Coalition
for an Independent and
Transparent Judiciary

Proposals for the Supreme Court Justice Selection Criteria and Procedures

Legislative amendments for regulating the selection criteria and procedures for Supreme Court Justice election will only ensure objective formation of the highest instance of the judiciary, if each judge-member of the High Council of Justice (hereinafter "HCoJ") as well as each non-judge member of the HCoJ elected by the Parliament of Georgia, who voted in favor of submitting the list of the candidates of Supreme Court Justices to the Parliament of Georgia in December 2018, will resign from office. Supreme Court Justices should only be nominated and elected after renewal of the composition of the HCoJ and enacting relevant legislative amendments.

The Coalition believes that the following principles should be taken into consideration in the process of electing the justices of the highest and final instance of the judiciary:

- Ensuring merit-based approach;[1]
- Transparency and openness of the process;[2]
- Objectivity and impartiality of the process.

It is crucial that legislation guarantees that persons who do not have judicial experience have a possibility to hold the positions of Supreme Court Justices.[3]
The main elements of the process for selecting Supreme Court Justices should be:

- Announcement of an open competition by the HCoJ;
- Examination by HCoJ of suitability of the candidates to the position of Supreme Court Justice for life, based on merit and objective criteria;

[1] UN Basic Principles on the Independence of the Judiciary, § 13; Recommendation R (94)12 of the Council of Europe, Committee of the Ministers, the first principle, CCJE opinions N1 (2001), § 17

[2] According to the Consultative Council of European Judges (CCJE), there must be total transparency in the conditions for the selection of candidates, so that judges and society itself are able to ascertain that an appointment is made exclusively on a candidate's merit and based on his/her qualifications, abilities, integrity, sense of independence, impartiality and efficiency. Opinion N10 (2007) § 50.
Apart from this, according to the guidelines of the ENCJ, the appointment process should be open for public discussions, and fully and properly documented. ENCJ, Independence and Accountability of the Judiciary, pages 27-28

[3] According to the Venice Commission, strictly limiting access to the Supreme Court to candidates from lower courts could lead to the isolation of the judiciary and promote conservative and rigid opinions, as opposed to being open to new thoughts and concepts, which could be brought in by legal professionals from different backgrounds. Venice Commission, CDL-AD(2018)003, § 31.
The same approach is established in the legislation of the EU member states including those systems that are based on promotional principle. E.g. in Germany appointment in higher courts are conducted via promotion, though the candidates of the supreme court justices do not necessarily need to have experience working as a judge. Even in such countries, together with the promotional procedures there is a possibility to appoint judges from outside the court system and promotion of the acting judges is conducted taking into consideration the results of the complex process of the continuing assessment of the judges. Clear rules regarding promotion procedures do not exist in Georgia. Legislation does not establish the mechanism of the continuing assessment of the judges and suitable assessment of the acting judges during their career is not conducted.

- Nomination of the candidates by the HCoJ with the support of 2/3 majority of the judge-members and 2/3 majority of the non-judge members of the HCoJ;
- Assessment of the candidate by the working group created at the Legal Issues Committee of the Parliament of Georgia;
- Public hearing of the candidate at the session of the Legal Issues Committee.

1. Requirements and selection criteria for the Supreme Court Justices

Required qualification

Higher qualification requirements should be established for Supreme Court Justices than it is required for the judges of lower courts[4], namely: at least 10 years of professional experience (hereby activities that can be considered as professional experience should be determined. E.g.: working as an advocate, a prosecutor, a judge, scientific/academic/research activities in the relevant field, experience of litigation, experience in the field of human rights protection).[5]

Criteria

The criteria of competence and integrity established by the Organic Law of Georgia on Common Courts for judges of the first and second instances and their features should be improved in a way as to satisfy the objective criteria established by international standards. For these purposes, the features of the established criteria should become more specific. The law should precisely define the sources and evidence for examining these features.[6]

Annex N1 defines the features for assessing candidates based on the criterion of competence and sources of assessment, as well as existing rules and proposed amendments.[7]

In the process of assessing the candidate based on the criterion of integrity, the self-assessment questionnaire with the content described in the Annex N2 should be used. That questionnaire should contain a detailed list of required information to be provided by the candidate and his/her obligation to submit a range of personal data.[8]

[4] Similarly, in the US the candidate of the Supreme Court Justices should differ from e.g. the candidate for the Court of Appeals with his/her competence and professional experience given the special role and importance of the Supreme Court.

[5] For example, in the UK, the law prescribes a list of activities that are considered as relevant work experience. The respective list of activities defined by the HCoJ is too wide and candidates satisfy the requirements of professional experience even if their experience is not related to litigation or is not relevant or useful to verify high qualification of the potential Justice of the Supreme Court.

[6] It should be taken into account that according to the current legislation, a Supreme Court judicial candidate is not required to have passed a judicial qualification exam or to have completed a training course at the High School of Justice. This does not provide information about the candidate's competence and other sources are needed for verifying his/her competence.

[7] The table in the Annex 1 is prepared according to the existing criteria and features in the UK and the US.

[8] Organic Law of Georgia on Common Courts and relevant decisions of the HCoJ determine insufficient list of the information based on which integrity of the candidate should be assessed.

2. Announcement of an open competition by the HCoJ and submitting applications

HCoJ should announce an open competition and define reasonable deadline for interested persons to submit applications.[9] Candidates wishing to become Supreme Court Justices shall provide documentation that proves their compliance with the requirements determined by the Organic Law as well as any other documents that confirm their competence and qualification. The Organic Law should determine the list of the necessary documents to be presented and the data to be included in the self-assessment questionnaire (see Annex N2). If the documentation provided by the applicant is incomplete, he/she should have additional reasonable time for completing the data (no less than 7 days).

3. Stages of the competition

At the first stage, compliance of the candidates with the formal requirements of the Organic Law should be examined. In order to ensure transparency of the procedures, short biographies of the candidates shortlisted for the second stage should be published on the HCoJ website.
Reasonable time (no less than 2 weeks) should be given to any interested person for submitting information/their opinions to the HCoJ regarding the candidates in a written form. HCoJ shall make the submitted information available to the candidates.
HCoJ should conduct interviews with shortlisted candidates in an open hearing,[10] with pre-defined and pre-agreed uniform questions.

4. Making a decision by the HCoJ

HCoJ should make a decision on the nomination of the candidates of the Supreme Court Justices via an open ballot with support of a 2/3 majority of the judge members and a 2/3 majority of the non-judge members of the HCoJ.
The decision on the nomination of the candidates must be duly substantiated[11] and must note the reasons for selecting a particular candidate. Any member of the HCoJ must be able to write dissenting opinion regarding a particular candidate that must be annexed to the decision.
Decision on rejecting the candidate should be substantiated as well.[12]
HCoJ should nominate at least 3 candidates for each vacant position to the Parliament.

5. The guarantees for the objective conduct of the competition

If a member of the HCoJ presents a statement to participate in the competition, his/her position as a member of the HCoJ should be suspended. The Organic Law shall prohibit any type of communication with the member of the HCoJ both in favor and against the candidate. If there is

[9] In many European countries, the competition is announced publicly and candidates can apply (e.g. the UK, Belgium, Denmark).
[10] During the selection process, conducting an interview is provided for in some European countries (e.g. the UK, Austria).
[11] In some countries substantiation of the decisions is required (e.g. Germany, Denmark).
[12] ENCJ pays attention to the importance of informing an unsuccessful candidate of the reasons for his/her lack of success. Available at: https://www.encj.eu/images/stories/pdf/workinggroups/encj_report_distillation_approved.pdf

a conflict of interests, the relevant HCoJ member should be excluded from the process of the candidate's assessment.

The rules on prohibited communication and avoiding conflict of interests should be established for the members of the working group created at the Legal Issues Committee of the Parliament of Georgia as well (section 8).

6. Appealing the results of the competition

The Organic Law should provide appeal procedures[13] for the results of the competition in the Qualification Chamber of the Supreme Court on the following grounds:

- The competition was conducted with the violation of the procedures established by the law;
- The reasons for rejecting a candidate are not indicated in the decision;
- The candidate satisfied the formal requirements established by the legislation but was not shortlisted for the second stage of the competition without any ground;

The nomination process should be suspended until announcement of the results of appellation/the expiry of the appeal.

7. Presenting the list and documents of the Candidates to the Parliament

HCoJ sends the list and all the documents related to the candidates to the Parliament. Immediately after receiving the documents, the Parliament publishes them on its website, in full.

8. Composition of the Working Group created at the Legal Issues Committee

The Committee working Group should consist of highly reputable 7 members, of which 2 members are nominated by the majority, 2 by the minority, one is the representative of the Bar Association, one is Public Defender or its representative, and one is nominated by the Public Defender. The working group should elect the chair of the working group from among its members.

9. Duties of the members of the Working Group of the Legal Issues Committee

The Working Group of the Legal Issues Committee shall be obliged to:

- Examine completeness and accuracy of the information about the candidate provided by the candidate/HCoJ
- Retrieve additional information about the qualification, professional experience and reputation of the candidate from all possible reliable sources as needed;
- Interview the recommender of the candidates and/or seek additional references as needed;

[13] According to the guidelines of the ENCJ, the appointment process should include independent procedure of appeal. ENCJ Independence and Accountability of the Judiciary, pages 27-28 .Apart from this, According to the CCJE, each of the decision of the Council including the decisions connected to the appointment and promotion of the judges should be substantiated and subject to appeal. CCJE Opinion N10 (2007), § 39; 92. Appeal mechanisms are also in place in some European countries (e.g. Germany, France and Italy).

- Consider and re-examine the information about the candidate provided by the interested persons;
- In case of need, the working group is able to retrieve all information regarding the candidate, to examine witnesses, to review documents;
- Prepare a conclusion related to each nominated candidate and present it to the Legal Issues Committee.

The candidate is able to have access to the information about him/her retrieved by the working group and present additional information/documentation.

The conclusion is adopted by the majority of the working group. Any member of the working group, who does not agree with the conclusion of the majority should be able to prepare a substantiated dissenting opinion, which will be annexed to the working group's conclusion.

The retrieved and processed information by the working group is sent to the Legal Issues Committee and is available to all members of the Committee.

10. The content of the conclusion of the Working Group of the Committee and its publicity

The conclusion of the Working Group shall include:

- Descriptive part, that will include information given to the Parliament together with the nomination of the candidate by the HCoJ, information about the candidate collected by the working group, information about the candidate provided by the interested persons and factual circumstances established by the working group after reviewing the above-mentioned information.
- Substantiation that the candidate meets the requirements, indicating relevant sources and evidence.

The conclusion of the working group of the committee should be published on the website of the Parliament immediately after its adoption.

11. Interview with the candidates on the committee session

Interview with the Supreme Court judicial candidates should be conducted at the committee session. Media should have the opportunity to record the process of the interview.
If the Public Defender or Bar Association or a Non Governmental Organisation address the Committee about the candidate who is being considered, the Committee must hear them on the committee session.
The interview should be conducted in accordance with the pre-established formal procedures. Minimum duration of the interview should be defined. Committee shall be able to conduct an additional interview if there is a need of clarification, retrieving additional informatin or other circumstances.

12. Conclusion of the Legal Affairs Committee

On the basis of the interview and the information given in the conclusion of the working group, the Committee shall prepare a substantiated conclusion and present it to the Parliament. As a result of vote, the Committee will make one of the following decisions:

- The candidate is suitable to the high status of the Justice of the Supreme Court of Georgia;
- The candidate is not suitable to the high status of the Justice of the Supreme Court of Georgia.

Despite the content of the conclusion of the Committee, each one of the candidates will be voted on at the plenary session of the Parliament.

13. Election of the Chief Justice of the Supreme Court

The HCoJ considers the issue of nomination of the candidate of the Chief Justice of the Supreme Court presented either by at least three justices of the supreme court or a member of HCoJ. The HCoJ makes decision with a 2/3 majority of the judge members and a 2/3 majority of the non-judge members of the Council.

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Annex 1

Assessment criteria for candidate judges determined by the Organic Law of Georgia on Common Courts, which are currently only applicable to judges of the first and second instances, should be improved in accordance with "objective criteria" established by international standards and applied to the Supreme Court Justices

Current criterion	Current characteristic	Current list of evidence	Offered wording for Criteria	Offered wording for characteristic	Offered wording for the list of evidence
Competence	Possessing knowledge of legal norms: Knowledge of material and procedural legislation; Knowledge of human rights law (including the case law of the European Court of Human Rights)	High Council of Justice of Georgia is entitled to inquire about the results of the judge's qualification exam and the evaluation of the Independent Council of the High School of Justice in order to assess the candidate judge's achievement level	**Competence**	**Has advanced knowledge in material and procedural legislation and foundational principles (including the case law of the European Court of Human Rights); Demonstrates an ability and willingness to learn and develop**	**High Council of Justice considers the following in order to assess the candidate judge's level of achievement: publications indicated in the candidate's self-assessment questionnaire as well as information on the candidate gathered by the Council; documents drafted by the candidate; judgements (in case of current or former judges); information about qualification enhancement noted in the biography. The evaluation must correspond with the issues referred to in the given characteristics.**
Competence	Legal reasoning skills and competence	Candidate's analytical thinking skills and professional experience will be taken into consideration in order to	**Competence**	**Decision-making skills: Demonstrates honesty in decision making, is fair and legally justified, takes timely**	**High Council of Justice considers the following in order to assess the candidate judge's level of achievement:publications**

		assess the achievement level.		**and appropriate decisions. Namely:** **• Exercises sound judgement and common sense** **• Reaches clear, reasoned decisions objectively, based on relevant law and findings of fact** **• Demonstrates integrity and independence of mind** **• Does not exercise bias or prejudice**	**indicated in the candidate's self-assessment questionnaire as well as information on the candidate gathered by the Council; documents drafted by the candidate; judgements (in case of current or former judges); information about qualification enhancement noted at the biography.** **The evaluation must correspond with the issues referred to in the given characteristics.**
Competence	Written and oral communication skills	Written and oral communication skills' assessment is based on a candidate's ability to express opinions in language that is clear and readily understood by all, logical reasoning and analytical skills, good verbal communication skills, openness, the ability to accept different opinions and etc.	**Competence**	**Effective communication: Demonstrates good oral and written communication skills which means that the candidate: Establishes authority and inspires respect and confidence; Remains calm and authoritative even when challenged; Explains relevant legal or procedural information in a**	**High Council of Justice considers the following in order to assess the candidate judge's level of achievement:publications indicated in the candidate's self-assessment questionnaire as well as information on the candidate gathered by the Council; documents drafted by the candidate; judgements (in case of current or former judges); recordings of the court trials in which the candidate participated, and other relevant sources.** **The evaluation must correspond**

				language that is succinct, clear and readily understood by all; Asks clear, concise, relevant and understandable questions; Is willing to listen with patience and courtesy; Possesses the ability to quickly absorb, recall and analyze information, facts and legal argument; Identifies and focuses on the real issues; is not lost in irrelevant detail. **Properly applies appropriate legal rules and principles to the relevant facts.** **Is able to weigh evidence in order to decide the facts of a case.** **Perception and specification of information:** **Quickly absorbs information and**	**with the issues referred to in the given characteristics.**

				identifies important issues. **Formulates issues clearly and can shed light on uncertain issues through processing information.**	
Competence	Professional Qualities	Candidate's punctuality, diligence, independent thinking, ability to work in a stressful situation, purposefulness, managerial skills, etc..	**Competence**	**Managing Work Efficiently:** **Works effectively and plans to make the best use of resources available which means that:** • **Runs trials/hearings effectively to facilitate their fair and efficient conclusion** • **Prioritizes effectively and minimizes delays and other transgressions** • **Shows the ability to work at speed and under pressure** • **Deals effectively with case load**	**High Council of Justice considers the following in order to assess the candidate judge's level of achievement: recordings of the court trials in which the candidate participated, interview with the candidate and other possible sources.** **The evaluation must correspond with the issues referred to in the given characteristics.**

				• **Undertakes necessary preparatory work**	
Competence	Academic achievements and professional training	Candidate's openness towards innovation, self-development skills, office culture, willingness to acquire new knowledge and skills, participation in professional training programs, practical implementation of newly gained knowledge and etc. will be taken into consideration in order to assess academic achievements and professional training.	**These characteristics and amendments for the relevant assessment sources are given in the first paragraph of the table**		
Competence	Professional Activity	The ability to initiate, express ideas and proposals, scientific and other publications, achievements before the legal profession and the society and etc. will be taken into consideration in order to assess professional activity.	**Competence**	**The ability to initiate, express ideas and proposals, scientific and other publications, merits before the legal profession and the society and etc. will be taken into consideration in order to assess professional activity.**	**High Council of Justice considers the following in order to assess the candidate judge's level of achievement:biographic data, information collected by the Council . The evaluation must correspond with the issues referred to in the given characteristics and explain why the certain professional activity of the candidate is highly**

					distinguished.

Annex 2

Documentation and information to be presented by applicants for judicial office:

- Copy of an Identity Document;
- Copy of a document confirming a candidate's education (if an applicant is a PhD candidate, an official document from the University is required)
- Statement of purpose;
- A full and detailed biography describing an entire professional carreer including academic activities (with exact dates of employment and names of direct supervisor(s));
- Information about the military service;
- Honors and awards with explanations (reasons for nomination);
- Ranks (professional) and reasons for receiving a rank;
- Membership of professional associations and unions;
- Publications;
- Public statements as considered relevant by a candidate;
- Decisions on self-recusal (if any);
- Political activities and affiliation with any political party (inter alia, if he/she or any of his/her family member has made financial contribution to any political party);
- Information on cases in which a candidate was a party (in criminal, civil, admiistrative and constitutional proceedings);
- A decision of the European Court of Human Rights or the United Nations Committee on a case where the candidate was a judge or a prosecutor;
- Constitutional submissions made by a candidate (if any);
- Information about the litigation at the Constitutional Court of Georgia, European Court of Human Rights, International Court of Justice and/or an international arbitration where the candidate was an a defense lawyer (if any);
- Receivable income (when a candidate has fulfilled the work to be paid for in the furture);
- Information about tax payments;
- Income received from other sources in the period of a judicial office;
- Income sources for the last 6 months;
- Information about disciplinary complaints against the candidate;
- Declaration of property;
- Information about potential conflicts of interest with the members of HCoJ (amical and spiritual (godparent) relationships, connections to former coworkers)
- Information on pro bono work (in case of a defense lawyer)
- Cases of legal violations (administrative fines, domestic violence, information on ongoing investigations were a candidate is a victim, a witness atc.)
- Information on investigation of a case where a candidate was accused of a crime by a complainer (author of a complaint);
- Five exemplary decisions made by a candidate in the last 5 years (dissenting opinion, if any) – applicable to former judges;
- Cases and reasons for dismissal from a job;
- Social network accounts used by a candidate;
- Three references with contact details.

The candidate must confirm authenticity of the submitted documents and accuracy of the data by his/her signature. A candiadte will be disqualitfied in case of intentional ommission or misrepresentation of data.