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Transparent Judiciary



# THE JUDICIAL SYSTEM PAST REFORMS AND FUTURE PERSPECTIVES

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**USAID**  
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EAST • WEST  
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*Promoting Rule of Law  
in Georgia (PROLoG)*

# Guarantees for Judicial Independence

**(Case Distribution and specialization of judges; Judicial administration and chairpersons of courts; Evaluation and promotion of judges; Communication with judges)**



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# Allocation of cases according to the list number

- There is no mechanism to control the adherence to the list in the process of case allocation;
- Chairpersons have unreasonably wide discretion to allocate cases based on an exceptional rule;
- The law does not envisage the obligation of the chairpersons to justify the use of exceptional rule;
- It is more complicated to control the case distribution process in the higher instance courts



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# Distribution of cases in electronic and random manner

- The law does not envisage the clear rules and principles of electronic case distribution (e.g. case weight, procedure and etc.);
- It is vague how cases are allocated and what is the role of chairpersons during the temporary failure of electronic system;
- Equal and fair distribution of cases between judges is under question;
- It is vague what is the procedure during the exceptional situation, when case has to be assigned to another judge;



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# Specialization of judges

- Assigning the cases of certain category to the judge with not relevant specialization;
- Composition of judges in narrow/thematic specialization solely decided by the chairperson;
- Appointments with the violation of specialization and the practice of case hearings in the Supreme Court;



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# Recommendations

- Implementation of electronic case distribution system in a timely manner;
- Development the principles of case distribution and a comprehensive list of exceptional occasions on a legislative level;
- Establishment of local councils for the cases of software failure, instead of participation of chairpersons the process;
- Composition of narrow/thematic specializations should be defined by the HCoJ instead of chairpersons;
- Assigning the case to the judge in other specialized chamber should have an exceptional nature and should be well grounded.



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# Appointment of chairpersons

- Latest surveys reveals that the rule of appointment of judges needs to be reviewed;
- Venice Commission - 2014
- CCJE – 2016
- Kiev Recommendations – 2010



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# Other issues in judicial administration

- Administrative functions are often duplicated (Department of Common Courts, Management Department, Court managers, Chairpersons);
- Vague functions of Management Department;
- Shortcomings in the process of delegation of powers of chairperson;



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# Recommendations

- Chairpersons should be elected by judges and relevant criteria should be defined by the law;
- Delegation of chairperson's power should be exercised only in exceptional cases and within the predetermined period of time;
- Roles and tasks of Management Department should be specified in the law;
- Institute of Court Managers should be further developed;



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# Shortcomings in the current evaluation system

- Law stipulates nothing about the periodic judicial evaluation;
- Goals of current evaluation system approved by the HCoJ, are unclear;
- Current model is mainly based on quantitative criteria and includes risks of infringement of independence of individual judges;



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# Mechanisms of promotion and rotation without competition

- Judges are promoted in the absence of clear and effective rule of judicial evaluation;
- Rules and criteria for promotion are adopted by the HCoJ in a speedy manner;
- Difference between the promotion and rotation to a higher instance court without competition is vague;



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# Recommendations

- Essence, goals and basic principles of periodic evaluation should be determined by the law;
- The law should include procedural guarantees, including the right to appeal the results of evaluation;
- Relevant components of evaluation should be improved. Bonus system based on evaluation should be removed;
- Decision regarding the transfer of judges should be justified and effective mechanism of appeal should exist;
- Criteria and procedure of promotion should be defined on the legislative level.



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# Flaws in the current communication rules

- Legislation does not ensure the protection of judges from the influences coming from the judicial system. Final decisions on improper communications are made by chairpersons which cannot be appealed to the HCoJ;
- Judges are not provided with the opportunity to apply to the HCoJ in cases of restricted ex-parte communication;
- Current definition of restricted ex-parte communication is not sufficiently foreseeable;
- Law does not clearly identify grounds for judge's liability in any breach of communication rules which weakens the accountability system and increases the risks of its abuse.



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# Recommendations

- In case of restricted ex-parte communication, judges should have right to apply to the HCoJ, where process should be conducted transparently and decisions made in a collegial manner;
- Law should precisely re-define the extent of restricted ex-parte communication and the group of people it refers to;
- Violation of communication rules and a composition of criminal offence should be clearly separated;
- Court should be obliged to notify the relevant authorities as well as the parties of proceedings about the cases of restricted ex-parte communications;
- HCoJ should proactively publish any information about each individual case concerning the violation of communication rules;



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