

Overview of the Second Part of the Judiciary Reform

On 8 September 2013, the Ministry of Justice of Georgia presented a package of draft legislative amendments pertaining to judicial reform. According to representatives of the Ministry, this marked the launch of the second part of the reform of the judicial system. Overall, the amendments should be evaluated positively, as their goals are: strengthening guarantees for the independence of the judiciary; enhancing the role of individual judges; improvements in the procedure of disciplinary proceedings; establishing democratic rules for the election of chairpersons of courts; and reforming the High School of Justice.¹ With this, a controversy was caused by the rules for the appointment of judges, more specifically, the three-year probationary period before the lifetime appointment of judges, along with the issue of assessing judges after the three-year period.

Together with the Ministry of Justice, at the initiative of the chairperson of the Supreme Court, draft amendments were prepared by some of the judicial members of the High Council of Justice. According to the representatives of the judiciary, the amendments were proposed to strengthen the weak areas of the system. The central goals of this draft law were to regulate the issues related to social guarantees of judges, reforming the High School of Justice and determining the rules for the appointment of judges.

Also, on 4 October 2013, the Parliament of Georgia adopted amendments to the Organic Law of Georgia on Courts of General Jurisdiction. Their goal was to bring the law into compliance with the new norms of the Georgian Constitution. The law entered into force on 17 November 2013, after the inauguration of the new President of Georgia.

The purpose of this report is to present part of the important reforms, proposed by various state agencies, to the public. Additionally, we herein present the opinions of “Transparency International – Georgia” with regard to the important reforms.

Amendments to the Organic Law on Courts of General Jurisdiction

Article 7. Independence of Judges

Current Regulation:

The said article lists the bases according to which judges make decisions. The article also provides that “no one has the right to demand an account from a judge as to a particular case.”

¹ The draft amendments will be made to the following laws: the Law on Courts of General Jurisdiction, the Law on Disciplinary Responsibility of Judges of Courts of General Jurisdiction and Disciplinary Proceedings, the Law on the High School of Justice, the Law on Personal Data Protection.

Draft Amendment Proposed by the Ministry of Justice:

The last sentence of Article 7(1) will be amended to read as follows: “No one has the right to demand an account from a judge as to a particular case **or instruct him/her on what decision to make upon a particular case.**”

Our Opinion:

We think that the said amendment is an additional regulation of general nature, which aims to strengthen the principle of non-interference with activities of a judge. Additionally, the wording of the amendment, proposed by the Ministry of Justice, adequately complies with Article 84 of the Georgian Constitution. Therefore, we evaluate the said amendment as positive.

Article 18. The Supreme Court Plenum

Current Regulation:

One of the administrative institutions of the Supreme Court is Plenum. According to the current wording of the law, the Supreme Court Plenum is composed of the chairperson of the Supreme Court, the first deputy chairperson and other deputy chairpersons, all members of the Supreme Court and chairpersons of the Appeals Courts.

Regulation in force before 17 November 2013

The Plenum gives the conclusion to the Parliament of Georgia of whether there are signs of a crime in the conduct of an individual in cases of impeachment.

Draft Amendment Proposed by the Ministry of Justice:

Chairpersons of the Appeals Courts will no longer be members of the Supreme Court Plenum; therefore it will be composed of only the Supreme Court judges.

Draft Amendment Proposed by Shalva Shavgulidze, MP:

According to the law in force before 17 November, one of the functions of the Plenum was to give the conclusion to the Parliament of Georgia of whether there are signs of a crime in the conduct of an individual in the cases of impeachment. Pursuant to the bill submitted to by the Parliament, the Plenum will no longer have this discretion.

Our Opinion:

Exclusion of chairpersons of the Appeals Courts from the Plenum composition is probably justified. Due to the fact that the Plenum is an administrative institution of the Supreme Court, whose capacity is largely related to the functioning of the Supreme Court, participation of representatives of lower instance courts in the work of the Plenum is probably not necessary. For instance, the Plenum makes decisions on issues such as: composition of the Chambers of

the Supreme Court; election of the chairpersons of the Chambers; determining bonuses on salaries of the members of the Supreme Court; and reports provided by the chairpersons of the Chambers of the Supreme Court and the staff etc. We think that the exclusion of the chairpersons of the Appeals Courts from this process is logical.

The amendments by Shalva Shavgulidze, MP, were initiated due to the amendments made to the Constitution. According to the new norms of the Georgian Constitution, giving conclusions related to the impeachment procedure is the sole prerogative of the Constitutional Court of Georgia. The new Constitutional regulation repeals the old norms; therefore, the Supreme Court will no longer be able to give such a conclusion on matters of impeachment.

Article 19. The Supreme Court Disciplinary Chamber

Current Regulation:

The chairperson of the Supreme Court has the discretion to dismiss a member of the Disciplinary Chamber.

Draft Amendment Proposed by the Ministry of Justice:

A member of the Disciplinary Chamber will be dismissed by the chairperson of the Supreme Court if agreed by the Supreme Court Plenum.

Our Opinion:

We think that the draft amendment will foster decentralization of the power within the judiciary. The Disciplinary Chamber is an important body within the Supreme Court. Its functions include reviewing decisions on the disciplinary proceedings made by the Disciplinary Panel. Therefore, it is necessary that the members of the Disciplinary Chamber are objective while entertaining cases, which is jeopardized unless the guarantees for their independence are strengthened. A system where members of the Disciplinary Chamber can be dismissed by one person would not be reasonable. Consequently, we believe that the said amendment is a positive step which aims to strengthening the guarantees for the independence of the members of the Disciplinary Chamber.

Article 21. The Chairperson of the Supreme Court

Current Regulation:

According to the law in force now, the chairperson of the Supreme Court brings the disciplinary action against a judge and undertakes other disciplinary duties.

Draft Amendment Proposed by the Ministry of Justice:

According to the draft amendment, the chairperson of the Supreme Court carries out responsibilities pursuant to “the Law of Georgia on Disciplinary Responsibility of Judges of Courts of General Jurisdiction and Disciplinary Proceedings.”

Our Opinion:

The draft amendment proposed by the Ministry will improve the management of the disciplinary system. “The Law of Georgia on Disciplinary Responsibility of Judges of Courts of General Jurisdiction and Disciplinary Proceedings” will also be amended. As a result of this reform, the chairperson of the Supreme Court will no longer be able to bring a disciplinary action against a judge. Instead, only the High Council of Justice will have such discretion.

Article 23. Composition of an Appeals Court

Current Regulation:

1. **The High Council of Justice appoints, as well as dismisses,** chairpersons and deputy chairpersons of Appeals Courts from the chairpersons of Chambers within Appeals Courts **for a 5-year term.**
2. The High Council of Justice appoints chairpersons of Chambers and Investigation Panels within Appeals Courts from the members of a corresponding Chamber or Panel **for a 5-year term.**
3. Before appointing a chairperson of an Appeals Court, its Chamber or Panel, the High Council of Justice is also authorized to assign one of the judges of the Appeals Court to carry out the duties of this position. The High Council of Justice is authorized to dismiss the judge from the office of a chairperson.

Draft Amendment Proposed by the Ministry of Justice:

1. **Judges of Appeals Courts elect** chairpersons and deputy chairpersons of Appeals Courts, from chairpersons of Chambers within Appeals Courts and other judges, **by secret ballot for a 3-year term.** Any judge of the Court has the right to propose a candidature.
2. The High Council of Justice appoints chairpersons of Chambers and Investigation Panels within Appeals Courts from the members of a corresponding Chamber or Panel **for a 3-year term.**
3. In case of dismissal from the office of a chairperson, a deputy chairperson of an Appeals Court and chairpersons of its Chamber or Panel, before electing or appointing a new candidate, the High Council of Justice makes a decision to assign one of judges of an Appeals Court to carry out the duties of a chairperson, a deputy chairperson of an Appeals Court and chairpersons of its Chamber or Panel **for no more than a 2-month period.**

Within this timeframe, judges of the court must ensure election of a chairperson or deputy chairperson of a court and the High Council of Justice – appointment of chairpersons of the court’s Chamber and Investigation Panel.

The High Council of Justice will be able to dismiss the incumbent judge from the office in case of a disciplinary misconduct.

4. The draft law also lays down the grounds for dismissal from the office of a chairperson, a deputy chairperson of an Appeals Court and chairpersons of its Chamber or Investigation Panel. They are as follows:
 - a. Personal Application;
 - b. Dismissal of an Appeals Court judge from the office;
 - c. Dismissal from the office as a measure of disciplinary effect;
 - d. Expiration of the term of judicial office.

Draft Amendment Proposed by Shalva Shavgulidze, MP:

5. Each Chamber and Panel in an Appeals Court has a chairperson who is appointed, and dismissed, by the High Council of Justice from the members of the corresponding Chamber and Panel for a 5-year term. If a judge is not appointed for life, he/she will be appointed as a chairperson within his/her term of office, but for no more than 5 years.
6. Chairpersons and deputy chairpersons of Appeals Courts from the chairpersons of Chambers and Investigation Panels within the Appeals Courts are appointed, as well as dismissed, by the High Council of Justice for a 5-year term. If a judge is not appointed for life, he/she will be appointed as a chairperson or **deputy chairperson** within his/her term of office, but for no more than 5 years.

Our Opinion:

The introduction of Appeals Courts chairpersons' elections is clearly a step forward for strengthening the individual role of judges. Also, the election of an Appeals Court's chairperson through the secret ballot not only significantly increases the inclusion of judges in the governance of the judiciary, but also ensures the freedom to express their will. Consequently, judges without administrative responsibilities, through elections, get involved in activities of their courts and partially take the responsibility for their governance. Judges electing a candidate among themselves, for the position of chairperson, will enable the elected chairperson to be accountable, not only to the High Council of Justice or the chairperson of the Supreme Court, but also, first, to those judges who ensured his/her election. Existence of such democratic principle will facilitate the elimination of the vertical accountability and general manner of governance entrenched in the practice. A Coalition of Non-governmental Organizations made a corresponding [recommendation](#) on this matter to the judiciary in 2012.

According to the reform proposed by the Ministry of Justice, the term of office of chairpersons is reduced from 5 to 3 years.

By the same reform, the High Council of Justice retains the competence to appoint chairpersons of Chambers/Panels. We consider it reasonable to introduce the election rules for this office and ensure inclusion of judges in this process as well.

3. [numbering] The reform presented by the Ministry of Justice proposes: that in case of dismissal from the office of a chairperson and a deputy chairperson of an Appeals Court and chairpersons of its Chamber or Panel, before appointing a new candidate, the High Council of Justice shall assign one of the judges of an Appeals Court to carry out the duties of this position for no more than a two month period. This reform is unequivocally positive. There has been an incorrect practice in the judiciary in this regard. Namely, before the 2012 elections, chairpersons had not been appointed in most of the courts. Instead, incumbent chairpersons had been carrying out the relevant duties. Appointing the incumbent chairpersons has been possible for an indefinite time. Such practice comes into conflict with the independence of the judge, as the High Council of Justice could have dismissed the incumbent chairpersons from the office of a chairperson, at any given moment. Such method of instability has been causing a doubt, that it was used as a mechanism to control chairpersons of courts. As a result of the draft law proposed by the Ministry of Justice, the timeframe for appointing a chairperson has been restricted to two months. The reform provides the guarantee that, on the one hand, a court will have a chairperson in cases when the previous chairperson is dismissed or his/her term of office is expired - ensuring uninterrupted work of administration. On the other hand, a concrete timeframe was set (2 months) when judges have the opportunity to elect themselves, according to their will, a new chairperson.

4. The reform laying down the grounds for dismissal from the office of a chairperson, a deputy chairperson of an Appeals Court and chairpersons of its Chamber or Investigation Panel is also a positive development. The law in force so far did not ensure the completeness of these grounds. Therefore, the amendments proposed by the Ministry are logical and represent a step forward. It will reflect the clarity of the administration of the judiciary and, in general, on stability of the governance in the system. The reform that restricts the High Council of Justice to dismiss an incumbent chairperson before the expiration of the term of office is also positive. Overall, these reforms will foster a stable functioning and development of the system.

The central goal of amendments presented by Shalva Shavgulidze, MP, is to bring the organic law into compliance with the Constitution of Georgia. In this respect, they do not contain any fundamental reform. The amendments entered into force on 17 November 2013.

Article 25. Competence of Chairperson of an Appeals Court

Current Regulation:

The article lists the competences of a chairperson of an Appeals Court, indicating that a Court's chairperson is also a chairperson of one of the Chambers or Investigation Panels. The article also provides that the chairperson assigns the submitted cases to the court among judges.

Draft Amendment Proposed by the Ministry of Justice:

The amendment proposed by the Ministry specifies that a chairperson participates in the adjudication of cases. In addition, the amendment strips a chairperson of the competence to assign cases and abolishes the obligation whereby a chairperson of an Appeals Court must be elected from chairpersons of Chambers and Investigation Panels.

Our Opinion:

We think that the draft amendments are positive, as the issue of participation of a Court's chairperson in cases has been a problem up until now. Unfortunately, there are judges, who are also chairpersons of Courts, who have not participated in the adjudication of any case for a long period of time. Moreover, an unfortunate practice and mentality have been entrenched in the system whereby a chairperson of a Court is perceived as a chief and director of judges. Throughout the years, chairpersons of Courts have enjoyed higher status as opposed to other judges within the system. Such approaches are inadmissible, as they fundamentally contradict with the principle of judicial independence. All judges are independent in exercising their duties and appointing a supervisor, in any form. Classification of judges according to their status is also inadmissible.

The amendment, which allows judges other than chairpersons of Chambers and Panels to be elected as a chairperson of an Appeals Court, is also a positive proposition. It is another successful step to achieve the equal status of judges. All judges will have an opportunity to be elected as a chairperson of a Court.

The existing rules for assigning cases have been causing many questions for years. Having a chairperson of a Court administer this matter was not a correct approach to the issue. We think that electronic case-assigning rules should be introduced in courts. The High Council of Justice should timely make the relevant decision, ensure development of the corresponding software and its obligatory introduction to all courts.

Article 26. Competence of Deputy Chairperson of an Appeals Court

[Current Regulation:]

A deputy chairperson of an Appeals Court also chairs one of the Chambers or Investigation Panels of the Court.

Draft Amendment Proposed by the Ministry of Justice:

A deputy chairperson of an Appeals Court may also chair one of the Chambers or Investigation Panels of the Court. The obligation to do so is to be abolished.

Our Opinion:

This amendment is positive as it provides judges with an equal status. All judges will have equal opportunities to take up administrative positions in his/her Court.

Article 32. Chairperson of District (City) Court

Current Regulation:

According to the current regulation, in a district (city) court, a chairperson of the court is dismissed or appointed from judges of the court, or from chairpersons of the Panels – in the courts where the Panels are created – by the High Council of Justice of Georgia for a 5-year term.

Draft Amendment Proposed by the Ministry of Justice:

In a district (city) court, a chairperson of the court is elected from judges of the court, or, including, from chairpersons of the Panels – in the courts where the Panels are created – by the judges of the same court through a secret ballot for a 3-year term.

Our Opinion:

The presented amendment, similar to the amendments in relation to the Appeals Courts, unequivocally is a positive step. This will foster an inclusion of judges of city courts into the management of the court, thus, strengthening their role.

According to the amendment proposed by the Ministry of Justice, a term for a chairperson's office will be reduced from 5 to 3 years.

Similar to the case of the Appeals Courts, according to the amendment proposed by the Ministry of Justice, the High Council of Justice retains the competence of appointing the chairpersons of the Chambers/Panels. We think that it would have been reasonable to introduce electoral rules in this case and to ensure the inclusion of judges in this process as well.

Article 36. Appointment (Election) of Judges

Current Regulation:

The High Council of Justice appoints Judges of Appeals and District (City) Courts for a 10-year term.

Draft Amendment Proposed by Representatives of Judiciary:

The High Council of Justice appoints Judges of Appeals and District (City) Courts for life, till the age of 65.

Draft Amendment Proposed by Shalva Shavgulidze, MP:

The High Council of Justice appoints Judges of Appeals and District (City) Courts. Judges of Appeals and District (City) Courts are appointed for 3 years. Before the completion of this term, the judge undergoes monitoring three times, which is conducted by three different members of the High Council of Justice. Upon the completion of the term, the results of the monitoring are presented to the High Council of Justice which, on the basis of the analysis of the monitoring results, discusses and makes a decision on whether to appoint the judge for life [till the age prescribed by the law]. The draft law does not provide for the criteria of the monitoring.

Remark: The amendment entered into force on 17 November 2013.

Our Opinion:

The proposed amendments are partly required to ensure compliance of the law with the new norms of the Constitution. According to the Constitution, judges are appointed for life. Before the lifetime tenure, the Constitution allows a possibility of a 3-year probationary period. The adopted law sets this 3-year probationary period. The issue of the probationary period is regulated differently in various states around the world. The debate continues about its justifiability. Some European countries use this mechanism at present and appoint judges after successfully completing the probationary period (e.g.: Germany, Estonia etc.).² In France and Spain, a judge, before acquiring the capacity to adjudicate cases, has to undergo special training for 31 months (in the case of France) and 24 months (in the case of Spain) at a special school (in the case of Georgia, the High School of Justice might be considered as such). A large part of the training relates to the practical skills. During this period, experienced judges supervise the training of newly appointed judges. Judges who successfully complete the training are appointed and acquire the full status of judges. From that moment, they have the capacity to adjudicate cases. Subsequently, in these countries, there is no probationary period for trial judges.³

The Venice Commission also discusses the issue of probationary period in its opinions. In its various recommendations made to several countries, the Commission's opinions stress that the probationary period might jeopardize the independence of judges. It critically evaluates the probationary period, noting that, in general it raises difficulties to the independence of judiciary, as there is a high risk that judges might feel under pressure while deciding cases.⁴ However, on the other hand, the Commission notes in the same opinions that there can be a practical necessity to establish whether a judge can effectively carry out his/her duties before

² Esterling K. M. (1999), Judicial Accountability the Right Way: official performance evaluations help the electorate as well as the bench, in *Judicature*, Vol. 82, no. 5, pp. 206-215.

³ United Nations Office for Drugs and Crime, *Resource Guide on Strengthening Judicial Integrity and Capacity*, New York 2011, pg. 11.

⁴ See: Opinion on the Draft Law on the Judiciary and the Draft Law on the Status of Judges of Ukraine Adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007)

the lifetime appointment in countries of relatively new judicial systems. In a case where the probationary period is necessary, a judge can be denied with lifetime appointment on the basis of an objective criteria and the same procedural guarantees as provided in the cases of dismissal of judges.⁵ In a specific recommendation made to the government of Georgia, the Commission recommended to remove the probationary period.⁶

We think that the introduction of the probationary period may hold significant risks for the independence of the judiciary. Instead of the proposed version of the law, the existing experience of France and Spain is far more suitable with Georgia's reality, where the independence of the judiciary is still a problem. Eliminating risks in this regard is a greater priority than other values. The [Coalition](#) of Non-governmental Organizations also expressed its critical [opinion](#) (in Georgian) related to the probationary period.

We think that it is necessary to improve the rules for selection (nomination) and appointment of judges. The current mechanism requires a significant reform. Unfortunately, the current system does not provide guarantees to compose courts with judges of high moral character and professional qualifications. Selection (nomination) and appointment of judges should entirely be based on an objective assessment criterion, where judges will be appointed as a result of scores-based criteria. In case the said initiative is successfully implemented, we believe, there will not be a necessity for the probationary period.

The draft law proposed by the judiciary provides for the re-appointment of judges for life, without any probationary period or additional procedures. This draft amendment contradicts the Georgian Constitution, as the Constitutional law that amended the Constitution, directly indicates that the new rule of lifetime appointment does not automatically apply to sitting judges. Subsequently, we think that every judge, whose term of office is completed, before appointing him/her for life, should undergo the due procedure and participate in the competition for the opened vacancy.

Article 35. Procedure for Taking up a Judge's Office

Current Regulation:

This article provides the rules for the High Council of Justice to announce and conduct a competition for a judge's vacant position. By the current wording of the law, there is no set timeframe for an application to the competition. The High Council of Justice has the discretion to set the deadline.

Draft Amendment Proposed by the Ministry of Justice:

⁵ See: Opinion on the Draft Constitutional Amendments Concerning the reform of the Judicial System in "the Former Yugoslav Republic of Macedonia - Venice Commission, Opinion no. 355/2005.

⁶ See: Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia - Venice Commission, Opinion no. 543/2009, Paragraph 91.

According to the draft amendment proposed by the Ministry of Justice, the High Council of Justice sets a deadline for applicants to register as candidate judges, which cannot be less than 10 calendar days. The competition will be allowed only after this deadline.

Our Opinion:

We evaluate the proposed amendment positively. In the past, there has been a practice where the High Council of Justice has set an inadequately short period of time for application. For example, there was a [case](#) (in Georgian) when it set five days for application and collection of all corresponding documentation. The proposed draft law rules out such instances in the future and provides guarantees for a reasonable timeframe for applicants to a competition.

Article 37. Rules for Re-appointment of a Judge to another Court without Competition

Current Regulation:

In case of an opening of a vacancy, a sitting judge, with his/her consent and within his/her term of office, can be re-appointed to a **lower, same or higher instance** court as a judge without a competition.

Draft Amendment Proposed by the Ministry of Justice:

In case of an opening of a vacancy, a sitting judge, with his/her consent and within his/her term of office, can be re-appointed only to a **same or higher instance** court as a judge without a competition.

Our Opinion:

According to the draft amendment proposed by the Ministry of Justice, in case of an opening of a vacancy, a sitting judge, with his/her consent and within his/her term of office, can be re-appointed only to a same or higher instance court without a competition. By current regulation, re-appointment of a judge is possible to both higher and lower instance courts. The new regulation removes this possibility. We think this amendment merits a positive evaluation. By current regulation, re-appointment of a judge is possible to a lower instance courts. It is doubtful that a judge of a higher instance court would like to be transferred to a lower instance court. Therefore, it is often believed that the said mechanism could have been used as duress on a judge. The draft law presented by the Ministry of Justice practically eliminates a possibility to place duress on a judge in this manner and, thus, removes the grounds for such suspicions in this regard. Besides, the reform ensures regulation of the said issue within the system in a more rational and logical fashion.

Article 58¹. Assigning Cases among Judges

Current Regulation:

Assignment of court cases is regulated by Article 30 of “the Organic Law on Courts of General Jurisdiction” and the “Law on Rules for Assignment of Cases and other Judges to Cases in Courts of General Jurisdiction.” According to the current regulation, assignment of cases is conducted in the ordinal sequence, which a chairperson of a court determines on the basis of surname and first name of judges. Therefore, today, cases in District and Appeals courts are assigned among judges according to the ordinal position of submittal of a case and the ordinal position of a judge’s name.

A chairperson of a court, as necessary, is authorized to assign a concrete case to a judge, ignoring the ordinal sequence.⁷

Draft Amendment Proposed by the Ministry of Justice:

Cases among judges of District (City) and Appeals Courts are assigned automatically, by an electronic system, on the basis of ordinal sequence, i.e. case assignment among judges according to the ordinal position of submittal of a case and the ordinal position of a judge’s name.

Our Opinion:

We think that the current regulation of assignment of cases among judges does not provide sufficient guarantees for independence of judges. It has [become](#) a subject of criticism in the past and questions have been raised with regard to its use. The proposed draft law clearly represents an improved principle. The introduction of an electronic system for case assignment must be welcomed. However, we think that the reform proposed by the Ministry of Justice is incomplete and it requires additional regulation. The discretion of chairpersons of courts to individually make decisions on assignment of cases should be removed even in exceptional cases. Consequently, assigning cases should be conducted only by the electronic system. Such approach is far more objective, fair and reliable which excludes any improper subjectivity.

Other Amendments to be made to “the Organic Law on Courts of General Jurisdiction of Georgia”

The draft law provides for promotion of judges, from District (City) Courts to Appeals Courts, only in case he/she has been working as a judge in a District (City) Court for no less than 5 years. The current regulation requires only a 2-year experience (Article 41).

According to the draft law presented by Shalva Shavgulidze, MP, the composition of the High Council of Justice will be reformed. Namely, the Georgian President will have the competence to appoint one member of the High Council of Justice. The Parliament, based on competition and through secret ballot, elects 5 members of the Council, instead of 6 prescribed by the

⁷ Article 30(5) of the Organic Law on Courts of General Jurisdiction of Georgia

current regulation. The said reform was necessitated by the new Constitutional norms entering into force, whereby the President will have the right to appoint one member of the High Council of Justice.

According to the reform, the term “the higher legal education” will be specified and the Parliament will be able to elect a Georgian citizen as a member of the High Council of Justice, who has higher legal education, **master’s degree or equal degree/diploma of higher education**. A subsection was added to the same Article, which provides for the rules for the President to elect a member of the High Council of Justice (Article 47).

The following reform concerns the legal and social security of judges. According to the draft law proposed by Shalva Shavgulidze, if life and health of a judge is at risk, on the basis of request of the judge, the Prime Minister will decide to ensure security of the judge or his/her family members. According to the current regulation, a decision on this matter is made by the President of Georgia (Article 68).

Our Opinion:

We think that the reform concerning the promotion of judges is a positive step. Raising minimum work experience in the first instance courts is logical. Besides, we think that it is necessary to introduce a “career development principle” in the system. It implies that it should be inadmissible to appoint candidates directly to Appeals Courts. In case of an opening of a vacancy in Appeals Courts, it should be filled with an experienced judge from first instance courts.

The amendments concerning the social security guarantees of judges are welcomed. With this, we think that the presented reforms in this regard are insufficient. It is necessary to raise the remuneration of judges and improve the health insurance conditions for judges and their family members. The security of judges also merits special attention.

Important Reforms to the Law on Disciplinary Responsibility of Judges of Courts of General Jurisdiction and Disciplinary Proceedings

Article 2. Grounds for Disciplinary Responsibility of Judge and Types of Disciplinary Misconduct

Current Regulation:

The current version of the law lists 8 types of disciplinary misconduct. For example, corruption and abuse of office against the interests of justice and professional duty, unjustified protraction of adjudication of a case, non-fulfillment of a judge’s duties or improper fulfillment, violation of the judicial ethical norms etc.

Draft Amendment Proposed by Representatives of the Judiciary:

A disciplinary misconduct is a violation of the judicial ethical norms by a judge.

Our Opinion:

The draft amendment proposed by representatives of the judiciary requires specification. It needs to be determined what constitutes a violation of ethical norms. We think restricting the disciplinary responsibility within the ethical norms in force as of now is inadmissible. Such move could be considered as an attempt by judges to avoid the responsibility.

According to the current regulation, a violation of judicial ethics is one separate type of disciplinary misconduct. Apart from it, the current law lists other quite dangerous forms of disciplinary misconduct. Therefore, we believe it would be unjustified to ignore them and to leave this issue unaddressed. No one should be immune from the responsibility, especially a judge when he/she does not discharge judicial duties and intentionally carries out his/her functions in an improper manner.

First, it must be determined what is considered as a violation of ethical norms. Only after this, it is possible to think about clarifying the grounds for disciplinary responsibility. We deem it inadmissible to confine the disciplinary responsibility by the current norms of ethics. The reform in the proposed form, i.e. removing other types of disciplinary misconduct and leaving only a violation of judicial ethical norms, will have a negative effect. A judge may act in a way that may cause a violation of public order. Thus, it is inadmissible not to consider such an act as misconduct and not to be qualified as a disciplinary misconduct.⁸

By such reform of the law, even in the case where it is established that a judge abused the office or/and he/she was not acting in good faith, violating the impartiality principle, he/she had some personal interest or gained the benefit, his/her act will not qualify as a disciplinary misconduct. Unequivocal implementation of the said principle, i.e. non-fulfilment of a judge's duties or improper fulfilment thereof constitute a disciplinary misconduct and the judge must be held responsible for it, is directly linked to the immunity of judges and the independence of the courts. Adopting the reform as proposed should be considered as an attempt by judges to evade the responsibility.

Article 7. Competence to Launch Disciplinary Proceedings

Current Regulation:

Pursuant to the current law, the following have the competence to launch disciplinary proceedings against a judge:

1. Chairperson of the Supreme Court of Georgia;

⁸ Besides, statistically, majority of disciplinary misconduct concern with types of misconduct such as unjustified protraction of adjudication of a case, non-fulfilment of a judge's duties or <improper> fulfilment ([Decisions](#) of the Disciplinary Panel of Judges of Courts of General Jurisdiction in 2012, 2013) and not a violation of the judicial ethical norms

2. Chairperson of an Appeals Court;
3. The High Council of Justice of Georgia.

Draft Amendment Proposed by the Ministry of Justice:

Only the High Council of Justice will have the competence to launch disciplinary proceedings against a judge of courts of general jurisdiction of Georgia.

Our Opinion:

The said reform is unambiguously positive. The High Council of Justice is the highest mechanism in the administration of the judiciary, possessing one of the most important competences in making a decision to initiate disciplinary proceedings against a judge. Therefore, it is not justifiable to have instances when high-ranking officials of the judiciary enjoy, in parallel, the same competences. Their right to make a personal decision on launching disciplinary proceedings against a judge always has and does raise questions. Only the High Council of Justice should have such an important right. Due to the fact that the High Council of Justice is a collegial body, the issue of disciplinary proceedings is discussed with more depth among its members. Hence, a decision made by a collegial body may be considered as more trustworthy.

Article 15. Imposing Disciplinary Responsibility and Termination of Disciplinary Proceedings

Current Regulation:

According to the current regulation, after the completion of an investigation into a disciplinary case, as a result of assessing the grounds for disciplinary proceedings, the secretary of the High Council of Justice appeals to the High Council of Justice to impose the disciplinary responsibility on a judge or terminate the disciplinary proceedings.

Draft Amendment Proposed by the Ministry of Justice:

By the reform proposed by the Ministry of Justice, the secretary will not have such competence. The Council, after completion of an investigation into a disciplinary case, makes a decision to impose disciplinary responsibility on a judge or terminate the disciplinary proceedings by the vote of 2/3 of all Council members. Subsequently, the new norms will remove the secretary's discretion to appeal to the Council with a recommendation on the said matter.

Our Opinion:

According to the current regulation, after completion of a preliminary investigation, the secretary of the High Council of Justice assesses the grounds for disciplinary proceedings and makes decisions regarding termination of disciplinary proceedings or requesting the judge to provide the explanation. On the following stage, the Council is the one which approves these decisions. For the optimization of the stages of the disciplinary proceedings, the secretary will not have this competence. For achieving the same goal, after completion of an investigation into a disciplinary case, as result of assessing the grounds for disciplinary proceedings, by the law, the secretary of the High Council of Justice will not have the discretion to appeal to the

High Council of Justice to impose disciplinary responsibility on a judge or terminate the disciplinary proceedings. According to the draft law, after completion of an investigation into a disciplinary case, a decision to terminate the disciplinary proceedings or impose disciplinary responsibility on a judge will be made by the High Council of Justice itself. This reform should be assessed positively; however, it is necessary to unambiguously note here that the secretary was not making a decision without consent to impose disciplinary responsibility on a judge, in order to terminate the disciplinary proceedings or to appeal with a personal recommendation notice. Such decisions were presented to the Council for approval.

Article 17. Decision-making related to Disciplinary Issues made by the High Council of Justice

Current Regulation:

The High Council of Justice, in accordance with the law and its regulation, makes decisions related to disciplinary issues. The Council, in its sessions, discusses issues of termination, the disciplinary proceedings, or imposition of disciplinary responsibility on a judge and the materials related to it. It has the competence to invite a judge and a petitioner to its session and listen to the information and explanations from them.

Draft Amendment Proposed by the Ministry of Justice:

The Council, on its sessions, discusses issues of termination, the disciplinary proceedings, or imposition of disciplinary responsibility on a judge and the materials related to it. It has the obligation to invite a judge to its session. If it considers necessary, it may invite a petitioner. It has the obligation to listen to the information and explanations from the invited individuals.

An explanatory note was added to subsection one of the said article, whereby the Law of Georgia on Disciplinary Responsibility of Judges of Courts of General Jurisdiction and Disciplinary Proceedings will also be used in disciplinary proceedings.

Our Opinion:

The proposed reform should be assessed positively, as it makes disciplinary proceedings more transparent and coherent. Pursuant to current rules, the High Council of Justice is authorized to make a decision to impose disciplinary responsibility on a judge, to terminate the disciplinary proceedings, or to appeal to a judge with a personal recommendation notice without listening to the judge. We think such rule is not correct and it cannot be considered as a fair principle. Deciding on such a matter requires inviting the judge against whom a petition is brought in the Council. We think that, as a result of this new rule, the Council will be far more informed about each individual case. This will assist in a more objective decision-making. However, if during discussions on a petition against a judge, it is established that disciplinary misconduct cannot be identified and the Council ceases the proceedings. Therefore, it would be better if an invitation of a judge were obligatory only in the case when the High Council of Justice finds that there are grounds for continuation of proceedings.

Additionally, there is no deadline prescribed for holding a session on disciplinary matters at the High Council of Justice in any of the following: the Organic Law on Courts of General Jurisdiction, the Regulation of the High Council of Justice and the Law on Disciplinary Responsibility of Judges of Courts of General Jurisdiction and Disciplinary Proceedings. The proposed draft law also leaves the issue unregulated. Therefore, a reform related to the timeframe for considering petitions and investigating disciplinary cases will not have a real effect if the law did not lay down the deadline for the Council to discuss a case and make a corresponding decision. The absence of such regulation causes unjustified protraction of disciplinary cases (For example, the last session of the Council on disciplinary matters was held on 25 February 2013). Consequently, it would be advisable to make an amendment to Article 17(4) of the Law on Disciplinary Responsibility of Judges of Courts of General Jurisdiction and Disciplinary Proceedings determining a timeframe for convening a Council's session on disciplinary matters and their periodicity.

Article 58. Sending a copy of a decision of Disciplinary Panel

Current Regulation:

Copies of a decision related to a disciplinary case made by the Disciplinary Panel are sent to the addressee judge of the decision, the High Council of Justice and the Conference of Judges of Georgia within 5 days after making the decision.

Draft Amendment Proposed by the Ministry of Justice:

According to the draft law proposed by the Ministry of Justice, the decision, in addition to the said subjects, is sent to the petitioner.

Our Opinion:

The amendment should be evaluated positively. We think that petitioners are interested parties and they should have full right to consult with the decisions made by the Disciplinary Panel. The regulation in force up till now has been incorrect as it was absolutely ignoring a petitioner.

Reforms concerning Confidentiality of Disciplinary Proceedings⁹

Article 5. Confidentiality of Disciplinary Proceedings

Current Regulation:

The process of disciplinary proceedings is confidential. If the case, related to which the disciplinary proceedings were launched, is no longer adjudicated in a court of general jurisdiction, a decision related to disciplinary proceedings made by the authorized body will be sent to the petitioner.

⁹ By the new amendments, articles concerning the confidentiality of proceedings are considered in their totality.

Draft Amendment Proposed by the Ministry of Justice:

According to the amendment proposed by the Ministry of Justice, disciplinary proceedings are confidential unless the judge (against whom the proceedings are ongoing) asks for making it public.

Article 51. Decision of Disciplinary Panel on recognition of culpability of a judge in disciplinary misconduct, imposition of disciplinary responsibility on a judge or appealing with a personal recommendation notice

Current Regulation:

The content of a personal recommendation notice is confidential. The notice is sent only to the judge who committed the disciplinary misconduct. Sending a copy of the decision to other bodies or officials is not permitted.

Draft Amendment Proposed by the Ministry of Justice:

The content of a personal recommendation notice is confidential. The notice is sent only to the judge who committed the disciplinary misconduct and the petitioner. The petitioner has to sign a document on non-disclosure of the content of recommendation notice. Sending a copy of the decision to other bodies or officials is not permitted.

Article 58. Sending a copy of a decision of Disciplinary Panel

Current Regulation:

Copies of a decision related a disciplinary case made by the Disciplinary Panel is sent to the addressee judge of the decision, the High Council of Justice and the Conference of Judges of Georgia within 5 days after making the decision.

Draft Amendment Proposed by the Ministry of Justice:

According to the draft law proposed by the Ministry of Justice, the decision, in addition to the said subjects, is sent to the petitioner.]

Article 74. Form of Decision made by Disciplinary Panel

Current Regulation:

A copy of a decision made by the Disciplinary Panel is sent to the High Council of Justice, to parties of the proceedings and their representatives the protocol.

Draft Amendment Proposed by the Ministry of Justice:

A decision made by the Disciplinary Panel is also sent to the petitioner.

Our Opinion:

The said reform is a positive step as the confidentiality of disciplinary proceedings is necessary for ensuring protection of the judge's rights. If the judge himself/herself thinks that his/her case should be made publicly available, the law should not restrict such a possibility. Such reforms represent an important step in terms of raising the transparency of the process. Changing the legislation to switch from full confidentiality towards openness will assist in satisfying the existing interest towards the process. In addition to this, together with the implementation of the new standards in practice as necessary, types and directions of additional amendments came before. Namely, based on the said reforms, on the one hand, a decision related to the imposition of disciplinary responsibility on a judge, termination or suspension of disciplinary proceedings, and appealing with a personal recommendation notice is sent to the petitioner (Article 5, 58 and 74). In these instances, he/she does not have the non-disclosure obligation. On the other hand, when he/she receives personal notice [itself/in person], he/she has the nondisclosure obligation related to the content of a recommendation notice.

If the purpose of nondisclosure of a personal recommendation notice is protection of a judge's rights, it is unclear why a petitioner does not have the same obligation in cases when he/she receives copies of decisions on a disciplinary case made by the Disciplinary Chamber and decisions made by the Disciplinary Panel. Especially, the grounds for appealing with a recommendation notice, its purpose, the essence of the misconduct and the measure undertaken against the judge are specified in the said decisions. The said issue should be specified in other articles (Articles 5, 58 and 74).

We think that the process of disciplinary proceedings should be confidential, but the decision made as a result of this process – public. To this end, the law should be reformed allowing a decision related to the imposition of disciplinary responsibility on a judge, termination or suspension of disciplinary proceedings, and appeal with a personal recommendation notice to a judge to be sent to the petitioner and to be published in full on the website of the High Council of Justice.

Other reforms to the Law on Disciplinary Responsibility of Judges of Courts of General Jurisdiction and Disciplinary Proceedings

The draft law proposed by the Ministry of Justice sets a one month timeframe for assessing the grounds of a petition, application or other information related to disciplinary misconduct by a judge. The current regulation provides for two months (Article 8). The timeframe for investigation of a disciplinary case has been prolonged. The investigation must be completed within two months after the decision on inviting the judge for explanation. In the case of necessity, this timeframe can be prolonged no more than one month. The current regulation provides for one month for discussion and a possibility to prolong it for two more weeks (Article 12).

The same amendment imposes the obligation of confidentiality onto the individual who submitted the disciplinary charge (Article 30). The deadline for considering a disciplinary case was set within three months, instead of current two months (Article 31).

Pursuant to the draft law proposed by the Ministry of Justice, the time period for suspension of disciplinary proceedings was increased to four months (today the time period is three months), in the case when the judge, who had been imposed with a disciplinary responsibility, cannot attend a session of the Disciplinary Panel due to a serious illness or other insurmountable factor. The time period for the imposition of imposed disciplinary responsibility was raised from three to five years (Article 41).

The current version of the law prescribes what disciplinary punishment can be imposed to a judge for a corresponding disciplinary misconduct. According to the draft law proposed by the Ministry of Justice, any disciplinary measure can be imposed onto a judge for a disciplinary misconduct (Article 54¹).

The reform presented by the Ministry of Justice determined a dismissal of a judge by the Disciplinary Panel as a measure of last resort and established that it is used only in exceptional cases (Article 56).

The draft law proposed by the Ministry of Justice increased the time period provided for the Disciplinary Chamber to discuss a disciplinary case from one month to three months (Article 64).

The time period to appeal a decision of the Disciplinary Chamber was also raised from 10 days to one month. Also, the draft law provides that the High Council of Justice makes a decision by vote of 2/3 of all members of the Council (Article 60). Copies of decisions of the Disciplinary Chamber are sent, in addition to the Council, to the parties of the proceedings and their representatives, also to a petitioner (Article 74).

Our Opinion:

The said reforms are mostly positive. Increasing the timeframes for investigation and consideration of a disciplinary case should be welcomed. We think that in certain instances, due to complexity of a case, investigating and considering a disciplinary case requires a long time period. Thus, increasing the time period to appeal a decision of the Disciplinary Panel should also be welcomed. However, as mentioned above, the amendment laying down a one month time period for assessing grounds of an application (charge) or/and the amendment stipulating that investigation into a disciplinary case must be completed within two months after a decision on receiving an explanation from a judge are baseless, unless the law regulates the deadline for the High Council of Justice to consider disciplinary matters and make corresponding decisions.

The draft law also provides that the High Council of Justice makes a decision by the vote of 2/3 of all the Council's members (Article 60). There is no need of such a provision. Article 50 of the

Law on Courts of General Jurisdiction lays down the rules for decision-making by the High Council of Justice. Its subsection 3 already sets the same rule as the draft law proposed by the Ministry of Justice.

Important Reforms to the Law on the High School of Justice

The purpose of the High School of Justice is to provide training to persons to be appointed as judges (the Students of Justice) in courts of general jurisdiction of Georgia, including improving their theoretical knowledge of the law and learning the practical skills necessary in their line of work. In addition, the School also has to ensure continuous judicial training of sitting judges, as well as training and retraining of candidates for a position of judge's assistant and other specialists.

Article 14¹ and 18¹

Current Regulation:

The current regulation does not provide for a mechanism related to complaints about the competition procedures in the High School of Justice and their results.

Draft Amendment Proposed by the Ministry of Justice:

According to the reform proposed by the Ministry of Justice, two articles will be added to the Law on the High School of Justice. The first concerns with creation of a complaint commission. This commission is to be created for complaints related to competition procedures and results. The High Council of Justice determines the number and composition of the commission. The commission is composed of a chairperson of the commission, deputy chairpersons and members. The draft law determined the rules and deadlines for submitting a complaint as well as rules for the decision-making by the commission. The High Council of Justice makes the final decision considering the complaint commission's decision.

Our Opinion:

The creation of the complaint commission is a positive initiative. However, we believe that the complaint commission should be independent from the High Council of Justice. The High Council of Justice may compose the complaint commission but it should not interfere in the commission's activities. The commission should make decisions independently and they should be obligatory for the High School of Justice. We think the law should explicitly ban the participation of members of the High Council of Justice in the complaint commission. Such approach will enable strong distinction of the High Council of Justice and the High School of Justice, thereby fostering the independence of the School.

Unfortunately, the draft law does not provide for the number of the commission members nor impose any standard (minimum requirements) to them. We think that minimum requirements

to the commission members should be set. For example, there should be an age limit, professional requirements, the obligatory legal education and norms regulating a conflict of interests.

Article 19: Duration of Training

Current Regulation:

The duration of training in the School is 10 months. For a Student of Justice who has the experience of a minimum 10 years of working as a head of a structural unit in the staff of the High Council of Justice, as a head of staff or a head of a structural unit in the staff of the courts of general jurisdiction, as a judge's assistant, as a secretary of trials, as an investigator, as a prosecutor or/and as an attorney, the duration of full training is 6 months.

Draft Amendment Proposed by the Ministry of Justice:

The draft law submitted by the Ministry of Justice increased the duration of training for Students of Justice from 10 months to 15 months. While, for a Student of Justice who has the experience of a minimum 10 years of working as a head of a structural unit in the staff of the High Council of Justice, as a head of staff or a head of a structural unit in the staff of the courts of general jurisdiction, as a judge's assistant, as a secretary of trials, as an investigator, as a prosecutor or/and as an attorney, the duration of full training is 10 months instead of 6 months.

Our Opinion:

The said reform should be assessed positively. It is necessary that, in the course of training at the School, the attention be paid to strengthening the skills and [corresponding manners for a to-be judge] Students. This cannot be achieved with quality within a short period of time. The professionalism and knowledge of incoming personnel are very important for the development of the judiciary. The High School of Justice should be the guarantor in providing the judicial system with highly qualified personnel.

Other Reforms to the Law on the High School of Justice

The second additional article of the draft law is concerned with the personal data of a student of justice. A student has the right to consult any information or official document about him/her existing in the School and obtain their copies. A student retains this right even after completion of the school, despite whether he/she was appointed as a judge or not. A student of justice has the right to request from the school to correct, update, add, block, suppress or destroy his/her personal data (including the evaluation of the Independent Council) if the data is incomplete, incorrect, out-of-date, or their collection and processing was undertaken in violation of requirements of the law. The Law on Personal Data Protection regulates this issue. In turn, the School has the obligation not to disclose (through issuing, disseminating or otherwise making it available) data and official documents about a student of justice without his/her consent, except for the cases stipulated in the law.

According to the draft law, a student will be informed about his/her ordinal number in the [qualifying] list. Practically, the number represents a rating of a School graduate, which is calculated on the basis of summing up his/her performance and exam results. The current regulation does not include such a rule (Article 29).

Our Opinion:

We think that the prohibition of personal data of a student of justice requires specification. The data concerning the individuals who have successfully completed the School and are participating in a competition for judicial appointment should be made public. In addition, the data on results of their performance in School and exams should also be publicly available. We consider closing other data as logical.

We think that the reform whereby a student is informed about the data saved at the School concerning him/her, including evaluations by the School and the ordinal number in the qualifying list, is a positive step. Practically, the number represents a rating of a School graduate, which is calculated on the basis of summing up his/her performance and exam results. The current regulation does not include such a rule. We believe this reform is clearly positive. In accordance with Article 41 of the Georgian Constitution, an individual has the right to know what data is saved about him/her in an administrative body. Therefore, students of the School have the full right to consult with the information concerning them and restricting this right contradicts the Constitution of Georgia.

This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of Transparency International Georgia and do not necessarily reflect the views of USAID, the United States Government, or EWTI.

