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**To: The Group of Independent Lawyers and Democracy Index - Georgia**

**Re: Webinar (December 14, 2023), Integrity Check for Judges**

## **I. Problem statement**

The Venice Commission Recommendation highlights Georgia as the first country to undergo pre-vetting for its judiciary's self-regulating bodies, proposed as an extraordinary integrity check to address concerns about corruption in the judicial system. In October 2023, the Venice Commission recommended that Georgia consider vetting High Council of Justice members to tackle issues of judicial corporatism and self-interest. In November 2023, the European Commission through the annual Country Accession Report suggested broader judiciary reforms, emphasizing the establishment of extraordinary integrity checks with international expert involvement for candidates and current appointees in key judiciary positions.

In the historical context, as many workshops indicated severe challenges in Georgia's judiciary reform. From 1997 to 2004, efforts were made to establish an independent judiciary, but corruption and incompetence persisted. Reforms from 2004 to 2010 focused on formal independence, addressing corruption, and improving competence. However, the period until 2012 faced criticism for power imbalances, high conviction rates, and controversial justice policies. Subsequent reforms from 2013 onward aimed at preserving the existing system, with changes to the High Council of Justice's composition and reforms in judge appointments. Despite initial efforts, the appointment of judges for life, reappointment without thorough evaluations, and concerns about integrity persisted, leading to challenges highlighted in reports and visa restrictions for judges.

To that end Georgia's judicial reforms have consistently lacked a robust framework for evaluating the professionalism and integrity of candidates and incumbent judges. Despite early efforts, the historical progression shows a pattern of replacing the judicial corps in some reforms but retaining experienced judges in others, neither significantly improving judicial

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independence or public trust. The absence of merit-based and objective assessments in appointing or dismissing judges has contributed to a negative perception of the judiciary's character. Urgent reform is needed to prioritize merit-based selection and objective evaluations in judicial personnel appointments and retentions.

## **II. Main findings**

The delivered lecture delved into the concepts of vetting and pre-vetting as crucial anti-corruption measures to restore trust in the Georgian judiciary, highlighting their distinctiveness from lustration and their alignment with international principles of judicial independence and human rights. It also examines the cautious approaches advocated by international bodies such as the Venice Commission and the CCJE for integrity checks of members of self-governing judicial institutions or pre-vetting.

Generally, any vetting procedure, in contrast to lustration, is a targeted, extraordinary anti-corruption measure employed by specialized bodies to eliminate corrupt legal actors from the judiciary. It involves a comprehensive and transparent evaluation of qualifications, financial backgrounds, ethics, and potential conflicts of interest, ensuring the suitability of judiciary members or public officials for specific roles and preserving institutional integrity.

While international instruments for judicial independence do not explicitly outline vetting processes, the Venice Commission recognizes vetting as a valid mechanism aligned with judicial accountability and human rights principles. The European Court of Human Rights also acknowledges the legitimacy of vetting. However, the CCJE and CCPO take a cautious approach, emphasizing vetting as a last resort to prevent potential misuse, particularly for politically motivated removals.

Any type of vetting should not be confused with regular mechanisms of judicial accountability, such as integrity checks, performance evaluations, asset assessments, background and security checks, disciplinary proceedings, and similar processes. Before resorting to vetting, it is essential to evaluate whether existing ordinary mechanisms can address systemic doubts and deficiencies within the judiciary. If vetting is deemed necessary, adherence to principles of judicial independence, objectivity, temporariness, due process of law, and international human rights principles is crucial.

In the case of Georgia, pre-vetting, serving as both an extraordinary and non-controversial measure, can be applied universally to all candidates or specifically to candidates for self-governing bodies. The latter involves a filtering process to assess candidates' financial, professional, and ethical integrity standards. The focus is on enhancing the integrity of future self-governing body members and increasing society's trust in the justice system.

The pre-vetting and vetting processes involve collecting materials, questioning, and a shift in the burden of proof when integrity issues are identified. Judges and prosecutors have the right to access materials, participate in public hearings, and receive a reasoned report or decision at the conclusion of the process.

### III. Summary of Findings

#### 1. Vetting as Anti-Corruption Measure:

- Vetting serves as a targeted and extraordinary anti-corruption measure, distinct from lustration, aiming to eliminate corrupt individuals from the judiciary through specialized bodies.
- Vetting is not lustration. Lustration aims for human rights abuses in past regimes, vetting is anti-corruption tool to rid the judiciary of corrupt actors.
- It involves a comprehensive assessment of qualifications, financial backgrounds, ethics, and potential conflicts of interest to ensure the suitability of judiciary members or public officials for specific roles.
- There are three known types of vetting: pre-vetting, periodic security vetting and full-fledged vetting. Pre-vetting pertains to members of self-governing bodies, and candidates for those bodies. The rationale is once they are cleared up, they will resume normal functions and rid the entire judiciary of corrupt actors. Periodic security vetting is periodic security checks for judges, checking on corrupt activities, and liaisons with foreign actors. Full-fledged vetting pertains to all members of the judiciary. The rationale is that entire judiciary is corrupt beyond repair and pre-vetting just won't address this systemic issue.

#### 2. International Support and Caution:

- While international instruments for judicial independence do not explicitly address vetting, the Venice Commission recognizes it as a valid mechanism aligned with judicial accountability and human rights principles.
- The CCJE and CCPO adopt a cautious approach, considering vetting a measure of last resort to prevent potential misuse, particularly in politically motivated removals.
- The jurisprudence of the European Court of Human Rights is applicable in cases of vetting. Even though the decisions of the Court are *inter partes* they do not stop governments from adhering to them or make the necessary changes in the political system.

#### 3. Distinction from Regular Mechanisms:

- Vetting should not be confused with regular mechanisms of judicial accountability, such as integrity checks, performance evaluations, and disciplinary proceedings.
- Vetting is extraregular mechanism which is applied only when regular mechanisms fail.

#### 4. Considerations for Vetting:

- Before resorting to vetting, it is crucial to assess whether existing ordinary mechanisms can effectively address systemic doubts and deficiencies within the judiciary.

- Adherence to principles of judicial independence, objectivity, temporariness, due process of law, and international human rights standards is crucial in the implementation of vetting procedures.

#### 5. Evaluation Process:

- Both pre-vetting and vetting processes include collecting materials, questioning, and a shift in the burden of proof to the candidate when integrity issues arise.
- Judges and prosecutors have the right to access materials, participate in public hearings, and receive a reasoned report or decision at the conclusion of the process.
- The participation of NGO organizations is highly encouraged.

#### 6. Balancing Accountability and Independence:

- Should vetting be applied, there must be the need for a careful balance between accountability and the preservation of judicial independence in the implementation of vetting and pre-vetting measures.
- Transparency, objectivity, and adherence to international standards are highlighted as essential considerations in the effective execution of these anti-corruption mechanisms.

### IV. Main Recommendations

- **Differentiate Exceptional Vetting from Lustration:** While both may share some similarities, it is crucial to recognize the distinctiveness of extraordinary vetting, which is aimed at addressing specific issues within the legal system, from the historical context and purposes of lustration processes conducted in the 1990s.
- **Differentiate from Regular Judicial Accountability:** Distinguish extraordinary vetting processes from regular mechanisms of judicial accountability, such as integrity checks, performance evaluations, asset assessments, background and security checks (where applicable), and disciplinary proceedings. Clear communication of these distinctions is crucial for a comprehensive understanding of the vetting process.
- **Evaluate Preconditions for Vetting:** Before opting for vetting there must be clear proof of a systematic problem within the judiciary, for example, widespread corruption, extremely serious deficiencies in the functioning of the judicial system, submission to oligarchic interests or systemic doubts about the integrity of the judiciary.
- **Evaluate Country-Specific Considerations:** The situation in each country is different and requires an assessment on its own merits by the national authorities with the assistance of international bodies and organizations, such as the Venice Commission, OSCE-ODIHR, USAID, CCJE, as well as with the assistance of the civil society sector. This collaborative effort ensures that the evaluation considers both local nuances and international standards, leading to a more effective response tailored to the distinct challenges and dynamics of each country.
- **Evaluate Judicial Self-Governing Institutions:** To ensure the effectiveness of alternative measures, it is crucial to first evaluate and possibly enhance the functionality

of judicial self-governing institutions and mechanisms as legally mandated. This step should precede the introduction of any vetting mechanism.

## **End of Report**