

## **Is Georgian Justice at Risk?**

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Questions remain over new legislation on how the country's most senior judges will be selected.

The Georgian parliament has adopted a controversial law on the procedure for selecting judges to the Supreme Court amid claims that this risks permanently damaging the country's independent judiciary.

Critics claim that a group of influential judges allied with the government are being allowed to nominate their own allies and tighten their grip on the judiciary.

The parliament, in which the ruling Georgian Dream party has a majority, had been trying to complete the formation of the Supreme Court since last December.

According to the Georgian constitution, there should be at least 28 judges in the Supreme Court. Currently, there are only 11 acting members. Amendments to the constitution passed in 2017 gave the High Council of Justice the power to nominate members of the Supreme Court, subject to approval by a parliamentary majority.

The 15-member High Council is an independent body with the power to promote and dismiss judges, organise exams, impose disciplinary measures and define budgets. The Council is made up of 15 members, of whom only nine are judges, with another five members chosen by parliament and one further figure appointed by the president.

However, **a 2018 investigation by Transparency International Georgia** found that flawed regulations around selecting and appointing judges as well as a lack of judicial accountability and meaningful ways to investigate corruption - and the fact that the High Council was not open to review from civil society - all allowed the possibility of misconduct.

In December 2018, the High Council of Justice presented its list of ten Supreme Court candidates to parliament. This included two members of the High Council itself as well as other persons allegedly affiliated with influential judges.

"The nomination process of the supreme court judicial candidates raised a lot of questions and demonstrated many problems," said Nazi Janezashvili, a non-judge member of the High Council of Justice who opposed the original list choice. "We spent a lot of resources on judicial reforms but we did not manage to create real independence... the majority members of the council are against progress, and they'll just support the issues agreed between them in advance."

High Council secretary Giorgi Mikautadze, one of those nominated, said that the choice of candidates had been entirely legitimate.

"The High Council of Justice has not violated any law, the constitution or a by-law," he said. "The discussion was made on the sitting of the High Council of Justice and the decision was made also on the sitting. All members took part and could ask questions," he said.

Nonetheless, a survey carried out by the Caucasus Research Resource Centre has showed that public trust in both the High Council and Supreme Court was low.

This public pressure - and internal dissent in Georgian Dream which resulted in several resignations from the party- put a temporary stop to the appointment of the ten original candidates. Instead, parliament created a working group to first define procedures for the selection of Supreme Court members.

However, this group - consisting of Georgian Dream and opposition lawmakers as well as High Council of Justice officials and civil society representatives - quickly disintegrated amid claims of no real political will to allow a fair selection process.

Irakli Kobakhidze, Chairperson of the Parliament, presented his own draft law in March 2019, although NGOs claimed his bill only increased the likelihood of a corrupt outcome, not least because it did not include conflict of interest regulations.

The EU's constitutional advisory body, the Venice Commission, also criticised the draft law, recommending more emphasis on candidates' experience and judgment, abolishing the secret ballot and adding procedures for the transparent selection of candidates.

Their report highlighted how unusual it was to select 18-20 Supreme Court Judges at once, noting that the

repercussions might last for decades, and emphasised the importance of opening up the pool of candidates to reflect the diversity of Georgian society overall.

The Commission concluded that without public trust in the process, the composition of the next supreme court would have little credibility.

“The Venice Commission speaks of things that everyone except the government agrees on,” said Davit Jandieri, an international law specialist. “It’s a slap in the face for the government, since the Venice Commission considers it necessary to point out that the High Council of Justice, a constitutional institution, does not have enough public trust to form the Supreme Court. The Council has unconditional support from the Government, which means its public trust is going further down.”

Sulkhan Saladze, chairman of the Georgia’s Young Lawyers Association, argued that the recommendations of the Venice Commission could have greatly improved the process. Under current legislation, a two-thirds majority in the council requires eight votes, which the judges already have as they make up nine positions. To prevent this group from making decisions in their own favour, the argument is that non-judge members should be given an equal measure of voting power.

“Even if the Parliament had taken all of the recommendations, it does not mean that the problem would be solved. From the very beginning, we demanded the introduction of the double two-thirds threshold. This means that a separate vote giving should take place among judge and non-judge members of the Council of Justice. This would be a mechanism that would prevent making the decision to the benefit of the influential judge members of the Council.”

Georgian Dream amended the draft law in March this year by removing mandatory qualification exams and introducing conflict of interest measures, and it was subsequently adopted on May 1 with 87 votes in favour. None of the opposition parties supported the vote. The Georgian Parliament is made up of 150 members and while a constitutional change requires 113 votes, any other change can be approved by a simple majority plus one vote, which the ruling party holds.

Eka Beselia, a former Georgian Dream member who left the party over this issue, said that the entire process had been flawed.

“Despite the fact that all who wish well for the country united to show the right path to the parliamentary majority, the Council of Justice and those who authored the ten candidate list managed to take over and win,” she said. “They found 87 lobbyists in the parliament who had no courage to say that this was a bad draft law.”

Others warned that fundamental reform of the judiciary was needed.

“The most important thing now is to heal the system,” said Eka Gigauri, executive director of Transparency International. “The problems that emerged with the Supreme Court showed us who the judges are that make the decision and their background and values are problematic. Therefore, the way out here cannot be setting the criteria for the candidates of the Supreme Court... the division of authority among different parts of the court system is the major solution for today and the future.”

Janezashvili, the non-judge High Council member, agreed.

“Unfortunately we have a justice system in this country where judges shift according to political changes, and if we don’t start judicial reforms the chance for creating an independent judiciary will be lost permanently,” she said. “We need to raise the question, do these judges deserve to occupy judicial positions for 20 or more years?”

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