



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

SUPREME COURT PLENUM MONITORING REPORT



Georgian Young Lawyers' Association

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1. RESEARCH METHODOLOGY

1.1. Research Subject and Objectives

As a result of the Third Wave of reforms, a number of changes have been introduced to the judicial system, including to the Supreme Court. Judges are appointed for lifetime, and number of the seats in the court has increased to 28.¹ At the end of 2019, the court of cassation was significantly renewed; the selection procedures of Supreme Court justices became the subject of criticism in 2018-2019. The civil society,² international organizations,³ and the Public Defender of Georgia⁴ negatively assessed the process. The qualifications and integrity of the selected candidates were doubted. Taking into account this background, the performance of the Plenum of the Supreme Court deserves special attention.

The Plenum makes decisions on important issues such as the election of judges of the Constitutional Court, the election of the compositions and chairpersons of the Supreme Court chambers, the submission of recommendations on international agreements, etc. Although the law does not specify the status of the body, a systematic analysis of its powers shows that the Plenum's mandate goes beyond the scope of the high-instance court and fully embraces issues related to the common court system.

A wide range of powers is regulated by a single article of the Organic Law "On Common Courts," there are no legal acts or by-laws that would more explicitly organize and define the role of the Plenum or its activities. The case law and doctrinal sources, which are scarce in this respect, provide little room for analysis. With this background, the aim of the research is to scrutinize the norms regulating the activities of the Plenum⁵ and monitor their implementation in the reporting period, in order to identify main shortcomings as well as offer relevant recommendations.

1.2. Research methodology, tools and sources

The paper is based on doctrinal, non-doctrinal, and comparative methods of research. Pursuant to the doctrinal method, the existing normative framework, both legal acts and by-laws, including the secondary sources related to such acts were analyzed. As for the non-doctrinal method, the report focuses on challenges related to the activities of the Plenum (problem research) and proposes recommendations to address the shortcomings (reform research). A part of the report is devoted to data obtained through comparative-legal methodology.

¹ Organic Law of Georgia on Common Courts, Article 14, Paragraph 3.

² For more details, see: "Assessment of the hearings of Supreme Court judicial candidates at the Parliament Legal Committee," the website of the Coalition for an Independent and Transparent Judiciary, available at: <http://bit.ly/2YguEKT>, updated on: 10.03.2021.

³ For more details, see: Second Report on the Nomination and Appointment of Judges of the Supreme Court of Georgia, Office for Democratic Institutions and Human Rights, the OSCE website, available at: <https://bit.ly/3tej8wj>, updated on: 11.03.2021.

⁴ For more details, see: The Public Defender demands the rule of selection of Supreme Court judicial candidates to be declared unconstitutional, the Public Defender's website, available at: <http://bit.ly/38EnnJz>, updated on: 14.03.2021.

⁵ The analysis of the legislation is essentially provided in the following study: Kukava K., Talakhadze M., Nozadze N., Bachmaier L., Analysis of the Supreme Court's institutional and legal framework, IDFI, GYLA, Tbilisi, 2020, the GYLA website, available at: <https://bit.ly/2AHeSPZ>, updated on: 14.03.2021.

GYLA has utilized the following instruments and sources for the purposes of the research:

- Legal acts;
- Public information as well as website data;
- Interviews with former and incumbent judges of the Supreme Court, as well as with independent experts;⁶
- Information obtained from the monitoring of the Plenum sessions.

1.3. International Standards and Best Practices

For analyzing the powers of the Plenum, GYLA conducted the study on international experience. That is why a significant part of the document is devoted to the analysis of the practices of other states.

The countries selected for the research are those whose courts of final instance have bodies the functions of whom are similar to the ones of the Plenum. The paper mainly refers to the experience of EU member states but also reviews the examples of countries that apply similar legal system, including the institutional arrangement of the Supreme Court, and has been elaborated concurrently to Georgia, with the same scenario.

EU Member States

Bulgaria is a unitary state.⁷ Constitutional Justice is independent of the common court system and the Constitutional Court performs this function.⁸ The three-level system of common courts is provided for civil and criminal cases,⁹ and two instances are envisaged for administrative cases.¹⁰ Both the Supreme Court and the Supreme Administrative Court have a Plenum.¹¹ The Plenum's powers,¹² composition,¹³ decision-making rules¹⁴ are identical. The main duties of the Plenum are related to administrative matters, which are shared by the Plenum with the President of the Court.

Estonia is a unitary state.¹⁵ The Supreme Court heads the three-level court system.¹⁶ One of its chambers exercises constitutional control.¹⁷ The powers of the Plenum are executed by

⁶ Acting Judges of the Supreme Court: Nino Bakakuri , Ekaterine Gasitashvili; Former judges of the Supreme Court: Teimuraz Todria, Nunu Kvantaliani; Independent experts: Sopho Verdzeuli , Kakha Tsikarishvili.

⁷ Encyclopedia Britannica, national political systems, unitary nation-states, Britannica website, available at: <http://bit.ly/3qUisL7>, updated on: 14.03.2021.

⁸ Constitution of the republic of Bulgaria, Article 147.

⁹ Judiciary System Act, Article 10, cl.2.

¹⁰ Ibid. cl.3.

¹¹ Judiciary System Act, Article 111; Judiciary System Act, Article 119.

¹² Ibid.

¹³ Judiciary System Act, Article 111; Judiciary System Act, Article 121.

¹⁴ Ibid.

¹⁵ European committee of the Regions, Division of Powers, Estonia, the CoR website, available at: <http://bit.ly/2PTk8aC>, updated on: 14.03.2021.

¹⁶ Judicial systems in Member States – Estonia, Organisation of justice – judicial systems, Hierarchy of courts, the EU website, available at: <http://bit.ly/3vnUM5e>, updated on: 14.03.2021.

¹⁷ Courts Act of Estonia, Article 29.

the Supreme Court *en benk*.¹⁸ The functions can be divided into two categories: 1. Judicial - reviewing judgments, matters related to the qualification and disciplinary liability of judges, etc.; 2. Administrative or policy management functions - presenting judicial candidates to the President of the Republic, etc.¹⁹

The form of territorial arrangement in the **Czech Republic** is unitary.²⁰ The Constitutional Court ensures the strict observance of the Constitution.²¹ The system of common courts comprises three instances in the field of civil, commercial and criminal law, and two instances in administrative law; therefore, there are two Supreme Courts - the Supreme Court and the Supreme Administrative Court.²² Both Supreme Courts have the Plenum in their compositions.²³ The functions are identical, for example, defining the procedural regulations of the court²⁴ and etc.²⁵

Latvia is a unitary state in terms of the territorial arrangement.²⁶ The country has the Constitutional Court.²⁷ The system of common courts is unified, with three instances, of which the final is the Supreme Court.²⁸ The Court is convened at plenary sessions²⁹ to make important decisions, such as appointing candidates to the Central Election Commission, appointing a judge to the Constitutional Court, and electing a disciplinary tribunal.³⁰

Non-European Union countries

Ukraine is a unitary state.³¹ The Constitutional Court stands as a separate institution.³² There are three instances in total, headed by the Supreme Court.³³ Its Plenum is a collective body composed of all judges of the Supreme Court.³⁴ The powers of the Plenum are quite broad and not limited to the administrative roles only.³⁵

The form of territorial arrangement of **Azerbaijan** is unitary.³⁶ The Constitutional and common courts are independent of each other in the judicial system.³⁷ The country has a

¹⁸ Supreme Court of Estonia, p. 13, the Court's website, available at: <https://bit.ly/2Oudur8>, updated on: 12.03.2021.

¹⁹ Ibid.

²⁰ Constitution of the Czech Republic, Article 1.

²¹ Ibid, Article 83.

²² Judicial systems in Member States - Czech Republic, Court hierarchy, the EU website, available at: <http://bit.ly/3bMwjyy>, updated on: 14.03.2021.

²³ Code of Administrative Justice, Article 20;- The Supreme Court of the Czech Republic, Nejvyšší soud, the website of the Supreme Court, available at: <http://bit.ly/3lhCOfl>, updated on: 14.03.2021.

²⁴ Code of Administrative Justice, Article 21; The Supreme Court of the Czech Republic, Nejvyšší soud.

²⁵ The main part of the text discusses the Plenum of the Supreme Administrative Court.

²⁶ Administrative territorial structure and reforms in Latvia: p.2, the website of the Supreme Court, available at: <https://bit.ly/3eBW8mJ>, updated on: 14.03.2021.

²⁷ The Constitution of the Republic of Latvia, section 85.

²⁸ Ibid. section 82.

²⁹ About the judiciary, Article 49.

³⁰ Ibid.

³¹ European Committee of the Regions, Division of Powers, Ukraine, the CoR website, available at: <http://bit.ly/2NicYMn>, updated on: 14.03.2021.

³² The Constitution of Ukraine, Article 124.

³³ Law of Ukraine on the Judiciary and Status of Judges, Article 17, cl.2.

³⁴ Ibid. Article 46.

³⁵ Ibid.

³⁶ Azerbaijan-unitary country, Main features of territorial organization, available at: <https://bit.ly/3ctSCs7>, updated on: 14.03.2021.

³⁷ Helsinki Foundation for Human Rights „The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders,” III. 5. Organization of the judiciary, 2016, available at: <https://bit.ly/3vmblyn>, updated on: 14.03.2021.

three-instance system of common courts supervised by the Supreme Court.³⁸ It consists of the Plenum that distributes judges to the chambers, reviews the President's motions concerning the removal of judges, and exercises other important powers.³⁹

In the course of the research, GYLA also examined documents prepared by international organizations, the Venice Commission, and the Consultative Council of European Judges.

2. KEY FINDINGS

The following findings have been identified based on the research:

- The presence of the chairpersons of Courts of Appeal in the Plenum is not supported by rational arguments;
- A timeframe within which a session of the Plenum shall be scheduled after the request thereof by judges is not specified;
- The law does not specify how many days in advance members of the Plenum shall be notified upon the convocation of a session as well as when shall they be provided with the documentation necessary for decision-making. The established practice is inconsistent;
- It is not specified when the information about candidates the Plenum appoints to office must be published;
- The Plenum has no obligation to publish information about its sittings within a reasonable timeframe. This is determined by the chairperson in each individual case;
- Plenary sessions are usually open, although the Plenum has a wide discretion to close the session;
- The minutes of plenary sessions are not published on the website, in some cases, the information is issued in the form of a press release, which cannot provide a complete picture;
- There is no obligation to make an audio recording of the sessions and it depends only on the goodwill of the Plenum;
- All decisions are made with the same quorum. Differences between their importance do not affect the majority required to make a decision;
- The Supreme Court does not have the Rules of Procedure, which contributes to leaving unregulated the procedural issues significant for the performance of the Plenum;
- Only the President of the Supreme Court has the right to introduce a candidate for membership of the Constitutional Court or the Grand Chamber to the Plenum;
- Although the Plenum does not have procedural powers, it can make submissions to the Constitutional Court;
- The power of the Plenum to submit a recommendation to the President and the Government in relation to international agreements goes beyond the Plenum's institutional role;

³⁸ Ibid.

³⁹ Structure and Powers of the Plenum of the Supreme Court, the website of the Supreme Court, available at: <http://bit.ly/30lCm0Y>, updated on: 14.03.2021.

- The Plenum determines the possibility of issuing bonuses to judges, which is contrary to international standards and threatens the independence of the judiciary;
- The functions of the Plenum and the High Council of Justice in terms of preparing reports on the state of judiciary system – informing the public - are not differentiated.

3. COMPOSITION OF THE PLENUM

The Plenum consists of the President of the Supreme Court, their deputies, members of the Supreme Court, and the Chairpersons of the Courts of Appeals.⁴⁰ It shall be noted that the Chairperson of the Tbilisi Court of Appeals did not attend any of the sittings during the reporting period.⁴¹

Questions regarding the relevance of the Plenum’s composition have been repeatedly raised not only at the local level.⁴² The Venice Commission does not see the necessity for the representatives of the appellate courts to be members of the Plenum and in past, welcomed the draft law under which these position would have been left out of the Plenum’s composition.⁴³ It shall be noted that no similar precedent was found in any of the analyzed states. The same collegial bodies of the Supreme Courts of Bulgaria,⁴⁴ Estonia,⁴⁵ the Czech Republic,⁴⁶ Latvia,⁴⁷ Ukraine,⁴⁸ and Azerbaijan⁴⁹ consist of only judges of the Supreme Courts.

There is no reasoning behind why the Plenum shall operate with the above-mentioned composition. The collegial body has no authority that may relate specifically to the appellate courts. The Plenum exercises several powers⁵⁰ that cover the entire system of common courts. If the membership of the Plenum by the chairpersons of the Courts of Appeal is based on these competencies, then the chairpersons of the first instance courts shall be represented in the body as well.⁵¹ These individuals are involved in decision-making on all matters that are not exclusively associated with the judicial system, which once again indicates that the membership of the persons to the Plenum does not stem from the powers

⁴⁰ Law on Common Courts, Article 18(1).

⁴¹ The sittings of the Supreme Court Plenum held on December 16 and December 19, 2019, were not attended by Mikheil Chinchaladze and Dimitri Gvritishvili. The session of January 16, 2020, by Dimitri Gvritishvili, Mikheil Chinchaladze, Lali Papiashvili. The sitting of April 3, 2020, by Besarion Alavidze, Nino Bakakuri, Ekaterine Gasitashvili, Zurab Dzlierishvili, Paata Katamadze and Mikheil Chinchaladze; the sitting of May 8, 2020, by Mzia Todua and Mikheil Chinchaladze; the sitting of May 29 by Besarion Alavidze, Giorgi Shavliashvili, Mikheil Chinchaladze; the sitting of April 4 by Vladimer Kakabadze, Mikheil Chinchaladze; the sitting of October 22 by Mikheil Chinchaladze, Besarion Alavidze and Lali Papiashvili.

⁴² Kukava K., Talakhadze M., Nozadze N., Bachmaier L., the cited paper, p. 61.

⁴³ European Commission For Democracy Through Law (VENICE COMMISSION), Joint opinion of the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law on amendments to the organic law on general courts of Georgia, Strasbourg, 14 October 2014 CDL-AD(2014)031, Opinion N°773/2014, §84, the Venice Commission website, available at: <https://bit.ly/3gPH0RC>, updated on: 03.06. 2020.

⁴⁴ Judiciary System Act of Bulgaria, Article 111.

⁴⁵ Courts Act of Estonia, Article 30.

⁴⁶ Supreme Court of the Czech Republic, available at: <http://bit.ly/3lhCOfl>, updated on: 14.03.2021.

⁴⁷ Law of the Republic of Latvia on Judicial Power, Section 49.

⁴⁸ Law of Ukraine on the Judiciary and Status of Judges, Article 46.

⁴⁹ Law of the Azerbaijan Republic on Courts and Judges, Article 79.

⁵⁰ These powers include appointing members of the Constitutional Court and publishing reports on the state of justice.

⁵¹ All interviewed officials shared the view.

of the body. Furthermore, only judges of the cassation court have the legitimacy to make decisions on issues related to the Supreme Court.

The membership, the right to deliberative voting, and the right of the Plenum to invite any individual to the plenary session shall be differentiated. The right to participate in deliberative voting is an established practice in Bulgaria,⁵² Estonia,⁵³ Latvia,⁵⁴ and the Czech Republic.⁵⁵ The legislations in the countries define a circle of persons who can attend the sessions in the above manner. A similar provision can be added to the law, yet there is no need to expand the composition of the Plenum, given the current range of powers. Moreover, this can complicate the decision-making process and render sessions less productive.

The Law on Common Courts shall be amended and only judges of the Supreme Court shall be conferred the right to be members of the Plenum.

4. SUMMONING A PLENARY SESSION

With regard to the procedure for convening a plenary session, three issues shall be distinguished: a person entitled to summon a plenum, the term of office, and the frequency of their appointment.

In Georgia, the Plenum can be convened by the Chairperson of the Supreme Court, on their own initiative or at the request of one-fifth of the members.⁵⁶ Summoning a plenary session on the initiative of the chairperson is the established practice in Bulgaria,⁵⁷ Estonia,⁵⁸ Latvia,⁵⁹ the Czech Republic,⁶⁰ Ukraine,⁶¹ and Azerbaijan.⁶² In addition, the chairperson in the Czech Republic is obliged to convene a Plenum within one month after the request is made by two-thirds of the members.⁶³ The same approach is favored in Ukraine, where the interest of one-fourth of the judges is sufficient to fix the date of a session.⁶⁴

Although the chairperson is required to summon a sitting upon the request of a relevant number of members, the law does not provide for a mandatory time range. This allows the chairperson to delay the discussion of any undesirable matters for an indefinite period. **In order to avoid manipulations, it is necessary to determine a specific timeframe and thus restrict the chairperson's discretion.**

The Plenum shall be summoned in Georgia at least once a year.⁶⁵ For comparison, the Plenum is obliged to convene once in three months in Azerbaijan⁶⁶ and Ukraine.⁶⁷ During the

⁵² Judiciary System Act, Article 113, cl. 1.

⁵³ Courts Act of Estonia, Article 30, cl.5.

⁵⁴ Plenary Session Manual, Article 4.

⁵⁵ Courts Act of Estonia, Article 30, cl.5.

⁵⁶ Law on Common Courts, Article 18(5).

⁵⁷ Judiciary System Act, Article 114, cl. 1.

⁵⁸ Courts Act, Article 30, cl 3.

⁵⁹ Plenary Session Manual, Article 10.

⁶⁰ Code of Administrative Justice, Article 20, cl.3.

⁶¹ Law of Ukraine on the Judiciary and Status of Judges, Article 46, cl.5.

⁶² Law of the Azerbaijan Republic on Courts and Judges, Article 83.

⁶³ Ibid.

⁶⁴ Law of Ukraine on the Judiciary and Status of Judges, Article 46, cl.5.

⁶⁵ Ibid.

⁶⁶ Law of the Azerbaijan Republic on Courts and Judge, Article 80.

⁶⁷ Law of Ukraine on the Judiciary and Status of Judges, Article 46, cl.5.

reporting period, nine plenary sessions were held in Georgia, which, according to GYLA, is in line with the existing requirements, so there is no need to introduce any additional regulations on the frequency of sessions, given that the members have the right to summon the Plenum.

5. DECISION-MAKING PROCESS

The quorum for the Plenum is two-thirds of the members. A decision is considered adopted if it is supported by two-thirds of the members present.⁶⁸ The provision does not contradict international practice. In Bulgaria, half of the members of the Plenum are sufficient for a quorum (a majority of those present is required to make decisions),⁶⁹ in Estonia - 11 members⁷⁰ (decisions are made by a simple majority⁷¹), in the Czech Republic - two-thirds (making decisions requires a majority of those present, and if a decision concerns the determination of the number of court units, an absolute majority is required⁷²), in Latvia - a majority of those present⁷³ (if a decision concerns the dismissal of the President of the Supreme Court or the Prosecutor General – two-thirds⁷⁴), in Azerbaijan - two-thirds (a decision requires a majority of those present and if a case concerns a certain criminal case, then - two-thirds⁷⁵).

6. INFORMING JUDGES ABOUT A PLENARY SESSION AND ITS AGENDA

The law does not specify how many days in advance the members of the Plenum shall be notified about fixing the date of a plenary session and when they shall be provided with information on the issues to be reviewed. The established practice is inconsistent.⁷⁶ The judges note that *“information on a plenary session and issues on the agenda are usually communicated to the members of the Plenum as soon as possible, in accordance with the law.”*⁷⁷ However, the practice reveals significant problems. The shortcomings were vividly demonstrated during the meeting of April 3, 2020, dedicated to the appointment of a member to the Constitutional Court. Several judges had no information about the candidate: “I am a member of the Plenum, apparently because I am a judge of the Supreme Court, yet I did not know who the candidate was. The plenary session was scheduled for April 3. I was informed on the evening of April 2, as is often the case, that the next day a session of the Plenum would be held. What is on the agenda? - I enquired. The matter concerned the nomination of a member of the Constitutional Court. All right, the next question was, naturally, who was the candidate, whether we had any biographical data about them, because previously when I had participated in a session, it was the case. [...] I did not have the information. [...] and I was not alone since some of my colleagues had no information either. Therefore, we deemed it unreasonable to participate in the plenary session without at least knowing who

⁶⁸ The Organic Law of Georgia on Common Courts, Article 18(4).

⁶⁹ Judiciary System Act, Article 111, cl. 4.

⁷⁰ Courts Act, Article 30, cl 4.

⁷¹ Ibid.

⁷² Code of Administrative Justice, Article 20, cl.2.

⁷³ Plenary Session Manual, Article 31.

⁷⁴ Ibid.

⁷⁵ Law of the Azerbaijan Republic on Courts and Judge, Article 80.

⁷⁶ According to letter (PN - 1969 -20) of the Supreme Court of December 21, 2020, the Supreme Court does not maintain information on how many days prior the judges are notified upon the convocation of a plenary session.

⁷⁷ Ibid.

the candidate was,”⁷⁸ noted one of the judges during a public discussion. This particular case has well indicated the necessity for a change. Appropriate legislative safeguards enabling a judge to make an informed decision shall be provided.

According to Latvian law, the agenda of the Plenum shall be introduced to the judges 15 days in advance (although in emergency cases, it is possible to convene a hearing immediately),⁷⁹ in Ukraine the timeframe is 5 working days,⁸⁰ in Azerbaijan - 10.⁸¹ Draft decisions in Latvia are available at least 7 days in advance.⁸²

Ten days is an optimal timeframe within which the members shall be notified of the convocation of a session in advance. This requirement shall be reflected in the law. Within the same time range, the agenda of the sitting shall be announced and any relevant documents/information that may be required to make a decision shall be provided to the members of the Plenum.

7. PUBLICITY OF THE PLENUM’S ACTIVITIES

7.1. Publicity of sessions

The activities of the Plenum of the Supreme Court are “usually public.”⁸³ This means that the closing of the session is a deviation from the rule and the expediency of any such closure shall be justified and substantiated. In the conditions where public trust towards the judiciary is low, the principle of publicity acquires a special value.⁸⁴ It is essential to strike the right balance between transparency and the principles of confidentiality in the justice system.⁸⁵ The purpose of the latter is to protect either the interests of specific individuals or the state in the absence of which transparency shall not be rejected.

The **urgency of the problem was particularly apparent** on December 12, 2019, when the Parliament of Georgia elected a judge of the Supreme Court for lifetime.⁸⁶ On December 16, the first session of the renewed composition of the Plenum was held.⁸⁷ Considering the controversies accompanying the process of composing the court, there was a particularly high interest in the activities of the renewed Plenum and its first session. According to the information published on the official website, the Plenum planned to discuss organizational issues⁸⁸ but specific topics were brought up only during the meeting.

⁷⁸ A statement by Ekaterine Gasitashvili, Judge of the Supreme Court, during the discussion “Composition of the Constitutional Court”, 1:37:40-1:40:50, the GYLA Facebook page, available at: <https://bit.ly/2ZHQWGE>, updated on: 09.12.2020.

⁷⁹ Plenary Session Manual, Articles 12 and 13.

⁸⁰ Law of Ukraine on the Judiciary and Status of Judges, Article 46, cl.6.

⁸¹ Law of the Azerbaijan Republic on Courts and Judge, Article 80.

⁸² Plenary Session Manual, Articles 12 and 13.

⁸³ The Organic Law of Georgia on Common Courts, Article 18(7).

⁸⁴ Human Rights Education and Monitoring Center (EMC), CRRC-Georgia, Institute for Development of Freedom of Information (IDFI), Knowledge and Attitudes of the Population of Georgia towards Judiciary: Results of the Public Opinion Survey, 2018, the EMC website, available at: <http://bit.ly/2UhKwK2>, updated on: 21.03.2020.

⁸⁵ Dodson, Scott, Accountability and Transparency in U.S. Courts (December 2, 2018) in Accountability and Transparency in Civil Justice 273 (Daniel Mitidiero ed. Thompson Reuters 2019). The SSRN website, available at: <http://bit.ly/3bL4YN3>, updated on: 15.03.2021.

⁸⁶ Parliament Elects Judges of the Supreme Court of Georgia, December 12, 2019, the website of the Parliament of Georgia, Available at: <https://bit.ly/2YeL5Ht>, updated on: 19.06.2020.

⁸⁷ The plenary session held in the Supreme Court, May 16, 2019, the Supreme Court’s website, available at: <https://bit.ly/30ZmKHu>, Updated on: 19.06.2020.

⁸⁸ The plenary session held in the Supreme Court, December 13, 2019, the Supreme Court’s website, available at: <https://bit.ly/30Tswum>, updated on: 19.06.2020.

As per the minutes of the session,⁸⁹ the agenda of the first sitting included the following three issues:

- Distribution of judges to the chambers;
- Appointment of the chairpersons of the Criminal and Administrative Case Chambers;
- The electronic distribution of cases to new justices.⁹⁰

Despite the fact that only organizational matters were planned to be reviewed, the plenary session was closed.⁹¹ In delivering this decision during the oral discussion, the majority relied on two arguments, one of which is specified in the minutes of the session, and the other became known through the Public Defender.

1. Judge Shalva Tadumadze “requested to put to a vote the issue of the Public Defender’s presence at the plenary session explaining that since the Plenum was to consider organizational aspects, it would be reasonable to close the session as the issues on the agenda were of no interest to the Public Defender.”⁹²

2. The representative of the Public Defender noted that the judge named the anxiety expressed by the newly elected judges as the excuse for the suspension of the session.⁹³

Despite the unfounded arguments, the Plenum decided to close the session with the support of 13 members,⁹⁴ six judges went against the closure⁹⁵ and three abstained.⁹⁶

Most of the interviewees are in favor of the openness of plenary sessions. Moreover, some of them cannot think of a power enabling the Plenum to close the sittings. Others believe that although such issues are not much visible today, they may be found in the recommendations concerning international agreements⁹⁷ therefore a complete restriction of closing the sessions may have the counter-effect and push the processes beyond the format of the Plenum.⁹⁸ **GYLA believes that it is possible to close a plenary session but the list of the circumstances of when the Plenum can resort to this measure shall be explicitly defined.**

7.2. Proactive Promulgation of Decisions, Publication of Information, Audio Recordings

As a rule, the information about conduction of plenary sessions and the issues on the agenda were published at least on a previous day. During the reporting period, in one out of nine cases, the agenda was not known in advance.⁹⁹ **The agenda of plenary sessions shall be**

⁸⁹ Minutes of the Plenary Session of the Supreme Court of Georgia # 7, December 16, 2019.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Information disseminated by the Deputy Public Defender, Giorgi Burjanadze. Available at: <http://bit.ly/3vpOG61>, updated on: 16.12.2019.

⁹⁴ The decision was supported by the following judges: Mzia Todua, Vasil Roinishvili, Merab Gabinashvili, Miranda Eremadze, Mamuka Vasadze, Tamar Zambakhidze, Shalva Tadumadze, Vladimer Kakabadze, Levan Mikaberidze, Giorgi Mikautadze, Giorgi Shavliashvili, Ketevan Tsintsadze, Aleksandre Tsuladze.

⁹⁵ The decision was not supported by the following judges: Besarion Alavidze, Nino Bakakuri, Ekaterine Gasitashvili, Paata Katamadze, Zurab Dzliearashvili, Lali Papiashvili.

⁹⁶ Judges Maia Vachadze, Nino Kadagidze, Nugzar Skhirtladze abstained during the voting.

⁹⁷ The interviews with Nino Baqaquri and Ekaterine Gasitashvili.

⁹⁸ An interview with Nino Baqaquri.

⁹⁹ The session of the Plenum of the Supreme Court of December 16, 2019.

posted on the website in advance as soon as the session is scheduled so that the public is aware of what issues the collegial body plans to discuss. The fact that the information about the plenary sessions was always known at least the day before shall be positively assessed; however, it is necessary to regulate this issue by the rules of procedure and the **term of notice shall increase to ten days.**

Proactive promulgation of decisions is another important issue. Contrary to the practice of previous years,¹⁰⁰ publishing information about some of the decisions of the Plenum on the court's website has been observed recently, yet this is not always the case. In the reporting period, in six out of nine cases, the decisions was not published.¹⁰¹ Where the resolutions were available, the form of the document remained as challenge. The current legislation does not envisage the requirement to publish decisions delivered by the Plenum in a form of protocol.¹⁰² Publishing the decisions as a press release (as is the case today) does not allow the parties interested to receive necessary information in a timely manner without requesting a protocol.

The law does not stipulate the obligation to make audio recordings of plenary sessions. The need to do so was identified during the first session of the renewed Plenum. The representative of the Public Defender speaks about one of the arguments due to which the first session was closed, however, this argument was not reflected in the protocol. It is necessary to amend the law so it requires making an audio recording of the sessions.

In order to increase the transparency of the work of the Plenum, the obligation to publish the minutes and make audio recordings of the sessions shall be arranged on the normative level.

7.3. Publicity of Information about Judiciary Candidates for the Constitutional Court

The Plenum makes decisions on several appointments.¹⁰³ The Supreme Court appoints three out of nine members of the Constitutional Court.¹⁰⁴ The process of selecting the candidates shall be fully transparent.¹⁰⁵ This is of absolute necessity insofar as each citizen must have faith that a competent judiciary will hear their case. The transparent and open processes of appointment help to protect judges from undesired external influences. In addition, the transparency facilitates to the selection of candidates who meet the qualification standards.¹⁰⁶

In 2020, two members were appointed to the Constitutional Court of Georgia within the quota of the Supreme Court.¹⁰⁷ One of the judges, Khvicha Kikalishvili was appointed on April 3, 2020. Despite the appeals,¹⁰⁸ he was assigned to the office during the state of emergency

¹⁰⁰ Ibid.

¹⁰¹ The sessions of the Supreme Court Plenum of December 16, 2019, January 16, 2020, May 8th, September 4th, October 24th and December 18th.

¹⁰² Kukava K., Talakhadze M., Nozadze N., Bachmaier L., the cited paper, p. 68.

¹⁰³ The power to determine the composition of the chambers and to elect the chairpersons is not included.

¹⁰⁴ The Constitution of Georgia, Article 60, Paragraph 1.

¹⁰⁵ Opinion of the Consultative Council of European Judges N10 (2007), §50, the website of the High Council of Justice, available at: <https://bit.ly/3ea0EFN>, updated on: 19.05.2020.

¹⁰⁶ Enhancing Judicial Transparency and Promoting Public Trust, International Development Law Organization, available at: <https://bit.ly/2NrnJbL>, updated on: 18.06.2020.

¹⁰⁷ Khvicha Kikalashvili was appointed to office on April 3, 2020, and Vasil Roinishvili on May 29, 2020.

¹⁰⁸ GYLA Calls on the Supreme Court Plenum to Suspend Procedures for the Appointment of a Justice of the Constitutional Court until the State of Emergency Ends, March 30, 2020, the GYLA website, available at: <https://bit.ly/2YqRgHv>, updated on: 12.06.2020.

(which reduced the possibility of stakeholder involvement in the process) and all members of the Plenum themselves did not have information about the identity of the candidate.¹⁰⁹ The process was assessed negatively.¹¹⁰ Yet, the President of the Supreme Court did not take into consideration the lesson learned and appointed another judge through the same process on May 29, 2020.¹¹¹

As to the appointment of Khvicha Kikilashvili, the openness of the sitting was problematic. Although GYLA monitors were allowed to be present at the plenary session, it was still risky to attend the sitting due to pandemics. That is why GYLA requested a live broadcast of the session. A few minutes prior to the commencement of the Plenum, it became known that the monitor installed in the building would be used to observe the sitting, however, the image and sound were of such poor quality that monitoring was virtually impossible. Consequently, it can be said that the sitting failed to meet even the formal criteria of transparency.

Information about candidates shall be published ten days prior to the session and a separate provision shall be introduced to the legislation.

As mentioned above, the Plenum appoints several persons, in addition to the members of the Constitutional Court, for example, the editor of the official journal of the Supreme Court,¹¹² academic secretary, etc. With respect to these positions, the similar procedural amendments shall be introduced in terms of publicity.¹¹³

8. REGULATIONS OF THE SUPREME COURT

The Plenum does not have any rules of procedure that would govern its activities. There are a number of procedural issues that are not regulated. For example, the standard of openness that the Plenum members shall adhere to depends on the composition of the court, the views of the chairperson. All of the interviewed officials believe it is necessary to have the regulations. It is impossible for a collegial body to operate without regulations. As the judges noted, the necessity for the development of the rules of procedure has long been debated in the Supreme Court.¹¹⁴ There is good practice in this respect in the Constitutional Court. The rules for the organization of the Constitutional Court and constitutional proceedings, which are not governed at the level of organic law and/or the Constitution, are determined by the rules of procedure.¹¹⁵

In Lithuania, the activities of the Plenum are managed as per the rules for a plenary session.¹¹⁶ The regulations approved by the Plenum cover the issues such as convocation and operation of a plenary session, the procedure of the session, the decision-making procedure, the document management rules, etc. The document describes in detail when the

¹⁰⁹ A statement by Ekaterine Gasitashvili, Judge of the Supreme Court, during the discussion “The Composition of the Constitutional Court”, 1:37:40-1: 40:50.

¹¹⁰ GYLA negatively assesses the appointment process of a member of the Constitutional Court by the Plenum of the Supreme Court, April 3, 2020, the GYLA website, available at: <https://bit.ly/2xT9Kap>, updated on: 27.05.2020.

¹¹¹ GYLA negatively assesses the appointment process of a member of the Constitutional Court by the Plenum of the Supreme Court, May 29, 2020, the GYLA website, available at: <https://bit.ly/3cQr5Pv>, updated on: 12.06.2020.

¹¹² Law of Georgia on Common Courts, Article 18(2)(h).

¹¹³ Ibid. Subparagraph “i”.

¹¹⁴ Interviews with Ekaterine Gasitashvili and Nino Baqaquri.

¹¹⁵ The Organic Law of Georgia on the Constitutional Court, Article 3(1).

¹¹⁶ Plenary Session Manual, the website of the Supreme Court of Latvia, available at: <https://bit.ly/3g5ivhE>, updated on: 16.08.2020.

members of the Plenum shall be informed about a session and when relevant documentation shall be provided to them.

The Supreme Court shall adopt the rules of procedure and ensure more procedural clarity.

9. POWERS AND RESPONSIBILITIES OF THE PLENUM

9.1. The Authority to Determine the Composition/Chairpersons of Structural Units

The structural problems of the Supreme Court (the number of judges in the court, where and under what principle they are distributed) are easily noticeable, nevertheless, the issue is barely studied.¹¹⁷ Naturally, the influence of the structure on the quality of the court's performance must not be overestimated, nor would it be wise to ignore its "contribution" either.¹¹⁸

The Supreme Court consists of the following units: Plenum, Grand Chamber, Chamber of Civil Cases, Chamber of Administrative Cases, Chamber of Criminal Cases, Chamber of Disciplinary Cases, and Chamber of Qualifications.¹¹⁹ Determining the compositions of these structural units also falls under the mandate of the Plenum of the Supreme Court.

The Plenum elects the members of the Grand Chamber based on the recommendation of the President of the Supreme Court.¹²⁰ The Grand Chamber consists of at least twelve judges; the maximum number is not set.¹²¹ This gives the chairperson the possibility to compose the Grand Chamber only with their like-minded associates leaving those with different views out of the unit without even introducing them to the Plenum. The fact that the President of the Supreme Court introduced all the judges to the Plenum for approval shall be appreciated, and at this stage, the Grand Chamber is composed of only those judges to whom cases are distributed electronically.¹²² However, this shall not be dependent only on the goodwill of the chairperson. **To improve the quality of self-governance, all members of the Plenum shall have the right under law to nominate a candidate.**

The Plenum elects the members and chairpersons of the chambers of the Supreme Court based on the recommendations of members of the Plenum.¹²³ The same approach with regard to structural units and chairpersons is maintained in Bulgaria,¹²⁴ Estonia,¹²⁵ Ukraine,¹²⁶ and Azerbaijan.¹²⁷ The powers of the Latvian Plenum are limited to the election of department heads.¹²⁸ The Plenum of the Supreme Administrative Court in the Czech Republic determines the number of divisions of the court based on the recommendation of the chairperson.¹²⁹

¹¹⁷ Alarie B., Green A., Iacobucci E., "Is Bigger Always Better? On Optimal Panel Size, with Evidence from the Supreme Court of Canada", the SSRN Electronic Journal (2011), p. 1, available at: <https://bit.ly/2BAeRO1>, updated on: 06.06.2020.

¹¹⁸ Ibid.

¹¹⁹ The Organic Law on Common Courts, Article 15(2).

¹²⁰ Ibid. Article 17(2).

¹²¹ Ibid.

¹²² Resolution №27 of the Plenum of the Supreme Court of May 8, 2020.

¹²³ The Organic Law on Common Courts, Article 18(2)(b).

¹²⁴ Judiciary System Act, Article 111, cl. 2 (1).

¹²⁵ Courts Act, Article 28, cl. 4.

¹²⁶ Law of Ukraine on the Judiciary and Status of Judges, Article 46 (2).

¹²⁷ Law of the Azerbaijan Republic on Courts and Judges, Article 80.

¹²⁸ Law of the Republic of Latvia On Judicial Power, Section 48, cl.2.

¹²⁹ Code of Administrative Justice, Article 15, cl.2.

During the reporting period, at the first session of the renewed composition, the Plenum appointed the newly elected justices to the Chambers of Civil, Administrative and Criminal Cases.¹³⁰ The same session elected chairpersons of the chambers as well. Judge Ketevan Tsintsadze nominated Nino Kadagidze as the Chairperson of the Chamber of Administrative Cases, and Merab Gabinashvili nominated Shalva Tadumadze for the office of the Chairperson of the Chamber of Criminal Cases. No other candidates were nominated, so the Plenum did not discuss this matter any further.

The members of the Qualification and Disciplinary Chambers were elected at the sitting of December 19. Mamuka Vasadze was appointed in the capacity of a member of the Qualification Chamber based on the recommendation of Shalva Tadumadze, and Miranda Eremadze, nominated by Levan Mikaberidze, became a member of the Disciplinary Chamber.

At the sitting of May 8, Levan Mikaberidze was appointed to the Chamber of Qualification as per the recommendation of Vladimer Kakabadze. At the session of September 4, Alexander Tsuladze was elected as a member of the Qualification Chamber based on the recommendation of Ketevan Tsintsadze, and Zurab Dzierishvili was appointed as the chairperson of the same chamber based on the recommendation of Nino Kadagidze. Merab Gabinashvili was appointed to the Disciplinary Chamber with the recommendation of Levan Mikaberidze, who became the chairperson of the same Chamber.

9.2. Policy-oriented powers

The Supreme Court, in addition to purely judicial powers, also exercises policy-oriented competencies. Such powers, which are not directly related to the administration of justice but affect the performance of the judiciary, contribute to the formation of the policy of justice. This is what distinguishes it from lower courts and, to some extent, increases its role in the common court system.

Taking into account the law, the right of the Plenum to appoint three members of the Constitutional Court,¹³¹ a submission of a matter to the Constitutional Court,¹³² and a recommendation to a relevant person on the conclusion of international agreements can be considered as the exercise of such powers.¹³³

Appointment of Justices to the Constitutional Court

According to the classification of the Venice Commission, the Constitutional Court of Georgia belongs to hybrid models.¹³⁴ This means that all three branches of governance are involved in the process of its composition. The Supreme Court appoints three out of nine

¹³⁰ The Chamber of Criminal Cases was composed by the following judges: Merab Gabinashvili, Mamuka Vasadze, Shalva Tadumadze, Lali Papiashvili. The Chamber of Civil Cases was composed by the following judges: Miranda Eremadze, Tamar Zambakhidze, Vladimer Kakabadze, Levan Mikaberidze, Giorgi Mikautadze. The Chamber of Administrative Cases was composed by the following judges: Maia Vachadze, Nugzar Skhirtladze, Nino Kadagidze, Ketevan Tsintsadze, Alexander Tsuladze.

¹³¹ The Organic Law on Common Courts, Article 18(2)(c).

¹³² Ibid. subparagraph (d).

¹³³ Ibid. subparagraph (f).

¹³⁴ The Composition of Constitutional Courts, Reports and Studies on Constitutional Justice, Strasbourg, April 14, 2020, European Commission for Democracy through Law (Venice Commission), p.5, the Venice Commission website, available at: <https://bit.ly/2AwOKJI>, updated on: 23.03.2021.

members of the court.¹³⁵ The decision is made by the Plenum.¹³⁶ The procedure contains a number of issues that, if addressed properly, can significantly improve the legal reality and increase the quality of legitimacy.

For example, the chairperson of the Supreme Court nominates a candidate,¹³⁷ yet there is no need to confer the president this exclusive authority.¹³⁸ The right to nominate a candidate shall be granted to three judges jointly. The appointment of a judge of the Constitutional Court requires the support of two-thirds of those present at the plenary session, and the Plenum shall be authorized if two-thirds of the members are present at the session.¹³⁹

Among comparable countries, the Plenum of the Supreme Court of Latvia is the body most involved in the appointment of a member of the Constitutional Court. The Saeima (Latvian legislature) appoints the members of the Constitutional Court.¹⁴⁰ However, two out of seven candidates are presented to the Saeima by the Plenum of the Supreme Court.¹⁴¹ The Plenum shall select a candidate among the judges of the common courts.¹⁴² The sitting shall be authorized if it is attended by two-thirds of the full composition of the Plenum,¹⁴³ and the decision-making requires a majority of those present.¹⁴⁴

In Latvia, the low quorum envisaged for decision-making of the Plenum may be justified by the fact that the support of another branch, the Saeima, is required to appoint a supported candidate as a judge. In Georgia, where the appointment is in the hands of one institution - the Plenum, **highly legitimate and consensus-based appointment decisions shall be made not by two-thirds of the present members but by two-thirds of the members on the list.**

Authority to File a Submission to the Constitutional Court

The law allows common courts to file a submission to the Constitutional Court based on the deliberation of a specific case.¹⁴⁵ However, the Plenum can also exercise this power,¹⁴⁶ which has not been used since 2014.¹⁴⁷ The Constitutional Court “on the basis of a submission made by a common court, shall review the constitutionality of a normative act to be applied by the common court when hearing a particular case.”¹⁴⁸ According to the provision, **only a court deliberating a specific case has the right to use the mechanism of submission, while the Plenum does not have the power to administer justice, nor can it hear specific cases. Therefore, this power of the Plenum is unconstitutional and shall be abolished.**

In Azerbaijan,¹⁴⁹ the Plenum has the right to refer to the Constitutional Court, while it also holds, as already mentioned, the power to administer justice; therefore, it is permissible

¹³⁵ The Constitution of Georgia, Article 60, Paragraph 1.

¹³⁶ Organic Law on Common Courts, Article 18(2)(c).

¹³⁷ Organic Law on the Constitutional Court of Georgia, Article 7, Paragraph 2.

¹³⁸ Kukava K., Talakhadze M., Nozadze N., Bachmaier L., the cited paper, p. 48.

¹³⁹ Organic Law on Common Courts, Article 18(4).

¹⁴⁰ The Saeima (Parliament) consists of 100 members, The Constitution of the Republic of Latvia, Article 5.

¹⁴¹ Ibid.

¹⁴² Law of the Republic of Latvia on Judicial Power, Section 49.

¹⁴³ Plenary Session Manual, Article 5.

¹⁴⁴ Ibid. Article 31.

¹⁴⁵ The Law on the Constitutional Court, Article 19 (2).

¹⁴⁶ Organic Law on Common Courts, Article 18(4)(d).

¹⁴⁷ Kukava K., Talakhadze M., Nozadze N., Bachmaier L., the cited paper, p. 62.

¹⁴⁸ The Constitution of Georgia, Article 60(4)(c).

¹⁴⁹ The Constitution of the Republic of Azerbaijan, Article 130, cl.3.

and justified.¹⁵⁰ In Bulgaria, the Plenum does not carry out legal activities, so it does not have this power.¹⁵¹ Similar to Georgia, although the Plenum of the Supreme Court of Ukraine does not administer justice in the classical sense, the Plenum is entitled to file a submission to the Constitutional Court.¹⁵²

Recommendations on the Conclusion of International Agreements on Matters within the Powers of the Court

One of the rights of the Plenum is to address to the Government or the President of the country for the conclusion of international agreements on matters within the competence of the Supreme Court.¹⁵³ The Plenum has not used this authority since 2012.¹⁵⁴ However, information on the exercise of the power previously cannot be found either.¹⁵⁵ The question is whether the Plenum should have this authority when there is the High Council of Justice, which consists of representatives of all instances. Opinions among the interviewees on the matter vary. According to one belief, this provision, as well as the possibility of filing a submission, is the norm that has failed to catch up with the reforms, and the power shall be vested in the Council, a constitutional body. Such communications shall occur through the Council.¹⁵⁶ Nevertheless, according to another position, the right shall be preserved for the Plenum on procedural issues¹⁵⁷ or on issues of recognition and enforcement of decisions delivered by foreign states.¹⁵⁸ **GYLA supports the first idea and believes that the Plenum shall be deprived of the above right.**

9.3. The Supreme Court, as a Doctrinal Court – The Role of the Plenum

One of the main purposes of the court of cassation is to clarify the norms of law and establish uniform case law. It is because of this role that the Supreme Court must pay significant attention not only to resolve specific legal issues but also develop legal-oriented reasoning. In this regard, the particular importance is paid to the power of the Plenum to compose:

- The official body of the Supreme Court responsible for its journal and appoint its editor as well as editorial board upon a recommendation of the President of the Supreme Court;¹⁵⁹
- The research-advisory board of the Supreme Court, to approve its regulations, composition, and academic secretary.¹⁶⁰
- The structural arrangement that will strengthen the analytical team.¹⁶¹

The challenges in this respect were pointed out by the judges at one of the plenary ses-

¹⁵⁰ Law of the Azerbaijan Republic on Courts and Judges, Article 78.

¹⁵¹ The Law of Bulgaria on Common Courts and the Constitutional Court do not provide for such powers.

¹⁵² Law of Ukraine on the Judiciary and Status of Judges, Article 46, cl.5.

¹⁵³ Organic Law on Common Courts, Article 18(2)(f).

¹⁵⁴ Letter of the Supreme Court, N3-1227-20, 21.08.2020.

¹⁵⁵ An interview with Ekaterine Gasitashvili .

¹⁵⁶ An interview with Sopho Verdzeuli.

¹⁵⁷ An interview with Nunu Kvantaliani.

¹⁵⁸ The Interviews with Ekaterine Gasitashvili and Nino Bakakuri.

¹⁵⁹ Organic Law on Common Courts, Article 18(2)(h).

¹⁶⁰ Ibid. subparagraph "i".

¹⁶¹ Ibid. subparagraph "k".

sions. They noted that there are cases of duplication of powers, and underlined the quality of analytical documents. However, only one sitting was dedicated to the above-mentioned topic in the reporting period during which the issue of reorganization was discussed¹⁶² and a restructuring plan was presented, which raised questions and criticism.¹⁶³ **It would be better if the Plenum intensifies its work in this direction and the involvement of the judges is not limited to only one sitting.**

9.4. Administrative Powers

Determination of the amount of a monthly bonus to the official salary of a member of the Supreme Court is particularly important among the administrative powers of the Plenum.¹⁶⁴

Social guarantees are considered to be linked with independence of judges. Inadequate funding increases the risks of corruption.¹⁶⁵ International acts rigorously indicate the need for sufficient funding. According to the basic principles of the UN, it is the obligation of each country to allocate adequate resources to enable a judge to perform their duties.¹⁶⁶ The same wording can be found in the European Charter on the statute for judges.¹⁶⁷ The Consultative Council of European Judges also states that funding of the court is closely linked to judicial independence.¹⁶⁸

The fact that the compensation of judges shall be adequate is certainly not doubted but the norm of the law is problematic in other regards:

1. There are no objective criteria based on which the expediency and amount of bonuses shall be determined. Consequently, the state resources may be allocated unfairly as there is no control mechanism;¹⁶⁹
2. Due to the wide discretionary powers of the Plenum, the bonus may jeopardize the independence of the judiciary.¹⁷⁰

In assessing the fourth round of anti-corruption reforms, according to the recommendations issued, any discretionary remuneration shall be excluded from the salary of judges, which is necessary to ensure the independence of the judiciary.¹⁷¹ The Venice Commission has negatively assessed the existence of discretionary elements as well. According to their recommendation, the benefits for judges containing a discretionary element shall be gradually abolished.¹⁷² A complete majority of the interviewees believes that the possibility of awarding and the amount of bonuses shall be governed at the normative level.

¹⁶² Ordinance of the President of the Supreme Court of Georgia of July 20, 2020, "On Approval of the Plan of Measures to be Taken Due to the Reorganization of the Office of the Supreme Court of Georgia."

¹⁶³ Shalva Tadumadze regarding the draft rules of procedure, the plenary session of September 4, 2020.

¹⁶⁴ Organic Law on Common Courts, Article 18(2)(j).

¹⁶⁵ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, practitioners Guide No.1, The International Commission of Jurists (ICJ), the ICJ website, available at: <https://bit.ly/2WRQ9R2>, updated on: 20.07.2020.

¹⁶⁶ UN Basic Principles on the Independence of the Judiciary, Principle 7.

¹⁶⁷ Council of Europe, European Charter on the statute for judges, DAJ/DOC (98) 23, operative para. 1.6.

¹⁶⁸ The Consultative Council of European Judges (CCJE) Opinion # 2 (2001) .

¹⁶⁹ Abashidze A., Arganashvili A., Beraia G., Verdzeuli S., Kukava K., Shermadini O., Tsimakuridze E., The Judicial System: Past Reforms and Future Perspectives, The Coalition for an Independent and Transparent Judiciary, Tbilisi 2017, p. 125, the Coalition website, available at: <https://bit.ly/2ZW8P4g>, updated on: 22.07.2020.

¹⁷⁰ Ibid.

¹⁷¹ Kukava K., Talakhadze M., Nozadze N. , Bachmaier L. , the cited paper, p. 64.

¹⁷² Ibid.

As for the practice of comparable countries in the above respect, the Plenums of the Supreme Courts of Bulgaria,¹⁷³ Estonia,¹⁷⁴ Latvia,¹⁷⁵ the Czech Republic,¹⁷⁶ and Azerbaijan¹⁷⁷ do not participate in any financial decisions. In Ukraine, the Plenum has the right to approve the budget of the Supreme Court.¹⁷⁸ However, this refers to the budget of the Supreme Court as a whole and not the salary of individual judges.

Apart from the irrationality, the judges point out that the exercise of this right is linked to a sort of inconvenience. At the session of December 19, 2019, the Plenum discussed the matter related to the bonuses of judges. During the sitting, the acting chairperson of the Court said: *“there were judges in the Civil Cases Chamber who declared they would not accept the bonuses to avoid any inconveniences, yet I do not think it would be fair because the number of the judiciary in the Supreme Court is decreasing from year to year and recently, for more than a year now, the judges of both the Civil Cases Chamber and the Chamber of Administrative Cases have been deliberating criminal cases in addition to electronically distributed cases, i.e. been working twice harder. Monthly bonuses within the existing budget allocations have always been issued and if we do it now, it will be the continuation of the same practice.”* Giorgi Mikautadze and Shalva Tadumadze declared that the newly appointed judges¹⁷⁹ shall not be given a bonus. Ultimately, as per the decision of the Plenum, ten judges of the Supreme Court were awarded the bonuses of one month’s salary.

At the sitting of January 16, 2020, the matter relating to 2020 bonuses was reviewed. However, remarks/questions neither were voiced, nor were any discussions held concerning the matter during the Plenum.

GYLA believes that it is unreasonable to grant the above-mentioned power to the Plenum and law shall govern the issue.

Other Administrative Powers

The Plenum has the right to approve the regulations of the Office of the Supreme Court, the rates of official remuneration of officials and other employees based on the recommendation of the President of the Supreme Court.¹⁸⁰ In this regard, most significant is the role of the court manager who is required to provide the chairperson and the Plenum with a broad picture. In fact, this is what happened at the plenary session, which was positively assessed by the judges.¹⁸¹

The Plenum is entitled to hear and evaluate the information submitted by the chairpersons of the chambers of the Supreme Court, the reports submitted by the heads of the structural subdivisions of the Supreme Court, and consider proposals related to the improvement of their performance.¹⁸² **It will be better if the Plenum hears reports of the court manager,**

¹⁷³ Judiciary System Act, Article 111.

¹⁷⁴ Courts Act, Article 30.

¹⁷⁵ Section 49. The Plenary Session and its Competence.

¹⁷⁶ Code of Administrative Justice, Article 20, cl. 5.

¹⁷⁷ Law of the Azerbaijan Republic on Courts and Judges, Article 79.

¹⁷⁸ Law of Ukraine on the Judiciary and Status of Judges, Article 46, cl. 10.

¹⁷⁹ This refers the judges appointed to the office on December 12, 2019.

¹⁸⁰ The Organic Law of Georgia on Common Courts, Article 18(2)(“j”).

¹⁸¹ Nino Bakakuri and Ekaterine Gasitashvili noted in the interviews that they found informative and interesting to hear the manager of the Supreme Court at the plenary session.

¹⁸² Organic Law of Georgia on Common Courts, Article 18(2)(g).

who is aware of a complete picture, instead of reports of the heads of the structural sub-divisions of the staff.

The fact that the Plenum has the above powers is acceptable because this is the only format through which judges can receive information. However, more procedural clarity is essential including how often the report shall be submitted and heard, what information shall the report incorporate, how the report shall be submitted, whether it must be written or not, etc. To this end, the Plenum must be equipped with relevant regulations.

10. REPORT ON THE STATE OF JUSTICE

The Plenum is obliged to prepare and publish an annual report on the state of justice in Georgia.¹⁸³ The law does not yet specify what information must be included in the report. The court of cassation must submit a report based on its role, which actually happens, albeit by deviating from the requirements of the law. **The implementation and normative regulation must be harmonized and the Plenum must be obliged by law to submit only a report on the activities of the Supreme Court, while the Council shall present reports on the state of justice in the country.**

11. RECOMMENDATIONS

The relevance of the composition of the Plenum, its openness, awareness of the judges on the work of the body, and in some circumstances the procedural obscurity - are the challenges the Plenum of the Supreme Court faces. The body shall not possess some of the powers it has today; at the same time, some of its functions are not sufficiently regulated. Interpretation of the the authority of the Plenum and adjustment of its role to the existing legislative reality is an essential process. To address the flaws identified during the study, the following suggestions have been elaborated:

- Only judges of the Supreme Court shall be included in the composition of the Plenum, and the chairpersons of the Courts of Appeals shall be left out of the body;
- The Plenum shall develop its rules of procedure;
- A reasonable timeframe shall be determined during which the chairperson will be required to fix the date of a session if members of the Plenum summon the sitting;
- A narrow list of circumstances shall be provided in the occurrence of which the closure of a plenary session should be allowed;
- Members of the Plenum and the public should be informed about the date and agenda of the sessions ten days in advance;
- The obligation to publish the minutes of plenary sessions and provide audio recordings and their subsequent publication shall be stipulated;
- The number of votes required for the election of a judge of the Constitutional Court shall be increased from two-thirds of the members present to two-thirds of the listed composition. All members of the Plenum must have the right to introduce a candidate;

¹⁸³ Ibid. subparagraph (l).

- All members of the Plenum shall have the right to appoint a judge to the Grand Chamber.
- The Plenum must be deprived of the authority to make a submission to the Constitutional Court;
- The power of the Plenum to address to the Government or the President of Georgia for the conclusion of international treaties on matters within the competence of the Supreme Court shall be transferred to the Council;
- The Plenum shall not be entitled to determine bonuses. Any remuneration shall be awarded to the justices in accordance with the procedures and criteria prescribed by law;
- It shall be specified what information a report on the state of justice in the country has to provide. The report shall not include basic statistics provided by the common courts.