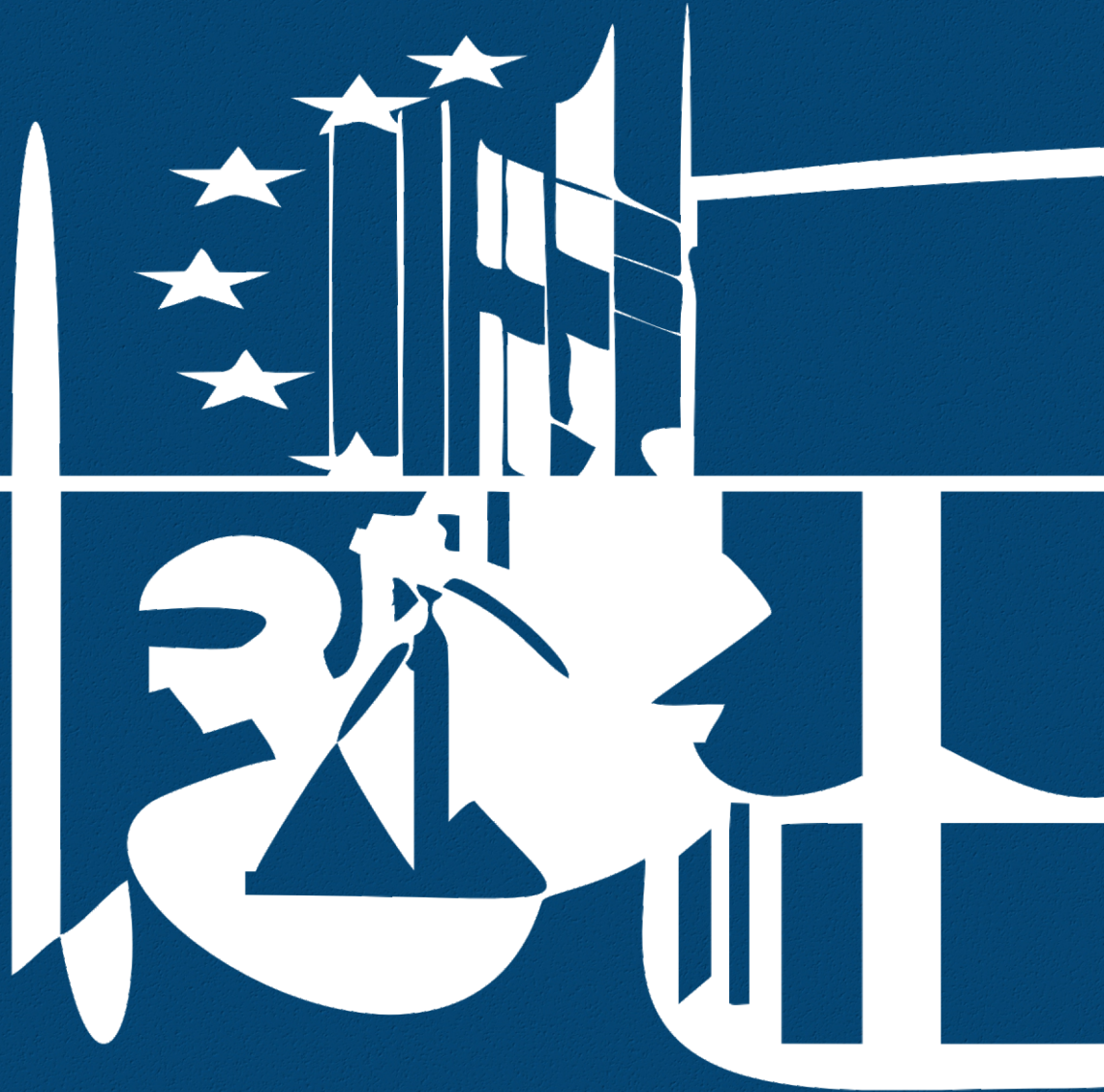


JUDICIAL REFORM AND EUROPEAN INTEGRATION

The state of fulfilling the European Commission's 3rd recommendation
and future prospects



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Judicial Reform and European Integration

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Social Justice Center

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Introduction

The past two years have proved particularly significant and simultaneously tense, full of conflicting events for the democratization of Georgia. Unfortunately, the central role in these events was played by Russia's full-scale military invasion of Ukraine and the sudden acceleration of the European integration process due to this tragic geopolitical event. Aligning with global trends, the accelerated democratic decline in Georgia in recent years was contrasted by a unique window of opportunity appeared for the country to use the ongoing processes for fundamental substantive reforms to build state institutions and improve human rights protection. From today's point of view, such an optimistic perspective has, unfortunately, been only partially realized. The chronicle of the last 18 months of life in Georgia and the evaluation report of the European Commission of November 8 on the implementation of 12 recommendations prove that the core contribution to the European integration was made less by the government and mainly by the general consolidation of society and the activation of direct democratic accountability mechanisms.

Georgia applied for EU membership alongside Ukraine and Moldova in March of the previous year. In response to the application, on June 17, 2022, the European Commission issued 12 recommendations to Georgia, the implementation of which was a prerequisite for obtaining the candidate status.¹ The priorities set out in the recommendations were directly related to EU values and standards, such as democracy and the rule of law. Among them, one of the central priorities was reforming the judicial system.

According to the recommendations, the reform of the judicial system included the following directions:

- Development of a transparent and effective strategy and action plan for judicial reform based on broad public and political consensus;
- Ensure a judiciary that is fully and truly independent, accountable and impartial along the entire judicial institutional chain,
- Safeguard the separation of powers and ensure the proper functioning and integrity of all judicial and prosecutorial institutions;
- Address any shortcomings identified in previous years in the process of the nomination of judges at all levels (in particular the Supreme Court);
- Undertake a thorough reform of the High Council of Justice and appoint the High Council's 5 members.

In addition, the document noted that the devised changes need to be fully in line with European standards and the recommendations of the Venice Commission.

As on other issues, to implement the recommendation on judicial reform, on August 4, 2022, the relevant working group was established within the Legal Affairs Committee of the Parliament of Georgia.² The working group was composed of parliamentarians, representatives of relevant state agencies, professional

¹ The European Commission Opinion on Georgia's application for membership of the European Union, Brussels, 17.06.2022, COM (2022) 405 final (available at: <https://cutt.ly/hwAlATb2> ; accessed on: 12.09.2023).

² Legal Affairs Committee establishes five working groups for fulfilling EC's 12 Recommendations, August 4, 2022 (available at: <https://cutt.ly/5wSX5mAt> ; accessed on:10.12.2023).

circles, and civil organizations, and its goal was to prepare the judicial reform strategy and action plan, as well as the necessary legislative initiatives.

In this way, a formal mechanism for working on systemic judicial reform was created in the legislative body. However, insufficient representation of civil organizations in the working group, disregard of the recommendations given by them and other independent actors, the superficial strategy of the reform, and the fragmented legislative amendments prepared in several stages on this basis showed once again that the existing parliamentary majority does not have the political will for a systemic, comprehensive reform of the judiciary.

The legislative amendments³ prepared by the working group and initiated by the Legal Affairs Committee on November 4, 2022, which were sent to the Venice Commission and the OSCE/Office for Democratic Institutions and Human Rights (ODIHR),⁴ attracted strict criticism from these organizations.⁵ Significantly, both organizations evaluated the package of legislative changes in light of the fragmented reforms implemented in the last four years (2019-2023) and their conclusions on these reforms, considering the recommendation issued by the European Commission itself. According to the findings, despite specific improvements, the changes did not strike as a thoroughly analyzed and comprehensive reform. According to the Venice Commission, this especially applies to the High Council of Justice, where concerns on corporatism and cronyism – issues perceived by the public and civil organizations – should be taken seriously. Later, on June 16, 2023, the OSCE/ODIHR published another conclusion,⁶ which, upon the Public Defender’s request in December 2022, provided a detailed assessment of the critical problems identified by the Public Defender and civil organizations over the years and discussed relevant European practices.

The ruling party failed to consider most of these findings and assessments in the subsequent stages. More so, following closed-door consultations with several parliamentary opposition members, the “Georgian Dream” chose three and then two more non-judge members of the High Council of Justice. In one way or another, the new non-judge members are connected with informal influential groups within the court and do not enjoy the support of the parliamentary opposition and civil organizations.⁷ The working process was not even affected by a concerning decision of the US State Department, according to which three current and one former judge and their family members were banned from entering the territory of the

³ Briefing By Anri Okhanashvili on Changes to the Law On Common Courts, 4 November 2022. (available at: <https://cutt.ly/bwSX5B8s>; accessed on:10.12.2023).

⁴ The Parliament sent draft laws prepared within the framework of the judicial reform to the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights, 22 November 2022 (available at: <https://cutt.ly/uwAljQqF>; accessed on:10.12.2023).

⁵ CDL-AD(2023)006-e, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, adopted by the Venice Commission at its 134th Plenary Session (Venice, 10-11 March 2023) (available at: <https://cutt.ly/2wAljPZx>; accessed on:10.12.2023). Also, OSCE/ODIHR, Opinion on the Draft Amendments to the Legal Framework on the Judiciary – Georgia, Warsaw, 15 March 2023, (available at: <https://cutt.ly/xwAljBef>; [წვდომის](#) accessed on:10.12.2023).

⁶ OSCE/ODIHR, Note on Several Issues relating to Judicial Reform – Georgia, Warsaw, 16 June 2023 (available at: <https://cutt.ly/PwAlk88Q>; accessed on:10.12.2023).

⁷ The Coalition for an Independent and Transparent Judiciary, Statement of 18 May 2023, (available at: <https://cutt.ly/2wSX6VBO>; accessed on:10.12.2023).

United States due to "*abuse of public office*" and "*involvement in significant corruption*".⁸ The ruling party did not support the creation of a temporary investigative commission of Parliament on this issue,⁹ which was demanded by the parliamentary opposition and, before that, civil society.¹⁰

Ultimately, "Georgian Dream" left the reform strategy unchanged and passed a slightly, non-essentially clarified legislative package through the third reading on June 13, 2023.¹¹ At the request of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), the changes were once again evaluated by the Venice Commission. The follow-up opinion was published on October 9, 2023.¹² The content of the opinion was essentially reflected in the first annual enlargement report on Georgia published by the European Commission on November 8,¹³ which provides a detailed description of the progress achieved by Georgia, including the state of fulfilling the 12 recommendations, and issues further recommendations. According to the report, the progress achieved on judicial reform was "limited" and the fundamental reform of the Georgian judicial system, especially the High Council of Justice, has yet to be implemented.

As a result, as the current working process showed, despite the international and local organizations being vocal about the acute problems in the Georgian judicial system, "Georgian Dream" still has not acknowledged the existence of such issues. Moreover, the reform strategy and package of legislative changes developed by the ruling party in this process, as well as the positions voiced by the chairman of the Legal Affairs Committee at hearings and plenary sessions, indicate that Georgian Dream considers the judicial reforms carried out so far to be sufficient for Georgia's integration into the European Union. According to Anri Okhanashvili, "Georgia deserved candidate status even before, but now it deserves even more as a result of our work and efforts; we will apply to the European Union with a kind of a bonus, an advance to be granted the candidate status."¹⁴

The present document evaluates the developments in the European integration of Georgia concerning judicial reform and the implemented legislative and personnel changes. In particular, the document analyzes the composition of the relevant working group in the Parliament and the quality of its work. It also discusses the judicial reform strategy developed by the working group, the package of legislative amendments prepared in two stages, as well as the draft amendments, which the ruling party registered in Parliament in September 2023 and sent to the Venice Commission for evaluation, though further consideration is yet to take place; The document also overviews assessments prepared by international

⁸Public Designations of Mikheil Chinchaladze, Levan Murusidze, Irakli Shengelia, and Valerian Tsertsvadze, Due to Involvement in Significant Corruption, Press Statement, Antony J. Blinken, Secretary of State, 5 April 2023 (available at: <https://cutt.ly/6wAllyW1> ; accessed on:10.12.2023).

⁹ Georgian Dream broke the quorum, 18 April 2023 (available at: <https://cutt.ly/NwAllKt> accessed on:10.12.2023).

¹⁰ 11 NGOs address the opposition with the call to create the investigative commission, 22 September, 2022 (available at: <https://cutt.ly/VwAll4cS>; accessed on:10.12.2023).

¹¹ Parliament adopted the law on Common Courts of Georgia in a third reading, 13 June 2023 2023 (available at: <https://cutt.ly/SwAlzpSe> ; accessed on:10.12.2023).

¹² CDL-AD (2023)033-e, Georgia - Follow-up opinion on previous opinions concerning the Organic Law on Common Courts, adopted by the Venice Commission at its 136th Plenary Session (Venice, 6-7 October 2023), (available at: <https://cutt.ly/rwAlxPRb> ; accessed on:10.12.2023).

¹³ Georgia Report 2023; Also 2023 Communication on EU Enlargement Policy (available at: <https://cutt.ly/hwAmgSUG> ; accessed on 10.12.2023).

¹⁴ The Conference "Georgia's Way to the European Union" Dedicated to the Judicial and Electoral Reform, 25 July 2023 (available at: <https://cutt.ly/swAlxCbu>; accessed on:10.12.2023).

organizations on the developments and legislative changes, as well as possible directions for further reforms, which were put on the agenda after the publication of the European Commission's report on November 8. Finally, the document heavily draws from the initial assessment of the judicial reform by the Social Justice Center, published in March 2023.¹⁵

Future Prospects of Judicial Reform

As evidenced by international evaluations and recommendations issued by the European Commission, the judicial system requires fundamental reform. The reforming process should concern not only the existing institutional framework at the legislative level but also the judicial personnel who hold leading administrative positions in the system. Under such complex approach is it possible to think about the long-term improvement of the judicial system, which, as the Venice Commission noted, is a long and daunting process.

Considering the problems already identified, it is possible to outline several critical directions for implementing the updated conditions of the European Commission and for planning the future steps of the reform. However, it should be emphasized that this list cannot be exhaustive, and depending on the relevant political and public will, as a result of an in-depth evaluation of the system, additional directions may be identified.

Personnel reform - the use of extraordinary mechanisms for checking the integrity of members of the judicial system and judicial candidates- is becoming more and more pertinent in a number of Central and Eastern European countries wishing to join the European Union. This trend, on the one hand, points to the severity of the challenges the judiciaries of these countries are facing. On the other hand, it puts on the agenda the issue that these challenges are not only a part of the existing institutional framework at the legislative level and, therefore, cannot be eliminated merely by reforming this framework. At the same time, such special mechanisms must be adapted to the local context and be based on a broad public and political consensus. Consequently, in this regard, Georgia has vital work to do in the coming years.

Systematic Assessment of the Challenges in the Judicial System and Reform Strategy – Alongside the appropriate directions of the personnel reform, it is necessary that the challenges in the Georgian justice system are acknowledged on the political level and through a broadly inclusive process and that an in-depth and objective assessment of the reforms implemented so far is made. This then needs to be the foundation for the judicial reform strategy and respective reform of the legislative framework. Otherwise, as noted, neither the personnel nor the institutional reform separately will be able to eliminate the existing problems, and neither will it be effective for their future prevention.

Institutional Reform:

Concentration of Power in the High Council of Justice – The implemented reforms and judicial reform strategy omitted not only a systemic reform of the High Council of Justice but also a minimal one. As a result, the concentration of power in the Council remains unchanged. Therefore, thorough decentralization of this power should be one of the main starting points for institutional reform.

¹⁵ Guram Imnadze, Another Attempt to Reform the Judiciary - Analysis of the Parliamentary Working Group and the Draft Law, Social Justice Center, 17 March 2023 (available at: <https://cutt.ly/NwAlx7Rt> ; accessed on:10.12.2023).

Corporatism in Decision-making by the High Council of Justice – the reforms and strategy did not affect the decision-making by the High Council of Justice. When the risks of corporatism and clan-like operation are high in the judicial system,¹⁶ it becomes even more crucial to achieve a proper balance in the decision-making process between judicial and non-judicial representatives of the Council and to seek the possibility of reaching consensus-oriented decisions.

The Undemocratic Manner of Composing the High Council of Justice - in addition to the lack of proper balance in the decision-making process, as of today, the manner of composing the Council itself is also problematic. The legislative amendments of June 13 proposed only minor changes in this direction, which cannot change the existing undemocratic rule as a whole. Over the years, civil organizations have raised the issue that judges in the High Council of Justice are ordinarily selected from a narrow group,¹⁷ and a fair, regional, and gender representation in the Council is not sufficiently guaranteed. Most importantly, four judge members of the Council can simultaneously hold other administrative positions (of the court president, chair of the panel/chamber), which further contributes to the concentration of power in the hands of the narrow group of judges.¹⁸ Accordingly, the fundamental reform of the High Council of Justice should address the manner of composing it on the institutional and personal levels.

Staffing of the Supreme Court - according to the current legislation, Parliament appoints the judges of the Supreme Court for life by a simple majority of the total composition. This kind of legislative arrangement contributes to appointing judges in the Supreme Court according to party interests and strengthening political influences on the justice system as a whole. The appointments of judges guided by this logic have earned heavy criticism from local and international organizations,¹⁹ and the legitimacy of the current Supreme Court judges has been put on the agenda. Future legislative changes should consider a substantial change in the procedure for appointing judges, including for decision-making by Parliament with a higher quorum.

Lacking Independence of the High School of Justice - the High School of Justice cannot ensure the training of competent personnel with integrity for the judicial system. The School lacks functional and institutional independence in the existing institutional arrangement, and its activity largely depends on the High Council of Justice.²⁰ Against this background, it is only natural that there is a constant shortage of competent judges in the common courts, leading to excessive caseload of judges and delays in considering cases. Therefore, it is essential to correctly identify the fundamental problems at this layer of the judicial career system and adequately implement the School reform.

Transparent System of Disciplining Judges - despite some elaboration, problems remain in disciplining judges, further aggravated by the legislative changes implemented at the end of December 2021.

¹⁶ Ana Papuashvili, The "European Model" of Judicial Institutional Arrangement: Salvation or Obstacle to Successful Judicial Reform, Social Justice Center 2021.

¹⁷ see Joint Statement of CSOs on appointing the High Council of Justice members in 2021. <https://cutt.ly/MwAlU1ID> ; accessed on:10.12.2023).

¹⁸ The Social Justice Center, the Georgian Young Lawyers' Association, Human Rights Council Universal Periodic Review, Challenges of Judicial and Law Enforcement Systems; Critical Issues of Criminal Justice, 2020.

¹⁹ See The Coalition for an Independent and Transparent Judiciary, Statement of 2 December 2021 available at: <https://cutt.ly/zwAlUd5G> ; accessed on:10.12.2023).

²⁰ The Social Justice Center, the Georgian Young Lawyers' Association, Human Rights Council Universal Periodic Review, Challenges of Judicial and Law Enforcement Systems; Critical Issues of Criminal Justice, 2020.

Considering the power available to the High Council of Justice, the system creates one of the most critical leverages for influencing individual judges. When planning future reform, it is essential to pay special attention to the design of disciplinary liability system and, in general, the implementation of effective mechanisms for improving the accountability of the judiciary.

Vulnerability of Individual Judges to Internal Influences - Several factors determine the vulnerability of judges in the system. A critical lever of influence on judges is the involuntary secondments to other courts. The new legislative changes have indeed included minor improvements in this direction. However, the ruling party has ignored all the key recommendations that would have substantially improved the rules on transfer. The case distribution continues to be a mechanism for influencing individual judges and, unfortunately, the said problem could not be eliminated even by introducing the electronic case distribution system. In distributing cases, unjustified powers are retained by the court presidents and the High Council of Justice.²¹ In addition, the legislation does not regulate the issue of judges' remuneration in detail; in this regard, it equips the High Council of Justice with broad discretion. This essentially increases the risks of arbitrariness and conflict of interest. As a result, the laws and practices governing remuneration contain high risks of influence on and corruption of individual judges. Accordingly, it is necessary that the legislative reform substantially rethinks these issues.

Transparency of the System - serious challenges in terms of transparency and openness of the judicial system significantly reduce its accountability. Among the problems remain inadequate access to court decisions, defective practice of providing public information, absence of a unified methodology for producing and processing statistical information, lack of effective mechanisms of communication with the public on the part of the judiciary, and arbitrary evasion of the accountability mechanisms established by the law. Accordingly, significant attention should be paid to the said issues.

Last but not least, the importance of conducting future reforms with broad public involvement through a transparent, inclusive, and collaborative process, whereby participation of various stakeholders, including civil society, will be meaningful, not just formal, shall be underlined once again.

²¹ Social Justice Center, Electronic System of Case Distribution in Courts (Monitoring Report 2020-2021) (available at: <https://cutt.ly/1wAIYgVZ>; accessed on:10.12.2023).