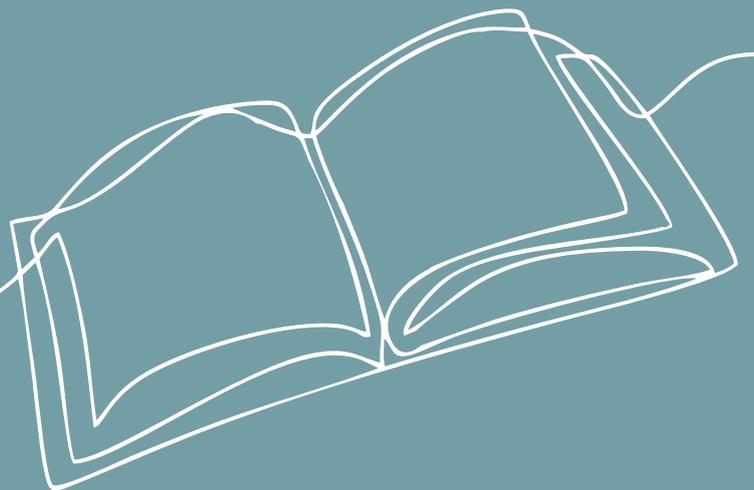


METHODOLOGY OF MONITORING THE HIGH COUNCIL OF JUSTICE



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**

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in Georgia (PROLoG)*

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INTRODUCTION

The Georgian Young Lawyers' Association (GYLA), within the framework of the project Promoting Rule of Law in Georgia (PROLoG) financed by USAID and implemented with the support of the East-West Management Institute, was monitoring the activities of the High Council of Justice of Georgia (hereinafter referred to as the Council) with the Transparency International Georgia from March 2012 to 2019. In 2019-2021 GYLA monitored the activities independently.

The Council is a constitutional body of the common court system.¹ Its purpose is to ensure the independence and efficiency of the courts, the appointment and dismissal of judges, the nomination of judges of the Supreme Court, and the fulfillment of other important tasks.² The Council, in fact, fully manages the system of common courts. The purpose of the monitoring was to identify and evaluate the positive or negative tendencies in the activities of the Council, the process of implementation of the legislation in practice, the positioning of the Council on issues considered challenging for the system.

The research consisted of findings, main text, and recommendations.

The findings and recommendations of the research served to increase the effectiveness of the Council's work, promoting transparency and impartiality of the justice system.

The monitoring period included a one-year term - from the beginning to the end of the year. Nine monitoring reports of the Council were prepared within the project (2012-2021).

¹ Constitution of Georgia, Article 64, Paragraph 1.

² Ibid.

OBJECTIVES OF MONITORING

- Assess the performance of the main constitutional body having the function of administering the judiciary in the scope of its effective assurance of the independence of the judiciary;
- Evaluation/analysis of the ongoing legislative reforms in the judiciary and their implementation;
- Promoting the Council's transparency and accountability;
- Document and analyze the situation in the judiciary, monitor the dynamics of reforms, and develop relevant recommendations/promote advocacy.

In the first stage of the monitoring, the observation was carried out in the following directions:

- The procedure for appointing judges;
- The practice of judges' secondments;
- Disciplinary proceedings;
- Transparency of the Council.

Each year, new chapters were added to the report, considering the legislative changes, as well as the challenges encountered in monitoring the activities of the Council, such as differences of opinion and pluralism in the Council, the role of chairpersons in the judiciary, the nomination of candidates for the Supreme Court, recruitment at the Council.

RESEARCH TOOLS AND RESOURCES

The research methodology, to understand the issues raised in the report, was based on the assessment of legislative changes, the analysis of its implementation, the study of international standards and experience, and the information obtained through the direct attendance at the sessions of the Council.

The following sources were mainly used in the research process:

Normative framework in Georgia, both legislative and subordinate acts:

- Constitution of Georgia;
- Organic Law of Georgia on Common Courts;
- Rules of Procedure of the High Council of Justice;
- The procedure for selecting candidates for judges;
- The rule of automatic distribution of cases in the common courts of Georgia through the electronic system;
- Charter of the High School of Justice.

Data obtained by requesting public information and posted on the Council's website regarding:

- Pre-publishing information related to the sessions and the agenda;
- Session preparation and management;
- Publishing minutes and decisions of the sessions;
- Filming and covering the sessions;
- Appointment of chairpersons of courts, boards/chambers;
- Appointment of judges by competition/for life;
- Enrollment of students in the School of Justice;
- Statistics on disciplinary proceedings.

Data obtained as a result of monitoring Council sessions: information obtained through the direct attendance at Council sessions and various public meetings. GYLA also relied on past reports and research evaluating the judiciary.

During the preparation of the report, the best international standards and experiences were studied - documents prepared by international organizations - the Venice Commission, the OSCE, the Consultative Council of European Judges (guidelines, reports, evaluations, etc.), both general and specific opinions and recommendations on the legislation of our country.

Below the monitoring methodology is presented in detail, with examples of the Council transparency issues and the selection and appointment of judges, considering the relevant questionnaire and the letter requesting public information.

MONITORING THE TRANSPARENCY OF THE COUNCIL

During the monitoring, the legislation related to the transparency of the activities of the Council was analyzed, the extent to which the regulations of the Council met the standards of transparency was assessed, and the challenges that existed in this regard at the legislative level were identified.

Then the analysis of the implementation of the existing regulations at the legislative level began. The evaluation was based on continuous monitoring of the timely and complete publication of information on the website, as well as information obtained through direct attendance at the Council meetings. Issues such as closure procedures of sessions, media access to the sessions, the quality of the topics initiated - how well the information was gathered around them, the involvement of each member of the Council, etc. were assessed through attendance at the meetings. In addition, the tendencies of improvement and deterioration were identified in relation to the results of previous years.

To illustrate, a session monitoring questionnaire is presented below

The questionnaire contains standard questions about the publication of the session date and agenda, as well as open-ended questions that are discussed in the context of direct attendance at the session as a result of monitoring and evaluation. The questionnaire was developed annually, considering the legislative changes that were implemented in the field of justice during the reporting period.

Questionnaire for monitoring the Council meetings

1. Session of the High Council of Justice: year, date, hour;
2. Council members present at the session;
3. When was the information about the session published?
4. When was the agenda published?
5. Item(s) on the agenda;
6. The initiator of the item;
7. Whether the session was closed during the discussion of any item;
8. Motivation for closing the session;
9. How well the topic was prepared during the hearing;
10. How clearly and comprehensibly the topic was presented at the hearing;
11. Who submitted the topic for hearing, a Council member/Council employee?
12. The item concerned:
 - Issuance of an individual act-ordinance;
 - Issuance of a normative act-resolution.
13. After the ordinance was issued, whether it contained a written justification; whether an interested person was allowed to submit a written opinion;
14. In case of adoption of the resolution, whether it was published on the website of the Council at least 7 days in advance;
15. The following opinions were expressed:
16. Member of the Council:
17. Opinion:
18. Voting Results:

Monitor Note (This should include monitor evaluations and any important information related to the hearing of the topic).

RULES AND PROCEDURE FOR APPOINTMENT OF JUDGES, THE PRACTICE OF APPOINTMENT/APPOINTMENT FOR LIFE

This section assesses the changes made during the reporting year, the deficiencies identified during their implementation in practice, and a summary of the information received.

In evaluating the judges appointed for the probationary period, since these topics were discussed (selection of evaluators by a lot) in a closed session, we analyzed the legislative regulations, their advantages and disadvantages, and cases of application in practice. We also requested evaluation reports in the form of public information, which clearly showed the shortcomings in the template evaluation by the members of the Council on the criteria of good faith and competence of judges.

The process of interviewing judges of the first and second instance is closed in accordance with the regulations of the Council. Only with the candidates' consent is it possible to attend the interviews and assess the environment of the interview, how equal the approach is to each candidate, whether they are asked questions of similar difficulty, and so on.

In addition to attending face-to-face interviews, there were additional competition-related information and statistics requests, a study of the information on the website, and evaluation and analysis of the Council decisions. To illustrate, here is a letter requesting public information:

To the person responsible for ensuring access to public information
And for the proactive disclosure of the information
Of the High Council of Justice of Georgia

Statement

In accordance with the Constitution of Georgia and the General Administrative Code, please provide the following public information:

1. In addition to the rule established by the Organic Law of Georgia on Common Courts for the Evaluation and Appointment of Probationary Judges, has a decision of the High Council of Justice been made regulating the evaluation and appointment of judges appointed for probation? In case of a positive answer, please provide us with the relevant documents.
2. According to Article 36¹, Paragraph 3 of the Organic Law on Common Courts, "a judge shall be informed of the **evaluation procedure and the circumstances** that will be taken into account when evaluating them by certain criteria and the decision to appoint a judge for life at the beginning of their 3-year term." Please provide the information sent by the High Council of Justice to the judges appointed for the probationary period to fulfill the above article.
3. According to Article 36⁴, Paragraph 5 of the Law of Georgia on Common Courts, "in order to **facilitate the proper conduct of the judge evaluation procedure, a relevant structural unit shall be established in the High Council of Justice of Georgia**, whose staff provides technical assistance to the evaluator and performs their individual tasks to find the information needed to evaluate a judge according to a specific criterion." Please provide information on the structural unit established to comply with the requirements of this law and the rules regulating the operation of this structural unit.
4. Please provide a copy of the sample form approved by the High Council of Justice of Georgia, which reflects the characteristics of the criteria of good faith and competence, in accordance with Article 36⁴, Paragraph 10, Subparagraph "b" of the Organic Law on Common Courts.
5. Please provide information/decision of the Council on all the documents and materials based on which, in accordance with Article 36⁴, Paragraph 10, Subparagraph "c" of the Organic Law on Common Courts, the performance of judges during the probationary period is assessed.
6. Please provide information/decision on how members of the Evaluation Council interpret each characteristic of the good faith criteria set out in Article 36³, Paragraphs 3 and 6 of the Organic Courts for the purposes of good-faith assessment for the judges appointed for the probationary period (for example, how a good faith, proper awareness of duties and responsibilities, etc. of a judge are interpreted). Please provide us with a decision made by the Council in this regard, if any.

7. How many judges so far have exercised their right under Article 36⁴ of the Organic Law on Common Courts and submitted their opinions or self-assessment to the Council on the evaluation results.

Monitoring reports developed in accordance with the above methodology were sent to Council members for comments and opinions prior to publication. In some cases, the Council shared its vision with us. Some of the notes were reflected in the final version of the document, and in case of disregard, they were attached to the reports.

The recommendations were thematically addressed to the Parliament of Georgia, the Council, and the High School of Justice.

Annual reports were presented to the media, stakeholders, and representatives of the diplomatic corps. Recommendations on the researched issues were also advocated at various meetings and conferences. The reports were published publicly on GYLA's official website.

Over the years, some of GYLA's recommendations have been reflected in legislation, although the independence and trust of the judiciary remain a challenge.