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MANAGEMENT
INSTITUTE
*Promoting Rule of Law
in Georgia (PROLoG)*

JUDICIAL REFORM RECOMMENDATIONS

GROUP OF INDEPENDENT LAWYERS

Judicial reform recommendations were prepared by the Group of Independent Lawyers (GIL) with the support of USAID funded project EWMI/ProLOG. The recommendations are based on thematic research conducted by members of GIL between December 2020 and June 2021. The study analyzes the judicial reforms carried out in the context of transitional democracies in the post-communist reality and in the context of EU membership, the reasons for the success and failure of the reforms, which should be considered for Georgia currently having a similar context. The group was consulted by American expert James Moliterno in preparing the study and recommendations. For the purposes of the study, the Group of Independent Lawyers held a two-day online international conference with the participation of 30 representatives from 10 countries and other interested organizations and experts. Two incumbent judges of Georgia shared their views and suggestions on the development of judicial reform recommendations.

While working on the recommendations, several factors were considered that exist today and influence the formulation of the recommendations: the context of the post-communist mentality and clan-based governance in the Georgian judiciary similar to the countries studied; Low chances of amending the Constitution of Georgia to carry out the reform.

With this in mind, judicial reform should be based on the following key principles:

- Ensuring internal control and containment mechanisms in the judiciary.
- Allocation of governance functions for effective governance.
- Support individual judges seeking independence and strengthen self-government through their broad involvement
- Increasing the role of civil society in the administration of the judiciary.
- Creating an effective system of court accountability.
- Review of alleged corrupt practices of incumbent judges.

In addition to legislative changes, effective implementation of the reform, as well as the commitment of politicians to the April 19 agreement, the Group of Independent Lawyers is calling upon:

- Georgian Parliament to adopt a resolution recognizing clan-based governance in the judiciary as a problem, which will be based on the results of the research conducted by the temporary commission created for the study of clan governance in the Parliament.

The Group of Independent Lawyers is also calling:

- international donor organizations to continue to support the rule of law projects that strengthen individual judges, rather than the influential group of judges and those close to them.

COURT REFORM RECOMMENDATIONS:

FOR THE PURPOSE OF SHARING POWER BETWEEN SELF-GOVERNMENT BODIES, INVOLVEMENT OF REGULAR JUDGES IN REAL SELF-GOVERNMENT AND PUBLIC INVOLVEMENT DESIGNED TO INCREASE JUDICIAL ACCOUNTABILITY:

1. RULES OF FORMATION OF HCOJ SHOULD BE CHANGED

Judicial members of HCOJ: The system of quotas for court representation should be established for the position of 8 judge-members of the Council of Justice as follows: one member from the Supreme Court; one member from each of two appellate courts; Three members from courts of first instance in western Georgia; Two members from courts of first instance of Eastern Georgia.

Out of the 8 judicial members four shall be nominated by the Judges and four by the public. Members will be named by the panel on behalf of the community, based on consensus. The panel may include the Bar Association, a representative of the Civil Service Bureau, non-governmental organizations, members elected by the Conference of Judges (minority), representatives of international organizations with experience of working in the rule of law, a representative of the Public Defender, and one member nominated by the deans of law faculties.

Alternative version: Each judge nominates himself/herself and a community council (composed of foreign experts) submits a report on the corrupt behavior/good faith of the judicial and non-judicial members¹.

Procedure for electing judges to the Council of Justice²: Two weeks before the Conference, candidates wishing to serve in the Council must submit to the Administrative Committee a vision and a four-year program of activities (mission) in the Council, ways to implement it and time schedule. Updated biographical information (CV) about the candidate, motivation letter, emphasizing why the candidate considers himself/herself the most suitable for the Council membership. The list of candidates with attached documents should be posted on the website of the Council of Justice

¹ According to CCJE opinion n. 1, 2018, For the purpose of this Opinion, judicial corruption comprises dishonest, fraudulent or unethical conduct by a judge in order to acquire personal benefit or benefit for third parties, par. 9.

² This procedure should also be extended by the Conference to the selection of judges for all self-governing bodies.

and all courts, published in the media. A portal should be created for each candidate, where along with the documents submitted by the candidate, written opinions, documents and / or questions submitted by any person will be published.

Each candidate at the conference should be required to speak, present his or her program, provide an opinion on written materials received from the public, and answer questions.

The decision shall be taken by the Conference of judges by a majority of votes. In the event of a tie vote for several candidates, priority will be given to maintaining the gender balance of judges in the collegial body, subsequent consideration shall be given to years of judicial experience.

A member of the Council of Justice (other self-governing body) may not be a judge entrusted with administrative functions in court³, a member of the Administrative Committee, Disciplinary Board, the Independent Council of the High School of Justice, the Chairman of the Judicial Association or any person who held similar position for the last 8 years.

Non-Judicial Members of the Council of Justice: For the election of non-judicial members, MP's and the public should be allowed to ask questions to the candidates. This recommendation also fully addresses the process of appointing one member of the Council of Justice by the President.

In order to make the appointment of members less dependent on Parliamentary majority or coalition with a majority in Parliament, the right to nominate a non-judge candidate out of 5 members should be given as a quota to: a) the Bar Association; B) Deans of the accredited Faculties of Law, as a result of voting; C) the Public Defender; D) Non-governmental organizations working in the field of justice, with at least 5 years of experience in pro-bono representation, having conducted at least three cases a year in a court of at least one instance. The relevant entity must nominate no more than three candidates in one place, among whom the final choice will be made by the Parliament. ⁴

The professional qualification of non-judicial members should be increased from 5 to 10 years. A non-judge member should not be restricted his / her professional activities.

2. DECENTRALIZATION OF FUNCTIONS OF HCOJ AND PUBLIC INVOLVEMENT INTO THE EXERCISE OF THE FUNCTIONS OF THE COUNCIL

HCOJ should be relieved of the following functions:

- Election of a member of the Independent Council of the High School of Justice. The number of members of the Council should be reduced to five - 2 members elected by the Conference of Judges, 2 members elected by the Deans of Law Faculties, one non-judge member of the High Council of Justice should be identified by lot.
- The organization of the judicial examination shall be transferred to the Ministry of Education or the High School of Justice.
- The function of evaluating a candidate for a judge should be delegated to specialized commissions.
- The function of a disciplinary prosecution should be transferred to the Independent Inspector.

³ See below. the deliberative panel of judges

⁴ This rule also applies to the election of a non-judicial member of the Disciplinary Board

The Council of Justice should decide on the following issues on a double 2/3 of votes - (2/3 of judges and 2/3 of non-judges)⁵. Alternatively, it is possible to increase 2/3 quorum by 4/5 so that decisions are made by 12 votes out of 15 (instead of 10).

Decision-making by a qualified majority shall extend to all personnel related decisions and other key decisions, including:

- determination of the narrow specializations of judges and approval of the composition of judges in narrow specializations.
- the nomination of a candidate for the presidency of the Supreme Court.
- the promotion of judges.
- Election of the Chairman of the High Council of Justice.

3. ABOLISH THE INSTITUTION OF COURT CHAIRMAN AND CREATE DELIBERATIVE PANEL OF JUDGES

The position of the chairperson, deputy chairperson of the court (panel, chamber) should be abolished. Instead, in courts where there are more than two judges, a deliberative panel of judges should be established for a period of 18 months. The sessions of the panel will be convened by the coordinating judge, whose functions will be assigned to the members of the panel on a rotating basis once every 6 months.

The number of members of the deliberative panel shall be determined by the number of specialized chambers (panels) in the courts. A member of the panel shall be elected from each chamber (to be determined by lot) on the principle that each subsequent lot shall be held among judges of a different sex. A judge holding any administrative position in the judiciary shall not participate in the casting of lots. In courts where there is no specialization, the composition of the deliberative panel shall be determined by three judges, on the principle that at least one member shall be of the opposite sex. In a court where there are three judges or less than three judges, all judges will serve in the deliberative panel.

The functions provided by law for a court chairperson should be delegated to a court manager (e.g. Appointment of the court security officers), the Chancellery (cases of intervention in the distribution system of cases), and the Coordinating Judge (review of cases of breach of order in the court building).

The deliberative panel has a representative function of the court. The manager is appointed to the position and dismissed by the Council of Justice upon the recommendation of the deliberative panel. The court manager is accountable to the deliberative panel and the coordinating judge. The assistant to the judge and the secretary are appointed by the deliberative panel on the recommendation of the relevant judge. The deliberative panel make decisions by a qualified majority on issues important to the relevant court (changes in the distribution of cases; rotation of judges; leave; establishment of a competition commission for court clerks).

FOR THE PURPOSE OF INCREASING THE PUBLIC INVOLVMENT AND ENSURING THE ENTRY OF JUDICIAL PERSONEL FROM OUTSIDE THE COURT SYSTEM:

⁵ Double 2/3 principle proposed by part of non-governmental organizations, Lelo faction in Parliament and USAID

4. EXPAND THE LIST OF PERSONS EXEMPTED FROM STUDY IN THE HIGH SCHOOL OF JUSTICE

Expand the list of persons exempted from studying at the School of Justice. This precondition for appointment to the position of a judge should be abolished for all lawyers whose activities are related to participation in court proceedings. Determine the period of experience of such persons as a precondition for appointment as a judge.

5. INTRODUCE QUOTAS OF PERSONS TO BE RECRUITED FROM OUTSIDE THE COURT

At least 30% of the total number of vacancies announced for each competition should be set aside for lawyers employed outside the judiciary.

6. CREATE JUDICIAL SELECTION COMMISSIONS

increase the involvement of the public and specialists in the relevant field in the process of selecting a judge. Establish two special commissions, whose roles will be to assess the formal compliance of candidates and compliance with the established criteria. One commission will assess the professionalism of the judge, the other - the good faith. The commissions will be composed of representatives of the relevant specialized community and various professional circles (representatives of non-governmental organizations working in the field of justice, representatives of the Public Defender, representatives of academia in relevant fields, representatives of international and donor organizations). Judges will participate in the commissions, although they will not be in the majority. The written and reasoned assessments done by the commissions will be submitted to the High Council of Justice / Parliament for a decision on the appointment of a judge.

The principle of evaluation by special commissions should be applied to the promotion of judges. Vacancies for the appointment of judges in higher instances should be allocated not only for promotion from within the judiciary, but also for primary appointments.

Revise evaluation criteria and the methodology for examination of criteria should be defined by law⁶.

7. REVISE THE DECISION-MAKING PROCEDURE FOR THE APPOINTMENT OF A JUDGES

Based on the results of the evaluation of the candidate by the special commissions and the points awarded, the High Council of Justice / Parliament should make a decision on the appointment / nomination of a judge. The appointing

⁶ For detailed recommendations see Venice Commission Opinion on the Judicial System Act of Bulgaria, CDL-AD (2017) 018 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e))

authority shall appoint the candidate / candidates with the best results in the evaluation to the position of judge. The decision to overrule the results of the evaluation must be duly substantiated by the appointing authority.

FOR THE PURPOSE OF ENHANCING JUDICIAL ACCOUNTABILITY:

8. CREATE DISCIPLINARY SYSTEM WHICH WILL BE INDEPENDENT FROM THE HCOJ

The function of disciplinary prosecutor should be transferred from the High Council of Justice to an independent body, an independent inspector. Independent Inspector should be chosen by Parliament with 2/3 votes.

Disciplinary Board may take decision by 4 votes.

Investigative powers of the Independent Inspector should be increased. He/she should be given the right to summon and question witnesses who will be obliged to appear, also request documents from private agencies and appoint expert examination.

The decisions to impose disciplinary liability on a judge should be fully published.

The case delay as disciplinary violation should not be tied to the statutory deadlines but the reasonable hearing times, so that this disciplinary violation can be formulated in following way: "violation of reasonable times of hearing the case or case proceedings committed by the judge without valid excuse.

FOR THE PURPOSE OF DETECTING CORRUPT BEHAVIOUR OF JUDGES AND JUDICIAL CANDIDATES:

9. CREATE TEMPORARY ANTI-CORRUPTION COMMISSION

Establish a temporary anti-corruption commission for judges and candidates nominated by international experts named by donor organizations working for the rule of law in Georgia. The term of office of the commission shall be 3 years. The Commission verifies:

- The legitimacy of the property of the current judges and candidates for judicial vacancies;
- The compliance of the lifestyle of the judge / candidate and his / her family members with the declared income;
- Compliance of the judge / candidate's lifestyle with the status of a judge;
- Informal connections of a judge and a candidate for judge with the political authorities;
- Cases of a judge influencing another judge, improper communication and / or attempts;
- Use of the position for personal gain or for the benefit or benefit of third parties.

The Commission shall issue a reasoned conclusion on the absence of corruption in the activities of a judge / candidate or on the dismissal of a judge, and in the case of a candidate, on the refusal to appoint him / her, which shall be sent

to the Council of Justice for execution. A negative conclusion of the Commission shall be appealed to the Disciplinary Board or Qualification Chamber, respectively.

Cooperation with the Commission is protected by the standard of whistleblower protection.

The activities of the Commission should be supervised by international missions.



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