



# MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE

No9



GEORGIAN  
YOUNG  
LAWYERS'  
ASSOCIATION

Georgian Young Lawyers' Association

# MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE №9

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# CONTENT

RESEARCH METHODOLOGY .....	5
KEY FINDINGS .....	6
1. THE POWER OF THE INFLUENTIAL GROUP OF JUDGES .....	9
1.1. Composition of the Council and Challenges .....	9
1.2. Appointment of a New Member of the Council by the President .....	11
1.3. Election of the Secretary of the Council .....	12
2. SELECTION-APPOINTMENT AND NOMINATION OF JUDGES .....	13
2.1. Appointment for a Probationary Period through a Competition .....	13
2.2. Lifetime Appointment of Candidates with Judicial Experience, through a Competition .....	15
2.3. Lifetime Appointment of Judges after the Probationary Period .....	15
2.4. Lifetime Appointment of Judges Whose Experience Exceeds Three Years .....	16
2.5. Reappointment and Promotion of Judges .....	16
2.6. Nomination of Judicial Candidates for the Supreme Court .....	17
2.7. Admission of Students to the School .....	18
3. JUDGES HOLDING ADMINISTRATIVE POSITIONS .....	20
3.1. The Role and Influence of Chairpersons .....	20
3.2. Selection of Court Chairpersons .....	20
3.3. Appointment of Chairpersons (Acting) of Chambers/Panels .....	22
3.4. Appointing the Chairperson of the Supreme Court by the Council .....	23
3.5. Selection of the Chairperson of the Council .....	24
4. DISCIPLINARY LIABILITY OF JUDGES .....	25
4.1. Appointment and Removal of the Independent Inspector .....	25
4.2. The Inspector’s Conclusions .....	25
4.3. Decisions Rendered by the Council .....	26
4.4. Transparency of Disciplinary Proceedings .....	28

5. COUNCIL ORGANIZATION AND TRANSPARENCY .....	29
5.1. Preparation of Council sessions .....	29
5.2. Publication of the Dates and Agendas of Council Sessions in Advance .....	29
5.3. Management of Council Sessions .....	30
5.4. Publication of Minutes and Decisions of the Council Sessions .....	30
5.5. Video-Audio Recording and Media Coverage of Council Sessions .....	31
5.6. Closure of Council Sessions .....	32
6. MANAGEMENT DEPARTMENT .....	33
6.1. Legislation and the Opaque Process for Selecting the Department Chairperson .....	33
RECOMMENDATIONS .....	34

## **RESEARCH METHODOLOGY**

### **Research Objectives and Subjects**

The High Council of Justice of Georgia (hereinafter – the “Council,” HCoJ) is a constitutional body of the common courts’ system.<sup>1</sup> Its goal is to ensure the independence and efficiency of the common courts, appoint and dismiss judges, and perform other tasks.<sup>2</sup> Practically, the Council fully administrates the judiciary system. The Georgian Young Lawyers’ Association (hereinafter GYLA) has been involved in the preparation of monitoring reports on the Council since 2012, through which the organization annually assesses its activities. This document is the #9 monitoring report and aims to identify positive and negative tendencies in the Council’s work, promote enhancement of the efficiency of the institute, raise the standards of transparency and impartiality of the justice system.

### **Research Tools and Sources**

The report covers the period from January 1 to December 31, 2020.

The following sources have been used in the report:

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

GYLA also relies on past reports and studies evaluating the judiciary system.

Within the framework of the research, GYLA studied the documents (guidelines, reports, assessments, etc.) prepared by the international organizations - the Venice Commission, the OSCE, the Consultative Council of European Judges, as well as general and specific opinions and recommendations towards Georgia.

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

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

<sup>2</sup> Ibid.

## KEY FINDINGS

The main challenge for the system by 2020 is still “clan-based” governance, which is partly facilitated by the current selection rules of HCoJ members, through which only those who are part of the influential group of judges are usually included in the composition of the Council. The rule of selecting non-judicial members within the mandate of the Parliament also fails to ensure the election of independent members, free of influences of the clan and the government. The “Clan” governance in the judiciary is already being heard from the international tribune. The 37<sup>th</sup> session of the Universal Periodic Review noted that “it is important to prevent informal governance by an influential group of judges known as the “clan”.<sup>3</sup> The “clan” in the judicial system was also discussed in the US Senate during the discussion of the issue of Georgia.

Observations show that an influential group of judges uses both shortcomings and positive amendments through the Council to strengthen their power. Improving the process of selecting judges is impossible without reforming the HCoJ itself. The changes made so far have failed to address significant challenges in the judiciary and improve the process. Procedural transparency and the introduction of a substantiation mechanism in the legislation did not prevent the Council from selecting candidates on the basis of loyalty. The study also includes other data on the work of the Council, which highlights the challenges that prevent the judiciary from becoming an independent institution. The main reason for this is that the “clan” controls 2/3 of the votes, sufficient to make a decision in the Council. At the same time, it is facilitated by procedures that still contain discrepancies:

- Those candidates who participate in the judicial selection competition but are not admitted to the voting stage, have no mechanism to appeal the decision;
- There is a relatively transparent rule of lifetime judicial appointment after the expiration of the probationary period, yet it is applied only to a small number of candidates (High School of Justice students). However, shortcomings can be found here as well. For example, if four out of six assessors assume that a judge does not meet the criterion of integrity during the evaluation process, and if the total score obtained by the candidate in the overall competence does not reach 70%, the chairperson of the Council shall issue a legal act rejecting consideration the case of lifetime appointment of the judge. The case cannot be brought forward for voting. This rule contradicts to the constitution, according to which six members shall reject the appointment of a person as a judge;
- Competitions for vacant places in the first and second instance courts are held at the closed sessions, which creates a problem in terms of transparency;
- The procedure for posting judges without competition does not comply with the standards of transparency. The Council did not publish information about the commencement of the process, as well as the number and identity of participants.

Although, through Fourth Wave of the judicial reform, the competition for admissions will be conducted by the school itself instead of the Council, the wider role of the High Council of Justice in the process of staffing an independent school board and selecting a chairperson remains problematic. In addition, the law does not regulate the rules and criteria for selecting students.

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<sup>3</sup> UN Web TV The United Nations Live & On Demand, Georgia Review - 37th Session of Universal Periodic Review, UN Web TV webpage. Available at: <https://bit.ly/3dySFDD>, updated: 14.04.2021.

One of the levers of “clan” power is the chairpersons. When appointing chairpersons, the Council uses the so-called “revolving door” system. Through this mechanism, all influential members of the “clan” constantly hold important positions in the judiciary. They alternate between these positions, which significantly reduces the opportunity for other judges to be involved in court management. An illustration of this view is the practice of appointing court/panel/chamber chairpersons established during the reporting period.

The unregulated mechanism for appointing the Acting Chairperson remains a challenge.

The rule of electing the Chairperson of the Supreme Court is also flawed, as it opposes the consensus model and encourages corporatism.

The report addresses another problematic issue - disciplinary proceedings. Despite a number of positive steps in improving procedures, inadequate legislative regulation in the selection of an Independent Inspector (hereinafter referred to as the Inspector) and the opaque practice of selecting them by the Council remain a challenge:

- The absolute majority of votes of the Council is sufficient to appoint and dismiss the Inspector, which allows the judicial members to nominate and appoint their desirable candidates for the position;
- The procedure for the appointment of the Independent Inspector does not envisage a range of important matters. Specifically, the major principles of holding the competition (such as impartiality, openness, the prohibition of discrimination, avoidance of conflict of interests) and procedures of conducting the competition (selection criteria, purpose and rule of conducting interviews, issues to be clarified during an interview, the assessment procedure of candidates and substantiation of such assessments) are not defined;
- The decisions of the Council on refusing to initiate disciplinary proceedings are not substantiated, in addition, the decision to initiate disciplinary proceedings and obtain an explanation is made by the Council by 2/3 of the votes. This requirement leaves many cases beyond consideration;
- Upon reviewing the Council’s decisions to discontinue disciplinary proceedings, it becomes clear that the timeframes for reviewing complaints are still delayed; the rate of termination of disciplinary proceedings is quite high.

The transparency of the Council is a separate issue. Delayed commencement of the Council sessions for a couple of hours was also a sign of poor management. The session closure procedures are also unclear. The following key findings were identified in this respect as a result of the monitoring:

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

- During the reporting period, the regulation on publishing the session date and agenda 3 days in advance was almost always violated. The agenda as well as the information about the session were announced the day before the session, in the afternoon;
- The Council did not provide a live broadcast of the sessions during the reporting period either.

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

### 1.1. Composition of the Council and Challenges

The purpose of the Council of Justice is to protect the independence of the judiciary and individual judges. Its composition must be such that it can serve to this objective.<sup>4</sup> Currently, the Council consists of 15 members, of which 8 members are appointed by the Conference of Judges, 5 by the Parliament and 1 by the President, and the Chairperson of the Supreme Court is ex officio member.<sup>5</sup> Improving the composition of the Council as an influential body in such a way as to facilitate sound processes in the judiciary is crucial. Despite numerous legislative changes in the last few years, the problem persists.

The current regulation for appointing Council members seems at first glance consensus-oriented, but on the other hand it fails to insure the risks of bias and gives good ground to “clan-based” governance. Judicial members are elected by the Conference of Judges by a two-thirds majority of those present.<sup>6</sup> **GYLA believes that the existing majoritarian system of elections shall be amended.**

The Council elected three new judge-members of the Council during the reporting period. At the Extraordinary Conference in March, after that the term of Sergo Metopishvili as a member of HCoJ had expired, Conference selected Nikoloz Marsagishvili as a new member with 224 votes.<sup>7</sup> Marsagishvili was the only candidate nominated. Another Extraordinary Conference of Judges was held on October 30. From the agenda of the Extraordinary Conference of Judges published on October 22, 2020, it became known that the body would elect, among other things, two new judge-members and a secretary of the Council.<sup>8</sup> Their election was on the agenda after the Secretary of the Council, Giorgi Mikautadze, was elected as the Chairperson of the Civil Chamber of the Supreme Court by the Plenum.<sup>9</sup> This position is incompatible with the secretariat of the Council. Revaz Nadaraia, whose term would have been expired on April 8, 2021 in a few months, applied to the Administrative Committee of the Conference for early termination of his membership in the Council. He later explained that his participation in the Supreme Court judges’ competition required him to be removed from all stages of the competition as the HCoJ member, and that the process required a great deal of effort from him.<sup>10</sup>

On October 30, the Conference of Judges elected Ketevan Tsintsadze, a judge of the Supreme Court, and Tea Leonidze, the Chairperson of the Bolnisi District Court, for the vacancies of two judge-members.<sup>11</sup> Miranda Eremadze, Chairperson of the Association of Women Judges, nominated their candidates. Any judge present at the conference<sup>12</sup> has the right to

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<sup>4</sup> The Council of Justice in the service of the community, Conclusion #10 (2007). Available at: <https://bit.ly/2YCtQt>, updated: 02.02.2021.

<sup>5</sup> The Organic Law of Georgia on Common Courts, Article 47, Paragraph 2.

<sup>6</sup> Ibid. Article 65, Paragraph 1.

<sup>7</sup> New member of the High Council of Justice, the website of the High Council of Justice of Georgia, March 14, 2020. Available at: <https://bit.ly/33MapGS>, updated: 11.05.2021.

<sup>8</sup> XXVIII Extraordinary Conference of Judges of Georgia, the website of the Supreme Court of Georgia, October 22, 2020. Available at: <https://bit.ly/3xcmW3P>, updated: 27.01.2021.

<sup>9</sup> Two members of the High Council of Justice of Georgia have left the Council, the website of the High Council of Justice of Georgia, October 23, 2020. Available at: <https://bit.ly/36yNfWv>, updated: 27.01.2021.

<sup>10</sup> Revaz Nadaraia explained the reason for leaving the High Council of Justice, Radio Liberty, October 26, 2020. Available at: <https://bit.ly/2NUQ51j>, updated: 30.01.2021.

<sup>11</sup> XXVIII Extraordinary Conference of Judges of Georgia, the website of the Supreme Court of Georgia, October 30, 2020. Available at: <https://bit.ly/3jemvzr>, updated: 02.02.2021.

<sup>12</sup> The Organic Law of Georgia on Common Courts, Article 65, Paragraph 2.

nominate a candidate, however, as is usually the case in a non-competitive environment, no other candidate was nominated in this case either. Candidates did not share their visions on the current situation, achievements and challenges in the justice system, however, Ketevan Tsintsadze received 243 votes and Tea Leonidze received 246 votes out of 260 judges present at the conference.

The U.S. embassy responded to an Extraordinary Conference of Judges being held the day before the election, saying it was disappointed with the rushed decision of the judiciary. "Important decisions with long-lasting consequences such as filling High Council of Justice vacancies should be taken deliberately, with sufficient transparency and time for consultations and participation by a broad range of qualified candidates."<sup>13</sup>

The Coalition for an Independent and Transparent Judiciary (hereinafter referred to as the Coalition) estimates that holding a Conference of Judges on October 30, the day before the regular Parliamentary Elections, and the election of two new Council members and the Secretary allowed the "clan", despite the results of the parliamentary elections, to have acceptable and loyal candidates in the institution for the next 4 years<sup>14</sup> It should be noted that, the term of office of 4 judicial and 5 non-judicial members of the Council is due to expire in 2021.

According to GYLA, holding of an Extraordinary Conference of Judges on October 30, the day before the Parliamentary Elections, is another proof of the manipulative policy of the "clan" in the system, which serves to appoint loyal and acceptable judges for the "clan" in strategic and important positions.

Observations of the process of electing judges to the Council show that the body is usually composed only of members of an influential group of judges, most of whom currently hold or have held managerial positions in the system for years. The composition of the Council helps to strengthen the influential group in the court and prevents the equal representation of the interests of different groups of opinions. "The chairpersons of the court, the panel/chamber have the right to be members of the Council, which helps to further strengthen the already existing informal hierarchy in the judiciary. **Therefore, a member of the Council who holds a position other than that of a judge should resign as soon as they are elected.**

At present more than 66% of judicial members of HCoJ are from the second and third instance courts, while they represent only 36% to the overall number of the judges. None of the seven judge members of the Council, which are selected from first and second instance courts, come from the institutions of the west of Georgia, whereas 6 of 7 members are from the city and the appellate courts of Tbilisi.

Since 2013, the Conference has elected 14 male and 5 female members to the Council. At the same time, the ratio of women representation in the Council is 53,3%.<sup>15</sup> The election of two female judges as members of the Council in 2020 can be positively assessed. Currently, 4 of the judges on the Council are women (one of them is the Chairperson of the Supreme Court, Nino Kadagidze).

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<sup>13</sup> Statement by the US Embassy on the Conference of Judges, October 30, 2020. Available at: <https://bit.ly/3t0YikG>, updated: 27.01.2021.

<sup>14</sup> The Coalition for Transparent and Independent Judiciary makes a feedback on scheduling The Extraordinary Conference of Judges of Georgia, October 30, 2020. Available at: <https://bit.ly/3auKEOW>, updated: 27.01.2021.

<sup>15</sup> Research on Main Factors Contributing to the Underrepresentation of Women Judges in the Management of the Common Courts in Georgia, Council of Europe, October 2019. Available at: <https://bit.ly/2OMKc7q>, Updated: 16.03.2021.

GYLA believes that the quota of chairpersons in the Council shall be abolished. In order to reduce the influence, changes in the composition of the Council are also required, such as: **setting gender, regional and instance quotas (the latter is defined by law, but needs to be clarified) when electing judicial members to the Council.**<sup>16</sup>

5 non-judicial members of the Council will be elected by 3/5 of the Parliament.<sup>17</sup> **GYLA believes that in order to make consensus-oriented decisions, as well as to increase the confidence of the judiciary, they shall be appointed with mutual support (from the government and the opposition).**

At the same time, the current rules for the election of non-judicial members of the Council by the Parliament do not provide a proper transparent procedure, which is why, even in the election of non-judicial members in 2017, GYLA submitted a legislative proposal to the Parliament, which provided: A) submission and publication of the biographies and vision documents of the candidates for membership in the Council; B) the introduction of the regulation of interviewing the candidates for members of the Council by the Steering Committee and the right of the interested third parties to ask questions.<sup>18</sup> **No changes were reflected in the regulations, GYLA calls on the Parliament to consider it and turn it into a normative document.**

## 1.2. Appointment of a New Member of the Council by the President

With the founding of the political movement by the non-judicial member Ana Dolidze, “For the People”, the issue of termination of her authority became relevant again. This topic was first discussed by the Council at its session on October 25, 2019. In their opinion, Ana Dolidze’s activities were political and were incompatible with her status.<sup>19</sup> By law, a member of the Council may not be a member of a political union and/or participate in political activities.<sup>20</sup> This record appeared in the law after the new composition of the Council and is aimed at protecting and maintaining the political neutrality of the judiciary. Nazi Janezashvili also called on Ana Dolidze to make a choice between political activities and membership in the Council.<sup>21</sup> Part of the civil sector also responded to the establishment of the movement, calling on Anna Dolidze: If she was going to be politically active in the near future, she should have decided to resign in time.<sup>22</sup>

The legislation provides for the definition of a stated election goal,<sup>23</sup> which defines individuals who have political ambitions to run the country or participate in the process in favor of someone else. Ana Dolidze’s activity was not similar to that during the period of issuance of the above-mentioned statements. However, a subsequent memorandum signed by her with

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<sup>16</sup> Nozadze N., Monitoring Report of the High Council of Justice №8, The Georgian Young Lawyers’ Association, Georgia, Tbilisi, 2020, p. 42, the website of the Georgian Young Lawyers’ Association., Available at: <https://bit.ly/3qTcutK>, updated: 16.03.2021.

<sup>17</sup> The Organic Law of Georgia on Common Courts, Article 47, Paragraph 5.

<sup>18</sup> NGOs call on Parliament to ensure a transparent process for electing new members of the Council of Justice, June 5, 2017. Available at: <https://bit.ly/2YIhR3c>, updated: 02.02.2021.

<sup>19</sup> See The Protocol of the session of the High Council of Justice of Georgia, October 25, 2020.

<sup>20</sup> The Organic Law of Georgia on Common Courts, Article 47, Paragraph 13.

<sup>21</sup> Janezashvili: Dolidze’s resignation confirmed everything I had said so far, Formula TV, June 22, 2020. Available at: <https://bit.ly/3cAWSHO>, updated: 02.02.2021.

<sup>22</sup> Statement of Non-Governmental Organizations, June 15, 2020. Available at: <https://bit.ly/3at7vtJ>, updated: 01.02.2021.

<sup>23</sup> The Organic Law of Georgia on Political Associations of Citizens, Article 7<sup>1</sup>

those who had electoral goals called into question her political neutrality.<sup>24</sup>

**The President responded to this fact. She noted in a statement** that the Constitution gives the head of state the right only to appoint a member of the Council, and expressed hope that Ana Dolidze is aware of the line between political activity and her current responsibilities and expects her to make a timely and dignified decision.<sup>25</sup>

Ana Dolidze resigned on June 22. After that, the President of the country announced a competition to select a Council member.<sup>26</sup> Applications were accepted within 10 days, including July 8.<sup>27</sup> 14 people expressed their desire to participate in the competition.<sup>28</sup> As a result of reviewing the documentation, 9 candidates met the requirements of the legislation.<sup>29</sup> The president interviewed the candidates although the selection process was not transparent, the administration did not publish the candidates' biographies and visions. On July 23, Tamar Gvamichava was appointed a member of the Council.<sup>30</sup>

### 1.3. Election of the Secretary of the Council

The Secretary of the Council is elected by the Conference of Judges from among the judicial members for a term of 4 years.<sup>31</sup> After the election of two new members, the 7 judicial members of the Council refused to be appointed as a Secretary, one after another, only the Chairperson of the Tbilisi City Court, Nikoloz Marsagishvili, expressed his desire. The candidate did not submit his vision and opinions for the Conference, which elected him as the Secretary of the Council by 248 votes.<sup>32</sup> He became a member of the Council at an Extraordinary Conference on March 14, 2020, when Sergo Metopishvili's term expired.<sup>33</sup>

The Secretariat of the Council is incompatible with other managerial positions, therefore Marsagishvili refused to chair the Tbilisi City Court. Prior to his election as a member of the Council, he held a managerial position for years (Chairperson of the Gori Court in 2008-2019 and Tbilisi City Court in 2019-2020).<sup>34</sup> His appointment is another manifestation of the "revolving door" that exists in the system. The members of the "clan" alternate positions, which does not allow other judges to be involved in the management of the court.

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<sup>24</sup> Elisashvili, Dolidze and Koberidze create a new political platform, Netgazeti, June 18, 2020. Available at: <https://bit.ly/2QPmmy>, updated: 31.03.2021.

<sup>25</sup> Statement by the President of Georgia, the official website of the Administration of the President of Georgia, June 19, 2020. Available at: <https://bit.ly/3r1FDU6>, updated: 30.01.2021.

<sup>26</sup> The process of nominating candidates for the selection of a member of the High Council of Justice of Georgia is underway, the official website of the President of Georgia, June 29, 2020. Available at: <https://bit.ly/2MNWDOC>, updated: 30.01.2021.

<sup>27</sup> Ibid.

<sup>28</sup> Applications for the competition for the member of the High Council of Justice of Georgia have been completed, the official website of the Administration of the President of Georgia, July 09, 2020. Available at: <https://bit.ly/3oGm02f>, updated: 30.01.2021.

<sup>29</sup> The President of Georgia met with the candidates for the membership of the High Council of Justice, the website of the Presidential Administration, July 18, 2020. Available at: <https://bit.ly/3tinIQx>, updated: 02.02.2021.

<sup>30</sup> The President of Georgia has appointed Tamar Gvamichava as a member of the High Council of Justice, the official website of the Presidential Administration, July 23, 2020. Available at: <https://bit.ly/39LeiQL>, updated: 02.02.2021.

<sup>31</sup> The Organic Law of Georgia on Common Courts, Article 51, Paragraph 1.

<sup>32</sup> XXVIII Extraordinary Conference of Judges of Georgia, the website of the Supreme Court of Georgia, October 30, 2020. Available at: <https://bit.ly/3jemvzr>, updated: 02.02.2021.

<sup>33</sup> A new member of the High Council of Justice, the website of the High Council of Justice of Georgia, March 14, 2020. Available at: <https://bit.ly/2MtWK2f>, updated: 30.01.2021.

<sup>34</sup> Nikoloz Marsagishvili, the website of the High Council of Justice of Georgia. Available at: <http://hcoj.gov.ge/ge/about/organizational-charter/sabchos-shemadgenloba/nikoloz-marsagishvili>, updated: 30.11.2020.

## 2. SELECTION-APPOINTMENT AND NOMINATION OF JUDGES

Selection and appointment of judges, transfer without competition are some of the levers to gain influence for the “clan”. Despite a number of legislative changes, the competitions held by the Council have been constantly criticized.

The legislation provides for:

- Reassignment for a probationary period and after its expiration.
- Lifetime appointment of persons with judicial experience.
- Lifetime appointment of judges with more than three years of experience.

Different regulations have also been established for the appointment of former and current judges of the Constitutional and Supreme Courts.<sup>35</sup>

By the time the report is being finalized there are 309 judges in the first and second instance courts<sup>36</sup> Of these, 235 judges have been appointed for lifetime, 32 judges for a 10-year term, and 42 judges for a three-year term.<sup>37</sup>

### 2.1. Appointment for a Probationary Period through a Competition

For selecting and appointing judges to the first and second instance courts, the Council holds a competition, which is open for (1) graduates of the High School of Justice (hereinafter - the School), and (2) former and acting judges. Graduates can be appointed for a three-year probationary period, while acting and former judges are appointed for lifetime.

After the Third Wave of judicial reforms, it was stipulated that the Council assesses candidates based on competence and integrity criteria using a scoring system.<sup>38</sup> Information about the professional reputation and activities of a candidate shall be provided in a protocol summary,<sup>39</sup> and then interviews with the candidate shall be scheduled.<sup>40</sup> Candidates in whose case the vast majority of the Council (eight members) consider that they “meet” or “fully meet” the criteria of integrity, and have obtained a total of at least 70% of the points, are submitted to a vote.<sup>41</sup> Eventually, the judge becomes the one who gets 2/3 of the Council votes.<sup>42</sup>

It is important to appoint judicial and non-judicial members of the first and second instance courts with 2/3 of the votes.

On June 26, the Council announced a competition for 99 vacancies for judges. Candidate registration took place from June 29 to July 19.<sup>43</sup> 71 people participated in the competition, 68 of them met the qualification requirements and registered as a candidate.<sup>44</sup> Of these, 20 were former judges, 21 current and 27 school graduates.

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<sup>35</sup> The Organic Law of Georgia on Common Courts . Article 35, Paragraph 9.

<sup>36</sup> Data updated as of December 31, 2020.

<sup>37</sup> Letter №1359/3663-03- m of the High Council of Justice of Georgia, December 29, 2020.

<sup>38</sup> The Organic Law of Georgia on Common Courts, , Article 35<sup>1</sup> Paragraph 1.

<sup>39</sup> Ibid. Article 35<sup>1</sup>, Paragraph 7.

<sup>40</sup> Ibid. Article 35<sup>1</sup>, Paragraph 13.

<sup>41</sup> Ibid. Article 35, Paragraph 12.

<sup>42</sup> Ibid. Article 36, Paragraph 4<sup>1</sup>.

<sup>43</sup> The High Council of Justice announces a competition for candidates for judges, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3rYkwCA> , updated: 14.02.2021.

<sup>44</sup> Biographies of Judicial Candidates, July 23, 2020, the website of the High Council of Justice of Georgia, Available at: <https://bit.ly/3k3brFN>, updated: 14.02.2021

Interviews with the candidates began on October 9.<sup>45</sup> The Council met with 10 candidates a day. The process was conducted in open format. No candidate requested the recusal of the Council member. In two cases, Council members requested recusal for themselves.<sup>46</sup> At the November 18 Session, 2 out of 68 candidates failed to pass to the voting stage, and Judge Bidzina Sturua refused to consider his candidacy.<sup>47</sup> In this instance, the Council did not formally substantiate its decision (as required by law<sup>48</sup>), so none of the candidates were able to learn about the reason why they did not receive support, nor did they have the opportunity to appeal against the decision. **GYLA believes it is important that candidates have the opportunity to appeal the rejection of not being admitted to the voting stage.**

The voting process was held on the same day, in which 65 candidates participated. The Council Session was attended by 14 members, including newly elected member Tea Leonidze, who did not attend the interviews with the candidates. As a result of the competition, 36 judges were appointed. 24 of them are graduates of schools and, consequently, were appointed to the position for a period of three years, and 12 of them for life.<sup>49</sup> As a result of the competition, 63 vacancies are still in the system, currently there are 76 vacancies in the court.<sup>50</sup>

With the Fourth Wave of amendments, the Council was instructed to publish the substantiation after the voting process.<sup>51</sup> The substantiation shall include a description of the procedure and the characterization of the appointed judge, the points accumulated by them and the conclusion on their integrity.<sup>52</sup> A Council member is authorized to write a dissenting opinion.<sup>53</sup> The substantiation of the appointment of the judges elected on the November 18 vote was published two months later. No dissenting opinion was expressed by any of the Council members.

Substantiations are transparent in the description of the procedure for selecting judges; however, for example, in the case of an integrity assessment, the substantiation is drawn up in such a way that the evaluation can be addressed to any judge and is not tailored to a specific person. The assessments are stereotyped in a number of elements, due to the lack of specific justification, the conclusions are made in such a way that it is not clear what a member of the Council relied on while assessing the integrity of a judge.

**It is important to point out the specific circumstances in the justification that led to the positive or negative assessment. The conclusion shall be read in such a way that interested third parties receive comprehensive information about the integrity of a judge.**

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<sup>45</sup> Interview, October 08, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3jWPsAv>, updated: 14.02.2021.

<sup>46</sup> Non-judicial member Shota Kadagidze requested for recusal in favor of the candidate Lela Tsagareishvili and judicial member Ketevan Tsintsadze - in favor of the candidate Nino Giorgadze.

<sup>47</sup> See The Protocol of the session of the High Council of Justice of Georgia, November 18, 2020.

<sup>48</sup> The Organic Law of Georgia on Common Courts, Article 35, Paragraph 12.

<sup>49</sup> Letter №12/3665-03 of the High Council of Justice of Georgia, January 25, 2021.

<sup>50</sup> Ibid.

<sup>51</sup> The Organic Law of Georgia on Common Courts, Article 36, Paragraph 4<sup>2</sup>.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

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

In this case, the procedure is almost the same as for those appointed for probationary period with no judicial experience reviewed above, however in addition to the professional qualities of a candidate, their conduct in the courtroom is also assessed and furthermore, (except for current or former members of the Constitutional or Supreme Court)<sup>54</sup> five cases reviewed by that specific candidate (these should include two cases, if any, where the final judgment/decision rendered by the judge has been overturned/partially overturned by the superior court) are evaluated. They will be appointed for life if they successfully pass the competition stages.<sup>55</sup> In 2020, under this regulations, 12 (4 acting and 8 former) judges were appointed for life.<sup>56</sup>

## 2.3. Lifetime Appointment of Judges after the Probationary Period

Three judicial and three non-judicial members of the Council assess a judge appointed for a probationary period for three years.<sup>57</sup> The Council, based on the analysis of the assessment results, discusses and makes a decision on the lifetime appointment of the judge.<sup>58</sup> The decision shall be made by open ballot, the refusal shall be substantiated, and relevant documents shall be published.<sup>59</sup> Under the current procedure, the Council reviewed the cases of 9 judges and appointed all of them to positions for life, in 2020.<sup>60</sup>

There are several discrepancies to the above rule: if four out of six assessors consider that the judge does not meet the criterion of integrity while making an assessment, this can serve as a sufficient prerequisite for not allowing them to the interview stage.<sup>61</sup> Moreover, if the number of points obtained by a judge does not attain 70% in the criteria of competence, the Chairperson of the Council shall issue a legal act on rejection to consider the issue of their lifetime appointment,<sup>62</sup> and the matter shall not be put up for voting. This rule contradicts to the constitutional regulation, according to which a person may not be appointed as a judge if six members of the Council do not support their candidacy.<sup>63</sup> According to the current rule, in fact, four members of the Council can do that. Despite the fact that the legislation allows appealing the decision,<sup>64</sup> such clause does not change the fact that the primary rule is unconstitutional. **This regulation must be revoked. Instead, if four members of the Council provide such an assessment, a draft of a substantiated decision on the rejection to consider the permanent appointment of the judge should be submitted to a session of the Council. Provided that the decision receives six votes, a candidate in question shall not be allowed to the interview round for the lifetime judicial appointment.**

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<sup>54</sup> The Organic Law of Georgia on Common Courts, Article 36, Paragraph 41.

<sup>55</sup> Ibid.

<sup>56</sup> Letter №12/3665-03- m of the High Council of Justice of Georgia, January 25, 2021.

<sup>57</sup> The Organic Law of Georgia on Common Courts, Article 36, Paragraph 44.

<sup>58</sup> Ibid. Article 36, Paragraph 41.

<sup>59</sup> Ibid. Article 36<sup>4</sup>.

<sup>60</sup> Nine judges were appointed for life, May 22, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3ddG4XG>, updated: 15.02.2021.

<sup>61</sup> The Organic Law of Georgia on Common Courts, Article 36, Paragraph 13.

<sup>62</sup> Ibid.

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

<sup>64</sup> The Organic Law of Georgia on Common Courts, Article 36<sup>4</sup>, Paragraph 13.

#### 2.4. Lifetime Appointment of Judges Whose Experience Exceeds Three Years

As per the decision of the Constitutional Court, the amendments introduced on June 16, 2017 established a different rule for lifetime appointments of those who are serving a probationary period and have at least three years of experience working as a judge.<sup>65</sup> Judges appointed for a probationary period before July 1, 2017 are entitled to request a lifetime appointment before the expiration of their term.<sup>66</sup> The procedure was the subject of constant criticism, as information was not available on the stages of consideration of the case, in addition, no timeframes were set for the decision.<sup>67</sup> There is a lot of questioning about these judges activities, and unfortunately, they have been appointed in such a flawed manner for life.

During the reporting period, the Council was no longer governed by this rule, as the judges to whom this transitional regulation concerned were re-appointed for life.<sup>68</sup> In fact, this article has exhausted its function. During the reporting period, there were three judges left who have not applied to the Council. On May 22, Diana Gogatishvili, Levan Nutsubidze and Mamuka Tsiklauri were appointed for life based on the results of a three-year evaluation.<sup>69</sup> There are currently 119 judges appointed under this procedure.<sup>70</sup>

#### 2.5. Reappointment and Promotion of Judges

Over the years, the rule and practice of reappointment of judges without a competition had been a subject of harsh criticism.<sup>71</sup> The amendments implemented through the Third Wave of judicial reforms provided the possibility of reappointing a judge of the same instance court without competition upon their consent.<sup>72</sup> Prior to the amendment, reappointment to the lower instance court had been allowed. A judge may be promoted only if they have been a judge in a district (city) court for at least 5 years.<sup>73</sup> The legislature instructed the Council to develop promotion criteria.<sup>74</sup> The Council limited itself to a general note, "Only a judge who meets the high rank of a judge of the Court of Appeals with competence, experience, business and moral reputation may be promoted."<sup>75</sup> **It is important to develop a procedure/criteria that clearly demonstrates the merits of giving preference to a particular candidate when transferring a judge to another court.**

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<sup>65</sup> The amendments to the provisions governing the selection and appointment of judges were conditioned by the decision №3/1/659 of February 15, 2017, rendered by the Constitutional Court into the case of "Citizen Omar Jorbenadze v. Parliament of Georgia". Pursuant to the decision, from July 1, 2017, the normative content of Article 36, Paragraph 41 of the Organic Law of Georgia On Common Courts, according to which a candidate who is an acting or former judge and has at least three years of judicial experience can be appointed as a judge

<sup>66</sup> The Organic Law of Georgia on Common Courts, Article 79<sup>4</sup>.

<sup>67</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, pp. 23-24, the website of the Georgian Young Lawyers' Association. Available at: <https://bit.ly/3bef5ZB>, updated: 22.03.2021.

<sup>68</sup> Letter №12/3665-03- m of the High Council of Justice of Georgia, January 25, 2021.

<sup>69</sup> Nine judges were appointed for life, May 22, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3ddG4XG>, updated: 15.02.2020.

<sup>70</sup> Letter №1359/3663-03- m of the High Council of Justice of Georgia, December 29, 2020.

<sup>71</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, pp. 30-32, the website of the Georgian Young Lawyers' Association. Available at: <https://bit.ly/3bef5ZB>, updated: 14.02.2021.

<sup>72</sup> The Organic Law of Georgia on Common Courts, Article 41.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid. Article 41, Paragraph 2.

<sup>75</sup> The Rules of Procedure of the High Council of Justice of Georgia, Article 13<sup>1</sup>, Paragraph 11, the website of the High Council of Justice of Georgia, Available at: <https://bit.ly/2WmWN0S>, Updated: 14.02.2021.

According to the procedure, the relevant information shall be published on the website of the Council. An applicant judge is given seven days<sup>76</sup> to submit an application, after which the Council shall review the application and invite the candidate for an interview. During the reporting period, the matter was put on the agenda 6 times. In total, 22 judges were re-appointed. 2 of them were promoted. The process was conducted in a non-transparent manner. The Council did not publish the information about the commencement of the process, as well as the number and identity of the candidates. The information was only made available on the day of the interview, at the session. The interview (which lasted mainly 5-10 minutes and mostly included questions about the motivation and workload) and voting rounds were mostly held on the same day. Nazi Janezashvili and Irma Gelashvili protested against this practice. They considered that the procedures were not properly regulated and, at the same time, initiating a non-competitive transfer could not solve the problem of lack of judges.<sup>77</sup> **It is important that the Council ensures transparency in the process of re-appointment and promotion of judges without a competition.**

## 2.6. Nomination of Judicial Candidates for the Supreme Court

On July 16, 2020, a draft law was submitted to the Parliament for expedited consideration, which envisages changes in the regulations for the selection of judges of the Supreme Court. It concerned the obligation to substantiate decisions made in relation to candidates and the ability to appeal the decision made.<sup>78</sup> According to the Coalition, the changes were fragmentary and could not meet the challenges and problems that exist.<sup>79</sup> Although it asked the European Commission for Democracy through Law (Venice Commission) to evaluate the project, it did not wait for the conclusion, and the draft was adopted by the Parliament in the third reading on September 30. On October 8, the Venice Commission published its opinions.<sup>80</sup> As expected, this hasty step of the legislature was negatively assessed by the Venice Commission itself, as well as by the EU and the Co-Rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) on Georgia.<sup>81</sup> The Venice Commission report highlights the extraordinary state of affairs in the country's judiciary and the severity of its problems, and also openly states that, given its past context, the Council has failed to gain public confidence and recognition.<sup>82</sup>

This once again puts the need for systemic change on the agenda, which should be reflected in the reorganization of inclusive, consensus-based decision-making mechanisms.<sup>83</sup> Observations of the processes show that any interference in the current normative framework that does not challenge the decision-making mechanism is supporting the influential group

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<sup>76</sup> Ibid. Article 13<sup>1</sup> Paragraph 8.

<sup>77</sup> See The Protocol of the session of the High Council of Justice of Georgia, January 24, 2020.

<sup>78</sup> The website of the Parliament of Georgia. Available at: <https://bit.0y/2Zs8rJK>, updated: 17.02.2021.

<sup>79</sup> The Coalition is responding to the draft law on amendments to the Organic Law of Georgia on Common Courts initiated by the Parliament of Georgia. The website of the Coalition for Transparent and Independent Judiciary, September 8, 2020. Available at: <https://bit.ly/2NwGdL3>, updated: 17.02.2021.

<sup>80</sup> European Commission for Democracy Through Law (Venice Commission), Opinion on the draft organic law amending The Organic Law on Common Courts, Strasbourg, October 8, 2020, the website Council of Europe. Available at: <https://bit.ly/34HKVKH>, updated: 16.03.2021.

<sup>81</sup> Crucial issues still need addressing over the appointment of Supreme Court judges in Georgia, 9 October 2020, Council of Europe website. Available at: <https://bit.ly/34FUQAx>, updated: 18.02.2021.

<sup>82</sup> Ibid.

<sup>83</sup> GYLA and EMC: Established vision for judicial reform is subject to change, Statement of October 10, 2020. Available at the Georgian Young Lawyers Association website: <https://bit.ly/2VT01ZZ>, updated: 08.12.2020.

of judges, who use both shortcomings and positive news to strengthen their power.<sup>84</sup> **Accordingly, GYLA believes that in the end, the contestants who will get 2/3 of the votes of the judicial and non-judicial members of the Council shall be separately nominated to the Supreme Court.**

The draft amendments also took into account the record that candidates submitted to the Parliament to be elected as Supreme Court judges at the time the law enters into force are considered withdrawn<sup>85</sup>

There were three competitions held for 11 vacancies during the reporting period. (1) Following the enactment of the amendments, a competition was re-announced for nine vacancies of Supreme Court of Justice.<sup>86</sup> 51 persons filled in the application, out of which 50 registered as candidates.<sup>87</sup> (2) On 5 November, the Council again announced a competition in which 22 candidates had registered.<sup>88</sup> (3) Another vacancy was announced on November 20, where 25 candidates registered.<sup>89</sup>

In December, the Council began interviewing candidates registered for the 9 vacancies.<sup>90</sup> Interviews were initially conducted on a daily basis, with the Council Session with two candidates a day. The interviews lasted 3-4 hours<sup>91</sup> Irakli Shengelia did not attend the interviews due to conflict of interests (his wife's brother - Levan Tevzadze was participating in the competition). The civil sector had called for the recusal of Irakli Shengelia during the previous competition, but he did not recused himself then.<sup>92</sup> The interviews were broadcast live.

## 2.7. Admission of Students to the School

According to the law, the school conducts a competition for students.<sup>93</sup> Despite the steps taken forward, which has been demanded by the civil sector for years,<sup>94</sup> the role of the High Council of Justice in the process of composition of the school's Independent Board is still problematic. In particular:

- Two out of seven members of the Independent School Board are appointed by the High Council of Justice from its own members;<sup>95</sup>

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<sup>84</sup> Nozadze N., Monitoring Report of the High Council of Justice №8, the Georgian Young Lawyers' Association, Tbilisi, 2020, p.7, the Georgian Young Lawyers Association website. Available at: <https://bit.ly/2VSE8KI>, updated: 08.10.2020.

<sup>85</sup> The Organic Law of Georgia, Amendments to the Common Courts, Article 2, September 30, 2020.

<sup>86</sup> The process of selecting candidates for the position of a judge of the Supreme Court begins, October 08, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3rRrV64>, updated: 30.03.2021.

<sup>87</sup> Candidates for judges of the Supreme Court have registered, November 5, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3dDjJBx>, updated: 30.03.2021

<sup>88</sup> Candidates for judges of the Supreme Court have registered, December 1, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3sQdrVn>, updated: 30.03.2021

<sup>89</sup> Candidates for judges of the Supreme Court have registered, December 21, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3cOdKnK>, updated: 30.03.2021

<sup>90</sup> Hearing of Candidates for judges of the Supreme Court, December 09, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3fVdYSD>, updated: 30.03.2021.

<sup>91</sup> See Interviews on December 15,16,17,18,21, 2020.

<sup>92</sup> Coalition evaluates the selection process of Supreme Court judges in the High Council of Justice, September 12, 2019, the website of the Coalition for Transparent and Independent Judiciary, Available at: <https://bit.ly/3dGCyDE>, updated: 30.03.2021.

<sup>93</sup> The Organic Law of Georgia on Common Courts, Article 66<sup>14</sup>

<sup>94</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, p. 37, the Georgian Young Lawyers' Association website, Available at: <https://bit.ly/2zqPX2X>, updated: 16.03.2021.

<sup>95</sup> The Organic Law of Georgia on Common Courts, Article 66<sup>3</sup>, Paragraph 4.

- Two more members from the Academy quota are also appointed by the HCoJ;<sup>96</sup>
- The Council elects the Chairperson of the Independent Board of the School within the quota of the Conference of Judges (three in total).<sup>97</sup>

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

**In order to reduce the role of the High Council of Justice, on the process of inflow of students and for the internal organizational independence of the Independent Board, the latter shall be granted the right to elect its members and chairperson by itself.**

### 2.7.1. *Student Enrollment Practice*

During the reporting period, the Council was still in charge of enrolling students in school. The above changes came into force on September 1. 10 students were enrolled in the school.<sup>98</sup> According to the Council, the reason for such a small number is the limited resources of the school.<sup>99</sup> The issue is especially problematic because of the overcrowding and delays in the courts,<sup>100</sup> the number of vacancies left as a result of competitions is quite large (there are currently 76 of them in the system)<sup>101</sup>

It should be noted that in accordance with the practice established in 2018, the Council conducted enrollment interviews at closed meetings with the view to protecting personal data. During the reporting period. The following remains problematic:

- Selection criteria;
- The assessment procedure and timeframes;
- Absence of appeal mechanism.

The elimination of the above problems was defined as the responsibility of the School pursuant to the amendments of the "Fourth Wave" of judicial reforms. GYLA hopes that the School will take appropriate measures to address the above gaps and ensure a transparent process of selecting students.

According to the amendments of the Fourth Wave of judicial reforms, the School needs to manage the admission competition form, the student registration and competition issues by its own regulation<sup>102</sup> **To ensure a transparent process of the student selection, the School should take appropriate measures that will result in trained competitive personnel, and introduction of the new employees into the judiciary.**

<sup>96</sup> Ibid.

<sup>97</sup> The Organic Law of Georgia on Common Courts, Article 66<sup>3</sup>, Paragraph 5.

<sup>98</sup> Letter №12/3666-03- m of the High Council of Justice of Georgia, January 25, 2021.

<sup>99</sup> See The Protocol of the session of the High Council of Justice of Georgia, June 5, 2020..

<sup>100</sup> Abashidze A., Arganashvili A., Beraia G., Verdzeuli S., Kukava K., Shermadini O., Tsimakuridze E., Judicial System: Reforms and Perspectives, Tbilisi, 2017, p.18, the website of the Coalition for Transparent and Independent Judiciary. Available at: <https://bit.ly/3floZXi>, updated: 31.03.2021.

<sup>101</sup> Letter №12/3665-03- m of the High Council of Justice of Georgia, January 25, 2021.

<sup>102</sup> The Organic Law of Georgia on Common Courts, Article 66<sup>14</sup>.

### 3. JUDGES HOLDING ADMINISTRATIVE POSITIONS

#### 3.1. The Role and Influence of Chairpersons

For years, chairpersons have been perceived as the instrument utilized by the Council to control judges.<sup>103</sup> In addition to an unofficial function of chairpersons to watch an individual judge, the role of the chairpersons inside the system is also determined by the discretionary powers. Although, apart from exceptional cases, court chairpersons no longer distribute cases,<sup>104</sup> yet there is another aspect to the problem - the chairperson, in order to avoid delays in the administration of justice, has the right to assign a judge (1) to participate in the hearing in another chamber or investigative panel, or a specialization; (2) to act as a magistrate judge; (3) and to assign a magistrate judge to hear a case outside their jurisdiction.<sup>105</sup>

The law does not stipulate the appointment of judges according to narrow specializations. Nevertheless, according to the established practice, the chairperson of the Tbilisi City Court assigns judges according to a narrow specializations since 2006. This right has been granted to the chairperson of the Tbilisi Court of Appeals by the Council since 2018.<sup>106</sup> Such regulation poses real risks of manipulation. Especially in the Court of Appeals, where a case is heard mostly by a panel of three judges, while the electronic program selects only the Judge Rapporteur from the panel. The other two judges are determined by the Judge Rapporteur themselves. The decision is made by a majority vote. Consequently, given the possibility of simple, unjustified appointment of judges according to narrow specializations, there is a high probability of interference in the process of forming the composition of the panel.<sup>107</sup>

**GYLA believes that during the collegial hearing of the case, the selection of all three judges shall be done through the electronic system, according to the rule of random distribution, and the appointment of judges according to narrow specializations shall be subject to voting.**

#### 3.2. Selection of Court Chairpersons

Administrative positions are usually held by the same persons, there is a so-called “revolving door” system. Through this mechanism, all influential members of the “clan” constantly hold important positions in the judiciary. They alternate between these positions, which does not allow other judges to be involved in the management of the court. An illustration of this point is the established practice of appointing court/panel/chamber chairpersons during the reporting period.

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<sup>103</sup> We call on the High Council of Justice to stop appointing chairpersons of the courts on the basis of subjective opinion. Statement of the Georgian Young Lawyers Association and the Georgian Democratic Initiative of February 26, 2018. Available at: <https://bit.ly/35e1M89>, updated: 22.01.2021.

<sup>104</sup> Decision of the High Council of Justice of Georgia №1/56 on the approval of the rule of automatic, electronic distribution of cases in the Common Courts of Georgia, May 1, 2017, Article 3, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3ggqJV0>, updated: 24.01.2021.

<sup>105</sup> The Organic Law of Georgia on Common Courts, Article 30, Paragraph 5.

<sup>106</sup> Decision of the High Council of Justice of Georgia №1/175, on the definition of narrow specialization of judges in the Chambers of Civil, Administrative and Criminal Cases of the Tbilisi Court of Appeal, April 30, 2018, Article 9, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/2TBquug>, updated: 23.01.2021.

<sup>107</sup> Coalition assesses the increase of powers for Mikheil Chinchaladze as a threat to the principle of random distribution of cases, the website of Coalition for Independent and Transparent Justice, May 20, 2018. Available at: <https://bit.ly/3107n0q>, updated: 16.03.2021.

In the first and second instance courts, the chairperson shall be appointed by the Council.<sup>108</sup> As a result of the “fourth wave” of justice reform, the law only stipulates that the Council makes a substantiated decision upon the appointment of a specific candidate to the position, and before that, it consults with the members of a relevant court,<sup>109</sup> as the results of such consultations, given their nature, cannot be binding.

According to the practice established in recent years,<sup>110</sup> in the existence of the vacancy for the chairperson’s position, relevant announcement has to be published in the internal network of the court. Therefore, all judges had the opportunity to apply to the Council. Nevertheless, until now and in 2020, the process was held mainly in a non-competitive environment.

At the July 17 session of the Council, only one candidate was nominated per vacancy of chairpersons of the Akhaltsikhe, Gurjaani and Khelvachauri District Courts.<sup>111</sup> Also, at the December 29 session, Shalva Kakauridze and Vasil Mshvenieradze had no competitors when they were appointed as the chairpersons of the Gori District and Tbilisi City Courts.<sup>112</sup>

The Council’s approach to conduct consulting was inconsistent. At the August 11 session, the Council considered the candidacy of Vasil Mshvenieradze for the position of the chairperson of the Kutaisi Court of Appeal, and unlike the previous appointments,<sup>113</sup> the Council held closed-door consultations. Such a process, especially when it involves substantiating the decision to appoint a chairperson by the Council, does not meet the goal of building trust in the system. Under the pandemic, consultations with relevant court judges were conducted remotely, online.<sup>114</sup> The chairperson of the Council asked the judges if they supported the candidate and called on them to express a different opinion, if any.<sup>115</sup> The responses were uniform, and judges largely emphasized the candidate’s many years of judicial experience.

During the reporting period, the Council appointed 6 court chairpersons and 2 acting chairpersons. 7 of them have already held this position in other courts at different times. This is the first managerial position for Khelvachauri District Court Chairperson - Gocha Putkaradze.

In accordance with the practice established in the previous reporting period, the Council did not hold an interview if there was only one application for the vacancy and the candidate was directly allowed for the voting. Under such conditions, the Council appointed the chairpersons of Kutaisi Appeal Court, Tbilisi City Court, Gori District Court. Despite the non-judicial members of the Council repeatedly making allegations of the need for the interviews,<sup>116</sup> such flawed practice was maintained during the reporting period, which is why Nazi Janezashvili and Irma Gelashvili did not support the decisions. **It is necessary to establish a transparent procedure and rule for appointing a chairperson, which will limit the arbitrariness of the Council.**

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<sup>108</sup> The Organic Law of Georgia on Common Courts, Articles 23 and 30.

<sup>109</sup> The Organic Law of Georgia on Common Courts, Article 23, Paragraph 6 and Article 32, Paragraph 1.

<sup>110</sup> Until 2018, the candidates were nominated by the Council members.

<sup>111</sup> See The Protocol of the session of the High Council of Justice of Georgia, July 17, 2020.

<sup>112</sup> See The Protocol of the session of the High Council of Justice of Georgia, December 29, 2020.

<sup>113</sup> See The Protocol of the session of the High Council of Justice of Georgia, July 17, 2020. During the appointment of the chairmen of Akhaltsikhe, Khelvachauri and Gurjaani district courts, consultations were held with the judges of the relevant court in an open session.

<sup>114</sup> See The Protocol of the sessions of the High Council of Justice of Georgia, July 17, and December 29, 2020.

<sup>115</sup> Ibid.

<sup>116</sup> These members were Nazi Janezashvili and Irma Gelashvili.

Nothing substantially has changed in the rules for appointment chairpersons over the years, even though it has deserved constant criticism. The original version of the third wave of amendments provided the appointment of chairpersons by judges, but eventually, due to the opposition of judges, this norm was removed from the draft law.<sup>117</sup> **GYLA believes that the chairpersons should be elected by the judges of the relevant court. This, in addition to removing a significant lever of influence for the Council also will help strengthen individual judges.**

### 3.3. Appointment of Chairpersons (Acting) of Chambers/Panels

By law, the chairpersons of the chambers/Panels are appointed by the Council from the relevant chamber and Panel members for a term of 5 years.<sup>118</sup> Their powers are not governed by the law and there is practically no functional need for them. Nor is it established in what cases the acting Chairpersons are appointed. During the appointment of Acting Chairperson, the Council does not determine the term of the office of the judge at the position.

During the reporting period, the chairpersons of the Panels of the Tbilisi City Court and the Administrative Chamber and the Investigation Panels of the Tbilisi Court of Appeal were appointed. They have held managerial positions in the judiciary for years. Comparing the biographies of these people shows how they alternate between different managerial positions. For example, the Council transferred Dimitri Gvritishvili, chairperson of the Kutaisi Court of Appeals and chairperson of the Chamber of Civil Cases, to the Tbilisi Court of Appeals, where he replaced Mikheil Chinchaladze, chairperson of the Chamber of Administrative Cases. The Council used the old and proven method of manipulation, changed the specialization of Mikheil Chinchaladze, transferred him from the Chamber of Administrative Cases to the Investigative Council and even appointed him as the chairperson of the same Council at the same session, without interview and competition.<sup>119</sup>

Chairperson of two panels of the Tbilisi City Court were appointed similarly. The agenda of the March 9 session of the Council included the case of electing the chairpersons of the panels of the Tbilisi City Court. One application was submitted per vacancy, for a total of 3. However, as the chairperson of the session said, Badri Shonia refused to participate in the competition. In line with the practice changed in the previous year (before, the Council “showed good will” and was interviewing candidates.)<sup>120</sup> since one candidate was nominated for a vacancy, the Council did not interview them.<sup>121</sup> As a result of the voting, Temur Gogokhia was appointed to the Criminal Investigation, Pre-Trial and Substantive Review Panel, and Sergo Metopishvili to the Civil Cases Panel. Ana Dolidze, Irma Gelashvili and Nazi Janezashvili did not support their candidacies.<sup>122</sup> In a few months, at the August 11 session, Badri Shonia was appointed the Council to act as the chairperson of the Administrative Panel of the Tbilisi City

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<sup>117</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, p. 39, The Georgian Young Lawyers' Association website. Available at: <https://bit.ly/2zqPX2X>, updated: 16.03.2021.

<sup>118</sup> The Organic Law of Georgia on Common Courts, Article 23, Paragraph 5 and Article 30, Paragraph 4.

<sup>119</sup> See The Protocol of the session of the High Council of Justice of Georgia, August 11, 2020.

<sup>120</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, the Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, p. 40, the Georgian Young Lawyers' Association website. Available at: <https://bit.ly/2zqPX2X>, updated: 30.03.2021.

<sup>121</sup> See The Protocol of the session of the High Council of Justice of Georgia, March 9, 2020.

<sup>122</sup> See The Protocol of the session of the High Council of Justice of Georgia, March 9, 2020.

Court.<sup>123</sup> On September 15, he was appointed Chairperson of the same Panel for 5 years.

The purpose of the position a chairperson of the Panel/Chamber, as well as the deputy chairperson, is to establish a hierarchical ladder among judges and to satisfy the personal ambitions of those loyal to an influential group. This view is also supported by the fact that the legislation does not assign specific functions to the chairpersons of the panel/chamber. Consequently, it is unclear why these positions exist in the judiciary. **GYLA believes that the position of the Chairperson (Acting) of the Panel and the Chamber shall be abolished. The main function of the Acting Chairperson is to exercise their powers in the absence of the Chairperson.**<sup>124</sup> **In order to reduce the ladder of hierarchy among judges, it is necessary to abolish the position of deputy and, if necessary, one of the judges can perform the function.**

#### 3.4. Appointing the Chairperson of the Supreme Court by the Council

The Council has the power to nominate a chairperson from among the judges of the Supreme Court<sup>125</sup> Candidates are nominated by at least 1/5 of the Council members and 2/3 of votes are required for the nomination. If none of the candidates receives a sufficient number of votes, an absolute majority shall render the decision.<sup>126</sup> This provision confronts the model of consensus. The majority shall not have the leverage to influence the final decision. The votes of the judiciary members alone should not be enough to resolve important issues, as this opposes the idea of staffing the Council and encourages corporatism. **The idea of a balanced Council when members appointed by different branches of government work by consensus on issues is essential to the judiciary. Therefore, the number of votes required to nominate a candidate for the position of the chairperson shall not be reduced, and if two-thirds of votes cannot be collected, the Council shall hold the procedure again.**

At the March 9 session, even though the pre-published agenda did not provide for the discussion on the nomination of the chairperson of the Supreme Court, the Secretary addressed the members of the Council to apply the procedure established for the appointment of chairpersons of the Courts of First and Second Instance courts and conduct consultations with third instance judges to appoint the chairperson of the Supreme Court. They added that they already had communicated with them on this case and the procedure would be held on March 10, at 3 p.m. After that, at 4 pm, the offsite session of the Council was held in the Supreme Court, where a candidate was appointed to be presented to the Parliament.<sup>127</sup> Non-judicial member Nazi Janezashvili asked about the format of the consultations and also initiated the involvement of interested third parties in the consultations.<sup>128</sup> The Council did not agree with her.<sup>129</sup>

The March 10 field hearing was preceded by closed-door consultations with Supreme Court judges. In this format, they nominated two candidates - Nino Kadagidze and Shalva Tadumadze.<sup>130</sup> At the end, as the secretary of the Council said at the session, they, Tamar Oniani,

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<sup>123</sup> See The Protocol of the session of the High Council of Justice of Georgia, August 11, 2020.

<sup>124</sup> The Organic Law of Georgia on Common Courts, Article 26, Paragraph 1.

<sup>125</sup> The Constitution of Georgia, Article 63.

<sup>126</sup> The Organic Law of Georgia on Common Courts, Article 36, Paragraph 1.

<sup>127</sup> See The Protocol of the session of the High Council of Justice of Georgia, March 9, 2020.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Nino Kadagidze has been nominated for the position of the Chairman of the Supreme Court. The website of the High Council of Justice of Georgia, March 10, 2020. Available at: <https://bit.ly/2Q9ny9w>, updated: 15.03.2021.

Irakli Shengelia and Dimitri Gvritshvili named Nino Kadagidze.<sup>131</sup> No other candidates were mentioned. Ana Dolidze called the process a poorly staged farce.<sup>132</sup> She refused to vote. Finally, Nino Kadagidze's candidacy was submitted to the Parliament by open voting with 12 votes. Nazi Janezashvili did not support this decision.

Nino Kadagidze was one of the 14 people appointed to the Supreme Court at the end of last year amid significant discrepancies. There was no extensive discussion at the Council during the submission stage to the Parliament. The coalition responded to the process by calling on lawmakers to refuse to support the candidacy.<sup>133</sup> At the March 17 session, the Parliament appointed Nino Kadagidze as the Chairperson of the Supreme Court for a term of 10 years. Her candidacy was supported by 82 members of Parliament. No one went against it. The opposition did not take part in the voting.<sup>134</sup>

### 3.5. Selection of the Chairperson of the Council

After the sudden resignation of Nino Gvenetadze in 2018, the Secretary became the Acting Chairperson of the Council. In 2020, two years later, a new Chairperson of the Council was selected. During this period, the rules for selecting the Chairperson of the Council have changed and the Chairperson of the Supreme Court was no longer the Chairperson of the Council at the same time. The Council elects its Chairperson from among the judicial members by an absolute majority for a term of 4 years.<sup>135</sup> At least 1/5 have the right to nominate a candidate.<sup>136</sup>

At the October 15 session, the Secretary of the Council, while naming the candidate, noted that they had consulted with the judicial members of the Council before the nomination of the relevant person, where a consensus was reached on the candidacy of Nino Kadagidze.<sup>137</sup> No other candidate was even named.<sup>138</sup> As a result of open voting, the Council supported her with 13 votes. Nino Kadagidze was previously nominated by the Council as the Chairperson of the Supreme Court, and was supported by the Parliament. Nazi Janezashvili went against the nomination of the Chairperson of the Supreme Court as the Chairperson of the Council was not in line with the spirit of the constitutional amendments. GYLA believes that the idea of the new edition is only to give this body the opportunity to elect its own chairperson and to exclude ex officio holding of this position.

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<sup>131</sup> See The Protocol of the session of the High Council of Justice of Georgia, March 10, 2020.

<sup>132</sup> See The Protocol of the session of the High Council of Justice of Georgia, March 10, 2020.

<sup>133</sup> The Coalition responds to the nomination of Nino Kadagidze for the post of the Chairman of the Supreme Court, the website of the Coalition for Transparent and Independent Judiciary, March 13, 2020. Available at: [http://coalition.ge/index.php?article\\_id=242&clang=0](http://coalition.ge/index.php?article_id=242&clang=0), Updated 29.12.2020.

<sup>134</sup> Parliament elects Nino Kadagidze as Chairman of the Supreme Court, Tabula, March 17, 2020. Available at: <https://bit.ly/3c9z914>, updated: 24.01.2021.

<sup>135</sup> The Organic Law of Georgia on Common Courts, Article 47, Paragraph 2<sup>1</sup>.

<sup>136</sup> Ibid.

<sup>137</sup> See The Protocol of the session of the High Council of Justice of Georgia, October 15, 2020.

<sup>138</sup> See The Protocol of the session of the High Council of Justice of Georgia, October 15, 2020.

## 4. DISCIPLINARY LIABILITY OF JUDGES

### 4.1. Appointment and Removal of the Independent Inspector

The decision to dismiss the Independent Inspector is made by the Council by 2/3,<sup>139</sup> however, the provision on the election of an inspector by the institution with an absolute majority remained in force.<sup>140</sup> When electing the Independent Inspector, only the support of the judiciary members is theoretically sufficient, leaving the non-judicial members of the Council beyond the process. The inspector initiates disciplinary proceedings against a judge and ensures the preliminary examination and investigation of the case, in addition to which they are responsible for reviewing complaints against members of the Council.<sup>141</sup> That is why it is necessary to create guarantees of independence to further increase public confidence in this institution. The possibility of being elected by only the judicial members makes the independence of the inspector vulnerable. **For the elimination of the gap, it is necessary to determine two-thirds of the votes as the requirement for the appointment of the Independent Inspector.**

The rule of appointment of the inspector, established by the Council, which does not envisage a number of important aspects, is flawed.<sup>142</sup> The basic principles of the competition (impartiality, openness, prohibition of discrimination) and procedures (selection criteria, purpose and procedure of the interview, openness to be clarified at the interview, rules for evaluation of a candidate and substantiation of such an evaluation) are not provided. **It is necessary, that the Council to improve the rule related to the selection of the Inspector.**

After the appointment of Inspector Ketevan Tsintsadze as a judge of the Supreme Court, the Council announced a new competition.<sup>143</sup> Interviews with the candidates were held behind closed doors. GYLA and other monitors were not allowed to observe the process. Information about the candidates who passed to the second stage, as well as the interviews, was not published on the website. Opaque competition further reduces public confidence in the selected candidate. **It is important that during the selection process, the Council ensures that candidates' biographies are published and that interviews are conducted in open session.**

The law no longer provides for the general grounds for the termination of the Inspector's authority, such as a gross or systematic violation of the rights of judges, and improper performance of their duties.

### 4.2. The Inspector's Conclusions

The disciplinary proceedings against a judge shall be initiated and preliminary examination and investigation into the case shall be provided by the Independent Inspector,<sup>144</sup> who shall submit the conclusions and opinions thereof to the Council.<sup>145</sup> There is a two-month

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<sup>139</sup> The Organic Law of Georgia on Common Courts, Article 51<sup>1</sup>, Paragraph 21.

<sup>140</sup> The Organic Law of Georgia on Common Courts, Article 51<sup>1</sup>, Paragraph 2.

<sup>141</sup> Ibid. Article 75<sup>6</sup>.

<sup>142</sup> The Rules of Procedure of the High Council of Justice of Georgia, Article 27<sup>2</sup>.

<sup>143</sup> Decision #1/346 of the High Council of Justice of December 13, 2019, On announcing a competition for the position of the Independent Inspector of the High Council of Justice of Georgia. Available at: <https://bit.ly/3tHSSuN>, updated: 18.02.2020.

<sup>144</sup> The Organic Law of Georgia on Common Courts, Article 75<sup>6</sup>.

<sup>145</sup> Ibid.

timeframe determined for this, which may be extended for further two weeks.<sup>146</sup> With the amendments within the Fourth Wave of judicial reforms, the Inspector was granted the right to submit a substantiated decision to the Council on forwarding case materials to the Prosecutor's Office if the elements of a violation are identified during the preliminary investigation.<sup>147</sup> The Inspector was also granted access to electronic databases.<sup>148</sup> It was further specified that the Inspector shall rely on the standard of "reasonable assumption" when making decisions.<sup>149</sup> The amendments strengthened the guarantees of the inspector's independence and improved the disciplinary process, which is positively assessed by GYLA.

In 2020, the Inspector's Office received 151 complaints in compliance with the sample form, and 72 applications without adhering to the form.<sup>150</sup> Out of 179 complaints (28 complaints filed in 2019), the inspector made a decision that 7 persons made discrepancies and were given a timeframe to correct them.<sup>151</sup> Out of the disciplinary cases prepared in 2017-2020, 186 cases are pending.<sup>152</sup> As can be seen from the decisions, the Council discussed the complaints received in previous years during the reporting period, which in turn indicates the inefficiency of this process and the neglect of the timeframe set by the third wave.<sup>153</sup> It is important that the Office of the Inspector and the Council ensure compliance with the timeframe set for disciplinary proceedings.

### 4.3. Decisions Rendered by the Council

After the Inspector submits their conclusions and opinions concerning a case, the Council shall make a decision (based on the standard of "substantiated assumption"<sup>154</sup>) whether to initiate disciplinary persecution or to obtain the explanation from a judge.<sup>155</sup> However, the Council does not have to substantiate its decision if it is decided not to start a disciplinary proceeding. **This needs to be changed and the decision to refuse to initiate the prosecution must be substantiated.**

The Council shall make a decision on the initiation of a disciplinary proceeding and obtain an explanation from a judge by the two-thirds of the total composition of its members.<sup>156</sup> This requirement leaves many cases beyond consideration; **therefore, it is advisable to have a simple majority for interim decisions and two-thirds for the final decisions only.** For example, during the reporting period, disciplinary proceedings were terminated in 17 cases due to the lack of votes required to initiate prosecution.<sup>157</sup>

A member of the Council who disagrees with the Council's decision to terminate the pro-

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<sup>146</sup> Ibid. Article 75<sup>7</sup>, Paragraph 1.

<sup>147</sup> Ibid. Article 75<sup>7</sup>, Paragraph 1<sup>2</sup>.

<sup>148</sup> The Organic Law of Georgia on Common Courts, Article 75<sup>6</sup>.

<sup>149</sup> Ibid. Article 75<sup>7</sup>, Paragraph 1.

<sup>150</sup> Letter №40/148-03-m of the High Council of Justice of Georgia, The Office of the independent Inspector, February 5, 2021.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Disciplinary Decisions, the official website of the High Council of Justice of Georgia. Available at: <https://bit.ly/381g0vC>, updated: 01.02.2021.

<sup>154</sup> The Organic Law of Georgia on Common Courts, Article 75<sup>8</sup>, Paragraph 1.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> Letter №40/148-03-m of the High Council of Justice of Georgia, The Office of the independent Inspector, February 5, 2021.

ceedings has the possibility to express their dissenting opinion in writing. None of the members of the Council exercised this right in 2020.<sup>158</sup>

During the reporting period, the Council held only four disciplinary hearings, at which 137 disciplinary cases were drawn up.<sup>159</sup> The Council shared the Inspector's 8 conclusions on the initiation of disciplinary proceedings and to obtain the explanation of the judges, as well as 99 conclusions on the termination of the proceedings (3 of which contained recommendations for both prosecution and termination).<sup>160</sup> The Council imposed disciplinary liabilities of the judges in 2 cases. One of them was about expressing disrespect to the party involved in the process, and the other was about refusing to recusal.<sup>161</sup> The Disciplinary Panel found the judge's refusal to recusal/self-recusal the case (when there is a clear ground for recusal the case by law) to be a misconduct. They used a private recommendation letter application mechanism.<sup>162</sup> Disciplinary penalties of reprimand were imposed on the judge for disrespecting a party during the proceedings.<sup>163</sup>

During 2020, the Council made 147 decisions to terminate disciplinary proceedings, of which 130 decisions did not confirm the fact of misconduct, and in 17 cases it was terminated due to the lack of votes required to initiate prosecution.<sup>164</sup>

Statistics show that, despite the large number of complaints, disciplinary mechanisms are rarely used (in 2019 there were 4 such cases, and in 2020 only 2 cases were reported). Procrastination of hearing the cases remains a problem, timeframes have been violated (none of the disciplinary complaints filed in 2020 have been reviewed). In disciplinary proceedings, it is important to hear the complaint within the prescribed time, because, on the one hand, it is related to the public expectation, and on the other hand - to the interest of the judge themselves, the case to be completed on time. Therefore, the Council should ensure that the timeframes set for the hearing of the complaint are met. The investigation of the case must be completed within 2 months after the decision to obtain the explanation. If necessary, the term may be extended by 2 weeks.<sup>165</sup> If the Council decides to obtain an explanation from the judge the proceedings must be completed within no more than 5 months, and in the event of termination or initiation of the prosecution without explanation, within 2 months and 2 weeks. The Council relies on a high degree of probability standard in imposing a disciplining liability on a judge.<sup>166</sup>

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<sup>158</sup> Letter №39/146-03-მ of the High Council of Justice of Georgia, The Office of the independent Inspector, February 5, 2021.

<sup>159</sup> Letter №40/148-03-მ of the High Council of Justice of Georgia, The Office of the independent Inspector, February 5, 2021.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Decision of the Disciplinary Panel of Judges of the Common Courts of Georgia, December 11, 2020, №2 01-2020, the website of the Supreme Court of Georgia. Available at: <https://bit.ly/307QDDK>, updated: 01.03.2021.

<sup>163</sup> Decision of the Disciplinary Panel of Judges of the Common Courts of Georgia, December 9, 2020, №1/01-2020, the website of the Supreme Court of Georgia. Available at: <https://bit.ly/3sKbUzE>, updated: 01.03.2021.

<sup>164</sup> Ibid.

<sup>165</sup> The Organic Law of Georgia on Common Courts, Article 75<sup>10</sup> Paragraph 1.

<sup>166</sup> Ibid, Article 75<sup>14</sup>, Paragraph 1.

#### 4.4. Transparency of Disciplinary Proceedings

The process related to a disciplinary proceeding against a judge is confidential.<sup>167</sup> Bearing this in mind, a timely publication of statistics (number of complaints, types of misconduct, etc.) by the Independent Inspector becomes even more important. GYLA positively assesses the work in this direction and observes that the Office of the Inspector is operative in providing information to public.

The positive legislative changes that gave the judge the right to request the Council sessions (except the deliberations and decision-making procedures), as well as of the sessions of the Disciplinary Panel and the Chamber to be made public at which their case was reviewed, no one uses, no one has exercised this right during the reporting period.<sup>168</sup>

According to the legislation, decisions made during the disciplinary proceedings are forwarded to the author of the complaint (appeal) and a relevant judge within five days after they are made. Throughout the reporting period, the initiators of 164 complaints were sent the decision of the Council on the termination of disciplinary proceedings.<sup>169</sup>

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<sup>167</sup> The Organic Law of Georgia on Common Courts, Article 75<sup>4</sup>.

<sup>168</sup> Letter №39/146-03-მ of the High Council of Justice of Georgia, The Office of the independent Inspector, February 5, 2021.

<sup>169</sup> Ibid.

## 5. COUNCIL ORGANIZATION AND TRANSPARENCY

### 5.1. Preparation of Council sessions

In accordance with the rules of procedure of the Council, the Secretary of the Council shall prepare sessions and ensure that all necessary materials are delivered to the Council members in a timely manner.<sup>170</sup> However, the regulations do not specify who shall draw up and approve an agenda of the Council sessions. Nor is the right of a member of the Council provided to request the removal or addition of an item to the agenda.

(1) There is no timeframe established for the distribution of documents related to matters to be considered at a session.

(2) Documents submitted to the Council are not automatically sent to the members of the Council. This prevents them from placing a matter on the agenda at their own discretion.

(3) It should be noted that the decision-making process on certain issues was postponed several times, which is the indication of improper management of the Council sessions. There were two reasons for the above: the matter under consideration required further preparation and examination,<sup>171</sup> (e.g. the case initiated at the July 17 session - the determination of the composition of the Panels of the Tbilisi City Court was postponed 3 times), or the agenda contained unreasonably many issues, making it impossible to discuss all of them.<sup>172</sup>

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

**In order to overcome these challenges, it is necessary for the Rules of Procedure of the Council to take into account: the timeframe for the Secretary of the Council to submit to other members the applications and projects that are scheduled to be discussed at the next session; The procedure for handing over a copy of any document submitted to the Council to members; Procedures for drawing up the agenda and the person responsible for it; The right of a member of the Council to request the removal or addition of an issue from the agenda. (Final decisions should be made by the majority of the members of the Council).**

### 5.2. Publication of the Dates and Agendas of Council Sessions in Advance

Within the framework of the Third Wave of judicial reforms, it was determined that the Council shall publish the date and agenda of the Council's sessions at least seven days prior to holding the session.<sup>173</sup> Nevertheless, the Council consistently violated the requirement of the law. According to the Council, the seven-day timeframes were not adhered to due to the intensity of sessions,<sup>174</sup> Currently, the law provides for the publication of information at least 3 working days before the session.<sup>175</sup> Nevertheless, this requirement of the law was constantly violated. The agenda as well as the information about the session were announced

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<sup>170</sup> The Rules of Procedure of the High Council of Justice of Georgia, Article 26, Paragraph 2, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3bVzXUw>, updated: 09.03.2021.

<sup>171</sup> See The Protocol of the session of the High Council of Justice of Georgia, August 4, 2020.

<sup>172</sup> See The Protocol of the session of the High Council of Justice of Georgia, June 5, 2020.

<sup>173</sup> The Organic Law of Georgia on Common Courts, Article 49, Paragraph 4.

<sup>174</sup> Letter №218/127-03 of the High Council of Justice of Georgia dated January 25, 2020.

<sup>175</sup> The Organic Law of Georgia on Common Courts, Article 49, Paragraph 4.

the day before the session, in the afternoon.<sup>176</sup> Only once the information about the January 23 session was posted on January 20, in compliance with the timeframe set by law.<sup>177</sup> On August 4, this information became known 2 days prior.<sup>178</sup> **It is important for the Council to act in accordance with the law and publish information about the session 3 days in advance.**

The goal of publishing information about Council sittings in advance is to formulate the items to be discussed at the Council session in such a way that any interested person could learn preliminarily what decisions the Council may render, which had been a problem for years. Therefore, the practice established in 2018 requiring the publication of session agendas with explanatory notes deserves a positive assessment. The item on the agenda published during the reporting period, including June, was followed by minor explanations, but this practice ceased in July. **It is important that it is restored, and that the public has the opportunity to receive comprehensive information on the topics under discussion in advance.**

### 5.3. Management of Council Sessions

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

The rules of procedure do not either adequately provide specific rules for inviting outside persons or allowing non-member attendees present at the meeting to voice their opinion. During the reporting period, the recommendation on developing the rules allowing persons attending Council sittings to express their opinion was not fulfilled.<sup>179</sup>

### 5.4. Publication of Minutes and Decisions of the Council Sessions

Another component of transparency is the publicity of session protocols and decisions rendered at Council meetings. The session protocols are not provided in writing. Since 2018, the Council has produced session protocols in a special audio format. This is an acceptable practice, although the recordings have been published with a delay. **Therefore, it is important that the sessions be streamed live on the website.**

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<sup>176</sup> See. Date of publication of information on the sessions of the High Council of Justice of Georgia, June 26, July 30, October 15, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3ccvQVq>, updated: 10.03.2021.

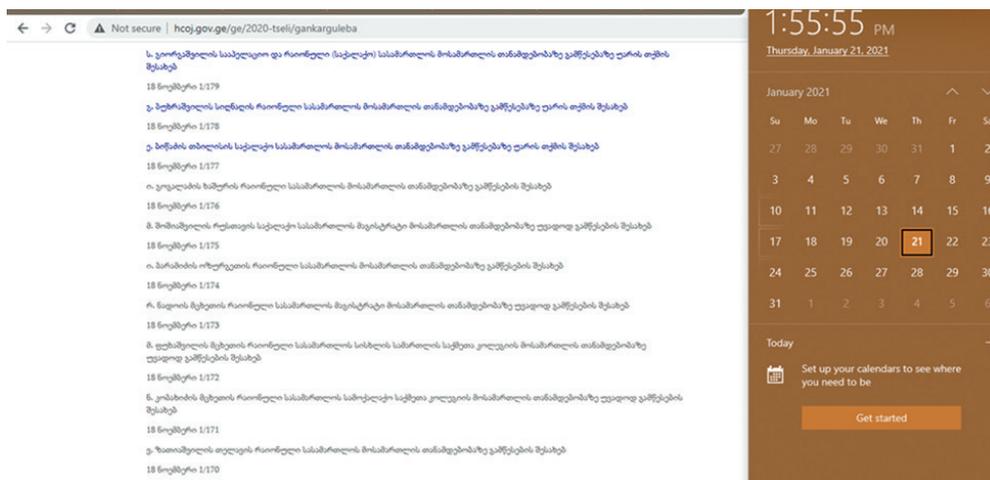
<sup>177</sup> See. Date of publication of information on the sessions of the High Council of Justice of Georgia, January 23, 2020, the website of the High Council of Justice of Georgia. Available at: <https://bit.ly/3vdBPCb>, updated: 10.03.2021.

<sup>178</sup> See. Date of publication of information on the sessions of the High Council of Justice of Georgia, January 23, 2020, the website of the High Council of Justice of Georgia., Available at: <https://bit.ly/3v9wjAk>, updated: 10.03.2021.

<sup>179</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №7, The Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, p. 68, The Georgian Young Lawyers' Association website. Available at: <https://bit.ly/2zqPX2X>, updated: 21.04.2020.

The law defines for a list of decisions to be published on the website.<sup>180</sup> According to the regulations of the Council, decisions are published on the official website no later than five days after their adoption, and the consolidated versions - no later than 14 days after the amendments are made therein.<sup>181</sup> Decisions are uploaded to the Council website with a delay (see image).

The website of the High Council of Justice is operating with shortcomings, which makes it difficult to locate specific decisions or documents. GYLA hopes that the new website of the Council, which is working in test mode, will eliminate these problems.



*Image: In January 2021, the decisions made in November 2020 had not been not uploaded on the Council website.*

### 5.5. Video-Audio Recording and Media Coverage of Council Sessions

For years, GYLA has been pointing out to the problem of media coverage of Council sessions, but no effective steps have been taken to address it.<sup>182</sup> Media is only allowed to take photos and make video-audio recordings of the opening of the session.<sup>183</sup> By law, an audio recording of a session shall be released immediately upon a request.<sup>184</sup> The Council sessions are broadcast through the screen installed in the hall room of the Council. For ensuring more transparency, it is important that the Council sessions be transmitted via online streaming to allow anyone to follow the progress of the sessions and the media to utilize the resource without any procedural hurdles.

<sup>180</sup> The Organic Law of Georgia on Common Courts, Article 49, Paragraph 4.

<sup>181</sup> The Rules of Procedure of the High Council of Justice of Georgia, Article 18.

<sup>182</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №5, The Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, p. 23, The Georgian Young Lawyers' Association website. Available at: <https://bit.ly/2X6J1k>; Report №6, pp. 26-27, The Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, The Georgian Young Lawyers' Association website. Available at: <https://bit.ly/2A8JB8d>; Report №7, pp. 72-73, The Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, The Georgian Young Lawyers' Association website. Available at: <https://bit.ly/2zqPX2X>, updated: 21.04.2020.

<sup>183</sup> The Rules of Procedure of the High Council of Justice of Georgia, Article 11<sup>1</sup>, Paragraph 3.

<sup>184</sup> Organic Law of Georgia on Common Court, Article 49, Paragraph 4.

To avoid the risk of spreading COVID 19 created by the pandemic, GYLA appealed to the Council to provide a live stream of the sessions based of the public interest.<sup>185</sup> This would have enabled remote monitoring of the topics under consideration in real time, although no live stream of Council sessions has been made. In a pandemic, due to the lack of space in the Council Hall, most of the sessions were held in the Plenary Hall of the Supreme Court. **It is important that Council sessions are broadcast online, which will allow anyone to monitor the progress of the sessions.**

### 5.6. Closure of Council Sessions

According to the law, the Council is obliged to conduct its sessions openly and publicly,<sup>186</sup> and when making a relevant decision, to announce upon its closure.<sup>187</sup> A total of 36 sessions were held in 2020 to discuss 200 cases. The Council adopted 256 ordinances and 4 resolutions during the reporting period.<sup>188</sup> As GYLA had indicated in the previous reports, the grounds and procedure for closing sessions are not defined.<sup>189</sup> **It is necessary to specify this matter (rare and good reasons, as a basis for the closure shall be defined).**

The procedure of appointing a judge envisages the stage of an interview.<sup>190</sup> According to the decision of the Council, a candidate has to be interviewed in a closed format.<sup>191</sup> The Council asks a candidate about a desirable format prior to starting the interview and conducts it in an open session upon his/her consent. In this context, openness depends on the good will of judges, which in all cases is not in favor of transparency. For example, none of the judges closed the interview during the reporting period, and in 2018, 34 had used this opportunity.

Given the high public interest in the candidates, the transparency of the process is important. The openness and publicity of the process should be considered unequivocally positive, as it is possible for the general public to assess the competence of both current judges and Council members and their integrity. **Therefore, it is important that first and second instance court candidate interviews, like those of the Supreme Court candidates, be conducted in an open session of the Council.**

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<sup>185</sup> Letter №8-04/51-20 of the Georgian Young Lawyers' Association, April 8, 2020.

<sup>186</sup> The General Administrative Code, Articles 32 and 34.

<sup>187</sup> Ibid.

<sup>188</sup> Letter №35/147-03-m of the High Council of Justice of Georgia, February 5, 2020.

<sup>189</sup> Nozadze N., Shermadini O., Monitoring Report of the High Council of Justice №4, the Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, The Georgian Young Lawyers' Association website. Available at: <https://bit.ly/3gpb5XQ>; Report №5, the Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, Georgian Young Lawyers' Association website., Available at: <https://bit.ly/2X6J1k>; Report №6, the Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, Georgian Young Lawyers' Association website. Available at: <https://bit.ly/2A8JB8d>; Report №7, the Georgian Young Lawyers' Association and Transparency International - Georgia, Tbilisi, 2019, Georgian Young Lawyers' Association website. Available at: <https://bit.ly/2zqPX2X>, Updated: 10.03.2021.

<sup>190</sup> The Organic Law of Georgia on Common Courts, Article 36<sup>4</sup>, Paragraphs 17 and 19.

<sup>191</sup> The Decision №308 of the High Council of Justice of Georgia, on the Approval of the Rules for the Selection of Judicial Candidates, October 9, 2009, Article 12<sup>7</sup>, Paragraph 2.

## 6. MANAGEMENT DEPARTMENT

### 6.1. Legislation and the Opaque Process for Selecting the Department Chairperson

In order to oversee the administration and management of the common courts, a Judicial Management Department was established in the Council with the changes of the Third Wave of judicial reform.<sup>192</sup> Its chairperson is appointed by an absolute majority to the Council on a competitive basis.<sup>193</sup> The Council managed to appoint them only 2 years after the changes took effect, and the apparatus is not yet fully staffed.

Criticism deserved the competition by which the Chairperson of the Management Department was elected in January 2019. "Information about the competition procedures and the identities of the candidates was not published on the website. The fact become known after the interviews had been already conducted. The biographical data of the participants in the competition for the positions of the Chairperson of the Management Department were closed."<sup>194</sup>

The department has various and ambiguous functions:<sup>195</sup>

- Study of information related to case management and court workload.
- Promote the introduction of a managerial culture, improving the managerial skills of chairpersons.
- Supervise the operation of the electronic case management program and submit recommendations to the Council to improve it.
- Submit conclusions and recommendations to the Council on important issues of the Court administration.

The role of the Department of Management in the effective operation of this system has been defined in great detail by the electronic distribution rule approved by the Council.<sup>196</sup> The relevant authorized person shall inform the Department about its temporary suspension, elimination of this delay and cases distributed during the delay.<sup>197</sup>

The Department will address the Council and the courts with further suggestions for observations and case studies, which will then be reflected in the Council's draft decisions.<sup>198</sup> Recommendations for refinement of the case distribution program prepared by the Department during the reporting period or conclusions on case management and court workload were not discussed at the Council session.

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<sup>192</sup> The Organic Law of Georgia on Common Courts, Article 56<sup>1</sup>.

<sup>193</sup> The Organic Law of Georgia on Common Courts, Article 56<sup>2</sup>, Paragraph 1.

<sup>194</sup> Nozadze N., Monitoring Report of the High Council of Justice №63, The Georgian Young Lawyers' Association, Tbilisi, 2020, p.7, the Georgian Young Lawyers Association website. Available at: <https://bit.ly/39oGhol>, updated:16.03.2021.

<sup>195</sup> The Organic Law of Georgia on Common Courts, Article 56<sup>1</sup>.

<sup>196</sup> Resolution #1 of the High Council of Justice of Georgia, on the attribution of some decisions of the High Council of Justice of Georgia to the normative acts (Annex 20), January 31, 2020, Legislative Herald. Available at: <https://bit.ly/3rS93DY>, updated: 30.03.2021.

<sup>197</sup> Ibid, Article 7.

<sup>198</sup> Letter №46/145-03-მ of the High Council of Justice of Georgia, February 12, 2021.

## RECOMMENDATIONS

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

### **By introducing amendments to normative acts, relevant bodies shall ensure as follows:**

- Replacement of the existing majoritarian system for the election of Council members. Establish gender, regional and instance quotas (as defined by law, but need to be clarified) when electing judicial members of the Council;
- The quota of chairpersons in the Council shall be abolished. A member of the Council who at the same time holds a position other than a judge must resign from the position immediately upon their appointment.
- Appointment of non-judicial members of the Council with mutual support (from the government and the opposition). Setting gender quotas;
- Transparency of the rules for electing non-judicial members at the Parliament;
- The possibility for candidates in the first and second instance courts to appeal against the refusal to be admitted from the interview to the voting stage; to appeal against the refusal to go from the interview to the voting stage;
- The procedure providing lifetime reappointment of judges after the completion of the trial period shall be revised (a draft substantiated decision refusing to consider the lifetime appointment of a judge shall be brought to a session of the Council; if the decision fails to obtain 6 votes, a judge shall be allowed to an interview for the permanent position);
- Interviews with judicial candidates (in the first and second instance courts) should be conducted at open sessions;
- Appointment of judicial and non-judicial members of the first and second instance courts with 2/3 of the votes;
- Develop a procedure/criteria that clearly demonstrates the merits of giving preference to a particular candidate when transferring a judge to another court;
- A candidate who obtains two-thirds of the total number of judicial and non-judicial members of the Council respectively should be nominated for the Supreme Court.
- Insurance of the internal organizational independence of the school's Independent Board; the Independent Board shall be granted the right to elect its members and chairperson to the School board itself;
- Electivity of chairpersons (in the first and second instance courts);
- The administrative positions of deputy chairpersons of the courts, as well as the chairpersons of the Panels and Chambers (including acting chairpersons), shall be revoked;
- The procedure for nominating a candidate for the position of the chairperson of the Supreme Court should be improved: the number of required votes should not be reduced after the first unsuccessful voting, and if two-thirds of the votes are not collected, the Council should start the procedures from all over again;

- Determination of 2/3 of the votes required for the appointment of an inspector;
- The required number of votes for the appointment of the Independent Inspector must be two-thirds;
- Substantiation of the decisions of the Council on refusing to initiate disciplinary proceedings;
- Adoption of a majority rule on decision making of the Council on initiating disciplinary proceedings and obtaining explanations.

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

- Indicate specific circumstances in the justification for the appointment of judges of the first and second instance courts in such a way that the interested person receives comprehensive information about the integrity of the judge;
- Conduct transparent processes of transfer and promotion of judges without competition;
- Establish a transparent procedure and regulation for appointing and nominating the chairperson;
- Select of all three judges through the electronic system, according to the rule of random distribution, and the distribution of judges in narrow specialization by voting, during the collegial hearing of the case;
- Improve the competition rules for selecting the Inspector: define selection criteria, rules for conducting interviews, rules for evaluating and substantiating a candidate;
- Review disciplinary complaints within the timeframes established by law;
- Conduct a transparent competition for the positions of the Inspector and the Chairperson of the Management Department;
- Publish information about the Council sessions in advance, within the statutory time periods;
- Develop rules for the procedures for handing over a copy of any document submitted to the Council to members, for expressing their opinion on a specific issue, for drawing up the agenda, also develop the rules for the right of a member of the Council to request the removal or addition of an issue from the agenda and inviting third parties to the session and expressing opinions by the attendees;
- Ensure live streaming of sessions of the Council;
- Develop a rule for Council session closure.

**The Independent Board shall ensure a transparent selection process for the students.**

