



Office for Democratic Institutions and Human Rights

**REPORT ON FIRST PHASE OF THE NOMINATION AND  
APPOINTMENT OF SUPREME COURT JUDGES IN  
GEORGIA**

**June – September 2019**

**OSCE/ODIHR Report**



**Warsaw**

## INTRODUCTION

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) provides support, assistance and expertise to participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. In April 2019, the OSCE/ODIHR reviewed proposed amendments relating to the appointment of judges to the Supreme Court of Georgia. The legal opinion prepared at the request of the Public Defender (Ombudsman) of Georgia, was published on 17 April and provided an assessment of the compliance of the draft amendments with international standards and OSCE commitments and noted several shortcomings.<sup>1</sup>

In light of the importance of the appointment process to strengthening judicial independence in Georgia and following a further request from the Public Defender, ODIHR is monitoring the process on the basis of the commitments OSCE participating States have made to upholding the rule of law and ensuring the independence of the judiciary.<sup>2</sup> OSCE participating States have specifically confirmed that judicial independence is a “*prerequisite to the rule of law and [...] a fundamental guarantee of a fair trial.*”<sup>3</sup>

The ODIHR monitoring team consisting of two national monitors and one international monitor began its work on 29 June, including monitoring all candidate interviews before the High Council of Justice (HCJ) and related sessions of the HCJ. Monitors strictly adhere to well-established OSCE/ODIHR monitoring principles of non-interference, impartiality, objectivity, confidentiality and professionalism. The HCJ has facilitated the unhindered access of ODIHR monitors to follow the process to date. ODIHR monitors will continue to follow the process through the next stage when the HCJ nominations are considered by parliament and will issue a final report providing a comprehensive assessment of the entire process as well as recommendations going forward.

## EXECUTIVE SUMMARY

Recent constitutional amendments increased the number of judges on the Supreme Court from a minimum of 16 to a minimum 28, changed term appointments to lifetime tenures, and gave the HCJ the authority to nominate candidates for parliamentary appointment. On 1 May 2019, amendments regulating the new process were adopted. The OSCE/ODIHR reviewed the draft amendments for compliance with international standards and OSCE commitments. The 2019 ODIHR Legal Opinion welcomed the introduction of an open appointment procedure and the efforts of parliament to fill a gap by elaborating more detailed provisions on the selection

---

<sup>1</sup> OSCE/ODIHR, [Opinion on Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia](#), 17 April 2019 (2019 ODIHR Opinion).

<sup>2</sup> See the [Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe](#) (Vienna Document, 1989), the [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#) (Copenhagen Document, 1990), [Charter of Paris for a New Europe](#) (Paris, 1990), [Document of the Moscow Meeting of the Third Conference on the Human Dimension of the CSCE, Moscow](#) (Moscow Document, 1991).

<sup>3</sup> [Brussels Declaration on Criminal Justice Systems](#) (MC.DOC/4/06 of 5 December 2006).

criteria and procedures. Yet, it also noted a number of key shortcomings, including a lack of guarantee for transparency that undermined a genuine merit-based nomination process. A few recommendations were addressed prior to adoption but a number of shortcomings remained.

Prior to the recent amendments, the President had the authority to nominate candidates for appointment by parliament and the legal framework did not envision an open recruitment procedure. In the new nomination process, according to the law, the HCJ conducts an open recruitment, determines applicants' eligibility, establishes a candidate shortlist by secret vote, conducts background checks, and interviews each candidate in a public hearing. Candidates are then scored by each member and subsequently ranked through a secret vote. The highest-ranking candidates are then individually voted on by another secret ballot and those who receive at least two-thirds of the votes of all members are nominated. Each nominee is then publicly interviewed by a parliamentary committee; those that receive the majority of votes in parliament are appointed. The introduction of an open competitive recruitment process that allows for significant public scrutiny of the process is a commendable step in advancing transparency and accountability in Georgia and building public confidence in the judiciary.

The HCJ generally implemented the technical aspects of the selection process in line with the law. However, ODIHR monitors noted in performance of its duties the HCJ was characterized by strong internal divisiveness and animosity between two groups of judge and non-judge members. Tense relations between the HCJ and civil society, which monitor the independence of the judiciary and the judicial oversight body, were also present throughout the process.

The recruitment to fill the 20 Supreme Court seats was open to all eligible citizens and yielded 144 applicants, with 38 per cent women. The law does not clearly and sufficiently regulate recusals for conflict of interest and two HCJ members refused to recuse themselves despite in-law relations with applicants. The HCJ secretary, a candidate, recused himself from the nomination process, however, concerns remained as he did not step down as an HCJ member and head of office. The vast majority of applicants were deemed eligible, while two of the five ineligible lodged unsuccessful appeals.

Public scrutiny of the nomination process was intense in light of the high number of vacancies to be filled for lifetime appointments to the highest court, and the HCJ's new authority in this process. Initially the HCJ released very little information about the applicants, limiting opportunities for public scrutiny of the candidates. As noted in the 2019 ODIHR Opinion, the legal framework lacks sufficient guarantees for transparency in the decision-making aspects of the process. Specifically, the HCJ was not required to provide any reasoning or justification for the shortlisting and nominations conducted by secret vote to demonstrate they were grounded on genuine consideration of the legal criteria of competence and integrity.

The HCJ did not adopt procedures for assessing the applicants' qualifications or for conducting the short-list vote. HCJ members were given five days to evaluate the applicants before, through a secret ballot, the pool was reduced to 50 candidates. Thirty-four percent were women. Notably, the average age and years of experience of those shortlisted were about

two years less than the average for all applicants, and some successful candidates, both judge and non-judge, had significantly less experience than some excluded ones. Following the vote on the short-list, the Public Defender issued statements raising serious concerns about voting patterns identified in the analysis and making strong allegations of colluding amongst the majority of HCJ members to split votes to ensure a specific 45 applicants were short-listed. These allegations, which were echoed by some civil society organizations, further diminished confidence in the process.

The HCJ secretariat carried out background checks for all shortlisted candidates. Despite recommendations made in the 2019 ODIHR Opinion to clarify procedures, the checks were conducted without sufficient elaboration or transparency on the methodology and procedures to be followed. The results of the background checks were provided to HCJ members only five days prior to the hearings leaving them limited time to adequately prepare for the interviews. In addition, within the HCJ, there were concerns raised about the thoroughness and effectivity of the background checks.

The public interviews of the candidates were open to international and civil society monitors and generally transparent but advance public notice of the hearings was very short and the size of the venue could not accommodate the high level of interest to observe and report on the process. The Public Broadcaster live-broadcasted the hearings on social media and audio recordings of the hearings were posted on the HCJ website. The HCJ did not adopt rules of procedure or a code of conduct for the hearings to ensure a fair and orderly process. This approach enabled the unequal treatment of candidates, further limited transparency and contributed to highly disorganized interviews. In addition, tensions within the HCJ were very high during the process, which ODIHR monitors noted resulted in frequent hostile remarks and heated arguments that dominated the interviews and created an unprofessional atmosphere.

ODIHR monitors observed that the substance of the hearings widely differed with regard to the number and content of questions, the manner of questioning and the length of the interviews, contrary to the principle of equal treatment. While overall, the questions posed covered issues related to the evaluation criteria of competence and integrity, ODIHR monitors noted significant differences in how candidates were questioned and treated and at times HCJ members indicated in various ways their support or opposition of a candidate. Still, the mixed composition of the HCJ with both judge and non-judge members contributed to the substance of the interview process.

The HCJ members each privately scored the candidates after completion of all interviews, rather than after each interview. The consolidated points received per candidate were posted on the HCJ website on 3 September, almost three weeks after completion of the hearings. The 20 candidates selected by secret ballot on 4 September did not coincide with the top 20 based on the scores received, as five of the top-scored candidates were not among the 20 selected. The candidates include fifteen sitting judges, one former judge, two high-ranking public officials, and two current or former judicial staff. Thirty-five per cent are women, notably less than the proportion of all women judges. All 20 candidates received at least 2/3 of the members' votes in the second secret ballot and are to be nominated to parliament. Two HCJ

non-judge members publicly indicated their intention to submit dissenting opinions on some nominees, although one of the non-judge members did not participate in the voting.

The HCJ is not required to provide a reasoned explanation of the decisions taken on short-listing, determining the ranking, or the final selection of the 20 candidates to be put up for nomination. Therefore, the opportunity for legal redress is significantly hindered. Further, the right to effective legal remedy against HCJ's actions and decisions is not sufficiently guaranteed in the legal framework. This left the nomination process under the final authority of a judicial oversight body, rather than a court of law, challenging OSCE commitments and international standards.

The ODIHR monitoring team will continue to follow the process through the next stage when the HCJ nominations are considered by parliament and will issue a final report providing a comprehensive assessment of the entire process as well as recommendations going forward. In light of the assessment provided in this report, ODIHR calls on parliament to critically review the process before the HCJ and address procedural deficiencies identified to ensure the process enjoys greater confidence and results in the merit-based selection of the most qualified candidates.

## BACKGROUND

Constitutional amendments that entered into force on 16 December 2018 included changes to the composition of the Supreme Court and to the process for selection and appointment of Supreme Court judges. The amendments increased the minimum number of Supreme Court judges from 16 to 28 and changed the 10-year terms to lifetime appointments. Under the reforms, the power formerly held by the president to nominate Supreme Court candidates for appointment by parliament was granted to the HCJ.

At present, 20 of the 28 seats on the Supreme Court are vacant, including the position of chairperson, which has been vacant since the former chairperson resigned in August 2018. The ongoing process to fill such a critical number of lifetime appointments to the country's highest judicial body is occurring at a time of low public trust in the judiciary and parliament.<sup>4</sup> Public interest in and scrutiny of the process is consequently very high, and the responsible institutions face intense public pressure to ensure that the most qualified candidates are appointed.

On 24 December 2018, the HCJ submitted to parliament ten candidates for appointment to the Supreme Court. These nominations were made in the absence of legislation establishing criteria and procedures for the selection process and without any consultation with relevant

---

<sup>4</sup> According to a [Transparency International Georgia Survey](#) from February-March 2019, public trust in the judiciary and parliament are at 24 per cent and 20 per cent respectively; 53 per cent of respondents believe that the judiciary is under the influence of the ruling party and 43 per cent consider that there is "clan-based" rule in the judiciary; of those respondents 87 per cent believe that the so-called "clan" is supported by government officials and 94 per cent think that influential groups of judges should leave the judiciary; 46 per cent of respondents think that the courts should be filled with new judges to increase public trust in the judiciary.

stakeholders.<sup>5</sup> The nominations garnered widespread public backlash and criticism from civil society, the Public Defender, political opposition, and forces within the ruling party.<sup>6</sup> Those critical of the nominations alleged that the selected candidates, all sitting judges, had made politically-motivated judgements and are part of or closely affiliated with an influential group of judges that controls the judiciary.

Stakeholders called on parliament to block the nominations and to draft legislation that provides clear and objective criteria and a transparent procedure for the selection and appointment process. Consequently, the ten nominees withdrew their candidacies and parliament agreed to draft amendments to regulate the process. A working group on judicial reform was appointed to draft the amendments, but civil society organizations and the political opposition protested the composition of the group.<sup>7</sup> On 22 February, the civil society organizations pulled out of the process claiming a lack of responsiveness to their concerns over the amendments.<sup>8</sup> In its assessment of the drafting and adoption process, ODIHR concluded that it “does not seem to conform to the...principles of democratic law-making”.<sup>9</sup> Several parliamentarians resigned from the ruling party in protest over the law-making process and/or the adopted amendments.<sup>10</sup>

## LEGAL FRAMEWORK

On 1 May 2019, the Organic Law on Common Courts of Georgia (hereafter Organic Law) and the Rules of Procedure of the Parliament of Georgia were amended to regulate the newly established constitutional process for the selection and appointment of Supreme Court judges. Shortly prior to their adoption, ODIHR assessed the draft amendments for consistency with OSCE commitments and international standards as well as international recommendations for

---

<sup>5</sup> 2019 ODIHR Opinion, paras. 94-98.

<sup>6</sup> See public statement, dated 27 December 2018, issued by the Coalition for an Independent and Transparent Judiciary at <[http://coalition.ge/index.php?article\\_id=197&clang=1](http://coalition.ge/index.php?article_id=197&clang=1)>. On 27 December, the ruling party’s Chair of the Parliamentary Legal Issues Committee, the body responsible for reviewing the nominees prior to the parliament’s vote on appointments, resigned from the post in protest and the vice-speaker of parliament called for the withdrawal of the nomination list. See <<https://agenda.ge/en/news/2018/2771>> and <<https://1tv.ge/en/news/tamar-chugoshvili-high-council-of-justice-should-withdraw-the-list-of-judges/>>.

<sup>7</sup> The first meeting of the working group on 27 January was boycotted by civil society organizations and the political opposition walked out, which was followed by changes to the group’s composition. See <<https://civil.ge/archives/274880>> and <<https://agenda.ge/en/news/2019/259>> on the opposition political parties and non-judge HCJ members leaving the meeting as well.

<sup>8</sup> See Statement of the Coalition for an Independent and Transparent Judiciary at <[http://coalition.ge/index.php?article\\_id=201&clang=1](http://coalition.ge/index.php?article_id=201&clang=1)>.

<sup>9</sup> The ODIHR assessment highlighted the hasty adoption of the amendments and noted insufficient transparency, a lack of inclusive, extensive and effective consultations with stakeholders at all stages of the law-making process, and the absence of a full impact assessment including on compatibility with relevant international standards. See 2019 ODIHR Opinion, paras. 91-98.

<sup>10</sup> See <<http://parliament.ge/en/media/axali-ambebi/parlamentis-wevrma-eka-beseliam-saparlamento-umravlesoba-datova.page>>; <<https://1tv.ge/en/news/gedevan-popkhadze-quits-the-ruling-georgian-dream-party>>; <<http://agenda.ge/en/news/2019/502>>; and <<https://agenda.ge/en/news/2019/1156>>. The resigned parliamentarians subsequently created a new party “For Justice”, see <<http://www.parliament.ge/en/parlamentarebi/news1/saqartvelos-parlamentis-wevri-eka-beselia-tanamoazreebtan-ertad-axal-partias-qmnis.page>>.

judicial appointment processes.<sup>11</sup> The assessment concluded that while the adoption of provisions on criteria, conditions and procedures for the selection was a positive development, the draft amendments fell short of guaranteeing an adequate open, transparent, and merit-based selection system and were not fully in line with international standards and recommendations.

The final amendments addressed a few ODIHR recommendations including the introduction of some provisions to avoid conflict of interest within the HCJ when HCJ members are also candidates and the removal of the requirement for non-judge candidates to pass the judicial qualification examination. However, key shortcomings remain. These include insufficient assessment criteria and a secret ballot selection procedure which along with the expedited timeline undermines the merit-based selection system; the absence of a requirement for a reasoned decision for the ranking and nomination of candidates based on the established evaluation criteria; insufficient guarantees against discrimination and a lack of mechanism to achieve gender balance and diversity; inadequate regulation of conflict of interest in the nomination process; and the lack of a clear right for candidates to challenge decisions of the HCJ before a judicial body. Furthermore, the adopted amendments fail to provide safeguards to prevent the politicisation of the appointment process before the parliament, for instance by strictly circumscribing parliament's role to one of supervising compliance with applicable procedures rather than undertaking what amounts to a re-assessment of the competence and integrity of all the candidates.<sup>12</sup>

Legislation establishes a new multi-stage process for the nomination and appointment of Supreme Court judges.<sup>13</sup> Following a recruitment period, the HCJ determines which applicants meet the minimum eligibility criteria.<sup>14</sup> By secret vote, the eligible applicant pool is shortlisted to a list of candidates equal to 2.5 times the number of vacancies, whereby each HCJ member votes for up to as many candidates as there are vacancies. Those who receive the most votes are subject to background checks and interviewed in a public hearing. Following interviews, candidates are scored by each HCJ member and an overall score is determined. By

---

<sup>11</sup> The Council of Europe's European Commission for Democracy through Law (Venice Commission) also issued an opinion of the draft law at the request of the then chairperson of parliament: [Urgent Opinion on the Selection and Appointment of Supreme Court Judges of Georgia](#), published on 16 April and endorsed by the Venice Commission on 21-22 June 2019 (2019 Venice Commission Urgent Opinion).

<sup>12</sup> 2019 ODIHR Opinion, paras 13 and 82-84. See also Venice Commission, [Report on Judicial Appointments](#) (2007), CDL-AD(2007)028-e, paras. 10-11; Council of Europe (CoE), [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities](#), 17 November 2010, para 46; [OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia](#) (2010), para. 8; [1998 European Charter on the Statute for Judges](#), para. 1.3; and Consultative Council of European Judges (CCJE), [Opinion no. 10 \(2007\) on the Council for the Judiciary at the Service of Society](#), para. 48 and Recommendation D(b); and [Opinion No. 18 \(2015\) on the Position of the Judiciary and its Relation with the Other Powers of State in a Modern Democracy](#), para. 15.

<sup>13</sup> For the purpose of this report "nomination process" is used to describe the application, selection and actual voting on the nominations conducted by the HCJ. Prior to the recent amendments, the President had the authority to nominate candidates for appointment by parliament and the legal framework did not envision an open recruitment procedure.

<sup>14</sup> Eligibility criteria: Georgian nationality, knowledge of the state language, masters degree or equivalent, at least 30 years old and five years experience as a judge or specialist of distinguished qualification in the field of law.

secret vote, the shortlist is then reduced to a list of candidates equal to the number of vacancies. Those on that list are then voted on individually whereby each HCJ member may vote by secret ballot for or against the slated candidate. Those with at least two-thirds of the HCJ members' votes are nominated for appointment by parliament. The introduction of an open competitive recruitment process that allows for significant public scrutiny of the process is a commendable step in advancing transparency and accountability in Georgia and building public confidence in the judiciary.

OSCE participating States have committed to ensuring the independence of the judiciary and international standards and good practice call for applying objective criteria in the selection of judges based on merit, taking into consideration qualifications, ability and efficiency.<sup>15</sup>

The Georgian legislation foresees a merit-based selection process and provides that the HCJ's decisions throughout the process are to be based on two main criteria of competence and integrity, which are further broken down into sub-criteria. However, the requirement for merit-based decision-making is seriously undermined by the use of secret votes throughout the process and the absence of a requirement for justification of the rankings and nominations. The lack of transparency in the HCJ's decision-making procedures may result in arbitrarily decided judicial appointments, potentially undermining the integrity of the appointment process and resulting in a violation of Article 6 of the European Convention on Human Rights, which provides basic guarantees for an independent and impartial tribunal.<sup>16</sup> Further, the HCJ did not adopt any regulations to supplement the legislation and further elaborate on the various stages of the nomination process to enhance transparency and accountability, as well as ensure an objective, merit-based process and greater gender balance and diversity in the Supreme Court.

The legal framework does not clearly define the parameters of parliament's role in the appointment process, but it appears to envision a second evaluation of the nominees. Once the HCJ submits the list of nominees to parliament, along with any dissenting opinions and background materials, the Legal Issues Committee "determines compliance of the nominee with the requirements defined in the constitution and and/or any other law" and individual public interviews of the nominees are conducted. Once the committee submits its report, parliament discusses and votes on each nominee. Those who receive a majority of votes are appointed to the Supreme Court. By law, if any of the vacancies remain unfilled, the HCJ is to nominate additional candidates from its original shortlist.<sup>17</sup>

---

<sup>15</sup> See e.g., CoE Recommendation CM/Rec(2010)12, para. 44; CCJE, [Opinion no. 1 \(2001\) on Standards concerning the Independence of the Judiciary and the Irremovability of Judges](#), paras. 25 and 73 (2); and [UN Basic Principles on the Independence of the Judiciary](#), endorsed by UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principle 10.

<sup>16</sup> See e.g., European Court of Human Rights (ECtHR), [Guðmundur Andri Ástráðsson v. Iceland](#) (Application no. 26374/18, judgment of 12 March 2019), paras. 97-103 and 112-123.

<sup>17</sup> Key parliamentary interlocutors have indicated to ODIHR that they will not necessarily appoint all 20 judicial posts at this time. Such steps were recommended in the 2019 Venice Commission Urgent Opinion, para. 64.



## THE JUDICIAL OVERSIGHT BODY

The HCJ is a constitutional body mandated with oversight of the judiciary. It is composed of 15 members serving four-year terms, eight elected by and from the plenary of common court judges, one member is *ex officio* the Supreme Court chairperson, and six non-judge members, five elected by parliament and one a presidential appointee. One of the current eight judge members (12 per cent) and three of the six non-judge members (50 per cent) are women.<sup>18</sup> There is currently no HCJ chairperson. Under the recent constitutional amendments, the chairperson is elected from amongst the body's judge members (previously the chairperson was *ex officio* the Supreme Court chairperson), but the new authority of the HCJ to elect its chairperson has yet to be exercised.<sup>19</sup> The lack of a chairperson, combined with the fact that the HCJ secretary had to recuse himself due to being a candidate, raised concerns about the legitimacy of the process.<sup>20</sup>

ODIHR's monitoring showed that the functionality of the HCJ was characterized by strong internal divisiveness and animosity between two groups – all the judge members (supported by several non-judge members, some of whom are former judges) and two non-judge members. The divisions stem from long-standing criticism from the two non-judge members that the others are part of the influential group of judges seen as controlling the judiciary.<sup>21</sup> The two sides harshly criticized each other in mainstream and social media, public statements, and public sessions. The nomination process heightened these internal tensions, with the two non-judge members publicly criticizing the manner in which the majority members conducted the process, questioning their impartiality and calling for the process to be halted.<sup>22</sup>

The HCJ met all deadlines in the nomination process. However, it consistently breached the requirement to provide seven-days notice for public sessions; often notices were only one-two days prior to sessions and the dates, times and agenda were at times changed at the last

---

<sup>18</sup> The significant gender imbalance amongst the HCJ judge members is highly inconsistent with the gender-balanced statistics for the overall judiciary in Georgia (as of October 2018, 53 per cent of the total 306 judges were women), but similar to the significant gender imbalance in managerial judicial positions (15 per cent of court chairpersons and 22 per cent of chamber chairpersons are women).

<sup>19</sup> There has been no Chair for one year since the former HCJ chairperson, the Supreme Court chairperson, has not been replaced and the acting Supreme Court chairperson has not taken on the role of HCJ chairperson. According to the HCJ secretary, the HCJ has postponed voting on a new chairperson until the new Supreme Court chairperson, who will be an *ex officio* HCJ member, is appointed.

<sup>20</sup> Two non-judge members raised concerns that the chairing of sessions and signing of decisions and protocols by ordinary members is not clearly authorized by the legislation and asserted that therefore, the secretary was not authorized to continue in his position while a candidate.

<sup>21</sup> On 4 June 2019, a group of independent lawyers and legal experts, supported by a number of civil society organizations and opposition political parties, submitted a draft resolution to the parliament in which they asked for condemnation of what they dub as “clan-based” management of the country's judiciary and to create a multi-stakeholder commission to probe the state of judiciary. On 16 July 2019, the parliament hosted a meeting with the initiating group to discuss the draft resolution.

<sup>22</sup> On 11 July, these two non-judge members unsuccessfully called for a halt to the process due to alleged malfeasance in various aspects of the nomination process, and demanded implementation of a legitimate selection process.

minute. The HCJ posted its decisions online as required by law and provided audio minutes of each session.<sup>23</sup>

## TRANSPARENCY AND MONITORING

Transparency of the HCJ's sessions in the nomination process was limited to some extent. While the law requires public sessions, the venue could not accommodate the high level of public interest in the process and was not accessible to persons with disabilities. Media representatives were generally not allowed in sessions and cameras were only permitted in the lobby area where the sessions were live streamed although with audio difficulties.<sup>24</sup> The Public Broadcaster livestreamed candidate interviews on social media, which significantly increased transparency, allowing the public to generally assess the quality of candidates. The HCJ posted session audiotapes online, but often with considerable delay, and videotapes were available on request (both without full audio content).<sup>25</sup>

The process was monitored by observers from civil-society organizations and the Public Defender and observed by representatives of international donors working on judiciary-related projects and the diplomatic community. Some ten journalists from TV, radio and newspapers reported on the process. ODIHR monitors noted a lack of cooperation between civil society groups and the HCJ during the nomination process, which interlocutors attributed to prior critical statements on the work of the HCJ.<sup>26</sup> Similarly, there was tension directed towards the Public Defender, which issued critical statements about the current nomination process.<sup>27</sup> Some HCJ members accused the civil society groups and the Public Defender of a partisan agenda and publicly criticized their assessments of the HCJ and the process.

## APPLICATION PROCEDURE

The recruitment period was only three weeks long (11-31 May).<sup>28</sup> The HCJ published the vacancy notice in line with the law,<sup>29</sup> however, eligibility and evaluation criteria and

---

<sup>23</sup> The HCJ informed ODIHR monitors that the audio recordings of the sessions fulfil the legal requirements for minutes although as noted elsewhere in the report ODIHR monitors found that the audio recordings fail to capture all the dialogue in the interviews.

<sup>24</sup> The audio was not transmitted or recorded when speakers failed to use their microphones or multiple members spoke at once (maximum three microphones can transmit audio), which regularly occurred particularly when members insulted each other or during heated arguments, sometimes for extended periods.

<sup>25</sup> For instance, audiotapes from the first two weeks of the candidate hearings were all uploaded on one day.

<sup>26</sup> The Coalition for an Independent and Transparent Judiciary, formed in 2011, unites 40 member NGOs to consolidate their efforts into a joint advocacy for an independent, transparent and accountable justice system. To view its public statements about the HCJ and the current nomination process, see <[www.coalition.ge](http://www.coalition.ge)>. Transparency International Georgia and the Georgian Young Lawyers Association, both members of the coalition, are engaged in long-term monitoring of the HCJ's activities. For their monitoring report on HCJ's activities in 2017, see <[www.gyla.ge](http://www.gyla.ge)>.

<sup>27</sup> See <[www.ombudsman.ge](http://www.ombudsman.ge)> to view all Public Defender statements on the current nomination process.

<sup>28</sup> The draft law had a four-week application period which was reduced to three weeks in the final version. One request for an extension for health reasons was denied.

<sup>29</sup> The vacancy notice was published on the HCJ and Legislative Herald websites and through the Public Broadcaster and all national broadcasters (by law, at least two are to be notified).

nomination procedures were not included.<sup>30</sup> The notice did not include any messaging encouraging applications from women, minorities and persons with disabilities.<sup>31</sup>

A standard application form with a list of required supporting documents, was posted on 6 May.<sup>32</sup> The application form included questions about marital status, financial information, and the personal data and criminal convictions of family members (including parents, spouse, siblings, and in-laws), among others, which goes beyond what is needed to evaluate candidates and may offer grounds for discrimination.<sup>33</sup> Further, these questions which are not explicitly required by law, may unduly impact the right to private and family life of candidates and family members.<sup>34</sup> Positively, the HCJ took the initiative to give applicants an opportunity to provide missing documentation, and informed applicants of specific missing documents, such as work records and educational documents.

The HCJ received 144 applications and published a list of the applicants with their names only. Based on a review of the published names, 38 per cent of the applicants were women (54 out of 144). This is the same percentage as the current composition of the Supreme Court (3 out of 8 sitting judges are women), but is significantly less than the overall percentage of women judges in the country (53 per cent). There were no apparent minorities in the applicant pool, despite a relatively diverse population.<sup>35</sup> Both members of the HCJ and civil society organizations informed ODIHR monitors that a number of highly qualified and reputable candidates, both judges and non-judges, did not apply due to a lack of trust in the HCJ and/or parliament to conduct an objective assessment.

---

<sup>30</sup> See [Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct](#) (2010), para. 12.3; and [Cape Town Principles on the Role of Independent Commissions in the Selection and Appointment of Judges](#) (February 2016), Principle 9, which provide that in order to ensure the transparency of the process, the vacancy notice should reiterate the selection criteria and specify the process of selection.

<sup>31</sup> See 2019 ODIHR Opinion, paras. 46-49 and all references contained therein.

<sup>32</sup> Applicants were to attach a CV/biography, diploma with transcripts, a work record, legal writing samples, health certificate, and consent to a background check and the release of collected information to parliament and the public.

<sup>33</sup> See e.g., on information requested or collected from candidates to judgeship in Georgia, Venice Commission, [Joint Opinion of the Venice Commission and the Directorate of Human Rights \(DHR\) of the Directorate of Human Rights and the Rule of Law \(DGI\) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia](#), CDL-AD(2014)031-e, 14 October 2014 (hereinafter 2014 VC-DHR-DGI Joint Opinion on Draft Amendments to the Organic Law on General Courts of Georgia), paras. 51-54. Discrimination on the ground of marital status was expressly acknowledged by ECtHR in [Petrov v. Bulgaria](#) (Application no. 15197/02, judgment of 22 May 2008). See also CCJE, [Opinion no. 21 \(2018\) on Preventing Corruption among Judges](#), para. 26.

<sup>34</sup> However, Article 35.1(5) provides that when evaluating a candidate's personal integrity "consideration shall be given to his/her. . . financial or other obligations (for example, when completing the property status declaration, paying a bank or other debts, paying utility or other fees, paying a fine for violating traffic regulations)".

<sup>35</sup> According to the [National Integration and Tolerance in Georgia Assessment Survey Report](#) (2007-2008) implemented by the UN Association of Georgia, 16 per cent of the population belong to some ten minorities, the highest being Azerbaijanis and Armenians.

## CONFLICT OF INTEREST

The law requires any member of the HCJ who is applying for a Supreme Court position to recuse themselves from the process and there is no further regulation on conflicts of interest. ODIHR and the Venice Commission previously recommended that the judicial council should ensure that no conflicts of interest arise within the council in carrying out its various tasks.<sup>36</sup> Furthermore, international recommendations call for judicial councils to be independent and impartial, and to ensure the appearance of impartiality and avoid conflicts of interest as well as situations that may be reasonably perceived as giving rise to a conflict of interest.<sup>37</sup>

The HCJ secretary, an applicant, recused himself from the nomination process. However, because he continued in his position as HCJ Secretary and Head of the HCJ office conflict of interest concerns remained and there were calls for him to resign or temporarily step down.<sup>38</sup> Civil society groups further alleged a conflict of interest between the HCJ and the Prosecutor General, an applicant, due to two ongoing criminal investigations, one connected to the HCJ Secretary. Two other HCJ judge members did not recuse themselves despite conflict of interest concerns raised due to in-law relations with two applicants.<sup>39</sup> The members argued that the law does not require them to recuse themselves, and the majority of HCJ members supported their decision.<sup>40</sup>

## DETERMINATION OF ELIGIBILITY

Following a five-day period to review applications, the HCJ took a decision on the applicants' eligibility in a public session on 7 June. Five applicants were deemed ineligible. One applicant was over 65 years old and while the eligibility criteria does not include a maximum age the law has a mandatory retirement age of 65 for judges. The four other applicants were deemed ineligible as follows: lack of higher education (one applicant), less than five years work experience (two applicants), and discharge from judicial duties as a disciplinary sanction (one applicant). Another applicant, the HCJ secretary, submitted his application with only two of the legally-required three references but despite this he was deemed eligible by a vote of ten to

---

<sup>36</sup> 2019 ODIHR Opinion, paras. 60-64; and 2019 Venice Commission Urgent Opinion, para. 51.

<sup>37</sup> The underlying key principle is that, in light of their roles as safeguards of judicial independence and the management of the judiciary, judicial councils and/or other similar bodies should themselves be independent and impartial; see CCJE Opinion no. 10, Recommendation D(a); [Bangalore Principles of Judicial Conduct](#) (2002), endorsed by the UN Economic and Social Council in its resolution 2006/23 of 27 July 2006, Preamble, which states that "institutions established to maintain judicial standards [should be] themselves independent and impartial"; and Principle 7 of 2016 Cape Town Principles. .

<sup>38</sup> Civil society groups and two non-judge members claimed that the HCJ secretary as the head of office (with dismissal authority) could exercise undue influence on the staff conducting the background checks of himself and other candidates and was privy to other candidate's private information.

<sup>39</sup> The two candidates are reported to be the brothers-in-law of the two HCJ members, though one member asserts that the candidate is her ex-brother-in-law. Concerns were also raised about a third member who is claimed to be the godfather of a child of one of the candidates.

<sup>40</sup> Article 35.3(2) of the Organic Law requires members to make a statement in advance about any conflict of interest and to voluntarily recuse themselves (though it refers only to recusing from decisions related to appointments, not nominations). However, the term 'conflict of interest' is not defined in that law and the law regulating conflict of interest in the public service does not define it in a context applicable to this process.

two.<sup>41</sup> The remaining 139 applicants were deemed eligible in a single unanimous vote. The decision on eligibility was posted online, included the grounds for refusal of the five applicants, and noted the right to challenge the decision on eligibility within two days to the Supreme Court Qualification Chamber.<sup>42</sup>

Two of the rejected applicants appealed the HCJ's decision – one on grounds that he had, in fact, the minimum five years professional experience and the other on grounds that his disciplinary sanction for judicial misconduct had been expunged and was therefore not legitimate grounds for exclusion. The Supreme Court issued its decisions on 13 June within the two-day deadline, dismissing both appeals as ungrounded. Contrary to international good practice, even one month after issuance, the court's reasoned decisions have not been made public.<sup>43</sup> The decisions included technical mistakes, such as incorrect references to the law and inaccurate dates, and unclear justification for dismissing the first-mentioned case.<sup>44</sup>

Following the withdrawal of two eligible candidates, both judges, 137 candidates remained. Of those, 65 were sitting judges (47 per cent), of which 28 were women judges, and 72 were non-judges (53 per cent), including mostly independent lawyers and legal academics, and to a lesser extent prosecutors and public officials.<sup>45</sup> Amongst the judges, three were sitting Supreme Court judges with term appointments and two from the Constitutional Court, including its head. A significantly disproportionate number of judges from the Tbilisi courts applied, compared to regional court judges.<sup>46</sup> Seven candidates had been on the withdrawn list of ten nominees submitted to parliament in December 2018. The average age of the candidates was 45 and the average years of professional experience was around 22 years, significantly exceeding the minimum eligibility criteria for age and experience.

The CVs/biographies of the 139 eligible candidates were published on the HCJ website as required by law, but not those of the applicants deemed ineligible. There was substantial inconsistency in the type, detail and length of the content of the CVs/biographies, as the HCJ

---

<sup>41</sup> Article 34.1(4) of the Organic Law states that an applicant is to be registered if he/she fulfils the eligibility criteria and has properly submitted the application and documents. At the session, the HCJ members who voted in favour of his eligibility commented that the failure to provide three referees was not grounds for ineligibility and that in any case the third referee was not required as the applicant was well-known to HCJ members.

<sup>42</sup> According to the HCJ, it individually notified in writing each of the applicants deemed ineligible.

<sup>43</sup> Notably, on 7 June 2019, the Constitutional Court ruled on increasing transparency for all court cases, noting that access to court decisions is crucial for ensuring public control of and trust towards the judicial system and protecting the right to a fair trial.

<sup>44</sup> The applicant had, in fact, well above five years work experience but was deemed ineligible due to a technical error (missing signature) in one of his work records. The court recognized that the HCJ had on its own initiative contacted applicants to submit missing documents, but reasoned that the HCJ was not legally obliged to give applicants the opportunity to correct any technical errors and that the court could not accept the corrected work record as evidence since the application deadline had passed.

<sup>45</sup> High-level officials included: Prosecutor General, First Deputy Prosecutor General, and Deputy Minister of Health.

<sup>46</sup> Twenty out of a total 64 Tbilisi Court of Appeal judges applied (31 per cent) compared to only two out of a total 15 Kutaisi Court of Appeal judges (13 per cent), and 31 out of a total 111 Tbilisi City Court judges applied (28 per cent), compared to 7 out of some 116 judges from all regional courts (about 6 per cent).

did not establish any standards for the document or provide a template.<sup>47</sup> Citing data protection concerns, the HCJ initially denied the requests of civil society organizations to access all applications and supporting documents to assist in their evaluation of the candidates.<sup>48</sup> On 12 July following a recommendation from the Public Defender to release the information as required by law and based on public interest and for enhancing the integrity of the process and after prolonged debates, the HCJ released the information.<sup>49</sup> Civil society organizations informed ODIHR monitors that the undue delay in making the information available hindered their ability to assess the candidates and conduct public awareness and advocacy on the process.

## SHORTLISTING CANDIDATES

On 20 June, the HCJ held a public session for a secret vote to short-list 50 candidates from the 137 applicants. Being five working days after the eligibility appeal process ended, members had limited time to become sufficiently acquainted with the qualifications and background of such a large number of eligible candidates.<sup>50</sup> No procedure was adopted for conducting the voting as required by the Organic Law and assessing the qualifications of the eligible candidates, which further limited the transparency and legal certainty of the process.<sup>51</sup>

The list of the 50 shortlisted candidates was posted on the HCJ website on the day of the voting. Contrary to international recommendations, the 87 unsuccessful candidates were not provided reasons for their exclusion or individually notified that they had been excluded.<sup>52</sup>

---

<sup>47</sup> In Georgian, the word for CV/biography is one in the same word which allowed applicants to submit either a CV or biography; this contributed to the disparity in the information.

<sup>48</sup> Transparency International Georgia submitted the first request on 31 May, and according to the HCJ, this was followed by similar requests from other civil society groups. On 8 July, the Open Society Georgia Foundation issued a statement that accessing all of the detailed information about the candidates would allow the public to evaluate the experience and achievements of each candidate. See <https://osgf.ge/en/open-society-georgia-foundation-calls-on-candidates-of-supreme-court-judges-for-cooperation/>.

<sup>49</sup> For several weeks, the majority of HCJ members refused to approve the release, claiming their opposition to the disclosure was based on concerns that the State Inspector, the body responsible for overseeing personal data protection, could issue a fine or lawsuits could ensue. The Public Defender's recommendation noted Article 18(3) of the Constitution on the right to access public information, Article 44 of the General Administrative Code that requires that personal data of an official as well as a candidate nominated for an official position be made public, and Article 34.1(2) of the Organic Law which requires applicant's consent to the public disclosure of their information (other than health data).

<sup>50</sup> At the international and regional levels, it is generally recommended that adequate time be provided for the assessment of candidates. See Principles 9-11 of the 2016 Cape Town Principles.

<sup>51</sup> Article 34.1(6) of the Organic Law requires that candidates' competency and integrity (and established sub-criteria) are to guide all decisions in the nomination process and Article 34.1(7) mandates that the secret voting be conducted "under the procedure defined thereby with regard to transferring a candidate to the next - stage." At the start of the session, the majority of HCJ members voted down a request of a non-judge member to adopt the required procedures.

<sup>52</sup> Any decisions relating to appointment or promotion of judges should be reasoned with explanation of their grounds, with the possibility for the unsuccessful candidate to challenge the respective decision, which should be subject to judicial review, at least on procedural grounds. See 2019 ODIHR Opinion, paras. 37, 57 and 78; CoE Recommendation CM/Rec(2010)12, para. 48; 2010 ODIHR Kyiv Recommendations, para. 23; CCJE Opinion no. 10, paras. 50-51 and 91-93; and CCJE Opinion no. 1, paras. 17-31.

The Public Defender analyzed the anonymous ballots and on 28 June and 31 July, issued statements raising serious concerns about voting patterns identified in the analysis and making strong allegations of colluding amongst HCJ members (10 of the 13 voting members) to split votes to ensure a specific 45 applicants were short-listed.<sup>53</sup> Notably, the voting results showed that no candidates received more 7 out of 13 votes and that only 2 received an absolute majority.

Of the 50 shortlisted candidates, 33 were men (66 per cent) and 17 women (34 per cent), and 33 were judges (66 per cent),<sup>54</sup> and 17 non-judges (34 per cent), with the proportion of judges shortlisted almost 20 per cent higher than the proportion who applied.<sup>55</sup> Notably, 51 per cent of all Tbilisi-based judge applicants were shortlisted, while only 22 per cent of judge applicants from regional courts were moved to the next stage. Some first instance court judges were shortlisted, while a number of former and current court of appeal judges were excluded. All seven judges who were originally nominated in December and who re-applied were shortlisted and notably 50 per cent of all public officials who entered the competition passed to the next stage. Based on ODIHR's review of all the applicants' CVs/biographies on the HCJ website, there appears to be some shortlisted candidates (judge and non-judge) with significantly less qualifications and experience than some excluded candidates.<sup>56</sup>

Civil society organizations monitoring the independence of the judiciary conducted a systematic review of publicly available information on the eligible applicants to evaluate their competency and integrity, and to inform the public of their findings. They reported that many better-qualified applicants, including former independent judges and experienced and reputable legal academicians were excluded in favour of shortlisting certain sitting judges, and allegedly government-backed candidates, some with less education and experience.<sup>57</sup>

## BACKGROUND CHECKS

All shortlisted candidates submitted the required drug exam certificates and asset declarations and in accordance with the law the HCJ posted the drug exam certificates online. The HCJ's secretariat conducted background checks of the shortlisted candidates.<sup>58</sup> However, the

---

<sup>53</sup> See <[www.ombudsman.ge](http://www.ombudsman.ge)> for the statements issued by the Public Defender that analyze the voting patterns. Civil society organizations and two of the HCJ non-judge members issued statements to the same effect, condemning the majority of HCJ judges for alleged vote rigging. The judge members denied any pre-arranged voting and publicly accused the Public Defender of a partisan agenda. Further, the judge members noted that the voting patterns of two non-judge members were identical.

<sup>54</sup> One shortlisted candidate, a judge, withdrew prior to his interview; the law does not regulate this situation and the HCJ did not replace him with the next highest-ranking candidate to ensure a complete list of 50 shortlisted candidates.

<sup>55</sup> The proportion of women judges to total judges shortlisted, 39 per cent, is 14 per cent less than the percentage of women in the whole judiciary in Georgia.

<sup>56</sup> Further, the average age and years of experience amongst those shortlisted were about two years less than the average of all applicants.

<sup>57</sup> The results of the civil society's analysis was shared with ODIHR monitors in bi-lateral meetings.

<sup>58</sup> Article 34.2(2) of the Organic Law provides that the background checks are to thoroughly examine the candidates' professional reputation and activities, verify the accuracy of information submitted by the candidates, and information with regard to any past criminal prosecutions, disciplinary measures and administrative proceedings against them.

transparency of the process was significantly limited. The HCJ published a standard reference form for the checks, but did not regulate the process to provide clear methodology and procedures.<sup>59</sup> None of the background check information was publicly available at this stage although all applicants submitted consents to their background check information being made public.<sup>60</sup> The unified summary protocol filled in by the HCJ on the actions and communications taken in conducting the searches were also not made public.

Candidates were notified of their right to review the collected background information and to file an objection with the HCJ or submit additional information, but this is not fully in line with international recommendations.<sup>61</sup> According to the HCJ, more than half of the candidates viewed their materials; some were dissatisfied with the financial information collected and submitted additional documents, but none formally objected.<sup>62</sup> As noted in the 2019 ODIHR Opinion the two-day period for filing an objection may hinder opportunities for such a challenge.<sup>63</sup> Five working days before the start of the interviews, the minimum period established by law, HCJ members were provided a summary of the background information. Given the importance of this process to nominate judges to the highest court and the number of shortlisted candidates, the five-day period falls short of international recommendations for sufficient time to allow for the proper assessment of candidates during interviews.<sup>64</sup>

Two HCJ non-judge members raised concerns with ODIHR monitors that the checks were merely a formality and the breadth of the information collected was insufficient to effectively assist in their evaluation of the candidates and did not include critical information easily found online. The information mainly included technical data, for instance number of cases heard, cases heard within deadlines, number of overturned decisions, amount of bank loans, and disciplinary sanctions, but did not include broader information related to the candidates' competence, professional integrity, and record on human rights.<sup>65</sup> The HCJ did not request the Public Defender or civil society sector to submit any relevant information, nor was there a system for formally submitting information.

---

<sup>59</sup> 2019 ODIHR Opinion, para. 73. See also 2010 ODIHR Kyiv Recommendations, para. 22; and 2014 VC-DHR-DGI Joint Opinion on Draft Amendments to the Organic Law on General Courts of Georgia, para. 55.

<sup>60</sup> The Organic Law does not oblige the HCJ to make the background checks publicly available but with the consent of the candidates, this information can be released and was provided to the Public Defender upon request.

<sup>61</sup> See CCJE Opinion no. 21 (2018), para. 26, which states that background checks should not go beyond the generally accepted checks of candidate's criminal record and financial situation and a candidate who is rejected on the basis of such a background check should have the right to appeal the decision to an independent body; and 2010 ODIHR Kyiv Recommendations, para. 22.

<sup>62</sup> While candidates consented to the HCJ contacting financial institutions to collect information on their financial background, financial checks can violate the right to privacy of candidates and go beyond what is needed to assess the candidates' professional qualifications. See 2014 VC-DHR-DGI Joint Opinion on Draft Amendments to the Organic Law on General Courts of Georgia, para. 54.

<sup>63</sup> See 2010 ODIHR Kyiv Recommendations, para. 22.

<sup>64</sup> See Principles 9-11 of the 2016 Cape Town Principles.

<sup>65</sup> For instance, the background information did not include the candidates' professional involvement in any court cases appealed to the ECtHR or in any court cases analyzed in the reports of international organizations.



## CANDIDATE HEARINGS

On 17 July, within the legal deadline, the HCJ started to individually interview the 50 candidates. The length and schedule of interviews was repeatedly debated throughout the process and became a point of contention between HCJ members. First the target of five one-hour interviews a day was adjusted to three at the insistence of two non-judge members to provide for longer and more thorough interviews and questioning of candidates without unreasonable limits, and despite strong opposition by the majority who wanted to expedite the process. Still, interviews continued to unreasonable hours in the evening and the two non-judge members began boycotting late evening interviews. The number of interviews per day was eventually reduced to two.

Procedural rules for conducting the interviews were not adopted by the HCJ which left the process disorganized and without any clarity and consistency in terms of structure and format.<sup>66</sup> Despite ODIHR recommendations, there were no standards for the number or content of questions, the manner and timing of questioning, or the length of the interviews, and no rules of conduct were in place to ensure a fair and orderly process.<sup>67</sup> Each interview was essentially improvised, with limited rules verbally discussed and changed on an *ad hoc* basis that did not serve to ensure any level of consistency in the process and did not provide candidates with advance notice about the nature of the proceedings.

The length of the interviews differed drastically, lasting between 1.5 – 6 hours (on average around 3.5 hours), with a big variance in the number of questions posed that challenges the principle of equal treatment.<sup>68</sup> The lack of a reliable schedule resulted in some candidates having to wait hours for their interview or having to reschedule. Further, the lack of proper breaks meant that some contenders were interviewed for up to six hours without any break and significantly impacted the ability of members to attend the whole interview and observers and media to follow the process. In addition, during the hearings, members were often distracted from the interview, texting and speaking on phones, browsing the internet, talking and joking with each other, and constantly walking in and out of the room.

There were also observed discrepancies in the tone that each candidate was interviewed and the nature of the questions, with some candidates offered favoured conditions, undermining the fairness of the process. Some candidates were interviewed in a congenial manner and were generally asked broad and relatively simple legal questions or questions in the candidate's area of specialization, or about court cases the candidate had dealt with, that allowed them to

---

<sup>66</sup> See 2010 ODIHR Kyiv Recommendations, para. 21, which states that both the topic of an interview and its weight in the process of selection should be pre-determined.

<sup>67</sup> 2019 ODIHR Opinion, para. 62, which recommended developing a more structured approach to the interview process and consider requiring standardised format for interviews to reduce the scope of subjectivity in the questioning of candidates and ranking. See also e.g., CoE, [Guidelines of the Committee of Ministers on the Selection of Candidates for the Post of Judge at the European Court of Human Rights – Explanatory Memorandum](#), CM(2012)40-add, 29 March 2012, para. 57; and e.g., [Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers](#) (2018), para 3.7.

<sup>68</sup> Between the lowest and highest number of questions asked in the interviews, there was a difference of about four times, with a maximum of some 140 questions presented in one interview.

excel in their answers. In various ways, some members were observed assisting certain candidates in answering their questions or the questions of other members.<sup>69</sup> Other candidates were asked less questions and at times, the interview remained on the same topic for prolonged periods. Often the questioning approach looked as if they were seeking the candidate's professional advice, rather than an interview. At times, some members openly expressed their support for candidates.<sup>70</sup>

In contrast, many members approached other candidates in a more hostile manner. Some candidates were asked difficult technical or obscure questions, particularly outside their specific area of legal expertise, and had their answers disagreed with, challenged or laughed at, apparently to discredit them. At times, these candidates were barraged with technical questions and were given little chance to highlight their knowledge and accomplishments. Candidates whose answers raised issues about the independence of the judiciary were met with harsh responses by some members. While some candidates were not interrupted by members, allowing them to answer freely for up to 30 minutes per question, others were constantly interrupted or abruptly cut off after only a few minutes. Candidates' requests for clarifications to their questions were also met with an inconsistent approach. A few members were highly dissatisfied with the vast majority of shortlisted candidates, publicly claiming they are affiliated with the influential group of judges, and employed a particularly harsh interviewing style, more akin to an interrogation than an interview that aimed to expose their perceived limitations.

Overall, the questions covered in each interview broadly related to the established evaluation criteria of competence and integrity, though members widely differed in the focus of their questions. Some members were observed asking apparently spontaneous unprepared questions which generally focused on the candidates' competence, in particular knowledge of the law, rather than on their integrity. With the assistance of the civil society sector, a few members came highly prepared with independent background research and pre-prepared questions, and asked questions with a particular focus on the independence of the judiciary, judicial ethics, and human rights and freedoms. The mixed composition of the HCJ with both judge and non-judge members, which aims to provide various perspectives, minimize self-protection and corporatism in the judiciary, and add a certain level of external broader view, contributed to the substance of the interview process, even if the body was divided and adversarial.

ODIHR monitors noted that the hearings were conducted in a highly dysfunctional and unprofessional manner, due to the heightened tensions between the two groups of HCJ members. Antagonistic arguments regularly broke out amongst the two groups for up to 30 minutes at a time and at numerous times throughout each interview, often triggered by various

---

<sup>69</sup> ODIHR monitors noted that some members gave hints to the answers, clarified, supplemented or corrected candidates' answers, outright provided the answers when the candidate was unable to do so, asked counter-questions, defended candidates' answers, or instructed candidates that they were not obliged to answer.

<sup>70</sup> They praised some candidates' biographies and professionalism, positively commented on the interviewee's specific answers or visibly nodded their heads in agreement while the question was being answered, and complimented candidates' general performance in the interview.

procedural and substantive issues.<sup>71</sup> The clashes were loud and aggressive with multiple members shouting over each other, and included personal insults, vicious accusations, and humiliating comments, that were at times sexist. The acting chair for the session generally did not attempt to maintain order and decorum in the hearings, allowing the conflicts to escalate, and even participated in the disorderly conduct. Some interviews abruptly ended due to uncontrollable clashes. Some questions posed to candidates by the members were overtly aimed at undermining and discrediting other members, or were used as a platform to praise or criticize the judiciary and nomination process. Some members gave media interviews before and after the hearings, in which they criticized each other and the nomination process and posted critical comments on social media, which further provoked the situation.

## SCORING, RANKING, AND FINAL SELECTION

The Organic Law establishes a 100-point scoring system for the evaluation of the competency of candidates (based on six sub-criteria). The point allocation system differs for judge and non-judge candidates. On integrity candidates are assessed on a simple three-point scale: fails to comply, complies, or fully complies. ODIHR monitors noted that during the interviews the members were not seen to be referring to the established evaluation form or to be taking any notes for reference during the subsequent evaluation phase. Moreover, contrary to international recommendations, the law does not envisage individualized or joint reasoning for the evaluations which significantly limited transparency in the process.<sup>72</sup>

The HCJ members each privately completed the evaluation forms and submitted them to HCJ staff after all hearings were completed, rather than following each interview.<sup>73</sup> One non-judge member did not participate in the scoring exercise. The law provides for the publishing of only the accumulated points received by candidates, limiting transparency of the scoring exercise. On 3 September, almost three weeks after completion of the interview process, the HCJ published the consolidated scores, without breakdown by the sub-criteria.<sup>74</sup> The score of a candidate who had withdrawn a day earlier was not published.<sup>75</sup> Justifications for the scores

---

<sup>71</sup> For instance, judge members would often interrupt the questioning of the non-judge members, harshly criticize and mock their questions, and pressure them to stop asking questions which would trigger hostile clashes.

<sup>72</sup> According to international and regional recommendations, councils of the judiciary should adopt reasoned decisions that demonstrate that the decisions were not arbitrarily adopted; see CoE Recommendation CM/Rec(2010)12, paras. 28 and 48; and European Networks of Councils for the Judiciary, [Dublin Declaration setting Minimum Standards for the Selection and Appointment of Judges](#) (May 2012), Indicator no. I.10.

<sup>73</sup> Article 34.1(11) of the Organic Law provides that members are to assess the candidates following hearings and before the next session; the HCJ interprets this as a requirement to score all candidates after the last interview is conducted, rather than to score each candidate following each interview. The HCJ staff provided the members with the template for the scoring form after the hearing process was completed.

<sup>74</sup> The law is not clear on whether the published scores are to be a consolidation of the points given for all criteria or are to be broken down by criterion. Soon after completion of the hearing process, the Public Defender requested from the HCJ a breakdown of the scores by sub-criteria for each candidate, but as of the date of the voting session it had not yet received the information.

<sup>75</sup> The judge candidate issued a public statement that he withdrew in order not to “cast a shadow on this historic process”; he is one of the candidates who had an alleged conflict of interest with one of the HCJ members who did not recuse himself.

were not provided. The 20 highest-scored candidates included 16 sitting judges, one former judge, and three public officials; eight were women (40 per cent).

With only one-day notice, on 4 September a public session was held to conduct the secret votes to determine the top 20 candidates and those candidates who would be nominated to parliament. One HCJ non-judge member did not attend the session or vote.<sup>76</sup> Two members did not vote for a full slate of 20 candidates.<sup>77</sup> Prior to the vote the scores of the candidates were not reiterated by the chairperson, nor were members instructed to take gender and diversity into consideration. The 20 selected candidates included 15 sitting judges and five non-judges, all of whom are either former judges or current or former public officials.<sup>78</sup> Seven of the selected candidates (35 per cent) are women which is almost 20 per cent lower than the proportion of women in the country's judiciary.

The results of the secret votes did not correspond to the 20 candidates that scored highest on the evaluations, and the HCJ did not provide any explanation for this deviation. Only 15 of the 20 highest-voted candidates were also among the 20 highest-scored candidates, with five top-scoring judges essentially replaced by four other judges and a former judicial staff. Of the seven applicants who had been nominated to parliament in December and re-applied, five were re-nominated, though one of them had not been among the 20 highest-scored candidates.<sup>79</sup> The lack of transparency in the HCJ's decision-making procedures may result in arbitrarily decided judicial appointments, potentially undermining the integrity of the appointment process and resulting in a violation of Article 6 of the European Convention on Human Rights, which provides basic guarantees for an independent and impartial tribunal.<sup>80</sup>

These 20 candidates were individually subject to another secret vote to determine if they would be nominated to parliament. All candidates passed the threshold of at least two-thirds votes of all members for nomination. The lists of the 20 highest-voted candidates and the final nominees were promptly posted on the HCJ website following each of the votes, but the number of votes received by each candidate were not published. Contrary to international recommendations, justification for their nominations was not provided by the HCJ members, which further limited transparency and a right to judicial review in the final nomination phase. By law, members could file a dissenting opinion against any final nominee. After the determination of the final list of nominees, two HCJ non-judge members publicly indicated their intention to submit to parliament general dissenting opinions on most of the nominees.

---

<sup>76</sup> The same member who did not participate in the scoring exercise. On social media on the day of the voting session, she posted that the nomination process was "politically managed" and noted her inability to return from her out-of-country vacation on time to attend the session due to the HCJ's last-minute notice.

<sup>77</sup> One member voted for only six candidates and one voted for 15 candidates.

<sup>78</sup> Of the 15 judges, nine are from the Tbilisi Court of Appeal, two are Tbilisi City Court judges, including the HCJ Secretary, three are Supreme Court judges, and one is the head of the Constitutional Court. The non-judges are the Prosecutor General and First Deputy Prosecutor General, a law professor (former Constitutional Court judge), the current Independent Inspector appointed by the HCJ, and a managing partner in a law firm (former employee of the HCJ and Supreme Court).

<sup>79</sup> In total, three of the seven applicants who had been nominated to parliament in December were not amongst the highest-scored candidates in the current nomination process.

<sup>80</sup> See e.g., ECtHR, *Guðmundur Andri Ástráðsson v. Iceland* (2019), paras. 97-103 and 112-123.

## ACCESS TO LEGAL REMEDY

Contrary to OSCE commitments, the only explicit appeal right granted to Supreme Court candidates is against the HCJ's initial decisions on eligibility, as per Article 34.1(5) of the Organic Law.<sup>81</sup> Further, while there are arguments that other legal provisions serve to guarantee a right to legal remedy against the HCJ's decisions in the nomination process, the HCJ did not inform unsuccessful eligible candidates of a right to appeal.<sup>82</sup> This left the nomination process under the final authority of a judicial oversight body, rather than a court of law, denying unsuccessful candidates the opportunity to seek legal remedy against an administrative body.

The ODIHR assessment of the draft amendments noted that this gap challenges international standards for granting unsuccessful judicial candidates the right to appeal the decision before an independent body, or at a minimum the procedure under which the decision was made and any discrimination during the decision-making process.<sup>83</sup> At the time of publishing this report, none of the unsuccessful eligible candidates had attempted to lodge an appeal at any stage of the nomination process.

---

<sup>81</sup> Copenhagen Document, 1990, para. 5.10 that states: "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity."

<sup>82</sup> As ODIHR's assessment of the draft law points out, while Article 35.4(1) of the Organic Law provides a right to appeal HCJ decisions in regular court appointments, it is not clear whether this provision is applicable with respect to the HCJ's nominations to parliament for the Supreme Court. In addition, Article 22 of the Law on Administrative Procedure, which grants a right to challenge in court any individual act of an administrative body, applies to the HCJ's actions and decisions. However, it is unclear whether this provision applies only to those HCJ actions and decisions of a solely administrative not constitutional nature.

<sup>83</sup> See 2019 ODIHR Opinion, para. 78; CoE Recommendation CM/Rec(2010)12, para. 48; CCJE Opinion no. 10, para. 39; *Universal Charter of the Judge* (1999, as last updated in 2017), Articles 5-2 para. 3; 2012 ENCJ Dublin Declaration, Indicator no. I.10; and 2016 Cape Town Principles, Principle 17.