



**Institute for Development
of Freedom of Information**

**The United Nations Human Rights Council
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**Administration of Justice and Fair Trial
Freedom of Expression/Access to Information
Right to Privacy**

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Contents

I.	Introduction	3
II.	Administration of Justice and Fair Trial.....	3
III.	Freedom of Expression/Access to Information.....	6
IV.	Right to Privacy	7



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I. Introduction

1. “Institute for Development of Freedom of Information” is a Georgian non-governmental organization established in 2009. IDFI is a hybrid watchdog/think-tank organization, combining monitoring and analytical skills with evidence based advocacy, strategic litigation, awareness raising and consulting activities.
2. This document provides information regarding normative framework and current challenges related to the administration of justice and fair trial, freedom of expression/access to information and right to privacy.

II. Administration of Justice and Fair Trial

Judiciary

3. Despite the “four waves” of judicial reform implemented in recent years, independence of Georgian judiciary has not been achieved. Fundamental deficiencies remaining in the legal framework constitute an important challenge. Achievement of judicial independence is significantly hindered by the influential judicial group-members who hold important administrative positions within the system. They deliver arbitrary decisions, and use their high positions and legislative deficiencies to strengthen their influence over the system.ⁱ
4. Current rule for selection of the Supreme Court judges is not fully consistent with international standardsⁱⁱ and does not ensure merit-based appointment process. The constitutional appeal of November 11, 2019 of the Public Defender challenges the provisions of the Organic Law on Common Courts regarding the selection of the candidacy for the nomination to the Parliament by the High Council of Justice (HCOJ). The Public Defender considers that the existing rule contradicts the right to hold public office and the right to a fair trial guaranteed by the Constitution.
5. IDFI has filed an amicus curiae brief regarding the above mentioned constitutional appeal. IDFI considers that the procedure envisaged by the Organic Law fails to ensure the practical and effective exercise of the right to hold public office guaranteed by the Constitution. The uninformed decision of the HCOJ during the first stage of secret ballot poses a risk that candidates with higher qualifications and integrity will be excluded from the selection process arbitrarily and without justification. Three-stage secret ballot excludes the possibility of taking a reasoned decision and creates the risk of arbitrary decision-making, which contradicts international standards. The lack of relevant guarantees for appointment of the competent and honest judges creates the risk of violation of the right to a fair trial, in particular, the right of a person to be heard by an independent and impartial tribunal established in accordance with the requirements of the Constitutionⁱⁱⁱ.
6. Significant problematic issues were identified in the process of competition for the selection of the Supreme Court judges in 2019, such as the participation of members of the HCOJ in the selection process, despite the existence of a conflict of interest, as well as the distribution of votes with the same scheme during the first secret ballot. This once again highlighted the gaps in the legislative framework and raised question marks in the society.^{iv} The hearing of candidates in the Parliament demonstrated that many candidates could not even answer basic legal questions. Majority of the candidates inadequately perceive existing challenges in the judiciary, do not recognize the problems existing in the past and at present, or are not willing to talk about them.^v Selection of 14 new judges in the Supreme Court gave rise to severe criticism by the international community^{vi} as well as NGOs as it has a detrimental impact on the judiciary.
7. There are further deficiencies in the legal framework related to the Supreme Court: Certain broad powers of the Chief Justice and vagueness of functions of the deputy Chairpersons, which creates an unjustified hierarchy in the Supreme Court, are problematic. The presence of the Chairpersons of the Courts of Appeal in the Supreme Court Plenum (a body taking decisions on the management and administration of the Supreme Court) is a significant challenge. This does not comply with the role and the place of the

Supreme Court in the judicial system. Certain excessive powers of the Plenum remain as an important challenge, such as the right to determine the amount of a monthly supplement to the official salary of a judge, which poses the risk of corruptive practices. The practice of exercising judicial power in another Chamber by a judge of a particular Chamber is flawed. The rule of case allocation is problematic as it creates the risk of arbitrary selection of panel members beyond legal regulation.^{vii}

8. The Court Chairpersons of the first and appellate instances are appointed by the HCOJ through a vague and non-transparent procedure. It is advisable to ensure election of the Chairpersons by the judges of the same court which would be in line with the requirements of the principle of internal independence of the judiciary.^{viii} Significant power assembled in the hands of the Court Chairpersons still remains a challenge.^{ix} Court Chairpersons can be the members of the HCOJ which contributes to the concentration of excessive powers within the hands of the narrow group of judges. Although electronic distribution of cases is established in common courts, Court Chairpersons have the power to distribute judges to narrow specialization arbitrarily, which may endanger the system of random distribution of cases.
9. Within the scope of recent judicial reforms certain positive amendments were enforced with regard to the High School of Justice (HSOJ). However, the real institutional independence of the HSOJ has not been achieved as 4 out of 7 members of the board of the HSOJ are appointed by the HCOJ, which enables the latter to have a considerable influence upon its activities. The procedure for enrolment of justice trainees is regulated by the Charter of the HSOJ and not by the law, substantiation of decisions and appeal mechanism is not guaranteed, which constitutes a significant challenge.
10. As a result of the four waves of judicial reform, the system of disciplinary liability of judges has been improved, however, certain flaws still remain.^x Procedure for electing an Independent Inspector remains flawed (decision is made by simple majority of the HCOJ), which does not ensure proper institutional independence of an Inspector. It is advisable to appoint an Inspector by 2/3 majority of the HCOJ.
11. Transparency of the judiciary still remains a challenge. In 2019 the Constitutional Court of Georgia ruled that the provisions of the Law on Personal Data Protection were unconstitutional as they prohibited access to the full text of court decisions delivered within the scope of a public hearing by Common Courts.^{xi} The Court held that the disputed norms would be void from May 2020 and gave the Parliament time to harmonize existing legislation with the requirement of the Constitution. Despite the reasonable timeframe clearly established by the Constitutional Court, the Parliament has not adopted appropriate legislative amendments yet. The absence of clear legislative provisions creates a risk of inconsistent practice, because in certain cases, based on their own point of view, the courts might give preference to the personal data protection and limit access to the full text of the court decision without justification.^{xii}
12. Legal framework does not provide for the objective and transparent process of promoting judges.^{xiii} Promotion of judges is closely related to their periodic evaluation. "The rule for evaluation of effectiveness of performance of judges of common courts" approved by the HCOJ is largely focused on the entire judicial system and not on individual judges. The existing rule for the evaluation of judges is ineffective for the purposes of assessing the performance of individual judges as well as the entire judicial system.^{xiv} Therefore, initiating reform in this regard is of utmost importance.
13. The excessive caseload of common courts is a significant challenge. Procedural delays in case consideration pose a risk of violating the right to a fair hearing within a reasonable period.^{xv} In order to ensure quality and efficiency of justice, relevant measures should be taken in this regard.
14. Recommendations:
 - a) Guarantee independence of the judiciary by reforming the system of appointment of judges, ensure justification of decisions and merit-based appointments;
 - b) Eliminate deficiencies in the legal framework related to the Supreme Court in order to restrict broad powers of the Chief Justice, remove Chairpersons of Courts of Appeals from the Plenum, limit excessive powers of the Plenum, and effectively separate competencies between the HCOJ and the Supreme Court;
 - c) Strengthen transparency of the judiciary;

- d) Continue the reform of the HSOJ in order to achieve its genuine independence, and to ensure quality and efficiency of justice;
- e) Further improve the system of disciplinary liability of judges with the aim of strengthening institutional independence of the Independent Inspector's Office, and ensure sufficient transparency of its activities;
- f) Strengthen internal independence of the judiciary by amending the rule for appointment of Court Chairpersons and by limiting their excessive powers;
- g) Take measures to ensure efficiency of justice by addressing the issue of excessive caseload and procedural delays in common courts;
- h) Initiate the reform of the judicial promotion and periodic evaluation system;
- i) Improve the system of electronic case allocation in order to ensure equal distribution, and avoid manipulation and arbitrary assignment of cases.

Prosecution Service

15. The independence accorded to the PSG through the recent reform is an unequivocally positive breakthrough. However, despite the reforms, there are remaining challenges that necessitate further efforts and strong addressing mechanisms in the institution.
16. Even though the Minister of Justice is no longer a member of the Prosecutorial Council (Council), it is the only change made to the Council composition rules, which became a target of Civil Society^{xvi} as well as the Venice Commission criticism, raising the issue of low representation of the civil society in the Council.^{xvii}
17. Constitutional amendments enforced in 2018 granted the Council the role to ensure independence, transparency, and effectiveness of the PSG, but without relevant legislative amendments this remains just a formality.
18. Individual prosecutors' independence remains a challenge. Prosecutors need effective and functional legislative guarantees to ensure their neutrality and impartiality while carrying out criminal proceedings. Chief Prosecutor's orders are obligatory for all prosecutors. It is important to further empower individual prosecutors and enhance the independence of the lower level prosecutors.^{xviii}
19. According to the new Organic Law on the PSG (Organic Law), appointment, promotion, disciplining and dismissal of prosecutors is a competence of the Prosecutor General. Even though the advisory body is formed in relation to above-mentioned issues, its decisions are not mandatory and the final decision is made by the Prosecutor General. Overall, such a system may affect the independence of the individual prosecutors and concentrate excessive powers in the hands of the Chief Prosecutor.^{xix}
20. The Organic Law sets the criteria of selection and promotion of prosecutors;^{xx} However, the Prosecutor General has great discretion to appoint a prosecutor without competition. The Organic Law does not require justification for promotion of prosecutors, which was underlined in the reports of international organizations.^{xxi} Promotion criteria for prosecutors and investigators are not detailed in the Organic Law. Even though the new Organic Law defines the basis for employee rotation in more detail, it does not include full procedural guarantees and criteria regarding an appeal of decisions on the reassignment (even mandatory) of a prosecutor/investigator to a different position.^{xxii}
21. The Organic Law provides general criteria for a candidate for the position of the Prosecutor General. However, there are no further criteria set forth in the legislation to choose between those candidates who have met general criteria set forth by the law and are taking part in the competition. Further, the Prosecutor General is elected by the majority of the full composition of the Parliament of Georgia.^{xxiii} This does not guarantee depoliticization of a selection process as has been recommended by international organizations.^{xxiv}
22. Recommendations:
 - a) Minimize the participation of political subjects (e.g. Members of the Parliament, a representative of the Minister of Justice) in the work of Prosecutorial Council;
 - b) Broaden the Prosecutorial Council functions to make it able to perform its constitutional role;
 - c) The role of the Council for Career Management, Ethics, and Incentives needs to be strengthened;

- d) Composition of the Prosecutorial Council needs to be reviewed and civil participation needs to be increased;
- e) Detailed promotion criteria for prosecutors and investigators as well as justification for assignment or promotion need to be prescribed by the law;
- f) Full procedural guarantees and criteria regarding an appeal of decisions on the reassignment (including mandatory) of a prosecutor/investigator to a different position need to be enshrined in the law;
- g) Additional qualifications for a candidate on the position of the Prosecutor General need to be evaluated when interviewing those, who have met formal criteria set by the law and guarantee the depoliticization of a candidate selection.

III. Freedom of Expression/Access to Information

- 23. The Constitution of Georgia guarantees the high standard of freedom of expression, however, in recent years, initiatives of certain public officials have threatened freedom of expression several times.^{xxv} There have been attempts to limit criticism of judges, to impose liability for insulting religious feelings, and statements were made regarding tightening regulatory norms of defamation, which should be negatively assessed.
- 24. The politicization of media content remains a challenge.^{xxvi} Recently serious concerns have been raised regarding the environment for media pluralism.^{xxvii} Concerns persist regarding government interference with some media outlets. In 2019 Adjara Public Broadcaster (APB) voted to dismiss its general director, citing mishandling of public funds and mismanagement of program priorities, among other things. International monitors had previously considered the APB an impartial media source. The decision raised concern for “the country’s democratic development and media freedom record.” Afterwards, the journalists protested against the new director, claiming he was interfering in their work and attempting to influence the station’s editorial policy.^{xxviii}
- 25. In 2019 a number of journalists sustained injuries during the June 20-21 protests. Multiple local and international organizations, including Reporters without Borders and the OSCE media representative, strongly criticized the use of force by police against journalists and issued statements calling for a prompt investigation into the incidents involving journalists.^{xxix}
- 26. As for access to information, Georgia has basic legal provisions on this issue in the General Administrative Code, but there is no stand-alone law on freedom of information. There is also no dedicated oversight authority that would ensure enforcement of the relevant provisions. Although the draft law on Freedom of Information was prepared in 2014, it has not been initiated in the Parliament yet. The government should develop prompt and effective mechanisms of ensuring the right to public information.
- 27. Access to information was significantly affected by the coronavirus pandemic. In Georgia state of emergency was declared on March 21, 2020 for one month and afterwards it was extended until May 22, 2020. The time frame for releasing public information was suspended during this period, which was problematic due to the blanket character of the restriction.^{xxx} The blanket limit on all requests and for all public authorities cannot be justified as it creates serious obstacles for holding the government accountable and exercising effective external control over its work. Such restriction should have been in place only to the extent which was strictly necessary.
- 28. Recommendations:
 - a) Ensure that freedom of expression and media pluralism are fully respected;
 - b) Strengthen guarantees of access to information by adopting the Draft Law on Freedom of Information, establishing a supervisory body and introducing a sanctioning mechanism against public institutions that ignore FOI requests or refuse to disclose public information.

IV. Right to Privacy

29. Secret surveillance system in Georgia remains an important challenge. Excessive power concentrated within the hands of the Operative-Technical Agency (subordinate body to the State Security Service) and weak oversight over its activities creates the risk of arbitrary and unlawful interference with privacy.
30. In 2016 the Constitutional Court ruled that the technical access of the State Security Service to telecommunication operator networks was unconstitutional. This access allowed unlimited monitoring of communication and data collection. According to the ruling, legislation failed to ensure control of real time acquisition of information on the internet.^{xxxi} Legislative amendments adopted in 2017 did not comply with the requirements of the Constitutional Court decision. As a result, more than 300 citizens filed constitutional appeals against the new amendments, which is still pending at the Constitutional Court.
31. Recommendation: Take measures to ensure that provisions regulating secret surveillance fully respect constitutional and international standards of human rights.

Endnotes

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