



Office for Democratic Institutions and Human Rights

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

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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. OSCE participating States have committed to ensuring judicial independence as a “*prerequisite to the rule of law and [...] a fundamental guarantee of a fair trial*”.¹ The establishment of credible processes for selection of judges is a fundamental component of judicial independence.

In 2019, ODIHR monitored the process for nomination and appointment of half of the Supreme Court judges of Georgia based on a request of the Public Defender (Ombudsman) of Georgia. ODIHR presented its monitoring results in two reports that provided an independent assessment of the process and its compliance with domestic legislation, OSCE commitments, international standards, and guiding principles of judicial independence.² These assessments concluded that while the adoption of legal reforms regulating the appointment of Supreme Court judges in Georgia was an important prerequisite to judicial independence, it was insufficient to ensure an impartial, merit-based process free from extraneous influences.

In November 2020, the Public Defender invited ODIHR to continue its monitoring of the nomination and appointment process for filling the remaining vacancies on the Supreme Court. The ODIHR team, comprised of two national monitors and one international monitor, began its work on 7 December 2020 and observed all candidate interviews before the High Council of Justice (HCJ), nominee hearings before the parliament’s Legal Issues Committee (Legal Committee) and related sessions, as well as the final vote on the nominees in parliament. Monitors strictly adhered to well-established OSCE/ODIHR monitoring principles of non-interference, impartiality, objectivity, confidentiality and professionalism. The HCJ and parliament facilitated unhindered access of ODIHR monitors to follow the entire process.

On 9 July 2021, ODIHR published a report assessing the first phase of the judicial selection process before the HCJ that resulted in the nomination of nine candidates for parliament’s consideration.³ While aiming to provide a comprehensive assessment of, and recommendations stemming from, the whole appointment process, this report primarily focuses on the parliamentary stage of the proceedings, and should therefore be read in conjunction with the earlier report on the first phase.

¹ 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), and the [Brussels Declaration on Criminal Justice Systems](#) (MC.DOC/4/06 of 5 December 2006).

² See OSCE/ODIHR, [Report on First Phase of the Nomination and Appointment of Supreme Court Judges in Georgia](#), June-September 2019 (10 September 2019); OSCE/ODIHR, [Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia](#), June-December 2019 (9 January 2020).

³ ODIHR, [Third Report on the Nomination and Appointment of Supreme Court Judges in Georgia](#), December 2020 – June 2021.

EXECUTIVE SUMMARY

In July 2021, amid a climate of political crisis and boycotts of the vast majority of the opposition, the Georgian parliament appointed six judges to lifetime posts on the country's highest court. Beginning in October 2020, the lengthy process of recruitment, nomination, and appointment of these new Supreme Court judges benefited from increased transparency and accountability measures progressively introduced by Georgia's parliament since 2019. However, overall the proceedings were marred by the lack of equal conditions and deficiencies in the process that ultimately undermined the credibility of the appointments as truly merit-based in line with international standards. Further, the law does not provide sufficient safeguards to exclude undue political influence in the appointment process and the lack of effort to garner broad political support, as well as the hasty proceedings before parliament with no debate, did little to allay concerns or build public trust.

As detailed in ODIHR's July 2021 monitoring report on the nomination phase, in absence of a parliamentary decision to suspend the process, the HCJ proceeded and put forward its nominees to parliament. Two sets of successive legislative amendments substantially bolstered transparency and accountability in the nomination stage, including repeal of secret voting, a new requirement for public and reasoned decisions on candidate scores and votes, and the creation of an appeal right. However, the candidate hearings before the HCJ, although highly transparent, were marred by variations in conditions, lapses in decorum, internal divisions on the HCJ, and serious conflict of interest issues. Following this process, the HCJ presented its list of nine nominees to parliament, all of which were sitting judges, two of whom were women.

The parliamentary appointment stage, while providing opportunities for public scrutiny of the process and the nominees, did not adequately guarantee that the final selections were made on objective, merit-based criteria. The applicable law continues to lack safeguards to prevent the politicization of Supreme Court appointments by giving parliament full discretion to appoint or reject any nominee without substantive justification and without adhering to any established criteria, further threatening judicial independence and impartiality in violation of international standards. A near-total opposition boycott and unheeded calls for the process to be postponed in light of the earlier political agreement did not allay concerns about the potential politicization of the appointments.

The parliamentary committee hearings, commencing on 6 July, shortly after receipt of the HCJ's nomination list, were well structured and generally proceeded in line with legal requirements in technical aspects, but political overtones and poor attentiveness to the proceedings by Committee members undermined the professionalism and perceived objectivity of the process. In light of the opposition boycott, the hearings were conducted primarily by the ruling party. Positively, the hearings were televised live and made open to the public, increasing the opportunity for scrutiny and assessment of the candidates. In addition, the Committee invited representatives of civil society and the legal community to question candidates, which contributed to the quality of the proceedings.

The eleven committee members that participated in the voting, among them only one woman, overwhelmingly recommended six of the nine nominees and rejected the three others, with the ten ruling party members voting for the same candidates. The committee's report to the plenary did not include reasoning for its support for, or opposition to, the nominees, raising concerns as to whether the recommendations were based solely on objective criteria. The fact that two of the three rejected candidates, the only two women, had been ranked higher by the HCJ than several of the recommended candidates without committee's reasoning provided for these deviations, further brought into question the merit-based selection.

Despite an unrelated civil protest on 12 July that breached the plenary chamber and led to physical confrontations, the final parliamentary vote on the appointments moved forward the same day. Contrary to a legal requirement for such, the plenary did not hold an open discussion about the nominees prior to voting. With almost all opposition parties boycotting the vote, including the largest one, and with barely more than half of all MPs participating, the parliamentarians in attendance overwhelmingly voted to appoint the six recommended nominees and to reject the three others, who received only nominal support. The ruling party's decision to move ahead with the proceedings with the opposition largely absent challenged the inclusivity of the process and credibility of the appointments, and risked further diminishing public trust.

Appointees were all male, undermining the principle of equitable gender representation, which prior to the new appointments was almost at parity (47 per cent women) on the Supreme Court. The lack of transparency in the final appointment decisions raises concerns about whether the most meritorious candidates were selected for the country's highest court, putting the independence of the judiciary at further risk.

Georgia has in the last two years appointed twenty Supreme Court judges to lifetime posts in processes that were assessed by ODIHR to lack integrity, objectivity and credibility. To rebuild public trust in the judiciary and ensure the independence, accountability, transparency, and quality of the judicial system, the Georgian authorities are urged to suspend further appointments pending key reform measures. To this end, this report advances recommendations based on ODIHR's monitoring findings since 2019 which aim at strengthening the future selection of Supreme Court judges in line with domestic legislation, international standards, and good practice.

BACKGROUND AND OVERVIEW OF NOMINATION PROCESS

The 2021 parliamentary appointments of Supreme Court judges followed a prolonged, complex, and controversial nomination stage before the HCJ between October 2020 and June 2021, which resulted in the nomination of nine candidates for parliament's consideration. As detailed in ODIHR's monitoring findings from the process, while strengthened in many key respects relating particularly to transparency, the proceedings were nonetheless marred by a climate of political instability and mistrust, a continuously changing legal framework, and impediments to the fairness and equality of conditions for candidates.⁴

⁴ See ODIHR, [Third Report on the Nomination and Appointment of Supreme Court Judges in Georgia](#), December 2020 – June 2021.

The nominations by the HCJ took place in spite of an EU-brokered agreement, signed on 19 April 2021 by the ruling party Georgian Dream (GD) and part of the opposition, that included in its terms: suspension of the ongoing Supreme Court judge appointment processes; further reforms to the selection process in accordance with Venice Commission recommendations;⁵ and reforms to the HCJ as the body overseeing the whole of the judiciary.⁶ In the absence of a decision from parliament to suspend the process and having begun recruitment for the first nine Supreme Court vacancies in October 2020, the HCJ continued the nomination process concurrent with two other selection processes (each for one Supreme Court judge).

Persistent calls from civil society, and international observers including the Venice Commission and ODIHR to improve the legal framework for Supreme Court appointments in Georgia had led to a series of amendments to the applicable legislation in 2019, September 2020, and April 2021. These amendments introduced substantial improvements to transparency and fairness of the process, including the removal of secret voting and a new requirement that HCJ members provide written justifications for scoring and nomination decisions. A right to appeal nomination process decisions was also established. Nonetheless, the legal framework remained flawed in a few regards, which pursuant to the 19 April agreement parliament should have addressed before the process continued. Further, when the April 2021 amendments were adopted, the HCJ had already heard more than half of the candidates for the nine vacancies but opted not to begin the process anew. The Venice Commission noted in its Opinion that this raised a major concern of equality of treatment of candidates.⁷

Overall, positive changes introduced through the legislative amendments led to an improvement of the appointment process. However, some major concerns remain that weakened the integrity of the proceedings before the HCJ. The HCJ failed to ensure a broad and inclusive recruitment process, which led to a limited applicant pool. In an encouraging move, the HCJ took measures to ensure open public access to the 43 candidate hearings, which were recorded and made available for viewing online. Unfortunately, in the absence of clear and consistent guidelines set by the HCJ for the hearings, they varied widely in length, structure, and tone, calling into question the equality of conditions for the candidates. In addition, internal divisions in the HCJ and hostile exchanges between HCJ members and some of the candidates blemished the professionalism of the proceedings. Breaches of conflict of interest principles by some participating HCJ members also threatened the integrity of the nomination process.

⁵ The Council of Europe's European Commission for Democracy through Law (Venice Commission) [*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.

⁶ The [MoU](#) included, among other commitments: 1) introduction of draft legislation on the selection of Supreme Court judges that would fully implement the Venice Commission's 2019 opinion; 2) the suspension of all pending appointments until the new legislation was adopted; and 3) the introduction of measures to reform the HCJ to increase transparency, integrity, and accountability, which the parties agreed would eventually be subject to review and assessment by the Venice Commission and the OSCE/ODIHR. The MoU foresaw the drafting and adoption of new legislation by the spring 2022 parliamentary session.

⁷ The Council of Europe's European Commission for Democracy through Law (Venice Commission) [*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.

Changes to the scoring, ranking, and final voting procedures for the nomination process introduced by the legislative amendments greatly strengthened the transparency of the process overall. Having heard the candidates, participating HCJ members provided written justifications along with their evaluation and scoring forms for each individual candidate. The HCJ then published all of the forms, together with the names of the relevant HCJ evaluators, on its website. Although the quality of the written justifications varied widely, overall the new measures improved accountability and strengthened the right of appeal for candidates. On the basis of its members' scoring and evaluations, the HCJ ranked, shortlisted, and published the names of nine final candidates. All nine were then selected to be nominated to parliament through an open vote in the HCJ. In another improvement to transparency and in accordance with the new legislative amendments, each HCJ member provided a written justification for his/her final vote on each candidate. The HCJ submitted its list of nominees, together with the justifications and background materials on candidates, to parliament on 17 June.

The political opposition, civil society, and the international community criticized the finalization of the nomination stage and continued to urge parliament to postpone further steps in the appointment process until further judicial reform took place in accordance with the 19 April agreement.⁸ The ruling party defended the nominations, claiming the political agreement had been fulfilled through earlier reforms, and on the grounds that the main opposition had not yet signed onto the agreement.⁹ In contradiction to its commitments under the agreement, parliament moved ahead with appointment preparations shortly after receiving the nominations list from the HCJ.

LEGAL FRAMEWORK

While the legal framework for the nomination phase underwent significant amendments before and during its implementation, provisions pertaining to the parliamentary appointment stage have remained unchanged since the 2019 Supreme Court appointments.¹⁰ Therefore the concerns previously raised by ODIHR in its legal opinion and monitoring reports remain.¹¹ Under the existing law, parliament's Legal Committee determines whether nominees "comply with the requirements defined in the constitution and legislation", including by conducting individual public interviews of the candidates and reporting its conclusions to the plenary. Nominees who then receive a majority of the votes of sitting members of parliament (MPs) are appointed to the Supreme Court for lifetime terms. The vagueness of the law, absent any applicable criteria for selecting the appointees, confers upon the Legal Committee and the plenary full discretion to reject or approve any nominee without substantive justification.

In assessing the applicable legal framework, one of ODIHR's key findings in its 2019 opinion was that the absence of safeguards to prevent the politicization of the appointment process could

⁸ See statements of opposition parties [UNM](#), [Strategy](#), and [Lelo](#); statements of the [Coalition for an Independent and Transparent Judiciary](#), [Georgian Young Lawyers Association](#), [Transparency International Georgia](#) and [Shame Movement](#); and statements issued by [US Embassy](#) and [EU Delegation](#), among others in the diplomatic community.

⁹ See 23 June [statement](#) of ruling party Georgian Dream and 24 June [statement](#) of the President of Georgia.

¹⁰ The Organic Law on the Common Courts and the Rules of Procedure of the Parliament regulate the parliament's process for appointment of Supreme Court judges.

¹¹ OSCE/ODIHR, [Opinion on Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia](#), 17 April 2019.

present a threat to judicial independence and impartiality in Georgia.¹² One such mechanism for reducing political influence would be, for instance, strictly circumscribing parliament's role to one of supervising compliance with the applicable procedures rather than undertaking what amounts to a re-assessment of the competence and integrity of the candidates.¹³ The legislation currently provides no such limitation or other guarantees to ensure a wholly objective and merit-based process at the parliamentary stage, leaving open the risk of undue political influence in the appointment of judges to Georgia's highest court.

HEARING PREPARATIONS AND TRANSPARENCY

Following the HCJ's nominations of the nine Supreme Court candidates on 17 June, the parliament hastily undertook the next stage in the process: the hearing of candidates by the parliament's Legal Committee. The Committee comprises 19 MPs, just over half from the ruling party;¹⁴ due to an unfilled vacancy, however, just 18 were sitting at the time of the appointment proceedings, only one of whom is a woman. Furthermore, at the start of the appointment process, all but one of the opposition parties and one independent MP decided to boycott the process, calling for a halt to the appointment proceedings as a breach of the 19 April political agreement.¹⁵ These boycotts resulted in only 11 (including one woman) of the 18 sitting members of the Committee fully participating in the hearing process, including the committee's vote. The ruling party's decision to move ahead with the proceedings in the absence of most of the opposition's participation challenged the inclusivity of the process and credibility of the appointments, and risked further diminishing public trust.

On 29 June, the Legal Committee established a working group, as required by law, and gave it just three days to verify that the nominees met the minimum eligibility criteria.¹⁶ The parliament posted on its website the nominee's applications and background check materials forwarded by the HCJ,

¹² OSCE/ODIHR, [Opinion on Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia](#), 17 April 2019, paras 13 and 82–84.

¹³ Id. 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 46-47; [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.

¹⁴ Membership of the parliamentary committees is proportional to the representation of factions and the number of those MPs who are not in any faction. The Committee comprises 10 Georgian Dream (GD) MPs and 9 MPs representing the opposition: 3 from the United National Movement (UNM), 1 Strategy Builder, 1 Lelo, 1 European Socialists, 1 Girchi, and 1 For Citizens; the one seat reserved for independent/non-faction MPs remained vacant.

¹⁵ MPs from the boycotting parties walked out of the 29 June Legal Committee session, a preparatory meeting for the appointment process, citing lack of trust in the judiciary and the appointment process. See media statements on boycotts of [UNM](#), [Strategy Builder](#), and [Lelo](#), and a statement on the planned boycott of the [independent MP](#). Others criticized the process and announced their boycott of the votes, but said they would question candidates during the hearings to inform the public. See for example For Citizens [statement](#) and [statement](#) of an MP affiliated with For Georgia. [GD MPs defended the decision](#) to move forward.

¹⁶ By way of a Legal Committee session, the group was composed of 25 members, including 13 ruling party MPs, 7 opposition and non-faction MPs, and 5 external representatives.

which contributed to transparency of the process. These materials were printed and provided to the MPs examining the nominees at the hearings. However, the MPs did not receive any other materials, including the written justifications for the HCJ's scoring/voting of the nominees although this information was already available on the HCJ's webpage. The written justifications despite their widely varying quality could have informed the parliament in its decisions on the appointments. In addition, as the parliament does currently have the role to determine if the candidates comply with the requirements defined in the constitution and legislation the lack of any research on the competence and integrity of the nominees in order to assist the committee in its decision-making brings into question the genuineness of the process.

General hearing rules adopted in advance of the hearings in accordance with the Rules of Procedure of the Parliament provided some structure and order to the proceedings.¹⁷ As a positive measure contributing to inclusiveness and transparency, representatives from the Public Defender, Bar Association, Legal Aid, Coalition for an Independent and Transparent Judiciary (Coalition), and academia were invited to attend and participate in the hearings,¹⁸ although the Public Defender refused to participate¹⁹ and the Coalition as a whole declined.²⁰ The contribution of those external actors that agreed to be involved provided a level of diversity to the hearing process, particularly in light of the opposition's boycott.

The hearings offered a high level of transparency, which allowed the public and civil society sector to evaluate the merits and suitability of the candidates. Hearings were open to the public and journalists and the agenda was published with three days of advance notice, in line with the law.²¹ The hearing hall had sufficient seating (although seats were not spaced in accordance with Anti-COVID-19 guidelines) and was accessible to persons with disabilities. The preparatory session minutes were posted on the parliament's website, but the hearing minutes were not always published, as required by law.²² Proceedings were broadcast live on television, as required by law, as well as on the parliament's website and Facebook page, and videos were uploaded to the parliament's website. The Coalition also posted short video clips of the hearings on its Facebook page, further expanding public access.²³

CANDIDATE HEARINGS

¹⁷ The Committee unanimously adopted the rules, which were reflected in the 2 July session minutes and included the allocation of time quotas for the candidate to present him/herself and for questions by parliamentary factions and external participants.

¹⁸ The Rules of Procedure of the Parliament provide that the Committee can invite the public to attend its sittings and take the floor.

¹⁹ See 30 June [statement issued by the Public Defender](#) on the decision to refuse to participate, citing "acute unresolved institutional problems in the judiciary."

²⁰ See 2 July [Coalition statement](#). Some of the Coalition's member organizations and a few non-Coalition NGOs participated on an individual basis. A representative of the Georgian Young Lawyers Association participated and questioned the nominees on a daily basis.

²¹ Several journalists daily attended the proceedings, although media cameras were not permitted in the committee hall. During the hearings, media interviews with MPs about the appointment process took place outside the venue. Only one private citizen attended one hearing day.

²² Minutes were timely posted for the preparation sessions and first two hearing days. However, one month after conclusion of the hearings, minutes for the last three hearing days had not yet been posted.

²³ See [Coalition's Facebook page](#), "I want to trust the court!". The video clips reflected questions and answers of particular public interest.

The candidate hearings, while generally orderly and mostly consistent, were marred by poor attendance of Committee members and political overtones that undermined the perception of an objective and merit-based appointment process.

Taking place between 6 and 10 July, the hearings followed a generally uniform format with some exceptions. Time slots allocated for questioning provided a degree of structure to the hearings, with the chairperson taking a flexible approach and granting time extensions as needed.²⁴ At the end of each hearing, candidates were given the opportunity to clarify or supplement any of their answers. Although the average duration of the hearings was four hours, a two-hour discrepancy between the longest and the shortest hearing challenged the principle of equal conditions.²⁵ The allotted time for the question periods of the boycotting parties was left unused.²⁶ While the parliament's Rules of Procedure envision Committee members questioning the candidates during its hearings, they were *de facto* quasi-plenary hearings, as all MPs were invited to ask questions (with Committee members having priority), which may have amplified the political tone.²⁷

Inconsistent attendance and participation by Committee members diminished the quality of the proceedings. While each session started with a quorum of 10 as required by law, Committee members often attended the proceedings only for their own question period, resulting at times in only two or three Committee members, or just the chairperson, being present in the hearing venue. In addition, the quorum requirement was not applied to the second hearing of the day, which at times started with fewer than 10 members. This poor attendance frequently resulted in the repetition of questions to candidates. In addition, those Committee members who were present at hearings, including the chairperson, were often distracted. Few members were observed reading the candidates' background materials or taking notes. As Committee members were responsible for evaluating nominees and recommending them for appointment, their absence and distraction from hearings challenged the key objective of informed decision-making in the process.

Although the hearings generally progressed in an orderly manner, likely as a result of the largely homogeneous political participation, heated debates, accusations, and insults flared up between several candidates and the few opposition MPs or civil society representatives in attendance. Some MPs made cynical or condescending remarks in response to candidates' answers or directly attacked the integrity of candidates. The chairperson occasionally warned MPs about their conduct, but rarely intervened in time to prevent escalation, allowing the MPs to interrupt candidates' answers and the questions of civil society representatives.

Of greater concern, at times the proceedings drifted into political territory, contrary to international best practices that the influence of partisan politics be prevented when appointing judges to the

²⁴ While the chairperson was generally flexible on the fixed time allotted for questions, on occasion this resulted in arbitrary and inconsistent extensions of time. The chair also established an *ad hoc* rule that MPs were permitted to interrupt candidates' answers, but not civil society representatives.

²⁵ The shortest hearing was 3:11 hours, and the longest 5:17 hours.

²⁶ A total of more than one hour per hearing had been assigned to political factions that boycotted the process.

²⁷ Non-Committee GD MPs, as well as several former GD MPs (non-faction) and one For Citizens MP who are not Committee members attended the hearings and actively participated; some only observed.

highest court.²⁸ As noted above and highlighted in ODIHR's 2019 opinion, the legislative framework in Georgia does not provide sufficient safeguards to exclude the influence of politics in the appointment process for Supreme Court judges,²⁹ and the proceedings did little to allay concerns of such influence. Some MPs used the hearing stage as a political platform, questioning candidates on divisive recent events,³⁰ debating and criticizing certain candidates on their politically-controversial judgements, or challenging candidates' answers to politically-sensitive questions.³¹ As a result, some candidates refused to answer certain questions. While the chairperson generally maintained neutrality in accordance with the parliamentary Rules of Procedure, at times even he made statements or had exchanges that were partisan in nature.³²

Despite political overtones, the questioning generally pertained to the candidates' merits; although the level of technical questioning to assess professional competency was limited, the MPs asked extensive questions on judicial reform and other policy matters.³³ The daily participation of representatives of civil society, the legal profession, and academia enhanced the quality of the hearings by broadening the range of issues covered. As a positive feature, the Committee chair allowed private citizens to submit questions, which were screened and read by the chairperson.³⁴

COMMITTEE CONCLUSIONS

On 12 July, two days after the conclusion of the hearings, with barely a majority of members present, the Legal Committee voted on each candidate in open session to determine whether or not to recommend him/her to the plenary for appointment. Due to opposition boycotts, just 11 of 18 committee members participated in the voting: 10 GD and 1 European Socialist, including only

²⁸ See 2019 ODIHR Opinion, paras. 26, 28 and 82-84. See also Council of Europe's Consultative Council of European Judges (CCJE), [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](#); and Venice Commission, [Report on Judicial Appointments \(2007\)](#), CDL-AD (2007)028-e, paras. 12 and 47.

²⁹ In accordance with international standards on judicial appointments, where the final decision relating to a judge's appointment is not adopted by an independent judicial council, guarantees should exist to ensure that it is taken exclusively on objective criteria. CCJE, [Opinion no. 1 \(2001\) on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, para. 37](#); 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](#).

³⁰ Several MPs made references to violence surrounding the planned Tbilisi Pride event. On 5 July, the day it was scheduled, organized anti-gay protests quickly turned violent, resulting in some 50 injuries and one apparent death. The event was canceled due to security concerns. In addition, some MPs opposed to the timing of the appointment process asked candidates if proceeding with the process was a breach of the 19 April agreement.

³¹ For instance, two GD MPs intensely debated for some 45 minutes with a candidate about one of her judgments that concerned the GD founder, a former Prime Minister.

³² Under Article 36 of the Rules of Procedure of the Parliament, Committee chairpersons are obliged to exercise their powers in a fair and impartial manner. The chair twice praised or placed in a positive light the Minister of Interior, a GD party member, with regard to police response to recent violence at the Tbilisi Anti-Pride event; civil society demanded resignation of the Minister for alleged failures in relation to the incident.

³³ Examples of topics covered are: judicial independence, court practice, judicial ethics, management of the judiciary, legal norms and principles, challenges in the judiciary, judicial reform, human rights, and personal values. A few MPs asked inappropriate personal questions about candidates' vaccination status or religious affiliation.

³⁴ The right and procedure to submit questions was not established in writing; the Chairperson verbally noted at the first hearing that citizens could write questions on parliament's website or Facebook page, anonymously or not. Throughout the hearing process, the chairperson read out twelve pre-screened questions submitted by four citizens.

one woman.³⁵ The Committee chairperson announced that Committee members will cast their vote “according to the Constitution, while considering the competence and integrity criteria established in the legislation”, essentially undertaking to recommend meritorious candidates, although without guidelines as to how Committee members should assess each candidate in the competence and integrity categories. The Committee chair did not open the floor for substantive discussions on the merits of the candidates; although not required by law, the absence of such deliberation did little to increase confidence in the merit-based nature of the process.

Voting patterns fell strictly along party lines: the 10 GD members all voted in favour of six of the candidates and abstained from the vote on the other three nominees; the European Socialist member voted in favour of three of the candidates that the GD members supported, and voted against one GD-supported nominee, abstaining in all other votes. Each of the six nominees barely received the necessary majority of 10 votes. Without further discussion, the Committee voted to recommend to parliament those six candidates that received the majority of votes.³⁶ The six recommended candidates were all male judges; the remaining three candidates did not receive any favourable votes. These included two female judges – on the Tbilisi City Court and Tbilisi Court of Appeal – and one male judge, a former Supreme Court justice whose expired term had twice been extended. Two of the three non-recommended candidates had been scored and ranked higher by the HCJ than three of the six recommended nominees.³⁷

In its Conclusion recommending the six candidates, the Committee did not provide any substantive justification for its selection, limiting transparency and raising concerns about whether the proposals were genuinely based on the nominees’ suitability for the highest court. The parliament’s Rules of Procedure provide that the Committee shall adopt a Conclusion that includes the recommendation regarding a nominee’s election and an “an assessment and/or concrete measures of responses.”³⁸ In its Conclusion, the Committee only listed the six recommended nominees and their voting results without justification or substantive findings on the candidates’ merits. The Conclusion was immediately submitted to the Bureau of Parliament and the results of the Committee’s votes were posted on the parliament’s website. However, the votes were not broken down by how each committee member voted, further limiting transparency.

Although the law does not explicitly require a substantive reasoning on each candidates’ merits, the lack of a Conclusion that – to the highest extent possible – made such assessment, limited parliament’s ability to vote on the candidates on the basis of their professional merits rather than political preferences. This was particularly concerning given that two of the three non-recommended candidates had been evaluated more favorably by the HCJ than some of those six who were ultimately recommended.³⁹ The discrepancies between the Committee’s

³⁵ Some other GD MPs observed the session, but no other opposition or independent MPs attended.

³⁶ Five of the six recommended candidates sat on the Tbilisi Court of Appeals, and one on the regional Mtskheta District Court.

³⁷ The HCJ scored/ranked the three non-recommended nominees as 4th, 5th and 8th among the 9 nominees it had submitted to parliament for appointment.

³⁸ Articles 42(2) and 205(4) of the Rules of Procedure of the Parliament.

³⁹ For example, in its 12 July [report](#), the Georgian Bar Association, which daily participated in the hearings, assessed the two female candidates as the only two nominees that were highly qualified for the Supreme Court. In its [March 2021 report on the judiciary](#), the Georgian Democratic Initiative, a member of the Coalition, also remarked of the

recommendations for appointments and the HCJ's nomination scoring, in the absence of substantive justification, further threatens judicial independence in Georgia and respect for the rule of law.⁴⁰

PLENARY VOTE

By law, the nominees receiving a majority of votes of all sitting MPs are appointed to the Supreme Court. The parliamentary plenary vote, taking place on 12 July the same day as the Committee's recommendations amid a tense environment, resulted in the appointment of the Committee's six recommended candidates by a largely homogenous voting bloc.

The plenary vote took place in an extraordinary session shortly after the Committee vote on 12 July. Although the session was broadcast live, it was not open to the public or journalists due to heightened security concerns from an unrelated protest outside the parliament that escalated into the storming of the plenary's chamber, physical confrontation, and temporary evacuation.⁴¹ The plenary session, delayed by two hours by the events, ultimately proceeded with 87 of the 150 sitting MPs present; ninety-three per cent of these represented the ruling party, as most opposition MPs walked out in boycott.⁴² This left the final appointment decisions with virtually no input from the opposition, which limited the inclusivity of the process.

There was no opportunity for substantive discussion of the candidates' merits as required in the parliament's Rules of Procedure.⁴³ The voting proceeded immediately after the session resumed, with six of the nine nominees – those who were recommended by the Legal Committee – obtaining the vast majority of the votes cast and thus lifetime appointments on the Supreme Court. However, each narrowly received the necessary majority of 76 votes.⁴⁴ The other three nominees received

non-appointed female Tbilisi Court of Appeal judge: “[her] answers and skills revealed during the hearing that she fully met the high standard required of a Supreme Court judge” (p. 46).

⁴⁰ The lack of transparency in the Legal Committee's decision-making 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. 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.

⁴¹ Only persons specifically authorized by the Speaker of the Parliament were allowed into the plenary hall; ODIHR monitors received authorization, but no journalists or other observers were present. The protests, organized by media outlets demanding the resignation of the Minister of Interior and Prime Minister, related to the death of a journalist the day before the session, who allegedly died from injuries sustained from beatings by religious extremists preceding the planned Tbilisi Pride event. The protests culminated in the storming of the parliament by protestors backed by some opposition MPs; physical confrontations including fistfights in the plenary chamber led to the evacuation of the MPs for some time.

⁴² European Socialists and For Citizens MPs were the exceptions to the opposition boycott. Present were: 81 of 84 GD MPs, 1 of 4 European Socialists, 2 of 2 For Citizens, and 3 (former GD) of 11 non-faction MPs; no MPs from UNM, Strategy, Lelo, Girchi, or unaffiliated MPs were present during the voting.

⁴³ Article 205(6) of the Rules of Procedure of the Parliament provides that the plenary is to discuss the candidates in session and openly vote on each candidate individually. Just one MP from For Citizens made a comment relating to the candidates' qualifications, asking that the MPs vote only for the two female candidates who had not been recommended by the Legal Committee, which he [stated](#) he believed was a moral obligation.

⁴⁴ The six appointees each received between 77 and 79 favourable votes amongst the 87 present MPs.

very few favourable votes, with the vast majority of MPs abstaining from voting for or against them.⁴⁵

On the same day, the parliament posted the disaggregated results of the plenary vote. There was a similarity in the voting patterns of the GD MPs, which suggested coordination along party lines.⁴⁶ During the voting session, several GD MPs openly called on their party's MPs to be "attentive" and "careful" and reminded them of the party's slim majority. One of the appointees receiving virtually every GD vote had been previously rejected by the parliament in December 2019.⁴⁷

Regrettably, the appointment of the six new judges seriously undermined gender representation in the highest level of Georgia's judiciary. Though 38 per cent of the candidates and 22 per cent of the nominees were women, none received appointments.⁴⁸ With the selection of six additional male judges, the gender balance on the Supreme Court significantly shifted, decreasing the proportion of its women judges from 47 to 35 per cent, well below the overall 57 per cent women judges in Georgia's judiciary.⁴⁹ Further, with only 19 per cent women in parliament and only one female participating in the Legal Committee voting process, the role of women in the decision-making on appointments was limited.

Overall, the shortcomings in the legal framework and the parliamentary appointment process damaged the credibility and representativeness of the Supreme Court judge selection, leading to public criticism on both substantive and procedural grounds. The Public Defender and some civil society condemned the process as flawed and failing to ensure the candidates appointed for life to the highest court are those most qualified.⁵⁰ At the same time, the international community criticized the parliament for moving ahead to finalize the appointments without first engaging in significant judicial reform.⁵¹ Following parliament's finalization of the Supreme Court appointments, on 28 July, the ruling party withdrew from the April 19 agreement, claiming the deal had "fulfilled its mission and reached its limits."⁵²

By law, if any of the HCJ nominations are not appointed by parliament and as a results seats remain vacant (in this case for three seats), within two weeks the HCJ is to nominate replacement

⁴⁵ From the 87 present MPs, each of the three unsuccessful nominees received between 3 and 5 favourable votes and between 2 and 7 votes against their appointment. The remainder of the MPs abstained.

⁴⁶ The six successful nominees each obtained between 76 and 78 of the 81 GD MP votes and between 78 and 79 GD MPs voted against or not at all for the three unsuccessful nominees. The three former GD MPs (non-faction) voted in line with each other, voting against or not at all for each of the nine nominees. Despite For Citizens' earlier statement that it would boycott the plenary vote, its two MPs participated, casting favourable votes only for the two female nominees who had been rejected by the ruling party and voting against all others. The one European Socialist MP voted against two of the appointees and did not support any of the unsuccessful nominees.

⁴⁷ In December 2019, 2 MPs voted in favour of the candidate, 3 voted against, and 86 abstained; in July 2021, the same candidate received 79 favourable votes, 5 against, and 3 abstentions.

⁴⁸ Twelve (38%) out of 32 candidates voted by the HCJ before nomination were women, and two (22%) out of nine candidates nominated by the HCJ were women.

⁴⁹ Prior to the six new appointments, 8 out of the 17 sitting Supreme Court judges were women; the number of women judges remained the same after the new appointments, that is, 8 out of 23.

⁵⁰ The Public Defender [publicly called](#) the appointment process a farce that failed to appoint the most highly qualified candidates. Having monitored all the hearings, the Georgian Young Lawyers Association issued a [statement](#) alleging undue influence in the appointment process.

⁵¹ See post-appointment statements of the [US Embassy](#) and [EU Delegation](#).

⁵² See [statement](#) of the Georgian Dream party chair.

candidates from its original shortlist, using the same voting system applied to the initial nominations.⁵³ The HCJ now has a significantly different composition than at the time of the nomination proceedings for the six Supreme Court judges just appointed. By the 26 July deadline, the HCJ had not submitted the three new nominations.⁵⁴ As a result, with the two on-going recruitment processes, 5 of the 28 Supreme Court judicial seats are currently vacant. In total, 20 of the 28 seats have been filled through the 2019 and 2021 appointment processes both of which completely lacked inclusivity and failed to garner cross-partisan support.

RECOMMENDATIONS

ODIHR's monitoring report aims to provide an independent assessment of the judicial appointment process and its compliance with OSCE commitments, international standards, and guiding principles of judicial independence. Recommendations are therefore given with the aim of improving the legal framework for judicial appointments to ensure compliance with international standards for judicial independence and fair trial rights. Although many recommendations advanced by ODIHR in its 2019 legal framework review⁵⁵ and monitoring report⁵⁶ have been addressed, some key recommendations remain outstanding and are reiterated below. These recommendations should be read in conjunction with those previous ODIHR reports.

Firstly, overarching recommendations include:

- ✓ Parliament and the HCJ should immediately suspend proceedings to fill the five remaining vacancies on the Supreme Court, pending further judicial reforms as noted below;
- ✓ Bring the legal framework for appointment of Supreme Court judges fully in line with outstanding ODIHR and Venice Commission recommendations, to ensure compliance with international standards for judicial independence and fair trial rights;
- ✓ Reform the HCJ and its composition to bolster public trust in its independence and integrity, by providing for competitive, inclusive, and transparent processes for appointment of its members, based on clearly-defined, objective criteria. Pending reform, filling of vacant seats on the HCJ should be suspended;
- ✓ Undertake comprehensive judicial reform to increase the independence, accountability, and quality of the judicial system in a broad, inclusive and cross-party reform process, including effective participation of civil society and legal experts.

⁵³ Art. 34.1(15) of the Organic Law on the Common Courts. If vacancies still remain after the parliament considers the new nominees, the process is to restart within one month.

⁵⁴ As of the end of July 2021, only six of the twelve members who participated in the nomination process now remain on the council. Five seats for the parliamentary-appointed HCJ members have remained vacant since the former members' terms expired in March and June 2021. On 24 June, the ruling party [announced](#) that these appointments would be postponed until October.

⁵⁵ OSCE/ODIHR, [Opinion on Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia](#), 17 April 2019

⁵⁶ [Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia](#), June-December 2019 (9 January 2020).

Key recommendations for parliament to consider introducing via legislative amendment include:

- ✓ Reconsider the parameters for the parliament's role in the appointment process to ensure judicial appointment decisions are made solely on the basis of merit-based, objective criteria and adopt legal and procedural safeguards to prevent the politicization of the appointment process;
- ✓ Amend the minimum eligibility criteria for competing for Supreme Court judicial posts to require more years of experience and extensive human rights experience to ensure higher standards for candidates for the highest court;
- ✓ Amend timelines where appropriate to allow for a thorough examination of candidates' merits prior to decision-making at all stages of the nomination and appointment process. This includes the timelines prior and subsequent to the holding of hearings in Parliament;
- ✓ Include a requirement for reasoned decisions at all stages of the appointment process based on clearly defined criteria, and require them to be duly published;
- ✓ Refrain from making changes to the legal framework during an ongoing selection process and ensure that all candidates are heard and considered under the same rules and procedures;
- ✓ Consider introducing guarantees for balanced representation of both genders on the Supreme Court, though not at the expense of the basic criterion of merit, and mechanisms to facilitate such objective.

In exercising their functions to nominate and appoint Supreme Court judges, the responsible institutions should consider the following recommendations, many of which are also applicable to appointment processes in general:

- ✓ Ensure adequate regulations and procedures are adopted to supplement the legislation on key aspects of the nomination and appointment process, including on the hearing proceedings and on evaluation and justification of the candidates' merits.
- ✓ Effectively involve civil society throughout the judicial selection processes to contribute to selection of the most qualified candidates and to bolster public confidence;
- ✓ Consolidate efforts to recruit the most highly-qualified candidates by soliciting applicants from the broader legal community, including from the civil society sector and academia.
- ✓ To increase diversity, women, persons with disabilities, and minorities should be explicitly encouraged to apply and affirmative measures should be considered to increase their representation in the judiciary;
- ✓ Strictly and transparently screen all applicants to ensure they fulfil established eligibility criteria, including the requirement for higher legal education;
- ✓ Further elaborate procedures for conducting background checks to be more transparent and more substantive, and ensure rigorous research on matters of competence and integrity;
- ✓ Strictly interpret conflict of interest rules to ensure no perceived or actual conflict of interest exists throughout the selection process, including the participation of sitting HCJ members in selection processes in which they have a personal interest;
- ✓ To ensure broad public participation and transparency, provide sufficient advance notice of nomination hearings of candidates and publish minutes of hearings on a timely basis;
- ✓ Adopt comprehensive, detailed hearing rules and procedures as well as codes of conduct for all stages of the nomination and appointment process by legal instrument through an

inclusive consultative process, and ensure they are applied strictly, fairly and consistently and published for greater transparency.

- ✓ Require a majority quorum throughout the hearings of candidates, which should be strictly adhered to, and ensure that participants commit their undivided attention to the process;
- ✓ Treat candidates fairly and equally throughout the selection process and provide them with respectful and dignified conditions;
- ✓ Hearing chairpersons should fulfil their role with strict political neutrality and fairness toward all members and candidates, and exert sufficient control over hearings to ensure an orderly and respectful process;
- ✓ Establish standards and guidelines for reasoned decisions on shortlisting of candidates, nominations, and recommendations to parliament to ensure standardized evaluations that are substantive, merit-based, and personalized.