

The image features a dark teal background with a complex geometric design. On the left, three vertical red rectangular panels of varying heights are arranged in a descending sequence from left to right. These panels are set against a backdrop of light grey, angular shapes that resemble stylized steps or a staircase. Two prominent diagonal lines, one dark teal and one light grey, cross the scene from the bottom left towards the top right. The overall aesthetic is modern and architectural.

**IMPLEMENTATION OF THE JUDICIAL STRATEGY AND THE ACTION PLAN**  
Second Shadow Report



**Implementation of the Judicial Strategy  
and the Action Plan  
(Second Shadow Report)**



The European Union  
for Georgia  
EU4Justice

ადამიანის უფლებების მსჯელობისა და მონიტორინგის ცენტრი  
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**Circulation:** 150

ISBN: 978-9941-8-2220-9

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# Table of Contents

Introduction .....	6
Methodology.....	7
Main Findings.....	10
<b>Reform of the High School of Justice .....</b>	<b>13</b>
Results of the Judicial Reforms and Existing Challenges.....	14
Implementation of the Judicial System Action Plan for 2017-2018 .....	15
Conclusion .....	23
<b>Selection, Appointment of Judges and Career Advancement Issues .....</b>	<b>25</b>
Results of the Judicial Reforms and Existing Challenges.....	26
Implementation of the Judicial System Action Plan for 2017-2018 .....	31
Conclusion .....	45
<b>Reform of the System of Liability of Judges.....</b>	<b>46</b>
Results of the Judicial Reforms and Existing Challenges.....	47
Implementation of the Judicial System Action Plan for 2017-2018 .....	49
Conclusion .....	58
<b>The Work and Institutional Organization of the High Council of Justice .....</b>	<b>60</b>
Results of the Judicial Reforms and Existing Challenges.....	61
Implementation of the Judicial System Action Plan for 2017-2018 .....	66
Conclusion .....	72
<b>Transparency of the Judiciary .....</b>	<b>74</b>
Results of the Judicial Reforms and Existing Challenges.....	75
Implementation of the Judicial System Action Plan for 2017-2018 .....	77
Conclusion .....	90

## Introduction

Based on the requirements set forth in the EU-Georgia Association Agenda,<sup>1</sup> on May 29, 2017, after nearly a year of work, the High Council of Justice of Georgia approved the 2017-2021 Judicial Strategy and its Implementation Action Plan for 2017-2018.<sup>2</sup> The Association Agenda highlights the importance of ensuring full independence of judges, strengthening the principles of impartiality, efficiency, integrity, professionalism and accountability of judges in the reform process of the justice system.<sup>3</sup> In order to achieve these goals, the appropriate strategic directions were identified and the relevant working groups were set up.<sup>4</sup>

Given that the process of creating the Strategy and the corresponding Action Plan was carried out with the active involvement of all three branches of government and the civil society, the approval of these documents was an important step forward in establishing a unified vision of a judicial reform. Consequently, these documents already provide an opportunity to analyze the vision of the judiciary in relation to the challenges facing the system and ways to eliminate them.

The presented shadow report is the second of its kind and aims to assess the implementation process of the 2017-2021 Judicial Strategy in the period of November 2018 to March 2020. The first shadow report was published in 2018, and the reporting covered the period of October 2017 to October 2018.<sup>5</sup> Regrettably, the Action Plan for 2019-2020 has not yet been approved and the progress report of the second year of implementation of the Action Plan for 2017-2018 has not been published (hereinafter referred to as the Second Progress Report). Accordingly, the present report reassesses the state of performance of the activities envisaged in the 2017-2018 Action Plan, which were marked as unfulfilled or partially fulfilled in the previous shadow report. The document also thematically discusses the *four waves* of judicial reform in order to create a unified picture of the ongoing reforms in the field of justice and identify the challenges that remain unresolved.

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1 Association Agenda between the European Union and Georgia, 2017-2020, p. 9, [available at: <https://bit.ly/2RS9uza>, accessed on, 20.04.2020].

2 Decision 1/162 of the High Council of Justice of Georgia of 29.05.2018 [available at: <https://bit.ly/3cz0BSS>, accessed on: 14.04.2020].

3 Association Agenda between the European Union and Georgia, 2017-2020, p. 9, [available at: <https://bit.ly/2RS9uza>, accessed on, 20.04.2020].

4 Decision of the High Council of Justice of Georgia of 16 October 2017, №1/260 on the Approval of the Organizational Rule for the Implementation of the 2017-2021 Strategy of the Judicial System and its Implementation Action Plan 2017-2018 [available at: <https://bit.ly/2xewoJR>, accessed on: 14.04.2020].

5 Institute for Development of Freedom of Information (IDFI), the Human Rights Education and Monitoring Center (EMC), implementation report of the Judicial System Strategy and Action Plan – Shadow Report, 2018, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

The present document was produced in the framework of the EU-funded project “Facilitating Implementation of Reforms in the Judiciary (FAIR)”, implemented by the Human Rights Education and Monitoring Center (EMC), in cooperation with partner organizations – Institute for Development of Freedom of Information (IDFI) and the Caucasus Research Resource Center (CRRRC- Georgia).

## Methodology

In order to assess the implementation of the 2017-2021 Strategy of the Judicial System and the implementation of its 2017-2018 Action Plan, the project team studied the activities of the responsible agencies, conducted in the period of November 2018 to February 2020.

The judicial five-year Strategy and two-year Action Plan are much broader, but this document, as well as the first shadow report, discusses those directions that are essential to strengthening the institutional capacity of the judicial system and increasing the independence of individual judges, and concern the most fundamental and debated areas of judicial reform. In particular, the report assesses activities under the umbrella of the following key directions:

1. **Activities and Institutional Organization of the High School of Justice** – education of the candidate judge and continued training of acting judges are essential components for ensuring judicial independence and impartiality and reinforcing a right of a person to have their case heard only by a competent court. The appointment of a competent judge relies on the institutional independence of the High School of Justice and the objective and transparent nature of the School admission process.
2. **Judicial Selection-Appointment and Promotion System** – Conducting the selection of judges is one of the most important constitutional powers of the High Council of Justice. The rules and practices for the appointment of judges largely determine the degree of public confidence in the judiciary.
3. **Judicial Liability System** – The disciplinary system serves the purpose of ensuring credibility of the judicial system, however, on the other hand, in case of its improper use, it contains potential danger of turning into a means for exerting pressure on individual judges.
4. **Institutional arrangement of the High Council of Justice and the regulation of its activities** – The High Council of Justice is the only constitutional body responsible for the administration of the judiciary, which encompasses a number of important functions.

Enhancing regulations on the activities of the Council is a prerequisite for transparent, public and impartial operation of the judicial system.

5. **Transparency of the Judicial System** – The principle of transparency presupposes both the public process of decision-making and the publicity and accessibility of the decisions, as a result of the said process. In addition to the transparency of judicial acts adopted by the court, it is important to ensure openness about the steps taken to administer the judiciary. Judicial transparency also implies the existence of forms of active communication between the public and the judiciary.

The project team assigned each of the above mentioned 5 directions a corresponding status based on the extent of their implementation:

1. **Fulfilled** – the activity envisaged in the Action Plan can be marked as fulfilled only in cases when the activity was fully implemented, including all of its aspects. The project team recognized the activity as fulfilled even if its implementation was delayed but it was otherwise completely fulfilled;
2. **Partially fulfilled** – this status is assigned to those activities where one or several aspects of the said activity has been fulfilled however not all the components have been thoroughly implemented (for example a piece of legislation has been drafted but it has not been approved and enacted);
3. **Unfulfilled** – activities, which have not been implemented at all or no effort has been made to start the initial working process, are marked as ‘unfulfilled’.

As of March 2020, the new 2019-2020 Action Plan has not been approved yet, therefore, the second reporting period assesses the state of performance of the activities envisaged in the 2017-2018 Action Plan, which were marked as unfulfilled or partially fulfilled in the previous shadow report, as of October 2018. In assigning relevant performance status to the activities, the project team relied on the following methodological tools:

**Analysis of legislation and policy papers** – one of the most important monitoring instruments was the analysis of current legislative framework, implemented reforms and the practice derived from these developments. For this purpose, relevant legal acts were also examined and analyzed in frames of monitoring. It is noteworthy that the Fourth Wave of the reform<sup>6</sup> was implemented during this reporting period, which also significantly changed the

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6 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 08/02/2017, 5569-1b, [available at: <https://bit.ly/2yf1zoI>; accessed on: 14.04.2020].



legal framework of the previous reporting period and, therefore, deserves special attention in the process of evaluating the activities of the judiciary. Such analysis allowed for reviewing the legal context in relation to each activity.

**Analysis of the Second Progress Report on Strategy and Action Plan Implementation and 2019-2020 Draft Action Plan** – In the summer of 2019, the Second Progress Report of the Action Plan and the 2019-2020 Draft Action Plan was prepared and submitted to interested parties for their comments and opinions. An important source of monitoring was the information provided in the draft of the Second Progress Report on the status of the fulfillment of each activity. The analysis of the new draft Action Plan made it possible to assess the relevance and effectiveness of the goals and activities set out in the document.

**Collection of public information from responsible agencies** – During monitoring, important source of information was the relevant data collected from government bodies identified as responsible agencies to implement activities of the action plan. Therefore, the project team requested public information in several stages from the High Council of Justice, Supreme Court of Georgia and the High School of Justice. The project team asked for information regarding the actions taken by the responsible bodies to implement the activities as well as other documents produced in relation to the said activity related efforts. Responses to the activity-based public information requests were often generalized and did not answer specific questions, which significantly complicated the full monitoring of the implementation of the Action Plan.

**Analysis of secondary sources** – Additional sources of information for monitoring included reports, research and evaluations published by local and international organizations and the Public Defender of Georgia. Analysis of such information helped the project team evaluate the scale of fulfillment of activities and, accordingly, assess the level of achievement of planned programs and goals in a more comprehensive way;

**Monitoring the sessions of the High Council of Justice and the workgroups** – As the High Council of Justice is specified as a responsible agency for many activities and the deliverables produced by the workgroups are reviewed in a Council session format, attending the Council sessions regularly was one of the important sources of information for monitoring purposes. During the reporting period, 3 public working group meetings were held, which were also attended by representatives of the project team. The letters obtained as a result of public information requests also point to internal organizational working group meetings held in a closed format, however detailed information about the content of said meetings was not provided by the High Council of Justice.<sup>7</sup> Neither is the information about the closed meetings and issues discussed accessible on the Council website.

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<sup>7</sup> Letter of the High Council of Justice of January 27, 2020, №94/105-03-გ; Letter of the High Council of Justice of March 10, 2020, №242/668-03-გ.

It is noteworthy that along with the implementation of the five priorities of the Judicial System Strategy and its corresponding Action Plan, the first shadow report also assessed the state of implementation of the adjoining policy documents. In particular, the previous shadow report analyzed the activities in the National Human Rights Action Plan 2018-2020 and the Criminal Justice Reform Action Plan 2018-2022, which corresponded with the 5 directions selected for the purposes of the monitoring report. It could be observed that in most cases there was a clear overlap between the activities established by the Judicial System Action Plan and the activities envisaged in the adjacent Action Plans.<sup>8</sup> Since the new Judicial Action Plan has not been approved and the first shadow report has already reviewed in detail the link between the 2017-2018 Action Plan and the adjacent Action Plans, as well as the implementation status of the said activities, the project team did not study any further the issues related to adjacent Action Plans in the second reporting period.

## Main Findings

The tasks outlined in the Strategy and Action Plan of the Judicial System, as of 2017, largely reflected the challenges facing the judiciary at the time. The document practically covered all key issues, working on which is crucial for ensuring independent, transparent and qualitative justice system. As noted, as of March 2020, the High Council of Justice has not yet approved the 2019-2020 Action Plan – second in order, which indicates that issues envisaged in the Judicial Strategy is not a priority for the Council. Systemic problems prevalent in the judiciary for years logically led to low level of public trust and criticism from professional circles. In this context, the working format created for implementing the Strategy and Action Plan is an important possibility to take effective steps with the involvement of professional groups and use of international expertise for genuine improvements in the sphere of administration of justice. Unfortunately, both previous and the present monitoring reports show that the High Council of Justice does not pay sufficient attention to thorough implementation of the Strategy and the Action Plan and often concrete activities are only formally fulfilled, while its substantive mission – qualitative improvement of administration of justice, remains unattended by agencies responsible for implementation of the Action Plan. This casts shadow on the existence and effectiveness of this format. Despite four waves of reforms implemented in the recent years and number of positive changes, unfortunately, significant systemic shortcomings and challenges remain, timely and effective resolution of which requires radical and fundamental reforms.

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<sup>8</sup> Institute for Development of Freedom of Information (IDFI), the Human Rights Education and Monitoring Center (EMC), implementation report of the Judicial System Strategy and Action Plan – Shadow Report, 2018, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

The study of the Strategy of the Judicial System and its implementation 2017-2018 Action Plan has shown that no effective steps have been taken by the responsible agencies in the last year and a half to address the challenges identified during the first reporting period. Consequently, the problematic issues reviewed in the second reporting period largely coincide with the challenges outlined in the previous shadow report.

The following findings were revealed regarding the implementation of the 2017-2018 Action Plan and the development of the new 2019-2020 Action Plan:

- The 2019-2020 Action Plan and the Second Progress Report have not yet been approved/published. Drafts of the new Action Plan and the Second Progress Report were provided to stakeholders in as early as the summer of 2019 to submit written opinions; Letters received from the High Council of Justice do not indicate the reasons for the delay of the proceedings, nor do they specify the tentative date of approval / publication of these documents;<sup>9</sup>
- The draft Second Progress Report, as well as the one-year Progress Report presented to the public by the High Council of Justice in the previous reporting period, is largely technical in nature and does not contain comprehensive information on the implementation status of the activities;<sup>10</sup>
- Only 3 open working meetings were held in the last year and a half, however, the letter from the High Council of Justice notes that a number of internal organizational meetings of all four working groups were held in a closed format; The letters received as a result of public information requests also indicate that the closed internal organizational working group meetings were held, however detailed information on their progress was not provided.<sup>11</sup> The Council's website also does not show any data on the progress of the meetings and the issues discussed;
- While the interested parties, including the representatives of the international and non-governmental organizations were allowed unhindered attendance to the public meetings of the working group during this reporting year, the rule of the Council, which states that the working group may restrict the attendance on the basis of a voting exercise, is problematic.

9 Letter of the High Council of Justice of January 27, 2020, №94/105-03-с; Letter of the High Council of Justice of February 21, 2020, №184/1498-03-с; Letter of the High Council of Justice of February 21, 2020, №183/501-03-с; Letters of the High Council of Justice of March 10, 2020, №242/668-03-с and №241/667-03-с.

10 The High Council of Justice, draft of the Second Progress Report, reporting period: June 2018 – June 2019, p. 19, obtained via the correspondence of the High Council of Justice №242/668-03-с of March 10, 2020

11 Letter of the High Council of Justice of January 27, 2020, №94/105-03-с; Letter of the High Council of Justice of March 10, 2020, №242/668-03-с.

The following findings were identified regarding the status of the implementation of the 2017-2018 Action Plan activities:

- In relation to the reform of the High School of Justice, 3 out of 10 activities evaluated under this monitoring were marked as fulfilled, 4 were partially fulfilled, and 3 were unfulfilled;
- 1 out of the 18 activities evaluated in the framework of this monitoring related to the appointment and promotion of judges was fulfilled, 7 were partially fulfilled and 10 were unfulfilled;
- In relation to the disciplinary liability of judges, 4 out of 15 activities evaluated in the framework of the monitoring were marked as fulfilled, 3 – partially fulfilled, and 8 – unfulfilled;
- 1 out of the 9 activities evaluated in the framework of this monitoring related to the institutional arrangement and regulation of the activities of the High Council of Justice was fulfilled, 6 were partially fulfilled, and 2 – unfulfilled;
- In terms of transparency of the judiciary, 2 out of 16 evaluated activities were marked as fulfilled, 11 were partially fulfilled, and 3 were unfulfilled.

Accordingly, out of 68 activities discussed during this reporting period, 11 were marked as fulfilled, 31 activities were partially fulfilled, 26 were unfulfilled, and from 2017 to February 2020, out of 92 activities<sup>12</sup> reviewed in both reporting periods, 35 were marked as fulfilled, 31 were partially fulfilled and 26 were unfulfilled.

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<sup>12</sup> In this monitoring period activity 3.2.2.4 (Developing distance learning to attract listeners from regions), which has been considered partially fulfilled in the previous reporting period has not been assessed anew, as in relation to activity 3.1.1.3 (Determining the desirability of the evening teaching and/or other alternative teaching programs), expert expressed the view that full transition to distance learning of the preparatory program for judicial candidates is unacceptable. The expert opinion was discussed by members of the third working group at the session of December 14, 2018 and concluded that introduction of alternative teaching modes for students of High School of Justice was not desirable. Accordingly, in this monitoring period project team did not deem it necessary to assess activity 3.2.2.4. Also, activity 2.1.1.4, which was not granted any status in the previous reporting period, is not counted in the total number of activities.



## Results of the Judicial Reforms and Existing Challenges

Enhancement of the legal framework related to the High School of Justice is especially relevant in the sense that the substantial reform of the unified system of selection and appointment of judges is impossible without ensuring the real independence of this body and improvement of its work.<sup>13</sup>

Reforms implemented in recent years were to certain extent related to the High School of Justice. Within the scope of the “First Wave” of judicial reform, the Chief Justice was excluded from the composition of the Independent Board of the School, the law determined election of the chairperson of the Independent Board by judges, and approval of the members of the Board by the High Council of Justice.<sup>14</sup> Restriction of broad powers of the Chief Justice in connection with the High School of Justice was an important step forward.

The “Second Wave” of the reform was not related to the High School of Justice. Certain positive legislative amendments were enforced within the scope of the “Third Wave”. In particular, the degree of transparency of the School increased, and mandatory publication of information regarding the sessions of the Independent Board and its agenda as well as the decisions of the Board together with session records was established.<sup>15</sup>

Important positive amendments were enforced with regard to the High School of Justice within the scope of the “Fourth Wave” of the reform,<sup>16</sup> in particular:

- The High School of Justice was granted the power to conduct competition for admission of judicial trainees, which increased its functional independence;
- Authority to elect judge members of the Independent Board of the High School of Justice was granted to the Conference of Judges;
- The duration of the training at the High School of Justice was increased from 10 to 16 months;
- The amount of stipend for judicial trainees was increased.

Despite the abovementioned positive amendments, important challenges still exist with regard to the High School of Justice, in particular:

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13 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 23, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

14 The High Council of Justice of Georgia, Implemented Reform, [available at: <https://bit.ly/3a2JSWw>; accessed on: 14.04.2020].

15 Law of February 8, 2017 on amending the Law of Georgia on the High School of Justice, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020], (At present, the provisions envisaged by this law are reflected in the Organic Law on Common Courts).

16 Organic Law on Common Courts, Articles 66<sup>3</sup>, 66<sup>14</sup>, 66<sup>21</sup> and 66<sup>17</sup>, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

- As a result of the amendments enforced within the scope of the “Fourth Wave”, the High Council of Justice was granted broad power to elect 4 members of the Independent Board of the School, which creates the risk of the influence of the Council over the work of the High School of Justice;
- Within the scope of the “Fourth Wave” of the reform, the authority to elect the Chairperson of the Independent Board of the School was granted to the High Council of Justice, which should be negatively assessed;
- The issues related to the competition for admission to the High School of Justice are regulated by the Charter of the School and not at the legislative level. Absence of the reasoned decisions and the appeal mechanism at the legislative level is problematic;
- The existing legal framework does not ensure an objective and transparent process for selecting the members of the Board of Teachers of the High School of Justice.

## Implementation of the Judicial System Action Plan for 2017-2018

As of October 2018, out of 17 activities envisaged by the judicial system action plan for 2017-2018 6 activities were fulfilled, 3 activities – partially fulfilled and 8 activities – unfulfilled<sup>17</sup>. The present report evaluates the implementation of those 10 activities which were granted the status “unfulfilled” or “partially fulfilled” as of October 2018.

### 3.1.1 Creating appropriate preconditions for employing the candidates with the best potential

The judicial system action plan for 2017-2018 envisaged four activities within the scope of creating appropriate preconditions for employing candidates with the best potential. Within the scope of this monitoring two activities related to the reform of the High School of Justice were assessed:

*3.1.1.1. Identify and react to the hindering factors of employing candidates with the best potential (2017, 2018) – **Partially Fulfilled**;*

*3.1.1.2. Providing adequate stipend to the judicial trainees of the High School of Justice (2018) – **Fulfilled**.*

<sup>17</sup> Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

**3.1.1.1.** Regarding this activity, the draft progress report<sup>18</sup> provides that the reform group created by the Parliament discussed the hindering factors of employing judges with the best potential and revealed that the amount of stipend for judicial trainees constitutes one of the hindering factors. The draft report indicates that increasing the budget of the High School of Justice by the Law on the “State Budget of Georgia of 2019” enabled the School to double the amount of stipend. Moreover, the amendments made to the Organic Law on Common Courts determined that the amount of state stipend for the trainees of the High School of Justice should not be less than 1/3 of the minimal salary of a judge of the first instance court.<sup>19</sup>

The amount of stipend constituted one of the hindering factors and not the only one. In addition, providing adequate stipend to the judicial trainees of the High School of Justice is a separate activity in the action plan. Therefore, it is necessary to identify other hindering factors and take relevant measures. Increasing the amount of stipend only cannot be considered as a fulfillment of the activity 3.1.1.1.

Moreover, it should also be noted that the document, which would thoroughly discuss identified hindering factors and would suggest relevant vision based on the analysis of these factors, is not available, which should be negatively assessed.

The draft report also mentions summer and winter schools on justice, which serves the aim of enhancing qualification of court officials and making students interested in the judicial system. Within the scope of summer and winter schools, trainings are held on the independence of justice, case-law of the European Court with regard to freedom of expression, prohibition of discrimination and right to a fair trial as well as on child rights, restorative justice and alternative dispute resolution.

Although using the abovementioned means to attract and encourage candidates with the best potential should be positively assessed, within the scope of this activity identifying and reacting to hindering factors is necessary. It is important to consider this issue thoroughly and systemically, and to find a way to solve the existing problems efficiently. Therefore, at this stage activity 3.1.1.1. can be considered partially fulfilled.

**3.1.1.2.** With regard to this activity, as mentioned above, the budget of the School was increased by the Law on the “State Budget of Georgia of 2019” which enabled the School to

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18 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 35, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-ᄁ.

19 Organic Law of Georgia on Common Courts, Article 6617, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].



double the amount of the stipend of the trainees. In particular, the stipend of the judicial trainee became 2000 GEL.<sup>20</sup> Therefore, activity 3.1.1.2 is considered to be fulfilled.

Moreover, it should be noted that one of the obstacles to attracting candidates with the best potential is also the risk that the graduates of the High School of Justice may not be appointed as a judge after successful completion of the course. Under the current legislation, when deciding on the selection of judges, the High Council of Justice is not obliged to take into account the school's assessment, or to justify why they take or do not take into consideration the school's evaluation of the candidate when assessing a candidate based on the criteria envisaged by the Organic Law. Therefore, the role of the High School of Justice in the process of appointment of judges is minor. Unfortunately, the action plan does not directly envisage increasing the role of the High School of Justice in the process of appointment of a graduate to the position of a judge.

### 3.2.1 Improving the process of admission of judicial trainees

The judicial system action plan for 2017-2018 envisaged 5 activities within the scope of improving the process of admission of judicial trainees, out of which 4 activities were assessed within the scope of the monitoring:

- 3.2.1.1. *Improvement of judicial qualification examination by increasing the duration of the training period and improvement of teaching methods (2017) – **Fulfilled;***
- 3.2.1.2. *Upgrading the criteria and improving the procedure for selection of the trainees (2017) – **Partially fulfilled;***
- 3.2.1.4. *Improvement of interview process of trainees (including questions) (2018) – **Unfulfilled;***
- 3.2.1.5. *Conducting research on the expediency of the introduction of a Master's Course in Judicial Studies (2018) – **Unfulfilled.***

Improving the process of admission of judicial trainees, which is essentially important for reforming the unified system of selection and appointment of judges, does not envisage creation of an efficient mechanism for appealing against the decision on refusal to enroll. Moreover, it is unclear whether the improvement of selection procedure includes regulation of cases of conflict of interest and creation of legislative guarantees against improper communication.

**3.2.1.1.** It should be noted that improvement of qualification examination, increasing the du-

<sup>20</sup> Letter of the High School of Justice of January 31, 2020, N02/2586.

ration of the training period and improvement of teaching methods are associated with three different challenges, therefore, it is controversial that they are unified under one activity. In addition, the relevance of this activity to the corresponding program of the action plan is problematic. Improvement of judicial qualification examination<sup>21</sup> is related to the improvement of the admission process of judicial trainees, however, increasing the studying term and improving teaching methods serve the aim of improving the teaching process. Therefore, it is unclear why these two issues are envisaged within the program of improvement of the admission process. Nevertheless, within the framework of the monitoring, these issues were considered as one activity.

As a result of legislative amendments enforced within the scope of the “Fourth Wave” of judicial reform, the duration of the training period at the High School of Justice increased to 16 months,<sup>22</sup> which constitutes a positive novelty. For those trainees, who have at least 10 years’ experience working as a head of a structural subdivision of the apparatus of the High Council of Justice, head of apparatus or its structural subdivision of a common court, a judge’s assistant, a secretary of a court session, an investigator, a prosecutor and/or an attorney, the duration of training is 12 months.<sup>23</sup>

According to the draft progress report, within the scope of the Twinning project, a group of French and Latvian experts with the involvement of Georgian judge-experts renewed the teaching program of the trainees of the High School of Justice, which includes a component of electronic teaching, introduction of a introductory teaching stage with the aim of equalizing the knowledge of trainees with different specialization, internship in different instances of the court and beyond the court. Moreover, competences, which the judges should possess, have been determined.<sup>24</sup> Therefore, activity 3.2.1.1. is considered to be fulfilled.

**3.2.1.2.** With regard to this activity, the draft progress report refers to the amendments of the “Fourth Wave”, which prescribed the criteria for admission of trainees of the High School of Justice as well as the rule for determining the number of trainees to be admitted.<sup>25</sup> Under current legislation, the result of a judicial qualification examination, qualification of a candidate, legal analysis, reasoning, oral communication and expression skills are taken into account when selecting the trainees<sup>26</sup>, which constitutes a positive novelty. Moreover, conducting

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21 This activity was fulfilled during the previous monitoring period, see *Institute for Development of Freedom of Information IDFI, Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018*, pp. 27-28, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

22 Organic Law of Georgia on Common Courts, Article 66<sup>21</sup>, paragraph 1, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

23 Ibid, paragraph 2.

24 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, pp. 42-43, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-გ.

25 Ibid, p. 41.

26 Organic Law of Georgia on Common Courts, Article 66<sup>14</sup>, Paragraph 2, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

the competition by the High School of Justice instead of the High Council of Justice should be positively assessed, which is an important step towards strengthening the independence of the School and a proper division of functions between these two bodies.

Despite the positive amendments, regulation of the form of the competition for admission of trainees, registration of candidates and other competition-related issues by the Charter of the School remains as an important challenge. Regulation of these significant issues by secondary legislation should be negatively assessed. In order to conduct the competition in a fair and objective manner, determination of the major principles at the legislative level is necessary. Such an approach ensures more solid guarantees as well as creates the possibility for involvement of the society and for discussions when considering this issue by the parliament. It should also be noted that in the current legal framework, non-justification of decisions made as a result of a competition and absence of an efficient mechanism for appealing the decision is especially problematic.

It is advisable that the issues related to the competition be clearly regulated by the law, and the decisions made as a result of the competition – properly substantiated. In the absence of appropriate legislative regulation, the risk of making arbitrary decisions in the selection process of the trainees is increasing, and an important public interest of conducting objective and transparent competition is damaged. Moreover, an efficient mechanism for appealing decisions made as a result of a competition should be available. Taking into account existing deficiencies, activity 3.2.1.2. can be considered partially fulfilled.

**3.2.1.4.** With regard to this activity, the High Council of Justice refers to the amendments made within the scope of the “Fourth Wave” of judicial reform, which determined the criteria to be taken into account when selecting the judicial trainees.<sup>27</sup> However, no measures have been taken with regard to improvement of the interview process. Therefore, at this stage, activity 3.2.1.4 is considered unfulfilled.

**3.2.1.5.** This activity has not been fulfilled to this date as no research has been conducted on the expediency of the introduction of a Master’s Course in Judicial Studies.<sup>28</sup>

Overall, monitoring of the implementation of the action plan reveals that despite certain steps forward, regulation of the competition-related issues by the Charter, making decisions without justification and the absence of an efficient appeal mechanism constitute a significant obstacle for achieving the aim of improving the admission process of trainees.

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27 Letter of the High Council of Justice of February 10, 2020, N141/138-03-00.

28 Ibid.

### 3.2.2 Improvement of the teaching process

The judicial system action plan for 2017-2018 envisaged four activities within the framework of improvement of the teaching process. Within the scope of this monitoring two activities were assessed:

*3.2.2.2. Planning and implementing measures in order to enhance teaching quality in accordance with the results of the study (2018) – **Fulfilled**;*

*3.2.2.3. Improvement of the judicial trainees' internship system (2018) – **Partially fulfilled**.*

**3.2.2.2.** With regard to this activity, the High School of Justice provided that based on the recommendations prepared with the involvement of French, Latvian and Georgian judge-experts, the judicial program of trainees has been renewed and those competences have been determined, which the judges should possess. Moreover, the component of electronic teaching, internship in different instances of the court and beyond the court have been envisaged in the renewed program. According to the information provided by the School, recommendations offered by the experts with regard to the teaching methods have been reflected in the existing 10-month program as far as possible. The letter also says that the Independent Board of the School will approve teaching and internship programs based on the legislative amendments enforced within the scope of the “Fourth Wave” of the reform<sup>29</sup>. The draft progress report provides that foreign experts also visited in December 2018, who renewed the syllabi of the teaching program together with Georgian judge-experts.<sup>30</sup> Therefore, activity 3.2.2.2 is considered fulfilled.

**3.2.2.3.** According to the draft progress report<sup>31</sup>, within the scope of this activity, in October 2018 a French expert visited the School, who prepared a report which included relevant recommendations regarding increasing the duration of the internship, introducing internship in different instances of the court, internship beyond the court, and training of internship coordinators. However, according to the information provided by the School, the Independent Board has not yet approved a renewed internship program.<sup>32</sup> Therefore, this activity should be considered partially fulfilled.

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29 Letter of the High School of Justice of January 31, 2020, N02/2586.

30 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 43, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-ᄁ.

31 Ibid.

32 Letter of the High School of Justice of January 31, 2020, N02/2586.

### 3.2.4 Improvement of the continuous learning system for court officials and other employees of the system

The judicial system action plan for 2017-2018 envisaged five activities within the framework of improvement of the continuous learning system for court officials and other employees of the system. Within the scope of this monitoring process, one activity was assessed which is related to the institutional reform of the High School of Justice:

*3.2.4.5. Assessment of the institutional independence, management and administration of the High School of Justice and providing recommendations (2018) – **Partially fulfilled.***

Assessment of the institutional independence, management and administration of the High School of Justice and the elaboration of the recommendations is one of the activities envisaged within the scope of improvement of the continuous learning system for court officials and other employees of the system, however, the relationship between this activity and the program is unclear.

**3.2.4.5.** With regard to this activity, amendments made within the scope of the “Fourth Wave” of judicial reform should be mentioned, in particular, granting the power to the High School of Justice to conduct competition for admission of trainees, which constitutes a step forward in terms of strengthening institutional independence of the School.<sup>33</sup>

The “Fourth Wave” of the reform also amended the rule for selection of the members of the Independent Board. According to the current legislation, the Independent Board consists of 7 members.<sup>34</sup> 3 members, each representing one of the three instances of common courts, are elected by the Conference of Judges, which should be positively assessed. 2 members of the Independent Board holding the position of a professor, associated professor or assistant professor at a higher educational institution accredited in accordance with the legislation, who do not work at a public institution, are elected by the High Council of Justice upon nomination of 3 members of the Council. Two members of the Independent Board (1 judge member and 1 non-judge member) are elected by the Council from its own members for the duration of their term of office.<sup>35</sup> Therefore, 4 out of 7 members of the Independent Board

<sup>33</sup> Letter of the High Council of Justice of February 10, 2020, N141/138-03-∞.

<sup>34</sup> Organic Law of Georgia on Common Courts, Article 66<sup>3</sup>, paragraph 1, [available at: <https://bit.ly/2K5YbyT>, accessed on: 14.04.2020].

<sup>35</sup> *Ibid*, paragraph 4.

are elected by the High Council of Justice within the scope of a broad discretion, which significantly strengthens its influence over the work of the School and therefore, should be negatively assessed.

Granting the power to the High Council of Justice to elect the Chairperson of the Independent Board from the members elected by the Conference of Judges, should also be negatively assessed.<sup>36</sup> It is important that the Chairperson of the Independent Board be elected by the members of the Independent Board by the majority of votes in order to decrease the influence of the High Council of Justice over the School.

Despite certain positive amendments enforced within the scope of the “Fourth Wave”, the current legislation does not ensure proper institutional independence of the School. The Independent Board, which determines main activities of the School and supervises the educational process, should be properly institutionally separated from the Council. Therefore, activity 3.2.4.5 should be considered partially fulfilled.

### 3.2.5 Ensuring high qualification of judges and invited specialists

The judicial system action plan for 2017-2018 envisaged four activities within the framework of ensuring high qualification of judges and invited specialists. Within the scope of the monitoring process the following one activity was assessed:

*3.2.5.1. Improving the selection process of judges and invited specialists (2017) – Unfulfilled.*

**3.2.5.1.** This activity, which should be fulfilled in 2017, has not been fulfilled yet. According to the draft progress report, within the scope of the Twinning project, when visiting Georgia, Croatian expert shared the experience of European countries to the representatives of the High School of Justice with regard to the selection of teachers at the judicial training institutions. The work with the aim of improving the selection process of the trainers is ongoing<sup>37</sup>.

In the light of above, activity **3.2.5.1.** cannot be considered fulfilled. The procedure for selecting teachers is not properly regulated, which constitutes a significant shortcoming of the

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<sup>36</sup> Ibid, paragraph 5.

<sup>37</sup> The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 48, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-გ.

existing legal framework. Taking into consideration the fact that the role of teachers in training of the judicial trainees and in-service training of judges is tremendous, their selection process should be conducted objectively and transparently. Therefore, taking efficient and timely measures in this direction is of particular importance.

## Conclusion

The results of the action plan monitoring revealed that in the reporting period certain positive amendments were implemented with the aim of reforming the High School of Justice, however, several serious deficiencies still remain as a challenge.

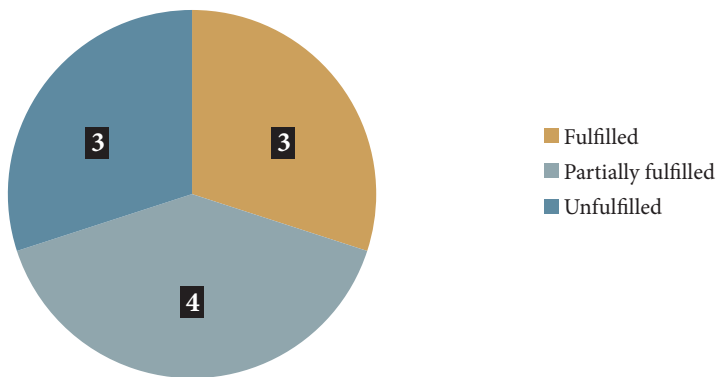
The Independent Board of the High School of Justice, which determines the main activities of the School and supervises the educational process, should be protected from the Council's influence. Despite the amendments enforced within the scope of the "Fourth Wave" of reform, proper independence of the School is not ensured. The absence of clear rules at the legislative level for conducting competition for admission to the School remains as an important challenge.

Unfortunately, the draft of the new action plan does not envisage strengthening the independence of the High School of Justice as a separate program. It is important to reflect this program in a new action plan and within its scope, to amend the rule for selecting the members of the Independent Board and its Chairperson.

In the light of above, it is important for the working group and the responsible bodies to carry out the work in the following directions:

- Identify and react to the hindering factors of employing candidates with the best potential;
- Regulate competition for selection of trainees at the legislative level, ensure justification of the decisions made as a result of the competition and create an efficient appeal mechanism;
- Conduct research on the expediency of the introduction of a Master's Course in Judicial Studies;
- Improve the selection process of teachers and invited specialists;
- Reduce the influence of the High Council of Justice in the process of selecting the members of the Independent Board, which is necessary for increasing autonomy of the School and ensuring its independence.

Fulfillment Status of the activities related to the Reform of the High School of Justice as envisaged by the Judicial System Action Plan for 2017-2018<sup>38</sup>



<sup>38</sup> This chart indicates the fulfillment status of those activities only, which were assessed during this monitoring period.



**Selection and Appointment of Judges  
and other Career Advancement Issues**

## Results of the Judicial Reforms and Existing Challenges

The selection and appointment of judges is the most important constitutional authority exercised by the High Council of Justice, in fact, the practice largely determines the degree of public confidence in the judiciary. The four waves of judicial reforms have introduced many significant positive changes in this direction; however, the observation on the process of selection and appointment of judges shows that the career advancement policy of the judicial system largely remains flawed.<sup>39</sup>

While it is true that the civil society evaluated the “First Wave” as an important step forward, considering the fact that at the initial stage of reform, career advancement issues were not included in priority directions relevant to the systemic improvement of the judiciary, the local non-governmental organizations emphasized on the necessity to continue pursuing the career advancement related reforms.<sup>40</sup>

One of the most important changes in this direction is related to the introduction of the principle of lifetime appointment of judges, as a result of the “Second Wave” of judicial reform.<sup>41</sup> The constitutional amendments, which took effect as the President-elect swore an oath of office in 2014,<sup>42</sup> instituted the possibility of appointing a judge to a term of office for a probationary period of up to 3 years before their appointment for life. Accordingly, in order to introduce the system of appointment of judges for a period of probation, it became imperative to establish the relevant criteria and procedures for evaluating the work of judges, appointed for three years. Legislative changes brought forward in the framework of “Second Wave” reforms confirmed the criteria for establishing good faith practices and assessing the competence of judges. In addition, the Organic Law on Common Courts secured a rule for appeals against the decision of the High Council of Justice concerning their refusal to approve lifetime appointment of a judge, and, for this purpose, the Qualification Chamber was established at the Supreme Court of Georgia.<sup>43</sup>

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39 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 46, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020] see also GRECO, Fourth evaluation round [available at: <https://rm.coe.int/16806dc116>; accessed on 14.04.2020].

40 Transparency International Georgia, Assessment of the Georgian Judicial System (2012 – 2016), 2016, p.7 [available at: <https://bit.ly/35hh1gn>; accessed on: 14.04.2020].

41 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/08/2014, 2647-სს, [available at: <https://bit.ly/34BqdML>, accessed on: 14.04.2020].

42 Constitutional Law on Changes and Additions to the Constitution, [available at: <https://bit.ly/3cZ6MQr>; accessed on: 14.04.2020].

43 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/08/2014, 2647-სს, [available at: <https://bit.ly/34BqdML>, accessed on: 14.04.2020].

The enactment of the rule for appointing a judge for probation period has been critically assessed by both the local non-governmental organizations<sup>44</sup>, and the Venice Commission.<sup>45</sup> The main subject of criticism was the recording in the Rule, which allowed the possibility to study the judicial acts issued by a particular judge, in the process of decision-making concerning their appointment for a vacant position.<sup>46</sup> The said directive could negatively affect the individual judge's independence and impartiality, as well as have a "radiant effect" on the entire judiciary.<sup>47</sup>

One of the most important innovations of the "Third Wave" reform of the justice system was the determination of the criteria and sub-criteria for selecting candidates for judges, including evaluation characteristics and the principles of evaluation, on the legislative level. Amendments to the Organic Law regulated the procedures for inspecting the documents submitted by the candidates, as well as recorded the rules for interviewing the candidate and collecting/obtaining candidate-related information. In addition, the obligations of members of the High Council of Justice and other issues concerning interviewing the candidates have also been addressed. The third wave reform established the possibility to challenge both the Council decisions on life-time appointment of judges and denials to appoint them for the term of three years before the qualification chamber of the Supreme Court of Georgia. It should be noted that until 2017, the legislation did not regulate the issue of recusal of a member of the High Council of Justice by a candidate for a judge. With the amendments adopted on the basis of the Third Wave reforms, the candidate was given the right to submit a substantiated motion to recuse a member of the High Council of Justice of Georgia, on the grounds of conflict of interests. In addition, the law provides for the obligation of a member of the Council to declare in advance the existence of a conflict of interests and not to participate in the decision-making process concerning the appointment of a candidate for the position of a judge.<sup>48</sup>

In addition to the above, the "Third Wave" reform has improved the rules concerning the judges' transfers to another court and has provided additional guarantees against arbitrary approaches to such transfers and their resignation due to a personal statement. In order to min-

44 The Coalition for Independent and Transparent Judiciary, Coalition's position on the appointment of judges on a probation period, 2013, [available at: <https://bit.ly/3cwqsvh>; accessed on: 14.04.2020].

45 Joint Conclusion of the Venice Commission and the General Directorate of Human Rights and the Rule of Law of the Council of Europe N 773/2014 on the Draft Law on Amendments to the Organic Law of Georgia on Common Courts, Strasbourg, 2014, [available at: <http://bit.ly/2bKgOJQ>; accessed on: 14.04.2020].

46 See also changes made to Article 364, para 3, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/08/2014, 2647-6b, [available at: <https://bit.ly/34BqdML>, accessed on: 14.04.2020].

47 Transparency International Georgia, Assessment of the Georgian Judicial System (2012 – 2016), 2016, p. 8, [available at: <https://bit.ly/35hh1gn>; accessed on: 14.04.2020].

48 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 08/02/2017, 255-IIb, [available at: <https://bit.ly/2yf1zoI>, accessed on: 14.04.2020].

imize the risks of influence on judges, when considering the issue of transfers, the decision of the High Council of Justice made it mandatory to invite a relevant judge to the hearing.<sup>49</sup>

Despite some significant and progressive changes, the final version of the Third Wave reform package did not reflect many of the substantive recommendations elaborated by the local NGOs<sup>50</sup> and the Venice Commission<sup>51</sup>. In particular:

- The increase of transparency of the judges' selection process, through ensuring regulation, under the Organic Law, of the interviews with candidates for judges and transparency of the points-based system (scores obtained throughout the competition), as well as the publicity of the evaluations made by the members of the Council.
- The abolition of the probationary period of judges;
- The rule for electing the Chairpersons of the court by the judges of the same court, instead of the Council;
- Regulation of the interview with the candidates for judges and the relevant points obtained as a result of the competition, as well as the evaluation of the guarantees set forth by the members of the Council, in accordance with the Organic Law of Georgia, in order to increase the transparency of the process of selection and appointment of judges;
- Substantiation of the decision on the candidates for judges, which would make the mechanism of appeals more flexible;
- Regulation of selection criteria and procedures for transferring a judge to another court without a competition (for example, when several judges express their will to be transferred in another court on a vacant position etc.) stipulated by the Organic Law;
- The issue of defining a minimum number of members of the Supreme Court (at least 16 judges), by the Constitution, instead of the Organic Law, as well as imposing an upper limit and restricting the powers of the Plenum in resolving this issue.

When reviewing the reforms, the new reality created by the February 15, 2017 decision of the Constitutional Court of Georgia is important to note. In particular, the decision invalidated the rule of the Organic Law of Georgia on Common Courts, which concerned the appointment of those existing or former judges for the probation period of 3 years, who had no less than 3 years of judicial experience.<sup>52</sup>

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49 Ibid.

50 Coalition Opinions on "Third Wave" of Judicial Reform Coalition for Independent and Transparent Justice 2016, [available at: <https://bit.ly/3cXJN8o>; accessed on: 14.04.2020]; Transparency International Georgia, Assessment of the Georgian Judicial System (2012 – 2016), 2016, p. 8, [available at: <https://bit.ly/35hh1gn>; accessed on: 14.04.2020].

51 Joint Conclusion of the Venice Commission and the General Directorate of Human Rights and the Rule of Law of the Council of Europe N 773/2014 on the Draft Law on Amendments to the Organic Law of Georgia on Common Courts, Strasbourg, 2014, [available at: <http://bit.ly/2btDWgo>; accessed on: 14.04.2020].

52 See, the decision of the Constitutional Court of Georgia of February 15, 2017 in the case: O. Jorbenadze v. Parliament of Georgia, [available at: <https://bit.ly/2T0rQyE>, accessed on: 14.04.2020].

Constitutional changes implemented in 2017 was an important step in for judicial reforms, which established general rules on life-time appointment of judges, until the age as envisaged in the Organic Law is reached.<sup>53</sup> This general rule, namely on life-appointments was extended to judges of the Supreme Court<sup>54</sup> and the probation period for judges was abolished. In the concluding observations, the Venice Commission welcomed these changes.<sup>55</sup>

However, it should be noted that the transitional provisions of the constitutional law contain exceptions to the general Rule for abolition of the probationary period of judges. In particular, until December 31, 2024, a person with zero judicial experience may be appointed to the position of a judge for a period of 3 years before being appointed for life.

After the constitutional law, significant changes in the judiciary continued with the “Fourth Wave” of judicial reform. The High Council of Justice was obligated to publicize a justification for lifetime appointment of a district/city, appellate court judges. The justification should include a description of the procedure and a description of the person concerned, including the points he/she has accumulated and a concluding statement on their good faith. The dissenting opinion of a member of the High Council of Justice on the lifetime appointment of a judge at district/city court, as well as at the Court of Appeals shall also be published, in an obligatory manner.<sup>56</sup>

As a result of the “Fourth Wave” reforms, the circle of issues, concerning which the High Council of Justice may apply the rules of the Organic Law of Georgia on Common Courts governing the conflict of interest, were expanded and accordingly, the issues of recusal of a member of the Council of Justice in the process of making these decisions have been refined.<sup>57</sup>

53 The Constitutional Law of Georgia of October 13, 2017 on Amendments to the Constitution of Georgia, which came into force from the moment of taking the oath by the President of Georgia elected as a result of the 2018 Presidential Elections of Georgia: [available at: <https://bit.ly/3dbYyor>; accessed on: 14.04.2020].

54 Before enacting these changes, Supreme Court Justices were appointed for the term of 10 years, see subparagraph 2 of article 90 of the Constitution as of December 16, 2018.

55 European commission for democracy through law(Venice commission), opinion on the draft constitutional amendments adopted on 15 December 2017 at the second reading by the parliament of Georgia, 14, [available at: <https://bit.ly/3aNRFI7>; accessed on: 14.04.2020].

56 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 13/12/2019, 5569-1b, [available at: <https://bit.ly/2V8oVoQ>, accessed on: 14.04.2020].

57 In particular, conflict of interest regulation rules apply not only to the judicial selection / appointment, but also in the cases, when the Supreme Council of Justice should decide on the promotion of judges, imposing judicial disciplinary responsibility, as well as appointment of a member of the High Council of Justice at High School of Justice Independent Council and Prosecutorial Council, or any other act. In addition, the draft Organic Law explicitly stipulates that the circle of persons (list of relatives) who are participating in the judges’ competition, the member of the council should not participate in the competition for the vacant position of judge. Also, the Organic Law stipulates that the member of the High Council of Justice of Georgia may not be recused due to his /her opinion regarding the abstractly defined circle of persons, see also Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 13/12/2019, 5569-1b, [available at: <https://bit.ly/2V8oVoQ>, accessed on: 14.04.2020].

Along with the above-mentioned significant positive legislative directives, minor adjustments have been made to the rules for electing chairpersons. In accordance with the Organic Law on Common Courts, the Chairperson and Deputy Chairperson of the Court of Appeals, as well as the Chairperson of the District / City Court, are appointed by the High Council of Justice. The Fourth Wave<sup>58</sup> did not substantially change this rule, despite the well-founded demand of the civil sector, it only imposed an obligation on the Council of Justice to consult with the judges of the court at which the chairman was to be appointed, however, it did not become mandatory to consider the opinion of the said judges, which was negatively assessed by NGOs.<sup>59</sup>

Despite the Four Waves of reforms, the existing regulation on the selection and appointment of judges still fails to meet the requirements of objectivity, substantiation, merit-based decision making and transparency. The illustration of this the judicial appointment process from December 2018 to December of 2019, which attracted harsh criticism of both domestic and international organizations.<sup>60</sup> The following challenges related to the selection and appointment of judges and other career advancement issues are particularly noteworthy:

- The procedures related to selecting/appointing or other decisions concerning judicial office, established by Organic Law does not ensure against arbitrary use of legislative provisions by the Council;
- The obligation to substantiate established by the Fourth wave of judicial reform only extended to positive decisions on judicial appointments;
- Under the current law, a candidate is entitled to appeal a decision on the refusal of their appointment on the position of a judge, although the process of a points-based assessment of a candidate by the High Council of Justice is not subject to appeal;
- According to the decision of the High Council of Justice,<sup>61</sup> interviews with candidates for judges are held at a closed session of the High Council of Justice, which fails to ensure a transparent process of selection of judges;
- The weight the interview points in the overall evaluation of the candidate has not been determined, which clearly allows arbitrariness at the interview stage;
- The Chairpersons of the courts are appointed by the High Council of Justice through a vague and ambiguous procedure.
- Judges are promoted in the absence of a proper and effective rule for judicial work assessment;
- The mechanisms for promoting judges and transferring them to the higher instance

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58 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 13/12/2019, 5569-Іb, [available at: <https://bit.ly/2V8oVoQ>, accessed on: 14.04.2020].

59 The Coalition for Independent and Transparent Judiciary, Conclusions on Changes made to Organic law on Common Courts of Georgia; For more on this, see. [Available at: <https://bit.ly/2VPn74p>; accessed on: 14.04.2020].

60 See in details below – Comment on activity 1.1.1.3.

61 Decision of the High Council of Justice of Georgia, №1/308 [available at: <https://bit.ly/3aNXa9J>]; accessed on: 14.04.2020].

courts, without competition, are identical in content, making it impossible to have a clear and ambiguous distinction between the two.

- Rules for appointment and promotion of judges, without competition, are not adequately regulated through the legislation.<sup>62</sup> As of today, the decisions of the High Council of Justice on the transfer of judges, without competition, are made without any substantiation, through vague and formal procedures;<sup>63</sup>
- The goals of the Judicial Periodic Evaluation System are not specific enough. They are more focused on the judiciary, in its entirety, rather than on the evaluation of the activities of an individual judge. The existing model is mainly based on quantitative criteria.

## Implementation of the Judicial System Action Plan for 2017-2018

The programs and the corresponding relevant activities, envisaged in the Judicial Strategy and the Action Plan, concerning appointment/selection of judges and other career advancement issues, largely correlated with the existing challenges in relation to the appointment/selection and promotion of judges. However, it should be noted that in the first reporting period, only 5 out of 23 activities, related to the selection, appointment and promotion system strengthening, reviewed by the project team, were marked as fulfilled, and 3 were partially fulfilled.<sup>64</sup> This chapter will discuss the 18 activities that have been granted unfulfilled or partially fulfilled status in the previous reporting period.

### 1.1.1. Constitutional and legislative endorsement of independence of courts

*1.1.1.1. Abolition of the probation period for judges (2019) – Partially fulfilled*

*1.1.1.3. Improvement of the rules, criteria and procedures of electing Supreme Court judges and designation of the role of the High Court of Justice in the process of appointing judges in Supreme Court (2017-2018) – Partially fulfilled*

**1.1.1.1.** 2017-2018 Constitutional amendments established rules for lifetime appointment of judges in all instance courts, however, as the full enactment of the general rule for lifetime ap-

62 Article 37 of Organic Law on Common Courts [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

63 Monitoring Report of the High Council of Justice N4, Georgian Young Lawyers Association, Transparency International-Georgia, 2016, [available at: <http://bit.ly/2bx4dd4>; accessed on: 14.04.2020].

64 „The Institute for Development of Freedom of Information IDFI”, “Human Rights Education and Monitoring Center”, Implementation of the Judicial Strategy and the Action Plan – Shadow Report 2018, p. 68, [Available at: <https://bit.ly/35cvlXl>; accessed on: 14.04.2020].

pointment of judges adopted after the constitutional amendments has been postponed till the end of 2024, the said activity, as in the first monitoring report,<sup>65</sup> should be marked as partially fulfilled.

**1.1.1.3.** The second draft progress report refers to the 2019 changes implemented by the Council, which regulated the rule for appointment/selection of judges at the Supreme Court.<sup>66</sup> However, the draft progress report fails to mention the long process that preceded the said amendments. In particular, in accordance with the amendment adopted in the framework of the 2017 constitutional reform, by the end of 2018 the Organic Law determined that the High Council of Justice and not the President of Georgia shall be mandated to nominate the candidates for Supreme Court to the Parliament.<sup>67</sup>

Afterwards, in December 2018, the Council submitted to the Parliament a list of 10 judicial candidates, compiled by several judges behind closed doors, without considering any substantial legislative changes, such as determining the selection proceedings on the legislative level. This process was heavily criticized by the civil society.<sup>68</sup> As a result of protests by various public groups, the Speaker of Parliament deferred the process till the Spring Session of Parliament. Later, the above-mentioned judicial candidates withdrew their candidacies.<sup>69</sup> Against this background, a working group was set up in the parliament to develop a detailed rule for the selection of Supreme Court judges. However, over time, it became clear that the draft law was not intended to establish a merit-based approach in the selection process of judges and to conduct the process transparently and impartially, and its sole purpose was to superficially improve the process in light of criticism from civil society and international organizations.<sup>70</sup>

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65 “The Institute for Development of Freedom of Information IDFI”, “Human Rights Education and Monitoring Center”, Implementation of the Judicial Strategy and the Action Plan – Shadow Report 2018, pp. 49-51 [Available at <https://bit.ly/35cviXI>; accessed on:14.04.2020].

66 The High Council of Justice, draft of the Second Progress Report, reporting period: June 2018 – June 2019, pp. 8-9, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

67 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts [available at: <https://bit.ly/2YiaUqF>; accessed on: 14.04.2020].

68 Coalition for Independent and Transparent Judiciary, The Coalition is calling on the Parliament to immediately elaborate rules for the selection of the Supreme Court judges, [available at: <https://bit.ly/2WhhTh8>; accessed on: 14.04.2020].

69 Coalition for Independent and Transparent Judiciary, The Coalition’s letter to the Venice Commission and OSCE/ODHIR on the draft law on selection of Supreme Court justices [Available at <https://bit.ly/2y3s0Ox>; accessed on:14.04.2020].

70 The majority of the group were, again, the members of the High Council of Justice and judges, moreover, different professional and interested circles were not fairly represented in the working group. Initially, the “Coalition for Independent and Transparent Judiciary” was involved in the process and the Coalition submitted its written opinion regarding the procedural soundness of the selection procedures, which, among other sources, was based on the recommendations elaborated by the US Embassy and the EU Mission. Shortly after, the Coalition left the working group see Coalition for Independent and Transparent Judiciary, The Coalition Left the Working Format offered by the Speaker of Parliament of Georgia, [available at: <https://bit.ly/2YgKOEw>; accessed on: 14.04.2020].



In accordance with the draft law developed by the working group, on May 1, 2019, an amendment was made to the Organic Law of Georgia on Common Courts,<sup>71</sup> which established:

- Selection of a judge of the Supreme Court on the basis of criteria of integrity and competence;
- Procedures on selection of candidates, to be nominated to the Parliament for appointment on the position of Supreme Court Judge, by the High Council of Justice; Collection of information regarding the candidates, holding hearings by the Council and other procedural issues.

The views presented by authoritative international organizations regarding this draft law, largely coincided with critical standpoint of the Coalition.<sup>72</sup>

Following the adoption of the relevant by-laws, in accordance with the amendments to the Organic Law, by the High Council of Justice,<sup>73</sup> on May 10, 2019, the procedure for selecting candidates, to be approved by the Parliament, for the position of Supreme Court Judge, began.<sup>74</sup> Several important, problematic issues have emerged during this process, which questioned the transparency and legitimacy of nominating the candidates.<sup>75</sup> It should be noted that based on the deficiencies detected in the selection process, on November 1, 2019, the Public Defender filed a constitutional complaint with the Constitutional Court and requested that the rule for selection of Supreme Court judicial candidates by the High Council of Justice, to be approved by the Parliament, be declared unconstitutional.<sup>76</sup> In December 2019,

71 See Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 4526-IIb, 01.05.2019, [available at: <https://bit.ly/3aQ1x3W>; accessed on: 14.04.2020].

72 For more on this see Coalition for Independent and Transparent Judiciary, The Coalition is assessing new rules for nomination and selection of Supreme Court justices, [available at: <https://bit.ly/2YhFXTu>; accessed on: 14.04.2020]; Venice Commission, CDL-PI(2019)002, [available at: <https://bit.ly/3fkSnQE>; accessed on: 14.04.2020]; OSCE/ODIHR opinion on draft amendments relating to the appointment of Supreme Court judges of Georgia, [available at: <https://bit.ly/2W731mF>; accessed on: 14.04.2020].

73 See Decision №1 / 41 of the High Council of Justice of Georgia of May 6, 2019 „On the approval of the form of the application to be submitted by the candidate, the standard form of the recommendation to be used for obtaining information about the candidate, the special questionnaire and the form of evaluation of the candidate, to be nominated to the Parliament of Georgia on the position of a judge of the Supreme Court of Georgia” [available at: <https://bit.ly/2Sm6UBM> accessed on: 14.04.2020].

74 On May 10, 2019, High Council of Justice initiated the procedure for selection of candidates to be nominated to the Parliament of Georgia, which lasted nearly 4 months and concluded on September 4, 2019 See Decision № 1/43 of the High Council of Justice of Georgia of May 10, 2019 “On the Initiation of the Procedure for Selection of Candidates to be nominated to the Parliament of Georgia on the Position of a Judge of the Supreme Court of Georgia” [available at: <https://bit.ly/2VMlTqF> accessed on: 14.04.2020].

75 Cases of conflict of interests of members of the High Council of Justice, participation in the selection procedures by an unauthorized member of the Council, a candidate for the Supreme Court judge holding a leadership position at the Council Apparatus, refusal to provide information about candidates, duration of interviews, verbal attacks on the non-judge members, inconsistency of the questions asked and the lack of the uniform standard, efforts by the members of the Council to help specific candidates in answering the questions, uniform voting scheme practiced by the judge-members of the Council, nomination of “influential judges” and acting high-ranking officials in the 10-person list, etc.; see Coalition for Independent and Transparent Judiciary, The Coalition is assessing the ongoing process of selection of Supreme Court judicial candidates available at: <https://bit.ly/3aQ2N7a> accessed on: 14.04.2020] see also: <https://bit.ly/2YhWkQ3>; <https://bit.ly/2L1swiA>.

76 Statement of Public Defender of Georgia, Public Defender Demands the Rule of Selection of Supreme Court Judicial Candidates to be Declared Unconstitutional, [available at: <https://bit.ly/3d4TmTb>; accessed on: 14.04.2020].

the Constitutional Court accepted the complaint for consideration and the decision made in this case will play an important role for the future regulation of the rules for the selection and appointment of candidates for judges of the Supreme Court.<sup>77</sup>

After the Council, the process of selecting judges of the Supreme Court continued, in accordance with the legislation of Georgia, at the first stage, by creating a working group in the Legal Committee of the Parliament,<sup>78</sup> and was proceeded with hearings of the candidates at the said Committee.<sup>79</sup> However, the overall process of nominating candidates for the Supreme Court and committee hearings made the problems in the judiciary even more evident. With rare exceptions, the legal reasoning skills of the candidates were weak and their responses were unsubstantiated.<sup>80</sup> Questions also arose as to how well the specific candidates met the formal criteria, namely with respect to their higher education qualifications. On December 12, 2019, the Parliamentary Legal Affairs Committee conducted the voting procedure concerning the Supreme Court candidates, amid active civil protest, and the ruling political team supported all the candidates nominated by the Legal Committee, at the plenary session.<sup>81</sup>

The above process confirms that the legislative changes have failed to provide solid guarantees, in practice, to ensure that judges of the highest instance court are selected transparently and fairly, in light of the competency and merit-based criteria.<sup>82</sup> Therefore, this activity should be considered as partially fulfilled.

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77 See N3/24/1459 Decision on admissibility of the Constitutional Court of Georgia, 17. 12. 2019, [available at: <https://bit.ly/35uBRcm>; accessed on: 14.04.2020].

78 In order to promote the compliance of the candidates with the requirements of the Constitution of Georgia and / or other laws, on September 11, 2019, the Committee enacted this mechanism. The coalition pointed out from the outset that the mandate of the group was misunderstood (narrowly defined) and that the group engagement process was also problematic. In particular, the group did not include any public organizations, including those from the Coalition; The number of quotas allocated by the working group on political grounds was excessively used; And the representatives of the relevant institutions did not have the opportunity to participate in the selection of the representatives of the academic field, see Coalition for Independent and Transparent Judiciary, Assessment of the Working Group Creation Process by the Legal Committee, [available at: <https://bit.ly/2yRKuS7>; accessed on: 14.04.2020].

79 Representatives of scientific circles, the Bar Association, the State Legal Service, the Public Defender's Office and non-governmental organizations took part in the committee hearings together with the deputies. Citizens could send their questions directed at the candidates to the chair of the Legal Affairs Committee, who would ask all questions publicly. See Coalition for Independent and Transparent Judiciary, Assessment of the Hearings of Supreme Court Judicial Candidates at the Parliament Legal Committee [available at: <https://bit.ly/35jSsiJ>; accessed on: 14.04.2020].

80 See Coalition for Independent and Transparent Judiciary, Assessment of the Hearings of Supreme Court Judicial Candidates at the Parliament Legal Committee, [available at: <https://bit.ly/35jSsiJ>; accessed on: 14.04.2020].

81 The Legal Affairs Committee restricted journalists from exercising their right to journalistic activity. There was also a case of a journalist being removed from the hall using force, [available at: <https://bit.ly/2yX48fD> accessed on: 14.04.2020].

82 Majority of the elected judges are members of the influential group in the judiciary, so-called "clan", or held a high-ranking position in the current government before being appointed on a position of a judge at the Supreme Court, and their activities are linked to human rights violations or politically motivated decisions. Considering that for almost a year, the constant challenge for the whole process, as well as with respect to the absolute majority of the individual candidates, was a low degree of credibility, the problem of the appointment of selected candidates to the Supreme Court is becoming more acute. We can say that the majority of the judicial candidates do not enjoy public legitimacy, See EMC, How the Supreme Court was Composed, [available at: <https://bit.ly/2YprSUh> accessed on: 14.04.2020].

It should be noted that the situation concerning the selection of judges of the Supreme Court requires more radical and systemic changes, as it is clear that the existing problems can no longer be eliminated in the framework of the next Wave of the Judicial Reform. Therefore, the activity envisaged in the new draft Action Plan, which establishes obligation of the enactment and practical implementation of the legislative changes, concerning the selection of judges of the Supreme Court, is not efficient and adequate.

### 1.2.1. Improvement of the judge appointment system

1.2.1.1. *Forming of a working group to improve the criteria and procedures of selecting listeners of High School of Justice and judges (2017) – **Partially fulfilled***

1.2.1.2. *Development of the effective system for collecting and processing relevant information about candidates (2018) – **Partially fulfilled***

1.2.1.3. *Drafting of a proposal regarding justification of decisions made during competitions for the School listeners, candidates for judges (2017-2018) – **Partially Fulfilled***

1.2.1.4. *Creation of the effective mechanism to justify candidate evaluations and allow for appealing the decision (2017-2018) – **Partially Fulfilled***

1.2.1.5. *Drafting of the relevant laws and by-laws (2018) – **Partially fulfilled***

1.2.1.6. *Introduction and monitoring of the new system (2018) – **Unfulfilled***

The initial version of the Judicial Strategy and Action Plan, under the judicial appointment system improvement program, in addition to the above issues, also provided for the establishment of an open voting procedure during the competition between school listeners, judges and Chairperson candidates. However, based on the opposing remarks submitted by a judge-member of the High Council of Justice, on behalf of the Conference of Judges, the principle of open voting was no longer included in the Action Plan.<sup>83</sup>

**1.2.1.1.** Activity concerned forming of a working group to improve the criteria and procedures for selecting listeners of High School of Justice and judges. The selection of listeners of the High School of Justice, as the starting point for the entire process of selection and appointment of judges, is a crucial direction in the improvement of the judicial appointment system. It should be noted that the First Progress Report did not contain any information on the evaluation of this task. The activity commentary of the draft Second Progress Report

<sup>83</sup> On April 24, 2017, at the extended meeting of the first working group, finally, as a result of a long discussion, the issue was removed on May 23, 2017, at the Strategic Committee meeting. The Institute for Development of Freedom of Information (IDFI), "Human Rights Education and Monitoring Center", Implementation of the Judicial Strategy and the Action Plan – Shadow Report 2018, pp. 55-56, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

makes a reference to the activity 3.2.1.2. – updating the listeners’ selection criteria and refining the procedure. 3.2.1.2. Activity commentary discusses what has been done, in general terms, to revise the selection criteria of the listeners and refine the procedure, in the framework of the “Fourth Wave” judicial reform.<sup>84</sup>

Accordingly, it is not desirable that these two essentially contrasting activities are equated. Namely, creation of the working group, apart from its formal significance is crucial for achieving the final goal. Although the reform group was created in the parliament during legislative consideration of the fourth wave draft bill, due to vague and general formulation of indicators in the Action Plan, it is impossible to establish whether the format of the reform group was appropriate for the goal envisaged under the activity. Also, it is true that representatives of the judicial system were involved in the operation of the working group in the parliament, however the Action Plan rather than limiting itself to participation, envisaged their full responsibility over the process. Due to all of the above, the activity has to be considered to be partially fulfilled.

**1.2.1.2.** The activity aims to develop a system for reviewing the criteria of integrity and competency, established by the Law on the Selection of Judges, which shall ensure unbiased and justified decision-making through collecting and processing relevant information about candidates. The draft of the second progress report on the implementation of this activity refers to the amendment to the decision of the High Council of Justice, for the purposes of the improvement of the process of collecting and obtaining information about the candidates for judges, which defined the list of institutions and government agencies from which the relevant unit of High Council of Justice shall request information about the judicial candidates; the amendment further specified the types of information to be requested and the period during which the High Council of Justice shall provide the candidate with the information they have collected.<sup>85</sup> As mentioned in the first reporting period, while it is true that the changes in the decision of the High Council of Justice shall allow the Council to collect important information about the candidates, it is imperative to regulate these issues on the legislative level. Accordingly, the activity should be considered as partially fulfilled.

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84 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 41, obtained via letter of the High Council of Justice of March 10, 2020 №242/668-03.

85 In particular, information may be collected from the Information-Analytical Department of the Ministry of Internal Affairs, the Revenue Service of the Ministry of Finance, the High School of Justice, the Ethics Commission of the Bar Association and others. In particular, the information obtained by the Department may concern: personal property declaration, information available in the media and on the Internet, information on participation in the legal proceedings, and etc. Decision № 1/ 247 of the High Council of Justice of Georgia of 17 September 2018 on the Amendment of the Decision №1/ 308 of the High Council of Justice of Georgia of 9 October 2009 on the “Approval of the Rules for Selection of Judicial Candidates” see [Available at: <https://bit.ly/2W8Lc5e>; accessed on: 14.04.2020]. See also: The Institute for Development of Freedom of Information (IDFI), “Human Rights Education and Monitoring Center”, Implementation of the Judicial Strategy and the Action Plan – Shadow Report 2018, pp. 53-54, [Available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

Although the changes to the decision of the High Council of Justice have to be assessed positively, the above provisions are largely focused on collection of information, and the issue of processing this data remains a challenge. It is imperative that legislative regulation creates strong guarantees, that only necessary information will be collected in a comprehensive manner, which will be processed effectively. This will contribute to more objectivity and transparency of the process. Accordingly, at this stage the activity is to be considered partially fulfilled.

**1.2.1.3** The activity entails drafting of a proposal regarding the justification of decisions made during competitions for the School listeners and the candidates for judges. The agency responsible for the implementation of the said activity is the High Council of Justice. According to the First Progress Report, the working group decided to involve an expert in the process of the implementation of the activity, who prepared a study on the experience of the European countries and developed the relevant proposals.<sup>86</sup> However, the First Progress Report did not include information on the results of the research and the concrete recommendations.<sup>87</sup>

The draft of the Second Progress Report points to the draft Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts developed in the framework of the working group, which was adopted in accordance with the “Fourth Wave” reforms.<sup>88</sup> According to the amendment, the justification should include an account of the procedure and a description of the appointed judge, including information on the points accumulated by them and a conclusion on their integrity. The procedure for drawing up the substantiation was also determined, in particular, the substantiation is recorded by the Secretary of the High Council of Justice. Dissenting opinion of a member of the High Council of Justice shall also be published.<sup>89</sup> The obligation to justify the decision on admission of the listener or appointment of a judge is welcomed, however the refusal on admission/appointment should also be justified. Consequently, the activity is partially fulfilled.

**1.2.1.4.** This activity requires development of effective mechanisms for justifying candidate evaluations and appealing final decisions. According to the draft of the second

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86 Council of Europe project “Support to the Judicial Reform in Georgia” Albers P., Legal Analysis of Legislation on the Rules and Standards for the Prevention of Conflict of Interests by Judges, [Available at: <https://bit.ly/3bKYyLD>; accessed on: 14.04.2020].

87 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, p. 10, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

88 Draft Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts, 12.06.2019, Article 1, Paragraph 5.

89 Ibid, Article 10.

progress report, the May 2019 amendments to the Organic Law of Georgia on Common Courts have determined the possibility of appeal, for the persons taking part in the competition for the position of judges, against the decision of the High Council of Justice to the High Court of Justice Qualification Chamber.<sup>90</sup> However, it should be noted that only the decision of the Council to deny registration as a candidate can be appealed, while the Organic law does not foresee a similar mechanism with regard to evaluation of candidates with scores/denial of nomination.<sup>91</sup> The Qualification Chamber of the Supreme Court shall consider the appeal and make a decision within two working days.<sup>92</sup> Introduction of the amendment is, clearly, a step forward, however, the revision fails to fully cover the issues envisaged by the activity (all courts, stages of appeals etc.).

An important step in this direction was the introduction of the justification system discussed in the commentary of the previous activity (1.2.1.3.), as a result of the Fourth Wave reforms, which allows for a broader discussion of the justifications for the decision of the Council in the appeals process. Since the first amendment applied only to the Supreme Court, and the second did not cover the appeals procedure, the activity should be considered partially fulfilled.

**1.2.1.5. and 1.2.1.6.** The activities are directly linked to the fulfillment of the obligations set out in the previous 4 activities, therefore, until the responsible agencies prepare their views/ studies on the above issues, the introduction of new relevant system shall not be possible due to the structure of the action plan. Considering that the above 4 activities have been unfulfilled or partially fulfilled, the introduction of new systems is also imperfect and, consequently, the monitoring exercise, envisaged by the action plan, shall not be possible. However, as a result of fourth wave reform activity 1.2.1.5, which foresees implementation of relevant legislative changes, has to be considered partially fulfilled. As for activity 1.2.1.6, considering that activities 1.2.1.1.-1.2.1.4. have not been fulfilled or were partially fulfilled, neither has introduction of new systems (1.2.1.5) been finalized, thus, fulfilment of the activity cannot be evaluated within the monitoring of the Action Plan. Accordingly, activity 1.2.1.6. is unfulfilled.

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90 See Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 4526-Ilb, 01.05.2019, [available at: <https://bit.ly/3aQ1x3W>; accessed on: 14.04.2020].

91 Section 5, Article 34<sup>1</sup> of Organic Law on Common Courts [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

92 See Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 4526-Ilb, 01.05.2019, [available at: <https://bit.ly/3aQ1x3W>; accessed on: 14.04.2020].

## 1.2.2. Improvement of the judge promotion system

*1.2.2.2. Development of the judge promotion system based on clear, transparent and impartial criteria (2017-2018) – Unfulfilled*

*1.2.2.3. Preparation of methodology for continued professional development of judges and determining between formal and non-formal evaluation systems (2017-2018) – Unfulfilled*

*1.2.2.4. Analysis of current legislation and practice concerning the procedures, deadlines and competencies for appointing chairpersons of courts and development of recommendations (2017) – Unfulfilled*

*1.2.2.5. Submission of draft modifications for the organic law to the Venice Commission and request of their opinion (2017) – Unfulfilled*

*1.2.2.6. Enactment of the recommended modifications in the organic law (2018) – Unfulfilled*

**1.2.2.2.** For developing a clear, transparent and objective system for the promotion of judges, a report “on the Promotion of Judges in Georgia” was prepared back in the first monitoring period.<sup>93</sup> However, the one-year progress report on the implementation of the Judicial Strategy and Action Plan did not indicate what the working group and the High Council of Justice had planned in relation to the reform of the promotion system. The first progress report also did not specify the tasks concerning the implementation of the activity.<sup>94</sup> The letter received from the Council of Justice in the first reporting period confirmed that the research envisaged in this activity had not yet been finalized.<sup>95</sup> Moreover, the second progress report does not provide additional information on the given activity, nor does the written responses to the request for public information contain additional data on this issue. Therefore, the activity should still be considered unfulfilled.

**1.2.2.3** – In the framework of the activity, the High Council of Justice is obliged to create a methodology for the system of permanent professional development of judges and determine between the formal and informal evaluation systems. According to the one-year report on the implementation of the Judicial System Strategy and Action Plan, a meeting was

93 Activity 1.2.2.1, which was marked as fulfilled in first reporting year, see also: Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

94 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, p. 17, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

95 Letter of the High Council of Justice of Georgia №2225/3134-03.

held in November 2017.<sup>96</sup> Based on the opinions voiced at the meeting, the High Council of Justice was planning to implement changes which would ensure the elaboration of such an evaluation system for the judges, which would include both quantitative and qualitative criteria. It should be noted that the deadline for the implementation of this activity was the year 2017-2018. Nevertheless, this issue was not discussed by the Council even during the second reporting period. Neither the draft of the Second Progress Report nor the letters of the High Council of Justice, obtained by as a public information, contain additional data on this issue. Therefore, it is still unclear whether the methodology for evaluating judges is concluded or not and in what time period the working group / Council is planning to discuss this issue. Therefore, the activity should be marked as unfulfilled.

**1.2.2.4.** – In recent years, the administrative positions in the judiciary were, as a rule, held by the same persons, their selection / appointment is done through a vague process, and the institution of the Chairman of the court is a leverage of control over the judges and a means to exert influence on the judiciary.<sup>97</sup>

As mentioned in the First Shadow Report, a number of meetings were held before the approval of the Strategy and Action Plan of the Judiciary for the purpose of reaching an agreement on the formulation of this activity. Initially, as recommended by the local non-governmental organizations, the activity should have concerned the revision of the rules, terms and competencies for the election of the Chairmen of the court. However, in the light of the opposition of the judge-members of the High Council of Justice, the above-mentioned part was removed from the final, consolidated version, and the activity covered only the analysis of the existing legislation and practice and elaboration of relevant recommendations.<sup>98</sup>

When evaluating this activity, the draft Second Progress Report points to the changes envisaged by the “Fourth Wave” judicial reform,<sup>99</sup> according to which the procedure for appointing court Chairpersons has been changed. Specifically, as mentioned above, the Chairperson of the district (city) and appellate courts, as well as their deputy, shall be appointed to the position on the basis of a substantiated decision taken by the High Council of Justice. The

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96 The meeting was organized by the High Council of Justice, the Supreme Court, the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights.

97 Coalition for Independent and Transparent Judiciary, Opinion of the Coalition for Independent and Transparent Judiciary on the Fourth Wave of Judicial Reform Legislative Package available at: <https://bit.ly/3bQGNKP>; accessed on: 14.04.2020].

98 The Institute for Development of Freedom of Information IDFI, “Human Rights Education and Monitoring Center”, Implementation of the Judicial Strategy and the Action Plan – Shadow Report 2018, pp. 58-59, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

99 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, pp. 15-16, obtained via letter of the High Council of Justice of March 10, 2020 №242/668-03.



procedure calls for the High Council of Justice to consult with the judges of the relevant court to select a candidate.<sup>100</sup>

The implementation of legislative changes without the preparation of the relevant research materials cannot be considered as a fulfillment of the activity, as the progress report for the first year pointed to the need to not only study the local legislative base, but also conduct research on the international best practice. Although the year of 2017 was a deadline for the High Council, as a responsible agency, to fully implement the activity, it became clear on the basis of the first report on the implementation of the Strategy and Action Plan that no effective steps have been taken to implement the above-mentioned activity. To date, no information has been provided on the said research document, even through public information requests to the High Council of Justice. Accordingly, in the absence of the above-mentioned research, inserting a clause concerning a need to consult with the Conference of Judges, in the norms regulating criteria and rules for appointment of Chairpersons, in light of the non-obligatory nature of the received recommendations as a result of the consultations, cannot be considered as a fulfillment of the activity. This change is indeed a step forward, however in the current context this legislative provision cannot become a solid guarantee for transparent /objective selection/appointment of Chairpersons. Therefore, the activity should be qualified as unfulfilled.

**1.2.2.5 and 1.2.2.6.** – The activities under the judges’ Career Advancement Program provided for the submission of the prepared legislative amendments to the Venice Commission and the reflection of relevant amendments in the Organic Law on the basis of the findings of the Commission. In the first reporting period, the Council expressed the need to postpone the deadline for the fulfillment of these obligations, however, the additional time period required for the relevant activities was not specified. Since neither the draft report on the implementation of the Judicial Strategy and the Action Plan, nor the letters received from the High Council of Justice have confirmed the opposite, it is likely that the draft Amendments to the Organic Law to be submitted to the Venice Commission is yet to be prepared. It should be noted that the already accepted Amendments to the “Fourth Wave” reform have also not been submitted to the Venice Commission. Therefore, these activities are unfulfilled.

### **1.3.1. Enforcement of impartiality of judges in the legislation**

*1.3.1.2. Revision of the rules for conflict of interest (2017–2018) – **Fulfilled***

<sup>100</sup> Draft Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts, 12.06.2019, Article 1, paragraphs 2-3.

**1.3.1.2.** The first progress report mentions the presentation of research and recommendation package prepared by the expert on the conflict of interest.<sup>101</sup> However, it remains ambiguous what the outcome of the research presentation was and if any specific steps were taken based on the research. In the first reporting period, additional public information requested from the High Council of Justice, indicated that the relevant working group would commence its works in the near future to revise the rules on the conflict of interest.<sup>102</sup>

The Second Progress Report links the update to the rules of conflict of interest to activity 2.2.1.4, which entails the creation and implementation of a confidential consultation mechanism for judges. Considering that, these two activities are interconnected, even though not substantially, the mentioned practice of referral is unclear. Accordingly, as in the previous reporting period, Activity 2.2.1.4 will be discussed in the chapter „Reform of the System of Liability of Judges“.

Despite the fact that the draft of the Second Progress Report does not indicate changes in the „Fourth Wave“, it is important to note that significant steps have been taken to regulate the conflict of interest under this reform. In particular, currently conflict of interest rules apply not only in the process of the selection / appointment of a judge, but also when the Supreme Council of Justice make a decision regarding a promotion of a judge, their disciplinary liability, as well as the decision on appointment of a new member in High School of Justice’s Independent Board or in the Prosecutorial Council of Justice, as well as when the issue of individual legislature emerges. Furthermore, Organic Law Project clearly defines the circle of people (list of relatives) who, when competing for the position of a judge, which member of the council should not participate in the selection process aimed to fill the vacant position. Also, the Organic Law stipulates that the member of the High Council of Justice of Georgia may not be excluded due to his / her opinion regarding the abstractly defined circle of persons.<sup>103</sup> Therefore, the activity should be considered as fulfilled.

### **3.1.1. Creating appropriate preconditions for employing staff with the best potential**

#### *3.1.1.4 Formation of a reserve list of candidates for judges (2017-2018) – Unfulfilled*

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101 Research was prepared in scope of EU funded project, presentation was held on March 28, 2018. Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, p. 22, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

102 Letter from the High Council of Justice of Georgia №2225/3134-03.

103 Organic Law of Georgia 13/12/2019, 5569-Іb, [available at: <https://bit.ly/2V8oVoQ>; Access on: 14.04.2020].

**3.1.1.4.** – Activity 3.1.1.4. entails the creation of reserve list of judges. However, as discussed in the first progress report, individuals included in the judge reserve list are not included in the reserve list of common court judges, which reinforces that the drafting of the mentioned list does not fall under the reserve system of the organic law, but instead represents new, entirely different model. It should be noted that the existence of this list does not oblige the High Council of Justice of Georgia to appoint a specific individual on the post of a judge<sup>104</sup>. Due to the unclear wording of the activity, it is difficult to establish the purpose of the reserve list of candidates for judges. Notably, as indicated in the first shadow report, a preliminary version of the reserve list was prepared by the third working group, the discussion of which was followed by a number of critical assessments<sup>105</sup>. According to the first progress report and additional public information from the High Council of Justice<sup>106</sup>, the discussion of this issue has been postponed indefinitely, in an effort to improve the candidate reserve list. Since neither the Second Progress Report Project nor the letters received through the request for public information contain this information, it is still unclear when the work on this activity will be resumed and what strategy will be utilized<sup>107</sup>. Therefore, the activity should be considered unfulfilled.

### 3.3.1. Introducing the system of periodic review for further development of judges

*3.3.1.1. Expert review of evaluation criteria and development of a new methodology in compliance with CCJE and ENCJ standards (2017) – Unfulfilled*

*3.3.1.2. Preparation of legal acts for the introduction of the evaluation system (2017-2018) – Unfulfilled*

*3.3.1.3. Analysis of the evaluation outcomes and planning/implementation of future actions (2018) – Unfulfilled*

**3.3.1.1** The activity aims to review the evaluation criteria and develop a new methodology that will be in line with international standards. Periodic evaluation of judges' activities is not currently regulated by the Organic Law of Georgia on Common Courts. The periodic evalu-

104 Judicial System 2017-2021 Strategy Action Plan Progress Report, Reporting Period: June 2017 – June 2018, p. 49, [Available at: <https://bit.ly/3epnxFU>; Access on: 14.04.2020].

105 Freedom of Information Development Institute, Human Rights Education and Monitoring Center, Judicial Strategy and Action Plan Status – Shadow Report, 2018, p. 62, [Available on: <https://bit.ly/3bsKFS6>; Access on: 14.04.2020], see also <https://bit.ly/2SIW5PZ>.

106 Letter from the High Council of Justice of Georgia №2225/3134-03.

107 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501; Correspondence of the High Council of Justice of February 21, 2020, №184/1498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

ation system is still regulated by a 2011 decree of the High Council of Justice<sup>108</sup>, which for the most part fails to meet internationally recognized standards for the evaluation of judges and contains risks of violating the independence of the individual judges<sup>109</sup>.

As early as April 2018, two draft laws on amendments to the Organic Law of Georgia on Common Courts were drafted, but the agreement was not reached on either<sup>110</sup>. According to the information provided by the council in the previous reporting period, the third working group should have resumed the work on the development of a new methodology of periodic evaluation<sup>111</sup>. However, neither the draft of the Second Progress Report nor the public information Letters from the High Council of Justice contain data related to this activity. Consequently, it is unknown what steps have been taken in this direction during the reporting period and what time period is needed to complete the work on the issue. Consequently, this activity is still unfulfilled.

**3.3.1.2** The preparation of bylaws for the implementation of the evaluation system is directly related to the performance of the previous activity of the same program. Moreover, it is unadvisable to prepare by-laws for the introduction of a new periodic evaluation system, without an expert reviewing the evaluation criteria and developing a new evaluation methodology. However, neither the Second Progress Report Draft nor the Public Information Letters from the High Council of Justice contain data on the Council's vision for this activity and, therefore, it is ambiguous what steps have been taken in this regard during the reporting period. Consequently, this activity is still unfulfilled.

**3.3.1.3** – The last activity of the program is to analyze the evaluation outcomes and plan and implement future actions. The implementation of this activity is directly related to the fulfillment of previous activities. As by the given period of time the High Council of Justice has failed to develop the new evaluation methodology and prepare legal acts for introducing the new evaluation system, analysis of evaluation outcomes cannot take place.

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108 Decision of the High Council of Justice of December 27, 2011 (№1/226) on "Approval of Rules on Assessment of effectiveness of Common Court Judges".

109 As indicated in the first shadow report, the objectives of the current evaluation system are ambiguous. Board decided that the evaluation mechanism established is more focused on the judiciary as a whole. rather than the evaluation of the activities of the individual judge. The current model includes components that in some cases may be due to factors independent of the judge and not subject to his or her control. For details, see. Coalition for an Independent and Transparent Judiciary, *Judicial System: Reforms and Prospects*, p. 89 [Available at: <https://goo.gl/NYowQU>, accessed on: 14.04.2020].

110 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, p. 38 [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

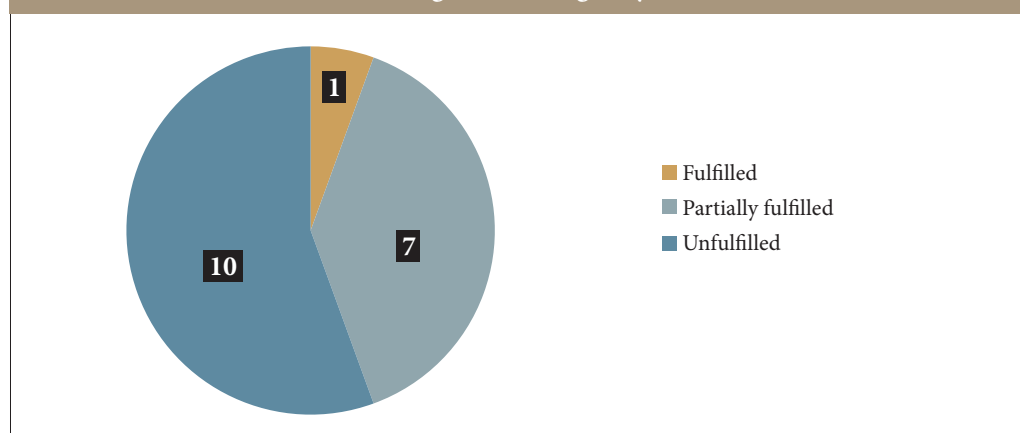
111 Letter of the High Council of Justice of Georgia №2225/3134-03.

## Conclusion

Monitoring results of the action plan demonstrates that there have been insufficient effort from the part of the responsible bodies to fulfill the activities in a comprehensive and timely manner. Number principle issues outlined in the Action Plan to improve the selection /appointment System for Judges are, at this stage, are neglected and / or are omitted from the Action Plan/Action Plan project entirely. Therefore, taking into account the evaluations described above, it is important for working groups and responsible agencies to engage in the following directions:

- Enhancing of appropriate procedures on selection/appointment of judges for ensuring transparency of selection/appointment of judges;
- Refining of substantiation and appeal mechanisms for decisions on outcomes of evaluation/competition for ensuring their effectiveness;
- Enhancing of practice on collection and processing of relevant data concerning judicial candidates;
- Preparing/enacting of legislative changes for introducing new regulations on procedures and terms of appointment of court chairpersons, as well as on their competencies;
- To comprehensively regulate the criteria and procedure on legislative level regarding the transfer of a judge to another court (this includes promotion to the second instance courts) without a competition;
- To draft and enact legislative amendments in order to establish the judge promotion system based on clear, transparent and impartial criteria;
- To develop methodology for continued professional development of judges and monitor the new system.

**Fulfillment Status of the Activities for Improving the System of Selection-Appointment and Promotion of Judges, as envisaged by the Action Plan<sup>112</sup>**



<sup>112</sup> This chart indicates the fulfillment status of those activities only, which were assessed during this monitoring period.

# **Reform of the System of Liability of Judges**

## Results of the Judicial Reforms and Existing Challenges

The disciplinary liability system, on the one hand, serves the interests of protecting the authority of the judicial system and the societal trust towards the judiciary, but on the other hand, in case of its misuse, it also includes potential threats to become a tool for pressuring individual judges.

The judicial liability system should, on the one hand, ensure to prevent dishonest and inappropriate behavior of a judge and in case of misconduct take appropriate steps, and, on the other hand, provide solid guarantees of independence of individual judges in order not to turn into a tool for pressuring them.<sup>113</sup>

As a result of reforms implemented in recent years, several positive amendments were enforced with regard to the disciplinary liability of judges. In 2013, within the scope of the “First Wave” of judicial reform, the bodies considering a disciplinary case and imposing a disciplinary liability were separated from each other. Legislative amendment determined that members of the Disciplinary Board and the Disciplinary Chamber should not be the members of the High Council of Justice. In order to increase transparency of the system, publication of decisions of the Disciplinary Board and the Disciplinary Chamber on an official webpage became mandatory.<sup>114</sup> The authority to elect non-judge members of the Disciplinary Board was granted to the Parliament instead of the High Council of Justice. Moreover, it was determined that judge members of the Disciplinary Board would be directly elected by the Conference of Judges, and the Chief Justice was deprived of the exclusive power to nominate candidates.<sup>115</sup>

The “Second Wave” of judicial reform was not related to the system of disciplinary liability. Certain positive amendments were enforced within the scope of the “Third Wave”, in particular<sup>116</sup>:

- The Independent Inspector’s Office was established within the High Council of Justice, that limited excessive exclusive powers of the Secretary of the High Council of Justice at the initial stage of disciplinary proceedings;
- Transparency of the process of disciplinary proceedings has been increased. In particular, the High Council of Justice became obliged to make a substantiated decision on termi-

113 “Institute for Development of Freedom of Information”, “Human Rights Education and Monitoring Center”, “Assessment of the Judicial Reform”, March, 2019, p. 43, [available at: <https://bit.ly/3am7d5F>; accessed on: 14.04.2020].

114 The High Council of Justice, Implemented Reform, [available at: <https://bit.ly/34REft6>; accessed on: 25.02.2020].

115 “Transparency International Georgia”, Assessment of the Georgian Judicial System (2012-2016), [available at: <https://bit.ly/2KID9wm>; accessed on: 25.02.2020].

116 “Institute for Development of Freedom of Information”, “Human Rights Education and Monitoring Center”, Assessment of the Judicial Reform, March, 2019, p. 10, [available at: <https://bit.ly/3am7d5F>; accessed on: 14.04.2020].

nation of disciplinary proceedings and to publish it on its website. Also, the judge was granted the possibility to make the sessions of disciplinary proceedings publicly available (sessions regarding bringing disciplinary charges and sessions of the Disciplinary Board and Disciplinary Chamber, except for deliberation and decision-making procedures);

- Timeframe for the preliminary inspection and examination of the disciplinary case has been defined. If the Council fails to make a decision within this timeframe, disciplinary proceedings should be terminated;
- The legal guarantees of judges have been increased in the course of disciplinary proceedings. In particular, a judge has a right to defender. The judge has the same right during the proceedings at the Disciplinary Board;
- The standard of proof has been specified at the stage of imposition of disciplinary liability and it was established that Disciplinary Board makes a decision on the basis of mutually compatible and convincing evidence;
- The Disciplinary Board has been entitled to send a reprimand letter as a disciplinary measure to a judge instead of the High Council of Justice.

Amendments enforced within the scope of the “Third Wave” of the reform were an important step forward in terms of improving disciplinary proceedings. Prior to this amendment, the disciplinary liability of judges and the disciplinary proceedings were totally confidential, which made it impossible for the public to exercise certain control over this process. The striking difference between the number of disciplinary complaints and the number of judges who have been imposed disciplinary charges have led to the feeling of failure of judges’ accountability system in society.<sup>117</sup>

Important positive amendments were enforced within the scope of the “Fourth Wave” of the reform, in particular:<sup>118</sup>

- The specific and exhaustive list of types of disciplinary misconduct were determined;
- The rule for dismissal of an independent inspector was changed and the decision is made by 2/3 majority of the High Council of Justice instead of a simple majority. Moreover, the possibility of appealing the decision on dismissal was ensured;
- Official salary of an independent inspector was determined at the legislative level;
- Standard of proof at the initial stages of disciplinary proceedings was determined.

Despite these positive amendments, important challenges still remain in the legislation and practice, and it is important to address them in a timely and efficient manner:

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117 “Institute for Development of Freedom of Information”, “Human Rights Education and Monitoring Center”, “Assessment of the Judicial Reform”, March, 2019, p. 44, [available at: <https://bit.ly/3am7d5F>; accessed on: 14.04.2020].

118 “Institute for Development of Freedom of Information”, “Human Rights Education and Monitoring Center”, “Assessment of the Judicial Reform – System of Disciplinary Liability of Judges, November, 2019, [available at: <https://bit.ly/2VMkWxz>; accessed on: 13.02.2020].



- The rule for appointing an independent inspector is flawed and does not ensure proper institutional independence of an inspector;
- Decisions of an independent inspector are not published (without identification data). Decisions are not available when requested as public information, which constitutes a challenge in terms of transparency;
- Decisions of the High Council of Justice on bringing disciplinary charges against a judge are not published;
- Under the current legislation, it is possible for two out of five members of the Disciplinary Board to find a judge guilty, and impose disciplinary liability and penalty on him/her, which poses a threat to the fairness of the disciplinary proceedings;
- The High Council of Justice holds meetings on disciplinary cases with insufficient frequency, which contributes to the delay in disciplinary proceedings.

## Implementation of the Judicial System Action Plan for 2017-2018

The judicial system action plan for 2017-2018 envisaged 21 activities with regard to the system of disciplinary liability. As of October 2018, 5 activities were fulfilled, 2 activities – partially fulfilled, 13 activities – unfulfilled, and 1 activity was not granted a status due to its ambiguous formulation.<sup>119</sup> Within the scope of this report, those 15 activities were assessed which were granted the status “unfulfilled” and “partially fulfilled”, as of October 2018.

### 2.1.2 Improving the rules of judicial ethics

The judicial system action plan for 2017-2018 envisages four activities within the scope of improving the rules of judicial ethics:

*2.1.2.1. Analysis of the current rules of ethics and practice (2017) – **Fulfilled***

*2.1.2.2. Updating the rules of ethics in accordance with international standards (2017, 2018) – **Fulfilled***

*2.1.2.3. Preparation of a commentary on rules of ethics (2018) – **Unfulfilled***

*2.1.2.4. Approval of the updated rules of ethics (2018) – **Unfulfilled***

119 “Institute for Development of Freedom of Information”, “Human Rights Education and Monitoring Center”, “Implementation of the Judicial Strategy and Action Plan – Shadow Report”, 2018, [available at: <https://bit.ly/3br7MMM>; accessed on:14.02.2020].

Within the strategic direction of accountable justice, the judicial system strategy considers improvement of rules of judicial ethics as one of the main challenges. Vagueness of current rules of ethics is problematic. In particular, according to the strategy, the rules of ethics do not contain exact definitions with regard to the standards of behavior. The rules of ethics need to be clarified based on the analysis of cases revealed in practice so that judges are able to obtain full and clear information about standards of behavior. Therefore, with regard to the rules of ethics, the strategy is based on the correct identification of existing shortcomings and challenges.

According to the draft progress report, with the aim of fulfilling activities 2.1.2.1, 2.1.2.2, 2.1.2.3 and 2.1.2.4, the High Council of Justice started preparatory work and established a working group which is composed of judges from all three instances of the court and the members of the High Council of Justice. They were given all research documents related to the current rules of judicial ethics. Moreover, partner organizations<sup>120</sup> were involved in the process of updating the rules of ethics, who ensured involvement of international experts within the scope of analysis of current rules of ethics and submitting recommendations on updated rules.<sup>121</sup>

**2.1.2.1.** With regard to this activity, the High Council of Justice provided that at the initial stage, the experts analyzed current rules of ethics as well as existing practice, and submitted their recommendations to the members of the working group.<sup>122</sup> Therefore, this activity is considered fulfilled.

On January 24, 2020 the meeting of the II working group was held, where the draft rules of judicial ethics were discussed. According to the members of the working group, the draft rules of ethics were prepared in accordance with international standards, their structure and content was refined, which was carried out based on the recommendations of 4 international experts. The draft rules of judicial ethics consists of a preamble and 7 parts. Each part contains provisions on independence, impartiality, integrity, propriety, equality, competence, diligence and fairness, and non-judicial activity. Moreover, at the beginning of each part the relevant text of Bangalore Principles is mentioned as a preamble.

At the session of January 29, 2020, the working group approved the draft rules of judicial ethics by majority votes, and submitted to the High Council of Justice for consideration. On January 31, 2020, the Council approved the draft rules and made a decision on submitting

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120 Project of the Council of Europe, project of the EU, USAID/PROLoG.

121 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 22, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-გ.

122 Letter N141/138-03 of the High Council of Justice of February 10, 2020.

the document to the Conference of Judges.<sup>123</sup> Therefore, rules of ethics can be considered updated in accordance with international standards, and the activity 2.1.2.2 is fulfilled.

According to the information<sup>124</sup> provided by the Council, after the Conference of Judges adopts the updated rules of judicial ethics, the second working group will start working with the aim of preparing commentary on the rules of ethics and planning subsequent measures envisaged by the action plan. Therefore, activities 2.1.2.3. and 2.1.2.4. are unfulfilled at this stage.

In the light of above, although certain efforts have been made with the aim of fulfilling this program of the action plan, shortcomings existing in this regard still remain until updated rules of ethics are adopted.

## 2.2.1 Prevention of disciplinary misconduct

The judicial system action plan for 2017-2018 envisages four activities within the scope of prevention of disciplinary misconduct. This report assesses the state of implementation of those three activities which were granted status “unfulfilled” or “partially fulfilled” in the previous monitoring period.

*2.2.1.2. Upgrading the teaching module on rules of ethics (2018) – **Unfulfilled***

*2.2.1.3. Organizing trainings on disciplinary violations, misconducts (decisions of the Board) and on accountability in general (within the scope of the teaching module on rules of ethics) (2018) – **Partially fulfilled***

*2.2.1.4. Creating and implementing a mechanism of confidential consultation for judges (2017,2018) – **Unfulfilled***

**2.2.1.2.** This activity is presumably related to the adoption of updated rules of ethics (2.1.2 program), which has not been fulfilled yet. According to the draft progress report, at present, two teaching modules exist with regard to the rules of ethics at the High School of Justice – basic course of judicial ethics and in depth course of judicial ethics. However, after new rules of judicial ethics are adopted, the School will update the teaching module.<sup>125</sup> Taking

123 Ibid.

124 Ibid.

125 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 24-25, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-გ.

into account the fact that updated rules of ethics are not adopted yet, the teaching modules are based on current rules of ethics. Therefore, activity 2.2.1.2 is not fulfilled at this stage.

**2.2.1.3.** With regard to this activity, according to the information<sup>126</sup> provided by the High Council of Justice, 3 trainings have been held for judges. The teaching module of in depth course of judicial ethics prepared within the scope of the program “training judges and other court officials” considers the issues related to the accountability of the judiciary, disciplinary violations and misconduct. In 2018, 2 trainings were held where 19 judges were trained, and in 2019 1 training was held where 13 judges were trained. The action plan envisaged holding at least 4 trainings based on the curriculum of judicial ethics as an indicator for fulfillment of this program. Therefore, activity 2.2.1.3 is considered partially fulfilled.

**2.2.1.4.** In order to fulfill this activity, to consider the best European examples about a confidential consultation mechanism and get recommendations, an expert of the Council of Europe prepared a study which aims to assist judges in the issues related to conflict of interest and judicial ethics. The research document discusses recommendations envisaged by international acts and models of different countries with regard to confidential consulting and advising mechanisms.<sup>127</sup> According to the research document, it is important that the confidential consultation is carried out by an independent body within the judicial system, where the advisors will have relevant experience in these particular areas. Moreover, it is necessary that the advisors are not the members of disciplinary bodies. According to the information provided by the High Council of Justice, the second working group continues working on creation and implementation of the confidential consultation mechanism.<sup>128</sup> Despite certain work carried out in this regard, taking into account the indicator (existence of a consultation mechanism) indicated in the action plan, activity 2.2.1.4 is not fulfilled at this stage.

In the light of above, the monitoring process reveals that in the reporting period tangible results in terms of preventing disciplinary misconducts have not been achieved.

## **2.2.2 Prevention of corruption cases in the system**

The judicial system action plan for 2017-2018 envisages the following three activities within the scope of prevention of corruption cases in the system:

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126 Letter N141/138-03 of the High Council of Justice of February 10, 2020.

127 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 25, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-გ.

128 Letter N141/138-03 of the High Council of Justice of February 10, 2020.

*2.2.2.1. Informing the judges about the new instructions for filling the declarations and conflict of interest, in coordination with the Civil Service Bureau (2017; 2018) – **Partially fulfilled***

*2.2.2.2. Analysis of corruption perception and risk assessment in common courts (2017) – **Unfulfilled***

*2.2.2.3. Development and implementation of the training modules for judges and court officials on eradicating corruption (2017, 2018) – **Unfulfilled***

**2.2.2.1.** With regard to this activity, the draft progress report of the High Council of Justice says that the second working group, created with the aim of implementing the second strategic direction (ensuring accountable justice) of the judicial strategy, and the Civil Service Bureau held a meeting, where it was decided that the representatives of the Civil Service Bureau would hold trainings for judges on filling the declarations and on conflict of interest.<sup>129</sup> According to the information provided by the High Council of Justice, the EU expert held training of trainers for the staff of the judicial system regarding filling the declaration. At the next stage, holding a training for judges is planned. Moreover, the expert is working on preparing guidelines on this issue for judges.<sup>130</sup> Therefore, as of today, activity **2.2.2.1.** can be considered partially fulfilled.

**2.2.2.2.** This activity is unfulfilled at this stage as analysis of corruption perception and risk assessment in common courts has not been carried out yet.<sup>131</sup>

According to the information provided by the High Council of Justice, activity **2.2.2.3** is not fulfilled at this stage either.<sup>132</sup>

### **2.3.1 Improvement of the disciplinary proceedings**

The judicial system action plan for 2017-2018 envisages four activities within the scope of improvement of the disciplinary proceedings, out of which 3 activities were assessed in this report:

<sup>129</sup> The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 26, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-გ.

<sup>130</sup> Letter N141/138-03 of the High Council of Justice of February 10, 2020.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

*2.3.1.1. Improvement of the existing disciplinary proceedings in accordance with international standards, within the scope of a working group (CCJE opinion No.3, GRECO recommendations), justification of a decision on termination of disciplinary proceeding, notifying to the author of the complaint (2017, 2018) – **Fulfilled***

*2.3.1.2. Preparing relevant proposals (including strengthening the guarantees of the independence of the inspector) (2018) – **Partially fulfilled***

*2.3.1.3. Development and implementation of electronic programme of disciplinary proceedings (2018) – **Unfulfilled***

**2.3.1.1.** With regard to this activity several positive amendments made to the Organic Law on Common Courts on December 13, 2019 should be mentioned (“Fourth Wave” of Judicial Reform). Introduction of the standard of a probable cause at the preliminary inspection and examination stage constitutes a significant novelty. Moreover, this standard is used by the High Council of Justice when making a decision on commencement of disciplinary proceedings and taking an explanation from a judge.<sup>133</sup> Making a decision on bringing a disciplinary charge against a judge based on a standard of high probability should also be welcomed.<sup>134</sup>

Moreover, it should be positively assessed that as a result of the amendments enforced within the scope of the “Fourth Wave” of judicial reform, the independent inspector was granted the power to refuse commencement of disciplinary proceedings against a judge and terminate disciplinary proceedings under the following circumstances:

- a) The time frame for bringing disciplinary charges or imposing disciplinary liability (disciplinary penalty) has expired;
- b) There is a decision made by a disciplinary body against the same judge on the same ground;
- c) Judicial powers of a judge have been terminated;
- d) The complaint is related to the legality of the act delivered by a judge.<sup>135</sup>

Taking into account the amendments enforced within the scope of the “Fourth Wave” of reform, activity **2.3.1.1.** can be considered fulfilled. However, it should also be noted that unfortunately, the amendments were not related to the rules of decision-making by the Disciplinary Board. Under current legal provisions, the disciplinary deci-

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<sup>133</sup> Organic Law of Georgia on Common Courts, Paragraph 1 of Article 757, Paragraph 1 of Article 75<sup>8</sup>, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

<sup>134</sup> Ibid, Paragraph 1 of Article 75<sup>14</sup>.

<sup>135</sup> Ibid, Paragraph 1 of Article 75<sup>12</sup>.

sion can be made by 2 members of the Board, which cannot ensure objective and fair process.<sup>136</sup>

**2.3.1.2.** This activity envisages “preparing relevant proposals”, however, it is not clear which specific issues this proposal should include. In order to assess the progress of the implementation of this activity, this monitoring report focuses on strengthening the guarantees of independence of an inspector and transparency of its activities. Taking into account the amendments made in this direction and the remaining challenges, activity **2.3.1.2.** can be considered partially fulfilled.

As a result of the amendments enforced within the scope of the “Fourth Wave” of reform, additional guarantees of independence were granted to the independent inspector. In particular, in order to terminate the powers of the independent inspector, at least  $\frac{2}{3}$  majority votes of the High Council of Justice is necessary, and the decision can be appealed in court.<sup>137</sup> However, the rule for appointment of the inspector remained the same: The independent inspector is elected by the simple majority of the High Council of Justice.<sup>138</sup> Such regulation constitutes a significant challenge, as the non-judge members do not have an influence on the decision-making process. In order to ensure a real involvement of the non-judge members, it is important that the independent inspector is elected by  $\frac{2}{3}$  majority votes of the Council.<sup>139</sup>

Notably, the “Fourth Wave” of reform envisaged financial guarantees of the independent inspector – his/her remuneration was determined to be equal to the salary of the judge of the court of appeals.<sup>140</sup> Moreover, decrease of the current expenses of the inspector’s office compared to the expenses of a previous year is not allowed without the consent of the independent inspector.<sup>141</sup> In addition, the independent inspector has an independent document circulation.<sup>142</sup>

Moreover, an important step forward is the fact that “improper fulfillment of duty” no longer constitutes one of the grounds of termination of the power of an inspector, which was quite

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136 Under current legislation, the Disciplinary Board is composed of 5 members. The decision of the Board is made by the majority of the members present. The Board is authorized to make a decision if the session is attended by at least 3 members. Organic Law of Georgia on Common Courts, Paragraph 1 of Article 75<sup>19</sup>, Paragraph 1 of Article 75<sup>24</sup>, Paragraph 2 of Article 75<sup>40</sup>, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

137 Organic Law of Georgia on Common Courts, Paragraph 21 of Article 511, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

138 Ibid, Paragraph 2 of Article 51<sup>1</sup>.

139 “Institute for Development of Freedom of Information”, “Human Rights Education and Monitoring Center”, Assessment of the Judicial Reform – System of Disciplinary Liability of Judges, November, 2019, p. 15, [available at: <https://bit.ly/2VMkwxz>; accessed on: 13.02.2020].

140 Organic Law of Georgia on Common Courts, Paragraph 8<sup>1</sup> of Article 51<sup>1</sup>., [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

141 Ibid, Paragraph 13 of Article 51<sup>1</sup>.

142 Ibid, Paragraph 9 of Article 51<sup>1</sup>.

a dubious provision. As a result of the amendments of the “Fourth Wave”, the grounds for terminating the power of an inspector became more clear and foreseeable which should be positively assessed.<sup>143</sup>

Despite important positive amendments, certain challenges still remain in terms of the transparency of the disciplinary liability system. In particular, under current legislation, the decisions and opinions of the independent inspector without identifying data are not published. Moreover, they are not available when requested as a public information,<sup>144</sup> which makes it impossible to assess and monitor the inspector’s decisions and opinions. The decisions of the High Council of Justice published to date clearly includes the materials considered by the inspector during preliminary inspection and examination, however, only few of them reveal the content of the inspector’s decision regarding existence/non-existence of signs of a disciplinary misconduct in the action of a judge.<sup>145</sup> Under such circumstances, it is difficult to assess the degree of independence of the inspector, objectivity of disciplinary proceedings and consistency of practice.

The action plan does not envisage increase of transparency of the independent inspector’s activities and review of the legislation in this regard. Within the scope of the strategic direction of ensuring accountable justice, the action plan for 2017-2018 only mentions creation and implementation of electronic programme of disciplinary proceedings.<sup>146</sup> Therefore, the action plan envisages measures for ensuring transparency of disciplinary proceedings in a limited manner and does not respond to the main challenge in this regard.

**2.3.1.3.** This activity has not been implemented in the reporting period.<sup>147</sup>

Monitoring of the action plan reveals that in the reporting period positive amendments were made in terms of improving disciplinary proceedings, which ensures partial achievement of the action plan’s aim (ensuring fairness, transparency and efficiency of disciplinary proceedings), however, certain challenges still remain in the system. As mentioned above, the rule

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143 Under subparagraph “i” of Article 6 of the Organic Law of Georgia on Common Courts, one of the grounds for terminating the power of an inspector is violation of the rights of a judge and the author of a complaint, which had a substantial impact upon the result of a case (this ground was not envisaged by the law before the amendment). Moreover, “i” subparagraph was added to Article 6 – disclosure of confidential information related to the disciplinary proceedings deliberately or with gross negligence.

144 Letter N14/6-03 of the Independent Inspector of September 14, 2018.

145 “Institute for Development of Freedom of Information”, “Human Rights Education and Monitoring Center”, “Assessment of the Judicial Reform”, March, 2019, pp. 66-67, [available at: <https://bit.ly/3am7d5F>; accessed on: 14.04.2020].

146 The judicial strategy considers the lack of transparency of disciplinary proceedings and the absence of electronic programme as a challenge. According to the strategy, electronic programme ensures transparency of disciplinary proceedings.

147 Letter N141/138-03 of the High Council of Justice of February 10, 2020.



of appointment of the independent inspector and inaccessibility of the inspector's decisions are especially problematic.

### 2.3.2 Development of effective mechanism for detecting misconducts in judicial activities

The judicial system action plan for 2017-2018 envisages the following two activities within the scope of development of effective mechanism for detecting misconducts in judicial activities:

*2.3.2.1. Organizing an informational campaign on the rules of judicial ethics in order to increase awareness on a right to submit a complaint (2017, 2018) – **Fulfilled***

*2.3.2.2. Publication of the rules of ethics on the web-site in a publicly available form (GRECO recommendation) (2018) – **Unfulfilled***

The Judicial System Strategy focuses on the necessity of determining interrelationship between the law regulating disciplinary liability and the rules of ethics. According to the international standards in this regard, violation of the rules of judicial ethics should not constitute a disciplinary misconduct. As a result of the legislative amendments enforced within the scope of the “Fourth Wave” of judicial reform, the list of the disciplinary misconducts does not envisage violation of the rules of ethics, which should be positively assessed. .

**2.3.2.1.** With regard to this activity, the draft progress report<sup>148</sup> provides that the independent inspector gave public lectures to the students of state universities within the scope of a visit to Gori and Kutaisi. Moreover, meetings were held with attorneys and the representatives of the legal sector in regions. In addition, lectures on awareness raising were held at the universities. Therefore, this activity should be considered fulfilled.

**2.3.2.2.** This activity, which envisages publication of the rules of ethics on the web-site, is probably related to the updated rules of ethics. Despite the fact that the current rules of judicial ethics is published on the website of the Supreme Court,<sup>149</sup> this activity should be considered unfulfilled, since updated rules of ethics have not been adopted in the reporting period.

148 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 29, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03-გ.

149 The rules of judicial ethics [available at: <https://bit.ly/2RMtTPl>; accessed on: 25.02.2020].

## Conclusion

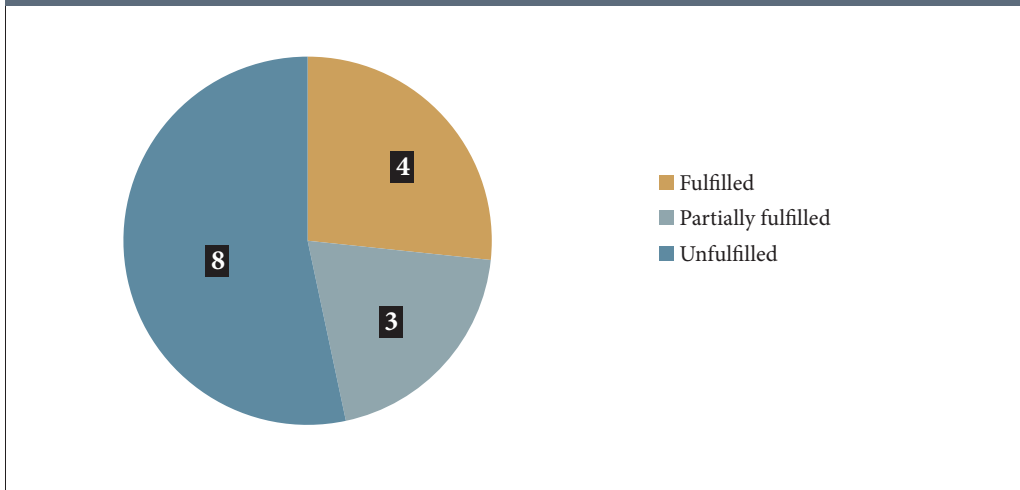
The disciplinary procedure significantly determines the fairness, objectivity and efficiency of the disciplinary liability system. In terms of the reform of the judicial liability system, analysis of a one-year report on the implementation of the action plan, other documents and public information revealed that the important changes have been implemented, however, certain challenges still remain. The efforts made in this regard are not sufficient to eradicate certain shortcomings of the disciplinary process.

Unfortunately, the draft of a new judicial action plan does not envisage publication of an independent inspector's decisions (without identification data) within the scope of enhancement of transparency of disciplinary proceedings. In addition, it does not mention publication of Council's decisions on bringing a disciplinary charge against a judge in accordance with confidentiality requirements. Moreover, the draft action plan does not envisage strengthening guarantees of independence of an independent inspector, which should be negatively assessed.

In the light of above, it is important for the working group and responsible agencies to carry out the work in the following directions:

- Creating solid guarantees of independence of an independent inspector at the legislative level, which includes amendment of the rule for appointment of an inspector;
- Improving disciplinary proceedings, which includes amendment of the rule of decision-making by the Disciplinary Board (by a majority vote of full composition instead of a majority of the members present);
- Approving the rules of ethics in compliance with the international standards, preparing the commentary on the rules of ethics and updating the existing teaching module on the rules of ethics;
- Creating and implementing a mechanism of confidential consultation for judges;
- Carrying out relevant work in order to prevent corruption cases in the system;
- Developing and implementing an electronic programme of disciplinary proceedings.

**Fulfillment status of the activities related to the reform of the disciplinary liability of judges as envisaged by the Judicial System Action Plan for 2017-2018<sup>150</sup>**



<sup>150</sup> This chart indicates the fulfillment status of those activities only, which were assessed during this monitoring period.

**The Work and Institutional Organization  
of the High Council of Justice**

## Outcomes of Judicial Reform and Remaining Challenges

The High Council of Justice is the primary constitutional organ for the administration of Judiciary. The Constitution of Georgia lists concrete goals of the Council's operation, such as independence and effectiveness of Common Court of Georgia, appointments and dismissals of judges. The Constitution also indicates that the Council may fulfil other functions, in turn rules on the operation of the Council and accordingly, the list of those additional functions is determined by an Organic Law of Georgia.<sup>151</sup> Further, absence of regulation in the Organic Law of Georgia for various aspects of Council activities remains a challenge. This leaves wide discretion and room for arbitrariness on the side of the Council.<sup>152</sup>

With regard to Council activities, the “first wave” of judicial reforms represented a significant positive step, which substantially modified the rule on composition of the Council.<sup>153</sup> Namely, it was established that judge-members of the Council are appointed directly by the Conference of Judges and the Supreme Court Chair was deprived of the exclusive power to nominate candidates. It indicated that from among members elected by the Conference of Judges, no more than three judges can simultaneously hold positions of chairs of a court panel or a chamber. Further, it was established that a member of the High Council of Justice cannot be a member of a disciplinary panel, which was aimed at drawing clear lines between these two institutions, and accordingly, needs to be positively assessed.<sup>154</sup>

As for the election of non-judge members, before the first wave reform, the Parliament appointed 3 Council members, while the fourth member was ex officio the chair of the Legal Issues Committee. As for the President – he/she appointed 2 non-judge members. As a result of the first wave of reforms, the authority to appoint all 6 non-judge members was transferred to Parliament. However, after the first wave reform, according to changes of November 1, 2013 to the Organic Law linked to constitutional amendments, the President regained the authority to appoint one non-judge member of the Council. Accordingly, 5 non-judge members of the Council are elected by the Parliament, while one is appointed by the President. As for the selection process of non-judge members in the Parliament, in accordance

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151 Constitution of Georgia, article 64, [available at: <https://bit.ly/3eWNs8l>; accessed on 14.04.2020].

152 Coalition for an Independent and Transparent Judiciary addressed the Parliament with a legislative proposal on regulation of the High Council of Justice in May of 2018, [the statement is available at: <https://bit.ly/2WnnzWG>; accessed on: 14.04.2020], which was partially reflected in the Organic law enacted as part of the fourth wave of reforms, however, number of issues remain beyond legislative regulation, e.g. the rule on closing Council sessions, rule on appealing all types of decisions rendered by the Council, etc.

153 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/05/2013, 580-IIb, [available at: <https://bit.ly/2RDJFTn>; accessed on: 14.04.2020].

154 See legislative changes to article 47, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/05/2013, 580-IIb, [available at: <https://bit.ly/2RDJFTn>; accessed on: 14.04.2020].

with the second wave of reforms, candidates are selected through a competition, excluding the possibility of their political affiliation with any party and/or membership in Parliament. Apart from that, the second wave of reforms, candidates are elected by two-thirds majority of the total composition of the Parliament. Also, requirements of professional qualification and list of persons authorized to nominate a candidate of a Council member were determined.<sup>155</sup> Civil society evaluated these changes positively, as a step forward in removing political influence on the Council.<sup>156</sup> It is also significant that as a result of the reform a person (both judge/non-judge members) cannot be reelected in the Council for two consecutive terms.<sup>157</sup>

After the legislative changes entered into legal force, the competition for selecting non-judge members of the Council was not conducted by the Parliament in a transparent manner. Despite recommendation of the civil sector, interview with candidates were held behind closed doors, accordingly, the public was not given the opportunity to monitor the process.<sup>158</sup> Thus, immediately after enactment of the first wave reforms, it could be observed that the new Government as well could not express firm political will to carry out actual and consistent changes in the court system. Gradually, the Government made significant concessions to the so-called “influential group” among the judges, which put the court system before crucial challenges of internal independence.<sup>159</sup>

The second wave of reforms pertained to life tenures of judges and introduction of a probation period for judges appointed for the first time. Appropriate changes to the rules on operation of the Council were required for the introduction of a probation period.<sup>160</sup>As the

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155 See legislative changes to article 47, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/05/2013, 580-IIb [available at: <https://bit.ly/2RDJFTn>, accessed on: 14.04.2020]. [available at: <https://bit.ly/2RDJFTn>; accessed on: 14.04.2020].

156 Transparency International Georgia, Assessment of the Georgian Judicial System (2012 – 2016), 2016, pp. 11-18, [available at: <https://bit.ly/35hh1gn>; accessed on: 14.04.2020].

157 See legislative changes to article 47, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/05/2013, 580-IIb [available at: <https://bit.ly/2RDJFTn>, accessed on: 14.04.2020].

158 Georgian Young Lawyers' Association, Transparency International Georgia, Monitoring Report of the High Council of Justice: Three-Year Summary (2012-2014), 2015, p. 24, [available at: <http://bit.ly/2b9ooZw>; accessed on: 14.04.2020]

159 Coalition for an Independent and Transparent Judiciary, The Judicial System: Past Reforms and Future Perspectives, 2017, p. 10 [available at: <https://bit.ly/3bdyGrp>; accessed on: 14.04.2020]. Apart from the appointment/dismissal process of non-judge members of the High Council of Justice, election of judge-members of the Council in May – July 2013 was also crucial for distribution of powers in the court system and accordingly, for testing the reform of the Council in practice. Precisely these two processes and accordingly, the same period is relevant for concentrating power in one group of influential judges, which gave them practically unlimited power to administer the court system. As the civil society has been emphasizing for years, starting from this period, critical views disappeared within the system. All Conferences of Judges held after 2013, during which decisions were made without any discussion by absolute majority of votes, are a clear indication that the court system gradually became closed and monolithic due to such influences. To illustrate the significance of expressing loyalty to the “influential group” by an ordinary judge, for years the Council had been using selective approach to appointment of judges and various disciplinary mechanisms with regard to judicial activities, see “Statement of Coalition for an Independent and Transparent Judiciary on Baia Bakradze’s complaint” [available at: [http://coalition.ge/index.php?article\\_id=240&clang=0](http://coalition.ge/index.php?article_id=240&clang=0); accessed on: 14.04.2020]

160 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/08/2014, 2647-6b, [available at: <https://bit.ly/34BqdMl>; accessed on: 14.04.2020].

said reform did not foresee substantive changes to institutional setup of the Council and its activities, the said issues were discussed in details in the chapter of the present report, which discusses issues of appointment-dismissal of judges.

Through the third wave of judicial reforms, the threshold of votes for electing non-judge members of the Council by Parliament was reduced, namely instead of two-third majority of the total composition of the Parliament, election by simple majority was deemed sufficient.<sup>161</sup> This was explicitly recognized as a negative step, as in this case no need arises for participation of opposition political groups, which is in stark contradiction with the principle of consensus. Accordingly, the safeguard that the person appointed to the Council does not represent interests of a concrete political group was weakened on a legislative level.<sup>162</sup>

Also, as a result of third wave reform, management department was created for supervising administration and management of Common Courts of Georgia. The third wave reforms regulated recusals of Council of members and the law envisaged the obligation of the Council member to indicate conflict of interest priorly as a reason for recusal and refrain from participating in the decision-making process. The changes foresaw the obligation of the Council to publish its decisions on the website, also information regarding change of Council's composition or other information related to its operation, including information on competition for a judicial office and its outcomes. Further, the Council was obliged to post the date and agenda of an upcoming session on the website no later than 7 working days before holding it.<sup>163</sup>

2017-2018 constitutional reform (1) determined more detailed rules on the composition of the Council; (2) the rule on election of the Council Chair changed; (3) The position of the Council Secretary was granted constitutional status; (4) the High Council of Justice was made accountable to the Conference of Judges (5) List of constitutional authorities of the Council was specified.<sup>164</sup>

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161 See the changes to paragraph 5 of article 47, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 08/02/2017, 255-IIb, [available at: <https://bit.ly/2yf1zoI>, accessed on: 14.04.2020].

162 Transparency International Georgia, Assessment of the Georgian Judicial System (2012 – 2016), 2016, p. 10, [available at: <https://bit.ly/35hh1gn>; accessed on: 14.04.2020]; Coalition for an Independent and Transparent Judiciary, The Judicial System: Past Reforms and Future Perspectives, 2017, pp.11-12, [available at: <https://bit.ly/3bdyGrp>; accessed on: 14.04.2020].

163 See the changes to paragraph 5 of article 47, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 08/02/2017, 255-IIb [available at: <https://bit.ly/2yf1zoI>; accessed on: 14.04.2020]. This reform also introduced the institution of an Independent Inspector (see the Chapter – “Reform of the System of Liability of Judges”).

164 Constitution of Georgia, article 64 [available at: <https://bit.ly/3eWNs8I>; accessed on: 14.04.2020], see Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 97 [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

Based on the fourth wave of reforms, the Chair of the High Council of Justice was obliged to present annual reports on the Council's activities to the Conference of Judges.<sup>165</sup> Changes were also made to the rules on composition of the High Council of Justice. Namely, in order to appropriately represent all instances of courts, the requirement was set that from among the eight members elected by the self-governing body of Common Courts – Conference of Judges – at least one Council member has to be presented from each instance of court. Apart from this, authorities presenting nominations for the position of the Council Chair were established; also, the rule on appointment of the Chair was renewed.<sup>166</sup>

The fourth wave of reforms included significant steps for ensuring transparency of the Council sessions. Namely, the obligation to publish minutes of the session on the website was established. Apart from this, if the obligation before was to post date and agenda of an upcoming Council session on the website no later than 7 working days before holding it, according to the amendments, this was changed to 3 working days. However, exception was made, that drafts of normative acts prepared by the High Council of Justice will be published no later than 7 days before the session.<sup>167</sup> The provision has to be assessed positively, as familiarization with the normative act requires more time than the agenda and relevant materials for sessions on other organizational issues to be discussed by the Council. Also, the fourth wave reform categorized decisions issued by the High Council of Justice as individual and normative acts.<sup>168</sup>

Despite constitutional amendments and four waves of reform, the current legislative framework entails the following shortcomings:<sup>169</sup>

- The legislation permits that a judge holds an administrative position, such as chair or deputy chair of court/panel/chamber and simultaneously is a member of the Council, which facilitates concentration of significant power in these persons. The Organic law imposes a limitation, that number of persons holding administrative positions cannot

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165 The report is approved by two-thirds majority of votes and is published on the website of the Council. See changes to paragraph 1<sup>1</sup> of article 47, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 13/12/2019, 5569-1b, [available at: <https://bit.ly/2V8oVoQ>; accessed on: 14.04.2020].

166 See changes made to paragraphs 2-2<sup>1</sup> of article 47, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 13/12/2019, 5569-1b, [available at: <https://bit.ly/2V8oVoQ>; accessed on: 14.04.2020].

167 See changes made to paragraph 4 of article 49, see Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 13/12/2019, 5569-1b, [available at: <https://bit.ly/2V8oVoQ>; accessed on: 14.04.2020].

168 See paragraphs 16<sup>1</sup>-16<sup>2</sup> added to article 47 with the changes, Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 13/12/2019, 5569-1b, [available at: <https://bit.ly/2V8oVoQ>; accessed on: 14.04.2020].

169 Majority of findings corresponds to challenges identified by the project team in the first reporting period, see Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, pp. 95-96, [available at: <https://bit.ly/2Kv6ML>; accessed on: 14.04.2020].



be more than half of the members elected by the Conference of Judges,<sup>170</sup> however, appointment of judge-members is regulated in such manner that in the selection of this half, the said persons holding administrative positions are privileged. Accordingly, to an extent, the legislation imposes a quota for persons holding administrative positions and accordingly, guarantees these persons a privileged position.<sup>171</sup>

- General Administrative Code of Georgia does not apply to activities of the High Council of Justice.<sup>172</sup> Despite the fact that the fourth wave of reforms categorized the acts issued by the Council, the legislation does not regulate scope, rules and procedures on appealing Council decisions (except certain decisions on appointments), which practically rules out reviewing of legality and substantiation of Council decisions;
- Existing legislative framework does not foresee the obligation to substantiate some of the most important decisions of the Council; The fourth wave established the obligation to substantiate the decisions. It entails the obligation to include formal legal grounds of an individual act, however, the Council obligation to materially substantiate the acts still is not mentioned;
- Despite obligations envisaged by law, in most cases information regarding dates and agenda of the upcoming sessions, is not published within the set deadline. Apart from that, draft/materials prepared on issues to be discussed during the Council session are not accessible;
- Procedures related to closing Council sessions are not established. In accordance with the rules on the Council activities, interviews with candidates for judicial positions, as well as with judges applying for a lifetime tenure are conducted behind closed doors, except when a candidate or an acting judge consents to attendance of interested persons;
- The legislation does not regulate the possibility/procedures for expressing views during the session of the High Council of Justice by persons attending it;
- Despite the fact that both interested persons and representative of media are entitled to attend the session, video recording of only the opening of a session is permitted;<sup>173</sup>
- In accordance with the obligation set by law, in the recent years only the audio recordings of the Council sessions have been accessible; It is significant that in cases when heightened public interest exists (e.g. appointment/dismissal of judges) video recording/live streaming of the session is ensured.

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170 See paragraph 4 of article 47 of the Organic Law on Common Courts of Georgia [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

171 Ibid, paragraph 3 of article 65.

172 According to subparagraph “e” of article 3 paragraph 2 of the General Administrative Code of Georgia, the Code except chapter 3 (rules on information freedom), does not apply to activities of the High Council of Justice [available at: <https://bit.ly/2KHblmh>; accessed on: 14.04.2020].

173 Additionally, the Council session is streamed live via the monitor in the building of the High Council of Justice.

## Implementation of the Judicial System Action Plan for 2017-2018

The tasks outlined in the Strategy and Action Plan of the Judicial System with regard to activities of the High Council of Justice and its institutional setup, largely reflected the challenges facing the judiciary in 2017. However, unfortunately these challenges are still actual and most of them remain unfulfilled due to inaction of agencies foreseen by the Action Plan. In total, in the first reporting period, 12 activities related to activities of the Council and its institutional setup were assessed by the project team, among those 3 were fulfilled, 5 were partially fulfilled and 4 were recognized as unfulfilled.<sup>174</sup> This chapter will precisely assess these 9 activities, which were granted the status of “partially fulfilled” or “unfulfilled” in the previous reporting period.

### 1.1.1. Ensuring Guarantees for Institutional Independence of the Council

*1.1.2.1. Updating the rule on composition of the Council, renewal of members and of criteria and procedures on their selection/appointment (2017 – 2018) – **Partially fulfilled***

*1.1.2.2. Inquiry into desirability of gradual renewal of the Council’s composition and establishing the principle to an appropriate degree (for continuity of institutional memory) (2017-2018) – **Unfulfilled***

*1.1.2.3. Granting of functional immunity and social protection guarantees to non-judge members of the High Council of Justice (2018) – **Partially fulfilled***

*1.1.2.4. Improvement of the Council’s operation, including enhancement of procedures on decision-making, substantiation and publicity of decisions (2018) – **Partially fulfilled***

*1.1.2.5. In light of legislative changes, updating and approving the Council’s regulations (2018) – **Partially fulfilled***

*1.1.2.6. Preparing of conclusions on legislative changes to the Organic law and relevant proposals by an expert – **Fulfilled***

**1.1.2.1.** – As a result of 2017-2018 constitutional reform, the Constitution established the rule of appointing non-judge members of the Council by a three-fifth majority of the parlia-

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174 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 108, [available at: <https://bit.ly/2K9v6ML>; accessed on 14.04.2020].

ment members. In addition, the new text of the constitution provided for a rule on appointment of the Chair and Secretary of the Council. Accordingly, the first part of the activity related to renewal of the rule on appointment of Council members and its composition, was recognized to be fulfilled already in the first reporting period. However, as in the first reporting period, the actual process of composing the Council remains a challenge and can be claimed to have shortcomings in view of the experience collected as a result of monitoring in the previous years.<sup>175</sup>

The draft of the second progress report refers to commentary on 1.1.1.7. activity in order to determine the status of fulfillment for this activity,<sup>176</sup> namely the draft refers to the activity, which sets the obligation to define independence, status, competence of the Council, rules on its composition and accountability.<sup>177</sup> This activity was fulfilled in the previous reporting period. Separation of these two activities in the Action Plan means that they refer to independent processes, which though related do not exhaust each other. Accordingly, when effective and systemic steps have not been undertaken in relation to the primary activity, practice of referring to an activity previously fulfilled by persons preparing the draft progress report is unacceptable.

The legislative recording, which allows a judge to be a member of the Council and at the same time hold such an administrative position as the Chairperson of the court / panel / chamber and / or the Deputy Chairperson of the court, may lead to accumulation of great power in the hands of these individuals. It is true that the Organic Law stipulates that the number of administrative officials should not exceed half of the members elected by the Conference of Judges of Georgia,<sup>178</sup> However, the problematic voting rule provided by the same law turns the above-mentioned restriction into more of a special quota and, therefore, puts these persons in a privileged position.<sup>179</sup> Although the civil sector has been pointing out this problem for many years, no new regulations have been enacted in the process of carry-

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175 As a rule, appointment of Council members does not proceed through a transparent procedure and the candidate's views on the situation in the judiciary, achievements and challenges, remains unknown to the public, see Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 99 [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020]. See also the Coalition addresses the new composition of the Council [available at: <https://bit.ly/3bH4Agh>; accessed on: 14.04.2020]; Coalition statement submitted to the extraordinary session of the Conference of Judges [available at: <https://bit.ly/3eYCFKT>; accessed on: 14.04.2020].

176 The High Council of Justice of Georgia, draft of the second annual report on the progress of the implementation of the 2017-2021 Strategy of the Judicial System, and the Action Plan, reporting period: June 2018 – June 2019, pp. 9-10, Obtained via letter of the High Council of Justice of March 10, 2020 №242/668-03.

177 Human Rights Training and Monitoring Center, Judicial Strategy and Action Plan – Shadow Report, 2018, p. 97, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

178 See Article 47, Paragraph 4 of the Organic Law of Georgia on Common Courts, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

179 Ibid, article 65(3).

ing out this activity, although the general formulation of the activity has allowed the Council, as the responsible agency, to address these and other legislative or procedural shortcomings.

It should be noted that during the first reporting period, the Council pointed out that work was underway to study the European practice on the criteria and procedures for the selection / appointment of members of the Council and the gradual renewal of the Council membership. However, the public information received in the second reporting period does not contain data on the meetings of the relevant working group and the preparation of the document.<sup>180</sup> In view of all the above, the activity should be considered partially fulfilled.

**1.1.2.2.** – Still in the first reporting period, correspondence<sup>181</sup> with the High Council of Justice indicated that research on desirability of gradual renewal of Council members was ongoing,<sup>182</sup> however, the findings of this research has not been made public, nor does public information provided contain relevant information, including draft of this research.<sup>183</sup> It is noteworthy, that draft of the second progress report does not discuss progress in fulfillment of this activity.<sup>184</sup> Accordingly, this activity is still unfulfilled.

**1.1.2.3.** – According to the draft of the second progress report, the first working group prepared two drafts on ensuring functional immunity and social security guarantees to non-judge members of the Council, which require legislative amendments to be made to the Organic Law on Common Courts of Georgia and Law on State Compensation and State Academic Stipends.<sup>185</sup> The first progress report also discussed preparation of the draft. However, until this date, it is unknown, when these drafts will be discussed at the Council session and presented to the Parliament in the form of a legislative proposal. This information is also not included in the letters provided by the Council.<sup>186</sup> Accordingly, this activity has to be recognized as partially fulfilled.

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180 Correspondence of the High Council of Justice of January 27, 2020, №94/105-03; Correspondence of the High Council of Justice of February 21, 2020; №184/1498-03; Correspondence of the High Council of Justice of March 10, 2020 №242/668-0 and №241/667-03.

181 Ibid.

182 Correspondence of the High Council of Justice of September 18, 2018, №1935/2675-03.

183 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501-03; Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

184 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 10, obtained via letter of the High Council of Justice of March 10, 2020 №242/668-03.

185 Ibid.

186 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501-03; Correspondence of the High Council of Justice of February 21, 2020, №184/1498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

**1.1.2.4.** – The Draft of the Second Progress Report also points to changes elaborated in the framework of the Reform Group (Fourth Wave) by the reform team that have determined the obligation to substantiate and publish the decision of the High Council of Justice to appoint the Chairperson of the district (city) court, the Chairperson of the appellate court and their deputy, as well as decisions on lifetime appointment of judges to district (city) court and appellate courts.<sup>187</sup> Additionally, the acts of the Council were categorized (see details above) and the cases of conflict of interest were regulated.<sup>188</sup> In relation to this activity, the Second draft Progress Report points to the changes made to the Organic Law of Georgia on Common Courts on May 1, 2019, on the basis of which the rules related to cases of conflict of interest in the process of selecting judges of the Supreme Court were regulated.<sup>189</sup>

According to the draft of the second progress report, amendments to the Decision of the High Council of Justice of Georgia on “Approval of the Protocol of the High Council of Justice of Georgia” enacted in July 2018 to improve the procedure for publishing Council decisions established the obligation to publish decisions on the official website within 5 days. The Council was also instructed to post decisions on the website in a consolidated manner within 14 days of enacting the relevant amendment.<sup>190</sup> The obligations to publish information regarding date and agenda no later than 3 days before the Council session, as well as to publish the draft normative acts no later than 7 days prior, established with the Fourth Wave reform, is also significant.<sup>191</sup>

However, despite four waves of reforms and number of positive changes, steps taken for improving Council activities cannot be considered to be comprehensive. Namely, despite guarantees with regard to publicity of decisions/draft decisions/agendas of sessions, the issues are still unresolved. Also, norms regulating substantiation and appeal mechanisms are not comprehensive and do not extend to all Council decisions. Because of this, the activity is partially fulfilled.

**1.1.2.5.** Regarding the activity, the second progress report refers to the working meeting between the members of the Council and the expert, which concerned the rules governing the activities of the High Council of Justice and based on this information the expert prepared a

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187 Draft Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts, 12.06.2019, Article 1, paragraphs 2-3, 5.

188 Ibid, article 4.

189 See: Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts, 01.05.2019.

190 Decision №1 / 226 of the High Council of Justice of Georgia of 2 July 2018 on the amendment of the Decision of the High Council of Justice of Georgia N1/208-2007 of 25 September 2007 on the Approval of the Protocol of the High Council of Justice of Georgia.

191 Draft Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts, 12.06.2019, Article 1, Paragraph 7.

conclusion on the draft amendments to the legislative / regulatory framework.<sup>192</sup> However, this conclusion is not available to the project team. Also, according to the Draft of the Second Progress Report, preparing amendments to the protocol was planned after the adoption of the Fourth Wave draft laws. However, this change is yet to be implemented. Therefore, the activity is partially fulfilled.

**1.1.2.6.** – As mentioned in the previous activity commentary, the expert prepared a conclusion regarding the draft laws, therefore the activity should be considered as fulfilled. However, as expert conclusions are not accessible to public, its content cannot be determined. Accordingly, even if a critical view is expressed, public scrutiny over the fact of its consideration cannot be maintained.

### **1.4.1. Strengthening protection mechanisms for independence of individual judges within the judicial system**

*1.4.1.4. Preparation of a proposal, which will address the need for increasing participation of the regional judges in the operation of the High Council of Justice (2017-2018)*  
– **Partially fulfilled**

**1.4.1.4.** – In the previous reporting period, the High Council of Justice discussing this obligation referred to decision rendered by the Council during the session on May 21, 2018 for fulfilling the activity 1.1.3.2. – enhancement of participation mechanisms for judges in the process of reforming legislation related to judiciary.<sup>193</sup> Based on this decision, judges of Common Courts of Georgia will be informed about key issues in the agenda of the Council and provided with annexed documents, while if they wish they can present comments and proposals on the issues.<sup>194</sup> It is significant, that as noted in the first shadow report, the High Council of Justice has on numerous occasions disclosed that often it is not feasible to agree on and formulate agendas for Monday sessions before Friday. Accordingly, as in the first reporting period, up until now it is still unclear, whether it is possible for judges to get fully familiarized with the relevant documents and present comments/views on them in this short time frame considering their work-

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192 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 12, obtained via letter of the High Council of Justice of March 10, 2020 №242/668-03.

193 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, pp. 13, 24, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

194 Decision of the High Council of Justice, May 21, 2018, [available at: <https://bit.ly/2zGSx4z>; accessed on: 14.04.2020].

load.<sup>195</sup> Precisely, due to these reasons, this activity was considered to be partially fulfilled in the previous reporting period. As neither the draft of the second report<sup>196</sup>, nor requested public information<sup>197</sup> point to additional information on these issues, the activity has to be regarded as partially fulfilled in the second reporting period as well.

## 1.4.2. Protection of judicial independence against undue influence

*1.4.2.1. Inquiry into the practice of reacting to cases of violating independence of the judiciary/a judge and the High Council of Justice/its members, illegal interference with their activities or incidents of pressure, also inquiry into the liability system and determination of the need to introduce it (2017) – Partially fulfilled*

**1.4.2.1** – According to the first progress report, foreign experts analyzed existing standards within the European Council related to illegal interference with judicial affairs and instances of pressuring judges and prepared recommendations.<sup>198</sup> The said document was submitted to members of the High Council of Justice and representatives of respective working groups during the working meeting of May 3-4, 2018. Despite this research, relevant views of the respective working group and the agency responsible for the fulfillment of this activity – High Council of Justice – are still unknown. Draft of the second progress report does not comment on this activity at all,<sup>199</sup> while the public information provided by the Council indicates that in the second reporting period respective working group has not convened to discuss the need for introducing the appropriate system based on research findings.<sup>200</sup> Accordingly, al-

195 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 101, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

196 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 18, obtained via letter of the High Council of Justice of March 10, 2020 №242/668-03.

197 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501-03; Correspondence of the High Council of Justice of February 21, 2020, №184/1498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

198 The research document was prepared in the framework of an EU project, see the Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, p. 15, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

199 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, obtained via letter of the High Council of Justice of March 10, 2020 №242/668-03.

200 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501-03; Correspondence of the High Council of Justice of February 21, 2020, №184/1498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

though the research was conducted, as no discussion followed on the practices of reacting to incidents of violating independence of the judiciary/a judge and the High Council of Justice/ its members, illegal interference with their activities or pressure, as well as on the need for a new liability system, the activity has to be deemed partially fulfilled.

### 4.3.2. Organizational-structural reform of the High Council of Justice and Department of Common Courts

*4.3.2.1. Functional analysis of the organizational setup of the High Council of Justice and the LEPL Department of Common Courts, formulation of recommendations and implementation plan (2018) – Unfulfilled*

**4.3.2.1.** – As in the first reporting period, for the purposes of this subsection, with regard to this activity the present report will only assess the part on organizational setup of the High Council of Justice. According to public information provided by the Council in the first reporting period, the activity had not been fulfilled.<sup>201</sup> It is noteworthy, that neither the official correspondence<sup>202</sup> in the second report period, nor the draft of the second progress report<sup>203</sup> contain information regarding undertaken and/or planned measures to functionally analyze the organizational setup of the Council, formulate recommendations and plan of their implementation. Accordingly, in the second reporting period also the activity is unfulfilled.

## Conclusion

In the monitoring process, number of shortcomings were identified with regard to fulfilment of the activities envisaged in the Action Plan, however, it is also significant which issues will be covered by the new Action Plan. As until now only a draft of the Action Plan is available to interested parties, it cannot be conclusively stated whether the issues significant for reforming the Council, but omitted in the Action Plan for 2017-2018 (e.g. regulations and procedures on closing Council sessions, ensuring the possibility for persons attending the

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201 The correspondence of the High Council of Justice №2226/3133-03.

202 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501-03; Correspondence of the High Council of Justice of February 21, 2020, №184/1498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

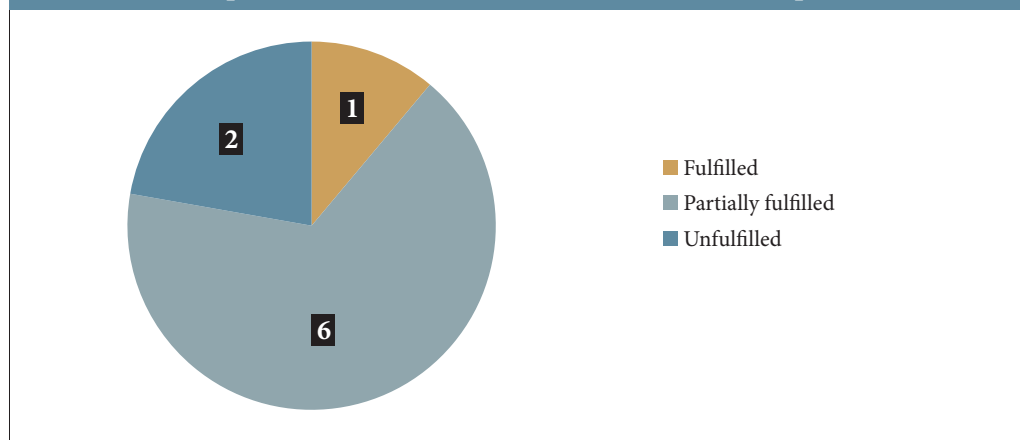
203 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 10 obtained via letter of the High Council of Justice of March 10, 2020 №242/668-03.



Council session to express views through legislative regulation, etc.) Accordingly, it is crucial that the next stage of implementation of Judicial Strategy and Action Plan includes the following directions:

- Further enhancing the rules on composition of the Council, as well as criteria and procedures on the selection/appointment of the Council members;
- Enhancing the practice of decision-making, substantiation and publicity of Council decisions;
- Enhancing the practice of complying with legislative regulations in relation to preparatory procedures of the Council sessions;
- Regulation of the rule and procedures on closing Council session and conducting interviews with candidates for judicial positions in an open session;
- Functional analysis of the organizational setup of the High Council of Justice, formulation of recommendations and plan of their implementation;
- Legislative regulation of procedures for expression of views by persons attending the Council session;
- Inquiry into desirability of gradual renewal of Council members and incorporation of this principle to an extent appropriate to need;
- Determination of the need to introduce the system of liability for reacting to incidents of violating independence of the judiciary/a judge and the High Council of Justice/its members, illegal interference with their activities or pressure;
- Formulation of effective mechanisms for participation of regional judges in the activities of the High Council of Justice.

**Fulfillment Status of Activities envisaged in 2017-2018 Action Plan for Enhancing Operation of the Council and its Institutional Setup<sup>204</sup>**



<sup>204</sup> This chart indicates the fulfillment status of those activities only, which were assessed during this monitoring period.

# Transparency of the Judiciary

## Results of the Judicial Reforms and Existing Challenges

In the framework of the “first wave”<sup>205</sup> of legislative reforms, significant steps were taken to improve transparency of the judiciary. Namely, as a result of the reform, the court’s obligation to audio/video record court sessions and to guarantee accessibility of such records to parties and other persons upon request, was established.<sup>206</sup> The “second wave”<sup>207</sup> of reforms did not envisage any changes with regard to transparency of the judiciary. In turn, the “third wave”<sup>208</sup> of legislative reforms introduced a new system of electronic case distribution.<sup>209</sup> The obligation to publish a decision following substantive consideration of a case in an open hearing was also defined by law.<sup>210</sup>

As for the “fourth wave”,<sup>211</sup> adopted legislative changes also included provisions related to public nature of Council activities, that are directly linked to transparency of the judiciary, namely on:

- Publication of annual reports on Council activities as presented to the Conference of Judges on the website of the Council;<sup>212</sup>
- Written substantiation of the decisions made by the High Council of Justice; ensuring possibility of presenting views by those persons, whose legal interests are directly affected by a decision of the High Council of Justice, prior to rendering one;<sup>213</sup>
- Publication of the information on decisions by the High Council of Justice, changes to the composition of the Council, minutes of the Council sessions and other information regarding activities of the Council, among others, statistical data in relation to reports of an Independent Inspector as well as initiation of disciplinary proceedings and imposition of disciplinary sanctions, also information regarding upcoming competitions for vacant position of judges and its results;<sup>214</sup>

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205 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/05/2013, 580-IIb, [available at: <https://bit.ly/2RDJFTn>; accessed on: 14.04.2020].

206 Ibid, see Changes made to articles 13 and 131 of the Organic Law on Common Courts of Georgia.

207 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 01/08/2014, 2647-6b, [available at: <https://bit.ly/34BqdMl>; accessed on: 14.04.2020].

208 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 08/02/2017, 255-IIb, [available at: <https://bit.ly/2yf1zoI>; accessed on: 14.04.2020].

209 Organic Law on Common Courts, Article 58<sup>1</sup>, [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

210 Ibid, Article 13 (3’).

211 Organic Law of Georgia on Changes to the Organic Law of Georgia on Common Courts, 13/12/2019, 5569-1b, [available at: <https://bit.ly/2V8oVoQ>; accessed on: 14.04.2020].

212 Organic Law on Common Courts, Article 47 (1’), [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

213 Ibid, Article 47 (16’).

214 Ibid, Article 49 (4).

- Guarantees that the High Council of Justice makes audio records immediately accessible to interested persons upon request;<sup>215</sup>
- Publishing information about the date and agenda of a Council session on the website no later than 3 days before holding it;<sup>216</sup>
- Publishing the draft normative acts of the High Council of Justice to be considered during the Council sessions on the website no later than 7 days before holding it;<sup>217</sup>
- Substantiation of decisions by the High Council of Justice on lifetime appointment of district/city/appeals court judges.<sup>218</sup>

Despite initial success of the reform, after the “first wave” of reforms, express will to improve transparency of the judiciary was not observed in practice. For years, civil society was emphasizing that closed nature of the system and practices of informal negotiations, on the one hand raised public distrust towards the judiciary and on the other hand, complicated exposure of problems prevalent in the system.<sup>219</sup>

Apart from overviewing waves of legislative reforms, for discussion on the transparency of the judiciary, it is significant to note the 2019 June decision of the Constitutional Court, which established standard of full public access to decisions of courts, except when considering sensitivity of information in the decision it is necessary to conceal personal identification data for protecting the right to private life. The Constitutional Court of Georgia deemed disputed norms void starting from May 1 of 2020 and set this deadline to the Parliament for regulating the issues in compatibility with the Constitutional requirements.<sup>220</sup> Unfortunately, thus far Parliament has not rendered a decision, which makes it questionable whether these legislative changes will be adopted within the set timeframe.

The following challenges are particularly noteworthy with regard to transparency of the judiciary:

- Inconsistent practice of communication between NGOs and professional circles in the process of working on the ongoing reforms in the Judiciary;
- Low level of awareness regarding ongoing processes in the Judiciary;

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215 Ibid.

216 Ibid.

217 Ibid.

218 Organic Law on Common Courts, Article 36 (4), [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

219 Coalition for an Independent and Transparent Judiciary, *The Judicial System: Past Reforms and Future Perspectives*, 2017, p. 10, [available at: <https://bit.ly/3bdyGrp>; accessed on: 14.04.2020].

220 „Media Development Foundation” and “Institute for Development of Information of Freedom” v. Parliament of Georgia, the decision of the Constitutional Court of Georgia of June 7, 2019 N1/4/693,857.

- Low level of public trust towards the Judiciary;
- Absence of effective communication mechanisms with the public on the side of the Judiciary;
- Flawed practice of publishing court judgements;
- Absence of uniform methodology of producing and processing statistical data;
- Flawed practice of granting public information requests.

## Implementation of the Judicial System Action Plan for 2017-2018

Programs and activities for the fulfillment of those foreseen in the Judicial Strategy and Action Plan with the purpose of overcoming existing challenges in the Judiciary largely addressed the context of 2017.<sup>221</sup> Unfortunately, these challenges are still actual, and a major part of the activities targeted at them are not implemented yet.

In total, there are 21 activities in the Action Plan addressing the issues of transparency in the Judiciary. In the previous reporting period out of those 21 activities, only 5 were fulfilled, 7 was partially fulfilled and 9 were qualified as unfulfilled.<sup>222</sup> This section will discuss precisely those 16 activities, which were partially or non-fulfilled according to the previous progress report.

It is noteworthy that effective implementation of electronic case distribution system introduced in the framework of “third wave” judicial reform is of utmost significance for transparency of the judiciary. All activities related to this direction were held to be fulfilled in the previous reporting period, however, as monitoring of the implementation process after the system’s introduction has revealed the issue has lost its pertinence within the judiciary and the will to further reforms in this direction is weakened.<sup>223</sup>

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221 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 89, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

222 Ibid, p. 101.

223 See in more details: Human Rights Education and Monitoring Center (EMC), Electronic System of Case Distribution in Courts, 2020, [available at: <https://bit.ly/2V7n1Fb>; accessed on: 15.04.2020].

### 1.4.3. Strengthening Communication with the Public for Raising Awareness and Legal Culture about Issues Related to Judiciary

*1.4.3.1. Devising and implementing strategy for the courts' effective communication with the public (2017) – Partially fulfilled*

*1.4.3.3. Planning and carrying out activities for raising awareness of the public and representatives of different professions, in the context of reporting on the pending cases – Partially fulfilled*

**1.4.3.1** – For assessing this activity, draft of second progress report refers to commentaries on activities 2.4.2.1. and 2.4.2.2.<sup>224</sup> The first shadow report already indicated that activities 1.4.3.1. and 2.4.2.1. have similar content.<sup>225</sup> Namely, activity 2.4.2.1. concerns devising of Communication Strategy and Action Plan, while activity 1.4.3.1. refers to formulation and implementation of the strategy on effective communication of the judiciary with the public. Due to their headings, drawing a clear line between these two activities is complicated and accordingly, the rationale behind separate formulation of these activities in two different sections remains ambiguous.

It is noteworthy, that both activities 1.4.3.1. and 2.4.2.1. had to be fulfilled in 2017.<sup>226</sup> The first shadow report indicated that on July 20, 2018 working group formed for implementing Strategy and Action Plan approved core directions of the Communication Strategy for the court devised with the support of a local expert in the framework of an EU project, after which the drafts were forwarded to the High Council of Justice for consideration. However, in the first reporting period, the High Council of Justice had not decided on adoption of the said strategy.<sup>227</sup> According to the draft of the second progress report, on November 19, 2018, the High Council of Justice adopted Communication Strategy,<sup>228</sup> which defines core directions and goals of internal and external communication of the judiciary, possible communication types and communication tools/instruments.<sup>229</sup>

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224 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018 – June 2019, p. 19, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

225 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 94, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

226 Judicial Strategy for 2017-2021 and Action Plan for 2017-2018 approved through the decision dated 29.05.2018 (N 1/62) of the High Council of Justice, [available at: <https://bit.ly/3cz0BSS>; accessed on: 14.04.2020].

227 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 90, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

228 Document was prepared through the support of a local expert in the EU project.

229 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 33, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

The draft of the second progress report also indicated that the Action Plan on communication of the Judiciary was being drafted for implementation of the Communication Strategy, which as planned had to be adopted in 2019.<sup>230</sup> However, based on the public information obtained, it cannot be established whether the said Action Plan was adopted or not.<sup>231</sup> As formulation of the Action Plan is a necessary component for “activating” the Strategy, also confirmed by joint consideration of this activity along with activity 2.4.2.1. in the draft of the second report, activity 1.4.3.1. cannot be considered to be fulfilled until the Action Plan is adopted for the implementation of the Communication Strategy and the Strategy is being realized in practice. Considering all of the above, activity 1.4.3.1. still has to be considered as partially fulfilled.

**1.4.3.3.** – According to the first progress report, measures for raising awareness of the public and representatives of different professions with regard to publicity of pending cases, could not be undertaken due to objective circumstances, however, the report did not point to objective circumstances, that led to such failure.<sup>232</sup> In relation to this activity, the draft of the second progress report refers to a two-day media seminar held for journalists of media and news agencies on October 20-21 of 2018.<sup>233</sup> It is noteworthy that relying on public information provided by the High Council of Justice the first shadow report included information regarding the seminar, based on which the activity was qualified as partially fulfilled already during the first reporting period.<sup>234</sup> As the draft of the second progress report states, significant issues such as functions of the High Council of Justice, accountability and effectiveness of the judiciary, appointment of judges, backlog of court cases etc. were discussed during the meeting.<sup>235</sup> Despite this, it has to be noted, that in the present reporting period, similar meetings have not taken place.<sup>236</sup> Accordingly, it is important that work in this direction continues. In view of the scale and circle of participants, the said single meeting could not meet the goal of raising awareness of the larger society and different professional groups. Thus, the activity has to be considered as partially fulfilled.

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230 Ibid.

231 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501; Correspondence of the High Council of Justice of February 21, 2020, №184/498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

232 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, p. 26, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

233 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 19, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

234 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, pp. 90-91, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

235 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 19, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

236 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501; Correspondence of the High Council of Justice of February 21, 2020, №184/498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

## 1.4.4. Enhancing Independence, Appearance of impartiality and Prevention of Violations

### 1.4.4.3. *Enhancing the practice of publishing court judgements (2017) – Fulfilled*

**1.4.4.3.** – A positive change brought by “third wave” judicial reform – publishing of court judgements rendered as a result of substantial consideration in an open trial<sup>237</sup> – was introduced in the judicial system already during the previous reporting period. However, the first shadow report pointed out the shortcomings with the platform (info.court.ge) in relation to publishing redacted decisions, which on most occasions made impossible to search for decisions.<sup>238</sup> The said fact is confirmed by the first progress report, which pointed to failure of operating a functional web portal within the deadline set by the Action Plan (until 2017) and indicated end of 2018 as the new deadline for the fulfilling this activity.<sup>239</sup>

Annual progress report also referred to the report of an information technology team pointing to the need of creating an integrated search engine for all three instances of courts. The report emphasized the need for ensuring access to all redacted judgements, final documents, public notifications and for the possibility to search for scheduled court sessions.<sup>240</sup> However, according to information available in the first reporting period, it was unknown whether the website – info.court.ge contained decisions of all three instances.<sup>241</sup>

The draft of the second progress report links this activity to obligations foreseen by program 5.4.3. This is partly logical, as the practice of publishing court decisions (1.4.4.3.) cannot be improved without unified database of decisions (both domestic and international) and fully functional uploading system on the website (activity 5.4.3.1), where decisions of all three instances will be systematized (activity 5.4.3.2.).<sup>242</sup>

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237 Organic Law on Common Courts, Article 13 (3<sup>1</sup>), [available at: <https://bit.ly/2K5YbyT>; accessed on: 14.04.2020].

238 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 91, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

239 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, pp. 27-28, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

240 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, p. 28, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

241 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 91, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

242 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, pp. 20, 101-102, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.



According to the draft of the second progress report, as a result of IT audit conducted in spring 2018,<sup>243</sup> on the basis of findings regarding operation of all programs in the court system (including the search engine for cases – info.court.ge), the module for search engine of court cases was developed, and on June 21, 2019, through the organizing of the High Council of Justice presentation of the new website took place in the High School of Justice.<sup>244</sup> According to the second progress report, apart from finding/getting familiarized with decisions on the new website, registered users will additionally be able to be informed about the progress of case proceedings, private and public notifications and all electronic documents related to the case. In addition, it is possible to search for court decisions with appropriate detailed filters such as case number, date of decision, text, court instances and specific courts, category of cases and disputes, also type of decisions. Currently, decisions from 2019 are available on the website, however, according to the draft of the second progress report, decisions from previous years will be gradually added.<sup>245</sup> Therefore, the activity has to be considered fulfilled.

#### 2.4.1. Enhancing Statistical Forms, Analytical Reports, and Tools for their Distribution

*2.4.1.1. Devising a methodology for uniform production of statistics (for all instances of courts and institutions of the judiciary) and its introduction on websites and other sources of communication (2017-2018) – **Partially fulfilled***

*2.4.1.2. Introducing the methodology for publication of analytical reports (of courts, the Council) and publishing them periodically, including on the websites and other sources of communication – **Partially fulfilled***

*2.4.1.3. Analyzing and enhancing the practice of issuing public information (2017-2018) – **Partially fulfilled***

*2.4.1.4. Organizing training for persons in charge of issuing public information (2018) – **Partially fulfilled***

*2.4.1.5. Establishing the practice of publishing and disseminating annual reports of Common Courts and the High Council of Justice on the website (among others ensuring public accessibility of information regarding the finances) (2017-2018) – **Partially fulfilled***

243 Findings of IT audit conducted through the joint initiative of donors has still not been published and neither could it be obtained by the project team through a public information request. – Correspondence of the High Council of Justice №2208/3236-03.

244 New website – <http://ecd.court.ge/>; for more details about the activity see The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 101, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

245 Ibid, p. 102.

**2.4.1.1.** – Currently, the Supreme Court processes statistical data relating to the judiciary. The Supreme Court produces statistics merely by integrating data from each court. In the absence of uniform methodology, it is ambiguous whether the practice of producing statistical data and/or providing the Supreme Court with appropriate documents is uniform.<sup>246</sup>

In relation to devising uniform methodology of producing statistics, the first progress report pointed to visits of international experts in 2017.<sup>247</sup> According to information indicated in the first progress report, already in the first reporting period full catalogue of statistical reporting forms for Common Courts was created with respect to different instances of court and revision and modification of the forms, verification of data was ongoing, after which forms of statistical reporting would be approved.<sup>248</sup>

Unfortunately, the draft of the second progress report does not entail information about adoption of these documents, neither has the High Council of Justice provided such information.<sup>249</sup> The draft of the second progress report does not even mention this process and emphasizes essentially different formats. Namely, according to the document, for improving processing of court statistics, refining statistical forms and discussing existing challenges, in December 2018, representative of the statistical department in the Supreme Court held work meetings with heads of registry offices in district/city and appeals courts and others persons responsible for handling statistical data. While describing the meetings, the second progress report indicates, that special attention was drawn to gathering and processing necessary data for producing gender-based statistics in line with obligations set by the European Convention on Preventing and Combating Violence against Women and Domestic Violence, attention was also drawn to the rules related to statistical reporting forms devised and introduced in line with international standards by the statistics sector of the Supreme Court.<sup>250</sup> The draft of the second progress report also indicates that starting from 2019 the Supreme Court Sta-

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246 Human Rights Education and Monitoring Center (EMC), “How to measure the independence of judiciary – Statistics of Acquittals”, [available at: <https://goo.gl/vouQk8>; accessed on: 14.04.2020].

247 In July 2017, upon invitation of the Supreme Court of Georgia, Slovenian expert visited Georgia. In September 2017, in the framework of EU project, delegation of European Commission visited Georgia to evaluate effectiveness of administration of justice, for more details about the activity. See Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, pp. 92-93, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

248 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, pp. 41-41, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

249 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501; Correspondence of the High Council of Justice of February 21, 2020, №184/498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

250 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 22, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

tistics sector is actively involved in the activities of the working group created for producing criminal case statistics.<sup>251</sup>

Despite the fact that organizing the said work meetings and/or involvement in interagency working groups has to be positively assessed, these cannot be assessed as complete fulfillment of the activities. These steps are fragmented and extends only to certain types of cases (criminal cases) or are even narrower and relate only to concrete crimes (domestic violence). The purpose of this activity is to draw a uniform methodology for producing statistics for all instances of courts and institutions and for all kinds of cases (considering specific characteristics). Accordingly, it is necessary that responsible agencies start working comprehensively. Considering all of the above, the activity has to be assessed as partially fulfilled.

**2.4.1.2.** According to the draft of the second progress report, the Supreme Court prepared and published on the website the 2018 report on the “State of the Administration of Judiciary”<sup>252</sup>, which was presented to the public on April 15, 2019. The report includes analysis of jurisprudence of lower courts and the Supreme Court, as well as information about significant cases discussed during that year. In 2019, annual electronic statistics edition “Administration of Justice in Georgia – 2018”<sup>253</sup> was prepared and published on the website. The edition contains statistical/analytic tables and graphs about the number of submitted and considered civil, administrative, and criminal cases according to court instances and categories of disputes (types of crimes) in a dynamic of several years. Draft of the second progress report indicates that systems of obtaining/processing data will be improved in line with international standards, in turn publishing of statistical data processed in accordance with the above methodology will continue annually.<sup>254</sup> It is noteworthy that the said documents are more like statistical reports than analytical documents based on statistical data. Accordingly, it is preferable that responsible agency corrects the draft of second progress report and the said documents are discussed within the scope of activity 2.4.1.1.

As for the methodology of preparing an analytical document, it is significant that the new Action Plan more clearly defines the indicators, which will simplify assessment of the activ-

251 Appropriate agencies of the Ministry of Internal Affairs, Prosecutor’s office and the Ministry of Justice are represented in the said working group. The working group was created to formulate uniform standard and methodology for producing statistical data by all state agencies/ to introduce uniform methodology for producing statistics on criminal cases established by international standards. See in more details: The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, pp. 29-30, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

252 Supreme Court of Georgia, Report Of 2018, [Available at: <https://bit.ly/2W94tUi>; accessed on: 14.04.2020].

253 Supreme Court of Georgia, Administration of Justice in Georgia – 2018, [Available at: <https://bit.ly/2YeQBKN>; accessed on: 14.04.2020].

254 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 31, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

ity. Precisely, the practice of defining general indicators for directions/programs<sup>255</sup> instead of defining them individually for specific activities in the Action Plan, causes ambiguity and complicates drawing clear lines between activities 2.4.1.1. and 2.4.1.2.

It is noteworthy that in relation to this activity the second working group in the first reporting period indicated that in the framework of an EU project on Strengthening Judiciary, in November 2017, local expert prepared a document on guidelines for research, which discusses types of documents/research projects, legal analysis, structure of the documents and standards for using statistical information.<sup>256</sup> However, it is still unknown how this document will be applied in the process of preparing and publishing analytical reports by the courts and the Council. It is noteworthy, that this document is not mentioned either in the first<sup>257</sup> or second progress reports.<sup>258</sup>

In the monitoring process, it was observed that there are cases when the Strategy and Action Plan define the obligation of preparing a document or undertaking research, which is formally fulfilled, however, in practice responsible agencies do not point to utility of these documents/research papers and/or instances of their use. It is significant, that information relating to the said document – guidelines for research – prepared by a local expert in November of 2017 is added to the draft of the second progress report, namely what measures were taken in this direction from November of 2017 up until today and what will be the value of this document for formulating a uniform methodology of preparing analytical reports.

**2.4.1.3.** – According to the second progress report, for analysing the practice of issuing public information and establishing uniform standards for granting public information requests in Common Court of Georgia, the High Council of Justice requested information from the Common Courts of Georgia regarding public information requests in 2017-2018. As it is observed, the High Council of Justice plans to analyse the practice of issuing public information and eventually, to establish uniform standards for granting public information requests precisely based on this information.<sup>259</sup> It has to be noted, that this information was already

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255 For instance, indicators in the Action Plan are determined broadly for program 2.4. and not with respect to subprograms and concrete activities see the decision of 29.05.2018 (N1/162) of the High Council of Justice see Judicial Strategy for 2017-2021 and Action Plan for 2017-2018 approved through the decision dated 29.05.2018 (N 1/62) of the High Council of Justice [available at: <https://bit.ly/3cz0BSS>; accessed on: 14.04.2020].

256 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 93, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

257 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

258 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 31, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

259 Ibid.

included in the first shadow report.<sup>260</sup> The Council does not explain why this process needed two years to be finalized. Accordingly, the activity has to be qualified as partially fulfilled.

**2.4.1.4.** – In relation to this activity, the draft of the second progress report as well as the first progress report point to two training sessions in the framework of the 2018 program on “Training of Judges and other Personnel of Court” prepared by second working group (on the topic: “law on Personal Data Protection” and accessibility of public information).<sup>261</sup> As the first shadow report indicates<sup>262</sup>, it is significant that training sessions for persons in charge of issuing public information address the challenges identified through the analysis of the practice, which at this stage has not been done. Therefore, the activity is considered to be partially fulfilled.

**2.4.1.5.** – According to the draft of the second progress report, on the grounds of the decision of the High Council of Justice,<sup>263</sup> information regarding financing of Common Courts of Georgia, Department of Common Courts of Georgia and financial reporting on these are published/updated in line with the rules in the same decision.

It has to be taken into account, that in contrast to prior experience, namely that operation of the Council from 2013 to 2017 was addressed in a unified document by the previous composition,<sup>264</sup> it has to be positively assessed that the period from 2018 to 2019 was assessed in the report of the Secretary of the High Council of Justice<sup>265</sup> which is published on the Council website. However, for the purposes of assessing the activity, as it was noted in the first shadow report, it is necessary that the list of the issues to be included in the annual report are defined.

As for annual reports of Common Courts of Georgia, the draft of the second progress report additionally refers to the annual report of the Supreme Court discussed in the commentary

260 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 93, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

261 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, pp. 31-32, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

262 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 93, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

263 “Standard for Electronic Public Information Requests and the Rule on Proactive Publication” approved through the decision of December 27, 2013 (№1/225) by the High Council of Justice [available at: <https://bit.ly/3bPJaNT>; accessed on 14.04.2020].

264 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 94, [available at: <https://bit.ly/2Kyv6ML>; accessed on 14.04.2020].

265 The Annual Report of the Secretary of the High Council of Justice 2018-2019, [Available at: <https://bit.ly/3f3DDW7>; accessed on: 14.04.2020 ].

on activity 2.4.1.2.<sup>266</sup> However, it remains unclear whether similar reports are prepared by district/city and appeals courts. Therefore, the activity needs to be considered as partially fulfilled.

## 2.4.2. Establishing Effective Mechanisms of Communication with the Public

2.4.2.1. *Devising Communication Strategy and Action Plan (2017) – Partially fulfilled*

2.4.2.2. *Revision of communication standards defined for the court personnel and their implementation (2017) – Partially fulfilled*

**2.4.2.1.** – The said activity was broadly discussed in the context of the assessment commentary on activity 1.4.3.1. (see above). As already mentioned, according to the draft of the second progress report, on November 19 of 2018, the High Council of Justice approved Communication Strategy,<sup>267</sup> however, based on the public information obtained it is unclear whether an appropriate Action Plan was prepared for the implementation of this Strategy.<sup>268</sup> Approval of both Communication Strategy and Action Plan and initiation of their implementation is defined as an indicator of fulfillment for the program 2.4.<sup>269</sup>, hence until the Action Plan for the implementation of the Communication Strategy is prepared/approved, this activity has to be deemed partially fulfilled.

**2.4.2.2** – The said activity had to be fulfilled in 2017, however, the draft of the second progress report indicates that activities for improving existing standards of communication with citizens in Common Courts of Georgia and High Council of Justice<sup>270</sup> are ongoing. According to the draft of the second progress report, international experts carried out needs assessment in city courts of Tbilisi, Rustavi and Gori. Within the framework

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266 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 31, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

267 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 33, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

268 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501; Correspondence of the High Council of Justice of February 21, 2020, №184/498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

269 Judicial Strategy for 2017-2021 and Action Plan for 2017-2018 approved through the decision dated 29.05.2018 (N 1/62) of the High Council of Justice, [available at: <https://bit.ly/3cz0BSS> accessed on: 14.04.2020].

270 The decision of 09.10.2009 (N1/310) of the High Council of Justice on “Approval of Communication Standards with Citizens in the Common Courts of Georgia and the High Council of Justice”, [available at: <https://bit.ly/2xy7XHz>; accessed on: 14.04. 2020].

of this research, the expert met with judges, managers and employees of the said courts, attended court sessions, got familiarized with the specificities of the courts' operation and monitored communication of court personnel with citizens. The draft of the second progress report indicates that experts prepared conclusions and recommendations based on research findings and international standards.<sup>271</sup> Based on the public information the draft of the communication standards with citizens was presented on the meeting of the second working group held in July 2019. The working group agreed on presenting written opinions about draft within 3-week period, after which discussions on the issue should be continued.<sup>272</sup> However, as of February 2020 the additional information on the implementation of this activity was not presented by the responsible agency.<sup>273</sup> Therefore, the activity has to be considered to be partially fulfilled.

### 2.4.3. Evaluation of Public Trust towards Administration of Justice and the Court System

*2.4.3.1. Research of shortcomings in the accountability system of the judiciary (2018) – Unfulfilled*

*2.4.3.2. Formulation of policy/strategy based on the findings of research (2017-2018) – Unfulfilled*

**2.4.3.1.** – As in the first reporting period, neither the public information provided by the High Council of Justice,<sup>274</sup> nor the annual progress report on the fulfillment of the Action Plan<sup>275</sup> and now also the draft of the second progress report contain information about investigation of shortcomings in the accountability system of the judiciary.<sup>276</sup>

271 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, pp. 33-34, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

272 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501; Correspondence of the High Council of Justice of February 21, 2020, №184/498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.

273 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of March 10, 2020 №241/667-03.

274 Ibid.

275 Progress Report on the Action Plan for 2017-2018 of the 2017-2021 Judicial Strategy, reporting period: June 2017 – June 2018, pp. 41-42, [available at: <https://bit.ly/3epnxFU>; accessed on: 14.04.2020].

276 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

**2.4.3.2.** – The following activity foreseen by the program is directly linked to fulfillment of the previous activity (2.4.3.1.).<sup>277</sup> In view of the fact that based on available information no such investigation has been undertaken, without the findings of such an inquiry, formulation of a policy/strategy cannot be discussed.

## **4.3.2. Organizational-Structural Reform of the High Council of Justice and LEPL Department of Common Courts**

*4.3.2.3. Structural strengthening of Public Relations Service (2017) – **Fulfilled***

*4.3.2.4. Creation of Unified Statistics Service (possibly under the Management Department) (2018) – **Unfulfilled***

**4.3.2.3.** – According to the draft of the second progress report, in summer of 2018 Media and Public Relations Service of the High Council of Justice was established. According to the same document, appropriate material-technical support was provided for the proper functioning of the said office. It is noteworthy, that the draft of the second progress report also points to those changes, based on which the functions of the manager of the Service included facilitation of coordinated work of the High Council of Justice and the Public Relations Service of Common Courts of Georgia, as well as supervision on formulation of unified communications policy and strategy of the court system for the purpose of improving public relations in the common courts' system.<sup>278</sup> Accordingly, the activity needs to be deemed fulfilled, however, it is significant that structural and functional strengthening of the service is continued.

**4.3.2.4.** – Despite the fact that according to the Action Plan the final deadline for the creation of a unified statistics service is 2018, based on available information, this has not happened yet. In addition, neither the draft of the second progress report<sup>279</sup>, nor public information requested<sup>280</sup> discuss steps planned and/or undertaken for fulfilling this activity.

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277 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 95, [available at: <https://bit.ly/2Kv6ML>; accessed on 14.04.2020].

278 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 66, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

279 Ibid.

280 Correspondence of the High Council of Justice of January 27, 2020 №94/105-03, Correspondence of the High Council of Justice of February 21, 2020, №183/501; Correspondence of the High Council of Justice of February 21, 2020, №184/498-03, Correspondence of the High Council of Justice of March 10, 2020 №242/668-03 and №241/667-03.



#### 4.5.5. Development of Software in the Court System

*4.5.5.8. Developing an electronic program for publishing court decisions and introduction of a new search engine for decisions (2017-2018) – Partially fulfilled*

**4.5.5.8.** – As it was noted in the commentary on activity 1.4.4.3., the module for search engine of court cases was developed and presentation of the new website for searching court cases was held.<sup>281</sup> As the website at this point contains court decisions from 2019 and the draft of the second progress report discusses gradual uploading of the decisions on the portal,<sup>282</sup> it is presumed that the automatic system of case publication is not introduced. However, due to steps undertaken for introducing the new search engine for court cases, the activity has to be deemed partially fulfilled.

#### 4.6.1. Improving Relations with Executive and Legislative Authorities, International/Local NGOs and Media

*4.6.1.1. Improvement of the regular format for cooperation, meetings and discussions with donors, NGOs and international organizations (2017-2018) – Partially fulfilled*

**4.6.1.1.** – Absence of appropriate formats for cooperation with non-governmental and international organizations is one of the key challenges in the judicial system. In the first reporting period, neither the progress report on the Action Plan, nor the information provided by responsible agencies pointed to measures undertaken for fulfilling this activity.<sup>283</sup> In turn, the draft of the second progress report indicates that the High Council of Justice is actively cooperating with international donor organizations, which is supported with reference to concrete meetings.<sup>284</sup> According to information provided

281 New website – <http://ecd.court.ge/>; for more details about the activity see The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 101, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

282 Ibid.

283 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 98, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

284 The High Council of Justice of Georgia, Draft of second progress report on the action plan for 2017-2018 of the 2017-2021 judicial strategy, reporting period: June 2018-June 2019, p. 76, obtained via letter of the High Council of Justice of March 10, 2020, №242/668-03.

by the Council, domestic NGOs are also involved in these formats. This possibility for NGOs to participate in meetings and express their positions and/or sharing working documents with them, cannot be automatically regarded as fulfillment of this activity, especially considering that working meetings can be attended in accordance with voting results in the Council and stable forms of participation are not established. Accordingly, the activity has to be deemed partially fulfilled.

## Conclusion

The analysis of public information provided by responsible agencies and the fact that the draft of the second progress report on the fulfillment of Strategy and Action Plan of the Judiciary has not been approved yet, shows that activities foreseen by the Strategy and Action Plan for improving transparency of the Judiciary are not undertaken appropriately and timely. As in the first reporting period, significant and principal issues remain unattended.<sup>285</sup>

Draft of the Action Plan for 2019-2020 envisages transparency issues in various directions, which has to be assessed positively. However, it has to be noted, that majority of these activities were already foreseen in the Action Plan for 2017-2018, while they remain unfulfilled. Therefore, for preventing non-fulfillment of activities in the timeframes defined by the plan, it is particularly important that the new plan sets realistic deadlines and appropriate and measurable assessment indicators in relation to activities aimed at improving transparency of the court system.<sup>286</sup> To address the challenges with regard to transparency of the judiciary, it is crucial that the following directions are assigned priority in the new Action Plan and accordingly, among the activities of responsible agencies:

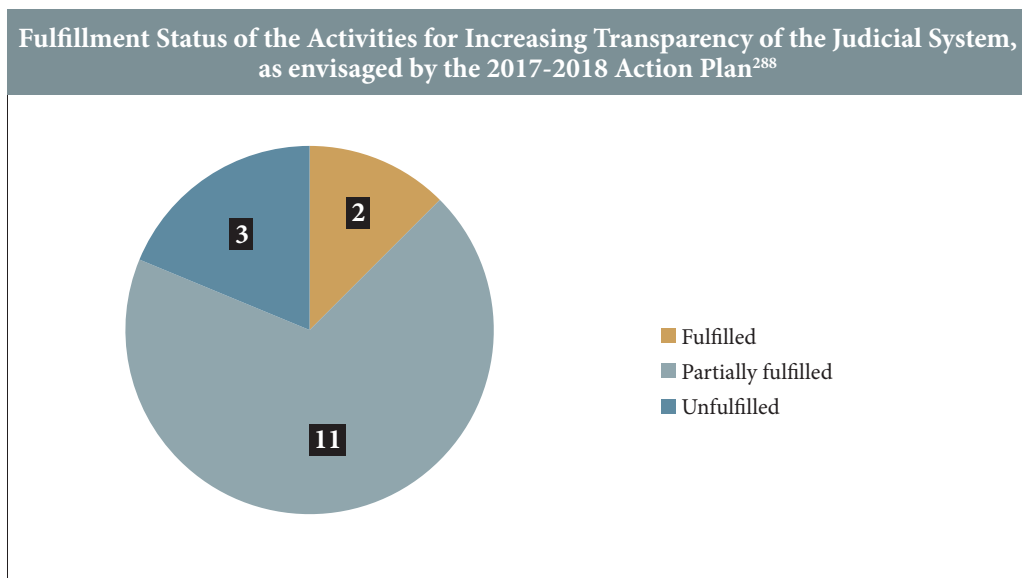
- Investigation of shortcomings in the accountability system of the judiciary and development of policies/strategies based on relevant findings;
- Development of an automatic system of case publication and further improvement of the new search engine for court decisions, including by gradual uploading of all decisions rendered until now;
- Monitoring the operation of the new search engine (unified database) with the involvement of professional groups, identification of shortcomings and appropriate solutions;

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285 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Implementation of the Judicial Strategy and Action Plan – Shadow Report, 2018, p. 100, [available at: <https://bit.ly/2Kyv6ML>; accessed on: 14.04.2020].

286 Human Rights Education and Monitoring Center (EMC) and Institute for Development of Freedom of Information (IDFI), comments on the draft of the Action Plan of the Judiciary for 2019-2020 were presented to the High Council of Justice through an email correspondence.

- Regulation of personal data protection in court decisions in line with the appropriate constitutional standard<sup>287</sup> and its practical implementation;
- Development and implementation of methodology for uniform production of statistical data.
- Creation of a Unified Statistics Service;
- Development of uniform methodological guidelines for analytical reporting intended for courts/the Council and establishing the practice of regular preparation/publishing of analytical reports in accordance with the said methodology;
- Analysis of administrative practice of issuing public information and its improvement;
- Organizing training sessions for persons in charge of issuing public information;
- Approval, implementation, and monitoring of the Action plan for the implementation of the Communication Strategy;
- Revision and implementation of existing communication standards for court personnel;
- Improvement of a regular format for cooperation, meetings and discussions with donors, NGOs and international organizations;
- For strengthening cooperation with them, granting of membership status to NGOs/professional groups in working groups created for implementing the Strategy of the judiciary;
- Planning and implementation of awareness-raising activities among the public and representatives of various professions with regard to publicity of pending cases;



287 „Media Development Foundation” and “Institute for Development of Information Freedom” v. Parliament of Georgia, the decision of the Constitutional Court of Georgia of June 7, 2019 N1/4/693,857.

288 This chart indicates the fulfillment status of those activities only, which were assessed during this monitoring period.