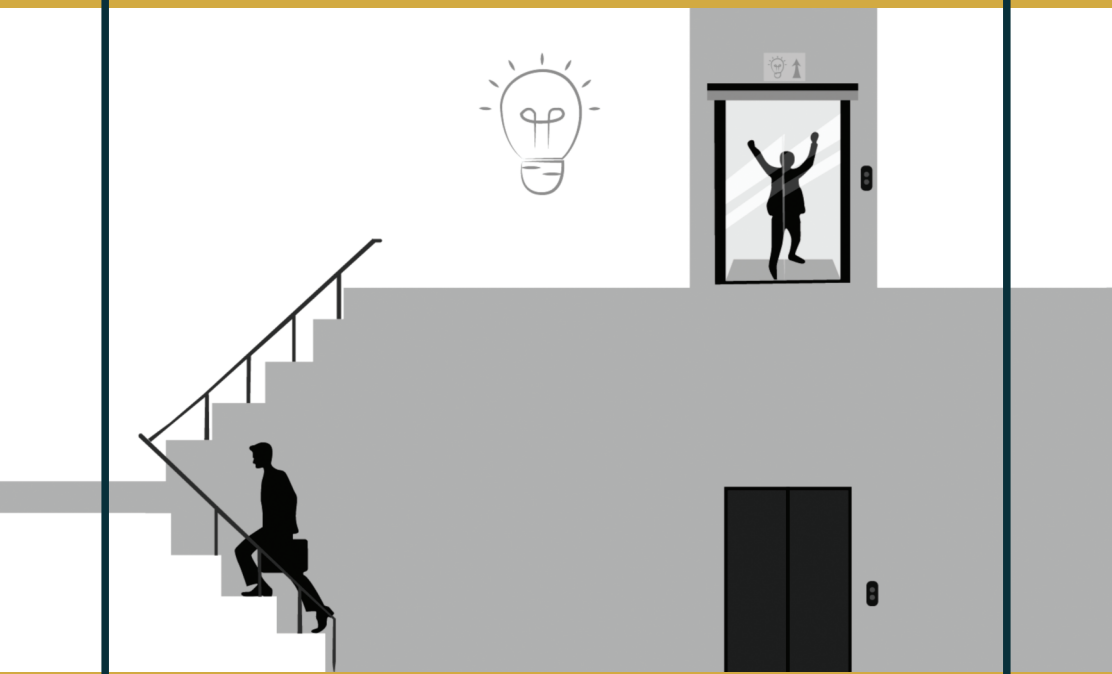
GEORGIAN COURT WATCH

FACTORS ENCOURAGING NEPOTISM AND CRONYISM IN THE JUDICIARY OF GEORGIA



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Factors Encouraging Nepotism and Cronyism in the Judiciary of Georgia

Tbilisi, 2022

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Responsible Person for the Research:

Nazi Janezashvili, Director of the Georgian Court Watch

Author of the Study: Nino Tsereteli

Research was carried out by:

Tamar Avaliani - Legal Expert

Salome Kvirikashvili - Researcher

Layout illustration: Mariam Sikharulidze

13b, Lubliana Street 0159 Tbilisi, Georgia
info@courtwatch.ge / +995 32 219 70 04

www.courtwatch.ge

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1. Introduction

1.1. Aim of the study

The aim of the study is to assess the extent of non-meritocratic approaches and more specifically nepotism and cronyism in judicial system of Georgia, identification of formal and informal factors, which encourage establishment and maintaining these approaches. Emphasis is on the shortcomings in the legislation and the problems of legislation implementation, as well as on the role of informal influences, norms and mechanisms[1] in staffing the courts. The study does not aim to identify any specific kinship, friendship and other social ties within the judiciary, however, the material obtained during the study, interviews among them, allows us to discuss the extent of such practices without mentioning specific examples.

(Non-meritocratic) personnel policy affects the quality of justice and the degree of public trust in the court. According to the Rule of Law index of World Justice Project, the situation in Georgia during 2015-2021 has worsened in terms of checking executive government (by the judiciary)[2]. Independence degree of the courts in deciding civil[3] and (to an even greater extent) criminal[4] cases has also deteriorated. The Freedom House Report 2022 indicates that despite the reforms, political

1 Formal rules are reflected in the legislation, informal rules and institutions form in practice, without legal ground. Existence of informal rules refer to the frequency/repetition of the behavior with the awareness that the said behavior is mandatory and in case of deviation from it, sanctions are applied. Additionally on formal and informal norms, see Gretchen Helmke and Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda," 2(4) Perspectives on Politics (2004), 725-740; Hans Joachim Lauth, "Informal Institutions and Democracy," 7(4) Democratization (2010), 21-50; Anna Grzymala-Busse, "The Best Laid Plans: The Impact of Informal Rules on Formal Institutions in Transitional Regimes," 45(3) Studies in Comparative International Development (2010), 311-333.

2 In terms of the check of the executive government by the judiciary, in 2015 Georgia held 48th position (out of 102) (point 0.56), in 2016 - 62nd position (out of 113) point: 0.54, in 2017-2018 - 69th position (out of 113), point: 0,49, in 2019 77th position out of 126, point: 0.46. in 2020 - 82nd position out of 128, point: 0.44; in 2021 - 87th position out of 139, point: 0,45.

3 Factor: Civil justice is free from political influence. In 2015 Georgia held 42nd position (out of 102) (point 0,52), in 2016 - 60th position (out of 113), point: 0. 49, in 2017-2018 – 63rd position (out of 113), point: 0, 48; in 2019 – 74th position (out of 126), point: 0,44; in 2020 – 88th position (out of 128), point: 0,39; in 2021 – 89th position (out of 139), point: 0,41.

4 Factor: Criminal justice is free from irrelevant political influences: in 2015 Georgia held 49th position (out of 102) (point: 0,46), in 2016 – 72nd position (out of 113), point: 0. 39, in 2017-2018 – 76th position (out of 113), point: 0, 35; in 2019 – 96th position (out of 126), point: 0,28; in 2020 – 96th position (out of 128), point: 0,27; in 2021 – 104th position (out of 139), point: 0,28. On the topic, see US Department of State Report on Georgia indicates that judges are vulnerable to pressure from within and outside the judiciary on politically sensitive cases. https://bit.ly/3RB6qUp.

interference in the courts remains a substantial problem, as does a lack of transparency and professionalism surrounding judicial proceedings.[5] In the 2021 report of the US Department of State, the reference was made to the shortcomings in the selection and appointment of the High Council of Justice judge members and court chairpersons; also to the ways of achieving desired results, among them through manipulation of case allocation process by chairpersons.[6] During recent years, the legislation and practice regulating selection of judges has become subject to criticism.[7]

1.2. Study characteristics

The study differs from the other studies conducted in the past in several ways:

1. It is based on the systematic analysis of the personnel policy of the High Council of Justice, since 2013 to date. The research focused on the appointment of judges and the effectiveness of procedural guarantees (for example, openness of the process, obligation for justification, right to appeal), the purpose of which is to ensure the fairness and consistency of the selection process of judges, as well as quality control.
2. The study is not limited to the analysis of the legislation and its implementation. To establish them, the organization relies on documentary and other sources, among them the interviews with former and current judges, court officials, lawyers, experts.
3. It covers selection and appointment of the judges, as well as High Council of Justice and courts staff, which has not been popular subject of research and observation until now.

5 Georgia: Freedom in the World 2022 Country Report | Freedom House. https://bit.ly/3TK-Prko.

6 Georgia – United States Department of State. https://bit.ly/3TI9aBn.

7 US Department of State Report 2021 on Georgia, as well as on nomination and appointment of judges of the Supreme Court of Georgia, ODIHR, June-December 2019: it is indicated that the legal framework did not create a guarantee of making decisions based on objective criteria in the selection process. More efforts were required from the High Council of Justice and the Parliament to ensure objectivity, fairness, consistency of the process and public trust towards it. It was emphasized that despite the improvement of the legislation, there were still shortcomings, due to which the goal of selecting judges based on the merits of the candidates could not be achieved.

1.3. Structure and methodology of the study

The study is divided into two parts. The first part is based on Georgian legislation and practice analysis. The analysis shows how influential judges (members of High Council of Justice, court chairpersons) use legislation to fill the courts with the personnel they wish. It also shows the uselessness of guarantees provided by legislation to avoid nepotism and cronyism. In this regard, the organization relies on the following:

1. Relevant legislation.
2. Decisions of the High Council of Justice.
3. Relevant court decisions.
4. Annual monitoring reports of the activities of the High Council of Justice.
5. Other thematic reports.
6. Scientific articles.[8]
7. Information the group of researchers requested from the High Council of Justice and the courts for this report.
8. Newspaper and other articles, interviews, etc.

The second part includes semi-structured interviews, conducted by the Georgian Court Watch's research group from February to April 2022. A special questionnaire was developed (Annex N1). We introduced the conditions of the research to the respondents and explained that the records of their interviews are anonymous and will not be made public. Total 30 interviews[9] were conducted with current and former judges, court officials, lawyers, and experts. After the interviews, the recordings were analyzed - issues on which there was agreement

8 The author relied on several studies conducted by her, within the framework of which she also recorded about 20 interviews, mainly on formal and informal factors, defining the degree of judicial independence. See Nino Tsereteli, Backsliding into Judicial Oligarchy? The Cautionary Tale of Georgia's Failed Judicial Reforms, Informal Judicial Networks and Limited Access to Leadership Positions, Review of Central and East European Law 47 (2) (2022) 167–201; Nino Tsereteli, Judicial Recruitment in Post-Communist Context: Informal Dynamics and Façade Reforms, International Journal of the Legal Profession (2020), https://bit.ly/3cLi7Jz. Experience of other countries: Samuel Spáč, Matej Šimalčík, Gabriel Šípoš, Let"s Judge the Judges: How Slovakia Opened its Judiciary to Unprecedented Public Control, available at: https://bit.ly/3RA4I5D.

9 From these 30 respondents, 8 were acting judges, 2 – former judges, 4- assistants, 6 – lawyers, 7 - experts (including NGO representatives), 2 – representatives of academic circles and 1 former nonjudge member of the Council. Group members were refused an interview by 4 acting judges, 2 assistants, active members of the Council (the request was sent to the Council), 6 former judge members, 1 former nonjudge member (whom we approached individually).

among respondents of different categories and issues on which different opinions were expressed were highlighted. The subject of interest was respondents' perceptions of the extent of nepotism and cronyism and of the effectiveness of legal guarantees, as well as discussion of contributing factors. Informal criteria, according to which the judges choose judges/court officials and the possibility of getting into the system through informal mechanisms were identified. We shall highlight that we are talking about the respondents' personal perceptions, however, a significant agreement among the views of the respondents gives some objectivity to the conclusions.

2. Career of judges – legislative framework and practice

2.1. Legal regulation and legislative guarantees against nepotism/cronyism

a. The scope of the High Council of Justice (HCoJ) and the control of the influx of personnel to the court - first and appellate instances

The composition of the corps of judges largely depends on the peculiarities of the selection process according to the legislation – what steps an aspiring judge shall pass to get into the judicial system, what are the pre-requisites for the lifetime appointment and what is the time required for it, role does the type and duration of the candidate's professional experience play, also how foreseeable is the process and the result, etc. Legislation can encourage or hinder the diversification of the corps of judges, make it easier for certain groups of aspiring judges to get into the system or vice versa. **Legislation, together with other factors (such as trust towards the process, for example) determines the degree of the attractiveness of a career in the judiciary.**

Georgian legislation as of today considers **four filters**, through which the High Council of Justice examines those who wish to become judges and gradually narrows the circle of persons who have a chance to get into and stay in the judicial system.

Necessary requirements to become a judge are the following:

1. Passing the qualifying exam.

2. Admission to the High School of Justice (HSoJ) and its successful

completion.[10]

3. Participation in the competition announced for the vacant position and appointment.

4. Passing the probation period and appointment for lifetime (until reaching the age of 65).

Three factors contributed recently to the selection of High Council of Justice judges without any external and internal control:

1. Legislative changes that should have increased accountability of the High Council of Justice were delayed. For example, specifying the selection criteria,[11] refining selection procedures, taking into account the transparency and justification was delayed. As a result, big part of the judges was appointed under flawed legislation.

2. As usual, judge members of the High Council of Justice, had the unified opinion towards staffing issues, raises the doubt that they are selected from a narrow circle of judges who have common interests and goals.

3. Part of the nonjudge members of the High Council of Justice were ready to act in agreement with the judge members and if required, support them. Without such support, the HCoJ would not be able to accumulate the number of votes (2/3 of the full composition of the HCoJ) required to appoint a judge.[12]

It is noteworthy, that the legislation hinders the renewal and diversification of the judicial system. It makes it easier for a certain category of candidates to get into the system, for example, for former/current judges and former members of the Constitutional and Supreme Courts. They do not need to pass qualification exam, as well as studying in the High School of Justice.[13] They are not subject to probation period, that is, they are directly appointed for life.[14] Any other aspiring judge has to undergo the program, despite of their experience type and length. Total length of the High School of Justice program is 16 months, due to which a career in the court is less attractive for the experienced lawyers. From this point of view, it should be positively evaluated that for a justice trainee who has at least 10 years of experience working as an

10 Law on Common Courts of Georgia, Article 34 (1).
11 For example, work on the so called third wave of the reforms started in 2014, but the changes came into force only in 2017. Delayed judicial reform and subsequent political processes. 27th May 2016, see https://bit.ly/3D3sQdb.
12 Organic Law on Common Courts, Article 50.
13 Organic Law on Common Courts, Article 34 (3)-(6).
14 Organic Law on Common Courts, Article 36(4[1]).

investigator/prosecutor/lawyer, the duration of the full training course is 12 months,[15] however, it seems this is not enough for attracting the candidates. Also, taking into account that the stipend for a student at the High School of Justice is not high enough,[16] also, due to the existing schedule, it is difficult to continue working in parallel to studying at the High School of Justice, and even in case of successful graduation, the appointment is not guaranteed.[17] Lack of trust towards the process (reputation of the High Council of Justice) decreases the interest of qualified lawyers in judicial careers.

15 Organic Law on Common Courts, Article 66 [21] (2). The same applies to the head of the structural subdivision of the High Council of Justice, to the head of the Common Courts Office or its structural subdivision, assistant to the judge, court hearing secretary.

16 According to the Organic Law on Common Courts (Article 66[17]), the amount of the justice trainee stipend cannot be less than 1/3 of the minimum salary of the first instance court judge.

17 Within the project funded by Rustaveli National Science Foundation (YS 17_23), the study author talked to the acting judge who is also the School graduate (interview of 21st December, 2018) the judge noted: "I have graduated the School with a very high result. Despite this, I was not appointed for a year… I was already going to change the direction, could not work, was living off 1000 Gel… there is a specific category of graduates who have not been appointed yet…"

Table №1: Determining the circle of persons who are eligible to apply for vacant positions of judges

Year	Date of the qualification exam,[18] number of persons attending the exam and of those, passing the exam	High School of Justice (date of admission to the School and number of trainees)[19]
2015	11.2015, attended by 156, 36 passed the exam	Decree 1/51, 25.05.2015, 11 trainees
2016	No exam conducted	Decree 1/273, 31.10.2021, 20 trainees
2017	No exam conducted	No trainees admitted to the School
2018	07.2018, attended - 233, passed – 57	No trainees admitted to School
2019	01.2019, attended - 123, passed - 25 8/15.06.2019, attended - 84, passed – 7	Decree 1/24, 04.03.2019, 20 trainees Decree 1/295, 25.10.2019, 20 trainees
2020	01.2020, attended - 180, passed – 21	Decree 1/58, 05.06.2020, 10 trainees
2021	No exam conducted	No trainees admitted to the School
2022	28.05.2022, attended - 74, passed - 3220	No trainees admitted to the School

The High Council of Justice is able to control the influx of personnel into the system. It takes decision on conducting the qualification exam[21] and the admission competition at the High School of Justice.[22] It also

18 Information is based on the letter of 26th October 2021, 791/2734/03/o. information on the 2022 exam is taken from the High Council of Justice website. See The second stage of the qualification exam for judges has ended, 29th May 2022. www.hcoj.gov.ge.

19 This part of the table was prepared based on information spread by the Council of Justice, letter 26th October 2021, 789/03.

20 The second stage of the qualification exam for judges has ended, 29th May 2022, Information taken from the Council website. www.hcoj.gov.ge.

21 See decision of the High Council of Justice of Georgia, 19th March 2018, 1/152. Article 4. 23. The HCoJ sets the exam date, terms of implementation of organizational events, as well as composition of exam committee.

22 Organic Law on Common Courts, Article 66[12] (3). The competition shall be organized

determines the total number of listeners to be admitted to the HSoJ before announcing the contest.[23] This means the High Council of Justice can hinder new people getting into the system and system renewal. **It is noteworthy, that the HCoJ did not conduct the qualification exam in 2016 and 2017.[24] Also, contest for admission to the High School of Justice had not been announced in 2017 and 2018.[25] In such way, influx of new personnel to the system was delayed.**

It is a separate issue how fair and consistent the High Council of Justice is at different stages of the evaluation of those who wish to become a judge, and how qualified personnel have the opportunity to enter and stay in the system. For ages, the High Council of Justice decided who would become the School Listener[26] until the transfer of authority to an Independent Board of the High School of Justice.[27] The HCoJ is not responsible of appointing High School of Justice graduates as the judges. It appoints judges for a probation period (those who are subject to this period), and for a lifetime (after the probation period, or directly, in case of those who are subject to this period). The legislation divided a process of appointing to the vacant positions into two parts, evaluation and ballot. Since a statutory threshold has to be passed to get to the voting stage, the HCoJ can filter out unwanted candidates by manipulating scores/grades if they wish so. The legislation is interpreted in a way, that only a decision to refuse appointment to a candidate by ballot is appealable, but not a decision to deny admission to the ballot.

The High Council of Justice members can also not appoint a judge being on a probation period for lifetime.[28] The probation period has become a significant mechanism to influence the judges and control their behavior.[29] Considering that before taking decision on the lifetime

minimum once a year. Also see Article 66^{12} (2).

23 Organic Law on Common Courts, Article 66^{15}.

24 6th monitoring report (2018), p. 47. https://bit.ly/3Qfs0g3.

25 See table №1, prepared based on information provided by the HCoJ.

26 Within the project funded by Rustaveli National Science Foundation (YS 17_23), the study author talked to the acting judge who is also the School graduate (interview of 21st December, 2018) the judge noted: "because admission to the School is upon interview, this opinion is extremely individual, there is no objective criteria… no justification here, you are either admitted or not."

27 The extent to which the High Council of Justice can influence the Independent Board of the High School of Justice through members appointed by themselves or judicial members elected by the Conference of Judges is a separate topic.

28 Organic Law on Common Courts, Article 36^{4} (A judge will not be appointed for life if he/she is not supported by 2/3 of the full composition).

29 Current and former judges, whom we interviewed during the study, talk about this. One of them (interview from 6th June 2018) noted:

"Judges had no guarantee that they would continue their work if they would clearly and

appointment of the unwanted (unpredictable/uncontrollable) judges, the HCoJ has several opportunities to filter them out, refusing appointment at this stage is less expected, however, this may encourage judges to act in compliance with the demands and expectations of influential judges during the probation period.

Broad discretionary powers allow the High Council of Justice to decide who gets into the system and who stays out. The practice showed that when staffing the judiciary, the HCoJ members give preference to candidates socialized in the system (for example, current/former judges and assistant of judges[30]).[31] As a result, we got homogenous judicial corps, monotony of opinions within the judicial system, reflecting in the absence of different position (from influential judges).[32]

The High Council of Justice appointed judges before the criteria and procedures were set in the legislation (2013-2017)[33] and exactly former and current judges dominated the list.[34] Many influential judges were appointed anew. The monitoring reports indicate that the HCoJ members asked candidates question of different difficulties, thus putting them in unequal conditions.[35] Influential judges were not asked critical and clarifying questions.[36] **Based on this, we can assume that the results of the selection were determined by friendly relations with the High Council of Justice members, and not by**

openly state a critical position, different from what the majority or the part who speaks in agreement with the executive authorities have... Now is not a period when the judges with specific service term shall be re-appointed for life and of course, this moment also works."

30 We are talking about a general trend, but we cannot rule out that some such candidates would be unacceptable to the Council. Here we are talking that 1. The Council knows such candidates and can predict their behaviors. 2. Such candidates are less likely to question the established rules of conduct of judges.

31 See. https://bit.ly/3eGukzL

32 A judge close to an influential group of judges in the judicial system explained the absence of a different opinion as follows:

"When there is pressures from the outside... the collective closes, or... you guess that it is not your colleague they are attacking. The system is attacked, you are attacked. This is bad for internal filtering processes, because you are already afraid of exposing bad to the extent that it will be used against the whole system... In different situation you would protest, including towards your colleagues, on what you do not like and this, generally, is good for the system when there is a common sense, including critical opinion... but when you are attacked from the outside..."

The study author recorded this interview on 13th December 2018, within the project funded by Rustaveli National Science Foundation (Young Scientist Grant YS 17_23).

33 According to Nazi Janezashvili, former nonjudge member of the Council, 214 judges total were appointed in 2013-2017.

34 The same source indicates that out of 214 judges, 157 were former and current judges, 5 - judges of Constitutional and Supreme courts and only 50 were the school trainees.

35 Monitoring Report of the activity of the High Council of Justice №6, 2018, p. 45. https://bit.ly/3Qfs0g3.

36 Ibid.

the qualifications of the candidates.

Table №2:[37] Information on the contests announced by the High Council of Justice for vacant positions

Date	Number of Vacancies	Number of Applicants	Number of Appointed
05.06.2015	42	96	10
05.10.2015	61	104	37
18.01.2016	30	127	22
28.04.2016	65	90	44
17.02.2017	84	106	64
16.10.2017	52	82	34
30.07.2018	43	81	32
26.06.2020	99	67	36
22.02.2021	85	56	44
02.03.2021	3	17	3

Table №2 shows that the High Council of Justice did/could not fill in the vacant places. The positions in almost all competitions remained unfilled, creating serious problems in terms of overloading of the system and delays in consideration of cases. This can be explained by the shortage of qualified applicants,[38] which the HCoJ is creating itself by hindering the influx of new candidates in the system. The circle of people who can apply for vacant positions is quite narrow. There are two reasons for that: one is the lack of interest towards career in the judiciary, which is largely due to distrust towards the High Council of Justice and selection processes; Second is the caution of the High Council of Justice, not to allow unpredictable and uncontrollable personnel getting into the system. The aim of the HCoJ to staff the courts with such personnel is made easy by the fact that the judiciary is no longer attractive to a large number of qualified, experienced lawyers (see below for reasons). As a result, contest for the admission to High School of Justice is lower

37 The table was prepared based on the letters provided by the Council, as well as information published on the Council webpage.

38 The monitoring report indicated that mostly the same candidates were registering for the competitions and vacant places remained unfilled. The competition was not held in 7 courts due to the lack of candidates. See 6th Monitoring Report 2018, p. 47. https://bit.ly/3Qfs0g3.

than it could be, and the HCoJ does not need a big effort to justify the decision taken during the selection process.

While granting broad powers, the legislation does not provide for accountability mechanisms and does not adequately bind the High Council of Justice (see below). This creates risks of arbitrariness in the context of wide discretion.

b. Requirement to justify decisions as a safeguard against arbitrariness of the High Council of Justice

Decisions of the High Council of Justice on the appointment of judges are highly discretionary. The process of selecting judges for appointment is divided into two stages:

a) Assessment stage;

b) Voting stage.

In the Organic Law on Common Courts of Georgia, with the so-called "third wave" changes of February 8th, 2017, the criteria (competence and integrity) were determined and what the HCoJ member should pay attention to when evaluating candidates with these criteria was specified.[39] Information sources which the High Council of Justice members should have used were also specified.[40] The Constitutional Court (majority of the plenum) concluded in its decision of April 7th, 2017, that legal regulation provided sufficient guarantees against arbitrariness and manipulation of discretionary powers from the High Council of Justice members at the assessment stage.[41] According to the judges of the Constitutional Court, filling in the assessment forms is "a kind of justification", as this forms reflect opinions of the HCoJ members on the candidate's compliance with the criteria.[42] Therefore, this gave the proper opportunity to verify the validity of exercising

39 Organic Law on Common Courts, Article 35^1 (6) (7) (See amendments of 8th February 2017, 255 IIS). For example, to assess whether a candidate will be an independent judge, attention should be paid to his "principality", "personal strength" and "ability to make decisions independently". When evaluating personal and professional behavior, "correctness", "restraint" and "ability to manage emotions" are taken into account.

40 The serial number of the person in the qualification list of justice trainees and evaluation of the Independent Council of the High School of Justice should be considered (Article 35 (13), Law on Common Courts). In case of the candidate with judicial experience, evaluation of the heard cases (same law, Article 35^1 (2)). Before the interview, the Council gathers information on the candidate, studies their professional reputation and activities. This information shall help Council members to assess the candidates. Information is confidential (same law, Article 35^2 point 4).

41 Kevlishvili, Dotiashvili, Gloveli v Parliament of Georgia, 3/2/717, 7 April 2017, para. 46.

42 Ibid. Para. 46-47.

discretionary powers by the members of the HCoJ. At the same time, the Constitutional Court explained that under the conditions of secret balloting,[43] the legislation does not require from the High Council of Justice members to justify the results of voting or referring to the factual circumstances that formed the basis of their decision (to vote or not to vote for the candidate passing the voting stage). The Constitutional Court considered that "even without direct justification, taking into account the entire process of the contest, it becomes clear how the High Council of Justice of Georgia reached the final decision."[44] Against this background, the Constitutional Court acknowledged that the HCoJ members may not vote for the candidate with the highest rating, but considered this less problematic given the right to appeal.[45]

The judges Kopaleishvili, Imerlishvili and Kverenchkhiladze[46] do not share the interpretation of legal norms by the majority of Constitutional Court plenum. They indicated the current legislation does not envisage obligation to justify:

"It seems that the legislator does not have such a goal. The organic law reflects the criteria and points in a way that, at the same time the High Council of Justice member is not required to provide a written justification of how they reached particular assessment. The above analysis showed that the decision of plenum majority is based on such interpretation and explanation of norms, which harms the whole selection process of candidate judges and constitutional justice…"[47]

According to the judges, the legislator required just a "pure" conclusion on the integrity of candidate judges ("not satisfying", "satisfying", "fully satisfying").[48] When evaluating competence criteria, maximum number of points was taken into account, however, the basis of writing a high or low score was unclear to an objective observer.[49] The judges also indicated that the assessment form only reflects the result and no written justification of what specific characteristics the HCoJ member considered to come the appropriate conclusion is done.[50] The judges claimed that only the legislative prescription of criteria and points cannot be considered as a sufficient guarantee, as "it becomes impossible to

43 Para. 49-51. The majority highlighted that "introducing the element of secrecy in the decision-making process serves to ensure the freedom of will of the decision-making entities and protect them from the influence of external factors."
44 Para. 51.
45 Para. 52.
46 See different opinion, para. 14-24.
47 Para 21- 23.
48 Para 18.
49 Para 19.
50 Para 20.

check whether the HCoJ members considered this or that criteria while taking decision".[51]

We can discuss to what extent the legislation existing before 2020, by which majority of judges were appointed, envisaged the obligation of justification, or, without direct indication, to what extent such an obligation was implied. In practice, the assessment forms did not indicate what circumstances the HCoJ members rely on when evaluating the candidates for years. No explanation was provided in terms of points and assessments. It was not clear, how the High Council of Justice member came to that specific conclusion, that is, based on what he considered that the candidate had necessary qualities and skills (is knowledgeable, principled, balanced, thinks logically, etc.). It was not clear, what is the share of, for example, assessment of the Independent Board of the High School of Justice or the responses given by the candidate in the whole evaluation. Therefore, it is not clear how the specific score/evaluation was justified. Wide discretion at the stage of evaluation is problematic considering that the candidates who are not able to score 70% of the maximum points,[52] during the evaluation by the competence criterion, are not allowed to the voting stage. This raised doubts about the deliberate lowering of scores. The legislation is also interpreted in a way that this type of candidates (who passed the interview, got evaluated but the High Council of Justice did not allow them to the voting stage) were not eligible to appeal rejection for the appointment, thus increasing the risks of arbitrariness of the HCoJ.

On the voting stage, the HCoJ members also had discretion. Given the secrecy of voting, they did not justify the voting results, thus they had opportunity not to vote for the candidate with the highest points allowed at the voting stage without any explanation.[53] In case of several candidates passing to the voting stage, it was unclear why the High Council of Justice members gave priority to one candidate and not to others and what role did the points/assessments, based on which the candidates were admitted to voting, played.

Obligation to justify was introduced with the amendments of December 13th, 2019, to the Organic Law on Common Courts.[54] The texts of the

51 Para 21.

52 Organic Law on Common Courts, Article 35 (12).

53 As a result, such candidate (candidate who exceeded the legally established limit of points and evaluations) may be refused appointment if they will not be able to collect required number of votes.

54 By Article 162 of the Article 47 on the Law on Common Courts the legislator envisaged general obligation of justification; The obligation to justify was specified separately in relation to certain types of decisions. E.g. a justification is published after the appointment of a judge, which should include a description of the procedure and a characterization of the

decisions prepared after the introduction of the obligation to justify by law describe the stages that the *successful* candidate went through, as well as gives basic information on the candidate (however, it does not provide detailed analysis of the candidate's compliance with the criteria). This is especially problematic if such analysis is not given in the individual assessment forms either. **It is also not clear from this document why this candidate was given preference over other candidates admitted to the voting stage. Without such comparison, choice of High Council of Justice members is unclear.** This is the result of minimalist, non-adequate interpretation of legal requirements.

The relevant legal norm indicates that the justification, which is signed by the Secretary of the High Council of Justice, must contain a description of the procedure and a characterization of the appointed judge, including the points received by him and a conclusion about his integrity.[55] The Secretary cannot single-handedly prepare the collective justification to be published on behalf of the HCoJ. It is necessary to take into account the motivation of individual members of the High Council of Justice or acquaint them with the drafted justification[56] determine whether the justification prepared by the Secretary is acceptable. Secret voting hinders involvement of the HCoJ members in the process of preparing the justification. Moreover, secret voting does not exempt the HCoJ from the obligation to justify its decisions. Therefore, if the secrecy of voting is maintained, it will be necessary to find the ways take into account the arguments of the High Council of Justice members when preparing the justification, without violating the secrecy of the vote.[57]

judge. When voting for the lifetime appointment of a judge appointed for a three-year term, if failed to obtain the support of 2/3 of the members of the Council of Justice, each member writes a justification on the basis of which he supported or did not support the appointment of the judge for life.

55 Organic Law on Common Courts, Article 36 4^2.

56 Considering the fact that the Council of Justice has right to prepare and publish different opinion, as a minimum, the justification prepared by the secretary should be presented and familiarized with other members of the Council before publication, so that they can prepare a different opinion in case of such.

57 Several ways can be highlighted: the secretary of the Council may collect the arguments of the Council members from the discussion which will be held before the vote and the purpose of which will be a general discussion about the compliance of the candidate(s) with the legal requirements. Improving the evaluation forms of the candidates so that together with the scores/evaluations the Council members prepare a detailed explanation is also possible. These forms may become source of information for the secretary of the Council when preparing the justification. It is also possible to find a mechanism which will give the Council members opportunity to get acquainted and (anonymously) submit comments on the text prepared by the secretary of the Council.

Example of the justification on the appointment of the judge

Justification

On the appointment of Ia Baramidze to the position of a judge. in Ozurgeti Regional Court

According to Article 35 of the Organic Law on Common Courts of Georgia, based on the High Council of Justice Decision N 1/89 of 26th June 2020, a competition was announced for the selection of judges to fill in the vacant position in the Common Courts system. On the 2 vacant positions in Ozurgeti Regional Court among them.

Registration of candidates was in progress from 29th June to 19th July 2020. 21 candidates registered for the mentioned vacancy.

From July 24th to August 21st, 2020, the Department of Judge Performance Evaluation Management collected information envisaged by Article 35² of the Organic Law on Common Courts of Georgia on the candidates participating in the competition, including Ia Baramidze, which was presented to the High Council of Justice members on August 24th.

Information collected on the candidate:

Ia Baramidze has 23 years of working in her profession. Through the period of 2005-2019, she was an assistant to the judge.

Ia Baramidze is a graduate of the 11th group of the High School of Justice.

According to the Independence Council of the School of Justice, in terms of professional skills, the candidate has good concentration and analysis skills, logical reasoning, and a good ability to take logical decisions.

In terms of personal qualities, Ia Baramidze is described as mobilized, balanced, able to work in stressful environments, collegial and hardworking person.

The candidate was a disciplined student and followed the School statute and requirements of internal regulations.

No disciplinary liabilities were imposed on her during her learning period.

Interview with the candidate:

An interview was scheduled after getting acquainted with information gathered on her by the Council members. The Council members interviewed Ia Baramidze on 9th October. The interview took place during the open session and was attended by the NGO representatives.

Evaluation of the candidate:

Through 5th to 12th November 2020, 15 members of the High Council of Justice evaluated Ia Baramidze by the competency and good faith criteria.

Evaluation of the candidate:

Through 5th to 12th November 2020, 15 members of the High Council of Justice evaluated Ia Baramidze by the competency and good faith criteria.

When evaluating Ia Baramidze by the criterion of good faith, 9 evaluators from the Council considered that she fully met the criterion and 6 members considered that she met the criterion.

When evaluating Ia Baramidze against the competence criterion by the members of the Council, according to the characteristics of these criteria, the total number of scores obtained by the candidate was 1258 points, which is 83.87% of the maximum number of scores.

Results of voting:

As a result of the first voting held to fill in the first vacant position of a judge in Ozurgeti Regional Court on 18th November 2020, where the total number of Council members participating was 13, Ia Baramidze scored 12 votes.

7 candidates were included in the voting ballot for the said vacancy, out of which 3 were former judges and 4 were former trainees of the High School of Justice. In particular:

1. Baramidze Ia – 12 votes
2. Gogaladze Irma – 0 votes
3. Lobzhanidze Giorgi – 0 votes
4. Chikovani Gvantsa – 0 votes
5. Tsetskhladze Nargiz – 0 votes
6. Javakhishvili Maia – 0 votes
7. Jvarsheishvili Maia – 0 votes

1 ballot was annulled.

Conclusion:

Considering good faith and competency criteria (written and verbal communication skills, professional qualities) of the candidate Ia Baramidze, based on the results of the voting, against 6 other candidates, Ia Baramidze was given priority and was appointed as a judge of Ozurgeti Regional Court with the 3-year term.

Nikoloz Marsagishvili

Secretary of the High Council of Justice

c. Effectiveness of appealing High Council of Justice decisions in practice

The legislation envisages the possibility of appealing the decisions of the High Council of Justice, in particular, the refusal of appointment for a probation period and for lifetime, in the Qualification Chamber of the Supreme Court.[58] Since 2014, four candidates, who did not reach the voting stage, because they could not cross the threshold set by the law, appealed the decision of the HCoJ in the Qualification Chamber.[59] In all four cases, the Qualification Chamber refused to accept the case with the reason that the candidates who were not allowed to the voting for the position of a judge did not have the right to appeal the refusal of the appointment by the High Council of Justice. The Qualification Chamber did not consider the decision of the Constitutional Court taken on April 7th, 2017, highlighting that the right to a justified decision is not limited to a final decision to refuse an appointment, but also applies to decisions made at various stages of the selection process.[60] In this regard, on April 7th, 2022, the European Court of Human Rights established a violation of Article 6th of the Convention in the case of *Gloveli v. Georgia*. The applicant disputed the violation of the right to a fair trial. The qualification chamber of the Supreme Court did not essentially consider his appeal of the decision to refuse an appointment, as the HCoJ did not allow him to the voting. ECtHR highlighted that the Qualification Chamber did not take into account the position of the Constitutional Court, according to which, the constitutional right to justified decision implies an adequate explanation at all stages of the selection process and that within the right to a fair trial all decisions of the HCoJ are appealable and must be reviewed by the court.[61]

One case of refusing lifetime appointment was also appealed to the Qualification Chamber.[62] It was about the lifetime appointment of a judge assigned to the position for a three-year term in accordance to Article 79[4] of the Organic Law on Common Courts, accordingly, when

58 Organic law on Common Courts, Articles 354, 365. In 2017-2021, the Qualification Chamber received 11 cases for review. 4 out of them were not satisfied, 5 cases were not accepted in the proceeding by the Chamber and 1 case was sent to Tbilisi City Court. In 8 out of 11 cases were about the competition of judges. In four cases, appeals were made against the refusal of appointment by candidates who had been dismissed from the selection process before being allowed to voting stage. In one case (SS-1-17 (11.01.2017) the person appealed Council's refusal of admission to the School, but the Chamber explained that reviewing such case was out of their scope. The case was sent to Tbilisi City Court for hearing. Tbilisi City Court suspended the proceedings because it considered that the plaintiff had violated timeframe for filing an appeal established by law.

59 SS-05-19 (08.07.2019); SS-03-19 (17.06.2019); SS-01-18 (06.02.2018); SS-2-17 (05.07.2017).

60 Kevlishvili, Dotiashvili, Gloveli v. the Parliament of Georgia, 3/2/717, 07.04.2017, § 31, § 38.

61 Gloveli v. Georgia, judgement of 7th April, para 58.

62 SS-02-18 (16.04.2018).

he had at least three years of experience as a judge. The complainant crossed the threshold set by the criterion of good faith, as well as of competence, underwent an interview, but was refused the lifetime appointment as a result of secret voting, without any justification. The Qualification Chamber did not share his arguments and explained that the HCoJ members take decisions by secret ballot in accordance with the procedures set by Article 79[4] of the Organic Law on Common Courts of Georgia. The Chamber considered that the obligation to justify does not apply to decisions made by secret ballot. In response, we can argue that the secrecy of the vote does not exclude the obligation to justify and that the Qualification Chamber could have interpreted the legislation with emphasis on this. In any case, this decision of the Qualification Chamber is not relevant any more due to the amendments of December 13th, 2019, to the Organic Law on Common Courts, as the law requires justification regardless the secrecy or openness of the ballot.

Table №3: Cases reviewed by the Qualification Chamber

Year	2017-2021	2017	2018	2019	2020	2021
Decisions of the Qualification Chamber	11/10/1[63]	2/1/1[64]	2/2/0	5/5/0	0	2/2/0

d. Transparency of High Council of Justice activities in the legislation and in practice

Monitoring of the activities of the High Council of Justice was complicated by the fact that the HCoJ did not publish information about the session in advance, within the time limits established by the law,[65] depriving the interested persons of the opportunity to attend and observe the sessions. Closing the sessions also complicate monitoring.[66] The HCoJ gave the right to the candidates to decide whether the interviews

63 The first digit reflects the number of cases entered for consideration in the Qualification Chamber, the second digit stands for the number of decisions taken in favor of the Council, the third digit shows the number of decisions taken in favor of the plaintiff/person.
64 In the mentioned case, the decision of the Chamber itself was neither a favorable nor unfavorable decision for the plaintiff, as the Chamber sent the case to the City Court for the hearing. Tbilisi City Court suspended the case proceeding. (3/364-17, 28.03.2017).
65 2012/2014 Three-year monitoring report, pp. 17-18. https://bit.ly/3KO4eXJ.
66 2012/2014 Three-year monitoring report, pp. 17-18. https://bit.ly/3KO4eXJ.

would be closed or open for the observers.[67] Many candidates, judge members of the High Council of Justice among them chose to close the interviews.[68] Interviews attended by the observers revealed unequal treatment of the respondents.[69]

The High Council of Justice members shall take decisions individually, based on the pre-set criteria. However, as practice shows, the HCoJ members informally agreed on who would be appointed and used the procedure set by the law to "formalize" this agreement. Accordingly, transparency of the process was illusory, and the transparency of the reasons - minimal. Given the secrecy of the ballot, the HCoJ members did not have to explain why they had appointed one specific candidate and not the others.

It is considered that after the change of government (2012), and before the influential judges "making a deal" with the new ruling party, appointments have been subject to bargaining the judge and nonjudge (selected by the Parliament) members. Nonjudge members voted for the candidates preferred by the judge members only in exchange for similar support. This was indicated, for example, by the statement of the nonjudge members on December 25th, 2015, in which they talked about the reasons for voting in favor of Judge Levan Murusidze:

"There also was a real threat that rejection of the candidature of Mr. Murusidze could result in the negative attitude towards other and first of all, those candidates who were supported by the nonjudge members. The vote could have ended with zero results."[70]

A judge member from those times, interviews in 2018 by the study author, indicated on the same:

"The re-appointments started and non-judicial members appointed by the new government and our judges in the High Council of Justice in agreement... there was such deal... we want you to appoint this candidate", and these are responding "we want this" "ok, deal", they would agree and these would appoint one candidate, those – another... they have appointed people who were brought only because they were

67 2016 4th Monitoring Report, pp. 36-37, https://bit.ly/3ARTlzd; 5th Monitoring Report (2017), p. 22. https://bit.ly/3Bob82R.
68 6th Monitoring Report (2018), p. 30, 47 (Indicates that in 2017 forty-five candidates closed the interview), https://bit.ly/3Qfs0g3. See also 7th Monitoring Report (2019), p. 18. https://bit.ly/3QwlwdB.
69 2016 4th Monitoring Report, p. 75. https://bit.ly/3ARTlzd.
70 Statement was published on the webpage of the High Council of Justice. www.hcoj.gov.ge.

relatives on a nonjudge member... someone brought the best-friend, best friend brought his friend, etc..."[71]

There is an impression that after the influential judges making a deal with the new ruling party and changing balance within the High Council of Justice[72] the process of selection and appointment passed into the hands of this group. This reduced the need for bargaining and made it easier for the influential judges in the HCoJ to fill the courts with the desired staff. Although the legal framework has relatively improved, formal procedures have acquired the function of a facade, disguising informal processes. It was believed that the public part of the process was only a performance for observers:

"This is not an interview... this is a show, everything is already decided because the system is built so that... whatever list will be agreed in the restaurant, it will be passed."[73]

The different degree of transparency of different procedures and peculiarities of the procedures contribute to staffing the courts by the HCoJ. Between 2013 and 2017 all judges, regardless of their experience, were appointed for a probation period and were subject to evaluation. In 2017, the legislation has changed and candidates with judicial experience were able to apply directly for the lifetime appointment. Incumbent judges could apply for a lifetime appointment before the expiration of their probation period. Procedural requirements vary for different types of appointment. For the High School of Justice graduates, the procedure provides more guarantees, for example, open voting. The transparency requirements were not same in case of lifetime appointment of experienced judges (Article 79[4]). As a result, the HCoJ were able to appoint significant part of the judges for a lifetime through the secret ballot, without any justification. In addition to this, the legislation is formulated in such a way that if the candidate is not supported by 2/3, they will not be appointed for lifetime, so not appointing undesirable personnel is not difficult for the judge members.

71 Interview was recorded on 1st June 2018 within the frameworks of the study, funded by Rustaveli National Science Foundation.
72 Votes of some nonjudge members are referred here.
73 Interview with the nonjudge member of the High Council of Justice was recorded on 5th June 2018.

2.2. Experience and selection process of the judicial candidates of the Supreme Court of Georgia (2020-2022) - Filters

The High Council of Justice was given the authority to nominate Supreme Court judicial candidates to the Parliament.[74] This change increased the quality of self-government of judges - the body, in majority of the members of which are the judges, is responsible for the selection of candidates for the position of Supreme Court judge.[75] However, It is debatable whether the increase of the authority of the High Council of Justice was justified, given the non-meritocratic approach to the recruitment of lower-level courts (see above). With this change, the system has practically closed for those, will not obey the control of the influential judges. In the circumstances of flawed legal regulation, the High Council of Justice was easily able to manipulate decision-making processes.[76] As expected, in practice, the focus was mainly on candidates acceptable to influential judges (on judges, whom they trust), however, considering involvement of the Parliament, we still cannot rule out the list of candidates becoming the subject to bargaining with politicians (putting the candidates acceptable to the ruling party in the list in exchange for the support of the candidates preferred by the HCoJ in the Parliament). In this background, we have the impression that the competence and integrity of the candidates are secondary factors.

Unlike lower instances, passing the exam and graduation from the High School of Justice is not a required for those seeking to become Supreme Court judges. This situation should contribute to the diversification of the Supreme Court, attracting external candidates (those who have experience working outside the judicial system), however, in practice it depends on (a) the interest of such candidates (b) informal criteria used by the HCoJ members (what type of the candidate the Council members think acceptable). The low interest in legal circles can be explained by the lack of trust towards the High Council of Justice, which is created by observing the process and results of the selection of judges among them. In other words, the subjective perception of lawyers is supported

74 Constitution of Georgia, Article 61 (2).

75 The Venice Commission considered it appropriate to increase the role of the Council of Justice in the staffing of the Supreme Court, however, at the same time, focused on reducing the role of the parliament. It was noted that the Supreme Court judges should have been appointed independently by the Council, without parliaments interference, or by the president, with the nomination by the Council. This was perceived as a way to ensure the independence of judges. See Opinion on the Draft Constitutional Amendments Adopted on 15 December 2017, at the Second Reading by the Parliament of Georgia, Opinion 918 / 2018, CDL-AD(2018)005, 19 March 2018. Available at: CDL-AD(2018)005 (coe.int)

76 referring that adopting the legislation has been delayed and many Supreme Court judges have been appointed under flawed legislation.

by objective data. The candidates nominated to the Parliament by the HCoJ are mostly judges (in close relationship with or acceptable for the group of influential judges). In December 2018, in the absence of legal regulations, the High Council of Justice tried to select the candidates to be nominated to the Parliament through informal consultations. The list of candidates mainly included influential judges (current and former members of the HCoJ). The list of the candidates prepared in accordance with legal amendments did not essentially differ from the initial list. Apart from couple of exceptions, the new list consisted of the current judges. Judge members of the HCoJ mentioned that "this happens like that everywhere" and that Supreme Court judges shall have experience within the judicial system.[77] Observing the practice reveals the following:

(a) The circle of people, from which the HCoJ selected the candidates to be nominated to the Parliament mainly consisted of the judges desired by the influential group of judges. Thus, judicial experience was required, but not necessary to be included in the list of the nominees to the Parliament or be appointed in the Supreme Court. This can be explained by the interest of influential judges to maintain power through ensuring "unity" of the corps of judges, excluding unpredictable, critical, or dissenting judges, who will endanger this "unity. "Control" over the Supreme Court also gives opportunity to the group of influential judges to avoid the Qualification Chamber of this court making decisions against the HCoJ.

(b) Although the legislation made it easier for outside candidates to get into the Supreme Court, in practice only those who are close to an influential group of judges or have political support can enter the system. In such cases, candidates' compliance with legal criteria becomes less relevant, as the formation of the list will be the result of negotiations between influential judges and politicians behind closed doors. In this context, the nomination and appointment of former chief prosecutor Shalva Tadumadze and his deputy Mamuka Vasadze as judges of the Supreme Court is considered.

77 Tazo Kupreishvili responds to Gvritishvili's criticism by Ana Dolidze and Margvelashvili's criticism. Netgazeti, 25th Decemebr2018. "It is the practice of all modern countries of the world to appoint judges to the Supreme Court on the principle of career advancement: The candidate must have several years of experience in the courts of the lower instance!" https://bit.ly/3QmBjuF. Also see Arguments of Judges Against the Third Sector, interview with the secretary of the Council of Justice, Imedinews, 25th January 2019: "I think that experience judges shall have priority and numerical superiority, their advancement to the Supreme Court should be career based."

The observers concluded that the circle of people interested in becoming a judge of the Supreme Court was narrow and this was a result of the fact that the High Council of Justice did not circulate information on vacant places wide enough and did not proactively act to encourage the candidates to ensure diversification.[78]

Similar to the lower instance appointments, adoption and refinement of legislation governing the selection process has been delayed. As a result, the HCoJ selected and nominated candidates within the flawed legislation.[79] Even under more or less improved legislation, High Council of Justice members were able to "pass" preferred candidates through informal agreements and coordination.[80] Although mechanisms for avoiding conflicts of interest were prescribed by law, observers pointed to violations in this regard.[81] Justifications prepared by the HCoJ members[82] often did not show how a member reached the conclusion while evaluating a candidate, or the factual circumstances were given without showing the relevance of these circumstances and making a proper conclusion; It was not clear, why the HCoJ member gave the candidate a low score despite the positive evaluation, or why he evaluated another candidate's writing ability,[83] for example, with a higher score when such a difference in scores was not justified.[84] In

78 The third report of the OSCE Office for Democratic Institutions and Human Rights December 2020-June 2021, p. 2.

79 The third report of the OSCE Office for Democratic Institutions and Human Rights December 2020-June 2021, p. 3 (It was pointed out that in the first competition the Council did not use the standards and rules, for example, during the interviews, due to which their duration and structure differed significantly; the Council was not consistent and the selection conditions were not fair; As a result, the candidates were put in an unequal position; this could have influenced their chances to succeed).

80 The Public Defender echoes the current process of selecting judges of the Supreme Court, 28th June 2019. Available at: https://bit.ly/3REPcpp.

81 The third report of the OSCE Office for Democratic Institutions and Human Rights December 2020-June 2021, pp. 14-16. The report pointed to several parallel competitions, and the risks of manipulation.

82 The author took the justifications prepared in May 2021 as an illustration. According to the report of the OSCE Office for Democratic Institutions and Human Rights (July 2021, p. 20): "Council members often relied on general, templated formulations taken from the law and did not individualize their justification. Some of them cited the data of candidates... to justify high scores but did not explain why this data was relevant... In many cases, candidates' "compliance with the criterion of integrity was justified by only one sentence, according to which the evaluator confirms that the candidate meets criteria, but no justification was provided. Majority of the assessments were short, with superficial references to the interview with the candidate, important incidents were not considered, which would indicate on the character of the candidates and their compliance with the requirements." (author's translation).

83 The advantage of the candidate can vary, for example, from the quality and quantity of publications prepared by them, analysis of decisions, etc.

84 In this case, the Council members may not be required to compare all the candidates to each other within the frames of written justification, but they are required to be consistent with the assessments. A significant difference between the scores of the candidates should be explainable and understandable and should not give rise to the suspicion that the scores

some cases, the High Council of Justice members deducted points with unclear reason.[85] The fact that the candidates practically never used legally prescribed opportunity to appeal the HCoJ decisions, says a lot. In cases where rejection to register as a candidate (3 cases) and to be admitted to the stage after the interview (a case[86]) was appealed, demands of the plaintiffs were not met.

2.3. Legal norms and practice governing the appointment of judges to administrative and other Positions

a. Election of the High Council of Justice judge members

The study of practice indicates that the elections of the High Council of Justice members are not meritocratic either.[87] Success of the HCoJ member candidate depends not on their skills and vision, but on the support from the influential judges.[88] High Council of Justice holds broad powers and, accordingly, levers of influence on judges. Adding loyal judges to the HCoJ allows influential judges to have their activities under influence. The support of at least 2/3 of the full composition of the HCoJ is required for the appointment of judges.[89] Electing even one judge as a High Council of Justice member, whose behavior the influential judges are not able to control, can hinder staffing the judicial corps with candidates acceptable for them. With this background, election of the judge members of the High Council of Justice has acquires special importance.

The obligation to hold a conference of judges in the event of a vacancy in the High Council of Justice and granting judges the right to nominate candidates should be evaluated positively, however, success of the reform mainly depends on the activity of the judges. As shown in Table №4 (see below), in recent years, number of candidates participating in the elections equals to the number of vacancies, meaning, the process

of some candidates were deliberately reduced.

85 For example, it was pointed out that during the interview, the candidate found it difficult to substantiate their opinion in a solid and argumentative way when discussing some legal issues. It was not explained what was the topic being discussed and what the weakness of the candidate's arguments.

86 SS-01-21 (14.06.2021).

87 Refers to the judge members of the Council. According to the Organic Law on Common Courts (Article 47), the Council comprises of 9 judge members, 8 out of which were elected on the Conference of Judges.

88 Refers to the judges, who for years held administrative positions and/or were members of the High Council of Justice.

89 Organic Law on Common Courts, Article50 (4).

is not competitive. Registration of only 24 candidates to the elections of June 2013 confirm the interest of the judges. In future, passivity can be explained by the facts that 1. Judges consider it unpromising compete with candidates supported by influential judges; 2. An attempt by one group of judges to change the culture of communication in the court system[90] failed and ended with those judges leaving the system. The combination of the High Council of Justice membership role by judges in administrative positions further reduces the chances of ordinary[91] judges to get into the HCoJ and enhances the problem of concentration of power.

It is significant that the candidates and their programs are not presented before the conference, the vision of the candidates is not discussed before directly voting at the conference either. This makes impression that candidates' skills and views are not important for the result – High Council of Justice member is already selected by the election day and the choice is "made official" on the conference. Election process is orchestrated, and the HCoJ composition changes based on the interests of influential group. Otherwise, it is difficult to explain why two judge members left the Council within couple of months of their election without any explanation for the conference.[92]

Elections of the members of the High Council of Justice are often scheduled at a time when observers' attention is focused on other events, such as Parliamentary elections.[93] This can be explained by the interest to conduct elections of HCoJ judge members under conditions of reduced public control.

90 In 2013 At the first conference held after the reforms, a group of judges demanded that candidates submit programs, but this initiative was supported by only a small number of judges. See Voting on the High Council of Justice Started, 9th June 2013, Netgazeti. https://bit.ly/3AS65pE.

91 Refers to judges who did not hold administrative positions before and during the election of members of the Council.

92 On the Conference of Judges held on 31st October 2021, the judges elected two new members of the High Council of Justice - Paata Silagadze and Giorgi Goginashvili. The topic was put on the agenda after Tamar Oniani and Tea Leonidze left their positions early.

93 Statement of the EU Delegation and US Embassy on 2020 and 2021 elections. "Remarks by EU Ambassador Carl Hartzell following the Appointment of Two Members of the High Council of Justice", 2 November 2021, available at https://bit.ly/3AJsHZs. also "U.S. Embassy Statement on Conference of Judges", 6 November 2021, available at https://bit.ly/3BfyN5t. See also "US Embassy Statement on the Conference of Judges"30th October 2020, available at: https://bit.ly/3wWf2NJ. In recent years, the conference has coincided with elections. For example, Conference was held on 30th October 2020, the parliamentary elections was held a day earlier. After one year, the conference was held on 31st October, a day before the local elections.

Table №4[94]: Election of the Judge Members of the High Council of Justice (2013-2021).

Date of the Conference and Number of Participating Judges	Number of Vacancies in the HCoJ	Number of Candidates
9/16.06.2013 222/223 judges	3 vacancies for the judges on administrative positions	4 (I round) 3 (II round)
	4 vacancies for ordinary[95] judges	20 (I round) 9 (II round)
11.07.2015 264 judges	1 vacancy	2
20.02.2016 227 judges	1 vacancy	1
08.04.2017 205 judges	2 vacancies	2
24.06.2017 271 judges	4 vacancies	7
24.03.2018 276 judges	1 vacancy	2
14. 03. 2020	1 vacancy	1
30.10.2020 260 judges	2 vacancies	2
26.05.2021 291 judges	4 vacancies	4
31.10.2021 266 judges	2 vacancies	2

94 The author prepared a table based on the letter from the Administrative Committee of the Conference of Judges, the letter is dated 5th December 2018. 2020-2021. Information on the conferences held is taken from the Council webpage and 9th monitoring report prepared by GYLA.

95 Here, we cannot rule out electing the former chairpersons, who did not hold such position during the elections.

b. Appointment of the Chairpersons of the courts

When appointing the court chairpersons, the High Council of Justice makes decisions by a simple majority of votes.[96] This means that the judge members of the High Council of Justice can make decisions without considering opinions of the non-judicial members. The study revealed, that in practice, vacant positions of chairpersons are open to a narrow circle of judges (the group members of influential judges). As usual, only one candidate is considered for this position. The fact, that other judges do not apply, may indicate towards their belief that the process is not competitive and the candidate, which is the member of the group of influential judges will be appointed in any case. Candidates are not required to submit an action plan, their previous activities in administrative positions are not critically assessed. Such experience is automatically considered as positive and enough be appointed for a new term, regardless of the effectiveness of their activities.

From the justifications, the preparation of which the HCoJ was obliged with the amendments of December 13th, 2019[97], it is not clear what criteria the High Council of Justice used when evaluating the candidates. No detailed analysis of the candidate's compliance with the criteria provided. Since more than one candidate is never considered for a vacant position, the High Council of Justice does not have to show the advantages of the successful candidate over others. The decisions point to the mandatory consultations with the judges, but their opinions are uniformly positive. Seems, there is no substantial discussion of the activities of the candidate in the position of the chairperson. Typical examples of justifications are given below.

96 Law on Common Courts, Article 50.
97 Law on Common Courts, Articles 23 (6) and 32 (1).

High Council of Justice

Tbilisi

5th April 2021

Decree

On the appointment of S. Metopishvili as the Chairman of the Chamber of Administrative Cases of the Tbilisi City Court

On 24th March 2021, the High Council of Justice of Georgia initiated the appointment of the chairperson of the Administrative Chamber of the Tbilisi City Court, and judges wishing to be appointed to the said position were given a deadline to submit the relevant applications. As part of the initiation, on 26th March 2021, only the application of Sergo Metopishvili, judge of the Chamber of Administrative Cases of the Tbilisi City Court, was received.

Sergo Metopishvili has 11 years of experience as a judge, including working on managerial positions. In particular, at different times, he was the chairperson of the Chamber of Administrative Cases of the Tbilisi City Court, the Chamber of Civil Cases of the same court, and the Bolnisi Regional Court.

Considering the mentioned and in line with point one of Article 32 of the Organic Law on Common Courts, Sergo Metopishvili is to be appointed as the chairman of the Chamber of Administrative Cases of the Tbilisi City Court.

Nino Kadagidze

Chairperson of the Supreme Court of Georgia

Chairperson of the High Council of Justice of Georgia

High Council of Justice

Tbilisi

29th December 2020

Decree

On the appointment of Sh. Kakauridze as a chairperson of Gori Regional Court

On 23rd December 2020, the High Council of Justice of Georgia initiated the appointment of the chairperson of the Gori Regional Court, and judges wishing to be appointed to the said position were given a deadline to submit the relevant applications. On 25th December 2020, the application of Shalva Kakauridze, judge of the Chamber of Criminal Cases of Gori Regional Court, was received.

On 29th December 2020, the High Council of Justice of Georgia held consultations with the judges of the Gori Regional Court. 7 judges attended the meeting. The judges supported the nominated candidate and noted that Shalva Kakauridze has experience working as a chairperson at Gori Regional Court and described him as a qualified and experienced manager.

Shalva Kakauridze has 10 years of experience as a judge, including working as a chairperson of Senaki, Sachkhere, and Gori Regional Courts. The said indicates that Shalva Kakauridze will successfully continue managerial work at Gori Regional Court.

Considering the said and in line with point one of Article 32 of the Organic Law on Common Courts, Shalva Kakauridze is to be appointed as the chairman of Gori Regional Court starting from 30th December 2020, for 5 years.

Nino Kadagidze

Chairperson of the Supreme Court of Georgia

Chairperson of the High Council of Justice of Georgia

2.4. Summary - How can we understand the personnel policy of the High Council of Justice? What are the factors affecting the recruitment of the judicial corps?

For years, influential judges have emphasized the need for the unity of the judicial corps, especially in the light of criticism of the HCoJ's activities by non-governmental and international organizations. Unity was determined not as a natural convergence of the opinions of individual judges on some (but not all) issues, but as the absence of different opinion among judges, the automatic sharing and acceptance/ support of the position of influential judges. It was highlighted that differences among the opinions of the judges would harm judiciary. From this point of view, the HCoJ's approach towards staffing the courts is clear. It is logical to assume that the High Council of Justice would focus on the candidates that would not threaten such unity and use the selection process to exclude unpredictable and unmanageable candidates. Competitive environment created by such candidates would make it difficult for a group whose members have held Council and administrative positions in individual courts for years to retain power. It would also make difficult mobilization of judges when influential judges would need to demonstrate their influence to the ruling party or the non-governmental sector. Taking into account the above, it is logical to assume that the Council members would choose familiar, easily predictable candidates, relatives and friends among them. The further cultivation of social ties by influential judges with other judges also has the same goal.[98] Interviews with the judges revealed that their approaches and opinions are in line with the rhetoric of the influential group.[99] It is interesting that they perceive criticism of influential judges or the activities of the High Council of Justice as an attack on judiciary[100], in other words, it creates the impression that they are united not around an idea (for example, the idea of independence of judiciary or judges) or an institution (for example, the High Council of Justice), but around

98 Levan Murusidze: I think of judges as my family members, Liberali, 28th December 2018, available at: https://bit.ly/2pFtMRa.

99 For details, including excerpts from specific interviews, see Nino Tsereteli and Salome Kvirikashvili, Self-Government of Judges in Georgia - Problems and Prospects. https://bit.ly/3ec7CiD.

100 One of the judges interviewed within the study frameworks (interview of 13th December) explained passivity of the judges as follows: "the team is closed, like one fist, you know that it is not your colleague being attacked, they attack the system generally and attack you. you are already afraid of exposing your flaws to the extent that it will be used against the whole system... In different situation you would protest, including towards your colleagues, on what you do not like and this, generally, is good for the system when there is a common sense, including critical opinion… but when you are attacked from the outside…"

specific individuals. This can largely be attributed to the selection policy of judges.

3. Employment in the offices of the courts and High Council of Justice of Georgia: legal framework and practice

Hiring and career advancement of court officials is part of the unified regulation of the public service. According to the Law on Public Service, the (court) employees are appointed to the positions based on the contest,[101] it serves to fill the vacant position with the best candidate and involves determining the candidates' compliance with the criteria established by the law.[102] The procedure prescribed by the law should instill trust towards the selection process among the contestants and the public, as well as belief that officials will be selected based on qualifications and not on the basis of kinship or friendship.[103] **In Georgian reality, the vagueness of the legislation creates the risk of abuse of powers by the persons responsible for the selection of personnel and favorable conditions for nepotism and cronyism.[104] Transparency of decision-making processes is low. Adequate implementation of the law by decision-makers is a separate challenge.** Even in cases when the selection process is properly regulated, problems can arise if influential judges bypass legal guarantees. The combination of these factors affects the quality of staffing and justice itself, as well as increases the risk of creating an unhealthy environment within the system. Non-meritocratic approach towards the selection and advancement of the staff, along with the workload and low remuneration, may lead to an outflow of qualified personnel from the system.[105]

Selection procedures of public servants is not structured in a way to encourage attracting highly qualified personnel from outside the system. According to the Law on Public Service, only one category of competitions (the competitions announced for the selection of the fourth or lowest ranking official)[106] is automatically open, or open for external

101 Law on Public Service, Article 34 (1).
102 Law on Public Service, commentaries, collective of authors, GIZ, 2018, p. 134. also Resolution No. 204 of April 21, 2017 of the Government of Georgia "on conducting a competition in public service agencies".
103 Law on Public Service, commentaries, collective of authors, GIZ, 2018, p.134.
104 Problem of nepotism and cronyism in the public service was highlighted several times Mechanisms for Career Advancement in Civil Service: Meritocracy vs Cronyism, 29th February 2016, available at: https://bit.ly/3RDMJva.
105 The courts employees interviewed within the framework of the study highlight this problem, see below, sub-chapter 4.4. (c).
106 This is the level of junior specialist, or the first stage of career development. Law on

candidates. Superior ranking (the third, the second or the first[107]) officials are appointed through closed competitions.[108] A closed competition is announced within the public service system to select an appropriate candidate from among existing officers, the officers transferred to the reserve list and persons employed on the basis of an employment agreement.[109] Open competition for the superior ranking officials is announced only in exceptional cases, if an appropriate candidate could not be selected through a closed competition.[110] This is based on the argument that people outside the system, unlike incumbents, do not have the necessary experience and skills.[111] In response, one may say that writing, organizational and communication skills can be developed outside the court system as well. It is not difficult for a person with such skills to learn the specifics of court work in a short time, especially if relevant conditions are created for their adaptation and integration into the judicial system. Such approach leaves experienced, qualified candidates, who can improve the performance of courts by introducing new approaches, behind the system.[112] Closing the system to new members is particularly problematic in the court context because it focuses on the candidates socialized into the judicial body, whose behavior is easier to predict and manage compared to the ones with experience outside the system. **Closing the competitions, i.e. narrowing the circle of persons who can apply for superior ranking positions, can be favorable for court chairpersons, whose interest is to control the influx of new candidates and "check" them, in order to exclude unruly or unpredictable candidates from getting into high ranking positions.**

Even in case of open competitions held for the selection of officials of the fourth rank, from the new candidates, the members of the selection commission may give preference to those they know, for example, those who completed an internship at the court.[113] We can assume

Public Service, Article 25.

107 Junior specialist level, mid management level and top management level.

108 Law on Public Service, Article 34 (2).

109 Law on Public Service, Article 34 (3).

110 Law on Public Service, Article 34 (4). Announcing open competition may be justified, for example, when innovations need to be introduced and incumbents lack the necessary skills; Therefore, it is necessary to bring in private sector employees or persons with practical experience in foreign institutions into the system. Law on Public Service, commentaries, collective of authors, GIZ, 2018, p. 138.

111 Law on Public Service, commentaries, collective of authors, GIZ, 2018, p. 136/138. 112 Such criticism was observed in relation to the legal framework in general. Assessment of service reform, analysis of legislative norms and administrative practices, Network of Centers for Civic Engagement (NCCE), 2019, https://bit.ly/3Be8Y5s.

113 Within the frames of this study, the respondents indicated that the most realistic way to get into the system is through an internship. This gives young lawyers a chance to demonstrate their abilities. see below.

that inexperienced candidates who enter the system as relatively low-ranking officials, undergo socialization and are easily influenced by experienced officials. This contributes to maintain, strengthen and manage the existing mentality and behavior pattern. It is significant that in future some of the judges will be selected from these candidates.

Another factor that reduces the attractiveness of a career in the judicial system is the probation period of an official. The probationary period applies to new staff[114] and its duration is 12 months.[115] The line manager checks compliance of professional skills, abilities and personal qualities of the person accepted for the probation period with the position held.[116] An official shall be dismissed from his position in case two negative evaluations are received during the probation period.[117] The imposition of a probation period is not problematic itself, but in this case the period is unreasonably long (it was extended - earlier it was 6 months), which puts the official in a state of stress and expectation, especially since a person accepted on a probation period is subject to the evaluation of the official once a quarter.[118] We can assume that 12-month probation period reduces the interest of qualified personnel to enter the judicial system and the increases the risk of higher officials using their authority for insufficient purposes.[119]

The **Competition Commission** is responsible for the selection of court officials. The court chairperson appoints an official of the first or second rank of the same court as the chairperson of the competition commission.[120] On its hand, the chairperson of the Competition Commission determines the number of members and composition of the Competition Commission "based on urgent necessity".[121] Thus, they enjoy wide discretion in the formation of the commission. According to the law, the Competition Commission *shall* be composed of a representative of the human resources management unit of the public institution concerned, a representative of the structural unit of the public institution where there is a vacant position, a representative of a sectoral trade union (if any) and an invited independent expert and/or an expert in the relevant field who is not officially related to the given

114 Law on Public Service, Article 45 (1).
115 Law on Public Service, Article 45 (2).
116 Law on Public Service, Article 45 (4).
117 Law on Public Service, Article 45 (5).
118 Law on Public Service, Article 53, part 4. Generally, civil servants are evaluated once a year, so, there is a longer interval between evaluations.
119 Transparency International Georgia, Evaluation of civil service reform: personnel policy and property declarations, 3rd December 2015. https://bit.ly/3AVMuoO.
120 Law on Public Service, Article 37.
121 Law on Public Service, Article 38 (1).

public institution.[122] The presence of persons with no official connection to the system among the members of the competition commission can add objectivity to the selection process and facilitate the selection of employees of the court office on the basis of professional rather than kinship or friendship, however, as the law does not properly regulate the criteria and procedures for the selection of such members, we cannot rule out the selection of persons close to the chairpersons of the court in this position. Within the framework of the research, several judges and court employees pointed out that such members of the commission are close to the court chairpersons and in many cases do not have an independent position.[123] This once again points to the risks of legal ambiguity and informal connections, due to which even an adequate law does not "work".

According to the law, the Commission ensures first screening of job seekers through the establishment of compliance of applications submitted for participation in a competition with basic official requirements.[124] Next, it evaluates the candidate's compliance with the requirements[125] and the Competition Commission nominates the best candidate for the appointment to the vacant officer position or refuses to nominate a candidate.[126] There is a question as to how much in practice the court chairperson can influence the results of the selection (ensure that the Commission nominates the candidate of his desire) or appoint a candidate who received lower scores than his competitors against the opinion of the Commission. The head of a public institution may not be the chairperson of the Competition Commission.[127] However, the law does not prohibit membership of the commission.[128] In Additionally, independently from their direct participation in the Commission activities, considering their role in the formation of the Competition Commission, we cannot exclude their indirect influence on the results of the selection by the Commission. The law excludes the possibility for the court chairperson deviating from the opinion of the Commission

122 Law on Public Service, Article 38 (1).
123 See below.
124 Law on Public Service, Article 39, 40.
125 Assessment is conducted through assignments, interviews and other forms of assessment. Law of Public Service, Article 41 (3). The justified result of the evaluation of the candidate by the Commission is reflected in the minutes of the meeting of the Competition Commission. Law on Public Service, Article 41 (5).
126 Law on Public Service, Articles 42 (1); 43 (1).
127 Law on Public Service, Article 37 (2).
128 Comment on the law indicate that it is desirable to minimize the presence of the chairman in the Commission, and not to become a frequent event in practice. Law on Public Service, commentaries, collective of authors, GIZ, 2018, p. 145. This would be appropriate only in exceptional cases (e.g., when they possess experience and knowledge that is important when selecting the candidate) and not frequently.

and refusing to appoint a contestant presented by them or appointing another candidate.[129] In light of this, the indication of several judges and officials that in practice the opinion of the case chairperson is decisive in many cases, raises questions.[130]

Hiring staff in court under an employment contract is risky. To recruit a person this way, a simplified public competition is announced, however, according to the amendments of 2017, the announcement of the competition is not mandatory.[131] The head of the public institution decides on the announcement of the competition. Such discretionary powers have been criticized as one of the sources of increasing nepotism in public institutions.[132] It should be mentioned that persons hired under the employment contract have right to participate in the closed competition (which is held for superior ranking positions) if their work experience in the public service system is at least 1 year.[133] Thus, we can consider this to be a relatively simple way for the candidates selected on the basis of kinship and friendship of getting into the system and then their quick advancement.

Internship is one of the ways of getting into the system. According to the internship rule established by the High Council of Justice,[134] interns are accepted based on the competition.[135] The Internship Commission is responsible for the selection of interns. The chairperson of the Commission is appointed and dismissed by the court chairperson in individual courts, and in case of the High Council of Justice - by the secretary of the Council. On their hand, chairperson of the Commission, determines number of the members and composition of the Commission,[136] appoints and dismisses them.[137] The competition is held in two stages: selection of applications and interview, however, upon the decision of the Commission, testing can also be conducted.[138] Criteria are vague and do not essentially limit the Council members. The specific share of testing and interviewing in the overall assessment is unclear; The risk of subjectivity is high when evaluating candidates

129 Law on Public Service, commentaries, collective of authors, GIZ, 2018, p. 156.
130 See below.
131 Law on Public Service, Article 83.
132 Evaluation of public service reform, analysis of legislative norms and administrative practices, Network of Centers for Civic Engagement (NCCE), 2019. https://bit.ly/3BeqC9l.
133 Law on Public Service, Article 34 (3).
134 The rule of internship in the High Council of Justice and courts approved by Resolution 1/251 of September 18th, 2017. https://bit.ly/3QfJrgD.
135 Rule, Article 4 (2) (3) Graduates of the course for judicial officer of the School are accepted based on an interview with the court manager.
136 Rule, Article 6.
137 Rule, Article 5 (4).
138 Rule, Article 9.

through interviews. According to the rule, the applicants are evaluated individually, based on knowledge and experience; a decision on the feasibility of appointing the candidate as an intern is made by the majority of votes of the Commission members. Interns in the court are appointed by the court chairperson, or by the manager with the order of the chairperson, and in the High Council of Justice - by the secretary of the Council or the head of the human resources department.[139] We can assume that they rely on the evaluations of the Competition Commission on the feasibility of the appointment of the candidate. It is unclear whether they can deviate from the Commission's opinion.

Staffing the offices of the HCoJ and the courts contains same risks as the process of selection and appointment of judges. The risk of personnel policy based on nepotism and cronyism is high considering the discretion and informal control of the influential judges – court chairpersons in this case. Informal influence can be indirect, or, the chairperson may achieve the appointment of the desired personnel through the persons he appoints to the Competition Commission. At this stage, legal and other guarantees are not enough to ensure meritocratic selection of personnel. Low level of transparency and limited external/public control is a particular problem, reducing the trust towards the process and makes judicial career less attractive for qualified candidates. This creates an opportunity to staff the courts based on kinship or other grounds, with the desired candidates (predictable, controllable) without hindrance. There is also the risk of demotivating underprivileged employees and them leaving the system in the long run due to increasing workloads and pressure. This ultimately affects the quality of judiciary.

4. Analysis of the interviews

Total 30 interviews were conducted within the study, among them with the current and former judges and judicial staff, lawyers, representatives of the non-governmental organizations and academic circles. Respondents talked about the problems of nepotism and cronyism in judicial system. In particular, the scale and character of the problem; also about the formal and informal mechanisms, through which the judicial system is staffed, contributing factors and results of non-meritocratic approaches (nepotism, cronyism) for the judiciary.

139 Rule, Article 10 (4).

4.1. Perception of nepotism/cronyism and its extent

A large number of respondents[140] believe that non-meritocratic approach to judicial system staffing (including selection of staff based on kinship and friendship) is a systemic problem.[141] Current and former judges talk about the scale of the problem[142]:

"Is there nepotism in the judicial system at the level of judges and the office? I think, there is, and it cannot be otherwise, as our country, as I said, comes from that past. ... I have listened couple of press and TV broadcasts, describing the facts of nepotism and cronyism, and I think that the claim was quite valid and that, such facts damage our system".

Judge №7.

"There is no other way of appointment in the court, no other way to appoint a person on a high-ranking position, and probably the same for lower ranking ones. What I have heard, at least, even on session secretary and chancellery level, no one is appointed except their own people".

Former judge №2.

"In my court, I would say like this - ***even a bird won't be able to fly inside, if not a relative, kin, friend's child, godson****.... I know exactly what is happening in my court, however, this does not happen only in [my] court, this is much large-scale... we talk to each other. These topics are discussed".*

Judicial staff №1.

140 Only one respondent claimed not to have heard of such cases (judge №8).
141 Lawyers №5, 6, judges №3,5. From academic circle №1 (former judge) and №2; NGO representative №2, nonjudicial member of the Council №1. Judicial staff №1, 4. One representative of academic circles compared this practice and its spread to cancer and metastases. NGO representative (№2) noted that the systemic nature of the problems is related to the centralized management of the court, the influence of the elite on all levels of the judicial system. Former nonjudicial member of the Council: "It is a direct direction that the court should be staffed in this way, and a court staffed like this is acceptable and desirable today. It acquired this systemic character permanently over the years." The judge №4 claimed that there are cases of nepotism in Georgia, but Georgia is not an exception, "there is an issue everywhere". At the same time, one of the respondents indicated that kinship with the judges shall not become a barrier for the qualified staff to get into the judicial system and that imposing restrictions would violate the labor rights of the judge relatives (judge №2). The second (judicial staff №4) claimed that "very good and motivated candidates come from these ties". One more candidate highlighted that the legal circle is very narrow thus increasing the probability of a decision making person being the relative (NGO representative №1).
142 Judges №2,3,4,7. Former judge №2. Also, Lawyer №4.

"Yes, of course our court is full of nepotism and cronyism. Judges, as well as assistants are appointed in this way."

Lawyer №5/former judge.

Some of the judges claimed that it is possible to enter the judiciary without good contacts, however, this happens very seldom and is more an exception than a rule:

"I do confirm this. The problem exists. Problems were there for past several years, but not like I have heard it is lately. But I cannot say that all the appointments in the court is a result of nepotism. I cannot say this. Not all appointments are like this, really. I know couple of cases when the good candidates were appointed..."

Judge №2.

"It is possible to enter the system from the outside, without having kinship or any other relationship, but get the job with your hard work and knowledge. However, for last years, I seldom see such employees."

Judge №1.

"Situation has truly worsened. It became harder and harder and now, I think, appointment on the position of a judge without someone's help is even impossible. I do not think it is possible to get the position, or even get admitted to the High School of Justice."

Judge №5.

"What is now happening in judiciary was not always like that. Yes, there was a period, but then, it was justified. Our reason was credibility. Today it all turned into a very ugly shape. In fact, people are not selected, ***unless someone is actually their recommender, someone takes responsibility for an employee or a judge.*** *Even the judges themselves, are not appointed or promoted unless they are member of any group, or experienced in any specific case, so to say. Unfortunately, this is the main direction and the only way. Exceptions are very rare."*

Former judge №2.

Some of the respondents point to the **growing role** of kinship and other social ties in terms of appointment and promotion in the system in recent years.[143]

"I think it has grown, but I cannot say for sure. What I see, kinship among the judges, assistants, secretaries became more frequent than before. For example, someone gets appointed as an assistant and later, we learn that they are someone's children, niece... same for the judges. For example, somebody was a judge at the first instance court, was promoted to the court of appeals and his brother came to the first instance court instead of him. Yes, we do have such cases."

Lawyer №4.

"The tendency is clearly increasing, because even under the previous government there, they controlled the court, but this group of judges had less power there. Now, as there is some kind of mutual cooperation agreement between the authorities and them, ***they have more freedom to bring in the personnel they want into the judicial system, they have more independence in this direction.*** *"*

From academic circle №2.

"Increased, of course it has increased. For example, when I started to work there, the situation was normal. It was gradually increasing and then... Prosecutor's office workers migrated to the court, and these were the people appointed precisely with this cronyism... the situation worsened year by year."

Lawyer №5, former judge.

"What I saw around me for these 14 years, the situation worsened even more recently. This is my opinion. If we look at it unbiased... we will easily see this circle, people are almost always the same there, people of same circle, who, so to speak, enjoy these benefits. These kinship, friendship and personal attitudes are quite obvious."

Judicial staff №2.

143 Judges №1, 5; Judicial staff №1, 2. NGO representatives №1, 2. Lawyers №4, 5; former judge №2, academic circle representatives №1, 2; some respondents indicated that nepotism was always there, but it did not garner much attention (judge №7). Now more attention is paid to such facts (close to the group of influential judges and the office staff) (NGO representative №4).

Some respondents suggested that the risks of a non-meritocratic approach are relatively high in large cities and courts,[144] as working in these courts is more attractive.[145] One respondent indicated that the risk is higher at the Supreme and Appellate court levels compared to the city courts[146] because an "unfavorable decision" by a first-instance judge will be more easily corrected in a higher instance; the same respondent added that the general feeling is that "the Court of Appeals should be filled with such judges...who will create fewer problems and correct some of the previously undesirable things."[147]

4.2. Who is behind non-meritocratic (nepotism and cronyism based) personnel policy? Influential group of judges and concentration of power

It is believed that the core of the influential group of judges consists of former prosecutors who entered the judicial system through the political filter in 2006-2007 and took leading positions - became court chairpersons and High Council of Justice members at different times.[148] Respondents noted that this is one group, one "gang"[149] and are "very intertwined with each other."[150] It is considered that group membership requires loyalty, readiness to act in accordance with the group interests,[151] uniformity of positions.[152] The group may not be related, but they share friendship, and trust that was built over the years.[153] They are selected/appointed and stay on managerial positions for years.[154]

"There is only one group, and the members of that group move in circles, from one court to another. They extend the terms, and therefore, no one can get an administrative position. Let's take the elections of the Council of Justice, there has been one candidate for one vacancy in recent years and the entire judicial system supports that candidate... In fact, there is no competitor, because if there was a competitor, they

144 NGO representatives №1 and 2. Former judge №2.
145 NGO representative №2.
146 NGO representative №1.
147 Judge №1.
148 Lawyer/expert №1, Lawyer №5 (former judge). In the previous research of the same author, one of the respondents compared the flow of prosecutors into the court system to the "landing operation".
149 Lawyer/expert №1.
150 Judge №1.
151 NGO representative №1.
152 Lawyer №1 (former judge).
153 Judges №1, 5.
154 Lawyer №5 (former judge).

would not stand a chance, they will simply not vote for them."[155]

Judges consider that the selection and appointment process is a formality, and the result is predetermined - a candidate preferred and trusted by the influential group is selected/appointed, and the judges automatically vote without additional questions.[156] With this background, it is easy to explain why judges do not nominate other candidates:

"Recently, just one candidate was nominated without any competitor. This is very, very bad. How can one candidate be nominated for one position? There should be at least two or three to give us a choice. This is definitely bad"[157]

Within the frames of the study, the expert indicated the following:

"300 judges come and vote based on what? The vision is not shared, no one will read the biography of the person, they will just quote the name and surname... They would say - what is the need, everyone here are cousins or husband and wife or friends, this is one big family and what is the need for them to come out now and talk about some kind of their visions."[158]

4.3. What does the personnel policy based on nepotism, cronyism and general non-meritocratic approach serve?

Respondents explain the trend to employ relatives and acquaintances/friends in the judicial system with the interest of an influential group of judges to gather a manageable, reliable staff and exclude unpredictable candidates from entering the court. This is believed to serve several purposes:

155 Lawyer №1 (former judge).
156 Judge №1. This judge compares the election of the judge members of the Council to the meetings of the Communist Party, where "everybody knows... they shall elect this candidate" and does not ask questions to understand what a particular candidate will do after coming to the Council. One more respondent (representative of the academic circle/former judge) indicated: "it is managed by two or three persons; these three persons make decisions afterwards. What happened on the Conference of Judges now, when the Council members were dismissed, when they have elected new one, what was this it was clear for everyone who rules the judiciary and then, everybody lifted their hands, like sheep. Nobody asked the two members of the Council who left on their own accord the reason for leaving, or how they were elected, or why they were dismissed, why others were elected afterwards."
157 Judge №7.
158 Lawyer/expert №2.

1. Retention the power[159] - Personnel policy based on nepotism and cronyism serves to retain of power by an influential group of judges.[160] It means that the group members taking managerial/administrative positions, which gives them leverage to potentially influence judges and control their behavior in and outside the courtroom. Legally, occupancy of these types of positions depends on the support of judges (where positions are selective – e.g., when staffing the High Council of Justice – or, where the Council makes decision on the appointment, but legislation imposes an obligation to consult with judges). Support can be expressed by automatically voting for the candidates of the influential group in the elections of the High Council of Justice members and not competing with them (not nominating alternative candidates), as well as in automatically supporting candidates for court/panel/chamber chairperson. Increasing the share of easily manipulated judges loyal to an influential group in the judicial system creates a base for this group and the conditions for their retention of power.

2. **Controlling the behavior of judges, including guaranteeing results desired by the ruling party in sensitive cases.** Emphasis on the candidates who do not fully meet the criteria established by law and would otherwise not be able to enter the system and/or be promoted, makes it easier for an influential group to control them and gives them the opportunity to influence their decisions.[161] Respondents indicate that under such conditions, there is a high chance that people who recommended the current judges at the time, may influence them:

"They tell you to come and submit [application for the competition], they already enter into the deal with you and you feel somehow obligated - they told me and they transferred me and I was promoted - and then you have some obligations towards these people, that's why I think there are more such topics in the higher authorities. And the judges of the first instance who do not create problems, are then taken exactly to the higher instance."[162]

Respondents point to the appointment of manageable or loyal staff, especially in the appellate instance. At this stage of the case proceeding, the situation can be corrected if the judge of the first instance "made a mistake"- made a decision against the interest and instructions of a

159 NGO representative №3. Lawyer/expert №2.

160 NGO representative №1. Some judges linked the interest of influential judges in maintaining managerial positions to privileges: "It is more of a privilege for them, and they cannot imagine life any other way, and actually they want to be a judge more because of these privileges, and not because of the reasons a person in general wants to be a judge." Judge №1.

161 Judicial staff №1.

162 Judge №1. From academic circles №2.

group of influential judges.[163] One judge highlighted that reassignment of judges to specializations is a mechanism for achieving desired results: "If a judge is "problematic", they are moved to a less sensitive category."[164]

3. Part of the respondents named desire to help relatives as a motivation,[165] with the background of high unemployment in the country.[166] It was noted that helping relatives is considered normal in Georgia.[167]

4.4. Informal criteria

a. Appointment of judges

Respondents point to informal criteria that are considered when appointing judges. The candidate should be loyal to the influential group,[168] reliable,[169] manageable,[170] obedient,[171] predictable.[172] Considering these, the emphasis is placed on candidates influential group members know,[173] on the candidates "checked",[174] e.g. former assistants ,[175] this only works in favor of those assistants who have

163 Judge №1.
164 Judge №1.
165 Judges №2, 3.
166 Judge №7.
167 NGO representative №2.
168 NGO representative №3; former nonjudicial member of the Council №1.
169 Judge №4: "Reliability in quotation marks, this is the Georgian understanding, that the person is my kin and will not betray me." Representative of the academic circles №2: "The judicial system is mainly filled with so-called reliable candidates, with people whom the existing clan trusts and who, during their activities, are unlikely to take steps that would be free and different from the clan's opinions."
170 Lawyer-expert №3: The whole system is based on fear, vertical and government. The easier you can manage a person, the easier to give them tasks."
171 Judicial staff №2: "Obedience is the main principle. Accordingly, all persons who do not have different opinions are invaluable." Lawyer №6 indicates that those people will be chosen who will take into account their "friendly advice, their needs." From academic circles №1 (former judge): "they will make them do, fulfil whatever they want"; former judge №2: "they know they exactly want to select people who will complete the task, will not even talk about the completed task, will not express their complaints on social network, will not talk to someone."
172 Lawyer №6, lawyer №5 (former judge).
173 Lawyer №1 (former judge) from academic circle №1 (former judge): "They will not bring in a foreigner who they have not studied at all and do not know. "
174 Lawyer №6: "you assign a person there and suddenly they start to publish their opinions publicly, which does not fit in the whole picture, this will not end well. Former judge №2: "if… let's say so, a candidate is not experienced, there is no way of them getting appointed or promoted."
175 Lawyer №6, from academic circle №1 (former judge); judge №1: "The degree of a trust

already shown loyalty and willingness to perform tasks to influential judges.[176] One respondent indicated on the cases of deliberate blocking of assistants because they worked with judges unacceptable to the influential group.[177]

Respondents excluded the possibility for random people to get into the system.[178] Reference is made to the fact that the influential group is actively looking for candidates "in their circle".

Current and former judges indicate:

"They do not want unknown for them people to enter the system, because it is hard, you do not know who will do what tomorrow, so they prefer to move forward, appoint, promote people from their own circle. They do not trust others."

Judge №5.

"These people seek candidates for appointment but seek within their own circle. Then, as far as I know, meet them, talk to them how to behave, agree in advance that they will get approvals. Then they will say "oh, this is a good boy" and appoint them. This is how it happens now."

Lawyer №5 (former judge).

Majority of the respondents think that the system is closed for external candidates, for those who have not worked in the judicial system.[179] The focus here is on two interrelated factors: low interest of such candidates towards employment in the court,[180] and he deliberate policy of the

factor is higher with employees."

176 Former judge №1: "As far as I am observing and according to my experience, it depends on their attitude toward instructions, their performance, and how they demonstrated their commitment to these leadership when they were assistant, specialist, courier, chancellery staff etc." Lawyer/expert №1: "the fact is that they choose people, based on how loyal they are. Because we know better assistants but without any possibility of advancement."

177 Former judge №1: "Best employees who used to work with those judges, who were not acceptable for this administration, … were neither admitted to the School, nor transferred to the assistants and after so many years, these kids left the system, or, if not, no advancement in their career."

178 Lawyer № 5 (former judge), from academic circle №2; judicial staff №1.

179 Judges № 1, 2, 5, 7; lawyer-experts № 1, 2, 3; judicial staff №4, lawyers №1 (former judge) and №4. From academic circles №1 (former judge); some judges chose more careful formulation and said that "it is harder for external candidates to enter the system." Judge №6.

180 One lawyer-expert (№2) indicates that entering the system for external candidates became harder and less attractive, "nobody participates in the competition… court internal office and even only those from that office, who have received prior guarantees" the same

High Council of Justice to exclude or reduce external candidates.[181] This policy implies creation of artificial barriers, for example, by rarely conducting qualifying exams or giving preference to internal staff in school admissions. As one of the acting judges noted:

"As for the influx of external candidates, the situation is very bad, it is extremely rare... qualification exam for judges is not conducted every year... the School of Justice is also staffed mainly with the judicial cadres. There are external employees as well, but very few."[182]

Successful completion of the High School of Justice as a prerequisite for applying for vacant positions reduces the interest of experienced lawyers.[183] Low interest is also evident in the Supreme Court, despite the fact that, at this level, external candidates are not required to pass the qualification exam and take a course at the High School of Justice. Respondents mention other obstructive reasons as well, including the low prestige of the judicial system,[184] low salary,[185] workload.[186] Reasons, why qualified lawyers who would otherwise be interested in a career in the courts would not try, are also outlined: distrust towards the process,[187] perception that trying means loosing time and even in case of successful graduation of the High School of Justice, appointment is not guaranteed,[188] or they will be appointed in the regions,[189] the idea that the selection criterion is loyalty, not qualification[190] and that for career advancement it is necessary to get close to an influential group.[191] One respondent pointed to The HCoJ's practice of "ruining" qualified but undesirable candidates by deliberately asking questions during interviews.[192] Potential

respondent notes "I can see one thing for sure, the system has become more closed than ever and I think it has never been so less desirable to enter this profession."

181 Respondents indicate that "the influential judges want to exclude candidates who will create discomfort to them (NGO representative №3), candidates who will express opinion different from theirs publicly, because such a judge may be followed by others and distort the "ordered system." (Lawyer №6).

182 Judge №2.

183 Judge №2.

184 Judge №7, NGO representatives №2, 4. Former judge №2.

185 Judge №8, Lawyer №2, NGO representatives №1,2; Former judge №2.

186 Judge №6.

187 Judge №2, NGO representative №4.

188 Lawyer-experts №2,3. NGO representatives №1,3. Former judge №1.

189 Judge №2. NGO representative №3.

190 NGO representative №3, Lawyer №1 (former judge).

191 NGO representatives №2, 4.

192 NGO representative №4.

candidates are also worried about the low degree of independence,[193] consequences of refusal to fulfill the "assignments" of influential judges.[194] In the end, these factors narrow the circle of individuals interested in a judicial career.

b. Promotion of Judges

It is thought that the promotion of judges is "more spontaneous than systematic",[195] depends less on the competency and experience of the judge, but more on their closeness to the group of influential judges:

"Many good judges from the city district court did not manage to be promoted, for example to the court of appeals, while judges less competent and less experienced than them were able to do so very easily... I'm sure the main decisive factor here is that you are someone's team relative or former assistant, and they need you to be by their side in a specific court."[196]

It's also believed that if more or less "free" (resistant to the influence) candidate accidentally becomes a judge in the system, most probably they will not achieve advancement. Instead, judges who are close to the influential group will be promoted:

"People who have been promoted are members of this clan directly and are either leaders or very close to the clan....many of them are concentrated in Tbilisi Appellate court, they have promoted themselves, killing the initiatives on the lower level, because we have the judges working for much longer who meet all the criteria to be promoted, but are not... Someone else will get the promotion, because they are not clan members or do not publicly defend the clan."[197]

"They might get mistaken and admit someone decent, but then you will not have any development prospects if you do not interact with this group... they are trying to establish friendly and such kind of relations."[198]

Respondents indicate that for career advancement it is important

193 NGO representative №4, academic circles №2.
194 Lawyer №6.
195 Judge №5 noted that there is no "established system" or "criteria." "It's simply due to some necessary need that someone may be transferred somewhere, spontaneously, this is not a systemic, or determined by the system."
196 Lawyer-expert №1.
197 NGO representative №2.
198 NGO representative №2.

to connect with an influential group of judges, gain their trust,[199] demonstrate loyalty to them.[200] Gaining trust is possible by solving specific cases in accordance with the interests of this group[201] or supporting the group otherwise (for example, making public statements in their favor). As the acting judge noted:

"for example, if you make a speech at a conference and insult a particular person, you will gain their trust. If there is a need of public statement, I will do it myself, without someone indicating me. But if I have done that, I think, I would have been more advanced with the promotions in the system."[202]

Some respondents indicated that, based on real-life examples, judges consider establishing a close relationship with an influential group, showing loyalty to influential judges as a necessity for career advancement.[203] Judges who are not oriented on making such connections think it is pointless to participate in the competition[204] and that criteria established by the law are not decisive.[205]

c. Employment and promotion in the apparatus

The judicial system is considered to be mainly closed,[206] from the point of view that the candidates close to influential judges and/or acceptable to them are *mostly* appointed to the vacant positions. Loyalty and reliability are named as the selection criteria.[207] This explains the emphasis on persons already familiar to the judges.[208] Respondents

199 Judge №1; from academic circles №2.
200 From academic circles №2.
201 Former judge №2: "If a person is not a member of a specific group, or is not experienced in a specific case, there is no way for them to be appointed or promoted."
202 Judge №1.
203 From academic circles №2; NGO representative №2.
204 Judge №5.
205 Judge №1: noted in regards to the interviews at Supreme court – "many are not appointed there for their knowledge. There have been candidates, more qualified and experienced, being able to express their opinion independently on various topics, would that be towards the clan or other, but they were kept out and those that got appointed could not answer basic questions."
206 Judicial staff №2. "Can you name a person recently employed within the system that came from outside?" Former judge №1: "Entry from the outside is also blocked and very complicated. Even for an insignificant position." Judge №6: "external candidates find it more difficult"
207 Lawyer-expert №1. Also, lawyer №4: "The motive is the same everywhere… to have the employee they trust… who will be loyal to you, and you will have support…"
208 Lawyer-expert №1. Also, from academic circles №1 (former judge) points out that "someone's" candidates are being appointed; Judicial staff №2 indicated that "reliability" of the candidates is very important for the influential judges and is often a result of the "service rendered."

from the system indicate on individual cases when the priority was given to the candidate who was a relative of a "high-rank official"[209] or "had better relationship" with an influential person in the judiciary.[210] Respondents claim this is more a rule, than an exception:

***"[for years] I was observing the candidate influx to our system and the real way of selecting them.* I would say like this – even a bird won't be able to fly inside, if not a relative, kin, friend's child, godson…."[211]**

It is believed that such personnel policy reduces the interest of entering the judicial system and the number of applications for vacant positions.[212] Such personnel policy also affects employees who do not have influential protectors. One respondent (judicial staff) indicates that employees related to the influential judges are privileged (in terms of workload, exercising right to vacation, etc.) compared to their colleagues not having such ties.[213] Discriminatory approach is also obvious in the application of disciplinary measures – in similar circumstances, such measures are applied to non-privileged employees for minor misconduct, while the "brought" candidates are not told a word.[214]

It is noteworthy that according to the respondents, the candidates in the Supreme Court are rarely selected on the basis of kinship, but familiarity and recommendation play an important role. For young lawyers who do not have such contacts, the way to get into the judiciary is an internship, which is considered an opportunity to show their abilities and increases the chances of later employment.

"It's all about recommendations, or you have to be someone's someone. I haven't seen an intern ***walking in from the street here****... A person not having any kind of ties cannot come to the Supreme Court just from the street... for example, you are an ordinary person, used to work somewhere and want to move to the Supreme court, you like it a lot, you are interested, you applied and Commission may have like you much, you were the best, but they have selected someone else. I would repeat, his someone else may be a former intern, former employee, who they already know. Foreigners, a foreign body is not accepted in*

209 Judicial staff №4 noted that that a suitable, worthy candidate should have been appointed, but a relative of the "high-rank official" was selected.
210 Judge №1.
211 Judicial staff №1.
212 Judicial staff №1: "they do not apply any more. There were to vacancies […] and no applications. This has never happened before."
213 Judicial staff №1.
214 Judicial staff №1.

the organization."[215]

It has been also noted that when selecting the candidate for the Supreme court, assessment of a written work (being more unbiased) is not decisive, but an interview (with the high degree of subjectivity) is more important:

"The Scores [for good candidates], coming from the interviews, but not from the written work, are simply not enough. In other words, the objective factor is often overstepped and the subjective factor no longer exists, which has less justification and is less convincing, sometimes they cannot overcome it."[216]

4.5. Informal mechanisms of entering the judicial system and career advancement

Respondents indicate that the personnel selection process is beyond formal procedures. The function of formal procedures is to create a facade for informal practices. In practice, the recruitment process is largely orchestrated: "There is a group that sits around the chessboard, so to speak, and assigns the roles..."[217] influential judges actively seek candidates who meet their informal criteria and "advise" them to apply.[218] After entering the system, career advancement depends on the weight of the protector: If several candidates are considered for the position, the one with the most influential protector will be selected.[219] As one of the respondents noted, "the main factor is that you are under someone's wings."[220] Often, the influential judges hint the judges they want to promote or transfer to apply.[221]

"They tell you to come and submit [application for the competition], they already enter into the deal with you and you feel somehow obligated - they told me and they transferred me and I was promoted - and then you have some obligations towards these people, that's why I think there are more such topics in the higher authorities. And the judges of the first instance who do not create problems, are then taken exactly to the higher instance."[222]

Appointment of judges is centralized. Judge members of the High

215 Judicial staff №3.
216 Judicial staff №2.
217 Judge №5.
218 Lawyer №5 (former judge).
219 Lawyer-expert №1.
220 Judicial staff №1.
221 Judge №1.
222 Judge №1.

Council of Justice act in agreement and can control who enters the system. As for the selection of court personnel, decisions are formally made at the level of individual courts, and thus the selection process is decentralized. In practice, all assignments may not be agreed with the group leaders/other members, but agreement on the criteria (focus on the predictable, manageable candidates) between the decision makers ensures a uniform practice and ultimately, staffing the court with such candidates. the chairpersons of the courts are responsible for the implementation of this approach at the level of individual courts.[223] Although, according to the legislation, the chairpersons do not make decisions alone, they are considered to influence the composition and decisions of the commissions that evaluate candidates,[224] and in any case, the final word is on them.[225] Accordingly, the chairpersons can ensure that they and other members of the influential group hire the desired personnel. Such issues are believed to be easily resolved with a phone call:[226]

"It is one circle, and if you don't have an acquaintance, if someone does not call you, it's out of the question. I know this for sure... I am not talking about the judges, even in the chancellery."[227]

Recommendation (of influential judges or persons close to them) is a prerequisite for entering the system or at least plays an important role.[228]

"People are not selected unless someone actually recommends them... unless someone takes responsibility on the staff member or judge, ... actually, this is the main direction, the only way with a very rare exception."[229]

The "external members" (required by the law) represented in the Competition Commission are often people close to the chairperson[230] and/or they do not form an independent opinion on the candidates.[231] The manager in charge of the selection process usually voices the will of the chairperson,[232] thus, the steps taken to improve the quality of

223 Judicial staff №1, also judge №2 (says that it is the chairperson who makes decision, regardless of his formal role), former judge №2.
224 Judicial staff №1.
225 Judge №2, former judge №1.
226 Judge №5.
227 Lawyer №4.
228 Judges №1,7. Judicial staff №3.
229 Former lawyer №2, Judicial staff №3.
230 Judicial staff №1.
231 Lawyer №2: "what I have seen, he did not have independent opinion on any of the candidates and was saying: whatever you say, I agree."
232 Judicial staff №1, lawyer-expert №1, lawyer №1 (former judge).

the process lose their meaning. [233] One respondent recalled witnessing "calling the manager and dictating the name and surname of a good candidate."[234]

Part of the respondents (former and current judges and judicial staff) point to the formal nature of the competitions,[235] to their fakeness.[236] One respondent noted that the chairperson will tailor the conditions of the competition to "their man" or "share the questions with them in advance."[237] On respondent emphasized that final decision is taken based not on the objective element of the contest (for example, test results), but on a subjective (for example, interview).[238] They highlight that "we, as the candidates will never know what they did not like in us."[239]

Generally, people outside the system know little about court personnel selection processes, but they think that if such things happen under the conditions of a transparent procedure for the selection of judges, we can expect worse on the closed processes.[240]

4.6. Cultivating informal rules of conduct

Interviews reinforced the view that an influential group of judges created informal rules of conduct through which it controls judges and court employees once they enter the system.

The Content of Informal Rules - The passivity of judges has become the norm, which is reflected, for example, in not entering into competition with the candidates of the judge members of the High Council of Justice and candidates of the influential group of judges, in their unconditional support of these candidates, avoiding publicly expressing opinion different from the group's. At the same time, the judges are required to be active and mobilized when such is in the interests of the group. The existence of such rules is indicated on the one hand by the rhetoric of influential group members, including an emphasis on the need for judicial unity and the harm caused by differences of opinion, and on

233 Lawyer-expert №1.
234 Lawyer-expert №1.
235 Formal means that the process does not determine the outcome and only serves to create the illusion of meritocratic selection, while decision on who gets appointed is taken outside it.
236 Judicial staff №1, 2, 4. judge №1; from academic circles №1 (former lawyer) and №2, former judge №2; lawyer №1 (former judge).
237 Former judge №2.
238 Judicial staff №2.
239 Judicial staff №2.
240 From academic circles №2.

the other hand by the behavior of judges that is consistent with this rhetoric.[241] Respondents highlight that expressing opinion different from the one of the influential group, or critical review of the subject by judges is rare.[242] Judges are careful with making problems of the judicial system public, showing differences of opinion, which finally work in favor of an influential group of judges.[243] Judicial staff is also limited to talk about the problems of judiciary.[244] As one judge said:

"Talking about this is somehow problematic, as it may cause negative results for the judge... The judge does not go to the court to fight or battle, he goes to do his job calmly, quietly, honestly. Therefore, when he knows that while participating in this self-government, if he expresses a negative position, if he says that it's wrong and let's do it this way and so on, it can become problematic. That's why he chooses not to participate in it."[245]

"At the end of the day, everyone thinks of themselves, because everyone has some kind of financial responsibilities, ... everybody is afraid of losing their jobs and try not to ruin the relationship..."[246]

Monitoring and Enforcement of the Rules - Individual court chairpersons are responsible for monitoring the implementation of the rules.[247] They are members of an influential group of judges or persons close to them. Some respondents also indicated the use of assistants to control individual judges.[248] The purpose of the monitoring is to identify a violation of the rules. Monitoring means controlling various activities, including activities using social media.[249]

The aim of the influential group is to **prevent** the violation of informal norms. This can be easily achieved by staffing the courts mainly the

241 One judge (№7) (who left the system and returned after years) noted that the situation worsened in terms of judges' self-expression: "they used to talk more, discuss more, openly express their opinions. When I returned, this was already dead, it was obvious."
242 Judges №1, 3; also, NGO representative №3, and from academic circles №2 indicate the same.
243 Judge №7: 8 "Discussion is necessary, but this kind of controversy would damage the judicial system even more." Judge №6: "I am far from the opinion that every problem should be made public as soon as identified... first there should be internal analysis, internal evaluation, internal weighing of the situation and so on."
244 Judicial staff №1.
245 Judge №6.
246 Judge №1.
247 Previous study by the author indicated on this: see Nino Tsereteli, Backsliding into Judicial Oligarchy? The Cautionary Tale of Georgia's Failed Judicial Reforms, Informal Judicial Networks and Limited Access to Leadership Positions, *Review of Central and East European Law* 47 (2) (2022) 167–201.
248 Former judge №2: "There is a tool, when they don't trust the judge, they appoint their own assistant, their staff, to keep that judge under control."
249 Judge №1.

candidates who are socialized in the system or are close to influential judges. Such candidates may be motivated by the prospect of career advancement, or simply by the desire to show loyalty to the protectors. Influential judges care to cultivate close social ties with such judges.[250]

Application of Sanctions for Violation of Rules - Formal and informal sanctions are applied to judges who deviate from the rules. One respondent pointed out that expressing a critical opinion publicly, for example through social media, "will necessarily involve communication through informal channels."[251] The second respondent claimed that the judges expressing different, critical opinions "face some specific problems afterwards."[252] As one of the judges noted, sanctions towards those expressing different opinion serve the purpose of silencing others, who may "dare" and "repeat".[253]

Some respondents associate the recent activation of several judges with their lifetime appointment, meaning more security.[254] However, this does not exclude the use of other types of sanctions against these judges, for example, hindering career advancement.

Interviews conducted within the frameworks of this study proved that the influential judges may also use informal mechanisms, including **disciplinary measures** to punish the judge or judicial staff. Due to the personnel policy (which is oriented on selection of the candidates reliable and easily manageable for them) implemented by the influential group, in the current state of the judicial system, the share of judges and employees who express a different opinion is small, therefore, there is no need to use disciplinary measures.

As one of the respondents noted, judicial staff is especially insecure, as their disciplinary prosecution is decided by the commission, the composition of which is controlled by the chairperson of the court:

"They can influence any judge, except for two or three judges. Often, the cases are not assigned to these judges; the judges whom they cannot influence, are not included in the Commission."[255]

The same respondent explained that expressing different opinion of criticizing is enough for the disciplinary prosecution to start; ground to the prosecution can be easily found.[256] This is perceived as a way of

250 Judge №1; former judge №1.
251 NGO representative №2.
252 NGO representative №3.
253 Judge №1.
254 Lawyer-expert №1.
255 Judicial staff №1.
256 Judicial staff №1.

intimidation, silencing, and subjugation.[257]

One more respondent, the judge referred to the use of disciplinary measure as a punishment mechanism used when "somebody does not like something", if the judge acts "without someone's permission", for example, applies to the position where the influential judges do not consider them: "if they do not want it and do not like you, then it's finished."[258] They will find a reason. The problem is that the disciplinary chamber in the Supreme Court is already controlled by the influential judges.[259]

4.7. Result of a non-meritocratic approach

The respondents highlighted some consequences of the non-meritocratic personnel policy:

a) Degree of independence of individual judges: Majority of the respondents thin that the non-meritocratic personnel policy negatively affects the degree of independence of individual judges. The judges appointed in this way may feel obliged to a group of influential judges as they would otherwise be unlikely to get into the system.260 Accordingly, Such judges are expected to make decisions in favor of an influential group or an individual member of that group.261

b) Quality of justice/effectiveness of the judicial system: It was identified that the influential group of judges is careful with the selection of judges and judicial staff to ensure that the candidates meet the (informal) criteria (see chapter 4.4). Focusing on loyal and manageable staff means that qualified staff either do not apply at all, or they do but do not make it into the court system. Consequently, vacant positions are not filled at all, or are filled with personnel who would otherwise not be able to enter the system without the contacts. The outflow of qualified, non-privileged personnel from the system, partly due to overcrowding and low pay, and partly due to loss of motivation, is a separate problem.

c) A distorted form of judicial self-government:[262] The passive, conformist approach of judges allows the influential group to monopolize the HCoJ and various administrative positions. Formally, the judges

257 Judicial staff №1.
258 Judge №4.
259 Judge №4.
260 NGO representative №4, lawyer №1 (former judge).
261 From academic circles №1, 2 (one of them noted: "there is a huge potential to be influenced by a person or persons who at one time recommended them for a certain position.").
262 NGO representative №3.

can nominate themselves and other candidates for the High Council of Justice membership, but, in practice, the number of candidates is limited. Is limited to the candidates who enjoy the support from the influential group of judges.

d) Absence of internal accountability, self-criticism and reflection: Internal accountability refers to the accountability of judge members of the High Council of Justice and other similar bodies towards the judges who elected them. Guaranteed retention of influential group members on managerial positions, absence of alternative candidates, different opinion and critical feedback indicates a low degree of internal (towards the judges) accountability. Passivity of judges at the conference of judges is a result of staffing the judicial corps with personnel loyal to influential judges. Judges, support the candidates who enjoy the support of influential judges without questions, automatically. They do not ask critical questions about the Council activities within the frameworks of the conference of judges. In addition, members of the influential group are not exercising self-criticism either. As one of the respondents noted: "there is only one group ruling everything… accountability is so low that even nobody within the group can balance it."[263]

e) Superficiality of legal (procedural and other) guarantees: It is thought that with existing personnel policy on the background, existence of **procedural guarantees** (for example, openness of the process, obligation to justify decisions, right to appeal) does not make sense.[264] These guarantees do not limit the decision-making body.[265] In reality, decisions are taken behind the closed doors and only "wrapped" afterwards using formal procedures.[266] The respondents consider justification of the decisions to be unconvincing,[267] and appealing the decisions - hopeless[268], given that the courts, including the Supreme Court Chamber where the Council's decisions are appealed, are already controlled by the influential group.[269] It is believed that the fact of

263 NGO representative №2.
264 NGO representative №2. Lawyer-expert №3, former non-judicial member of the Council.
265 NGO representative №3.
266 NGO representative №2.
267 NGO representative №3 ("The justifications are still templated… the Council can still make a decision based on its opinion and then formally justify it."). Also, NGO representative №4.
268 NGO representative №4: "I cannot recall the appeals mechanism working in a way to influence competition results, this has never happened." Judge №5: I have not heard someone filing the appeal and having the result. Judicial staff №2 ("even if the Council justifies today not appointing me… unfortunately, the Council will just indicate the legal ground, will just say – I'm rejecting you on these grounds.")
269 Lawyer-expert №3, also, NGO representative №3 ("even in case of appeal, we do not hope that there will be a fair decision.")

(unsuccessful) appeal itself will "ruin the judge."[270] Due to this, judges and judicial candidates do not dare to appeal or consider it pointless. As a result, we get "indifference, adaptation."[271]

Some current and former judges indicated that the problem is not the quality of the legislation, but the approach of the decision-making bodies, ,[272] hindering proper enforcement of the law.[273]

"Any norm, how good it may be, will not work if fallen into the hands of dishonest people... the law is not bad, but it does not work with bad people..."

Lawyer №1, 5 (former judges).

"Adapting these laws are often formal because everybody knows, whatever is written there, will not be implemented or reinforced. Why did we even introduce criteria for selected the judges... nobody pays attention to these criteria, they tailor criteria to people as they wish."

Former judge №1.

"Of course, the legislation regulates much, but it is not enough for the real result if a person is not honest...I still see the enforcement of the law as a main problem, not the law itself."

Lawyer №2.

„...legislation, I do not think there is something to change. The Council is the problem, honesty of the Council members is a real problem and to say so, if we have a good Council and the members who act in the interests of judiciary, if they make decisions in accordance with the law, and ensure genuinely merit-based process, this law will be enough."

NGO representative №3.

270 Former judge №2.
271 Judge №5.
272 Lawyer №5 (former judge).
273 Judges №2, 3; lawyer-expert №2, lawyer №3.

4.8. Contributing factors

a. Support of an influential group of judges by the ruling party and interest in manageable judges

Respondents point to support from the ruling party to the influential group of judges,[274] which was manifested in the creation of a comfortable environment for this group, more specifically: (1) in adopting the legislative changes desired by the group,[275] including tailoring the legislative framework to specific influential judges or their favorite candidates.[276] (2) in delaying legislative changes which would specify criteria and procedures of selecting the judges, would introduce obligation to justify and right to appeal, making the High Council of Justice accountable. (3) In appointing the candidates acceptable to influential judges as non-judicial members of the High Council of Justice or delaying the appointment of non-judicial members.

It is believed that before 2012 one should have undergone a political filter to get into judicial system.[277] This is the way through with former prosecutors, got into the system, forming the influential group of judges now.[278] From 2013 until today direct political interference in the staffing of the judicial system is less noticeable, however, concentration of power in the hands of an influential group[279] and staffing judicial system with the candidates easily manageable by this group, as a mean of obtaining desired results in sensitive cases is in the interests of the ruling party. Political support means low degree of accountability for the influential judges and encouraging non-meritocratic approaches.[280] As one respondent noted:

274 Former non-judicial member of the Council.
275 Respondents indicate that the influential judges have direct contact with the leaders of the ruling party and possibility to pass desirable legislative amendments. From academic circles №1, 2. Judge №4.
276 Lawyer №5 (former judge): "they have directly changed the laws… tailored the legislative amendments. This is the support, isn't it?"
277 From academic circles №2.
"The government was checking these people themselves and then sent to the courts as the judges. This started somewhere between 2006-2007. There were times in 2005-2006, 2004 when a specific number of judges came from the outside, quite honest and qualified people, but then, the number of these judges decreased, but not due to the relatives of the then leadership, but due to the "experienced" candidates coming from the law enforcement bodies, from the Prosecutor's office, Ministry of Internal Affairs, etc. if we look through the biographies of those judges, we'll see almost all of them have past experience in law enforcement bodies."
278 From academic circles №2, Former non-judicial member of the Council.
279 NGO representative №2.
280 NGO representative №1.

*"Even under the previous government, they controlled the court, but this group of judges had less power then, now... **they have more freedom to bring their candidates in the judicial system, they have more independence in this regard.** Of course, this independence is compensated by the fact that, on the other hand, when it is necessary, the decisions on important issues are easily taken in favor of government desire. **This is a mutually beneficial cooperation between them**."*[281]

It is believed that legislation amendments created illusion of progress.[282] International and non-governmental organizations focused on creating mainly institutional and procedural guarantees, shortcoming in this regard.[283] In the end, the influential group of judges used these guarantees as a facade, which gave them the opportunity to formalize the procedural legitimacy of the desired personnel policy.[284]

b. Passive position and conformity of judges

As a result of the personnel policy, the courts were staffed mainly based on the loyalty to the influential group. It is believed that the influential group requests and encourages passivity and conformism (see below). Behavior of the majority of judges is in compliance with the influential group requirements. As some of the respondents think, considering the difficulty of getting into the judicial system, the judges do not wish their achievements to go in vain, therefore the reason to the silence is pragmatism.[285] Others think that majority of judges already have the *"indifference and obedience" in their blood."*[286] Those judges, who are not close to the influential group and do not like existing culture of communication, probably think they cannot change the internal dynamics.

c. Low interest towards career in judiciary and low competition

Due to the low interest towards the career in judiciary,[287] which is

281 From academic circles №2.
282 NGO representative №2.
283 NGO representatives №2, 3. №2 sees the focus mainly on improving procedures as a mistake.
284 NGO representative №2.
285 Former non-judicial member of the Council.
286 Judge №5.
287 Lawyer-expert №2 indicates that influx of external candidates became harder and less interesting, "nobody participates in the competition...the internal office of the court and even within that office only those who have prior guarantees." The same respondent mentions: "I see one thing for sure, system is closed more than it has ever been, and this pro-

mostly related to distrust towards the process[288] and High Council of Justice's interest to limit the outsiders to enter the system, there is no serious competition during the contests.[289] This makes it easier for the influential judges to push their candidates forward.

d. Low public interest

Citizens do not react on the practice of staffing the courts, because they do not see direct connection between this practice and independence of judges, as well as quality of justice.[290] It is believed that the degree of public control and accountability is low,[291] especially when it comes to the judicial staff appointments. The low degree of protest against the practice may also be facilitated by the fact that the use of family ties for employment is a social norm and does not cause surprise, on the contrary, it is normalized.

5. Study summary

Implementation of judicial reform in several stages created the illusion of progress. Legislative amendments that would have reduced the risk of non-meritocratic approaches in the selection and appointment processes of the judges were delayed, and as a result, the HCoJ appointed a large number of judges under flawed legislation. Another problem is the inadequate implementation of more or less acceptable legislation, neglecting its requirements in practice or a minimalistic interpretation inconsistent with the goals, making decisions based on informal criteria and mechanisms behind the facade of the procedures outlined in the law. Under these conditions, the risk of appointing judges non-meritocratically (including on the basis of kinship and friendship) is high. Selection of employees of the court apparatus in the light of the influence of the court chairpersons on the process and results raises even more questions.

The unfilled vacancies in the judicial system and deterioration of the

fession has probably never been less appealing."

288 Respondents name other hindering reasons as well, among them low prestige of the court, low remuneration, high workload. They also list low court perception that trying is a waste of time and even with successful graduation from the School, appointment is not guaranteed opinion that selection criterion is loyalty and not the qualification and that the pre-requisite of career advancement is getting close to the influential group.

289 Judicial staff №1. Judge №6.

290 One respondent emphasized the connection between the judicial system and the level of poverty.

291 Judicial staff №2.

quality of justice as a result, are not accidental and are directly related to the policy of the HCoJ (influential judges behind it/represented in it) – to staff the courts *only* by the candidates they gave "checked", are reliable and loyal to them. Taking this goal into account, it is logical that the search for the candidates within "their own circle", focus on internal candidates who they already know (e.g. former assistants) and reliable external[292] candidates (e.g. family members/relatives of the judicial and non-judicial members of the Council, or other lawyers with the recommendation of an influential judge). Selection process is not competitive anyway, because judicial career is not attractive for the qualified lawyers anymore. This makes it easier for the High Council of Justice to staff the courts with desired candidates.

As mentioned above, the High Council of Justice was fully handling the staffing process of the courts (except the Supreme Court) for years; could control the influx of the personnel; exclude non-predictable/ unwanted candidates who would question the "order" they had established (including the idea of unity, which the influential group of judges uses to demonstrate and maintain power), using existing filters (school, probation period) on different stages.

Transferring the authority to nominate candidates for the Supreme Court judges to the Parliament towards the High Council of Justice, in practice meant largely closing the system for the lawyers, who would not obey the control of the influential group of judges. Like the first and appellate instances, the focus was driven to the loyal to influential judges, predictable candidates (mainly current judges). The legislation encourages the influx of the external candidates into the system, but as practice shows, that entering the system is possible for only those external candidates who are close to the influential group of judges and have their support. The risks of bargaining between influential judges and politicians increase. With this background, compliance of the candidates with the criteria set by the law becomes less relevant.

The interviewees within the study believe that

1. Nepotism and cronyism in the courts is systemic and increasing.[293]
2. The High Council of Justice members follow informal criteria when selecting the judges, in particular, they check how loyal, reliable, manageable and predictable the candidate is.

292 Personnel who did not work in the judicial system before being appointed as a judge, for example, former prosecutors.

293 This opinion is also shared by the current judges, whom we talked within the frameworks of the study.

3. The Council members look for the aspiring judges within "their circle", who would meet these criteria; the system is closed for external candidates who are not closed to the influential judges ("even the bird will not fly in, without being a relative or a friend (of the influential judge", "you can't get into judiciary from the street… you need to have a reference.").
4. Career advancement into judicial system depends on (a) demonstrating loyalty; (b) "weight" of the influential protector.
5. - The current personnel policy allows a small group of judges to monopolize the levers of managing the system. It negatively affects the independence of individual judges, as well as the quality and efficiency of justice in general.
6. The following creates a favorable environment for nepotism and cronyism:
    - The interest of the ruling power of the court in the ruled judges - due to this interest, the judicial reform was fragmented, serving more the concentration of power, strengthening internal hierarchies, than strengthening individual judges; it was less oriented on reducing the risks of arbitrariness of the Council, Which is especially problematic in light of the growth of the Council's powers in recent years.
    - Conformist approach of the (majority of) judges, which in turn is explained by the Council emphasizing on "obedient" candidates when selecting the judges, after appointment, court chairpersons "monitoring" the behavior of judges, cultivating passivity,[294] using informal sanctions or threatening to use formal sanctions.

294 Except of the cases when the judges being active is the interest of the influential judges.

6. Changes

6.1. Legislative Amendments

Changes in the composition of the High Council of Justice

a. Considering Georgian reality, one of the solutions might be to change the proportion of judicial and non-judicial members in the High Council of Justice, in order to increase number of nonjudge members and accordingly, the public involvement in the judicial system management process. At the same time, increasing number of votes required for the appointment of judges in a way that the votes of nonjudge members are decisive and therefore, influential judges cannot be guaranteed to "push" the desired candidates.[295] In this way, nonjudge members will perform a quality control function.

b. Changing the rule for electing judicial members of the Council to ensure the involvement of ordinary judges:

- Judges with administrative positions should not be able to combine membership of the Council.

- Candidates for the membership of the High Council of Judges should be required to submit a program and participate in the discussion. The focus shall fall on the vision, experience, characteristics, and skills of the candidate.

c. Changing the process of selecting non-judicial members (by the Parliament): The involvement of the opposition can reduce the risk of the ruling party influencing the Council activities and give opportunity to balance the Council composition, but to reduce the degree of politicization and shift focus on the vision, knowledge and skills of the candidates, involvement of a public or expert council at the selection stage, which will evaluate the candidates from this point of view and present conclusions may be justifiable.

295 In practice, we cannot exclude that the influential judges will manage to push forward the candidates close to them as the judges and accumulate votes enough for the appointment of desired candidates. If such happens, the aim of the changes will not be reached. Taking this into account, the process of selection of non-judicial members by the Parliament and the President should be improved at the same time in order to exclude such a scenario (see below).

d. Changing the rule for selecting the chairperson of the High Council of Justice: Nowadays, the chairperson of the High Council of Justice is selected from the judge members of the Council.[296] The chairperson of the Supreme Court is not automatically the chairperson of the Council any more, but they can be selected through the mentioned procedure. To avoid the concentration of power, imposing a restriction on the election of the chairperson of the Supreme Court as Chairperson of the Council may be appropriate. At the same time, we can discuss electing a non-judicial member of the Council as the chairperson, especially, in case the judge members remain the majority of the Council.

Changes in the activities of the High Council of Justice

a. Public control in the process of selection of judges: for example, It is desirable that the selection of personnel is monitored by the Public Council, which will which will comprise from the civil society representatives and experts.[297] The High Council of Justice may remain a decision-making body, but has to take the decision of the Public Council into account (among them. reflecting in the justification if their approach significantly differs from the one of the Public Council).

b. More transparency in terms of kinship. Imposing an obligation on judges to publicly declare *family ties* within the judicial system.[298] This change will be considered efficient only in case the monitors use disclosed information, e.g., pay attention when the relative of the influential judge gets promotion within the judicial system. Such declaration will give allow us to make informed overview of the risk of nepotism and its scale.

c. Transparency in the process of selecting the judges, including publicity of the documents submitted by the candidate, openness of the interviews; also, openness in regards with the decision justification; proper justification of the decisions (including refusal to appoint) taken by the Council at all stages of filtering the candidates for selection;

d. Review of judge selection process: canceling the vote (it is not

296 Organic Law on Common Courts, Article 47 (2^1).

297 Legitimacy and efficiency of this body will mostly depend on its composition, methods of selecting its members, existing resources, etc.

298 For example, in Slovakia, where nepotism in the judiciary is a problem, judges have obligation to declare family ties in annual property declarations. It implies the family ties within judiciary and with the employees of the Ministry of Justice. Failure to comply with this obligation may result in the disciplinary liability. See Samuel Spáč, Matej Šimalčík, Gabriel Šípoš, Let"s Judge the Judges: How Slovakia Opened its Judiciary to Unprecedented Public Control, available at: https://bit.ly/3RA4I5D.

clear what the purpose of the vote is; candidates have already been evaluated for the voting stage; a logical continuation of the process would be appointing the candidates with the highest scores/grades. If the vote remains, in any case, under conditions of wide discretion, due to the high risk of unfairly prioritizing a specific candidate, the voting shall be open and justified; In the justification, the Council member shall explain why they gave priority to one of the few candidates passing to the voting stage.[299] The element of comparison is not determined in the legislation, but is implied in the obligation to justify.

e. In the context of low interest in a career in the judiciary, taking measures to make the judiciary more attractive to experienced lawyers, for example by removing some filters (e.g. the School of Justice), with a policy of openness.

f. Better regulation of the selection process of court chairpersons: [under conditions of selection of chairpersons by the Council]: Setting the selection criteria and detailed justification of candidate(s) compliance with these criteria; within the framework of the justification, a thorough assessment of the past activities of the candidates (on similar positions); review of the role and format of the consultations to ensure comprehensive participation of the judges.

Maintaining the existing "order" given the role of court chairpersons, selection of court chairpersons with more decentralized process, e.g. through election by the judges.[300]

In order to de-concentrate power, we can consider imposing temporary restrictions on holding administrative positions for the judges who have uninterruptedly held the chairmanship and other similar administrative positions for years.

g. Due to the flaws in the appointment process, the compliance of judges with the criteria becomes questionable. Against this background, regular evaluation of activities of the judges (with lifetime term) becomes important.

h. More transparency in hiring of employees of the court apparatus; accessibility of documentation; Involvement of external members in the selection process who are not easily controlled by the court chairpersons. Finding ways to reduce undue influence from court chairpersons.

299 The fact that scores and evaluations should be justified, is a separate issue, especially if the degree of discretion is high (if there is a risk of manipulation).

300 We cannot exclude the same result in terms of changed legislation (elections), which is in the case of a decision by the Council; the example of Ukraine shows the same.

6.2. Other changes

Changing informal norms of judge behavior: this is achievable if enough judges deviate from such norms and establish an alternative pattern of behavior, through normalizing active discussions and expressing different opinion. Events of 2013-2015 and 2021-2022 showed[301] that if relevant conditions created, the judges can overcome the habit of passivity and change the culture of communication. This can be achieved by the active judges setting an example for others, as well as sharing experiences of foreign judges. Filling vacant positions with the judges who did not have judicial experience before the appointment, contributed to changing the internal dynamics.

Encouraging judges is important, as in case of interest, they could submit candidacies for membership of the Council and other similar bodies, participate in the consultations, etc. this will make harder to full these positions in centralized way and will prevent the concentration of power.

Any attempt of silencing the judges should be followed by a strong public reaction.

301 Now a contributing now is that judges are already appointed for lifetime and are not as vulnerable as they were in 2013. A hindering factor is that a large number of judges have been selected out of loyalty to influential judges and are therefore less likely to question the existing “order”.

Annex 1

Questions for the interviews

In your opinion, how widespread is the practice of employing family members/relatives and friends of [judges[302]] in the Georgian judicial system? To what extent is the family ties of candidates [with the judges] a decisive factor in appointment and promotion? At what extent is the family ties and friendship decisive in appointment of administrative positions within judiciary? On what basis do you make such a statement?

1. Do you think that such practice is more characteristic to any particular court or is it more systematic?
2. Do you think such practice has increased or reduces over time?
3. What do you think may be the motivation to attract relatives and/or friends to the system?
4. Do you see a problem in employing / career advancement of family members, relatives, friends of the influential judges in the judiciary? In what cases this practice is problematic?
5. How can influential judges influence the decision-making process [in favor of the relatives] directly or indirectly?
6. What kind of formal guarantees exist against nepotism/cronyisms – or giving undue preference to relatives/friends? How efficient are these guarantees?

    a. How competitive is the selection of judges or other personnel?

    b. How transparent is the decision-making process? How adequate are the legal requirements and practice in this regard?

    c. Does obligation for justification/right to appeal excludes/reduces arbitrariness of the decision-making body? How refined is the legislation and what are the implementation difficulties?

    d. How open is judicial system for external candidates - for those with no experience in the system? How attractive is the judiciary for such candidates?

    e. The issue of declaring a conflict of interest – legal regulation

302 We can talk about the employment of the relatives of influential judges, as well as politicians in judiciary.

and practice.

1. How do you think influences such practice on court operation? On operation of judicial self-government bodies? [positive/negative influence?]
2. Is media coverage of the topic enough? Do the non-governmental organizations react? Does public react? Why?