



JUDGES' PROFESSIONAL TRAINING SYSTEM IN GEORGIA

JUDGES' PROFESSIONAL TRAINING SYSTEM IN GEORGIA

2019

AUTHORS

Ketevan Kukava, Mariam Orzhonia, Giorgi Beraia,
Ana Tchiabrishvili, Saba Buadze

SUPERVISORS

Mikheil Benidze, Elene Nizharadze, Levan Avalishvili

AUTHOR OF THE CHAPTER ANALYSIS OF PROGRAMS FOR INITIAL TRAINING OF JUDICIAL CANDIDATES AND IN-SERVICE TRAINING FOR JUDGES

Revaz Khoperia

FOREIGN CONSULTANT

Marina Naumovska

DESIGNER

Iona Utavsauri



USAID
FROM THE AMERICAN PEOPLE

EAST • WEST
MANAGEMENT
INSTITUTE
*Promoting Rule of Law
in Georgia (PROLoG)*



ISFED
INTERNATIONAL SOCIETY FOR
FAIR ELECTIONS AND DEMOCRACY

IDFI
Institute for Development
of Freedom of Information

This report is made possible by the support of American People through the United States Agency for International Development (USAID). The contents of this report are the sole responsibility of the International Society for Fair Elections and Democracy (ISFED) and Institute for Development of Freedom of Information (IDFI) and do not necessarily reflect the views of East West Management Institute, USAID or the United States Government.

TABLE OF CONTENTS

Executive Summary.....	4
Introduction.....	5
Methodology.....	6
HSoJ Functions and Governing Bodies.....	10
Admission Process at the High School of Justice.....	17
Stages of Recruitment of Judicial Candidates at the High School of Justice.....	24
Initial Training at the High School of Justice.....	32
School Teachers (trainers) and Invited Experts.....	41
Final Examination.....	44
Role of the HSoJ in Judicial Appointments.....	46
In-service Training of Judges.....	53
Analysis of Programs for Initial Training of Judicial Candidates and In-Service Training for Judges.....	60

EXECUTIVE SUMMARY

The present research provides an overview of the institutional arrangement of the High School of Justice of Georgia (HSoJ) and main challenges related to its work. The research summarizes distribution of powers between the HSoJ and the High Council of Justice (HCoJ) and identifies a number of problems that exist in HSoJ performance, including initial training, in-service training and training programs.

The report analyzes applicable legal framework, identifies main flaws and reflects opinions of respondents interviewed during the research. Based on the analysis of national legal framework and positions of respondents, the report presents applicable international experience and provides subsequent findings and recommendations at the end of each chapter.

A separate chapter examines the HSoJ functions and bodies of governance. The regulation governing the formation of the Independent Board of the High School of Justice has a major flaw, mandating the HCoJ with the power (responsibilities) to control activities of the School. The research lays particular emphasis on the need to increase organizational independence of the School, as a crucial requirement for ensuring judicial independence and transparency of judicial appointments.

The research also focuses on admission process and selection of judicial candidates. Another key flaw of the same regulation, is the fact that the School is not authorized to select judicial candidates itself. In addition, the existing legislation does not provide sufficient guarantees for avoiding arbitrary decisions by the HCoJ about announcement of the competition. This creates a serious risk that the Council will make decisions based on its subjective views, as opposed to interest of justice. Research findings also indicate that requirements that judicial candidate should meet are flawed; selection criteria, guarantees for reasoned decisions and appealing are not provided in the law, which is problematic. Lack of such legislative guarantees poses the risk of arbitrary actions and biased decisions, which harms the important public interest of staffing the judicial system with qualified, competent and independent judges.

The research suggests that duration of in-service training at the High School of Justice is insufficient for preparing qualified judicial candidates. The existing regulations do not allow judicial candidates to explore deeply issues that are important for effective implementation of judicial functions. The research has also found that the training methodology and the practice of quality assurance and development needs to be further elaborated.

Further, the existing legal framework does not ensure objective and transparent

process of staffing of the teachers' council. Lack of qualification requirements that members of the final examination commission should meet and their selection criteria are also problematic, which provides the independent board with a broad discretion for selection of the 3 members of the commission.

The research also underlines the need to increase the School's role in appointment of judges, as a crucial requirement for ensuring fair and objective process of judicial appointments.

Problems identified by the research suggest that comprehensive reform of the High School of Justice is needed. Based on international standards and experience, the report presents recommendations for addressing existing flaws and problems.

INTRODUCTION

Qualification of a judge and high quality of his/her work is an important prerequisite for ensuring independent and accountable judiciary, one that effectively protects interests of individuals who seek justice. To achieve the said goal, the judicial system should be composed of competent and qualified judges that ensure administration of impartial and quality justice. Adequate legal guarantees should be set in place to assure that disputes are considered by impartial, competent and honest judges whose professional competencies are in line with the important role and responsibility of the judiciary. According to the Consultative Council of European Judges (CCJE), the rule of law in a democracy requires not only judicial independence but also establishment of competent courts rendering judicial decisions of the highest possible quality.¹

The High School of Justice was established in 2006. The main objective was to create a new, merit-based system of appointment of judges and to institutionalize professional trainings for sitting judges and other court staff. In order to ensure systematic work of the High school of Justice and to enhance its operational efficiency, a new structure was created in 2013. 3 structural departments were formed and separation of duties by departments was clearly defined.² Legislative amendments of 2013³ restricted broad legal power of Chairperson of Supreme Court in relation to the HSoJ. In particular, the amendments stipulate that Chairperson of Supreme Court of Georgia shall not become the member of the Inde-

¹ CCJE Opinion N17 (2014), §1.

² High School of Justice, Report on the Implementation of the Reform (2013-2016). Available at: <https://bit.ly/2ugah0z> (last accessed 8 March, 2019).

³ <https://matsne.gov.ge/ka/document/view/1922267?publication=0> (last accessed 10 March, 2019).

pendent Board as well as Chairperson of the Independent Board shall be elected by the Conference of Judges.⁴ “Third wave” of judicial reforms has also led to improved regulation to a certain extent. In particular, legislative amendments of 2017⁵ has improved transparency of the HSoJ performance.

Despite the three waves of the judicial reform implemented over the last few years and subsequent positive changes, problematic matters that continue to exist include ensuring institutional and functional independence of the High School of Justice (HSoJ), an important link in the system of judicial selections and appointments, and meaningful improvement of its work. The issue of improving applicable legal framework is especially important since no comprehensive reform of the system of judicial selections and appointments is possible without ensuring meaningful independence of the School and improving quality of its work in the first place. The School also plays an important role in ensuring and maintaining quality and effectiveness of justice by delivering in-service training for judges on periodic basis.

The purpose of this analysis among other is to identify any gaps in the legislation and practice and to appraise the existing training programs for judicial candidates and judges. It also aims to support further reform of the HSoJ by proposing recommendations to ensure meaningful independence of the School and improve its work.

METHODOLOGY

Methodology of this research is based on the following tools:

Analysis of the applicable legislative framework

Within the research, we analyzed legal acts that regulate functions and operation of the High School of Justice, its governing bodies and structure, the rule of admitting judicial candidates to the School, initial training process and in-service training of judges. We also focused on legal norms that regulate distribution of functions between the HSoJ and the HCoJ. After analyzing the national legislation, we were able to identify challenges, flaws and main problems related to the High School of Justice.

⁴ Before legislative amendments Independent Board was chaired by the Chairman of the Supreme Court of Georgia who was approving 5 members of the Independent Board with the agreement of the HCoJ.

⁵ <https://matsne.gov.ge/ka/document/view/3296544?publication=0> (last accessed 10 March, 2019)

Within the research the following legal acts were analyzed:

- The Organic Law of Georgia on Common Courts
- The Law of Georgia on the High School of Justice
- The Statute of the Legal Entity of Public Law – the High School of Justice

Study of applicable international standards and practices

Within the research, we focused on studying applicable international standards and practices. We analyzed following recommendations and findings:

- Consultative Council of European Judges (CCJE) Opinion no.4 (2003);
- CCJE Opinion no.10 (2007);
- Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010);
- EJTN Handbook on Judicial Training Methodology in Europe (2014);
- European Commission, Advice for Training Providers (European Judicial Training (2015)).

Study of international experience mostly involved pre-selected countries. Selection was done based on consultations with an international expert. As a result, we selected states where trainings for judicial candidates are mandatory and relevant to the Georgian model. In addition, we selected countries in consideration of the Georgian legal tradition and flaws and challenges identified. More specifically, we focused on models that exist in France, Portugal, Belgium, Denmark, Poland and Austria.

Individual interviews

One of the methods used in this analysis were the individual interviews. To collect additional information and listen to opinions of different actors, we conducted interviews with judicial candidates, judges and other individuals, which allowed to identify flaws in the existing practice and come up with different ways for solving problems. The interviews were conducted also with the representatives of HSoJ and two members of the HCoJ. Within the research we conducted a total of 11 interviews based on a questionnaire prepared beforehand, which entailed questions about problematic issues available at the time of this research.

The significant effort was required to get in touch with the School graduates that was mainly carried out by personal contacts. Some of them refused to participate

in the interviews regardless of respect of anonymity. The HSoJ refused to provide the contact details of the justice listeners based on personal data protection, as well as rejected a request to share information about the project with the justice listeners in case if they wished to get in touch with the organizations implementing the project.⁶ These resulted in a relatively small number of interviews. It should be noted that the given report constitutes a qualitative research and the interviews conducted do not aim at being statistically representative.

Request and analysis of public information

Official website of the HSoJ, including the School activity reports was an important source of information for this research. In addition, evaluation form of candidates by Independent Board, information about number of judicial candidates, judges that participate in the in-service training program, HSoJ teachers and invited experts was provided by the HSoJ. The following information about training programs was also received from the School:

1. Initial training program for judicial candidates and other relevant documents, including:

- Initial training program, curriculum and teaching plan;
- Curricula of theoretical courses of the initial training program, internship curricula;
- Course outlines within the initial training program;
- The regulation for conducting a final examination within the initial training program and evaluation criteria;
- The rule of, criteria and conditions for selection of teachers for initial training program of judicial candidates.

2. In-service training program for judges and other court staff, including:

- Program, curriculum and teaching plan of in-service training for judges and other court staff;

⁶ E-mail communication with the HSoJ dated 18 May, 30 July and 16 August, 2018.

- Course outlines (or detailed description) within the in-service training for judges and other court staff, indicating objectives, outcomes, topics and evaluation criteria.
- The rule of, criteria and conditions for selection of individuals that are involved in implementation of in-service trainings for judges and other court staff (teachers).

3. Information about comparable international practice. In particular, information about specific country/countries with similar training programs and experiences that the HSoJ training programs are based on.

Besides that, the following additional information was received from the HSoJ:

- Information on determination of training needs;
- Information on introducing e-learning;
- Information on training methodology;
- Reports prepared in the framework of EU supported Twinning project - Strengthening Judicial Training through Twinning.

From the requested information the HSoJ has not provided information on quality assurance and documents about survey results.

Public information was also received from the High Council of Justice. In particular: information about number of competitions for recruitment of judicial candidates, number of applicants and number of judicial candidates enrolled, number of competitions for selection of judges and number of appointed judges.

HSOJ FUNCTIONS AND GOVERNING BODIES

Legal Framework

Legal entity of public law – the High School of Justice is the agency responsible for professional training of judicial candidates, i.e. individuals to be appointed as judges, for in-service training of sitting judges, as well as for initial and in-service training of candidates for the position of judicial assistants and other specialists in Georgia.⁷

The HSoJ governing bodies include: the Independent Board (IB) and the Directorate.⁸

The IB coordinates activities of the HSoJ and determines the course of the training process as well as methods of examination. It prepares and establishes the Statute of the HSoJ, the budgeting rule; hears annual reports of the Director; approves School budget, internal regulations, initial, in-service training and internship programs proposed by the Director, eligibility criteria for judicial candidates, employee list, salary fund, amounts of remunerations and stipends. The IB also proposes the School budget, selects the School teachers; selects the Deputy Director and the Head of Internship, and discharges other powers provided in the law and in the Statute of the HSoJ.⁹

The IB is comprised of 6 members, including a chairperson of the IB selected by the Conference of Judges from among its members¹⁰ and five members nominated by the IB Chairperson and approved by the HCoJ (one out of five members approved by the IB should be non-judge member of the Council). A member of the Independent Board is relieved of his/her duties by the HCoJ, based on the initiative of the IB Chairperson, while the chairperson himself/herself can be relieved of his/her duties by the Conference of Judges of Georgia.

Notably, the legislative changes of 2017¹² placed the responsibility on the Independent Board to disseminate information about the meeting and to announce the meeting agenda on the HSoJ website a week before as well as to publish the decision together with the transcript of the meeting no later than 3 work days after the meeting which constitutes a step forward in terms of improving transparency of the HSoJ performance.

⁷ Law of Georgia on the High School of Justice, Art.1

⁸ *Ibid*, Art.2

⁹ *Ibid*, Art.7; Statute of the Legal Entity of Public Law - High School of Justice, para.8 of Art.8

¹⁰ Law of Georgia on the High School of Justice, paras 3 and 4 of Art.3

¹¹ *Ibid*, para.2 of Art.3'

¹² Law of Georgia on the High School of Justice, Art. 4

As regards the Directorate, it is comprised of the HSoJ Director, Deputy Director and Head of Internship.¹³ The HSoJ Director is responsible for functioning of the School and administration of its initial and in-service courses and for enforcing decisions of the Independent Board. In addition, the Director submits initial training, internship and in-service training programs prepared in coordination with the Directorate and Teachers' Council to the Independent Board of the School for its approval.¹⁴

Flaws in the existing legal framework

The existing rules of formation of the main governing body of the HCoJ – the Independent Board does not ensure adequate institutional independence of the School from the High Council of Justice. The IB, which determines main activities of the School and oversees training process, should be protected against the Council's influences. The fact that 5 out of 6 members of the IB are selected by the HCoJ poses a significant risk to the School's independence.

Consultative Council of European Judges (CCJE) has underlined that to rule out any conflict between different functions of the Council for the Judiciary, different tasks of the Council should be separated between various branches of the Council.¹⁵ In addition, according to the CCJE “Those responsible for training should not also be directly responsible for appointing or promoting judges. If the body (i.e. a judicial service commission) is competent for training and appointment or promotion, a clear separation should be provided between its branches responsible for these tasks.”¹⁶ It follows that not only the two agencies should be formally separated from one another but also, their meaningful and effective institutional division should be ensured.

In addition, based on Kiev Recommendations, in order to avoid excessive concentration of power in one judicial body and perceptions of corporatism it is recommended to distinguish among and separate different competences. A good option is to establish different independent bodies competent for specific aspects of judicial administration without subjecting them to the control of a single institution or authority.¹⁷

In contradiction to the international recommendations, even though under the

¹³ *Ibid*, para.1 of Art.5

¹⁴ *Ibid*, Art.6

¹⁵ CCJE Opinion N10 (2007), §23

¹⁶ CCJE Opinion N4 (2003), §18

¹⁷ KYIV RECOMMENDATIONS ON JUDICIAL INDEPENDENCE IN EASTERN EUROPE, SOUTH CAUCASUS AND CENTRAL ASIA (2010), §2, available at: <https://bit.ly/2DHRmBn> (last accessed 19/07/2018).

existing Georgian legislation, the High Council of Justice and the High School of Justice are two different agencies, the important principle of separation between activities of the two agencies has not been ensured. Under the existing regulation, such division is only a matter of form, since five members of the School's Independent Board are approved by the HCoJ, meaning that the Council can significantly influence activities of the School.

Interviewed respondents have different positions on the composition of Independent Board, however majority thinks that HCoJ should have minimum representation in the IB of the School and in the composition of IB various actors should be involved. For instance, one of the respondents positively assesses representation of the High Council of Justice in the IB, as believes that ties between the two establishments are important: „It is possible that council might identify problems in respect of the School. It is also important that at the stage of evaluation of judges the information about the problems is received by the School and vice-versa”. However, the respondent states that carrying out this feedback in practice is problematic and “representation of HCoJ in the IB of the School has only formal character”.

One of the respondents stated that the model of composition of the Independent Board of the High School of Justice and in particular, approval of 5 out of 6 members of the IB by the HCoJ, will not be problematic if relevant decision-makers will act in good conscience. Though, according to the respondent, even when relevant individuals act in good conscience, broad scope of the HCoJ powers may be threatening. In light of this, the respondent considers involving different actors in formation of the Independent Board.

Other respondents also talk about the involvement of different actors. They think that it would be good if non-political actors –e.g. universities, the Public Defender, Constitutional Court, etc. will participate in composition of the IB.

One of the respondents stated that selection of the Independent Board should be assigned to the judges self-governing body while representation of the High Council of Justice should be kept to minimum. According to the respondent, independence of the HSoJ requires maximum division between the HSoJ and the HCoJ. Similar to this, one respondent also stated that under the existing arrangement, powers are concentrated in hands of a single agency, the High Council of Justice, which is a problem.

Contrary to this, representatives of HSoJ do not find composition of Independent Board as a problematic matter. They cannot recall a case when the HCoJ negatively evaluated or questioned qualifications of IB members nominated by the chair. According to them, the HCoJ does not intervene in this matter and it does not decide who should be a member of the IB. Therefore, the School representatives believe that the IB does not depend on the HCoJ.

The members of the HCoJ indicated, the IB chair is elected by a self-governing body – Conference of Judges, who then nominates IB members before the Coun-

cil. According to their assessment, the Conference of Judges has more role than the HCoJ does in composition of the Independent Board. HCoJ has only formal role in the process. Member of the HCoJ also said, that legislation does not even regulate what happens if the HCoJ refuses to approve candidates nominated by the IB chair, whether it is obligated to explain its refusal in case of rejection. Accordingly, legislation needs to be improved in this regard.

Institutional independence of HSoJ is primarily related with the rule of composition of its principle management body. Excessive powers concentrated in HCoJ contains the risks of influencing the activities of HSoJ. Accordingly, distancing HSoJ from HCoJ and substantial change of rule of composition of Independent Board is highly important.

International experience

In **Portugal**, the Center for Judicial Studies (Centro de Estudos Judiciarios (CEJ)), operating under the supervision and responsibility of the Ministry of Justice but with its own legal form and administrative autonomy, is an institution responsible for initial and in-service training of judges and prosecutors. Functions of the General Council, a governing body of the CEJ, are similar to those of the Independent Board of the Georgian High School of Justice. Composition of the General Council is regulated by the law. Responsibilities of the Council include: approve the annual activities plan and review the annual activities report of the CEJ; approve the Rules of Procedure; give its view on the appointment and renewal of the office of the Director; discharge other powers related to functioning of the Center for Judicial Studies that do not fall within the discretion of other agencies or the Council is directly tasked with by the Director or the Ministry of Justice.

The General Council is composed of (a) the President of the Supreme Court of Justice, (b) the President of the Supreme Administrative Court, (c) the Attorney-General, (d) the President of the bar association, (e) the director of the CEJ, (f) two people of recognized merit selected by the Assembly of the Republic, (g) three law professors jointly chosen by the Minister of Justice and the Minister of Education, (h) a member appointed by the High Council for the Judiciary, (i) a member appointed by the High Council for the Administrative and Tax Courts, (j) a member appointed by the High Council for the Public Prosecution Service, and (k) two future judges and public prosecutors in the first stage of the theoretical and practical training course, elected from among their peers.¹⁸

¹⁸ Law #2/2008 of January 2008, on admission and training of judicial candidates and the structure

In Belgium trainings for judge candidates are conducted by the Judicial Training Institute composed of three organs: Directorate, Governing Board and Scientific Committee.¹⁹

The annual plan submitted by the Directorate is approved by the Governing Board. The annual plan should be in accordance with the directives of the Supreme Judicial Council. Apart of it, the Governing Board controls management of the Institute by the Directorate, adopts the budget and the plan regarding the employees suggested by the Directorate. The Governing Board ensures that the members of the Directorate observer discipline.²⁰ The Governing Board is composed of 14 members 7 of whom are in the Board based on their positions and the rest are appointed.²¹

The **Danish** Court Administration is responsible for training of candidates (candidates are judicial assistants and they are not selected by way of a competition), which has a trainings division. Even though the Administration is formally an agency under the Ministry of Justice, the Minister cannot overturn decisions made by the Administration.²²

The Danish Court Administration is an independent body and headed by the Board of Governors and the Director.²³ Director elected by the Board of Governors is responsible for day-to-day management of the Administration and he/she is not required to have legal education.²⁴ The Board of Governors consists of 11 members including 8 judges, one attorney and two members entrusted with special management functions.²⁵

Pursuant to the Danish Court Administration Act, members of the Board who are judges are nominated by the Court system, the attorney is nominated by the Danish Bar, and the members with special management insights are nominated by two public institutions - the Danish University Rectors' Conference Secretariat and the National Employment Council. Formally the members of the Board of Governors are appointed by the Minister of Justice. Chairman and deputy chairman are elected by the Board from its members.²⁶

and operation of the Center for Judicial Studies, Art.97, available at: <https://bit.ly/2rs1qaQ> (last accessed 2/12/2018).

¹⁹ <http://www.ejtn.eu/About-us/Members/Belgium/> (last accessed 30/11/2018).

²⁰ <https://bit.ly/2EhaHLI> p.6 (last accessed 30/11/2018).

²¹ <https://bit.ly/2rq440H> (last accessed 1/12/2018).

²² A Closer Look at the Courts of Denmark, p. 14, <https://bit.ly/2RHqLZE> (last accessed 26/11/2018).

²³ <http://www.ejtn.eu/About-us/Members/Denmark/> (last accessed 26/11/2018).

²⁴ The Danish Courts – an Organization in Development available at: <http://www.scandinavianlaw.se/pdf/51-27.pdf> (last accessed 26/11/2018).

²⁵ <https://bit.ly/2rrPC8i> (last accessed 26/11/2018).

²⁶ Consultative Council of European Judges (CCJE) Questionnaire for 2007 CCJE Opinion Concerning the Councils for the Judiciary – Reply submitted by the delegation of Denmark, available at:

Polish National School of Judiciary is governed by the Director and the Programme Board and is in charge of preparing the judge candidates. The Programme Board is the organ that functionally resembles the Independent Board of the High School of Justice of Georgia. The Programme Board is responsible for:

- Outlining the general directions of activity for the National School;
- Drafting annual training schedules;
- Drafting curricula for judicial trainings;
- Expressing opinions on the composition of teams involved in competitions and examinations;
- Defining the materials for annual publication;
- Determining regulations for organizational issues of the National School, etc.²⁷

The Programme Board is composed of the Director of the School and no more than 12 members appointed by the Minister of Justice based on nomination by relevant actors. One member is assigned by the President of the Republic of Poland, one by the National Council of Judiciary, one by the National Council of Prosecutors from General Prosecutor's Office, one by the Chair of the Supreme Court, one by the First Chair of the Supreme Court, two member are assigned by the Ministry of Justice among judges, two members are assigned by the General Prosecutor among the prosecutors and the three members are assigned by higher education institutions providing legal education.

The Director of the National School is the manager of the School activities and represents it outside. The Director is appointed by the Ministry of Justice however acting with the advice of the National Council of Judiciary and the National Council of Prosecutors.²⁸

Judicial training institution of **France** (École nationale de la magistrature- ENM) is the National School for the Judiciary, an administrative body that operates under the supervision of the Ministry of Justice of France.²⁹ Due to its status, the School is autonomous in the management of its administrative and financial resources.³⁰ The French National School for the Judiciary is responsible for orga

<https://rm.coe.int/16807474d7> (last accessed 26/11/2018).

²⁷ <https://www.kSSIP.gov.pl/angielski> (last accessed 1/12/2018).

²⁸ *Ibid.*

²⁹ The French National School of Judiciary, available at: <http://www.ejtn.eu/About-us/Members/France/> (last accessed 26/11/2018).

³⁰ National School for the Judiciary, available at: <https://bit.ly/2zKRHRy> (last accessed 26/11/2018).

nizing competitions, examinations and trainings for candidates as well as sitting judges and acting prosecutors.³¹

The School is managed by a special board. The President and Vice-President of the Board are the Chief Justice and the Chief Prosecutor of the Court of Cassation, respectively. The School Board includes representatives of the Ministry for Justice and the courts. The Board takes decisions in respect of the teaching curriculum of the School, its budget and presents the administrative and financial reports each year.

Director of the ENM is appointed by the Minister for Justice. The Director implements the School's pedagogical mission and takes all necessary measures to implement decisions of the Board. He/she prepares reports on targeted training program agendas for each candidate and sends them to the Board of Judicial Training responsible for training of judicial candidates.³²

Conclusions and recommendations

The overview of applicable international practice makes it clear that composition of governing bodies of judicial training centers is maximally diverse, their nominating actors are also diverse, which helps improve quality of their independence.

According to international standards it is recommended to divide competences between different bodies independent from each other.

In contrast to international practice and standards, in Georgia independence of the Independent Board of the High School of Justice is called into question due to its monolithic nature. This is caused by the fact that absolute majority of the IB members are approved by the HCoJ, which makes it possible for the Council to exercise control over activities of the School.

Existing national legal framework allows concentration of broad powers in the High Council of Justice, while the High School of Justice fails to meet the independence criteria, even though it exists as a separate legal entity of public law.

In addition to this, majority of respondents consider that the composition of the Independent Board is problematic and different actors should be involved in this process, while the representation of HCoJ should be reduced to the minimum.

³¹ <http://www.ejtn.eu/About-us/Members/France/> (last accessed 26/11/2018).

³² Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature. Version consolidée au 07 août 2018, Art. 21-1, available at: <https://bit.ly/2LThbPI> (last accessed 26/11/2018).

Therefore, we believe that the regulation for formation of the Independent Board should be changed in order to increase autonomy of the School and ensure its independence. More specifically:

- Judge members of the Board, accounting for half of the IB members, should be elected by the self-governing body of the common court judges – the Conference of Judges. Their dismissal should also fall within the powers of the Conference. It is essential that judge members of the Board do not include members of the High Council of Justice.
- To ensure a link and cooperation between the School and the Council, one non-judge member of the HCoJ should be kept in the composition of the Independent Board.
- To avoid having a closed system, two members of the IB should be selected with participation of outside actors and the law should provide objective criteria for their selection.
- The Chair of the Independent Board should be elected by the Board members by majority of votes.

Such reform is essential for ensuring independence of the judicial system and fair process of judicial appointments.

ADMISSION PROCESS AT THE HIGH SCHOOL OF JUSTICE

Legal Framework

Under the applicable legislation, judicial candidates are admitted to the High School of Justice as a result of a competition usually held twice a year – in May and in October. Decision to announce the competition is made by the High Council of Justice in consideration of the number of judges in the common court system of Georgia. The HCoJ has the power to announce a competition additionally, at another time of the year and the announcement should be made at least a month prior to the competition.³³ Number of judicial candidates to be admitted at the

³³ Law of Georgia on the High School of Justice, Art.11

School is proposed by the HCoJ and approved by the Independent Board.³⁴

Competition should be announced no earlier than one month and no later than two weeks before beginning of the relevant month. Deadline for registration of applicants is defined by the High Council of Justice at the time of announcement of the competition.³⁵The competition is conducted by the High Council of Justice.³⁶

According to the law, a person nominated for the elective position of a judge of the Supreme Court of Georgia, also a former judge who has passed the judges qualification exam, has served as a judge at the Supreme Court of Georgia or at the district (city) and/or appellate court through competition, and possess the judicial experience of no less than 18 months; a person who has attended the full training course at the school and has been included in the qualification list of justice trainees, are all exempt from studying at the School for appointment as a judge, irrespective of how long they were holding the judicial office or whether or not they were appointed to the office after finishing the School.³⁷

Flaws in the existing legal framework

Analysis of the existing legal framework clearly indicates that excessive powers are concentrated in the HCoJ, rendering the role of the HSoJ in determination of judicial carriers of aspiring judges a matter of formality. The HCoJ is in charge of admission of judicial candidates, even though such function is not suitable for the Council. The School is the agency that should be in charge of renewing the judicial system, recruiting new staff and making the system healthier. The fact that the School has no authority over recruitment of judicial candidates is the key bottleneck of the system of judicial selections and appointments.

It should be noted that further development of the independence of the HSoJ is one of the priorities of the 2017-2020 Agenda of the Association Agreement between EU and Georgia.³⁸ Increase of the competences of the HSoJ is one of the main factors for ensuring its independence.

The existing legislation does not provide sufficient guarantees for the HCoJ to announce a competition for recruitment of judicial candidates when this is warranted by interests of justice or the situation that exists in the judicial system.

³⁴ *Ibid*, Art.14

³⁵ Statute of the Legal Entity of Public Law – the High School of Justice, Art.4

³⁶ Law of Georgia on the High School of Justice, Art.13

³⁷ *Ibid*, Art.36

³⁸ <https://bit.ly/2W9E6Mj> (last accessed 10 March, 2019).

Based on the public information provided by the High Council of Justice³⁹, in 2013-2018, a total of three competitions were announced for admission of judicial candidates to the High School of Justice - in 2013, 2014 and 2015. In 2016-2017, the High Council of Justice has not announced admissions process; however, it is impossible to determine what was the reason because the existing legislation does not provide any concrete factors that serve as the basis of such decision. Neither does it require the Council to substantiate its decision. Considering the fact that insufficient number of judges is a challenge and there are discussions to increase their number⁴⁰ the decision of not announcing competition raises even more questions. Accordingly, it is obvious that the existing legislation does not provide any legal guarantees for preventing the Council's arbitrariness.

The legislative framework does not ensure also determination of the number of judicial candidates to be admitted to the School based on clear and objective criteria.

According to public information provided by the School⁴¹, under the IB decision dated 16 December 2013, number of judicial trainees to be admitted was set at 15. Under the 6 November 2014 decision of the IB, total number of the HSoJ trainees was set at 15. However, according to the HSoJ letter, based on the HCoJ's request and consideration of needs of the judicial system and capacity of the School, under the 23 May 2015 decision of the IB, total number of judicial candidates to be admitted was set at the maximum of 20 trainees. Under the existing legislation, it is impossible to determine what circumstances were taken into consideration in the process of setting the total number of judicial candidates to be admitted by the School.

Announcement of competition and determination of the number of judicial candidates to be admitted should be tied to certain objective circumstances, including number of judges in the judicial system, indicators that signify reduction of the number of judges in the near future (due to expiration of their term of office or reaching the age of retirement). It should also be tied to determination of number of judges that are needed in the judicial system. All of this should be used to determine number of anticipated judicial vacancies in the near future.

Similarly, one of the respondents think that the number of candidates should be decided based on statistical data, especially now that judges will be appointed for lifetime. In particular, number of new judges needed in the judicial system should be identified and used for determination of the number of judicial candidates.

Several respondents support increase of competences of the HSoJ. In particular,

³⁹ Letter N 1710/2209-03 of the High Council of Justice, dated 1 August 2018

⁴⁰ Assessment of the number of judges needed in Georgia, 8 August, 2018, available at: <http://ewmi-prolog.org/images/files/4319AssessmentoftheneedforjudgesinGeorgia-GEO.pdf> (last accessed 26/01/2019).

⁴¹ Letter no.02/2088 of the High School of Justice, dated 21 August 2018

according to the feedback from one of the respondents the High School of Justice should be responsible for announcement of a competition and recruitment of judicial candidates, however this will be pointless if the HSoJ continues to be dependent on the Council in every aspect of its work. To avoid this, the HSoJ should be institutionally empowered.

According to another respondent, involvement of the HCoJ in recruitment of candidates to be admitted to the School should be reduced to minimum. The respondent believes that involvement of the HCoJ is important only when it comes to determination of the number of candidates in consideration of the Council's resources. According to the respondent, this is important in the process of lifetime appointment of judges, while other issues – selection, admission and training – should fall within the competencies of the High School of Justice.

According to the position of respondents the HCoJ should not be responsible for admitting candidates to the School and conducting competition. Its role should be restricted to determining number of candidates to be admitted to the School based on the needs existing in the judicial system.

With regard to increasing the role of the HSoJ, representatives of the School stated that this is up to the legislative body to decide whether to increase or decrease the role of the School. However, if this issue is put on the agenda, clearly the HSoJ will express its position. This will be the position of the entire judicial system, not an individual position because the School is part of the judicial system and not a separate organization. In light of this, coordination with the judicial system is necessary regarding some issues. Increasing or decreasing the role of the HSoJ falls under the category of such issues. This kind of statement shows obviously that the School does not have position on the changes needed for strengthening institutional or functional independence of this organ which in some respect demonstrates to what extent HSoJ is depended on the HCoJ.

According to the HCoJ members, even though the law does not directly stipulate how the number of judges should be determined, a range of different factors are taken into consideration, including number of vacancies and approximate number of judges that can be added, etc. According to them, these factors are also taken into consideration for determining the number of judicial candidates, alongside the position of the School with regard to how many students it can train. Moreover, according to the HCoJ members, to determine the number of judicial candidates they first of all consult with the HSoJ.

According to one of the members of the Council, initially when the idea of creating the High School of Justice in Georgia was formed, it was intended to copy the French model. However, later the School became more like a Belgian project. In Belgium it is the Council that admits judicial candidates, however later the candidates are automatically appointed as judges.

Regarding this issue, one of the Council members stated that it is the function of the Council to appoint and dismiss judges and the needed number of candidates

is admitted to the School. Therefore, if admission of judicial candidates will no longer fall within powers of the Council, the function of the Council will lose its significance.

This opinion is not substantiated, because the candidates are not directly appointed as judges after the successful completion of the HSoJ and in case of desire they should participate in the competition for the appointment of judges which enables HCoJ to assess the candidate. Accordingly, even if HSoJ will be responsible for admission of the candidates to the School the appointment and dismissal of judges will still remain as an important function of the HCoJ.

Besides that, assessment of the candidate by two different organs independent from each other, firstly at the stage of admission to the HSoJ and secondly at the stage of appointment of a judge will contribute to the selection of the best candidates. While in case of current regulations the HCoJ has excessive powers and at both stages selection is carried out by the same organ which does not guarantee fair process of appointment of judges.

International experience

In **Portugal**, the law #2/2008 of January 14 provides a detailed regulation about dates when activities of the Center for Judicial Studies (CEJ) began and end. According to the law, working with a new group of judicial candidates begins in September and ends on July 31,⁴² which guarantees a new group of judicial candidates for the School and secures its independence in this regard. Substantiated information about the number of judges needed in a certain court is submitted to the Minister of Justice every year, before July 15, by the High Council of Magistracy, the High Council of Administrative Courts and the Office of the General Prosecutor in consideration of duration of a training course.⁴³ The Minister of Justice issues an order on the announcement of a competition determining the number of magistrates to be admitted by each court.⁴⁴

No later than on 30th day after the Minister of Justice issues the act, the CEJ director should publish a notice about the competition in the official gazette.⁴⁵ After that, candidates have 15 days to sign up for the competition.⁴⁶ They should submit an application addressed to the School director.⁴⁷ After verifying formal

⁴² Law #2/2008 of 14 January 2008, on admission and training of judicial candidates and the structure and operation of the Center for Judicial Studies, Art.4, available at: <https://bit.ly/2rs1qaQ> (last accessed 2/12/2018).

⁴³ *Ibid*, Art.7

⁴⁴ *Ibid*, Art.8

⁴⁵ *Ibid*, Art.10

⁴⁶ *Ibid*, Art.11

⁴⁷ *Ibid*, Art.11

aspects and contents of applications, the CEJ Director approves the list of registered candidates within the period of 15 days (the list is published at the School premises as well as on the CEJ website), while candidates whose applications were rejected receive a substantiated rejection notice. They have five days to challenge the decision.⁴⁸

Clearly, Portuguese law provides approximate date of announcement of competition, as well as a fixed date for registration of candidates for the competition and publication of the list of candidates admitted to the School.

In Poland the Minister of Justice announces the competition for the judicial and prosecutorial candidates. The Minister of Justice determines the number of candidates to be admitted and the date of exams. The candidates are selected on the basis of exam by checking candidates' knowledge of different fields of the law, also testing legal argumentation and interpretation skills.

The exams are prepared by the judges and the prosecutors who represent the jury appointed by the Minister of Justice. The competition is conducted by the Special Committee composed of judges and prosecutors appointed by the Minister of Justice. The candidate judges and prosecutors are suggested by the Director of the National School to the Minister of Justice.⁴⁹

In France, the Minister of Justice annually determines the number of candidates to be admitted. The National School for the Judiciary is in charge of organizing admission of future magistrates. More specifically, based on the School objectives, there are two main departments of the School – one is responsible for selection, initial training and research (located in Bordeaux) while another is responsible for in-service training of judges and prosecutors and for international relations (located in Paris).⁵⁰

The sub-department of employment organizes the following three types of examination every year:⁵¹ examination open to people under the age of 27 in possession of 4-year university degree,⁵² examination for civil servants, and examination for individuals with several years of professional experience in private sector

⁴⁸ *Ibid*, Art.12

⁴⁹ <https://www.kSSIP.gov.pl/angielski> (last accessed 1/12/2018).

⁵⁰ National School for the Judiciary, available at: <https://bit.ly/2zKRHRy> (last accessed 26/11/2018).

⁵¹ Detailed information about exams is available at: <https://bit.ly/2Exe8xz> (last accessed 26/11/2018).

⁵² Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands and Spain, p.45. Available at: <https://bit.ly/2rrPiXo> (last accessed 1/12/2018).

or in elected office.⁵³

Some may enter the ENM without passing an examination, if they meet certain requirements in addition to the general ones outlined above:

- They have a four-year law degree and four years of experience in a specific field (legal, social or economic);
- They hold a doctorate in law and university degree in another subject;
- They have taught or done research in a university and hold a university degree in law.⁵⁴

In order for such individuals to be admitted, they must be vetted by the promotion commission.⁵⁵

Conclusions and recommendations

A major flaw in the existing legislative framework is the fact that the School is not authorized to select judicial candidates itself. In addition, the law does not provide adequate guarantees for preventing arbitrary decisions of the HCoJ about announcement of competition. Therefore, there is a risk that the Council will make biased decisions, as opposed to decisions based on interests of justice. It is also problematic that existing legal framework does not ensure determination of the number of candidates to be admitted to the School based on clear and objective criteria.

In order to improve the process of admitting judicial candidates to the HSoJ it is important to take into consideration the following recommendations:

- It is important that the frequency of announcement of competition for admission of judicial candidates to the School should be determined by the law which will exclude possibility of arbitrary decisions. In exception

⁵³ National School for the Judiciary (The spirit of laws thrives at the ENM), available at: http://www.enm.justice.fr/sites/default/files/publications/plaquette2017_EN.pdf (last accessed 26/11/2018).

⁵⁴ Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands and Spain, p.48. available at: <http://www.difederico-giustizia.it/wp-content/uploads/2010/09/recruitment-evaluation-and-career.pdf> (last accessed 1/12/2018).

⁵⁵ Ibid.

cases strictly prescribed by the law (for instance when there are no vacancies expected in the nearest future) the decision of the HCoJ for not announcing competition shall be substantiated.

- Decisions concerning announcement of competitions and determination of the number of judicial candidates to be admitted should be based on the existing number of judges in the judicial system, number of judges whose term of office will expire in the near future (if appointed for a definite period of time), number of judges that are reaching the age of retirement, objective needs identified based on the rule for determination of the number of judges that are needed and interests of justice in general. In view of these data, the HCoJ should propose and the HSoJ should approve the number of judicial candidates to be admitted.
- The HSoJ activity report should provide a detailed explanation of circumstances and factors that served as the basis for determination of the number of judicial candidates to be admitted by the School.
- To ensure a fair system of judicial selections and appointments, competencies of the HSoJ and the HCoJ should be separated in an objective and fair manner. We recommend limiting the broad powers concentrated in the HCoJ and allowing the HSoJ to select judicial candidates itself. Such regulation would be an important guarantee for independence of the School, which in turn will make the judicial system healthier and avoid risks that exist.

STAGES OF RECRUITMENT OF JUDICIAL CANDIDATES AT THE HIGH SCHOOL OF JUSTICE

Legal framework

Under the existing legislation, any legally capable citizen of Georgia without a previous conviction record, who has passed the judicial qualification examination⁵⁶ within the past 7 years can participate in the competition. This means that passing judicial qualification examination successfully is a precondition for admitting a judicial candidate to the School.

⁵⁶ Law of Georgia on the High School of Justice, Art.12 and 38

Notably, organizing judicial qualification examination also falls within competencies of the High Council of Justice. In particular, to organize and conduct the examination the Council creates a qualifications examination commission and approves composition and statute of the said commission based on the rule provided in its Rules of Procedure.⁵⁷ The Council also approves the rule of conducting a judicial qualification examination, the examination program and participation fee.⁵⁸

After announcement of the School admission competition, the HCoJ begins recruitment of judicial candidates. Criteria for recruitment by way of a competition and stages of recruitment are provided in the HSoJ Statute.

During stage 1 of the competition, candidates are selected based on documents submitted (application for participation in the competition, certificate of judicial qualification examination, medical/narcological certificate, copy of ID card, certificate of previous conviction and a photo⁵⁹), in absence of the candidate concerned. Candidates positively evaluated by the HCoJ have the right to participate in stage 2. If needed, the Council has the right to invite to interview only candidates that were shortlisted for stage 2.⁶⁰ The HCoJ selects candidates based on the following criteria: results of qualification examination, moral reputation, personal characteristics, professional skills, qualification, ability of expression, analytical thinking and decision-making skills.⁶¹ In addition, if a candidate is negatively evaluated against the criterion of personal characteristics, the HCoJ member has the right to reject the candidate without evaluating him/her against other criteria.⁶²

Flaws in the existing legal framework

The fact that the Council enjoys broad discretion in the process of organizing and conducting judicial qualification exams is a flaw of the existing legal framework per se. It is also a problem that criteria and the rule for selection of qualification examination commission members are not regulated by the organic law.

The existing legislation fails to ensure objective, fair and transparent process of selection of the judicial candidates. Objective and clear criteria for selection of judicial candidates are not provided in the legislation, which poses a risk of

⁵⁷ Organic Law of Georgia on Common Courts, para.1 of Art.52

⁵⁸ Ibid, para.2 of Art.53

⁵⁹ Statute of the legal entity of public law – the High School of Justice, Art.6

⁶⁰ Ibid, Art.8¹

⁶¹ Ibid, Art.8

⁶² Ibid, Art.8

making arbitrary decisions. In addition, specific information and sources that the Council uses for evaluation of candidates have not been officially determined, which makes the process of selection ambiguous and not transparent.

The process of consideration of documents submitted during stage 1 of the competition is also problematic. The existing legislative framework establishes minimum requirements for participation in the competition. In particular, at the stage of admission to the School, candidates are not required to have a master's degree or any equivalent academic degree. Candidates are also not required to have relevant professional experience, which later in the process is an absolute requirement for appointment as a judge.⁶³ In consideration of these regulations, it is safe to say that after spending certain resources on training of a judicial candidate, it may turn out that he or she does not meet the formal requirements to be appointed as a judge, which essentially makes the training completed by the candidate pointless. Therefore, it is important that requirements for judicial candidates are as close as possible to the standard prescribed by the legislation for holding judicial office.

The existing legislation fails to ensure adequate level of qualification of judicial candidates in the process of recruitment, which later negatively affects training of judicial candidates and operation of the High School of Justice. Respondents often indicated that qualification of judicial candidates is problematic. For instance, several respondents stated that in view of the overall level of judicial candidates, it is impossible for trainers to discuss a range of legal issues in more detail.

Besides that, the legislation does not regulate conflict of interest in the process of recruitment, neither does it prohibit improper communication, which may in practice call objectiveness and impartiality of the competition into question.

Applicable regulations do not require also evaluation of judicial candidates by assigning scores and substantiation of decisions made. It also fails to ensure effective mechanisms for challenging such decisions, which makes it impossible to evaluate whether decisions are fair and objective. Lack of relevant regulations also encourage risks of favoritism, nepotism and biased decisions.

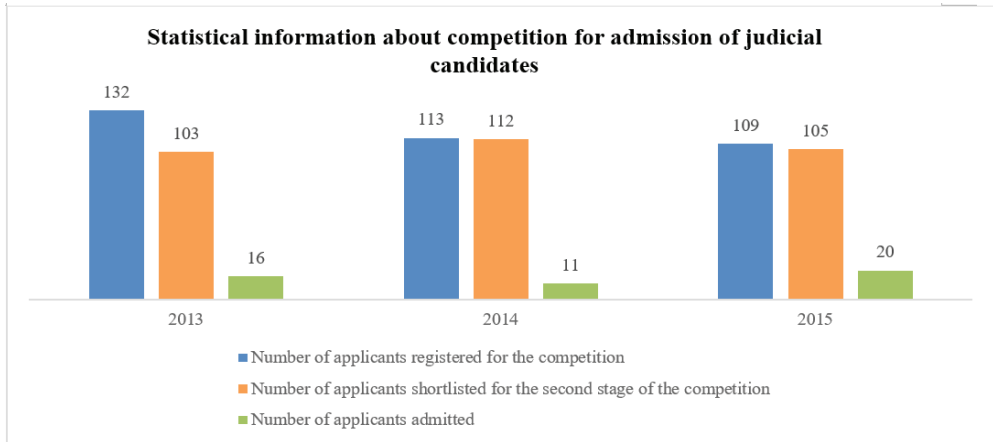
In addition, in view of the fact that admission of judicial candidates is an important stage of the entire system of selection and appointment of judges, regulating the criteria and the process of selection of candidates by the School Statute instead of a legislative act is an important flaw in the legal framework. From legal point of view, it is also problematic that the Statute of the HSoJ establishes norms that apply to the HCoJ.

It should be noted that 2017-2018 Action Plan for the Implementation of the Judicial System Strategy envisaged improvement of the admission process of the candidates, including upgrading selection criteria and improving the procedures

⁶³ Organic Law of Georgia on Common Courts, Art. 34.

(3.2.1.2), also improvement of the interview process of candidates (3.2.1.4.), however, nothing has been done in this direction.⁶⁴

According to the public information provided by HCoJ,⁶⁵ in 2013-2015, a total of 354 applicants registered for the competition; 320 applicants were shortlisted for the second stage of the competition and 47 applicants were admitted to the High School of Justice.



This data clearly indicates that number of admitted candidates is only 14,7% of the number of candidates shortlisted for stage 2. In consideration of the fact that the competition for admission of judicial candidates falls short of requirements of transparency and admission decisions of the Council are not substantiated, it is impossible to draw any conclusions about qualification of candidates registered for the competition based on the foregoing statistical information. It is also difficult to evaluate whether the competition was objective and fair. Lack of effective mechanism for appealing makes it impossible to discuss whether the Council's denial decisions were fair.

The HCoJ members highlighted the fact that their goal is to select best judicial candidates and therefore, sometimes number of judicial candidates admitted is less than previously determined number.

⁶⁴ Implementation of the Judicial Strategy and the Action Plan (Shadow Report), 2018, Human Rights Monitoring and Education Centre (EMC) and Institute for Development of Freedom of Information (IDFI), pp.26-28. Available at: <https://bit.ly/2TkMYhd> (last accessed 26 January, 2019).

⁶⁵ Letter N 1710/2209-03 of the High Council of Georgia, dated 1 August 2018

As to the criteria for selection of judicial candidates, the HCoJ members believe that introducing new criteria can be discussed, however the existing model generally performs its function. They also said, that all candidates go through an interview with the Council before they are admitted to the School and the legislation is not problematic in this regard.

With regard to selection of judicial candidates, including objectivity and transparency of selection criteria, the HSoJ representatives stated that they have not worked on these issues because these issues have never been questioned. However, they also said that they would try to take relevant recommendations of civil society into consideration. Generally, they stated that a number of different recommendations are implemented and the HSoJ has a Twinning project⁶⁶ and many recommendations are prepared within this project.

International experience

In Portugal, a special commission is set up for selection of applicants. The Center for Judicial Studies (CEJ) Director is responsible for determining the number of selection commission members in consideration of the number of applicants registered. The commission that examines written tests should be composed of at least three members. The following ratio should be observed as much as possible in the composition of the commission: a judge, a prosecutor, a lawyer renowned for its work or a renown individual in any other field of science and culture. Oral examination commission is composed of at least five members that include two judges or prosecutors, three attorneys renowned for their work or other renown individuals in any other field of science and culture, or in civil sector. Members of the commission who are judges are appointed by the relevant high council, while remaining three members are appointed by the Minister of Justice or CEJ Director as needed. CEJ director also appoints chairs of each commission. No later than 10 days before examination, composition of the commission is published in the official gazette and on the CEJ website.⁶⁷ Written exams are anonymous.

Recruitment entails checking an applicant's knowledge, evaluating his/her experience and psychological evaluation.⁶⁸ Checking of knowledge has the following

⁶⁶ The main objective of the project „Strengthening Judicial Training Through Twining” supported by the European Union is to support HSoJ in approximating its institutional set-up and educational programmes to the standards of European Union. Information about the project is available at: <http://www.hsoj.ge/eng/TW/989-2017-10-03-strengthening-judicial-training> (last accessed 26/01/2019)

⁶⁷ Law #2/2008 of January 2008, on admission and training of judicial candidates and the structure and operation of the Center for Judicial Studies, Art.13. available at: <https://bit.ly/2rs1qaQ> (last accessed 2/12/2018)

⁶⁸ Ibid, Art.14

two stages – written and oral and it involves topics that must be included in the notice on announcement of a competition. Individuals that hold a master’s or a doctoral degree or have at least five years of professional experience and meet other general requirements for discharging public functions, will be subjected to evaluation of experience instead of oral exam.⁶⁹ Written exam mostly aims to evaluate applicant’s ability to convey information, to apply relevant law to a particular case, to analyze, synthesize and identify relevancy, and knowledge of the language. Written examination should serve the purpose of confirming the following:

- a) Application of civil and commercial law, application of civil procedure legislation and deciding a case;
- b) Application of criminal law and criminal procedure legislation and deciding a case;
- c) Cultural, social or economic development.⁷⁰

Candidates are able to challenge results of written exam.

The purpose of oral exam is to evaluate applicant’s skills related to critique, argumentation and expression. Topics that will be on the oral exam should be disclosed 48 hours prior. Through the oral exam, students should demonstrate their knowledge of constitutional law, EU law, civil law, commercial law, civil and criminal law processes, criminal law, administrative law, labor law, child law and their ability to discuss about these areas.⁷¹

Evaluation of experience of the applicant aims to establish consistency of professional experience and relevance of the experience to the goals of working in the judicial system. This stage of examination entails an interview about the applicant’s experience and discussion about legal issues. The law assigns certain percentage weight to this element of examination – e.g. professional experience or ability to discuss.⁷²

Applicants also go through psychological evaluation conducted by a competent independent institution appointed by the Minister of Justice. The psychological evaluation aims to examine capacities of an individual and his/her character against the goal of discharging functions of a judge. The evaluation has one of the following two outcomes – satisfactory or unsatisfactory. The selection com-

⁶⁹ *Ibid*, art.15

⁷⁰ *Ibid*, Art.16

⁷¹ *Ibid*, Art.19

⁷² *Ibid*, Art.20

mission will be informed about results of psychological examination in written for oral exam.⁷³

After the final test, the evaluation commission meets and prepares the list of successful candidates. It also prepares substantiated refusals for candidates that were not successful. The legislation provides clear and strict guidelines for evaluation of applicant's knowledge during every stage of examination and his/her fitness for the judicial office. Final list is approved by the CEJ Director.⁷⁴

In the **Kingdom of Denmark**, for evaluation of individuals wishing to become judicial assistants the Dutch Court Administration considers their education, experience, recommendations of former employers, information on training and then conducts an interview.⁷⁵

At the **French** National School for the Judiciary, the format of three different types of examinations is the same, not including some minor exceptions owing to specific characteristics of different categories of applicants.⁷⁶ The examination entails written and oral components. Part 1 of the examination is written and anonymous, while part 2 is done orally and entails questions about legal topics among other issues as well as questions for evaluation of knowledge of foreign language.⁷⁷

The examination board is usually composed of members of the judicial system, university professors, a member of the State Board and other individuals.⁷⁸

Conclusions and recommendations

Analysis of the existing legal framework and practice of other countries clearly indicates that requirements that judicial candidates should meet are flawed, selection criteria are problematic, and so is the lack of legal guarantees for substantiation of decisions and for challenging these decisions. The lack of legislative guarantees poses a risk of unsubstantiated and biased decisions, which has damaging effect on the public interests of composing the judicial system with qualified, competent and independent judges.

⁷³ *Ibid*, Art.21

⁷⁴ *Ibid*, Art.26

⁷⁵ Experience of initial training of candidates for a post of judge and newly appointed judges in the member States of European Union, available at: <https://bit.ly/2zLYIXo> (last accessed 26/11/2018).

⁷⁶ Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands and Spain, p.48. available at: <http://www.difederico-giustizia.it/wp-content/uploads/2010/09/recruitment-evaluation-and-career.pdf> (last accessed 1/12/2018).

⁷⁷ *Ibid*.

⁷⁸ *Ibid*.

For improving the selection of judicial candidates it is important to take into consideration the following recommendations:

- In view of the fact, that the successful passing of qualification exam is a pre-condition for admission to the HSoJ the responsible agency for organizing and conducting judicial qualification exam and for creating the commission should be HSoJ. Criteria and rule for selection of qualification examination commission should be regulated by the organic law of Georgia on Common Courts;
- Formal requirements that applicants should meet should be increased and brought in maximum compliance with the standard established for individuals that wish to be appointed as judges.⁷⁹ The law should determine that judicial candidates must hold a master's degree and have adequate working experience;
- It is essential that criteria for recruitment of judicial candidates are objective and transparent, and the rule for conducting a competition is clearly stipulated by the legislation; evaluation should be based on scores and decisions made following competitions should be adequately reasoned;
- The law should regulate instances of conflict of interest, in order to allow judicial candidates to request recusal of a particular evaluator, if there are circumstances calling objectivity, independence and/or impartiality of the individual in question. Evaluator should be obligated to declare about any conflict of interest that exists and recuse himself/herself from interviewing or evaluating a candidate;
- The law should prohibit improper communication, i.e. communication with potential judicial candidates bypassing the applicable rules both at his/her advantage or disadvantage;
- It is also important to have an effective legal mechanism that allows filing of complaints to challenge recruitment decisions. Candidates whose applications were rejected should be able to challenge rejection in the qualification chamber of the Supreme Court.

⁷⁹ According to the organic law, a judge should hold a master's degree or its equivalent.

INITIAL TRAINING AT THE HIGH SCHOOL OF JUSTICE

Legal Framework

Individuals that pass the competition organized by the High Council of Justice are awarded a certificate of a judicial candidate and are admitted to the High School of Justice.⁸⁰ Judicial candidates receive a stipend amounting to at least ¼ of minimum salary of a first instance judge.⁸¹ In addition, the training period at the HSoJ is credited towards working experience.⁸²

Duration of the training at the HSoJ is ten months and it consists of three different stages including a theoretical course, internship and seminar work. Duration of the theoretical course is 5 months, internship - 4 months and seminar work – 1 month.⁸³ As an exception, for judicial candidates with no less than 10 years of experience working as the head of a structural unit of the office of the HCoJ, as head of the office of common courts or its structural unit, judicial assistant, court clerk, investigator, prosecutor and/or lawyer, duration of the entire training is 6 months.⁸⁴ In that case, theoretical course lasts 5 months, internship and seminar work last half a month each.⁸⁵

Forms of training at the School include workshops, mock trials, discussions, trainings on issues related to rendering and substantiating court decisions, evening training, as well as other forms of training proposed by the School director and approved by the Independent Board. The training program may also include short-term assignments for judicial candidates in courts and in prosecutor's office.⁸⁶

Stage 1

After completing stage 1 of the training (theoretical course), judicial candidates take an exam that includes a test and an oral exam. The examination board con-

⁸⁰ Law of Georgia on the High School of Justice, Art.15

⁸¹ *Ibid*, Art.16

⁸² *Ibid*, Art.18

⁸³ Statute of the legal entity of public law – the High School of Justice, Art.13

⁸⁴ Law of Georgia on the High School of Justice, para. 2 of Art.19

⁸⁵ Statute of the legal entity of public law – the High School of Justice, Art.13

⁸⁶ Law of Georgia on the High School of Justice, Art.21

sists of at least 4 members, who are usually experts of different areas of law.⁸⁷ Members of the examination board are nominated by the School director and approved by the IB.⁸⁸

The IB determines topics that will be on the exam, while tests itself are chosen by the examination board. Maximum test score is 70 (passing score is 50). Oral exam can be taken by judicial candidates that pass the test. Maximum score for the oral exam is 30 (passing score is 20).⁸⁹

Stage 2

Judicial candidates that pass the oral exam begin second stage of the training process (internship). Forms of internship include mandatory internship in common courts and alternative internship (which may take place at the office of a notary, at the prosecutor's office, or other administrative institutions, in consideration of a judicial candidate's own will. The list of alternative internship options is proposed by the School Director and approved by the IB).⁹⁰

An internship coordinator may be a judge, a prosecutor or head of an institution nominated by the head of internship appointed by the IB and approved by the School Director.⁹¹ For selecting internship coordinator, as a rule, the following criteria must be taken into account: a) The time served by the candidate on the relevant position at the office; b) Experience in internship coordination; c) Ability to perform the function of internship coordinator during the internship period; d) Candidate's willingness to perform the function of the internship coordinator. In the selection of internship coordinator evaluation results of the internship coordinators made by the justice trainees can be also taken into account.⁹²

Functions of internship coordinators include: supervising internship, giving qualification scores and reference letters to judicial trainee, submitting a report to the head of internship after internship is completed.⁹³

Internship coordinator evaluates daily work of judicial candidates. Maximum point of evaluation is 1 and it entails five different levels. Points are assigned based on quality of assignments completed by judicial trainee and the extent to which the goal has been fulfilled. Internship is considered to be successfully completed if a judicial trainee receives at least 2/3 of the maximum point. As to

⁸⁷ Statute of the legal entity of public law – the High School of Justice, para.2 of Art.15

⁸⁸ Law of Georgia on the High School of Justice, Art.23

⁸⁹ Statute of the legal entity of public law – the High School of Justice, Art.16

⁹⁰ Law of Georgia on the High School of Justice, Art.24

⁹¹ Law of Georgia on the High School of Justice, Art.25

⁹² Statute of the legal entity of public law – the High School of Justice, Art.17

⁹³ Law of Georgia on the High School of Justice, Art.25

recommendation letters provided by the coordinator, it concerns personal characteristics, attitude toward work, professional traits demonstrated, types of assignments completed and other characteristics of a judicial trainee.⁹⁴

At the end of the internship, a report is also submitted by a judicial trainee. He or she also writes a report concerning functioning of the internship institutions, any problems there and their solutions. Both reports are submitted to the internship coordinator, are sealed and enclosed to the case file of a trainee⁹⁵

Stage 3

At the end of the second stage, stage 3 (seminar work) begins with the aim of generalizing the knowledge accumulated during the first two stages of the training and preparing for the final exam.⁹⁶ Head of Seminar Work prepares a description form of seminar work for each judicial trainee, which essentially includes the same information as the recommendation letter of the Internship Coordinator.⁹⁷

Flaws in the existing legal framework

Important flaws of the existing legal framework are insufficient length of the training course and similar training program for judicial candidates with different qualification and experience.

Besides that, several respondents stated that small amount of stipend may be the reason why lawyers are not as interested to become judicial candidates. During trainings they are forced to leave their jobs and dedicate their entire time to the HSoJ while they receive a meager stipend. The problem is aggravated by lack of guarantees that judicial candidates will automatically become judges and their time will not turn out to have been wasted.

It should be noted that the amount of stipend is not a problem any longer. According to the information received from the HSoJ the Law of Georgia on the State Budget of 2019 approved by the Parliament envisages increased budget for the School in the part of stipends⁹⁸. By the decision of the Independent Board

⁹⁴ Statute of the legal entity of public law – the High School of Justice, paras 4, 5 and 7 of Art.17

⁹⁵ Law of Georgia on the High School of Justice, Art.26

⁹⁶ Ibid, para.1 of Art.27

⁹⁷ Statute of the legal entity of public law – the High School of Justice, para.3 of Art.18

⁹⁸ Implementation of the Judicial Strategy and the Action Plan (Shadow Report), 2018, Human Rights Monitoring and Education Centre (EMC) and Institute for Development of Freedom of Information (IDFI), p.25. Available at: <https://bit.ly/2TkMYhd> (last accessed 26 January, 2019).

of HSoJ of 3rd March 2019 the monthly amount of stipend was determined to be 2000 GEL.⁹⁹ Therefore, new group of candidates will have increased stipend that should be assessed positively.

Conducted interviews indicate that nearly all respondents believe that duration of the training is insufficient. For instance, one of the graduates of the School stated that the training is extremely stressful because due to the lack of time classes take place six days a week from 10am to 8-9pm, and judicial candidates have to be at School during that time. Some classes also take place during weekend. According to the respondent, the intensive process which is quite tiring for students may be due to the fact that duration of the training (10 months) is short and even during intensive training it is impossible to cover all necessary issues.

Similarly, other respondent stated that lack of time is the main problem making the initial training program inadequate to ensure that judicial candidates become judges in the future. According to the respondent, duration of the training should be extended to allow the program to cover all important issues. Also according to another respondent, “duration is the key problem and without extending the duration it will be impossible to improve the quality... Reforms cannot take place without extending duration of the training, as it is impossible to fit more contents into the program that we have.”

In addition, one of the respondents noted that the biggest problem was that the entire group attended same training, meaning that judicial candidates with different levels of knowledge could have been at the same seminar, which prevented the trainer from discussing a range of legal issues in depth. Problem was that most trainings were not tailored to methods that are necessary for developing practical skills. Instead, they were limited to theoretical learning.

One of the respondents stated that the HSoJ should not be viewed as a training institution because its role is to enable students to develop judicial skills and competencies. According to the respondent, the training program of the HSoJ needs to be changed in order to allow it to focus more on development of judicial skills and competencies, as opposed to teaching or reviewing a concrete field of law. The respondent stated that the program should focus more on human rights, practice of international courts and work of international institutions. According to the respondent, it is also important to focus on issues of judicial philosophy and not just procedural issues, in order to encourage right attitudes and sensitivity towards the profession of a judge among judicial candidates.

Lack of a uniform practice was highlighted with regard to internships, an important component of the training process. E.g. one respondent stated that he was lucky with the supervisor as the respondent was communicated with the supervisor on the daily bases. However, this was not due to effectiveness of the system. Some judicial candidates don't even see their internship supervisors for two

⁹⁹ <https://www.hsoj.ge/uploads/01-9-19.pdf> (last accessed 10 March, 2019).

weeks. According to the respondent, other judicial candidates didn't receive any comments on how to improve their papers. Despite significant contributions of his internship supervisor, the respondent believes that he was able to develop only legal writing skills, he was not able to acquire any judicial competencies. Another respondent stated that during internship not all judicial candidates have the opportunity to prepare draft decisions.

Notably, the internship plays a vital role in preparing justice listeners for becoming a judge. It is essential for the internship coordinators to possess adequate skills in order to share experience and expertise with the justice listeners as well as to supervise their work. Therefore, selection of the coordinators is one of the most important phases. Notwithstanding the fact that the Statute of the HSoJ sets certain criteria the coordinator should meet, selection process is vague as far as it is agreed with the head of the agency where the respective internship is going to take place. Therefore, the current regulation does not ensure transparency and impartiality of the selection process.

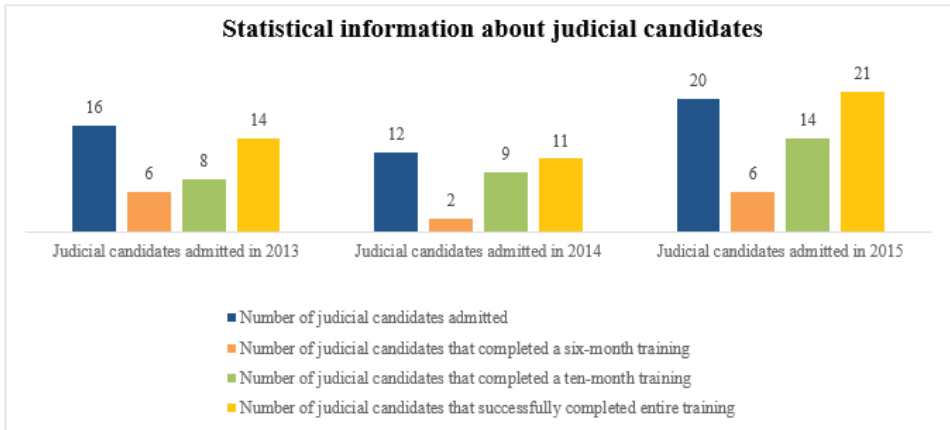
In addition, one respondent believes that the system of evaluation of internships is inadequate. More specifically while points may range from 1 to 5, evaluating the entire day on a scale from 1 to 5 is inexpedient and inadequate. Instead, the respondent believes that a detailed description of what is being evaluated should be provided because "universal evaluation is impossible. Evaluation should be broken down into components like writing skills, etc."

The report of the HSoJ on the reform carried out in 2013-2016¹⁰⁰ and public information¹⁰¹ provided by the School indicate that out of judicial candidates admitted in 2013-2015, 46 were able to successfully finish their studies at the School.¹⁰²

¹⁰⁰ High School of Justice, Report of Implemented Reform (2013-2016), 2017. Available at: <http://www.hsoj.ge/uploads/angarishi2013-2016-.pdf> (last accessed on 9 August 2018).

¹⁰¹ Letter N02/2080 of the High Council of Georgia, dated 30 July 2018

¹⁰² High School of Justice, Report of Implemented Reform (2013-2016), 2017. Available at: <http://www.hsoj.ge/uploads/angarishi2013-2016-.pdf> (last accessed on 9 August 2018). In 2015, 20 judicial candidates were admitted and 21 graduated. According to the HSoJ representative, this is due to the fact that a judicial candidate enrolled in previous years also graduated in 2015.



This data indicates that almost all of judicial candidates admitted to the School successfully finish training, which is commendable. However, as stated earlier, duration of the training and shortcomings of the training program are an important challenge.

According to the HSoJ representatives, they are in constant communication with members of the teachers’ council to improve the training process. In particular, the School representatives discuss with them issues related to contents of the training. The School receives feedback from trainers as well as trainees to determine what needs to be changed.

According to the HSoJ representatives, duration of training is problematic because the period of ten months is insufficient. However, it is impossible for the School to go beyond the ten-month period. It is required to make up any missed training sessions. Special reserve days are allocated for this purpose. On the other hand, according to the School, after completing the training at the High School of Justice, candidates are ready to assume the office of a judge. The School representatives stated that if a candidate is able to handle the difficult training regime at the School and receives adequate evaluation from the HCoJ, then the School is confident that the candidate has all the capacities to handle responsibilities of a judge if s/he is appointed.

As to the internship component, according to the HSoJ representatives, it has been recommended within a CoE project to have individual internship program for candidates and the School will absolutely implement this recommendation.

HCoJ representatives also expressed their opinion about the training process.

They believe that duration of the training should be increased. This is especially important for the internship component. However, the Council members believe that in consideration of the ten-month period, the existing training program is as good as it can be.

Members of the HCoJ also stated that the Independent Board of the HSoJ has prepared a program that has not been approved yet. Within the program, candidates will have internships in all systems including in the Constitutional Court, prosecutor's office, forensic bureau and penitentiary facilities. More specifically, within the internship component trainees will spend 1 week at a penitentiary facility. According to the HCoJ members this is based on the international practice and in particular the French model, where candidates spend two weeks working as prison guards. The HCoJ members estimate that the new model will be available for the next group of judicial candidates.

With regard to specialization of judicial candidates, the HCoJ members stated that it is very important for a judge to have knowledge of different areas of law. For instance, administrative and civil laws are closely linked, while criminal law may be applicable to certain civil disputes, etc. Therefore, the new program dedicates 1 month to evening out the trainees' level of knowledge.

The HCoJ members underlined that the HSoJ cannot focus on the basic knowledge but rather, primary goal of the School is to provide trainees with in-depth knowledge. They believe it is already presumed that trainees have the basic knowledge and are ready to delve deeper in some areas.

It is worth noting that according to the Action Plan Progress Report 2017-2018¹⁰³ of the Judicial Strategy for 2017-2021 specific recommendations were formulated by Georgian and international experts in order to develop the system of internship.¹⁰⁴ The recommendations envisage extending the period of study, drafting the framework internship programme for each judicial candidate, preparing individual study programmes, modifying the assessment standards of candidates, evaluating self-progress made and the performance of the mentor judges by the candidates, as well as other issues related to the internship. Besides that, with the involvement of international experts' huge work was carried out for improving the initial training program of candidates.¹⁰⁵ However, till now the improvement process of the program is not completed yet, because increase of the duration of the program requires legislative amendments which has not been carried out.

¹⁰³ 2017-2018 Action Plan Progress Report of the Judicial System Strategy 2017-2021, reporting period: June 2017 - June 2018, HCoJ, (2018).

¹⁰⁴ <http://www.hsoj.ge/uploads/recommendations.pdf> (last accessed 2/12/2018).

¹⁰⁵ Implementation of the Judicial Strategy and the Action Plan (Shadow Report), 2018, Human Rights Monitoring and Education Centre (EMC) and Institute for Development of Freedom of Information (IDFI), pp.29-30. Available at: <https://bit.ly/2TKMYhd> (last accessed 26 January, 2019).

International experience

For comparison it can be said that initial training in **Portugal** lasts for 2 years¹⁰⁶ and in **France** for 31 Months¹⁰⁷.

In the Netherlands, the training period is 6 years.¹⁰⁸ After completing 38 months of training, the candidates have to choose between the career of a judge and the career of a public prosecutor. After that, they take 10 months training course. It is upon the candidates to choose between Criminal, Civil or Administrative Law and focus on Public Prosecutor's Office as their major field of study. The candidates also follow a two years period of internship in different organs outside the judicial organization.¹⁰⁹

In Portugal, the initial training itself consists of theoretical and practical courses and internship, which follow one another. Cycle 1 of the training begins on September 15 and lasts through July 15. Next cycle begins on September 1 and ends on July 15.¹¹⁰ Cycle 1 takes place at the Center for Judicial Studies, while cycle 2 takes place in a pre-selected court.¹¹¹ At the end of cycle 1, which aims to help judicial candidates develop judicial skills and competencies, the council of teachers decides whether an individual is fit for the office.¹¹²

During cycle 2, judicial candidates are evaluated based on pre-determined rules, while at the end of the cycle the teachers' council evaluates their fitness for the office again.¹¹³ Successful candidates will be appointed as judicial assistants by the High Council of Magistracy.¹¹⁴ This phase of internship lasts 12 months, based on an individual plan prepared by the High Council and the CEJ.¹¹⁵

Interns are supported by supervisors in their work, however they have their own

¹⁰⁶ A. Milart, „Initial Appointment of Judges and Re-appointment after Probation Period – Criteria and Procedures“, July, 2018, p. 11.

¹⁰⁷ https://www.enm.justice.fr/sites/default/files/publications/plaquette2017_EN.pdf (last accessed 3/12/2018).

¹⁰⁸ Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands and Spain, available at: <http://www.difederico-giustizia.it/wp-content/uploads/2010/09/recruitment-evaluation-and-career.pdf> (last accessed 3/12/2018), p.167

¹⁰⁹ *Ibid*, 168.

¹¹⁰ Law #2/2008 of January 2008, on admission and training of judicial candidates and the structure and operation of the Center for Judicial Studies, Art.35, available at: <https://bit.ly/2rs1qaQ> (last accessed 2/12/2018).

¹¹¹ *Ibid*, Art.30

¹¹² *Ibid*, Art.46

¹¹³ *Ibid*, Art.55

¹¹⁴ *Ibid*, Art.68

¹¹⁵ *Ibid*, Art.70

functions, obligations and responsibilities. The High Council of Magistracy, the administrative and tax courts collect information about internship, provided by the CEJ on a periodic basis.¹¹⁶ At the end of the internship, if candidate is positively evaluated, he or she will be appointed as a judge. If there are no vacancies of a judge, they will be appointed as assistants.¹¹⁷

As regards amount of stipend in **Portugal** stipend is 60% of the salary of judges.¹¹⁸

Conclusions and recommendations

Duration of training at the HSoJ is insufficient to prepare qualified judicial candidates, which in turn might negatively influence administration of quality justice. Under the existing regulations, it is practically impossible to introduce trainees closely to all important issues that are necessary for effective implementation of functions of a judge.

Besides that, as it was revealed during the research the problem is that candidates with different knowledge and experience are in one group that prevents more profound discussion of the issues. This problem can be solved by essentially improving the admission process of the candidates which should ensure selection of qualified candidates based on objective and impartial criteria.

As of today, judicial candidates may not be able to acquire practical skills during their internship period, which the internship aims to accomplish.

For improving initial training program at HSoJ it is important to take into account the following recommendations:

- Legislative amendments should be carried out and duration of the training should be increased (including the internship part) so that judicial candidates are able to receive adequate knowledge and skills necessary to discharge functions of a judge;
- It is important to strengthen and improve the practical aspect of the program in order to ensure development of practical skills of the justice listeners;
- Impartial and transparent procedure of selecting the coordinators should

¹¹⁶ Ibid, Art.71

¹¹⁷ Ibid, Art.72

¹¹⁸ CONSEIL CONSULTATIF DE JUGES EUROPEENS (CCJE) QUESTIONNAIRE RELATIF A LA FORMATION DES JUGES Réponse de la délégation du Portugal, available at: <https://rm.coe.int/1680747dbe> (last accessed 26/11/2018).

be elaborated;

- It is important to have an individual internship plan for every judicial candidate in accordance with unified internship program. Fulfillment of this plan should be the responsibility of the head of internship. It should be checked on a daily basis whether the internship coordinator abides by the internship guidelines. Internship coordinators should complete training for mentors, equal treatment of all candidates should be ensured.

SCHOOL TEACHERS (TRAINERS) AND INVITED EXPERTS

Legal Framework

Training at the HSoJ is conducted by teachers that make up the Council of Teachers.¹¹⁹ The Council submits to the School Director a report about progress of the training process at the School. It also implements individual decisions of the IB and the School Management, prepares recommendations about internal regulations of the School and recommendations for improving the training program.¹²⁰

Based on the School Statute, School teachers are selected by the IB for the maximum term of two years. Teachers are selected according to the field of law and/or training topic(s), and based on their professional and teaching experience. School teachers can be nominated by any member of the IB. Accordingly, open competition for selecting teachers is not announced. School teachers are selected by voting. The candidate who receives most votes but no less than majority of the present members of the IB is elected as a teacher. School teachers are elected through an open voting, unless the IB decides to hold a secret ballot.¹²¹ Experts of different fields of law as well as supporting disciplines, including foreign experts can be invited on a periodic basis for initial training of judicial candidates.¹²² They are not subject to the rule on selection of teachers provided in the Statute¹²³ and they are not members of the teachers' council.¹²⁴

¹¹⁹ Law of Georgia on the High School of Justice, Art.22

¹²⁰ Statute of the legal entity of public law – High School of Justice, Art.12

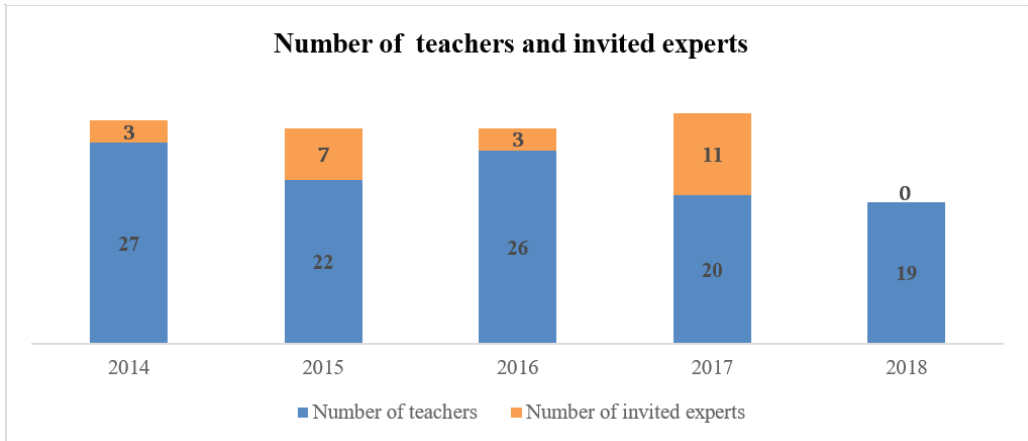
¹²¹ Ibid, Art.12¹

¹²² Law of Georgia on the High School of Justice, para.6 of Art.22

¹²³ Statute of the legal entity of public law – High School of Justice, para.6 of Art.12¹

¹²⁴ Article 22 of the Law of Georgia on the High School of Justice states that teachers' council consists of teachers of the School.

The chart below illustrates number of teachers and invited experts at the High School of Justice in 2014-2018:¹²⁵



As it could be seen from the chart vast majority of persons responsible for conducting trainings are teachers of the HSoJ rather than invited experts. The percentage of invited experts out of the total number of trainers varies from 10% in 2014 and 2016 to 24% in 2015 and 35% in 2017, whilst in 2018 there were no invited experts at all.

According to the HSoJ, a total of 4 foreign experts were invited within the training program for Group XI of judicial candidates in 2014-2015, 2 foreign experts were invited within the training program for Group XII and two foreign experts were invited within the training program for Group XIII.¹²⁶

Flaws of the existing legislative framework

An important flaw of the existing legislative framework is lack of proper regulation of objective criteria and procedure for selection of teachers.

According to the CCJE, it is important that the training is carried out by judges

¹²⁵ Letter N02/2080 of the High School of Justice, dated 30 July 2018
Note: there were 22 teachers by 3 November 2016, and 26 from 3 November 2016

¹²⁶ Foreign experts were invited with support from international partner/donor organizations of the HSoJ. Letter N02/2080 of the High School of Justice, dated 30 July 2018.

and experts in each discipline. Trainers should be chosen from among the best in their profession and carefully selected by the body responsible for training, taking into account their knowledge of the subjects being taught and their teaching skills.¹²⁷

One of the respondents stated that she would welcome more transparency in the process of selection of teachers. According to her, it is clear why she was selected as a teacher, because they knew her in person; however, she had not been provided with an official response and she was not interviewed for the position. According to her, judges know one another quite well and she thinks that trainers are selected based on documents and personal impressions.

Other respondents point out a trend that HSoJ is trying to prevent judicial candidates from being in contact with judges whose opinions differ from those of the School. He also states that the environment at the High School of Justice is closed and controlled to keep trainees away from different opinions.

In addition, one of the respondents stated that a lecturer that was not liked by previous groups and was criticized in feedback forms continued to deliver trainings.

Regarding members of the teachers' council and invited trainers, the HSoJ stated that they view this matter and the training process in general systemically. Trainees evaluate all stages of the training as well as teachers. The School has a system for ranking trainers, which is confidential information. For instance, when same issues are reported about a trainer, the School absolutely takes this into consideration.

The School representatives also stated that they are actively discussing feedback of judicial candidates about members of the teachers' council and invited trainers. For instance, judicial candidates stated that they wished seminars had been more practical. After analyzing these recommendations, HSoJ representatives discussed with teachers what causes the problem – whether it was time or any other factors. The School representatives also stated that problems are eliminated in time, based on such communication and analysis.

Conclusions and recommendations

The existing legislative framework does not ensure objective and transparent process of recruitment of members of the Teachers' Council. Lack of transparency renders the process susceptible to favoritism while judicial candidates may not be provided with the most competent teachers for training.

¹²⁷ CCJE Opinion □4 (2003), §20.

- In view of the immense role of teachers in the training process, they should be selected based on foreseeable and clear criteria through an open competition, while the process of selection should be objective and transparent.
- Criteria and process for selection of teachers and invited experts should be clearly regulated. In addition to qualification and experience, selection criteria should focus on communication and teaching skills of a candidate.

FINAL EXAMINATION

Legal Framework

At the end of the training process at the HSoJ, candidates take a written examination conducted by an examination board composed of the following seven members: Supreme Court judge, member of the HCoJ, professor of law at the State University, three members appointed by the IB (experts of criminal, civil and administrative law) and the HSoJ Director.¹²⁸

Maximum score of the final exam is 100, passing score is 85. If the student scores less than 85 but not less than 70, he/she has the right to, after the publication of the final exam results, and in case of appeal, within two workdays after the publication of the decision issued by the Complaints Committee, address the Independent Board on admittance on the following/complementary exam. The decision regarding the candidate's once-only admittance on the following /complementary exam is made by the Independent Board.¹²⁹

Complaints Committee reviews results of the theoretical course and final examination. Its composition is anonymous and is determined by the IB. Complaints are admitted within two days after announcement of the examination results.¹³⁰

Within 1 month after the final examination, the School Director submits to the IB the list of qualified judicial candidates. The list is prepared based on the criteria provided in the law.¹³¹ More specifically, the list is prepared by summing up the

¹²⁸ Law of Georgia on the High School of Justice, Art.28

¹²⁹ Statute of the legal entity of public law – the High School of Justice, Art.19

¹³⁰ Ibid, Art.20

¹³¹ Law of Georgia on the High School of Justice, Art.30

following scores of judicial candidates: score of the judicial qualification examination (or its replacement), coefficient of the score is 1; score of the examination taken after completing stage 1 of the training, coefficient of the score is 2; score of the examination taken after completing stage 2 of the training, coefficient of the score is 3; and score of the final examination, coefficient of the score is 4.¹³² As a result, each judicial candidate is assigned a number, which is taken into account during selection of judges. Judicial candidates on the qualification list receive a certificate of completion of the High School of Justice.¹³³

Flaws in the existing legislative framework

Three members of the final examination board are appointed by the IB. The only stipulation about the three prospective members provided in the School Statute is that they include experts of criminal, civil and administrative law.¹³⁴ No other specifications are provided about the minimum competencies or criteria that a member of the board should meet.

According to one respondent, the rule of appointment of three members of the final examination board by the IB is problematic because the respondent believes that members of the examination board should be independent and the final examination score should have a decisive importance. According to the respondent, criteria for selection of the examination board members should be clearly stipulated and transparent.

With regard to appointment of three members of the final examination commission by the Independent Board, the HSoJ representatives stated that they haven't worked in this regard and based on practice, there have not been any talks about introducing any additional criteria for appointment of final examination commission members because their selection focuses on ensuring representation of specialists of all fields of law and selection of professionals.

A significant drawback of the current legal framework is a limited opportunity to appeal unsatisfactory results of the final examination. This issue is also problematic with regard to the theoretical course examination. The Statute of the HSoJ envisages creation of the Complaints Committee, however, revision of results is possible in that case if the listener accumulates certain amount of points.¹³⁵ It

¹³² Statute of the legal entity of public law – the High School of Justice, Art.21

¹³³ Law of Georgia on the High School of Justice, Art.31¹

¹³⁴ Statute of the legal entity of public law – the High School of Justice, Art.19

¹³⁵ Revision of results of the test is possible in the case if the examinee receives at least 45 points. Revision of the results of the graduation examination is possible, as a rule, in the case if the examinee receives at least, 80 points. Statute of the Legal Entity of Public Law- the High School of Justice, Article 20.

should be noted that the decision of the Complaints Commission is final. Given the circumstances of non-existent effective appeal mechanism, the risk of the listener to receive unreasonable unsatisfactory assessment and thus, to deprive him/her of the possibility to enter the judicial system prevails. Notably, no request addressing the Complaints Committee to revise the graduation examination results have been recorded since 2014.¹³⁶

Conclusions and recommendations

An important flaw of the existing legislative framework is the lack of regulations about qualification requirements that members of the final examination commission should meet and their selection criteria, which provides the IB with a broad discretion for choosing the three members. Restricted possibility of appealing negative results of the final examination and also of the theoretical course of the HSoJ is problematic.

- It is important to clearly establish those requirements and criteria that the final examination commission members chosen by the IB should meet.
- It is important to create effective mechanism for appealing negative results of the theoretical course and final examination of the HSoJ.

ROLE OF THE HSOJ IN JUDICIAL APPOINTMENTS

Legal Framework

Judges in Georgia are appointed by a constitutional body set up for this particular purpose – the High Council of Justice. Pursuant to the organic law, decisions about appointment of an individual on the qualification list of judicial candidates to the judicial office is taken in consideration of his or her number on the qualification list and evaluation of the Independent Board of the High School of Justice.¹³⁷

The Law of Georgia on the High School of Justice provides information on what the evaluation of the IB should entail. In addition, according to the law evaluation

¹³⁶ Letter of the High School of Justice dated 15.03.2019 #02/2277.

¹³⁷ Organic Law of Georgia on Common Courts, para.13 of Art.35

of the IB should be based on the evaluation criteria established by the HCoJ.¹³⁸

According to public information provided by the HSoJ¹³⁹, the IB uses a special form for final evaluation of judicial candidates. During the meeting the HSoJ representatives stated that the form was used for the last group only (group XIII), while previous groups were evaluated based on a different form. According to them this change was due to new regulations introduced in the Law of Georgia on the High School of Justice, based on which judicial candidates should be evaluated according to the criteria established by the HCoJ. The new regulations were reflected in the form of evaluation, however as representatives of the School noted the form of evaluation for judicial candidates used to be approved even before the new regulations.

According to the evaluation form of IB of the School, evaluation of the candidate is based on the following scores: score in the judicial qualification exam, in theoretical exam, internship score, graduation exam score. There is indicated also candidate's number on the qualification list. As to evaluation of discipline, it entails attendance, number of absences for valid and invalid reasons and number of foreign language classes missed. This component also takes into consideration study visits abroad and local field trips for studying purposes.¹⁴⁰

The form of evaluation also includes a component of the works completed, which entails different types of works completed during internship and seminar. The form also includes a criterion of integrity, which entails evaluation of a candidate's personal and professional integrity, independence, his/her impartiality, fairness, professional conduct and other personal characteristics.¹⁴¹

Personal and professional integrity entails whether or not a candidate has a strong sense of responsibility, determination, ability to recognize his/her mistakes, etc. The component of independence, impartiality and fairness entails candidate's independence, ability to evaluate circumstances of a case critically and objectively, as well as whether or not a person is free from any prejudice and whether or not he is influenced by others, etc.¹⁴²

The evaluation form also entails competency criteria: professional competence and legal reasoning; managerial and other professional skills; written and verbal communication skills.¹⁴³

¹³⁸ The Law of Georgia on the High School of Justice, Art.31

¹³⁹ HSoJ public letter no.02/2088, dated 21 August, 2018

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

Flaws in the existing legal framework

“The role of the High Council of Justice in judicial selections/appointments is immense. The School only has a supportive function and it does not play a decisive role throughout an individual’s judicial career.”¹⁴⁴ Balancing the Council’s broad discretion and the School’s involvement in the process will help the Council make appointment decisions that are more informed and substantiated, since the School is the body that observes judicial candidates during the training period and has more information about their capacities.

It should be also noted that it is also unclear based on what and how Independent Board carries out evaluation of a candidate according to such components as personal and professional good faith; independence, impartiality and fairness. This kind of evaluation should not be made by a teaching institution.

In respect of the involvement of the School in the appointment of judges one of the respondents think that while the School should not be involved in voting for appointment of judges, it should play a bigger role in this regard. For instance, the respondent believes that the HSoJ can provide a more detailed reference for judicial candidates and it should not just provide formal statistics, how many times a candidate was late, etc. Also, the School should be asked questions about each candidate.

Another respondent thinks that the HSoJ should play a bigger role in judicial appointments: “today the law stipulates that the Council may follow the School’s recommendation, but this is not a mandatory requirement. The Council does not provide any justification as to when it follows the School’s recommendations”, so the respondent believes that “the process of selection of candidates should be tightened more because it is illogical for the Council to initially choose a candidate because it likes the candidate and sees a potential in him/her, especially when the candidate may have a glowing recommendation from the School, but s/he may not be appointed [as a judge], which is questionable.” In light of this, the respondent believes that the Council should be obligated to justify why it refuses to consider positive recommendations provided by the School.

According to the same respondent, results indicate that judicial candidates that have been positively evaluated by the HSoJ are not appointed as judges, including judicial candidates with highest scores. The respondent also states that in the past there was a practice when rejected candidates were appointed as consultants in the Supreme Court of Georgia, etc. After working a few years in this environment, they were appointed as judges. The respondent believes that this rule was

¹⁴⁴ Coalition for Independent and Transparent Judiciary, “Judicial System: Reforms and Perspectives”, p.36, available at: <https://bit.ly/2Li5TGf> (last accessed 3/12/2018)

used for individuals whose loyalty and obedience were somewhat questioned. The Supreme Court was the place where this was “corrected”. The respondent also stated that this is her personal opinion as an observer.

Regarding the question whether the School should have more role in appointment of judges the representatives of HSoJ refrained from answering. As to the weight that the HCoJ should attribute to positive recommendation of the School about a judicial candidate, the School representatives stated that they are working on many European models and they know that in some countries judicial candidates are automatically appointed if they successfully graduate from a judicial training institution, however they also believe that the School cannot address this issue independently; in addition, systemic changes are needed for this matter to be discussed. They also stated that it would be wrong for them to express a concrete position about the matter.

The School representatives also indicated that they do not feel like the High Council of Justice is not taking the School’s recommendations into account. They don’t remember a case when a judicial candidate was not appointed notwithstanding the School’s positive recommendation. To the contrary, there is a very positive trend and there are only a few cases when graduates of the School did not become a judge. There are cases when some judicial candidates are not appointed the first year, but they apply again and are appointed later.

It should be noted that information was requested from the HSoJ about the number of candidates who successfully completed the School in 2014-2017 and out of this number how many of them were appointed as judges. The HSoJ has provided information about the number of candidates who successfully completed the School¹⁴⁵ and were included in the qualification list, however the School did not have exact information out of this number how many were appointed as judges. This clearly demonstrates that there is not effective communication between the HSoJ and HCoJ on the respective issue.

In contrast, one member of the HCoJ recommends appointing judicial candidates automatically after they graduate from the School, unless there are basis for denying appointment. However, she also stated that in practice most graduates of the School are appointed as judges: “There were some cases when a graduate was not appointed immediately but after participating in the competition more than once. Percentage of those who were not appointed is very low.” According to the same member of the HCoJ, if a graduate has a negative recommendation of the School, the Council takes this into account.

Another member of the Council had a different opinion. He/she believes it is not necessary for the School graduates to be automatically appointed. During the interview he/she generally underlined significance of the profession of a judge and the importance of having motivation, which is why he believes that lack of

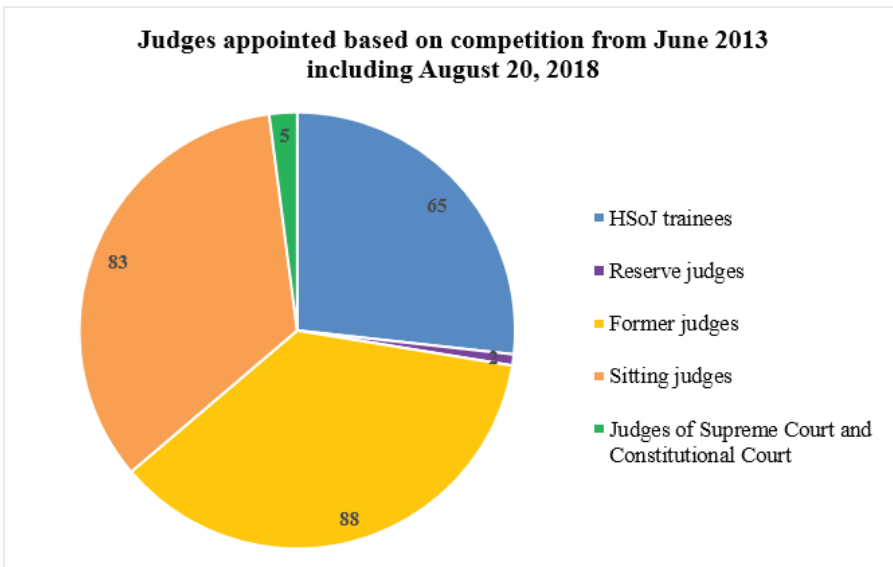
¹⁴⁵ Letter N18/2-009 of the High School of Justice, dated 6 June, 2018.

guarantees for automatic appointment should not prevent interested individuals from participating in the competition.

According to the same member of the Council, the HCoJ does not have much information about judicial candidates that are admitted to the School. During training they demonstrate a lot of different characteristics including details that were unnoticeable during interview and admission process. Therefore, he believes that it is essentially important for the Council to be able to make final decisions about appointment of a graduate.

Members of the HCoJ also stated that it is desirable that the evaluation of a judicial candidate by the Independent Board be more detailed. They highlighted the fact the judges are appointed by a secret ballot, meaning that reasons why a particular member of the Council did or did not take the IB's evaluation into consideration are not provided. If such reasons were provided, secret ballot would have been pointless because if a judicial candidate appeals the decision of the Council s/he will learn about individual position of the Council members.

According to the information provided by the HSoJ, from June 2013 to August 20, 2018, a competition for judicial appointments was held nine times. As a result, a total of 243 judges were appointed, including 83 sitting judges, 88 former judges, 2 reserve judges, 5 judges of the supreme and the constitutional courts and 65 trainees of the HSoJ.¹⁴⁶



¹⁴⁶ Letter N1815/2494-03 of the HSoJ, dated 20 August, 2018

These statistics indicate that from June 2013 to August 20, 2018, about 26,7% of judges appointed through a competition were the HSoJ trainees.

According to the HCoJ members, it is important to evaluate not only the percentage of the HSoJ trainees among appointed judges, but also number of graduates of the School that were appointed as judges.

Based on statistical information received from the HCoJ¹⁴⁷ regarding this issue **153**¹⁴⁸ HSoJ trainees participated in nine competitions for judicial appointments held from 2013 and out of this number 65 were appointed as judges. This data indicates that trainees participating in the competition are not appointed as judges from the first try and one and the same trainee may have participated in the competition more than once.

The fact that HSoJ does not have statistical information indicates, that probably it does not analyze tendencies in the appointment of justice trainees as judges.

International experience

In Belgium there are several recruitment ways depending on candidate's experience.¹⁴⁹ Calls for applications are announced in an official journal giving a month to apply. In particular, candidates should address a letter to the Ministry of Justice.

According to the paragraph 4 of the Article 151 of the Belgian Constitution, the judges are appointed by the King on nomination by the Supreme Council and on reasoned nomination by the appointment committee. The nomination is made by the majority of two thirds after the assessment of the candidate's experience.¹⁵⁰

In Portugal, the High Council of Justice is responsible for appointment, transfer, promotion and disciplinary evaluation of judges,¹⁵¹ and in case of judges of Administrative and Tax Courts this responsibility vests with the respective High Council (Administrative and Tax Court High Council).¹⁵² However, the Council is indirectly bound by the School's recommendations since after a judicial candidate completes internship, which is the last stage of training at the School, and

¹⁴⁷ Letter N59/49-03 of the HSoJ, dated 18 January, 2019

¹⁴⁸ This is the total number where the justice trainee may appear more than once.

¹⁴⁹ <https://rm.coe.int/16806c2c40>, p. 32 (last accessed 2/12/2018).

¹⁵⁰ Constitution of Belgium, para. 4 of Art. 151, available at: <https://bit.ly/2QO97q4> (last accessed 3/12/2018).

¹⁵¹ Constitution of Portugal, para.1 of Art. 217, available at: <https://bit.ly/2EwGyrc> (last accessed 3/12/2018).

¹⁵² *Ibid*, para.2 of Art. 217

receives positive recommendations, s/he will be automatically appointed after nomination by the Council.¹⁵³

In the **Kingdom of Denmark**, the Minister of Justice is responsible for appointment of judges in consideration of recommendations of the Special Council. The Council is composed of a Supreme Court judge, a regional court judge, a practicing lawyer and two representatives of a non-governmental organization.¹⁵⁴

In the Republic of Poland, the judges of the Supreme Courts, Common Courts, Administrative and Military Courts are appointed by the President on nomination by the National Council of the Judiciary. The Act of 12 May 2001 on the National Council of the Judiciary stipulates that the Council is responsible for the review and assessment of candidates for the position of judges.¹⁵⁵

In **France** there are two ways in which judges can be appointed: one is appointment of graduates of the National School for the Judiciary (ENM) and another is appointment of candidates that meet certain criteria, without completing the ENM training course.¹⁵⁶

After completing trainings at the ENM, judicial candidates take final exam. The examination board is independent from the School. Based on the examination results, graduates are ranked and they can choose from the positions provided on the list offered by the Minister of Justice, based on their ranking number. Graduates are officially appointed as judges by the resolution of the President and based on the consent of the High Council of the Judiciary.¹⁵⁷

In **Austria**, after completing their training candidates take written and oral exams evaluated by the examination board composed of five members including at least two judges and one practicing lawyer. Final decision about appointment of a candidate is made by the Ministry of Justice, in consideration of recommendation of judges.¹⁵⁸

¹⁵³ Law #2/2008 of January 2008, on admission and training of judicial candidates and the structure and operation of the Center for Judicial Studies, Art. 72, available at: <https://bit.ly/2rs1qaQ> (last accessed 2/12/2018).

¹⁵⁴ Experience of initial training of candidates for a post of judge and newly appointed judges in the member States of European Union, available at: <https://bit.ly/2zLYIXo> (last accessed 3/12/2018).

¹⁵⁵ Act of 12 May 2011 (Journal of Laws of 2016.976 of 5th July 2016), available at: <https://www.legislationline.org/documents/id/20326> (last accessed 3/12/2018).

¹⁵⁶ Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands and Spain, p. 45. Available at: <https://bit.ly/2rrPiXo> (last accessed 1/12/2018).

¹⁵⁷ National School for the Judiciary, available at: <https://bit.ly/2zKRHRy> (last accessed 26/11/2018).

¹⁵⁸ Experience of initial training of candidates for a post of judge and newly appointed judges in the member States of European Union, available at: <https://bit.ly/2zLYIXo> (last accessed 3/12/2018).

Conclusions and recommendations

Under the existing legislative framework, the High Council of Justice is not required to take into account evaluation results of the Independent Board of the HSoJ in the process of judicial appointments.

- To ensure fair and objective process of judicial selections and appointments, the role of the HSoJ in judicial appointments should be increased. More specifically, the HCoJ should be required by the organic law to consider opinion of the authorized representative of the School in the process of collection of information about judicial candidates;
- Evaluation of the Independent Board should be restricted to the information that will enable HCoJ to evaluate judicial candidate according to the competency criteria;
- In addition, it is important that the HCoJ should be required to provide a detailed reasoning as to why it chooses to rely or not to rely on evaluations and recommendations provided by the HSoJ for evaluating judicial candidates based on the criteria provided in the organic law.

IN-SERVICE TRAINING OF JUDGES

Legal Framework

Purpose of in-service training of judges is to upgrade qualification of individuals eligible for in-service training by introducing them to new legislative and other legal or scientific developments, adapting them to a new social or legal setting, generalizing and sharing international judicial practice.¹⁵⁹

In-service training program is developed and implemented by the School on annual basis.¹⁶⁰ Applications are accepted by the School administration after publishing of the annual in-service program. All applications should include a motivation letter and the School should provide a response no later than two weeks

¹⁵⁹ Law of Georgia on the High School of Justice, Art.32

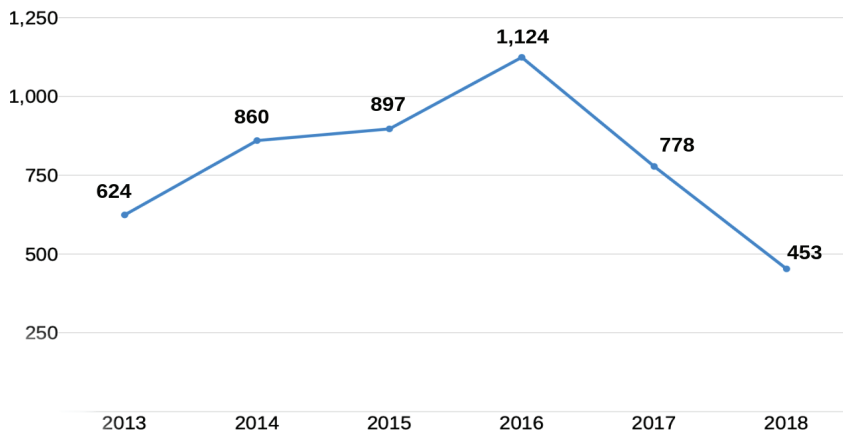
¹⁶⁰ Ibid.

before the training event begins.¹⁶¹

Pursuant to the law, training takes form in various seminars, training courses and conferences, theoretical and practical work, as well as discussions. Training program is prepared by the School Deputy Director in agreement with the IB, and it is submitted to the School Director. The Director then reviews the program and submits it to the IB for approval every year in October. The in-service training program is prepared based on recommendations of chairpersons of first instance, appellate and cassation courts.¹⁶²

According to statistical information provided by the HSoJ in 2013-2018, 4,736 judges participated in in-service programs.¹⁶³ According to the HSoJ, this is a statistically analyzed figure indicating total number of participants where the same judge may appear more than once if s/he attended several different trainings organized by the HSoJ throughout a year.¹⁶⁴

Judges that underwent in-service training programs



The HSoJ has also provided information about the number of judges who participated in two or more trainings.¹⁶⁵

¹⁶¹ Ibid, Art.34

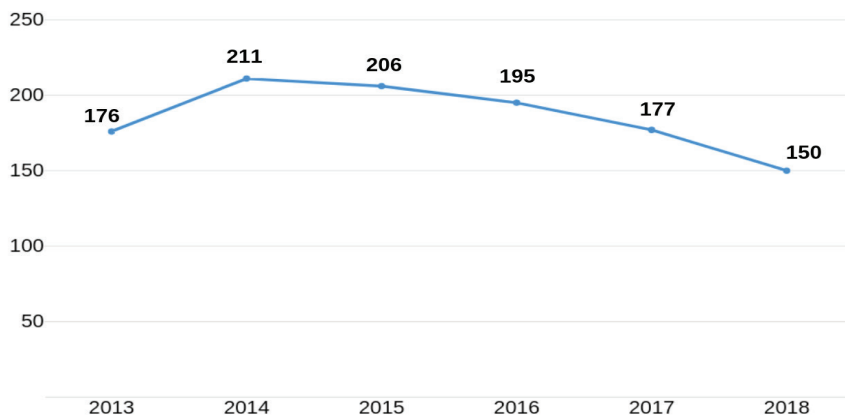
¹⁶² Ibid, Art.33

¹⁶³ Letter N02/2080 of the High School of Justice, dated 30 July, 2018

¹⁶⁴ Ibid

¹⁶⁵ Letter N02/2230 of High School of Justice, dated 17 January, 2019

Number of judges that underwent two or more trainings



According to the same letter HSoJ does not have information about the number of judges who did not participate in trainings at all.

In addition, it needs to be noted that in 2017, three joint in-service trainings were implemented for judges and court staff with a total of 64 participants, meaning that number of judges that participated in in-service training programs in 2017 may exceed 778.

Under its 4 June 2018 decision,¹⁶⁶ the High Council of Justice approved “The rule on attending mandatory trainings for common court judges”, effective as of 1 January 2019. According to this new rule, the purpose of conducting mandatory trainings is to ensure qualify of justice, reinforce the rule of law and strengthen independence of the judiciary. Minimum duration of mandatory trainings is 3 days a year. The training methodology and implementation will be ensured by the HSoJ. As this regulation entered into force on 1 January 2019 at this stage it is impossible to evaluate the results of its implementation.

Flaws in the existing legal framework

The new rule adopted by the HCoJ by its 4 June 2018 decision does not specify clearly what type of training in particular and in which cases may be mandatory for judges. Besides that, problems related with in-service training of judges

¹⁶⁶ <https://bit.ly/2rqf26v> (last accessed 29/11/2018).

are caused more by practice rather than existing regulations.

With regard to in-service training of judges, some respondents said that they would welcome mandatory trainings on some of the issues- e.g. “if there is a new legislation or practice”, however training contents should be improved. According to these respondents, trainings are general in nature and they fail to provide judges with necessary information about legal issues. One respondent stated that seminars were quite general and they didn’t offer an opportunity to receive answers to problems encountered in practice. The respondent suggested that in-service training needs to be improved. More specifically, he also said that even though judges filled out questionnaires and in some cases training topics were selected based on these questionnaires, overall suggestions provided in the questionnaires were not taken into consideration and trainings did not meet expectations.

According to the CCJE, ethical duties of a judge include the duty to focus on development of professional ability through deepening practical skills and continuous theoretical education.¹⁶⁷ High professional level of a judge reduces vulnerability of human rights, reinforces respect towards courts and strengthens public trusts towards the judiciary.

The same CCJE opinion states that it is unrealistic to make in-service training mandatory in every case, so that it does not become bureaucratic and simply a matter of form. A concrete training must be attractive enough to induce judges to take part in it. As participation on a voluntary basis is the best guarantee for the effectiveness of the training, this should also be facilitated by ensuring that every judge is conscious that there is an ethical duty to maintain and update his or her knowledge.¹⁶⁸ The CCJE also states that there may be mandatory in-service training only in exceptional cases – for instance (if the judicial or other body so decides), when a judge takes up a new post or a different type of work or functions or in an event of fundamental changes in the legislation.¹⁶⁹

The CCJE explains that “The legal and ethical duty and right of judges is to work on their own professional development through participation in the continuous training which should be understood as a life-long learning process.”¹⁷⁰ The CCJE also believes that “training is a prerequisite if the judiciary is to be respected and worthy of respect. The trust citizens place in the judicial system will be strengthened if judges have a depth and diversity of knowledge which extend beyond the technical field of law to areas of important social concern, as well as courtroom and personal skills and understanding enabling them to manage cases and deal with all persons involved appropriately and sensitively. Training is in

¹⁶⁷ CCJE Opinion N4 (2003), §2

¹⁶⁸ *Ibid*, §34

¹⁶⁹ *Ibid*, §37

¹⁷⁰ CCJE Opinion N10 (2007), §70

short essential for the objective, impartial and competent performance of judicial functions, and to protect judges from inappropriate influences.”

The CCJE recommends that the Council for the Judiciary should take into account judges’ participation in training programmes when considering their promotion.¹⁷¹ The existing Georgian legislation does not provide such regulation.

Regarding in-service training the HSoJ representatives stated that the HCoJ has already made a decision to make in-service training mandatory. More specifically, judges are required to attend 3 days of training a year. This model is similar to the French practice. According to the School, Council is now discussing whether to introduce mandatory topics as well.

According to the School, identification of training needs is a complex process. The School is working on a number of recommendations and it will also be necessary to hold additional meetings with judges with the aim of communicating with them and receiving information in addition to what the School already has access to through surveys.

According to the HCoJ representatives, mandatory topics have not been identified but they recommend practice of human rights.

According to the Council members, even though procedures for studying training needs of judges are not specified, all judges receive a questionnaire and results are taken into account. They also stated that they considered the recommendation of the Public Defender to improve qualification of judges on mental health issues.

International experience

In Portugal the Centre for Judicial Studies offers trainings to judges. The ongoing training plan is drafted annually by the Centre for Judicial Studies in cooperation with the High Councils of Judges, Administrative Judges and Public Prosecutors.¹⁷²

In Germany in-service trainings for judges are conducted by various institutions. Each judge in Germany receives training-related annual program with an option to choose one or several seminars. The annual program does not include a list of obligatory courses. The judges make choice based on their preferences.

The trainings are conducted in groups of about 30 or 40 people. For instance, seminars cover a specific field of law or discuss a concrete situation the judges might confront in practice. Various actual issues of family law, legislative

¹⁷¹ *Ibid.*

¹⁷² <http://www.ejtn.eu/About-us/Members/Portugal/> (last accessed 3/12/2018).

amendments, etc. are discussed at the seminars. It is worth noting that the seminars also cover interdisciplinary issues.

The judges are regularly offered to attend international seminars with experts from foreign countries.

In-service training is optional in Germany, however, certain training schemes for judges on probation may be compulsory.¹⁷³

In Denmark like in Germany, in-service training is optional. The training schemes are run by private consultants which are funded by court administration. The information about the courses and training schemes are sent to all judges twice a year. The main objective of the training course is improving professional skills of judges.¹⁷⁴

In service-training for judges is optional in the **Netherlands**, too.¹⁷⁵

As for **France**, in-service training is mandatory for judges for 5 days a year.¹⁷⁶ The trainings are conducted by the National School for the Judiciary which is composed of the directorate for life-long learning.¹⁷⁷

There are various life-long learning schemes in France, for instance, participation in seminars conducted by foreign experts and professionals. The seminars cover technical as well as social issues. Internship opportunities at public and private institutions along with language courses are also offered in the framework of life-long learning.¹⁷⁸

¹⁷³ Consultative Council of European Judges (CCJE) Questionnaire on Judge's Training (Reply submitted by the delegation of Germany), available at: <https://rm.coe.int/1680747c67> (last accessed 26/11/2018).

¹⁷⁴ Consultative Council of European Judges (CCJE) Questionnaire on Judge's Training (Reply submitted by the delegation of Denmark), available at: <https://rm.coe.int/1680747cd0> (last accessed 26/11/2018).

¹⁷⁵ Consultative Council of European Judges (CCJE) Questionnaire on Judge's Training (Reply submitted by the delegation of Netherlands), available at: <https://rm.coe.int/1680747c22> (last accessed 26/11/2018).

¹⁷⁶ https://www.enm.justice.fr/sites/default/files/publications/plaquette2017_EN.pdf (last accessed 30/11/2018).

¹⁷⁷ https://www.enm.justice.fr/sites/default/files/publications/plaquette2017_EN.pdf (last accessed 30/11/2018).

¹⁷⁸ Conseil Consultatif De Juges Europeens (CCJE) Questionnaire Relatif A La Formation Des Juges (Reponse de la delegation de la France), available at: <https://rm.coe.int/1680747b7e> (last accessed 26/11/2018).

Conclusions and recommendations

Judges should be able to realize the importance of self-development and should be motivated to undergo trainings based on their own free will. We recommend taking into account judges' participation in in-service trainings, their focus on self-development and interest in deepening of knowledge and skills in promotion decisions.

According to the decision of the HCoJ from 2019 it became mandatory for judges to undergo minimum 3 days' training in a year, however it is not determined on which issues and in which cases the training is mandatory for judges. In-service training of judges is especially important when there are substantial changes in the legislation or in legal practice.

It should be specified in detail that individuals who select topics for training of judges rely on questionnaires filled out by judges, maintain statistics and evaluate which issues are especially relevant for judges. For instance, one may evaluate and look into issues involved in decisions for first and second instance courts later overturned by the Supreme Court decisions. Also, judges may benefit from hearing opinions of international experts and deepening their knowledge about new legal challenges and relatively unknown issues, which should be evaluated and analyzed.

It is also important that HSoJ should maintain detailed statistics about in-service trainings undergone by each judge, including information about judges who did not participate in trainings. The latter is especially important in view of the decision of the HCoJ that minimum three days in-service trainings per year is mandatory for judges.

ANALYSIS OF PROGRAMS FOR INITIAL TRAINING OF JUDICIAL CANDIDATES AND IN-SERVICE TRAINING FOR JUDGES

In this chapter it is discussed to what extent programs and syllabuses of initial training of judicial candidates and in-service training of judges correspond to European standards and practice. The analysis is focused on three issues:

- If training needs are determined for the purpose of developing training programs;
- If program contents, methodology is correctly determined and if achievement of training results is evaluated;
- If quality assurance system is introduced.

Elaborated recommendations are based on programs, syllabuses and supporting documents received from the HSoJ and interviews conducted with stakeholders.

I. Determining training needs and planning educational programs

Regional, national and European judicial training institutions have the important responsibility to plan and organize training activities which respect the true needs of trainees.¹⁷⁹

Before implementing training programs, it is important to determine training needs first and evaluate individual as well as organizational and functional needs.¹⁸⁰

Recommended process of planning a needs' oriented training program entails:

- Defining training purposes;
- Setting main goals of the training;

¹⁷⁹ EJTN, *Handbook on Judicial Training Methodology in Europe (Guidelines Issued by EJTN's Sub-Working Group "Training the Trainers")*, Brussels 2014, p. 20

¹⁸⁰ European Commission, *Advice for training providers (European judicial training)*, European Union, 2015, p. 3

- Setting general goals and objectives;
- Analyzing the job tasks;
- Setting the curriculum goals (competence and performance);
- Setting evaluation criteria;
- Selecting evaluation tools;
- Arranging curriculum goals and learning outcomes;
- Course design: (a) setting course goals and objectives; (b) selecting course content and time schedule; (c) choosing training methods; (d) planning to get feedback;
- Selecting and creating course materials;
- Setting time schedule
- Implementing the curriculum;
- Evaluating the process and analyzing the results.¹⁸¹

One of the most important objectives of a judicial training institution is to determine true needs of judges, including based on different hierarchy or specialization. According to the “Handbook on Judicial Training Methodology in Europe” the following methodology is used to this end:

- Handing out questionnaires at the end of a training event;
- Carrying out surveys in courts;
- Identifying job profiles, functions and responsibilities within the judiciary;
- Conducting regular interviews with chief judges (judges in high instance courts) about carrier advancement.¹⁸²

Besides that, it is also important to involve civil society/educational institutions/special interest groups in the planning process. Involvement of such outside stakeholders in the process of needs identification can be fruitful; it may however

¹⁸¹ EJTN, Handbook on Judicial Training Methodology in Europe (Guidelines Issued by EJTN’s Sub-Working Group, Training the Trainers”), Brussels 2014, p. 19

¹⁸² Ibid, p.20-21

be difficult to institutionalize such a dialogue.¹⁸³

The abovementioned recommendation is not fully considered according to the training programs and supporting documents provided by the HSoJ and interviews conducted with the respondents. Interviews with stakeholders indicate that programs are not tailored to real needs, meaning that effective needs analysis should be carried out. For instance, one respondent stated: “there are very many topics that a judge should know and they should have been included in the program, but they could not physically fit into the program.”

Lack of needs assessment is also indicated in the report conducted within the Twinning project. According to it the information about the trainees is not collected in advance, it is not sent to the trainers and this information is not taken into account also during the preparation of the training courses. Also, as it is indicated in the report each trainee has his/her training needs and it is desirable that these needs are considered in order to tailor program to the needs of concrete trainee.¹⁸⁴

II. Program contents, methodology and evaluation of training results

Contents of training courses

Training courses should not only focus on knowledge of the law but also include the development of legal skills. It is also important to concentrate on development of transferrable skills (e.g. ability to analyze and synthesize, critical thinking, argumentation and interpretation, planning and organization), to improve trainees’ acceptability towards changes and developments taking place in the contemporary society.¹⁸⁵

The syllabuses of the training courses of the HSoJ are not enough detailed and they do not contain needed information, in particular, there are not indicated results of the training.

According to the recommendation the first stage of elaborating and introducing training courses is to determine purpose and results of the course. The course should answer following questions:

¹⁸³ Ibid, p.22

¹⁸⁴ Strengthening Judicial Training Through Twinning; Analysis of the Judicial Candidates Training Program and Recommendations for the Improvement of the Program within the activities 1.1.1 and 1.1.5 of the project, Amandin De La Harp, Zintra Balta, 26.02-6.03.2018, p. 6

¹⁸⁵ European Commission, Advice for Training Providers (European judicial training), European Union, 2015, p.6

- What knowledge will the trainee receive upon the successful completion of the course?
- Will the trainee receive skills for using the knowledge in practice?¹⁸⁶

In the syllabuses there are indicated only topics and areas of study. It is important to describe results of the trainings in the syllabuses, because on the one hand judicial candidates will have clear impression about the goals to be achieved and about the efforts needed to successfully complete the training course and on the other hand it makes easier for the teacher/lector to evaluate the knowledge of the trainee. The purpose of the training is to evaluate training results achieved which is difficult without indicating training results.

In-service training courses do not have syllabuses at all. There is indicated only the area of study.

This problem is also revealed by the conducted interviews: one respondent stated that poor syllabuses were especially problematic during initial training. The respondent indicated that the syllabus provided only a general list of issues and it did not specify the issues that the trainer should have addressed. According to her, even though she expressed her objections about the syllabus and the training process in general, her comments were not taken into account. For instance, according to the respondent, “when they sent me a syllabus, it only said ‘torts’ and nothing else. I criticized this and said that the syllabus was no good and that it didn’t meet the requirements.”

Training methodology

According to European Commission recommendation formal learning activities should be aligned with the daily work and workload of training participants. Training courses should be practice-oriented. Theoretical training must be combined with practical training, so that trainees can apply their theoretical knowledge in practice. The following measures should be taken to achieve this goal:

- tailoring training methodology to specific and divers needs of trainees;
- involving qualified legal practitioners of the relevant field in the training process;
- ensuring active participation of trainees in training courses;

¹⁸⁶ EJTN, *Handbook on Judicial Training Methodology in Europe*, Brussels 2016, p. 40

- using interactive learning methods: case studies, simulations, role plays, moot courts;
- considering importance of development of practical skills (including communication and drafting skills, use of IT and web-based resources);
- offering adequate training methods that combine theory and practice;
- using case studies that relate to the professional practice of the target group, including comparative case studies;
- ensuring a range of different perspectives during the training process, e.g. by engaging a representative of another field of law or another profession in the training process;
- including visits to other relevant institutions in the training process;
- teaching EU law in a way that each practitioner considers it useful for their profession;
- allowing sufficient time for discussion and feedback of participants; a trainer has to make sure that participants understand the material provided during the training;
- ensuring that formal training activities include the idea of learning by doing, enabling participants to exchange views and experiences without external monitoring or interference.¹⁸⁷

Training and in-service programs of the HSoJ do not contain or contain incomplete information about the methodology. In majority of training courses (for instance “Techniques of relation and subsumption”, “Measures of restraint”, “Judgement, its entrance into force and enforcement”, “Law of intellectual property” “International cooperation in criminal matters”, etc.) there is not indicated teaching methodology. In the syllabuses of some of the training courses methodology is described incompletely, for instance the course on “Considering cases on trafficking” is taught by using group work, discussion, individual work and debate methods, while discussion of cases is indicated not as a teaching method, but as an activity. Course on Tax Law is taught only by using the following methods: interactive, group. The syllabus does not contain explanation of the meaning of these methods, also discussion of cases and problem-oriented teaching are not indicated as teaching methods.

Problems related with the methodology of the training courses has been revealed also during interviews. On the one hand, it has been found that contents of some training courses are not tailored to their interests and actual needs and are mostly limited to reviewing university education, while on the other hand, training

¹⁸⁷ *Ibid*, p.7

methodology is inadequate.¹⁸⁸ The respondent suggests that the methodology also needs to be improved: “they should change the methodology. Trainings at the School are mostly lectures.” In addition, “[the program] should focus more on judicial skills, instead of, for instance, teaching or revisiting a field of law.”

Problems related with the methodology are also mentioned in the report prepared within Twinning project, in particular, according to the report in the documents there are not described methodology used by trainers during training courses – showing practical exercises, working on solving the problem, empirical exercises, de-briefing.¹⁸⁹

Besides that, it is necessary to update teaching format by elaborating and introducing distance learning programs. The importance of the issue is proved by the fact that introduction of distance learning programs is envisaged by Twinning project.¹⁹⁰ According to European Commission training based on technologies has several benefits:

- With this format it is possible that more participants will be involved in the training;
- It is more cost-effective, than traditional face to face training format;
- It is adjusted to the busy schedule of trainee.

Therefore, the provider of the trainings should use in the training process modern technologies and develop more programs of distance learning in order to integrate distance learning in the strategy of initial and in-service trainings of judges.¹⁹¹

III. Quality assurance

According to the recommendation given in “Handbook on Judicial Training Methodology in Europe” evaluation of activities of initial and in-service training programs is a very important component in the training cycle which enables to

¹⁸⁸ For detailed information about problems identified through interviews with regard to the training program, including internship, see the chapter on the training process at the HSoJ, flaws in the legislative framework. For results of interviews with respondents about in-service training program, see the chapter on in-service training of judges, flaws in the legislative framework.

¹⁸⁹ Strengthening Judicial Training Through Twinning; Analysis of the Judicial Candidates Training Program and Recommendations for the Improvement of the Program within the activities 1.1.1 and 1.1.5 of the project, Amandin De La Harp, Zintra Balta, 26.02-6.03.2018, pp. 14-15

¹⁹⁰ Report of the Judiciary Strategy 2017-2021 and Action Plan 2017-2018, HCoJ, Tbilisi, 2018, p.29

¹⁹¹ European Commission, Advice for training providers (European judicial training), European Union, 2015, p.10

detect if the training objects and results at macro (curriculum) and also at micro (training course) levels have been met fully, partially or have not been met at all. It should be noted that evaluation is beneficial if it is followed by discussion and improvement. If based on conducted interviews and evaluations the improvement of the training process is not followed than these evaluations are useless. When planning the evaluation process the important issue is not evaluation concept, but the professionals who design, assess and use evaluation results.¹⁹²

As indicated in the information received from HSoJ¹⁹³, trainees have the opportunity to fill out training evaluation questionnaire which enables them to assess training, trainer, organizational issues related with the training and generally training. Though, only this questionnaire is not enough, because Kirkpatrick's 4-level evaluation model implies not only the evaluation of the training process, but also evaluation of the results attained by the trainee, including at the work place. From the received information it is not identifiable if Kirkpatrick's 4-level evaluation model is used. The HSoJ has provided neither evaluation results nor key findings.

From the materials received from the HSoJ it is not clear that the following recommendations of the European Commission are taken into account: Outcomes of evaluation should be published and shared with stakeholders. If results of evaluation are negative, they should absolutely be analyzed and discussed with other colleagues (lecturers). In addition, at the end of a training course it is also important to evaluate the effects of the course on practice of participants. Evaluation should be conducted after a participant handles a certain number of relevant cases. This part of evaluation is critically important since the overarching goal of all training courses is to improve work of participants. For instance, participants of a training course can be asked how many times they applied knowledge received during training process in practice; how many times they used outlines or samples and/or case laws discussed during a training course; whether or not they shared their knowledge received during a training course with their colleagues. It is important to involve adequate number of participants in such evaluation. To ensure adequate number of participants and to increase their number, it is important to make necessary arrangements beforehand. This can be achieved by using the following method: creating a large group and giving them a task of filling out a questionnaire for evaluation. Another method is determining a contact person who will remind the participant about evaluation period and ensure collection of results. Results of evaluation should become a part of the training cycle and serve as the basis for constant quality improvement.¹⁹⁴

Deficiency of the quality assurance system is indicated also in the conducted interview, in particular, according to several respondents the surveys are only a

¹⁹² EJTN Handbook on Judicial Training Methodology in Europe, 2016, p. 67

¹⁹³ Letter N02/2158 of High School of Justice, dated 6 November, 2018

¹⁹⁴ *Ibid*, p.9

matter of form and using the method provided in the questionnaires it is impossible to evaluate exact quality of a training course, competencies of a lecturer or work of the supervisor. Analysis of the results are not carried out. In addition, stakeholders also stated that critical opinions about the training process are not encouraged, trainees refrain from expressing their opinions.

Without the analysis of the results and appropriate reports there is not quality assurance system oriented on the result. It is necessary to collect and analyze the information properly. This is the most important stage of evaluation process, because it is related with the planning future activities.

IV. Conclusions and recommendations

The following conclusions and recommendations have been prepared in line with the European recommendations and experience and by closely examining the HSoJ programs and practice:

Conclusions

- The documents received from the High School of Justice and interviews conducted do not prove the effectiveness of needs assessment process;
- No proof of all stakeholders' involvement in drafting of the programs (curriculum);
- The program is too short. Inadequate duration of training concerns both theoretical and practical [internship] aspects of the program;
- The study of documents and interviewing reveal that the training format and methods are not tailored to needs of participants; training is mostly based on the lecture method;
- The documents received from the High School of Justice and the interviews conducted do not demonstrate that the training courses are evaluated, the reports drafted or an appropriate response made to assessment results.

Recommendations

The necessity of effective evaluation of learning needs before preparing and implementing the curriculum (training program):

- The HSoJ should plan training programs for judicial candidates, judges and other court staff based on analysis of actual needs of judges and other court staff; needs assessment analysis should be more effective;
- The HSoJ training programs determine that surveys are held at the end of every training course or component. However, this is not sufficient and is only a small part of methods for determination of needs. It is also important to carry out surveys in courts, conduct opinion polls, study job description, conduct qualitative as well as quantitative research and publish respective results.

Involvement of civil society, educational institutions and special interest groups in the process of planning curriculum:

- We recommend involving civil society, educational institutions and special interest groups – e.g. bar associations, association of judges or any other similar organizations - in drafting, planning and introducing curriculum;
- Even though the judicial training institution may have adequate qualified personnel that plans and implements curriculum, it is recommended to listen to opinions of outside observers.

Diversification of training methods and teaching formats, duration of training

- The HSoJ training programs indicate various methods that are mostly university teaching methods. It is recommended to diversify these methods by focusing on adult training techniques (questions & answers-discussions, work in group, case study work, role play, moot courts) and formats, for instance, by introducing conferences, symposiums, workshops, webinars, e-learning and exchange programs;

- Duration of programs should be increased and tailored to actual need

Evaluation of and reporting on the training process:

- To increase quality of training programs, a system of evaluation should be developed. It is important to evaluate training process, which is the main part of evaluation. Therefore, this part of evaluation should be well structured in order to measure substance of change from beginning of the program to its end. It is also important to evaluate behavior, i.e. application of theoretical knowledge in practice and its use during working process.

