

## Universal Periodic Review of Georgia

# Administration of Justice and Fair Trial (Judiciary)

### SUMMARY OF KEY ISSUES FROM PREVIOUS CYCLES

Recommendations from the 2nd cycle were related to strengthening the independence and transparency of the judiciary (Czech Republic, France, Portugal, Switzerland), eliminating existing gaps in the legislation governing the work of the High Council of Justice (Sweden), a comprehensive review of arrangements for the appointment, training, and transfer of judges (Ireland), ensuring depoliticization of the judiciary (USA) and adopting measures to prevent political interference in the work of judges (Czech Republic). All recommendations related to the administration of justice and a fair trial were supported by Georgia. Although certain measures have been taken to fulfill the above-mentioned recommendations, significant shortcomings and challenges remain in the judiciary, which necessitates systemic and fundamental reform.

### NATIONAL FRAMEWORK

The Organic Law of Georgia on Common Courts regulates a system and organization of common courts, a legal status of judges, a procedure for their appointment, discharge, and disciplinary liability as well as the work of the High Council of Justice and the High School of Justice. In recent years “four waves” of judicial reform were implemented and certain amendments were made to the Organic Law, however, independence and depoliticization of the Georgian judiciary have not been achieved. Fundamental deficiencies remaining in the legal framework constitute an important challenge. The systemic reform of the judiciary, which fully responds to the existing challenges, has not been implemented. The High Council of Justice, which could not establish its credibility in the Georgian system, enjoys a fairly low trust by a large segment of society. Achievement of judicial independence is significantly hindered by the influential judicial group-members who hold important administrative positions within the system. They deliver arbitrary decisions and use their high positions and legislative deficiencies to strengthen their influence over the system.

### CHALLENGES

1. Flaws in the legislative framework related to the Supreme Court, in particular: Certain broad powers of the Chief Justice and the Plenum of the Supreme Court, vagueness of functions of the deputy Chairpersons, and the presence of the Chairpersons of the Courts of Appeal in the Plenum.
2. Lack of institutional independence of the High School of Justice (HSOJ) and flawed regulation of the procedure for enrolment of justice trainees.
3. Failure to fulfill the Constitutional Court’s ruling of June 7, 2019, concerning the accessibility of court decisions and disregard for the constitutional standard.

### IMPACTS

1. Current legislative framework creates an unjustified hierarchy in the Supreme Court. Besides, the presence of the Chairpersons of the Courts of Appeal in the Supreme Court Plenum (a body taking decisions on the management and administration of the Supreme Court) does not comply with the role and the place of the Supreme Court in the judicial system. The Plenum’s competence to determine the amount of a monthly supplement to the official salary of a judge poses the risk of corruptive practices.
2. Current legal framework enables the High Council of Justice (HCOJ) to have a considerable influence upon the work of the HSOJ, as it appoints 4 out of 7 members and the Chairperson of the board of the HSOJ. Moreover, the absence of reasoned decisions of the HSOJ and the absence of appeal mechanism creates the risk of arbitrary decision-making on enrolment of justice trainees.
3. There are no clear legislative provisions regarding the accessibility of court decisions as the Parliament did not adopt relevant amendments to bring the law in compliance with the Constitution. Besides, in practice, the courts do not follow the constitutional standard and do not disclose the full text of the judgments. Consequently, serious challenges concerning the accessibility of court decisions remain.

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## CHALLENGES

4. Lack of independence of an Independent Inspector's Office (a body responsible for the preliminary examination of a disciplinary complaint), and insufficient frequency of sessions held by the HCOJ on disciplinary liability.
5. The deficient procedure of appointment of Court Chairpersons of the first and appellate instances, and the possibility for Court Chairpersons to become members of the HCOJ.
6. Deficient procedure of promotion of judges, and the absence of an efficient rule for their periodic evaluation.
7. The excessive caseload and procedural delays in common courts.
8. Flaws remaining in the system of electronic case distribution.

## IMPACTS

4. Procedure for electing an Independent Inspector is flawed as the decision is made by a simple majority of the HCOJ without the actual influence of non-judge members on the decision-making process. Fairness, impartiality and effectiveness of the system of judicial disciplinary liability are doubtful.
5. It has been years already that administrative positions in the courts are held by the narrow group of judges. The unlimited authority of the HCOJ in the process of appointing Chairs is problematic in the sense that it creates excessive power of the HCOJ as well as risks for influencing individual judges. Court Chairpersons can be the members of the HCOJ which further contributes to the concentration of excessive powers within the hands of the narrow group of judges.
6. Judges are promoted without objective and transparent procedures that pose threats to the independence of the judiciary. The current periodic evaluation system is deficient and cannot ensure merit-based promotions.
7. Procedural delays in common courts pose a risk of violating the right to a fair hearing within a reasonable period.
8. Current practice still creates the risk of arbitrary case allocation. Besides, there is a risk that cases between judges are not equally distributed by weight, which might create unequal conditions for them.

## RECOMMENDATIONS

- Restrict broad powers of the Chief Justice and the Supreme Court Plenum, and remove Chairpersons of Courts of Appeals from the Plenum;
- Reform the system of appointment of judges in order to ensure merit-based appointments;
- Ensure the real independence of the High School of Justice by limiting the power of the High Council of Justice in the formation of its board; regulate the procedure for enrolment of justice trainees at the legislative level, ensure reasoned decisions and the possibility of appeal;
- Regulate the accessibility of court decisions in accordance with the constitutional standard;
- Create solid guarantees of independence of an Independent Inspector;
- Amend the rule for the appointment of Court Chairpersons and limit their excessive powers;
- Initiate the reform of the judicial promotion and periodic evaluation system;
- Address the issue of excessive caseload and procedural delays in common courts;
- Improve the system of electronic case allocation to ensure equal distribution and avoid manipulation and arbitrary assignment of cases.

## SOURCES

IDFI, Report for the 3<sup>rd</sup> Cycle of Universal Periodic Review, available at: <https://bit.ly/3gkDiPS>

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