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# The High Council of Justice

## Monitoring Report

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Tbilisi



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## **I. Introduction**

Since 2012, in the framework of Judicial Independence and Legal Empowerment Project (JILEP) Transparency International Georgia (TI Georgia) and Georgian Young Lawyers' Association (GYLA) have been implementing monitoring of the High Council of Justice (HCOJ).

The monitoring aims to assess activities of the High Council of Justice, as of the essential unit of management, in view of ongoing reforms in judiciary system, to illustrate implementation of recent legislative amendments and their effects. It also intends documentation of the situation in the system which will later allow observing of the ongoing process and reforms in dynamics.

Monitoring priorities were determined in view of developments in judiciary by considering the topical issue and fields identified for the past period. To this end, following fields were selected as monitoring targets:

- Judges' appointment;
- Judges' transfers (missions);
- Disciplinary proceeding;
- Transparency of the High Council of Justice (HCOJ).

As far as in March 2012, crucial changes were introduced to legislation, pre-amendment and post-amendment periods were determined as targets of monitoring. In particular, amendments concerned regulation of judges' transfers (missions) to other courts and their disciplinary proceedings, which should have affected substantially application of the mentioned mechanisms in practice.

The monitoring period also turned to be important in terms of manning the HCOJ. In 2012, some new members were appointed in the HCOJ. In particular, Vakhtang Khmaladze, Shalva Shavgulidze, Zakaria Kutsnashvili and Paata Lezhava were nominated by the Parliament, Ilona Todua was submitted by the judiciary and Giorgi Obgadize was the President's candidate for the membership in HCOJ. It should be noted, that during this period, the process of staffing the HCOJ generated special public interest and required adequate transparency. Yet, save for the Parliament, the process of nominating the members was not sufficiently open and available to interested individuals. Notwithstanding previous unfavorable assessments, judiciary continued to appoint HCOJ members by the decision of the administrative committee of judges' conference, whereas making of such a decision by an administrative committee (composed of 9 members), instead of judges' conference, was the part of widespread criticism directed to judiciary and relevant high officials were also informed thereon.

Nevertheless, Ilona Todua was nominated as a member of the HCOJ upon the decision of October 12, 2012 adopted by the administrative committee, while the judges' conference was held on October 29, 2012, following some days from the decision.<sup>1</sup>

As with regards to Giorgi Obgaidze, another new member of the HCOJ, he was appointed on the position by the Presidential order of December 12, 2012.<sup>2</sup> The web-page of the HCOJ, however, did not release any information. Mere alteration of the list of HCOJ members, without making relevant official statement, violates transparency requirements, especially in view of special public interest towards the issue.

Even though the process of manning the HCOJ was not a key objective of the monitoring, the issue relates to transparency of HCOJ activities. In view of this, the report discusses the process of appointing HCOJ members.

## **II. Methodology**

Essential part of the research is based on the retrieved public information. Monitoring implementer organizations applied to HCOJ and to various courts with request of public information.

In addition, legislation analysis, including comparison of pre-amendment and post-amendment legislative field was also applied for monitoring purpose.

Monitoring implementer organizations regularly participated in open sessions of HCOJ and attended other public meetings.

It should be noted, that at the initial stage of monitoring, HCOJ was open to communication with monitoring implementer organizations. Moreover, there was no problem to receive requested public information. However, for the past period, for some unknown reasons, retrieval of necessary information was complicated. In certain cases, responses of the HCOJ were incomplete and sometimes HCOJ did not react on certain applications within period established by the legislation. In view of above, monitoring organizations encountered scarcity of necessary information concerning certain issues.<sup>3</sup>

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<sup>1</sup> Information on judges' conference <http://tcc.gov.ge/index.php?m=443&date=2012.10.29&newsid=460>

<sup>2</sup> Giorgi Obgaidze's biography, the new members of the HCOJ <http://hcoj.gov.ge/ge/about/organizational-charter/sabchos-shemadgenloba/giorgi-obgaidze>

<sup>3</sup> Monitoring organizations failed to receive comprehensive information in response to October 22 and November 15 letters.

### **III. Appointment of judges**

The Georgian legislation provides for two ways for designating a person on the position of a judge. In view of this, both of them were selected as targets of monitoring:

1. The process of appointing students of the High School of Justice;
2. Appointing of persons who are relieved from attending the High School of Justice, on the basis of competition.

#### ***a. Students of the High School of Justice***

The monitoring covered and assessed the period from the moment of admitting students in the High School of Justice until the end of the process, which implies appointment of an individual on the position of a judge.

In the period of monitoring (since March 2012), the admission competition was announced twice, on May 7, 2012 (the IX group) and on October 15, 2012 (the X group).

In both cases, six days' period was determined for submission of applications. TI Georgia and GYLA were able to attend interviews of part of applicants from the IX group held on May 21, 2012. As it became known later, part of applicants have been interviewed the previous day, on May 20, on Sunday. Since no advance notification was submitted to monitoring organizations on Sunday interviews, they failed to observe the process.

On May 21, 2012 10 applicants turned out on the second phase of interview. They had individual interviews with HCOJ members. Duration of interviews was mainly 10 -15 minutes. Key questions concerned motivation of candidates. Applicants were also asked about their family condition and employment of their family members. There were certain cases when applicants were asked about judiciary changes and their future plants in case of their designation on the position of a judge.

It should be noted that professional questions were rare, save some exceptions, when candidates were asked to give the meaning of "decriminalization", "depenalization" and "collision". The applicants were not asked to provide analysis of the specific legislative problems.

Some members of the HCOJ were especially active at the interviews. Majority of questions came from Konstantine Kublashvili, the head of the HCOJ, Valeri Tsertsvadze, secretary of the HCOJ and Kakha Koberdize, member of the HCOJ. Other members only observed the process. It should be noted, that 4 members of the HCOJ nominated by the Parliament attended neither this session, nor the interview of the next group. Monitoring implementer organizations observed that participation of HCOJ members

appointed by the Parliament was problematic during the whole monitoring period, since they have not attended any of the sessions.

The decision about candidates was not made following the interviews. Later, from the Council's web-site authors of the report learned that results of the competition were summed up during the board meeting on June 15 and a subsequent decision to admit 9 students was made. As the information about the board meeting was not been made public, we could not attend to hear evaluations and judgments made by its members. Authors of the report requested from the board access to evaluation sheets filled out about applicants for the team 9. Prior to receiving the information GYLA's representative was able to familiarize herself with a standard form (a template) of evaluation sheet at the High Council of Justice and learned that the sheet does not envisage the obligation of a board member to submit any motivated arguments and substantiations about applicant. Therefore, it is safe to conclude that decision about applicants was not founded on motivated arguments or substantiations. In this light, boosting substantive role of the evaluation sheets may be considered. Further, the HCOJ responded that the information in evaluation sheets contained data allowing identification of applicants and therefore, it was protected under the law of Georgia on Protection of Personal Information.

As for the competition announced for admission of students in the X group, it was announced on October 15, 2012 and similarly to the previous one, submission of applications lasted for six days.

TI Georgia and GYLA had chance to attend interviews of the applicants for the X group, held on October 23-24 and 25, 2012. The official web-page of the HCOJ provided no advance information on the interviews and its schedule. TI Georgia and GYLA were given opportunity to attend the competition in HCOJ after expressing interest to anticipated interviews.

During all three days of competition, each interview lasted for 10-15 minutes. Similarly to previous interviews, the key questions concerned motivation of applicants and their vision concerning implemented and anticipated reforms. In addition, the candidates were asked about family conditions and their working places. Members of the HCOJ also asked some professional questions depending on specialization of candidates in criminal law or civil/administrative fields.

Final decision was adopted on November 2, 2012 and information was released on official web-page of the HCOJ on November 2.<sup>4</sup> Similarly to group IX, no advance announcement was made on the date of session and about anticipated debate on final selection of candidates to Justice School. Therefore, GYLA and TI Georgia were not given chance to listen to argumentation and reasoning of HCOJ members in terms of admission of each student.<sup>5</sup>

For comprehensive monitoring of the process, GYLA retrieved from HCOJ additional information on the number of applications submitted for competition in the Justice School for IX and X groups. According

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<sup>4</sup> The web-site of HCOJ : <http://hcoj.gov.ge/ge/iustitsiis-umaghles-skolashi-charitskhuli-msmenelebi/1988>

<sup>5</sup> In view to previous experience the authors of the report did not apply to HCOJ with request of evaluation lists.

to the information received by the HCOJ, 54 individuals were registered for competition announced in May 2012, and 59 individuals were registered for competition announced in October 2012. As regards the May round, 21 applicants were shortlisted, whereas 33 individuals appeared in a shortlist from applicants of October.<sup>6</sup> The total number of applicants was decisive since the first stage of contest, envisaging submission of applications, does not fall within monitoring scope in any other way. As for the second stage of competition, authors of the report attended the interview process.

In view of above, the problems encountered in the process of admitting students to Justice School shall be determined as follows:

- Insufficient transparency of the process;
- Short period for the competition;
- Unavailability of evaluations made by HCOJ members in terms of students.

*Hereby we present the chart providing the basic data on the students enrolled in the IX and X groups of the Justice School. It is based on the information received from the HCOJ.*

| <b>Individuals admitted to the School of Justice (IX group)</b> | <b>Age</b> | <b>Specialization</b>        | <b>The last working place</b>                                      |
|-----------------------------------------------------------------|------------|------------------------------|--------------------------------------------------------------------|
| <b>Zurab Balavadze</b>                                          | 29         | Criminal Law                 | Tbilisi City Court                                                 |
| <b>Nino Buachidze</b>                                           | 34         | Civil and Administrative Law | The Supreme Court                                                  |
| <b>Giorgi Gratiashvili</b>                                      | 33         | Criminal Law                 | Investigative unit of Adjara Prosecutor's Office                   |
| <b>Levan Darbaidze</b>                                          | 33         | Criminal Law                 | Internal Inspection and Audit Service of the Civil Registry Agency |
| <b>Teona Leonidze</b>                                           | 29         | Criminal Law                 | Tbilisi Court of Appeal                                            |
| <b>Nino Meladze</b>                                             | 27         | Civil and Administrative Law | Tbilisi Court of Appeal                                            |
| <b>Diana Parkosadze</b>                                         | 30         | Civil and Administrative Law | High Council of Justice                                            |

<sup>6</sup> The letter of HCOJ of January 11, 2013 #20/13-03-o

|                            |    |              |                                                              |
|----------------------------|----|--------------|--------------------------------------------------------------|
| <b>Valerian Pilishvili</b> | 29 | Criminal Law | Akhaltzikhe regional court                                   |
| <b>Lado Karkashadze</b>    | 33 | General      | Administrative Department<br>of the State Revenue<br>Service |

| <b>Individuals admitted to<br/>the School of Justice (X<br/>group)</b> | <b>Age</b> | <b>The last working place</b> |
|------------------------------------------------------------------------|------------|-------------------------------|
| <b>Ana Chkhetia</b>                                                    | 30         | Tbilisi Appeal Court          |
| <b>Maia Kokiashvili</b>                                                | 36         | Tbilisi Appeal Court          |
| <b>Badri Niparishvili</b>                                              | 28         | The Supreme Court             |
| <b>Levan Mikaberidze</b>                                               | 31         | Tbilisi City Court            |
| <b>Giorgi Mirotadze</b>                                                | 38         | High Council of Justice       |
| <b>Tamar Meshveliani</b>                                               | 30         | Tbilisi City Court            |
| <b>Nikoloz Margvelashvili</b>                                          | 28         | Tbilisi City Court            |
| <b>Irakli Kopaliani</b>                                                | 31         | Chancellery                   |
| <b>Giorgi Ketarishvili</b>                                             | 29         | Tbilisi City Court            |
| <b>Aleksandre Iashvili</b>                                             | 28         | The Supreme Court             |
| <b>Lasha Tavartkiladze</b>                                             | 33         | Tbilisi City Court            |
| <b>Germane Dadashqeliani</b>                                           | 35         | The Supreme Court             |
| <b>Meri Guliashvili</b>                                                | 33         | The Supreme Court             |
| <b>Sophio Gagnidze</b>                                                 | 33         | Tbilisi City Court            |
| <b>Shota Bichia</b>                                                    | 30         | Tbilisi Appeal Court          |

*\*As for individuals enrolled in the tenth group, no specialization was indicated there in contrast to persons enrolled in the ninth group.*

### ***b. The competition for selection of judges***

The second way of designating a person on the position of a judge is a competition. During the monitoring period HCOJ announced a competition only once, for individuals who are relieved from attending the High School of Justice.

The competition was announced on November 2, 2012.<sup>7</sup> The web-page, however, did not set the deadline for registration of documents, nor it provided the list of specific vacancies for judges. The application provided that the applicants should have submitted application in an electronic form, that ensured provision of information on the stages of contest and about adopted decisions. For failure to have access to the electronic base, we were not informed if applicants received information on the specific vacancies, yet it is obvious that the information should have been available to everyone.

The deadline was specified after GYLA had contacted with HCOJ and expressed interests concerning the period of announced competition. As it turned out the registration period was November 2-6, 2012. It was determined that envisaged term for submission of documents was unreasonably short, especially if considering that the period coincided with week-ends.

The list of necessary documents for registration was incomplete and it did not comply with the “Rule for Selecting Candidates on the Position of a Judge”<sup>8</sup>. The document provides, that an individual relieved from attending the High School of Justice should submit an application on participation in the competition *announced for a specific vacancy*.<sup>9</sup> The competition announced by the HCOJ, however, missed such application in the list of necessary documents.

According to the “Rule for Selecting Candidates on the Position of a Judge”, within three days after the end of competition the HCOJ is obliged to release the list of selected candidates by indicating the relevant vacancies.<sup>10</sup> Nevertheless, in the process of preparing the report, the list was unavailable on the official web-page.

Later, the web-page released information on appointing 7 judges through the competition. Published information, however, did not specify either identity of appointed judges (except the one, who took a judge’s oath) or the date of session when decision was made.<sup>11</sup> It should be noted, that according to the Rule for Selecting Candidates on the Position of a Judge, the shortlisted candidates should be interviewed at the second stage of contest. Therefore, the HCOJ was obliged to invite shortlisted candidates to the session and to interview them. Nevertheless, no information was published on the web-page on conduct of session in November. In view of the above, authors of the report had no opportunity to be informed about the time and form of conducted interviews by the members of the HCOJ with shortlisted candidates.

The authors of the report applied to the HCOJ and requested information about the number of applicants, appointed judges and the minutes of the sessions when HCOJ made relevant decisions. According to submitted information, 37 candidates were registered in the competition announced in

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<sup>7</sup> HCOJ web-page: <http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabcho-atskhadebs-mosamartleta-shesarchev-konkurss/1987>

<sup>8</sup> Approved by HCOJ decisions of October 9, 2009 №1/308.

<sup>9</sup> Paragraph 2, Article 5

<sup>10</sup> „The Rule for Selecting Candidates on the Position of a Judge“, Article 7

<sup>11</sup> <http://hcoj.gov.ge/ge/akhladdanishnulma-mosamartlem-iustitsiis-umaghles-sabchoshi-fitsi-dado/1993>

November 2012.<sup>12</sup> The minutes of the session, provided by the HCOJ report that 8 candidates were shortlisted and interviews were conducted on November 9, 2012.

As for successful applicants, their biographies provide that 7 candidates out of 8 were practicing judges. One implemented its authority in the court of “mission”, and she was appointed there upon HCOJ decision. The process of appointing judge in the same court where she was already appointed in 2012, is quite confusing. For lack of details in the minutes of the session, we were unable to determine the actual reason, as well as to find out evaluations with respect to other candidates.

| Appointed judges            | Age | The last working place                                       | The place of designation    |
|-----------------------------|-----|--------------------------------------------------------------|-----------------------------|
| <b>Leila Gurchiani</b>      | 58  | Judge of Tsageri regional court 1991-2011. Lawyer since 2011 | Khelvachauri regional court |
| <b>Vera Dolidze</b>         | 43  | Has been implementing authority in Kutaisi Appeal Court      | Kutaisi Appeal Court        |
| <b>Marine Imerlishvili</b>  | 47  | The judge in Kutaisi Appeal Court since 2005                 | Kutaisi Appeal Court        |
| <b>Arsen Kalatozishvili</b> | 29  | The judge in Tbilisi City Court since 2011                   | Zestaphoni regional court   |
| <b>David Svanadze</b>       | 53  | The judge of Kutaisi Appeal court since 2005                 | Samtredia regional court    |
| <b>Tariel Tabatadze</b>     | 46  | The judge of Tbilisi city court since 2012                   | Gori regional court         |
| <b>Tamar Chuniashvili</b>   | 55  | The judge in Tbilisi City Court since 2012                   | Tbilisi City Court          |

In summary, following primary gaps have been observed in the process of appointing judges through competition:

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<sup>12</sup> HCOJ letter of January 11, 2013 #20/13-03-o

- Failure to submit exhaustive information on the web-page;
- Unreasonably short period for submission of applications;
- Insufficient transparency of the process.

#### **IV. Transfer (mission) of Judges**

Prior to introducing amendments to the Law of Georgia on the Rule of Distribution of Powers and Cases between the Judges of Common Courts, there were two grounds for application of the mechanism, in particular:

- a) Absence of a judge in a specific court;
- b) Sharp increase in the number of cases in a specific court.

Moreover, the Law did not stipulate any additional requirement or limitation on frequency or duration of applying the mechanism. The law also did not envisage mandatory advance consultations with a judge and his/her consent. In view of this, prior to 2012 amendments the transfer could have been applied if one from the mentioned two conditions persisted and the relevant decisions was followed from the HCOJ.

Following 2012 amendments, additional stipulations occurred in a legislation which regulated transfer of judges thus altering substantially the process of transfers at the legislative level.<sup>13</sup> The report evaluates application of legislative norms in practice in pre-amendment period. The given analysis targets examination of transfers that took place in 2011, in terms of their compliance with applicable legislation.

As for post-amendment period, the monitoring group requested from HCOJ decisions on implemented transfers following enactment of amendments. In the period of preparing the report, however, the HCOJ did not release the decisions. Authors of the report received only general statistics providing that in the period of April 20, 2012 until December 1, 40 transfers were carried out, while majority of them had been already invalidated by the time of receiving information.<sup>14</sup> As for assessment of the process of transfers and sufficient reasoning thereto, GYLA and TI Georgia were unsuccessful to implement this part of monitoring for unavailability of sufficient information.

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<sup>13</sup> The report „Judiciary in Georgia “, <http://www.coalition.org.ge/ge/article119>

<sup>14</sup> The letter of HCOJ of December 18, 2012 #1181/1072-03-o

### ***a. Revealed deficiencies***

With a view to conduct comprehensive analysis, we requested from HCOJ decisions on implemented transfers. In addition, we retrieved additional documents for inspecting reasonability of decisions. In particular, minutes of all sessions where decisions were made on judges' transfers. Moreover, we also requested number of ongoing and ended cases from the courts where transfers were implemented with a view to assess influence of missions on court operation. For more clarity, the court from where the judge was sent is referred to as court of "origin" in the research, whilst the court where the judge was transferred is mentioned as a court of "mission."

According to the information received from the HCOJ 42 transfers were implemented in 2011. HCOJ decisions illustrated that they were insufficient source for determining the grounds of missions in each specific case. Majority of decisions contained only relevant article of the law, and lacked additional justification and reasoning.

Therefore, for determining the reason of transfers in each specific case, monitoring organizations had to study minutes of the session, which more or less reflected pre-conditions for transfers. It should be noted, that though 42 pieces of decisions were received from the HCOJ, only 19 minutes were released concerning judges' transfers.<sup>15</sup> In all other cases (23 transfers) it was practically impossible to evaluate reasonability of adopted decisions. In view of the above, submitted analysis is based only on the minutes of session disclosed by the HCOJ on 19 cases. In other instances, the document suggests only statistical data.

### ***b. Missions in different instances of courts***

It was observed that out of 42, in 39 cases, judges were sent for mission in the same instance courts. There were some exceptions:

- Tea Dzimistarashvili's mission to Tbilisi Appeal Court from Mtskheta regional court;
- Besarion Tabagwas' mission to Tbilisi Appeal Court from Telavi regional court;
- Khatuna Khomeriki's mission to Kutaisi Appeal Court from Abasha regional court.

### ***c. Duration of the missions***

Out of 42 cases, there was only one instance when the HCOJ indicated the period of mission in its decision. Tsisana Sirbiladze's mission from Sagarejo regional court to Rustavi city court was implemented in the period of June 6, 2011 until September 5, 2011. The minutes of HCOJ session held

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<sup>15</sup> GYLA requested from HCOJ minutes of the sessions about other missions, letter sent on October 22, 2012 #8-04/13-12

on May 30, 2011 illustrates that the issue on duration of a mission was stated in Tsisana Sirbiladze's case and final decision had to be adopted after negotiating with a judge. It should be noted, that for the period of 2011, HCOJ had no obligation to observe specific terms, however, the legislation made reference on temporary and exceptional nature of transfers.

#### ***d. Territorial scope of missions***

Generally, judges were sent to mission in courts located in a same or nearby regions, though there were certain exceptions, including Iraki Bondarenkos transfer to Signagi regional court from Khelvachauri court. It should be noted that the law does not envisage any territorial restrictions in terms of transfers.

#### ***e. Judge's consent***

Though 2011 legislation did not stipulate the necessity of judge's consent for transfers, applied practice still generates interest. As the studied minutes of the session illustrated, in five cases judges expressed their consent, in different forms, to exercise their authority in a court of "mission". In other cases, neither decisions, nor the minutes of the session specified consent of the relevant judge or their objection to the missions. It should be noted that as minutes of the session provide, no preliminary consent was submitted in Bezhanishvili's and Khomeriki's cases, since existed situation did not change.

#### ***f. Grounds for missions***

Motivation and reasoning of decisions in terms of judges' transfers are the most complicated components of the analysis. The decisions were not well reasoned; mostly they were identical and were not substantiated. In view of the above, the grounds for judges' transfers were determined from the minutes of the session. It turned out, that missions were mostly implemented for absence of judges in the specific courts. Another motivation for sending a judge to other court was sharp increase in number of cases in different courts.

Other cases that also generate special interest are those cases in which Judges' missions were concerned to the reason of liquidating the court of "origin". According to Article 44 of the Organic Law of Georgia on Common Courts, in case of liquidation of a court, if there is advance consent of a judge, he/she may be designated to another court within his/her tenure. Therefore, the legislation does not relate transfers to liquidation of a court. The law envisaged "reappointment" of a judge in another court within his/her judiciary term, rather than a transfer.

According to the position communicated by the HCOJ to authors of the report on this matter, following liquidation of courts judges are not appointed to liquidated courts. Name of a newly set up court may coincide with the name of a liquidated court; however, it is a brand new court with a different scope of

operation. In an event of liquidation of court, judge is first appointed to any other court and afterwards, assigned to a different court.

Based on the analysis of materials obtained by authors of the report from the High Council of Justice, assignment of the following judges to different courts may have had to deal with liquidation of court:

- Assignment of Khatuna Khomeriki
- Assignment of Indira Mashaneishvili
- Assignment of Shalva Mchedlishvili

In order to determine whether these judges had been appointed to other courts before their assignment, authors of the report turned to the website of the High Council of Justice and learned that these judges had not been appointed to other courts (to courts with similar names as liquidated courts, or to courts with different names). As authors of the report did not have access to any other source of information, it was impossible for them to determine whether following liquidation of courts judges were appointed to any other courts and consequently, whether their assignment was lawful.

#### ***g. Effect of transfers on judiciary operation***

Effects of transfers on the activities of other courts attract attention. Analysis of the minutes of HCOJ session revealed that transfers have certain effect on the operation of the court of “origin”, if insufficient number of judges are left there.

The minutes of session illustrate two cases when the HCOJ had to send on mission judges to Mtsketa and Zugdidi courts, since two judges were transferred from these courts to other courts before.

To sum up, 2011 practice of transfers showed that HCOJ fails to provide well-reasoned decisions and thus questions legality of certain transfers. As far as it is difficult to judge lawfulness and reasonability of certain adopted decisions on sending judges to mission, it is complicated to carry out comprehensive analysis of the process. Minutes of the session applied for drafting the analysis is not a key source and may be used only as an additional tool for judging the grounds and content of adopted decisions, which cannot substitute well-reasoned decisions.

As for imposing authority upon judges in other courts following 2012 amendment, GYLA has applied to HCOJ and requested information about post-amendment transfers,<sup>16</sup> the HCOJ however, submitted incomplete information. It only released number of transfers and the register of transfers. For failure to disclose decisions of post-amendment period, monitoring organizations were not able to draft analysis of post-amendment period.

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<sup>16</sup> The letter of November 15, 2012 #3-04/41-42

## V. Disciplinary Proceedings

Until March 2012 disciplinary proceedings against judges were confidential, therefore evaluation of applied practice was practically impossible.

In 2012, the legislation had been significantly amended in the area of regulation of disciplinary proceedings against judges. Most of the amendments targeted the issue of complete confidentiality of such proceeding, making them partially public. Amendments also affected fundamentals of the disciplinary proceeding. Accommodating provided recommendations, such wordings as “a gross violation of a law by a judge” and “breach of the internal regulation” have been deleted from the fundamentals of disciplinary proceeding.<sup>17</sup>

Though, introduced amendments increased transparency of the process considerably, as well as the chance to implement public control thereon, no retroactive force has been applied to amendments. Therefore, contextual part of disciplinary proceedings carried out in pre-amendment period was left beyond the scope of monitoring. It is only possible to analyze statistical data, yet scarceness of information excludes conduct of detailed research.

As for disciplinary proceedings carried out in 2012, it should be mentioned that amendments were introduced in March, 2012 and the obligation to release decisions adopted by the disciplinary board generated afterwards. However, in the period of working on the monitoring report there was not even a single case of releasing such decision. With a view to determine adoption of disciplinary decisions in post-amendment period, GYLA applied to HCOJ and requested public information.<sup>18</sup>

The letter received in response provided that since enactment of amendments (April 20, 2012) until December 1, 4 disciplinary cases have been examined by the HCOJ. Among them remark was applied in one case, while reprimand was used against two judges and private recommendation note was issued to one judge.<sup>19</sup> The HCOJ also provided to authors of the report that according to Article 5 of the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts the HCOJ is not entitled to release decisions of disciplinary cases.

It should be noted that the main value of implemented amendments in spring 2012 was to make confidential disciplinary proceedings public. The amendment introduced to the Law stipulates that: “decisions of the disciplinary board and disciplinary chamber should be published on the official web-site without indication of personal data of the concerned individual”<sup>20</sup>. According to this norm, disclosure of disciplinary decision is an obligation of the relevant organ imposed by introduced

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<sup>17</sup> <http://www.coalition.org.ge/ge/article119/>

<sup>18</sup> The letter of November 15, 2012#8-04/41-42

<sup>19</sup> The letter of HCOJ of December 18, 2012 #1181/1072-03

<sup>20</sup> Article 81 of the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges on Common Courts

amendment, rather than its discretion. As for Article 5 of the Law, it provides that disciplinary proceeding is confidential, save for instances envisaged by law. Obligation of the disciplinary board and the disciplinary chamber should be considered as such an exception, otherwise amendment introduced to the Law on March 2012 with a view to make disciplinary proceeding public, loses its value.

As for assessing disciplinary proceedings of post-amendment period, the HCOJ failed to meet its obligation in terms of releasing decisions of the disciplinary board on its official web-site. For unavailability of relevant data, authors of the report could not make any additional assessments.

#### ***a. Disciplinary Proceedings in the High Council of Justice***

According to the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts, disciplinary prosecution is commenced by *preliminary investigation* of the complaint/an application on a disciplinary violation committed by a judge. According to the norm applied in 2011, it was the competence of the chairman of the Supreme Court, chairman of the Appeal Court, Secretary of the High Council of Justice of Georgia or a member of the HCOJ (staff member of the High council of Justice)<sup>21</sup>.

Information discussed in the document contains data only on the complaints/applications examined by the High Council of Justice, since according to the information submitted by the HCOJ: competent officials on initiation of disciplinary prosecution as per Article 7 of the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges, did not implement disciplinary prosecution against judges in 2011<sup>22</sup>.

As for the cases examined in 2011 by the Department of Judiciary Ethics and Disciplinary Prosecution of the High Council of Justice, the HCOJ web-page provides that 940 complains were submitted in the department for examination, which is less by 173 pieces compared to the previous year indicator.<sup>23</sup> Moreover, as the letter of the High Council of Justice reports, the HCOJ did not implement disciplinary proceeding against judges without preliminary investigation of the reasonability of commencement of disciplinary prosecution.<sup>24</sup>

Investigation into the basis of the commencement of disciplinary prosecution is the subsequent stage of preliminary inspection and according to the law applied in 2011 the secretary of the High Council of Justice or the chairman of the relevant court made decision thereon.<sup>25</sup> The decision of the secretary might imply termination of the prosecution or examination (questioning) of a judge, which is continuation of the disciplinary proceeding. In view of it, initial selection of the

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<sup>21</sup> Article 8 of the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges on Common Courts

<sup>22</sup> Letter #178/163-03 March2, 2012 of the High Council of Justice

<sup>23</sup> Disciplinary statistics of 2011 is available on: <http://hcoj.gov.ge>

<sup>24</sup> The letter N178/163-03 of March2, 2012 of the High Council of Justice

<sup>25</sup> Article 9(1) of the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges on Common Courts

complaints/applications on committing of disciplinary offence takes place at this stage when the decision is made either on termination of the prosecution or on its continuation (examination/questioning of a judge). We should also note, that HCOJ secretary's decision on termination of disciplinary prosecution against a judge is submitted to the High Council of Justice, which may uphold or change it (that may be followed by continuation of the process and examination of a judge).

According to statistical data, the HCOJ made following decisions after examination of submitted complaints/applications:

- Disciplinary prosecution against judges was terminated on 422 cases;
- In 19 disciplinary cases judges received private recommendation notes;
- In 8 disciplinary cases judges were examined, among them in two cases judges have been held liable for disciplinary offence, in three cases judges received recommendation notes and three disciplinary cases are being investigated;
- Repeated applications were combined with other similar applications, they were sent according to jurisdiction and citizens received responses on 431 letters and applications;
- Disciplinary proceedings are ongoing on the basis of 61 complaints/applications.

According to the information, among 940 complaints/applications 879 complaints/applications had various developments, whilst disciplinary proceedings are ongoing on the rest 61 cases. It means that these complains will be examined in 2012 and correspondingly information about them will be reflected in 2012 statistical data.

As for the part of examined complaints/applications, the statistics provides that like previous year, disciplinary prosecution was terminated on majority cases (44,9%). 22 judges received recommendation notes (3 received such note after being questioned). According to the Law on Disciplinary Prosecution ***"If during a preliminary investigation on the grounds for commencing the disciplinary prosecution or investigation of a disciplinary case, a commitment of such a disciplinary violation by a judge will be proved, because of which it would not be considered advisable to bring a disciplinary case against a judge, a respective authorized person or an agency has the right to terminate the disciplinary prosecution. He/she has the right to send a private recommendation letter to a judge."***<sup>26</sup> It is possible to apply to a judge with a private recommendation note by the decision of the disciplinary board when a disciplinary board recognizes disciplinary violation of a judge and imposes disciplinary responsibility thereon. Yet, in this case recommendation note was applied against 22 judges without bringing disciplinary cases against them in correspondence to the norm.

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<sup>26</sup> Article 19 of the Law of Georgia on Disciplinary Responsibility and Disciplinary Prosecution of Judges on Common Courts

As the submitted information provides, a decision on examination of a judge after inspecting the grounds for commencing the disciplinary prosecution was made only in 8 cases. The figure differs considerably from 2010 indicator.<sup>27</sup> Specifically, in 2010 among examined 1116 complaints/applications the decision on examination of a judge was made in 54 disciplinary cases, which is the only alternative for termination of disciplinary proceeding. Although the difference is crucial, it is difficult to explain the reasons according to characteristics of the specific cases or the reasoning of complaints/applications, since neither in 2010 nor in 2011 was the content of the disciplinary cases available to us.

#### ***b. Examination of disciplinary case in a disciplinary board***

In view of described difference, the number of cases sent to disciplinary board in 2010 and 2011 also differed considerably. In 2010, disciplinary cases were brought against 30 judges, consequently same number was sent to disciplinary board for examination. In 2011 two judges were held liable for disciplinary offence. As for examination of the case by the disciplinary board, it is interesting to compare statistical data of 2010 and 2011, since there is considerable difference among the examined disciplinary cases. As mentioned already in 2010 disciplinary board had 30 cases for examination (leftover from the previous year-0), in 2011 27 cases (leftover from the previous year -25).

According to official data, in 2010 the disciplinary board examined 5 cases from the lodged 30 cases, whereas in 2011 the disciplinary board managed to examine five times more cases, specifically 25.<sup>28</sup> 2 disciplinary cases were left for examination in 2012. It means that a new standard of transparency may be applied on these cases. According to the amendment initiated to the law, if the cases are examined after enforcement of the amendments, information about the cases will be accessible and the disciplinary board will have to place its decisions on official web-page. Only these two cases may fall within the transparency regime, since amendments are not applied to old decisions of the disciplinary board.

The difference in examined cases is significant and needs more detailed analysis. However, as content of the cases are not available, it is impossible to explain the diverse pace of operation of the disciplinary board in view of complexity of certain cases or other objective circumstances.

#### ***c. Disciplinary penalties and appeal***

The strictest penalty applied against a judge – dismissal from the occupied position was used in only one case in 2011. As for other sanctions, in view of examined cases, application of sanctions was increased in 2011. Strict reprimand, as a penalty, was used against two judges. In addition, upon the

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<sup>27</sup> 2010 statistic is available on <http://hcoj.gov.ge/?!=2&i=2439>

<sup>28</sup> According to statistical data, disciplinary board had finished examination of these 25 cases within first 6 months of 2011

decision of a disciplinary board, 2 judges received private recommendation notes. Among examined 25 cases, disciplinary prosecution was terminated against 6 judges.

According to official response of the Supreme Court<sup>29</sup> two decisions of the disciplinary board have been appealed. In one instance disciplinary proceeding was terminated upon resignation of a judge, whereas in the second case the decision of the disciplinary board on dismissal of a judge remained unchanged.

#### ***d. Disciplinary Proceedings of 2012***

The primary objective of the report was to assess pre-amendment and post -amendment situation, yet, as mentioned already, authors of the report were unable to receive disciplinary decisions of post-amendment period. Therefore, only statistical data placed on HCOJ official web-page were applied for monitoring purpose. The information contained one year statistics and due to their nature excluded detailed contextual analysis.

Generally, it should be stressed that for the first six months period of 2012 the number of disciplinary complaints/applications filed against judges was low.<sup>30</sup> According to the information released on HCOJ web-page, in the period of January 1, 2012– January 1, 2013, 844 complaints were filed to the HCOJ. Therefore, the HCOJ had totally 905 applications for examination, including 61 applications from the previous years.

According to statistical data, out of 458 applications:

- Disciplinary prosecution was terminated on 201 cases;
- In 15 disciplinary cases judges received private recommendation notes;
- In 11 disciplinary cases judges were examined, among them in four case a judge has been held liable for disciplinary offence;
- 620 applications were combined with other ones;
- As for 58 applications, reasonability of starting disciplinary persecution is being examined.

Unfortunately, submitted statistical data is insufficient for comprehensive assessment of disciplinary cases in 2012. In particular, applied disciplinary penalty, as well as the content of disciplinary cases is not specified.

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<sup>29</sup> Letter Nv-140-12 of March 6, 2012

<sup>30</sup> Disciplinary statistics 2012 is available on: <http://hcoj.gov.ge/files/pdf%20files/statistika%20%202012.pdf>

## VI. Transparency of the High Council of Justice

During the monitoring period the new web-page of the HCOJ started operation. In addition, the HCOJ approved the Activity Plan for Communication with Public and Trust. The special place was determined on the web-page for publication of the dates of sessions and relevant agendas. There is also a place for uploading the minutes of the session.

According to HCOJ web-page, in 2012 the sessions were held on April 3 and July 3 and information was released in advance on the web-page. Agendas were also published.

The web-page also reports that the session should have been arranged on October 3, 2012, yet neither agenda nor the minutes of the session were available. In response to GYLA's application, HCOJ provided that on October 3 the HCOJ adopted only one decision "on continuation of the authority to M.Imerlishvili, until finishing examination of already launched cases." So far the web-page does not provide information on the 3rd October session, including the agenda and the minutes of the session.

It should be noted, that in the reporting period, supposedly, the HCOJ has gathered several times, apart from the sessions released on the web-page. Among them was the session, when HCOJ made decision on admitting the students in Justice School and on appointing judges through the competition. Some important decisions, including re-election of Valeri Tsertsvadze on the position of the Head of the Appeal Court were also dated by October 5, 2012.<sup>31</sup> No information has been released on the mentioned sessions though. We should also note, that authors of the report attempted to acquire information from ex-officio member of the HCOJ on renewal of the composition of HCOJ. As Vakhtang Khmaladze, head of the legal committee of the Parliament reported, he became the member of the HCOJ on October 21, 2012, however, as he stated, he was not informed about planned sessions for already a month. Afterwards, he received information about anticipated session several times, yet for parliamentary activities he managed to attend the session only once. Authors of the report believe that the HCOJ should ensure adequate informing of all members about the session with a view to guarantee participation of all branches in activities of the HCOJ and in decision-making process.

Insufficient transparency of HCOJ activities hindered monitoring of each component of the research. In addition, it is a barrier for the public scrutiny on HCOJ operation which decreases its transparency. As far as information on anticipated activities or sessions was not open, it was practically impossible to become aware of HCOJ members' positions and their discussions. In view of the above, motivation of the HCOJ remained unclear while taking decisions. Moreover, transparency problem created obstacles while monitoring important decisions and it also lead to violation of publicity obligation, which is defined by the General Administrative Code of Georgia.

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<sup>31</sup> <http://hcoj.gov.ge/ge/valeri-tsertsvadze-tbilisis-saapelatsio-sasamartlos-tavmdjdomared-meore-vadit-airchies/1997>

High Council of Justice is a corporate public agency bearing obligation to conduct its sessions openly. In particular, HCOJ shall publicly announce about forthcoming sessions, including its time, place and agenda a week ahead.<sup>32</sup> In view of the above, holding of a session without advance notification as stipulated by the Code, comes in conflict with Georgian legislation.

Moreover, the HCOJ is also obliged to release its decision and the report of public session. Though, for the past period the HCOJ has adopted number of crucial decisions, the last decision of the HCOJ, placed on its official web-page, is date by April 2012.<sup>33</sup>

To sum up, activities of the HCOJ needs to be conducted in more transparent manner. In particular, debates and discussions should be open. It also includes obligation of the HCOJ to release advance notification on the date of anticipated sessions and agendas, to place the minutes of sessions and taken decisions on its official web-page, as well as to allow interested persons attend the sessions. Apart from improvement of the process, increased transparency will ensure fulfillment of legislative requirements by the HCOJ and will promote public awareness raising towards activities of the HCOJ. In addition, it will facilitate interested public in conducting well-reasoned debates about activities of the HCOJ.

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<sup>32</sup> Paragraph 1, Article 34 of the General Administrative Code of Georgia.

<sup>33</sup> The web-page of the Council by January, 2013 <http://hcoj.gov.ge/ge/2012-tseli>