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THE FORMATION OF JUDICIAL SELF-GOVERNANCE IN CERTAIN EASTERN-EUROPEAN COUNTRIS AND BEHAVOUR OF JUDGES IN RESPONSE TO CHALLENGES OF HYBRID REGIME

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INTRODUCTION

The purpose of the study is to review the challenges facing Eastern European countries in moving to a European model of judicial self-government. Identify the consequences of the post-Soviet past, describe ways to overcome the challenges.

For the purposes of the study, the countries of the Eastern European region were selected, which have historical similarities with Georgia and whose experience in administering justice was / is similar to Georgia, given the situation that Georgia has today. The challenges of introducing a self-governing mechanism for the judiciary in general, as well as a self-governing system of justice in post-communist systems, are described based on the works of researchers.

The paper is composed of two parts: first part covers international standards related to court self-government. In order to compare the challenges of the self-government system in Georgia, part of the research is devoted to the normative regulation of the self-government of Georgian judges and the description of existing situation. The experience of several countries in the selection of judges by judges and the formation of self-governing bodies in general, including the division of functions is also presented. The final section of the paper reviews ways to maintain the autonomy of judges in countries with hybrid regimes and their ability to defend themselves by acting outside their courtroom. Second part of the report covers the conduct of the judges in the hybrid regimes[1]. It reflects specific methods chosen by judges, how they use their autonomy for the protection of individual or institutional independence or their corporate interests.

1 The political regime whith democratic and autocratic elements. Judges and Their Allies, Beloit Colleg, Journal of Law and Court, Spring 2014, p.67.

1. JUDICIAL SELF-GOVERNMENT, CHALLENGES OF POST-COMMUNIST COUNTRIES

The support of the judicial self-government was aimed at strengthening the participation of judges in the management of the judiciary, which in turn serves the idea of checks and balances and politicized justice. For EU-oriented countries, a strictly defined goal was a strong judiciary as a prerequisite for membership.

Unlike Eastern Europe, Western European countries have more historical experience in maintaining a balance between accountability and independence. The challenge for Central and Eastern European countries was to create an independent branch with the mental legacy they had inherited from the Soviet past. On the one hand, the judges themselves were not mentally independent and did not have the self-confidence to be able to make decisions on their own, they perceived themselves as well-paid public servants[2], on the other hand, there was no public trust in the judiciary, society considered it a corrupt authority.[3]

The models of court self-government can be conventionally divided into three groups: the model of the Council of Justice, the model of management with the Minister of Justice, and the court service model[4].

Most Central and Eastern European countries have opted for the Council of Justice model. Exception is Czech Republic. However, although the Czech Republic has a large participation of the executive branch in the judiciary, the power of judges in this system is no less increased. Created to protect against external influences in some Central and Eastern European countries the model of strong judicial councils has indeed increased the degree of independence from external threats, but has minimized judicial accountability. Against this background, the lack of strong self-government and mental independence is a fertile ground for the "tradition" of judicial oversight to be transferred from the executive to the judiciary.[5] These factors pose a threat to internal independence and lock the system, corporatism, which in turn contributes to nepotism, the seizure of power, and the distancing of the justice system from the needs of society and the legal community.

The self-government of the court is exercised through self-governing bodies, the source of legitimacy of which is the Constitution and the law. Researchers formulate a broad definition of judicial self-government bodies and consider that **a self-governing body of a court is a body composed of at least one judge and its statutory function is to make decisions on judges' careers and administration of justice, or to make recommendations to the decision-making body.**[6]

2 Bobek, The Fortress of Judicial Independence Id. at 8

3 Independence without Accountability: The Harmful Consequences of EU Policy towards Central and Eastern European Entrants, James E. Moliterno, Lucia Berdisová, Peter Čuroš, & Ján Mazúr, Fordham International Law Journal.

4 In mixed governance, where a special body is involved in the selection of judges (Denmark, Ireland, Scotland), David Kosar Beyond Judicial Councils German Law Journal, 2018 p. 1574.

5 *Supra note 2*

6 David Kosar, Beyond Judicial Councils German Law Journal, 2018 p. 1571,

2. INTERNATIONAL STANDARDS FOR JUDICIAL SELF-GOVERNMENT

Countries are free to choose the composition of the representation of judges in self-government. The international standard favors a diverse representation of judges. The dangers of self-government are considered to be corporatism, less democracy, although the system of self-government cannot be used to deal with these risks. Self-government is a guarantee of independence, but it should not be understood in such a way that only judges should be members of councils[7].

With the establishment of the Judicial Councils as a self-governing body, standards have been set for its arrangement, according to which at least half of the members must be judges. The mechanism for electing members of the Council should completely exclude the interference of the executive or the legislature, and judges should be elected only by judges and based on a broad representation of the relevant sector of the judiciary.[8]

According to the Venice Commission, in order to prevent corporatism within the court, a balance must be struck between the independence of the judiciary and self-government on the one hand, and the accountability of the judiciary on the other. The excessive number (power) of judges in the Councils of Justice poses a threat to corporatism. Members elected by judges should not be able to make decisions independently as a single body, but members of the public should be able to balance effectively[9].

The primary role of judicial councils is to be independent guarantors of judicial independence. However, this does not mean that such councils are bodies of judicial 'self-government'. In order to avoid corporatism and politicization, there is a need to monitor the judiciary through non-judicial members of the judicial council. Only a balanced method of appointment of the SCM members can guarantee the independence of the judiciary. Corporatism should be counterbalanced by membership of other legal professions, the 'users' of the judicial system, eg attorneys, prosecutors, notaries, academics, civil society.[10]"

" Corporatism can be avoided by ensuring that the members of the Judicial Service Commission, elected by their peers, should not wield decisive influence as a body. They must be usefully counterbalanced by representation of civil society (lawyers, law professors and legal, academic or scientific advisors from all branches).[11]"

On the other hand, the representation of the judges themselves should be diverse. Judges should be represented by the courts at all levels and pluralism should be ensured within the judiciary.[12] The European Judicial Advisory Council (CCJE) also recommends a wide representation of judges[13].

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7 Primoi Rataj, Grega Strban; The Role of the Councils for the Judiciary for an Effective Judicial System pp 214.

8 2011-15 report ENCJ the mechanism for appointing judicial members of a Council must be a system which excludes any executive or legislative interference and the election of judges should be solely by their peers and be on the basis of a wide representation of the relevant sectors of the judiciary.

9 Opinion N ° 779/2014 CDL-AD (2014) 026 Or Eng. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) OPINION ON THE SEVEN AMENDMENTS TO THE CONSTITUTION OF "The former Yugoslav Republic of Macedonia"

10 Strasbourg, 19 March 2018 Opinion No. 916/2018 CDL-AD (2018) 003 Or. Engl. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) REPUBLIC OF MOLDOVA, para 56 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)0033G

11 hjOeJ6jWJOelVMJDXTWpKnZmHxKoDNMl2WKznN40ti4 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (

12 Recommendation 2010/12 of the Committee of Ministers of the Council of Europe: CM / Rec (2010) 12 on Judges, Independence, Efficiency and Responsibilities.

13 opinion number 10 of the CCJE (Consultative Council of European Judges of the Council of Europe):

The 2010 recommendations of the OSCE Office for Human Rights and Democratic Institutions (OSCE / ODHIR)[14]consider it appropriate for the region to divide the administration of justice between different bodies, so as not to concentrate power in one body and to avoid the dangers of corporatism. These bodies should be independent of each other, set up by law and its composition should be determined taking into account the peculiarities of its competence.

We can conclude that if in the first stage a significant emphasis was placed on the wide representation of judges in the self-governing body, recent findings and assessments clearly highlight the need to address self-government challenges such as uncontrolled system governance by judges, corporativism, formation of influential group of judges. They support the formation of pluralistic democracy, involvement of civil society in the form of external actors in the management of the court, their substantial (and not formal) participation in the self-government of the court.

14 KYIV RECOMMENDATIONS ON JUDICIAL INDEPENDENCE IN EASTERN EUROPE, SOUTH CAUCASUS AND CENTRAL ASIA - Judicial Administration, Selection and Accountability - Kyiv, 23-25 June 2010; OSCE Office for Democratic Institutions and Human Rights (ODIHR) together with the Max Planck Institute for Comparative Public Law and International Law (MPI), organized and hosted a regional expert meeting on Judicial Independence in Kyiv. The meeting was attended by approximately 40 independent experts, among them prominent scholars and senior practitioners from 19 OSCE participating States, and from the Council of Europe and its Venice Commission. https://www.osce.org/files/f/documents/a/3/73487.pdf

3. CHALLENGES OF THE EUROPEAN MODEL OF JUDICIAL SELF-GOVERNMENT

European systems have shown that with the strengthening of self-government, judicial systems will face new challenges. With the relocation of the Center for Court Administration within the judiciary, the focus has been on increasing autonomy and the non-interference of political actors, however, other factors arising from the power of judges to be elected in self-government have been left out. In different countries, this model has helped to strengthen certain groups and to form a layer of influential judges who have undue pressure on ordinary judges. The model of judicial autonomy in some cases damaged the idea of its creation and shaped" dependent judges in an independent court."[15]

Two to three decades of experience allow us to evaluate the results of judges' increased self-government, to identify existing challenges. When evaluating the effectiveness of self-government, it is important to ask

- whether there is a de facto center of self-government elsewhere, ie forces that have an impact on the budget of the judiciary, the appointment of judges, discipline, promotion.
- Note that the governance of the judiciary is flexible in nature and responds to external political factors.
- Realize as opposed to armor against the violation of the independence of the judiciary, self-government can be one of the ways of political influence on it.[16]

The problems of self-government were especially reflected in the example of countries with the experience of the communist regime. The system of self-government itself has become a pillar for authoritarian and populist politicians who seek to maintain influence over the judiciary precisely through the control of self-governing bodies.

The examples are: minimal transparency and corporate governance, which has developed a culture of corruption and obedience in the courts in **Romania;** With the help of political governance, the use of power by self-governing judges to seize power in the judiciary **(Slovakia)**

In small countries with a Soviet past, personal relationships and informal connections play a greater role than institutional arrangements, thus the threat of corporatism comes from the past culture. If informal ties are severed, illegal co-operation between state institutions and the judiciary will be complicated. The remnants of the communist totalitarian past and the political community were used to manipulate the system in such a way as to weaken self-government even in a model of good constitutional order, that is, to create a gap between the written and real models of self-government (Slovenia).[17]

According to researchers, the introduction of judicial councils has not had a positive effect on public confidence in the judiciary. According to researchers, public trust in the judiciary among the old EU member States is lower in countries with a model Council of Justice than in countries without a model Council. In the new member States as well. The mere existence of councils does not have a positive effect on public confidence. This is not to say that the council model explicitly undermines public confidence, although we can conclude that its existence is not a determinant of increasing people's trust.[18]

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15 Bogdan Iancu, Perils of Sloganised Constitutional Concepts Notably that of 'Judicial Independence, book review essay, pp 584-588 EuConst 13 (2017)

16 David Kosar Beyond Judicial Councils German Law Journal, 2018

17 Avbelj, Matej. Contextual Analysis of Judicial Governance in Slovenia, German Law Journal, 2018, p.1925.

18 David Kosar Beyond Judicial Councils German Law Journal, 2018, *See* Marina Urbanikova & Katarina Šipulova, *Failed Expectations: Does the Establishment of Judicial Councils Enhance Confidence In Courts?*

The experience of European countries shows that in some countries, it has become possible to use the model of the Council in the interest of a specific group or actor.

In Poland, while the Council of Justice set a successful example of guaranteeing the independence of the judiciary, it proved powerless against the 2017 reform. The large-scale reform of 2017 provided for the election of council members by Parliament instead of judges, by the early dismissal of court chairmen and members of the Council of Justice by Parliament. Election / dismissal of court chairpersons by the Minister of Justice on the recommendation of 2/3 of the judges of the same court and the Council of National Justice.[19] Nevertheless, the Law and Justice Party has not had difficulty to dismiss more than a hundred presidents and deputies of the courts, compose the National Justice Council with desirable candidates, and launch disciplinary proceedings against dissident judges. To this end, two new chambers were established in the Supreme Court - the Disciplinary Chamber and the Extraordinary Chamber (extraordinary chamber). They were staffed with cadres loyal to the party. The first could prosecute judges, and the second, review their decisions.[20]

Hungary is the first post-communist country to choose a strong council model. The National Council of Judges (NCJ) was established with a wide representation of judges, and the function of administering the court, previously held by the Minister of Justice, was fully within the competence of the Council. Despite the wide representation of judges, the National Council of Judges (NCJ) has failed to maintain the existing model. Due to the ineffective work of the Council, a legislative change was made and the administration of justice was subordinated to the newly established National Office of Judges (NJO). The Venice Commission has been critical of the fact that the National Council of Judges (NCJ) has had the oversight function of the National Office of Judges[21] but at the same time, the President of the National Council of Judges can influence important issues of judicial administration. A judge with five years of experience is elected president by parliament for 9 years. It is true that a high quorum was imposed for his election, he was elected by one party due to insufficient votes of the parliamentary majority. The President establishes a long-term plan for the administration of the court, internal regulations, can initiate legislation related to the court, submit a personal opinion on the issue of the legislation and observe its consideration in the parliamentary committee, submit a proposal for the appointment and dismissal of the deputy, develop and submit for approval the issues of the court budget and its implementation report, participate in its consideration, influence the internal distribution of the budget, in some cases determines the number of judges, and determine jurisdiction of trial court, oversee the workload of the courts, submit a proposal to the President on the appointment and dismissal of judges, lead the data collection process.

19 Article 3 § 2 (5) of the Act on the NCJ and Article 27 § 5a of the Act on Ordinary Courts:

20 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) POLAND Strasbourg, 16 January 2020 Opinion No. 977/2019 CDL-PI (2020) 002 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)002-e Last viewed 23. 05.21)

21 OPINION ON ACT CLXII OF 2011 ON THE LEGAL STATUS AND REMUNERATION OF JUDGES AND ACT CLXI OF 2011 ON THE ORGANISATION AND ADMINISTRATION OF COURTS OF HUNGARY, https://bit.ly/2UCOYat (Last seen: 21.07.2021).

4. SELF-GOVERNMENT OF JUDGES IN GEORGIA

According to a broad definition of self-governing bodies, the following can be considered as judicial (self-governing body) in Georgia: Conference of Judges; High Council of Justice; Disciplinary Board; Independent Board of the High School of Justice; Presidents of the Court.[22]

The Constitution of Georgia defines the High Council of Justice as the body responsible for the independence and efficiency of the common court system, the appointment and dismissal of judges and other functions[23]. The function of the Council of Justice on the appointment and dismissal of judges is defined at the constitutional level, although the establishment of a complete list of activities is entrusted to the law.

According to the Constitution, more than half of the members of HCOJ are judges elected by judicial self-government body. This does not include Chief Justice of the Supreme Court, which is the ex officio member.[24] The Constitution of Georgia does not specify the exact number judicial members, nor the self-governing body of the court that elects judges to the Council of Justice. The Law of Georgia on Common Courts stipulates that the Conference of Judges is a body of judicial self-government and consists of all judges of the common court system. The Conference of Judges is tasked with strengthening the independence of the judiciary, ensuring public confidence in the judiciary, and enhancing the reputation of judges.[25] The High Council of Justice is accountable to the Conference of Judges.[26] The conference elects the members of the Council of Justice, the members of the Disciplinary Board, the three members of the School of Justice, and the Secretary of the Council of Justice.[27] Candidates can be nominated by any judge, the decision is made by secret ballot with the support of 2/3 of the judges present. In the absence of support, a second round of voting is held, as a result of which the candidate who will gather the attending members is considered elected[28]. Elections to the Conference of Judges are mainly held in a non-competitive environment, with the trend of equalizing the number of nominated candidates to the number of vacancies since 2013. For example, at the last conference, as many candidates were nominated as there were seats, and all of them were selected in the first round.[29] Judges are not involved in real self-government due to the indifferent attitude of judges (on the one hand) and the dominance of the influential group consisting of a majority of court presidents. Self-governing bodies are composed of members of this group, or their subordinate judges. Instead of protecting judges from internal

22 Nino Tsereteli Salome Kvirikashvili, Judicial self-government in Georgia 2020, Center for Human Rights Education and Monitoring (EMC) https://socialjustice.org.ge/uploads/products/pdf/%E1%83%A1%E1%83%A2%E1%8 3% 90% E1% 83% A2% E1% 83% 98% E1% 83% 94% E1% 83% 91% E1% 83% 98% E1% 83% A1_% E1% 83% 99% E1% 83% A0% E1% 83% 94% E1% 83% 91% E1% 83% A3% E1% 83% 9A% E1% 83% 98_1588745696.pdf

23 Ibid Article 64 (1)

24 According to the second part of Article 64 of the Constitution of Georgia, more than half of the members of HCOJ are judges elected by self government.

25 Organic Law of Georgia on Common Courts Article 63

26 Ibid Article 47.1

27 Article 65, 66^3

28 Except for the members of the Independent Board of the High School of Justice, who are elected by a majority of those present, Supra note 24

29 Information is available on the website of the Council of Justice http://www.hcoj.gov .ge / ka / 2021-% E1% 83% AC% E1% 83% 9A% E1% 83% 98% E1% 83% A1-26-% E1% 83% 9B% E1% 83% 90% E1% 83 % 98% E1% 83% A1% E1% 83% A1-% E1% 83% 9B% E1% 83% 9D% E1% 83% A1% E1% 83% 90% E1% 83% 9B% E1% 83% 90% E1% 83% A0% E1% 83% 97% E1% 83% 9A% E1% 83% 94% E1% 83% 97% E1% 83% 90-xxix-% E1% 83% A0% E1% 83 % 98% E1% 83% 92.html (Last viewed 31.05.2021)

and external influence, the Council of Justice was established as an institution for the subordination of judges. The governing levers in their hands are used to suppress dissent in the system, expel critical judges, and appoint and encourage loyal cadres as judges. [30]

Chart N1

Judicial self-government functions and their distribution among self-government bodies in Georgia.[31]

Functions of self-government	Human resources	the selection, appointment, discipline, promotion, impeachment, remuneration, bonuses	the High Council of the Judicial Disciplinary Board, Chamber
	Administrative	Distribution of cases, Assignment of Judges, Distribution of Judges in Panels, Determination of Number in Courts, Selection of Judicial Officers, Review of Complaints, Evaluation of Court Performance	fHigh Council of Justice Chairman of the Court
	Financial	Budget of judicial system, separate courts budget and other type of assistance	High Council of Justice
	Education	Training of judicial candidates and judges, conferences, continuing education, study tour	the High School of the High Council of
	Ethics	Judicial Ethics and Judicial Ethics Rules	of the Judicial Conference of the Supreme Council of
	Information	transparency, Publication of decisions, Financial Openness, Personal Data Control	High Council of Justice Chairman of the Court
	Digital	Data Storage, Servers, Internet Access, e-	Justice High Council of Justice
	Regulatory	Procedures, Regulations	High Council of Justice

30 *Supra Note 19, p. 29 The problems of clan governance in the courts have been the subject of numerous responses from domestic and international organizations in the country. Lastly, this problem was reflected in the US Department of State's Georgia 2020 Report https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/georgia/ https: // www. gdi.ge/uploads/other/1/1348.pdf (Georgian unofficial translation)*

31 For the structure of the table see: *David Kosar, Beyond Judicial Self-governance,* German Journal of Law vol 19, no 07, pp 1597. The right column of the ta ble shows the specific functions of the competent judicial authorities in Georgia.

5. CONCRETE MODELS OF JUDICIAL SELF-GOVERNANCE

Estonia

Administration of courts is not fully integrated into the justice system and is not the responsibility of one specific body. The principle of administration is based on the cooperation of the judiciary and the Ministry of Justice, the main functions being divided between the Ministry of Justice and the Council for the Administration of Justice (en banc).

Ministry of Justice:

determines the court's territorial and jurisdiction, total number of judges in each court, in agreement with the Council

- Appoints and dismisses the court presidents with the agreement of the Council
- May conduct financial audit in low instance courts

5 self governing bodies functioning of the Estonian justice system:

- Judicial conference en banc -composed of all judges
- Court Administration Council
- Disciplinary Chamber
- Judges Examination Commission
- Judicial Continuous Education Council.

The Supreme Court guarantees the work of self-governing bodies and the proper administration of the court. The Chairman of the Supreme Court chairs the en banc and the Board of Justice Administration.

In addition to electing judges in self-governing bodies, En Banc has the function of talking and discussing the problems and challenges of the court. Estonian En Banc has discussed issues such as the development of the judiciary and the judiciary, the draft law on courts, the analysis of the workload of judges, the public relations strategy of the courts.[32] The Court en banc has discussed, for example, the directions of the development of the court system, the draft Courts Act, the possibilities for analyzing the workload of judges, the methods of giving feedback to the judges and the public relations strategy of the courts .

In Estonia, each court has a collegial body composed of judges from that court. It is convened by the presiding judge or two-thirds of the judges. The body makes decisions by a majority of those present on issues such as drawing up a case distribution plan, making recommendations to the court chairperson, issues necessary for the court to function, addressing the Minister of Justice with a request to appoint or dismiss the court chairperson,[33] and so on.

The Supreme Court is involved in the administration of the courts. It has certain regulatory and

32 Courts Act art.38, https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide Supreme Court of Estonia https://www.riigikohus.ee/sites/default/files/Tr%C3%BCkis/ 2019-Riigikohus-brozu-ur-2019-ENG.pdf (last viewed 21.03.2021)

33 The Minister of Justice is involved in the administration of justice in the Estonian model

administrative functions, such as determining the number of chambers of the regional court and judges in the chambers, appointing the presidents of the chambers, and establishing the territorial jurisdiction of the lower courts. The Supreme Court en banc also reviews appeals against decisions made by judges.

Courts Administration Council, which half of which is made by judges elected by the En Banc, one member of the council - a representative of the Ministry of Justice - has only a deliberative vote. The functions of the Council are administration issues in full agreement with the Ministry of Justice and the self-governments of the courts. The council's responsibilities include submitting opinions on administration issues, dismissal of judges, budget, legislative changes related to the judiciary, and more.

Estonia has had an Ethics Council since 2019, with an advisory function to judges. The Ethics Council issues recommendations based on a judge's appeal or on its own initiative. The opinions and recommendations of the Ethics Council are published on the website of the Supreme Court and are of a recommendatory nature. The Ethics Council consists of 5 judges elected by the en banc, including retired judges (emeritus judges) as well as relevant experts.

Slovenia

All three branches of government are involved in the management of the Slovenian judiciary. The main body is the Council of Justice. However, it does not govern independently and divides its functions with the **court administration**, which is exercised at the court level mainly by the chairpersons, through the Staff Councils. Quite a strong institution is the chairman of the court, who fully holds managerial and administrative functions in a particular court, as well as presides over the Staff Council. The chairpersons shall participate in the pre-selection of the candidates to be nominated by the Council of Justice to the National Assembly (Parliament) for appointment. **The Staff Council is** is formed at the District, Supreme and Supreme Court level, consisting of six judges in the District Court and 4 judges in the Superior Court, selecting and evaluating judges and making recommendations on their career issues.[34] As the career of judges depends on the recommendations of the Staff Council, court presidents are very influential people. The Minister of Justice is responsible for the functioning of the judiciary, creates the administrative framework, determines the budget and monitors the administration of the court through the Department of Court Management. Parliament appoints judges, approves the budget, elects the chairman of the Supreme Court, who also heads the administration.

Although unable to make final decisions on the appointment of judges and the administration of the court, the Council of Justice is a strong institution in Slovenia. Its functions include selecting and nominating judges, appointing court chairmen, reviewing judges' complaints on their evaluation documents, other personnel issues, nominating disciplinary bodies, conducting the disciplinary process and enforcing sanctions, making regulations, defining criteria for the selection of judges, appointing ethic commission members, giving consent to the arrangement and structure of the courts, etc. It is unable to perform these functions fully, leaving the entire preparatory workload to other persons (support staff), and the decision-making center shifting elsewhere. De facto decision makers are staff councils performing these functions. Consequently, the presidents of the courts and several members of this council have influences. In addition, in the absence of special separate judicial training, new judges are "raised" by mentors. These circumstances form an influential layer and a hierarchical attitude towards them, which is a socialist approach, promotes judicial corporatism and turns self-government into a fiction.

According to scholars, the de facto lack of judicial independence as opposed to de jure independence is due to a misalignment of the system, which manifested itself in the fact that judges who violated human rights during the previous regime were re-appointed without any real individual re-examination. The Council of Justice became a "factory" of judges, appointing old-fashioned judges by lists rather than by individual

34 Courts Act Art. 30, para 1

marks. The judges, for their part, followed political elite[35], believing that Slovenia was a post-communist mafia state and trying to demonstrate this themselves.[36] The Slovenian Council of Justice has minimal effect on the accountability, independence and transparency of the system, as its formal competence differs from the existing one and does not have the capacity to perform its function. One reason for this is the practice of making decisions elsewere out of different interests. The model of a strong chairman established corporatism in the system, driven by an oligarchic structure and a vulnerability to political influence. All of this has contributed to a decline in public confidence in the system [37]

Ukraine

Ukraine has chosen the path of internal balance and equilibrium with recent reforms. Several interdependent bodies have been set up to exercise self-government, setting a precedent for the participation of international experts in the self-governing bodies of judges.

The High Council of Justice - the constitutional body that ensures the independence of the judiciary, functions in accordance with the principles of accountability to the public, and its function is to form a highly professional corps. 10 out of 21 members of the Council of Justice are judges elected by the Congress of Judges.

The Congress of Judges is a self-governing body of judges composed of delegates elected by judges of Ukraine. Delegates are elected by the courts, the general principle being to nominate one delegate for every twenty judges by secret ballot. The law provides for a specific number of delegates for higher courts, for example the Supreme Court is represented by 12 delegates. Judges holding administrative positions may not be delegates. The Congress hears the reports of the Qualification Commission, the Head of Justice Administration and the Council of Justice, elects the judges of the Constitutional Court, the members of the Council of Justice, the members of the Council of Judges, discusses the problems of self-government. The Congress of Judges can elect both current and former judges to the board.[38] One and a half months before the elections, information about the elections is published. Candidates will submit their applications for election to the position of Board Member. Among other documents, the application is accompanied by a candidate requesting that his / her candidacy be lustrated, according to the Ukrainian Lustration Law, consent to the candidate's examination, as well as a cover letter as to why he / she wants to be elected to the Council of Justice. After the registration of the candidates, his request along with the documents is published publicly on the website of the Council of Justice and in the media.[39]

The presidents of the court are elected by the judges of the same court by a majority of secret ballots.[40]

Council of Judges - The executive body that ensures the enforcement of congressional decisions and related measures. Discusses current issues of courts, issues of legal and social protection of judges, discusses cases of conflict of interest in the actions of the Qualification Commission, member of the Council of Justice,

35 The ruling power in the country consisted of left-wing centrist parties originating from the former communist elite; Matej Avbelj; Contextual Analysis of Judicial Governance in Slovenia, German Law Journal 2018, pp 1916

36 The presiding judge of the Ljubljana court attended the concert with a red star and the flag of Communist Yugoslavia. This fact was not seriously taken by leniently by Council for the Judiciary which limited itself by public reprimand, explaining that in his free time he enjoys personal freedom (dissented by other judges). Matej Avbelj; Contextual Analysis of Judicial Governance in Slovenia, German Law Journal 2018, pp 1916

37 According to the author as of 2018, the trust does not exceed 16%.

38 Law on Ukraine on High Council of Justice, chapter, Article 10, ..https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)067-e&fbclid=IwAR0OWmmaLbwVupuVEQYC5SrUzKRo- ZMkfwvY_oTRWd6gZU4p68M (last viewed 24.05.2021)

39 Law on Ukraine on High Council of Justice, chapter 3, ..https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020) 067-e & fbclid = IwAR0OWmmaLbwVupuVEQYC5SrUzKRo5lm21Z_w-ZMkf-wvY_oTRWd6gZU4p68M (last viewed 24.05.2021)

40 Ib art 20

judge, head of the administration of justice and resolves them if the law does not provide for other solutions. Executes, manages budgeting and other management issues.[41]

Judges 'Qualification Commission[42] - Its function is to conduct a competition for judges' vacancies and to make recommendations for the appointment of judges. The Commission consists of 12 members elected by the Council of Justice for a term of 4 years. A citizen of Ukraine with 15 years of legal professional experience, higher education and political neutrality can be appointed as a member. Members of the Commission are prohibited from combining membership with any other position in the public service, as well as with court administrative position.[43]

The members of the Qualification Commission will be selected on the basis of a competition. The selection commission is composed of three members of High Council of Justice and 2 international experts. International experts are represented by the partner international organizations of Ukraine in accordance with the law.[44] The commission is assisted by Public Integrity Council in establishing the integrity of the candidates. The Council consists of 20 members who may be highly respected members of the following circles: civil society, human rights defenders; Lawyers from the academy; Practicing lawyers; Journalists. They are elected at a meeting of civil society (organizations) in a pre-established manner. Representatives of public institutions or state-funded civil society organizations do not participate in the election of this body. The Venice Commission did not welcome the existence of a qualification commission in parallel with the High Council of Justice, but said in its latest report that the Judicial Qualifications Commission is a relict of the past. Its mixed composition (local and international members) and the Integrity Council will help increase public confidence and address the problems posed by corporatism.[45]

The HQCJ is a historical relict from a time when, due to constitutional restrictions, the HCJ was deemed difficult to reform. (para 17)

Both the Selection Board for the appointment of the members of the HQCJ and the Integrity and Ethics Commission are conceived to have a mixed international (three members) / national (three members) composition. Following the successful model of the anti-corruption law, such a composition fosters the trust of the public and may help in overcoming any problems of corporatism The

Ethics and Good Faith Commission - its functions include **to present conclusion on the eligibility of members of HCOJ and High Qualification Commission.** Control of the of good faith and ethics of the members of the High Council of Justice and the Qualification Commission of Judges; Submit proposals to the High Council of Justice on the dismissal of a member of the High Council of Justice and the Qualification Commission of Judges. It consists of 6 members, 3 members from the High Council of Justice and 3 international experts.

Moldova

Moldovan law defines the notion of judicial self-government as the right and ability of the courts to resolve judicial problems independently and responsibly. Self-government should be exercised on the basis of accountability and conscientious exercise of the delegated powers by the competent authorities based on the principle of representation. The law defines the Assembly of Judges and the High Council of Magistrates

41 Article 147

42 Article 92 (1) of the Law on the Judiciary and Status of Judges (LJSJ)

43 Article 94

44 Ib. Article 87

45 EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) UKRAINE OPINION ON AMENDMENTS TO THE LEGAL FRAMEWORK GOVERNING THE SUPREME COURT AND JUDICIAL GOVERNANCE BODIES Adopted by the Venice Commission at its 121st 2019 (127th) , 22 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)027-e (last viewed 21.05.2021)

(SCM)[46]as self-governing bodies. The main body of self-government is the High Council of Magistrates (SCM), according to the law, it is an independent body[47]. The High Council of Magistrates consists of 15 members, including non-judge members, *ex officio* members and 7 judge members elected by judges.[48] Judge members are elected by the Assembly of Judges. The Venice Commission concluded with a positive assessment of the constitutional amendment, which provides for a broad representation of judges at the constitutional level and provides for the Assembly to elect four members from the courts of first instance, two members from the appellate courts and one from the Supreme Court[49]. There are five other bodies affiliated with it, a disciplinary body (board), judicial 'inspectorate, a selection and career board, a judges' evaluation board and an ethics commission. Elections of Judicial Members shall be held by the Assembly in the High Council of Magistrates, Colleges and Disciplinary Boards (hereafter Soviets and Colleges) in accordance with the pre-election procedure.

At least 2 months before the meeting of the Assembly, the announcement of the elections in the councils and colleges is made public. Within 1 month of publication, judges may apply for permanent or alternative membership. Opinions and evaluations on candidates may be submitted by judges and civil society (Reg. Elections, V). The final list of candidates will be submitted by the Registrar to the General Assembly 3 days before the meeting and will be published on the website of the High Council of Magistrates.

Once the list of candidates has been approved separately from the Court of First Instance, the Supreme Court and the Court of Appeal, the Assembly will approve a special commission to conduct the elections (Reg. Elections, V). When nominating judicial candidate, his / her biographical data and vision-action program must be submitted. Elections are secret. Alternate members will be elected together with the permanent member, who will take the position of a member in case of early termination of the term of office of the member.[50]

Slovakia

In Slovakia, a strong council model has been developed that deals with issues related to the career of judges, among other things. The granting of strong autonomy was reflected in the strengthening of elite groups within the system and reduced the accountability of the judiciary. The justice system has been isolated from the public and serves personal interests. Accountability mechanisms have been used in the interests of elite groups.[51] Judges may be nominated at the Conference of Judges by the Council of Judges, the Association of Judges, and at least ten judges. The candidate must be sent to the chairperson of the election commission no later than 30 days before the election. If a candidate is nominated by a panel of judges or a association of judges, he or she must be accompanied by a decision on his or her nomination and minutes of the meeting. The nomination of a candidate by ten judges must be accompanied by their signatures and personal data. Election commissions of district courts are set up in advance before the elections.[52]

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46 Law on the Superior Council of Magistracy, No. 947 of 19 July 1996, last amended by Law no. 271 of 23 November 2018. Art. 23^2

47 Law on the Superior Council of Magistracy, No.947 of 19 July 1996, last amended by Law no. 271 of 23 November 2018. 35 Ibid., Articles 1 (1) and 8 (1).

48 Ibid article 3,

49 CDL-PI (2020) 001 Urgent Joint Opinion on the draft law on amending the law no. 947/1996 on Superior Council of Magistracy, para. 24. See, also, for a similar consideration, CDL-AD (2018) 003, p. 54.

50 General Assembly of Judges REGULATIONS on the functioning of the General Assembly of Judges APPROVED by Decision of the Assembly General of the Judges no. 1 of 23.11.2012 Amended by the AGJ Decision of February 15, 2013 Modified by AGJ Decision no. 7 of March 13, 2015 Modified by the AGJ Decision no. 11 of March 11, 2016

51 Samuel Spac, Katerina Sipulova & Marina Urbanikova, Capturing The Judiciary from Inside, The Story of Judicial Self-Governance in Slovakia, German Law Journal Vol 19. No 07, pp 1741-1768

52 185/2002 Coll. ACT of 11 April 2002 On the Judicial Council of the Slovak Republic and on amendments of certain Acts

6. THE COURT CHAIRPERSONS

The role of court chairpersons should be strictly limited in the following sense: they may only assume judicial functions which are equivalent to those exercised by other members of the court. Court chairpersons must not interfere with the adjudication by other judges and shall not be involved in judicial selection. Neither shall they have a say on remuneration (see para 13 for bonuses and privileges). They may have representative and administrative functions, including control over non-judicial staff. Administrative functions require training in management capacities. Court chairpersons must not misuse their competence to distribute court facilities to exercise influence on the judges.

The selection of court chairpersons should be transparent. Vacancies for the post of court chairpersons shall be published. All judges with the necessary seniority / experience may apply. The body competent to select may interview the candidates. A good option is to have the judges of the particular court elect the court chairperson[53].

Court chairpersons should be appointed for a limited number of years with the option of only one renewal[54].

In case of executive appointment, the term should be short without possibility of renewal.

The court president shouldn't be seen a superior of the other judges, he/she shouldn't have possibility to influence on the judges neither *de jure* nor *de facto*.[55]

The appointment of court presidents in different models is more a matter of internal regulation of the judiciary. Judicial councils in one case appoint the chairpersons of the courts (although the involvement of external actors is largely reflected in the appointment of the chairperson of the Supreme Court).

In post-communist countries, court presidents more or less retain historical experience and are considered influential judges. If in one case, their power is enhanced by the functions provided by law, in case of limitation of their power by law, the presidents of the courts are able to maintain their formal influence only by the fact that they are holders of this position. In turn, their mentality is facilitated by the mentality of post-Soviet culture of obedience of judges.

Under Georgian law, the non-interference of court chairpersons in the work of a judge has been clarified and amended several times, but the legislature has not refused to maintain the benefits set for the chairperson at the level of law. Lets consider the rules governing the activities of the President of the Court, including the President of the Supreme Court, including the presidents of the courts of first instance.

The President of the Supreme Court is elected by the Parliament from among the members of the Supreme Court for a term of ten years. His candidacy will be submitted to the Parliament by 2/3 of the nominations of the High Council of Justice. He/she can be dismissed by impeachment.[56] He/she is ex officio chair of the Grand Chamber of the Supreme Court[57]. The President of the Supreme Court is also an ex officio member of the High Council of Justice.[58]

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53 KYIV RECOMMENDATIONS ON JUDICIAL INDEPENDENCE IN EASTERN EUROPE, SOUTH CAUCASUS AND CENTRAL ASIA - Judicial Administration, Selection and Accountability - Kyiv, 23-25 June 2010, https://www.osce.org/files/f/documents/a/3/73487.pdf

54 Ib. for 15

55 CDL-AD(2017)018 Or.Engl. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) BULGARIA Par. 83; https://bit.ly/3zyWOAB, (03/22/2021).

56 of the constitution, article 61

57 The 9-member Chamber of the Supreme Court, which hears particularly difficult cases. See the law on "common courts" Article 17

58 of the constitution article 64

The President of the Supreme Court and the Presidents of the Courts of Appeal are ex officio members of the Plenum of the Supreme Court[59]. The President of the Supreme Court is authorized to temporarily appoint Disciplinary and Qualification Chambers Judges[60], if he / she could not been elected in accordance with the law. The Chambers of the Supreme Court have chairpersons who are also the Deputy Chairpersons of the Supreme Court, and one of them is the First Deputy Chairperson of the Supreme Court.

The chairmen of the Court of Appeals are appointed by the High Council of Justice for a term of 5 years. The decision is made by a majority of the members present, which makes it possible to appoint a chairperson (out of 15 members of the Council), with the support of only five members. The participation of judges of the relevant courts in this process is reflected only in the fact that the Council consults with them in a format not prescribed by law. The rule of nomination by the judges for the chairperson has not been established. The chairman of the Court of Appeals has a deputy. Their functions are mostly duplicated, or blurred.[61] The lower courts have presidents of chambers and boards, although their functions are not defined by law.

Unlike the Court of Appeals, in the case of a district (city) court, the chairperson does not have a deputy chairperson; in his / her absence, the chairpersons function is assumed by one of the judges. The courts also have a manager, whose function is also the management of the judicial staff.[62]

Despite the existence of an electronic case distribution system, the President of the Court has the opportunity to intervene exceptionally in the distribution. The president also has the opportunity to instruct a judge of another specialization to hear the case in a particular case, or to change the narrow specialization individually[63]. By doing so, the chairperson, in fact, has the leverage to influence the distribution of the case, through which he or she does not refer a particular case to a particular judge, but can even form a majority of judges in a collegial hearing - bringing a judge to the case.

Although the activities of the President of the Court are not very intense, they are also provided with concessions in terms of the number of cases to be considered. This privilege starts from 50% of the workload of other judges and is set in case of the chairmen of the Supreme Court of Georgia, the Tbilisi Court of Appeal and the Tbilisi City Court **no more than** 5% .[64]

Georgian law allows the election of court chairmen as members of the Council of Justice. They have a quota

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59 of the Organic Law on "Common Courts" Article 18 of the Supreme Court Plenum of the Supreme Court consisting of a body that takes in significant decisions on the administering of justice

60 judicial qualification chamber considers appeals in the appointment against High Council of Justice, Article 19[1]

61 The Chairman of the Court of Appeals supervises the work of the court, the Deputy Chairman of the Court of Appeals supervises the work of the court upon the instructions of the Chairman; Ibid Article 25, 26

62 Ibid Article 56 There

63 narrow specializations in the panels or chambers of a particular field in the Tbilisi Court of Appeals and some courts of first instance. Judges are distributed in panels and chambers by the Council of Justice, in accordance with narrow specialization.

64 Georgia Democratic Initiative, p. 12, Legal and Technical Analysis of the New System of Distribution of Cases in Common Courts, http://ewmi-prolog.org/images/files/2744%E1%83 % A1% E1% 83% 90% E1% 83% 94% E1% 83% A0% E1% 83% 97% E1% 83% 9D% E1% 83% A1% E1% 83% 90% E1% 83% A1 % E1% 83% 90% E1% 83% 9B% E1% 83% 90% E1% 83% A0% E1% 83% 97% E1% 83% 9A% E1% 83% 9D% E1% 83% 94% E1 % 83% 91% E1% 83% A8% E1% 83% 98% E1% 83% A1% E1% 83% 90% E1% 83% A5% E1% 83% 9B% E1% 83% 94% E1% 83 % 97% E1% 83% 90% E1% 83% 92% E1% 83% 90% E1% 83% 9C% E1% 83% 90% E1% 83% AC% E1% 83% 98% E1% 83% 9A % E1% 83% 94% E1% 83% 91% E1% 83% 98% E1% 83% A1% E1% 83% 90% E1% 83% AE% E1% 83% 90% E1% 83% 9A% E1 % 83% 98% E1% 83% A1% E1% 83% 98% E1% 83% A1% E1% 83% A2% E1% 83% 94% E1% 83% 9B% E1% 83% 98% E1% 83 % A1% E1% 83% A1% E1% 83% 90% E1% 83% 9B% E1% 83% 90% E1% 83% A0% E1% 83% 97% E1% 83% 9A% E1% 83% 94 % E1% 83% 91% E1% 83% A0% E1% 83% 98% E1% 83% 95% E1% 83% 98% E1% 83% 93% E1% 83% 90% E1% 83% A2% E1 % 83% 94% E1% 83% A5% E1% 83% 9C% E1% 83% 98% E1% 83% 99% E1% 83% A3% E1% 83% A0% E1% 83% 98% E1% 83 % 90% E1% 83% 9C% E1% 83% 90% E1% 83% 9 A% E1% 83% 98% E1% 83% 96% E1% 83% 98.pdf (last viewed 12.05.2021)

of four seats[65], which is voted on separately for the chairpersons (chairmen of the boards and chambers). Only if the appropriate votes are not obtained by the chairperson (chairperson of the panels and chambers) may another judge be elected to this seat. Such a rule, even in a pluralistic environment, gives different electoral chances to chairpersons and other judges to take a seat on the Council of Justice. Considering that the position of the chairman of the court, chamber, panel, or deputy chairman of the court is 36 in total, and the total number of judges is 326. Thus, four seats are chosen from a maximum of 36 candidates when other judges are elected for 8 seats out of 326.

In 2007-08, the positions of court chairmen were massively filled. Mostly, people from the prosecutor's office or other law enforcement agencies (with no prior judicial experience) were appointed to this position[66]. In October 2012, following a change of government following parliamentary elections, the Council of Justice extended the term of office of these individuals until the expiration of their five-year term and re-appointed them to chair positions for a five-year term. In doing so, they were guaranteed to retain their positions until the composition of the Council of Justice changed. In fact, these individuals have held the positions of chairpersons since 2007-08 using the rotation mechanism. Thus was formed the layer of permanent presidents - as privileged judges,[67] who retained influence over the judges.

As a result of the implemented reforms, the legislature has rejected a number of progressive initiatives, increased the influence of judges in administrative positions, created opportunities to regain power in the hands of influential judges. This has largely led to the neglect of content of the reforms, such as the existence of interest groups in the judiciary, their de facto power, formal and informal influences, hierarchies and statuses that have been created and strengthened over the years. Groups that pose a threat to individual independence. At the same time, the part of the increase in accountability had a minimal share in the reforms, there was no mechanism of restraint and balance within the system, which created a fertile ground for the seizure of power in the hands of an influential group.[68]

Risks of external and internal pressure on judges remain if the levers of power fall into the hands of a few influential judges. Judges who presided over the courts before the reform, for the most part, not only retain these positions (and leverage the influence of judges in the respective courts), but also become members of council of justice (where permitted by law), or staff these bodies with their puppets. [69]

According to surveys[70], some countries analyzed the post-Soviet hierarchical model and banned the election of court presidents in the Council of Justice (Croatia, Poland, Slovakia). This approach somewhat

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65 The 2013 legislative amendment reduced the number of chamber chairpersons to three, although with the December 29, 2016 amendment, the possible number of chairpersons in the Council of Justice was increased to a maximum of half of the members. See. Article 47.4 of the Law

66 In November 2008, the Prosecutor's Office was integrated into the system of the Ministry of Justice as a state agency. The prosecution system was generally headed by the Minister of Justice. Following the 2018 constitutional amendments, it was recognized as an independent body. See. Organic Law on the Prosecutor's Office. Information is available on the website https://pog.gov.ge/history

67 Decisions on appointment of chairmen of the Council are published on the website of www.hcoj.gov.ge.

68 Georgian Young Lawyers Association, Justice Reform in Georgia 2013-2021, pp. 70-72 https://www.gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1 % 83% 93% E1% 83% 98/2021 / JUDICIAL% 20SYSTEM% 20REFORM-2.pdf pp64

69 Nino Tsereteli Salome Kvirikashvili, Judges' Self-Government in Georgia, Collection of Articles on Justice 2020, Human Rights Training and Monitoring Center (EMC) https: // socialjustice.org.ge/uploads/products/pdf/%E1%83%A1%E1%83%A2%E1%83%90%E1%83%A2%E1%83%98%E1%83%94%E1 % 83% 91% E1% 83% 98% E1% 83% A1_% E1% 83% 99% E1% 83% A0% E1% 83% 94% E1% 83% 91% E1% 83% A3% E1% 83 % 9A% E1% 83% 98_1588745696.pdf

70 David Kosar, Perils of Judicial Self-Government in transitional societies, Cambridge University Press, 2017 pp 389-403. Author reviews researchers - *Daniela Piana, Judicial Accountabilities in New Europe, From Rule of Law to Quality of Justice, Alena Ledeneva "From Russia with Blat: Can Informal Networks Help Modernize Russia, Peter H Solomon" Authoritarian Legality and Informal Practices: Judges, Lawyers and the State in Russia and China*

reduces the risk of one-handed power-taking, although it may not be sufficiently considered in post-communist countries. Chairmen (administrative officials) were perceived as "bosses" in the courts governed by the Ministry of Justice. The culture of bureaucratic accountability is difficult to eradicate. The presidents of the courts are left with formal or informal ways of influence over the judges to to make them elect trustees to the board so that their puppets are in control. In 2012, the President of the Supreme Court of Slovakia sent a letter to the judges a few days before the elections, listing the judges they should support. They also have informal leverage to influence judges. Information about the situation in the court, about the needs of a particular judge. In Russia, court presidents can offer judges vacations, help with housing, and get children into good schools. In Russia, the presiding judge is an authoritative figure outside the judiciary, including in informal dealings with political authorities, whose favor and support are important to the court. According to the author, the "judicial oligarchic" mentality is difficult to eliminate. However, it is possible to weaken or balance the role of the chairman of the court through several mechanisms. Remove them from the full distribution of cases, judge career development issues, redistribute the mechanisms in their hands to other mixed bodies, reduce the terms of the presidency and appoint them to this position on a rotating basis.

7. THE THREATS TO THE INDIVIDUAL INDEPENDENCE OF THE JUDICIARY AND THEIR IMPACT ON THE CONDUCT OF THE JUDICIARY, THE PRECONDITIONS FOR THE EMERGENCE OF CORPORATISM[71]

For hybrid political regime countries the social arrangement of the judiciary is a complex process. The system seeks out off-line resistance to protect itself from external threats, which is a manifestation of autonomy. Judges' defenses are usually manifested in exposing violators (those with external influence) and in seeking allies to defend themselves. In the Georgian reality, the defensive behavior of judges is used only by uniting against the demands of the society, and only the political ruling power is perceived as the main ally - which makes the autonomy of the system completely dependent on the foreign political will.

The unity of the judges serves to maintain power by the dominant group. The impression remains that judges are defending not specific institutions and structural guarantees of independence, but influential judges, their access to the levers of governance, their (and their own) narrow interests [72]**.**

In order to better understand the autonomy of judges, it is not enough to present them as an entity that administers justice. It is important to perceive judges as social and political actors and to thoroughly analyze how they behave outside the courtroom. This behavior is manifested in the search for allies, which is no less important for determining the autonomy of the court than their activities in the courtroom.

Five methods of searching for an external ally, dictated by self defense instinct, were identified. Judges negotiate with friends and also seek common interests with opponents, appeal to the public for support, organize themselves and organize a revolt, provide information to the media, apply for asylum in another country.

The autonomy of a judge is his freedom from undesirable influence and from personal or professional

71 This issue is addressed in the article: Judges and Their Allies, rethinking judicial autonomy through the prism of off-bench resistance, according to Alexi Trochev, Rachel Ellet, Journal of law and courts 2014

72 Supra note 69 p.31.
"I am the Secretary of the High Council of Justice, elected by the Conference of Judges. When the judiciary sees that their chosen person is being attacked and pressured, they perceive it as pressure, and if that pressure is exerted, pressure will be exerted on each of them. Therefore, the judiciary perceived this as a threat. " Under the term "pressure", the Secretary of the Council of Justice considered the reactions of the public, media NGOs, and opposition parties following his appointment as a judge for life in December 2015. In 2016, at a conference of judges, judges drafted an appeal against the non-governmental sector, the chairman of the Bar Association, the Speaker of Parliament, the President, and called for an end to the attempt to confront the court with the public. The public outcry was related to the judge's hearing in the so-called "Girgvliani case" in 2006, who was found dead after being abducted and retaliated against by police. Public outcry was sparked by the judiciary in the case, as it emerged that the crime investigation and the court had collaborated in the interests of the authorities to ensure that not all perpetrators of the crime were identified and that the convicts were treated fairly. The European Court of Human Rights has not found a violation of Article 6 of the Convention in this case, although the text of the judgment states that the Court is concerned about how all three branches of government tried to organize the administration of justice in the case. The decision criticized the crime investigation process, which resulted in a misqualification of the crime, and the court also discussed the issue of insufficient punishment. The domestic courts did not take into account such manifestly aggravating circumstances as the deliberately degrading and particularly cruel treatment of the victim by state officials (para. 272). After the early dismissal of the Council of Justice in 2013, Murusidze (the judge hearing this case) was elected Secretary of the Council by an absolute majority of judges.).

harm that may be caused due to the administration of justice. The judges of the hybrid regime are too weak, cautious, and overly benevolent to play the role of balancer of the political process. Violation of autonomy by the experience of hybrid regimes is possible in a variety of ways, so as not to directly interfere with justice.[73] Judges either get used to the situation and make the regime's preferred decision, or defend autonomy, and set out in search of external allies. Which way judges choose depends on their inner mood, values, security. Judges in hybrid countries are also prone to seeking corporate ties for defense. In such countries, autonomous judges have often been the target of attacks and insults by the executive branch. "Those who want to preach about judicial independence may go to Mars and preach there". These words belong to prime Minister of Serbia.[74]

Off-bench resistance from judges is an active offensive or passive defensive action by which they try to avoid unwanted attacks. This action is associated with certain risks because 1. Support for the judiciary is weaker and more unsustainable than that of political actors. 2. Judges' means of communication are weak and their spoken language less understandable than that of politicians. 3. In an effort to appease the crisis Judges try to stir it up even more.

In hybrid regimes, judges have the following choice for resistance:

- Secret negotiations with a source of threat
- Mobilization of open or secret allies
- Public relations campaigns
- Collective protest

Such actions are mainly expected from senior and experienced judges, as they can be the target of influence, have more experience and have more to lose than novice judges.

Covert negotiations with the source of the threat

High-ranking judges act diplomatically conducting negotiations with politicians and other external actors. In turn, these negotiations may themselves take the form of interference when they respond by asking to know the outcome of the decision in advance, or to change it. The role of the President of the High Court is special in such cases, he either stands on the side of the judges or the entity exerting informal influence. Such cases were reported in 2005-08 in South Africa, South America, and the former Soviet Union.

Mobilization of allies

The method of defense is the covert mobilization of domestic and international allies. Using the resources of relatives, colleagues, classmates to support judges in all forms, in the media, soc. networks, even physical defense. In order to avoid electoral disputes for Ukrainian judges, they were allied with doctors who issued a hospital sheet so that the judges could be in the hospital during the election campaign and avoid the ongoing processes.

External allies are international donor organizations, embassies, from which the political forces hope to obtain help. They, in turn, can influence entities that violate autonomy by reducing funding or by reconsidering ways of cooperation. There have been instances of survival through external allies when judges have left the country and sought asylum.

Judges also openly seek allies to protect autonomy. They can be free trade unions, for example lawyers.

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73 The author of the article recalls various cases, in Pakistan in 1977 judges were sworn in before the executive, in Kyrgyzstan and Uganda in 2005-06 there were attacks on court buildings, ignorance of undesirable decisions by the executive (Belarus 1996), abolition of courts in Ukraine (Ukraine in 2008) The cat of Chief Justice was killed was killed in 1993 in Russia.

74 Judges and Their Allies, Beloit Colleg, Journal of Law and Court, Spring 2014. (Serbia's Prime Minister Zoran Đindic 2001-2003)

The non-governmental sector, which is in the interest of judicial autonomy and protection from external influences. Maybe open cooperation and support from the government itself. However, in order to protect oneself from external threats, the Alliance may itself become a threat. [75]

Public Relations and dialogue

If secret negotiations and mobilization of the allies is not effective, the judges go to the public, make public statements, cooperate with the media. This form of defense involves a preventive and warning strategy. Judges may pre-disclose an anti-government ruling. This may, on the one hand, have a warning effect, observe the response of the authorities, and on the other hand show the allies that they are free from influence and gather support before it is attacked by the ruling power. Public relations of judges is not always successful, as noted the language of judges is not understood by the public. However, judges may become victims of political persecution, instead of being protected by public statements. The media is also more interested in seeking scandals in judges' statements than in their actual protection. However, communication with the media is easier for the government than for the judge. The government in Romania carried out a discrediting campaign against judges by which it tried to achieve desired ruling from the court.

Despite these risks, judges do not refuse to use public media to defend themselves, as the more active they are and the more they use public social networks and media outlets, the more likely they are to gain public support and more leverage against the pressure upon the judge.

International connections in various formats are also a good tool for maintaining the autonomy of judges. Conferences, networking, on the one hand, form a platform for discussion on legal issues, on the other hand, they are used to discuss and protect each other's resources on issues related to the protection of judges from external threats. Common rules, standards are set by these networks and associations, reflected in relevant reports, calls and recommendations are made. Effective result may not be even brought by this communication, as far as the government has the leverage to reject sharp recommendations based on sovereignty principle, or to apply concealed changes in the way, try to reveal allegedly corrupt judges or complicate the judicial status: reduce the powers of the judiciary[76], the judicial budget[77],the courts or the number of judges, drag judicial appointments, which will increase the workload of judges and delay the hearing of cases, increase disciplinary action, lower the standard of human rights protection.

Collective protest

If publicity does not bring results, and does not calm their protest, the judges move to a form of collective protest. Protecting the autonomy of judges costs less if the high ranking judges take over his reins. They unite judges, talk about interference, organize protests, appeal to international organizations, and other international platforms. Examples of this are Egypt, Pakistan, Poland, Romania, and in Serbia, judges' associations perform this function, go out to the public, protest in various ways, including organizing street rallies.

In 2007, a protest by judges in Uganda was followed by a court ruling that released supporters of the opposition presidential candidate on bail. The ruling sparked an attack by the President on the court. To neutralize the judges' dissatisfaction, the Deputy Chairman of the Supreme Court convened an extraordinary

75 The case of Ukraine, when Yushchenko sent his bodyguards to defend the Supreme Court judges to protect judges who heard election rigging, however, once after coming to power he himself interfered in the activities of the court. Judges and Their Allies, Beloit Colleg, Journal of Law and Court, Spring 2014 p13

76 Hungary's 2011 constitutional reform has been criticized by the Venice Commission for putting budget issues above human rights priorities, reducing the jurisdiction of the Constitutional Court to protect human rights in the event of a tax law violation. Venice Commission Report 621/2011 17-18 June 2011. Available at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e. Last viewed 04.04.2021

77 Ukraine2005-06, Russia 1993, Serbia 2006-07

meeting. At the meeting, the judges announced that they would stop hearing the cases of all the political forces that were attacking the court, were ready to leave their positions in protest and announce a mass mourning action, and called on Khali to pray for justice. The deputy chairman's efforts were in vain and the next day the judges demanded an apology from the authorities and a promise that such a thing would never happen again, otherwise they would stop hearing their cases. Later, the resigned chairman wrote, Musevin[78] did not have a strategy to individually suppress the vote of each bold judge, therefore judges used the opportunity to oppose anything that contained a dictatorial sign or was contrary to human rights.

Collective resistance is much more effective than individual because it

1. expresses the judges' desire to uphold the system;
2. It is very noticeable, which is why the government has to react to it;
3. Such solidarity of judges creates their heroic image and provokes a supportive attitude from the public, especially if the government is not popular enough;
4. Causes public debate on issues such as democratic values, rule of law, separation of powers, accountability, etc.

Finally, the collective protest shows the future allies that there are not only so called Individual judges, who are often active, defend their positions, but judges act collectively to protect their autonomy. However, if individual judges do not resort to a form of collective expression and do not speak to the media insofar as they find it incompatible with their activities, however, a common protest is seen as an important form of autonomy protection, rather than other methods of seeking potential allies.

Proper management of judges' resistance to external threats is crucial for off-bench resistance. The position of the Presidents of the Supreme Court is important at such times. They are more likely to try to play the role of a whisperer of the case outcomes between the government and the judges than to actually support the judges in defending their autonomy and try to show that the judges do not want development and change. In contrast, experienced judges (senior judges), active judges, members of the Council of Justice are more likely to offer real resistance. Clearly, the ruling power is trying to marginalize these forces and give them a political label. Such attitudes are fostered by the activities of judges' associations as a platform for collective protest.

Understanding the politics of justice is possible in five ways:

First, theories according to which judges are forced to conform to the political preferences of other branches should be replaced by an off-bench search for allies.

Second, this interference-conflict relationship shows a level of real autonomy and attracts new allies who are not in frequent contact with the judiciary and politics. Isolation and confinement in hybrid regimes does not serve to protect the autonomy of the judiciary, it only indicates the judges' distance from the people. Adherence to the norms supporting lock-in and isolation within the system of judges does not protect the judge from outside interference.

Third, the analysis of the alliance with judges should include a discussion with broad professional involvement, including with the participation of the civil sector and lawyers. Lawyers in hybrid regimes are also under threat, and their activities partly reflect the signs of this influence. Support for the autonomy of the judiciary in countries with hybrid regimes may lead to blows against the Bar Association by the authorities. On the other hand, however, credibility with the professional community can be diminished by ties to political elites. Their cooperation will bring new empetus in avoiding future threats and interference.

Fourth, external cooperation also provokes a response from the interfering party. They are also beginning to think about how to maintain the loyalty of judges and what they can do to disrupt this cooperation. They try to disguise their interference with the principles of democracy or the security of the country, the fight

78 President of Uganda from 1986 to the present. Was elected six times consecutively. .

against corruption or the interests of economic or social development of the country. Disobedient judges, for their part, also analyze the effectiveness of unions, ways of further action, to present themselves as law-abiding defenders of liberty. Researchers believe that this path also helps to strengthen the autonomy of the judiciary.

Finally, it should be noted that judges' serious perception of off-bench behavior plays an important role in reforming the rule of law. Insult of the court and judges by the general public, weakens the autonomy of the court, the public does not want to be an ally of such judges. Judges in hybrid regimes should attach as much importance to their off bench activity, as well as to improve the quality of reasoning for decisions. Consequently, they may be more developed in the field of social activity, team building, foreign languages, through teachings and trainings.

External factors, political context, formal protection of independence, preferences of politicians affect the degree of autonomy of judges in hybrid regimes. Judges, in turn, have to behave like politicians outside the courtroom. Two important forms - the use of collegial connections of judges' networks and the above listed ways to protect themselves from outside influence - determine the degree and extent of their autonomy. Judges behave in ways which is unusual for them, looking for allies, including in covert ways, protesting, publicizing concrete facts. Describing the long-term consequences of such actions is the subject of additional research, however in the short run they are left with only this way of survival to act against the influence, or choose the path of obedience.

CONCLUSION

introduction of the European model of self-government has enabled the judiciary to protect itself from external political influence, although there is a risk of corporate governance within the system, priority of personal interests of judges, corruption, which in turn reduces public confidence in the judiciary and hinders democratic processes. These risks manifested themselves in various forms in post-communist countries. The existing mental culture has led to the formation of informal ways of political influence, thus undermining the idea of considering self-government as a mechanism for reinforcing the principle of separation of powers. On the other hand, self-government is a good idea and the negative factors were caused not by the inadequacy of the model but by ignoring the relevancy, public mentality, individual context of the country and shifting the entire focus on self-government, insufficient consideration given to effectiveness and accountability. By expanding independence, without strengthening the protective mechanism of accountability, it created a threat of corporatism and the capture of justice from within.

Over the last decade, the focus of international organizations has shifted to addressing the risks posed by self-governing models, reflected in individual needs in setting standards, focusing on balancing mechanisms within the judiciary, and promoting effective public involvement in governance, and diverse representation.

Clearly, in considering these factors, the behavior of judges should also be taken into account in choosing the model of judicial self-government, namely how they use the autonomy of the judiciary, whether they chose the only alliance with the government and seek compromise or somehow resist to the government pressure, maintain autonomy and protect their acquisition of self-government. What are they seeking, how they use their powers: only for personal gain or to promote professional interests. The examples discussed show that, unlike in Georgia, even in hybrid countries, judges do not choose the only path to be connected with the current government, but seek allies to maintain autonomy, including links with donor organizations, the media, and the International Judicial Associations. It is important that understanding examples of judges' behavior makes it possible to identify judges seeking independence in the system in order support and strengthen them, in order to prevent negotiations with a source of danger or seeking of illegitimate connections to survive under conditions of influential governance.

Attachment 1