Monitoring of the implementation of the Government's Human Rights Action Plan

Goal 2.2

Goal 2.2. Take measures to further reform the justice sector

The progress of the implementation of the Goal: 66%

The goal covers further reform of the justice sector and consists of one objective and 7 activities (actions). The set objective implies, within the implementation of the third wave justice reform, adopting amendments to the Organic Law on Common Courts, the Law on Disciplinary Responsibility and Disciplinary Proceedings against Judges, as well as changes to the acts of the HCoJ. Even though the objective is a means to achieve the goal, the goal is worded in such broad terms – further reform of the justice sector – that it is impossible to be achieved only through this one objective and it might necessitate legislative amendments and changes to regulations as well as other efforts (e.g. institutional reform).

Reflection of the legislative changes as an activity in the HRAP is a significant fact indicating that the judiciary itself acknowledges the shortcomings existing in the legislation, which causes the important problems in practice, such as problems related to existing rules of selection of judges, existing system of judges' periodical evaluation, the absence of judges' promotion system, disciplinary proceedings against judges, etc. These problems have been criticised by the civil society and international organisations. However, despite the fact that the authorities are aware of the problems, unfortunately, no effective steps were made to redeem them within the time frames set by the action plan.

Objective 2.2.1. Ensure the implementation of third wave justice reform legal changes. More specifically, amendments stipulated by the organic law on common courts, the law on disciplinary liability and disciplinary proceedings of judges or common courts, changes to the acts by the High Council on Justice

The progress of the implementation of the Objective: 66.25%

The objective comprises seven actions. Within the third wave of justice reform, they should ensure making legislative amendments and incorporating these changes in the acts and practice of the HCoJ. The activities are implemented by approximately 66% within the time frames set by the HRAP. Within the time frames determined by the HRAP, the following important activities were not implemented: improvement of criteria for selection of judges, system of periodical assessment of judges' performance, elaboration of criteria for promotion of judges, improvement of disciplinary mechanisms under the Law on Disciplinary Proceedings against Judges, elaboration of proposals regarding the Code of Judicial Ethics, etc. This fact certainly influences the quality of the implementation of the objective and, overall, the objective should be considered as partially implemented.

It should also be noted in this regard that the activities determined under objective at stake are sufficient and relevant for its implementation as the objective itself sets out which legislative acts or regulations should be changed.

Activity 2.2.1.1. Implementation on an electronic random distribution of cases system in courts

Responsible agency:

- The High Council of Justice of Georgia
- Supreme Court of Georgia
- Common Courts
- Ministry of Justice of Georgia/The Criminal Justice Reform Inter-Agency Coordination Council.

Indicator:

1. Decision of the HCoJ (about introduction of the electronic case management system in common courts) and technical assessment do not allow the possibility of distribution of cases averting bypassing the software;
2. Equal work load of judges with various specialisations is ensured;
3. The number of notifications on the faulty system communicated to the HCoJ; and
4. Number of the courts where the software is operational (all courts since 31 December 2017).

Status: Mostly completed

The progress of the implementation of the Activity: 75%

Start date: 2016-01-01

Deadline: 2017-12-31

Assessment

Assessment:

Legislative Regulation

For ensuring independence of judges, their equal work load and diminishing the role of a court's president in case distribution, within the third wave justice reform, the Organic Law of Georgia on Common Courts was amended.[1] Based on the amendment, since 31 December 201, cases among judges have been distributed automatically in common courts through the electronic case management system, based on the principle of random distribution.

This reform is clearly a step forward towards timely and effective administration of justice and equal work load of judges. However, the legislative framework governing the functioning of the software is not comprehensive. This is further confirmed by the fact that, within a short period after the legislation was enforced, it was necessary to make many changes to it. Under the organic law, the authority to elaborate the electronic case management protocol is entirely within the competence of the HCoJ. It is noteworthy that the Venice Commission assessed the introduction of the electronic case management positively. However, it also mentioned that the law should be drafted in a very concise manner and provide for detailed rules on case distribution when the electronic system is out of order.[2]

The HCoJ, by its decision no. 1/56 of 1 May 017, approved the procedure for automatic distribution of cases in the common courts of Georgia through the electronic case management system[3] that governs assignment of cases to judges. The system is based on the principle of random distribution with the application of a number-generating algorithm. Court cases are distributed among judges according to their specialisation. According to a general rule, the software ensures equal distribution of cases among judges. The system identifies an average indicator of distributed cases and the number of cases assigned to each judge, then generates a number based on random selection and logs all these parameters.

One of the aims sought by the introduction of the system was to decrease to a maximum extent the role of a court's president in the distribution of cases as practiced before the computerised system was introduced. The exclusive power of case distribution used to rest with court presidents. This used to give

rise to misgivings that a specific case, towards which there was a vested interest, would be assigned to a loyal judge selected in advance to secure a desirable outcome.

Current electronic case distribution rule still leaves for the chairmen the following important leverages of intervening in and influencing the case distribution process.

1. **Setting Up and Making Changes Based on Their Personal Attitude in the Composition of Judges in Narrow Specialisations**

The Organic Law on Common Courts states that in district (city) courts with high intensity of case management, where more than two judges are employed, the narrow specialisation[4] of judges or the establishment of special court boards[5] could be arranged by the decision of the HCoJ, whereas in case of court of appeal, the legislation allows only the narrow specialisation by the decision of HCoJ. Until 30 April 2018, the narrow specialisation existed only in Tbilisi City Court but since 30 April the narrow specialisations were established by the decision of HCoJ[6] at the Tbilisi Court of Appeals.

In spite of the fact that the law does not grant the Chairman of the Court with the power to define the composition of the judges with narrow specialisation, the Chairman of the Tbilisi City Court, using the already established practice, defines the composition unilaterally by his/her order.[7] It means that the electronic program distributes the cases according to the specific specialisations and among the judges of narrow specialisation, although which judges will be included in the program and in which boards totally depends on the decision of the Chairman of the Court. According to 30 April decision of the HCoJ, the Chairman of the Appellate Court was granted with the same authorisation. The existence of such power creates risks that the chairman of a court could intervene in the case distribution process and have an influence on it.[8]

2. Setting Up the Composition of Boards

There are interesting cases when a case is considered in the court not only by one judge but by a board of judges (consisting of three judges). In district (city) courts during the consideration of case by a board of judges, the composition of board has been decided not by the program, but by the chairman with the mandatory participation of the first judge who started case consideration. It should be noted that these changes were made to the rule on case electronic distribution on 24 July 2018,[9] whereas, before the changes, the selection of relevant number of judges for the case consideration in district (city) courts had been ensured by the electronic system.

The rule of composing the boards/chambers in court of appeal and court of cassation is especially problematic. The electronic case distribution rule established only the rule of distribution of the cases for the chief/speaker judge and says nothing about the composition[10] of board/chamber. Some changes were made to this rule on 18 December 2017.[11] Initial edition did not specify the courts but was focused only on the cases of consideration by board, meanwhile the electronic system additionally ensured the selection of the necessary number of judges (except for the HCoJ member judge) out of the relevant board/chamber. In the situation when the chairman of a court has the possibility to easily change places of judges in narrow specialisations without any reasoning, the high risk of intervention in the setup of composition of board emerges.

3. Establishment the List of Shifts for Judges

The chairman of a court defines the list of shifts for judges by his/her order and both cases, during and out of working hours, without taking into consideration the specialisation and random distribution principle, the criminal and administrative cases for which the consideration deadlines do not exceed 72 hours, are distributed to certain judges according to the shift. The above-mentioned discretion leaves a substantial leverage for the chairman of a court to assign a case to a preferable judge and, therefore, influence the results.

4. Defining the Percentage Indicator (Workload) of Case Distribution Among Judges

According to the case distribution rule, the chairman of a court is granted with the authority to increase the workload by 20% for the following positions: a judge who is a member of the HCoJ, Deputy Chairman of the Court, chairman of the board/chamber and others. Moreover, to avoid the obstacles to the implementation of justice, due to the healthcare problems, family related or other objective reasons, the chairman has the right to decrease the workload of a judge by no more than 50%.

Despite the abovementioned, under decision no 1/243 of 24 July 2017[12] and decision no. 1/329 of 27 December 2017,[13] a vice president and a president of a section/chamber as well can view the number of cases already distributed to judges and, whenever a system is temporarily disrupted, circumvent it by assigning cases according to the sequential order of judges. The HCoJ explains this change by relieving presidents from administrative duties. However, the draft amendment that was submitted mentioned nothing as to under what circumstances this power was discharged by a vice president or presidents of sections and chambers. This could cause a real risk of duplication.

Another change was made to the above-mentioned procedure later, on 8 January 2018,[14] under which a respective competent official in the court registry was entrusted to distribute cases according to judges' sequential order whenever the computer system failed temporarily, whereas the court presidents, vice presidents and presidents of sections/chambers only retained the power to view the distributed cases. It was maintained by the HCoJ at its session, when the change was initiated, that it aims at ensuring that presidents are not involved in case distribution. However, in our view, this is more about averting formal responsibility on the part of the presidents, rather than preventing their involvement in the process. We believe that the existing practice is less likely to ensure that presidents distance themselves from the distribution of cases.

It should be taken into consideration that after launching the pilot run of the electronic case distribution system, we have repeatedly requested the information on technical assignment of the electronic program from the HCoJ, Supreme Court of Georgia as well as from the Ministry of Justice of Georgia but we have received neither the requested information nor the answer whether such document existed at all. If there is no pre-written program in the case distribution system which defines in detail the type of product it is aimed for, what kind of functions the program has, types of users and their authorities, then how could one define whether the algorithm of the program is in line with the case distribution rule or in which cases the issue of responsibility for the group of program designers could be raised if in the view of outsiders there is an error in the program?

The main innovation of the electronic program is the existence of the module of random distribution of cases (randomiser), which ensures the distribution of cases to randomly selected judges by the system. The program uses standard random function of Microsoft, which is not professional and less protected. Gambling businesses (for example casinos), which consider the above-mentioned function to be very important, use special paid randomiser services which are more professional and reliable.

The main challenge to the case distribution program is the lack of protection for its main module, in particular, the lack of so-called hard lock which could seal the system and protect it by means of several keys in a way which implies the consent of all the key owners for making any type of program changes (changes in the algorithm of the program, increasing/decreasing the functions of users, adding the new user, etc. The unprotected program leaves a space allowing the technical assistance group to make changes to the program any time, thus allowing control over the case distribution system and assignment of a case to a preferred judge.

Running the Software in Beta Mode

On 1 July 2017, the electronic case-management system became operational in beta mode in Rustavi City Court. According to the public information requested from Rustavi City Court, from 1 July 2017 until 31 December 2017, the following different categories of cases were distributed: 1,325 criminal cases

(905 out of them by random distribution principle); 1,987 civil cases (1,804 out of them by random distribution principle); 178 administrative cases (158 out of them by random distribution principle) and 327 administrative offences (183 out of them by random distribution principle).

Under Article 5.3 of the Procedure for Automatic Distribution of Cases through Electronic System in Common Courts, the difference in the number of cases distributed through the electronic system among judges of relevant specialisation should not be more than 3. However, as the results show, the cases that entered the court are not equally distributed according to specialisation and in all cases the difference is more than 3 (the difference between civil and criminal cases – 1,987 civil cases are distributed in the following way: 703, 699 and 585; whereas the distribution of criminal cases was the following: 474, 347, 398 and 106). The court explains that the imbalance is due to different dates of leave and differences in case flow. As for 106 cases, they are assigned to the chairman of a court, which according to the case electronic distribution rule has a smaller percentage indicator[15] compared to other judges.

Regarding the number of the cases distributed outside the electronic case-management system, there were 17 cases in the reporting period. These cases were distributed by a court president according to the approved sequential order (on one occasion, a case was assigned to a judge of Gardabani municipality).

Conclusion: At this stage, the activity is implemented by 7**5%**, as:

- The electronic case-management system that is based on random distribution of cases is introduced in every court;
- The electronic case distribution rule allows the chairman of a court to retain the substantial leverages of intervening in the case distribution process and the relevant result;
- The main module of the case distribution program is unprotected and leaves a space for making undesirable changes in it; and
- The pilot program failed to ensure equal workload among the judges.

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[1] Organic Law of Georgia on Common Court, Article 58[1],

available at: https://matsne.gov.ge/ka/document/view/90676, (accessed 21 January 2018).

[2] Venice Commission, CLD–AD 2014, para. 78,

available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e, (accessed 21 January 2018).

[3] Decision no. 1/56 of the HCoJ of 2017,

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/56-2017.pdf, (accessed 21 January 2018).

[4] In Administrative, civil and criminal cases the narrow specialisations will be arranged within the boards, which will be functioning only in Tbilisi City Court.

[5] Organic Law on General Courts, Article 30 (2).

[6] Decision no. 1/176 of the HCoJ, 2018; available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/176-2018.pdf, [accessed 24

May 2018).

[7] Order no. 02-s, §01 of the Chairman of Tbilisi City Court of 18 January 2018 “on defining the composition of judges in Tbilisi City Courts’ boards according to the narrow specialisation” (webpage is not available).

[8] The Coalition of Independent and Transparent Judiciary – public statement, available in Georgian at: http://gdi.ge/ge/news/koalicia-mixeil-chinchaladzisatvis-uflebamosilebis-gazrdas-saqmeta-shemtxveviti-ganawilebis-principis-safrtxed-afasebs.page, (accessed 24 May 2018).

[9] Decision no. 1/243 of the HCoJ, 2017, available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/243-2017.pdf, (accessed 24 May 2018).

[10] Decision no. 1/56 of the HCoJ, 2017, Article 4(9).

[11] Decision no. 1/326 of the HCoJ, 2017, available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/326..pdf , (accessed 24 May 2018).

[12] Decision no. 1/243 of the HCoJ of 2017,

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/243-2017.pdf, (accessed 21 January 2018).

[13] Decision no. 1/329 of the HCoJ of 2017,

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/329.pdf, (accessed 21 January 2018).

[14] Decision no. 1/1 of the HCoJ of 2018,

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/1-2018.pdf, (accessed 21 January 2018).

[15] According to Article 5(6) of the electronic case distribution rule, the case distribution indicator for the chairman, deputy chairman and chairman of board/chamber of those courts where the number of judges exceed 7, is 20%.

Activity 2.2.1.2. Effectively implement the criteria for the selection of judges, further improve the system of periodical performance evaluation of judges, elaborate and implement criteria for the promotion of judges. Review recommendations developed by the Public Defender in order to initiate disciplinary proceedings.

Responsible agency:

- The High Council of Justice of Georgia

Indicator:

1. Practical implementation of criteria for selection of judges

1.1. Percentage of point system used during selection of judges; and

1.2. Percentage of reasoned decisions about selection/appointment of judges.

2. Improvement of the system of periodic assessment of performance

2.1. A document on the system of periodic assessment of performances is developed.

3. Development and implementation of criteria for promotion of judges

3.1. Criteria for promotion of judges are developed;

3.2. Percentage of judges promoted with the use of the criteria developed; and

3.3. Percentage of reasoned decisions about promotion.

Status: Mostly incompleted

The progress of the implementation of the Activity: 50%

Start date: 2016-01-01

Deadline: 2017-12-31

Assessment

The action (activity) brings together practical implementation of criteria for selection of judges, improvement of the system of periodic assessment of performance, and development and implementation of criteria for promotion of judges. All three are so important in their essence that we do not find it advisable to have them united under one activity (action). Furthermore, it is unclear what is implied under practical implementation of criteria for selection of judges and improvement of the system of periodic assessment of performance. It is unclear whether the latter implies streamlining the procedure for assessing effectiveness of judges' performance as approved by a decision of the HCoJ of 27 December 2011.[1]

Practical Implementation of Criteria for Selecting Judges

All international documents that are related to a judicial status attach crucial importance to selection of judges and their future career. "Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity."[2]

Under the amendment made to the Organic Law of Georgia on Common Courts on 8 February 2017,[3] judges are selected based on two major criteria – good faith and competence – and the indicators to assess these criteria are determined. However, the selection criteria laid down by the said amendment as well as the procedure for assessing judicial candidates still cannot meet the requirements of impartiality and transparency and enables members of the HCoJ to adopt biased decisions.[4]

Candidates are assessed by competence criterion with the use of point system, whereas the good faith criterion is not assessed with points and accordingly gives the council broad discretion and possibility to make biased assessment since the statutory assessment specifications do not identify the basis on which this criterion is examined and how it should be reasoned. This raised a serious problem also in that regard that under Article 35.12 of the Organic Law of Georgia on Common Courts, "for filling a vacant judicial position votes should be cast only for the judicial candidate with regard to whom more than half of the entire composition of the High Council of Justice considers that he or she meets or fully meets the good faith criterion, whereas, when assessing based on the competence criterion, the total number of points acquired by the judicial candidate is no less than 70% of the maximum number of points." Accordingly, the candidate who cannot meet the good faith criterion cannot reach the voting stage and is dismissed from the competition without the right to appeal. Only those decisions of the HCoJ which concern the refusal to appoint to judicial office for a three-year term or life-time can be appealed before the Qualification Chamber of the Supreme Court. The council does not adopt any decision regarding those candidates who cannot reach the voting stage.

Refining the System of Periodic Assessment of Performance

The above-mentioned wording of the HRAP causes certain ambiguity. It is unclear what is implied under improvement of the system of periodic assessment of performance; whether the mechanism of assessing performance of only those judges who are appointed for the so-called probation period of a three-year term or all incumbent judges?

The law determines assessment of performance of judges appointed for the so-called probation period of a three-year term. However, it mentions nothing about the periodic assessment of effectiveness of performance of common court judges. Since 2011, the HCoJ has been assessing effectiveness of judges' performance based on its own decisions. The outcomes of these assessments are used in the process of promotion of judges. However, as already mentioned, there is no legislative basis for this activity, which is problematic. The existing procedure does not meet the internationally recognised standards of assessment of judges and contains the risks of infringement of individual independence of a judge, since it is directed not at assessing an individual judge but at the entire court system and is based on quantitative instead of qualitative criteria.[5]

However, even if the said activity implies only the system of assessment of judges appointed for the so-called probation period of a three-year term, the relevant provisions stipulated in the Organic Law do not contain sufficient safeguards for objective and transparent assessment of a judge. On the other hand, the HCoJ conducts this process without any sub-legislative act regulating the assessment procedure in detail.

The explanation given by the Consultative Council of European Judges (CCJE) is noteworthy in this regard. According to the CCJE, any assessment of judges appointed for a certain period should be aimed at improving the judiciary and the fundamental rule for any individual evaluation of judges must be that it maintains total respect for judicial independence. When an individual evaluation has consequences for a judge's promotion, salary and pension, or may even lead to his or her removal from office, there is a risk that the evaluated judge will not decide cases according to his or her objective interpretation of the facts and the law, but, in a way, that may be thought to please the evaluators.[6]

At the workgroup meeting held on 14-15 December 2017, the representatives of the HCoJ, the Supreme Court of Georgia, the Parliament of Georgia, Council of Europe, OSCE Office for Democratic Institutions and Human Rights (ODIHR) and international experts discussed the issue of adding the qualitative performance indicator together with the quantitative system of performance assessment of judges. With the support of the Rule of law Project (PROLoG), the recommendations have been elaborated on the performance assessment system for judges and the working group meeting was held for the court representatives with the participation of the international expert Mr Alesh Zalar.

Developing and Implementing Criteria for Promotion of Judges

The Organic Law of Georgia on Common Courts provides for the possibility of appointing (promoting) a judge of a district (city) court to a court of appeal. However, the law entrusts the HCoJ to develop the promotion criteria. The Venice Commission maintains that, considering the importance of the issue, the criteria for promotion of judges should be clearly determined by law.[7] The failure of the legislature to determine promotion criteria in clear and objective terms gives additional leverage to the HCoJ.

The HCoJ does not actually use the promotion mechanism in its decision when transferring individual judges to the higher instance court. This, in its essence, amounts to promotion. The HCoJ in such cases invokes Article 37 of the Organic Law of Georgia on Common Courts (the procedure for appointing a judge to another court without competition) which is further elaborated in Article 13^1, para. 11 of the Rules of the HCoJ[8] determining the following criteria: "A judge can be appointed to the office of a court of appeal if he/she has competence, experience, professional and moral reputation required for appointment to high judicial office of a court of appeal and has at least 5 years of experience of working for a district (city) court." Paragraph 14 determines the mechanism of verifying these criteria.

These criteria were introduced into the Rules of the HCoJ through the changes made on 19 October 2015. Earlier, judges used to be promoted without criteria and procedure. Even though such criteria exist today, the promotion procedure remains to be inadequate as there is no proper assessment system of judges' performance and decisions of the council are not reasoned.

With the support of East-West Management Institute (EWMI), PROLoG and USAID, in January 2017, Slovenian expert Alesh Zalar drafted a report on promotion of judges in Georgia. The report contains the overview and analysis of best international and European practices on promotion of judges and the assessment of the existing system and legislative framework for promotion of judges in Georgia. The report also contains recommendations on elaborating the promotion system based on merits and honesty of judges.

The annual report presented by the President of the Supreme Court of Georgia[9] emphasised the importance of improving the mechanism of judges' promotion and assessment, and bringing it in compliance with international standards. According to the report, on 14-15 November 2017, with the support of the Council of Europe and OSCE Office for Democratic Institutions and Human Rights, a working meeting was held, within which recommendations were discussed. According to these recommendations, apart from a quantitative system of assessment, there should also be a qualitative assessment of judges' performance. It was also observed that the HCoJ continues to work on this issue to this date.

Conclusion: At this stage, the activity is implemented by 50**%**, as:

- The amendment to the Organic Law of Georgia on Common Courts determined two main criteria for selection of judges and specifications to examine these criteria. However, the aforementioned selection criteria and procedure of selection of judicial candidates still fail to meet the requirements of impartiality and transparency;
- The specifications determined to check assessment of good faith cannot establish the specific criterion and it is impossible to identify how the specific criterion is reasoned;
- The recommendations have been provided to improve the periodic performance assessment system for judges and to add qualitative assessment to the quantitative one; and
- The criteria for the promotion of judges has not been developed and established at this stage.

[1] Decision no. 1/226 of the HCoJ of 2011,

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202011/226-2011.pdf, (accessed 21 January 2018).

[2] Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities (17 November 2010) paras. 44-45, available at:

https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2010)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true, (accessed 2018 January 21).

[3] Organic Law of Georgia on Amending the Organic Law of Georgia on Common Courts, 08.02.2017, 255-IIs, available at: https://matsne.gov.ge/ka/document/view/3536739#DOCUMENT:1; (accessed 21 January 2018).

[4] Research of the Coalition for an Independent and Transparent Judiciary, the Judiciary: Reforms and Perspectives, Tbilisi, 2017, available at: http://www.coalition.ge/files/pdf, (accessed 21 January 2018).

[5] Research of the Coalition for an Independent and Transparent Judiciary, the Judiciary: Reforms and Perspectives, Tbilisi, 2017, available at: http://www.coalition.ge/files/pdf, (accessed 21 January 2018).

[6] Consultative Council of European Judges (CCJE), Opinion no. 17 on the evaluation of judges' work, the quality of justice and respect for judicial independence, CCJE(2014)2 – 2014, para. 6.

[7] Venice Commission, CLD –AD 2014, para. 53,

available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-geo (accessed 21 January 2018).

[8] Rules of the High Council of Justice, 1/208 – 2007,

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202007/208-2007.pdf, (accessed 21 January 2018).

[9] Annual Report of President of the Supreme Court of Georgia and the High Council of Justice of Georgia, Nino Gvenetadze at XXII Conference of Judges of Georgia, 20.01.2018, available at: http://www.supremecourt.ge/files/upload-file/pdf/samushao-angarishi2018.pdf, (accessed 21 January 2018).

Activity 2.2.1.3. Improve disciplinary mechanism stipulated by the law on disciplinary liability and disciplinary proceedings of judges and organic law on common courts

Responsible agency:

- The High Council of Justice of Georgia
- In cooperation with the Supreme Court of Georgia and the Disciplinary Panel of Common

Courts

Indicator:

1. The relevant research is carried out and the document is accessible for all stakeholders;
2. For improving the mechanism of disciplinary responsibility, the minimum portion of recommendations given by the Public Defender, as well as by the Judiciary Coalition and international organisations, have been taken into account to ensure that proceedings are conducted objectively and impartially; and
3. The percentage of disciplinary proceedings instituted based on the applications filed by the Public Defender (51%).

Status: Mostly incompleted

The progress of the implementation of the Activity: 50%

Start date: 2016-01-01

Deadline: 2017-12-31

Assessment

Assessment

As it is shown by the strategy of the judiciary, the goals of the above-mentioned activities are: express formulation of types and grounds of judges' responsibility; determination of the grounds for civil, criminal, administrative and disciplinary responsibility in laws and/or regulations in a manner that avoids subjecting judicial independence and freedom to undue influence; revision of the wording of abuse of power and official negligence; streamlining those provisions of the Criminal Code that concern judges' responsibility when discharging official powers to determine clearly those instances where a judge's conduct goes beyond disciplinary boundaries; developing grounds for balanced and fair disciplinary responsibility that would not allow holding a judge accountable for administration of justice, content of his/her decision or legal error; and adequate follow-up on the incidents of grave breaches.

It was planned within the said activity to have relevant research conducted by the second working group of the strategic direction – accountable justice – to ensure improvement of disciplinary proceedings. Within this research, best international practices were supposed to be studied and analysed, based on which corresponding proposals would be developed.

As the annual report of the President of the Supreme Court shows,[1] the problem of streamlining disciplinary proceedings and its adjustment within the format of the Organic Law, in accordance with the Constitutional Court, remains one of the pressing challenges.

In the reporting period, representatives of the Parliament of Georgia, Ministry of Justice, HCoJ and common courts held 5 working meetings concerning this issue. Further refinement of the grounds of disciplinary responsibility and elaboration of corresponding legislative changes were discussed at these meetings. However, there is no document accessible at this stage.

Setting up the institution of an independent inspector by the legislative amendment of 8 February 2017[2] should be positively assessed. The independent Inspector should ensure, on the one hand, effectiveness of disciplinary proceedings, adequate respect for prestige and authority of the judiciary and, on the other hand, compatibility of disciplinary proceedings with the principles of independence of the judiciary and impermissibility to interfere in a judge's work. Based on the legislative amendment, on 20 November

2017, the HCoJ appointed the first inspector for a 5-year term.[3] Even though the change is unambiguously positive, there are certain shortcomings regarding the legal regulation of the institution, which generally implies inadequate legal safeguards of the Independent Inspector and challenges the effectiveness of her work. To strengthen the independence and impartiality of the Independent Inspector, it is necessary to increase the guarantee of its institutional independence at the legislative level.

Regarding the institution of disciplinary proceedings based on a recommendation of the Public Defender, according to the information submitted by the HCoJ,[4] there was no complaint filed by the Public defender with the council in 2016. Regarding the 2 complaints lodged in 2017, proceedings were discontinued in one case, and another set of proceedings was pending by the time the HCoJ communicated its response.

Conclusion: At this stage, the activity is implemented by **50%**, as:

- The institution of the Independent Inspector was set up; and
- Within the time frames envisaged by the HRAP, there were no effective steps made towards improving the disciplinary mechanism under the Law on Disciplinary Proceedings against Judges and the Organic Law of Georgia on Common Courts.

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[1] Annual Report of President of the Supreme Court of Georgia and the High Council of Justice of Georgia, Nino Gvenetadze at XXII Conference of Judges of Georgia, 20.01.2018, available at: http://www.supremecourt.ge/files/upload-file/pdf/samushao-angarishi2018.pdf, (accessed 21 January 2018).

[2] The Organic Law of Georgia on Amending the Organic Law of Georgia on Common Courts of Georgia, 255-IIs, 08.02.2017, available at: https://matsne.gov.ge/ka/document/view/3536739#DOCUMENT:1, (accessed 21 January 2018).

[3] Decision no. 1/312 of the HCoJ of 2017,

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/312.pdf, (accessed 21 January 2018).

[4] Response of the HCoJ to GDI, Letter no. 1181/2333-03-o, dated 13.10.2017.

Activity 2.2.1.4. Develop proposals in relation to the code of ethics for judges

Responsible agency:

- The High Council of Justice of Georgia
- In cooperation with the Supreme Court of Georgia and the Disciplinary Panel of Common Courts

Indicator:

1. The relevant research is conducted and the document is accessible for all stakeholders;
2. In accordance with developed proposals, the Code of Judicial Ethics has been streamlined and legal outcomes for breaching it are determined in express terms;
3. Those NGOs are involved in the working group of streamlining the Code of Judicial Ethics that have conducted considerable work in this regard (research, recommendations);

Status: Mostly incompleted

The progress of the implementation of the Activity: 50%

Start date: 2016-01-01

Deadline: 2017-12-31

Assessment

Assessment

As the strategy for the judiciary shows, the activities are aimed at refining the rules of judicial ethics so that the authorities in charge of administration of justice apply the clearly defined rules of professional ethics in a consistent and transparent manner, with due respect for the right to a fair and effective trial; development of guiding principles of professional ethics; and adjustment of the interrelation between the Law on Disciplinary Responsibility and Disciplinary Proceedings against Judges of Common Courts with the rules of professional ethics.

It was planned within the said activity to have relevant research conducted by the second working group of the strategic direction, namely, accountable justice. Within this research, best international practices were supposed to be studied and analysed, based on which corresponding proposals would be developed. According to the public information[1] received from the HCoJ, certain activities have been conducted to improve disciplinary legislation, including the regulations of judges' code of ethics. The representatives of court, legislative as well as executive bodies and an international expert were involved in the process. The working group elaborated the working document, which has not been finalised yet, therefore, it is not available.

Conclusion: At this stage, the activity has been completed by 50% for the following reasons:

- A working group has been set up to improve judges' code of ethics and regulations and certain activities have already been implemented; and
- The recommendations and suggestions elaborated by the working group has not been available till now.

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[1] Response from the HCoJ to the letter of GDI; Letter no. 771/639-03-o, 05.04.2018.

Activity 2.2.1.5. Study and extrapolate international best practices in the Chamber's activities in order to improve its effectiveness

Responsible agency:

- The High Council of Justice of Georgia
- Supreme Court of Georgia

Indicator:

1. A report on best practices of other countries is prepared and made accessible for all stakeholders;
2. After studying international experience, the terms of references of the Qualification Chamber are determined additionally in the Rules of the Supreme Court (substance of the changes);
3. The number of complaints examined by the Qualification Chamber;
4. The amount of reasoned decisions adopted by the Qualification Chamber; and
5. Percentage of the decisions adopted by the Qualification Chamber on repealing the decisions of the council and returning cases for fresh adjudication.

Status: Fully completed

The progress of the implementation of the Activity: 100%

Start date: 2016-01-01

Deadline: 2017-12-31

Assessment

Assessment

According to the public information received from the Supreme Court of Georgia[1] concerning the implementation of the said activity (action), within the reporting period, 3 working meetings were held, with the participation of international experts, to increase effectiveness of the performance of the Qualification Chamber of the Supreme Court, through studying international experience and its implementation in the chamber's work.[2] At the working meetings, international experience was shared and, among others, the recommendations adopted on the basis of jurisprudence of the Federal Constitutional Court of Germany were discussed.

The activity of the Qualification Chamber of the Supreme Court is governed by the Organic Law of Georgia on Common Courts. Within the action at stake, as a result of study of international experience, it was planned to determine further the chamber's terms of reference in the Rules of the Supreme Court.

Under Order no.3/pl-2018 of 18 January 2018 of the Supreme Court Plenum, the new edition of the Rules of the Supreme Court[3] came into force on 1 January 2018, which defined the functions of the Qualifications Chamber of the Supreme Court.

Regarding the cases examined by the Qualification Chamber, in 2016, not a single complaint was filed with the chamber, whereas there were 2 complaints in 2017. In one case, the chamber relinquished its jurisdiction in favour of a competent court; the other complaint was not admitted for the consideration of merits. Both decisions met the standards of reasoning of court judgments.

Conclusion: At this stage, the activity is implemented by 100**%**, as:

- Working meetings were held to share the best practices of other countries;
- The Qualification Chamber examined all filed complaints and the adopted decisions meet the standards of reasoning of court judgments; and
- The new edition of the Rules of the Supreme Court started functioning.

[1] Response of the Supreme Court of Georgia to GDI, Letter no. p-239-17, dated 02.10.2017.

[2] On 22 June 2016; 8 November 2016; and 23 September 2017.

[3] The Rules of the Supreme Court of Georgia, available at: http://www.supremecourt.ge/files/upload-file/pdf/reg444.pdf, (accessed 24 May 2018).

Activity 2.2.1.6. Provide relevant trainings for a group responsible for developing tests and case studies for qualification exams of judges and improve the standards of the qualification

Responsible agency:

- The High Council of Justice of Georgia
- Common Courts

Indicator:

1. Training curriculum as well as methodology is prepared in advance;
2. The duration of training sessions is adequate in terms of the time required to cover each topic;
3. Percentage of participants of the training sessions that are members of the group drafting legal tests and case studies (70%); and
4. Percentage of tests for assessing analytical thinking developed as a result of training sessions and comparison with previous tests.

Status: Mostly completed

The progress of the implementation of the Activity: 75%

Start date: 2016-01-01

Deadline: 2017-12-31

Assessment

Under the Organic Law on Common Courts, the HCoJ announces and conducts judicial qualification examination. The procedure for conducting judicial qualification examination is determined by the Decision of the HCoJ of 25 September 2007 on Approving the Procedure of Conducting Judicial Qualification Examination and Qualification Examination Programme.[1] The decision was streamlined by the amendment of 30 October 2017[2] in terms of creating the Qualification Examination Commission and determining its authority. The following was determined as the commissions' goal: determining methodology for developing topics of an examination test and the level of difficulty; determining management of the database of topics; the criteria of formulating an examination test and assessing written text; assessing professional level of participants of a qualification examination; and outcomes of qualification examination. The number of the members of the qualification examination commission increased from 15 to 20. The decision also determined the duty of the HCoJ, for staffing the qualification examination commission, to select candidates for membership and retrain them in accordance with the

training module developed by the LEPL National Accreditation and Examination Centre.

As the public information provided by the HCoJ[3] shows, there was a meeting held with the participation of the organisation Promoting Rule of Law in Georgia (PROLoG), the HCoJ and an expert, at which the methodology of a training session to be conducted for members of the Qualification Examination Commission was discussed.

In December 2017, the HCoJ selected 30 candidates for the membership of the expert commission of judicial qualification examination. With the support of the donor organisation – East-West Management Institute (EWMI), PROLoG/USAID – the candidates successfully completed the relevant study programme at the National Accreditation and Examination Centre. In February 2018, the HCoJ (confidentially) staffed the expert commission of judicial qualification examination with 20 experts.

It is noteworthy that within the time frames envisaged by the HRAP, the HCoJ did not conduct a single judicial qualification examination. On 19 March 2018 HCoJ adopted the new rule on conducting the judicial qualification examination test and program of the judicial qualification examination test[4]

Regarding the samples of judicial qualification examination test and case study, it is impossible to assess them due to the refusal of the HCoJ to provide them. The reason behind the refusal was the examination software being at development stage due to which it was not considered advisable to provide the samples.

Conclusion: At this stage, the activity is implemented by **75%**, as:

- The section about setting up the Commission of Qualification Examination and its authority is refined;
- Members of the expert commission of qualification examination were selected and trained;
- The Expert Commission of Qualification Examination was staffed;
- The qualification examination software is deficient, which hampers the process of qualification examination; and
- It is impossible to assess samples of an examination test and case study.

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[1] Decision no. 1/207 of the HCoJ of 2007;

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202007/207-2007.pdf, (accessed 21 January 2018).

[2] Decision no. 1/301 of the HCoJ of 2017,

available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/301.pdf, (accessed 21 January 2018).

[3] Response of the HCoJ to GDI, Letter no. 1178/2332-03-o, dated 13.10.2017.

[4] Decisions of the HCoJ 2018, available at: http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/152-2018.pdf [accessed 30 August 2018].

Activity 2.2.1.7. Implement a new standard for the admissibility of **cassation appeals**

Responsible agency:

- The High Council of Justice of Georgia
- Supreme Court of Georgia
- Common Courts

Indicator:

1. The number of cassation appeals and its comparison with the previous year's data; and
2. The number of cassation appeals admitted (comparison with the data before the amendment).

Status: Mostly incompleted

The progress of the implementation of the Activity: 50%

Start date: 2016-01-01

Deadline: 2017-12-31

Assessment

Within the third wave of justice reform, in February 2017, grounds for admissibility of cassation appeals in criminal as well as civil and administrative proceedings were extended through legislative amendments. According to the new criteria, the Supreme Court, inter alia, has the right to admit a cassation appeal filed against an appeal court's judgment, if the latter contradicts the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights in the context of similar legal issues.

Concerning the practical implementation of the new standard of admissibility of cassation appeals, the Supreme Court is carrying out the following activities:

a) It is planned to Georgianise the electronic search system of judgments and decisions of the European Court of Human Rights (HUDOC), which will facilitate prompt search of cases in Georgian;

b) The Human Rights Centre of the Supreme Court updates Georgian translation of the ECtHR judgments systematically, which makes it easier for judges to have access to cases; and

c) Within the HSoJ retraining programme for court employees of 2017, 20 training sessions were conducted on human rights for 121 judges and 223 court clerks.

In 2016, the Supreme Court of Georgia received:

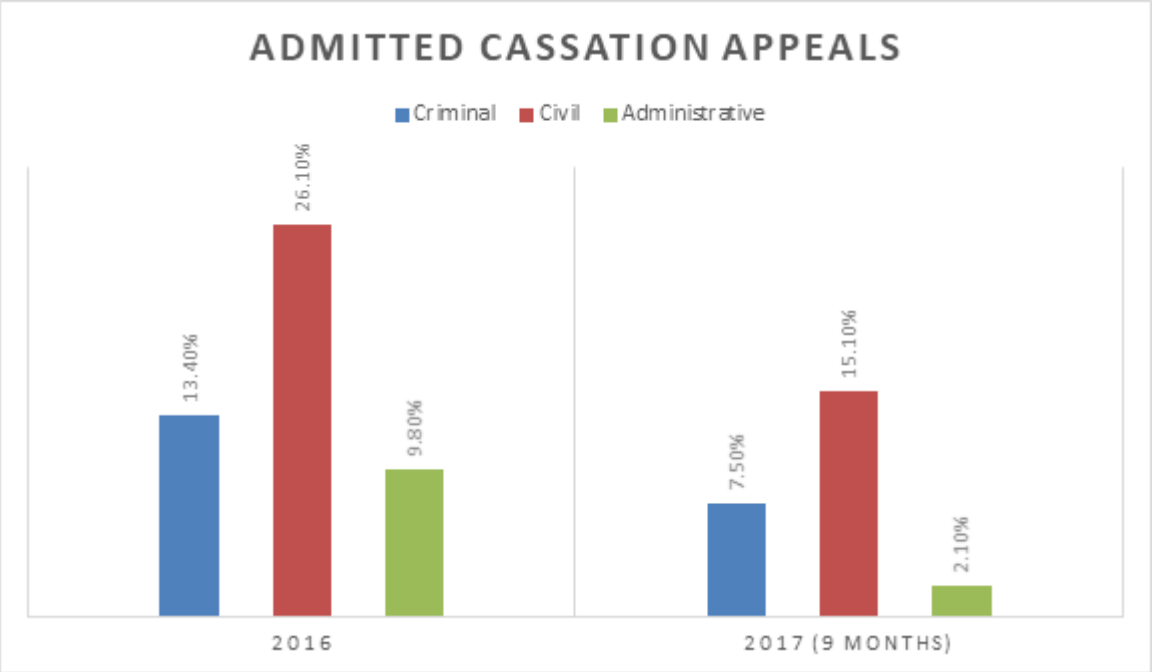
- Cassation appeals in 764 criminal cases; 103 were admitted (13.4%)
- Cassation appeals in 940 civil cases; 246 were admitted (26.1%)
- Cassation appeals in 951 administrative cases; 94 were admitted (9.8%)

From 13 March until 31 December 2017 (when the standard of cassation appeal entered into force), the Supreme Court of Georgia received:

- Cassation appeals in 587 criminal cases; 51 were admitted (8.6 %);
- Cassation appeals in 828 civil cases; 173 were admitted (20.8%); and

- Cassation appeals in 902 administrative cases; 52 were admitted (5.7 %).

From the analysis of the data, it can be assumed that the number of cassation appeals is reduced in all three specialisations. Regarding the percentage of admitted cassation appeals, drastic decrease in all specialisations is statistically noticeable. The data is presented in a chart below:



Conclusion: At this stage, the activity is implemented by **50%**, as:

- After extending the grounds for admissibility of cassation appeal, the number of admitted cassation appeals are reduced in all three specialisations almost by 50%; and
- It is also unclear what is implied under practical implementation of the new standard of cassation appeal and, despite certain activities having been implemented by the Supreme Court of Georgia, the exiting information does not enable us to identify tangible results and analyse them.