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Judicial reform in Georgia and the Association Agreement

Old wine in a new barrel –what has changed?

POLICY BRIEF

Executive summary

This policy brief analyses the obstacles to judicial reform in Georgia after the change in political leadership in 2012. Is it possible to settle the problem of judicial independence by pouring 'old wine' into new barrels – i.e. keeping the old judges in place while trying to address some institutional and legal aspects of judicial independence? What are the risks of carrying out judicial reforms without addressing the dilemma of the 'old wine'? What are the risks of replacing it? What was the impact – if any – of the Association Agreement on this process? This policy brief provides some answers and reflections on these issues and sets out recommendations for further action.

Introduction

Security of tenure and removability of judges are key elements of judicial independence.[1] This principle might however be called into question after the removal of political leaders implicated in widespread or systemic human rights violations. After such changes take place, the question often arises: what should happen to the judicial power that was an accomplice in those violations? Is institutional reform sufficient to address the past? Is it justifiable to trust and keep in office those who were part of a repressive system and served it for years for personal gain, political preferences, pressure or any other reason? Does judicial independence grant immunity to judges? How far can governments go in judging the past without the risk of compromising the future?

This was one of the main dilemmas that faced the Georgian state and society after the 2012 elections when the political leadership that had ruled the country since 2003 was voted out of power. But the dilemma was not solved at that time. The issue of sitting, discredited judges who had failed the test of integrity and justice re-emerged with particular acuteness at the end of 2015 when judges who authored manifestly

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unjust and outrageous decisions causing wide public outcry during the previous administration were reappointed after their expiration of the term of office. At that time, the public was told to view these judges as victims of the system.

Allowing those judges known for their odious decisions to remain in their posts resulted in almost universal condemnation.[2] The judicial corps responded to this with firm resistance to criticism and counter-accusations, instead of engaging in a healthy reflection on past wrongdoings and the flaws present in the system.[3] The head of the Tbilisi City Court and the only judge who spoke publicly about systemic problems was quickly and illegally dismissed from his position by the High Council of Justice and later resigned as a judge too.[4]

Thus, four years after the change of government, it became obvious that the sitting judges, instead of supporting renewal of the system and judicial independence, had used this time to prepare the grounds for staying in power - this time potentially for life.[5] The executive and legislative branches verbally expressed concern about the re-appointment of discredited judges but dismissed their own role in this situation and placed full responsibility on the High Council of Justice as an independent body. However, it was obvious that these events were also supported by the authorities - through active or passive means, including protracted judicial reforms.[6]

Why did all of this happen? Did the judicial reform go in the wrong direction? What was the main reason for this failure – leaving the problem of the 'old wine' unaddressed or other parts of the institutional and legal reform? Maybe both? What, if any, role did Georgia's commitments, particularly those undertaken by the EU-Georgia Association Agreement, play in those developments?

Analysis of Judicial Reform in Georgia

Relevance of the reform

After a change of political power in 2012, together with a number of successful modernisation reforms which turned Georgia – nearly a failed state – into a functioning one, the new Georgian government inherited a difficult legacy: rampant abuse of power, impunity, political repressions and serious and systemic human rights violations.[7] In the vast majority of these cases, the court not only failed to oppose the will of the political party and the prosecutor but actively engaged in legalising these violations.

After the change of political power, judicial reform became one of the key priorities for the Georgian government. It was also among Georgia's key commitments under the EU-Georgia Association Agreement.

Countries with a context similar to Georgia's often use transitional justice measures to recover the judicial system and re-establish public confidence in the judiciary. These measures imply not only legislative and institutional changes, but also substantial revision and replacing of the 'old wine'.[8] Georgia's reform agenda, however, did not envisage any measures in that direction.[9]

State of independence of the judiciary after 2012

After 2012 some positive changes towards liberating the judiciary from total control of the prosecutor's office and political leadership were observed.[10] However, this did not result from the government introducing important legal and institutional guarantees of judicial independence, and without such guarantees, the judiciary remains vulnerable, particularly if there is external (political) interest in a particular case. The number of cases in which judicial independence has been seriously questioned due to allegedly present external (ruling party, etc.) interests is proof of this.[11]

The need for fundamental reform of the judiciary is further demonstrated by the fact that the courts do not function as a lead actor in the fight for human rights and fundamental freedoms, particularly as far as the rights of vulnerable groups are concerned.[12]

Environment and focus of the reforms

After the change in government, tension between the judiciary and the ruling political power was obvious.[13] One could see that the new government did not trust the old judges, however, to address this mistrust and take precaution against the risks, the government relied upon the probationary period of judges. This probationary period for judges is a mechanism that, especially in fragile democracies like Georgia, may threaten judicial independence instead of helping it to recover from its problematic legacy.[14] The judiciary and NGOs opposed the introduction of a probationary period, but in vain. Judges further advocated for the automatic reappointment of sitting judges for life, however, this idea was not supported by the government, NGOs and other actors and soon faded away.

In 2013 the government depoliticised the composition of the High Council of Justice and introduced democratic rules for the election of the judge members of the Council.[15] However, the positive effect of the reform was challenged right at the first Judicial Conference when judges failed to make use of newly amended democratic procedure in the process of electing their representatives to the Council. At that time, one of the NGO leaders in Georgia compared the judicial corps to a bird which failed to fly once the door of its cage was thrown wide open.[16]

Representatives of the civil society elected by the Parliament and the President also became members of the Council, although they were in the minority. These members made significant efforts to improve the situation in the judiciary,[17] but the majority of the Council was able to neutralise the pluralism of opinion and other attempts at improving the situation from within. Instead, the Council turned into the lobbyist of corporate rather than judicial interests.[18]

In 2014 the government started a so-called third wave of judicial reforms, a package of legislative amendments that aimed at improving the system of selection and appointment of judges and introducing a system of random electronic distribution of cases.[19] The judicial corps resisted. The reform was put on hold. Civil

society raised concerns that the reform process was not inclusive and transparent and blamed the Ministry of Justice (the government) in making certain concessions – and even a deal with the judiciary.[20] The fact is that after this closed door meeting, the content of the draft law was amended and became less favourable for the interests of justice, but more in line with the demands of judges. In the end the Parliament adopted the draft by two hearings but failed to adopt it by the third and final hearing.[21]

At the end of 2015, the High Council of Justice began an intensive process of selection and appointment of judges, leaving the impression that the Council is trying to reappoint old judges before the new law on appointment enters into force. NGOs have raised concerns that the government is supporting this speedy and problematic process of urgent reappointments by delaying the reform and leaving the appointments to the full discretion of the Council.[22]

Critical Analysis of the Reforms Conducted in 2012-2016

Closed work format

Effective work on judicial reforms required well-coordinated actions among three actors: the Parliament, the Ministry of Justice and the High Council of Justice. Such coordination was absent in the period of 2012-2016.The Ministry of Justice, which was assigned as the lead agency on judicial reform, failed to create an inclusive format that would involve all interested parties, including NGOs. In addition, by fully transferring the function of generating reforms to the Ministry of Justice, the Parliament has been almost entirely excluded from the working process and this shifted the centre of responsibility away from the major political actors.

Last but not least, all three actors used the tactics of avoiding the responsibility for the problematic processes that unfolded in the judiciary, described in this brief, and blamed each other for wrong developments; It became difficult to identify one particular actor responsible for the failed judicial reform.[23]

Lack of a clear reform agenda

The government started the reform process without first elaborating a detailed vision of what kind of a judicial system it aimed to establish, what the steps were, the sequence of those steps or the timeline for the reform process. There was also no needs assessment of the system or risk analysis conducted. Furthermore, judicial reform was not built upon the lessons to be learned from the problematic past. Doing this would have enabled the reformers to see exactly how the system of government control over the judiciary should have worked and take appropriate steps for furthering judicial independence.

Reform without rethinking the 'old wine' dilemma

It has been observed that 'most internationally-supported judicial reform initiatives have tended to shy away from the core challenges of dealing with an incumbent judiciary that is illegitimate or corrupt, concentrating instead on technical assistance measures such as improving court infrastructure or judicial training and sometimes on new ways of appointing judges'.[24] Georgia did not prove to be any different from this pattern. On the one hand, such caution regarding dismissal of judges is understandable, considering the risks of encroaching upon judicial independence. On the other hand, leaving the dilemma of the 'old wine' unaddressed may also pose a serious risk to successful judicial reforms.

Arguments for and against renewal of the judicial corps

Politicians, especially those empowered with the mandate to reform the judiciary, are often tempted to subordinate the judiciary (or preserve an already subordinated one) and do so in the name of judicial freedom. Therefore, dismissing the entire corps of judges poses a serious risk of setting a dangerous political precedent. In addition, there is a risk of turning the process into a witch-hunt. Moreover, it is practically impossible to find substitutes to tens of judges within a short period of time.

Leaving the same corps without any substantial change has its own shortcomings. Allowing the perpetrators of human rights abuses to go unpunished – if their role is proved through relevant procedure - is in itself a violation. In addition, leaving the same discredited judges makes it difficult to rebuild public trust in the institution. The sitting discredited judges are also vulnerable to manipulations and blackmail by both the old and the new government due to their past misdeeds.[25] For these reasons, they 'are often not willing to keep up with the new reality and often purposefully undermine it.[26]

These considerations were not seriously weighed against each other and against the background of the Georgian context in the course of the reform,[27] the possibilities to mitigate potential risks were not discussed,[28] etc. which was not a right approach.

Missed momentum

Taking into consideration the reality that existed in Georgia before 2012 and the role that the judiciary had played in creating that reality, it was necessary in the course of the reform to set up certain mechanisms and identify principles that would have promoted judicial independence and accountability and assisted the system to recover. Among other things, this included healthy and genuine self-reflection, acknowledgment of the problems, and renewal of human resources in the system. This would have been a difficult and a risky process, though a very important one for a genuine reform, if the measures would have been taken to mitigate those risks.

What is even more important, however, is that the new government had a unique opportunity, a historic momentum to carry out the above mentioned process of renewal that would not even breach the principle of security of tenure. In particular, the vast majority of judges holding office by 2012 had been appointed in 2005-2007 for 10-year terms. Accordingly, in 2015-2017 there was an opportunity for renewal. This really was a historic opportunity, particularly considering the fact that starting from 2013 Georgia has a lifetime appointment of judges, meaning that the judges appointed in 2015-2017 will most probably form the judicial corps not only for one, but for many decades to come.

For the government that came to power in 2012, legitimate opportunity as well as reasonable time existed in order to prepare the grounds for significant renewal of the judicial corps in 2015-2017 through the new system of selection and appointment of judges - while fully observing the principles of the rule of law. To do this, the reform of the selection and appointment of judges should have been a priority. The selection system should have been based on transparent procedures and a merit-based system of evaluation of candidates. Candidates should have been evaluated based on professional and personal skills, integrity, respect for human rights and their potential to contribute to building an independent judiciary, etc.. In parallel to this, the government should have implemented the reform of the High School of Justice and introduced a policy which would encourage new bright people to apply to the School, thus broadening the pool of best candidates for the judicial positions.

The reformers have missed this opportunity, which was a huge mistake.

Judicial Reform and the Association Agreement

Article 4 of the EU-Georgia Association Agreement talks about the parties' responsibility to 'cooperate… on making further progress on judicial and legal reform, so that the independence of the judiciary is guaranteed, strengthening its administrative capacity…' [29] The Association Agenda expressly emphasises that the judicial reform should aim at 'strengthening the independence, efficiency, impartiality and professionalism of the judiciary as well as independence from political or other undue interference'.[30] The Agenda also obliges Georgia to 'develop a Judicial Reform Strategy and Action plan with clear benchmarks and priorities, including an appointment and training policy for judges and adequate resources to ensure proper judicial competencies'. The Action Plans further contain specific reforms and measures to be taken to achieve these goals.

While little has been done so far by the Georgian side in terms of complying with the commitments outlined in the Association Agreement, Agenda and the Action Plans as far as judicial reform is concerned, it remains relevant to analyse what was the position – if any – taken by the Association Agreement and Agenda with respect to the 'old wine' dilemma and other relevant issues. Unfortunately, none of the instruments say anything about this issue. The tenets set out in them are all legitimate and very important, but they are also general and universal, more or less relevant for judicial reforms in any emerging democracy. These documents

further say nothing about the reform of the High Council of Justice, which was one of the key instruments of government control over the judiciary in the past and proves to be an important obstacle to progress at this point in time.

One should not overlook however that the Agreement required the Georgian authorities to develop a Judicial Reform Strategy with clear benchmarks and priorities.[31] It further stressed that the strategy should elaborate a policy for appointing and retraining of judges as one of the priorities. In this context, however, it placed emphasis on the competence of judges, rather than on integrity, impartiality and accountability – which were and continue to be the most significant challenges facing Georgia's judicial system.

Thus, the text of the Association Agreement and the Agenda leave the impression that they insufficiently reflect the Georgian political and judicial reality and the challenges to building an independent, professional and efficient judiciary. The European Union's caution in defining the direction of local reforms in great detail is understandable, however, it remains arguable whether it was reasonable and effective to give the local authorities almost full discretion to define the reform strategy, especially given the specific and complex needs facing the Georgian judiciary and the entire country.

Conclusion

Georgia's example demonstrates that without addressing the dilemma of the sitting, discredited judges and finding a reasonable solution that respects judicial independence, other reform measures may fail as well. It would not be accurate to say that the Georgian government has implemented all necessary legislative and institutional reforms and the only shortcoming was the unaddressed 'old wine' dilemma, however what this brief has shown is that leaving the dilemma unaddressed poses a risk to timely and successful reforms in other directions.

The Association Agreement and Agenda contain no suggestion or guidance on addressing the issue of the sitting, discredited judges. Leaving the resolution of this and some other crucial issues to the discretion of the national authorities may have deprived the Association Agenda of an important opportunity to positively influence the situation on the ground. While the tenets set out in the Agenda are all legitimate and very important, they are also general and universal and more or less relevant for judicial reforms in any emerging democracy. They are not narrowly tailored to the specific, Georgian context.

From today's perspective, one may state that the government did not appear to be ready for comprehensive judicial reform. It is hard to describe the reform as an integral, planned and well thought-out process. The reform was sporadic, even chaotic. In spite of a number of positive legislative changes and some improvements in judicial practice, the sustainability and irreversibility of the achievements of the last few years was again put to question, significantly jeopardising the independence of the judiciary.

Recommendations

To the EU

- Take special efforts to analyse the local context of partner countries in greater detail and narrowly tailor the priorities of the Association Agenda 2017-2019 to the local context and needs;

- Take measures to effectively involve local stakeholders, particularly non-governmental organisations and experts working on relevant topics, in the process of elaborating the Association Agenda for the upcoming years.

To the Government of Georgia

- Ensure the creation of a functional and inclusive format for elaborating judicial reform priorities and relevant draft amendments;

- Pay particular attention to reform of the High Council of Justice, taking into consideration the principles of checks-and-balances, transparency and good governance;

- Pay particular attention to reform of the High School of Justice and institute an effective policy to increase the current pool of judicial candidates;

- Effectively reform the disciplinary system of judges to ensure the proper balance between judicial independence and accountability;

- Take all necessary measures to ensure that a probation period for judges serves the purpose of fostering judicial independence;

- Learn lessons from the judicial reforms of 2012-2016 and take them into close consideration in future reforms.

[1] Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

[2] The President of Georgia negatively assessed these developments and promised the public to continue his fight for judicial independence. Later on he added that the portrayal of judges as victims of the system would have been unimaginable four years ago (back in 2012). The Public Defender of Georgia severely criticised the practice of appointing judges and called the developments in the High Council of Justice 'alarming'. A bit later, the Prime Minister referred to the reform of the judiciary as 'the biggest headache'. International watchdogs also critically assessed the current situation in the judiciary. The coalition of NGOs engaged in the justice sphere initiated a public campaign demanding suspension of judicial appointments and the implementation of fundamental reforms in the procedure of selection and appointment of judges. Certain actors even called for the dissolution of the High Council of Justice, the body responsible for judicial appointment.

[3] Special statement of the Judicial Conference, last accessed on 1 July 2016, available at http://accept.ge/News/?newsid=52401. See further, Special statement of the Judicial Conference, last accessed on 1 July 2016, available at: http://1tv.ge/ge/news/view/113568.html; See further The Judicial Conference - rally, protest and noisy statements, last accessed on 1 July 2016, available at: http://www.imedi.ge/index.php?pg=nws&id=63217.

[4] The Ombudsman submitted a report to the High Council of Justice of Georgia, last accessed on 1 July 2016, available at: http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelma-iusticiis-umagles-sabchos-daskvna-warudgina.page; see further Coalition for Transparent and Independent Judiciary, The High Council of Justice dismissed Mamuka Akhvlediani in violation of law, last accessed on 1 July 2016, available at: http://www.coalition.org.ge/en/article264/The%20High%20Council%20of%20Justice%20dismissed%20Mamuka%20Akhvlediani%20in%20violation%20of%20the%20law

[5] Based on the constitutional provision that entered into force in 2013, judges are appointed for lifetime in Georgia, subject to a three-year probation period.

[6] Interview with Ana Natsvlishvili, News Agency InterPressNews, last accessed on 4 July 2016, available at: http://www.interpressnews.ge/ge/interviu/375120-ana-nacvlishvili-khelisuflebis-tsarmomadgenlebma-erthi-ram-unda-gaiazron-politikur-dzaltha-balansi-sheidzleba-martivad-sheicvalos.html

[7] These abuses included but were not limited to: widely prevalent practices of torture and ill-treatment, illegal surveillance and around 24 000 secretly recorded videos, including of the private life of opposition activists, media, etc., one of the highest rates of per capita incarceration, an acquittal rate equal to only 1%, potentially politically motivated prosecutions, government controlled media environment, violent dispersals of public demonstrations, tens of individuals and businesses whose property was illegally and forcefully seized. See e.g., Thomas Hammarberg, Georgia in Transition, etc See further Legal Analysis Of Cases of Criminal and Administrative Offences with Alleged Political Motive (2011) Georgian Young Lawyers' Association, last accessed on 02.07.2016 available at https://www.gyla.ge/files/news/gamocemebi2012-2013/2011%E1%83%AC%E1%83%94%E1%83%9A%E1%83%98/Legal%20Analysis%20of%20Cases%20of%20Criminal%20and%20Administrative%20Offences%20with%20Alleged%20Political%20Motive.pdf.

[8] There exist successful as well as unsuccessful examples of the above. One of the success stories of using transitional justice approaches in judicial reform in Kenya. Additional information can be seen at http://www.constitutionnet.org/files/kenyas_judicial_vetting_process.pdf; Maldives, on the contrary, represent an example of a transitional country where judges became so afraid to lose their jobs, because of low qualification rates, that they took control over the High Council of Justice; as a result no judges has been replaced (see further at http://constitutionaltransitions.org/working-paper-no5/); For comparison, it is further interesting to compare examples of Kosovo, Serbia and Ukraine. Further information can be seen at http://www.osce.org/kosovo/87138?download=true, http://www.coe.int/t/dghl/cooperation/ccje/textes/OP18_Ukraine.pdf, http://www.balkaninsight.com/en/article/serbian-prosecutors-to-return-to-offices/1431/19, http://www.balkaninsight.com/en/article/jury-out-on-serbia-s-botched-reform-of-judges/

[9] It must be noted that Georgia does not have any experience of revisiting and dealing with the past in a meaningful and comprehensive way. After 2012 certain ideas emerged with respect to using transitional justice mechanisms in Georgia, however no specific developments followed. See e.g., Anna Dolidze, Thomas De Waal, Truth Commission for Georgia, last accessed on 05.07.2016 available at http://carnegieendowment.org/2012/12/05/truth-commission-for-georgia; Similar to judiciary, the issue of old and discredited personnel has not been raised in any other public sphere, although civil society organization raise this issue, see e.g., a statement by a campaign against illegal surveillance, last accessed on 05.07.2016 available at http://www.esshengexeba.ge/?menuid=9&lang=1&id=1071

[10] See Georgian Young Lawyers' Association, Monitoring of Criminal Trials in Batumi, Kutaisi and Tbilisi City and Appellate Courts, Report N 7, last accessed on 2 July 2016, available at https://gyla.ge/files/news/Courts%20Monitoring.pdf; Georgian Young Lawyers' Association, Monitoring of Criminal Trials in Tbilisi and Kutaisi City and Appellate Courts, Reports N 5-6, last accessed on 2 July 2016, available at: https://www.gyla.ge/en/mod/publications/2;

[11] See e.g., NGO statement on the case of Giorgi Ugulava, last accessed on 2 July 2016, available at: https://www.gyla.ge/en/post/statement-on-the-case-of-giorgi-ugulava-1061174, see further GYLA's statement on the so-called "Cable Case", last accessed on 2 July 2016, available at https://www.gyla.ge/en/post/saia-ets-kabelebis-saqmeze-sasamartlom-ukanono-usamartlo-da-dausabutebeli-ganacheni-gamoitana, see further GYLA's statements on TV company "Rustavi 2" Case, and the TV programme "Real Space" about this case, last accessed on 5 July, 2016 available at https://www.youtube.com/watch?v=XZ0DszH6LKM

[12] See Georgian Young Lawyers' Association, Judgements of 2014 Femicide Cases, last accessed on 04.07.2016, available at https://gyla.ge/en/mod/publications/10; See further a recent statement by the Coalition for an Independent and Transparent Judiciary, which assessed the problems documented during the interview process of judicial candidates, including the very low level of human rights awareness among the candidates, the statement is available at: https://gyla.ge/ge/post/koalicia-damoukidebeli-da-gamtchvirvale-martlmsajulebistvis-mosamartleta-konkurss-afasebs

[13] As a result of these tensions, there was practically no dialogue and coordination between relevant stakeholders. For example, when elaborating the judicial reform part of the Association Agreement Action Plan, there was no such coordination among relevant agencies, See, Georgian Young Lawyers' Association and Transparency International Georgia, Monitoring of the High Council of Justice N3 (2015), p. 11, last accessed on 30.06.2016 available at https://gyla.ge/files/news/High%20Council%20of%20Justice%20Monitoring%20Report%203.pdf; see further an article "Tea Tsulukiani [the Minister of Justice] VS Kote Kublashvili [Chief Justice], last accessed on July 2, 2016 at http://liberali.ge/articles/view/2843/tea-tsulukiani-VS-kote-kublashvili;

[14] It still remains to be tested how it will work in practice in Georgia. See the Statement by the Coalition for Transparent and Independent Judiciary regarding the introduction of a probation period for judges in Georgia, last accessed on 3 July 2016, available at: http://www.coalition.org.ge/article_files/186/Coalition_Statement_September_2013.pdf. See Further Venice Commission Opinion on the Draft Law on Amendments to the Organic Law on General Courts of Georgia, (Adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014), para 32, last accessed on 3 July 2016 at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e.

[15] Georgian Young Lawyers' Association and Transparency International Georgia, Monitoring of the High Council of Justice, No 2, last accessed on 1 July 2016, available at: https://gyla.ge/files/news/gamocemebi2012-2013/HIGH%20COUNCIL%20OF%20JUSTICE%20MONITORING%20REPORT%20.pdf

[16] Kakha Kozhoridze, Judiciary continues sitting in a cage, last accessed on 1 July 2016, available at: http://liberali.ge/news/view/8416/kakha-kozhoridze-sasamartlo-galiashi-jdomas-agrdzelebs

[17] Georgian Young Lawyers' Association and Transparency International Georgia, Monitoring of the High Council of Justice, No 3, last accessed on 1 July 2016, available at: https://www.gyla.ge/files/news/High%20Council%20of%20Justice%20Monitoring%20Report%203.pdf

[18] See further Georgian Young Lawyers' Association and Transparency International Georgia, Monitoring of the High Council of Justice, No 4, last accessed on 1 July 2016, available at: https://www.gyla.ge/files/news/2010%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%92%E1%83%90%E1%83%9B%E1%83%9D%E1%83%AA%E1%83%94%E1%83%9B%E1%83%94%E1%83%91%E1%83%98/eng.pdf. One demonstration of this is the fact that from 2012 to 2015 number of judges who have been held accountable by the Council on disciplinary grounds remains exceptionally low, despite the fact that hundreds of disciplinary complaints are pending before it. For example, in 2013 out of 272 complaints under consideration none of them ended with disciplining a judge; the same was the case in 2014 – 0 disciplinary sanctions out of 383 cases considered. In 2015 there was only one case out of 375. Against this background, in 2016 the Council urgently and in violation of the law dismissed a whistle-blower judge serving as head of one of the courts on alleged disciplinary grounds.

[19] NGOs have criticized the third wave of the reform, as insufficiently addressing the problems of the selection/appointment process of judges. See e.g. a statement of the Coalition for Transparent and Independent Judiciary, last accessed on 02.07.2016 at http://www.coalition.org.ge/en/article274/%20Considerations%20of%20the%20Coalition%20on%20the%20%E2%80%9CThird%20Wave%E2%80%9D%20of%20the%20Judicial%20Reform

[20] Judicial Reform – Justice or Politics, last accessed on 04.07.2016 available at http://liberali.ge/articles/view/22677/sasamartlos-reforma--samartali-tu-politika; Altered Draft – Did a Deal Between the Judiciary and Ivanishvili Take Place? last accessed on 04.07.2016 available at http://liberali.ge/articles/view/4069/shetsvlili-kanonproekti----shedga-tu-ara-garigeba-sasamartlosa-da-ivanishvils-shoris

[21] Coalition for an Independent and Transparent Judiciary Reacts to the Delay of the Third Wave of Judicial Reform, Last accessed on 4 July 2016, available at: http://www.coalition.org.ge/en/article279/Coalition%20Reacts%20to%20the%20Delay%20of%20the%20Third%20Wave%20Judicial%20Reform.

[22] Until the law is adopted, the selection process is regulated merely by a Decision of the Council, which it often violates in practice. There is no remedy for such cases either for the candidate or the general public. See an assessment of the interview process by the Coalition for an Independent and Transparent Judiciary, last accessed on 4 July 2016, available at: https://gyla.ge/ge/post/koalicia-damoukidebeli-da-gamtchvirvale-martlmsajulebistvis-mosamartleta-konkurss-afasebs

[23] See e.g., reportage by TV Imedi on judicial appointments (05.07.2016) available at http://imedi.ge/index.php?pg=nws&id=72218&l=1

[24] The Center for Constitutional Transitions, Judges After Transitions: Achieving Legitimacy Within the Rule of Law, last accessed on 4 July 2016, available at: http://constitutionaltransitions.org/research-judges-after-transition/

[25] This dilemma was also a subject of the UN Special Rapporteur's speech, see the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence A/HRC/30/42, 7 September, 2015, last accessed on 3 July 2016 at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/202/04/PDF/G1520204.pdf?OpenElement

[26] The Center for Constitutional Transitions, Judges After Transitions: Achieving Legitimacy Within the Rule of Law, last accessed on 4 July 2016, available at: http://constitutionaltransitions.org/research-judges-after-transition/

[27] The most frequently invoked reason is the past precedent when the previous government of Georgia 'cleaned' the system off 'disobedient' judges, damaging judicial independence to a great extent. However this comparison does not seem to be very relevant. That process was undertaken without any control or transparency and defied relevant principles and procedure. Therefore it should not be a surprise that instead of recovering the system, this cleansing had a devastating effect on judicial independence.

[28] Based on certain international instruments and practice of other transitional states, it is possible to identify a number of principles which, if observed, will considerably decrease the risks associated with dismissal of old judges; these principles are e.g., transparency, individual and not collective responsibility, presumption of innocence, right to rebut charges, etc. In this context it is interesting to see e.g., Parliamentary Assembly of the Council of Europe has adopted the Resolution "On measures to dismantle the heritage of former communist totalitarian systems» № 1096 (1996)

[29] EU-Georgia Association Agreement (2014)

[30] Association Agenda between the European Union and Georgia, last accessed on 4 July 2016, available at: https://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf

[31] The Reform Strategy has not been elaborated as of now.