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## Introduction

Functioning of a rule of law- based democratic state requires relentless concentration of efforts. There is always a looming risk that a smoothly operating system will become corrupt, especially in a country like Georgia where democracy is still in a developing stage and the tradition of respecting public institutions is nearly non-existent. Courts that exercise constitutional control and justice play a very important role in protecting the firm will of Georgian citizens “to establish a democratic social order, economic freedom, a rule of law-based social State, to secure universally recognized human rights and freedoms...”. One of the important roles are imposed on courts carrying out constitutional and judicial control. It is the obligation of the judiciary and individual judges to uphold the Constitution and democracy.

The Constitutional provision stipulating that the judiciary is independent and is exercised by courts only has been challenged over the past decade. “Public distrust towards the judiciary has become a sort of tradition<sup>1</sup>.” Although the process of “improving” the judiciary began in the 90s and still continues, one thing that remains static is public distrust towards the judicial system.

Concerns of public and non-governmental sector had ripened before the Georgian Dream came into power, due to corrupt and politicized judiciary as well as clan governance within the system and the practice of influential judges exerting pressure on other judges.<sup>2</sup> At that time, the most important challenge was ensuring institutional independence of individual judges and increasing their role. Lack of transparency, unreasonably broad powers of the Supreme Court Chair, ambiguity of the process of transferring a judge to other court and lack of regulations for judicial selections and appointments posed a particular threat to the system.<sup>3</sup>

The program of the electoral bloc Bidzina Ivanishvili – Georgian Dream for the 2012 parliamentary elections underlined that “the judiciary is only formally independent and in reality, its activities are entirely controlled by the political authorities and often serve to fulfill their unfair wishes in the hands of unprincipled judges. Therefore, reasonable distrust towards the judicial authorities prevails.”<sup>4</sup> As a key campaign promise, the Georgian Dream vowed to “restore justice” and “improve” the judiciary, which somewhat, if not greatly, influenced the decision of voters. Back then members of the Georgian Dream talked about the extremely difficult conditions within the judiciary system, putting the blame on certain influential individuals, and declared that cleansing of the system was unavoidable.

Transparency International’s Global Corruption Barometer 2012 found that 51% of respondents considered the judiciary as the most corrupt institution<sup>5</sup>. Minister of Justice Tea Tsulukiani stated that the finding of the survey was important. She said she was hopeful that the rate would be lower in 2013, because the prosecution service and the executive authorities would no longer exercise any pressure on the judiciary.<sup>6</sup> **Did this prove to be sufficient for improving the judicial system in a meaningful manner, for increasing its authority and convincing public that their right to a fair trial is not illusory?!**

**Clearly it did not**, because in 2014 a research conducted by the Caucasus Research Resource Center (CRRC) found the judiciary to be among institutions that have not gained public trust.<sup>7</sup> Moreover, five years after the Georgian

1 Transparency International – Georgia, “Refreshing Georgia’s Courts: Trial by Jury: More Democracy or Improving the Image of the Judiciary?” 2010, p.1, available at: <https://goo.gl/qe7cbG>

2 Georgian Young Lawyers’ Association, Justice in Georgia, 2010, available at: <https://goo.gl/zCQ7X9>

3 Coalition for Independent and Transparent Judiciary, The Judicial System in Georgia, 2012, available at: <https://goo.gl/Li9Kbi>

4 <https://goo.gl/WJVk0N>

5 <https://goo.gl/s38n6N>

6 <https://goo.gl/X5pBZH>

7 <https://goo.gl/jm1bKV>



Dream came into power it is still believed that the judiciary reform is not on the right track in Georgia<sup>8</sup> on the account of the fact that individuals within the system who are in charge of the reform fail to address causes of public concern and to make any meaningful changes. It is safe to say that changes are made merely for the sake of change. Therefore, it comes as no surprise that even after implementation of “three waves” of the reform by the legislative authorities in the judicial system, key problems that were raised during the time of the United National Movement still persist.

### Key Problems in the Judicial System before and after 2012

Prior to 2012, politicization of clearly influential individuals in the judicial system was perceived as the main threat to the functioning of a democratic state. In 2010, i.e. before appearance of the Georgian Dream on the political playground, in its reports<sup>9</sup> Georgian Young Lawyers’ Association (GYLA) provided names of influential individuals in the judicial system who also served as members of the High Council of Justice (HCoJ) and were believed to belong to the so-called circle of elite judges who were shaping the policy in the system of general courts because of the high-level offices that they held. Several high-ranking judges rarely fulfilled obligations of a judge; instead, they were engaged in administrative work, shaped policy within the system of general courts and functioning of the system.<sup>10</sup>

These individuals, were considered to be a clear example of the judiciary’s bias. Among them were: Chair of the Administrative Chamber of the Supreme Court of Georgia Mikheil Chinchaladze, Chair of Tbilisi Appellate Court Valeri Tsertsvadze and Chair of Tbilisi City Court’s Board of Administrative Cases Mamia Pkhakadze. Although the new government pledged to free judicial bodies from these individuals and their influence, their names have not disappeared from the judicial system after 2012. Instead, they continue to hold high-level offices, as a result of direct or indirect expression of the Georgian Dream’s will. For instance, in 2017 Mikheil Chinchaladze was appointed as a judge in the appellate court for a permanent term, Valeri Tsertsvadze was re-appointed as the chair of Tbilisi Appellate Court on 5 October 2012<sup>11</sup>, and Mamia Pkhakadze was appointed as the chair of Rustavi City Court in 2017.

**“The problem of clans within the judicial system”** has been the focus of the public’s attention on numerous occasions. For instance, having evaluated the state of the judicial system in Georgia in 2012-2016, Transparency International – Georgia found the following: “Significant problems in terms of internal judicial independence have been detected. A group of judges has formed in the judicial system that has real and effective leverage for influencing major decisions about the system and is intolerant of criticism. This has given rise to doubts about clan governance in the judiciary, undermining independence of individual judges”.<sup>12</sup> This opinion is also shared by the Coalition for Independent and Transparent Judiciary in its 2017 report about the The Judicial System: Past Reforms and Future Perspectives.<sup>13</sup> In the report the Coalition has identified formation of groups of influential judges in the corps of judges as one of the major flaws of the judicial system. It is safe to say that **the problem of a group of judges influencing important decisions about the judicial system remains unsolved. Despite the campaign pledges, the ruling party continues to promote strengthening of clans within the system.**

Formation of a group of influential judges within the judicial system is closely linked with another problem – **ambiguous regulations for appointment of**

8 <https://goo.gl/GcU8Hz>

9 Georgian Young Lawyers’ Association, „Justice in Georgia”, 2010, p. 7

10 Georgian Young Lawyers’ Association, „Justice in Georgia”, 2010, p.7

11 On 25 May 2017, four days before Mikheil Chinchladze’s appointment. Civil society believes that it was the reason why he resigned “voluntarily”.

12 Transparency International – Georgia, „Assessment of the Georgian Judicial System (2012-2016)”, 2016, p. 4 available at: <https://goo.gl/7c29RN>

13 The Coalition for Independent and Transparent Judiciary, „The Judicial System: Past Reforms and Future Perspectives”, 2017, p.

14 available at: <https://goo.gl/EisgBJ>

**chairs.** The office of a chair is perceived as an elite office and is used as means for “rewarding” influential and obedient judges. Based on the experience, court chairs are the most influential judges and the powers delegated to them by law create an opportunity to exercise control over individual judges.<sup>14</sup>

NGO sector raised the issue again in 2016 and stated that selection of candidates for court chairmanship is not an open process and it is unclear how an individual can become a candidate for appointment. Further, the Council does not evaluate suitability of candidates based on any objective criteria. “This creates an impression that the mechanism of appointment of chairpersons ... is applied by the Council to appoint individuals that are acceptable/faithful to them to important positions and to maintain its influence on the judicial system and judges through these individuals.”<sup>15</sup>

The issue drew a particular attention in 2017, when the threats highlighted by critics of the judicial system became evident – the public witnessed that judges who were loyal to authorities were “rewarded” with a title of the court chair for their obedience. These judges included: Davit Mamiseishvili, appointed as Batumi City Court Chair on 11 June 2017 (he is known for the “scandalous case of Lobzhanidze” and his name has been linked with appointment of Levan Murusidze as the Secretary of the Council of Justice. He was especially enthusiastic about discrediting Mamuka Akhvlediani) and Dimitri Gvritishvili, appointed as Kutaisi Appellate Court Chair on 5 June 2017 (about whom former First Deputy Chair of Parliament used to think that he illegally sentenced people to prison time. MP Eka Beselia believed in 2012 that Gvritishvili was biased and partial and accused him of conducting a sham trial<sup>16</sup>).

Another problem related to exerting control and influence over judges is **ambiguity of the system for transferring a judge to other court.** There is a reasonable suspicion that the previous government used the mechanism to punish judges or to reward judges who were obedient. Such practice still persists. The issue of defining frames for transfer of a judge was raised as early as in 2010.<sup>17</sup> In 2012, organizations that monitored the HCoJ found motivation of decisions about transferring a judge to be the most challenging component of the analysis, because decisions were unfounded and very similar.<sup>18</sup>

The HCoJ monitoring report **prepared in 2013** states that the Council has not yet been obligated to provide justification for each decision to transfer a judge to other court,<sup>19</sup> which makes it impossible to check suitability of use of this measure. “Having examined minutes of the Council meetings, we have once again found that the Council’s decisions are unfounded and ambiguous.”<sup>20</sup>

The legal deficiency was also raised in reports **of 2014 and 2015.** Monitoring organizations continue to call for eliminating the ambiguity in the applicable legislation to prevent subjective decisions based on inappropriate motives.<sup>21</sup> **In 2017** the Coalition addressed the issue once more and explained that some of the problems that existed in previous years in that respect are yet to be resolved.<sup>22</sup> It is safe to conclude that the situation that existed prior to 2012 has only undergone superficial changes, because the Council is still not obligated to provide justification, which allows using the institute of transferring a judge to other court for payback or for informal “promotion” of a judge.

**Lack of transparency of the process of judicial appointments has been raised as another crucial problem for years,** because it makes it impossible to check if an individual is suitable for the office in question. The first report of **the HCoJ monitoring** about the situation in 2012 underlines that

14 The Coalition for Independent and Transparent Judiciary, 29 May 2017 statement, available at: <https://goo.gl/L8gLMj>

15 Georgian Young Lawyers' Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №5, 2017, p. 6 available at: <https://goo.gl/bPmEUw>

16 <http://netgazeti.ge/news/16150/>

17 Georgian Young Lawyers' Association, „Justice in Georgia”, 2010 №, p. 10

18 Georgian Young Lawyers' Association and Transparency International - Georgia, the High Council of Justice Monitoring Report, 2013, p.15 available at: <https://goo.gl/kuRGXo>

19 Georgian Young Lawyers' Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №2, 2014, p. 18 available at: <https://goo.gl/eZf5Ba>

20 Georgian Young Lawyers' Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №2, p. 19

21 Georgian Young Lawyers' Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №3, 2015, p. 32; the High Council of Justice Monitoring Report №4, 2016, p. 45

22 The Coalition for Independent and Transparent Judiciary, „The Judicial System: Past Reforms and Future Perspectives”, 2017, p. 83



the process of judicial appointments is flawed mostly on the account of lack of transparency and public access.<sup>23</sup> Organizations that conducted monitoring in 2013 confirmed that flaws that were evident the year before continued to exist<sup>24</sup>, stating that “the procedures of judicial appointments are ambiguous, flawed and fail to create a fair system for ... making entirely impartial decisions based on objective criteria”.<sup>25</sup> **In 2014**, GYLA and Transparency International continued urging the authorities to improve “legislation for judicial appointments in a way that will reduce the possibility of making subjective decisions based on inappropriate motives to a minimum.”<sup>26</sup> **In 2015**, the very same organizations underlined, however in vain, that the legal framework for the process of judicial appointments fails to ensure transparency and objectivity of the process, making the Council’s activities unregulated and arbitrary.<sup>27</sup> “Many years of monitoring of the High Council of Justice has found that ... the process of judicial appointments is deeply flawed, which is caused both by legislative gaps as well as malpractice... and the neglect of its share of obligations by the current authorities.”<sup>28</sup>

Nothing was changed **in 2016 or in 2017**,<sup>29</sup> meaning that the problem still persists and similar to the previous government, current authorities have failed to resolve it.

## Conclusion

The Coalition for Independent and Transparent Judiciary, which has been pointing out the shortcomings in the judicial system before all three branches of the government for many years and providing them with recommendations for creating a fair judiciary, reacted to the government’s futile promises and the static situation in the following way: on 1 June 2017, GYLA and Transparency International – Georgia canceled presentation of a new monitoring, explaining that **“Failure of the legislative authorities to act and inadequacy of changes that they have been made grants the Council absolute arbitrariness, which is leading the judicial system into a crisis... The authorities often state that a comprehensive reform of the judiciary requires time and the important thing is that the reform is on the right track, which is misleading and a way to escape from responsibility. The judiciary reform in Georgia is not on the right track... Individuals not trusted by public and viewed as incompetent are returning back to the judicial system and this time – permanently; moreover, they are appointed to high administrative positions. The reins of the judiciary continue to be concentrated into the hands of a single group, transforming the judiciary into a closed corporate system. Such developments can only take place if they are supported by the political authorities.”**<sup>30</sup>

“To create the judiciary that enjoys public trust and ensure independent, fair and competent administration of justice, personal independence of a judge as well as institutional independence of the judiciary must be guaranteed. It is also mandatory to achieve a balance between independence and accountability of the judiciary”<sup>31</sup> – these words belong to the Georgian Dream’s team; however, since 2012 they have not expressed any meaningful desire to fulfill the promise, they have not made any necessary steps for establishing an independent judiciary. Despite certain changes that took place after 2012, essential problems that used to exist during the previous government and were criticized by the Georgian Dream were not only not solved but also further strengthened and consolidated. This has led to the reality in which five years after the Georgian

23 Georgian Young Lawyers’ Association and Transparency International - Georgia, the High Council of Justice Monitoring Report, 2013, p. 12

24 Georgian Young Lawyers’ Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №2, 2014, p. 22

25 Georgian Young Lawyers’ Association and Transparency International – Georgia, the High Council of Justice Monitoring Report №2, 2014, p. 25

26 Georgian Young Lawyers’ Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №3, 2015, p.32 available at: <https://goo.gl/tg6BKr>

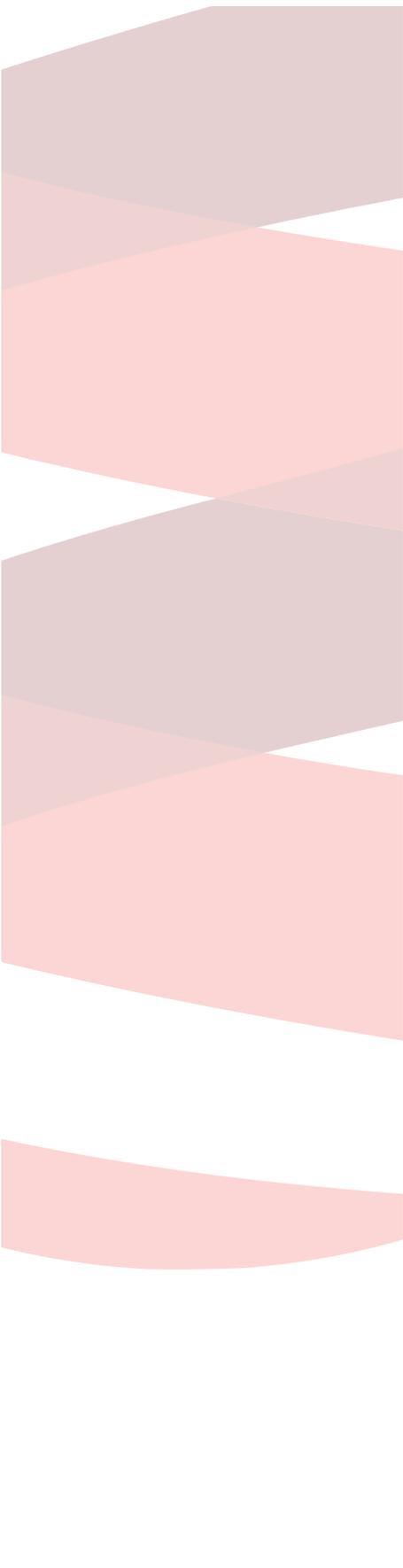
27 Georgian Young Lawyers’ Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №4, 2014, p. 9 available at: <https://goo.gl/KFKJML>

28 Georgian Young Lawyers’ Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №4, 2014, p. 61

29 Georgian Young Lawyers’ Association and Transparency International - Georgia, the High Council of Justice Monitoring Report №5, 2017, p. 5; The Coalition for Independent and Transparent Judiciary, „The Judicial System: Past Reforms and Future Perspectives”, 2017, p. 45

30 <https://goo.gl/MFcaX9>

31 <https://goo.gl/W6CECN>



Dream's coming into power NGOs and other stakeholders are forced to continue talking about the same problems and challenges that they talked about prior to 2012.

If we don't want to become an authoritarian state where courts are puppets of the regime and serve to protect interests of the ruling elite, the state must relinquish the leverage at its disposal, allow the judiciary to act as a real implementer of its own powers and let it implement its real function to protect democracy and the Constitution. To this end, the state must demonstrate political will and recognize the problems that unfortunately none of the "waves" of the reform managed to tackle.