

**Concept – Fair Trial**

*Summary of the Online Public Discussion Series*

2020

**Responsible for Conducting Public Discussions:**

Coalition “for an Indepenent and Transparent Judiciary“

**Public Discussions were broadcasted LIVE from:**

Coalition “for an Indepenent and Transparent Judiciary’s“ official Facebook page – “Make Courts Trustworthy” at <https://www.facebook.com/CoalitionGe>



This document is made possible by the American People through the United States Agency for International Development (USAID). The content of this document is the sole responsibility of the Coalition “for an Indepenent and Transparent Judiciary “and do not necessarily reflect the views of the East West Management Institute, USAID or the United States Government

Content

[Introduction 3](#_Toc58692346)

[II - Composition of the High Council of Justice - existing problems and possible solutions 7](#_Toc58692347)

[III - The High School of Justice - Functional and institutional independence; 9](#_Toc58692348)

[IV- Individual independence of judges - Key challenges; 12](#_Toc58692349)

[V - Judiciary and publicity; 15](#_Toc58692350)

[VI - Constitutional Court of Georgia – Existing challenges 18](#_Toc58692351)

# Introduction

A series of public discussions, "*Concept - Fair Trial*" was organized and conducted by the Coalition for an Independent and Transparent Judiciary, from July 17 to November 2, 2020. Public Discussions aimed at holding public online discussions on the problems existing in the judiciary and the possible solutions with the participation of various stakeholders.

Organizing public discussions on the one hand, is a mechanism for generating market ideas on issues that are necessary for the society, and on the other hand, is a precondition for increasing social legitimacy for the process of the Judiciary reform.

**Participants of the discussions:**

Non-governmental organizations:

* Georgian Democracy Initiative (GDI)
* Georgian Young Lawyers Association (GYLA)
* Open Society Georgia Foundation (OSGF)
* Institute for Development of Freedom of Information (IDFI)
* Rights Georgia
* Human Rights Education and Monitoring Center (EMC)
* Democracy Index

Professional Unions:

* A group of independent lawyers

Public Sector:

* Public Defender of Georgia
* High Council of Justice of Georgia
* Legal Aid Service
* Georgian Bar Association

Academia

* Giorgi Meladze - Associate Professor of Ilia State University

The vast majority of public discussion speakers acknowledged the fundamental institutional problems in the Judiciary system, the existance of a small, influential group of judges, so-called “clan” within the judiciary, the low degree of individual independence of the judges, the prevailing elitism, Judges' dishonesty, favoritism and nepotism. The speakers' attitudes towards the ways of solving the identified problems were different, however, they unanimously agreed that the reform of the Georgian Judiciary system willcould be achieved not by fragmentary, but by complex and unified legislative changes.

The public discussions were interactive – any Facebook user was able to ask questions to the speakers, to express their views on issues of fundamental importance for the discussion. The public discussions covered the following topics:

* Reform of the Supreme Court of Georgia, Revision of the procedures for selecting the judges of the Supreme Court;[[1]](#footnote-1)
* Composition of the High Council of Justice - existing problems and possible solutions; [[2]](#footnote-2)
* The High School of Justice - Functional and institutional independence; [[3]](#footnote-3)
* Individual independence of judges - Key challenges; [[4]](#footnote-4)
* Judiciary and publicity; [[5]](#footnote-5)
* Constitutional Court of Georgia – Existing challenges; [[6]](#footnote-6)

I - Reform of the Supreme Court of Georgia, Revision of the procedures for selecting the judges of the Supreme Court;

During the first public discussion, the speakers reviewed the rules for staffing the Supreme Court, current challenges and problems. Although, on a formal level, integrity and competence are imperative preconditions for appointing individuals to the Supreme Court on a Judges’ position, the speakers unanimously acknowledged that the existing institutional reality does not allow for the appointment of conscientious and competent individuals to the Supreme Court.

As part of the public discussion, the staffing of the Supreme Court by the end of 2019 was considered[[7]](#footnote-7) as a pagan process in the conditions of formal competition, which means that candidates for Supreme Court judges have already been elected behind the scenes. Following the constitutional amendments, which delegated the power to nominate Supreme Court judges to Parliament to the High Council of Justice, instead of the President of Georgia, there was an expectation[[8]](#footnote-8) that the Supreme Court would be staffed in strict compliance with objective legal criteria and fair procedure. However, further developments showed, that the Supreme Court has been staffed by bypassing constitutional provisions - although the integrity and competence of judges are constitutional requirements. Significant questions arise concerning the competence and integrity of the judges of the Supreme Court appointed by Parliament for life-time, and the procedure that was supposed to ensure the validity of these criteria is poorly regulated. [[9]](#footnote-9)

Part of the speakers are skeptical about the prospect of bringing the selection process of judges of the Supreme Court within the legal and political framework by improving the formal legislative rules and mechanisms. The clan, an influential group of judges in Judiciary system, has the ability to adapt to legislative changes and exert informal influence. The clan can implement the desired institutional schemes in the, even if it strictly adheres to the law.[[10]](#footnote-10)

During the public discussion, it was suggested that the reform of the Supreme Court should focus not only on the procedure for selecting judges, but also on the broad powers of the Chairperson of the Supreme Court, who single-handedly nominates a candidate for the Constitutional Court. In addition, the Plenum is authorized to unjustifiably impose a supplement on judges' salaries, which, in the speaker's view, poses risks of corrupt practices.[[11]](#footnote-11)

The differences in opinions between the speakers was caused regarding the conceptual part of the reform of the Supreme Court judges’ selection procedure - each of them shared the urgency of the components of jurisprudence and political consensus, though with the different approaches. The part of the speakers supported the legalistic vision, giving primacy to the logic of the competition and an evaluation system based on objective criteria, within which the High Council of Justice has the obligation to operate.[[12]](#footnote-12) According to the alternative view, in the first voting conducted by the High Council of Justice, candidates should be evaluated in a professional context, based on objective criteria, those who meet the constitutional standard in terms of eligibility should be selected for the position of Supreme Court judge, And in the second stage, the candidates who are consensual should be selected.[[13]](#footnote-13)

During the public discussion, it was argued that the decision-making procedure for the composition of the Supreme Court by Parliament should not be a matter of full political consideration and that there should be an obligation to substantiate the decision made by Parliament on certain issues. Contrary to this view, the High Council of Justice should select a candidate with professional characteristics in the light of objective criteria set by the legislature, and the parliament’s part should be left within the full political consideration - its decision should not be subject of evaluation by any objective criteria.[[14]](#footnote-14)

# II - Composition of the High Council of Justice - existing problems and possible solutions

Participants of the second public discussion shared the view, that one of the main problem of Georgian judiciary today is the practice of "clan governance" and the increased risks of informal influence over individual judges. The power of so-called "clan" is concentrated in the hands of the High Council of Justice, which leads to a vertical scheme of institutional arrangement of the common court system - strict subordination and internal hierarchy. The Judiciary in Georgian is, in essence, authoritarian, as evidenced by the fact that there is no difference of opinion among judges on issues of fundamental importance.[[15]](#footnote-15) The functioning of the Judiciary system is based on the authority of the “clan” members, who can have a direct influence on the process of resolving key issues.[[16]](#footnote-16)

According to the speaker in the public discussion (no one has expressed counter opinion), the High Council of Justice was a mechanism for punishing judges until 2012, and since 2012 it has become a collective defense mechanism. Several episodes of disciplinary proceedings against judges conducted by the High Council of Justice were related to legal errors made by a judge during the interpretation of the law. The "clan" has created an icon of the enemy in a form o f a government since 2012 and has called on all judges to unite under a collective defense mechanism. This explains the significant reduction in the number of disciplinary cases since 2012.[[17]](#footnote-17)

During the public discussion, the speakers also focused on the composition of the High Council of Justice. According to one view, since according to the current order the Conference of Judges decides on the composition of the members of the High Council of Justice in accordance with the will of only one group of judges, the procedure for staffing eight judges of the High Council of Justice should be changed. Each member of the Conference shall have one vote, and eight candidates with the best results shall be elected as members of the High Council of Justice.[[18]](#footnote-18)  Such an arrangement would ensure that the interests of minority judges are reflected in the High Council of Justice, which would neutralize the threat of domination of one group of judges over another and facilitate the realization of pluralism in the judiciary. As for the compatibility of a person with the position of a member of the High Council of Justice, according to one view, it would be appropriate if the High Council of Justice were composed not of judges but of distinguished representatives of the civil sector.[[19]](#footnote-19)

In the course of the public discussion, a reasonable doubt was expressed that Tamar Gvamichava, a member of the High Council of Justice appointed by the President's quota, was a person close to the clan and loyal to them. She has neither high social nor professional status nor is she a recognizable face. This fact once again testifies to the vicious tendency in the Georgian justice system, which is manifested in the influx of people only desired and acceptable for the Clan in the system. [[20]](#footnote-20)

The speakers unanimously shared the fundamental importance of monitoring and activism carried out by the civil society sector while addressing issues related to theJudiciary. According to one view, clan governance in the Judiciary system is reinforced by the passivity shown by professional circles motivated by the protection of their own interests, and bold and effective steps should be taken to dismantle the authority-based system. [[21]](#footnote-21) The discussion also highlighted the need to focus on particularly important issues as part of the Judiciary reform, while focusing on relatively minor issues. [[22]](#footnote-22)

# III - The High School of Justice - Functional and institutional independence;

The sub-issues of the third public discussion were the institutional relation of the High Council of Justice and the High School of Justice, the functional independence of the High School of Justice, the influence of the so-called "clan" over the High School of Justice, and the High School of Justice as a barrier to the influx of new staff into the common court system. The speakers focused on the staffing of the Independent Board of the High School of Justice and the admission procedures for the High School of Justice students. According to them, the High Council of Justice maintains a monopoly in the process of staffing the High School of Justice. In order to ensure the autonomy of the High School of Justice, it is necessary to reduce the role of the High Council of Justice in this process. One of the speakers considered the Conference of Judges as an alternative in the process of staffing the High School of Justice. Speaker also noted that the conference itself is not eager to act beyond the influence of the High Council of Justice. [[23]](#footnote-23)

According to the participants of the discussion, the High School of Justice is a barrier, the function of which is to control the influx of new staff into the judiciary and to train staff loyal to the clan. Numerous studies confirm, that the court suffers from a significant shortage of judges, but the High Council of Justice still inertly addresses the issue of staffing. A new flow is required to enter the course, although the School declares the admission of judges to be limited due to lack of funds. There is a reasonable doubt, that the existing reality is part of the strategy of the High Council of Justice, so that the court is not filled with new staff and the "clan" manages to maintain its spheres of influence.

The above-mentioned regulation has two effects - on the one hand, to control the Conference of Judges, and on the other hand, to use the overload of cases against judges as a basis for disciplinary proceedings. [[24]](#footnote-24) As for the circle of persons enrolled as trainees of the High School of Justice, the new cadres are usually persons working within the judiciary. For example, in November 2019, the High Council of Justice selected 20 trainees from the High School of Justice, whose biographies revealed that most of them work, professionally grow and cooperate with the judiciary. From 20 trainees elected by the High Council of Justice in November 15, had professional connections to the judiciary system. 15 out of 10 had experience working only in the judiciary. Based on these data, the speaker concludes, that the tendency of the system to create a kind of magic circle is obvious, and this explains the rotation of personnel in the judiciary. Relationships, friendships, cooperation, are the starting point in the process of staffing the judiciary. [[25]](#footnote-25)

The close connections between the High School of Justice and the so-called "clan" is also indicated by the informal connections within the judiciary. The director of the High School of Justice, Vano Bolkvadze, has been working with Mikheil Chinchaladze for years, he is connected with an influential group in the system, his wife also works in the office of an independent inspector of the High School of Justice. [[26]](#footnote-26)

According to the international standards, the High School of Justice should be a body independent from the rest of the branches of government and should have the authority to provide judges with continuing education. In the Georgian normative reality, the separation of the High Council of Justice and the High School of Justice is of a formal nature, as the High School of Justice is not institutionally separated from the High Council of Justice, which is manifested, first of all, in the staffing of the Independent Board of the High School of Justice. The majority of the Independent Board of the High School of Justice is composed by the High Council of Justice, and it also has the following functions of fundamental importance:

* Selects the Justice trainees based of the interviews;
* Establishes the number of Justice rainees to be admitted in the High School of Justice;
* Participates in the creation of the graduation examination commission of the High School of Justice; [[27]](#footnote-27)

The followed up discussion focused on two key issues: Who do admit in court? What do we teach them? Differences in opinion between the speakers were caused by several issues: *(1) Number of judges and case management; (2). Decentralization of the High School of Justice.* One of the speakers expressed the view, that the problematic aspect is that courts cannot handle the flow of cases, citing a disproportion in the number of cases and the number of judges.[[28]](#footnote-28) In contrast, it has been argued that under clan’s governance, it does not matter if the court is staffed at a faster pace and examines cases at a faster pace or not, increasing the efficiency of a vicious system will only have negative consequences for the justice system and society.

The attitude of the rapporteurs towards the decentralization of the High School of Justice was contradictory. According to one of the speakers, the decentralization of the High School of Justice and its subordination to the market regulation scheme is dangerous, and may have unfair consequences, as well as it can create a basis for active state intervention in the high schools of justice. [[29]](#footnote-29) According to the second part of the speakers, the decentralization of the High School of Justice is not accompanied by the threat of marketing, as the separation of the education system is a proven practice, and there may be a unified examination system for the coordination of the system. [[30]](#footnote-30)

# IV- Individual independence of judges - Key challenges;

The subject of the fourth public discussion was the degree of individual independence of Georgian judges and related issues of institutional importance. The speakers unanimously agreed that no different opinion is expressed in the Georgian justice system on a number of important issues, judges do not see themselves as neutral and independent human rights arbitrators, but rather as civil servants who serve, who must obey certain types of internal or external influences. According to the speakers, the individual independence of judges is affected by the lack of formal legislative guarantees, as well as informal authoritarian influences and the centralized power in the hands of the so-called "clan".

The general social background is also noteworthy - independent decision-making by judges is perceived as heroic in society, which once again indicates the shortage of influence-free judges. [[31]](#footnote-31) If in the recent past the way to influence the individual independence of judges was through the use of repressive legislative levers, this time the same goal will be achieved through arbitrary management of certain privileges - judges who are close to this circle will more easily move to different courts. Also, when promoting judges, it is not their experience or professionalism that is taken into account, but the degree of informal connections and loyalty. [[32]](#footnote-32)

From a categorical point of view, we can distinguish three main stages of influencing the individual independence of judges:

 (1) the stage of appointment to the position of judges, within which a close institutional link between the High Council of Justice and the High School of Justice should be indicated in order to select persons loyal to the "clan";

(2) the control of judges' loyalty, which starts from the stage of appointing a person as a judge until his/her appointment for life;

(3) the third stage leads to the disciplinary responsibility of a judge appointed for life - this mechanism is used if the judge decides to be independent, not to obey the influences inside or outside the judiciary and to be faithful to his / her real constitutional obligations. [[33]](#footnote-33)

One of the formal means of influencing the autonomy of an individual judges is the formation of a judge’s cabinet (assistant to the judge and a secretary of the court session) without an expressed will of the judge. In a congested judiciary system, if a judge is deprived of the opportunity to work with a conscientious and qualified staff, he or she will not be able to perform his or her professional duties properly, which may even constitute grounds for disciplinary liability. In order to neutralize these threats, a judge's cabinet should be set up, which implies the direct participation of a judge in the process of forming his/her own cabinet. [[34]](#footnote-34)

During the public debate, it was argued, that despite formal legislative guarantees, the individual judges’ independence could not be guaranteed without the formation of his or her reputation, meaning that the wide range of society should be interested in the litigation process. The decision written by the judge is very specific and understandable only to people with legal education. Consequently, the general public is unable to grasp its essence easily, which is why they are alienated from the justice system and may not even be the basis for ensuring judge's reputation. To eliminate this problem, it would be expedient if the jurisprudence is removed from the technical language as much as possible and the barriers between the civil sector and the court are minimized. [[35]](#footnote-35)

In a state based on liberal and democratic values, the violation of the individual independence of judges by the people within the judiciary and the society should provoke a sharp reaction, although, nevertheless, the number of publicly reported facts is small and the response to them is ineffective. The clan creates a system of motivation within the Judiciary, that forces judges to be biased and obedient to the government and the clan. In order to ensure the individual independence of judges, it is necessary for civil society representatives to explore this system of motivation and act with the pathos of neutralizing it. [[36]](#footnote-36)

The discussion also focused on the institutions in the hands of the High Council of Justice that violate the individual independence of judges: secondment to another court and tranfering a judge to another court without competition.[[37]](#footnote-37)

Secondment and tranfering a judge to another court without competition differ from each other, secondment is for a specific term (maximum one year), while the transfer takes place for the term of a judge. The speakers believe, that the secondment has, over the years, been a powerful institution undermining the individual independence of judges. The High Council of Justice transferred judges, who wanted to "punish" and "discipline" to perform their professional functions in another region, away from their families. Legislative changes have duly outlined the basics of secondment, which has reduced the dangers of misuse of the institution of secondment, although the legislative changes have not affected the institution of non-competitive transfer, which can be used by the High Council of Justice without any legislative detail, within a very broad discretion. In 2018, only one judge was transferred this way, although in 2019 and 2020, up to 100 vacancies were announced for non-competitive transfer applications, raising suspicions that there are periods when this mechanism is not used, although there are episodes when it is used intensively.

At this point, one gets the impression, that the secondment mechanism is not being abused, although it can be said that it has been replaced by a rule of transfer without competition. The basics of the secondment and the transfer should be separated from each other. The readiness and need for a judge must be crucial to the transfer mechanism, and the decision to transfer a judge must be substantiated. [[38]](#footnote-38)

# V - Judiciary and publicity;

Open governance is a fundamental functional characteristic of a democratic state, which is a prerequisite for conducting public monitoring of the exercise of public authority and ensuring the accountability of public servants. Participants in the public discussion agree that Georgia's Judiciary system is characterized by closure and a low degree of transparency. The judiciary, which is supposed to be the guarantor of freedom of access to public information and open governance, is one of the most closed institutions. [[39]](#footnote-39)  Issues related to the administration of justice as well as the organizational arrangement of the judiciary are less publicized.

As a branch of government with indirect legitimacy, the openness of the justice system is linked to the public legitimacy of the judiciary and is an exclusive precondition for building public confidence in it. Due to the vague procedures and formal arrangements in place today, all institutions of the judiciary are experiencing a crisis of legitimacy. [[40]](#footnote-40)

As a result of legislative changes, interviews with the candidates of Supreme Court judges are public, in contrast to the interview process with the candidates of the lower instnace court judges, which indicates to a low degree of transparency in the judiciary. According to the decision of the High Council of Justice, no external observer has the right to attend the procedure of interviewing a candidate to a lover instance court judge, which translates into practice as follows: The Secretary of the High Council of Justice asks the candidate if he/she wants to be interviewed with the attendance of outside persons and monitors. In this practice, monitoring the recruitment of judges in the first and second instances depends on the will of the candidate himself/herself. Even if the monitors are allowed to attend the interview process, they do not have the right to request the minutes of the session, and such an arrangement is due to the fact that the interview session is closed. The speaker believes, that the process of selecting judges for the Supreme Court has confirmed that the public interest in this process is great. The acting judges participated in in the selection process of the Supreme Court judges, and the public clearly saw the low level of their integrity and competence - problems that NGOs have been talking about for years. [[41]](#footnote-41)

Publicity of court hearings protects the parties to the dispute from the covert and arbitrary administration of justice, as well as provides public oversight of the judiciary and increases the degree of accountability. The right to a public hearing implies the possibility of enforcing the right of both the media and the public to attend the trial. The publicity of the hearing is not an absolute right and the legislation provides a list of legitimate purposes on the basis of which this right may be restricted. In this case, the judge is obliged to substantiate the reason for closing the hearing and explain its proportionality, although the case law proves that judges analyze the grounds for closing the hearing superficially and formally. In practice, there are cases when several persons violated the court order in a high-profile case and because of this the court session was declared closed, which should be considered as a form of illegitimate and disproportionate interference in the right.

One of the most important aspects of the issue of transparency of the judiciary is the availability of court decisions. Since 2015, the practice of refusing to issue court decisions due to the protection of personal data has been established in Georgia. In June 2019, the Constitutional Court declared unconstitutional the normative content of Articles 5 and 6 of the Law on Personal Data Protection, which precludes the issuance of acts adopted as a result of an open court session. This decision gave priority to freedom of information in the context of access to court decisions. The Constitutional Court noted that judicial acts belong to the type of information available in a public institution, the access to which is within the increased public interest.

Despite the decision of the Constitutional Court, the Parliament of Georgia did not make any legislative changes within the set deadline. Due to the lack of legislative regulation, the common courts do not issue decisions, which unequivocally indicates that serious challenges to the transparency of the judiciary still exist and that effective public monitoring of the judiciary is not possible. Failure to comply with the constitutional decision significantly damages the rule of law in the country and threatens the process of realization of democratic values. [[42]](#footnote-42)

During the period from March 10 to May 2, 2020, when court hearings were held remotely, neutral observers were unable to attend court hearings because the court administration, on the grounds of technical impossibility, unjustifiably refused anyone’s attendance. The speaker believes, that in connection with the publicity of the hearing, it is necessary to ensure a uniform standard in the judiciary, even by issuing a guideline. [[43]](#footnote-43)

During the public discussion, the problem with the openness of the Georgian Judiciary system was mentioned as the fact that out of 14,000 remote sessions held during the pandemic, the media and civil society representatives were given very little opportunity of monitoring. All this violates the practice of Article 6 of the European Convention on Human Rights, which protects the right to public administration of justice. According to the standard set by the European Court of Human Rights, ensuring a fair trial implies the possibility of public control over justice. The requirement of publicity of the process also applies to remote court hearings. [[44]](#footnote-44)

During the public discussion, the difference of opinion between the speakers was caused by the issue of publicity of the personal data of the candidates of Supreme Court judges. According to one of the speakers, the personal information and life episodes of the judge / judicial candidate are important for the appointment process, and at the same time, he believes that the judicial candidates will not be completely honest during the interview. In Germany, sessions of the High Council of Justice are closed, and council members have signed a non-disclosure agreement. As public confidence in the judiciary does not matter whether the sessions are open or closed, to achieve this goal, it is advisable to increase the minimum age for candidates and also to change the configuration of the High Council of Justice to include civil society representatives and their nominees. [[45]](#footnote-45)

The alternative opinion expressed in the discussion categorically deviates from the above opinion. According to this view, when a person claims to be a judge, he/she must be accustomed to the public, showing increased interest in his/her life episodes and value system. [[46]](#footnote-46)

# VI - Constitutional Court of Georgia – Existing challenges

The topic of the sixth public discussion was the main challenges, problems and ways of solution of the body of constitutional control within the judiciary, the Constitutional Court of Georgia. The participants of the public discussion focused on the degree of independence of the Constitutional Court, its renewed configuration, one of the precedent decisions and its institutional-functional relationship with the common court system.

According to the expressed position, the authority of the Constitutional Court exceeds the authority of the common courts, although the factor determining the acquisition of authority is not complete liberation from political influence, but the fact that most of the decisions of the Constitutional Court had no political and therefore authoritarian influence. However, the quality of the substantiation of the Constitutional Court decisions, far exceeds the quality of the substantiation of the decisions made by the common courts. With regard to political influence and the attitude of the Constitutional Court, most of the speakers share the position that the Constitutional Court has usually fulfilled its political mandate and has failed to maintain its institutional independence. [[47]](#footnote-47) The peculiarity of constitutional litigation today is that constitutional disputes are becoming more and more complicated. If 10-15 years ago it was enough for the court to develop international practice and resolve disputes based on them, today the complexity of disputes is equivalent to current and unresolved legal problems in the international space, thus, it has to solve any social, moral, political or legal dilemma. The court was not prepared to deal with a similar challenge. [[48]](#footnote-48)

Within the framework of the public discussion, one of the sub-issues concerned to the renewed configuration of the Constitutional Court of Georgia, in particular, the fact of the appointment of judges of the Constitutional Court - Vasil Roinishvili and Khvicha Kikilashvili with the quota of the Supreme Court of Georgia. The speakers are skeptical of the integrity and autonomy of the selected judges. They do not share the view that the Plenum made the decision on the basis of the qualifications and competence of the candidates. The speaker Nazi Janezashvili got acquainted with the motivation letter of both judges, where both of them named becoming a judge as the greatest career success. The motivation letters of the judges are characterized by stereotypes, it "copies" the legal requirements related to the position of a judge, the motivation letters lack the individualistic perception of the judges themselves. During the discussion, the fact that despite their long judicial careers, none of them has expressed their position on issues of public importance was also referred. None of the facts in their careers indicate that they are conscientious and independent.[[49]](#footnote-49) Most of the speakers share the pathos that this form of staffing has strengthened the influence of the "clan" in the Constitutional Court.

The process of selection of judges of the Constitutional Court of Georgia by the Plenum of the Supreme Court was also characterized by slips: it was not transparent - some judges of the Supreme Court did not know the identity of the candidate and one of the member of the Plenum openly stated about it. These circumstances, in turn, remove the basis for the sociological legitimacy of the Constitutional Court.[[50]](#footnote-50) According to the speaker, Vakhushti Menabdi, GYLA has introduced a legislative initiative, according to which all members of the Supreme Court should have the right to nominate a candidate, a judge should be nominated some time before the vote, in order for the public to be able to participate in a public debate on this, the number of votes required for a decision must be more than 2/3 of the Plenum Members. Such an arrangement would more or less reduce the questions and doubts that arise around the Supreme and Constitutional Courts. [[51]](#footnote-51)

The second sub-topic of discussion was the decision of the Constitutional Court of Georgia - "Public Defender of Georgia v. Parliament of Georgia", which concerned the constitutionality of the norms of the Organic Law of Georgia “on Common Courts” on of the selection of judges of the Supreme Court. Most of the speakers shared the position that due to the dissatisfaction of the lawsuit, the Constitutional Court missed the opportunity to implement fundamental positive reforms in the justice system. According to the speaker, Giorgi Burjanadze, the Public Defender's Office presented all the legal arguments on the basis of which the claim should have been by the Constitutional Court and there were no legal questions during the process, which created grounds for dissatisfaction with the claim. Accoring to his explanaition, the procedure provided for by the Organic Law of Georgia “on Common Courts” did not ensure the realization of the constitutional right to hold public office and there was a risk of violating the right to a fair trial. Nevertheless, the Constitutional Court of Georgia rejected the lawsuit and thus deserved great criticism from professional circles. During the public discussion, the focus was on the circumstances that preceded the declaration of the claim as unsatisfactory. When public attention was turned to the pandemic, the Supreme Court elected Khvicha Kikilashvili and Vasil Roinishvili as judges of the Constitutional Court, and it was their vote that was decisive in declaring the constitutional claim against the Supreme Court's regulatory norms unsatisfactory. [[52]](#footnote-52)

The unequivocal criticism of the speakers was due to the fact that the Constitutional Court, in its decision, equated the role of Parliament with the High Council of Justice. Also, this was the first case in the history of constitutional proceedings when the Constitutional Court of Georgia went against the conclusions of the Venice Commission or the OSCE/ODHIR. [[53]](#footnote-53)

The decision of the Constitutional Court was also contrary to the practice established by it on the obligation to substantiate the decision made by the High Council of Justice. According to dissenting opinions, it is illegal for the High Council of Justice to bring the decision on the selection of candidates for judges of the Supreme Court within the scope of political expediency. [[54]](#footnote-54)

The current version of the Constitution provides for a mixed model for the selection of judges of the Supreme Court, according to which the High Council of Justice should select candidates on a professional basis and the Parliament on a political basis. The Constitutional Court, by its decision, deviated from the above-mentioned model. The Constitutional Court had the opportunity, with a correct and principled decision, to have a significant impact on the ongoing proceedings in the court, however, with the decision made, it failed. In the end, the Constitutional Court not only deviated from its practice, but also ignored the assessments of international organizations on the flawed legal framework in Georgia. [[55]](#footnote-55)

During the discussion, it was especially underlined, that the support of Judges: Roinishvili and Kikilashvili was crucial in appointing Merab Turava as Chairman of the Constitutional Court. And those judges who unreasonably supported the dismissal of the lawsuit were acting in self-interest, the whole context was aimed at maintaining the legitimacy of the Supreme Court selection procedure. [[56]](#footnote-56)

Given the current political context, the Constitutional Court is divided into two camps, with a representation of 5 to 4 judges. Where 5 judges are positioned based on political interests - all this is clearly seen in the recent decisions on issues of political importance. [[57]](#footnote-57)

During the discussion, it was suggested that the transfer of constitutional control to the common courts would make it possible to exercise constitutional control more effectively, as there are no additional procedural barriers to declaring this or that norm unconstitutional, and constitutional control itself is more widespread. [[58]](#footnote-58)

According to an alternative view, the inclusion of the Constitutional Court in the common court system would be counterproductive, as there is a very strong sense of subordination and hierarchy in the common court system. [[59]](#footnote-59) Also, the reputation of the Constitutional Court will be damaged by merging with the Supreme Court, and the final institutional arrangement will have impractical consequences. [[60]](#footnote-60)

# Conclusion

The cycle of public discussions organized by the Coalition “for an Independent and Transparent Judiciary” within the framework of the “Concept - Fair Trail” illustrates the public consensus on the fundamental problems in the Georgian Judiciary. The whole public spectrum was actively represented in the discussions: non-governmental organizations, representatives of the public sector and academia. They unanimously acknowledged that Georgia's justice system does not serve the realization of democratic and constitutional values, but is a mechanism in the hands of influential political or professional group ("clan") to pursue their own interests, suffering from a lack of accountability and public trust. Although the members of the public discussion had differing views on how to address this or that institutional problem, they shared the view that the justice system needed to be fundamentally and comprehensively reformed.

1. 17.07.2020 - <https://www.facebook.com/watch/?v=734437984038285> [↑](#footnote-ref-1)
2. 04.08.2020 - <https://www.facebook.com/watch/?v=289101068982075> [↑](#footnote-ref-2)
3. 14.08.2020 - <https://www.facebook.com/watch/?v=302944090938759> [↑](#footnote-ref-3)
4. 31.08.2020 - <https://www.facebook.com/watch/?v=3643473935663426> [↑](#footnote-ref-4)
5. 17.09.2020 - <https://www.facebook.com/watch/?v=606286190051926> [↑](#footnote-ref-5)
6. 02.10.2020 - <https://www.facebook.com/watch/?v=256096742369512> [↑](#footnote-ref-6)
7. Kakha Tsikarishvili, “Rights Georgia”; Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia. [↑](#footnote-ref-7)
8. Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia [↑](#footnote-ref-8)
9. Giorgi Burjanadze, Deputy Public Defender of Georgia [↑](#footnote-ref-9)
10. Vakhushti Menabde, “Georgian Young Lawyers Association” (GYLA); Guram Imnadze, “Human Rights Education and Monitoring Center” (EMC) [↑](#footnote-ref-10)
11. Keti Kukava, Institute for Development of Freedom of Information (IDFI) [↑](#footnote-ref-11)
12. Giorgi Burjanadze, Deputy Public Defender of Georgia; Keti Kukava, Institute for Development of Freedom of Information (IDFI); [↑](#footnote-ref-12)
13. Vakhushti Menabde, “Georgian Young Lawyers Association” (GYLA) [↑](#footnote-ref-13)
14. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-14)
15. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-15)
16. Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia [↑](#footnote-ref-16)
17. Kakha Tsikarishvili, “Rights Georgia” [↑](#footnote-ref-17)
18. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-18)
19. Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia [↑](#footnote-ref-19)
20. Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia [↑](#footnote-ref-20)
21. Tamara Laliashvili, “A group of independent lawyers”, Former judge of the Supreme Court of Georgia. [↑](#footnote-ref-21)
22. Vakhushti Menabde, “Georgian Young Lawyers Association” (GYLA) [↑](#footnote-ref-22)
23. Vakhushti Menabde, “Georgian Young Lawyers Association” (GYLA) [↑](#footnote-ref-23)
24. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-24)
25. Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia [↑](#footnote-ref-25)
26. Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia [↑](#footnote-ref-26)
27. Maia Bakradze, “A group of independent lawyers”, former Judge. [↑](#footnote-ref-27)
28. Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia [↑](#footnote-ref-28)
29. Vakhushti Menabde, “Georgian Young Lawyers Association” (GYLA) [↑](#footnote-ref-29)
30. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-30)
31. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI); Vakhushti Menabde, “Georgian Young Lawyers Association” (GYLA) [↑](#footnote-ref-31)
32. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-32)
33. Vakhushti Menabde, “Georgian Young Lawyers Association” (GYLA) [↑](#footnote-ref-33)
34. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-34)
35. Giorgi Meladze - Associate Professor of Ilia State University [↑](#footnote-ref-35)
36. Kakha Tsikarishvili, “Rights Georgia” [↑](#footnote-ref-36)
37. Ekaterine Tsimakuridze, “Democracy Index” [↑](#footnote-ref-37)
38. Ekaterine Tsimakuridze, “Democracy Index” [↑](#footnote-ref-38)
39. Guram Imnadze, “Human Rights Education and Monitoring Center” (EMC) [↑](#footnote-ref-39)
40. Kakha Tsikarishvili, “Rights Georgia” [↑](#footnote-ref-40)
41. Gvantsa Tsuukidze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-41)
42. Keti Kukava, Institute for Development of Freedom of Information (IDFI) [↑](#footnote-ref-42)
43. Merab Kartvelishvili, “Georgian Young Lawyers Association” (GYLA) [↑](#footnote-ref-43)
44. Nana Mchedlidze, “Rights Georgia” [↑](#footnote-ref-44)
45. Sulkhan Gvelesiani, Executive Director of the Legal Aid Service [↑](#footnote-ref-45)
46. Gvantsa Tsuukidze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-46)
47. Vakhushti Menabde, “Georgian Young Lawyers Association” [↑](#footnote-ref-47)
48. Vakhushti Menabde, “Georgian Young Lawyers Association” [↑](#footnote-ref-48)
49. Nazi Janezashvili, non-judge member of the High Council of Justice of Georgia [↑](#footnote-ref-49)
50. Vakhushti Menabde, “Georgian Young Lawyers Association” [↑](#footnote-ref-50)
51. Vakhushti Menabde, “Georgian Young Lawyers Association” [↑](#footnote-ref-51)
52. Keti Kukava, Institute for Development of Freedom of Information (IDFI) [↑](#footnote-ref-52)
53. Giorgi Burjanadze, Deputy Public Defender of Georgia [↑](#footnote-ref-53)
54. Keti Kukava, Institute for Development of Freedom of Information (IDFI) [↑](#footnote-ref-54)
55. Keti Kukava, Institute for Development of Freedom of Information (IDFI) [↑](#footnote-ref-55)
56. Giorgi Burjanadze, Deputy Public Defender of Georgia [↑](#footnote-ref-56)
57. Vakhushti Menabde, “Georgian Young Lawyers Association” [↑](#footnote-ref-57)
58. Giorgi Burjanadze, Deputy Public Defender of Georgia [↑](#footnote-ref-58)
59. Vakhushti Menabde, “Georgian Young Lawyers Association” [↑](#footnote-ref-59)
60. Giorgi Mshvenieradze, “Georgian Democracy Initiative” (GDI) [↑](#footnote-ref-60)