

THE JUDICIAL WORKPLACE AND THE INTERSECTION WITH JUDICIAL INDEPENDENCE

Fourth Study Commission Questionnaire—2023

For most, appointment to judicial office represents not only immense personal achievement but also public acknowledgment of professional eminence. In this Fourth Study Commission analysis, we will look at the judicial workplace and examine aspects of appointment to judicial office, promotion within the judiciary, equitable allocation and distribution of judicial workload and removal from judicial office. This review also endeavors to consider how the judicial workplace is or is not comparable to other workplaces.

Please answer the following in respect of your own country.

1. APPOINTMENT TO JUDICIAL OFFICE

- A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.
- B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.
- C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.
- D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.

Answer to questions 1-ABCD (appointment to judicial office)

According to the legislation of Georgia, the common court system is uniform and it consists of courts of three instances: district (city) courts (first instance); courts of appeal (Second instance); Supreme Court of Georgia (third instance). Justice is administered by the common courts through civil, administrative and criminal proceedings. Specialised courts may be established only within the common court system. However, currently there are no specialized courts in the judicial system.

The legislation defines two different mechanisms for the appointment of judges of the lower courts (first and second instance courts) and the Supreme Court:

Judges of first and second instance courts are appointed by the High Council of Justice (HCJ) - a body of the Common Courts system, which is established by the Constitution specifically for ensuring the independence and efficiency of the common courts, to appoint and dismiss judges and to perform other tasks. The HCJ is a politically neutral body.

The representatives of other branches of the government are fully excluded from the composition of the HCJ, which creates important guarantees for the institutional independence of the judiciary. In particular, the HCJ consist of 15 members. Eight judge members of the council, of whom at least one member represents a court of every instance, shall be elected by a self-governing body of judges of the common courts of Georgia – the conference of judges, 5 non-judge members shall be elected by the Parliament of Georgia and one non-member shall be appointed by the President of Georgia. The chairperson of the Supreme Court shall be an ex officio member of the HCJ.

Unlike judges of the lower courts, judges of the Supreme Court are elected by the Parliament of Georgia, upon nomination by the HCJ.

Appointment of Judges to the Supreme Court

According to Article 61 of the Constitution of Georgia, the Supreme Court shall consist of at least 28 judges. Upon nomination by the HCJ, the judges of the Supreme Court shall be elected for life, until they reach the age established by the organic law, by a majority of the total number of the Members of Parliament.

In accordance with Article 63(6) of the Constitution of Georgia “A judge of the common courts shall be a citizen of Georgia who has attained the age of 30, has a relevant higher legal education and at least 5 years of specialised professional experience.” Additional qualification requirements for judges are set forth in the Law of Georgia “on Common Courts” ([LCC](#)). According to Article 34(1) of the LCC, “a person may be appointed (elected) as a judge if he/she is a citizen of Georgia with legal capacity, from 30 years of age, who has a higher legal education with at least a master’s or equal academic degree/higher education diploma, at least five years of working experience in the specialty, has the command of the official language, has passed a qualification exam for judges, has completed a full training course at the High School of Justice (HSJ) and is included in the Justice Listener Qualifications List.” However, a person nominated for the position of a judge of the Supreme Court is exempted from passing the qualification examination for the position of a judge, as well as from studying at the High School of Justice.

A person with previous conviction, or a person who has been discharged from the position of a judge on the ground of disciplinary violation (except when the provision regarding the norm of this law on the basis of which the person was discharged from the position of a judge ceased to exist) or on the ground of corruption, may not be appointed/elected to the position of a Supreme Court judge.

The Organic Law on Common Courts defines the following detailed procedures for appointment of the Supreme Court judge:

A) The process in the High Council of Justice

A1) Registration of Candidates:

No later than 3 months prior to the occurrence of a vacant position of a judge of the Supreme Court or no later than 1 month from the date of early termination of the powers of a judge of the Supreme Court of Georgia, the HCJ, in accordance with the procedure established by this Law, shall proceed with the selection procedure of a candidate submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court. The HCJ announces the start of the selection procedure in the

official press of Georgia and through its official website and provides relevant information to the Public Broadcaster and at least 2 national broadcasters.

The HCJ establishes the form of an application submitted by a person to participate in the selection procedure and the list of attached documents. An application and documents submitted by a person (including an autobiography) must contain relevant information on the satisfaction of the qualification requirements of a judge, as well as the person's consent to the collection/re-verification of information about him (including the person's personal data) by the HCJ and for their submission to the Parliament of Georgia/publication.

Applications for a vacant position of a judge of the Supreme Court are accepted within 3 weeks from the date of commencement of the selection procedure.

The HCJ, within 5 working days after the deadline for accepting applications, considers the applications and attached documents of the persons participating in the selection procedure. The HCJ makes a decision to register a person as a candidate if he or she satisfies the qualification requirements of a judge and if his/her application and the attached documents are submitted in accordance with the rule.

Upon completion of the registration procedure, the list of applicants, their CVs and information on their registration as a candidate are published on the website of the HCJ.

A person participating in the selection procedure has the right to appeal against the decision of the HCJ within a period of 2 working days after its publication, in the Qualification Chamber of the Supreme Court. The Qualification Chamber of the Supreme Court considers the complaint and makes a decision within 2 working days.

A2) Candidate Interviews in the High Council of Justice:

The HCJ, no earlier than 10 and no later than 20 working days after the expiration of the period for considering a complaint, begins public hearings of persons registered as candidates.

Persons registered as candidates, within 5 working days after the expiration of the period for consideration of this complaint, must submit to the HCJ a certificate on the submission of a property declaration and a drug test certificate issued in accordance with the legislation of Georgia. The drug test certificate is published on the website of the HCJ within 2 working days after it is submitted by the candidate. If a candidate fails to submit a certificate of filing a property declaration or a certificate of drug testing within the prescribed period, his/her registration as a candidate is cancelled.

No later than 5 working days before the start of the hearings of candidates, each member of the HCJ shall be provided for examination with information collected about the candidates by the relevant structural unit of the HCJ.

Candidates are presented at public hearings on an individual basis. Members of the HCJ have the right to ask questions to each candidate. **Public hearings of candidates must be held in compliance with the principle of equal treatment of all candidates.** Public hearings of candidates are held in accordance with the procedure established by the HCJ.

A3) Evaluation of candidates by members of the High Council of Justice according to the criteria of integrity and competence:

After adjourning the public hearings of the candidates, until the next meeting of the

HCJ, members of the Council evaluate the candidates in accordance with the competence criterion. Members of the Council evaluate the candidates in accordance with the integrity criterion as well. At the same time, each member of the HCJ, when assessing candidates, substantiates in writing each score assigned by him/her in competency criterion and each characteristic of the criterion of integrity given by him/her. Name, surname and signature of the member of the HCJ are indicated in these assessments and justifications.

If a member of the HCJ does not assess all candidates and does not submit these assessments, together with justifications, to the Staff of the HCJ, it is considered that the said member of the Council does not participate in the procedure; at the same time, the results of the evaluation of all candidates carried out by him/her are annulled. If a member of the HCJ submits to the Staff of the HCJ an incomplete assessment of a candidate or an assessment of a candidate without substantiation/justification, the Staff of the Council shall notify this member of the Council of the specified gap. The member of the HCJ may eliminate this gap within a period of 2 working days. If the gap is not eliminated within the specified period, it is considered that this member of the HCJ does not participate in the procedure, and the results of the evaluation of all candidates carried out by him/her are annulled.

The number of points scored by candidates in competency criterion and the justification for these points, as well as the assessments in integrity criterion and justifications for these assessments, are public/open and are published on the website of the HCJ with the indication of the identities of the members of the HCJ.

A4) The final shortlisting of candidates by the High Council of Justice:

After the results of the evaluation of candidates and the justifications for this evaluation are published, the HCJ shall issue an order indicating the identities of candidates who have passed to the next stage, as well as the identities of candidates who have not passed to the next stage.

Prior to the adoption of this order, the Secretary of the HCJ shall submit to the members of the Council the results of the assessments of each candidate and the justifications of these assessments, as well as summarizing written information on the assessments of candidates.

Candidates with the best results in terms of the sum of points scored in the evaluation in competence criterion, the number corresponding to the number of announced vacancies, go to the next stage. At the same time, the candidate proceeds to the next stage only if the sum of points scored by him/her in the course of the assessment in competence criterion is at least 70% of the maximum number of points and if, in the opinion of at least 10 members of the HCJ, the candidate satisfies or fully satisfies the criterion of integrity. If the number of candidates who meet the specified requirements is less than the number of announced vacancies, only these candidates go to the next stage.

If, when identifying candidates who have passed to the next stage in the order, it turns out that the sum of points scored by two or more than two candidates when assessing according to the criterion of competence is equal, preference is given to the candidate who received the best assessment according to the criterion of integrity from a larger number of members of the HCJ; and if these scores are also equal, - to a candidate who has a longer work experience in the specialty.

The list of candidates who have passed to the next stage and the order of the HCJ are

public/open and are published on the website of the HCJ.

A5) The balloting of candidates and nomination of elected candidates to the Parliament of Georgia by the High Council of Justice:

After the publication of the list of candidates who have passed to the next stage and the order of the HCJ, in order to present candidates to the Parliament of Georgia for election to the position of a judge of the Supreme Court, voting shall be held at an open meeting of the Council, separately for each candidate from the specified list, subject to the following order: first of all, voting is carried out for the candidate with the best result among the indicated candidates in terms of the sum of points scored in the assessment of the competence criterion, and then, following the same principle, consecutive voting is held for the remaining candidates. At the same time, if any of the candidates, as a result of voting, could not receive the support of at least two thirds of the full composition of the HCJ, voting for the remaining candidates is no longer held.

In case of equality of the sum of points scored by two or more than two candidates when assessed according to the criterion of competence, when determining the order of voting, preference among them is given to the candidate who received the better assessment according to the criterion of integrity from a larger number of members of the HCJ, and if these scores are also equal, - Candidate with more experience in the field.

Voting is open. During voting, members of the HCJ are guided by the criteria of competence and integrity. The members of the HCJ participating in the voting, upon completion of voting, shall submit to the Secretary of the HCJ written justification of their voting decisions.

The nomination of a candidate to the Parliament of Georgia for election to the position of a judge of the Supreme Court is carried out if he/she receives the support of at least two thirds of the full composition of the HCJ. Candidates are presented to the Parliament of Georgia together, based on the submission of the HCJ.

This submission, as well as the voting results, the voting decisions of the members of the HCJ, and the justifications for these decisions is published on the website of the Council.

A member of the HCJ has the right after each vote to submit in writing to the HCJ his/her dissenting opinion, which is published on the website of the HCJ and sent by the HCJ to the Parliament of Georgia when a candidate is presented to the Parliament of Georgia for election to the position of a judge of the Supreme Court.

The HCJ also sends to the Parliament of Georgia complete information and documentation published on the website of the HCJ (starting from the stage of the assessment of criteria of integrity and competence to all following stages of the selection process).

A6) The collection of information about the candidates by the relevant structural unit of the High Council of Justice:

The relevant structural unit of the HCJ, in order to carry out an objective and complete assessment of candidates selected for election to the position of a judge of the Supreme Court, upon completion of their registration, begins collecting reliable information about candidates in accordance with the procedure established by this Law.

The collected information about candidates submitted to the Parliament of Georgia for

election to the position of a judge of the Supreme Court is used by the members of the HCJ when evaluating candidates. When voting, a member of the HCJ has the right to take into account the information collected about a candidate submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court.

Information about candidates submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court, collected in violation of the procedure, is not taken into account when making a relevant decision.

An authorized structural unit of the HCJ, when collecting information about candidates submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court, thoroughly examines their professional reputation and activities, checks the accuracy of the information provided by the candidates, as well as information on criminal / disciplinary prosecution and/or about administrative proceedings in the past.

When collecting information about candidates submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court, the relevant structural unit of the HCJ is authorized to contact the recommenders of candidates, their former employers and colleagues, the administration and academic staff of relevant educational institutions, as well as departments where Candidates' convictions, their participation in administrative and disciplinary disputes, and their violations may be stored. An authorized structural unit of the HCJ, in order to obtain information, is obliged to provide the relevant person with the written consent of the candidate for the collection/re-verification of his/her personal data.

The unit uses a standard recommendation form and a special questionnaire to collect information about candidates submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court. As an exception, an authorized structural unit of the HCJ may apply to information providers with additional questions and/or communicate verbally with its providers in order to receive information, which must be in writing, and information providers must confirm in writing the accuracy of the information they provide.

Any actions and/or communication carried out in order to collect information about candidates submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court must be reflected in the final protocol.

Upon presentation to the members of the HCJ of the results of the collection of information on candidates submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court, the Council is obliged to inform the candidates about the completion of the collection of information and ensure that the information available to the Council about him/her is available to each candidate. After information on the results of the collection of information becomes available to the candidate, the candidate has the right, within 2 working days, to apply in writing to the HCJ, provide additional information and/or refute the data collected about him/her in the proper manner. The candidate also has the right to get acquainted with the specified information at any time after the end of the voting procedure. The source of this information is confidential. The candidate gets acquainted with the specified information in the place designated for this by the HCJ.

The information collected about the candidates submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court shall be stored in a sealed form in a protected place designated by the HCJ for at least 1 year.

The HCJ shall submit to the Parliament of Georgia a submission on the nomination of a candidate for election to the position of a judge of the Supreme Court. Together with the submission, the application and the documents attached to it, as well as information obtained by the HCJ as a result of collecting information about the specified candidate, shall be sent to the Parliament of Georgia. Information obtained as a result of the collection of this information related to human health is confidential and its disclosure in any form is prohibited. The mentioned submission shall contain information related to the candidate selection procedure and general information about the candidate.

A7) Appeal against the order of the HCJ, adopted in the process of selection of candidates:

A candidate who participates in the selection process of candidates submitted to the Parliament of Georgia for election to the position of a judge of the Supreme Court has the right to appeal to the Qualification Chamber of the Supreme Court against the order of the HCJ or the submission of the HCJ, if he/she participated in the relevant stage of selection of candidates and considers that:

- In the process of selecting the candidates, a member of the HCJ was biased;
- The approach of a member of the HCJ in the selection process of the candidates was discriminatory;
- A member of the HCJ exceeded the powers granted to him by the legislation of Georgia, as a result of which the rights of a candidate were violated;
- The information on the basis of which this order/submission was made is inherently erroneous, in support of which the candidate provided relevant evidence;
- The selection process of candidates was conducted in violation of the procedure established by the legislation of Georgia, which could significantly affect the final result.

A complaint is submitted to the HCJ within a week after the publication on the website of the Council of the order of the HCJ or the submission of the HCJ. The HCJ immediately sends the complaint to the Qualification Chamber of the Supreme Court of Georgia.

In case of filing the said complaint in the HCJ, the selection procedure is suspended at the appropriate stage until the decision of the Qualification Chamber of the Supreme Court is made.

The Qualification Chamber of the Supreme Court verifies whether the complaint is filed by a candidate eligible to file a complaint and whether the complaint satisfies the formal requirements. If the complaint is filed by a candidate who has the right to file a complaint and satisfies the requirements, the Qualification Chamber of the Supreme Court accepts it for consideration. If the complaint is filed by a candidate who has the right to file a complaint and does not satisfy the requirements, the Qualification Chamber of the Supreme Court instructs the author of the complaint to eliminate the shortcomings and sets a reasonable time for this, but not more than 2 days. If the shortcomings are not eliminated within the specified period, if the complaint is made by a candidate ineligible to file a complaint, or if the deadlines for filing a complaint established by law are violated, the complaint shall not be considered. The Qualification Chamber of the Supreme Court decides on the admissibility of the

complaint without oral consideration.

After the complaint is accepted for proceedings, the complaint and copies of the materials attached to it are sent to the responding party. The Qualification Chamber of the Supreme Court has the right to combine two or more than two complaints into one proceeding for joint consideration.

The Qualification Chamber of the Supreme Court considers the complaint within 2 weeks after the submission of this complaint to it by the HCJ. The Qualification Chamber of the Supreme Court determines the time of oral consideration of the case by its ruling on accepting the complaint for consideration and informs the parties about it within 1 day after the issuance of this ruling. The Qualification Chamber of the Supreme Court ensures that the parties/participants are invited to participate in the session of the Qualification Chamber.

The HCJ appoints its representative to participate in the consideration of the complaint by the Qualification Chamber of the Supreme Court.

As a result of consideration of the case, the Qualification Chamber of the Supreme Court makes one of the following decisions:

- to leave the order/submission of the HCJ unchanged;
- to cancel the order/submission of the HCJ and return the case for reconsideration.

Establishment by the Qualification Chamber of the Supreme Court of the grounds for appealing the order/submission may only then serve as a basis for annulling the order/submission of the HCJ, if, in the opinion of the Qualification Chamber, the relevant violation affected the final result and led to the adoption by the HCJ of an essentially wrong order/submission.

If the Qualification Chamber of the Supreme Court makes a decision to annul the order on the final shortlisting of the candidates and return the case for reconsideration, the HCJ shall issue a second order. In case the Qualification Chamber determines that any member of the HCJ was biased, his/her approach in the selection process of the candidates was discriminatory or he/she exceeded the powers granted by the legislation of Georgia, as a result of which the rights of a candidate were violated, it is considered that the results of the evaluation of all candidates carried out by all members of the HCJ in connection with the relevant vacancy are canceled and the members of the council shall re-evaluate the mentioned candidates. The member of the HCJ, who has been found to have committed any of the above-mentioned actions, shall not participate in the re-evaluation and shortlisting of candidates.

If the Qualification Chamber of the Supreme Court makes a decision to annul the submission of the HCJ and return the case for reconsideration, the HCJ shall adopt a second submission. The member of the HCJ, who has been found to have committed any of the above-mentioned actions, shall be excluded from participating in this procedure as well.

The second order/second submission of the HCJ can be appealed within 3 working days following its publication on the webpage of the HCJ. The Qualification Chamber shall consider this complaint after the submission of this complaint by the HCJ.

The right to appeal the order/submission of the HCJ, taking into account the deadlines for filing a complaint, applies at each relevant stage of the selection of the candidate/candidates for the Supreme Court until the Qualification Chamber of the

Supreme Court makes a decision to leave the order/submission of the HCJ unchanged.

A8) Other provisions:

If the Parliament of Georgia fails to select a candidate/candidates for the position of a judge of the Supreme Court, within 2 weeks from among the candidates indicated in the list of persons registered as candidates, the number of candidates shall be selected, which must be equal to the number of vacancies, and he/she/they will be submitted to the Parliament of Georgia for election to the position of judge of the Supreme Court. The procedure is of a one-time nature and is carried out by the same rules as mentioned above.

If the HCJ fails to submit a candidate to the Parliament of Georgia, the corresponding vacancy cannot be filled (as a result of the exhaustion of all proper procedures established by law), or the number of members of the HCJ, which is sufficient for the positive resolution of the relevant issue, cannot participate in the voting due to the restrictions discussed above, the selection procedure of the relevant candidate shall be restarted within 1 month.

If a candidate for a judge of the Supreme Court is a member of the HCJ, he/she shall be dismissed from the whole selection process which implies that he/she does not have the right to evaluate candidates and vote at any stage of the procedure. In this case, the member is also deprived of the right to address candidates with questions during their hearing by the HCJ.

The submission to the Parliament of Georgia of a candidate for election to the position of a judge of the Supreme Court, who did not receive the required number of votes of the members of the Parliament of Georgia as a result of voting, is allowed only twice within the term of office of the Parliament of the same convocation.

B) The process in the Parliament of Georgia:

The Parliament of Georgia elects a judge of the Supreme Court of Georgia with the majority of the total number of its members.

The committee considering the issue of the election of the Supreme Court judge shall be the Legal Issues Committee of the Parliament.

The Legal Issues Committee shall determine the compliance of the nominated candidates with the requirements of the Constitution of Georgia and/or other laws. For that purpose, the candidate shall provide the committee with complete information as required. The committee shall be authorised, in its turn, to obtain/verify all necessary information on a respective candidate, including his/her biographical data, work experience, and professional expertise.

In order to contribute to the determination of the compliance of nominated candidates with the requirements of the Constitution of Georgia and/or other laws, the Legal Issues Committee of the Parliament shall form a working group within 3 days after it receives a submission from the Bureau of the Parliament on the nomination of a candidate for a judge of the Supreme Court of Georgia.

The Legal Issues Committee of the Parliament shall, within 1 week after it receives a submission from the Bureau of the Parliament on the nomination of a candidate for a judge of the Supreme Court of Georgia, make available to all members of the

Committee the submission and the attached documents. Upon request, the submission and the attached documents shall be provided to other MPs as well.

In order to establish the compliance of the candidates for a judge of the Supreme Court of Georgia with the legislation of Georgia, the Legal Issues Committee of the Parliament shall hear each candidate at a public sitting not earlier than 1 week after forwarding to all members of the Committee the above-mentioned documents. Candidates shall be heard and question-and-answer sessions shall be held individually for each candidate. The procedure for hearing candidates at a public sitting of the Legal Issues Committee shall be determined by the Committee chairperson in agreement with the Committee.

Based on the practice after the 2019 legislative changes, the hearing of the candidates on the Legal Issues Committee is done by a long procedure respecting the highest standard of publicity, openness, transparency and wide engagement. All parliamentary factions, parliamentary political groups, group of independent members of Parliament, the Public Defender, LEPL Legal Aid Service, LEPL Georgian Bar Association, professional circles and non-governmental organizations have the right to freely, comprehensively and properly talk and ask questions during the committee hearing of the candidates. Moreover, the chairperson of the committee sitting asks the candidates the questions of citizens (including, the charged and convicted persons in the penitentiary institutions) sent in advance to the committee, and the general public receives answers to these questions. Any local or international organization, representative of the diplomatic corps, media representative and, based on prior request to the committee, citizen has the opportunity to attend the committee hearing and observe the process. The committee hearing of the candidates are broadcasted with live stream on the website of the Parliament of Georgia and via a Facebook page.

After hearing the candidates at a Committee sitting, the Committee shall prepare an opinion. The Committee shall make a decision regarding the opinion by a majority of its members on the list. The opinion of the Committee shall include a recommendation of the Committee in relation to a candidate. The opinion of the Committee shall be submitted to the Bureau of the Parliament for the purpose of putting it on the agenda of a plenary sitting of the Parliament, and shall be published on the website of the Parliament.

Each candidate for a judge of the Supreme Court of Georgia shall be put to a vote separately without discussion at the plenary session. Before voting, the chairperson of the plenary sitting shall introduce to the Parliament a list of candidates and their written consent.

The candidate is deemed elected as a Supreme Court judge if he/she gains support of the majority of the total number of Parliament's members at the voting.

Appointment of judges of the first and the second instance courts

According to Article 34(1) of the LCC, "a person may be appointed (elected) as a judge if he/she is a citizen of Georgia with legal capacity, from 30 years of age, who has a higher legal education with at least a master's or equal academic degree/higher education diploma, at least five years of working experience in the specialty, has the command of the official language, has passed a qualification exam for judges, has completed a full training course at the High School of Justice (HSJ) and is included in the Justice Listener Qualifications List."

A. Qualification exam for judges

The provisions governing the qualification exam for judges are set forth in the Regulation on Examination for Judges approved by the HCJ on 19 March 2018. A citizen of Georgia who has attained the age of 25, has a relevant higher legal education and has the command of the official language shall be entitled to pass a qualification exam for judges.

Importantly, in order to enhance the integrity of the examination process, promote greater public trust towards the judiciary, and to achieve the selection of the best candidates, since 2014 the qualification exam has been conducted through an electronic system.

In order to determine the methodology and the level of complexity of exam tasks, to establish the criteria for evaluating written tasks and to evaluate the exam results, the Qualification Examination Commission shall be created by the HCJ. The Commission shall consist of 20 members. The identity of the members is anonymous. With the assistance of the USAID, the National Assessment and Examinations Centre of Georgia created the special certification learning course aiming at certification of the members of the Qualification Examination Commission in a methodology for elaboration of tests.

In accordance with the regulations, the test or the written exam shall not be public. Before the exam, the HCJ publishes the examination sample/template which entitles the interested persons to have a general understanding of the form of the exam tasks.

In order to prevent access to the examinations tasks or any other information, each persons related to elaboration of tests or monitoring the process, shall sign the non-disclosure act. Additionally, access to the electronic system is limited by the requirement to use personal identification data for logging the system. Each person logged in the system, may have access only on certain type of information. The examination tasks are kept on an entirely different server.

Qualification exam for judges includes two stages: test and the written exam. The test shall be passed electronically. The results are checked immediately through the electronic software and the system gives the relevant notice to the examinee. The written exam shall be administered electronically or via written format in case an examinee gives the relevant notice before the Qualification Examination Commission in advance. The qualification exam is considered to be successful, in case the examinee successfully passes both the test and the written exam. The data on the results of the exam (without personal identification details) shall be uploaded at the official website of the HCJ.

Each written test is being subject to evaluation by two Commission members independently. Noteworthy when evaluating answers in the written exam, both the examinees and the examiners are identified only by code numbers in order to preserve the double anonymity and to ensure that cheating on the exam is entirely impossible.

Results of the exam (test or written exam) can be appealed to the Revision Group. The Revision Group shall consist of 5 members of the Qualification Examination Commission. The Revision Group shall make a substantiated conclusion in response to the complaint. Furthermore, the decision of the Revision Group can be appealed to a court through general proceedings in place for filing a lawsuit.

The qualification exam for judges is one of the eligibility criteria aiming at selection of the high-qualified lawyers who become justice listeners as a next stage.

As it is defined by Article 34 (3) of the LCC, the following persons shall be exempted from passing the qualification examination for the position of a judge: a) a person nominated for the position of a judge of the Supreme Court; b) current or former member of the Supreme Court; c) current or former member of the Constitutional Court of Georgia; d) a former judge of the common courts of Georgia until the expiration of 10 years from the date of termination of judicial authority.

B. Justice listener

Persons, who have successfully passed the qualification exam for judges, are eligible to become justice listeners. Completion of a full training course delivered by the High School of Justice (HSJ) is one of the essential eligibility requirements to become a candidate for the office of a judge. Persons undergoing the training course are justice listeners.

According to Article 34 (4) of the LCC, the following persons shall be exempted from studying at the High School of Justice: a) A person nominated for election to the office of a Supreme Court judge; b) current or former member of the Supreme Court; c) current or former member of the Constitutional Court of Georgia; d) a former judge of the Supreme Court, District (City) or Appellate court, who has passed a qualification exam for judges, was appointed as judge of the relevant court as a result of the competition and has at least 18 months of working experience as a judge; e) a person who completed a full training course of the HSJ and who has been included in the Justice Listener Qualifications List, regardless of the period he/she served as a judge or whether he/she had been appointed to the office of a judge since graduation from the HSJ.

Significantly, the selection procedure of justice listeners and the training program as well have been improved by the legislative amendments elaborated within the framework of the fourth wave of the judicial reform in 2019.

- ✓ As a major result of the 2019 reform, the selection of justice listeners has fell within the competence of the Independent Board of the HSJ. The HCJ is not involved in the admission procedure. An admission competition to the HSJ shall be held at least once a year. When selecting a candidate for justice listener, the results of the qualification examination, the candidate's qualifications and his/her skills and abilities of legal analysis, reasoning, verbal communication shall be taken into account.
- ✓ The rules governing the composition of the Independent Board of the HSJ changed. Currently it consists of seven members (instead of six) - three judge members elected by the Conference of Judges of Georgia; two members of the HCJ (one judge and one non-judge member) elected by the HCJ; and two members - elected by the HCJ from Academia.
- ✓ The HCJ shall first establish the tentative number of the vacancies for judges and afterwards, the Independent Board announces the admission of justice listeners. The HSJ shall have the discretion to approve a number of candidates to be admitted that might be less than recommended by the HCJ, only if the HSJ's

budget and/or facilities/ infrastructure preclude the HSJ from admission of more justice listeners.

- ✓ Duration of the training course has been increased from 10 months to 16 months. Whereas for a justice listener who has at least 10 years of experience of working as head of a structural unit of the HCJ /common courts or court manager, assistant of a judge, secretary of a court session, investigator, prosecutor and/or defence lawyer, the duration of a full training course shall be 12 months.
- ✓ The full training course includes a theoretical course, internship, and seminar course. The training methods employed shall include seminars, moot courts, discussions, courses on making and reasoning judicial decisions etc., that strives to broaden the theoretical knowledge and develop practical abilities and skills of a justice listener.
- ✓ Upon the completion of the theoretical course, a justice listener shall take an examination and shall enrol in an internship. A justice listener shall undergo an internship program in common courts, the Constitutional Court of Georgia, the bar, notary office, prosecutor's office, and/or administrative bodies whose list, at the recommendation of the director of the HSJ, shall be approved by the Independent Board.
- ✓ Upon the completion of the studies at the HSJ, a justice listener shall take a graduation examination.

Thus a person who meets the aforementioned conditions shall be eligible to participate in the competition for the position of a judge announced by the HCJ. The person concerned shall be considered a candidate for judge after he/she submits an appropriate application to the HCJ.

As it was already noted, the HCJ is the only responsible body for the selection/appointment of judges of the first instance and appellate courts. The executive or parliamentary interference is wholly excluded in the process.

In accordance with Article 35(1) of the LCC, not later than 3 months prior to the occurrence of a vacant position of a judge of a district (city) court or court of appeals and not later than 1 month after its occurrence, the HCJ announces a competition through the official press of Georgia and its official website and conducts an appropriate procedure for the appointment of a judge for the vacant judicial position of the relevant court. The HCJ provides relevant information about the competition to the public broadcaster and at least 2 national broadcasters.

Within the framework of the competition, the decision to appoint a judge shall be made by a majority of at least two thirds of the full composition of the members of the HCJ. When appointing a judge through a competition, the Council shall be guided by the procedure established by the legislation of Georgia for the selection of a candidate to be nominated to the Parliament of Georgia for the election to the judicial position of the Supreme Court.

Each candidate shall be evaluated by the HCJ on the basis of two criteria – integrity and competence. There are two different procedures for evaluation of a candidate for judge: evaluation of a candidate for judge without judicial experience and a candidate for judge with judicial experience (Except for a current or former member of the Constitutional Court or the Supreme Court of Georgia). Although each and every

candidate is subject to background check, interview and evaluation on the basis of integrity and competence criteria, in case of candidates with judicial experience, the HCJ additionally conducts the examination of 5 cases adjudicated by them.

In particular, candidates for a judge *without judicial experience* shall be evaluated by the HCJ according to the criteria of integrity (personal good faith and professional conscience; independence, impartiality and fairness; personal and professional behaviour; personal and professional reputation) and competence (knowledge of legal norms; ability of legal substantiation and competence; writing and verbal communication skills; professional skills; academic achievements and professional training; professional activity)¹, based on interviews conducted with them, and the background check.

Candidates for *judge with the judicial experience* shall be evaluated by members of the HCJ independently according to the criteria of integrity (personal good faith and professional conscience; independence, impartiality and fairness; personal and professional behaviour; personal and professional reputation, financial obligations) and competence (knowledge of legal norms; ability of legal substantiation and competence; writing skills, verbal communication skills; professional skills (including conduct in a courtroom); academic achievements and professional training; professional activity), following the interviews with them and examination of cases.

In particular, while assessing a candidate for judge with judicial experience (except for a current or former member of the Constitutional Court or Supreme Court of Georgia) by the criteria of integrity and competence, it is mandatory to evaluate 5 cases considered by him/her. These should be the cases on which summary/final decisions are already entered into force, including, at least, two cases on which the summary/final decisions had been overturned/partially overturned (if any) by a higher instance court. The 5 cases shall be selected randomly. The purpose of the examination of a case/decision is to assess the level of knowledge of legislation, human rights law, including case law of the European Court of Human Rights, the proper application of appropriate legal norms with respect to the decisions made by the judge, the substantiation of court decisions and their persuasiveness, analytical skills of the judge, ability to communicate his/her ideas clearly and lucidly, ability of logical reasoning and analysis. When studying the case/decision, the nature and seriousness of the legal error made in the overturned/partially overturned decision by the higher instance court is also evaluated.

When evaluating a candidate, with or without previous judicial experience, by the integrity criterion, consideration shall be given to the characteristics of the integrity. On the basis of analysis of these characteristics, the HCJ shall make one of the following conclusions: a candidate fails to meet integrity criterion; a candidate meets integrity criterion; candidate fully meets integrity criterion. Whereas, the evaluation of a candidate by the competence criterion shall be performed by use of points, according to the characteristics of the competence criterion. The maximum amount of points for each characteristic is prescribed by the LCC.

¹ The specific characteristics of these criteria are defined in detail by Article 35¹ of the LCC.

Appointment of judges of first and second instance courts for life

The guaranteed tenure of judicial office is entrenched at the constitutional level, namely, Article 63(6) of the Constitution stipulates that judges of the common courts shall be appointed for life until they reach the age determined by the organic law (LCC).

Georgia preserved only temporarily (until 31 December 2024) the initial appointment of judges for certain positions. The reason for such a decision was that the High School of Justice was not sufficiently equipped with necessary resources at the time to prepare the needed quantity of qualified professional judges ready for a life-tenure appointment.

The rule under the Constitution of Georgia prescribes that judges shall be appointed for a lifetime. In accordance with the legislation, appointment for 3-year period may be applied only in cases of initial appointment (the rule on appointment for a three year period does not apply to a current or former member of the Constitutional Court or the Supreme Court of Georgia, a current or former judge of an appeal or district (city) court, if he/she has at least 3 years of experience as a judge and if 10 years have not passed since the termination of judicial authority of the former judge) and until 31 December 2024. In particular “before lifetime appointment of a judge, in case of the first appointment, the judge may be appointed for three-year term until 31 December 2024.”

In accordance with Article 36 (4)¹ of the LCC, “Not earlier than two months and not later than one month before the expiration of the term of office of a judge appointed to the judicial position of a district (city) court or court of appeals for a 3-year term, the HCJ, based on the analysis of the results of the evaluation of judge’s performance, makes decision whether to assign a judge to the position for lifetime”. The purpose of the evaluation of a judge’s activity is to ensure the exercise of independent and qualified justice by means of selecting a worthy, qualified and honest candidate to be appointed for life as a judge. Therefore, the activity of a judge shall be evaluated in an objective, honest and unbiased manner.

The activity of a judge shall be assessed based on two main criteria – integrity and competence.

A judicial performance evaluation shall be conducted three times during three-year appointment period. In particular, in order to evaluate the activity of a judge assigned to the position for a three-year term, after one year and after two years of his/her assignment to the position, also four months before expiration of the three-year term of office of a judge, the HCJ shall select, by lot, one judge member and one non-judge member of the HCJ (“the evaluators”). The evaluators shall evaluate the activity of the judge for the given period within two months, independently from each other. After the drawing of lots, the judge to be assessed shall be immediately notified of the identity of the evaluators. The above six assessments shall be performed by different evaluators. The judge to be assessed shall have access to the reports of each period of assessment. These reports shall be submitted for examination to members of the HCJ two months before the three-year term of office of the judge expires.

The evaluators shall assess the activity of a judge concurrently and independently from each other. The evaluators may not disclose to each other the information and assessment results obtained during the assessment.

When assessing a judge's activity for a given period, the evaluators shall, concurrently and independently from each other, examine one and the same at least five cases reviewed by the judge, on which summary/final decisions have entered into force, including, at least, two cases on which the summary/final decisions have been overturned/modified (if any) by a higher instance court. The cases to be examined shall be selected randomly. The result of the assessment of the cases cannot be the basis for the review of the decisions made by the judge in these cases and/or the initiation of disciplinary proceedings against him/her.

The HCJ shall analyse the results of all assessments it has performed during the three-year term of office of a judge. To sum up the assessment points gained by a judge with respect to the competence criteria, calculation shall be made of the total sum of the points gained by the judge in the six evaluations held during three periods of assessment based on the characteristics of the competence criteria, after which a calculation shall be made of the percentage of this sum in relation to the maximum available points determined for the competence criteria.

If, when assessing a judge based on the integrity criteria, more than half of the evaluators consider that the judge fails to meet the integrity criteria, and/or the sum of the points gained by the judge based on competence criteria does not make up 70% of the maximally available points, the Chairperson of the HCJ shall issue a legal act on the refusal by the HCJ to consider the life time appointment of the judge. This act may be appealed to the HCJ within one week after its delivery to the judge." "Following the review of the appeal, the HCJ shall, by an open ballot, and by the majority of two-thirds of the full composition, make the decision to revoke the legal act of the Chairperson of the HCJ and conduct an interview with the judge.

If, when assessing a judge based on the integrity criteria, three or more evaluators consider that the judge meets or fully meets integrity criteria, and the sum of the points gained by the judge based on the competence criteria is at least 70% of the maximally available points, the HCJ shall interview the judge and listen to his/her opinion on the results of the assessment. The judge may submit to the HCJ his/her opinion on the results of the assessment also in writing, as well as submit an oral and/or written self-assessment, which means that the judge shall submit to the HCJ the analysis of, what he/she considers to be the most successful and most unsuccessful decision(s), as well as mistakes made when adopting decisions over the past three years of judicial activity. To obtain information on the issues related to the assessment, the HCJ shall hear the evaluators.

Based on the analysis of the assessment results and the interview with the judge, the HCJ shall hold a discussion and make a decision with no less than two-thirds of the full composition and by an open ballot on the appointment of the judge to office for life until he/she reaches the age determined by law. If less than two-thirds of the full composition of the HCJ votes for life time appointment of a judge to office, the HCJ shall refuse to appoint the judge to office for life time. Immediately after the decision is made, a copy of the decision of the HCJ on the appointment of/refusal to appoint a judge to office for life time, along with a dissenting opinion or reasoning made by the members of the HCJ shall be provided to the judge concerned.

If a judge is appointed for life tenure to office, the judicial assessment reports shall be made public and any person may request them under Chapter III of the General Administrative Code of Georgia.

A judge may appeal the decision of the HCJ on the refusal to appoint him/her to office for life tenure to the Qualification Chamber of the Supreme Court. If the Qualification Chamber of the Supreme Court overturns the decision of the HCJ and makes a decision to resubmit the case for a review, the HCJ shall, taking into consideration the decision of the Qualification Chamber, review the issue regarding the appointment of the judge to office indefinitely.

If the HCJ makes a decision to appoint a judge to office for life, the judge shall be deemed appointed to office for life as soon as the HCJ makes this decision. "If a decision of the HCJ on the refusal to appoint a judge to office for a life tenure is appealed, the position of the judge shall be considered vacant and a competition will be announced to fill the position after the Qualification Chamber of the Supreme Court leaves the decision of the HCJ unmodified; or after the HCJ issues a repeated decision on the refusal to appoint a judge to office indefinitely.

It should be underlined that no judge has been refused to be appointed for life tenure after serving his/her three-year term of office.

2. PROMOTION WITHIN THE JUDICIARY

- A. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.
- B. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary.
- C. Describe the transparency involved in the process of promotion within the judiciary.

Answer to Questions 2-ABC (promotion within the judiciary)

The promotion of first-instance court judges to courts of appeal takes place either through a competitive procedure or without competition:

- ✓ Appointment of first instance court judges to the court of appeals via competition

Appointment of judges of first instance court to the appellate court is carried out according to the rule of appointment of judges via competition.

In accordance with Article 35(1) of the LCC, not later than 3 months prior to the occurrence of a vacant position of a judge of a district (city) court or court of appeals and not later than 1 month after its occurrence, the HCJ announces a competition through the official press of Georgia and its official website and conducts an appropriate procedure for the appointment of a judge for the vacant judicial position of the relevant court. The HCJ provides relevant information about the competition to the public broadcaster and at least 2 national broadcasters.

Importantly, while reviewing the applications, the HCJ takes into account that applicants have at least 5 years of judicial experience.

The applicant judge shall be evaluated by members of the HCJ independently according to the criteria of integrity (personal good faith and professional conscience; independence, impartiality and fairness; personal and professional behaviour; personal and professional reputation, financial obligations) and competence (knowledge of legal

norms; ability of legal substantiation and competence; writing skills, verbal communication skills; professional skills (including conduct in a courtroom); academic achievements and professional training; professional activity), following the interviews with them and examination of cases.

While assessing a candidate for judge with judicial experience (except for a current or former member of the Constitutional Court or Supreme Court of Georgia) by the criteria of integrity and competence, it is mandatory to evaluate 5 cases considered by him/her. These should be the cases on which summary/final decisions are already entered into force, including, at least, two cases on which the summary/final decisions had been overturned/partially overturned (if any) by a higher instance court. The 5 cases shall be selected randomly. The purpose of the examination of a case/decision is to assess the level of knowledge of legislation, human rights law, including case law of the European Court of Human Rights, the proper application of appropriate legal norms with respect to the decisions made by the judge, the substantiation of court decisions and their persuasiveness, analytical skills of the judge, ability to communicate his/her ideas clearly and lucidly, ability of logical reasoning and analysis. When studying the case/decision, the nature and seriousness of the legal error made in the overturned/partially overturned decision by the higher instance court is also evaluated.

When evaluating a candidate, by the integrity criterion, consideration shall be given to the characteristics of the integrity. On the basis of analysis of these characteristics, the HCJ shall make one of the following conclusions: a candidate fails to meet integrity criterion; a candidate meets integrity criterion; candidate fully meets integrity criterion. Whereas, the evaluation of a candidate by the competence criterion shall be performed by use of points, according to the characteristics of the competence criterion. The maximum amount of points for each characteristic is prescribed by the LCC.

The decision to appoint a judge shall be made by a majority of at least two thirds of the full composition of the members of the HCJ. When appointing a judge through a competition, the Council shall be guided by the procedure established by the legislation of Georgia for the selection of a candidate to be nominated to the Parliament of Georgia for the election to the judicial position of the Supreme Court.

✓ Appointment of first instance court judges to the court of appeals without competition

The appointment of a judge of first instance court to the court of appeals is regulated under Article 37 and Article 41 of the LCC.

Article 41 concerns promotion of a judge and prescribes that “a judge of a district (city) court may be appointed in the court of appeals if he/she has at least five years’ experience of working as a judge of district (city) court”.

Article 37 of the LCC sets forth the rule for appointment of a judge to another court (to another court of the same instance or to the court of appeals) without competition. In particular, “when there is a vacancy, a judge of a district (city) court may be appointed to the court of appeals without competition if he/she meets the requirements set forth in Article 41.”

Article 13¹ of the Rules of Procedure of the HCJ regulates the procedure for hearing an issue on appointing a judge to another court without competition and sets forth the relevant criteria.

According to article 13¹ of the mentioned rule:

For the purpose of ensuring the right to be promoted, also for the purposes of the mobility of judges and efficient use of the experience of the acting judges, the HCJ may, in case of existence of vacancies at the court of appeal, determine the number of the vacant positions designated for judicial promotion.

The information on vacancies shall be published on the official website of the HCJ. “Any judge of the common courts is entitled to submit an application. The application shall be submitted in writing to the HCJ within 7 days upon the publication of the information on the official website.” The HCJ reviews the applications and invites the candidates for interview.

A judge may be appointed as a judge of the court of appeals, if his/her competence, experience, professional and moral reputation is compliant with the high rank of the judge of court of appeals and he/she has at least five years’ experience of working as a judge of district (city) court. A judge shall be restricted from getting promoted to a higher instance court, if disciplinary sanction imposed on him/her has not been expunged.

While making the decision, the member of the HCJ shall take into consideration the quantitative and qualitative indicators of the judge’s performance, the number of ratios of cases considered, the complexity of the cases completed, adherence to procedural time frames of considering cases, adherence to procedural time frames for preparing decision, stability of the decisions, working discipline, reputation of the judge among colleagues, participation of the judge in mentoring and teaching young judges and lawyers, his/her active role in discussing judicial and legal issues, his/her organizational skills, scientific and pedagogical activity, adherence to ethical and professional standards, tendencies of his/her professional growth and etc.

The HCJ shall appoint a person as a judge of another court, if the candidate is supported by at least 2/3 of the full composition of the HCJ, by a secret ballot.

After the HCJ votes for the assignment of a judge to the upper instance court, the reasoning for the decision shall be published.

The decisions of the HCJ can be appealed through the general procedure provided for appealing administrative acts under the Code of Administrative Procedure.

3. WORKLOAD WITHIN THE JUDICIARY

- A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

In general terms, the workload requirements for magistrates and judges in Georgia are typically determined by the relevant laws and regulations governing the judiciary. The courts in Georgia usually establish court calendars that outline the scheduled hearing dates and the allocation of cases to judges. These calendars help in managing and distributing the workload among the judges. Cases are distributed evenly through the electronic program, unless judges are on vacation, cases are distributed to them continuously. At the same time, judges have discretion in managing their workload within the framework of the laws and regulations. They may have the authority to schedule hearings, manage case flow, and allocate time to various judicial responsibilities.

It is important to note that the specific requirements and workload measurements may vary among different courts, such as district courts, appellate courts, or the Supreme Court of Georgia. Additionally, workload requirements can be subject to changes in laws and regulations over time.

B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –

- (i) that judge's workload is allocated to other judges;
- (ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.
- (iii) there are other mechanisms to address judicial delinquency.

Due to the fact that the workload of the judges is written in the calendar by the electronic program, it is not possible to transfer their cases to others, but judges may provide temporary support to their colleagues by assisting with case preparation, conducting hearings, or rendering decisions on behalf of overloaded judges. This helps to prevent delays and backlogs in the court's operations. Therefore the only solution to this problem is to increase the number of judges in Georgia.

C. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

Yes, judges are often expected and may be required to assist other judges who may be adversely affected by overload in order to ensure the timely discharge of court business in Georgia. The principle of judicial cooperation and assistance among judges is commonly practiced to manage workload and maintain the efficient functioning of the court system

4. REMOVAL FROM JUDICIAL OFFICE

A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-

- (i) who decides that the judge is to be removed from office;
- (ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;
- (iii) what are the grounds for seeking the removal of a sitting judge;
- (iv) what is the relationship between violation of the ethics code/principles and removal; and
- (v) describe the transparency in the process.

- B. If removed from office, describe the adverse consequences that may affect the removed judge including -
- (a) financial (especially pension) consequences;
 - (b) future employment consequences following removal;
 - (c) societal consequences including loss of title or civic decorations; and
 - (d) disciplinary steps that may be taken against the removed judge.

Answer to Questions 4-AB (Removal from Judicial Office)

The Constitution of Georgia guarantees irremovability of a judge and states that the reorganisation or liquidation of the court shall not be the basis for dismissing a judge appointed for life.

✓ Impeachment of Supreme Court judges

Article 48 of the Constitution and Article 42 of the LCC govern the impeachment procedure of Supreme Court judges.

According to Article 48 of the Constitution of Georgia, no less than one third of the total number of the Members of Parliament shall have the right to raise the question of impeachment of a judge of the Supreme Court, if actions of the judge in question violate the Constitution or contain the signs of crime. Such cases shall be transferred to the Constitutional Court, which shall consider the case and submit its conclusion to Parliament within 1 month. If the Constitutional Court's conclusion confirms a violation of the Constitution or signs of crime by the official in question, Parliament shall discuss and vote on the impeachment of the official within 2 weeks from the submission of the conclusion.

A judge of the Supreme Court shall be considered impeached if this decision is supported by a majority of the total number of members of Parliament.

If Parliament does not decide on impeachment within the required time frame, initiating an impeachment procedure on the same grounds shall be inadmissible.

✓ Dismissal/termination of office of judges of Supreme Court and 1st instance/appellate courts

Article 43 of the LCC sets forth the following grounds for dismissal of a judge, termination of office of Chairman of the Supreme Court and Supreme Court judges: a) a personal application; b) committing disciplinary misconduct; d) being recognised by court as having limited legal capacity or as a beneficiary of support, unless otherwise determined under court decision; e) termination of Georgian citizenship; f) final judgment of conviction against him/her; g) reaching the age of 65; h) committing a corruption-related offence as determined in Article 20(6) of the Law of Georgia "Fight Against Corruption"; i) death; k) appointment (election) to another court; l)

appointment/election to another institution; m) expiration of tenure.” Besides that, the HCJ may dismiss a judge if he/she has been unable to discharge his/her duty for more than four months in the last 12 months and there is a relevant medical certificate showing that he/she won’t be able to discharge his/her duties in the future, either.

Dismissal of a judge due to commission of disciplinary misconduct

The types of disciplinary misconduct are enshrined in Article 75¹ (8) of the LCC. Noteworthy, before January 2020, violation of the rules of judicial ethics belonged to the list of grounds for disciplinary liability. Therefore, in case of violation of the rules of judicial ethics by a judge, the disciplinary proceedings were applied in accordance with the legislation on disciplinary liability and disciplinary proceedings against judges. The current edition of the LCC excludes the breach of rules of judicial ethics as a basis for imposing a disciplinary liability.

Disciplinary proceedings in relation to alleged disciplinary misconduct on the part of a judge are initiated by the Independent Inspector. Upon the completion of prior examination, the Independent Inspector submits the conclusion to the HCJ. If the HCJ decides to impose disciplinary liability on a judge, the case will be submitted to the Disciplinary Panel of Judges of Common Courts of Georgia. The Panel shall decide whether the judge must be held liable for the disciplinary misconduct and whether disciplinary penalty shall be imposed on him/her. If it has been proved, by inter-compatible and irrefutable evidence collectively, that a judge has culpably committed a disciplinary misconduct, and if the Disciplinary Panel deems it appropriate, the Panel shall impose disciplinary liability on the judge and decide on the disciplinary penalty to be applied.

According to Article 75⁵⁰ of the LCC, dismissal of a judge as a disciplinary penalty is a measure of last resort, and it shall be applied in a special situation. The Disciplinary panel shall make a decision on dismissing a judge from the judicial office if - based on the gravity and number of a specific disciplinary misconduct, and considering a previously committed disciplinary misconduct - the Panel deems it inappropriate for that judge to continue with the exercise of judicial powers. From the moment the Disciplinary Panel makes the decision to dismiss the judge, the latter must be withdrawn from hearing a case and exercising other official powers under the procedure established by law.

A decision of the Disciplinary Panel may be appealed before the Disciplinary Chamber of the Supreme Court (‘the Disciplinary Chamber’). The Disciplinary Chamber shall review the decision of the Disciplinary panel within the scope of the appeal in terms of both, factual and legal aspects, and the lawfulness of a penalty imposed. The Chamber may uphold, modify or reverse the decision of the Panel, or return the case for reconsideration. The grounds for making any of the aforementioned decisions are established in the LCC. The decision of the Disciplinary Chamber shall be final and shall not be subject to appeal.

When dismissal of a judge is applied as a disciplinary penalty, the Disciplinary Panel or the Disciplinary Chamber shall submit the binding decision on dismissal for formal enforcement to the HCJ.

Corruption-related offence

If a judge, who has committed a corruption-related offence for which a disciplinary measure (except for dismissal) has been imposed on him/her, commits a corruption-related offence (provided for by the Law on Fight against Corruption) again within three years, he/she shall be dismissed from office.

It should be noted that committing a disciplinary misconduct or committing a corruption-related offence as determined in Article 20(6) of the Law of Georgia “Fight Against Corruption” shall not be the ground for termination of powers of the chairperson of the Supreme Court and a judge of the Supreme Court.

Other grounds for dismissal

As regards other grounds for dismissal listed in Article 43 of the LCC, the HCJ shall dismiss a judge by a majority of two-thirds of its full composition, through an open vote. Proceedings of dismissal are initiated upon the submission of relevant documents (judgment of the court, documents issued by relevant state bodies, draft of the order prepared by the HR department of the HCJ).

If the ground for dismissal of a judge is his/her personal application, the HCJ shall invite the judge to the relevant session of the Council. The judge has a right to provide for his/her point of view on the matter.

The decision of a Disciplinary Panel of judges of common courts adopted in the course of a disciplinary proceeding shall be appealed by the judge in question to the Disciplinary Chamber of the Supreme Court of Georgia. As regards other grounds for dismissal/termination of office, the relevant decision of the HCJ may be appealed to the common courts in accordance with the procedure provided for appealing administrative acts under the Code of Administrative Procedure.

As concern the consequences caused by the dismissal of a judge, according to the LCC, a person with previous conviction, or a person who has been discharged from the position of a judge on the ground of disciplinary violation (except when the provision regarding the norm of this law on the basis of which the person was discharged from the position of a judge ceased to exist) or on the ground of corruption, may not be appointed/elected to the position of a judge.

In addition, the dismissal of a judge has financial consequences as well. In particular, after reaching the age of 65, judges of the common courts are awarded by the compensation. However, compensation shall be awarded to a judge only if a) his/her term of office has expired or b) his/her powers have been terminated due to liquidation of the court or attaining retirement age. Thus, a judge dismissed on the grounds other than those listed above will not be awarded compensation.

