

# IMPLEMENTATION OF THE JUDICIAL STRATEGY AND THE ACTION PLAN

Shadow Report



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



The European Union  
for Georgia  
EU4Justice

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი  
**EMC**  
Human Rights Education and Monitoring Center



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# Table of Contents

Introduction .....	7
Methodology .....	8
Key Findings .....	12
Evaluation of the Development of the Judicial Strategy and the Action Plan .....	15
Implementation of the Judicial Strategy and the Action Plan .....	18
<b>Reform of the High School of Justice .....</b>	<b>22</b>
Main Challenges .....	23
Implementation of the Judicial System Action Plan 2017-2018 .....	24
Assessment of the Related Action Plans .....	34
Activities foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation .....	34
Activities Envisaged by the National Human Rights Action Plan 2018-2020 and the Degree of their Implementation .....	35
Conclusion .....	35
<b>Selection and Appointment of Judges and other Career Advancement Issues .....</b>	<b>38</b>
Main Challenges .....	39
Implementation of the Judicial System 2017-2018 Action Plan .....	41
Assessment of the Related Action Plans .....	54
Activities Foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation .....	54
Activities Envisaged by the National Human Rights Action Plan 2018-2020 and the Degree of their Implementation .....	55
Conclusion .....	56
<b>Reform of the System of Liability of Judges .....</b>	<b>58</b>
Main Challenges .....	59
Implementation of the Judicial System 2017-2018 Action Plan .....	60
Assessment of the Related Action Plans .....	71
Activities Foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation .....	71
Activities Envisaged by the National Human Rights Action Plan and the Degree of their Implementation .....	73
Conclusion .....	73

<b>The Work and Institutional Organization of the High Council of Justice</b> .....	76
Main challenges .....	77
Implementation of the Judicial System 2017-2018 Action Plan .....	78
Assessment of the Related Action Plans .....	84
Activities Foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation .....	85
Activities Envisaged by the National Human Rights Action Plan 2018-2020 and the Degree of their Implementation .....	85
Conclusion .....	86
 <b>Transparency of the Judiciary</b> .....	 88
Main Challenges .....	89
Implementation of the Judicial System 2017-2018 Action Plan .....	90
Assessment of the Related Action Plans .....	99
Activities Foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation .....	99
Activities envisaged by the National Human Rights Action Plan 2018-2020 and the Degree of their Implementation .....	100
Conclusion .....	100

# Introduction

This publication was prepared in frames of the project “Facilitating Implementation of Reforms in the Judiciary (FAIR)” which Human Rights Education and Monitoring Center (EMC) is implementing with support from European Union and in cooperation with Institute for Development of Freedom of Information (IDFI) and the Caucasus Research Resource Center (CRRC Georgia). The purpose of the publication is to review the implementation status of the Judicial Strategy for 2017-2021 and its Action Plan for 2017-2018, also examine the implementation of action plans in adjoining areas and assess specific measures taken by responsible state agencies.

Based on the requirements set forth in the EU-Georgia Association Agreement, the judicial branch of the government developed the 5-year Strategy for judicial reform and the 2-year action plan for the implementation of the Strategy for the first time in Georgia’s history. Through participation of all three branches of the government and civil society it was possible to develop and unanimously agree upon the long-term reform Strategy, to specify directions for future reform based on the flaws identified in the system and design actions to address the challenges. Consequently, adoption of these documents was an important step forward in establishing a unified vision for judicial reform.

Despite the three waves of reform implemented in previous years and a number of positive changes, the court system continues to be faced with significant flaws and challenges, which point to the need for a profound system reform. Insufficient legislative guarantees for judicial independence and persistent institutional challenges must be addressed effectively and in time.

The 5-year Strategy and the 2-year action plan are both lengthy documents but the presented report mostly covers the important aspects of institutional strengthening and improvement of independence of individual judges – the issues which are most crucial for judicial reform and have been subject of major debates in Georgia for years.

The monitoring report reviews key challenges in the court system and procedural aspects of the development and implementation of the judicial Strategy and the action plan; it assesses the extent to which the planned activities have been fulfilled and offers recommendations for future reforms in the judicial system.

## Methodology

In order to evaluate the implementation status of the Judicial Strategy for 2017-2021 and its Action Plan for 2017-2018, the project team examined performance of responsible state agencies from October 2017 through to October 2018 and the fulfillment of up to 100 activities undertaken in the action plan.

The report analyzes implementation of the action plan activities, which deal with the most compelling and pressing issues of the judicial system reform. More specifically, the report assesses activities that were carried out in five crucial directions:

- 1. Activities of the High School of Justice and its institutional organization** – education of candidate judges and continued training of acting judges is an essential element of the independence and impartiality of courts and reinforces the right of people to have their case heard by the competent court. Appointment of a knowledgeable judge relies on the financial and institutional independence of the High School of Justice and the impartial and transparent nature of the admission process. The current arrangements do not ensure organizational or functional independence of the High School of Justice from the High Council of Justice and the eligibility criteria established for admission to the School do not eliminate the risk of biased decision-making;
- 2. Rules for selection, appointment and promotion of judges** – selection and appointment of judges is one of the most important constitutional powers of the High Council of Justice. The rules and practice of appointing judges significantly determines the level of people's trust in the court system. Different regimes of judge selection and appointment are faced with different challenges and the practice has demonstrated that despite waves of reforms, the system of selecting and appointing judges in Georgia continuously fails to meet the requirements of impartiality, justification, transparency and the principle of merit. As for the promotion of judges – appointment and promotion of judges without competition is not adequately regulated by law and the process of defining corresponding procedures and criteria are left to the High Council of Justice to handle;
- 3. Liability of judges** – the system for disciplinary liability of judges serves the purpose of enhancing the authority of courts and increasing people's trust in the system on the one hand while if misused, it contains potential danger of turning into a means for exerting pressure on individual judges on the other. Disciplinary liability procedures have often been criticized by local and international organizations. Despite the implemented reforms, certain challenges remain in the efforts to refine disciplinary liability procedures and ensure actual independence of the Independent Inspector;



4. **Institutional organization of the High Council of Justice and regulation of its activities** – The High Council of Justice has numerous important duties but the majority of its constitutional and administrative functions are left beyond legal regulations. Multiyear monitoring of activities of the High Council of Justice has often found the negative impact that the insufficient, flawed and ambiguous legal arrangements have on the practice of the Council to carry out its activities in a transparent, impartial and public manner;
5. **Transparency of the court system** – despite a number of reforms and positive actions since 2012 to make the judicial system more transparent, the public mistrust in courts and the lack of due transparency of the entire system continues to be one of the main challenges of the Georgian judiciary;

As mentioned previously, while assessing the implementation of the Judicial Strategy and the Action Plan, the project team placed emphasis on the above-listed five crucial aspects and examined the extent to which all of the related important activities of the Action Plan have been fulfilled. In overall, the implementation of up to 100 activities was evaluated and the project team assigned a corresponding status to each activity based on the extent of their implementation:

1. **Fulfilled** – the status of having been fulfilled is applied only in cases where the activity of the Action Plan was fully implemented, including all of its aspects. The project team recognized fulfillment of the activity even if its implementation was delayed but it was completely fulfilled;
2. **Partially fulfilled** – this status is assigned to such cases where one or several aspects of the activity has been fulfilled but it has not 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 working on it are given the status of ‘unfulfilled’;
4. **No status** – activities that are ambiguous and the descriptions of efforts and measures to achieve them are unclear have not been assigned any status.

The project team assessed the implementation of the Action Plan from October 2017 through to October 2018 using the status list given above. In order to assign corresponding status to the activities the project team relied on the following methodological instruments:

**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. Such comprehensive analysis allowed for reviewing the legal context around each activity and assessing their effectiveness and adequacy on the one hand and the scale of their fulfillment on the other. This is especially important with regard to activities, which set out to carry out legislative changes in certain directions;

**Review of international standards and practice** – in addition to the national legislation, the project team looked at relevant international standards and recommendations. Applying this instrument was particularly significant with regard to those objectives and programs, which seek to introduce amendments in the Georgian legislation. Looking at the international standards allowed for assessing the effectiveness and adequacy of the objectives, tasks and activities;

**Collection of public information from responsible agencies** – during monitoring the first-hand information was collected from government bodies identified as responsible agencies to implement activities of the action plan. The project team requested public information in several stages from the High Council of Justice, Supreme Court of Georgia, High School of Justice and the Independent Inspector of the Council. The project team asked for information not only regarding the actions taken by the responsible bodies to implement the activities but also copies of all projects, research or other documents related to these efforts;

**Progress report on the implementation of the Strategy and the Action Plan** – a year after the approval of the Strategy and the Action Plan the High Council of Justice presented the annual report describing the implementation status of these documents. The project team analyzed the data provided in the report in detail, in connection with other instruments of monitoring and available public information;

**Analysis of secondary sources** – additional sources of information for monitoring included reports, evaluations and research published by local and international organizations and the Public Defender of Georgia. Analysis of such information helped the project team to evaluate the scale of fulfillment of activities and 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 Council session format, attending the Council

sessions regularly was one of the important sources of information for monitoring purposes. As for the workgroups created for the implementation of the Action Plan, their meetings that took place during the monitoring period were mostly closed and the public did not have access to the discussions and materials produced by the workgroups; however, whenever possible, the project team used every opportunity to attend the workgroup sessions.

Importantly, the presented report also evaluates performance of adjoining policy areas along with the fulfillment of the 5 major directions of the Judicial Strategy and the Action Plan. More specifically, the report explores, analyzes and compares activities of the Judicial Action Plan with the responsibilities listed in the National Human Rights Action Plan and the activities foreseen by the Criminal Justice Reform Action Plan.

During assessment of the elements of adjoining action plans, the project team placed specific focus on the following issues: (1) to what extent the three action plans entail identical responsibilities; (2) whether one action plan proposes implementation of activities that are different from those listed in other plans; (3) in case of identical activities, whether the implementation periods of these activities and responsible agencies are similar. As for the implementation status of the tasks and measures undertaken in the adjoining action plans, the project team used similar methodological instruments to describe obligations that are important for the purpose of this publication as fulfilled, partially fulfilled or unfulfilled.

## Key Findings

Monitoring of the development and implementation of the 2017-2021 Judicial Strategy and its Action Plan for 2017-2018, also analysis of collected public information, the one-year progress report, various studies and legal acts has revealed the following challenges and findings:

### Development and implementation of the Judicial Strategy and the Action Plan

- Development of the Strategy and the Action Plan in a mostly open format provided opportunities for debating about various compelling issues and sharing expert knowledge which increased the quality of the final documents;
- By decisions of the High Council of Justice, the established deadlines for developing the Strategy and the Action Plan changed several times and, in the end, it took about a year to finalize both documents;
- The strategic committee met 7 times and corresponding thematic workgroups held up to 26 sessions in order to develop the Strategy and the Action Plan;
- The High Council of Justice defined the organizational instructions for the implementation of the Strategy and the Action Plan 5 months after the approval of these documents. The instructions include a number of flaws and questionable provisions;
- Stakeholders, including representatives of international and local organizations are allowed to attend workgroup sessions only through voting;
- Deadlines to prepare implementation reports of the Strategy and the Action Plan changed several times due to the ineffective performance of the workgroups;
- The workgroups met only 11 times within a year after the adoption of the organizational instruction for implementing the Strategy and the Action Plan;
- The one-year implementation progress report published by the High Council of Justice is mostly technical in terms of its contents and does not offer comprehensive information.

### Activities and their implementation status

- The objectives and strategic programs described in the Judicial Strategy and the Action Plan mostly respond to current challenges in the court system;
- The 2017-2018 Action Plan does not entail a range of substantial and crucial issues;
- Certain activities are duplicated under various strategic programs;
- 35% of the Action Plan activities regarding reforming the High School of Justice are fulfilled, 18% of the activities are partially fulfilled, 47% of the activities are unfulfilled;
- 22% of the Action Plan activities related to the appointment and promotion of judges are fulfilled, 9% of the activities are partially fulfilled, 69% of the activities are unfulfilled;
- 24% of the Action Plan activities related to ensuring disciplinary liability of judges are fulfilled, 9% of the activities are partially fulfilled, 62% of the activities are unfulfilled<sup>1</sup>;

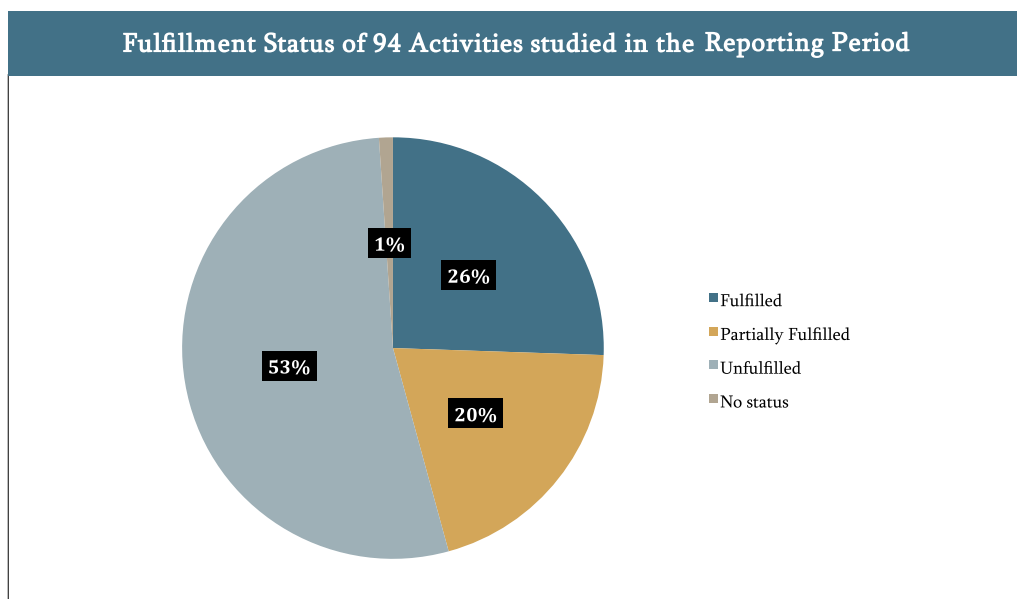
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<sup>1</sup> No status assigned to one activity under this section

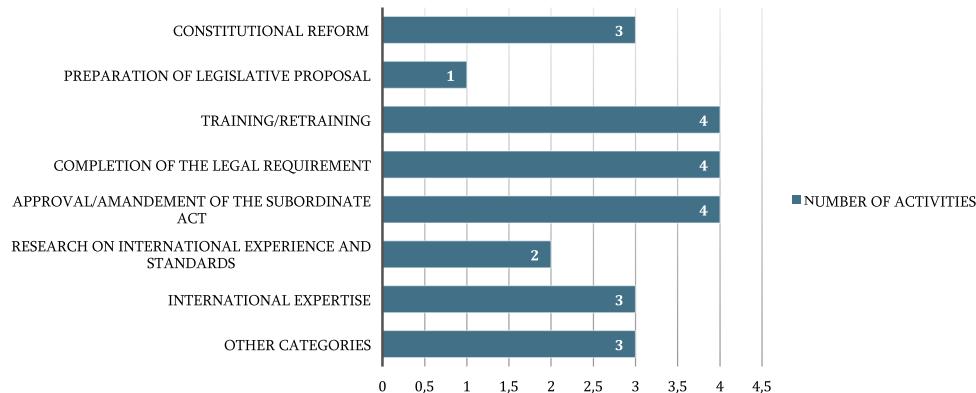
- 25% of the Action Plan activities concerning the institutional organization and operation of the High Council of Justice are fulfilled, 42% of the activities are partially fulfilled, 33% of the activities are unfulfilled;
- 24% of the Action Plan activities for increasing transparency of the court system are fulfilled, 33% of the activities are partially fulfilled, 43% of the activities are not fulfilled;
- The role of the High Council of Justice – as the responsible agency – is unclear in the implementation of most of the activities considered by the Council to be fulfilled;
- The implementation periods identified in the Action Plan for the activities are violated in most cases.

### Correlation of the Judicial Strategy and the Action Plan with other action plans

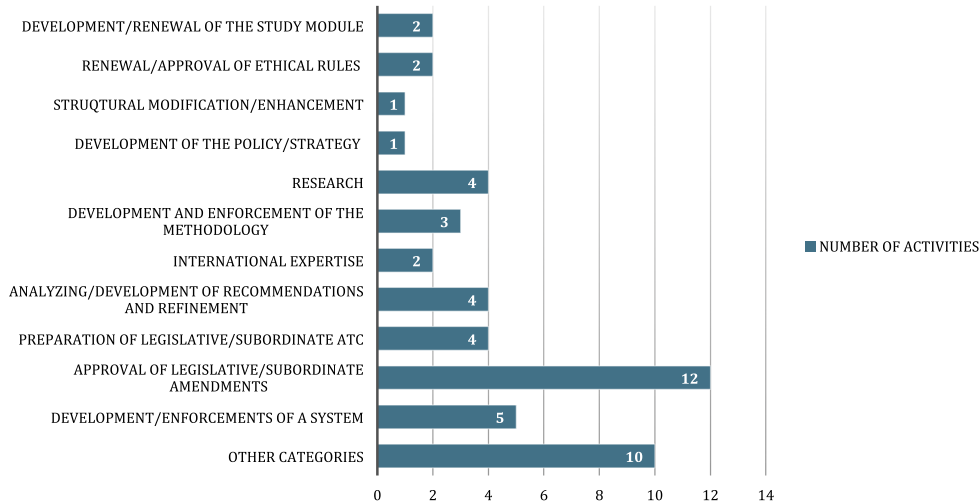
- The Human Rights Action Plan and the action plan of the interagency coordinating council of the criminal law reform mostly contain activities similar to those described in the 2017-2018 Action Plan of the Judicial Strategy;
- There are several instances of parallel activities which are identical in contents but formulated differently;
- The implementation periods allowed for similar activities in the action plans are different in a number of cases;
- There is no need to incorporate identical activities in various action plans and/or relate the different action plans to each other.



Categorization of Fulfilled Activities



Categorization of Unfulfilled Activities



# Evaluation of the Development of the Judicial Strategy and the Action Plan

Reforming the judicial system in Georgia is one of the priority tasks in the area of institutional development and good governance defined in the 2017-2020 agenda of the EU-Georgia Association Agreement. Namely, according to the agenda, crucial reforms should ensure full independence of judges; strengthening of accountability, impartiality, effectiveness, integrity and professionalism of the court system.<sup>2</sup> Development and implementation of Judicial Strategy and its Action Plan was identified as a priority objective in order to achieve these goals, which should also entail improving policies and practices of selection/appointment of judges; promotion and training/education of judges; increased efforts to allocate resources in order to ensure adequate competency in justice and human rights; also support for the independence of the High School of Justice, particularly by means of improving its opportunities.<sup>3</sup>

Pursuant to the May 23, 2016 decree of the High Council of Justice,<sup>4</sup> a special committee was created in order to develop the judicial Strategy and its action plan as required by the EU-Georgia Association Agreement. The decree specified the composition of the committee; its mandate; opportunities to form workgroups; schedule of the meetings between the committee and the workgroups and other organizational matters. Importantly, representatives of local and international non-governmental organizations were also granted the status of committee and workgroup membership, which ensured openness of the development of the Judicial Strategy and the Action Plan and allowed for sharing expert knowledge in addition to engaging in discussions about crucial issues.

Four thematic workgroups were formed in order to draft the Strategy and the Action Plan: (1) Independence and Impartiality of Judiciary; speaker: Eva Gotsiridze, a non-judge member of the High Council of Justice; (2) Accountable Judiciary; speaker: Tamar Alania, a judge member of the High Council of Justice; (3) Effective and Qualitative Justice System; speaker: Kakhaber Sopromadze, a non-judge member of the High Council of Justice; (4) Accessible, Transparent and Trustworthy Judiciary; speaker: Nino Gvenetadze, chairperson of the High Council of Justice.

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2 Association Agenda between the European Union and Georgia, 2017-2020, P. 9 [available at: [http://www.parliament.ge/ge/ajax/downloadFile/78447/annex\\_ii\\_-\\_eu-georgia\\_association\\_agenda\\_text](http://www.parliament.ge/ge/ajax/downloadFile/78447/annex_ii_-_eu-georgia_association_agenda_text). Accessed on: 12.09.2018]

3 *Ibid*, pp. 14.

4 Decision of the High Council of Justice, May 23, 2016, №1/136, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawvyvetilebebi%202016/136-2016.pdf>. Accessed on: 10.09.2018]

The May 23 decree specified the deadline of October 15, 2016 for the committee to draft and submit the Judicial Strategy and its Action Plan to the High Council of Justice; however, shortly after, namely with June 20 decree,<sup>5</sup> an amendment was made to this instruction according to which the High Council of Justice was allowed to extend the deadline for drafting and submitting the Strategy and the Action Plan, if requested by the committee. Based on the July 14, 2016 decree of the High Council of Justice,<sup>6</sup> the timeframe to submit the Strategy and the Action Plan was extended to November 15 and January 31, 2017 respectively. The decision changed again on February 17, 2017<sup>7</sup> and May 1, 2017 was set as the final deadline.

In order to develop the 2017-2021 Judicial Strategy and its 2017-2018 Action Plan the committee met 7 times and the thematic workgroups held 26 sessions.<sup>8</sup>

Joint meetings of the strategic committee	Meetings of Workgroup I of the strategic committee	Meetings of Workgroup II of the strategic committee	Meetings of Workgroup III of the strategic committee	Meetings of Workgroup IV of the strategic committee
June 3, 2016	July 25, 2016	July 29, 2016	July 20, 2016	December 12, 2016
July 9-10, 2016	November 17, 2016	November 7, 2016	November 10, 2016	December 26, 2016
December 28, 2016	December 27, 2016	December 7, 2016	December 2, 2016	February 27, 2017
February 10-12, 2017	January 10, 2017	December 21, 2016	December 20, 2016	March 23, 2017
March 22-23, 2017	March 1, 2017	February 24, 2017	January 11, 2017	
April 19, 2017	March 23, 2017	March 22, 2017	February 23, 2017	
May 23, 2017	May 8, 2017	May 2, 2017	March 22, 2017	
			April 19, 2017	

Eventually, the High Council of Justice approved the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan of its implementation on May 29, 2017, after a year's work on the documents.<sup>9</sup>

5 Decision of the High Council of Justice, June 20, 2016, №1/141, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/141-2016.pdf>. Accessed on: 12.09.2018]

6 Decision of the High Council of Justice, July 14, 2016, №1/192, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202016/192-2016.pdf>. Accessed on: 10.09.2018]

7 Decision of the High Council of Justice, February 17, 2017, №1/23 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/23-2017.pdf>. Accessed on: 12.09.2018]

8 Letter of the High Council of Justice, №1951/2815-03-00.

9 Decision of the High Council of Justice, May 29, 2018, № 1/162 [Available at: <http://hcoj.gov.ge/ge/162-2017>. Accessed on: 12.09.2018]



As the reforms led by the Ministry of Justice in previous years were mostly criticized for its lack of engagement of the judicial branch of the government in the process, the formation of their own vision and strategies for development by the judiciary system is a significant step forward.

It should also be highlighted how strategically important these documents are in order to analyze the visions that the judiciary had/has regarding the necessary reforms and existing challenges. Notably, the objectives and strategic programs described in the Judicial Strategy and its implementation Action Plan respond to the current challenges in the justice system; therefore, the importance of these documents for carrying out a qualitative reform should be stressed. It is crucial for the activities in the Action Plan to be fulfilled in a due time and manner.

## Implementation of the Judicial Strategy and the Action Plan

On October 16, 2017, five months after the approval of the Judicial Strategy and its Action Plan, the High Council of Justice adopted the organizational instruction for the implementation of the Strategy and the Action Plan. Importantly, the document was adopted behind closed doors and its contents became known to the stakeholders only on the day of its approval.

The October 16, 2017 decree of the High Council of Justice<sup>10</sup> approved the composition of the workgroups and the Secretariat for the implementation of the Strategy and the Action Plan. Based on the decision, High Council of Justice was mandated to authorize the composition of the workgroups (and sub-workgroups, where necessary) and the Secretariat. It also changed the format of thematic workgroup leadership and assigned two co-speakers per workgroup: one judge member and one non-judge member of the High Council of Justice.

The October 16, 2017 decree<sup>11</sup> and the following amendments<sup>12</sup> granted workgroup membership status to a member of the High Council of Justice; a judge of Common Courts; Independent Inspector; administration unit of the High Council of Justice and representatives of the Department of Common Courts, High School of Justice and administration unit of Common Courts.

Four workgroups in the following strategic directions were formed according to the instructions developed by the Council: (1) Independence and Impartiality of Judiciary; (2) Accountability of judiciary; (3) Effectiveness, Professionalism and High Quality of the Justice System; (4) Accessibility of the Justice System.

Pursuant to the Council instructions, each workgroup was tasked with the following activities:<sup>13</sup>

- (1) Develop a detailed action plan to implement activities described in the Strategy and the Action Plan, specifying implementation periods and responsible and co-responsible agencies;

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10 Decision of the High Council of Justice, October 16, 2017 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/260-2017.pdf>. Accessed on: 10.09.2018]

11 *Ibid.*

12 Decision of the High Council of Justice, March 26, 2018 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/165.pdf>. Accessed on: 12.09.2018]

13 *Ibid.*, Article 3.

- (2) Prioritize activities described in the Strategy and the Action Plan; where necessary, draft projects regarding the renewal of certain activities and/or their implementation periods;
- (3) Prepare annual reports on the implementation of the Strategy and the Action Plan;
- (4) Draft the High Council of Justice proposals in accordance with the activities undertaken in the Strategy and the Action Plan, etc.

The Secretariat was also established in order to coordinate and administer operations of the workgroups. The Secretariat consists of workgroup coordinators who can be employees of the administration unit of the High Council of Justice. The workgroup is authorized if more than half of its members are in attendance and decisions are made by the majority of votes.

Monitoring of the implementation of the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan has revealed a number of challenges. The instructions adopted by the High Council of Justice in order to support implementation of the Strategy and the Action Plan are also flawed and problematic. Specifically, the following issues need to be stressed:

**Unsystematic operation of the workgroups** – despite the fact that the instructions adopted on October 16, 2017 clearly stipulate that workgroups must meet as needed but no fewer than once a month, only a total of 11 meetings were held by all workgroups between October 2017 through to October 31, 2018, as described in the information provided by the High Council of Justice.<sup>14</sup>

Meetings of I Workgroup	Meetings of II Workgroup	Meetings of III Workgroup	Meetings of IV Workgroup
November 3, 2018	November 17, 2017	February 5, 2018	November 10, 2017
April 4, 2018	July 20, 2018	April 4, 2018	June 11, 2018
June 22, 2018		October 25, 2018	October 17, 2018

**Participation of stakeholders in workgroup sessions only through voting** – the Council instructions have stripped representatives of civil society organizations of workgroup membership status and allowed their participation in workgroup sessions only by decision of the workgroup members (through voting). In November 2017 the “Coalition for Independent and Transparent Judiciary” officially requested from the High Council of Justice to amend the instruction for the implementation of the Strategy and the Action Plan and ensure engagement and participation of civil society representatives in workgroup sessions. The High Council of Justice reviewed the request during December 5, 2017 session and accepted it as information. Importantly, after December 5, 2017 the High Council of Justice changed the instructions multiple times; however, they disregarded the issue of revising the document to ensure the civil society engagement on all times.

<sup>14</sup> Letter of the High Council of Justice, №2223/3235-03-00.

**Lack of fixed deadlines to publish the dates of meetings or their cancellation on the Council website** – The instructions adopted by the High Council of Justice does not specify the deadlines for informing the public about the dates of workgroup sessions or their postponement. Normally, information about the planned date of workgroup meetings or their postponement is published a day before the session or on the actual day of the session. Consequently, stakeholders are unable to receive information about planned meetings in a reasonable period of time and to request attendance at the meetings in due time;

**Lack of fixed deadlines to publish minutes of workgroup sessions on the Council website** – Despite the fact that the instruction adopted by the Council require publication of workgroup meeting minutes on the Council website, it does not specify deadlines to do so.<sup>15</sup> In practice, the session minutes are published at least one month later. For example, the minutes of the April 4, 2018 session was made available on the Council website on May 30, 2018.<sup>16</sup> Minutes of all of the workgroup meetings were disclosed on the Council website simultaneously before the publication of the annual report.<sup>17</sup>

**Dates for publishing implementation reports changed several times by decision of the Council** – Article 6 of the October 16, 2017 decree of the High Council of Justice addresses the issue of accountability; however, the article has been modified several times since the adoption of the decree. For instance, by November 20, 2017 decision<sup>18</sup>, 2<sup>1</sup> paragraph was added to Article 6 according to which reports about the implementation of the Strategy and the Action plan had to be submitted to the High Council of Justice twice a year – in December and January. As due to the sporadic nature of their performance the workgroups failed to submit the reports in due time, the said requirement was modified and the current version<sup>19</sup> stipulates that reports regarding the implementation of the Strategy and the Action Plan must be submitted to the High Council of Justice once a year (in June). These reports must also be submitted to the Conference of Judges; however, the organizational instruction does not specify deadlines to do so. According to the instruction, the High Council of Justice must present the report once a year to representatives of legislative and executive government,

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15 Notably, November 12, 2018 decree of the High Council of Justice established a deadline for publishing workgroup meeting minutes on the website; however, this decision does not fall into the reporting period covered by the methodology of the presented document.

16 Information available on the website of the High Council of Justice, [Available at: <http://hcoj.gov.ge/ge/iii-samushaodjgufis/3242>. Accessed on: 15.10.2018]

17 Minutes of workgroup sessions [Available at: <http://hcoj.gov.ge/ge/reforms/ongoing-projects/sasamartlo-sistemis-2017-2021-tsebis-strategiis-da-misi-implementatsiis-samoqmedo-gegmis-shesrulebis-koordinatsia>. Accessed on: 10.10.2018]

18 Decision of the High Council of Justice, November 20, 2017 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/314.pdf>. Accessed on: 12.09.2018]

19 Decision of the High Council of Justice, March 26, 2018 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/165.pdf>. Accessed on: 12.09.2018]

international organizations, local non-governmental organizations and professional associations in frames of the Conference. The first annual report was presented by the High Council of Justice to the representatives of legislative and executive branches, international and local organizations in frames of the Conference held on July 25, 2018. Notably, the workgroups had not submitted their interim reports during the High Council of Justice session which took place before July 25. According to the information provided by the High Council of Justice, the presentation of the progress report about the 2017-2018 Action Plan was preceded by the workshop of the Council during which the Council members reviewed the draft progress report.<sup>20</sup> Analysis of the accountability obligations does not offer a clear understanding as to who is required to fulfill the duties described in the Strategy and the Action Plan and who is mandated to supervise this process.

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<sup>20</sup> Letter of the High Council of Justice, №2223/3235-03-ᄡ.



## Main Challenges

The rule of law in a democratic country implies not only the independence of the judiciary, but also the creation of a competent judicial system that can conclude high quality judgments.<sup>21</sup> The issue of improving the legal framework for the High School of Justice is especially relevant in the sense that the fundamental reform of the uniform system of selection and appointment of judges is impossible without the real independence of this body and its improvement. The school also plays an important role in the process of maintaining and retaining the quality and efficiency of justice through periodic retraining of judges.

Under existing legislative regulation, the following main challenges are highlighted in relation to the High School of Justice:<sup>22</sup>

- Current legislation fails to provide adequate institutional and functional independence of the High School of Justice from the High Council of Justice;
- High Council of Justice enjoys wide range of powers in the process of organizing and conducting the qualification examination of judges, as well as the selection criteria and selection rules for members of the Qualification Examination Commission are not regulated at the legislative level;
- Current legislation does not provide sufficient safeguards for avoiding arbitrary decisions by the High Council of Justice regarding the announcement of the competition.
- Requirements for the listeners of High School of Justice are problematic, so is the selection criteria, as well as the non-existence of appeals mechanism at the legislative level;
- A significant shortfall is a small amount of scholarship and lack of the duration of training course which does not ensure thorough understanding of all important issues necessary for effective undertaking of judicial functions;
- The applicable legal framework does not provide the objective and transparent process of staffing the Council of Teachers at the High School of Justice.

These challenges show the necessity of the basic and systematic reform of the High School of Justice, which is essentially important to ensure independent judiciary and quality of justice.

In many cases, the 2017-2018 Annual Action Plan responds to the High School-related challenges on the program level, however, it does not include such fundamental issues as provision of institutional and functional independence to the High School of Justice and enough

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21 Conclusion of the Consultation Council of European Judges N17 (2014), § 1.

22 Coalition for independent and transparent judiciary, Courts system: reforms and perspectives, 2017.

distancing from the High Council of Justice, which is essential for ensuring fair and objective selection and appointment process of judges.

During the monitoring process 17 activities related to the reform of the High School of Justice were evaluated, which are important steps to achieve the goals set out in the plan, but in certain cases it is not enough to ensure the basic and systematic reform of the High School of Justice.

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

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

The Action Plan for the Judiciary System 2017-2018 envisages four activities within the framework of creating appropriate preconditions for employing staff with the best potential, three of which are related to the reform of the High School of Justice:

*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 scholarship to the High School of Justice attendees (2018) – **Unfulfilled**;*

*3.1.1.3. Determining the expediency of the evening teaching and / or other alternative teaching programs (2017, 2018) – **Fulfilled**.*

**3.1.1.1.** Regarding the activity, the progress report states that<sup>23</sup> at the session of 16 October 2017, the Council discussed the report on the hindering factors of employing candidates with the best potential and reasoned on different ways to solve the problem. According to the additional information provided by the Council<sup>24</sup>, during the said meeting, with the initiative of the non-judge member Irma Gelashvili, they discussed potential legal amendments to the Law on the High School of Justice in relation to hindering factors of employing candidates with the best potential. In particular, accepting the individual in the school is usually the basis for the dismissal of a person from their position. Taking into consideration that the judge's candidate prepared by the High School of Justice may not be appointed on the position of a judge, the qualified and experienced personnel refuse to participate in the selection competition. The project submitted by the non-judge member envisaged suspension of official position while

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23 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 28

24 Letter of the High Council of Justice, №2224/3141-03-0.



attending the High School of Justice. It should be noted that this initiative is not based on systematic and comprehensive understanding of the issue and cannot offer an effective solution of the existing problem. In addition, such legal regulation will put the candidates with the best potential, who are not judges, in unequal position.

The progress report also speaks about the working visit of the Chairman of the High Council of Justice, members of the Council and the independent council in France. Participants of the visit were acquainted with basic and continuous teaching methods, enrollment procedures and internships of the French National Justice School. Furthermore, according to the information provided by the Council<sup>25</sup>, the hindering factors of employing candidates with the best potential are being discussed with the working group on judicial reform under the Chairman of the Parliament, which should be assessed positively. However, given the fact that currently tangible results in this direction are not present, 3.1.1.1 activity should be considered partially fulfilled at this stage.

**3.1.1.2** According to the information provided by the High School of Justice in connection with the activity,<sup>26</sup> increase of the scholarship of the students is envisaged by the draft law of Georgia “On the State Budget of 2019”. After approving the draft law, the Independent Council of the High School of Justice will decide on the amount of scholarship by the end of the year. A significant shortcoming of the current legal framework is a small amount of scholarship,<sup>27</sup> which reduces the chance that a qualified and successful lawyer will be willing to attend school. Consequently, some work in this direction is welcome. However, given the fact that adequate scholarship is not guaranteed as of today, this activity should be considered as not fulfilled at this stage.

**3.1.1.3** Within the scope of the activity, certain activities were carried out with the involvement of foreign experts to determine the feasibility of the evening teaching and other alternative teaching programs.<sup>28</sup> In particular, according to the progress report, foreign experts introduced the best experience in distance learning through various electronic platforms and presented recommendations on the introduction of e-learning.<sup>29</sup> In the framework of the experts’ visit to the High School of Justice, the needs were analyzed to identify the topics for which remote learning programs will be developed and the technical specifications document for the e-learning platform has been devel-

25 Letter of the High Council of Justice, №2224/3141-03-ᄡ.

26 Letter of the High Council of Justice, №02/2158.

27 According to Article 16 of the Law of Georgia on High School of Justice, attending student receives a state scholarship, which can not be less than 1/4 of the minimum salary of the first instance court judge.

28 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 29

29 With regard to distance learning, the High School of Justice has provided the report of experts on various educational programs established in EU member states. Letter No. 6 of 2018, High School of Justice, No. 02/2158.

oped.<sup>30</sup> The initial investigation into the evening teachings revealed that there is no such practice throughout Europe. According to one of the principles adopted in the General Assembly of the European Judicial Training Network (EJTN) in 2016, training is a regular part of a work of a judge and the judge must undergo training during the regular working hours.<sup>31</sup> Consequently, taking into consideration the implemented work, 3.1.1.3 activity is considered to be fulfilled.

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 do not take into consideration the school's assessment of the candidate when deciding on them 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 small. Unfortunately, at the legislative level, the Action Plan does not directly cover increasing the role of the High School of Justice in the process of appointment of a graduate on the position of a judge.

Overall, despite implementing certain activities, considering the current situation, necessary preconditions are not designed to employ staff with the best potential.

### 3.2.1 Improving the process of accepting students

Judiciary System Action Plan 2017-2018 envisages the following 5 activities in terms of improving the process of accepting students:

*3.2.1.1. Improvement of the qualification of examination of judges, by increasing duration of studying term of the candidates and improvement of teaching methods (2017) – Partially Fulfilled;*

*3.2.1.2. Upgrading selection criteria and improving the procedure (2017) – Unfulfilled;*

*3.2.1.3. Periodic preparation and update of judges' qualification tests and case studies (2018) – Fulfilled;*

*3.2.1.4. Improvement of candidates interview process (including questions) (2018) – Unfulfilled.*

*3.2.1.5. Conducting research on the expediency of the introduction of masters course on judicial studies (2018) – Unfulfilled.*

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30 The High School of Justice provided the Document elaborated by the expert regarding "The Guidelines for the Synchronization of High School School of Justice Portal Database and Moodle". Letter No. 6 of 2018, High School of Justice, No. 02/2158.

31 Judicial Training Principles, [Available at: [http://www.ejtn.eu/PageFiles/15756/Judicial%20Training%20Principles\\_EN.pdf](http://www.ejtn.eu/PageFiles/15756/Judicial%20Training%20Principles_EN.pdf), Accessed on: 18.11.2018]

Improvement of enrollement of the listeners, which is essentially important for the reform of the unified system of selection and appointment of judges, does not include such an important activity as an effective mechanism for appealing against the decision on refusal to enroll. In addition, it is unclear how much does the improvement of the recruitment procedure include regulating the cases of conflict of interest and creating legislative guarantees against improper communication. This program does not include the development of relevant legislative proposals when in order to ensure objective and transparent processes it is essential that criteria and procedures for the selection of listeners is regulated at the legislative level and not by the Charter of High School of Justice.<sup>32</sup> In the legal viewpoint, it is also problematic that the charter approved by the independent council of the School established the norms for the High Council of Justice.

**3.2.1.1** It should be noted that improvement of qualification exam, increase of teaching time 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 judges' qualification examination is related to improvement of the process of listener's admission, however, increasing the studying term and improving teaching methods serves to improve the teaching process. Thus, it is unclear as to why these two issues are considered within the program of improvement of the admission process. Nevertheless, within the framework of the monitoring, these issues were discussed as one activity.

Within the scope of this activity, certain works were implemented to improve the qualification examination of judges. The High Council of Justice approved the rule of conducting the qualification examination and the qualification examination program for the Judiciary by the decision of N1/152 of 19 March 2018.<sup>33</sup> However, it should be noted the deadline for implementing this activity according to the Action Plan was the year 2017. According to the progress report,<sup>34</sup> in order to improve the quality of the qualification examination of the judges, following the initiative of the National Assessment and Examination Center, the participants passed all the phases of testing (contextual and methodological expertise), "reading and use" the psychometric characteristics of the test. Accordingly, the activity is fulfilled in this section. As for the increase of the teaching term and the improvement of teaching

32 According to paragraph 2 of Article 13 of the Law of Georgia on High School of Justice, the form of an acceptance competition at school, registration of candidates for justice listeners, selection criteria for justice listeners and other issues related to conducting competition are determined by the School charter.

33 Decision of the High Council of Justice, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/152-2018.pdf>], Accessed on: 18.11.2018].

34 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018).

methods, according to the progress report, work is being conducted in the framework of the Twinning project in relation to increasing the duration of the preparation of the Judicial candidates.<sup>35</sup> Increasing the studying term requires a legislative amendment, however, the draft law has not yet been elaborated for the purpose of legal regulation of the issue. Consequently, 3.2.1.1 shall be considered partially fulfilled.

**3.2.1.2** Activity is included in one of the directions to be implemented by the Judicial System Reform working group under the reform of High School Justice.<sup>36</sup> Accordingly, 3.2.1.2 activity is unfulfilled as of today.

Under existing legal regulations, the process of reviewing documents presented at the first stage of the competition is problematic because the current law sets minimum requirements for participation in the competition. In addition, the objective and clear criteria for selection of listeners are not established at the legislative level. It also does not specify what information and sources are used as a basis of the assessment of the candidate by the Council, which makes the admission process obscure and non-transparent. Consequently, the failure to perform this activity harms the significant public interest for the objective and transparent provision of the School admission process.

**3.2.1.3** In order to fulfill the activity, according to the progress report, the qualification examination commission has set new tests and the tests are updated periodically.<sup>37</sup> Accordingly, 3.2.1.3 activity is considered to be fulfilled. It should be noted that in the framework of the monitoring, the quality of the exam tests were not evaluated.

**3.2.1.4** Activity has not been fulfilled during the reporting period, as the improvement of the listeners' interview process is part of the reform of the High School of Justice.<sup>38</sup>

**3.2.1.5** The activity has not yet been fulfilled, as the research on the expediency of the introduction of Judicial Studies master's course has not been conducted yet.<sup>39</sup>

In relation to improvement of the process of admission, the challenges which are not considered by the Action Plan should be additionally noted. The Board has wide powers in the

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35 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 32.

36 Letter of the High Council of Justice, №2224/3141-03-0.

37 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 33.

38 Letter of the High Council of Justice, №2224/3141-03-0.

39 Letter of the High Council of Justice, №2224/3141-03-0.

process of organizing and conducting the qualification examination of the judges, which is a drawback of the existing legal framework. Successful passing of the qualification exam is a precondition for enrollment at the school and therefore the function must be in the capacity of the High School of Justice. Furthermore, it is problematic that the selection rules and criteria of the qualifying examination committee members are not regulated by organic law.

It is noteworthy that the current legislation does not provide enough guarantees to prevent arbitrary decisions regarding the announcement of the competition by the High Council of Justice, and the existing legislative framework does not guarantee defining the number of listeners based on clear and objective criteria. Consequently, there is a risk that the council will decide according to its subjective view and not according to the judicial interests. Unfortunately, the Action Plan does not envisage taking appropriate measures to eliminate these shortcomings. Consequently, the individual deficiencies of the admission process will still remain a challenge, even if the 3.2.1 program activities are fully implemented.

Overall, monitoring of the implementation of the plan reveals that effective steps were not taken in the direction of improving the admission process. The High Council of Justice announced the admission process on September 19, 2018,<sup>40</sup> accordingly, the admission process was conducted with existing flaws, which imposes risks to the significant public interest of staffing judicial system with qualified candidates.

### 3.2.2 Improving the teaching process

In terms of improving the teaching process, Judiciary System Action Plan 2017-2018 envisages the following four activities:

- 3.2.2.1. *Analysis of the existing preparation program of judicial candidates (2017) – **Fulfilled;***
- 3.2.2.2. *Planning and implementation of work towards improvement of training quality, in accordance with the study results (2018) – **Unfulfilled;***
- 3.2.2.3. *Improving listeners' internship system (2018) – **Unfulfilled;***
- 3.2.2.4. *Developing distance learning to attract listeners from regions (2018) – **Partially Fulfilled.***

40 Statement of the High Council of Justice, [Available at: <http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabcho-atshkadebs-iustitsiis-skolis-msmenelta-shearchev-konkurss/3297>, Accessed on: 30.09.2018]

**3.2.2.1** The activity is considered to be implemented as French and Latvian experts analyzed the existing program for the preparation of judicial candidates of the High School of Justice and the relevant recommendations have been developed.<sup>41</sup> Recommendations included prolonging the term of the program, increasing the term of teaching based on skills, giving more time to constitutional law and human rights, inclusion of multi-disciplinary approach in the program, elaboration of electronic training and elective modules and other issues.<sup>42</sup> It should be noted that, according to the Action Plan, this activity should have been completed in 2017, however, the implementation of program analysis became possible in 2018.

**3.2.2.2** The activity is considered to be unfulfilled at this stage, since nowadays, the improvement of teaching quality has not been implemented and the amendments have not been made to the “Law on High School of Justice”.<sup>43</sup> According to the information provided by the High School of Justice, in September 2018, French and Latvian experts visited the High School of Justice in order to renew the existing program of training, which also includes the internship. In order to renew the training program, another visit of foreign experts is planned for December.<sup>44</sup>

**3.2.2.3** According to the progress report<sup>45</sup> some work has been done by the Georgian and foreign experts in relation to improvement of the internship system and provision of certain recommendations.<sup>46</sup> The recommendations concern increasing the duration of the study, elaborating the internship framework program for each judicial candidate, preparing the individual training program, modifying the rules of evaluation of the candidates, candidates evaluating their progress and mentor judges and other issues related to the internship. According to information provided by the High School of Justice in October, 2018 the school was visited by the French expert to upgrade the internship program.<sup>47</sup> However, as of today, the process of refining the internship system is not completed, as it is also related to increasing duration of training, which requires legislative amendment. Consequently, this activity should be considered as unfulfilled at this stage.

**3.2.2.4** With regard to the development of distance learning, within the scope of this activity, foreign experts have provided recommendations regarding introduction of e-learning (see activity 3.1.1.3).

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41 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 29.

42 Amandin de la Harpp, Dzintra Balta, “Analysis of preparation of Judicial candidates and recommendations on the improvement of the program, within the framework of 1.1.2. and 1.1.5. of Twinning project, 2018.

43 According to the Article 19 of the Law on High School of Justice, the duration of teaching is 10 months.

44 Letter of the High School of Justice, №02/2158.

45 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 33.

46 Recommendations for the Internship Programme, [Available at: <http://www.hsoj.ge/uploads/recommendations.pdf> Accessed on: 18.11.2018]

47 Letter of the High School of Justice, №02/2158

In addition, foreign experts conducted training for the employees of the High School of Justice in the field of elaboration and implementation of the Distance Learning Module.<sup>48</sup> According to the information provided by the High School of Justice, the introduction of distance learning pilot modules within the framework of judges and other staff training programs is envisaged by the end of 2018 – at the beginning of 2019. Specifically, e-Learning Modules will be developed and implemented on the following three topics: International Labor Standards and Labor Code of Georgia, European and International Standards of Human Rights (General Course) and Communication Standards / Effective Communication.<sup>49</sup> In October 2018, an e-learning pilot program was launched on the subject of “Justifying judgments of Criminal Law Cases”, which is intended for court officials.<sup>50</sup> Accordingly, 3.2.2.4 activity should be considered partially fulfilled as of today.

It should be noted that the duration of teaching at the High School of Justice is not enough to prepare qualified listeners, which could affect the quality of justice. Considering the existing regulations, it is practically impossible to get familiar with all the important issues necessary for effective implementation of judicial functions. Therefore, efforts to improve the teaching process are welcome, however, the absence of effective and tangible results remains a significant challenge.

### 3.2.3 Improving the continuous learning system for judges

Judiciary System Action Plan 2017-2018, in terms of improving the continuous learning system for judges, envisages six activities, two of which were evaluated during the monitoring process:

*3.2.3.1. Improvement of the increasing qualification system for judges, determination of expediency of compulsory training hours (2018) – **Fulfilled**;*

*3.2.3.6. Organizing a special course of administration and management skills for court chairmen (2017, 2018) – **Fulfilled**;*

**3.2.3.1.** On June 4, 2018, the High Council of Justice of Georgia adopted N1 / 205 decision on Approval of Rules of Passing Compulsory Training Courses of Judges of Common Courts of Georgia<sup>51</sup>, which will take effect on January 1, 2019. According to this rule, the purpose of conducting mandatory training is to ensure the quality of justice, strengthening the rule of law and enhancing judicial independence. Duration of compulsory training is defined

48 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 29.

49 Letter of the High School of Justice, №02/2078.

50 Letter of the High School of Justice, №02/2158

51 Decision of the High Council of Justice, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/205-2018.pdf> accessed on: 26.09.2018].

for at least 3 days per year, and determining the methodology and conducting the training is ensured by the High School of Justice. Accordingly, in terms of determining compulsory learning, 3.2.3.1 activity should be considered to be fulfilled.

**3.2.3.6** The activity is considered to be fulfilled, as the following 2 teaching modules were developed with the participation of foreign experts and Georgian judges-experts:<sup>52</sup>

- An in-depth course on court management for court chairmen and court managers;
- Management and leadership for judges.

In 2017-2018, using the abovementioned modules the following were carried out:

- 2 trainings for judges – “Management and Leadership for Judges”, attended by 27 judges;
- 2 trainings for court officials on “In Depth Course on Court Management for Court Chairmen and Court Managers”, attended by 31 court officials.<sup>53</sup>

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

Judiciary System Action Plan 2017-2018, in the framework of improving continuous learning system for court officials and other employees of the system, envisaged 5 activities, one activity which concerned the institutional reform of the High School of Justice was evaluated during the monitoring process:

*3.2.4.5. Assessing independence, management and administration of the High School of Justice and providing recommendations (2018) – **Unfulfilled**;*

The institutional independence, management and administration of the High School of Justice and the elaboration of the recommendations is one of the activities in the framework of refining the continuous learning system for the court officials and other employees of the system, however, it is difficult to understand the relationship between this activity and the program. In addition, the plan specifies only the assessment of current situation and the elaboration of recommendations and there are no specific and effective steps to strengthen the institutional independence of the school. In addition, the indicator “Strength and institutional independence of High School of Justice is increased”, in the absence of appropriate program and clear formulated activities, fails to provide adequate assessment of the progress in this direction.

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<sup>52</sup> Teaching modules were elaborated in the framework of the CoE funded project – “Improving the opportunities of High School of Justice”.

<sup>53</sup> Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 34.



**3.2.4.5.** According to the information provided by the High School of Justice,<sup>54</sup> on the basis of the School Strategic Development Action Plan, relevant activities have already been implemented in the direction of institutional independence of the school and the necessity of additional institutional evaluation of the school is not determined at this stage.

The existing rule for the formation of the main organ High School of Justice – the formation of an Independent Council<sup>55</sup> fails to ensure the proper institutional independence of the School from the High Council of Justice. The current legal framework envisages concentrating powers in the hands of the Council and the High School of Justice, although it operates in the form of a separate legal entity, cannot satisfy the institutional independence criterion. The Independent Council, which defines the main activity of the school and oversees the learning process, should be institutionally differentiated from the Council. Despite the existing challenges, the relevant works have not been implemented during the reporting period. Consequently, 3.2.4.5 activity is considered unfulfilled.

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

Judicial System Action Plan 2017-2018, in the framework of ensuring high qualification of judges and invited specialists, envisages 4 activities, the following were evaluation during the monitoring process:

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

*3.2.5.2. Increasing teaching qualification of judges and invited specialists, including in the methodology of teaching adults (2017, 2018) – **Fulfilled;***

**3.2.5.1** The activity which was to be completed in 2017 has not been fulfilled yet. According to the progress report, this activity is planned to be completed in 2018.<sup>56</sup> According to the information provided by the High School of Justice<sup>57</sup>, work on selection criteria of teachers and invited specialists is underway. However, at this stage no concrete results have been attained in this direction, therefore this activity is considered unfulfilled.

<sup>54</sup> Letter of the High School of Justice, №02/2158

<sup>55</sup> According to Article 3, paragraphs 3 and 4 of the Law of Georgia on High School of Justice, the Judges Conference selects the Chairman of the Independent Council, who at the same time is a member of the Independent Council, from its members for a term of three years. 5 members of the Independent Council, 1 of which is a non-judge member is approved by the High Council of Justice of Georgia on the application of the Chairman of the Independent Council for a term of three years.

<sup>56</sup> Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 37.

<sup>57</sup> Letter of the High School of Justice, №02/2158.

The objective criteria for selection of teachers and the selection procedure are not regulated at the legislative level, which is a significant shortcoming of the existing legal framework. Taking into consideration that the role of teachers in training of the listeners and judicial re-training process is tremendous, their selection should be based on the foreseeable and clear criteria and the selection process should be conducted objectively and transparently. Consequently, taking effective and timely measures in this direction is of particular importance.

**3.2.5.2.** In order to fulfill the activity, according to the progress report<sup>58</sup> trainings were conducted for the trainers of the High School of Justice in Adult Teaching Methodology in 2017.<sup>59</sup> Two trainings were conducted on Adult Teaching Methodology and were attended by 26 participants and 2 training courses were conducted on adult teaching assessment methodology and were attended by 16 participants. According to the additional information provided by the High School of Justice,<sup>60</sup> the absolute majority of School teachers / trainers are retrained. Consequently, 3.2.5.2 activity is considered to be fulfilled.

## Assessment of the Related Action Plans

Similarly to the Judicial System 2017-2018 Action Plan, the National Human Rights Action Plan and the Criminal Justice Reform Action Plan discuss issues related to the High School of Justice Reform. The activities defined by these documents are largely similar, however, in certain cases, the deadlines and responsible / co-responsible organs are different. In addition, unlike Judicial System Action Plan, the said Action Plans make (limited) fewer references to the work to be conducted in relation to the School reform.

## Activities foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation

The Criminal Justice Reform Action Plan, within the task of institutional development and strengthening of the Common Courts System, envisages the reform of the High School of Justice and enhancement of the qualification of judges, together with the elaboration of legislative amendments for further reform of the school. In order to implement this activity, in 2018 it is planned to study international best practices and prepare legislative proposals based on research findings. For ensuring broader involvement 2019 is considered deadline for hearing legislative

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58 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 37.

59 Trainings were conducted in the framework of the retraining program of judges of High School of Justice and other court officials, with support of CoE and GIZ.

60 Letter of the High School of Justice, №02/2158.

proposals and making legislative amendments and the amendments are to be implemented by 2020. Contrary to this, the main issues related to reform of the High School of Justice are envisaged in the activities of 2017-2018 in the Judicial System Action Plan. In the Criminal Justice Reform Action Plan the High Council of Justice and High School of Justice are considered as responsible agencies and the Parliament of Georgia and NGOs are considered to be partners. As it is known, the reform of the High School of Justice is one of the directions of the Judiciary Reform Working Group, which includes all three branches of the government.<sup>61</sup> As of today, the legislative proposal is not elaborated on this issue. Consequently, this activity is not fulfilled.

### **Activities envisaged by the National Human Rights Action Plan 2018-2020 and the Degree of their Implementation**

Similarly to the Judicial System Action Plan, the National Human Rights Action Plan 2018-2020 within task on improving the quality of initial training and continuing education, envisages creating appropriate preconditions for employing candidates with best potential, attracting and selecting them, as well as renewing the criteria for selection of the attendees of the High School of Justice and improving the procedure. According to the document the period of implementation of these activities is 2018-2019, and the High Council of Justice and the Supreme Court are considered as responsible organs. The deadlines and the responsible organs provided by the Governmental Action Plan are different from the Judicial System Action Plan. The latter considers the above-mentioned issues within the framework of 2017-2018, and together with the High Council of Justice, High School of Justice is a responsible organ and the Ministry of Finance as a co-responsible organ within the framework of the creating necessary preconditions for employing the candidates with the best potential. The activities under the Governmental Action Plan are at this stage are not fulfilled.

## **Conclusion**

The Action Plan monitoring results showed that in the reporting period the measures have not been implemented in terms of systematic revision of the legislation, which is essentially important for the fundamental reform of the High School of Justice. During the monitoring process it became clear that a number of fundamental deficiencies still remain as a challenge.

The Independent Council of the High School of Justice, which defines the main activities of the school and supervises the educational process, must be protected from the Coun-

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61 Letter of High Council of Justice, №2224/3141-03-ᄁ.

cil's influence. The Action Plan does not provide for the guarantee of the institutional independence of the High School of Justice, which, first of all, implies the change of the rule on forming an independent council of the School. The Action Plan also does not provide for the functional independence of the High School of Justice, which is also a significant gap.<sup>62</sup> Ensuring the organizational and functional independence of the School is essential to ensure the judicial independence and the fair appointment of an individual as a judge. Unfortunately, the Action Plan does not fully meet the current challenges in this direction. Significant efforts have been made with the involvement of foreign experts in order to improve the quality of the learning process, which should be assessed positively, but in certain cases, the specific and tangible results were not attained in the reporting period

Taking into consideration all of the above mentioned, it is important for the working group and the responsible organs to carry out the work in the following directions:

- To identify and respond hindering factors for employing people with the best potential;
- With regard to improvement of admission criteria of the listeners and improvement of the procedure, it is recommended to increase the formal admission requirements of the listeners and ensure maximum approximation with the standard that is set for the candidate of the judge. Objective and transparent criteria for selection of listeners as well as the rules of conducting the competition should be clearly regulated at the legislative level, the evaluation should be conducted through the score system and the decision made as a result of the competition should be appropriately substantiated. Also, it is necessary to have an effective mechanism for appealing the decision made as a result of the competition at the legislative level;
- To conduct research on the expediency of introduction of the Master's Course in the Judicial Teaching;
- To Increase the duration of studying at High School of Justice, in order to enable the justice listeners to acquire the knowledge and skills necessary for the performing the duties of judges;
- To ensure adequate scholarships for the listeners of High School of Justice, that will encourage best candidates to apply for;
- To Improve the quality of teaching at the High School of Justice and improve the internship system;
- To improve the selection process of teachers and invited specialists – It is important that the criteria and procedures of selection of teachers and invited specialists are regulated at the legislative level, ensuring that the selection process is objective and transparent.

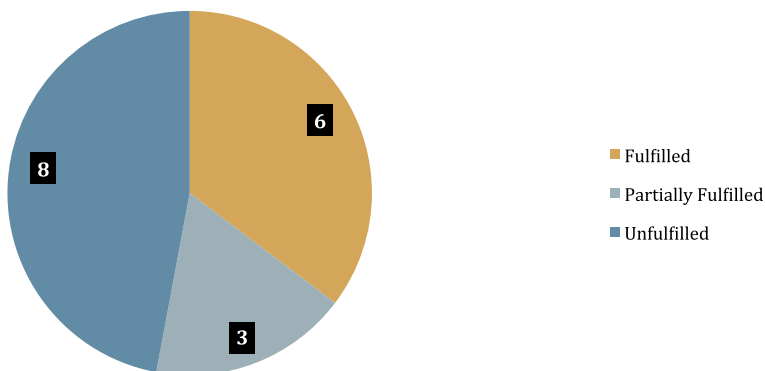
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62 According to paragraph 1 of Article 13 of the Law of Georgia on High School of Justice, the High Council of Justice of Georgia shall conduct a school acceptance competition.

Furthermore, it is essentially important to carry out the work that is not directly envisaged by the 2017-2018 action plan:

- To change the rule of formation of an Independent Council and exclude the involvement of the High Council of Justice in the process of approving Independent Council members. That is necessary to increase the autonomy of the High School of Justice and ensure its independence;
- To ensure the fair system of selection and appointment of judges, it is important to have a fair and objective separation of the competencies of the High Council of Justice and the High School of Justice. It is expedient to restrict the wide-ranging powers in the hands of the Council and the School should select the candidates on its own, based on the competition;
- It is important that High School of Justice is considered as a body responsible for organizing and conducting a judicial qualification examination, as well as creating the committee. It is also necessary that the criteria for selecting the members of the qualification examination committee and the procedure for selection are defined by the Organic Law of Georgia on Common Courts;
- It is important that the High Council of Justice should be obliged to justify the reasons why it takes/does not take into consideration the assessments and recommendations issued by the High School of Justice in the assessment of a candidate judge with the criteria envisaged by the Organic Law.

**Fulfillment status of the activities of the Reform of the High School of Justice, as envisaged by the Judicial System Action Plan for 2017-2018**



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

## Main Challenges

The current version of the organic law of Georgia on Common Courts sets forth different procedures for holding office of a judge:

- (1) Rules for appointing a judge for the first time for a probation period;<sup>63</sup>
- (2) Rules for lifetime appointment of the judge after the probation period;<sup>64</sup>
- (3) Rules for lifetime appointment of judges who are exempt from probation requirement;<sup>65</sup>
- (4) Rules for lifetime appointment of judges with 3-year term of office who have at least 3 years of judge experience.<sup>66</sup>

Based on the observations of each stage of judge selection/appointment, it can be concluded that all of the four procedures for selecting and appointing judges are characterized with a range of gaps. Despite numerous ‘waves’ of reform, the existing system for judge selection/appointment does not meet the requirements of impartiality, justification, transparency and the principle of merit and enables the High Council of Justice to make biased decisions.<sup>67</sup> Assessment of the principles of judge appointment and all of the procedures in combination demonstrates that the element of professional appointment is still weak in this process. Making the final decision through secret ballot which can outweigh evaluations of the candidate according to the criteria established by law points to the political nature of the process. This questionable logic of the law along with the practice of appointing judges may be some of the reasons for suspecting the High Council of Justice in using its powers and the flaws in the legislation in order to remove judges with differing opinions from the system and strengthen its positions.<sup>68</sup>

Rules for appointing and promoting judges without competition constitute another important mechanism in the career advancement of judges. Despite the modifications brought by

63 The organic law of Georgia on Common Courts, Articles 35-36.

64 *Ibid*, Article 36.

65 *Ibid*.

66 *Ibid*, Article 79<sup>4</sup>.

67 “The GET (GRECO evaluation team) notes that the rules on judges’ recruitment have, in recent years, been subject to quite substantial reforms which introduced the principle of lifetime appointment and detailed regulations on the assessment of judges during the probationary period, as well as procedural rules and criteria to be applied when deciding on appointment for life. However, it very much regrets that the procedure and criteria for the selection of candidates and their appointment for the probationary period – i.e. the first stages of judges’ recruitment – is much less regulated. The GET was concerned to hear that the absence of clear rules at this stage of the process, as well as the recent practice of the HCJ, have fuelled citizens’ mistrust in the system” – GRECO, Fourth evaluation round, [Available at: <https://rm.coe.int/16806dc116>. Accessed on: 16.10.2018]

68 The Coalition is debating the decision made with regard to one dismissed judge in the court, [Available at: [http://coalition.ge/index.php?article\\_id=179&clang=1](http://coalition.ge/index.php?article_id=179&clang=1), Accessed on: 14.09.2018]

the “third wave” of reform, inadequate legislative regulation of the process of appointing and promoting judges without competition and leaving the development of corresponding criteria and procedures to the High Council of Justice continue to be some of the main challenges of the system.

With regard to the selection/appointment of judges and other career advancement policies the following issues should be highlighted:

- The indicators to verify the criteria established by law are not defined. The law does not specify as to based on what kind of information the evaluator should conclude that the candidate possesses the qualities required by law;
- Pursuant to the decision of the High Council of Justice,<sup>69</sup> interviews with candidates are held at closed sessions of the Council which does not ensure transparency of the selection process;
- The process of interviewing candidates is not formalized; the scoring share of the interview in the overall evaluation score is not specified which allows for broad arbitrariness during interviews;
- The organic law of Georgia on Common Courts establishes the rules for evaluating candidates based on their competency and the maximum scores to be gained per the indicators of the criterion, however, this rule does not apply to the criterion of integrity;
- The rule of final appointment of judge through secret ballot contradicts the rule of appointing them based on their evaluation per established criteria;
- The legislation does not require the High Council of Justice to justify their decisions regarding the selection/appointment of judges or other personnel-related matters;
- Pursuant to the legislation, candidates are allowed to dispute the refusal to be appointed as a judge; however, the process of scoring the candidate against the established criteria cannot be appealed;
- Judges are promoted without a set of coherent and effective rules for the evaluation of their court practice;
- Mechanisms for the promotion and transfer of judges to higher instance courts are identical in contents which hinder clear and specific distinction between them;
- Objectives of the periodic review of judges are ambiguous. Evaluations are focused more on the entire court system rather than the performance of individual judges. The current model is mainly based on quantitative indicators;
- Court chairpersons are appointed by the High Council of Justice in an ambiguous and non-transparent manner.

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69 Decision of The High Council of Justice, №1/308 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/308.pdf>. Accessed on: 25.09.2018]



The programs and activities listed in the Judicial Strategy and the Action Plan with regard to the selection/appointment of judges and other personnel-related matters mostly respond to the challenges prevailing in these directions; however, the final version of the Action Plan neglects several crucial issues: (1) revision of the rules of electing court chairpersons, corresponding deadlines and competencies; (2) introduction of an open ballot during competitions between the School attendees, candidates for judges and chairpersons. These thematic programs are mostly grouped under the first and third strategic direction of the Action Plan. There is a total of 23 activities of the Action Plan aiming to improve the system of selection/appointment and promotion of judges.

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

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

In frames of the program to reinforce independence of the judiciary in the Constitution and corresponding legislation, the 2017-2018 Action Plan lists four main activities that aim to improve the system of selection and appointment of judges:

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

*1.1.1.2. Ensuring the guarantees of lifetime appointment for judges in courts of all instances, including the Supreme Court (2017) – **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***

*1.1.1.8. Request for and analysis of opinions of the Venice Commission regarding the draft revised constitution – **Fulfilled***

**1.1.1.1.** – Notably, the modified Constitution of Georgia which was enacted after the 2017-2018 constitutional reform allowed for lifetime appointment of judges in common courts until reaching the age established by the organic law. Transitional provisions of the constitutional law offer an exception to the general rule: until December 31, 2024 the judges who takes office for the first time can hold office for 3 years, before their lifetime appointment. As the full enactment of the general rule for lifetime appointment of judges adopted after the constitutional amendments has been postponed till the end of 2024, this activity can be considered as partially fulfilled.

It is also noteworthy that development and approval of constitutional amendments was facilitated by the Parliament of Georgia. The one-year report on the implementation of the

Action Plan does not contain information about the role of the High Council of Justice in the process of fulfilling these obligations. According to the information provided by the High Council of Justice, the former chairperson of the Supreme Court of Georgia was engaged in the constitutional commission, however, the workgroup I itself has not submitted their views/recommendations to the constitutional commission.<sup>70</sup>

**1.1.1.2.** – This activity is also directly linked with the 2017-2018 constitutional reform as a result of which the rules of lifetime appointment will also be applied to judges in the Supreme Court. In this case too the role of the High Council of Justice, as a responsible agency, in drafting the constitutional amendments is unclear.<sup>71</sup>

With regard to Activity 1.1.1.2 the High Council of Justice in the annual report on the implementation of the Strategy and the Action Plan places emphasis on the circumstances generated by February 15, 2017 ruling of the Constitutional Court of Georgia.<sup>72</sup> Namely, the court annulled the rule in the organic law of Georgia on Common Courts about the appointment of judges according to which an acting or former judge with no less than 3 years of experience could be appointed as a judge of Court of Appeals or city courts.

Importantly, for the purpose of enforcing the Constitutional Court ruling, the Parliament added a considerably ambiguous article in the transitional provisions of the organic law of Georgia on Common Courts.<sup>73</sup> By decision of the High Council of Justice<sup>74</sup>, modifications and addendums were introduced in the Council regulations as well in July 2017. The purpose of the changes was to describe the rules for lifetime appointment of judges with 3 years of judge experience; however, it has to be pointed out that the lifetime appointments of judges in accordance to these procedures in October 2017<sup>75</sup> and February 2018<sup>76</sup> revealed a number of flaws and gaps. Specifically, due to the wrong practice of judge appointment, individuals who have a distinctly negative public image because of the rulings they issued in the past

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70 Letter of of the High Council of Justice, №1941/2677-03-09.

71 Letter of the High Council of Justice, №1941/2677-03-09.

72 Please see the February 15, 2017 Constitutional Court ruling in the case: O. Jorbenadze vs Parliament of Georgia. [Available at: <http://constcourt.ge/ge/legal-acts/judgments/3-1-saqartvelos-moqalaqe-omar-djorbenadze-saqartvelos-parlamentis-winaagmddeg3.page>. Accessed on: 14.09.2018]

73 Please see the views of the Coalition for Independent and Transparent Judiciary regarding the draft bill [http://coalition.ge/index.php?article\\_id=157&clang=0](http://coalition.ge/index.php?article_id=157&clang=0)

74 Please see the July 17, 2017 High Council of Justice decree [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/226-2017.pdf>. Accessed on: 17.09.2018]

75 Please see the subsequent stages of lifetime appointment of judges. [Available at: [http://coalition.ge/index.php?article\\_id=170&clang=0](http://coalition.ge/index.php?article_id=170&clang=0). Accessed on: 17.09.2018]

76 The Coalition comments on the events taking place in court and starts the campaign: "I Want to Trust Courts", [Available at: [http://coalition.ge/index.php?article\\_id=177&clang=0](http://coalition.ge/index.php?article_id=177&clang=0). Accessed on: 25.09.2018]

have been appointed as lifetime judges. In addition, appointment of judges took place mostly behind closed doors. Overall, the obligation to ensure constitutional and legislative guarantees for lifetime appointment of judges in courts of all instances, including the Supreme Court, can be considered as fulfilled.

**1.1.1.3.** – The 2017-2018 constitutional reform also defined the role of the High Council of Justice in the process of appointing Supreme Court judges. Namely, the High Council of Justice and not the President of Georgia will be mandated to nominate the candidates for Supreme Court to the Parliament. Even though this amendment will come into force in October 2018, after the inauguration of the elected President of the country, the Council has not presented their views regarding their new role and corresponding procedures. The technical modification introduced in the organic law of Georgia on Common Courts in order to harmonize it with the new edition of the Constitution aimed to only replace the authority of the President of Georgia with the new mandate of the High Council of Justice.<sup>77</sup> Although the activity requires development of specific mechanisms and modifications, the information provided by the High Council of Justice and the annual report of the Council reveals that despite numerous documents<sup>78</sup> prepared in 2018 with support from international organizations in order to implement the activity, the Council has yet to finish their work on improving the rules and procedures of electing Supreme Court members.<sup>79</sup> The Council has not yet presented their unified vision with regard to these issues, therefore, Activity 1.1.1.3 can be considered as unfulfilled for the given period of time.

**1.1.1.8** is the last activity of the program and it entails collection of feedback from the Venice Commission regarding the draft constitutional amendments. In the one-year progress report on the implementation of the Strategy and the Action Plan the High Council of Justice describes that the Venice Commission has published their final opinion regarding the draft bill on introducing amendments in the Constitution of Georgia. While the publication of the Venice Commission opinion is not itself an arguable fact, it is unclear as to what role was played by the High Council of Justice in this process. As pointed out earlier, the 2017-2018 constitutional reform was implemented by Georgia's legislative body and evaluations of the Venice Commission were subsequently requested by the Parliament of Georgia. In its final

<sup>77</sup> Organic law of Georgia on Common Courts regarding the modifications to the organic law [Available at: <https://matsne.gov.ge/ka/document/view/4274417?publication=0#DOCUMENT:1>. Accessed on: 17.10.2018]

<sup>78</sup> (1) The European Council expert prepared a comparative analysis of practices of judge selection in European Council member countries. The research reviews experiences of Germany, United Kingdom, France, Latvia, Lithuania and Estonia and provides recommendations on selecting and nominating judges in Georgia; (2) The USAID-funded project Promoting Rule of Law in Georgia (hereinafter referred to as USAID/PROLoG) prepared the statute of the consulting council for the Parliamentary Committee of Legal Issues on criteria and selection procedures of membership candidates for the High Council of Justice, disciplinary panel and Supreme Court of Georgia

<sup>79</sup> Letter of the High Council of Justice, №2225/3134-03-0.

opinion the Venice Commission welcomed: (1) election of 5 non-judge members of the High Council of Justice by the Parliament with the three-fifths majority of its full composition; (2) lifetime appointment of Supreme Court judges; (3) Abolition of the probation period for judges starting from December 31, 2024.<sup>80</sup>

### 1.2.1. Improvement of the judge appointment system

The 2017-2018 Action Plan contains 6 activities in order to improve the system of appointment of judges.

*1.2.1.1. Forming of a workgroup to improve the criteria and procedures of selecting listeners of High School of Justice and judges (2017) – Unfulfilled*

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

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

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

*1.2.1.5. Drafting of the relevant amendments and legal acts (2018) – Unfulfilled*

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

**1.2.1.1.** – Selection of the High School of Justice listeners is one of the initial stages of the entire process of selecting and appointing judges. The current legislation does not ensure sufficient guarantees for preventing arbitrary decisions on the part of the High School of Justice in publicizing admissions competitions. The legislative regulation of the requirements from the listeners is also problematic as well as the lack of justification of the decisions made and the guarantees for appealing the decision. The first program activity in terms of improving the judge appointment system proposes establishment of the workgroup to improve the criteria and procedures for selecting the School listeners and candidates for judges. The annual progress report does not offer information about the workgroup. According to the additional information requested from the High Council of Justice, it is clear that the workgroup has not been yet formed.<sup>81</sup> Consequently, the activity that had to be implemented in 2017 is still unfulfilled.

<sup>80</sup> 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://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)005-e). Accessed on: 17.10.2018]

<sup>81</sup> Letter of the High Council of Justice, №1940/2674-03-ᄁ.

**1.2.1.2.** – Indicators proposed by the legislation for verifying the criteria of competency and integrity do not specify at any appointment stage as to based on what kind of information and evidence the High Council of Justice members should rely on to decide that candidates meet the requirements of each criterion. The activity aims to develop a system, which will ensure unbiased and justified decision-making through collecting and processing relevant information about candidates. Despite the fact that 2018 is indicated as the implementation period for this specific activity, the progress report does not provide information about initiating or planning to initiate actions under this activity. As for the additional information requested from the High Council of Justice,<sup>82</sup> it describes modifications introduced in corresponding rules based on the recommendations of the Georgian Young Lawyers Association. The project team believes that this action is relevant to Activity 1.3.1.1. therefore, these modifications are analyzed in terms of 1.3.1.1. activity.

**1.2.1.3.** – This activity listed under the program of improving the judge appointment system entails development of proposals to justify decisions made during competitions between the School listeners and judges. The High Council of Justice is indicated as the responsible agency for this activity. The one-year progress report describes that the Workgroup I has discussed the need for involving an expert in order to address this issue. A research was conducted with support from an international organization<sup>83</sup> during which the expert studied European experience and developed proposals.<sup>84</sup> The report presented by the Council does not provide information about the outcomes and recommendations of the research. The report also does not describe any specific actions that the workgroup is planning to undertake in order to continue working in this direction.<sup>85</sup> Based on the additional information requested from the High Council of Justice, proposals regarding justifications of decisions made during competitions between the School attendees and candidate for judges, have not yet been developed.<sup>86</sup> Thus, this activity is considered as unfulfilled.

**1.2.1.4.** – This activity requires development of effective mechanisms for justifying candidate evaluations and appealing final decisions. With regard to this activity, the progress report published in July 2018 describes the appeal rules developed as a result of the ‘third wave’ of the reform. Notably, the legislative amendments prepared in the ‘third wave’ were enacted in

82 Letter of the High Council of Justice, №2225/3134-03-00.

83 Project of the Council of Europe: “Support to the Judicial Reform in Georgia”

84 Legal analysis of the legislation related to the rules and standards to prevent conflict of interest, prepared by Albers, P. [Available at: <https://www.coe.int/en/web/tbilisi/-/support-to-the-judicial-reform-in-georgia-discussion-on-the-conflict-of-interest-rules-and-practices>. Accessed on: 23/07/2018].

85 Progress report on the implementation of the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan, pp.10.

86 Letter of the High Council of Justice, №2225/3134-03-00.

February 2017 and subsequent to these modifications, the Judicial Strategy and the Action Plan were approved in May. This is to point out that adoption of the regulations, which took place as part of some other development before the enactment of the Action Plan cannot be considered as an achievement of this activity of the Action Plan, especially when the appeal rules developed in frames of the ‘third wave’ are not viewed as an effective mechanism by the civil society. As for the justification of candidate evaluations, the progress report describes that considering the difficulties related to the justifications of candidate evaluations which are caused by the confidentiality of voting, the work in this direction is still under way; however, here too the report does not specify what measures have been taken and what activities are planned to be implemented in order to fulfill this task.<sup>87</sup> The additional information provided by the High Council of Justice to the project team also points to continued efforts under this activity.<sup>88</sup>

**1.2.1.5. and 1.2.1.6.** – These activities are directly connected to the implementation of the requirements of the previously described activities. Without fulfilling these four duties it is impossible to draft relevant bills and legal acts and introduce and monitor the new system. Analysis of the implementation status of preceding activities demonstrates that the High Council of Justice has not yet fulfilled activities 1.2.1.1., 1.2.1.2., 1.2.1.3. and 1.2.1.4; therefore, the relevant legislation has not yet been prepared and the new systems cannot be introduced.

In terms of improving the judge appointment system, the original version of the Judicial Strategy and the Action Plan, among others, set out to introduce open voting during competitions between the School attendees and candidates for judges and chairpersons. However, at the Workgroup I session that took place on April 24, 2017 one of the judge members of the High Council of Justice requested removal of this provision based on the comments provided on behalf of the judge corps. Eventually, after lengthy discussions which continued during the May 23, 2017 session of the strategic committee as well, the provision about making final decisions through open voting was removed from the Action Plan.

## **1.2.2. Improvement of the judge promotion system**

The 2017-2018 Action Plan contains 6 activities in order to improve the system of promoting judges:

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<sup>87</sup> Progress report on the implementation of the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan, pp.10.

<sup>88</sup> Letter of the High Council of Justice №2225/3134-03-00.

*1.2.2.1. Expert analysis of European experiences in different methods of judge promotion and development of recommendations for Georgia (2017) – **Fulfilled***

*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***

**1.2.2.1.** – Pursuant to the organic law of Georgia on Common Courts the High Council of Justice is required to establish criteria for promotion of judges and to evaluate judges according to these Criterion . Despite the fact that the promotion criteria and rules are now determined in the Council regulations there are certain criticisms about the process of promotion, which mostly have to do with the absence of a consistent system of judge evaluation and justification of the Council decisions.<sup>89</sup> According to the annual progress report on the implementation of the Strategy and the Action Plan,<sup>90</sup> the research “Promotion of judges in Georgia” has been prepared with support from the donor organization.<sup>91</sup> The research analyzed best European and international practices in terms of judge promotion and assessed the existing promotion system in Georgia and corresponding legal acts. Based on the analysis, the research proposed four approaches for promotion. Namely, promotion to a higher judge position must be a formalized process of evaluation based on qualitative and quantitative criteria. Furthermore, the expert also stated that it is necessary to have indicators for the competency and authority of the Council during evaluation.<sup>92</sup>

**1.2.2.2.** – Development of the judge promotion system based on clear, transparent and impartial criteria is the next step in the Action Plan program for the improved promotion system. Despite the fact that the report “Promotion of Judges in Georgia” has been prepared, the

89 Coalition for Independent and Transparent Judiciary: “The Judicial System: Past Reforms and Future Perspectives”, pp. 87 [Available at: <https://goo.gl/NYowQU>. Accessed on: 23.10.2018]

90 Progress report on the implementation of the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan, pp.10-11.

91 The Promoting Rule of Law in Georgia Activity (PROLoG) which is funded by the United States Agency for International Development (USAID) and implemented by the East-West Management Institute (EWMI).

92 Letter of the High Council of Justice №2225/3134-03-0.

progress report on the implementation of the Strategy and the Action Plan describes plans to develop criteria and procedures for promoting judges, however, the report does not specify<sup>93</sup> these plans and does not offer information about the visions of the workgroup and the High Council of Justice to address these gaps based on the research prepared by the international expert. According to the information requested from the High Council of Justice, the document that had to be developed under this activity is not prepared yet.<sup>94</sup>

**1.2.2.3** – This activity places responsibility on the High Council of Justice to develop a methodology for continued professional development of judges in 2017-2018 and determine between formal and non-formal systems of evaluation. The progress report on the implementation of the Strategy and the Action Plan describes the meeting held in November 2017,<sup>95</sup> during which participants discussed the issue of adding a qualitative evaluation system to the quantitative evaluations of the performance of judges. The report also describes plans of the High Council of Justice to change its decree about the rules for evaluating effectiveness of the performance of Common Courts judges based on the outcomes of the meeting. According to the report, judges will be evaluated against quantitative and qualitative criteria and it is planned to review the rule at the High Council of Justice session, however, it is unclear if the evaluation methodology has been prepared and what is the timeframe for examining this issue at the sessions of the workgroup and the Council. Based on the information provided by the High Council of Justice, the efforts in this direction is still underway.<sup>96</sup>

**1.2.2.4.** – Currently, appointment of chairpersons of courts take place through an ambiguous, non-transparent process which encourages perceptions of chairpersons within the court system as individuals assigned to control. Moreover, administrative positions within courts have been occupied by the same individuals for many years now. The Action Plan sets out to analyze the legislation and practice concerning the procedures, deadlines and competencies of appointing court chairpersons and to develop relevant recommendations. Importantly, there were a number of meetings before the adoption of the Strategy and the Action Plan in order to finalize the wording of this activity. Initially, the High Council of Justice was assigned the responsibility under the Action Plan to revise the rules, periods and competencies for appointing chairpersons of courts, as pushed for by non-governmental organizations; however, this formulation encountered much resistance from the judge members of the Council. Eventually, at the strategic committee session a consensus was reached which proposed development of recommendations based on the analysis

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93 Progress report on the implementation of the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan.

94 Letter of the High Council of Justice, №2225/3134-03-0.

95 The meeting was organized by the High Council of Justice, European Council and OSCE Office for Democratic Institutions and Human Rights.

96 Letter of the High Council of Justice, №2225/3134-03-0.



of existing legislation and practice. Despite the deadline of 2017 set for the High Council of Justice as the responsible agency to fulfill this activity, the annual progress report on the implementation of the Strategy and the Action Plan demonstrates that the Council and the workgroup have not taken any substantial actions in this regard. The report describes that the Council is studying international practice concerning the procedures, timeframes and competencies for appointing judges as court chairpersons. At the same time, the Council points to the need to change the implementation period for this particular activity. According to the additional information requested from the Council, it is planned to conduct the research proposed under this activity in the nearest future.<sup>97</sup>

**1.2.2.5 and 1.2.2.6.** – The program for promotion of judges ends with activities that entail submission of draft modifications for the organic law to the Venice Commission and enactment of recommended amendments in the legislation. These activities are formulated in an ambiguous way, making it hard to distinguish whether the development of modifications for the law and their submission to the Venice Commission applies to every document prepared under each activity or only one of them; however, it is a fact also confirmed in the progress report on the implementation of the Strategy and the Action Plan that the responsible agency has not yet drafted modifications of the organic law to be submitted to the Venice Commission. The Council considers it reasonable to extend the deadline for these requirements, however, it does not specify the timeframe they need to fulfill this activity.

### 1.2.3. Ensuring protection of the principle of irremovability of judges

The 2017-2018 Action Plan contains 2 activities in order to reinforce the principle of irreplaceability of judges. With regard to improving the system of selection and appointment of judges, the following activity should be emphasized:

#### *1.2.3.1. Development of proposals to ensure irremovability of judges (2017-2018) – **Fulfilled***

**1.2.3.1.** – As a result of the 2017-2018 constitutional reform, the new edition of the Constitution now includes a provision according to which removal of a judge from the case, their dismissal or transfer to other position is allowed only in circumstances described in the organic law. Reorganization or liquidation of the court must not be the reason for dismissing a judge from their position.<sup>98</sup>

<sup>97</sup> Letter of The High Council of Justice, №1935/2675-03-მ.

<sup>98</sup> Progress report on the implementation of the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan; reporting period: June 2017 – June 2018. High Council of Justice. Tbilisi, 2018.

This requirement has been fulfilled, however, it has to be noted that the modifications have been prepared by the Parliament of Georgia. The progress report prepared by the High Council of Justice does not elaborate on the role of the Council in this process. According to the public information requested from the High Council of Justice, the former chairperson of the Supreme Court was engaged in the operation of the constitutional commission, however, Workgroup I has not directly prepared and submitted their opinions/recommendations to the constitutional commission.<sup>99</sup>

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

The 2017-2018 Action Plan contains 2 activities concerning the legislative enforcement of the impartiality of judges:

*1.3.1.1. Development of proposals regarding the past performance of candidates and definition of circumstances which cast doubts on the impartiality of the candidate (2017)*

**– Fulfilled**

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

**1.3.1.1.** – The High Council of Justice and the High School of Justice are responsible for implementing this activity. The School argues that it exceeds the mandate of the High School of Justice and it is negotiating with the High Council of Justice to discuss changes to this activity.<sup>100</sup> As for the implementation period, although it was planned to fulfill the activity in 2017, according to the annual progress report the High Council of Justice adopted the decree to modify the rules for candidate selection for judges <sup>101</sup> at May 21, 2018 session. The report also explains that the Council took the international expert's recommendations into account in the development of the proposal. More specifically, the Council described additional circumstances which may cast doubt on the impartiality of the candidate and established that information about the behavior of the candidate during civil or administrative proceedings must be taken into consideration in the evaluation of the candidate's independence, impartiality and sense of justice.

The list of specific sources of mandatory information about the candidate, which was developed during September 10, 2018 session based on the recommendations of Georgian Young

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99 Letter of the High Council of Justice, №1941/2677-03-0.

100 Letter of the High School of Justice, №02/2037.

101 Decision of the High Council of Justice, May 21, 2018, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/189.pdf>. Accessed on: 19.09.2018]

Lawyers Association is also directly connected to this activity. The list of sources includes: information covered in the media; information requested from the Georgian Bar Association; reference letters from at least two individuals, etc.<sup>102</sup> While these modifications will ensure availability of important information about candidates, the lack of legislative regulations of these issues continues to be a significant challenge.

**1.3.1.2.** – In the progress report on the implementation of the Strategy and the Action Plan the High Council of Justice states that the issues of conflict of interest have been addressed in the amendments of the organic law of Georgia on Common Courts, which were prepared and enacted during the ‘third wave’ of the reform. Notably, the ‘third wave’ legislative amendments were enacted in February 2017 and subsequent to these modifications, the Judicial Strategy and the Action Plan were approved in May. This is to point out that adoption of the regulations, which took place as part of some other development before the enactment of the Action Plan cannot be considered as an achievement of this specific activity of the Action Plan, particularly when the mechanisms adopted in the ‘third wave’ reform contain a number of flaws and ambiguities, according to the civil society.<sup>103</sup>

Legislative regulation of the issues of conflict of interests during competition is a positive achievement, however, these issues continue to be unaddressed in connection with other decisions of the Council. The practice of making decisions by the High Council of Justice regarding conflicts of interests behind closed doors is also problematic.<sup>104</sup>

The progress report provides information about the March 28, 2018 presentation of the research and recommendations developed by the expert with regard to conflict of interests.<sup>105</sup> However, the report does not elaborate on the outcomes of the research presentation and the actions planned in consideration of the research findings. In the additional information provided by the High Council of Justice, it indicates that the responsible workgroup will start working towards revising the rules regarding conflict of interests in the near future.<sup>106</sup>

102 Recommendations of Georgian Young Lawyers Association regarding the selection/appointment of judges have been partially taken into consideration: [available at: <https://goo.gl/XkTwXH>. Accessed on: 19.10.2018]

103 The Coalition has submitted a legislative proposal regarding the regulations of the High Council of Justice to the Parliament of Georgia., [available at: [http://coalition.ge/index.php?article\\_id=190&clang=0](http://coalition.ge/index.php?article_id=190&clang=0). Accessed on: 18.09.2018]

104 The Coalition comments on the events taking place in court and starts the campaign: “I Want to Trust Courts”, [available at: [http://coalition.ge/index.php?article\\_id=177&clang=0](http://coalition.ge/index.php?article_id=177&clang=0). Accessed on: 25.09.2018]

105 The research was prepared under the framework of project implemented by Council of Europe.

106 Letter of the High Council of Justice, №2225/3134-03-0.

### 3.1.1. Creating adequate preconditions for hiring individuals with best potential

The 2017-2018 Action Plan proposes a number of activities in order to encourage preconditions for hiring individuals with best potential. With regard to improving the system for selecting and appointing judges, the following is an important activity:

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

Due to the unclear wording of the activity, it is difficult to establish the purpose of the reserve list of candidates for judges. Notably, Workgroup III submitted the first draft of the reserve list to the High Council of Justice at June 4, 2018 session. The list consisted of 150 individuals, including those whose names are associated with a number of widely known cases in Georgia. The list was criticized several times.<sup>107</sup> According to the progress report and the information provided by the High Council of Justice,<sup>108</sup> discussions of this issue have been postponed indefinitely, in an effort to improve the reserve list.

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

There are three activities in the 2017-2018 Action Plan in order to introduce a 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 organic law of Georgia on Common Courts fully ignores periodic evaluations of the performance of judges. In 2011, the High Council of Justice adopted a periodic review system on its own initiative; however, the system does not follow international standards in judge evaluations and contains risks of impinging on the independence of individual judges. Objectives of existing evaluation system are unclear. It is more focused on the entire judicial

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107 For example, please see an Article, [Available at: <http://netgazeti.ge/news/283777/>, Accessed on: 10.10.2018]

108 Letter of the High Council of Justice, №2225/3134-03-0.

system rather than the assessment of individual judges. The model incorporates components which, in certain cases, may be caused by factors independent from judges and beyond their control.<sup>109</sup>

This activity proposes to review the evaluation criteria and develop a new methodology, which will comply with international standards. The Action Plan requires the activity to be implemented in 2017; however, the High Council of Justice which is the responsible agency, has failed to deliver. Importantly, two proposals were drafted in April 2018 in order to introduce relevant modifications in the organic law of Georgia on Common Courts; however, neither the Workgroup III<sup>110</sup>, nor the High Council of Justice were able to reach agreement over any of the proposals. The workgroup did not endorse the proposal developed by one of its co-speakers and argued that it was necessary to study the matter in more depth; therefore, the workgroup made a decision to continue working on the development of the evaluation system.<sup>111</sup> According to the High Council of Justice, Workgroup III is continuing efforts to develop the new system with active involvement of their members.<sup>112</sup> However, in this case too it is unclear as to how much time is needed for the workgroup and the Council to fulfill this activity.

**3.3.1.2.** – Preparation of legal acts in order to introduce the evaluation system is directly connected with the fulfillment of the activity described above. The information provided by the High Council of Justice concerning this activity in the annual progress report is ambiguous. The report describes that on December 27, 2011 the High Council of Justice made a decision №1/226 “Regarding approval of evaluation rules of the performance of Common Courts judges”. The objective of this activity is to prepare legal acts in order to introduce the periodic review system based on the new methodology, which has not been fulfilled by the responsible agency.

**3.3.1.3.** – The last activity of the program is to analyze the evaluation outcomes and plan and implement future actions. Working on this activity is directly linked with the two activities described above. 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.

109 Coalition for Independent and Transparent Judiciary: “The Judicial System: Past Reforms and Future Perspectives”, pp. 89 [Available at: <https://goo.gl/NYowQU>. Accessed on: 23.10.2018]

110 Progress report on the implementation of the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan, pp.38.

111 Progress report on the implementation of the 2017-2021 Judicial Strategy and the 2017-2018 Action Plan, pp.38-39.

112 Letter of the High Council of Justice, №2225/3134-03-ᄡ.

## Assessment of the Related Action Plans

In addition to the Judicial Strategy and the Action Plan, efforts to improve the system of selection/appointment and promotion of judges are also proposed in the government's Human Rights Action Plan and the plan of the interagency coordinating council of the criminal law reform. The objectives and activities in these two documents are almost identical to those described in the Judicial Strategy. Similarly, government agencies indicated as responsible for the implementation of certain activities are also same: mostly the High Council of Justice and Common Courts. Furthermore, implementation periods given in the government's Human Rights Action Plan and the plan of the interagency coordinating council of the criminal law reform repeat the dates given in the Judicial Strategy. However, in some cases the deadlines indicated in the Judicial Strategy precede the deadlines of the two related action plans.

### Activities foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation

The action plan of the interagency coordinating council of the criminal law reform includes several activities related to the selection/appointment of judges. Similar to the Action Plan of the Judicial Strategy, one of the activities sets out to develop proposals for improving the selection procedures of judges and attendees of the High School of Justice. For this purpose, the activity offers to analyze corresponding international practice, draft proposals based on the research findings, prepare relevant modifications and submit the proposal to the coordinating council of the criminal law reform. The action plan indicates 2018 as the implementation period of this activity and responsible agencies include the High Council of Justice and Common Courts. The information provided by the High Council of Justice<sup>113</sup> does not offer details about the actions taken in order to fulfill this activity, therefore, it can be described as unfulfilled.

In addition, the interagency action plan also requires development of legislative proposals regarding the revised rules of lifetime appointment of judges, corresponding criteria and procedures in order for these modifications to be reflected in the organic law of Georgia on Common Courts. For this purpose, this activity also requires to research international practice; form a workgroup involving local and international organizations and submit the draft legislative recommendations developed by the workgroup to the interagency coordinating council of the criminal law reform. The action plan sets 2018 as the implementation year of the activity and the High Council of Justice and Common Courts as responsible agencies. A similar activity is included in the Action Plan of the Judicial Strategy with the implementation period of 2017: ensuring guarantees for lifetime

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113 Letter of the High Council of Justice, №2151/3024-03-09.

appointment of judges in courts of all instances, including the Supreme Court. According to the High Council of Justice,<sup>114</sup> only one of the three components of this activity has been fulfilled: research and analysis of international practice;<sup>115</sup> therefore, this activity has not been fulfilled.

The action plan of the interagency coordinating council also entails formulation of proposals to improve the periodic review system for judge evaluation and criteria for their promotion. The action plan indicates 2018 as the period for the workgroup to prepare recommendations and proposals. There is a considerable parallelism between the Action Plan of the Judicial Strategy and the interagency action plan in the objective to improve the judge promotion system. Although the wording of the activities in the two documents is not identical, they are parallel in content. One of the major distinctions between the activities under this objective is different implementation periods: the Judicial Action Plan indicates 2017-2018 as the implementation period of the activity. As for the implementation status, according to the information provided by the High Council of Justice, two research papers have been prepared but recommendations and legislative proposals developed on the basis of these studies are not available. As the interagency action plan set out to prepare recommendations and legislative proposals as the end result of the activity, conducting a research only cannot be considered as a fulfillment of this activity, therefore this requirement is also described as unfulfilled.

### **Activities envisaged by the National Human Rights Action Plan 2018-2020 and the Degree of their Implementation**

The government's Human Rights Action Plan aims to establish independent, impartial and accountable judiciary in 2017-2019. Activities planned under this objective include efforts to develop the judge promotion system based on clear, transparent and unbiased criteria; draft proposals regarding justifications of decisions made during competitions between the School attendees and candidate judges and revise regulations of the High Council of Justice based on the legislative modifications. The High Council of Justice and Common Courts were named as responsible agencies to implement all of the activities described above in 2017-2019. The information provided by the High Council of Justice does not provide details about any actions taken concerning justifications of decisions made during competitions between the School graduates and candidate judges and revision of the High Council of Justice regulations. With regard to the development of a clear and transparent judge promotion system, the Council points to one research about the promotion of judges in Georgia<sup>116</sup>. Thus, activities towards independent, impartial and accountable judiciary are not fulfilled for the given period of time.

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114 *Ibid.*

115 Comparative analysis of Supreme Court judge's selection in European Council member countries.

116 Letter of the High Council of Justice, №2152/3025-03-0.

Similar to the Judicial Action Plan, the government's Human Rights Action Plan also sets out to introduce an effective periodic review system for judge evaluation in compliance with international standards and names the High Council of Justice and the Supreme Court of Georgia as responsible agencies. Notably, the two action plans identify different implementation periods for identical activities: 2017-2018 in the Judicial Action Plan and 2018-2019 in the government's Human Rights Action Plan. As for the implementation status of this activity, here too the High Council of Justice points to only the research part of the work. There is no information about the future visions of the responsible agency, which would be based on the research findings, therefore, this activity is also considered as unfulfilled.<sup>117</sup>

The Human Rights Action Plan also proposes to develop recommendations for improving the process of holding office by judges, similarly as in the Judicial Action Plan but with different implementation periods: 2018-2019 in the Human Rights Action Plan and 2017 in the Judicial Action Plan. The public information provided by the High Council of Justice does not offer details about the actions taken in this direction.<sup>118</sup> Therefore, this activity is considered as unfulfilled.

## Conclusion

Analysis of the one-year progress report on the implementation of the Judicial Strategy and the Action Plan with regard to the selection/appointment and promotion of judges, relevant researches, legal acts and other documents, also the public information requested from responsible agencies demonstrates that there have been insufficient effort from the part of the responsible bodies to fulfill the activities in a comprehensive and timely manner.

Only five activities have been implemented in order to improve the systems for selection/appointment of judges and their promotion. Importantly, three of them have been considered as fulfilled due to the modifications enacted in the Constitution of Georgia as a result of the constitutional reform. As for partially fulfilled activities, the constitutional amendments have significantly influenced such status of these activities as well. Monitoring of the implementation of the Action Plan has revealed that a whole range of crucial issues addressed in the document in order to improve the selection/appointment and promotion system of judges are currently neglected. Therefore, taking into account the evaluations described above, it is important for workgroups and responsible agencies to engage in the following directions:

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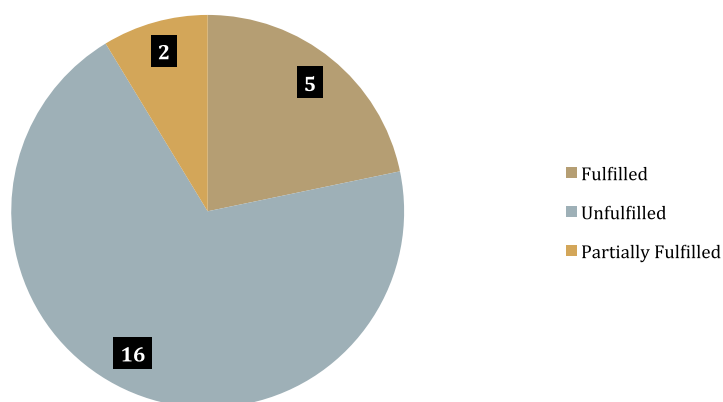
<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*



- To establish the rules, criteria and procedures of Supreme Court judge selection in the legislation, taking into consideration the new reality after the constitutional reform;
- To form a workgroup to improve procedures and criteria for selecting candidate judges and listeners of the High School of Justice;
- To formalize interviews with candidate judges and identify the scoring share of the interview within the overall evaluation system;
- To draft and enact legislative modifications regarding justification of the competition outcomes between the School listeners and judges;
- To abolish the rule of secret voting for candidate judges and appoint judges based on the total scores received in evaluation;
- To establish effective mechanisms in the legislation for justifying the candidate evaluations and allowing to appeal the final decisions;
- To create an effective system in the legislation for collecting and processing relevant information about candidate judges;
- 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;
- To conduct analysis of the legislation and practice regarding the procedures, timelines and competencies for appointing court chairpersons and enact relevant legal amendments;
- Further develop the standards addressing the issues of conflict of interest.

#### Fulfillment status of the activities for improving the system of selection-appointment and promotion of judges, as envisaged by the Action Plan



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

## Main Challenges

An effective and foreseeable system of judicial liability, which envisages strong guarantees of independence of individual judges, is essentially important to ensure the accountability of the judiciary. The disciplinary liability system, on the one hand, serves the interests of protecting the authority of the judiciary system and the societal trust towards the judiciary, but on the other hand, it, in case of its misuse, also includes potential threats to become an effective tool for pressuring individual judges.<sup>119</sup>

Research,<sup>120</sup> and assessments carried out in relation to judicial liability system are focusing on the following main challenges:

- The current legislation in Georgia does not explicitly define the purpose of disciplinary liability,<sup>121</sup> which may lead to risks of conducting parallel judicial execution through disciplinary proceedings;
- The current grounds of disciplinary proceedings do not meet criteria for clarity and foreseeability and have repeatedly been subject to criticism from local and international organizations;<sup>122</sup>
- Defining the violation of the judicial ethical norms in the acting legislation as a general basis of disciplinary proceedings fails to meet the international standards<sup>123</sup> and creates a threat of its unethical misuse in practice;
- The procedure of disciplinary proceedings is problematic, in particular, the number of votes required by the Disciplinary Panel to make a decision on disciplinary issues; In addition, the legislation does not clearly define the standard for evaluating collected information and conducting the case proceedings, as well as the degree of the collected evidence which should be the basis of the decision taken by the Independent Inspector, as well as the High Council of Justice;

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119 Coalition for Independent and Transparent Judiciary, “Court System: Reforms and Perspective” (2017), pg. 120, [Available at: [http://coalition.ge/file\\_.pdf](http://coalition.ge/file_.pdf) Accessed on: 10.10.2018]

120 Coalition for Independent and Transparent Judiciary, “Analysis of the Judicial Liability System” (2014), [Available at: [http://coalition.ge/files/analysis\\_of\\_the\\_judicial\\_liability\\_system\\_ge.pdf](http://coalition.ge/files/analysis_of_the_judicial_liability_system_ge.pdf), Accessed on 19.10.2018] Coalition for Independent and Transparent Judiciary “Court System: Reforms and Perspectives”, [Available at: [http://coalition.ge/file\\_.pdf](http://coalition.ge/file_.pdf), Accessed on: 10.10.2018]

121 According to the Venice Commission, the purpose of disciplinary liability is protecting the court authority and not insuring the proper use of the law CDL-AD(2007)009, § 29.

122 Venice Commission 2014 report reiterates the recommendation issued in 2007 on the necessity to review the basis of liability and indicates that their definition should be more specific in such a way to exclude their use for other purposes, except for the real purpose of disciplinary proceedings CDL-AD(2014)032, § 27.

123 The need for accurate list of disciplinary violations on the legislative level and the abolition of reference to judicial ethics was discussed in the 2014 report of the Venice Commission. In addition, according to the Venice Commission it is not clear whether the current norm refers to the current code of ethics or also the general, unwritten rules of ethics. CDL-AD(2014)032, § 28.

- Under existing legislative regulation, there are no strict guarantees ensured for the independence of Independent Inspector;
- Conclusions and opinions prepared by the Independent Inspector in the process of disciplinary proceedings<sup>124</sup> is not published without the identification of the judge, which is a significant drawback in terms of transparency;
- The grounds for the criminal liability of judges are unclear.

The Strategy of Judiciary and the 2017-2018 Action Plan of its implementation on the level of tasks and programs, in most cases, respond to the current challenges of the judicial liability system. In this regard, the Action Plan provides a total of 21 activities which in certain cases are formulated in such a general way that it is difficult to assess whether it includes relevant and effective steps to be taken to achieve the goals set out in the plan.

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

### 2.1.1. Improving types and grounds of judicial liability

The Judicial System 2017-2018 Action Plan in relation to improving types and grounds of judicial liability envisages the following four activities:

*2.1.1.1. Creating a working group for the preparation of proposals for the improvement of the basis of the judicial liability (2017) – **Fulfilled**;*

*2.1.1.2. Assessment of the current situation by the international expert and provision of the recommendations (2017) – **Fulfilled**;*

*2.1.1.3. Preparation of proposals for the improvement of the basis of judicial responsibility (2017, 2018) – **Fulfilled**;*

*2.1.1.4. Advocacy of legislative proposals in front of the Ministry of Justice and Parliament (2018) – **No status assigned**.*

Considering that the vague and unforeseeable nature of disciplinary misconduct represents a substantial shortcoming of the applicable legislative framework, the issue of its timely improvement is of particular importance. Consequently, it should be commended that the issue is included in the Action Plan.

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<sup>124</sup> The decisions of the High Council of Justice on termination of disciplinary proceedings indicate factual circumstances established by an Independent Inspector, but in some cases, the inspector's conclusion on the existence/absence of signs of disciplinary misconduct in a judge's action is missing.

Activity 2.1.1.1 and 2.1.1.2 is considered to be fulfilled. From the second half of 2017, the fourth wave of judicial reform started with the participation<sup>125</sup> of the Parliament of Georgia, the High Council of Justice of Georgia, the Supreme Court of Georgia, Ministry of Justice of Georgia and international organizations.<sup>126</sup> The recommendations of international experts have been discussed in the working group meeting regarding the improvement of disciplinary legislation.<sup>127</sup>

At the same time, it should be noted that the Committee of Legal Issues was initially in charge of the working group of the “Fourth Wave” of the judicial reform,<sup>128</sup> and later it was the Chairman of the Parliament.<sup>129</sup> According to the information provided by the Council,<sup>130</sup> within the working group’s activities, the judiciary has the opportunity to present their opinions and projects. Despite the involvement of the High Council of Justice in this process, its role, as a responsible organ under the Action Plan, is unclear.

**2.1.1.3** In order to fulfill the activity, the Legal Committee of the Parliament of Georgia and the High Council of Justice of Georgia separately developed specific legislative proposals. As a result of the 2 meetings of the working group, two legislative proposals were summed up and finally a single draft law was created.<sup>131</sup> It is commended that the elaborated document provides a concrete list of disciplinary offenses and does not include the failure of the judge to perform the corresponding responsibilities or unreasonable performance as one of the forms of disciplinary misconduct, and does not make a further references to judicial ethics. It should be assessed positively that the document specifies the corruption offense that can become the basis for disciplinary liability. Taking into account the implemented work, 2.1.1.3. Activity is considered to be completed.

At the same time, it should be noted that certain issues envisaged by the draft law require further improvement. In particular, it is problematic that the action, which formally includes traces of misconduct as envisaged by the law, but due to its size does not cause any damage which would lead to

125 Working Group conducted 5 working meetings in 2017 and 3 in 2018.

126 EU4Justice – Judiciary Support Project, Council of Europe – Support to the Judicial Reform in Georgia, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Promoting Rule of Law in Georgia (PROLoG) funded by United States Agency for International Development (USAID).

127 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 17-18.

128 The fourth meeting of the working group on the judicial reform,[Available at: <http://www.parliament.ge/ge/saparlamento-saqmianoba/komitetebi/iuridiul-sakitxta-komiteti-146/axali-ambebi-iuridiuli/sasamartlo-reformis-meotxe-etapis-dziritad-mimartulebebe-momushave-samushao-djgufis-mesame-shexvedra.page>, Accessed on: 27.10.2018].

129 During the Discussion on judicial system reform Several directions have been identified which should be continued, [Available at: <https://1tv.ge/news/irakli-kobakhidze-sasamartlo-sistemis-reformaze-msjelobisas-gamoikveta-ramdenime-mimartuleba-romelzec-mushaoba-unda-gagrdzeldes/>, Accessed on: 16.11.2018].

130 Letter of the High Council of Justice, №2224/3141-03-0.

131 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 18-20.

disciplinary liability or has not caused damage to such a degree, does not constitute a disciplinary offense. Such a vague recording creates risks of misuse and subjective use. In addition, several types of individual misconduct are narrowly formulated (for example, interference with other judges' activities in order to influence the outcome of the case). Also, the final version of the document does not provide for the use of the court resources for personal purposes as a form of abuse.

Regarding this activity envisaged in the plan, additionally it should be noted that the working group has only created a draft law on disciplinary liability and no work has been taken to improve the grounds of criminal liability. The Court's Strategy states: "The grounds for civil, criminal, administrative and disciplinary responsibilities shall be established in the laws and / or regulations so that judges' independence and freedom are not subject to improper pressure. To revise the dispositions of abuse of power and work related negligence. To improve the norms of the Criminal Code concerning the liability of judges in exercising their official rights in order to clearly define when the actions of the judges are beyond disciplinary boundaries." Considering the goals of the strategy, it is also important to work on the improvement of judicial criminal liability system.

**2.1.1.4** The formulation of activity (advocacy of legislative proposals in front of the Ministry of Justice and Parliament) has deficiencies, since it is unclear what measures are to be taken and what results are expected. Consequently, this activity was not granted the status of 'fulfilled' in the monitoring process.

Although the legislative proposal in relation to disciplinary liability was developed in July, 2018, the draft law is not yet initiated in the Parliament of Georgia. The foreseeable and specifically formulated types of disciplinary liability are essentially important for ensuring the independence of individual judges in the disciplinary proceedings, hence, timely implementation of legislative amendments is of particular importance.

## 2.1.2 Improving the rules of judicial ethics

The Action Plan for the Judicial System 2017-2018 envisages the following four activities within the scope of improving judicial ethics rules:

- 2.1.2.1. *Analysis of the existing rules and practices of ethics (2017) – Unfulfilled;*
- 2.1.2.2. *Updating rules of ethics in accordance with international standards (2017, 2018) – Unfulfilled;*
- 2.1.2.3. *Preparation of comments on rules of ethics (2018) – Unfulfilled;*
- 2.1.2.4. *Approval of the revised rules of ethics (2018) – Unfulfilled.*

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

The monitoring process demonstrated that no efforts were made to improve the rules of judicial ethics and none of the activities were implemented within the program.

**2.1.2.1, 2.1.2.2, 2.1.2.3 and 2.1.2.4** In relation to fulfilling these activities, according to the information provided by the High Council of Justice<sup>132</sup>, there are currently talks between the Council and the partner international organization. Within the framework of cooperation with the organizations, it is planned to analyze the rules and practices of judicial ethics at the first stage. On the basis of the analysis, judicial ethics rules will be revised according to international standards, after which the work on the preparation of comments on rules of ethics and planning for the corresponding measures will begin. Accordingly, as of today, these activities are considered not fulfilled.

Given the above-mentioned, deficiencies related to the rules of ethics are still a significant challenge at this stage. The existing international standards<sup>133</sup> and studies/assessments on the local level<sup>134</sup> indicate the need to take timely and effective steps in this direction.

## 2.2.1 Prevention of disciplinary misconducts

The Action Plan for the Judicial System 2017-2018 envisages the following four activities within the scope of prevention of the disciplinary misconduct:

- 2.2.1.1. Improving statistical data on complaints, disciplinary misconduct (2017) – **Fulfilled**;*
- 2.2.1.2. Upgrading the teaching module on rules of ethics (2018) – **Unfulfilled**;*
- 2.2.1.3. Organizing trainings for disciplinary violations (decisions of the board) and general accountability of judges (part of the judicial ethics training module) (2018) – **Partially Fulfilled**;*
- 2.2.1.4. Creating and implementing a mechanism of confidential consultations for judges (2017, 2018) – **Unfulfilled**.*

<sup>132</sup> Letter of the High Council of Justice, №2224/3141-03-0.

<sup>133</sup> According to the assessment of the Council of Europe Judges' Advisory Council, the principles of professional conduct should determine on the rules of solving the issues, how to behave in a particular situation and, therefore, give the opportunity to overcome the difficulties they face in maintaining impartiality and independence, conclusion N3 (2002).

<sup>134</sup> "Unity of Judges" also focuses on the revision of the ethics code: there must be a self-regulatory mechanism, which ensures the increased authority for the judiciary in accordance with generally accepted ethical standards."Analysis of Disciplinary Liability of Judges of Common Courts of Georgia" (2015), pg. 18.

**2.2.1.1** In order to fulfill the activity, in June 2018, the Independent Inspector Service published statistical data for 2017-2018,<sup>135</sup> which should be assessed positively. It should be noted that according to the Action Plan the activity was supposed to be fulfilled in 2017. Statistical data was published one year late in 2018 because the Independent Inspector was elected late.<sup>136</sup> According to the information provided by the Independent Inspector, statistics are processed using quantitative and ranking methods, and are periodically published on the website of the Independent Inspector.<sup>137</sup> Introduction of such practice is a step forward in terms of transparency.

At the same time, it is noteworthy that according to the Organic Law the Independent Inspector service does not have the obligation to proactively disclose the information. Under the applicable legislation, an Independent Inspector may, per request, at least once a year submit a report to the High Council of Justice of Georgia and the Conference of Judges of Georgia.<sup>138</sup> The legislation does not guarantee disclosing the information on the website and insuring public access, which is a significant drawback.

**2.2.1.2** The activity is likely associated with the approval of the updated rules of ethics (program 2.1.2), which has not yet been implemented. According to the information provided by the High School of Justice,<sup>139</sup> in 2017-2018 two trainings were carried out using the in-depth course on judicial ethics, which were attended by 21 judges and also 2 training courses using basics of judicial ethics, which was attended by 34 judges. The information provided by the School also states that almost all judges have undergone training in judicial ethics. However, taking into consideration that the revised rules are not yet established, the modules of instruction are based on the existing rules of ethics. Consequently, 2.2.1.2 activity is not fulfilled at this stage.

**2.2.1.3** According to the information provided by the High Council of Justice in relation to the activity<sup>140</sup>, 2 trainings were conducted for the judges. In the framework of teaching module of the in-depth course of the judicial ethics, developed under the High School of Justice “Retraining program of Judges and Other Court Officials”, discusses the accountability of the court, the widespread disciplinary violations and misconduct. 10 judges participated in the trainings held on 10-11 March, 2018 and 9 judges on 29-30 September, 2018. The Action

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135 <http://www.independent-inspector.ge/Legislation/Decision/17> [Accessed on: 17.11.2018].

136 Decision of the High Council of Justice, November 20, 2017, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/312.pdf>, Accessed on: 17.11.2018].

137 Letter of the Independent Inspector, №66/101-03-09.

138 Organic law of Georgia on Common Courts, Article 51<sup>1</sup>, para. 12.

139 Letter of the High School of Justice, №02/2078.

140 Letter of the High School of Justice, №2224/3141-03-09.



Plan envisaged at least 4 training courses using judicial ethics curriculum as an indicator. Consequently, 2.2.1.3 activity should be considered as partially fulfilled.

**2.2.1.4** In order to fulfill the activity, in 2017, the Department of Legal and Material Provision of the High Council of Justice has developed a working format document for the members of the working group on the functioning of the confidential consultation mechanism in several European countries.<sup>141</sup> Currently, the Council of Europe expert is conducting comparative research in order to study the best European examples of confidential consultation mechanisms and provide recommendations.<sup>142</sup> Although some work has been done in this regard, considering the indicator of the Action Plan (existence of the consultation mechanism), the activity 2.2.1.4 is not fulfilled at this stage.

Based on this, the monitoring process shows that no effective and efficient steps have been taken to prevent disciplinary misconduct during the reporting period.

## 2.2.2 Prevention of corruption cases in the system

The Action Plan of the Judiciary System 2017-2018 envisages the following three activities within the framework of the prevention of corruption cases:

- 2.2.2.1. Introduction of the new instructions for filling the declarations and informing the judges on the conflict of interest, in coordination with the Civil Service Bureau (2017; 2018) – **Unfulfilled**;*
- 2.2.2.2. Analysis of corruption perception and risk assessment in the Common Courts System (2017) – **Unfulfilled**;*
- 2.2.2.3. Development and implementation of the training modules on eradicating corruption of judges and court officials (2017, 2018) – **Unfulfilled**.*

**2.2.2.1** According to the information provided by the High Council of Justice,<sup>143</sup> for the implementation of the second strategic direction (ensuring judicial accountability) negotiations are currently underway between the second working group and Civil Service Bureau. In the framework of the meeting, the planned activities will be discussed. Accordingly the said activity is not fulfilled.

141 Letter of the High School of Justice, №2224/3141-03-ო.

142 According to the information provided by the High Council of Justice, the document will be available only after the Council of Europe submits it to High Council of Justice. Letter No. 15 of 2018 of the High Council of Justice of Georgia, No. 2224 / 3141-03. High School of Justice, November 15, 2018, №2224/3141-03-ო.

143 Letter of the High Council of Justice, №2224/3141-03-ო.

**2.2.2.2.** The activity at this stage is not fulfilled because the analysis of perception of corruption and risk assessment in the system of common courts have not been implemented yet.<sup>144</sup>

**2.2.2.3** Regarding this activity the progress report states that the High School of Justice elaborated a curriculum of “Effective review of corruption cases” – in relation to morality, ethics and integrity issues of the judges, as well as other curricular modules covering basic and indepth courses of “judicial ethics”. With the involvement of local and foreign experts, judges of the Supreme Court, Appeals and First Instance City / District Courts of Georgia, as well as court officials took part in the trainings conducted within the training modules.<sup>145</sup> However, this activity is likely to be related to corruption perception and risk assessment analysis (2.2.2.2 activity) which has not been implemented in the reporting period. Accordingly, at this stage, 2.2.2.3. activity should also be considered as not fulfilled.

### 2.3.1 Improvement of the disciplinary proceedings

The Action Plan for the Judicial System 2017-2018 envisages the following four activities within the scope of the disciplinary proceeding process:

*2.3.1.1. Improvement of the existing disciplinary proceedings, in accordance with international standards, under the framework of the working group justification of the decision on termination, (Consideration of the Council of Europe Judges’ Advisory Council No.3, GRECO recommendations) notifying to the author of the complaint (2017, 2018)- **Unfulfilled;***

*2.3.1.2. Preparing appropriate 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;***

*2.3.1.4. Enforcement of the inspector institute (2017) – **Fulfilled.***

**2.3.1.1** The activity is formulated in general form and it is unclear whether it includes relevant steps to be taken to eliminate the major deficiencies in the disciplinary proceedings. Under the existing legislative regulations, the rule of decision making by the Disciplinary Panel is problematic. Under the existing legal norms, two members of the Disciplinary

<sup>144</sup> Letter of the High Council of Justice, №2224/3141-03-0.

<sup>145</sup> Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 22

Board may decide on a disciplinary case, which may not ensure the objectivity and the fairness of the process<sup>146</sup>.

The challenge is also that the legislation, in the preliminary examination stage, does not clearly define the standard of assessment of the collected information and case proceedings, as well as the quality of evidence which should be the basis of the decision of an Independent Inspector. This issue is also relevant for disciplinary decisions taken by the High Council of Justice.

It is unclear how much the 2.3.1.1 activity considers making the adequate legislative amendments to eliminate the above deficiencies, since the indicator generally indicates “the process of disciplinary proceedings is improved”.

In regard to this activity, the progress report focuses only on legislative amendments made within the “third wave” of the judicial reform,<sup>147</sup> which is an important step forward, but can not fully respond to challenges in the process of disciplinary proceedings. Considering that the legislative amendment in the “third wave” of the court reform had been implemented before the Action Plan was approved,<sup>148</sup> it cannot be considered that this activity is fulfilled.

According to the 16 November, 2017 decision of the Constitutional Court of Georgia<sup>149</sup>, with the legislative amendments of 20 April, 2018,<sup>150</sup> the issues related to disciplinary liability and the rule of dismissal of judges from their position were regulated at the level of organic law and the “Law on Disciplinary Liability and Disciplinary proceedings of Judges of Common Courts” was invalidated. However, taking into consideration that concrete steps have not been taken in the direction of improving the process of disciplinary proceedings, 2.3.1.1 activity is not fulfilled at this stage.

In the framework of the “Third Wave” of the Judicial Reform, which established the institute of an Independent Inspector, the Secretary of the High Council of Justice was deprived of an authority to conduct disciplinary prosecution or make an exclusive decision on taking statements/explanations from the judge which is an important step forward. However, it should be noted that under the existing legislative regulations, the independence of Independent Inspector are not guaranteed. Their appointment and dismissal is made by the High Council

146 Under current legislation, Disciplinary Panel consists of 5 members. The decision of the Disciplinary Panel shall be deemed to be adopted if it is supported by the majority of the members attending the Panel. Disciplinary Board is in its capacity if at least 3 members of the College are present at the session.

147 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 22

148 Legislative amendment was conducted on Feb. 8, 2017, and the Action Plan was approved on May 29<sup>th</sup>.

149 Nov, 16, 2017 decision №2/5/658 of the Constitution Court of Georgia. Omar Jorbenadze v. Parliament of Georgia.

150 Amendments to the Organic Law of Georgia On Common Courts, [Available at: <https://matsne.gov.ge/ka/document/view/4156879?publication=0>, Accessed on: 17.11.2018].

of Justice by the decision of the majority of its members, which can not ensure the actual influence of non-judicial members in the process of selection and dismissal of the Inspector. In addition, the legislation envisages quite general grounds for dismissal of the inspector and opportunity and the rule of appeal of the Council's decision is not clearly defined.<sup>151</sup>

2.3.1.2 "Preparing appropriate proposals" is included in the framework of these activities, however, it is unclear what kind of concrete issues should be included in this proposal. In addition, it is also problematic that the Action Plan envisages strengthening the guarantees of the independence of the Inspector as part of the "preparation of appropriate proposals." Considering that an Independent Inspector is responsible for the preliminary examination and review of the disciplinary case, the creation of solid guarantees for its independence is essential in terms of ensuring the independence of individual judges at the initial stage of disciplinary proceedings. Consequently, strengthening the independence of the Inspector should be a separate program of the Action Plan with clearly established activities and appropriate indicator.

With regard to this activity, the draft law elaborated by the working group increases the legislative guarantees of Independent Inspector's independence: the remuneration is determined by law, and it will also be established that the Independent Inspector has an independent document turnover. At the same time, they will be obliged to proactively publish the report on their activities once every 6 months.<sup>152</sup> Including these issues in the draft law should be assessed positively, but the guarantees of independence of the Inspector are first of all linked to the rule of selecting and dismissal of the Inspector, and the elaborated document does not envisage the change here. Due to this, activity 2.3.1.2 (preparation of appropriate proposals, including strengthening the guarantees of the independence of the Inspector) should be considered partially fulfilled.

Transparency of the disciplinary liability system has increased with legislative amendments implemented within the "Third Wave" of the Court Reform,<sup>153</sup> which should be assessed positively. However, despite significant positive changes, there are still separate challenges in terms of transparency of disciplinary liability. In particular, according to the applicable legislation, the Independent Inspector's findings and opinions prepared in the course of disciplinary proceedings are not published without the identification data of the judge. In addition, Independent

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151 Coalition for independent and transparent judiciary, *Court system: reforms and perspectives*, 2017, pg. 125.

152 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 20

153 The judge, in respect of whom the disciplinary proceedings are being conducted, shall have the right to request to make the sessions of the Disciplinary Panel and the Disciplinary Chamber public, as well as the public hearing of the High Council of Justice's decision on the disciplinary prosecution of the judge (except for the meeting and decision making procedures). In addition, decisions made by the High Council of Justice on termination of disciplinary proceedings are published on the Council's website, which is an important step forward in terms of transparency.

Inspector's assessments are not available even through public information requests,<sup>154</sup> which makes it impossible to assess and monitor their conclusions and opinions. It is noteworthy that decisions made by the High Council of Justice on termination of disciplinary proceedings, in certain cases, do not accurately reflect the assessment of evidences and materials collected by the Independent Inspector, and in most cases the Independent Inspector's conclusion on whether the disciplinary misconduct took place or not is completely missing. In such conditions it is difficult to evaluate the degree of independence of the Inspector, the impartiality of the disciplinary proceedings and the consistency of the practice.

The Action Plan does not envisage to increase transparency of the activities of an Independent Inspector and to review the legislation for this purpose. Within the strategic direction of accountable justice, the 2017-2018 Action Plan only mentions the development and implementation of the electronic program of disciplinary proceedings<sup>155</sup>. Consequently, the Action Plan poorly includes the measures necessary to ensure transparency of disciplinary proceedings and can not answer the main challenge in this regard.

**2.3.1.3** Within the scope of the activity, the partner international organization has been identified in order to assist in the development and implementation of the electronic program of disciplinary proceedings and the High Council of Justice will begin negotiations on planning further works.<sup>156</sup> Consequently, this activity is not fulfilled at this stage.

**2.3.1.4** Regarding this activity, the High Council of Justice, as a result of the competition, elected an Independent Inspector by the decision of 20 November 2017,<sup>157</sup> who implements the functions and obligations imposed by the legislation. Consequently, this activity (implementation of the Inspector's institute) has been fulfilled. At the same time, it should be noted that the legislative amendment by which the Independent Inspector Institute was activated was initiated in February 2017 and the Inspector was elected after a nine-months delay. In addition, his office was settled even later. 102 Disciplinary complaints were submitted to the Independent Inspector for their consideration after their election.<sup>158</sup> Delayed selection of the inspector led to delays in the disciplinary proceedings and delayed processes on disciplinary complaints / applications.

154 Letter of Independent Inspector of High Council of Justice of Georgia, №14/6-03.

155 The Judicial System Strategy considers the lack of transparency of the disciplinary proceedings and absence of electronic case proceedings as one of the main challenges. According to the strategy, the electronic case proceedings ensures the transparency of the disciplinary procedures.

156 Letter of the High Council of Justice, №2224/3141-03-0.

157 Decision of the High Council of Justice, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/312.pdf>, Accessed on: 17.11.2018].

158 Statistical Data [Available at: <http://www.independent-inspector.ge/Legislation/Decision/17>, Accessed on: 19.11.2018]

Monitoring of the Action Plan reveals that in the reporting period no efforts have been made in terms of substantial improvement of the process of disciplinary proceedings which would ensure reaching the goal of the action plan (ensuring fairness, transparency and effectiveness of judicial disciplinary proceedings).

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

The Action Plan for the Judicial System 2017-2018 envisages the following two activities within the framework 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 to increase awareness on right to submit complaints (2017, 2018) – **Unfulfilled**;*

*2.3.2.2. Publication of the Ethics Rules on the web-site in an publically available form (GRECO recommendation) (2018) – **Unfulfilled**.*

The Judicial System Strategy focuses on the necessity of the law regulating the disciplinary liability and arranging interdependency of the rules of ethics. According to international standards in this regard, the violation of the rules of judicial ethics should not be a disciplinary misconduct. The legislative proposal developed by the working group of the Fourth Wave of Judicial Reform no longer provides a reference to the violation of ethical norms in the list of types of disciplinary offenses. Consequently, it is unclear as to why the activities related to raising awareness on ethics rules are included in the framework of developing an effective mechanism for detecting misconduct in judicial activities. Nevertheless, the implementation of these activities was assessed during the monitoring process.

**2.3.2.1** Regarding the activity the progress report indicates that <sup>159</sup> everybody has the opportunity to receive information on the disciplinary proceedings procedure and submit a complaint. Disciplinary legislation, form of disciplinary complaint and its filling instructions are available on the official website of the High Council of Justice of Georgia. Submitting disciplinary complaint is possible either by submitting a printed complaint or an electronic one using the website of the High Council of Justice. For increasing access to the complaint procedure, the courts have complaints boxes. It should be noted that this information about the submission of the complaint in such form was available even before the adoption of the Action Plan and therefore it could not be considered as an implemented activity within the framework of the plan. In addition, according

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159 Judicial System 2017-2021 Strategy, 2017-2018 Action Plan Progress Report, Reporting Period: June 2017 – June 2018, High Council of Justice (2018), pg. 24-25

to the progress report, the website of the Independent Inspector service was created independently from the website of the High Council of Justice of Georgia, which contains the form of disciplinary complaint and the instruction of filling it, as well as other information related to disciplinary proceedings procedures. However, even this work cannot be considered as an informational campaign. Additional information provided by the High Council of Justice<sup>160</sup> considers the activity 2.3.2.1 as an accompanying measure of the improvement of judicial ethics, which has not been implemented yet. Consequently, this activity should be considered as unfulfilled at this stage.

**2.3.2.2.** The activity, which envisages publication of the ethics rules, presumably refers to the renewed rules. Although the existing judicial ethics rules are published on the Supreme Court web site,<sup>161</sup> this activity should be considered as not fulfilled, because the revised ethics rules have not been confirmed during the reporting period.

## Assessment of the Related Action Plans

In addition to the Judicial Strategy Document activities related to judicial liability reforms are also envisaged by the Criminal Justice Reform Action Plan and the National Human Rights Action Plan. Objectives and activities under these Action Plans are almost identical to the Judicial System Action Plans, but the latter is broader and better structured. Responsible organs under the action plans are also identical, these are mainly the High Council of Justice and the bodies related to the disciplinary liability system. As for the duration of the implementation of activities, in one case, the deadline set by the 2017-2018 Action Plan of the Judiciary System precedes the deadline established by the applicable action plan. It is unclear what the purpose is of having identical activities including in two other applicable action plans. Different deadlines for the identical activities is also problematic.

## Activities foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation

Similarly to the Judicial System Action Plan, the Criminal Justice Reform Action Plan, within the task of improving the disciplinary mechanism according to the applicable legislation, envisages as one of the measures designed to provide the basis for the improvement of judicial disciplinary liability and its compliance with international standards, including

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160 Letter of the High Council of Justice, №2224/3141-03-0.

161 Code of Ethics, [Available at: <http://www.supremecourt.ge/judges-self-governance/judges-ethics-code/>, Accessed on: 19.11.2018]

improving the disciplinary proceedings in terms of transparency, rights protection and independence guarantees. The activities of 2018 include the development of relevant legislative amendments through cooperation with the Parliament of Georgia, NGOs and international organizations and submitting legislative proposals to the Criminal Justice Reform Coordination Council. The deadline for implementing the mentioned activities coincides with the period covered by the Judicial System Action Plan. The High Council of Justice, Independent Inspector, common courts are considered as responsible organs, and Parliament of Georgia and NGOs are listed as partners. As of today, the working group established by the Chairman of the Parliament of Georgia has prepared a draft law on the improvement of the grounds of disciplinary liability, and the works have not been implemented during the reporting period to improve the process of disciplinary proceedings. Therefore, this activity should be considered partially fulfilled.

One of the activities of the Criminal Justice Reform Action Plan provides is to bring of the Judicial Code of Ethics in compliance with international standards and the 2018 activity includes elaboration of the proposals for the Code of Ethics of Judges. The Action Plan also provides for the development of guidelines regarding the Code of Ethics of Judges by 2019 and the implementation of the Code of Ethics in the Common Courts System, including the functioning of consultation mechanism by 2020. The High Council of Justice of Georgia and the Conference of Judges represent the responsible organs for implementation of the mentioned activities and the Parliament of Georgia and NGOs are indicated as partners. In this case, it is problematic to define different timeframes for similar activities: According to the Judicial System Action Plan improving the rules of judicial ethics should be conducted in 2017-2018 and the deadline for creation and implementation of a confidential consultation mechanism is 2018. At present, works have not been implemented to improve the rules of ethics. Consequently, this activity is not fulfilled at this stage.

Similarly to the Judicial System Action Plan, the Criminal Justice Reform Action Plan provides for the development of relevant recommendations to ensure the independence of the inspector institute by 2018 but in this case the involvement and support of international experts and civil society organizations it is directly indicated. The High Council of Justice and the Independent Inspector Service are responsible for the implementation of this activity, and the partners are the Parliament of Georgia and NGOs. The draft law developed by the Judicial Reform Working Group provides limited guarantees of the independence of the Inspector's Institute and deals only with the determination of their remuneration at the legislative level. Therefore, this activity should be considered partially fulfilled.



## Activities envisaged by the National Human Rights Action Plan and the Degree of their Implementation

Similarly to the Judicial System Action Plan, the National Human Rights Action Plan 2018-2020 envisages bringing judicial disciplinary grounds, disciplinary proceeding procedures and ethical norms in compliance with international standards for the purpose of ensuring accountable justice.<sup>162</sup> In relation to the judicial liability reform this task includes refining code of ethics and disciplinary liability of judges based on the study and generalization of international practice, optimization of stages of disciplinary liability process, ensuring the transparency of the process, as well as creating the consultation mechanism for appropriate legislative proposals for further improvement of grounds of disciplinary liability of judges and code of ethics. Similarly to the 2017-2018 Judicial System Action Plan, 2017-2018 is the deadline for the implementation of the National Action Plan. However, it is unclear why the activity which was supposed to be implemented in 2017 is included in the 2018-2020 National Action Plan.

Similarly to the 2017-2018 Judicial System Action Plan, the National Action Plan also defines the High Council of Justice, the Conference of Judges, the Disciplinary Board and the Disciplinary Chamber of the Supreme Court as responsible organs. However, there is a difference: the 2017-2018 Action Plan of the Judicial System, in the area of improvement of the types and grounds of disciplinary liability of judges, considers the Ministry of Justice, the Criminal Interagency Council and the Anti-Corruption Inter-Agency Council as co-responsible agencies and in relation to improvement of disciplinary proceedings the Ministry of Justice and the Parliament are defined as co-responsible agencies.

## Conclusion

In terms of judicial liability system reforms, analyses a one-year report on the implementation of the Action Plan, other documents and public information revealed that the responsible organs had failed in their efforts to carry out timely and perfectly implemented activities envisaged by the plan.

The state of fulfillment of the plan shows that the essential part of the major deficiencies in the judicial system of liability remain a challenge. Although significant efforts have been made in the reporting period in terms of improving the types of disciplinary liability, the

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<sup>162</sup> Due to the identical content of the activities envisaged by the National Action Plan, the degree of their implementation was not discussed in this sub-chapter.

relevant draft law is not initiated in the Parliament. In addition, the relevant works have not been carried out in terms of refining the grounds of criminal liability.

The disciplinary proceeding procedure significantly determines the fairness, objectivity and effectiveness of the disciplinary liability system. Given the fact that most of the procedural issues in the Georgian legislation have been repeatedly criticized, efforts in this direction are not enough to eradicate the major deficiencies of the system of disciplinary proceedings. In addition, during the reporting period, no effective steps have been taken to create solid guarantees for the independence of Independent Inspector.

Overall, during the monitoring process, it was revealed that the effective reform of the judiciary liability system, which fully responds to the existing challenges, has not been implemented yet.

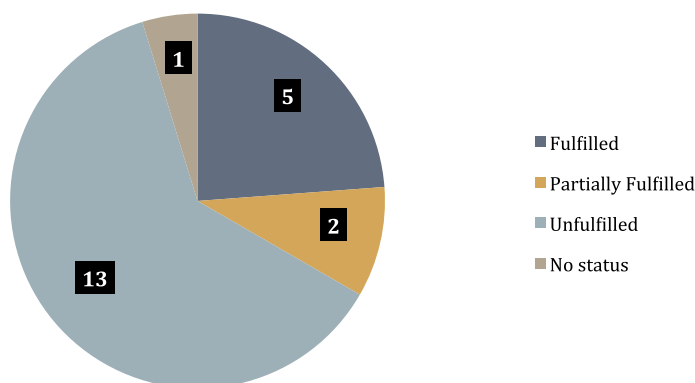
Taking into consideration all the above mentioned, it is important for the work group and responsible agencies to carry out the work in the following directions:

- Further refinement and timely initiation of the bill on disciplinary liability, which provides detailed descriptions of disciplinary misconduct in the Parliament;
- Establishing solid guarantees for Independent Inspector's independence at the legislative level, including the amendment to the existing rules for appointment and dismissal of the Inspector and definition of the rule of appealing against their dismissal, as well as defining their remuneration by the law;
- Improving the disciplinary proceedings, which, among others, includes a change to the rules of decision making by the Disciplinary Board (by a majority vote instead of the majority of the members present), as well as defining the standard for an Independent Inspector's assessment of the information, evidence and standard for case proceedings which must be the basis of the inspector's evaluation and the Council's decision;
- Elaborating and approving the rules of ethics in compliance with the international standards, prepare the comments of the ethics rules and update the modules of the teaching on the ethics rules;
- Creating and implementing a mechanism of confidential consultation for judges;
- Carrying out proper works to prevent corruption cases in the system;
- Developing and implementing electronic program of disciplinary proceedings.

In addition, it is important to carry out the work that is not directly covered by the 2017-2018 action plan:

- To ensure transparency of disciplinary proceedings, it is important that the organic law provides the publication of conclusions prepared by an Independent Inspector by concealing the identification data of the parties; In addition, it is important to oblige Independent Inspector in accordance with the Organic Law to periodically publish the general (statistical) report of disciplinary offenses based on complaints / applications;
- It is of utmost importance to carry out the appropriate work in relation to improving the criminal liability of a judge, namely to improve the norms of the Criminal Code concerning the judicial liability when exercising official duties in order to clearly define the cases in which the judge's action is beyond the disciplinary boundaries.

**Fulfillment status of the activities of the reform of  
Judicial Liability System, as envisaged by Judicial  
System Action Plan for 2017-2018**



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

## Main Challenges

Representative of the civil sector and international organizations have been discussing regulations related to the activities of the High Council of Justice for years. Leaving the Council's activities unregulated in a number of spheres, grants the Council unfettered discretion and a broad room for arbitrariness.<sup>163</sup>

Systemic monitoring undertaken by local non-governmental organizations, has identified on many occasions, that the insufficient, flawed and vague legislative and by-law regulations has a negative effect on transparency, publicity and objectivity of selection/appointment, transfer and promotion of judges – the core competencies of the Council.<sup>164</sup> Considering the findings from the analysis and monitoring of a legal framework, the following major challenges have to be noted:

- Constitutional and administrative functions are not delineated when the High Council of Justice exercises its powers;
- Based on the legislation in force, the Administrative Code of Georgia does not extend to the High Council of Justice (except for the third chapter). The law does not define the scope, rules and procedures related to judicial review of Council decisions, which effectively bars control of scrutiny exercised over legality and substantiation of the Council decisions;
- Existing legal framework does not foresee an obligation of substantiating the Council decisions;
- Despite existence of legislative regulations, information about the date of Council sessions and relevant agendas is not published within the timeframe indicated. Projects/materials about the issues considered during the session are not accessible to the public, both before and during the session;
- Video recording of the Council session by representatives of media is permitted only at the stage of its opening;
- Timelines for publishing Council decisions is regulated by a legal act adopted by the Council itself;
- The legislation does not foresee the rules related to expression of views by persons attending the session;
- Closure of the Council sessions is not regulated. In addition, according the regulations of the Council, interviews with candidates and incumbent judges applying for life-time

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163 Coalition for an independent and transparent judiciary addressed Parliament with legislative proposal concerning regulation of High Council of Justice, [Available at: [http://coalition.ge/index.php?article\\_id=190&clang=0](http://coalition.ge/index.php?article_id=190&clang=0), Accessed on 19.09.2018]

164 The fourth monitoring report of the High Council of Justice", Georgian Young Lawyers' Association, Transparency International Georgia [Available at: <https://bit.ly/2HdV35k>, Accessed on 23.10.2018]

judicial positions are held behind closed doors, except when the candidate or incumbent judge himself/herself consents to its publicity;

- The written minutes of session are not drawn up. In the recent period, only audio-video recording of sessions has been conducted. In practice, several technical errors were identified, due to which audio-video recordings of sessions were not accessible to interested parties;
- For appointment of judge-members of the High Council of Justice, the existing legislation<sup>165</sup> sets special quota related to persons holding administrative positions in the judicial system.

The programs foreseen by the Action Plan and strategic document for judiciary regarding activities and institutional setup of the High Council of Justice mainly address current challenges. However, the Action Plan does not foresee all substantial issues relevant for increasing transparency of the work of the High Council of Justice, for instance, issues related to regulation of closures of sessions and relevant procedures, and the possibility of expressing views during the Council sessions.

Activities in connection with the work and institutional organization of the High Council of Justice are mainly placed under the first and fourth strategic directions of the action plan. In sum, from among the activities foreseen by the action plan, approximately 12 are related to regulations of the Council's institutional setup and its operation. As for the indicators for activities and measurement tools for fulfillment of obligations, as a rule a qualitative indicator is set based on a concrete fact, for instance, relevant legislative changes were enacted, changes/additions were made to internal documents, updated structure was adopted etc. Mere reference to the fact that legislation or structure is updated does not allow substantive assessment of the program. It is important, that the content of the undertaken changes is assessed. To achieve this, the Action Plan defines the tools to assess fulfillment of goals. The tools defined for measuring fulfillment of strategic goals are reports of international organizations/experts, assessments of non-governmental organizations, reports of the High Council of Justice.

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

### 1.1.1 Strengthening judicial independence through constitution and relevant legislation

The 2017-2018 Action Plan for Judiciary, in the framework of the program on strengthening judicial independence through constitution and relevant legislation, includes one activity related to institutional setup of the High Council of Justice:

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<sup>165</sup> See articles 47 and 65 of the organic law on common courts of Georgia.

*1.1.1.7. Defining independence, status, competence, accountability of the High Council of Justice and rules for appointment of its members (2017) – **Fulfilled***

**1.1.1.7.** – As a result of 2017-2018 constitutional reform, the constitution (1) Established a relatively detailed rule of appointing members of the High Council of Justice; (2) Changed the rules related to appointment of the Council chairperson; (3) Determined the constitutional status of the Council Secretary; (4) Made the High Council of Justice accountable to conference of judges; (5) Specified the list of constitutional competencies of the Council.<sup>166</sup>

It has to be noted that in contrast to other changes, the constitutional amendments, based on which the position of the Council Secretary and rules for his/her appointment were established, was initiated by the Secretary himself, at the second stage of the constitutional reform. It has to be noted, that throughout the reform neither the minutes of nation-wide public discussions, nor the explanatory note of the draft amendments contained justification for this change. According to civil society, the constitutional amendments related to court system were fragmented and lack thorough consideration.<sup>167</sup>

## **1.1.2. Ensuring guarantees for institutional independence of the High Council of Justice**

The 2017-2018 Action Plan for Judiciary foresees six activities under the program on guarantees for institutional independence of the Council:

*1.1.2.1. Updating criteria and procedures for appointment of Council members, its composition, selection/appointment of members (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 extent (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. Improving operation of the High Council of Justice, including enhancement of procedures of decision-making, its substantiation and publicity (2018) – **Partially Fulfilled***

*1.1.2.5. Considering legislative changes, updating and adopting the Council's regulations (2018) – **Unfulfilled***

*1.1.2.6. Preparing assessment of legislative changes and proposals about the organic law by an expert – **Unfulfilled***

<sup>166</sup> Constitution of Georgia, article 64.

<sup>167</sup> See the Parliament in the process of constitutional reform shall not overstep the Venice Commission recommendations, [Available at: <https://emc.org.ge/ka/products/parlamenti-konstitutsiuri-tsvlilebebis-protsessshi-ar-unda-gasts-des-venetsiis-komisiis-rekomendatsiebs>, Accessed on 19.09.2018]

**1.1.2.1.** – As a result of 2017-2018 constitutional reform after the new president takes an oath, the constitutional amendments, which provide for new regulations related to appointment of members and composition of the High Council of Justice, will enter into legal force. Namely, the constitution established the rule of appointing non-judge members of the Council through a three-fifth majority of the parliament members. In addition, the new text of the constitution provided for a rule for appointment of the chairperson and secretary. Accordingly, the first part of the activity related to appointment of Council members and renewal of its competition, shall be regarded as fulfilled.

As for the second part of the activities, the High Council of Justice, legal framework on procedures of selection/appointment of the Council members and the actual process of it has often become subject of criticism.<sup>168</sup> 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.<sup>169</sup> Legislative provision, based on which persons holding administrative positions are granted special quota on appointments of judge members to the Council, is also problematic.<sup>170</sup> The content of this activity allows a possibility of introducing new regulations on the issue, however, it has to be said that in this case also, as supported by the annual report on the fulfillment of the Action Plan<sup>171</sup> and obtained public information,<sup>172</sup> the responsible agency – the High Council of Justice did not make sufficient efforts to fulfill the activity. The Council points out that work is ongoing to research practice of European Countries on criteria, procedures of selection/appointment of the Council members and gradual renewal of its composition.<sup>173</sup> Accordingly, part of this activity is fulfilled at this stage. Considering the above, altogether the activity has to be regarded as partially fulfilled.

**1.1.2.2.** – One more activity planned in the framework of the program is inquiry into the desirability of gradual renewal of the Council's composition and establishing the principle to an appropriate extent. In the public information<sup>174</sup> submitted to the team of the project, the High Council of Justice points out that research is ongoing, however, its period and concrete timelines are not indicated either in the report or the public information obtained from the Council.<sup>175</sup>

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168 The Coalition addresses the renewed composition of the Council [Available [http://coalition.ge/index.php?article\\_id=161&clang=0](http://coalition.ge/index.php?article_id=161&clang=0), Accessed on: 23.10.2018]

169 The Coalition Addresses the Judicial Conference Held on Extraordinary Basis [Available: [http://coalition.ge/index.php?article\\_id=148&clang=0](http://coalition.ge/index.php?article_id=148&clang=0), Accessed on: 25.10.2018]

170 The organic law of Georgia on Common Courts of Georgia, articles 47 and 65.

171 The progress reports of the 2017-2021 strategic document and 2017-2018 action plan for Judiciary, pp. 7-8;

172 Letter of the High Council of Justice, №2226/3133-03-მ.

173 *Ibid.*

174 *Ibid.*

175 Letter of the High Council of Justice, №1935/2675-03-მ.



**1.1.2.3.** – According to the information provided by the High Council of Justice, the first working group prepared a project, which concerns granting of functional immunity and social security guarantees to non-judge members of the Council and the project will soon be presented to the working group for consideration. Accordingly, this activity may be regarded as partially fulfilled.

**1.1.2.4.** – At this stage, information regarding steps taken to enhance decision-making and substantiation of decisions is not accessible. As for publication of decisions, the progress report does not indicate, however, the decision<sup>176</sup> of the High Council dated July 2, 2018, which provides for the requirement of publishing the decisions of the Council on the official website no later than 5 days after its adoption and uploading a legal act in its consolidated form within 14 days from the date when the changes were made to the relevant act, has direct links with this activity. Accordingly, the activity has to be regarded as partially fulfilled.

**1.1.2.5. and 1.1.2.6.** – The final activities under the program on guarantees for institutional independence of the High Council of Justice have direct links with fulfillment of previous activities of the same program. Considering that the fulfillment of obligations foreseen by previous activities has not been finished, in certain occasions has not even commenced, there are no resources for updating/adopting the regulations of the Council and preparing evaluation report on the changes to be made to the organic law by an expert.

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

The 2017-2018 action plan, in terms of strengthening protection mechanisms for the independence of individual judges within the judicial system, foresees five activities, however, for the subchapter's purposes, the following activity will be emphasized:

*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 annual report on the fulfillment of the strategic document and Action Plan, the High Council of Justice while discussing fulfillment of obligations refers to decision rendered by the Council in the framework of the activity 1.1.3.2. – enhancement of participation mechanisms for judges in the process of reforming legislation related to judiciary.

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<sup>176</sup> Decision of the High Council of Justice, July 2, 2018 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/226-2018.pdf>, Accessed on: 10.09.2018]

Namely, during the session of May 21, 2018, the High Council of Justice approved the draft document about the changes to the regulations of the Council,<sup>177</sup> based on which judges of the Common Courts of Georgia shall be informed about important issues foreseen by a relevant agenda of the High Council of Justice, who if they wish can present relevant comments and proposals. It has to be noted, that the High Council of Justice has on many occasions expressed the view, that often it appears infeasible to have agendas for Monday sessions agreed before Friday. Accordingly, it remains vague, to what extent it is possible to get fully familiarized with the materials related to the sessions and prepare comments in accordance with the rule established by the decision of May 21, in the tight timeframe and considering the workload of judges.

### 1.4.2. Protection of judicial independence against influence

2017-2018 Action Plan foresees two activities under the program on protection of judicial independence against influence, however, for the subchapter's purposes, it is interesting to discuss the following activity:

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

**1.4.2.1.** – According to information indicated in the annual report regarding fulfillment of the strategic document and Action Plan for judiciary, foreign experts<sup>178</sup> prepared analysis and recommendations of existing standards within the European Council related to illegal interference with judicial affairs and cases of pressure,<sup>179</sup> which during the meeting on May 3-4, 2018, they presented to the members of the High Council of Justice and representatives of respective working groups. It is important, that this activity had to be finalized in 2017, however, despite the research prepared by international experts, the position of the relevant working group and the responsible body for the activity – the High Council of Justice about resolution of the issue has not been made public. Based on the public information obtained from the High Council of Justice, it is clear, that the respective working group has not yet discussed the need for introduction of the accountability system addressing cases of illegal interference with the activities of the Council and pressure.<sup>180</sup>

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177 Decision of the High Council of Justice, May 21, 2018 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/188.pdf>, Accessed on: 20.09.2018]

178 The research document was prepared within the framework of the project implemented by Council of Europe.

179 The progress reports of the 2017-2021 strategic document and 2017-2018 action plan for Judiciary, p 15

180 Letter of the High Council of Justice, №2226/3133-03-09.

#### 1.4.4. Enhancing independence, appearance of impartiality and prevention of violations

From among activities foreseen in the framework of the program, for the subchapter's purposes, it is necessary to analyze only the following activity:

*1.4.4.1. Ensuring transparency of the High Council of Justice through introduction of the practice of publishing decisions and reports (2017) – **Fulfilled***

**1.4.4.1.** – In the annual report of the strategic document and the action plan, the information provided in relation to fulfillment of the said activity, concerned the annual reporting presentation by chairperson of the Supreme Court and the High Council of Justice and the Secretary of the Council, delivered on January 20, 2018. The report also highlights that the decisions of the High Council of Justice, as well as the agenda of the working groups and summary minutes are systematically published on the website of the High Council of Justice. However, a contrary situation is indicated by the findings made during monitoring of the Council activities and strategy/action plan.<sup>181</sup> Namely, in 2017, a number of occasions were identified, when there were obstacles to publishing of the Council decisions on the website. As for the problems related to publishing agendas and session minutes, the same issue is discussed in the chapter – *Implementation of the Judicial Strategy and the Action Plan*. In connection with the activity, the decision of July 2, 2018 has to be noted<sup>182</sup> which foresees the requirement of publishing a Council decision on the official website within 5 days after its adoption and that of a legal act in its consolidated form within a 14-day timeframe, starting from the date when the changes were made to the relevant acts. Accordingly, the activity has to be regarded as fulfilled.

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

From among activities foreseen under the program, in view of the thematic issue in this subchapter, the following two activities have to be analyzed:

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

*4.3.2.2. Operating management department and the mechanism of an independent inspector (2017) – **Fulfilled***

<sup>181</sup> Monitoring report on the High Council of Justice №6, [Available at: <https://www.transparency.ge/ge/post/iustici-is-umaglesi-sabchos-monitoringis-angarishi-n6>, Accessed on 20.09.2018]

<sup>182</sup> Decision of the High Council of Justice dated July 2, 2018 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetile-bebi/gadawyvetilebebi%202018/226-2018.pdf>, Accessed on: 20.09.2018]

**4.3.2.1.** – for subchapter’s purposes, this document will address only the part about the organizational setup of the High Council of Justice. It is noteworthy that at this stage no information is available about the measures undertaken or planned by the Council for functional analysis of the Council’s organizational setup, for devising recommendations and formulating an implementation plan. According to additional information obtained from the High Council of Justice, at this point the activity is not fulfilled.<sup>183</sup>

**4.3.2.2.** – As for this activity, in connection with the activities of the High Council of Justice, only the part concerning operation of the management department needs to be assessed. The management department was established, as a result of the so-called “third wave” reform, in accordance with the organic law on Common Courts of Georgia, which defined supervision over administration and management of the common courts as its main function. According to the decision of the High Council of Justice, the management department is composed of seven positions, however, at this stage only one senior consultant and one consultant are appointed.<sup>184</sup> On October 8, 2018, based on the decision of the Council competition was announced for selection of the department chair.<sup>185</sup> It has to be noted, that the first competition for the position of the department chair was announced on May, 2017,<sup>186</sup> however, due to reasons unknown to the public, the High Council of Justice could not select an appropriate candidate for the position of the department chair.

The information concerning introduction of the independent inspector mechanism is available in the chapter – *Reform of the system of Liability of judges*.

## Assessment of the Related Action Plans

In a similar manner as the 2017-2018 Action Plan for Judiciary, the Georgian government’s 2017-2018 Human Rights Action Plan and the Action Plan of the intergovernmental Council for Criminal Justice Reform address issues related to operation of the High Council of Justice and its institutional setup. The measures and activities foreseen in the said documents are essentially identical, however, several activities are formulated in a slightly different manner.

Analysis of all three Action Plans, similarities between measures and activities related to the institutional setup of the Council and its operation are obvious. Generally, terms for fulfilling

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183 Letter of the High Council of Justice, №2226/3133-03-0.

184 Letter of the High Council of Justice №1481/1875-03-0.

185 See decision of the High Council of Justice dated October 8, 2018 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/264.pdf>, Accessed on: 18.20.2018]

186 See decision of the High Council of Justice dated May 8, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/58-2017.pdf>, Accessed on: 18.10.2018]

the obligations and the responsible bodies for executing those are identical. Even though, due to their importance, all three Action Plans draw attention to enhancement of the structure of the High Council of Justice and regulation of its activities, majority of the indicated activities have not been fulfilled yet.

### **Activities Foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation**

The Action Plan of the intergovernmental Council for Criminal Justice reform foresees determination of a normative framework for the High Council of Justice as one of its activities. The said activity includes establishing the requirement of substantiation for the Council decisions and rules for appealing them, also regulating interest conflict situations and ensuring publicity, including the guarantees for attendance of sessions. For eliminating loopholes around these issues, the activities foreseen by the Action Plan includes research of international practice, based on which working groups, composed of representatives of international organizations and domestic NGOs, will prepare relevant legislative proposals. Eventually, legislative changes drawn up by the working group have to be presented to coordination council of criminal justice reform. Based on the Action Plan, the indicated period for implementing the mentioned measures is 2018 and the responsible body for carrying out the activity is the High Council of Justice and Common Courts of Georgia. With a different formulation, though an activity with similar content is foreseen by the 2017-2018 Action Plan for judiciary, however, a different timeframe for carrying out the activity from the one set by the Action Plan of the intergovernmental Council for Criminal Justice reform is determined. Regarding fulfillment of this activity, the High Council of Justice in the public information<sup>187</sup> obtained by the project group points only to the decision of the Council dated July 2, 2018,<sup>188</sup> which determined terms for publishing decisions of the High Council and legal acts in its consolidated form. As the measure consists of 5 components, despite positive regulations concerning publicity of the Council decisions, the activity has to be regarded as unfulfilled.

### **Activities Envisaged by the National Human Rights Action Plan 2018-2020 and the Degree of their Implementation**

The Human Rights Action Plan foresees guarantees for an independent, impartial and accountable judiciary as an important component of realizing the right to a fair trial and ac-

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187 Letter of the High Council of Justice, №2151/3024-03-00.

188 Decision of the High Council of Justice №1/226, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/226-2018.pdf>, Accessed on: 19.11.2018]

cess to court. In view of the legislative changes, revision of regulations concerning the High Council of Justice is precisely under this goal. The said formulation is identical to the activity about revision of the regulations concerning the High Council of Justice foreseen by the Action Plan for Judiciary. The public information<sup>189</sup> provided to the project group by the High Council of Justice does not contain information about the steps taken for fulfilling the said activity. Accordingly, at this stage the obligation under the activity has not been fulfilled.

In addition, the strategic document and the Action Plan for judiciary envisions definitions of independence, status, competence, rules of composition and accountability of the High Council of Justice, which has to be fulfilled in 2017. The Human Rights Action Plan also sets a similar obligation, which serves further enhancement of independence guarantees, rules of composition, substantiation of decision and appeal mechanisms. However, the fact that the document does not set a deadline for fulfilling the said activities of the Human Rights Action Plan has to be highlighted.

## Conclusion

The analysis of the progress report of the strategic document and the Action Plan for judiciary, research reports, by-laws and other documents, also the analysis of the public information received from responsible authorities revealed, that only three activities were fulfilled from those related to activities and institutional setup of the High Council of Justice – among those the first activity was carried out due to constitutional changes, while the second one was fulfilled in accordance with obligations in the law following the so-called “third wave” reform.

As for the content of the activities partially fulfilled, in this case such status of these activities has to be attributed to research projects undertaken with the support of international organizations and the changes made to by-laws of the High Council of Justice. A number of important activities remain unfulfilled, which indicates that responsible bodies have directed the process of implementing activities foreseen for 2017-2018 years ineffectively and without sufficient effort. Accordingly, it is important, that the next stages of the strategy and Action Plan implementation include the following directions:

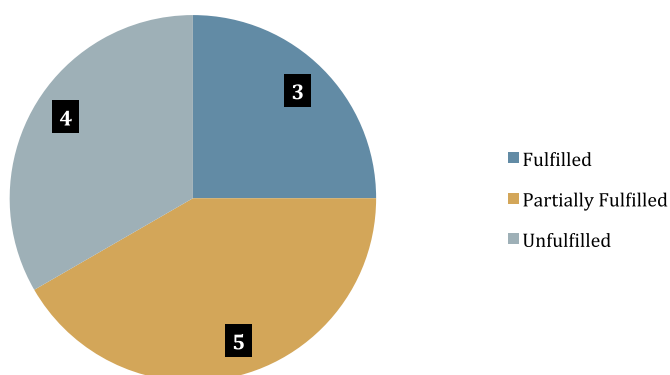
- Updating the rules for appointment of Council members, its composition, criteria and procedures for selection/appointment;
- Comprehensive delineation of constitutional and administrative functions of the High Council of Justice, establishment of the obligation to apply standards of administrative code to exercises of administrative functions;

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189 Letter of the High Council of Justice №2151/3024-03-07.

- Enhancing legal forms of the Council's activities, among others improving procedures of decision-making, substantiation and publicity of decisions on a legislative level;
- Enhancing procedures of preparation for the Council sessions;
- Regulating closure of the Council sessions and procedures, also holding interviews with candidates for a judicial position in an open session;
- Functional analysis of the Council's organizational setup, devising recommendations and formulating an implementation plan;
- Establishing procedures on a legislative level for expressing views by attendants during a Council session;
- Ensuring publicity of draft decisions about issues included in the agenda before and during the session of the High Council of Justice through a legislation;
- Inquiry into desirability of gradual renewal of the Council's composition and establishing the principle to an appropriate extent;
- Determination of the need for introduction of the accountability system addressing violations of independence of the court/a judge and the High Council of Justice/its members, illegal interference with their activities and incidents of pressure;
- Devising effective mechanisms for increasing participation of the regional judges in the operation of the High Council of Justice.

**Fulfillment status of the activities for improving the work and institutional arrangement of the High Council of Justice, as envisaged by the Action Plan**



# Transparency of the Judiciary



## Main Challenges

After 2012 parliamentary elections, the first significant legislative reform of the judicial system was carried out on May 1, 2013. An important part of the changes made in the framework of the first wave of judicial reform were based on previous criticism and recommendations of NGOs.<sup>190</sup> Based on the reform the court's obligation to audio/video record a court session and to ensure access to it to parties and other persons upon request, were established. In addition, it was made possible to monitor sessions of the High Council of Justice. Often, the requirement of publicity is formally observed. However, the system started to face new challenges, namely that it is closed, and informal negotiations take place behind closed doors.<sup>191</sup>

In relation to transparency of the judiciary, the following challenges have to be emphasized:

- Lack of involvement of civil society in the process of judicial reform;
- Variable awareness of and attitudes of society towards the processes in the judicial system;
- Low level of public trust towards judiciary;
- Absence of effective mechanisms of communication with the public;
- Absence of a useful, flexible platform for accessibility of court decisions;
- Absence of unified methodology for producing and processing statistical information;
- Flawed of practice of withholding public information.

Programs and activities under the programs aimed at overcoming existing challenges in the court system in terms of transparency mainly respond to current reality. Relevant activities are placed in the first, second and fourth strategic directions. In sum, up to 21 activities are related to transparency of the judiciary. As for indicators for activities and tools for measuring fulfillment of obligations, as a rule, an indicator set for measuring fulfillment of activities is qualitative and relates to a concrete fact, for instance, the practice of publishing court decisions is established, methodology for producing statistics and reports is enhanced, etc. In relation to the said activities the Action Plan also defines a quantitative indicator, for instance, at least 5 activities were carried out for increasing the public's awareness. As for methods of measurement, the Action Plan, mostly refers to reports of the High Council of Justice, assessments of international and local organizations and survey of public opinion.

190 Coalition statement regarding the need for large-scale reforms in the court system. [Available: [http://coalition.ge/index.php?article\\_id=120&clang=0](http://coalition.ge/index.php?article_id=120&clang=0), Accessed on: 18.11. 2018]

191 Judiciary: reforms and perspectives, p. 6 [Available at: [http://www.coalition.ge/index.php?article\\_id=150&clang=0](http://www.coalition.ge/index.php?article_id=150&clang=0) Accessed on: 21.09.2018]

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

### 1.4.3. Strengthening communication with the public for increasing awareness about issues related to judiciary and enhancing legal culture

The Action Plan foresees three activities under the program on strengthening communication with the public:

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

*1.4.3.2. Strengthening the position of a speaker – judge (2017) – **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 ongoing cases – **Partially Fulfilled***

**1.4.3.1.** – Based on available information, on July 20, 2018, during the meeting of the second working group formed for implementing strategic and action plan, the group approved core directions of the communication strategy for the court formulated with the support of a local expert.<sup>192</sup> The project was forwarded to the High Council of Justice for consideration. Despite the fact, that the agenda of the session on July 30, 2018 included discussion of the communication strategy, its adoption was postponed. At this point, it is unknown, how and in what time does the High Council of Justice plan to finalize fulfillment of this activity. It has to be noted, that based on the Action Plan, formulation and implementation of the strategy had to be finalized already by 2017.<sup>193</sup>

**1.4.3.2.-** As for this activity, even though 2017 was set as the deadline for fulfilling the activity, the High Council of Justice appointed 10 speaker-judges in Tbilisi appellate and city courts by the end of May 2018.<sup>194</sup> The progress report on the fulfillment of the strategic document and Action Plan includes information about training of the speaker-judges. Based on the information available to the second working group, training for speaker-judges in effective communication was held on July 16-20 and October 12-14, 2018 with the support of an EU project, in which all speaker judges participated.

**1.4.3.3** – The progress report on the fulfillment of the strategic document and Action Plan does not entail information in relation to the planned activities aimed raising awareness of

<sup>192</sup> The document was prepared with the support of a local expert in the framework of the EU project.

<sup>193</sup> On November 19, 2018, the High Council of Justice approved the communication strategy document, however, it has to be indicated hereby that it did not take place in the reporting period and therefore will be analyzed in the next reporting cycle by the project team.

<sup>194</sup> The decision of the High Council of Justice, May 21, 2018 [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/192-2018.pdf>, Accessed on: 21.09.2018]

the public and representatives of different professions in the context of reporting on the ongoing cases. Based on the report this activity could not be fulfilled in 2017 due to objective circumstances. However, the report does not point to those objective circumstances, which made the fulfillment of this activity impossible.<sup>195</sup> According to the additional information<sup>196</sup> provided by the High Council of Justice, on October 20-21, 2018, with the support of the European Union, a working meeting was held with the participation of media representatives. During this meeting, discussions were focused on the issues such as authorities of the High Council of Justice, accountable and efficient judicial System, judicial appointments and professional development. Furthermore, participants discussed the issues towards the media coverage of the high-profile cases. Therefore, this activity should be considered as a partially fulfilled.

#### 1.4.4. Enhancing independence, appearance of impartiality and prevention of violations

The 2017-2018 Action Plan for Judiciary foresees several activities for enhancing independence, appearance of impartiality and prevention of violations, from among those it is important to discuss the following activity in relation to transparency of the judiciary:

##### 1.4.4.3. *Enhancing the practice of publishing judgements of the Courts (2017) – Unfulfilled*

**1.4.4.3.** – One of the positive changes brought by the so-called “third wave” judicial reform is the requirement of publishing decisions rendered after substantial consideration of the case in an open session.<sup>197</sup> At this stage, redacted decisions are posted on info.court.ge, however, this platform operates with interruptions, which on most occasions makes search for decisions impossible. Even though based on the Action Plan the activity had to be fulfilled by 2017, the progress report on the fulfillment of the strategic document and the Action Plan indicates that it appears impossible to operate a functional web portal until the end of 2018.

Annual progress report refers to the conclusions of an information technology team pointing to the need of creating an integrated search engine for all three instances of courts, which will ensure access to all redacted judgements, final documents, public notifications and make it possible to search for scheduled court sessions. In relation to this activity, it is also noteworthy that IT audit was being conducted since spring of 2018 upon the joint initiative of 4 donor organizations,

<sup>195</sup> The progress reports of the 2017-2021 strategic document and 2017-2018 action plan for Judiciary, p. 16;

<sup>196</sup> Letter of the High Council of Justice, №2253/3132-03-გ.

<sup>197</sup> Organic Law on Common Courts of Georgia, article 13.

which based on available information is already finalized however, results are not yet publicly available.<sup>198</sup>

### 2.4.1. Enhancing statistical forms, analytical reports and tools for their distribution

The 2017-2018 Action Plan for Judiciary foresees five activities under the program of 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 court and its institutions) and uploading them on websites and other sources of communication (2017-2018) – **Unfulfilled***

*2.4.1.2. Introducing the methodology for publication of analytical reports and publishing them periodically, including on the websites and other sources of communication – **Unfulfilled***

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

*2.4.1.4. Organizing training for persons responsible for 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 (including making information regarding the finances publicly available) (2017-2018) – **Partially Fulfilled***

**2.4.1.1.** – For years, statistics of considered cases was used as one of the criteria for assessing the independence of the judiciary. Today, the Supreme Court produces the statistical data of the judiciary. According to the information provided by the Supreme Court, it receives information regarding criminal cases from electronic files submitted by city/district courts. With uniform methodology for producing statistics, the Supreme Court produces statistical data of the judiciary through unification of the data received from each court.<sup>199</sup>

In relation to measures undertaken for devising uniform methodology of producing statistics, the progress report on fulfillment of strategic document and the Action Plan draws attention to monitoring visits of an invited Slovenian expert<sup>200</sup> in July 2017 and of the Europe-

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198 Letter of the High Council of Justice, №2208/3236-03-0.

199 EMC, how to measure the independence of judiciary – statistics of acquittals [Available at: <https://goo.gl/vouQk8>, Accessed on: 18.10.2018]

200 Visit was undertaken in the framework of an EU project.

an Commission for the Efficiency of Justice in September 2017.<sup>201</sup> According to information indicated in the report, currently full catalogue of statistical reporting forms for common courts is created with respect to different instances of court and revision and modification of the forms, verification of data is ongoing, after which forms of statistical reporting will be approved.<sup>202</sup> Based on available information, adoption of uniform methodology for statistical reporting is planned for 2018, among others for wide incorporation of indicators of the European Commission for the Efficiency of Justice in the court management system.

**2.4.1.2.** – According to information of the second working group, in the framework of an EU project on Strengthening Judiciary, in November 2017, local expert prepared a guideline for research, which discusses types of documents/research, legal analysis, structure of the documents and standards for using statistical information. However, it is still unknown how this document will be used for preparing and publishing analytical reports by the courts and the Council. Therefore, at this point this activity has to be regarded as unfulfilled.

**2.4.1.3.** – As for the analysis and improvement of the practice related to issuing of public information, the annual report on the fulfillment of the strategic document and the Action Plan refers to introduction of an electronic communication platform in the previous years. It must be noted, that the said platform operated before the strategic document and the Action Plan were adopted. Therefore, a mechanism introduced in the framework of another process before the adoption of an Action Plan may not be regarded as fulfillment of an activity foreseen by the Action Plan. The report also refers to cumulative statistical information of 2013-2017 produced by the Supreme Court about the public information provided. However, this may not be regarded as fulfillment of the requirement about enhancing the practice of issuing public information. During one of the meetings of the second working group, it was reported that the High Council of Justice requested relevant information from each court to study the practice concerning accessibility of public information in the courts. As the Council explained, the plan is undertaken to analyze information received from courts and provide relevant recommendations. Accordingly, the activity has to be regarded as partially fulfilled.

**2.4.1.4.** – According to a document prepared by the second working group, in the framework of the 2018 program on “training of judges and other staff of judiciary”, 2 training sessions were held for the staff of judiciary related to the following issues: the law “on protection of personal data” and accessibility of public information. The said activity must be understood as a further step of the previous activity. Accordingly, it is important that the training of

201 Visit was undertaken upon the invitation of the Supreme Court of Georgia.

202 The progress reports of the 2017-2021 strategic document and 2017-2018 action plan for Judiciary, p. 25-26;

persons responsible for issuing public information addresses challenges identified through an analysis of the relevant practice, which is still ongoing at this point. Taking this into consideration, the activity can only be regarded as partially fulfilled.

**2.4.1.5.** – In relation to enhancing statistical forms, analytical reports and tools for their distribution, the progress report refers to proactive publication of the 2017 joint report of the High Council of Justice and the Supreme Court of Georgia and the report on the activities of the High Council of Justice in 2013-2017 on websites of the High Council of Justice and the Supreme Court of Georgia.<sup>203</sup> According to the High Council of Justice, information about the budget and financial reports of common courts is available on the website of common courts.<sup>204</sup> However, it is unclear whether common courts produce annual reports, in addition, it has to be noted, that the list of issues which the annual report of the High Council of Justice has to contain is not determined. The previous composition of the Council assessed 2013-2017 years in a consolidated document. As for 2017, two-page reporting presentation of the Council Secretary is available on the website of the Council,<sup>205</sup> which due to its form and structure cannot be held to represent a report. Accordingly, considering all of the above this activity must be regarded as partially fulfilled.

## **2.4.2. Establishing effective mechanisms of communication with the public**

The 2017-2018 Action Plan for Judiciary foresees three activities for establishing effective mechanisms of communication with the public:

*2.4.2.1. Devising and implementing communication strategy (2017) – **Partially Fulfilled***

*2.4.2.2. Review of communication standards defined for the staff of judiciary and their establishment (2017) – **Unfulfilled***

*2.4.2.3. Organizing training sessions for speaker-judges (2017-2018) – **Fulfilled***

**2.4.2.1. and 2.4.2.3.** – Activities have similar content as those 1.4.3.1. and 1.4.3.2. in the section of the second strategic direction of the strategic document and the Action Plan for judiciary. Namely, the activity 1.4.3.1. foresees an obligation of devising and implementing communication strategy and the activity 1.4.3.2. refers to strengthening of speaker-judges.

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203 Report on the activities of the High Council of Justice in 2013-2017, joint report of the High Council of Justice and the Supreme Court of Georgia of 2017 [Available at: <http://www.supremecourt.ge/news/id/1573>, Accessed on: 25.09.2018]

204 Information is available at: <http://ccd.court.ge/public>, Accessed on: 25.09.2018.

205 Annual report of the Secretary of the High Council of Justice, [Available at: <http://hcoj.gov.ge/ge/saqartvelos-iustitsiis-umaghlesi-sabchos-mdivnis-koveltsliuri-mokhseneba/3139>, Accessed on: 23.11.2018]

**2.4.2.2.** – As for revision the existing communication standards and establishment of the revised ones for the staff of judiciary, even though the Action Plan foresees 2017 as the deadline, the annual progress report on the fulfillment of the strategic document and the Action Plan postpones the deadline to 2018. The report does not contain information about the circumstances, which caused the non- fulfillment of the activity in 2017.

### 2.4.3. Evaluation of public trust towards judiciary and the court system

The Action Plan foresees two activities for evaluating public trust towards judiciary and the court system:

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

**Unfulfilled**

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

**Unfulfilled**

**2.4.3.1.** – Neither the public information provided by the High Council of Justice, nor the annual progress report on the fulfillment of the Action Plan include information about the inquiry into shortcomings of the accountability system in the judiciary.

**2.4.3.2.** – The following activity foreseen by the program has direct links with the previous activity. Provided that based on available information no inquiry had been undertaken, without the findings of such an inquiry, formulation of a policy/strategy cannot be discussed.

### 4.1.2. Enforcement of electronic system of case distribution and management

For the purpose of enforcement and management of the electronic system of case distribution, the Action Plan envisages four activities, and the following three, which are linked to the transparency of the judicial system, deserve special attention:

*4.1.2.1. Retraining of relevant judicial officials (2017) –* **Fulfilled**

*4.1.2.2. Implementation of the pilot program of the electronic system of case distribution and management for Rustavi City Court, observation of the process and providing result analysis (2017) –* **Fulfilled**

*4.1.2.3. Finalization of the electronic system of case distribution and management and its introduction in all court instances (2018) –* **Fulfilled**

**4.1.2.1.** – Development of a new system of distribution of cases in common courts is one of the most important reforms of recent years, which should answer many challenges in terms of the impartiality and independence of courts. The system of distribution of cases among the judges should, first of all, ensure impartial review of cases, protection against external interference in a trial, as well as timely and efficient implementation of justice and fair distribution of labour among judges. The new system of electronic distribution is based on the principle of random distribution of cases between the judges. The principle was introduced to eliminate the existing gaps in the legislation as a result of the so-called “third wave” of the reform. It was first introduced as a pilot project, in Rustavi city court and only became operational throughout the country since December 31, 2017.

As for ensuring the readiness of judicial officials, by the time the system was enacted, according to the one-year progress report<sup>206</sup> and public information received from the High Council of Justice<sup>207</sup>, relevant trainings were conducted before the full implementation of the electronic program of distribution for (1) western Georgia (2) Shida Kartli and Samtskhe-Javakheti (3) Kakheti and Kvemo Kartli court managers and employees of the chancellery<sup>208</sup>.

**4.1.2.2.** All around the country, December 31, 2017 was defined by the law as the date of full enactment of the system of automatic distribution of cases. However, prior to the implementation of the system around the country, it was introduced in Rustavi City Court from July 1, 2017, as a pilot. In Rustavi City Court, from July 1, 2017, to December 31, 2017, 2,608 cases were distributed through electronic system, and 17 without the program<sup>209</sup>.

**4.1.2.3.** Since December 31, 2017, the new system of distribution of cases has been used throughout the country. However, cases are not distributed randomly in Gali-Gulripshi and Oчамchire-Tkvarcheli regional court. According to the information by the High Council of Justice<sup>210</sup>, there is only one judge of the relevant specialty in the mentioned court. In addition, cases are not distributed by the principle of random distribution in other 13 municipalities<sup>211</sup>. According to the Council, only one judge has the magistrate judiciary authority in

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206 Progress report of judicial system strategy for 2017-2021 and Action Plan for 2017-2018, p. 48

207 Letter of the High Council of Justice of Georgia, August 20, 2018, №1821/2456-03-6.

208 Trainings were supported by the EU project.

209 EMC, New system of case distribution in courts, [available at <https://emc.org.ge/ka/products/sakmis-ganatsilebis-akhali-sistema-sasamartloshi>, last viewed: 19.11.2018]

210 Letter of the High Council of Justice of Georgia, №1905/2562-03-6.

211 Kobuleti, Baghdati, Tkibuli, Tskaltubo, Dusheti, Tianeti, Kazbegi, Akhagori, Kareli, Lagodekhi, Kvareli, Ninotsminda and Keda.



the respective municipalities<sup>212</sup>. According to the one-year progress report and the statistical information received from the Supreme Council of Justice, from December 31, 2017, to October 10, 2018, a total of 209 274 cases were distributed through the electronic program. 77 389 cases were distributed without the system. As for the delays, in the same period, there were 6 disruptions, and 46 cases were distributed based on sequential rule<sup>213</sup>.

#### 4.3.2. Implementing organizational-structural reform of the High Council of Justice and LEPL Common Courts Department

Within the framework of the program, Action Plan for 2017-2018 envisages up to four activities, however, considering the challenges of transparency of the judiciary system, the following two require special attention:

- 4.3.2.3. *Structural strengthening of Public Relations Service (2017) – Partially Fulfilled*  
 4.3.2.4. *Creation of unified statistical body (possibly under the Management Department) (2018) – Unfulfilled*

**4.3.2.3.** – While discussing the activities implemented for structural strengthening of public relations service, one-year progress report of the Action Plan focuses on the preparation of communication strategy project, the working meeting of the members of the High Council of Justice and judges held on November 11-12, 2017, and the appointment of speaker judges to the Court of Appeals and civil courts, following the decision by the High Council of Justice. It is noteworthy that the development of communication strategy and strengthening of the speaker-judicial institution is provided by other activities of the Action Plan (1.4.3.1 and 1.4.3.2.) as well. Towards this activity, it is important to note the decision<sup>214</sup> of the High Council of Justice, according to which a separate independent unit was established for the relations with public and media. Prior to this decision, this function was under the authority of the Department of International Cooperation and Public Relations. According to the information<sup>215</sup> provided by the High Council of Justice, the unit has been strengthened with human resources, as well as the process of material-technical maintenance is underway. Taking into consideration all of the above, the activity should be considered partially fulfilled.

212 Letter of the High Council of Justice of Georgia, №382/308-03-6.

213 Letter of the High Council of Justice of Georgia, №2150/2981-03-6.

214 The letter of the High Council of Justice, №2253/3132-03-0.

215 *Ibid.*

**4.3.2.4.** – As for the second activity, despite the fact that the final term of the creation of a unified statistical service, according to the Action Plan, is 2018, no information is available on the implemented or planned steps by the High Council of Justice for the purposes of fulfilling this activity.

## 4.5.5. Development of court system software

The following activities, envisaged within the framework of the Judicial System Development Program, in relation to the transparency of the judiciary system, deserve special attention:

*4.5.5.8. Developing an automatic publishing program of court decisions and introduction of the decision search system (2017-2018) – **Unfulfilled***

**4.5.5.8.-** The obligation undertaken by the activity is directly related to the obligation defined in the first strategic direction 1.4.4.3, which aims to improve the practice of publishing court decisions. It is noteworthy that there is no additional information on the completion of the activity in the Action Plan progress report; the report refers to activity 4.5.3.1. which, in turn, implies a complex IT audit. Consequently, there is a reason to assume that the responsible body plans to develop the automatic publishing program and the implementation of the decision search system after a complex audit.

## 4.6.1. Improving relationships with executive and legislative authorities, international and local NGOs and the media

The Action Plan of the Judicial System for 2017-2018 envisages up to six activities within the framework of relationship improvement program with the executive and legislative government, international and local NGOs and the media, and one of the activities linked to the transparency of the judiciary system is especially important:

*4.6.1.1. Improve the regular format of cooperation, meetings and discussions with donors, NGOs and international organizations (2017-2018) – **Unfulfilled***

**4.6.1.1.** – The absence of appropriate formats for cooperation with non-governmental and international organizations is one of the key challenges in the judicial system. However, the Action Plan progress report does not provide information about the measures taken to fulfill this activity. The Action Plan report indicates that the commitments to fulfill the activity are planned to be implemented in 2018-2019. Currently, no additional information is available on specific directions or plans by the responsible agency.

## Assessment of the Related Action Plans

Measures to increase the transparency of judiciary in parallel with the Action Plan of the Judicial System for 2017-2018, are also included in the Action Plans of the Intergovernmental Coordination Council for Human Rights and Governmental and Criminal Justice Reform Council. The activities covered by these two action plans are largely identical to the measures defined by the Judicial Action Plan. The description of the issues and the deadline for the action determined by the action plan are also similar.

### Activities foreseen by the Criminal Justice Reform Action Plan and the Degree of their Implementation

One of the important challenges in terms of strengthening the transparency of the judiciary is the launch of the speaker-judicial institute, which, similar to the Judicial Action Plan, is defined as one of the measures in the Action Plan of Criminal Justice Reform Inter-Agency Coordination Council. However, the timeframes for the fulfillment of the obligation are different. Under the Action Plan of Criminal Justice Reform Inter-Agency Coordination Council, the selection and retraining of the speaker-judges starts in 2018 and the Judicial System Action Plan establishes 2017 as the timeframe for this activity. According to the information obtained from High Council of Justice<sup>216</sup>, for the purposes of implementing this measure, the High Council of Justice made a decision on May 21, 2018<sup>217</sup>, which approved speaker-judges for the Tbilisi civil court and Court of Appeals. Therefore, this measure can be considered as accomplished.

One of the activities of the Action Plan of Criminal Justice Reform Inter-Agency Coordination Council is to fully implement the electronic case distribution system in general courts and ensure the subsequent monitoring. With regard to this activity, in 2018, the High Council of Justice is planned to review the recommendations of the Management Department and to improve the electronic distribution principle based on the recommendations. The public information provided by the High Council of Justice to the project team<sup>218</sup>, does not contain data on the recommendations prepared by the Management Department for the enhancement of the system or any subsequent changes. Consequently, the activity should be viewed as not completed.

216 Letter of the High Council of Justice of Georgia, №2152/3025-03-6.

217 Decision of the High Council of Justice №1/192, [Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/192-2018.pdf>, Accessed on: 19.11.2018]

218 Letter of the High Council of Justice of Georgia, №2152/3025-03-6.

These issues, as defined by the Action Plan of Criminal Justice Reform Inter-Agency Coordination Council, duplicate the activities of the Judicial System Action Plan. In spite of such a similarity, the Coordination Council Action Plan creates better guarantees to ensure that e-program functions in all instances, without any delays.

### **Activities envisaged by the National Human Rights Action Plan 2018-2020 and the Degree of their Implementation**

The Governmental Action Plan for Human Rights provides for the enhancement of the efficiency of the judiciary through improving the organizational and administrative structures. Under this objective, the plan envisages the introduction of modern standards for obtaining and processing statistical data, taking into consideration the best international practices; the High Council of Justice and the Supreme Court have the obligation to perform these activities within the relevant period of 2018-2019. Similar obligation is also included a Judicial System Action Plan, but with different timeframe. According to the High Council of Justice<sup>219</sup>, in order to carry out the above-mentioned activities, recommendations on the topic “the existing practice of adoption and processing of court statistics and its approximation with European standards” has been prepared. Since the actions taken at this stage are limited to the development of recommendations, the activity should be considered partially fulfilled.

## **Conclusion**

The analysis of the Judicial System Strategy and Action Plan one-year report, the prepared research, as well as, the bylaws, and other documents, and the public information on the implementation of the activities obtained from the relevant agencies in order to ensure transparency of the judicial system, the activities envisaged by the Strategy and Action Plan have not been fully and timely fulfilled. Only five of the activities linked to the transparency have been fulfilled. We may say that some important and principled issues remained unattended. Therefore, for increasing the transparency of the judiciary and responding to the existing challenges, the responsible agencies should carry out activities in the following directions:

- Study the deficiencies in judicial accountability and develop policies/strategies based on results;
- Developing an automatic publishing program of court decisions and introduction of the decision search system;

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219 Letter of the High Council of Justice of Georgia №2152/3025-03-5.

- Develop and implement the methodology of uniform production of statistics on websites and other channels of communication;
- Formation of uniform statistics service;
- Introduction of analytical reporting methodology, periodical publication, including on websites and other channels of communication;
- Analyze and refine the practice of issuing public information;
- Organizing the training of persons responsible for issuing public information;
- Approve, implement and monitor communication strategies and action plan
- Review and implementation of the existing communication standards for court officials;
- Strengthening of the speaker-judicial institute in continuous mode;
- Improve the regular format of cooperation, meetings and discussions with donors, NGOs and international organizations;
- Planning and implementation of awareness raising activities among the public and the representatives of various professions in respect to covering current affairs.

**Fulfillment status of the activities for increasing  
transparency of the judicial system, as envisaged by the  
Action Plan**

