



MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE

No12



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE №12

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METHODOLOGY

Objectives and subjects of the research

The High Council of Justice (hereinafter - the Council) is a constitutional body of the system of common courts.¹ Its function is to ensure the independence of the courts - efficiency, appointing and dismissing judges and performing other tasks.² The Council, in fact, fully administers the common courts system. The Georgian Young Lawyers' Association (GYLA), which has been monitoring the sessions of the High Council of Justice since 2012 and annually prepares reports that are public and available on the official website of GYLA (www.gyla.ge), presents Report No. 12. The purpose of this report is to identify challenges within the system, develop recommendations that will contribute to freeing the system from internal and external influences, and increase the effectiveness and transparency of the Council of Justice's activities.

Research tools and resources

The reporting period includes the period from January 1 to December 31, 2023.

The following sources are used in the document:

- The existing normative framework in Georgia, both legislative and by-laws;
- Data attained through public information requests and placed on the website of the Council;
- Information obtained by GYLA monitors at council meetings and various public meetings.

GYLA also relies on past reports and studies that evaluate the judiciary. The documents (guidelines, reports, evaluations, etc.) prepared by international organizations such as the Venice Commission, the OSCE, and the Advisory Council of European Judges were analyzed. These analyses considered both general insights and specific opinions and recommendations related to Georgia.

¹ Constitution of Georgia, paragraph 1 of Article 64.

² Ibid.

FINDINGS

Despite numerous waves of justice reforms and constitutional changes, the justice system continues to face systemic challenges.

The main challenge is corporatism within the system. If years ago, the main challenge was control of the judicial system by the authorities, nowadays the influences have shifted inside the system and the main controlling persons have become influential judges, who are often in alliance with the government and have gained substantial control over the justice system and the main body - the High Council of Justice, which, taking into account its diverse functions, exercises significant control over the system. In recent years, international organizations have increasingly emphasized the current context of corporatism and the lack of public trust in the Council as a governing body.³ Accordingly, the recommendations call for a comprehensive reform of the justice system rather than mere procedural refinements. On the contrary, all legislative changes developed during the reporting period were superficial in nature and did not address the real challenges within the system.

The imposition of personal restrictions on entry into the country by the United States State Department for members of an influential group of current and former judges—Mikheil Chinchaladze, Levan Murusidze, Valerian Tsertsvadze, and Irakli Shengelia—due to their involvement in significant corruption, confirms the serious problems within the system.⁴ Unfortunately, the ruling party prevented the creation of a temporary investigative commission in the parliament, which was supposed to study corruption and other types of violations in the judicial system. The leader of the majority, Irakli Kobakhidze, assessed this as an “act of solidarity” towards the judges.⁵

Parliament appointed non-judge members to the Council of Justice after a delay of two years. Considering their work experience and interviews, there was no expectation that the newly appointed members would speak openly about the problems in the system. However, their entry into the council did not even create a space for healthy discussion. It is regrettable that, even with a fully staffed Council of Justice, issues are considered without discussion, and the meetings receive unanimous support from those present.

The existence of the so-called quota of chairpersons in the Council remains a problem. During the reporting period, 4 of the 8 elected members of the Council simultaneously held the presidency of a collegium/chamber. This is compounded by the fact that none of the judges from the courts located in the regions have been nominated to the Council, thus losing the opportunity to voice regional problems at Council meetings.

During the reporting period, it became evident once again that the Council uses its available leverage to strengthen an influential group and suppress dissent. The Council of Justice did not appoint the judge Nino Giorgadze, who was appointed in the three-year probationary

³ CDL-AD (2023)006-e, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, adopted by the Venice Commission at its 134th Plenary Session (Venice, 10-11 March 2023), para. 16-17.

⁴ Public Designations of Mikheil Chinchaladze, Levan Murusidze, Irakli Shengelia, and Valerian Tsertsvadze, Due to Involvement in Significant Corruption, Press Statement, U.S. Department of State, 5 April 2023, available at: <https://www.state.gov/public-designations-of-mikheil-chinchaladze-levan-murusidze-irakli-shengelia-and-valerian-tsertsvadze-due-to-involvement-in-significant-corruption/>, accessed: 26.05.2024.

⁵ Irakli Kobakhidze - we made a decision not to go through the registration before voting - this is an act of solidarity towards Georgian judges, April 18, 2023, Interpressnews, available at: <https://shorturl.at/WiyCF>, updated: 28.05.2024

period of the Bolnisi District Court, for life. There were doubts that the non-appointment of Nino Giorgadze was related to the decisions he made and the different views he publicly expressed on the legislative changes initiated in December 2021 to strengthen the clan.. The low number of candidates and the declining interest in vacancies announced in recent years clearly exemplify the lack of confidence in the competitions conducted by the Council.

During the reporting period, the rotation of the influential group and their close associates continued to secure important positions within the system. After the independent inspector Zura Aznaurashvili left his position prematurely, he was replaced by Shota Kadagidze, a former non-judge member of the Council. Additionally, Dimitri Gvritishvili, a judge member of the Council, replaced Badri Shonia on the independent council of the School of Justice. Notably, Dimitri Gvritishvili had previously held this position before his reappointment as a Council member.

The broad and varied powers of the board, including its role in selecting the members of the Independent Board of the School of Justice and its chair, remain a challenge.

During the reporting period, the Council of Justice held only one disciplinary session. Despite the numerous complaints, the majority of which are related to delayed justice, the Council has not taken effective steps to solve this problem, which is an effective lever to put pressure on individual judges in the context of protracted disciplinary proceedings.

In terms of transparency, the situation is extremely serious. GYLA did not receive responses to eight letters sent during the reporting year. This lack of communication significantly complicates the work of monitoring organizations.

The Council did not upload any meeting minutes to its website, and decisions made by the Council were not published on the website after June 2, 2023 . Additionally, it did not publish the date and agenda of any meeting within the time limit set by law. The date and time of sessions were regularly changed or postponed, and issues were frequently removed from the agenda.

1. THE PROGRESS OF IMPLEMENTATION OF THE EUROPEAN COMMISSION RECOMMENDATION IN THE POLITICAL CONTEXT

During the reporting period, the monitoring of the High Council of Justice took place alongside the anticipation of Georgia receiving the status of a member state of the European Union. This chapter evaluates the legislative changes initiated by the ruling party during this period, using the recommendations of the Venice Commission and the European Commission.

The steps proposed by “Georgian Dream” to fulfill the 12 recommendations of the European Commission consistently sidestepped the core issue in the judiciary: the presence of an influential group within the system. Instead, these steps mainly focused on procedural improvements. This approach was evident in the strategy developed by the working group created in 2022 to implement the recommendations of the European Commission. The strategy failed to include a real assessment of the legal and practical challenges within the system. Consequently, the proposed solutions did not address the existing problems. The drafted law also completely disregarded the primary challenges within the justice system, such as the concentration of power and informal influences.⁶

The imposition of personal entry sanctions by the United States State Department on members of an influential group of judges⁷ for their involvement in significant corruption once again underscored the issues of informal influence and clannishness.⁸ Civil organizations have been asserting for years that decisions on cases with political implications are not made based on the interests of justice, but rather on the political objectives of the ruling team.⁹

Against this background, it was critically important to appoint impartial and competent candidates as non-judicial members, which, together with the double 2/3 decision-making rule, would change the balance of power positively and create diversity of opinion on the board. However, with a delay of 2 years, the government supported candidates as non-judge members of the council, whose presence couldn’t even introduce a dissenting opinion in the council.

That the authorities did not intend to implement real legislative changes was confirmed once again by the amendments adopted on June 13, 2023, which they claimed were aimed at fulfilling the recommendations of the Venice Commission.¹⁰ Actually, the selection procedure for non-judge and judge members of the Council has been slightly improved. In particular, the regulations of the Parliament now mandate the public hearing of candidates for non-judge membership at the session of the Legal Affairs Committee.¹¹ In addition, the

⁶ The judicial reform strategy and action plan developed by the management team do not address the real problems in justice, the Coalition for an Independent and Transparent Judiciary, 07.11.2023. available at: http://coalition.ge/index.php?article_id=274&clang=0, updated: 27.09.2023.

⁷ Acting judges Mikheil Chinchaladze, Levan Murusidze, and Irakli Shengelia and former judge Valerian Tsertsvadze.

⁸ Public Designations of Mikheil Chinchaladze, Levan Murusidze, Irakli Shengelia, and Valerian Tsertsvadze, Due to Involvement in Significant Corruption, Press Statement, U.S. Department of State, 5 April 2023, available at: <https://shorturl.at/04SeE>, updated: 06.10.2023.

⁹ Verdzeuli S. Reform of the justice system in Georgia (2013-2021) Tbilisi, 2021, p. 4, available at: <https://shorturl.at/btvYD>, updated 24.03.2024.

¹⁰ The Coalition Responds to the Amendments to the Organic Law on General Courts, June 23, 2023, Coalition for an Independent and Transparent Judiciary, available at: https://coalition.ge/index.php?article_id=293&clang=0, updated: 25.03.2024.

¹¹ Paragraph 3 of Article 65 of the Organic Law of Georgia on General Courts.

candidate for judge membership of the council was granted the right to present their views and opinions to the conference of judges before voting.¹² Also, for the seconded judge, the obligation to issue a monthly travel allowance and the limits of the amount of the allowance were established.¹³ The changes still overlooked the main issue in the system - the politicization of justice and informal influences on judges.¹⁴

Nor did the changes initiated in September 2023¹⁵ solve the issues systematically.¹⁶ Despite some positive changes, such as the new regulation of publicizing court acts, none of the proposed reforms were substantial. They were fragmented and did not serve the purpose of freeing the system from informal influences or increasing trust in the system. For instance, one of the changes proposed was to increase the quorum required for decisions on imposing disciplinary responsibility from a simple majority to at least 2/3 of the members of the Council.¹⁷ It should be noted that prior to the hastily adopted changes by “Georgian Dream” in December 2021, the quorum required for making a decision on the imposition of disciplinary responsibility was 2/3. After these changes, it was reduced to a simple majority. According to the GYLA, this significantly weakened the guarantees necessary for judicial independence.

Given the country’s context, where the High Council of Justice has struggled to gain public trust,¹⁸ the Venice Commission has even suggested the possibility of implementing integrity checks.¹⁹ These would serve as a temporary mechanism to assess the professionalism and integrity of council members.²⁰ The commission also explained that comprehensive reform entails revising the functions and composition of the High Council of Justice, as well as the method of selecting its members. Additionally, it involves addressing societal concerns regarding corporatism within the system.²¹

On November 8, 2023, the European Commission announced its decision recommending Georgia for candidate status. One of the key recommendations was the implementation of a comprehensive and effective judicial reform. The European Commission urged the Georgian

¹² Paragraph 7 of Article 208 of the Regulations of the Parliament of Georgia.

¹³ Paragraph 5 of Article 37¹ of the Organic Law of Georgia on General Courts.

¹⁴ Coalition Responds to Amendments to Organic Law on General Courts, Coalition for an Independent and Transparent Judiciary, June 23, 2023, available at: http://coalition.ge/index.php?article_id=293&clang=0, updated: 26.12.2023.

¹⁵ The Parliament of Georgia supported this package of changes in the third reading at the plenary session of May 29, 2024.

¹⁶ “On Amendments to the Organic Law of Georgia on General Courts”, available at: <https://info.parliament.ge/#law-drafting/27096>, updated: 26.12.2023.

¹⁷ “On Amendments to the Organic Law of Georgia on General Courts”, available at: <https://info.parliament.ge/#law-drafting/27096>, updated: 26.12.2023.

¹⁸ Venice Commission, Georgia follow-up opinion to previous opinions concerning the organic law on common courts, CDL-AD(2023)033-e, 9 October 2023, 12-13.

¹⁹ Vetting of judges refers to the process of checking their qualifications, integrity and quality of work, which requires their compliance with certain standards and criteria. This process is usually carried out to strengthen the independence of the judiciary and also to build public confidence in the judiciary. Commission For Democracy Through Law (Venice Commission) Compilation Of Venice Commission Opinions And Reports Concerning Vetting Of Judges And Prosecutors, Strasbourg, 19 December 2022, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2022\)051e#:~:text=Vetting%20of%20judges%20and%20prosecutors%20as%20examined%20in%20earlier%20VC,and%20integrity%20in%20public%20office](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)051e#:~:text=Vetting%20of%20judges%20and%20prosecutors%20as%20examined%20in%20earlier%20VC,and%20integrity%20in%20public%20office), updated: 26.12.2023.

²⁰ Venice Commission, Georgia follow-up opinion to previous opinions concerning the organic law on common courts, CDL-AD(2023)033-e, 9 October 2023, para., 11, <https://cutt.ly/x4xO9NR>, updated: 07.12.2023.

²¹ Venice Commission, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, CDL-AD(2023)006-e, 11 March 2023, available at: <https://cutt.ly/x4xO9NR>, updated: 07.12.2023.

authorities to fully implement the recommendations of the Venice Commission through a transparent and inclusive process.²² The European Commission's document, echoing the Venice Commission's assessment, emphasizes the necessity of a thorough and systematic integrity check mechanism involving international experts. According to the conclusion, integrity checks should be applied to individuals in leading positions, members of the Council of Justice, Supreme Court judges, presiding officers of the court, and candidates aspiring to these positions.²³

²² Ibid.

²³ COMMISSION STAFF WORKING DOCUMENT Georgia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, page 20-21, <https://shorturl.at/fqtFO>, available at: 13.04.2024.

2. STAFFING THE COUNCIL OF JUSTICE - CHALLENGES

One of the 12 recommendations from the European Commission calls for a profound reform of the judicial system. In its 2023 findings, the Venice Commission underscored ongoing and widespread allegations of corporatism and self-interest within the judiciary, which have significantly undermined public confidence in the judicial system.²⁴ The document states that corporatism, which promotes the interests of one group of judges to the detriment of other groups of judges, is not allowed.²⁵ Additionally, it is emphasized that the consecutive election of the same judge as a member of the Council of Justice, given the prevailing lack of confidence in the Council, should only be permitted with proper justification.²⁶ In its conclusion, the Venice Commission once again emphasized the need to amend the decision-making procedure within the Council of Justice, advocating for an increased role for non-judge members. It recommended that the participation of at least three non-judge members should be mandatory for making decisions.²⁷

According to the law, there are 15 members in the High Council of Justice.²⁸ 9 members are judges, and 6 are non-judges.²⁹ For nearly two years, the Council of Justice has been conducting its meetings with only 10 members. The Parliament's selection of non-judge members has been criticized for reinforcing an influential group rather than fostering pluralism. Meetings are typically held without debates or dissenting opinions. Additionally, the Council lacks representation from regional courts outside of Tbilisi, despite the fact that the majority of the judicial system comprises courts located in the regions. Due to the existence of a clan in the Council, the election of persons³⁰ in administrative positions as members of the Council is not restricted. Moreover, the record that prohibited the election of the same person twice in a row to the Council was canceled, by the legislative changes of December 2021, and all this against the background when the main object of criticism is the Council of Justice. The Council of Justice, an institution that has failed to gain public trust over the years, exercises immense power over the judicial system. Its authority includes the appointment of judges, reassignment, nominations to the Supreme Court, secondment without a judge's consent, and oversight of the disciplinary system.

The Venice Commission, in its report published on October 9, emphasized that comprehensive reform requires revising the Council's powers, functions, composition, and the member selection process. This is necessary to address public concerns regarding the Council's integrity and the potential for corporatism within the system.³¹

²⁴ CDL-AD (2023)006-e, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, para. 15. available at: <https://cutt.ly/84zgMcd>, updated, 27.09.2023.

²⁵ *Ibid*, para. 17.

²⁶ *Ibid*, para 23.

²⁷ COMMISSION STAFF WORKING DOCUMENT Georgia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, chapter 23, Brussels, 8.11.2023. available at: chromeextension://efaidnbmninnibpcjpcglclefindmkaj/https://neighbourhoodenlargement.ec.europa.eu/system/files/202311/SWD_2023_697%20Georgia%20report.pdf?fbclid=IwAR0PLTK4h7bboAlft_PyLONImiScoPm8i_h1CvCWuiflglPyOjJKD3vL4, updated: 08.12.2023.

²⁸ Organic Law of Georgia on General Courts, Article 49, Paragraph 2.

²⁹ *Ibid*.

³⁰ It means the chairpersons of the court, collegiums, chamber chairpersons, who have been holding important positions in the court system for years.

³¹ European Commission For Democracy Through Law (Venice Commission), Georgia follow-up opinion to previous opinions concerning the organic law on common courts, CDL-AD(2023)033-e, 9 October 2023, available at:[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)033-e&fbclid=IwAR1DqcEePgU2mr--fhJhtRB6wAV9iqj3yGzRQ3Gh4EO9ZaQirJ36VuYVDI](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)033-e&fbclid=IwAR1DqcEePgU2mr--fhJhtRB6wAV9iqj3yGzRQ3Gh4EO9ZaQirJ36VuYVDI), updated: 26.10.2023.

Ibid, para. 19.

The Venice Commission shared another challenge identified by the civil sector, stressing that decision-making leverage in a body composed of two different groups should not be in the hands of only one group.³² According to the commission, the concept of pluralism entails not only the inclusion of non-judge members in the council but also granting them a significant role in the decision-making process.³³ The Commission urged Parliament to reconsider the decision-making process within the Council and establish a balanced system between non-judicial and judicial members.³⁴ For the effective participation of non-judge members, the commission talked about the need for the support of at least 3 non-judge members when making decisions.³⁵

In response, the authorities continue to overlook the primary issue within the system - the politicization of the court and the informal influences on judges.

GYLA advocates for the abolition of the quota of chairpersons in the Council. Furthermore, they propose eliminating the possibility of re-electing the same judge consecutively. To diminish undue influence, they suggest implementing gender and regional quotas in the selection of judicial members of the Council and enhancing the representation of lower instance courts.

2.1. Election of non-judge members of the High Council of Justice

For nearly two years following June 2021, the council operated with ten members, which goes against the principle of pluralism inherent in the guidelines for staffing the Council of Justice. Pluralism, with the inclusion of non-judge members in the council, entails public engagement in the court's activities.³⁶

In October 2022, the Parliament of Georgia announced a selection competition for non-judge members.³⁷ Non-judge members will be elected by not less than 3/5 of the full composition, based on the competition.³⁸ On May 17, 2023, during the plenary session, 29 candidates were voted on for membership in the High Council of Justice, out of which 3 candidates were ultimately selected.³⁹ The parliament elected Tristan Benashvili, Giorgi Gzobava and Zurab Guraspashvili as non-judge members.⁴⁰

³² Ibid, para. 19.

³³ CDL-AD (2023)006-e, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, (Venice, 10-11 March 2023), par 19-20, <https://cutt.ly/x4xO9NR>, updated: 23.03.2023.

³⁴ Ibid.

³⁵ European Commission for Democracy Through Law (Venice Commission), Georgia follow-up opinion to previous opinions concerning the organic law on common courts, CDL-AD (2023)033-e, 9 October 2023, par. 18. available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)033-e&fbclid=IwAR1DqcEePgU2mr-fhJhtRB6wAV9iqj3ylGzRQ3Gh4EO9ZaQiRj36VuYVDI](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)033-e&fbclid=IwAR1DqcEePgU2mr-fhJhtRB6wAV9iqj3ylGzRQ3Gh4EO9ZaQiRj36VuYVDI), updated: 22.10.2023.

³⁶ The Evolution of Judicial Councils and Their Role in Independent and Impartial Judiciary Systems, Strasbourg, 5 November 2021, para 29, available at: <chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://rm.coe.int/opinion-no-24-2021-of-the-ccje-ge/1680a53db2>, updated: 23.10.2023.

³⁷ "The competition for the election of 5 non-judge members in the High Council of Justice was announced", Radio Tavisupleba, September 29, 2022, available at: <https://tinyurl.com/49k2v5x>, updated: 09.01.2023.

³⁸ Paragraph 5 of Article 47 of the Organic Law of Georgia on General Courts.

³⁹ Parliament elected 3 non-judge members of the High Council of Justice, May 17, 2023, Publica, available at: <https://publika.ge/parlamentma-iusticiis-umaghlesi-sabchos-3-aramosamartle-wevri-airchia/>, updated: 20.06.2023.

⁴⁰ The Parliament elected 3 new members of the High Council of Justice, website of the Parliament of Georgia, May 17, 2023, available at: <https://parliament.ge/media/news/parlamentma-iustitsiis-umaghlesi-sabchos-3-akhali-tsevri-airchia?fbclid=IwAR0Xq-3jQ44dtwVux4HHVqGnl8bKdhHOTCAVzxqqp7AtmfZLg-Pm5VmF3OY>, updated: 17.06.2023.

Appointing impartial and competent candidates as non-judicial members⁴¹ was crucial for effectively implementing the EU recommendation. This, along with the implementation of the double 2/3 rule, would have changed the balance of power for the better, fostering dissent within the Council.⁴² However, with a delay of 2 years, the government supported those candidates as non-judge members of the council, who were distinguished by their loyal positions towards the government and the judicial system during the interviews.⁴³ In addition, as a result of studying their biographies, their connections with influential persons at the court were revealed.⁴⁴

It is unfortunate that the election of 3 non-judge members was supported by several representatives of the opposition party.⁴⁵ Non-judicial members were chosen not by broad political consensus but by closed-door negotiations.⁴⁶ The Venice Commission agreed with this assessment, noting in its conclusion that the election of non-judicial members occurred two years behind schedule amid a politically polarized environment.⁴⁷ Also, the possible connections of the three non-judge members to an influential group in the system called into question the pluralism of the council.⁴⁸

The parliament held voting for the remaining 2 vacant seats on October 17.⁴⁹ Out of the four candidates⁵⁰ who advanced to the second round, the parliament supported Goga Kikilashvili and Levan Nemsadze as non-judge members with 90 votes.⁵¹ Goga Kikilashvili is the son of a judge appointed to the Constitutional Court through the influence of a powerful group – Khvicha Kikilashvili. Prior to being elected as a non-judge member, Goga Kikilashvili served as a member of the Independent Council of the Higher School of Justice. He was appointed to this position by the High Council of Justice. Deputies of the Georgian Dream stated that by making this decision, Parliament fulfilled an important aspect of the European recommendation, ensuring the complete staffing of the High Council of Justice.⁵²

⁴¹ A major decision will require the concurrence of 2/3 of the judicial members and 2/3 of the non-judicial members.

⁴² A New Perspective on Judicial Reform, June 21, 2021, Coalition for an Independent and Transparent Justice, available at: http://coalition.ge/index.php?article_id=256&clang=0, updated: 14.04.2024.

⁴³ The coalition responds to the election of non-judge members of the High Council of Justice, May 18, 2023, available at: http://coalition.ge/index.php?article_id=287&clang=0, updated: 22.10.2023.

⁴⁴ “Who are the new non-judge members of the High Council of Justice and what are their connections”, Transparency International Georgia, May 24, 2023, available at: <https://transparency.ge/ge/blog/vin-arian-da-rakavshirebi-akvt-iusticiis-umaglesi-sabchos-axal-aramosamartle-cevrebs>, updated: 23.10.2023.

⁴⁵ Parliament elected only 3 out of 5 non-judge members of the High Council of Justice, May 17, 2023, Radio Tavisupleba, available at: <https://www.radiotavisupleba.ge/a/32415599.html>, updated: 23.20.2023.

⁴⁶ The coalition responds to the amendments made to the Organic Law on General Courts, 23. 06. 2023, available at: http://coalition.ge/index.php?article_id=293&clang=0, updated: 27.09.2023.

⁴⁷ European Commission for Democracy Through Law (Venice Commission), Georgia follow-up opinion to previous opinions concerning the organic law on common courts, CDL-AD (2023)033-e, 9 October 2023, para. 19. available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)033-e&fbclid=IwAR1DqcEePgU2mr-fhJhtRB6wAV9iqj3yIGzRQ3Gh4EO9ZaQiRJ36VuYVDI](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)033-e&fbclid=IwAR1DqcEePgU2mr-fhJhtRB6wAV9iqj3yIGzRQ3Gh4EO9ZaQiRJ36VuYVDI), updated: 23.10.2023

⁴⁸ *Ibid*, para. 16.

⁴⁹ Parliament elected Levan Nemsadze and Goga Kikilashvili as non-judge members of the high Council of Justice, 17.10.2023. available at: <https://www.interpressnews.ge/ka/article/773960-parlamentma-iusticiis-umaglesi-sabchos-aramosamartle-cevrebada-levan-nemsadze-da-goga-kikilashvili-airchia>, updated: 22.10.2023.

⁵⁰ Levan Nemsadze, Goga Kikilashvili, Nino Nishnianidze, Rusudan Kvinikadze.

⁵¹ The Parliament elected Levan Nemsadze and Goga Kikilashvili as non-judge members of the high Council of Justice, October 17, 2023. available at: <https://www.interpressnews.ge/ka/article/773960-parlamentma-iusticiis-umaglesi-sabchos-aramosamartle-cevrebada-levan-nemsadze-da-goga-kikilashvili-airchia>, updated: 22.10.2023.

⁵² Archil Talakvadze - the Parliament fulfilled another important point of the European recommendations – high Council of Justice was staffed with two more members, October 17, 2023, Interpressnews, available at: <https://www.interpressnews.ge/ka/article/773977-archil-talakvadze-parlamentma-sheasrula-evrorekomendaciebis-kideverti-mnishvnelovani-punkti-iusticiis-umaglesi-sabcho-daakomplekta-kidev-ori-cevrit>, updated: 17.10.2023.

In fact, by appointing new non-judge members to the Council of Justice, it further strengthened the existing clan in the system. All 15 members of the Council are unanimous and decisions are made at the Council meeting with the same number of votes. It is the first time since the Justice Council was appointed in the new manner that no dissenting opinion was recorded at the Council meeting.

3. THE PRIVILEGE OF FILLING THE SYSTEM - ANOTHER LEVER OF AN INFLUENTIAL GROUP

3.1. Appointment of judges in district (city) and appeal courts

The High Council of Justice exercises significant control over the recruitment of new personnel into the judicial system. This authority is one of the important levers in his hands to control the system. Despite various legislative changes and refinements to appointment rules, the council's competitions continue to face criticism and suspicions of loyalty-driven appointments.⁵³

The council is responsible for the competitive appointment of judges in district (city) and appellate courts.⁵⁴ A prerequisite for becoming a judge is to pass the qualification exam and pass the course at the Higher School of Justice.⁵⁵

Today, the High Council of Justice is responsible for announcing and administering the qualification exams for judges. However, the law does not specify the criteria for selecting members of the qualification examination commission.⁵⁶ The council creates the qualification examination commission and approves its composition in accordance with the rules established by the regulations, and also determines the procedure and program of the qualification examination itself.⁵⁷ The above gives the board broad powers to improperly influence the school's student admission process.

The right to take the qualifying exam is granted to any capable citizen of Georgia who is at least 25 years old, holds a higher legal education, and is proficient in the state language.⁵⁸

During the reporting period, the Council conducted the qualification exam for judges three times.

It was held on January 25 - March 2023.⁵⁹ 38 people passed the exam out of 201 examinees.⁶⁰

According to the decision of April 25, 2023, the qualification exam for judges was scheduled again, and it was held in June.⁶¹ Out of 167 examinees, 51 people finally passed the exam (test and written component).⁶²

⁵³ Nino Nozadze and Olgha Shermadini, Monitoring Report of the High Council of Justice No. 7, Georgian Young Lawyers' Association and International Transparency - Tbilisi, Georgia, 2019, p. 16-25, available at: <https://bit.ly/2zqPX2X>, updated: 12.03.2022; Nino Nozadze, Monitoring Report of the High Council of Justice No. 8, Georgian Young Lawyers' Association, Tbilisi, 2020, p. 14-21, available at: <https://bit.ly/3qTcutK>, updated: 12.03.2022.

⁵⁴ Paragraph 1 of Article 35 of the Organic Law of Georgia on General Courts.

⁵⁵ Paragraph 1 of Article 34 of the Organic Law of Georgia on General Courts.

⁵⁶ Ibid, Paragraph 1 of Article 52.

⁵⁷ Ibid, Paragraph 2 of Article 53.

⁵⁸ Ibid, Paragraph 1 of Article 53.

⁵⁹ Qualification exam for judges, website of the High Council of Justice of Georgia, January 26, 2023, available at: <https://shorturl.at/dptJO>, updated: 22.03.2024.

⁶⁰ 27 in the specialization of civil and administrative law, 11 in the specialization of criminal law. The second stage of the judicial qualification exam, the written exam, has been completed, the website of the High Council of Justice of Georgia, March 20, 2023, available at: <https://shorturl.at/jlUZ6>, updated: 22.03.2024.

⁶¹ Judge qualification exam, website of the High Council of Justice of Georgia, April 26, 2023, available at: <https://shorturl.at/afLMR>, updated: 22.03.2024.

⁶² In the specialization of civil and administrative law - 28 passed, in the specialization of criminal law - 22, and in the general specialization - 1 examinee passed. The second stage of the judicial qualification exam, the written exam has ended, the website of the High Council of Justice of Georgia, June 11, 2023, available at: <https://shorturl.at/BEFX1>, updated: 22.03.2024.

At the meeting of July 12, 2023, the Council made a decision to conduct the qualification exam for judges once again. The qualification exam for the judgeship was held in September.⁶³ Out of 158 examinees, 37 persons passed the exam.⁶⁴

According to the data published by the Council of Justice in the reporting period, 126 contestants passed the judge qualification exam.

3.2. Influences of the High Council of Justice on the process of entry of judges into the system - Challenges in practice

The final step of passing the qualification exam for a judge is to enter and complete it at the High School of Justice.

The board makes a decision on conducting the school admission competition.⁶⁵ The School of Justice conducts the competition for the admission of students to the Higher School of Justice.⁶⁶ However, the broader role of the High Council of Justice in the process of recruiting and selecting the chairman of the independent school board remains a challenge. Two out of the seven members of the independent council of the school are appointed by the High Council of Justice from its own composition.⁶⁷ The council appoints 2 additional members from the academic quota;⁶⁸ Three members are elected by the Conference of Judges, and the Chairman of the Independent School Board is elected from the Quota of the Conference of Judges (3 in total), again by the High Council of Justice.⁶⁹ The manner of decision making by the independent board is also problematic. The session of the independent board is valid if the majority of the members of the independent board are present. The decision is made by the majority of votes. In case of an even split of votes, the vote of the chairman of the meeting of the independent board is decisive.⁷⁰

For the internal organizational autonomy of the independent school board, it would be beneficial to reconsider the role of the High Council of Justice in the selection process of its members, and to grant the authority to elect the chairman to the school board itself.

In 2022, the conference elected Giorgi Mikoutadze, Irakli Shengelia and Vasil Mshvenieradze as members of the school's independent council. The latter was later elected by the Council as the Chairman of the Independent Council.

During the reporting period, at the meeting of May 24, the High Council of Justice unanimously supported the re-appointment of Dimitri Gvritishvili as a member of the Independent Council of the School of Justice.⁷¹ In 2021, he served as both a member and chairman of the school's independent board after his initial term as a board member ended. A year

⁶³ Judge qualification exam, website of the High Council of Justice of Georgia, July 12, 2023, available at: <https://shorturl.at/bqszF>, updated: 22.03.2024.

⁶⁴ In civil and administrative law specialization - 15, in criminal law specialization - 22 examinees passed. The second stage of the judicial qualification exam, the written exam has ended, website of the High Council of Justice of Georgia, September 24, 2023, available at: <https://shorturl.at/IRSX1>, updated: 22.03.2024.

⁶⁵ Paragraph 3 of Article 66¹² of the Organic Law of Georgia on General Courts.

⁶⁶ Ibid, Paragraph one of Article 66¹⁴.

⁶⁷ Ibid, Paragraph 4 of Article 66³.

⁶⁸ Ibid.

⁶⁹ Paragraph 5 of Article 66³ of the Organic Law of Georgia on General Courts.

⁷⁰ Ibid, Paragraph 4 of Article 66⁵.

⁷¹ In 2021, he was already a member and chairman of the school's independent board, after his term as a member of the Justice Board expired. A year later, he left this position, as the conference re-elected him as a member of the Council of Justice on October 23, 2022.

later, he vacated this position when he was re-elected as a member of the High Council of Justice on October 23, 2022.⁷²

The re-appointment of Dimitri Gvritshvili to the independent board of the school occurred following the voluntary resignation of Badri Shonia from his position on the board. This rotation of influential judges within the independent council of the school underscores the ongoing dominance of the High Council of Justice in the school's operations. Moreover, the transfer of the competition process from the council to the School of Justice appears to be largely formal, given these dynamics.

At the same meeting, the Council announced a competition for students at the School of Justice.

During the reporting period, despite the presence of over 100 vacancies⁷³ for judges in general courts due to the new legislative regulations, which mandate the enrollment of students by the school instead of the council, no students were admitted in either 2021 or 2022. Despite the significant number of vacancies, the school's capacity to train more than 30 students is constrained by limited resources. The apparent inadequacy of the school's capacity is especially concerning given the context of court congestion and case delays, which serve as levers of pressure on individual judges within the system.

The law does not regulate the rules and criteria for the selection of students. The issues related to the registration of candidates for auditions and the conduct of the competition are regulated by the school's charter.⁷⁴

During the reporting period, the board announced the admission of students to the school twice. The competition was conducted completely opaquely. GYLA requested information related to the competition - the minutes of the meeting of the independent council and the decisions made at the relevant meeting, the deadlines for submitting candidates' applications to the traineeship competition, the total number of people participating in the competition, how many candidates moved to the second stage, when the independent council interviewed the candidates and how long the interview lasted. However, the Higher School of Justice has not returned any answers to any of the issues, and therefore, in the conditions of complete closure and arbitrariness of information, the organization is deprived of the opportunity to evaluate the process of receiving students.

3.3. Selection and appointment of judges in the courts of first and second instance

The following are eligible to participate in the competition announced by the Council: (1) graduates of the Higher School of Justice, (2) former or current judges. Students of the school are appointed for a three-year probationary period, while current and former judges are appointed for life. The legislation envisages different regulations:

- When appointing persons with no judicial experience for a probationary period and for life after its completion;
- When appointing persons with judicial experience for life;

⁷² Levan Murusidze and Dimitri Gvritshvili were elected as judges of the High Council of Justice, Radio Tavisupleba, October 23, 2022, available at: <https://www.radiotavisupleba.ge/a/32097023.html>, updated: 13.04.2024.

⁷³ Judge vacancies in Georgia, March 26, 2024, Georgia Court Watch, available at: <https://courtwatch.ge/articles/number-of-judges>, updated: 14.04.2024.

⁷⁴ Paragraph 2 of Article 66¹⁴ of the Organic Law of Georgia on General Courts.

A simplified rule has been established for the appointment of former and current judges of the Constitutional Court and the Supreme Court.⁷⁵

There are 305 active judges in the first and second instance.⁷⁶ Among the judges, 274 are appointed for life, and 31 are appointed for a three-year term.⁷⁷

3.4. Appointment of judges by the High Council of Justice in accordance with the competition

The candidate is evaluated by the criteria of competence and integrity, through points.⁷⁸ Interviews are conducted with the candidates.⁷⁹ The candidacy of the person, in the case of which the absolute majority of the Council (8 members) considers that they “meet” or “fully meet” the criterion of integrity, and in the competence part, in total, he has obtained at least 70% of the points, is put to the vote.⁸⁰ Finally, the one who receives 2/3 of the votes of the members of the council becomes the judge.⁸¹ Following the voting, the Council is obligated to publish a reasoned decision. This justification must include a detailed description of the procedure, information on the appointed judge, the points they accumulated, and a conclusion regarding their integrity.

The description of the procedure for selecting judges in the justifications of the published conclusions is transparent, however, for example, in the assessment of good faith, the justification is drawn up in such a way that it is not clear what the board member relied on when evaluating the judge.⁸² In the reasoning of the judges appointed on February 7, 2023, the evaluation of good faith is identical and this sentence is expressed as “while evaluating by the criterion of good faith, all ten members of the evaluation council considered that it fully meets the mentioned criterion”.⁸³

It is important that the justification shows the specific circumstances that became the basis for a positive or negative assessment. The conclusion should provide the interested person with comprehensive information about the integrity of the judge.

Only 21 candidates were registered in the competition announced by the High Council of Justice on November 25, 2022.⁸⁴ Among the registered candidates, 10 were acting judges who requested to be transferred to another court.⁸⁵ 7 former judges and 4 Justice School students also participated in the competition.⁸⁶

⁷⁵ Ibid, Paragraph 3 of Article 35.

⁷⁶ As of December 31, 2023.

⁷⁷ Judge vacancies in Georgia, March 26, 2024, Georgian Court Watch, available at: <https://courtwatch.ge/articles/number-of-judges>, updated: 14.04.2024.

⁷⁸ Paragraph 1 of Article 35¹ of the Organic Law of Georgia on General Courts.

⁷⁹ Ibid, Paragraph 13.

⁸⁰ Ibid, Paragraph 12 of Article 35.

⁸¹ Paragraph 4¹ of Article 36 of the Organic Law of Georgia on General Courts.

⁸² Nozadze N. Monitoring Report of the Council of Justice # 10, Tbilisi, 2022, Georgian Young Lawyers' Association, available at: <https://shorturl.at/rx256>, updated: 13.04.2024.

⁸³ Decree #1/12 of February 7, 2023 of the Supreme Council of Justice of Georgia on the appointment of Z. Ramishvili as a judge of the Court of Appeal of Kutaisi for life, available at: <https://shorturl.at/OY034>, updated: 13.04.2024.

⁸⁴ Letter No. 55/4103-03-o dated January 30, 2023 of the Supreme Council of Justice of Georgia.

⁸⁵ Biographies of judicial candidates, December 20, 2022, website of the Council of Justice, available at: <https://bit.ly/46ppMnR>, updated: 23.06.2023.

⁸⁶ Ibid.

At the February 7 session of the High Council of Justice, voting was held to appoint judges to vacant positions.⁸⁷ As a result of the vote, 1 student of the School of Justice was appointed to the position of judge, and also 7 acting judges were transferred.⁸⁸

After the voting, the members of the Council: Badri Shonia, Temur Gogokhia and Nikoloz Marsagishvili addressed the Council to conduct a re-voting for the acting judge Ia Labadze.⁸⁹ Accordingly, for the first time in practice, a legal provision was implemented stipulating that in the event a candidate for a judgeship fails to secure appointment to a vacant position following the conclusion of voting, a minimum of three members of the Council possess the authority to petition the Council, with the candidate's consent, for the opportunity to rerun for any of the remaining vacant positions.⁹⁰ As a result of re-voting, Ia Labadze was appointed to Mtskheta District Court for life.⁹¹

There are more than a hundred vacant positions of judges in the court. Such a high number of vacancies in the system and the lack of people participating in the competition indicate that qualified personnel refrain from participating in the competitions, the reason of which may be distrust towards the Council of Justice.

A vote of 9 judicial members and one non-judicial member to appoint a judge to the Council of Justice. According to GYLA, it's crucial to appoint judges for both first and second instance courts, as well as judges and non-judges of the council, through a double 2/3 vote.⁹² This regulation, particularly if non-judge members, trusted by the public and selected through broad consensus, are appointed, has the potential to shift the current power distribution within the Council towards a more consensus-oriented approach.

3.5. Lifetime appointment of persons with judicial experience in a competitive manner

Here, the procedures are almost the same as in the competitive appointment of persons with no judicial experience, although the criterion of competence is added to the evaluation of professional qualities, including behavior in the courtroom.⁹³ In addition, 5 cases reviewed by them (except for the current or former member of the Constitutional or High Court) are evaluated, including, if any, a minimum of two cases wherein the summary or final decision was overturned by a higher court.⁹⁴ After successfully passing the competition stages, these candidates are appointed for life.⁹⁵ In 2023, no one was appointed as a judge by this procedure.

⁸⁷ Voting for the competition for judges was held in the Supreme Council of Justice, February 8, 2023. available at: <http://bit.ly/3Pz2uWq>, updated: 20.06.2023.

⁸⁸ Ibid.

⁸⁹ Decree # 1/18 of February 7, 2023 of the Supreme Council of Justice of Georgia on conducting re-voting within the selection competition for judicial candidates.

⁹⁰ Paragraph 13¹ of Article 35 of the Organic Law of Georgia on General Courts.

⁹¹ Decree 1/19 of February 07, 2023 of the Supreme Council of Justice of Georgia on appointing I. Labadze to the position of Mtskheta District Court judge for life.

⁹² According to this principle, the consent of 2/3 of the judge members and 2/3 of the non-judge members will be required to make a decision, see "A New Perspective on Judicial Reform," website of Coalition for an Independent and Transparent Justice, 21 June 2021.

⁹³ Organic Law of Georgia on General Courts, Paragraph 2 of Article 36³.

⁹⁴ Ibid, Paragraph 41 of Article 36.

⁹⁵ Ibid.

3.6. Appointment of judges for life after the probationary period

The probationary judge undergoes evaluation by a panel consisting of three judges and three non-judge members of the council over a period of three years.⁹⁶ Based on the analysis of the evaluation results of the first, second and third year, the board deliberates and makes a decision on the appointment of a person for life.⁹⁷ In 2022, due to the fact that the council was working with 10 members and only one non-judge member, the evaluation of the judges on the three-year probationary period and the discussion of their permanent appointment could not take place.⁹⁸ According to the law, 6 different assessors had to carry out the assessment.⁹⁹ At the meeting of the Council on June 2, 2023, the term of office of three judges appointed for a three-year term: Aleksandre Lomidze, Fati Furtskhvanidze and Lela Chincharauli was extended. GYLA requested information and copies of the decision, but the council did not respond.

At the November 1, 2023 session, the judge of the Bolnisi District Court, Nino Giorgadze, who had been serving a three-year probationary period since December 2020, did not even receive a vote on permanent appointment from the High Council of Justice. The Council refused to grant her a lifelong suspension. It should be emphasized that the Council has not used such an approach towards any judge so far. This decision raises concerns, especially considering the systemic issue of non-acceptance of dissent within the judiciary. There are doubts whether the refusal to appoint Nino Giorgadze for life is linked to her decisions and/or differing views.

GYLA has requested evaluation reports and relevant decisions regarding Nino Giorgadze from the Council of Justice, but has yet to receive them.

At the meeting of November 3, the Council, with the joint support of 15 members, appointed 26 judges on a three-year probationary period. This included the three judges whose evaluation in 2022 was postponed due to the absence of non-judge members, granting them permanent positions as judges.

3.7. Secondment of judges

As a result of the hastily adopted amendments on December 30, 2021, the legislation regulating the secondment of judges and their guarantees was completely changed: a) the Council can second a judge for two years without their consent, and this term can be extended for an additional two years;¹⁰⁰ b) It became possible to send the judge of the Court of Appeal to the Court of First Instance.¹⁰¹ In addition, the record was canceled, according to which the involuntary secondment of a judge to a particular court was done from the court closest to the territory.

The changed regulation of judges' business trips increases the power of the Council even more and makes individual judges more vulnerable.

As one of the prerequisites for business trips, the law states the lack of judges, which is a universally recognized challenge in the system. However, the Council of Justice fails to take

⁹⁶ Paragraph 44 of Article 36 of the Organic Law of Georgia on General Courts.

⁹⁷ Ibid, Paragraph 41 of Article 36.

⁹⁸ Minutes of the meeting of the Supreme Council of Justice of June 2, 2022.

⁹⁹ Paragraph 4⁴ of Article 36 of the Organic Law of Georgia on General Courts.

¹⁰⁰ Paragraph 2 of Article 37¹ of the Organic Law of Georgia on General Courts.

¹⁰¹ Ibid.

effective steps to address this problem. For instance, due to the absence of a judge in Tsageri District Court, Ketevan Thinadze, a judge from Kutaisi City Court, is frequently sent there.¹⁰²

The existing rule regarding judicial secondments paves the way for arbitrariness by the Council. Following the vote on February 8, Khashuri District Court Judge Zaza Ramishvili was transferred to the Kutaisi Court of Appeal. Subsequently, on February 14, the Council returned him to the Khashuri District Court for one month to prevent delays in cases nearing completion.

On June 13, according to the amendments to the law, the judge sent to another court will be given a monthly travel supplement to the official salary.¹⁰³ The amount of this supplement is determined by the High Council of Justice and its amount should not be less than 10% of the monthly official salary of the seconded judge.¹⁰⁴

At the December 22, 2023 session, Ekaterine Kululashvili, who was seconded from the Tbilisi Court of Appeal to the Batumi City Court and had been serving as the court's chairwoman since August 14, had her secondment extended by three months. Additionally, in line with the amendments to the organic law,¹⁰⁵ she was granted a supplement of GEL 1000. Batumi City Court Judge Roin Kakhidze's secondment to Ambrolauri District Court was extended for one year, with an additional allowance of GEL 500. He was also entrusted with the authority of the chairman of Ambrolauri District Court. Similarly, the secondment of Zugdidi District Court Judge Ekaterine Bebia to the district courts of Gali-Gulrifshi and Ochamchire Tkvarcheli was extended for one year, with an additional allowance of GEL 400. As announced at the session, these extensions were made with the consent of all three judges.

It is important to revert to the pre-December 2021 regulations governing the secondment of judges. These regulations included the possibility of secondment for up to one year without consent, the principle of secondment to a territorially close court, the necessity of consent for secondment from the Court of Appeal to the District (City) Court, and the obligation for the Council to provide a reasoned decision when making changes to judges' assignments.

The power to transfer judges to collegiums/chambers is also an important lever in the hands of the High Council of Justice. Which may be used by the Council to grant unjustified privileges, and in some cases to punish judges, as well as to remove an unwanted judge from a specific case. Against this background, the rotation of judges within the Tbilisi City Court was noticeable during the reporting period. Specifically, the Council transferred Judge Davit Mgeliashvili from the Criminal Law Board to the investigative and pre-trial session board of the same court, appointing Giorgi Gelashvili, who is on a three-year probationary period, in his place. Additionally, Lasha Kldiashvili, also on a three-year probationary period, was transferred from the investigative and pre-trial panel to the criminal justice panel.¹⁰⁶ On the same day, Judge Nino Tarashvili was transferred to fill the vacancy left by Judge Davit Mgeliashvili in the administrative affairs collegium.¹⁰⁷ The Council's decisions lacked substantiation regarding the necessity for the rotation of judges.

¹⁰² From January 25, 2023 to February 1, 2023, he was sent to the Tsageri District Court, by the decision of March 24, 2023, this term was extended until April 1.

¹⁰³ Paragraph 5 of Article 371 of the Organic Law of Georgia on General Courts.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Decree #1/30 of the Supreme Council of Justice of Georgia dated February 14, 2023, regarding the appointment of Judge L. Kldiashvili of the Investigative and Pre-Trial Session of the Tbilisi City Court to the Criminal Law Affairs Panel.

¹⁰⁷ Decree #1/31 of the Supreme Council of Justice of Georgia dated February 14, 2023, regarding the appointment of Judge N. Tarashvili to the investigative and pre-trial session panel of the administrative affairs panel of the Tbilisi City Court.

4. JUDGES HOLDING WITH ADMINISTRATIVE POSITIONS

4.1. The role and influence of chairpersons

The European Union's recommendation regards presiding officers of the court as integral subjects for integrity checks.¹⁰⁸ They belong to a privileged group within the system and, alongside the council, represent a primary force to be overseen by judges. Their influence is underscored by significant powers granted to them either by law or by the Council. To prevent obstruction of justice, they may issue orders to judges:

- (1) Consideration of the case in another chamber or investigative panel, or in a specialized composition;
- (2) Magistrate judgeship;
- (3) And for the magistrate judge - activities outside their area of activity.¹⁰⁹

According to the established practice, since 2006, the chairman of the Tbilisi City Court allocates judges narrow specializations, and in 2018, the Council granted this authority to the chairman of the Tbilisi Court of Appeal.¹¹⁰ This regulation poses significant risks of manipulation, particularly in appellate courts where cases are typically heard by a panel of three judges. When assigning cases, the electronic program only displays the reporting judge from the panel, potentially allowing for biased case distribution. The identity of the remaining two is chosen by the reporting judge. Considering that the collegium makes a decision by majority vote, giving the chairman the right to easily move judges in a narrow specialization increases the probability of interference in the process of formation of the composition of the collegium.

GYLA believes for the random selection of all three judges during the collegial consideration of a case through an electronic system. Additionally, in cases requiring specialized knowledge, GYLA suggests that selection should be determined by lot.

In addition to these significant powers, it's essential to highlight the opaque practices that have been established over the years in the selection of court guardians. The chairman of the court in both the first and second instances is appointed by the council.¹¹¹ Like the Council of Justice, the rotation of the same persons in managerial positions is also noticeable here. According to the established practice in recent years, when there is a vacancy for the chairman, the announcement is published on the internal network of the court. Nevertheless, the process is generally conducted in a non-competitive environment.¹¹²

GYLA believes, that judges of the respective courts should have the authority to select their own chairpersons. This rule would enhance the autonomy of individual judges and provide a crucial mechanism for exerting influence to counterbalance the authority of the Council.

¹⁰⁸ COMMISSION STAFF WORKING DOCUMENT Georgia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, page 20-21, <https://shorturl.at/fqtFO>, available at: 13.04.2024.

¹⁰⁹ Paragraph 5 of Article 30 of the Organic Law of Georgia on General Courts.

¹¹⁰ Nozadze N., #11 Monitoring Report of the Council of Justice, Tbilisi 2023, Association of Young Lawyers of Georgia, p. 20, available at: <https://shorturl.at/osFIW>, updated: 13.04.2024.

¹¹¹ Articles 23 and 32 of the Organic Law of Georgia on General Courts.

¹¹² Nozadze N. Monitoring report of the Supreme Council of Justice No. 11, 2023, <https://shorturl.at/eksvQ>, updated, 13.04.2024.

5. DISCIPLINARY PROCEEDINGS

5.1. Legal loopholes - selection of an independent inspector

The independent inspector is elected by the High Council of Justice on the basis of a competition, for a term of 5 years, by the majority of the full composition.¹¹³ The rule established by the Council regarding the selection of the inspector is flawed and lacks definition on several important issues. This includes the absence of clear principles governing the competition (such as objectivity, publicity, and prohibition of discrimination), as well as undefined procedures related to selection criteria, the purpose and regulation of interviews, issues to be clarified during interviews, evaluation of candidates, and the justification of evaluations. Since the inception of the Independent Inspector Institute, the civil sector has been vocal about the lack of adequate guarantees for its independence.¹¹⁴ According to the law, disciplinary proceedings against the judge, preliminary inspection and examination of the case are initiated by the inspector.¹¹⁵ Accordingly, it is the judge's responsibility to review complaints filed against judge members of the Council. The requirement that only judicial members' votes are necessary to elect an independent inspector mitigates the risk of electing a candidate deemed unacceptable to influential groups within the Council. Furthermore, the involvement of non-judge members in the decision-making process appears merely formal. Additionally, the absence of proper legal guarantees surrounding the selection process of the independent inspector and the candidates chosen has consistently raised concerns.¹¹⁶ In addition to this, the constant delay of the disciplinary proceedings and the disregard of the deadlines set for the proceedings,¹¹⁷ which ultimately contributed to the transformation of the disciplinary proceedings into a lever to influence the judges.

At the meeting of June 16, 2023, independent inspector Zura Aznaurashvili addressed the council with a personal statement and requested his early dismissal.¹¹⁸ Zurab Aznaurashvili was chosen as an independent inspector by the council in 2020. His term of office was due to expire in 2025. The Council accepted his application without question and shortly afterward, he was appointed to the position of Deputy Chairman of the General Courts Department. The actual reasons for his departure from the post remained undisclosed to the general public. Following the termination of Zura Aznaurashvili's authority, a competition was announced to fill the vacancy.¹¹⁹ 32 people registered for the independent inspector selection competition, 9 candidates went to the interview stage. 5 people appeared for the interview.¹²⁰ Among them were two former non-judge members of the Council of Justice: Shota Kadagidze and Zaza Kharebava.¹²¹ The Council of Justice appointed former non-judge member Shota Kadagidze to the position of independent inspector by the unanimous decision of the 11 members present at the meeting on July 27, 2023.¹²² The selection process of

¹¹³ Organic Law of Georgia on General Courts, Article 51¹ Paragraph 2.

¹¹⁴ Statement of the coalition on the shortcomings related to the disciplinary proceedings of judges, March 6, 2020. available at: https://coalition.ge/index.php?article_id=241&clang=0, updated: 27.03.2024.

¹¹⁵ Organic Law of Georgia on General Courts, Article 75⁶.

¹¹⁶ The Coalition criticizes the progress of the independent inspector selection process, January 20, 2020, Coalition for Independent and Transparent Justice, available at: http://coalition.ge/index.php?article_id=238&clang=0, updated: 13.04.2024.

¹¹⁷ Nozadze N. Monitoring report of the Supreme Council of Justice No. 11.

¹¹⁸ Monitoring of the session of the Supreme Council of Justice on June 16.

¹¹⁹ Ibid.

¹²⁰ Monitoring of the session of the Supreme Council of Justice on July 27.

¹²¹ Ibid.

¹²² Shota Kadagidze was appointed to the position of independent inspector on July 28, 2023, available at: <https://dis.court.ge/damoukidebeli-inspeqtoris-thanamdebobaze-shotha-qadagidze-dainishna/>, updated: 27.03.2024.

the independent inspector was conducted in a non-transparent manner this time as well. The council conducted interviews with the candidates in closed mode. The names of the candidates, nor their biographies, were not published on the website of the Council.

A member appointed as an independent inspector by law must have a high professional reputation.¹²³ With the election of Shota Kadagidze, the influential group continued to appoint loyal individuals to key positions. This practice undermines the independence of the system once again.

5.2. Findings of the independent inspector

Disciplinary proceedings against the judge are initiated and preliminary inspection and examination of the case is ensured by the inspector,¹²⁴ who presents the conclusions and opinions to the council.¹²⁵ On December 30, 2021, with the changes adopted in haste, the two-month term of disciplinary proceedings was halved, instead of 2 months, the preliminary investigation term was set to 1 month, which may last for 2 weeks.¹²⁶ During the reporting period, as in the previous year, the Council did not consider any of the complaints received in 2023.

None of the judges used the right to recuse the independent inspector, just as the independent inspector did not use the right to recuse himself.

5.3. Decisions of the High Council of Justice

After the inspector submits a conclusion and opinion on the case, the council makes a reasoned decision (under the “reasonable suspicion” standard¹²⁷) on the initiation of disciplinary proceedings and the confiscation of an explanation to the judge. However, in case of refusal to initiate the prosecution, he is not required to justify the decision.¹²⁸ **According to GYLA, it is important for the Council to justify its decision to refuse to initiate prosecution.**

A council member who disagrees with the council’s decision to terminate proceedings may express their dissent in writing. However, in 2022, as in previous years, none of the members exercised this right.¹²⁹ In its monitoring reports of the Council, GYLA supported the adoption of interim decisions in disciplinary proceedings by a simple majority, while advocating that final decisions on imposing disciplinary responsibility or terminating proceedings require a 2/3 majority.¹³⁰ in the reporting period, at all stages of disciplinary proceedings, this quorum has been changed, and the council makes decisions by an absolute majority of members instead of 2/3.¹³¹ **It is important that the final decision on disciplinary responsibility is taken by 2/3 and only the consent of the judicial members is not enough.**

¹²³ Organic Law of Georgia on General Courts, Paragraph 3 of Article 75¹.

¹²⁴ Organic Law of Georgia on General Courts, Article 75⁶.

¹²⁵ Ibid.

¹²⁶ Ibid, Paragraph 1 of Article 75⁷.

¹²⁷ Paragraph 1 of Article 75⁸ of the Organic Law of Georgia on General Courts.

¹²⁸ Ibid.

¹²⁹ Supreme Council of Justice of Georgia, Independent Inspector Service, letter No. 16/4170-03-o of January 17, 2023.

¹³⁰ Nozadze N. Monitoring Report of the Supreme Council of Justice No. 9, Association of Young Lawyers of Georgia, Tbilisi, 2021, p. 30, website of the Georgian Young Lawyers’ Association, available at: <https://cutt.ly/QA5FwMf>, updated: 23.01.2023.

¹³¹ Paragraph 1 of Article 75⁸ of the Organic Law of Georgia on General Courts.

With the changes initiated in September,¹³² the ruling party reinstates the requirement for 2/3 support for decisions on imposing responsibility, which aligns with the spirit of the GYLA recommendation.

During the reporting period, 230 complaints were submitted to the inspector's office.¹³³

The majority of complaints received by the office of the independent inspector are primarily related to the violation of procedural deadlines without justified reasons. Specifically, 84.4% of complaints pertain to judges of the first instance, with 50.25% originating from civil cases. Notably, during the reporting period, the Justice Council conducted only one disciplinary session.¹³⁴ At the disciplinary session, the High Council of Justice of Georgia reviewed 68 reports by an independent inspector and made 74 decisions on termination of disciplinary proceedings and 10 decisions on initiating disciplinary proceedings against the judge.

The statistics show that despite the number of complaints, the disciplinary mechanism is not effective.¹³⁵ In disciplinary proceedings, it's crucial to address complaints within the established period. This not only meets societal expectations but also serves the interests of the judge involved. Timely completion of cases is essential as prolonged disciplinary proceedings can become an effective tool for exerting pressure on individual judges. **Therefore, it is important to observe the deadlines for considering disciplinary proceedings.**

5.4. Transparency of disciplinary proceedings

The process of disciplinary proceedings is confidential.¹³⁶ Taking this into account, timely publication of statistics (number of complaints, types of misconduct, etc.) by the inspectorate is of even greater importance.

No one uses the positive legislative change that gave the judge the right to require the Council (in addition to deliberations and decision-making procedures), as well as the Disciplinary Board and Chamber sessions, at which his case was discussed, to be made public. From 2018 (from the implementation of the change) until now, no one has taken advantage of this opportunity. During the reporting period, the judge was not asked to make the session public either.¹³⁷ Nevertheless, the presence of this entry in the law should be evaluated positively, since it may prove to be an important leverage against those judges who, due to different opinions, may be the objects of punishment by the Council.

¹³² The Parliament of Georgia supported this package of changes in the third reading at the plenary session of May 29, 2024.

¹³³ Independent inspector service, reports available at: <https://dis.court.ge/category/statistics/>, updated: 25.05.2024.

¹³⁴ Ibid.

¹³⁵ Nozadze N. Monitoring report of the Supreme Council of Justice No. 11.

¹³⁶ Article 75⁴ of the Organic Law of Georgia on General Courts.

¹³⁷ Independent inspector service, reports available at: <https://dis.court.ge/category/statistics/>, updated: 25.05.2024.

6. THE PROBLEM OF TRANSPARENCY IN THE COUNCIL

6.1. Publishing the meeting date and agenda in advance

Transparency is one of the determining factors of public trust in the court system. Consequently, in conditions of low trust in the court, effective public control over its activities becomes especially important. However, the practice established by the Council significantly complicates the work of monitoring organizations and has a negative impact on the level of accountability and transparency of the Council's activities.

The practice established by the Council is evident in its failure to adhere to deadlines for providing information about its meetings, as well as poorly organized meetings. For the past two years, the Council has not announced any meeting three days in advance as required by law.

Postponement of sessions is also problematic. The Council held 30 sessions during the reporting period.¹³⁸ Information about the meeting is consistently published on the Council's website the day before, thus regularly violating the legislative requirement for publishing the date of the meeting and the agenda three working days in advance.¹³⁹ The postponement of the council meetings was also problematic in previous years, however, in the reporting period (especially in the first half) it took on an intense character. Postponement of meetings and session hours has become systematic.¹⁴⁰ This was confirmed by the meeting of July 10, which was scheduled at 5:00 p.m., and the representatives of monitoring organizations waited for more than 3 hours in the council building for the opening of the meeting. After waiting for three hours and receiving no information about the postponement or holding of the meeting, the monitoring organizations left the Council building. It was only the next day that it became known that the session had taken place after 21:00.

It should be emphasized that the information about the postponement is not posted on the website of the council and it is automatically replaced with a new date.

SAIA and other monitoring organizations are trying to obtain information about the postponement of the Council meeting by communicating with the staff of the Council. Often, they also do not have information about the session or the postponement of the session. Consequently, the monitors, in many cases, have to wait for hours in the council building.¹⁴¹ **It is important for the Council to conscientiously carry out its assigned functions, to eliminate the vicious practice of postponing meetings, and to publish information about the postponement of the meeting in a reasonable time before.**

Additionally, the general nature of the agenda of the session published publicly is problematic. The Council has changed the positive approach it had established, which meant publishing the agenda items with small explanatory texts.¹⁴² (See Figure 1) As a result, formulating agenda items in a general manner, such as "organizational issues" or "current is-

¹³⁸ Letter No. 57/4171-03-o dated January 30, 2023 of the Supreme Council of Justice of Georgia.

¹³⁹ Paragraph 4 of Article 49 of the Organic Law of Georgia on General Courts.

¹⁴⁰ The council meeting scheduled for May 17 was postponed to May 18, but did not take place and was postponed again. The meeting scheduled for May 19 at 2 o'clock was postponed to 5 p.m. Finally, the session was not held. Also, the session scheduled for May 30 was postponed to May 31, then June 1.

¹⁴¹ For example, the session of November 30, which was scheduled for 14:30, started at 19:30, 5 hours late.

¹⁴² From June 2018 to June 2020, the Supreme Council of Justice indicated brief information on the discussed issue in the published agenda.

sues,” remains problematic today.¹⁴³ In many cases, it is impossible to guess the content of the issue under discussion.ague records of initiated issues and multiple adjourned meetings raise reasonable suspicion that the board prefers to discuss important matters behind closed doors. For example, at the meeting on November 14, there were two organizational issues on the agenda. The first was to approve a 30% bonus in addition to the monthly bonus for judges of the common courts in November, which was unanimously supported by 14 council members¹⁴⁴. And the second issue involved a planned training for judges of the General Court, aimed at establishing common practices.¹⁴⁵

Such practice significantly complicates the work of monitoring organizations and has a negative impact on the level of accountability and transparency of the Council’s activities. **GYLA believes that the Council, as a collegial body, should feel more accountable to the public and publish information about the meeting and the issues discussed by it within the deadlines set by the law.**

GYLA has repeatedly appealed to the Council to ensure that its meetings are broadcast live, considering the public’s interest.¹⁴⁶ This would allow for real-time monitoring of the issues discussed without the need for physical attendance. However, this recommendation has remained unfulfilled for years. **It is important that the meetings of the Council, as the main body of administration of the court system, are broadcasted in live mode, which will give any person the opportunity to follow the proceedings of the sessions.**

Figure 1. The table shows that the issues are included in the agenda with a general formulation

SESSION OF THE HIGH COUNCIL OF JUSTICE OF GEORGIA

Agenda

17:00, July 21, 2023

1. The issue related to the High School of Justice

Speaker: Nikoloz Marsagishvili, Secretary of the High Council of Justice of Georgia

2. On making changes in some normative acts

Speaker: Nikoloz Marsagishvili, Secretary of the High Council of Justice of Georgia

3. Draft decree - “On the approval of the structure of Tbilisi and Kutaisi appellate courts, district (civil) court departments, staff list, and official positions of residents” on making changes to the decree 1/3 of January 16, 2023 of the High Council of Justice of Georgia.

Speaker: Nikoloz Marsagishvili, Secretary of the High Council of Justice of Georgia

4. Organizational issues

Speaker: Nikoloz Marsagishvili, Secretary of the High Council of Justice of Georgia

¹⁴³ Minutes of the meeting of the Council of November 30, 2022.

¹⁴⁴ Chairman of the Board Nino Kadagidze was not present at the meeting.

¹⁴⁵ see November 14, 2023 session of the Supreme Council of Justice.

¹⁴⁶ Letter of the Georgian Young Lawyers’ Association, dated April 8, 2020 No. G-04/51-20.

6.2. Preparation of sessions

Regular preparation for Council meetings remains problematic. Mismanagement is evident in the constant postponement of issues. For instance, every meeting agenda includes items such as “On determining the composition of chambers/colleges in some district (city) appellate courts” and “Organizational issues.” These two items are consistently on the agenda but are frequently postponed. When issues are adjourned, the Secretary of the Council does not provide justification for their removal from the agenda.

According to the regulations, the board secretary prepares the meetings and ensures the timely delivery of materials to the members, although there is no mention of who sets and approves the agenda.¹⁴⁷ Also, the secretary sends documents to the council as intended,¹⁴⁸ but the deadline for distributing the materials related to the discussed issues is not defined. The problem is that the documents submitted to the council are not automatically sent to the members. This practice prevents members from demanding the inclusion of specific issues in the agenda at their discretion. In previous years, there were instances when non-judge members objected to the discussion of certain matters because information about the issues was uploaded to the intranet on the day of the hearing or on non-working days. Consequently, they could not thoroughly review the documentation. During the reporting period, no such protests were raised, and there is almost no debate at the sessions. The speaker presents the issue, and the council members unanimously support it.

To overcome these challenges, the Council’s regulations need to include procedures for transferring copies of any documents submitted to the Council to its members. Additionally, there should be clear procedures for drawing up the agenda and identifying the person responsible for it. Members of the Council should have the right to request the removal or addition of specific issues from the agenda. While the absence of such procedures is not the main challenge for the board, it is crucial that the legislation ensures accountability within the collegial body.

6.3. Management of sessions by the High Council of Justice

The meeting of the council is chaired by either the chairman or the secretary.¹⁴⁹ However, several procedures related to the conduct of the meeting remain disorganized. To express their opinion, a member of the Council must signal the session’s chairman, who then determines the order of the speakers. The regulations do not specify how much time each member of the Council is allotted to express their position, how many times they can speak on the same issue, or how many minutes they are given to make a statement. However, observations of the sessions reveal that under the current composition, discussions on the issues are rare, and members often refrain from expressing their opinions. The absence of discussion is not conducive to effective and business-like deliberation. **It is necessary to organize in detail the procedure of members of the Council expressing an opinion on the issue.**

The regulations also do not adequately address the possibility of inviting unauthorized persons to the sessions or the ability of attendees to speak during the meetings.

According to a recent opinion of the Consultative Council of European Judges, the legiti-

¹⁴⁷ Regulation of the Supreme Council of Justice of Georgia, Sub-paragraph “d” of Paragraph 2 of Article 26.

¹⁴⁸ Ibid, Sub-paragraph “g”.

¹⁴⁹ Paragraph 16 of Article 47 of the Organic Law of Georgia on General Courts.

macy of councils is grounded in legislation, but it must also be supported by public trust.¹⁵⁰ And trust must be gained through transparency, accountability and working in the public interest.¹⁵¹ All judicial councils are obliged to work transparently, provide reasons for their decisions and procedures, and thereby maintain accountability.¹⁵²

6.4. Publication of the minutes and decisions of the sessions

Another component of transparency is the publication of the minutes and decisions of the Council meetings. According to the regulations of the council, the protocol should reflect: the identity of the initiator of the meeting, the date of the meeting, the start time and duration, the names of the participants and the chairman of the session, the content of the speeches of the speaker and the participants in the debate, the arguments expressed, the decision made, and also who voted for what.¹⁵³

Since 2018, a special audio system has been used to produce minutes. However, audio minutes cannot fully capture the reality of the meeting hall. The published minutes are often of poor quality, making it unclear what issues were discussed by the council members. Additionally, sometimes the minutes do not reflect all the issues that were actually discussed. Alarming, during the reporting period, the High Council of Justice has not published the minutes of any meeting on its website, despite its obligation to do so proactively.¹⁵⁴ Moreover, despite a written appeal, the Council did not provide the organization with the relevant documents. According to the law, the Council must immediately provide the audio recording of the session to any interested person upon request.¹⁵⁵

The law provides for a list of decisions that must be posted on the website.¹⁵⁶ In accordance with the regulations, these documents must be uploaded to the official website no later than 5 days after receipt, and consolidated versions must be uploaded no later than 14 days after any changes are made.¹⁵⁷ Timely publication of Council decisions on the website remains a problem. According to the Council's regulations, decisions must be published on the website no later than 5 days after their adoption. However, these deadlines are frequently violated. For example, after June 2, 2023, the Council has not updated the decisions on its website. (See. figure 2)

¹⁵⁰ CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE), Strasbourg, 5 November 2021, CCJE (2021)11 IV. Conclusions and recommendations, para. 4

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, para. 7.

¹⁵³ Paragraph 3 of Article 20 of the Regulations of the Supreme Council of Justice of Georgia.

¹⁵⁴ Organic Law on General Courts, Article 49, Paragraph 4.

¹⁵⁵ *Ibid.*

¹⁵⁶ Paragraph 4 of Article 49 of the Organic Law of Georgia on General Courts.

¹⁵⁷ Article 18 of the Regulations of the Supreme Council of Justice of Georgia.

Figure 2. The table shows that the decisions have not been published on the website after June 2.

Number of records 4494 (4494 found) Public Information

Category: Decree

Date: June 2, 2023

Number: 1/62

On the dismissal of Sh. Getsadze as a judge of the Tbilisi Court of Appeal

Board meeting: June 2, 2023 / 14:00

Category: Decree

Electronic registration

Date: May 24, 2023

Number: 1/53

On the dismissal of L. Orkodashvili as a judge of the Tbilisi Court of Appeal

Board meeting: May 24, 2023 / 17:00

Board meetings

Category: Decree

Date: May 24, 2023

It is critical for the Council to ensure the high-quality recording of meeting minutes and to publish decisions and minutes on the website within the established timeframe.

It should be emphasized that in the last year, the situation regarding information transparency has significantly deteriorated. The High Council of Justice has transformed into a completely closed agency.

GYLA addressed the High School of Justice on July 11, 2023, and sent 8 letters to the High Council of Justice on August 9, 2023, and in January 2024 to obtain public information. To date, the organization has not received a response to the letters sent to these agencies. Most of the requested information should have been proactively published on the websites of the Higher School of Justice and the Higher Council of Justice.

By withholding public information, the activity of monitoring organizations is hindered. Moreover, the non-disclosure of public information constitutes a violation of the right to access public information, and the public consequently loses the opportunity to obtain information on important court-related issues. On December 14, 2023, GYLA filed lawsuits against these agencies in the Tbilisi City Court due to their failure to disclose information, although no proceedings were registered during the reporting period.

RECOMMENDATIONS

When studying the report, it becomes clear to an objective observer the challenges that the system is facing and the harmful practices that the Council of Justice is carrying out with the support of the ruling party.

The European Commission for the Protection of Democracy through Law (hereinafter - the Venice Commission) discussed the temporary mechanism for assessing the integrity of Council members in its latest report.¹⁵⁸ The European Commission went even further and recommended mandatory integrity checks for the Council, members of the Supreme Court, and individuals in leading positions within the system.

Judging by the actions taken by the ruling party to fulfill the recommendation of the European Commission, it appears that there is no genuine desire for fundamental reforms of the system. This is concerning, especially considering that opening negotiations after receiving the status of a candidate necessitates meticulous implementation of the given recommendations.¹⁵⁹ The government ignores the presence of an influential group within the system and views the integrity checking mechanism as an encroachment on the country's sovereignty.

- 1. Against this background, it is essential to assess the challenges within the system. Legal and practical issues, informal influences within the system, and corruption risks need to be thoroughly evaluated. Based on the challenges identified through the relevant analysis, a justice system strategy and action plan should be developed with the broad involvement of relevant stakeholders.**
- 2. When undertaking the reform, primary attention should be directed towards the Council of Justice as the controlling body of the system. It is crucial to engage in discussions regarding the decentralization of power within the Council of Justice. This includes determining which functions will remain within the Council and which can be redistributed. This is essential to prevent the concentration of power in the hands of a single body, which could potentially lead to threats of corporatism in the future.**
- 3. A double 2/3 of judge and non-judge members should be required to make an important decision in the Council of Justice.¹⁶⁰**
- 4. Taking into account the context of the country, important positions in the system are constantly held by the same persons, it is imperative to introduce limitations of the chairpersons of the court, collegium/chamber from simultaneously holding the position of a member of the council, as well as electing the same judge as a member of the council twice in a row.¹⁶¹ Also, it is important to review the broad powers of the**

¹⁵⁸ Venice Commission, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, CDL-AD(2023)006-e, 11 March 2023, available at: <https://cutt.ly/x4xO9NR>, updated: 27.11.2023.

¹⁵⁹ COMMISSION STAFF WORKING DOCUMENT Georgia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, <https://shorturl.at/fqtFO>, available at: 13.04.2024.

¹⁶⁰ The Venice Commission advocates changing the decision-making process in the Council, which involves more involvement of non-judicial members. see Venice Commission, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, CDL-AD (2023)006-e, 11 March 2023, para. 17.

¹⁶¹ Justice Reform, Vision of the Coalition for an Independent and Transparent Justice, October 9, 2023 available at: https://coalition.ge/index.php?article_id=297&clang=0, updated: 27.03.2024.

presiding officers of the courts and to elect the presiding officers of the courts by the judges of the respective courts.

5. Effective steps are necessary to reform the system of disciplinary responsibility for judges. Currently, this mechanism has become punitive in nature and is entirely controlled by the Council. Given the shortage of judges in the system and the backlog of cases, all judges are more or less susceptible to disciplinary action. This leverage constitutes an important pillar of the Council's power. Thus, it is essential to strengthen the institutional and functional powers of the independent inspector. For instance, measures could include requiring a 2/3 majority for the appointment of an inspector, providing justifications for the Council's decisions to refuse to initiate disciplinary proceedings.
6. Additionally, the vicious rule and practice of transfer-promotion by the Council should be reformed, as it provides the Council with ample opportunity to promote judges based on loyalty rather than merit. Moreover, changes that grant the Council complete discretion over judges' business trips need to be addressed. It is crucial to introduce stronger guarantees of protection for individual judges in legislation. For instance, re-instating the regulations from the December 2021 changes to the rules on business trips could provide more solid protection for judges.
7. To attract qualified personnel and ensure fair selection processes, it's crucial to review the entire selection and appointment system. This includes reassessing the significant role of the High Council of Justice in staffing the independent council of the Higher School of Justice, ensuring integrity and qualification are paramount. Despite the Council announcing numerous vacancies, the low number of contestants and their lack of interest highlight an issue. Therefore, limiting the Council of Justice's involvement in both the qualification exams for judges and the recruitment processes of the Higher School of Justice is essential.
8. Moreover, it is crucial to uphold the principles of transparency and accountability to ensure that the public has timely access to information about events in the judicial system. However, the current situation in this regard is alarming. The Council of Justice must fulfill its assigned duties, including issuing public information within the time limits established by law and ensuring the timely publication of session information and agendas in advance, as mandated by law.