

The Coalition Assesses the Process of Selecting the Members of the High Council of Justice by the Parliament

1. The Role of Non-judge Members in the Activities of the High Council of Justice

In the last decade, several waves of reform in the judicial system have been evaluated as an insufficient attempt to strengthen the courts and support democratic transformations within this system. The absence of political will for fundamental changes and only fragmented institutional reforms, without considering the local context, have failed to deal with such important challenges as internal corporatism, clannishness, threats of external influences, and court politicization.¹

For years, the major support for the influential group of judges in the judicial system has been the High Council of Justice of Georgia and its constitution-based power. The Council makes decisions on all key issues of importance to the court. Accordingly, for a long time, the civil sector has been discussing a radical change in the judicial reform strategy and the need for an in-depth reform of the High Council of Justice, which should be aimed at creating consensus-based governance of the judicial system and solid barriers to the concentration of power. In recent years, criticism of the judiciary has been growing at the international level as well. The recommendation for an in-depth reform within the Council and the appointment of non-judge members was among the recommendations developed by the European Commission for Georgia on June 17, 2022, within the candidate status granting process.²

In order to prevent the concentration of power in the Council, along with the fundamental reform, the issue regarding its personnel composition is also of great importance. Namely, when the members of the influential group or persons affiliated with them are elected as the judge members of the Council,³ as a rule, by rotation, the issue of the participation of 1 member appointed by the President and 5 members elected by the Parliament in the activities of the Council acquires special importance.

The appointment of independent, impartial, and conscientious persons to the positions of non-judge members significantly ensures diverse public representation in the Council, transparency of its activities, and accountability to the public. This is of vital importance given the power concentrated within the

¹ The Coalition for Independent and Transparent Judiciary, A New Perspective on Judicial Reform, June 12, 2021 (Available at: <https://bit.ly/3knOx03> ; Accessed on: 18.01.2023).

² Commission Opinion on Georgia's application for membership of the European Union, Brussels, 17.6.2022 COM (2022) 405 final (Available at: <https://bit.ly/3C3FS8n> ; Accessed on: 18.01.2023).

³The Coalition for Independent and Transparent Judiciary reacts to the re-election of **Levan Murusidze** and **Dimitri Gvritishvili** as members of the Supreme Council of Justice by the Conference of Judges, October 25, 2022 (Available at: <https://bit.ly/3ZM6wO4>; Accessed on: 18.01.2023); The Coalition for an Independent and Transparent Judiciary Reacts to the Planned Judicial Conference, October 29, 2021 (Available at: <https://bit.ly/3Hdpztc> ; Accessed on: 18.01.2023).

Council, since, according to the international standards, *"the more powers and responsibilities the Council has, the more important is its accountability in relation to the use of these powers"*.⁴

Accordingly, the presence of non-judge members in the Council and their effectiveness is an important prerequisite for reducing the risks of corporatism in the court.⁵ However, it should also be noted, that along with staffing of the Council with conscientious, competent, independent, and politically neutral personnel, its simultaneous and systematic reform is also essential, which ensures more efficiency and involvement of non-judge members in the decision-making process.

2. The Absence of Political Will and International Obligations

The term of office of 5 non-judge members of the High Council of Justice, elected by the Parliament of Georgia, expired in June 2021. These places are still vacant. According to the Constitution, the election of Council members requires the support of at least three-fifths of the full membership of the Parliament.⁶ Today, the "Georgian Dream" does not have enough votes in the parliament, and the support of the opposition groups is necessary to make a decision.

Achieving political consensus by the Parliament is particularly important to select non-judge members of the High Council of Justice. The Coalition for an Independent and Transparent Judiciary pointed to the need of selecting impartial, conscientious, and competent candidates in a such manner yet in June 2021 when a new perspective of judicial reform was presented. However, the ruling team, throughout this period, without any justification, refused to elect non-judge members of the Council based on consensus with the parliamentary opposition. As a result, for almost 2 years, the legislative body does not have a representative in the Council, which contradicts the existing constitutional logic of the division of power and significantly damages the credibility of judicial institutions. Moreover, instead of the full composition of the Council, the ruling team further increased the powers of the Council on December 30, 2021, through legislative amendments that were passed hastily and without extensive public engagement. In relation to a number of issues - where the vacant positions of non-judge members in the Council created an obstacle – the majority requirement for decision-making was reduced.⁷

As mentioned, the election of non-judge members of the High Council of Justice, along with the in-depth reform of the Council, is also provided for in the recommendations issued by the European Commission to Georgia on June 17, 2022, for candidate status.⁸ Accordingly, the selection of non-judge members has once again become one of the essential and critical issues of the political agenda last year.

⁴CCJE Opinion No. 24 (2021): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, Strasbourg, November 5, 2021, para. 13 (Available at: <https://bit.ly/3XE8nCF> ; Accessed on: 18.01.2023).

⁵ Ibid., para. 29.

⁶ Paragraph 2 of the Article 64 of the Constitution of Georgia

⁷ The Coalition responds to the ad hoc hearing of the amendments to the Organic Law on Common Courts, December 28, 2021 (Available at: <https://bit.ly/3kjcKVb> ; Accessed on: 18.01.2023).

⁸ Commission Opinion on Georgia's application for membership of the European Union, Brussels, 17.6.2022 COM (2022) 405 final.

3. The First Stage of Competition

The competition for 5 non-judge members of the High Council of Justice was announced by the Parliament on September 30, 2022.⁹

According to the Rules of Procedure of the Parliament, candidates for membership of the Council are selected:

- from professors and researchers working in higher educational institutions of Georgia.
- From members of the Georgian Bar Association, and/or
- From those persons nominated by non-entrepreneurial (non-commercial) legal entities of Georgia, one of the fields of activity of which in the last 2 years prior to the announcement of the competition was to exercise representative authority in court litigation proceedings.

Each organization/university has the right to present to the Parliament no more than 3 candidates for membership of the Council.¹⁰

It should be noted that the current edition of the Rules of Procedure of the Parliament does not provide for the public hearing of the candidates. The Legal Affairs Committee checks the compliance of the candidates' data with the legislation and submits its recommendations to the parliamentary factions. However, within the framework of the implementation of the European Commission's recommendations, the committee decided to hold a public hearing of the candidates.

From September 30 to October 20, 2022, various organizations submitted 32 candidates for Council membership to the Parliament of Georgia, namely:¹¹

- (only) higher educational institutions - 9 candidates;
- (only) Georgian Bar Association - 3 candidates;
- (only) non-entrepreneurial (non-commercial) legal entities - 14 candidates;
- (jointly) higher educational institution and non-entrepreneurial (non-commercial) legal entity - 6 candidates.

The Coalition for Independent and Transparent Judiciary had not presented its own candidates in the competition due to the lack of authority provided under the law, although it publicly supported 5 candidates, which were presented by individual non-governmental organizations included in the Coalition, as well as by higher educational institutions.¹²

It should also be noted here that, since the candidates supported by the Coalition also participated in the competition, considering the principles of objectivity and impartiality, the organizations included in the coalition refrained from participating in the hearing process and asking questions to the candidates.

⁹ Statement by the Chairman of the Parliament of Georgia, September 29, 2022 (Available at: <https://bit.ly/3Xml1Gz>; Accessed on: 18.01.2023).

¹⁰ Paragraphs 2 and 3 of Article 208 of the Rule of Procedure of the Parliament of Georgia

¹¹ See the full list of candidates and their presenting organizations on the website of the Parliament of Georgia (Available at: <https://bit.ly/3CVxclD> ; Accessed on: 18.01.2023).

¹² The Coalition presented candidates for the positions of non-judge members in the High Council of Justice, November 10, 2022 (Available at: <https://bit.ly/3XJkGOd> ; Accessed on: 18.01.2023).

However, the coalition was actively monitoring the progress of the interviews and the general trends that emerged during the process.

4. Interviews of Candidates in the Legal Affairs Committee

The hearings of the candidates in the Legal Affairs Committee of the Parliament for the membership of the Council were held on December 8, 9, 10, 12, and 19, 2022. The Chairman of the Legal Affairs Committee noted at the Committee hearing on the 8th of December that the candidates would be heard in alphabetical order.¹³ Each candidate was given 5 minutes to present his/her biographical data and, if elected, his/her perspective on the activity in the High Council of Justice. The format provided for the opportunity for the members of the Parliament and the attending public to ask questions together, followed by the candidate's unified answers and, additionally, clarifying questions. At the end of the interview, the candidates were given a 1-minute time limit for their final speech. On December 8 and 9, the committee heard 5 candidates, on the 10th of December - 7 candidates, on the 12th of December - 6 candidates, and on 19th of December - 8 candidates.

1 candidate did not appear at the committee meeting - Grigol Gagnidze. In addition, in relation to several candidates, the committee indicated in its conclusion that there are certain gaps in the required documentation,¹⁴ however, considered it possible to correct them and, finally, recommended voting for all candidates.¹⁵ At the meeting of the Bureau of the Parliament on December 22, 2022, some of the parliamentary political groups¹⁶ used the powers provided under the Rules of Procedure of the Parliament, regarding the consideration of the candidates participating in the competition within 2 weeks from the submission of the list of candidates to the Bureau. Accordingly, the extraordinary session of the Parliament ended without the election of 5 non-judge members of the High Council of Justice, and the process is likely to resume in the spring session.

5. Key Tendencies

Low Political Interest Towards the Issue

As mentioned, the presence and effectiveness of conscientious, competent and politically neutral non-judge members in the Council is important to reduce the risks of corporatism in the court and start to improve the judicial system. In addition, the election of 5 members by the Parliament is one of the mandatory prerequisites for fulfilling the recommendations of the European Commission and receiving

¹³ Except for those exceptional cases, when the candidates presented the relevant evidence to the Committee that due to objective circumstances, they would not be able to participate in the interviews at the appointed time.

¹⁴ According to the conclusion of the Legal Affairs Committee, there were deficiencies in connection with the submission of mandatory documentation for 5 candidates, and they mainly related to: *a) participating in court cases in a representative capacity for at least the last 2 years prior to the announcement of the competition by the submitting organization, and b) Having a higher legal education with a master's degree or equivalent academic degree/diploma of higher education.* Conclusion of the Legal Affairs Committee on the candidates for membership of the High Council of Justice of Georgia, 2-20735/22, 22-12-2022 (Available at: <https://bit.ly/3iKdcvt> ; Accessed on: 18.01.2023).

¹⁵ Ibid.

¹⁶ Record of the session of the Bureau of the Parliament of Georgia, December 22, 2022 (Available at: <https://bit.ly/3QPURZ> ; Accessed on: 18.01.2023). The parliamentary political group "Lelo - Partnership for Georgia" and "Reforms Group" used the right to use the 2-week period.

the candidate status for EU membership. Therefore, the importance of this issue and the political and public interest in it should be high.

Regardless of this, during the parliamentary hearings of the candidates, low political interest in this process was noticeable, especially from the side of the parliamentary opposition. From the opposition spectrum, the representatives of political parties "For Georgia", "Lelo - Partnership for Georgia" and "European Socialists" attended the interviews most often. A representative of the "Girchi" political party, as well as representatives of the "Reforms Group" and "Citizens" attended only a few interviews. The representatives of the political party "United National Movement" did not participate in the process at all. The members of the ruling team took part in the candidate interview process and the members of the Legal Affairs Committee asked questions.

While the topical and substantive participation of the parliamentary opposition in the decision-making process is not only important (the need for political consensus) and politically desirable (implementing the recommendations of the European Commission with the broad involvement of political parties), but also legally necessary (considering the required majority of votes), it is not clear why the representatives of the opposition did not use such opportunity. By active participation in this process, it was possible, on the one hand, to ask critical questions to the candidates and evaluate their views/qualifications, and on the other hand, to substantively discuss the problems in the judicial system.

Transparency and Procedural Democracy

According to the conclusion of the Legal Affairs Committee, *"hearings of the nominees at the Committee meetings were conducted...openly, transparently and with the highest standard of publicity."*¹⁷ The meetings were broadcasted via so-called live stream on the official website of the Parliament of Georgia and on YouTube. Accordingly, the public, interested parties, and civil sector had an opportunity to observe the process. The Coalition was actively monitoring the interviews both within the committee sessions and remotely.

First of all, it should be noted that, despite the publicity, hearing of at least 5 candidates in 1 day, within the framework of 1 committee hearing, did not create an opportunity to conduct the process with quality, listen to the views of the candidates in detail, and properly assess their competence and integrity.

The format itself deserves criticism, within the framework of which questions were asked by the interested parties altogether and the candidate answered these questions jointly, which often created a situation when the candidate could not/didn't answer specific questions properly and completely. The problem of listening to this number of candidates during the day was especially visible in relation to the candidates at the end of the list - by the end of the day, some deputies left the session or asked fewer questions, and the answers were often very concise.¹⁸

Furthermore, it is important to note that a democracy based on the rule of law does not imply only a formal concept of publicity and transparency, where adherence to the procedures is sufficient. It should be based on objective, meaningful discussion, and exchange of opinions between the majority and the opposition, a

¹⁷ Conclusion of the Legal Affairs Committee on the candidates for membership of the Supreme Council of Justice of Georgia, 2-20735/22, 22-12-2022.

¹⁸ For example, the hearing of the candidate for non-judge membership - Teimuraz Jervalidze was held on December 19. The candidate was 8th on the list and his interview lasted for a total of 7 minutes.

broad consensus in accordance with public interests.¹⁹ Therefore, the ruling team's decision to publicize the competition and committee hearings is welcomed, however, firstly, the smoothness of the process itself is important. Moreover, to properly conduct the process of electing non-judge members of the Council of Justice in accordance with the democratic standards based on the rule of law, the main importance should be given to meaningful discussion, broad party and public consensus and the election of independent, politically neutral, and competent members as a result of such consensus.

Content of Questions and Equality of Candidates

Along with the procedural part of the Committee hearings of the candidates for the membership of the Council of Justice, the tendencies that emerged regarding the substantial part of the interviews are no less important. This applies both to the content of the questions asked by the members of the parliament, and to equal approaches to the candidates.

First, it should be noted that the content of the questions asked by both, the ruling team and the opposition were more or less similar towards each candidate. However, the ruling team also had questions of political content with some candidates, including regarding the expression of their political views on social networks.²⁰ In addition, in some cases, the questions of the representatives of the ruling team and the political group "European Socialists" escaped from the content of the process and did not serve to examine the candidate's qualifications or integrity.²¹ It is worth noting that some questions asked by the ruling team, also partially contained positive assessments regarding the reforms implemented by them²² and, for example, statistical data on the lawsuits filed against Georgia in the European Court of Human Rights.²³

Regarding the difference between the time allotted to candidates in general and the equal approaches to them to this extent, the duration of the interview varied from 7 minutes to about 2 hours.²⁴ Such a different picture was caused by interviewing of at least 5 candidates during the day, as well as, in some cases, by the brevity of the answers given by the candidates themselves.

6. Summary

The presence of non-judge members in the High Council of Justice and their effectiveness is an important prerequisite for reducing the risks of insider influence and corporatism in the court. The selection of Council members of persons who meet the criteria of independence, political neutrality, and qualification and enjoy a high reputation in the social and professional circles will be an important step forward for the

¹⁹ Opinion on the December 2021 amendments to the organic Law on Common Courts, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022), CDL-AD (2022)010-e Georgia, (Available at: <https://bit.ly/3tSfb3a>).

²⁰ For example, Anri Okhanashvili's question to Kakha Tsikarishvili, a candidate for non-judge membership, about the evaluation of the efforts made by the Georgian authorities in relation to the practice of the European Court of Human Rights on Russia's 2008 aggression towards Georgia, as well as the judgments made by the International Criminal Court in The Hague.

²¹ For example, the question of Fridon Injia, a member of the political group - "European Socialists", to the candidate for non-judge membership, Giorgi Burjanadze, as well as Goga Kikilashvili, regarding their marital status; Also, Rati Yonatamishvili's question to Giorgi Burjanadze about living wage calculation method.

²² For example, Rati Yonatamishvili's question to Giorgi Burjanadze, candidate for non-judge membership, about 3 positive decisions made by the Georgian government in the last 5 years.

²³ For example, Anri Okhanashvili's question to Zurab Guraspashvili, candidate for non-judge membership, about the statistical data of appeals to the European Court of Human Rights before 2012 and after 2012.

²⁴ For example, the hearing of candidates for non-judge membership - Teimuraz Jervalidze and Rusudan Kvinikadze lasted for a total of 7 minutes; The interview of the candidate for non-judge membership - Giorgi Burjanadze lasted 2 hours and 10 minutes, and the hearing of Ana Abashidze - 1 hour and 28 minutes.

start of strengthening the judicial system. This will also be a step forward in terms of the implementation of the recommendations of the European Commission. Therefore, despite the above-mentioned shortcomings of the competition and committee hearings of the candidates, the Parliament still can resolve this issue with a multi-party consensus and in accordance with public interests.

At the same time, for the full recovery of the judicial system, the staffing of the Council of Justice with non-judge members is not enough, and simultaneous systemic reforms are also required. Of particular importance is a comprehensive reform of the Council, as the main institution of the court, which ensures both the effectiveness of non-judge members, as well as the decentralization of the entire judicial system and the increase of guarantees for the independence of individual judges. Therefore, without the presence of political will to carry out systemic reforms, the election of non-judge members of the Council, in the long term, will not bring vital and radical reforms to the judicial system.

To this end, the Coalition for Independent and Transparent Judiciary calls on the Parliament of Georgia to:

- Select independent, conscientious, competent, and politically neutral candidates, who benefit from a high level of public trust;
- Decide on the election of 5 members of the High Council of Justice based on political consensus with the parliamentary opposition;
- On the basis of a comprehensive analysis of the existing problems in the judicial system, develop a reform of the High Council of Justice and the judicial system as a whole, that will be focused on creating a court free from political and internal corporate influences.