

## **Judicial Reform Concept**

Georgian judiciary is in a state of severe crisis, caused by years of unsuccessful, fragmented and inconsistent reforms. Over time, it became apparent that the authorities failed to show the political will to bring about tangible and consistent change. The government's policies have strengthened the influential group of judges, often referred to as the "clan". Currently, the judicial system serves the interests of the clan, which eventually led to a sharp decline in the independence and public confidence of the judiciary, and subsequently turned the court into a tool of political retaliation.

The Georgian judiciary needs complex and comprehensive reform. This concept aims to facilitate institutionalization of the justice system, its liberation from informal influence, facilitation for internal democratic processes, and the establishment of the highest standards. The concept paper addresses institutional and functional problems which obstruct judicial independence and ability of judges to exercise their professional authority competently and with integrity.

### **1. Staffing the High Council of Justice**

The rule of staffing the High Council of Justice (HCJ) is problematic. The existing rule does not allow reflecting the interests of the judges who are in the minority in the composition of the HCJ. This causes domination of one group over another and centralization of the spheres of influence within the justice system.

The rule of staffing the HCJ and its mandate must be changed through strengthening consultative democracy and implementing consensus-oriented procedures. Specifically, the interests of the minority in the Conference of Judges of Georgia must be given an operational role in the process of staffing the HCJ; the role of the opposition must be strengthened when electing non-judicial members from the parliamentary quota.

#### **As a result of the reform:**

- All eight judicial members of the HCJ must be elected by the Conference of Judges every four years;
- Each judge must be authorized to vote for only one HCJ membership candidate;
- Eight candidates who demonstrate the best results must be elected by the Conference;
- In the event of early termination of powers of an HCJ member, his or her place for the remainder of the term must be assumed by the next candidate on the list. If candidates receive an equal number of votes, the decision on who becomes an HCJ member must be made by drawing lots;
- The HCJ members from the parliamentary quota must be elected through an open and transparent process;
- The HCJ members from the parliamentary quota must be elected with the support from both the parliamentary majority and minority;
- The HCJ member from the presidential quota must be appointed as a result of an open, fair, and substantiated procedure.

### **2. Appointment of the Supreme Court Members**

On 12 December 2019, the Parliament of Georgia granted lifetime Supreme Court appointments to the 14 candidates nominated by the HCJ. Despite the fact that, during public committee hearings, the problems concerning each candidate's competency, integrity and system of values were made clear, the Parliament of Georgia did not consider the shortcomings or the conclusions made as a result of active monitoring conducted by the civil society sector and international society (harshly critical conclusion by OSCE/ODIHR) and supported their lifetime appointment.

The legal basis regulating the procedure of staffing the Supreme Court is flawed and needs to be improved.

**As a result of the reform:**

- A candidate for the membership of the Supreme Court must be appointed based on the support from both the parliamentary majority and minority;
- The issue of the conflict of interests between an HCJ member and a judicial candidate must be regulated by law;
- Openness and transparency of the selection process (both at the HCJ and the Parliament) must be ensured by law.

**3. Individual, Operational and Institutional Independence of Judges**

Exercising professional authority by a judge in an efficient and high-quality manner to a great extent depends on the staffers of the judicial bureaucracy whose work is directly related to the administration of justice by the court. According to the current legislation, in the court of the first and second instance, a competition commission decides on the issue of appointment of persons to the vacant positions of judicial aides and session secretaries; at the Supreme Court, this is done by the chairperson of the Supreme Court. The competition commission is staffed by a court chairperson at his or her full discretion. Given the fact that chairpersons of courts of the first and second instances are considered to be persons close to the so-called clan members, there is a reasonable suspicion that a competition commission is an additional lever in the hands of the influential group within the judicial system to influence judicial independence. In addition, the individual independence of judges may be threatened not only by the absence of legal guarantees ensuring their autonomy but also by the vague nature of the norms regulating the work, reward or promotion of judges as well as the existing practice.

**As a result of the reform:**

- A judicial cabinet must be established, which implies that a judge should have the authority to significantly contribute to the appointment of his or her own aides and session secretaries;
- A predictable and non-discriminatory system of rewarding and promoting judges must be established, with clear criteria determining promotion. Rewarding judges based on these criteria must be linked to their professional development, judicial and academic activities.

**4. Closed Nature of the Judiciary, New People, and Judicial Appointments**

The closed nature of the Georgian justice system remains one of the key challenges in this system. Since the inflow of new, qualified employees into the system and an increase in the number of judges is directly related to diminishing the power of an influential group within the system, the HCJ strictly controls the process of entry of new employees into the justice system by means of the High School of Justice and creates significant obstacles in the process. In order to ensure [judicial] independence, it is important to revise the mechanism of the formation of the High School of Justice by the HCJ in such a way as to weaken as much as possible the Council's control over new people acquiring the judicial profession.

Also, in order to improve the process of judicial selection/appointment, a clear and non-discriminatory mechanism, which would rule out as much as possible an opportunity for making subjective decisions, must be introduced.

**As a result of the reform:**

- The admission criteria for the High Council of Justice must be defined in detail by the law;
- Judges must be appointed at an open session through an open ballot, within the framework of an obligation to substantiate decisions on judicial appointments;
- To open up the judiciary and to decentralize the power concentrated in the hands of the HCJ, alternatives to the High School of Justice must be created within higher education institutions; this will allow more judicial aspirants to acquire relevant knowledge and to have an opportunity to develop their career in the judicial system after passing corresponding examinations.
- Studying at the High School of Justice must not create legal obstacles to its students if they wish to choose a different line of work.

## **5. Case Overload, Number of Judges and Remuneration of Judicial Staff**

Case overload is one of the key challenges facing the judicial system. The trend of hearing delays deprives the public of an opportunity to benefit from timely and high-quality justice. Furthermore, when judges have to consider an unreasonably high number of disputes, the risk of negligence, mistakes, and failure to meet deadlines is high, which means that judges become relatively more vulnerable to disciplinary liability. This creates an additional mechanism of ill-intentioned restriction of their autonomy. The problem of case overload in courts can be caused by both an increased number of cases as well as a shortage of human resources.

### **As a result of the reform:**

- An optimal number of judges in common courts must be determined based on the inflow of cases (the number of unconsidered, ongoing, and pending cases);
- Fair labor conditions must be ensured for the court staff. Also, the court staff hiring must be done based on sound and fair competition;
- The electronic system of case distribution must be improved, and the issue of the creation of narrow specialization must be better regulated.

## **6. Court Chairpersons**

In order to ensure the individual independence of judges and for institutional improvement of the judicial system, the power concentrated in the hands of the HCJ must be decentralized. The institution of court chairpersons is the core of the vertical arrangement of the justice system. According to the current legislation, the HCJ appoints chairpersons of the courts of the first and second instance, and court chairpersons have a number of organizational and functional responsibilities which directly affect the way the judges exercise their authority.

### **As a result of the reform:**

- The appointment of a court chairperson must occur through exercising internal institutional democracy rather than by the HCJ – judges of specific courts must be given an opportunity to elect their court chairperson by a majority of votes;
- The responsibilities of court chairpersons must be separated from those of court managers. Court managers must be given full control over the internal organizational and operational administration of courts.

## **7. Jury Trial**

The establishment of public trust in the judicial system depends on the degree of transparency of the processes unfolding there and on the component of public legitimacy. The institution of a jury trial is an expression of the idea of public legitimacy in the process of justice administration, backed by both history and doctrine. According to the Georgian legislation, the jury only considers criminal cases concerning the category of charges indicated directly in the Criminal Code.

### **As a result of the reform:**

- The mandate of jury trials must be expanded, which implies a person's right to participation of jury in trials where this person may face a custodial sentence;
- To save human resources and in order to avoid greater delays than those experienced currently, it is possible to adopt the model of U.S. courts. The cases which do not have a broad social impact may be considered by a minimum of six jurors;
- Jurors must make a unanimous decision based on the "preponderance of evidence" or "more true than not" standard. The role of judges in such trials is limited to defining corresponding legislation

and determining corresponding punishment envisaged by the law in the event the jurors establish the violation.

**Georgian Democracy Initiative (GDI)**

**Transparency International Georgia (TI Georgia)**

**Open Society Georgia Foundation (OSGF)**

**Institute for Development of Freedom of Information (IDFI)**

**International Society for Fair Elections and Democracy (ISFED)**

**Human Rights Centre (HRC)**

**Partnership for Human Rights (PHR)**