

Executive Summary

Brief Overview of the Results

The 2005 Judicial Reform Index (JRI) assessment for Georgia was conducted at a time of considerable change and uncertainty about the future of the judiciary due to the reorganization of the courts that began in 2005 and will continue through 2006. As illustrated in the Table of Factor Correlations, Georgia scored positively on only two of the thirty JRI factors (Adequacy of Judicial Salaries and Public and Media Access to Proceedings). Fifteen factors received a negative correlation, including most factors related to judicial accountability and efficiency, financial resources and structural safeguards, and judicial powers. These results are comparable to the performance of other similarly situated countries in the region, where the ABA recently implemented the JRIs.¹ It should be noted that after the JRI assessment was conducted, the Parliament addressed a number of shortcomings that are identified in the assessment.

Concerns Relating to Judicial Independence

- One of the most serious issues facing the Georgian judiciary is ***improper influence from the executive branch and the procuracy***, particularly in criminal cases, despite constitutional and other guarantees of judicial independence. Such influence is said to have increased since 2003. Some respondents asserted that no court in Georgia had the reputation for being independent, and that even the Constitutional Court seeks ways to avoid deciding difficult issues in politically sensitive cases. On the other hand, others commended the Constitutional Court for being effective.
- Another threat to judicial independence is ***the use of disciplinary proceedings*** for gross or repeated violations of the law in hearing a case — that is, for making mistakes. It appears that most disciplinary cases are commenced not for ethical violations per se, but for judicial mistakes. Apparently, the practice has developed of ***filing disciplinary complaints against judges in lieu of formally appealing a decision***. Judges may, in fact, be disciplined for decisions that are not appealed and therefore remain in effect. Further, prosecutors have reportedly used the threat of filing a disciplinary complaint to influence judges' decisions, particularly in matters of pretrial detention. For example, in 2005, one judge who had denied a prosecutor's request for pretrial detention was disciplined for mistakes following an extensive review of his decisions by the High Council of Justice (HCOJ), an advisory body to the president of Georgia addressing issues affecting the judiciary's ability to function and administer justice effectively. Disciplining a judge for mistakes is also reportedly used to accomplish other HCOJ objectives, such as disciplining judges for ethical violations that cannot be proven. For example, when a judge is suspected of corruption, but evidence to prove it is lacking, the HCOJ reportedly reviews the judge's decisions, looking for mistakes that can form the basis for discipline.
- Judicial independence may be questioned even in the ***selection and appointment process***. Except for the Supreme Court judges, judges of the common courts are appointed and dismissed by the President of Georgia on the recommendation of the HCOJ. Although such judges must pass a qualification examination – which has improved significantly in the past year – and meet other objective criteria, selection and appointment are also based on subjective criteria, such as professional and moral reputation, and professional work experience. The basis for selecting certain judicial candidates rather than others is neither clear nor transparent.

Concerns Relating to Reorganization of the Common Courts

- The ongoing reorganization of the common courts, expected to be completed by the end of 2006, will consolidate the 75 existing first instance courts into some 15 unified regional (city) courts, with

¹ Other JRI reports are available at <<http://www.abanet.org/ceeli/publications/jri/home.html>>.

the appointment of magistrate judges for administrative-territorial units under the jurisdiction of the regional (city) courts. Whether the benefits of the reorganization will outweigh its costs remains to be seen. Significant issues include the problem of **how existing courthouses can accommodate all the judges** of the consolidated courts, and the potentially complicating effect of consolidation on **access to justice**.

- One important consequence of the reorganization has been the **placing of many judges of the reorganized courts on the “reserve list.”** This reduction in the number of active judges has exacerbated the problem of judicial vacancies and has led to increased delays in hearing cases. Concerns have also been raised about the lack of transparency in the HCOJ's decisions as to which judges to assign to the consolidated courts and which to place on the reserve list, as well as the apparent absence of objective criteria for making such decisions. This, in turn, has fueled suspicion among judges about the HCOJ and its motives. A more important result is that the uncertainties surrounding the reorganization and the reserve list have caused many judges to be fearful and concerned about their future. Judges who have such fears and concerns are less likely to be independent and more likely to be susceptible to influence.

Other Concerns

The JRI identified a number of additional important issues concerning the judiciary, including the following:

- shortage in the number of existing judicial positions and problems with a large number of **judicial vacancies**, which have resulted in significant **delays** in the resolution of cases;
- lack of a meaningful **initial judicial training** program and limited availability of **continuing education** for judges;
- insufficient emphasis placed on and little training in **professional ethics**;
- limited influence afforded to the judiciary over the amount of **funds budgeted** for the common courts and inadequate **material and technical support** provided to them; and
- **ineffective enforcement of judgments**, particularly those against the state.

Significant Judicial Reform Measures since the Assessment

It should be noted that after this JRI assessment was conducted, the Parliament addressed a number of shortcomings that are identified in the assessment. Significant amendments were made to the Law on Common Courts, the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts, the Civil Procedure Code, and the Criminal Procedure Code.

- **The HCOJ was expanded** from nine to eighteen members. Four are ex officio (Chairperson of the Supreme Court, Chairperson of the Legal Committee of the Parliament, Minister of Justice, and Prosecutor General). Two members of the HCOJ are appointed by the President, four (three of whom must be members of the Parliament) are elected by the Parliament, and eight are elected from among the judges of the common courts by the Administrative Committee of the Conference of Judges. This amendment gives judges half the seats on the HCOJ, in accordance with Principle 1.3 of the Council of Europe's European Charter on the Statute for Judges. Nevertheless, the HCOJ remains part of the executive branch and is considered highly politicized.
- **To address concerns about the protracted disciplinary process**, the Parliament adopted amendments to the Law on Disciplinary Responsibility of Judges, which become effective in March 2006. One of these changes eliminated the three-person disciplinary commission that was responsible for investigating complaints against a judge, but it did not identify who will conduct the

investigation. Perhaps the most significant change was replacing panels of the Disciplinary Council (appointed by the Conference of Judges) with a six-member Disciplinary Collegium (three of whose members must be judges) to decide disciplinary cases. Because the new Disciplinary Collegium is elected by the HCOJ from among its members, the HCOJ's authority over the disciplinary process will be considerably increased. Previously, parties to disciplinary proceedings could appeal a decision issued by a Disciplinary Panel to the full Disciplinary Council, and then to the Disciplinary Chamber of the Supreme Court, which could review only procedural issues. In the future, appeals of the Disciplinary Collegium's decisions will go directly to the Disciplinary Chamber, which will have authority to review both factual and procedural issues.

- Effective January 1, 2006, the Parliament **significantly raised judicial salaries**, which had not been raised since 1998, making judges among the highest paid employees in public service and thus removing a possible cause for corruption.
- Amendments to the procedural codes that came into effect on October 1, 2005, gave judges **contempt powers** to impose a fine of GEL 50 to 500 on those who cause disorder in court. Additionally, persons who show obvious and egregious disrespect toward the court can be jailed for up to thirty days.
- **Court marshals** were introduced to protect courthouses and maintain order in courtrooms during proceedings, thereby **improving judicial security**.
- A law to establish a **"High School of Justice"** has been adopted. The High School of Justice is scheduled to begin operations in Spring 2006. Initially, it will provide continuing education for sitting judges. Beginning in 2008, it will offer fourteen months of theoretical and practical training for "students of justice," that is, candidates for appointment as judges.