



# **PERSECUTION OF CRITICAL VOICES WITHIN THE JUDICIARY**

Assessment of Judge Nino Giorgadze's case



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Social Justice Center

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## Introduction

On November 1, 2023, the public learned about the decision of the High Council of Justice, which refused to appoint Judge Nino Giorgadze with life tenure after completing a three-year probationary period.<sup>1</sup> With this decision, the Council deviated from the existing practice of lifetime appointments of judges after completing probationary periods, especially considering that on November 3, 26 other judges who had completed their probation terms were appointed for lifetime.<sup>2</sup> At the same time, taking into account the challenges in the judicial system, Nino Giorgadze's public criticism of the problematic legislative changes of December 2021<sup>3</sup> raised suspicion that the refusal to appoint her for lifetime was aimed at suppressing critical voices within the system.

The Social Justice Center conducted a study analyzing the evaluation reports of Nino Giorgadze's performance during her probationary period prepared by the members of the High Council of Justice, as well as the decision of the Council on the complaint submitted by her. The studied documentation shows the problematic nature of this case as a precedent and of the probationary appointments and periodic evaluation system in general. In particular:

- Considering the existing informal influences in the judiciary and the excessive power accumulated in the hands of the High Council of Justice, probationary appointments are an important mechanism for exerting undue influence on individual judges and controlling the influx of new judges into the system;
- The current procedure for periodic evaluation of judges during the probationary period fails to achieve its intended goals in practice, is often abused, and its appeal mechanism is ineffective;
- One of the most important challenges of the judicial system - excessive workload, resolution of which is the Council's responsibility, is seen as a problem of individual judges and is used against them;
- The substantiation in the evaluation report on Nino Giorgadze's 3-year performance is in clear contradiction with the points given and exhibit inconsistencies, casting doubt on the objectivity and independence of the evaluating members of the High Council of Justice;
- Non-adherence to procedural deadlines is practically the only tangible problem in the evaluation reports for Nino Giorgadze. However, the Council assessed this issue as an individual problem of the judge and did not consider her heavy workload together with other factual circumstances hindering the efficient administration of cases.

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<sup>1</sup> Social Justice Center, Judge Nino Giorgadze was not appointed for life, which is a noteworthy precedent for the alleged suppression of critical opinion in the judicial system, November 3, 2023 (Available at: <https://cutt.ly/WwNwfD3B>; Accessed on: 23.02.2024).

<sup>2</sup> High Council of Justice, 26 judges appointed for life, November 3, 2023 (Available at: <https://cutt.ly/RwNwgjHT>; Accessed on: 23.02.2024).

<sup>3</sup> Nino Giorgadze's public opinion on the social network Facebook can be seen in full at the link: <https://cutt.ly/iwNwhlit>; Accessed on: 23.02.2024).

Ultimately, the decision of the High Council of Justice not to appoint Nino Giorgadze with life tenure is another measure serving suppression of critical voices within the judiciary instead of the interests of justice.

### **Factual Circumstances and Chronology of Events**

Based on the decree issued by the High Council of Justice on November 18, Nino Giorgadze was appointed as a judge in the Bolnisi District Court for a 3-year probationary period starting from December 1, 2020. According to the substantiation provided, Giorgadze's candidacy was evaluated by 14 Council members based on the criteria of competence and integrity.<sup>4</sup> According to the evaluation of all Council members, Giorgadze fully satisfied the criterion of integrity, with the total number of points obtained for the criterion of competence amounting to 1189 points - 84.93% of the maximum points. In the final vote with 14 council members participating, Giorgadze received 13 votes in her favor.

It is notable that Nino Giorgadze has many years of experience working in the judicial system. From 2008 to 2018, she served as a senior consultant in the Ethics Department of the High Council of Justice. Then, from 2018 to 2019, she held the position of a senior consultant at the Independent Inspector Service. In addition, from 2019 to 2020, she completed the training program of the High School of Justice with excellent final grades.

During a probationary period, judges' performance is subject to periodic evaluation based on the criteria of competence and integrity set by law.<sup>5</sup> Each evaluation is conducted by one judge and one non-judge member of the High Council of Justice selected randomly by lot beforehand. In addition, all evaluations must be made by a different evaluator and their identities, as well as the evaluation reports, are disclosed to a judge whose performance is assessed.

During the 3-year probation period, Nino Giorgadze's performance was evaluated by the following members of the Council:

- 01.12.2020-01.12.2021 - Tamar Ghvamichava (non-judge member) and Badri Shonia (judge member);
- 01.12.2021-01.12.2022 - Tristan Benashvili (non-judge member) and Nikoloz Marsagishvili (judge member);
- 01.12.2022-01.08.2023 - Zurab Guraspashvili (non-judge member) and Paata Silagadze (judge member).

According to the law, in order for the High Council of Justice to schedule an interview for the lifetime appointment of a judge appointed for a probationary period, it is necessary that: a) three or more evaluators consider that a judge satisfies or fully satisfies the criterion of integrity b) the total points obtained by a judge per the criterion of competence is not less than 70% of the maximum available points.<sup>6</sup>

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<sup>4</sup> Ketevan Tsintsadze, a member of the High Council of Justice, announced self-recusal.

<sup>5</sup> Articles 36-36<sup>4</sup> of the Organic Law of Georgia "On Common Courts".

<sup>6</sup> Ibid., paragraph 19 of Article 36<sup>4</sup>.

In Nino Giorgadze's case, none of the evaluators concluded that she failed to meet the integrity criterion (five members confirmed that she fully satisfied it, while one member held that she satisfied it). However, her overall score for the competence criterion over the three years was 68.33% (Tamar Ghvamichava - 68 points; Badri Shonia - 70; Tristan Benashvili - 68; Nikoloz Marsagishvili - 69; Zurab Guraspashvili - 67; Paata Silagadze - 68 points).

Consequently, in accordance with the law<sup>7</sup>, Giorgadze was automatically denied consideration for the lifetime appointment by the order N1 of Council Chair dated October 23, 2023.

Nino Giorgadze filed an appeal against the said order to the High Council of Justice, requesting its annulment and the scheduling of an interview regarding the lifetime appointment to the judicial position. In her complaint, she argued that the factual circumstances and substantive justifications provided by the evaluators did not indicate a basis for the conclusion that her competence was unsatisfactory.

The Council refused to satisfy the complaint by its decree N1/96 of November 1, 2023, referring to lack of justification. The decree was delivered to the applicant on December 7 after the expiration of her judicial authority (on 01.12.2023). In addition, the Council's decree indicated the possibility of appealing the decision through the standard lawsuit procedure provided for in the administrative legislation (even though the Organic Law of Georgia "On Common Courts" excludes the application of the special rule for appealing the Council's relevant decree to the Qualification Chamber of the Supreme Court).

On December 29, 2023, Nino Giorgadze lodged an administrative complaint with the court. The complaint seeks the annulment of the chair's order, the Council's decree, and the evaluation conclusions. Additionally, it requests the High Council of Justice to conduct an interview with Nino Giorgadze regarding her lifetime judicial appointment.

### **Failure to Substantiate the Non-appointment of Nino Giorgadze**

The official evaluation reports on Nino Giorgadze's performance during her 3-year probationary period, her workload, as well as the response from the High Council of Justice and lack of substantiation in its decision are clear examples of a number of existing challenges in the judicial system. This case demonstrates the problematic nature of the probationary appointment system, over which the High Council of Justice has a decisive influence. Given the current challenges facing the judiciary, such a system does not serve the purpose of staffing the court with independent and qualified personnel, leaving newly appointed judges vulnerable to informal influences. Additionally, it needs to be noted that the Constitution allows the appointment of judges for a probationary period only until the end of 2024.<sup>8</sup>

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<sup>7</sup> Ibid., paragraph 13 of Article 36<sup>4</sup>.

<sup>8</sup> Paragraph 3 of Article 2 of the Constitutional Law of Georgia "On Amending the Constitution of Georgia" (1324-რს, 13/10/2017).

### ***1. Participation of Non-judge Council Members in the Evaluation Process***

A judge appointed for a probationary period is evaluated after a year, after two years, and four months before the end of the 3-year term. One judge and one non-judge Council member evaluates a judge within a two-month timeframe simultaneously and independently of each other. Furthermore, each evaluation must be carried out by different evaluators, and they are strictly prohibited from sharing with each other any information obtained, or evaluations made.

The evaluation results for Nino Giorgadze show that Tristan Benashvili was a non-judge member who participated in her 2021-2022 evaluation. However, during the period from June 2021 to May 2023, the High Council of Justice operated with only one non-judge member. Tamar Ghvamichava. Tristan Benashvili and Zurab Guraspashvili were elected as members of the Council by the Parliament of Georgia on May 17, 2023. Accordingly, during the interim period of 2021-2022, only one judge member of the Council evaluated Nino Giorgadze's performance within terms stipulated by the law. The assessment conducted by Tristan Benashvili is dated July 27, 2023.

In addition to the formal violation of the deadlines stipulated by the legislation, this fact holds significance from another perspective. According to the law, immediately upon the conclusion of each evaluation period, the reports are delivered to the Council in a sealed form, and the judge being evaluated is entitled to familiarize herself with these reports. In addition, the judge has the right to inform the Council in writing regarding any alleged abuse of authority by an evaluator. If the Council concurs with this assertion, the evaluation obligation is reassigned to another Council member randomly by lot, or other measures are undertaken to rectify and prevent the violation.<sup>9</sup>

In its order of November 1, 2023, the High Council of Justice highlighted that the complainant had the opportunity to review the evaluations and express her opinions after each evaluation stage, which did not occur. However, the Council's reasoning does not address the breach of the evaluation deadlines in 2021-2022. Accordingly, during this period, Giorgadze did not have the opportunity to promptly review the evaluation results and submit her views.

This case also shows the ineffectiveness of appeals on evaluation decisions and the risks of influencing judges. The final decision on appointments with life tenure are taken by a collegial body (Council), whose members, more than 1/3 (in total), simultaneously periodically evaluate a candidate. These members of the Council also take part in the final decision-making process. Accordingly, under these circumstances, it is not unusual that judges under probation refrain from actively commenting on evaluations. The present case of submitting comments (Nino Giorgadze's submission of a complaint to the Council) clearly demonstrates the problematic and unsubstantiated approach of the High Council of Justice to the process of considering these submissions and deciding on them.

### ***2. Participation of Evaluators in the Review of the complaint by the Council.***

According to the legislation, a total of 6 members of the High Council of Justice evaluates the performance of a judge appointed for a 3-year probationary period. However, if the candidate fails

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<sup>9</sup> Paragraphs 6 and 9 of Article 36<sup>4</sup> of the Organic Law of Georgia "On Common Courts".



to meet the minimum requirements of the law, the matter is appealed to the Council, which takes a decision by a 2/3 majority (with the support of 10 members).

Grounds for appealing the evaluation results to the Council, among others, include alleged biased/discriminatory actions of the evaluator(s) or exceeding of the powers granted to him/her by law.<sup>10</sup> Accordingly, if a judge indicates such actions of evaluators in the complaint, the authors of the evaluation themselves participate in the discussion of this issue. Moreover, if there is a request for the removal of all six evaluators simultaneously and this request is granted, the Council will be left with only nine members, rendering it unable to reach a decision. As a result, the internal institutional mechanism for appealing the evaluation results envisaged in the legislation is ineffective and cannot meet the criteria of independence and impartiality.

The problematic nature of this mechanism became apparent in this case. During the hearing of her complaint in the High Council of Justice, Nino Giorgadze raised the issue of recusal for 6 members of the Council participating in her evaluation. However, she withdrew this motion after considering the Council's position that granting this request would render it incapable of reaching a decision.

### ***3. Inconsistent and Insufficiently Substantiated Evaluations***

The evaluation reports for Nino Giorgadze's performance over a 3-year period issued by the members of the High Council of Justice are particularly problematic. Their inconsistency and lack of substantiation illustrate the shortcomings of the current evaluation system's operation.

#### *3.1. Discrepancy between Points and Substantiation of the Evaluation Reports*

In Nino Giorgadze's complaint, the discrepancy between the points assigned by the members of the council and their justifications is rightly indicated as the main problem. In all six evaluations, the main feedback concerned the violation of procedural deadlines by the judge. The evaluations for other components addressing, for example, legal reasoning and competence, writing and oral communication skills, professional qualities, courtroom behavior or professional activities, were positive. Despite this, in a completely unjustified manner, the points given by the evaluators for these components fell short of the maximum by 2 to 7 points. In the eyes of an objective observer, this raises legitimate questions regarding the fairness and consistency of the evaluations, not to mention the fact that despite such positive evaluations, according to the final conclusions Nino Giorgadze could not even meet the minimum requirement of the competence criterion - 70 points.

The fact that the sum points for the competence criterion in all six evaluation reports are almost identical and range between 67-70 points, also raises suspicions. Such a situation in a 100-point system and under the conditions that all six Council members shall make evaluations independently of each other is even more unusual.

#### *3.2. Excessive Workload and Non-observance of Procedural Deadlines as a Leverage on Judges*

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<sup>10</sup> The first paragraph of Article 36<sup>5</sup> of the Organic Law of Georgia "On Common Courts" also provides the essentially incorrect information that formed the basis of the assessment as grounds for appeal, as well as the implementation of the assessment in violation of the procedure established by the legislation, which could significantly affect the final result.

In the evaluation reports of all six members of the High Council of Justice, non-observance of deadlines for case consideration and preparation of the final decision established by the procedural legislation is seen as the main problem. For example, according to the conclusion of a judge member of the Council - Paata Silagadze, *"the judge has certain problems in terms of organization, effective use of time and resources, which manifests itself when working under tight schedules."*

As is clear from the information presented by Nino Giorgadze, within 3 years she considered a total of 2,147 cases. Out of the mentioned cases, 2,132 cases were not appealed/overruled by higher instance courts (99.30% - decisions on merits were overruled in 6 cases; 9 appeals in administrative offense cases were satisfied). In addition, for example, court sessions scheduled in the period of 1.12.20-1.12.21 were 991, in the period of 1.12.21-1.12.22 - 1435 (daily average of sessions - 5.9), and in the period of 1.12.22-1.12.23 - 1023 (daily average of sessions - 5.87). It should also be considered that the vast majority of court sessions required the participation of an Azerbaijani language interpreter, as the territory of the Bolnisi District Court is mostly inhabited by ethnic Azerbaijanis. In the court with 5 judges, only 2 interpreters of the Azerbaijani language are employed; In addition, roughly during the period of 1.12.20-30.03.21, the secretary of the court session exercised authority only on 2 procedural days a week, while simultaneously performing the tasks of a secretary for another judge's sessions. Significantly, according to Giorgadze, the number of judges of the Bolnisi District Court has not increased since 2009, even though the caseload doubled and, in some cases, tripled. The existing positions (5) were never fully filled during her judgeship.

Although the magnitude of the problem of excessive workload is evident to the public, to the Parliament of Georgia,<sup>11</sup> as well as to the judiciary itself and especially to the High Council of Justice, the latter does nothing to eliminate this problem. Moreover, as the present case proves, when necessary, the Council sees this challenge as a problem of individual judges and uses it against them. In fact, it is the Council that is responsible for the inefficient management of the case-flow in the courts, the fair distribution of workload among judges and the determination of appropriate number of necessary staff for each court. As the given data shows, Nino Giorgadze had the caseload of more than 700 cases per year, which was accompanied by additional barriers to the efficient administration of cases (insufficient interpreters, court session secretaries employed part-time), while the said circumstances were assessed by the Council not as a systemic challenge, but as the judge's individual shortcoming.

Numerous international and regional standards on the independence of the judiciary and individual judges indicate that judges' qualifications should be evaluated with independence, responsibility and through a transparent procedure finalized with an appropriately substantiated decision. Evaluation should primarily draw on qualitative criteria, and quantitative indicators should be considered with great care, as use of the latter entails risks of creating improper incentives. The quality rather than the quantity of judges' decisions should form the main component of individual

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<sup>11</sup> Excessive workload of judges as a problem is recognized and identified in the 2023 judicial reform strategy developed by the Parliament of Georgia (available at: <https://cutt.ly/dwNwkKpP>; accessed on: 23.02.2024).

evaluations.<sup>12</sup> Accordingly, when the judge fully meets the criterion of competence to judicial activity and when the systemic excessive workload of judges is a recognized problem, the negative evaluation of the judge's performance primarily based on the quantitative components and the dismissal from a judicial position cannot be justified.

### *3.3. Examples of "Shortcomings" forming basis for the Negative Evaluations*

Apart from the compliance with procedural deadlines and excessive caseload, several other facts referred to in the evaluation conclusions as shortcomings of Nino Giorgadze's judicial activity also deserve attention. For example:

- According to the evaluation reports of Tristan Benashvili and Nikoloz Marsagishvili, in one of the evaluated cases, the court referred to part 1 of Article 55 of the Code of Civil Procedure instead of part 1 of Article 53 of the same code. As it became clear from the explanation of Nino Giorgadze in the complaint, this was a mechanical error. Namely, in substance, the court's reasoning (motivational part) and conclusion (resolution part) draw on Article 53 of the Civil Code. The indication of Article 55 of the Civil Code in the motivational part is a technical error. Hence, this error is not related to any legal consequence, or to the incompetence of the judge;
- According to the evaluation report of the same Council members, in one of the evaluated cases, the date of the decision "on public notification" is indicated as "2021" instead of "2022". According to Nino Giorgadze, all data, including all dates are correct in the resolution part of the judgment;
- According to the evaluation report of the same Council members, in one of the evaluated cases, the court did not inform the parties about the secretary of the session and did not explain the right to recuse him/her. In the complaint, Giorgadze confirmed the facts, however, she noted that the case was discussed in a session only with the participation of the plaintiff, whose interests were defended by a lawyer. The lawyer knew the identity of the secretary of the session (based on previous practical experience) and considering his/her legal competence, he/she would have been aware of the procedural right to recuse the secretary of the session. Moreover, the secretary of the mentioned session has been employed in court since April 2021.

Another notable observation is that the wording of the justifications regarding the said shortcomings is identical in the case of both members of the Council.

It is unquestionable that the mentioned facts constitute shortcomings of a judicial activity. However, they seem to be mechanical errors and can be accounted for by the judge's excessive workload. However, considered together or separately, such facts in the evaluations cannot objectively lead to a conclusion that the judge cannot satisfy the competence criterion's minimum requirements.

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<sup>12</sup> CCJE Opinion No.24 (2021): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems; Also, CCJE Opinion No.17 (2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence.

#### **4. Substantiation Problem of the Council's Order**

Considering the above-mentioned shortcomings, particularly problematic is the content of the decree of the High Council of Justice dated November 1, 2023, adopted on the complaint submitted by Nino Giorgadze. The reasoning and substantiation in the decree clearly demonstrate the superficial nature of both the procedural and substantive safeguards within the current system. Such approaches deplete from their content the guarantees foreseen by the law for the smooth administration of justice by judges appointed for a 3-year probationary period and for the protection of their rights.

First, in response to Nino Giorgadze's argumentation in the complaint, that none of the substantive justifications provided by evaluators formed basis for making negative conclusions (failure to meet the minimum standard per the competence criterion), the Council merely referred to the formal requirements of the law. In particular, according to the Council, the complaint did not specify on which/how many grounds the complainant challenged the legality of the decisions made by the evaluators: "*the author of the complaint does not agree with the received evaluations; however, she does not indicate for which component and how many (more) points she should have been awarded*". Such a superficial approach, when it comes to evaluating the performance of an acting judge, does not only make the whole process extremely formalistic, but also illustrates the weakness of the guarantees for individual judges and the risks of internal influences on them.

Regarding the evaluation process, the Council's reference to the legal rule prohibiting interference with the activities of evaluators with a foreseen legal sanction deserves special attention. According to the Council, when the complainant does not indicate the relevant legal grounds, criticism of the evaluator due to the points awarded is clearly unfounded. The reference to non-interference in the activities of evaluators by the body responsible for considering lawfulness of the evaluators' conduct in case of a submitted complaint is entirely incomprehensible.

In addition, the complaint clearly points to the factual inaccuracies in the statistical information provided in the evaluation conclusions. Nevertheless, according to the Council, "*although certain statistical data are attached to the complaint, they do not allow for any statistical analysis*." In addition, the Council noted that "*even in the case of admitting a certain margin of error, statistical data are not the only and defining feature for evaluating judges' competence. Thus, even if admitting a margin of error, no violation is of such an essential nature that would create an unequivocal condition for the annulment of the act*". This kind of reasoning is contradictory and problematic considering that the only essential feedback in the conclusions of all six evaluators refers to the non-observance of procedural deadlines, which was primarily justified precisely based on statistical information.

Finally, it should be noted that, in general, the legislation does not foresee a special mechanism for appealing the decree adopted by the High Council of Justice on this matter. Also, the Organic Law "On Common Courts" excludes the possibility of re-appealing the legal act of the Council Chair, if the council does not satisfy the appeal, does not annule the act and does not hold an interview with the judge.<sup>13</sup> However, in the discussed decree, the High Council of Justice still pointed to the general administrative law mechanism for appealing its decision. Considering the legal logic of the existing

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<sup>13</sup> Paragraph 16 of Article 36<sup>4</sup> of the Organic Law of Georgia "On Common Courts".

legislation and the constitutional-legal functions of the Council, such an approach is controversial. When it comes to the Council's exercise of constitutional powers to appoint judges, the effectiveness of such an appeal mechanism is unclear. If the administrative lawsuit is admitted, the reasoning of the Tbilisi City Court on this issue will be interesting.

## **Conclusion**

Nino Giorgadze's case illustrates many serious challenges facing the judicial system today. The substantiation in the evaluation reports and the points awarded to the judge are in clear contradiction with each other, which calls into question the impartiality and independence of the evaluating members of the High Council of Justice. In addition, the judge's non-observance of the procedural deadlines is named as the only tangible problem in the evaluation report. However, the Council assessed this as an individual problem and did not consider Giorgadze's excessive workload or other circumstances hindering the efficient administration of cases. Besides, the existing system does not even minimally incentivize appeals of the evaluation reports issued during a judge's probationary period, while the existing appeal mechanism for the decisions not to appoint judges with life tenure is extremely ineffective and deficient.

The developments in this case and their legal assessment once again show that:

- In fact, a 3-year probationary period is an important mechanism of the High Council of Justice to influence individual judges and control the influx of loyal personnel into the system;
- The existing rules on evaluation of a judge during the probationary period does not achieve the set goals in practice, and its appeal mechanism is ineffective;
- The excessive workload of judges is one of the most important challenges of the judicial system, resolution of which is in the hands of the High Council of Justice. The Council does nothing to solve this problem and, when necessary, uses it against individual judges.

Considering all the said factors, the Council's decision not to appoint Nino Giorgadze for life tenure does not serve the interests of justice and positive development of the judiciary, but the persecution of judges with a dissenting/critical voice from the system.