MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE

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1. Key Findings and Recommendations

The monitoring of the activities of the High Council of Justice of Georgia during 2016 revealed the following key findings:

Pluralism of opinions in the High Council of Justice

- As in the previous reporting period, the scarceness of actual discussions in the Council was revealed. The non-judge members appointed by the Parliament and the Chairperson of the Council, who distinguished themselves with principal positions with respect to important issues during the first period of their authority, in the reporting period again did not express their opinions different from those of the judge members of the Council/the influential group of judges. Only the member of the Council appointed by the quota of the President expressed a different opinion on several important issues;

- A number of initiatives regarding important issues have been put forward by both judge and non-judge members of the Council; however, no appropriate response followed those initiatives, which might be indicative of only a formal nature of raising of important initiatives and of the incapacity of the Council;

- In the reporting period one position of a member of the Council was still vacant, who was to be elected by the Parliament by a qualified majority of votes. The legislative changes of the Third Wave of the Judicial Reform, according to which the election of one member of the Council by a qualified majority of votes was eventually waived, worsen the situation with pluralism in the Council.

- The maintaining by the Council of its practice to invite interested persons to the Council's sessions in the reporting period as well should be assessed positively;

- The Council's response to accusations against judges and to the disclosures of violations in the judicial system aimed in most cases to protect the judges and the judicial system from critics but failed to answer the arisen questions and, accordingly, to dispel legitimate doubts surrounding the occurred facts.

Key findings related to the transparency of the activities of the High Council of Justice of Georgia:

- The problem of **preliminary and timely publication of information on the Council's sessions** was again identified in 2016. There were cases when information on the session was published in the evening of the previous day or on the very day when the session was to be held. Because information on one of the sessions was published a few minutes before the session, the monitoring group was unable to attend the session.

- **Agendas were not always published** along with the information on sessions. In addition, the formulation of items in the agendas did not give comprehensive information on the issues to be discussed at the sessions.

- **The issue of preparation for sessions** is not regulated under the legislation governing the Council's activities. In the reporting period, the Council postponed many times the making of decisions on the issues included in the agenda on the ground that the issue needed to be better studied by the Council's members and to be better prepared. There were also cases when the review of the issue was postponed because the respective material had not been provided in a timely manner to all the members of the Council.

- In the reporting period, a number **minutes of the sessions** were published on the web page of the Council; however, due to the place where they were published on the web page, interested persons were not actually able to search for them. The decisions of the Council were not published in a codified form; in addition, the Council failed to completely fulfil an obligation to proactively publish information.

- Information **on the closing of the sessions** was not preliminarily published within a statutory period of 7 days. In 2 cases, there were violations not only of the obligation to preliminarily publish information on the closing of the session, but the Council also failed to properly justify the need to close the sessions.

- The coverage of sessions by mass media also remained a problem. In the reporting period, mass media was allowed in most cases to take photos and make audio and video recordings of **the opening** of sessions only. On occasions, a monitor was placed in the reception room of the Council, through which the sessions of the Council were broadcast, but the camera mounted in the session hall did not provide the quality of audio and video recordings appropriate for their dissemination for journalism purposes.

- The procedures of the **selection/appointment** of judges were carried out with certain violations, in terms of transparency. During the competition announced in the reporting period, interviews with judicial candidates, at their wish, were conducted in a closed manner for the first time within the past few years, which is indicative of the need to regulate this issue at a regulatory level.

- In the reporting period, certain positive trends of regulation based on **the conflict of interest** practice were revealed. Two members of the Council participating in the competition of judges resorted to a recusal mechanism. In addition, two members of the Council sought recusal in voting on the decision regarding one of the issues. Despite this, there is no uniform vision and regulation with regard to the conflict of interests, which could allow the members of the Council to independently decide the issue of recusal in each individual case.

Main problems associated with the selection/appointment of judges:

- The competitions for the selection of judges held during the reporting period left an impression that the Council had only a formal approach to the process of competitions: both competitions were held in an unreasonably short period of time and in violation of established procedures;

- In the reporting period, the legislation still failed to provide for objective criteria and a transparent process of selection of judges, and granted an unfettered discretion to the Council. A legislative reform in this regard was not implemented in the reporting period either;

- The time frames for obtaining information on judicial candidates and for the submission by candidates of additional information, and other procedural issues, are not sufficiently regulated by the procedure for the selection of judges, established by the High Council of Justice of Georgia, which contravenes the standard of the foreseeability of a law and adversely affects the process of selection of judges.

- The process of interviews is not sufficiently formalised: the purpose of interviews is general, and the specific topic of interviews and the procedure for the conduct of interviews are not pre-determined. The improper organisation of the process of interviews puts the candidates in an unequal position and allows the Council to arbitrarily create better conditions for individual candidates;

- In the reporting period, the Council re-appointed effective judges, whose terms of office were to expire a few years later. The substantiation of the reason for the participation of effective judges in the competition was so unbelievable that it gave rise to assumptions that the effective judges were appointed by prior agreement with the Council, in the conditions of the effective Council.

- In the reporting period, the inconsistent practice of reappointment of effective and former judges gave rise to suspicions as to the application by the Council of a selective approach - refusals to appoint former and effective judges were not properly justified despite the existence of unfilled vacancies. The law does not provide for an obligation of such substantiation either.

- In the reporting period, there were cases, when for many judges, who were appointed with the specialisation determined by the competition, the Council altered specialisations at their request soon after the competition was conducted. The above is indicative of the fact that the Council does not appropriately examine the compliance of candidates with vacancies announced in specific specialisations, and improperly uses the power to determine specialisations for appointing person pre-determined by prior agreement.

Findings related to the admission of trainees to the High School of Justice:

- The Council held a competition for the admission of trainees to the High School of Justice only once over the past two years. This adversely affects the process of selection/appointment of judges - results in the participation of the same candidates in the competitions and precludes the appearance of new figures in the judicial system;

- The criteria of selection of trainees do not meet the standard of objectivity, while interviews are not formalised enough, which allows the Council to admit trainees to the School based on its subjective decisions;

- The law does not regulate the procedure and criteria for the admission of trainees of the High School of Justice, which grants to the Council a broad discretion to determine criteria and establish the procedure for the admission of trainees to the School.

Gaps identified in the process of appointment/dismissal of chairpersons of courts:

- The criteria and the procedure for the appointment of chairpersons of courts/panels/chambers are prescribed by neither the law nor the decision of the Council;

- Candidates for chairpersons of courts/panels/chambers are not identified through the announcement of a competition and it is unclear how a person becomes a candidate for chairperson; when considering the issue, the Council does not examine by any objective criteria the candidate's compatibility with the position to be occupied. This creates an impression that the mechanism of appointment of chairpersons of courts/panels/chambers is applied by the Council to appoint suitable/reliable persons to significant positions and to maintain its influence on the judicial system and judges through them;

- In the reporting period, the precedent of dismissal by the Council of chairpersons of courts, contradicts the established international standards, violates the right of individuals to a due process, and allows to arbitrarily and immediately dismiss chairpersons of courts.

Mechanism of disciplinary responsibility of judges:

- In the reporting period, the low number of reviews of disciplinary complaints and the tendency of unreasonable protraction of reviews was identified. This gives rise to assumptions that the problem of impunity exists in disciplinary proceedings. In addition, the delay in the review of disciplinary complaints and the resumption of reviews of complaints submitted years ago considerably prejudice the internal independence of courts.

Gaps related to the process of evaluation of judges appointed for a probation period:

- Regulatory norms of the evaluation of judges appointed for a probation period and the procedure for making decision on the appointment of judges for an indefinite period of time do not contain guarantees sufficient for the objective and transparent evaluation of judges, and give an opportunity to make arbitrary and subjective decisions.

- From 2013 up to present, the High Council of Justice has been carrying out the evaluation of judges appointed for a probation period without having adopted a sub-statutory act that would regulate in detail the process of evaluation of judges appointed for a probation period.

- The blanks approved by the High Council of Justice were completed by some of the evaluators in a manner that, due to absence of concrete substantiation in a number of evaluation components, the evaluation could be attributed to any judge, rather than a particular judge. Therefore, it may be said that the evaluation reports in a number of components are formulaic. A formulaic nature is mostly characteristic of the **'honesty'** component.

- Conclusions in the reports are made in a manner that they fail to show what the evaluators relied on when making the conclusions. Moreover, in a number of cases, the reports were not preceded by information on the documents or materials that the evaluator could rely on.

- When assessing judges based on an 'honesty' criterion, the evaluators observe that they relied on information requested from various institutions, information obtained through interviewing individuals, the results of examining the audio and video recordings of court sessions and others. However, when reading the conclusions, it is difficult to establish exactly what information led the evaluator to making a positive conclusion.

- The evaluation of judges according to a 'competency' criteria is mostly based on the study of cases reviewed by the judge, which should be selected randomly; however, it is difficult to figure out from the reports what methodology was used when randomly selecting the cases. In addition, it is uncertain what methodology was used to assess the decisions made by judges and whether the evaluators have uniform approaches to assessing the decisions.

- It has not been pre-determined based on which information a judge should be assessed in each specific criteria. The above mentioned showed in practice that information that was used for the evaluation of different criteria may be insufficient and irrelevant.

Recommendations

Recommendations related to ensuring the pluralism of opinions in the Council:

- In order to actually ensure pluralism in the Council, the procedure for the election by the Parliament of non-judge members of the Council should be improved in such a way as to ensure compulsory participation of both the parliamentary majority and the deputies outside the majority, and to make the process of election and the procedure for election more transparent and to ensure that it is based on the principle of professional selection;

- The Council should develop the procedure and forms of responding to facts of pressure on judges and to violations in the judicial system, which will ensure the efficient observance of the independence of the judicial system and judges.

Recommendations related to the transparency of the activities of the Council:

- It is important that the Council regulates, by developing its internal regulations, the procedure and time frames for the arrangement of sessions, and the instances of calling sessions in the cases of urgent necessity and making changes in the agendas of sessions. An obligation to publish draft laws, conceptions and other public documents to be discussed at the session should be established.

- The Council should be imposed an obligation to publish the minutes of its sessions and its decisions on the web page of the Council within specific time frames. A live broadcasting of sessions via its own web page is also recommended.

- It is important to regulate the rule and procedures for closing sessions in advance. In this regard, the Council shall ensure the protection of the interests of persons willing to attend the Council's sessions.

- The standard approved by the Council with respect to the conduct of interviews with judicial candidates at closed sessions should be changed, and the interviews should be conducted in an open manner. In addition, the records of interviews should be made available to all interested persons.

- The Rules of the Council should be brought into compliance with the General Administrative Code of Georgia in order to provide for the possibility of unhindered and complete coverage of the sessions by mass media.

- The Council should develop acts regulating the conflict of interests in a timely manner, which will apply to all forms of the activities of the Council.

Recommendations related to the selection/appointment of judges:

- The Council should carry out the selection/appointment of judges in full compliance with the current legislation, within reasonable time frames, in such a manner as to ensure that the rights of candidates are protected and that the transparency of the process is not prejudiced;

- The legislation should improve the standard of evaluation of objective criteria of selection of judges;

- Both the legislation and the procedure of the High Council of Justice for the selection/appointment of judges should be improved in such a manner as to ensure the observance of the principle of foreseeability of legislation;

- The Council should ensure that good practice is established in adopting decisions on the selection/appointment of judges and other decisions, which will earn the confidence of the society;

- Both the legislation and the Council's decision should improve the process of interviews with judicial candidates, which should ensure the conduct of interviews in an objective manner and in an environment equal for all candidates;

- The Council should ensure the reappointment of effective judges through both strict compliance with the principle of merit and observance of the principle of irremovability of judges, in order to exclude inappropriate arrangements between the Council and individual judges;

- The legislation should establish the procedures and conditions for determining and changing specialisations of judges, in order to exclude inappropriate manipulation with the power to determine/change specialisations of judges;

- The Council should, in each concrete case, substantiate the need to make a decision to determine/change the specialisation of a judge.

Recommendations related to the admission of trainees to the High School of Justice:

- The legislation should clearly prescribe the procedure for holding competitions for the admission of trainees to the High School of Justice, as well as objective criteria and a transparent process of selection of trainees;

- The legislation should also provide that competitions for the admission of trainees shall be announced at least once a year, in order prevent improper influence of the Council on the process of announcement of the admission of trainees to the School. This will exclude the right of the Council not to hold a competition at all, as was the case in 2015-2016.

Recommendations related to the appointment and dismissal of chairpersons of courts:

- The law should establish the criteria for the appointment of chairpersons of courts/panels/chambers, the procedure for appointment through open competitions, and the obligation of the Council to justify its decisions on the appointment of chairpersons;

- The legislation should clearly determine an obligation of the Council to ensure the exercise by the person of the right to a due process when dismissing a chairperson of a court.

Recommendations related to the disciplinary responsibility of judges:

- The Council should develop a procedure for maintaining statistical data about disciplinary proceedings against judges, which will make accessible the statistical information about the grounds for initiating or terminating disciplinary proceedings, bringing the person to disciplinary liability or for other decisions made by the Council.

Recommendations related to the evaluation of judges appointed for a probation period:

- The High Council of Justice should establish a procedure for the evaluation of judges appointed for a probation period, which will ensure the observance of the principles of foreseeability, objectivity, and independence of judges. This procedure should be made available to judges and the public in advance, and it should ensure a uniform approach of evaluators to the process of evaluation, and substantiation.

- In order to prevent arbitrary decisions, and to achieve better objectiveness in the evaluation of judges, the evaluators should substantiate the evaluation conclusions appropriately and the conclusions should not be formulaic.

- When an evaluator makes a certain conclusion, he/she should refer to information that became a basis for a positive or negative evaluation. Conclusions should be read in such a manner as to provide an objective reader with an exhaustive information about the honesty and competency of the judge.

- The evaluation conclusions should specify what methodology was used to select five cases reviewed by a judge and what methodology was used to evaluate these decisions.

- If information obtained by the evaluator in the course of evaluation of a judge in insufficient, the evaluator should make a respective note in his/her conclusion and should avoid writing a general evaluation of the judge.

- The points awarded by the evaluator should be in conformity with the substantiation stated in the evaluation conclusion.

2. Methodology

Within the framework of the project 'Promoting Rule of Law in Georgia' (PROLoG), which is financed by USAID and implemented by the East West Management Institute, the Georgian Young Lawyers' Association (GYLA) and Transparency International - Georgia have been carrying out annually the monitoring of the activities of the High Council of Justice of Georgia since March 2012.[1]

This reporting period covers the period between January 2016 and December 2016. The report is prepared on the basis of information obtained as a result of the direct attendance of the representatives of monitoring organisations at the Council's sessions and different public meetings, and on the basis of the analysis of this information; also on the basis of the study and analysis of current legislative regulations, and the analysis of data obtained by requesting public information and of information uploaded to the web page of the Council, and of the conclusions of evaluation of judges appointed for a probation period. The documents and opinions of competent international organisations regarding the matters related to the independence of courts have also been used in this report.

The monitoring which was carried out in 2016 once again identified a number of gaps in the Council's activities, which is conditioned by the obscurity of legislation and the insufficiency of legal regulation, and the incapacity of the Council to establish appropriate procedures and good practice.

This report aims to identify positive or negative trends of the activities of the Council, which will contribute to better efficiency of this body and the transparency and impartiality of the justice system. We hope that the key findings of the monitoring carried out by us and the prepared recommendations will be interesting for the members of the Council and local and international experts and organisations involved in the operation and reform of the judicial system.

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[1] *High Council of Justice Monitoring Report,* Georgian Young Lawyers' Association, Transparency International - Georgia, 2013*,* https://goo.gl/VGPFdp*; High Council of Justice Monitoring Report No 2,* Georgian Young Lawyers' Association, Transparency International - Georgia, 2014*,* https://goo.gl/o07Sz3*; High Council of Justice Monitoring Report No 3,* Georgian Young Lawyers' Association, Transparency International - Georgia, 2015*,* http://bit.ly/2cbgioj*; High Council of Justice Monitoring Report No 4,* Georgian Young Lawyers' Association, Transparency International - Georgia, 2016*,* http://bit.ly/2bx4dd4

3. Pluralism of opinions in the High Council of Justice

3.1. Diversity of the positions of the members of the Council

- **In the reporting period, the positions of judge members of the Council and non-judge members of the Council elected by the Parliament frequently coincided with the positions of judge members; on frequent occasions, the Chairperson of the Council did not state different positions with regard to the positions of judge members of the Council. The above mentioned comes into conflict with an idea of mixed composition of the Council, which should be contributing to the existence of the pluralism of opinions in the Council.**

- **In most cases, the positions of the member appointed by the President differed from those of judge and non-judge members of the Council. Whereas, one non-judge member of the Council also expressed his different opinion in individual cases.**

- **In the reporting period, several important initiatives of judge and non-judge members of the Council were not supported by the Council. (For example, solving of the problem of protraction of cases, changes in the Rules of the Council, etc.). This may be indicative of the failure of the Council to solve the problems associated with the independence and transparency of courts;**

- **In the reporting period one position of a non-judge member of the Council still remained vacant.**

- **The legislative changes of the Third Wave of the Judicial Reform worsen the situation with pluralism in the Council: The Parliament of Georgia elects all the members of the Council by a simple majority of votes; the Rules of Procedure of the Parliament of Georgia do not provide for an open process of election of members of the Council by the Parliament.**

The High Council of Justice of Georgia is composed of 15 members. Eight members of the Council are elected by the self-governing body of Georgian general court judges in a manner established by law, 5 members are elected by the Parliament of Georgia and 1 member is appointed by the President of Georgia. The High Council of Justice of Georgia is chaired by the Chairperson of the Supreme Court who holds a position of member of the High Council of Justice of Georgia.[2]

In the reporting period, the Council functioned with the composition of 14 members. In the reporting period, one position of a non-judge member of the Council was still vacant, who should have been elected by a qualified majority of votes, with the participation of the governmental and non-governmental political forces of the Parliament of Georgia. Accordingly, the purpose of the law that the High Council of Justice is to be composed of members elected through the participation of both the parliamentary majority and non-government opposition forces was not accomplished.

Pursuant to relevant international standards, 'non-judge members... should be elected by a qualified majority, which requires a significant support from the opposition, and they should be such individuals as to ensure diverse representation of the society in the final composition of the Council of Justice.' [3]

The changes provided for by the Third Wave of the Judicial Reform annulled the procedure for the election of one member of the Council by the Parliament of Georgia by a qualified majority of votes, and the Parliament now elects members of the Council by a simple majority. The above mentioned excludes the need of participation of non-governmental parliamentary forces in the election of members of the Council, which will affect even more the pluralism of opinions in the Council. In addition, the procedure for the election of members of the Council established by the Rules of Procedure of the Parliament of Georgia fails to ensure an open election process.[4] In order to achieve a diversity of opinions in the Council, it is necessary to make relevant changes in the Organic Law of

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[2] Article 47(2) of the Organic Law of Georgia on General Courts.

[3] Opinion No 10 (2007) of the Consultative Council of European Judges (CCJE).

[4] Article 219 of the Rules of Procedure of the Parliament of Georgia, which regulates the procedure for the election of members of the High Council of Justice and the disciplinary panels of general courts, provides for formal procedures for establishing the compliance of candidates. In particular, the Rules of Procedure of the Parliament does not provide for the possibility for the presentment by candidates of their opinions regarding the effective accomplishment of the objectives of the High Council of Justice, as well as for the involvement of interested persons.

Georgia on General Courts and in the Rules of Procedure of the Parliament of Georgia[5] to ensure the election by the Parliament of one member of the Council by a qualified majority of votes.

In the reporting period, there was no difference of opinions between the judge members concerning any important issues. In addition, the opinions of non-judge members elected by the Parliament and judge members coincided with each other in most cases. The approximation of the positions of non-judge members elected by the Parliament and judge members could already be observed in the previous reporting period as well. The opinions of the Chairperson of the Council frequently coincided with the opinions of judge members of the Council. However, as in the previous reporting period, the Chairperson urged the members of the Council to follow the principle of the review of issues by a collegial body and requested them to be active in expressing their opinions concerning issues to be reviewed by the Council.

In the reporting period, mostly two non-judge members of the Council, Vakhtang Mchedlishvili and Gocha Mamulashvili, were expressing their different opinions. Vakhtang Mchedlishvili, a non-judge member appointed by the President, stated his different positions most frequently on the issues to be reviewed by the Council. However, the different positions were often stated inconsistently and they failed to defend their opinions till the last.

At the session held on 12 September 2016, one of the issues was to determine the composition of the Panels of some of the courts. The letters of the Batumi City Court's judges Davit Mamiseishvili, Indira Mashaneishvili and Salikh Shainidze were presented at the session, in which Davit Mamiseishvili was asking to transfer him to the Criminal Cases Panel soon after his appointment in the Civil Cases Panel. Vakhtang Mchedlishvili, a member appointed by the President, noted that the Council should decide upon whether it is appropriate to appoint a judge to a vacant position through a competition and soon after change his/her specialisation. Gocha Mamulashvili, a non-judge member, responded to the above and asked: Didn't Davit Mamiseishvili know two months ago that he wanted to work with other specialisation and applied for the vacancy announced in the Civil Cases Panel when 2 years were remaining before the 10-year term of his judicial office expired. However, during the interview conducted with the above judge remotely, Gocha Mamulashvili and Vakhtang Mchedlishvili, non-judge members, did not ask more questions, and despite their different opinion stated at the previous session, voted for Davit Mamiseishvili's transfer to the Criminal Cases Panel, in contrary to the opinion stated earlier.

In the reporting period, a number of important issues were initiated by the members of the Council. However, it should be noted that the Council did not make concrete decisions on important initiatives, the need of adoption of which is actively discussed by general public. This created an impression in individual cases that important initiatives were put forward only formally, and in other cases this was indicative of the incapacity of the Council and the lack of desire of the Council to make decisions important for the judicial system.

Eva Gotsiridze, a non-judge member, raised an issue before the Council to study delays in the examination of cases in courts. The protraction of cases in the judicial system is a well-known problem and the High Council of Justice is responsible for the solving of this problem. Although the Council did not effectively respond to the raised issue, which deserves a negative assessment, the initiative of Eva Gotsiridze, a non-judge member, for starting work on solving this problem, which is critical for the judicial system, is worth to be pointed out.[6]

In addition, Shota Getsadze, a judge member of the Council, presented a draft decision on making changes to the Rules of the Council, which provided for an attempt of the Council to decide on the comments received from the civil society. The presented draft was supposed to include the regulation on the preliminary publication of drafts regarding the holding of the Council's sessions and issues to be discussed at the sessions. The draft also included the regulation of the review of matters at closed sessions and the procedure for presenting a specific issue by a Council member, requirements established with regard to the conduct of attending persons, time frames for the publication of decisions made by the Council, the procedure for appealing acts adopted by the Council, and the issue of the conflict of interests.[7] The Council expressed readiness to engage the civil society in these issues; however, the discussion of the above changes was not included in the agenda of the following sessions.

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[5] GYLA applied to the Parliament with a legislative proposal regarding this issue, and according to draft changes proposed, the Rules of Procedure would regulate anew the procedure for the election of members of the High Council of Justice and the disciplinary panels of general courts. In particular, it was proposed to grant a broad mandate to the committee of the Parliament in deciding issues regarding candidates. The above mentioned implies the improvement of the existing procedure and its detailed regulation on the one hand, and the obtaining of additional information on candidates on the other.

[6] ***Eva Gotsiridze, a non-judge member, presented at the Council's session*** *a draft decision 'On approving the procedure for the submission and review of materials concerning the reasons for delay in the review of cases', according to which the chairpersons of courts would be obliged to provide the Council with information on delayed cases every six months.*

[7] Session of the High Council of Justice held on 16 May 2016.

At the Council's session held on 12 September 2016, Vakhtang Mchedlishvili, a member appointed by the President, raised an issue of determining Friday instead of Monday as the day when session would be held, since the agendas of Monday sessions were provided to the members of the Council late, on Friday evenings, due to which it was impossible to timely study issues included in the agendas, since Saturday and Sunday were non-working days in order to manage to verify the issues or to obtain information. Moreover, the Council's members still met on Fridays to review disciplinary cases and they could interchange the days. The Council's members supported this initiative; however, as it turned out later, the Council's sessions were appointed both on Fridays and Mondays.

Vakhtang Mchedlishvili, a member appointed by the President, presented recommendations for the improvement of the existing situation as to the case load in the Tbilisi City Court. According to him, a complex approach is needed to relieve the case load. According to statistical information, the flow of cases particularly increased in relation to civil cases over the past years (2011-2015). Vakhtang Mchedlishvili presented 8 recommendations focusing on the resolution of the case load problem in the Tbilisi City Court. Levan Murusidze, Secretary of the Council, disagreed with the presented recommendations, calling the initiative populistic, since the announcement of the competition within tight time frames would be impossible during December. Despite the expressed opinions that the issue had not been studied appropriately, as well as the opinion that Council should continue working on this issue, since the case load problem really existed, neither Vakhtang Mchedlishvili's recommendations were discussed on the following sessions of the Council, nor other members of the Council presented proposals regarding the case load problem in the judicial system.

3.2. Inclusivity in the Council

The fact that in the reporting period the Council allowed interested persons to express their opinions concerning issues under discussion should be assessed positively.

The Council invited at various times the agencies or persons to whom the issue to be discussed concerned and who held any interest for the issue. For example, the representative of the office of the Public Defender stated his positions at the Council's session and came up with suggestions on discrimination-related issues. The Personal Data Protection Inspector was invited to one of the sessions to share his opinion regarding the procedure for the release and publication of decisions by general courts. An international expert was invited in order for him to share his experience with regard to the concept of juror and give practical recommendations. In addition, High Council of Justice Monitoring Report No 4, prepared by the Georgian Young Lawyers' Association and the Transparency International - Georgia, was discussed at the Council's session.

Notably, the Council members mostly expressed their willingness to listen to the opinions of persons attending the session. The monitoring group did not look into the issue of taking into account by the Council of the opinions expressed by interested persons. Consequently, this report does not contain any evaluations as to whether or not the expressed opinions have been taken into account.

By Decision No 1/136 of the Council of 23 May 2016, a Committee for the Development of the Justice Strategy and the Action Plan for its Implementation was set up. The Committee is composed of the Council members and the representatives of the judicial, executive and legislative authorities. Various non-governmental organisations and the Public Defender are also involved in the activities of the Committee. The representatives of international organisations have been invited in the status of observers of the work of the Committee. The objective of the Committee was to identify strategic problems in the judicial system and to plan appropriate measures for their solution. The Justice Strategy and the Action Plan within the frame of the EU-Georgia Association Agreement has been intensively developed since last year through organisation of the High Council of Justice of Georgia.

Developing the Justice Strategy and then fulfilling the obligations provided for by the Strategy by means of an inclusive process is crucial for the development of the judicial system and the fulfilment of obligations undertaken by Georgia under international agreements.

3.3. Council's response to accusations against judges and the disclosures of violations in the judicial system

- **The Council's response to accusations against judges and to the disclosures of violations in the judicial system aimed in most cases to protect the judges and the judicial system from critics but failed to answer the arisen questions and, accordingly, to dispel legitimate doubts surrounding the occurred facts**.

According to the opinion adopted by the Consultative Council of European Judges, when dealing with the issue of judges or courts challenged or attacked by the media or by political or social figures through the media – considered that, while the judge or court involved should refrain from reacting through the same channels, the Council for the Judiciary or a judicial body should be able and ready to respond promptly and efficiently to such challenges or attacks in appropriate cases. The Council for the Judiciary should have the power not only to disclose its views publicly but should also take all necessary steps before the public, the political authorities and, where appropriate, the courts to defend the reputation of the judicial institution and/or its members.[8]

The approach of the High Council of Justice to public criticism regarding judges is not uniform and it is not equally applied to all such cases, and there is no rule established by law or by a decision of the Council or an established uniform practice that would define the forms of response by the Council. In addition, the reporting period revealed a tendency when the Council inefficiently attempts to defend the authority and reputation of courts. The Council's statements often failed to answer questions with regard to the judicial system appeared in the public and did not dispel the arisen doubts. Consequently, the Council's response to accusations against judges and to disclosures of problems or violations in the judicial system failed to ensure an effective defence of the reputation of courts.

The Council was the target of criticism from the Chairperson of the Tbilisi City Court on numerous occasions. Mamuka Akhvlediani made a public statement regarding a number of problems within the judicial system, incorrect and chaotic appointments of judges,[9] as well as exposed the fact of disclosure of qualification test questions, concerning which an investigation was launched afterwards.[10] The Council's statement of reply[11] did not contain a well-argued objection to the accusation.[12]

Through public statement, the Council responded to the statements spread in media on 16 May 2016 concerning the judgement of conviction delivered by the Criminal Cases Panel of the Tbilisi City Court against the high officials of the Ministry of Defence of Georgia, and noted that the Council considered absolutely unsubstantiated any public statement with respect to the judiciary that explicitly damaged the court's prestige and authority, and urged all the interested persons to abstain from ill-judged and rushed assessment of the court's decision and, moreover, from ill-grounded criticism.[13]

The Council also responded to the fact of embezzlement of state funds by judge Natia Gujabidze, who reviewed the case of TV Company Rustavi 2, and expressed its extreme concern and considered inadmissible ungrounded accusations brought against the court and the judges and the unprecedented fact of pressure on them. According to the spread information, judge Natia Gujabidze was renting her mother's apartment, the cost of which was covered by the High Council of Justice. The Council noted in its statement that a disciplinary sanction or a measure of pressure had never been applied against Natia Gujabidze throughout her judicial career, and bringing accusations against her served the purpose of demoralising her and, thus, putting pressure on the court.[14] The Council's statement describes in general the procedure for providing judges with accommodation, established by law. However, the statement says nothing about the main issue that captured the public's attention and that relates to the legality of renting for Natia Gujabidze an apartment owned by her own mother. The explanation provided by the Council concerning the spread information failed to dispel doubts of the public, which prejudices the court's reputation, confidence of the public in the court, and also challenges the impartiality and independence of the judge who reviewed the dispute.

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[8] Opinion No 10 (2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary at the service of society, paragraphs 82, 83.

[9] Mamuka Akhvlediani's statement: Chairperson of the Supreme Court must retire
http://www.ipress.ge/new/20793-saqalaqo-sasamartlos-tavmjdomare-uzenaesi-sasamartlos-tavmjdomare-unda-tsavides

[10] Mamuka Akhvlediani: Last year's tests were disclosed in advance. Source: Radio Tavisupleba
http://www.radiotavisupleba.ge/a/27527350.html

[11] Statement of the High Council of Justice of 25 March 2016 regarding the statement made by Mamuka Akhvlediani
http://hcoj.gov.ge/ge/iustitsiis-umaghlesi-sabchos-gantskhadeba/2690

[12] The statement says that after Mamuka Akhvlediani was dismissed for the position of chairperson of the Tbilisi City Court, he 'resorted to extremely humiliating, unsubstantiated and false accusations, which is beyond the limits of the freedom of speech and expression and took a provocative format and form and which serves the main purpose: to compel the Council to initiate disciplinary proceedings that would result in his dismissal from the judicial position in order for him to acquire the status of 'victim of lawlessness' of the Council or the status of 'the oppressed' and earn the sympathy of the public through deceiving it. The Council urged Mr. Akhvlediani through this statement to cease talks in the form inappropriate for a judge, stop defaming court officials, the Council members and other judges, slandering and calling them 'criminals' and bringing false accusations against them. The Council's statement does not give an answer to the problems mentioned by Mamuka Akhvlediani on account of appointments and transfers of judges, which were permanently pointed out by non-governmental organisations.

[13] Statement of the High Council of Justice of 17 May 2016 http://hcoj.gov.ge/ge/gantskhadeba/2713

[14] Statement of the High Council of Justice of 2 June 2016
http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabchos-gantskhadeba/2718

The Council did not respond to a sexist and humiliating statement made by the host of a top-rated TV programme against the same judge,[15] which was later on appealed by the Women's Movement within the internal mechanism of the TV Company in question.

The Council made a public statement with regard to the secret recording of a private conversation held between Mamuka Akhvlediani, Chairperson of the Tbilisi City Court, and Nika Gvaramia, General Director of TV Company Rustavi 2, and expressed its concern regarding the communication that took place between the chairperson of the court and the party to the case. Any communication of the chairperson of the court, in which the case is reviewed, with an interested party regarding the case under review is absolutely inadmissible and constitutes a violation of not only the principles of judicial ethics but the Law of Georgia on the Procedure for Communication with Judges of General Courts, and in this case, not only from the side of the chairperson but also from the side of the interested party. The Council further noted that it was deprived of the possibility to conduct disciplinary proceedings, as Mamuka Akhvlediani did not hold the position of chairperson at that time any longer.[16] This case showed that corruption may take place in the judicial system, about which suspicions existed in the previous reporting period as well;[17] however, the Council's response both in the previous and this reporting period is ineffective, and the statement does not mention the need to create an efficient mechanism for revealing corruption in the judicial system and to implement prevention activities, and the Council's future plans in this regard. The Council only points out in its statement that 'in order to prevent such facts and violations, the Council intends to further intensify the teaching of the principles of judicial ethics.' Notably, such teaching, as a prevention activity, may be applied for preventing ethical violations, rather than for fighting corruption.

The Council also responded to the accusation regarding physical and verbal abuse against Giorgi Mikautadze, Chairperson of the Tbilisi City Court, which occurred in Gonio on 26 August 2016 in the place intended for public assemblies. In this regard, the Council noted that the attack was associated with the performance of judicial duties by the judge, and in this statement the Council urged the relevant public authorities to investigate this incident in a timely and effective manner and take appropriate measures to prevent similar incidents. In addition, the Council urged the media, the non-governmental sector, and state and other interested institutions to contribute, through their activities, to the correct understanding of the role and functions of the court in the society that chose a democratic way of life.[18] However, the Council's statement did not dispel the doubts in the society regarding the objectivity of the court in the case involving a high official.[19]

The case of disclosure of judicial qualification test questions was actual in the reporting period. On 2 February 2016, Mamuka Akhvlediani, then-Chairperson of the Tbilisi City Court, exposed the fact of preliminary disclosure of test questions.[20] The Council stated in this regard that the Council started investigating this issue. Despite the fact that this incident clearly contained the elements of crime, the criminal investigation of the case was launched only in early March 2016, after the Council had completed the examination of the case and forwarded the case to the Prosecutor's Office for investigation. The above fact and delay in launching the investigation gave rise to many questions in the public.[21] The members of the High Council of Justice stated that they were aware of this fact even before Mamuka Akhvlediani made a public statement, and that the investigation was under way. It remains obscure why the Council failed to communicate this fact to the Prosecutor's Office well before it was made public. In addition, it is still unclear what was being examined by the Council for more than one month after Mamuka Akhvlediani had spread information of the disclosure, and due to which powers and why the Council failed to apply to the Prosecutor's Office immediately.

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15 https://www.youtube.com/watch?v=0SevGFAoI1k

16 Appeal of the High Council of Justice of 5 October 2016 to the public, general courts, political parties, the non-governmental sector and the diplomatic corps http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabchos-mimartva-sazogadoebis-saerto-sasamartloebis-politikuri-partiebis-arasamtavrobo-seqtorisa-da-diplomatiuri-korpusisadmi/2780

17 Monitoring Report No 4 of the Georgian Young Lawyers' Association and the Transparency International - Georgia, paragraph 3.2.

18 http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabchos-gantskhadeba/2768 - Statement of the Council of 31 August 2016.

19 Statement of 7 September 2016: 'GYLA makes an assessment regarding the investigation of the incident occurred between the Chairperson of the Tbilisi City Court and the head of one of the non-governmental organisations.' The statement says that the investigation gave rise to assumptions that the investigation of the incident involving a high official is was conducted in a biased manner. The correctness of the classification of the committed action and the proportionality of expected punishment were also open to doubts. https://gyla.ge/ge/post/saia-tbilisis-saqalaqo-sasamartlos-tavmjdomaresa-da-ert-erti-arasamtavrobo-organizaciis-khelmdzghvanels-shoris-momkhdari-incindentis-gamodziebastan-dakavshirebit-shefasebas-aketebs

20 Mamuka Akhvlediani talks about the preliminary disclosure of judicial qualification test questions, 2 February 2016, source: Public Broadcaster http://1tv.ge/ge/news/view/116855.html

21 Statement: Non-governmental organisations request to launch investigation on the fact of alleged disclosure of judicial qualification test questions https://gyla.ge/ge/post/arasamtavrobo-organizaciebi-mosamartleta-sakvalifikacio-gamocdis-testebis-shesadzlo-gamzhghavnebastan-dakavshirebit-gamodziebis-datsyebas-itkhovs

Despite the questions emerged, which captured high public interest and which prejudiced the court's prestige and reputation, the Council did not make any statement in this regard. Notably, the Georgian Young Lawyers' Association applied to the Chief Prosecutor's Office of Georgia twice for obtaining information on the course of the investigation. The Prosecutor' Office informed in response that the investigation is under way on the fact of abuse of official duties by certain public officers, on the account of a crime provided for by the Article 332(1) of the Criminal Code of Georgia, and that the investigation of this case was launched on the basis of materials received from the High Council of Justice and it is still under way, and that no criminal prosecution had been initiated by that moment against any concrete person.[22]

4. Transparency of the Council's activities

4.1. Publishing information on the Council's sessions

The publication of information on the Council's sessions on a preliminary and timely basis allows interested persons to attend the Council's sessions and effectively carry out the monitoring of the Council's activities. Failure to publish information on the Council's sessions results in the violation of the requirement for the openness of sessions and considerably weakens the involvement of interested persons in the Council's decision-making process.

Pursuant to the General Administrative Code of Georgia,[23] the High Council of Justice of Justice, as a collegial body, is obliged to publish information on its session, as well as the venue, time and agenda of the session, a week before the session is held. It is unfortunate that, as in the previous reporting period, the problem of preliminary and timely publication of information on the Council's sessions was again identified in 2016. Out of 41 sessions held during this reporting period,[24] only in 1 case information on the session was published 7 days prior to the session. In particular, on 13 October, the information on the date of an interview with judges to be appointed to office for an indefinite period of time and the date of holding voting was published on the Council's web page. However, it should be noted that in this case as well, information on the specific time (hour) of start of the session was published one day prior to the session.

In this reporting period, information on sessions was mostly published on the Council's web page 3 days prior to the session or later. There were cases when information on the session was published in the evening of the previous day[25] or on the very day when the session was to be held.[26] In addition, because information on one of the sessions was published a few minutes before the session, the monitoring group was unable to attend the session held on 18 July.

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[22] Letters No ვ-04/207-16 of 24 March 2016 and No ვ-04/345-16 of 12 August 2016 of the Georgian Young Lawyers' Association; letters No 13/25544 of 21 April 2016 and No 13/54225 of 18 August 2016 of the Chief Prosecutor's Office

[23] Article 34 of the General Administrative Code of Georgia

[24] This number does not include the sessions, at which interviews were held and/or disciplinary complaints were reviewed.

[25] For example, Information on the session to be held on 16 November was published on the Council's web page late at night on 15 November.

[26] Information was published on the web page at 11 a.m. on 3 October saying that the session will be held at 1 p.m. Notably, information on the session was also communicated to monitoring organisations by e-mail by 11 a.m.

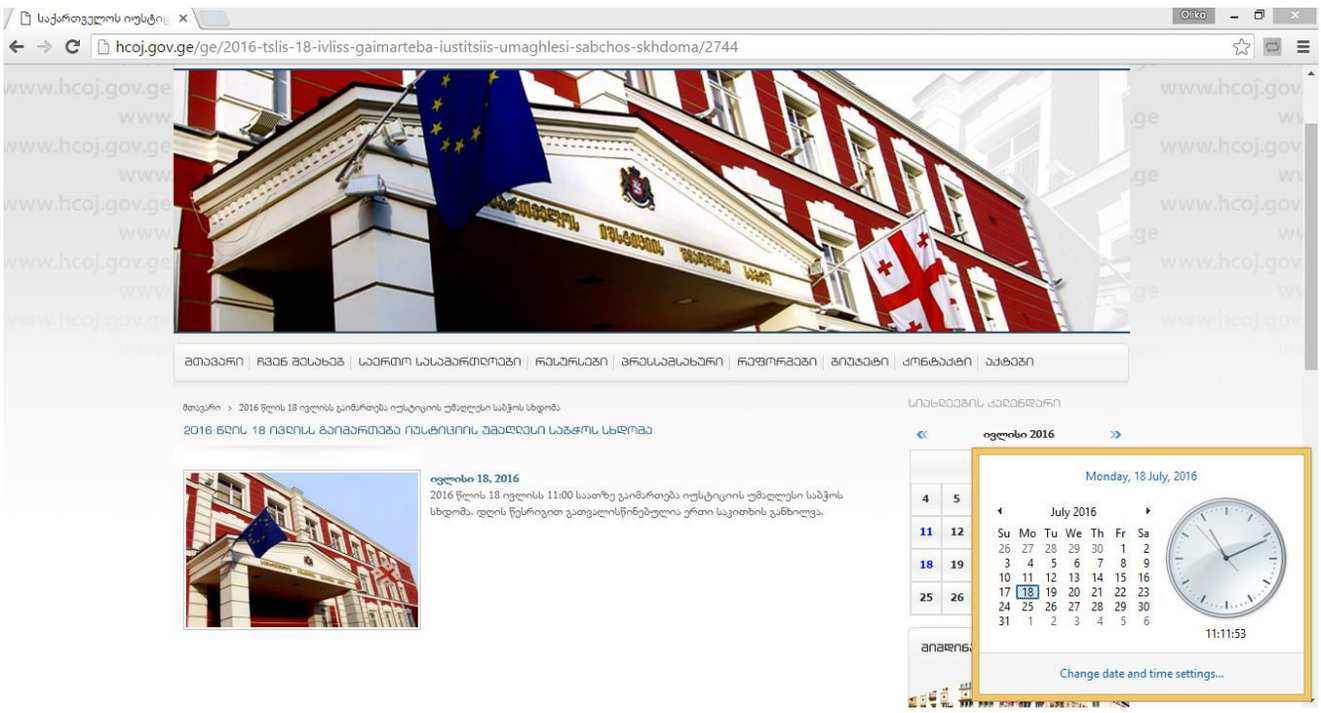

Illustration No 1: Because information on the session was published on the web page with delay, the monitoring group was unable to attend the session held on 18 July.

The problem of the publication with delay of information on the postponement of scheduled sessions was also identified. In 7 cases,[27] the sessions scheduled in 2016 were postponed for other time. In 2 out of the above cases, information on the postponement of the session has never been published on the Council's web page and the monitoring group learned about the postponement only after visiting the Council.[28] In 3 cases, information on the postponement was published on the very day when the session was to be held.[29] There also was a case when the time of start of the session was changed and information in this regard was published on the very day when the session was to be held.[30] Notably, in none of the cases, the reason of change in the date/time of the session was published on the web page. The problem of the start of sessions later than announced was also identified as an important problem. The sessions normally started 15-35 minutes later than announced, which caused discomfort to persons willing to attend the sessions.[31]

As in the previous reporting periods, there were cases in 2016 as well, when the Council's decisions were delivered on the dates for which the sessions had not been announced. The above makes it possible to believe that the session was held so that information on the session was published neither preliminarily nor with delay. Such decisions, in some cases, coincide with the dates when interviews were held for the selection/appointment of judges, [32]and in other cases, with the dates when disciplinary complaints against judges were reviewed at closed sessions. Based on the information mentioned at the Council's sessions, we may conclude that some of the decisions were probably made on the basis of the so-called check list.[33]

The above data prove that gaps still remain in the Council's activities with regard to the preliminary publication of information on the sessions. In virtually all cases, the Council neglected the provision of the General Adminis-

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[27] Sessions scheduled for the following dates were postponed: 25.07.2016, 23.09.2016, 11.11. 2016, 30.09.2016, 18.11.2016, 21.11.2016, 27.12.2016.

[28] On 11 November and 30 September

[29] On 18 November, 21 November and 27 December

[30] On 23 May, information was published on the web page saying that the session was postponed from 10 a.m. to 2 p.m.

[31] For example, on 28 November, the session started at 4:10 p.m. instead of announced 3:00 p.m.

[32] For example, on 3 February, a decision concerning the advancement of one of the candidates to the second tour was made, despite the fact that the session was intended for the conduct of an interview and the agenda of the session did not include the above issue.

[33] Decisions were made on the following dates without information on the sessions being published on the web page: 1) 18 March - the amount of increment was determined for judges; 2) 1 April - Mamuka Akhvlediani's resignation based on his personal application; 3) 27 January - the decision on the advancement of the candidates to the second tour of the competition; 4) 29 August - decisions on the dismissal of judges and on declaring void the conferment of powers to the chairperson of the court.

trative Code of Georgia about the publication of information on sessions 7 days prior. The practice of publishing information on sessions, established by the Council, failed to meet the relevant standards of transparency and to allow interested persons to carry out monitoring effectively. According to the assessment of the monitoring group, in this reporting period, the Council violated the law in all those cases when it failed to publish information on its sessions within statutory time frames. Failure to comply with statutory time frames may be justified only in exceptional cases, in the case of urgent necessity. Urgent necessity was not substantiated in any of the cases.[34]

4.2. Accessibility of agendas and additional drafts/documents

When talking about the publication of information on the Council's sessions, it is important to discuss the issue of publication of agendas of the sessions as well. During the reporting period, agendas were not always published along with the information on sessions. In 2 cases,[35] agendas were not published at all before the sessions, and in 4 cases agendas were published with delay, namely, a few hours or minutes before the sessions.[36] In addition, the formulation of items in the agendas did not give comprehensive information on the issues to be discussed at the sessions. For example, one of the issues included in the agenda of the session of 22 February was *'Analysis of information on alleged violations identified in establishing the composition of judges based on the categories of cases for the purpose of adopting the procedure for interrogating witnesses';* however, the session actually contained discussions of the issue of dismissal of Mamuka Akhvlediani, Chairperson of the Tbilisi City Court, and a positive decision in this regard was made at this session. One of the issues in the agenda of the same session was 'Giving approval to the LEPL Department of General Courts'. As in the case of this issue, the agendas often included the discussion of letters received from certain entities or the chairpersons of courts. Such general headings of agenda issues actually make it impossible for interested persons to understand the contents of the issues to be discussed or to figure out what exactly is to be discussed by the Council.

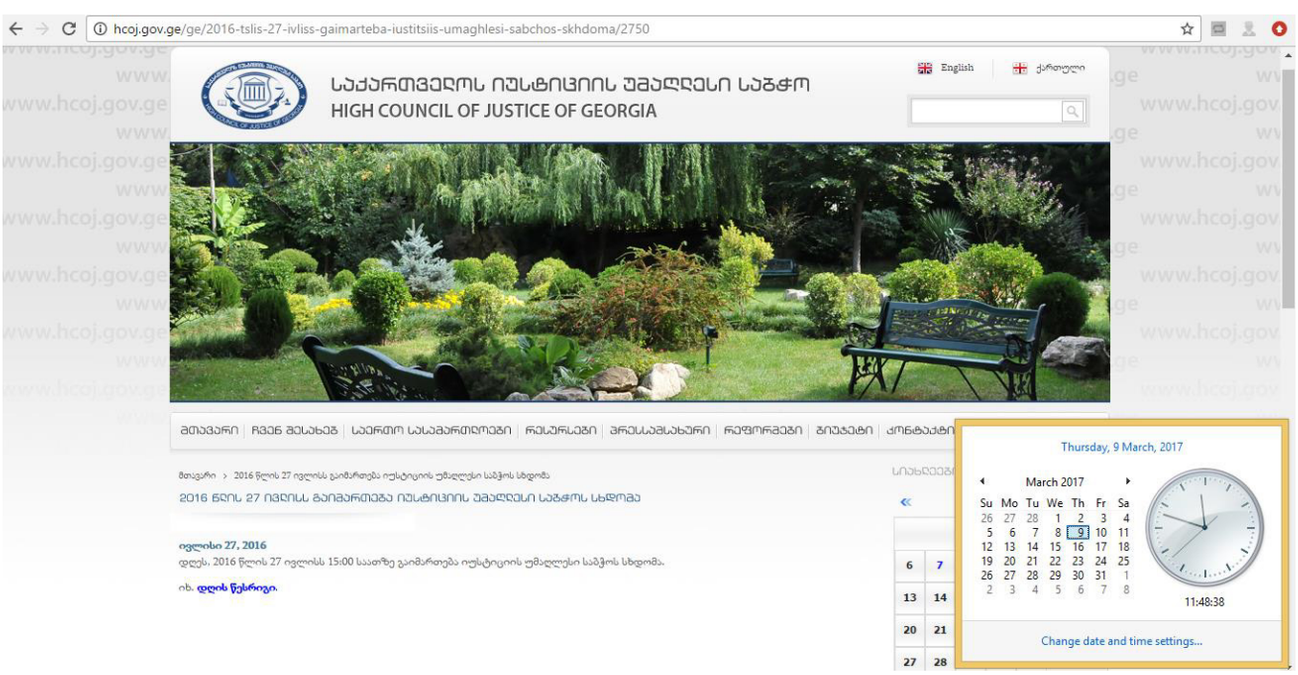

Illustration No 2: The agenda of the session of 27 July was published a few hours before the session.

[34] Notably, based on the amendments of the Third Wave of the Judicial Reform, from 14 March 2017 the Council will be obliged to publish on its web page information on the date and agenda of a session 7 days prior to the session.

[35] Sessions held on 18 July and 19 September

[36] 1) The agenda of the session of 27 July was published a few hours before the session. 2) On 3 October, at 11:00 a.m., information was published on the Council's web page saying that one issue was included in the agenda; 3) On 16 November, 2 hours prior to the session, information was published saying that the agenda included one issue: the discussion of the letter from the chairperson of the LEPL Department of General Courts. This information was later corrected and one more issue was added on the web page.

We should also point out the issue of preliminary accessibility of documents, draft laws, action plans or conceptions related to issues to be discussed at the session. Only in one case interested persons were able to obtain via web page documents to be discussed or that have already been discussed at the session. In particular, on 30 December, a working draft of the 2017 National Action Plan for the Implementation of EU-Georgia Association Agreement was published on the Council's web page. Persons interested in the announcement had an opportunity to present their comments and views to the Council by 9 January 2017.

Based on the changes of the Third Wave of the Judicial Reform, from 14 March 2017 the Council will be obliged to publish on its web page information on the agendas of sessions 7 days prior. It is important that the Council also defines in the acts regulating its activities the obligation of publishing documents to be discussed at its sessions, especially if documents that are intended for frequent use or that have regulatory content are planned to be approved at the session.

According to Article 32 of the General Administrative Code of Georgia, public institutions are obliged to conduct their sessions openly and publicly. The principles of openness and publicity implies that interested persons have the right to know as precisely as possible what the issue concerns, and that the draft laws and conceptions and other public documents brought for discussion should be accessible for interested persons. For these purposes, in order to ensure the observance of the principles of openness and publicity, draft agendas of the Council's sessions should be as detailed as possible, and draft laws, action plans and conceptions or other documents to be discussed should also be accessible. This will ensure the actual transparency of the Council's activities and will facilitate the realisation of the right of the public to have appropriate and complete information in order to carry out an efficient control. The Council has no direct obligation under the legislation to publish all draft documents beforehand; therefore, it is important that the Council implements the above mentioned activities in practice, based on the principle of publicity.

4.3. Preparation of sessions

The issue of preparation for sessions is not regulated by the legislation governing the Council's activities. In the reporting period, the Council postponed many times the making of decisions on the issues included in the agenda on the ground that the issue needed to be better studied by the Council's members and to be better prepared. There were also cases when the session was postponed because the respective material had not been provided in a timely manner to all the members of the Council. In the current reporting year, the Council held sessions almost every week and sometimes twice a week. Under such conditions, it is very important and essential to regulate the issues related to the preparation of sessions and the issue of respective time frames. Namely, it should be regulated, within what time frames the Secretary of the Council provides all the members of the Council with those applications and draft documents that are to be discussed at the upcoming session. It is also important that the Council members are timely provided with not only those documents to be discussed at the upcoming session, but also with copies of any incoming document addressed to the Council and falling within its competence, in order to enable the Council members to demand, at their own discretion, reviewing of certain issues at the Council's upcoming sessions.

Matters related to the drawing up of the Council's agendas are also problematic. Neither the General Administrative Code of Georgia nor the statutory and sub-statutory acts regulating the Council's activities determine how and under what procedures the Council's agendas should be drawn up. Whereas, the improper regulation of this issue undermines the transparency of the Council's activities and raises additional questions as to the openness of its activities. It would be expedient if the legislation regulating the Council's activities sets forth the procedures for drawing up agendas and determines persons responsible for that. The insufficient regulation of this issue may be the reason why items not included in the agenda are reviewed and decided at the Council's sessions,[37] the examples of which we have had within the current reporting period. The Rules of the Council do not determine persons who will be responsible for compiling a list of issues to be included in the agenda, and the rights of the Council members are not defined either with regard to requesting the removal from or addition of this or that issue to the agenda, within appropriate time frames and under appropriate procedures, or directly at the Council's sessions.

Problems related to the preparation of sessions were revealed in the previous reporting year as well, about which the Council members spoke aloud. Verbal references to similar problems were again made by the Council members in the current reporting period. At the session held on 9 January, a non-judge member [38] of the Council stated that

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[37] For example, decisions were similarly made at the sessions held on 11, 15, 18, 25 January, 20 June, 14 July and 16 November

[38] Vakhtang Mchedlishvili, a member appointed by the President

recently the agenda materials were uploaded to the web page on the previous day (session No 4 or No 5). At the same session, he requested to postpone the discussion of the issue of appointment of a chairperson of one of the panels of the court on the ground that this issue had not been included in the agenda.[39] At the Council's session held on 5 September, the same member noted that the materials for Monday sessions are uploaded with delay on Fridays and sometimes in the course of the sessions, and he had therefore to become familiar with the materials during the session. The same problem was pointed out at the session held on 12 September, as a result of which the Council made a decision to appoint the Council's sessions on Fridays instead of Mondays. Afterwards, the sessions were normally held on Fridays as well; however, the discussion of the issues was frequently postponed due to inappropriate preparation.

4.4. Publishing the minutes of sessions and decisions

Another component of the transparency of the activities of the High Council of Justice is the publicity and availability of the minutes of sessions and the decisions of the Council, which allows interested persons to understand and assess the Council's activities. The Council maintains the minutes of sessions in the forms of video and audio recordings.

Notably, after the meeting of the authors of Monitoring Report No 4 with the Council, the video recording of the following session was uploaded to the Council's web page.[40] Unfortunately, this practice was not further pursued by the Council. In several cases, the recordings were replaced by new ones; however, it was practically impossible for interested persons to find them, as they were placed at the electronic address of old recordings, and thus the old recordings were replaced by new ones. In addition, after 16 September, the session recordings were not updated on the web page. The publication of session recordings on the official web page of the Council is especially important in the circumstances when the decisions of the Council are only limited to the indication of legal grounds and are prepared according to an established template and contain no justification. Whereas, a session recording is the only way for interested persons to become familiar with the justification of a particular decision.

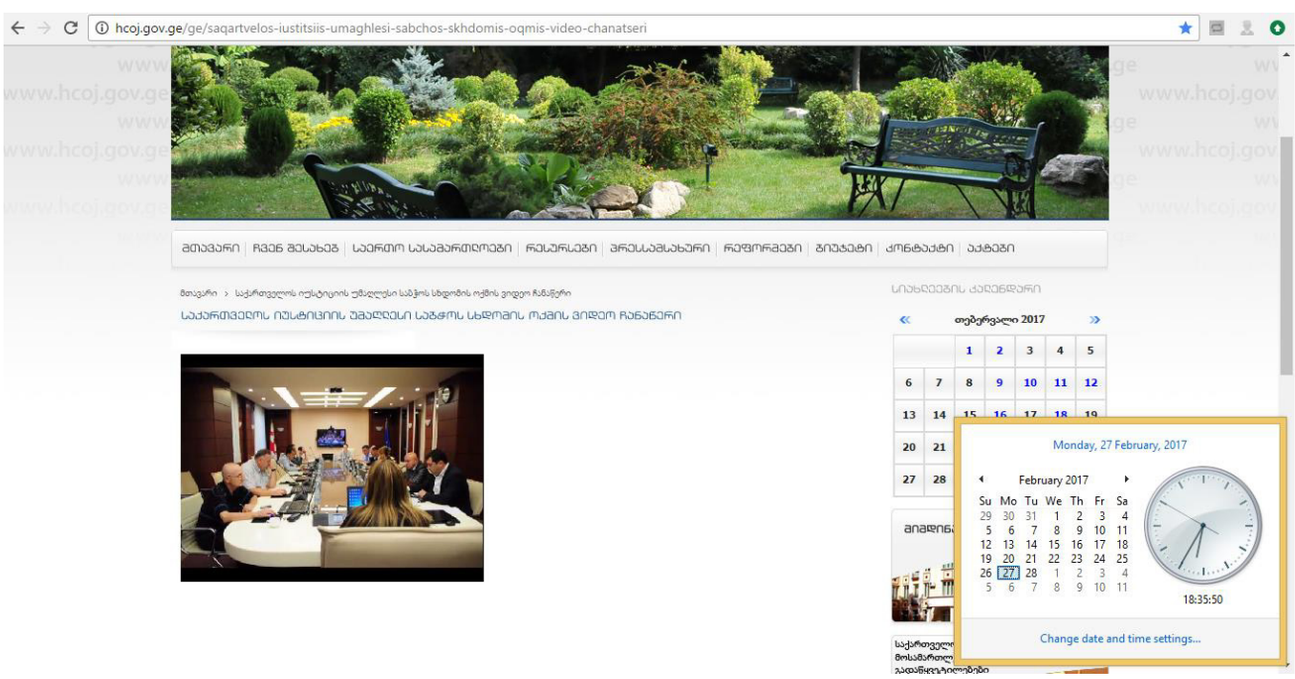

Illustration No 3: After 16 September, session recordings were not updated on the web page.

[39] However, the issue was eventually discussed and Sergo Metopishvili, a member of the Council, was assigned to perform the duties of a chairperson of the panel.

[40] In particular, the video recording of the session held on 6 June was published on the web page on 7 June.

The monitoring group considers that the Council should be imposed an obligation by law to upload video and audio recordings and decisions to the web page of the Council within certain time frames, because the public has the right to access this material; however, the Council failed to ensure regulating this issue in practice for many years. Before having it regulated by law, the High Council of Justice should ensure the publication of audio and video recordings of the sessions not only within its internal network (intranet), but also on its official web page. A live broadcasting via its own web page is also recommended. This would contribute to the introduction of a transparent system in the Council by sparing less efforts and resources.

Notably, the Council did not provide the monitoring group with the June, July and August recordings, having referred to technical problems on the server during the monitoring period. The Council said that the recordings, including the recordings depicting the held interviews with judges, could not be restored by the completion of this report. Stemming from the fact that the audio and video recordings of the sessions are the only means to depict the course of the Council's sessions, including the positions expressed by the Council members and the questions raised, it is important that the Council introduces security mechanisms to prevent the loss of information due to technical drawbacks.

As for the publication of decisions, they were normally published on the Council's web page on the day following the sessions; however, there were cases when a particular decision was put to vote at the Council's session but the same decision was not made available through its publication on the web page or through being requested as public information.[41] The fact that the Council's decisions are not published in a codified form also represents a problem. Consequently, in order for interested person to view the latest version of a particular decision, they have to find the primary version of the decision and all the subsequent decisions amending the primary decision.

4.5. Information published proactively

There is a special space on the Council's web page as provided for by the Ordinance of the Government of Georgia on Requesting Public Information in Electronic Form and Publishing it proactively, where information defined in the ordinance should be uploaded. The major part of information has already been uploaded to the web page but there is certain information that cannot be found here. For example, only the 2013 Annual Report on the Council's Activities has been published, while such reports should be published on the Council's web page annually. In addition, information on incurred fuel expenses was not updated after 2014. No strategies, conceptions and action plans were published in the respective column on the Council's web page either. However, it should be noted that the Council provided the monitoring group with the above mentioned information upon request.

4.6. Closed sessions

Pursuant to the General Administrative Code of Georgia, the announcement on a closed session shall be published along with the agenda of the session 7 days prior. The monitoring group emphasised in the previous reports as well that the legislation regulating the Council's activities does not determine the procedures for closing sessions and this constantly causes problems in practice. The issue is directly related to the non-existence of regulated procedures for drawing up agendas and preparing sessions. Hence, it is expedient that these matters are regulated by the statutory and sub-statutory acts determining the Council's activities, so that a high standard of publicity and transparency is achieved, which will ensure the protection of the interests of persons willing to attend the sessions.

In the current reporting period, in none of the cases information on closed session was published 7 days prior as determined by law, and in some cases the issue of closing the session was raised directly at the Council's session. In all cases when the Council did not publish information on closing the session within the established time frames, the requirements of legislation were violated. The Council is obliged to strictly comply with the requirements of law and to ensure a high standard of publicity and transparency. For this purpose, it is necessary to regulate the rule and procedures for closing sessions. The Council shall ensure the protection of the interests of persons willing to attend the Council's sessions.

In the reporting period, only in 4 cases[42] information on the closing of a session was published on the Council's web page beforehand. In all cases, as indicated by the Council, the reason for closing the sessions was the review

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41 For example, on 19 February, the Council made a decision on the determination of a fuel limit for 3 judges through voting, but the decision was not subsequently published.

42 About the closing of sessions of 19, 22, 25 February and 19 September

of disciplinary complaints. After this, information on the sessions held for the review of disciplinary complaints was not published at all, notwithstanding that the Council, as mentioned at the Council's sessions, met every week to review such issues in a closed manner.

The Council made a decision on closing the sessions of 16 and 28 November right in the course of those sessions. Among the issues included in the agenda of the session of 16 November *was 'Discussion of the letter received from the Chairperson of the LEPL Department of General Courts'.* Before starting the review of the issue included in the agenda, the Secretary of the Council raised an issue regarding the closing of the session. According to him, it would be appropriate to close the session as the issue related to the allocation of a building to a city court. He made an additional explanation that he wanted to go through the available options 'without formality', and what the Council agreed upon in the end would be made available to the public. Other members of the Council additionally noted that the documents to be discussed contained commercial and private secrets on certain companies and it was necessary to close the session to prevent the disclosure of this information. Afterwards, the Chairperson on the Council put to vote the issue of closing the session, which was unanimously supported by the Council. The review of the above mentioned issue continued at the session held on 28 November, which was also closed for interested persons. Before starting the review of the issue, the Council members have been distributed documentation that was not made accessible for the public either. Notably, in the reporting period, the High Council of Justice refused to provide additional information on this issue to the monitoring group. Nevertheless, on 14 January 2017, the visual illustrations and information on the commencement in the nearest future of the construction of a new building in the territory of the Tbilisi City Court were officially presented at the Conference of Judges.

In the above mentioned 2 cases, there were violations not only of the obligation of preliminary publication of information on the closing of the session, but the Council also failed to properly justify the need to close the sessions. The construction of a building for the purpose of allocating a new space to the city court is financed from the State Budget; therefore, it is absolutely unclear what kind of commercial or personal information had to be protected in the given case. The Council did not provide any further justification either in response to the application sent by the monitoring group.[43] The Council only mentions in its response that the position of the representatives of the LEPL Department of General Courts with regard to the issue to be discussed was heard at those sessions. We consider it important that the Council specifies in each individual case the legal provisions that were relied on in closing the session.

4.7. Making photos and video recordings of the Council's sessions and media coverage

The monitoring group has been pointing out the problem of media coverage of the Council's sessions for five years, but the Council has never made any effective steps to find solutions to the problem. The publicity of sessions of collegial bodies, which is guaranteed by legislation, does not imply any restrictions for the representatives of mass media. They, equally as any interested person, have the right to attend sessions and make audio or video recordings of the sessions. Nevertheless, the Council determined a different procedure by its decision made on 17 February 2014, according to which mass media may take photos and make audio and video recordings of the opening of the sessions only. In the reporting period, mass media only took photos and made video recordings of the opening of the sessions; however, on several occasions they were allowed to take photos and make video recordings of the whole procedure of the session. We believe that this issue needs to be regulated, and it is essential that the Rules of the Council provide for the possibility of unhindered and complete coverage of the sessions by mass media, by which the Rules of the Council will be in conformity with the General Administrative Code of Georgia.

It should be noted that a monitor was placed in the reception room of the Council, through which the sessions of the Council were broadcast. Later, some other sessions were also broadcast in the same manner. For this reason, journalists were not admitted to the session on 28 October in order to take photos and make video recordings, at which voting was conducted with regard to the appointment of judges for an indefinite period of time. It is important to note that the video broadcasting of the session cannot be equated to the right of mass media to take photos and make video recordings at the session itself. Apart from the fact that video was broadcast with certain disturbances and, as stated by journalists, was interrupted on several occasions, it should also be noted that the camera mounted in the session hall did not provide such a quality of audio and video recordings as to ensure that the interested persons outside the session hall fully perceive and understand the processes going on in the session hall and at the same time use the recordings for dissemination for journalism purposes.

[43] Letter No 136/2788-03-ო of the High Council of Justice of 3 February 2017

The members of the High Council of Justice stated at the sessions on several occasions that the restriction on taking photos and making video recordings was conditioned by a small space of the session hall and by impediment to the activities of the Council. The monitoring group considers that the above arguments are not groundless but this cannot justify the restriction on the taking of photos and making of video recordings by journalists. The Council has the possibility to develop a regulation on the basis of which the session can be recorded by means of only one camera, and the journalist will be obliged to provide the recorded material to other mass media. Such regulation exists with respect to the coverage of court sessions, ensuring unhindered recording of proceedings in court rooms.

The interest in the Council's activities grows daily not only within the judicial authorities but also from the part of different groups of the public. Consequently, it is inappropriate to restrict the process of taking photos and making video recordings of entire sessions, especially when the minutes of the Council's sessions, which are in the form of audio or video recordings, are not uploaded to the Council's official web page. The Council is obliged to bring the legislation regulating the Council's activities into compliance with the General Administrative Code of Georgia and to determine for mass media the right to unhindered coverage of sessions.

4.8. Transparency of the process of selection/appointment of judges

The monitoring group monitored the procedures of selecting/appointing judges and assessed the level of transparency of the process together with other important issues. The competitions for the selection of judges were announced twice within the reporting period. In addition, the competition of trainees of the High School of Justice announced in 2015 was finalised and 12 judges were appointed for an indefinite period of time.

Information on the first competition was published on the web page on 18 January and it was conducted in an expedited manner because of the upcoming date of the entry into force of a new procedure for interrogating witnesses in courts. Accordingly, the deadline for the registration for the competition was 18-24 January (6 days). The list of candidates registered for the competition was published on 26 January, and short biographical data of the candidates were published on 2 February. Interviews with candidates were held on 3-5 February. Information on interviews along with the schedule of interviews was published on the website 1 day prior. The monitoring group faced no obstruction in attending the interviews. It was allowed to attend the voting procedure as well.

The second competition was announced on 28 April and the registration deadline was from 3 to 22 May, which was later on extended till 30 May. Information on the candidates registered for the competition was published on the web page on 3 June. The short biographical data of 127 candidates were published on 7 June. The interviews continued for 9 days and information on the interviews together with the schedule of interviews was published on the web page 1-3 days prior. **In the course of this competition, interviews with a few judicial candidates were conducted in a closed manner for the first time within the past few years.**

According to the changes introduced in 2014 in Decision No 308 of the High Council of Justice of Georgia of 9 October 2009, interviews with judicial candidates are conducted at closed sessions. Despite the above procedure, the Council established the practice of conducting interviews with judicial candidates in an open manner. However, in the course of time, the Council established a new practice of asking judicial candidates before the interviews started whether they wished the interview to be conducted publicly, to what the candidates normally expressed consent in previous competitions and, accordingly, the interviews were conducted publicly. During the same competition, after four candidates disagreed with the conduct of the interviews in an open manner, the sessions were closed.[44] Under the circumstances when neither the Council, as a collegial body, nor its individual members have an obligation to justify their positive and negative decisions with regard to candidates, the openness of the process of interviews with candidates is the only opportunity for interested persons, not completely, but at least to observe the process of selection and appointment of judges, and to identify and disclose the positive and negative sides of the process and to assist the judicial system to make this process more sound. Due to closing of this process, it becomes completely impossible for third parties to assess the process of selection of judges.

Referring to the regulation, pursuant to which interviews should be held at closed sessions, the Council did not provide the monitoring group with the video material and the minutes of the sessions depicting the interviews with any candidate. The reason of this is unclear in the circumstances when the sessions used to be open and they were attended by all interested persons, and the Council stated its position on several occasions that the openness of sessions was established by practice, notwithstanding the provision in this regard in the Rules of the Council. In addition, in the reporting period, the Chairperson of the Council asked all the candidates before the interview started

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[44] *Coalition for an Independent and Transparent Judiciary assesses the competition of judges,* https://goo.gl/gpGBoV

whether they agreed with making available the recording of the interview to the public upon request, to what the majority of candidates gave a positive answer. It is unclear what the purpose of such question was, since in order to issue recordings of interviews, the Council requires from the applicant to present the consent for the candidate.

According to Decision No 1/308 of the High Council of Justice of Georgia of 9 October 2009,[45] information on candidates obtained in the course of competitions is also confidential; however, the Council substantiated the refusal to provide documents related to the candidates not by referring to the above provision but by the large amount of information to be released and its non-systematised form.[46] However, it should be noted that upon request of the monitoring group of the competition documents on the specific person already appointed as judge, the Council provided this information by having encrypted it.

In this reporting period, the Council extended the deadline from 13 to 23 September 2016 for the submission of applications of trainees of the High School of Justice for the competition announced on 2 November 2015. The list of candidates to trainees and information on the dates of interviews were also published. The interviews and voting were held in an open manner, but the Council, having referred to the requirement of protection of personal data, refused to provide the monitoring group with the curricula vitae of candidates and respective evaluation sheets, despite the fact that the request excluded the identification data of the candidates. As a result, one gets impression that there is no systemic approach which could make it clear for interested persons what procedures and factors are taken into consideration by the Council when deciding whether or not to release information.

In addition, in the reporting period, the Council appointed 12 judges for an indefinite period of time. Information on the dates of interviews with judges and voting was published on the web page a few days prior, and the monitoring group did not encounter any problem in terms of attending the sessions.

In general, it can be said that the above mentioned processes, namely, the procedures for the selection/appointment of judges, were carried out with certain violations, in terms of transparency. The Council's inconsistency as to the publicity of interviews is unacceptable. Interviews should be conducted openly, and the minutes of sessions should be made available to all interested persons. This becomes especially important under circumstances when the Council has no obligation to justify decisions on the selection/appointment of judges and when the observation on the process of interviews remains the only means for interested persons to assess the Council's decision. Refusal to provide recordings contradicts the policy of openness declared by the Council many times. These issues need to be regulated in such a manner as to ensure the maximum transparency of the Council's activities, which, in its turn, will reflect in the public's confidence in the institute.

4.9. Conflict of interests

The issue of the conflict of interests has been a problem in the Council for years. The Council was able to regulate this issue neither in practice nor by means of legislation. In the reporting period, there was no procedure for preventing the conflict of interests among the Council members. Notably, in accordance with Article 11 of the Law of Georgia on the Conflict of Interests and Corruption in Public Service (Article 2(1)(q) of which applies to members of the High Council of Justice of Georgia), members of a collegial body are be obliged to refuse to participate in decision-making, in which they have property or other personal interest. Apart from the fact that this law does not permit the persons having conflict of interest in a collegial body to make decisions, it also prohibits the persons having conflict of interest to participate in a decision-making process. However, in the previous reporting periods, it was always emphasised that the Council members disregard this requirement.

In this reporting period, certain positive trends in the regulation of the conflict of interest in practice were revealed, which could be conditioned by public critics. Notably, the Chairperson of the Council asked all the candidates before the interview started whether they had the conflict of interest with respect to any member of the Council. This should be assessed positively. In addition, in comparison with the previous years, the issue of recusal was not open to doubt, when a member of the Council participated in the competition himself and then recused himself in the case of the vacancy that he/she applied for. In the case of the competition announced in April 2016,[47] two members of the Council, who were participating in the competition, used the mechanism of self-recusal and did not attend the interviews with the candidates who participated in the competition for the same vacancy. The Council members noted that they would not participate in voting with respect to these candidates and themselves. However, despite

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45 Article 12^4

46 Letter No 1464/1783-03-ო of the High Council of Justice of 19 August 2016

47 Tamar Alania and Merab Gabinashvili

the responsibility individually demonstrated by some members of the Council, the issue of systemic regulation of the conflict of interests still remains a problem in the Council's activities, which might challenge the independence and impartiality of a number of decisions made by the Council. In addition, the fact that the Council members, who participated in the competition as candidates, would be asked the same questions as they themselves used to ask other candidates, should be assessed as a significant gap. Consequently, the Council member candidates knew in advance what questions they would have to answer, which put them in a privileged position, as compared to other candidates.[48] Improper regulation of the issue of access to the documents of other candidates in the course of the same competition remained a problem, due to which other candidates, unlike the Council members, were in an unfair and unequal conditions.

The refusal of 2 members of the Council, due to the conflict of interest, at the Council's session held on 1 August to participate in voting in connection with assigning powers to the chairpersons of courts should be assessed positively.[49] However, the fact that there is no uniform vision and regulation of the conflict of interests allows the Council members to decide the issue of recusal individually in each concrete cases and adjust their decisions to their personal interest, which, in its turn, prejudices the Council's credibility and the impartiality of decisions made.

Notably, the Third Wave of the Judicial Reform includes the changes that provide for the regulation of the conflict of interests in the course of the competitions of judges at the level of the Organic Law. In particular, the changes entered into force from 14 March 2017, according to which a member of the High Council of Justice of Georgia shall not participate in the procedures of the competition to hold a vacant judicial position if he/she participates in the same competition for a vacant judicial position. According to these changes, the High Council of Justice of Georgia shall make a decision on the recusal of its member by a majority of votes; whereas, the member of the Council, the issue of whose recusal is put to vote, shall not participate in the voting. The regulation of the conflict of interests in the course of competition at the level of the law should be assessed positively; however, the issue of the conflict of interests with regard to other decisions of the Council still remains without regulation. In the reporting period, the Council explained in this regard that the regulation of this issue may be included in the Rules of the Council, the draft of which is being prepared. [50]

5. Justification of decisions made by the Council

In the reporting period, like in the previous reporting periods, the problem of the non-existence of an obligation of the High Council of Justice to justify its decisions was identified again. This problem is very well manifested in the decisions made by the Council with regard to the appointments of judges, chairpersons of courts and panels, and the trainees of the High School of Justice. As a result of studying the minutes of the relevant sessions of the Council and the decisions of the Council, it is established that the decisions made with regard to the above mentioned important issues are very general and lack any justification. The minutes of the sessions depicting the process of making the respective decisions usually do not contain substantiated answers as to the reasons of making the respective decision. The assessment of the justifications of the Council's decisions is based on the study of the Council's decisions with regard to the above mentioned issues and the minutes of the sessions, and on the monitoring of the sessions.

5.1. Selection and appointment of judges

- The competitions held in the reporting period left an impression that the Council had only a formal approach to the process of competitions: both competitions were held in an unreasonably short period of time and in violation of established procedures;

- The process of the appointment of judges again was not regulated properly, and the selection of judges was carried out in absence of objective criteria, without the observance of the principle of merit and without legislative guarantees required for a transparent process;

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[48] *Coalition assesses the competition of judges, https://goo.gl/ebQSWy*

[49] As explained by themselves, Levan Tevzadze was the relative of one of the candidates, while Merab Gabinashvli was a candidate himself.

[50] Letter No 1560/1101-01-ო of the High Council of Justice of Georgia of 9 September 2016

- The procedure for the selection of judges established by the High Council of Justice fails to ensure a transparent process of the selection of judges;

- The Council is given unfettered powers in the process of the selection/appointment of judges, which provides a vast possibility of arbitrariness;

- The topics of interviews with judicial candidates were non-uniform and failed to ensure an equal assessment of the compliance of the candidates with the established criteria;

- The situation in terms of the openness of interviews with judicial candidates worsened in the reporting period;

- In the reporting period, effective judges participated in the competition for the selection of judges, whose terms of office would expire a few years later. They were reappointed to judicial positions by decision of the Council with new terms of office, which gave rise to suspicions as to prior arrangements between the judges and certain members of the Council;

- In the reporting period, the practice of reappointment of effective and former judges gave rise to suspicions as to the application by the Council of a selective approach;

- In the reporting period, there were suspicions concerning the inappropriate exercise by the Council of its authority to determine the specialisations of judges - many judges, who were appointed with the specialisation defined by the competition, were assigned by the Council, soon after their appointment, the specialisation they had before being reappointed.

5.1.1. Legislation regulating the appointment of judges

In the reporting period, the Organic Law of Georgia on General Courts (hereinafter 'the Organic Law') actually did not regulate the procedure for the appointment of judges - did not determine the criteria for the selection of judges and did not set forth the procedure that should be followed by the Council to select judges, and the powers to determine the criteria and the procedure for the selection of judges were fully delegated to the Council. This significantly prejudices the principle of independence of courts, and the law does not guarantee the selection of independent, impartial and professional judges. The Council has an exclusive and unfettered power to establish the selection criteria and determine the procedure of the selection of judges, which provides the possibility of arbitrariness. Whereas, the procedure and the criteria for the selection of judges established by the High Council of Justice fail to meet the standard of objective criteria and a transparent process. In addition, the cases of violations by the Council of the procedure established by Council itself have been identified and included in the monitoring reports.[51] In general, the process of selection/appointment of judges has been characterised for many years as non-objective and non-transparent and formal, lacking equal approaches towards the participants of the competitions.[52] The above situation is especially precarious if we take into account that judges are appointed for probation periods, which is another leverage for exerting influence on them.

Despite such defective legislation and the malpractice established by the Council for the selection of judges, the issue of selection/appointment of judges has never become the part of the judicial reform. The inconsistency of the judicial reform and the problem of protraction of the inclusion of certain issues in the reform, which probably points out the absence of the will of the government to implement a real judicial reform, is specified in the monitoring report.[53] The criteria and the procedure for the selection of judges were included in the package of bills prepared within the framework of the Third Wave of the Judicial Reform only in 2015, after their review in the Parliament; however, their adoption was delayed and they were eventually adopted only in January 2017. Consequently, in the reporting period as well, the selection/appointment of judges was carried out in the conditions of absence of appropriate legislative guarantees and based on the malpractice established by the Council.

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[51] See High Council of Justice Monitoring Report No 4. goo.gl/UQdk5Q, 2016.

[52] See High Council of Justice Monitoring Report No 2. https://goo.gl/et2gIs.

[53] See High Council of Justice Monitoring Report No 3. https://goo.gl/ojXuLD

5.1.2. Announcement of competitions for the selection of judges

In the reporting period, the Council announced competitions for the selection of judges twice: on 18 January 2016 and 28 April 2016.

Competition announced on 18 January 2016

On 18 January 2016, the Council announced a competition for the selection of judges in connection with the entry into force of Article 114 of the Criminal Procedure Code of Georgia (the Procedure for Interrogating Persons as Witnesses).[54] The competition was announced for 30 vacant judicial positions. Fifty candidates registered for the competition for the selection of judges.[55] Forty-six candidates were advanced to the second tour of the competition.[56]

The competition was conducted within tight time frames. The deadline for the submission of competition documents determined by the Council was from 18 January to 24 January 2016. The curricula vitae of judicial candidates were published on 2 February. The procedure for the selection of judges provides 30 days after the publication of the curricula vitae of candidates for obtaining additional information about the candidates. The procedure does not determine a minimum time frame for obtaining this information, due to which the Council was not limited to determining an unreasonably short time, and the Council finalised the stage of obtaining information about the candidates and started interviews on 3 February. Accordingly, there was no real possibility to provide information on the interviews, since the Council published on the same day the schedule of interviews with candidates to be held on 3, 4 and 5 February. **The above mentioned also proves that the Council does not organise or organises improperly the stage of obtaining information about candidates. In addition, failure to organise the stage of obtaining information on candidates deprives the candidates of the possibility to become familiar with and respond to the information obtained by the Council within the framework of the competition.**

Notably, the schedule of each subsequent interview was published on the web page on the previous day, which significantly undermined the level of the publicity of interviews. At the session held on 22 February 2016, 22 judges were appointed as a result of the competition. [57]

Competition announced on 28 April 2016

In the reporting period, a competition for the selection of judges was announced by decision of the Council on 28 April 2016 in order to fill 65 vacant judicial positions. The deadline for the registration of applications was from 3 May to 22 May. This decision was made at the Council's session held on 28 April;[58] however, information about the competition and its terms were published on the Council's web page on 5 May 2016.[59] At the session held on 23 May 2016, it was decided to extend the deadline for the submission of documents till 30 May inclusive.[60] At this session, the Secretary of the Council noted that, according to information he had received, the candidates could not manage to submit the relevant documents on time and it would be better to extend the deadline.[61] Information was published on the Council's web page on 3 June that 131 candidates had been registered within the period from 3 May to 30 May for the competition for the selection of judicial candidates, and the list of candidates along with respective vacant positions was published.[62] The announcement also contained a note that the High Council of Justice started to formally examine the submitted documents.

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[54] http://hcoj.gov.ge/ge/konkursi/2594 On 18 January 2016, the Council announced a competition for the selection of judges, which aimed to add judges in the frame of available vacancies in connection with the entry into force of the procedure for interrogating witnesses at the stage of investigation of criminal cases

[55] http://hcoj.gov.ge/ge/konkursi/2594 List of candidates registered for the competition announced by the Council on 18 January 2016.

[56] Decision 1/17 of the High Council of Justice of Georgia of 27 January 2016

[57] http://hcoj.gov.ge/ge/grdzeldeba-mosamartleobis-shesarchev-konkursshi-monatsile-kandidatebtan-gasaubreba/2636 Schedule of interviews.

[58] For example, see the Council's session held on 28.04.2016

[59] http://hcoj.gov.ge/ge/gamotskhadda-mosamartleobis-kandidatta-shesarchevi-konkursi/2709 Competition for the selection of judges, announced by the Council on 28 April 2016. Information on the competition was published on the web page on 5 May.

[60] http://hcoj.gov.ge/ge/gantskhadeba/2715 The Council extended the deadline for the registration of candidates.

[61] Minutes of the Council's session held on 23 May 2016.

[62] http://hcoj.gov.ge/ge/mosamartleobis-kandidatebis-sia/2720 List of candidates participating in the competition.

By Decision No 1/139 of the High Council of Justice of Georgia, 127 candidates were advanced to the second tour of the competition.[63]

The curricula vitae of the candidates were published on the Council's web page on 7 June. As in the case of the previous competition, the announcement about this competition also contained a note that all interested persons had the right to provide the High Council of Justice with information in written form about the judicial candidates.[64] However, no reasonable time frame was determined for the provision of such information. The Council started interviews with candidates from 10 June, which makes absolutely ineffective the process of receiving information about judicial candidates from interested persons. This also proves that the Council does not organise or organises improperly the stage of obtaining information about judicial candidates. In addition, failure to organise the stage of obtaining information on judicial candidates deprives the judicial candidates of the possibility to become familiar with and respond to the information obtained by the Council within the framework of the competition.

The interviews were conducted on 10, 11, 13, 20, 21, 22, 24, 27, and 28 June. The Council members interviewed 15-16 candidates during one day. It should be pointed out that information on each subsequent interview was published on the previous day. Consequently, a few candidates stated when viewing the information obtained by the Council that they knew nothing about disciplinary complaints against themselves and they had to be become familiar with this information at the very session.[65] **According to the procedure established by the Council, a judicial candidate has the right to become familiar with the information about him/her, available in the Council, at least 5 days prior to the interview. This time frame was not observed by the Council.**

The Council's decision regulating the procedures for the selection and appointment of judges[66] establishes that 'a judicial candidate has the right to become familiar with information about himself/herself available in the Council at least five working days prior to the interview.' Despite this clause, in the case of both competitions, the High Council of Justice started the stage of interviews with candidates in a manner that the period between the publication of information on candidates and the start of interviews was only two days. The above mentioned shows that the Council violated the established procedure - in the case of both competitions the Council did not organise the stage of obtaining information on judicial candidates, limited the candidates' right to become familiar with and express their views with regard to the information which the Council relied on in making decisions with respect to the candidates. This proves that there is only a formal approach to the conduct of competitions.

The fact that the procedure for the selection of judges, established by the Council, does not provide for the specific time frame for obtaining information on judicial candidates also shows the defectiveness of this procedure. The procedure only establishes the maximum deadline, which is 30 days before the start of interviews; whereas, the minimum time limit for obtaining information is not determined. The above mentioned gaps identified during the reporting period are the evidence of the fact that the Council only formally allocated 2 days for obtaining information on judicial candidates. However, it is obvious that the Council would not be able to obtain within two days information on 50 candidates in the case of the first competition and on 11 candidates in the case of the second competition.

As a result of the voting on judicial candidates at the Council's session held on 14 July 2016, 44 judges were elected. Among them were 21 effective judges, 9 trainees of the High School of Justice and 14 former judges.[67]

The procedure established by the Council was again violated when deciding the issue of participation in the competition of Judge Indira Mashaneishvili. Indira Mashaneishvilir registered as candidate for the competition for the selection of judges announced on 18 January 2016.[68] By Decision No 1/17 of the High Council of Justice of Georgia of 27 January 2016, 3 candidates were not admitted to the second tour on the ground that they did not have higher legal education with at least master's degree or an academic degree equated thereto. The Council did

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[63] http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/139-2016.pdf Decision on the advancement of candidates to the second tour of the competition.

[64] http://hcoj.gov.ge/ge/informatsia-mosamartleobis-shesarchevi-konkursit-dainteresebuli-pirebisatvis/2723 Curricula vitae of judicial candidates.

[65] See, for example, the minutes of the Council's session held on 11 June 2016.

[66] Decision No 308 of the High Council of Justice of Georgia of 9 October 2009 on Approving the Procedure for the Selection of Judicial Candidates.

[67] http://hcoj.gov.ge/ge/mosamartleobis-kandidatta-kenchiskris-shedegebi/2743 - The results of voting on judicial candidates.

[68] http://hcoj.gov.ge/files/pdf%20files/gamocda/%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%A1%E1%83%90%E1%83%A5%E1%83%95%E1%83%94%E1%83%A7%E1%83%9C%E1%83%94%E1%83%91%E1%83%94%E1%83%9A%E1%83%98%20%E1%83%A1%E1%83%98%E1%83%90%20%28%E1%83%99%E1%83%90%E1%83%9C%E1%83%93%E1%83%98%E1%83%93%E1%83%90%E1%83%A2%E1%83%98%E1%83%95%E1%83%90%E1%83%99%E1%83%90%E1%83%9C%E1%83%A1%E1%83%98%E1%83%90%29.pdf - Candidates registered for the competition.

not give additional time to Indira Mashaneishvili. Notwithstanding the above, Indira Mashaneishvili still submitted to the Council the decision of the Administrative Cases Panel stating that the legal education received by her was equated to master's degree. The curricula vitae of the candidates participating in the competition, published on the Council's web page on 2 February, did not include the curriculum vitae of Indira Mashaneishvili, as she had not been admitted to this stage of the competition and her candidature was not considered.[69] On 3 February, after the interviews with the candidates had started, the Council considered the documents submitted by Indira Mashaneishvili and admitted her to the second tour of the competition. Within the framework of this competition, by Decision No 1/28 of the High Council of Justice of Georgia, Indira Mashaneishvili was appointed to the position of judge of the Criminal Cases Panel of the Batumi City Court. This case is another example of clear violation by the Council of the established procedures. Perhaps, this case also reveals the Council's preferential attitude to particular judges.

5.1.3. Interviews conducted with judicial candidates

- **Unequal environment for judicial candidates**

Pursuant to Decision No 1/308 of the High Council of Justice of Georgia of 9 October 2009 on Approving the Procedure for the Selection of Judicial Candidates, interviews with candidates serve the purpose of establishing their compliance with the criteria of honesty and competency. According to this decision, the Council allocates equal time to all candidates during interviews, gives them an opportunity to manifest themselves and to substantiate their motivation, asks candidates questions having identical content, through which the Council members obtain information on the skills, qualification and theoretical knowledge of candidates, as well as verifies data obtained as a result of processing their personal information. [70]

The interviews were conducted in an unstructured manner. The candidates were often asked questions having different content, and some were not asked at all questions to check their professional qualification.[71] In a number of cases, it remained unclear for the evaluation of which criteria, listed in the decision establishing the procedure for the selection of judges, this or that question asked by a Council member was intended.[72]

Interviews with some candidates related to only particular rumoured cases; whereas, other judges involved in rumoured cases were not asked such questions at all.[73] Such inconsistency may be indicative of non-objectiveness in the process of appointment of candidates.

- **Topics of interviews: problematic formulation and content of questions**

In the reporting period, the candidates were asked for their opinion regarding the 'over the top' critics from the side of non-governmental organisations and the public. Such formulation of the question of the Council member was a directing question, by which the candidates were actually pointed out to give an answer desirable for the evaluators.

In addition, the fact that the Council members, who participated in the competition as candidates, would be asked the same questions as they themselves used to ask other candidates, should be assessed as a significant gap. Consequently, the Council member candidates knew in advance what questions they would have to answer, which put them in a privileged position, as compared to other candidates.[74]

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69 http://hcoj.gov.ge/ge/informatsia-mosamartleobis-shesarchevi-konkursit-dainteresebuli-pirebisatvis/2634 - see Curricula vitae of judicial candidates.

70 See Article 127 (Interviews) of Decision No 1/308 of the High Council of Justice of Georgia of 9 October 2009 on Approving the Procedure for the Selection of Judicial Candidates.

71 See the minutes of the Council's session held on 11 June 2016, where the Council members observed at the session that the candidate was a professional and would suit for the Supreme Court as well.

72 Minutes of the Council's session held on 21 June 2016. Who may exert influence on you when making a decision? The candidate answered that nobody can influence him. Then the Council member asked the candidate if the latter had ever missed the work? The candidate answered that he missed work due his and his child's disease. Then the Council member said that it came out that his child could influence him. It is beyond understanding with which criteria this question aimed to establish the compliance of the candidate or how this question may reveal this or that quality of the candidate's character.

73 For example, the Council members asked Giorgi Chemia and Tamaz Urtmelidze questions about rumoured cases reviewed by them (Giorgi Chemia was asked about the case of Girgvliani, and Tamaz Urtmelidze about the case of TV Company Rustavi 2); however, such questions were not asked to judicial candidate Tamar Alania, who was a member of the Council.

74 See the minutes of the Council's session held on 20 June 2016. On this day, an interview with two members of the Council, Tamar Alania and Merab Gabinashvili, was held, at which the candidates were asked the same questions as they used to ask to other candidates. For example: What are your views about the LGBT community? Are you familiar with the decisions of the Supreme Court? What can you say about the public's attitude to courts? etc.

The fact that some members of the Council actively asked questions to the candidates about human rights, in particular the rights of marginalised groups, should be assessed positively. However, among some members of the Council, discontent could be sighted with regard to such questions.

Although the questions asked about human rights had normally a basic content (for example, what is LGBT, what is an absolute right, what are the criteria of a fair trial, etc.) and did not require an analytical assessment or reasoning, the answers given to these questions revealed that the knowledge of the majority of candidates, both the former and effective judges and the graduates of the High School of Justice, and their sensitiveness towards human rights issues, are insufficiently low.

5.1.4. Wide discretion of the Council in the determination of the specialisation of judges

At the Council's session held on 14 July 2016, Davit Mamiseishvili, Chairperson of the Batumi City Court, was elected as judge of the Civil Cases Panel of the Batumi City Court as a result of voting on judicial candidates. It is important to note that Davit Mamiseishvili's term of office was not expiring but he participated in the competition in advance. At the interview, he noted that, in anticipation of the probation period, he would better undergo the probation period earlier and become aware whether he would be appointed as judge. Only one vacancy was announced in the Civil Cases Panel of the Batumi City Court, and Davit Mamiseishvili latterly held the position of judge with a specialisation in criminal cases. At the Council's session held on 19 September 2016 it became known that despite the fact that Mr. Mamiseishvili was appointed in the Civil Cases Panel, he reviewed criminal cases by his own order and also delivered a decision with respect to a quite rumoured case within that period. **Mr. Mamiseishvili requested the Council to make a decision on his appointment in the Criminal Cases Panel and on the transfer of judges** Indira Mashaneishvili and Salikh Shainidze to the Civil Cases Panel.

By the decision of the High Council of Justice of Georgia made on 19 September 2016, Mr. Mamiseishvili was transferred to the Criminal Cases Panel and Mr. Shainidze and Mrs. Mashaneishvili to the Civil Cases Panel.

This practice makes the selection process absolutely formal and gives rise to suspicions as to prior arrangements between the judge and the Council members.

It should be noted that the legislation regulating the change of the specialisation of judges does not meet the standard of transparency and foreseeability and prejudices the independence of judges. Pursuant to the legislation, within the context of the competition for the selection of judges vacancies are announced according to specialisations in the specific panels and chambers. Interviews with candidates are conducted based on the vacancy selected by the candidates and the respective topic. However, at the same time, the law provides a general regulation with regard to the change of the specialisation of judges, which gives the Council a wide discretion to change, without any substantiation, the specialisation of a judge, to which he/she had been appointed as a result of the competition. The cases that were revealed in the reporting period, when the judge was appointed through the competition and soon after his specialisation was changed, contribute to losing the meaning of announcing a competition for the selection of judges for specific vacancies, contravene the principle of a competent judge and are a leverage in the Council's hand to influence the judges.

Main trends revealed in the selection of judges during the monitoring period:

Notably, many effective or former judges participate in competitions and the Council refuses to appoint them to the position to judge without any substantiation, despite the fact the vacancies remain unfilled.[75] In the case of systems where judges are appointed for a definite period of time and they have to participate in competitions on a periodic basis, the Council's obligation to substantiate its refusal to appoint an effective or former judge to a vacant position increases. Under the circumstances when vacant positions cannot be filed, and the effective and former judges are refused appointment by the Council, this leaves an impression of a selective approach.

In the reporting period, 147 candidates participated in the competition for the selection of judges. Among them 51 candidates were effective judges, 93 candidates were former judges and 29 candidates were graduates of the High School of Justice.

As a result of both competitions, the Council appointed 66 candidates to judicial positions. Among them 32 candidates were effective judges, 22 candidates were former judges and 12 candidates were graduates of the High School of Justice.

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[75] According to Opinion No 1 of CCJE, in the systems where judges are appointed for a definite period of time

As a result of both competitions, 29 vacancies remained unfilled. While, a total of 108 candidates were refused appointment to judicial positions. Among them 19 candidates were effective judges, 71 candidates were former judges and 17 candidates were graduates of the High School of Justice.

This statistics shows that despite the vacant positions, which remained unfilled as a result of the competitions, the Council appointed to judicial positions only 19 former judges out of 93. Based on international standards,[76] this requires additional substantiation from the Council. However, the Council did not give any explanation as to what causes such low statistics of reappointments of former judges. In addition, the statistics of appointments of the graduates of the High School of Justice is also low, which may be indicative of a low quality of studies in the High School of Justice.

5.2. Premature appointments of judges

It was revealed that a great part of effective judges participated in the competitions during the reporting period. For examle, for some judges, 2 or 3 years remained before the expiration of their term of office but they still participated in the competitions with an argument that, in anticipation of the probation period, they would better undergo the probation period earlier and become aware whether they would be appointed as judges for an indefinite period of time. Some of them were asking for the change of work place, for example, transfer from the Batumi City Court to the Tbilisi City Court for family reasons. Keeping in mind that the issue of transfers of judges without competition was not reviewed at any of the Council's sessions and no letter was received by the Council requesting to add judges on a temporary or permanent basis, the participation of the effective judges in the competitions a few years prior to the expiration of their term of office, inter alia, for the vacancies in other courts, is challenged, and doubts arise as to the non-existence of unsound arrangements in this process between the Council and the judges.

Premature appointments of effective judges and the way this process is carried out give rise to assumptions that the effective judges participated in the competitions with prior agreement with the Council in order to be appointed for a new term of office within the term of powers of the effective Council. The existence of such prior arrangements contravenes the procedure for the selection of judges based on their merits, may put other judges in an unequal position and prejudices the internal independence of individual judges.

Notably, in the reporting period, the Council did not apply the procedure for appointment without competition, provided for by Article 37 of the Organic Law of Georgia on General Courts, which had been one of the subjects of criticism from the civil society for many years. In the previous years, the issue of missions/promotions of judges was very problematic and the procedure and practice established by the Council brought many questions. The monitoring group requested from the Council public information on whether from January 2016 till now the issue of transfers of judges without competition was reviewed at any of the Council's sessions. According to the Council's response to our request, no issue on the transfer of judges without competition was reviewed at any of the Council's sessions and no letter was received by the Council requesting to add judges on a temporary or permanent basis.[77]

5.3. Competition for the admission of trainees to the High School of Justice

- **The Council held a competition for the admission of trainees to the High School of Justice only once within the past two years, which adversely affects the number of potential judges and the process of selection/appointment of judges in the future. The legislation also contributes to this, as it does not establish an obligation for the Council to announce competitions for the admission of trainees;**

- **The decision of the Council on the announcement of the competition for the admission of trainees to the High School of Justice does not contain any substantiation of the number of trainees to be admitted, or information on whether the number of judges in the judicial system was taken into consideration when announcing the competition;**

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[76] European Charter on the Statute of Judges, para. 3.3. Where the recruitment procedure provides for a trial period, necessarily short, after nomination to the position of judge but before confirmation on a permanent basis, or where recruitment is made for a limited period capable of renewal, the decision not to make a permanent appointment or not to renew, may only be taken by the independent authority referred to in paragraph 1.3 hereof, or on its proposal, or its recommendation or with its agreement or following its opinion. https://wcd.coe.int/ViewDoc.jsp?p=&id=1766485&direct=true

[77] Letter No 1937/2761-03-ო of the High Council of Justice of Georgia of 14 December 2016.

- **The criteria for the selection of trainees do not meet the standard of objectivity, and the stage and procedure for obtaining information of candidates are not established;**

- **Interviews for the selection of trainees are not sufficiently formalised: the purpose and topic of interviews and the procedure for evaluation according to established criteria are not pre-determined;**

- **Interviews with the candidates were conducted at the Council's open session; however, due to the absence of a formalised process and the ambiguousness of questions asked by the Council members, it was difficult to evaluate what criteria were relied on by the Council in making a decision on the admission of the trainee.**

5.3.1 Announcement of a competition for the admission of trainees to the High School of Justice

According to the Law of Georgia on the High School of Justice (hereinafter 'the law'), a trainee of justice is a person who, as a result of the competition, will be admitted to the School for studies by the decision of the High Council of Justice of Georgia. The competition for admission of trainees to the School is conducted by the Council. In the previous reporting period, in November 2015, the Council announced a competition for the admission of trainees to the High School of Justice,[78] which did not have a continuation after the stage of submission of required documents was completed, and the Council returned to this issue only at the Council's session held on 12 September 2016. The Council made a decision to make changes in the terms of the competition announced in November 2015 and determined a deadline for the submission of competition documents from 13 September 2016 to 24 September 2016.[79] In addition, the Council decided that the persons who registered for the competition of trainees in November-December 2015, were not required to update their information, unless there had been any changes in their personal or working biography.

The Council did not have any discussions at its sessions and, correspondingly, the reasons why the competition for the admission of trainees announced in 2015 was suspended and was later resumed in September 2016 are unknown.[80] Neither the legislation nor the statute provide for the possibility and grounds for the suspension of a competition.

According to the Law of Georgia on the High School of Justice, competitions for the admission of trainees to the School shall be conducted twice a year: May and October. In the reporting period, the competition for the admission of trainees to the High School of Justice was conducted only once. While In the previous reporting period, in 2015, the competition for the admission of trainees was not conducted at all.

According to the law, the decision on the conduct of a competition for the admission of trainees to the School is made by the Council in consideration of the number of judges in the system of general courts of Georgia. However, it is unclear whether in practice the Council announces the competition for the admission of trainees to the School in consideration of the number of judges in the judicial system, because the recommendation of the Council, which was sent to the independent board of the High School of Justice, says that the total number of trainees to be admitted to the High School of Justice as result of the competition to be conducted in November-December should not be more than 20,[81] while the decisions made by the Council in 2015 and in 2016 do not contain any substantiation of the need to announce a competition based on the number of judges. This issue was not discussed at the Council's session either. Whilst the Council fails to select appropriate judicial candidates as a result of announced competitions, and vacancies remain unfilled,[82] the Council does not substantiate why the competition for the admission of trainees to the School, announced in November 2015, was suspended and trainees were not admitted for almost one year.

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[78] http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202015/160-2015.pdf - About the announcement of the competition of trainees in 2015.

[79] http://hcoj.gov.ge/ge/informatsia%C2%A0iustitsiis%C2%A0skolis%C2%A0msmenelta%C2%A0shesarchevi%C2%A0konkursis%C2%A0taobaze/2771 - Information on the competition for the selection of trainees of the High School of Justice.

[80] Letter No 65/55-03-ო of the High Council of Justice of Georgia of 18 January 2017 stating that the Council did not make a decision on the suspension of the competition for admission of trainees, announced in November 2015.

[81] Letter No 02/1359 of the High School of Justice of 11 January 2017.

[82] The announcement published on the Council's web page on 26 April 2015, related to the results of voting on judicial candidates, states that 24 judges were elected and for 24 vacancies judicial candidates could not be selected. In addition, on 28 December 2015, a competition was announced for 60 vacant judicial positions, 38 judges were appointed and 22 vacancies remained unfilled. In 2016, a competition was announced for 65 vacant judicial positions, 44 judges were appointed and 21 vacancies remained unfilled.

The impediments in the process of admission of trainees to the High School of Justice adversely affect the process of selection/appointment of judges. In particular, same candidates register for the competition for the selection of judges, due to which the Council lacks a wide choice; whereas, the suspension of admissions of trainees to the High School of Justice impedes the inflow of new human resources to the judicial system. **In addition, the practice showed that the power of admitting trainees to the School, exercised by the Council, is an additional leverage in its hands to influence the process of selection/appointment of judges**.

5.3.2. Competition of trainees of the High School of Justice

In the reporting period, 109 candidates registered for the competition of trainees of the High School of Justice. One hundred and five candidates were advanced to the second tour of the competition.[83]

The Council started interviews with the trainees from 5 October. The interviews with the trainees lasted 7 days.

On 31 October 2016, the Council's session was held, at which the trainees were selected through open voting. According to information published on the Council's web page on the same day, 20 trainees were admitted to the 13th group of the School,[84] while according to information that was published on the Council's web page on 3 October, by the decision of the independent board of the High School of Justice of 25 November 2015, the number of trainees to be admitted to the High Council of Justice through the current competition should be a maximum of 19.

Trainees are not required by the law to have work experience, while according to the Organic Law of Georgia on General Courts, a judicial candidate shall have at least 5 years of work experience in the speciality. The law allows for the possibility of admitting to the School persons who do not have work experience. Concurrently, according to the law, the purpose of the School is to train trainees to be appointed as judges within the general courts system of Georgia. Hence, trainees of justice may be admitted to the School and they may complete training in the School successfully, but their candidatures will not be considered for judicial positions due to not meeting the requirement of having work experience of at least 5 years. A similar situation is observed with regard to age limits. No age limit is determined for the admission to the School; whereas, a person may be appointed to a judicial position from the age of 30. Such inconsistencies pose the following problem: despite the fact that the School trains persons to be appointed as judges, they still will not be appointed to judicial positions for a certain period of time, which contradicts the requirement of considering the number of judges in the judicial system in the process of admission to the School, as well as the purpose of the law, which implies the preparation of judicial candidates by the High School of Justice.

5.3.2. Interviews

The statute of the School provides for the criteria for the selection of candidates through a competition, which do not meet the standard of objectiveness and transparency. Neither the law nor the statue provide for the procedure for obtaining information about candidates. Consequently, it is unclear how moral character, personal qualities and professional skills are evaluated. What is more, the statute of the School authorises the Council members to take an unfavourable decision without evaluating the candidate based on other criteria if he/she receives a negative evaluation based on the personal qualities criterion.[85] It is ambiguous what evidence and sources the Council relies on when evaluating candidates based on these criteria.

The trainees were selected at the Council's session through open voting. In the course of voting, none of the Council members substantiated their decisions, while the decision, by which the trainees were admitted to the School, only contains the list of persons admitted to the School and lacks individual substantiation of the decision. [86]

Forty-six out of 105 candidates participating in the competition are effective employees of the judicial system. Fourteen out of 20 trainees admitted to the School are effective employees and one trainee is a former employee. [87]

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[83] http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/259.pdf - Decision No 1/259 of the High Council of Justice of Georgia of 3 October 2016 on the advancement of candidates to the second tour.

[84] http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/273.pdf - By Decision No 1/273 of 31 October 2016, the Council admitted 20 trainees to the High School of Justice.

[85] Article 8(4) of the Statute of the High School of Justice.

[86] http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/273.pdf - About trainees admitted to the School.

[87] Letter No 65/55/03-ო of the High Council of Justice of Georgia of 18 January 2017.

5.4. Internal independence of courts: judges must be free from undue influence of court presidents

- **The criteria for the appointment of presidents of courts/panels/chambers are not prescribed by law. Such criteria have not been developed by the High Council of Justice either.**

- **The procedure for the appointment of presidents of courts/panels/chambers is not prescribed by law. Such procedure has not been developed by the High Council of Justice either.**

- **It is unclear how a judge becomes a candidate to court president: only one judicial candidature is considered for one vacancy of court president, without any other alternative; the Council members do not explain the reason of nominating a concrete judicial candidature.**

- **The practice of appointing acting presidents of courts/panels/chambers leave an impression that head officials are appointed arbitrarily, which is possibly applied for retaining influence of the Council on individual judges and the judicial system.**

- **The Council established a practice of dismissals of courts presidents, which contradicts to the established international standards, violates the right of individuals to a due process, and allows to arbitrarily and immediately dismiss the court president.**

- **The Council established a non-uniform approach by permanently appointing the president of Tbilisi City Court while appointing acting presidents in other courts.**

5.4.1. Appointment of court presidents (analysis of legislation)

According to the relevant international standards, a judge shall abide only by law and shall be independent and free from both external influence and possible pressure from the chairperson of a court.[88]

According to international standards, chairpersons of courts should be selected through open competition, in which candidates meeting the pre-determined criteria will have the right to participate.[89]

Under legislation, chairpersons of courts have quite broad and, often, discretionary powers, which include: managing and overseeing the operation of the office of a court; distributing cases; the chairperson is authorised to assign a judge to participate in the review of a case in another panel or chamber of the same court, or in a specialised composition; the chairperson is authorised to examine the reason for delays in the review of cases in the court.[90] Hence, according to the legislation of Georgia, chairpersons of courts are assigned a number of important functions, the fulfilment of which is directly associated with the process of review of a case by an individual judge and, correspondingly, enables the chairperson to influence the work process of a judge.

Neither the legislation of Georgia nor a decision of the Council determine the criteria for the election of chairpersons of courts.

The legislation of Georgia does not establish either a concrete procedure for the selection, appointment and dismissal of chairpersons of courts. The law only contains a general provision, according to which the Council appoints a chairperson of a district (city) court from among the judges/chairpersons of the panels of the respective court for a term of 5 years, as well as dismisses.

The initial draft laws of the Third Wave of the Judicial Reform provided for the possibility of electing chairpersons by the judges of respective courts. The changes presented by the Venice Commission were approved,[91] and it was noted that the introduction of the procedure for the election of chairpersons of courts would increase the role of an individual judges in the self-government of the court. Nevertheless, the procedure for the election of chairper-

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88 Opinion No 19 (2016) of the Consultative Council of European Judges (CCJE), paragraph 13; Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), paragraph 1.

89 Opinion No 19 (2016) of the Consultative Council of European Judges (CCJE), paragraphs 45, 46.

90 Articles 25 and 30 of the Organic Law of Georgia on General Courts (Powers of chairpersons of courts of appeal and city courts).

91 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e - Venice Commission Opinion CDL-AD(2014)031, para. 84

sons was removed from the draft law after the Ministry of Justice presented the draft laws to the judiciary before their review in the Parliament.[92] After the Parliament had passed the draft laws of the Third Wave of the Judicial Reform, the President put a veto on the law and forwarded it to Parliament along with grounded comments. The grounded comments of the President related inter alia to taking into consideration of the procedure for the election of chairpersons in accordance with the opinion of the Venice Commission.[93] However, neither the grounded comments of the President nor the recommendations of the Venice Commission were taken into consideration. The Parliament overrode veto and, accordingly, the power to appoint chairpersons again retained to the Council. This may be indicative of the non-existence of a political will to introduce a more democratic procedure for the election of chairpersons of courts.

5.4.2. The practice of appointment of chairpersons of courts and the panels of courts

At different times of the year 2016, the High Council of Justice of Georgia made decisions to appoint 17 Acting Chairpersons of courts/chambers/panels and 4 Chairpersons of the court / panel in the judicial system. From the above, 14 chairpersons are still acting. Only the Chairperson of Tbilisi City Court and the Chairpersons of the four Panels of the same Court have been appointed for the term of 5 years of the office as prescribed by the law. [94]

At the meeting of February 22, 2016, the Council made decision on the discharge of Mamuka Akhvlediani, the Chairman of Tbilisi City Court, and appointment of Acting Chairman of the Court and the Panel. The issue in the agenda of the Council meeting of February 22 could be read as follows: *Analysis of information on the alleged violations discovered in determining the composition of judges according to the category of cases in the Tbilisi City Court for the purpose of interrogation of witnesses*. Such evasive reference to the important issue in the agenda contradicts to the principles of transparency.

At the meeting, the Chairman asked the members to nominate candidates from among the Judges of the Criminal Cases Panel for the position of the Chairperson of the Panel. The candidature nominated was Judge Eka Areshidze. Merab Gabinashvili, the member of the Council of Justice, supported Eka Areshidze's candidacy in the following way: **She is an experienced judge and she will cope with the temporary actions planned by the Council**. No other candidates were nominated. During the session the Council contacted Eka Areshidze who consented to the position of the Acting Chairperson of the Panel. As a result of voting, Judge Eka Areshidze was appointed for the position.

After this, the Council reviewed the issue of appointment of the Acting Chairperson of the Court. Levan Murusidze, the Secretary of the Council, named the candidate for the Acting Chairman of the Court and noted **that Giorgi Ebanoidze frequently was the Acting Chairman (chairman of the Civil Cases Panel) and until the Council could turn to this issue again Mr. George could be the most acceptable candidate**. No other candidates were nominated at the session. During the meeting the Council contacted Giorgi Ebanoidze who consented to the position of the Acting Chairperson of the Court. As a result of voting, Judge Giorgi Ebanoidze was appointed for the position.

At the meeting of February 29, 2016, the Council reviewed the issue of appointment of the Chairperson of Tbilisi City Court and Chairpersons of the Court Panels. Over agian, the nomination and appointment of the Chairperson candidates were not substantiated and their compliance with the position was not examined through the objective criteria. [95]

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92 http://www.tabula.ge/ge/story/96310-martlmsajulebis-reforma-mosamartleebi-dagegmil-cvlilebebs-etsinaaghmdegebian - Article 'Justice Reform - Judges Stand Against the Planned Changes'

93 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e - Venice Commission Opinion CDL-AD(2014)031, para. 84

94 The source of information: The decisions on the appointment of chairpersons in 2016 published on the website of the High Council of Justice.

95 The Chairman of the Council noted that the Council had appointed the Acting Chairperson of Tbilisi City Court, as well as several Panels had Acting Chairpersons and for the establishment of a stable environment in the shortest possible time, it would be better the Council to have clear candidates for the position, considering the judges' will of course. The Secretary of the Council also noted that it was time to reconsider the candidates of the Chairperson. However, since the Chairperson shall be elected from the chairmen of the Panels, the Council should first review the issue of appointment of the chairpersons of the Panels. The Secretary of the Council presented the candidates for the Chairmen of the Panels. Sergo Metopishvili's candidature for the position of the Chairperson of Civil Cases Panel with the following substantiation: **as he has managed the Civil Cases Panel for years**; Giorgi Ebanoidze would be moved from the Civil Cases Panel to the position of the Chairperson of the Criminal Cases Panel; Rezo Nadaraia's candidature – as the Chairman of the Pre-trial and Investigation Panel. Giorgi Mikautadze was nominated for the position of the Chairman of Tbilisi City Court who had been the Chairman of the Administrative Cases Panel. Levan Murusidze substantiated the nomination of the candidates as follows: **they have passed all the stages in the judiciary system, managed the Panel and have good personal and business reputation.**

The vagueness of the agenda of the session was negatively evaluated by Vakhtang Mchedlishvili, the non-member of the Council who noted that the issue on the agenda was included **as a general item related to the court administration** and that he was not aware that the issue referred to the appointment of the Court and Panel Chairpersons. Therefore, he requested to adjourn the meeting in order to examine the issue thoroughly and get to know the candidates better. The initiative was met by the discontent of the Council members. Vakhtang Mchedlishvili added that it was necessary to put an end to guerilla insertion of items into the agenda, as it happened in the case of Akhvlediani's dismissal: **"Did you specify that you were going to discharge Akhvlediani?"** in response Mr Levan Murusidze said that the City Court needs a sound management team which together with the Council will work to resolve the problems accumulated in the Court and that a quick decision was required to maintain the stability. [96]

The reporting period has also revealed that in some cases the Council appointed chairpersons not from the composition of the respective panels but changed the specialization of Judges of other Panels, moved them to respective panels where they were finally appointed as chairpersons. In addition, this was done by substituting chairmen of panels by another panel chairperson instead of appointment of ordinary judges as chairpersons. Neither the change of the specialization nor the decisions for appointment of the chairpersons were properly reasoned.

In particular, at the Council meeting of March 4, the Council changed the specialization of Sergo Metopishvili, the Chairman of Tbilisi City Court Investigative Panel, moved him to the position of the judge of the Civil Cases Panel and at the same session appointed him as the Chairman of the Civil Cases Panel. Similarly, Giorgi Ebanoidze was appointed as the Chairman of the Criminal Cases Panel by changing his specialization. The decisions of the Council were not properly substantiated. The member appointed by the President protested against such approach to the issue. Vakhtang Mchedlishvili noted that a few days previously the Council had appointed acting officials, and today they presented their visions and performed the work, Sergo Metopishvili made proposals and now we spontaneously learn that he has to move to another Panel. Moreover, Vakhtang Mchedlishvili wondered why it had been required to change Giorgi Ebanoidze's specialization and nominate him as the Chairman of the Criminal Cases Panel. Giorgi Ebanoidze replied that the initiative for changing the Panel did not belong him, though he did not object.

As for the appointment of the Chairman of Tbilisi City Court, at the session of February 29, the Secretary of the Council Levan Murusidze nominated Giorgi Mikautadze as the candidate for the position of the Chairman of Tbilisi City Court, who had chaired the Administrative Cases Panel. Levan Murusidze substantiated the nomination of the candidature as follows: **he has passed through all the stages in the judiciary system, headed the Panel, and has good personal and business reputation**. The candidate for the Chairperson of the Tbilisi City Court was asked how he envisaged to manage Tbilisi City Court and whether he had any plans. The candidate answered that the declaration of trust was a great honor to him but it was unexpected and it would have been better if he had had time to prepare for this issue. The issue was adjourned for the next session.

Afterwards, Vakhtang Mchedlishvili, the non-judge member, presented the candidature of Giorgi Ebanoidze as the Chairperson of the Court at the meeting of March 4 and also presented the statistics of the activities of the candidates in the judiciary system where he highlighted the advantages of the candidate submitted by him, including court management experience.

The system of voting for making decisions caused misunderstanding as well. Since the rule of voting is not defined by the law or any decisions of the Council, one of the candidates received 12 votes, while the other candidate was actually unable to put his or her candidate on vote. This is yet another clear example how unregulated the procedure for appointment of court chairmen is.

The issue of appointment of the Chairperson of Tbilisi City Court was decided by the Council in the shortest period of time justifying that it was necessary to maintain the stability of the Court activities. However, it should noted out that during the reporting period, the Council delegated the duties of the Council to 14 chairpersons of the Courts and Panels. In all cases when discussing the delegation of duties, the Council did not examine the managerial skills of the persons to be appointed as Acting Chairpersons. The Council emphasized the fact that it was a temporary activity and when the Council discussed the issue on their appointment as Chairpersons, then their managerial skills would be examined. **The questions have been raised and the Council failed to provide the substantiation why the Council showed a non- uniform approach to the appointment of the Chairpersons of Tbilisi City Court and other courts of Georgia**.

[96] The Meeting of the Council of 21 March 2016.

The following inconsistencies in the appointment of Chairpersons of the Courts and Panels have been observed: actually the Council failed to examine the compliance of the candidates for the position of Chairpersons through the objectively criteria. Therefore, it is unclear and unsubstantiated what criteria the Council members were guided by when making decisions upon the appointment of the Chairpersons. Nominating of the candidates for the leading positions of the courts by the Council is not transparent and it is unclear how candidates are selected. The above leaves the impression that judges are appointed arbitrarily on leading positions which can be used to maintain influence on individual judges and the judiciary system.

The Council's official position about the criteria of appointment of the court chairman is known. In the letter sent to the Georgian Young Lawyers' Association, the Council [97] notes that "election of judges for the position of Chairperson of the Court of Appeals and Regional (City) Courts in addition to other circumstances depends on their professional experience and managerial skills which will ensure the efficient and appropriate fulfillment of their duties and responsibilities. Consequently, it is unacceptable to allow a judge to become a chairman of the court without considering the above." Despite this, the practice shows that the Council does not appoint chairpersons of the courts based on their managerial qualities.

5.4.3. The Practice of discharge of Court Chairpersons

According to all international legal standards, the principles of irremovability of a judge from the office shall also apply to the appointment and dismissal of presidents of courts and when discharging presidents the equivalent safeguards shall be used which are applied in case of dismissal of a judge.[98] Providing safeguards the similar to a judge's for court chairpersons shall imply that removal of the chairperson of a court shall not be easy and s/he as well as a judge shall be subjected to disciplinary proceedings in the manner as stipulated in the legislation.

It should be noted that the issue of dismissal of chairpersons of the courts is regulated by the Law of Georgia "On Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings" under which the dismissal of a chairperson, first deputy chairperson and deputy chairperson of a court, or a chairperson of the judicial Board or Chamber shall be considered as a disciplinary measure.[99]

At the meeting of February 22, 2016, the High Council of Justice of Georgia reviewed the issue of alleged violations committed by Mamuka Akhvlediani, the Chairman of Tbilisi City Court. Shota Getsadze, a member judge of the Council accused Mamuka Akhvlediani of interfering with the competence of the Council. The above issue in the agenda of the Council was formulated as follows: **"On the alleged violations revealed during the determination of the composition of judges in Tbilisi City Court according to the category of cases for the enactment of the procedure of interrogation of witnesses."** The agenda did not clearly provide that the session would discuss the issue of removing the Chairman of Tbilisi City Court from the office.[100]

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97 The letter #1560 / 1101-01-n of September 09, 2016 prepared by the High Council of Justice of Georgia. The letter referred to the proposals submitted by the Coalition, including the rule of appointment of the chairman of the court.

98 The Opinion #19 of the Consultative Council of European Judges (2016), Paragraph 45.

99 The Article 4, Paragraph 2, Subparagraph "b" and Article 55 of the Law of Georgia "On Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings."

100 Shota Getsadze, the judge of the Council, noted that the Chairperson of the City Court made decisions on the issues that fall into the competence of the Council and added that several times Mamuka Akhvlediani had been served a notification to attend the Council sessions and state his opinion on the issue. Mamuka Akhvlediani was invited at today's meeting, but he did not turn up. He also pointed out that at the Conference of Judges negative opinions were expressed generally regarding Mamuka Akhvlediani's work as a Chairman. Based on these circumstances, Shota Getsadze requested the members of the Council to review the issue on termination of Mamuka Akhvlediani's office as the Chairman of Tbilisi City Court and the Chairman of the Criminal Cases Panel of Tbilisi City Court.
Eva Gotsiridze and Vakhtang Mchedlishvili, the non-judiciary members, for ensuring more legitimacy requested to send questions to Mamuka Akhvlediani and require from him answers to the questions which the Council had about his work. However, the majority of the Council members opposed this and said that he had repeatedly waived to attend the Council meetings and it was unacceptable when the Chairman of the City Court refused to communicate with the High Council of Justice.
Then, the members of the Council resolved to review the issues on the agenda and return to the above issue by the end of the day. Meanwhile Mamuka Akhvlediani was given again an opportunity to attend the Council session. Mamuka Akhvlediani, in the letter sent to the Council of Justice, requested to discuss his case on February 26.
Shota Getsadze once again called on the Council to make a decision on the issue immediately. "Every minute and hour is important when it comes to the court's activities", noted the Chairman of the Council.
At the same meeting, the High Council of Justice with the majority- twelve votes versus one - resolved to terminate Mamuka Akhvlediani's office as the Chairman of Tbilisi City Court, and the Chairperson of the Criminal Cases Panel.

The Council discussed the issue of dismissing the Chairperson at the session whose agenda did not include the issue of discharge of the chairperson of the court. By resolving to dismiss the chairman from the office, the requirements for the due process were grossly violated. Besides, pre-term dismissal of the Chairperson of the court before the expiry of the term office shall be based on specific grounds as prescribed by the legislation. And for such procedure, the law establishes disciplinary proceedings. Even if the law is ambiguous, the Council should have explained the law in favor of the due process and should not have been guided by a blanket provision that only establishes the rights for discharge but fails to define the grounds and proceedings of the discharge. Under the applicable legislation, only after carrying out the disciplinary adjudication flawlessly and establishing a violation, it is possible to assign a disciplinary sanction such as a dismissal of a chairperson from the office.[101]

The resolution made by the Council reaffirms that appointment and dismissal of the Chairman of the Court is an arbitrary process, which transfers a significant leverage in the hands of the Council to exercise undue influence on the court and judiciary.

6. Disciplinary Liability

- **The reporting period revealed the critically low number of reviews of disciplinary complaints, the Council had only examined 10 disciplinary complaints out of 211 received during the reporting period;**
- **The timeframes for consideration of disciplinary complaints were unreasonably delayed, which can pose serious risks to internal independence of the judiciary;**
- **For the first time during the reporting period the Council refused to disclose the information about the number of the reviewed complaints which were not submitted in accordance with the formal requirements. Neither the law nor any decisions of the Council has provided for the legal regulations for reviewing of complaints that were submitted in non-compliance with the formal requirements;**
- **The number of termination of the disciplinary proceedings is high, which under the inadequate transparency, creates doubts about the impartiality of the decisions taken on termination of the cases.**

6.1. Transparency of the process of disciplinary proceedings

Before 2012, the process of disciplinary proceedings was fully confidential and excluded any possibilities of monitoring. Only statistical information could have been obtained from the High Council of Justice. [102] Under the amendments introduced in the legislation in 2012, disciplinary proceedings became relatively open, in particular: it was established that the decisions of the Disciplinary Board and Disciplinary Chamber shall be published on the official website immediately after their entry into force. However, the process of consideration of disciplinary liability proceedings at the High Council of Justice is still insufficiently transparent. Only general statistical information is available on the decisions made by the Council.

Notably, pursuant to the amendments drafted within the framework of the "Third Wave" of Judicial Reform, judges are entitled to publicize the sessions of the High Council of Justice, the Disciplinary Board and the Chamber, except for deliberation and decision making procedures. The Independent Inspector's Office has been set up to conduct an objective, impartial and comprehensive research and preliminary examination of the alleged disciplinary misconduct of a judge, but these amendments were not implemented during the reporting period and their practical outcomes still remain unknown. Consequently, the assessment of the judicial disciplinary liability proceedings is based only on statistical data.

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[101] http://www.coalition.ge/index.php?article_id=74&clang=0 – The High Council of Justice dismissed Mamuka Akhvlediani in violation of the law.

[102] The High Council of Justice of Georgia publishes on its official website the periodic statistical information on the number of disciplinary complaints submitted to the Council during any corresponding reporting period, the number of complaints which came from the previous reporting periods, the total number of decisions made regarding the termination of disciplinary proceedings, the total number of cases of sending recommendation letters to judges, the total number of the disciplinary prosecution against judges, the number of decisions made about referring cases to the Disciplinary Panel, and the total number of pending disciplinary proceedings in the reporting period.

6.2. Analysis of statistical data

During the reporting period, overall 241 disciplinary complaints were considered as submitted to the Council in accordance with the formal requirements. It is unknown how many complaints were deemed to be non-compliant with the formal requirements and returned to appellants during the reporting period. The Council did not publish the statistics on its website and failed to provide us with the information as requested.[103] It should be taken into account that the results of submitting complaints against the formal requirements shall be specified in the form of a disciplinary complaint as approved by the High Council of Justice. The form contains a warning that a complaint (application) not submitted in accordance with the formal requirements shall be considered inadmissible and the appellant shall be notified thereupon by a relevant officer. Other procedural provisions which could clarify when a complaint may be deemed submitted against the formal requirements, or may not be considered at the time of its submission and returned to the appellant are not provided.

Pursuant to the law, a complaint shall be drawn up according to the template approved by the Council. However, as we learned from the information requested from the Council in 2015, a complaint may be submitted to the Council in accordance with the formal requirement or without the observance of the formal requirements. For example, the overall number of disciplinary complaints received by the Council was 875 in 2015, out of which 347 disciplinary complaints the Council considered as submitted in accordance with the formal requirements.[104] The number of the disciplinary complaints considered to be submitted against the formal requirements and returned to appellants was too high in the previous years.[105] Under such conditions, it is interesting to know the number of such complaints, why and on what grounds the Council decided that the complaints were not submitted according to the formal requirements and whether an interested party was given a timeframe to eliminate the defect. For the first time in the reporting period, the above information has not been available.[106]

Notably that under the amendment introduced within the framework of the Third Wave of the Judicial Reform in the legislation, submission of a complaint against the formal requirements shall no longer become the grounds for the refusal or waiver of admittance (registration) of the complaint. Hence, the Council shall substantiate the reason for the refusal to review a complaint submitted against the formal requirements, which will make the process more transparent.

During the reporting period, after merging of some complaints the overall 211 disciplinary cases were reviewed by the Council. In 25 cases the judges have been obliged to provide explanations and the proceedings are still pending.

In 2016, the number of disciplinary sessions conducted was 16. The sessions reviewed both the disciplinary complaints submitted in 2016, as well as the complaints of the previous years that were not considered in the respective year and came to 2016. Overall, 231 complaints were reviewed by the Council during the reporting period. The number of complaints from the total 241 complaints (after the merge the complaints were 211) submitted in 2016 and reviewed in the same period was 10. Other complaints which the Council considered in the reporting period are 9 complaints[107] from those submitted in 2014 and 212 complaints out of 277 complaints that came from 2015.

Notably that according to the law, the examination of a disciplinary case shall be completed within one month after the decision is made on taking an explanation from a judge. If necessary, this term may be extended for no more than 2 weeks.

Such delays in consideration of disciplinary complaints and then renewal of case reviews after some years pose a serious threat to judges' individual internal independence even if after the consideration of such complaints decisions were made on termination of the majority of such disciplinary complaints.

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[103] The letters #c-04/346-16 and Nc-04/472-16 of Georgian Young Lawyers' Association dated as 12 August and 27 december 2016 and of the High Council of Justice of Georgia 1477/2032-03-n of 23 August 2016 and #2065/3009-03-n of 30 December 2016

[104] Statistical information of the disciplinary proceedings against judges in 2015 published on the website of the High Council of Justice. http://hcoj.gov.ge/files/axali/%E1%83%A1%E1%83%A2%E1%83%90%E1%83%A2%E1%83%98%E1%83%A1%E1%83%A2%E1%83%98%E1%83%99%E1%83%90%202015.pdf

[105] The letter 2065/3009-03-n of the High Council of Justice of Georgia of 30 December 2016.

[106] The letters #c-04/346-16 of Georgian Young Lawyers' Association dated as 12 August 2016 and the letters of the High Council of Justice of Georgia #2065/3009-03-n of 30 December 2016.

[107] The question on how many complaints came from the year of 2014 to 2016, the Council left open: The letter #c -04/346-16 of GYLA dated as 12 August 2016; The letter #1477/2032-03-n of the Council dated as 23 August 2016; The letter # c-04/472-16 of GYLA; The letter #2065/3009-03-n of the Council of 30 December 2016.

Pursuant to the decision of the Council, the review of 209 complaints out of the total 488 complaints (the data includes 277 cases which came as the balance of the year 2015 to 2016 and the number of complaints submitted in 2016) was terminated. According to the Council, the ground for the termination of the complaints was the absence of a misconduct, fault or damage. The high rate of discontinuation of disciplinary complaints also raises questions about the impartiality of the decisions made on the termination as it is unknown what the content of the complaints was, or the evidence based on which a judge's decision was appealed and the way the Council substantiated the lawfulness of the termination of the complaint. The decisions above could have been publicized in two ways, by publishing the decisions of the Council in bar-coded form as the decisions of the Disciplinary Board and Disciplinary Chamber are published. Alternatively, the degree of transparency of the Council's decisions could be enhanced by publishing the content of the Council's decisions in the statistical and more detailed form.

One case proceeding should be noted in which a judge was imposed a disciplinary liability in 2016.[108] As we have learned from the decisions of the Disciplinary Board and the Disciplinary Chamber, there was no discussion at all whether the appellant suffered any damages due to the judge's decision, which can serve as the necessary ground for imposing a disciplinary sanction. However, in other cases we can also see that the Council makes decisions on termination of disciplinary proceedings due to the absence of damages.

The Council did not approve the decisions of the Secretary of the Council on termination of the disciplinary proceedings in 16 cases and made a decision to require only explanations from judges. As a result, the disciplinary proceedings were terminated against judges in 2 cases and they were provided with personal recommendation letters. In the remaining 14 cases we should assume that the disciplinary proceedings are being carried out as we learn from the letters that no disciplinary proceedings were suspended in 2016.

During the reporting period, the Council only in one case made a decision on holding a judge responsible on the ground of "the judge's inappropriate actions which damage the reputation of the judiciary and undermine the confidence in the court due to the failure to perform the judge's duties or the breach of judicial ethical norms."

6.3. Discilinary liability of member Judges of the Council

During the reporting period 11 disciplinary complaints were submitted against the members of the Council and after the merge overall 9 disciplinary proceedings were administered. The majority of the complaints were related to improper performance of the duties, legality of decisions and in one case, the legitimacy of a case review. The information requested from the Council does not specify what decisions were made regarding the above mentioned complaints.[109]

7. The rules and practice for evaluation of the judges appointed for a probationary period

The amendments introduced to the Constitution of Georgia in 2010 established the rule of appointment of judges indefinitely which may be preceded by appointment of a judge for a probationary period. The monitoring team analyzed the legislation regulating the appointment of judges for a probation period and the assessment reports prepared on 12 judges appointed indefinitely on 28 October 2016.

7.1. The rule for evaluation of judges appointed for a probationary period

Key findings

- **The provisions regulating the assessment process of judges appointed for a probation period as prescribed by the Organic Law contain no sufficient safeguards for assessing a judge through an objective and transparent procedure;**

[108] The Decision of the Judicial Disciplinary Panel of Judges of Common Courts of Georgia of April 12, 2013 on the Case # 1/04-12; The Decision of the Judicial Disciplinary Panel of Judges of Common Courts of Georgia of 2 August 2012 on the Case #1-01/11. Available on the webpage of the Panel.

[109] The letter 1477/2032-03-n of the Council dated as 23 August 2016 and the letter 2065/3009-03-n of the Council dated as 30 December 2016.

- **The procedure for making a decision on lifetime appointment of the judge designated for a probationary period, which is defined by the Organic Law, provides the possibility to make subjective and arbitrary decisions and fails to provide sufficient standards of transparency;**

- **Since 2013 up to present, the High Council of Justice of Georgia has conducted the evaluation of the judges appointed for a probationary period without the approval of any subordinate acts which would regulate in details the evaluation process of judges appointed for a probationary period.**

Since November 2013, all judges shall be appointed for a probation period in the first and second instance courts. While working on this report, overall 12 judges were appointed indefinitely in the judicial system.

The procedure for evaluation of judges designated for a probationary period, which is defined by the Organic Law of Georgia on Common Courts, does not meet the requirement of foreseeability of the law, as well as the analysis of the legislation has revealed that the provisions of the law are not sufficiently detailed and a number of procedural issues requires additional regulation. In particular:

- The rule for assessment of the decisions made and sessions conducted by the judges appointed for a probationary period are vague and require detailed regulation;

- There are no rules provided about how information shall be obtained about a judge to be assessed;

- There is not specified what sources or evidence shall the judiciary evaluation be based on;

- It is not established how the principle of randomness can be achieved during the assessment process (selection of decisions made and sessions conducted by a judge in question).

According to the Organic Law of Georgia on Common Courts, upon the launch of the three-year tenure a judge shall be notified on the assessment procedures and the circumstances which shall be taken into consideration when evaluating the judge through individual criteria and when making a decision on the appointment of the judge indefinitely.[110]

The Law does not include any provisions on what information about the above procedure and in what manner shall be communicated to a judge. According to the letter of the High Council of Justice,[111] no additional procedures have been developed by the Council for the last three years; Only after the appointment of judges for a probationary period, they shall be informed about the assessment procedure which is already envisaged by the law and which even more formalizes and underestimates the requirement of the law to inform judges about their evaluation process.

In practice, the evaluation process of the judges designated for a probation period is carried out, even though the Council has not developed any additional assessment procedures for over three years. It compromises the transparency of the process and provides the possibility of making arbitrary and biased decisions and it is not foreseeable for a judge what information her/his assessment is based on, which violates the principle of judicial independence.

7.2. The practice of evaluation of the judges appointed for a probationary period

Key findings:

- **The forms approved by the High Council of Justice of Georgia are completed by some evaluators in a manner that due to the absence of specific evaluation in a number of the components the assessments may apply to any judge and are not tailored for a particular judge. Therefore, we can say that assessment reports in a number of components are formulaic. The cliché style is more characteristic to the component of honesty.**

[110] The Article 361, paragraph 3

[111] The letter N1701/2387-03-n of High Council of Justcie dated as 20 October 2016.

- **The assessment reports do not clearly and expressly provide what the evaluator relied upon when making conclusions. In addition, in some cases assessment reports are not preceded by the information on the documentations or other material which the evaluator based his/her decisions on.**

- **When assessing the judges through the criteria of judicial honesty, the evaluators point out that their decisions are supported by the information requested from different agencies, the information obtained through individual interviews, the results of examining audio-video recordings of court sessions, and so forth. However, when it comes to reading the conclusions, it is hard to determine which information led the evaluator to provide a positive assessment report.**

- **The assessment of the judiciary based on the criterion of competence is mainly based on the examination of the cases which the judges reviewed, but such cases should be selected randomly, however, the reports do not expressly demonstrate what methodology was applied for the random selection of cases. Also, it is unclear what methods have been used to assess the decisions made by the judges and whether the evaluators had uniform approach when assessing the decisions.**

- **It is not established in advance on the basis of which information a judge shall be evaluated through each specific criterion. This practice has shown that the information used for the evaluation of individual criteria is insufficient or irrelevant.**

7.2.1. Public information obtained from the Council

GYLA requested the High Council of Justice of Georgia to provide the assessment reports prepared between 2013 and 2016 for 12 judges appointed for a probationary period.

In accordance with the Article 363 the paragraph 21 of the Organic Law of Georgia on Common Courts: “If a judge is appointed to the office indefinitely, the judge’s evaluation report shall be public information and any person shall have the right to request the same in accordance with the rules prescribed by the Chapter III of the General Administrative Code of Georgia.”

In accordance with the Article 364 the paragraph 10 of the Organic Law of Georgia on Common Courts, a judicial assessment report shall include:

a) a conclusion that provides an appropriate description of and grounds for the results obtained on the basis of each characteristic of both assessment criteria;

b) a form completed according to a sample approved by the High Council of Justice of Georgia that incorporates the conclusions drawn, according to the seventh paragraph of this article, from the assessment of a judge based on the honesty criteria, and the number of the points gained by a judge for each characteristic of the competence criteria;

c) all written documents and other materials which were used for the assessment of a judge’s activity for the given period.

The High Council of Justice did not provide GYLA with the documents and materials based on which the judges’ assessment conclusion reports had been prepared. GYLA reapplied to the High Council of Justice of Georgia with the request of issuance of the above documentations. In the letter of February 13 sent to GYLA the High Council of Justice noted that the information requested by GYLA is of a volume and its systematization and encoding of personal data requires definite time. Thus, the High Council of Justice violated the 10-day timeframe established by the legislation for the issuance of public information and made a promise to send the information on a “later” date.

7.2.2. Analysis of the assessment reports prepared by evaluators on judges' activities

The evaluation reports of a judge's activities when assessing the judicial honesty and competence criteria, as a rule, are usually based on the following sources:

- A judge's biography and personal file.
- The testimonials-assessments provided by the staff of the Office of court administrations and the judges having official relationship with a judge in question.
- Declaration of property of a judge
- The data obtained from JSC "Creditinfo Georgia" on the current and overdue indebtedness of a judge to be evaluated.
- The data obtained from the LEPL Revenue Service of the Ministry of Finance of Georgia on the income sources, assets and tax liabilities of a judge to be evaluated.
- The information from the Information-Analytical Department of the Ministry of Internal Affairs of Georgia on a judge to be evaluated.
- The data obtained from the Department of Judicial Ethics of the High Council of Justice of Georgia on any disciplinary proceedings against a judge to be evaluated.
- The data obtained from the Department of Human Resources Management of the High Council of Justice of Georgia on professional trainings and professional activities of the judge to be evaluated.
- The statistical information obtained from a court and elaborated by the Department of International Cooperation and Quality Management of the High Council of Justice of Georgia on meeting the procedural timeframes in his/her activities by a judge during the assessment period and the stability of decisions.
- Audio recordings of court sessions included in cases.
- Video recordings of the court sessions retrieved from the Department of Organizational Support of the High Council of Justice on various cases.
- The documents verifying the judiciary qualification exams passed by a judge.
- Information published in the media about a judge.

In the assessment reports, some evaluators from the very start note the use of the above-mentioned data, and then according to the criteria indicate what conclusions have been made on the basis of the obtained information. For instance: The assessment report prepared about the activities of Khatuna Khomeriki, a Judge of the Kutaisi Court of Appeals, Kakhaber Sopromadze, the evaluator first of all lists down the data obtained and examined for the assessment, and then indicates at the sources when discussing the specific components, namely the evaluator when assessing the "personal honesty and professional integrity" appears to have relied on the documents on the property status of and came to a conclusion that the judge "performs financial and other civil commitments in good faith and clear conscience". In addition, the evaluator notes that according to the information requested from the MIA, there were no administrative penalties imposed on Judge Khatuna Khomeriki during the assessment period. The question remains unanswered whether it is relevant to assess the judge's "personal honesty and professional integrity" only on the basis of the above information, though the reference to the source should be assessed positively.

Making irrelevant conclusions is quite frequent when an evaluator refers to the source. In a number of cases it is hard to make a conclusion on the compliance with a specific criteria only on the basis of the data provided (for instance to establish "independence, impartiality and fairness" based on the following description provided by colleagues: "a competent, principled and fair person with rich practical experience),[112] however, the reference to the source itself can be assessed as a positive factor since the evaluator's conclusions appear more reasoned

[112] The evaluation conclusion report prepared about Khatuna Khomeriki, the Judge of the Kutaisi Court of Appeals. The period of assessment 29.11.2014 – 29.11.2015, the evaluator Kakhaber Sopromadze.

and understandable. When an evaluator does not refer to the source at all, it is impossible to argue about the relevance of the evaluation. **For example**, in the assessment of Judge Murtaz Meshveliani, the evaluator Levan Murusidze regarding the judge's personal and professional conduct points out that "he adheres to the rules of the judicial ethics in and out of the courtroom; he is reserved, well-conducted and capable of managing his own emotions." However, it is still unclear based on what information the conclusion was made.

When assessing both the honesty and professional integrity, the assessment report prepared by an evaluator shall be substantiated. In accordance with the Article 36^4, paragraph "a" of the Organic Law of Georgia on Common Courts, the evaluator shall provide in the reports "accurately described and substantiated results obtained through each aspect of each criterion."

The provision of the law obliges evaluators to prepare the conclusion reports based on the sources obtained that will enable unbiased readers to understand what the evaluators base their assessment on and why they evaluate a specific component positively or negatively.

From 2013 to 2016, the assessment conclusion reports prepared about 12 judges appointed for a probation period are not properly substantiated when assessing the honesty and professional integrity criteria. While reading the assessment reports it is unclear whether the judges were assessed fairly and whether such assessments were supported by the information obtained.

7.2.3. Personal honesty and professional integrity

The Article 35^1,Paragraph 5 of the Organic Law on Common Courts defines the component of personal honesty and professional integrity and therefore provides for the aspects which the evaluator should take into consideration during the assessment of a judge by this specific component: „when assessing a judge based on personal honesty and professional integrity the following qualities of a person, as a judge and a citizen, shall be taken into consideration: integrity, honesty, appropriate awareness of one's duties and responsibilities, love of truth, transparency, civility and accuracy when performing official and other duties and fulfilling financial and other obligations (e.g. when completing a declaration of property, paying bank or other loans, utility bills or other charges, or a traffic fine), etc."

In the assessment reports prepared by the evaluators when assessing personal honesty and professional integrity, the list of the components above provided by the law is not envisaged. The evaluators, as a rule, with the similar terminology point out that the interviews with the judge's colleagues and the court administration staff' revealed that a judge is humble, honest, industrious, and etc. However, how these features have been particularly demonstrated and how they are reflected in the judge's activities is usually vague.

In addition to the interviews with the persons related with a judge in question, for the evaluation of the judges appointed for a probationary period the component also envisages the information received from the Ministry of Internal Affairs about administrative offenses, the information from the Revenue Service in connection with payment of taxes, and the information about a judge's declared property in Civil Service Bureau. As is clear from the assessment reports, the above information enabled the evaluators to provide positive conclusions for all judges. As the assessment reports are not properly substantiated it is virtually impossible to identify from the conclusion reports whether such results were really based on judges' actions in good faith or the assessment sources were insufficient and not properly investigated.

7.2.4. Independence, impartiality and fairness

The Article 35^1, the paragraph 6 of the Organic Law of Georgia on Common Courts defines independence, impartiality and fairness as the component of honesty in the following way:"when assessing a judge based on independence, impartiality and fairness, account shall be taken of his/ her adherence to principles, ability to independently make a decision, and resistance to influence, personal steadfastness and firmness, political or other type of impartiality, fairness, etc".

In this component, the evaluators assess the judges in a cliché manner. They do not review specifically what actions or decisions revealed the judge's ability to stay independent and impartial. While reading the conclusion reports it is difficult to understand why the evaluator considers the judge impartial and fair. As a rule, the assessments are provided as follows:

- The monitoring of the court sessions and also the examination of the cases reviewed by Judge Tsitsino Kikvadze allowed me to assess the judges' independence, impartiality and fairness. It should be noted that the judge is capable of making decisions independently based on the circumstances of a case and the internal faith, treat people equally and worthily showing the respect to their rights and interests with no prejudices." [113]

- Judge Khomeriki is characterized by her colleagues as a competent, steadfast and fair person with great practical experience. In the course of the assessment, no facts of ex-parte restricted communications with the judge or interferences in the judge's activities were revealed.[114]

Such ambiguousness and catchall assessments raise questions about the substantiation and credibility of the assessment conclusions. In addition, an impression is created that the judge's impartiality, fairness and independence was not examined thoroughly and the conclusions fail to "describe and substantiate the obtained results based on each component of both criteria" which is required by the Organic Law of Georgia on Common Courts.

7.2.5. Personal and professional conduct

In accordance with the Article 35 paragraph 7 of the Organic Law of Georgia on Common Courts: "When assessing a judge based on personal and professional conduct, account shall be taken of his/her adherence to judicial ethics, civility with regard to colleagues and other persons, conduct and image appropriate for a judge's high rank, restraint, the ability to manage one's emotions, appropriate conduct during disciplinary proceedings against him/her, in litigation to which the judges is a party, existence of criminal charges against the judges etc."

The content and obligation of the provision of the Organic Law for producing a substantiated assessment of a judge's personal and professional conduct should deprive evaluators of the ability of making arbitrary conclusions and obliges them to describe a personal and professional conduct of a judge as it is required by the Law. Besides, assessment conclusion reports should not reiterate the legal provision of "personal and professional conduct" as stipulated in the law, but each component should be grounded, for instance, how the ability of self-control or managing one's emotions has been demonstrated and what are the grounds for the positive assessment of these characteristics.

Usually personal and professional conduct in the conclusions is provided as follows:

- "The monitoring of the court sessions conducted by Judge Nino Sharadze allows to evaluate her with regard to professional conduct (as well as the materials of the cases reviewed by her) and the information received from the interviews with her colleagues.

Her colleagues emphasize her communication and organization skills. According to their assessment, Nino Sharadze is well able to plan and organize cases considering their number and complexity, and she has the ability to cooperate effectively oriented on quality.

As a result of the monitoring of court hearings, the judge has demonstrated the ability to properly manage her emotions, tactfulness, placidity and consistence. She appears convincing and reliable during the process, gives competent explanations and conducts sessions effectively, and has never been involved in any controversial relationship."[115]

The above characterization due to its cliché nature could be easily matched to any judge appointed for a probationary period if the name and surname of the judge were changed. It is impossible to identify the specific reasons why the evaluator came to the above conclusion. Noteworthy that almost all the judges have been assessed in the same manner above.

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[113] The evaluation report prepared by Ilona Todua, the member of the High Council of Justice of Georgia on the assessment of the activity of Tsitsino Kikvadze, the Judge of Kutaisi City Court. The period of assessment: 29.11.2013 - 29.11.2014.

[114] The evaluation report prepared by Kakhaber Sopromadze, the member of the High Council of Justice of Georgia on the assessment of the activities of Khatuna Khomeriki, the Judge of Kutaisi Court of Appeals. The period of assessment: 29.11.2014 – 29.11.2015.

[115] The evaluation report prepared by Sergo Metopishvili, the member of the High Council of Justice of Georgia on the assessment of the activities of Nino Sharadze, the Judge of Gori District Court. The period of assessment: 29.11.2015 – 29.11.2016.

7.2.6. Personal and professional reputation

In accordance with the Article 35 paragraph 8 of the Organic Law of Georgia on Common Courts: "When assessing a judge based on personal and professional reputation, account shall be taken of his / her business and moral reputation and authority in legal circles and society, the nature and quality of relations with legal circles etc."

When assessing personal and professional reputation, the evaluators have used the characterizations provided by the colleagues and court staff personnel of the judges in question. Typically, the evaluators point out as follows:

- "Based on the available information, I am convinced that the judge has the reputation of a conscientious and qualified lawyer among the colleagues and in private circle. S/he has never demonstrated any personal weaknesses and faults with the colleagues and participants to proceedings."[116]

- "I can conclude that the Judge enjoys the reputation of a likable person and competent lawyer among the colleagues and in his/her private circle, and is distinguished with diligence. S/he is straightforward and sincere in expressing his/her opinions, is sociable with colleagues and in personal relationships. S/he has the ability to ease the tense situations. S/he has never demonstrated any personal weaknesses and faults with colleagues and participants to proceedings however one of the colleagues notes the excessive self-criticism of the judge as the only fault.[117]

- "Judge Giorgi Mirotadze has long experience of working in the judiciary system and enjoys good reputation within the judiciary, the legal circles and society.[118]

In order to ensure the compliance of the assessment of personal and professional reputation with the Law, it needs to be tailored to individual judges and describe the authority and status of a particular judge in the society. The assessment conclusion reports provided for all twelve judges are drawn up in catchall/general manner, namely, the biographies of some judges are copied, note that a judge has a good reputation based on the interviews, most evaluators do not even provide biographical data and simply state that a judge has a good reputation because the interviewees declared so.

7.2.7. Financial liability

Information about the financial status of the judge is included in other components of the judiciary evaluation report. In particular, when assessing "personal honesty and professional integrity", one of the factors that should be taken into consideration during the evaluation is fulfillment of financial obligations, but the Organic Law of Georgia on Common Courts also requires individual assessment of a judge in terms of financial liabilities."Financial liability" as an independent component is much broader and contains the detailed information about the property of a judge. The Law defines the meaning of "financial liability" as follows: "when assessing a judge based on financial obligations, account shall be taken of the information on his / her source of income, assets, property owned and / or used, and on debts and liabilities related to this property and income. Examination of financial obligations is intended to establish whether there are grounds for a conflict of interest between a judge's material interests and the interests of justice, which may potentially compromise a judge's impartiality."

The assessment conclusion reports prepared for all 12 judges appointed for a probationary period in terms of their financial liabilities are based on the judges' property declarations which include the information about the judges' owned real estate property, as well as the cash on their bank accounts. In addition to that, the evaluators have used the data obtained from JSC "Creditinfo Georgia" about the judges' personal credit information and tax receipts from the Revenue Service.

Noteworthy that the evaluation reports provided for all 12 judges in terms of their financial liabilities are all positive. This component is also characterized by generality and the evaluators only point out that there are no grounds for suspicion of conflict between the judges' property interests and the interests of justice.

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[116] The evaluation report prepared by a member(the name and surname are not indicated in the report, only the illegible signature is attached) of the High Council of Justice of Georgia on the assessment of the activities of Germane Dadeshkeliani, the Judge of Gori District Court. The period of assessment: 29.11.2015 – 29.07.2016.

[117] The evaluation report prepared by Vakhtang Tordia, the member of the High Council of Justice of Georgia on the assessment of the activities of Nana Chichilashvili, the Judge of Tbilisi City Court. The period of assessment: 29.11.2013 – 29.11.2014.

[118] The evaluation report prepared by Merab Gabinashvili, the member of the High Council of Justice of Georgia on the assessment of the activities of Giorgi Mirotadze, the Judge of Tbilisi Court of Appeals. The period of assessment: 29.11.2013 – 29.11.2014.

7.2.8. Criterion of Competence

Unlike the criterion of honesty, the criterion of competence is relatively well-substantiated. As the assessment conclusion reports show the evaluators examine the results of the exams taken by the judges, as well as the statistical information requested from the courts. In addition, the evaluators randomly select and examine five cases reviewed by a judge, on which final decisions have already entered into force, and according to the cases evaluate the judge's knowledge and skills through different criteria.

In addition to the above information, in order to make conclusions the evaluators use audio-video recordings of the sessions conducted by judges, the information on the participation in seminars and trainings and the biographies of judges. Based on such information and in accordance with the Organic Law on Common Courts, the evaluators provide the assessment within the criterion of competence through the various components, namely: " knowledge of legal norms", "ability to provide legal arguments, and competence", "writing skills", "oral communication skills," "professional qualities, including conduct in a courtroom," "academic achievements and professional training", "professional activity."

7.2.9. Knowledge of legal norms

The level of the judges' knowledge of the legal norms is assessed by the evaluators according to the decisions reviewed. It is noteworthy that compared to the criteria of honesty, the degree of substantiation of this component is slightly higher, but still with many issues. The evaluators do not specify what knowledge of legal norms and to what extent the judges has demonstrated, also, whether the decision of the European Court referred to in a particular case by a judge is relevant and if the judge makes the reference correctly. The reference to the decision itself may not be a basis for a positive assessment.

In accordance with the Organic Law of Georgia on Common Courts: "When assessing a judge based on knowledge of legal norms, account shall be taken of the level of knowledge of substantive and procedural legislation, human rights law, including case law of the European Court of Human Rights. In order to assess a judge based on this characteristic, the evaluator shall consider the correctness of the application of legal norms, including the case law of the European Court of Human Rights with respect to decisions made by the judge on the cases reviewed. To assess a judge based on the above characteristic, the evaluator shall also request and obtain the results of the judicial qualification exams taken by the judge and the assessment of the Independent Council of the High School of Justice."

The law unambiguously requires the establishment of the level of knowledge of a judge and not only the reference to the laws or decisions. The evaluators should have included in the assessment reports whether the judges had or did not have the knowledge of the legal norms and procedural legislation.

7.2.10. Ability to provide legal arguments, and competence

When assessing a judge based on competence and the ability to provide legal arguments, account shall be taken of the substantiation and cogency of the decisions made by the judge with respect to cases reviewed, the judge's ability to think analytically and professional experience." [119]

In this component, the assessment conclusion reports provided should be evaluated positively since the evaluators reviewed the judges' decisions and analyzed the degree of substantiation of the decisions, which, of course, is in line with the requirements of the law. However, as a judge's decisions shall be randomly selected, it is unclear from the reports what methodology has been used for random selection of the cases. There is also no information on what methodology has been applied to assess the decisions of the judges, and whether the evaluators had uniform approaches when evaluating the decisions.

[119] The Organic Law of Georgia "On Common Courts", Article 363 (9).

7.2.11. „Writing skill" and "Oral Communication Skill"

The assessment reports on writing skills are characterized by generality like honesty criteria, for instance, when assessing Judge Levan Mikaberidze's work in Batumi City Court, the report prepared by Kakhaber Sopromadze, the member of the High Council of Justice, can be read as follows:

"As a result of the examination of the decisions made by Judge Levan Mikaberidze, I can conclude that:
The procedural documents prepared by Judge Levan Mikaberidze are in clear language and easily readable. The rules of spelling and punctuation are mostly adhered."

The above general evaluation may not be a reliable source in the eyes of an objective observer who needs to obtain information on written skills of the judge.

As for the oral communication skills, the evaluators demonstrate the same approach to this component. The similar records provided by the evaluators about different judges show the attitude of the evaluators to the assessment process. For example, the assessments provided by Kakhaber Sopromadze, the member of the High Council of Justice, are worded in the following way:

"As a result of the examination of the audio and video recordings of court sessions, it has been established that Judge Gocha Putkaradze speaks fluently. While speaking he maintains academic register, refrains from using offensive or derogatory words and expressions, discriminatory terminology, jargons and slangs." [120]

The similar record is provided in the assessment report of another judge. For example, the evaluator when assessing Judge Murtaz Meshveliani notes out: "As a result of the examination of audio recordings of court sessions and by attending court hearings, I can conclude that Judge Murtaz Meshveliani speaks fluently. He maintains academic register, refrains from using the offensive or derogatory words and expressions, discriminatory terms." [121]In accordance with the Article 363(11) of the Law of Georgia "On Common Courts:"When assessing a judge based on oral communication skills, account shall be taken of his/her ability to speak fluently, the ability to listen to other people's opinions with patience, his/her openness, and the ability to tolerate different viewpoints, etc." The assessment reports should clearly state whether the judge's oral communication skills are consistent with the legal requirements, and why the evaluator thinks so.

7.2.12. Professional qualities, including conduct in a courtroom

The judges' assessment in this component can be evaluated positively as the members of the High Council of Justice of Georgia have provided much more detailed, in-depth and objective assessment rather than when examining the criteria of "writing skills" or honesty.

As required by the law, the evaluators, as a rule, review the judge's qualities which are listed in the law for assessment of professional qualities, such as: "Punctuality, preparation of a case with due care and responsibility, conduct in a courtroom and the ability to preside over a court sitting in an appropriate manner, conduct in the relationship with the parties, diligence and industriousness, the ability to make a decision without assistance, and to think independently, the ability to work under stress, purposefulness, efficiency and speed, adherence to procedural time frames, managerial skills and etc."[122] The evaluators when assessing these characteristics declare that they have used the audio materials of cases, video recordings of court hearings, a judiciary evaluation questionnaire, statistical data on the activity of a judge etc. The evaluators have based their assessments on the statistical information on violation of the procedural timeframes by the judges and so forth. Therefore, such evaluations are more convincing, and we can say that the judges' assessments in this component are relatively well substantiated.

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120 The evaluation report prepared by Kakhaber Sopromadze, the member of the High Council of Justice of Georgia on the assessment of the activities of Gocha Putkaradze, the Judge of Batumi City Court. The period of assessment: 29.11.2014. – 29.11.2015.

121 The evaluation report prepared by Kakhaber Sopromadze, the member of the High Council of Justice of Georgia on the assessment of the activities of Murtaz Meshveliani, the Judge of Kutaisi Court of Appeals. The period of assessment: 29.11.2013. – 29.11.2014.

122 The Organic Law of Georgia "On Common Courts", Article 36^3 (12).

7.2.13. „Academic Achievements and professional trainings“ and „Professional Activity“

Academic achievements and professional training as well as professional activity are the components that should have been easily assessed because if a judge has achieved anything it can be easily tracked. However, these components have also revealed challenges, in particular, if a judge has no academic achievements or has not participated in professional activities (trainings, discussions, etc.), the evaluators still assess the judge in general and cliché format. Subsequently, when assessing with points, instead of zero or lower scores, they are awarded high points based on this general assessments. For instance:

“Judge Khatuna Khomeriki speaks Russian (fluent), English (intermediate) languages. She follows the rules of the office culture, in particular, she is punctual and organized and can use computer office programs.“[123] The assessment cannot be considered as an adequate tool to determine the “academic achievements and professional training”. However, on the basis of this assessment, the judge received 4 points from 5.

[123] The evaluation report prepared by Kakhaber Sopromadze, the member of the High Council of Justice of Georgia on the assessment of the activities of Khatuna Khomeriki, the Judge of Kutaisi Court of Appeals. The period of assessment: 29.11.2014. – 29.11.2015