

Despite the four waves of judicial reform implemented in recent years, independence of the Georgian judiciary has not been achieved. Fundamental deficiencies remaining in the legal framework constitute an important challenge. Moreover, the High Council of Justice (hereinafter- the HCOJ), which could not establish its credibility in the Georgian system, enjoys a fairly low trust by a large segment of society.

In 2019, the selection procedure of the Supreme Court judges was not in line with international standards. The legal framework did not ensure a merit-based appointment process: A three-stage secret ballot excluded the possibility of taking a reasoned decision and created the risk of arbitrary decision-making, which contradicted international standards. The negative consequences of the deficient legislative regulation were revealed in practice.

Significant problematic issues were identified in the process of competition for the selection of the Supreme Court judges in 2019, such as the participation of members of the HCOJ in the selection process, despite the existence of a conflict of interest, as well as the distribution of votes with the same scheme during the first secret ballot. The hearing of candidates in the Parliament demonstrated that many candidates could not even answer basic legal questions. The majority of the candidates inadequately perceived existing challenges in the judiciary, did not recognize the problems existing in the past, and at present, or were not willing to talk about them.

In December 2019, 14 new judges were appointed in the Supreme Court until retirement, including those candidates who had not demonstrated that they had the legal knowledge, integrity, and independence required for such an important position. These appointments had a detrimental impact on the judiciary and gave rise to the international community's severe criticism.

Notably, the Parliament amended the Organic Law (in particular, redesigned the evaluation and voting process to provide written reasoning as well as introduced the possibility of judicial appeal against the decisions made by the HCOJ) only in September 2020, after 14 judges had already been appointed in the Supreme Court, which demonstrated that such belated amendments did not serve the genuine interests of the judicial reform.

There are further deficiencies in the legal framework related to the Supreme Court: Certain broad powers of the Chief Justice and vagueness of functions of the deputy Chairpersons, which create an unjustified hierarchy in the Supreme Court, are problematic. The presence of the Chairpersons of the Courts of Appeal in the Supreme Court Plenum (a body taking decisions on the management and administration of the Supreme Court) is a significant challenge. This does not comply with the role and the place of the Supreme Court in the judicial system. Certain excessive powers of the Plenum remain an important challenge, such as the right to determine the amount of a monthly supplement to the official salary of a judge, which poses the risk of corruptive practices.

Transparency of the judiciary remains an important challenge. In 2019 the Constitutional Court of Georgia ruled that the provisions of the Law on Personal Data Protection were unconstitutional as they prohibited access to the full text of court decisions. The Court held that the disputed norms would be void from May 2020 and gave the Parliament time to harmonize existing legislation with the requirement of the Constitution. However, the Parliament did not adopt relevant legislative amendments. Consequently, the challenges concerning the accessibility of court decisions remain. Failure to fulfill the Constitutional Court's ruling and disregard for the constitutional standard undermine the rule of law and pose threats to the fundamental democratic values.

Moreover, the Court Chairpersons of the first and appellate instances are appointed by the HCOJ through a vague and non-transparent procedure. Significant power assembled in the hands of the Court Chairpersons remains a challenge. Court Chairpersons can be the members of the HCOJ which contributes to the concentration of excessive powers within the hands of the narrow group of judges.

Despite recent reforms, the real institutional independence of the High School of Justice (hereinafter – HSOJ) has not been achieved, as 4 out of 7 members of the board of the HSOJ are appointed by the HCOJ, which enables the latter to have a considerable influence upon its work. The procedure for enrolment of justice trainees is regulated by the Charter of the HSOJ and not by the law, substantiation of decisions and appeal mechanism is not guaranteed, which constitutes a significant challenge.

As a result of the four waves of judicial reform, the system of disciplinary liability of judges has been improved, however, certain flaws remain. The procedure for electing an Independent Inspector remains flawed (the decision is made by a simple majority of the HCOJ), which does not ensure proper institutional independence of an Inspector.

The legal framework does not provide for the objective and transparent process of promoting judges. Furthermore, the excessive caseload of common courts is a significant challenge. Procedural delays in case consideration pose a risk of violating the right to a fair hearing within a reasonable period.

Therefore, the Georgian Government should continue and consolidate its reforms of the judicial system, in particular: guarantee the independence of the judiciary by reforming the system of appointment of judges (in all instances of the court); restrict certain broad powers of the Chief Justice; remove Chairpersons of Courts of Appeals from the Plenum of the Supreme Court, and limit its excessive powers; regulate the accessibility of court decisions following the constitutional standard; ensure the real independence of the HSOJ; improve the system of disciplinary liability of judges by creating solid guarantees of independence of an Independent Inspector; amend the rule for the appointment of Court Chairpersons and limit their excessive powers; address the issue of excessive caseload and procedural delays in common courts; initiate the reform of the judicial promotion and periodic evaluation system, and improve the system of electronic case allocation. These measures are necessary to eradicate significant flaws and challenges existing in the Georgian judiciary.

As for freedom of expression, concerns persist regarding government interference with some media outlets. Furthermore, in 2019 several journalists sustained injuries during the June 20-21 protests. Multiple local and international organizations strongly criticized the use of force by police against journalists and issued statements calling for a prompt investigation into the incidents involving journalists.

As for access to information, Georgia has basic legal provisions on this issue in the General Administrative Code, but there is no stand-alone law on freedom of information. There is also no dedicated oversight authority that would ensure enforcement of the relevant provisions. Although the draft law on Freedom of Information was prepared in 2014, it has not been initiated in the Parliament yet.

Access to information was significantly affected by the coronavirus pandemic. During the state of emergency, for two months the time frame for releasing public information was suspended, which was problematic due to the blanket character of the restriction. The blanket limit on all requests and for all public authorities could not be justified as it created serious obstacles for holding the government accountable and exercising effective external control over its work. Such restriction should have been in place only to the strictly necessary extent.

Freedom of expression and media pluralism must be fully respected in Georgia. Moreover, it is necessary to strengthen guarantees of access to information by adopting the Law on Freedom of Information,

establishing a supervisory body, and introducing a sanctioning mechanism against public institutions that refuse to disclose public information.

To summarize, independence of the judiciary, as well as strong guarantees of freedom of expression and access to information, are necessary preconditions for the democratic development of a state. Therefore, continuing and consolidating reforms in this direction is essential for ensuring human-rights based policy and strengthening the rule of law in Georgia.