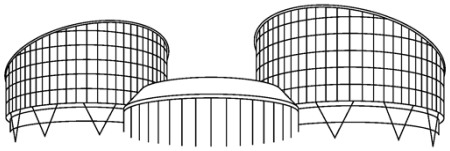

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BAKRADZE v. GEORGIA

(Application no. 20592/21)

JUDGMENT

Art 14 (+ Art 10 and Art 11) • Insufficient judicial review of alleged discrimination of a former judge by the High Council of Justice (HCJ) in judicial competitions on account of her role as founder and President of the NGO "The Unity of Judges of Georgia" and her critical views of the state of the country's judiciary • Applicant demonstrated a *prima facie* case of discrimination • Specific circumstances of applicant's interviews such that an independent observer could reasonably have drawn an inference that her NGO related activities played a significant role in decisions not to reappoint her • Interview questions went beyond testing her integrity and demonstrated bias and prejudice of the HCJ's individual members against her • Domestic courts' failure to address discrimination complaint with proper attention so as to ensure applicant's real and effective protection from any potential bias and discrimination • Failure to shift burden of proof onto the HCJ to dispel perception of bias and demonstrate difference in treatment justified by objective reason

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 November 2024

FINAL

17/03/2025

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Bakradze v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mattias Guyomar*, President*,
Lado Chanturia,
Stéphanie Mourou-Vikström*, judges*,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy,
Artūrs Kučs*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 20592/21) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Ms Maia Bakradze ("the applicant"), on 24 January 2020;

the decision to give notice to the Georgian Government ("the Government") of the complaints under Articles 10 and 11 of the Convention in conjunction with Article 14, and under Article 1 of Protocol No. 12, and to declare the remainder of the application inadmissible;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Public Defender of Georgia, who was granted leave to intervene by the President of the Section (Article 36 § 2 of the Convention and Rule 44 § 3);

Having deliberated in private on 12 March and 24 September 2024,

Delivers the following judgment, which was adopted on the last mentionned date:

INTRODUCTION

1. The applicant complained that she had been discriminated against in the course of two judicial competitions on account of her role in an organisation "The Unity of Judges of Georgia" and her critical stance towards the High Council of Justice and its policies on the judiciary. She relied on Articles 10 and 11 of the Convention in conjunction with Article 14, and on Article 1 of Protocol No. 12 to the Convention.

THE FACTS

2. The applicant was born in 1971 and lives in Tbilisi. She was represented by Ms T. Samkharadze, a lawyer practising in Tbilisi.

3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. BACKGROUND INFORMATION

5. The applicant is a former judge. In 2005 she was appointed as a judge of the Tsalka District Court for a term of ten years. Shortly after that she was seconded to the Tbilisi City Court, where she served until 2006. Subsequently, she served as a judge in the Tbilisi Court of Appeal. On 22 September 2015 she was dismissed from her judicial position because of the expiry of her ten-year term. During her tenure as a judge, the applicant was not the subject of any disciplinary proceedings.

6. The applicant was also a founding member and the President of a non-governmental organisation called "The Unity of Judges of Georgia ("Unity of Judges") (see paragraphs 27-34 below).

7. In October 2015 and May 2016, the applicant participated in two competitions for vacant judicial positions at the Tbilisi Court of Appeal. Both her applications were unsuccessful. The present case concerns the proceedings relating to both of her attempts to seek reappointment.

II. APPLICATION FOR A JUDICIAL VACANCY IN OCTOBER 2015

8. On 6 October 2015 a judicial competition for filling vacancies in the district (city) and appeal courts was announced by the High Council of Justice ("the HCJ", the authority responsible for the recruitment, promotion and dismissal of judges, see paragraph 38 below). The applicant applied for a vacant judicial position in the civil chamber of the Tbilisi Court of Appeal. Having reviewed the documents submitted by the applicant, the HCJ accepted her for participation in the competition along with ninety-eight other candidates. After conducting a background check of all the candidates, the HCJ started the interview process.

9. On 15 December 2015, members of the HCJ interviewed the applicant for about thirty minutes. The first few questions concerned her education, experience, and her motivation for applying for the job. Eight minutes into the interview she was asked several questions related to Unity of Judges, notably concerning the objectives and aims of the organisation, its internal organisation and how many members it had, and also its interactions and cooperation with the Association of Judges (another non-governmental organisation to which most of the judges in the country belonged) and any disagreements they had had. The applicant was then asked a question about several critical Facebook posts published by the executive director of Unity of Judges. The members of the HCJ wanted to know what she thought about those posts, whether they had been made on behalf of Unity of Judges as such and whether they had been agreed with the applicant in advance; and also, whether she agreed with the content of the posts, including those that the

members of the HCJ had found insulting. While replying to those questions, the applicant observed that she could not see any link between the questions asked and the purpose of the interview, which was the evaluation of her judicial qualifications and competencies. A judge member of the HCJ claimed that he had been personally offended by a statement made by the executive director of Unity of Judges in which she had criticised the decision of the HCJ to award bonuses to judges who held managerial positions in courts, allegedly implying that they were "slackers" (see for the relevant statement paragraph 31 below). He suggested that the applicant as a representative of Unity of Judges should have been held responsible for those insulting remarks. After some fifteen minutes of questions concerning Unity of Judges, the applicant was asked a final question about her law diploma and the interview was ended.

10. On 28 December 2015 the HCJ published a press release from which the applicant learnt that her application for the vacancy had been rejected. The applicant was subsequently notified of the rejection. No reasons were given (the judicial selection and appointment procedure is described in detail in paragraphs 38-43 below).

11. According to the case file, the applicant asked the HCJ to provide her with a copy of the video recording of her interview, as well as a copy of the recordings of the interviews of other candidates. In reply, the HCJ noted that interviews with judicial candidates were conducted in private and that accordingly the applicant could obtain access to recordings of them only with the consent of the relevant candidates. As regards her own interview, she was provided with a copy of that recording.

III. APPLICATION FOR A JUDICIAL VACANCY IN MAY 2016

12. On 5 May 2016 a new judicial competition was announced by the HCJ. The applicant applied again and was registered along with other 130 judicial candidates. Having undergone background check, the applicant was interviewed on 21 June 2016. During the interview, which lasted for some thirty-five minutes, the applicant was asked a variety of questions concerning her education, experience and other professional activities, including those relating to Unity of Judges. In particular, after a brief presentation of her education and relevant experience, she was asked a question about her law diploma and then a question about her strengths and weaknesses as a judge. Starting from the eighth minute of the interview, several questions were put to the applicant with a view to identifying her views on the issue of public criticism of judges and how far it should be allowed to go, and in particular her position concerning the then ongoing media campaign by various non-governmental organisations ("NGOs") which, in the opinion of some members of the HCJ, aimed to discredit the judiciary. The applicant was asked whether in her role as the President of Unity of Judges she thought the

NGOs' criticism of the judiciary was healthy and fell within the scope of permitted criticism. After some fifteen minutes she was asked two final questions concerning the salary she was receiving as the President of Unity of Judges and her recent work experience.

13. On 14 July 2016 the HCJ, while again refusing the applicant's application, selected forty-four candidates for appointment to various judicial positions.

IV. ANTI-DISCRIMINATION PROCEEDINGS

A. Proceedings before the Tbilisi City Court

14. On 17 October 2016 the applicant lodged a civil complaint with the Tbilisi City Court, challenging the results of both judicial competitions and alleging that the HCJ had discriminated against her on account of her role in Unity of Judges, an organisation critical of the HCJ and its policies, and because of her own expressed views which were critical of the state of the country's judiciary. She alleged that the interviews the HCJ had conducted with her had not served the purpose of evaluating her competencies and professional skills as the questions asked by individual members of the HCJ had been primarily aimed at eliciting any critical views she might have of what was happening within the judiciary. The applicant submitted that the real reasons why the HCJ did not want to reappoint her were her role in Unity of Judges and her critical views. In their submissions in reply, the HCJ dismissed the applicant's allegations of discrimination as unsubstantiated. They noted that the applicant had not challenged any of the questions asked during the interviews. Moreover, with reference to the relevant statistical data, according to which in the years 2013-2016 fourteen out of the eighteen founding members of Unity of Judges had participated in various judicial competitions, six of them successfully, they asserted that the allegations of discrimination were totally unfounded.

15. On 8 November 2016 the applicant asked the first-instance judge to obtain a copy of the HCJ's recordings of the interviews conducted with other candidates during the two judicial competitions concerned, as well as copies of their application files. She argued that in the absence of written reasoned decisions concerning the appointment of or refusal to appoint judicial candidates, this information would allow the court to compare and analyse the manner in which the various interviews had been conducted. On 20 June 2017 the applicant's case was transferred from the civil chamber of the Tbilisi City Court to its administrative chamber. On 8 August 2017 the applicant repeated her request. Both her requests were dismissed by the Tbilisi City Court on 24 October 2017 and 25 January 2018.

16. On 13 November 2017 the Public Defender of Georgia submitted an *amicus curiae* brief. He started by giving an overview of the domestic

legislation concerning the distribution of the burden of proof in cases involving allegations of discrimination and noted that the standard required for the facts and evidence to show a prima facie case of discrimination was lower than would be required for a judge to reach the conclusion at the final stage of the proceedings that there had been discrimination. For an allegation to arise it was sufficient to produce facts and evidence creating an assumption in an objective observer that discrimination might have occurred. The Public Defender also gave an overview of the procedure for organising judicial competitions and suggested that, in the absence of reasoned decisions on appointments and in view of the secret nature of the voting, there was a risk of individual members of the HCJ taking biased decisions motivated by their personal and subjective attitudes. In his view, the situation was further complicated because the decisions of the HCJ were not subject to judicial review. The Public Defender also submitted that the conditions and procedures for the appointment and promotion of judges were not prescribed in a sufficiently detailed manner by the legislation and therefore lacked transparency.

17. On 13 December 2017 the applicant asked the first-instance judge to admit in evidence a document prepared by one of the non-judicial members of the HCJ, V.M., entitled "The problems of access to justice, their causes, and ways of addressing them", in which he had addressed, among other things, the procedure for making judicial appointments. In that document he had alleged that the majority of the members of the HCJ had abused the system of judicial appointments in order "to undermine the organisational structure of judges with opposing views" and "to prevent the spread of new opinions within the judiciary." As far as Unity of Judges specifically was concerned, V.M. had written that so-called "cancelled ballots" had been used to prevent members of that organisation who had successfully passed the competency and integrity requirements from being appointed to vacant judicial positions.

18. On 5 February 2018 the Tbilisi City Court gave a thirteen-page decision dismissing the applicant's discrimination claim as unsubstantiated. With reference to Article 363^3 of the Code of Civil Procedure (see as cited in paragraph 44 below), the court noted the following:

> "... when lodging an application with a court a person must produce facts and relevant [pieces] of evidence which show the basis for the allegation of discriminatory treatment, after which the burden of proof lies with the respondent party [to show] that no discrimination has taken place.
>
> The analysis of the above-mentioned provision makes it clear that an allegation of discriminatory treatment should be based on concrete [pieces] of evidence and facts, which should be presented to the court by the [claimant] and which should adequately substantiate the existence of such treatment. Pursuant to the same provision, the respondent party is expected to argue that no discrimination has taken place but only after the claimant provides relevant evidence [of the treatment in question].

The court considers that in the present case no evidence has been produced substantiating such a fact. The allegation of discriminatory treatment of the applicant has not been proven by relevant [pieces] of evidence ... It is an established fact that the organisation 'Unity of Judges of Georgia' was founded in 2014 and that its members are former and serving judges, some of whom participated in the [judicial] competitions in 2015-2016 ... successfully.

Accordingly, the court accepts the respondent administrative body's position that the appointment of judges who participated in the [judicial] competitions in 2015-2016 was not dependent on whether or not the specific candidate was a member of the organisation ...

The court cannot accept the claimant's argument that she was subjected to discriminatory treatment on account of her expressing different opinions and/or being a member of a certain organisation, and that [this conclusion could be derived] from the substance of the questions put to her during the interview with the High Council of Justice on 25 December 2015 ...

... questions put to a candidate are not written down in any of the [relevant] regulations and [each] member of the High Council of Justice decided individually which question to ask each candidate ...

At the same time, during the interview with the High Council of Justice on 25 December 2015 [the applicant] agreed to answer all the questions, noting that they were acceptable to her.

In view of the above, the court considers that the evidence available in the case does not lead to a finding that there was a causal link between the views expressed by the candidate and the refusal to appoint her to a judicial position, or, in general, that the applicant was discriminated against."

B. Proceedings before the Tbilisi Court of Appeal

19. The applicant appealed against the decision of 5 February 2018. She also challenged the refusals of the Tbilisi City Court to obtain additional evidence. The applicant alleged that the first-instance court had incorrectly distributed the burden of proof between the parties, placing it in its entirety on her. She further alleged that, even in such circumstances, she had not been allowed to present her case fully as the first-instance court had refused to obtain important and relevant pieces of evidence. She maintained in that connection that the questions she had been asked during the interviews primarily concerned the activities of the organisation, her views about criticism by Georgian civil society of the functioning of the HCJ, and her views regarding the HCJ's policies and decisions. No questions had been put to her concerning her competencies and professional skills. She asserted that the first-instance court had failed to examine whether the questions put to her and the other judicial candidates had been of a similar standard. She also referred to the statistical data about the seven judicial competitions which had taken place in between 2013 and 2016 and claimed that they showed a low number of members of the organisation being appointed to various judicial posts.

20. In support of her discrimination allegations the applicant submitted a further copy of the document prepared by the then non-judicial member of the HCJ, V.M.

21. By a decision of 29 October 2018 (twenty-four pages long), the Tbilisi Court of Appeal dismissed the applicant's applications for additional evidence to be obtained and upheld in full the decision of the first-instance court. The appeal court reasoned that the number, substance and wording of the questions put to the different candidates had varied; the examination of the HCJ's interviews conducted with other judicial candidates accordingly could not be of any value. In particular, it observed:

> "... The High Council of Justice takes a decision concerning each judicial candidate on the basis of [his or her] experience and qualifications, and the competency and integrity criteria. The substance and formulation of the questions and the number asked during the interviews therefore differs. In each case the decision taken by the Council has its own individual characteristics. Recordings of interviews with other candidates therefore could not be used as evidence to show that [the applicant] was treated differently, particularly in circumstances where the evidence and the parties' submissions ... do not confirm the fact of discriminatory treatment of the applicant by the Council."

22. The appeal court further considered that the applicant had failed to show any bias on the part of particular members of the HCJ against her. It went on to examine the notion of discrimination and the procedure, including the criteria, for the evaluation of judicial candidates, and applying the subjective and objective tests for bias it concluded as follows:

> "... discrimination, that is, treating people differently, applying restrictions or giving preferences in order to deny equal rights and protection, which is in breach of the principle of equality and violates human dignity ...
>
> The appeal court observes that in order to establish the fact of discriminatory treatment *vis-à-vis* [the applicant] on account of her critical views of the judicial system ... it will examine whether the High Council of Georgia has interfered with the enjoyment of the right to equality as provided for by the Constitution and international legal instruments during the judicial selection competition.
>
> The administrative chamber observes that under Article 86 § 1 of the Constitution of Georgia, the High Council of Justice was established to appoint judges to judicial office, to remove them from judicial office, and to perform other functions. More than half the members of the High Council of Justice are appointed by the judges' representative body. The President of the High Council of Justice is the President of the Supreme Court. The rules concerning the formation of the High Council of Justice and its power[s] are provided for by an organic law.
>
> Under section 47(2)(2) of the Act on the Common Courts of Georgia, the High Council of Justice consists of fifteen members. Eight members of the Council are selected by the judges' representative body in accordance with the procedure provided by the [above-mentioned] law, five members are appointed by the Parliament of Georgia, and one member is appointed by the President of Georgia. The President of the High Council of Justice is the acting President of the Supreme Court, who is [at the same time] a member of the High Council of Justice.

Pursuant to paragraph 8 § a of the Rules for the Selection of Judicial Candidates, adopted by the High Council of Justice on 9 October 2009, as in force at the material time, the evaluation of a judicial candidate is conducted on the basis of two main criteria – integrity and competency. The chamber notes that ... the elements of the integrity criterion for a judicial candidate with judicial experience are the following: (a) personal integrity and professional conscience; (b) independence, impartiality, and sense of justice; (c) personal and professional behaviour; (d) personal and professional reputation; and (e) financial obligations. According to paragraph 3 of the same provision, the characteristics of the competency criterion for a judicial candidate with judicial experience are: (a) the knowledge of legal norms; (b) skills and ability in legal reasoning; (c) writing skills; (d) oral communication skills; (e) professional skills, including conduct in the courtroom; (f) academic achievements and professional training; and (g) professional activities.

Under paragraph 10 of the same Rules, the members of the High Council of Justice must proceed in accordance with the main evaluation criteria provided for by these Rules and assess the candidates against the principles of objectivity, fairness, and impartiality and apply uniform evaluation standards with respect to all of them. The evaluation of a judicial candidate is also ... conducted on the basis of the documents submitted to the High Council of Justice, the information obtained by the High Council of Justice ... and the results of an interview with the candidate.

In the present case the appeal chamber does not share the appellant's view that certain members of the High Council of Justice of Georgia were biased against [the applicant] because she was the President of Unity of Judges of Georgia or because of her critical attitudes towards the judicial system ...

The video recordings of the interviews presented [to the court] show that the members of the [HCJ] asked [the applicant] many questions. During the interview the applicant had an opportunity to present her position and to enter into a discussion, a fact which leads the chamber to the conclusion that the purpose of the interviews was to evaluate the candidate's levels of competence and integrity and not to put her into an unequal position. In view of the questions put and the interview [process] as such, there was no breach of the [applicant's] rights and interests. The chamber notes that the [HCJ] enjoys a wide discretion in asking any type of questions of whatever difficulty from the legal sphere or outside it, for the purpose of assessing the integrity and competence of a candidate; having regard to the main evaluation criteria, the members of the [HCJ] themselves choose how questions are formulated, their content and their number. The questions put to [the applicant] were aimed at evaluating her legal analysis and arguments concerning legal issues such as the independence of the courts, freedom of expression and other legal issues. The appeal court observes that the criterion of integrity relates to the subjective attitude of a person to a concrete fact and an assessment of it has to be made separately in each case, in the light of the [relevant] factual circumstances. At the same time, it should be noted that the candidate did not challenge the substance of the questions or the way in which they were asked. The chamber accordingly cannot share the appellant's view that the purpose of the interview was not the evaluation of her candidacy on the basis of the criteria provided for by the legislation then in force."

23. As far as the issue of the burden of proof was concerned, the appeal court fully accepted the position of the first-instance court. It noted that Article 363^3 of the Code of Civil Procedure required the applicant party to base his or her allegations of discrimination on concrete facts and relevant evidence, and only in such a case, in the face of a substantiated allegation,

was the respondent party expected to bear the burden of proof of showing that the alleged treatment had not amounted to discrimination. The appeal court observed that between 2013 and 2016 seventeen members of Unity of Judges had been appointed to various judicial positions in district, city and appeal courts. That fact, in its view, was illustrative of the absence of differential treatment and discrimination *vis-à-vis* the members of the organisation. In connection with the document prepared by V.M., the non-judicial member of the HCJ, the appeal court concluded that it represented his subjective views and could not give an objective picture of a collegial body whose decisions were based on professional evaluation, inner convictions and the personal views of each of its members. Lastly, as regards the procedure for judicial appointment as such, the appeal court noted that decisions concerning judicial appointments were taken by the HCJ by a secret ballot and that voting needed to be confidential in order to ensure the independence of the individual members of the HCJ and protect them from outside influence. It continued as follows:

> "... the element of secrecy in the decision-making process is intended to ensure the free expression of views by decision-makers and to shield them from outside influence. That secrecy is intended to prevent the abuse or manipulation of the discretionary powers of the members of the High Council of Justice, as the final decision is based on the principle of a majority view determined by the inner conviction of each member of a collegial body. Accordingly, the decision of the Council represents an aggregate of the individual assessments of each of its members, and their personal perceptions are not susceptible to legislative regulation, and they are not assessed through the prism of law, since ultimately the decision process ... has been delegated to the Council. Checking whether the Council members' decisions are reasonable is therefore beyond the jurisdiction of the court ..."

C. Proceedings before the Supreme Court

24. The applicant lodged an appeal on points of law against the decision of the appeal court, alleging that the court had erroneously placed the burden of proof entirely on her, at the same time rejecting her applications for additional evidence to be obtained. In the absence of access to evidence concerning the interviews and selection of other judicial candidates, the applicant alleged that she had been deprived of the opportunity to prove her allegations of discrimination. As to the statistical data, she explained that only those members of the organisation who had not been vocal in criticising the HCJ had been successful in the judicial competitions in question and that moreover, all of them had left the organisation as soon as they had been appointed.

25. The applicant's appeal on points of law was rejected as inadmissible by the Supreme Court on 7 May 2019 (a twelve-page decision served on the applicant on 26 July 2019). The Supreme Court started by observing that between 2013 and 2016 seventeen members of the organisation had been appointed to first- and second-instance courts. That fact, in and of itself,

refuted the applicant's argument about her having been discriminated against on account of her membership of that organisation. The court also rejected as unsubstantiated the applicant's argument about the questions asked in the interviews, finding that she had not indicated or demonstrated which specific questions she considered to have been discriminatory and biased. The Supreme Court noted that the HCJ enjoyed wide discretion as regards the nature and wording of questions and that, having examined the records of the interviews with the applicant, it did not consider that any of the questions had breached her rights and interests. It observed, in particular, the following:

> "In the present case the questions put to [the applicant] were designed to enable an evaluation of the candidate's skills of legal analysis and argument concerning issues such as the independence of the judiciary and freedom of expression ... Asking candidates different questions does not amount to treating them differently [or] subjecting them to discrimination. It should also be noted that the candidate did not challenge the substance and form of the questions during the interviews and that she agreed to answer them."

26. As regards other pieces of evidence, the Supreme Court fully accepted the reasoning of the appeal court:

> "The court of cassation shares the appeal court's assessment of the document prepared by one of the members of the High Council of Justice of Georgia, V.M. ... and notes that the Council's decision is based on individual professional evaluation, inner conviction, and the personal assessment of each of [its] members. The views of V.M. and other members of the Council might not coincide as each of them has the opportunity to make an independent assessment."

V. RELEVANT FACTS ABOUT UNITY OF JUDGES

27. On 4 June 2013 the applicant and seventeen other serving judges founded a non-government organisation, Unity of Judges, with the stated aims of supporting the independence and transparency of the judiciary, improving adjudication procedures, and empowering judges by supporting their continued professional development. The applicant was soon elected as the President of the organisation. In 2014 the organisation consisted of forty-three serving and former judges. In 2016 their number increased slightly, to forty-eight, of whom thirty-three were serving judges and the remainder were former judges.

28. The main activity of Unity of Judges was organising training sessions and seminars for judges and conferences for the wider public in order to foster debate about problems within the judiciary and about the need for reform. Soon the organisation became vocal in criticising the policies of the HCJ, particularly where recruitment and the career path of judges were concerned. Unity of Judges started a monitoring and reporting project on the work of the HCJ and issued regular public statements with findings and recommendations. Among some of its early critical public statements was that of 2 December 2013, when Unity of Judges alleged that the HCJ had

unlawfully bypassed the relevant domestic regulations to second several judges from first instance to appeal courts and *vice versa*. The organisation alleged that the HCJ was misusing the secondment system in courts to exert pressure on individual judges. In another statement, on 14 February 2014, Unity of Judges criticised the HCJ's policies with respect to keeping judges in reserve and recommended filling the existing multiple vacancies from the existing reserve list. They wrote a separate letter to the HCJ in which they alleged that by removing acting judges from their positions and putting them on the reserve list for indefinite periods, the HCJ was acting in breach of the principle of the independence of the judiciary, which included the principle of tenure for judges.

29. In the same period, the applicant gave an extensive interview in which she spoke about her experience of working as a judge under the previous Government, and the problems judges had been facing after the change of power in the country. She shared her views on issues such as the HCJ and the rules on its composition and function; the judicial appointment procedure and its deficiencies; the system of secondment of judges; the appointment of judges for life and the rule on the three-year probationary period for newly appointed judges; and on the HCJ's policies concerning the appointment of judges who were placed on the reserve list.

30. In April 2014 the organisation published a report on problems related to the appointment, promotion and secondment of judges and to the holding of judges in reserve, followed by another report in October 2014 summarising the results of their monitoring of the HCJ's work.

31. On 5 May 2015 the executive director of Unity of Judges, N.J., wrote a letter to the HCJ challenging as unfair changes to the rules on awarding bonuses to compensate for the heavy workload in courts. She claimed that holders of managerial positions in courts, such as the presidents and their deputies, and also the chairs of panels and chambers, had, on account of their managerial duties, a lesser case-processing workload and were already being paid higher salaries: they therefore did not merit workload-related bonuses. The same held true, according to N.J., for those judges who were also members of the HCJ, as they were processing fewer cases and at the same time were receiving bonus payments because of their work in the HCJ.

32. In the subsequent period Unity of Judges made several critical public statements alleging, with reference to the results of several judicial competitions, that the HCJ was refusing to reappoint judges who had been vocal about problems within the judiciary and about the need for reform. The executive director of Unity of Judges, N.J., noted in one of her public interviews in December 2015 that the main problem with the judicial competitions was the lack of any reasons in the HCJ decisions concerning the appointment of or refusal to appoint judicial candidates. She described the interviewing process with the judicial candidates as "messy" and lacking structure.

33. In February-June 2017 thirty members of Unity of Judges, including all serving judges, left the organisation. The circumstances of their leaving are contested. The Government alleged, with reference to a public statement made by certain of them, that they had left because Unity of Judges had made yet another public statement criticising the HCJ, the content of which had not been agreed with them in advance. The applicant, for her part, claimed that the judicial members of Unity of Judges had been compelled to give up their membership because of the hostile attitude of the HCJ towards Unity of Judges and its critical views.

34. By July 2017 Unity of Judges had only non-judicial members. By the end of October 2017, the organisation had ceased to exist.

VI. RELEVANT STATISTICAL DATA

35. In the years 2013-2016 the HCJ conducted six judicial competitions in connection with which the parties produced different statistical data.

36. According to the information provided by the applicant, five out of seven members of the executive council of Unity of Judges, including herself, took part in those competitions and with the exception of one all were refused reappointment. Furthermore, in the relevant period of time the HCJ appointed 214 judges to various judicial positions, about 82% of whom were either serving or former judges. 41% of judges who were members of Unity of Judges were refused reappointment, while the corresponding figure for judges who did not belong to that organisation was only 18%.

37. The Government submitted that in the years 2013-2016 fourteen out of eighteen founding members of Unity of Judges had participated in various judicial competitions, six of them successfully. In total, in the years 2013-2016, seventeen members of Unity of Judges were appointed to various judicial positions.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Appointment of judges

38. Under section 47 of the Act of 13 June 1997 on courts of ordinary jurisdiction ("the Courts Act") the HCJ is the authority responsible for the appointment, promotion, and dismissal of judges. It is composed of fifteen members: eight judicial members elected by the conference of judges (judges' representative body); six non-judicial members, five of whom are elected by Parliament and one appointed by the President of Georgia, and the President of the Supreme Court serves as an *ex officio* member of the HCJ. Each of the

judicial and non-judicial members of the HCJ is elected or appointed for a term of four years.

39. Under section 34 of the Courts Act, as in force at the material time, every citizen of Georgia over 30 years of age was eligible to be appointed (or elected) as a judge if he or she had at least a master's degree in law or an equivalent academic qualification, had a minimum of five years' relevant professional experience, was proficient in the official language of the State, had passed the examination for admission to the judiciary, and had successfully completed the judicial training programme organised by the HCJ. Serving judges with at least eighteen months' judicial experience were exempted from completing the judicial training.

40. Under Section 34 of the Courts Act, judges of the appeal and district (city) courts were appointed by the HCJ for the term of three years, at the expiration of which the HCJ had to decide whether to reappoint them with tenure for life. The three-year probationary period was subsequently removed for the judicial candidates with at least three years' judicial experience whose term of office had expired less than ten years before the relevant judicial competition.

41. The judicial selection and appointment procedure was regulated by a decision of the HCJ dated 9 October 2009, on the Rules for the Selection of Judicial Candidates ("the HCJ Decision of 9 October 2009"). Judicial competitions for filling vacant positions in the first- and second-instance courts were organised by the HCJ. During the first phase of the competition, the HCJ reviewed the applications together with the documents submitted in support and if the criteria provided for by the Courts Act were met, it formally registered the judicial candidates and then published brief information about them on its official website. During the second phase of the competition, the HCJ obtained additional information about the judicial candidates, then interviewed all of them individually, and finally voted on the candidates. The interviews conducted by the HCJ, which all had to last the same amount of time, were closed to the public. Members of the HCJ were allowed to ask a variety of questions concerning the skills, qualifications and theoretical knowledge of the judicial candidates, and also any questions concerning specific information they had obtained about them. The judicial candidates were evaluated on the criteria of competence and integrity. The voting was secret and only those candidates who received support from two-thirds of the HCJ were appointed to judicial positions. A decision of the HCJ refusing to appoint or reappoint a judicial candidate to a judicial position did not contain any reasons and was not, at the material time, amenable to appeal (see in this connection *Gloveli v. Georgia*, no. 18952/18, 7 April 2022).

42. Paragraph 8 of the HCJ Decision of 9 October 2009 defined the integrity and competency criteria on the basis of which judicial candidates were to be evaluated. The Decision set out a list of the following elements of the integrity criterion for judicial candidates with judicial experience:

(a) personal integrity and professional conscience;
(b) independence, impartiality, and sense of justice;
(c) personal and professional behaviour;
(d) personal and professional reputation; and
(e) financial obligations.

The elements of the competency criterion for judicial candidates with judicial experience were:

(a) the knowledge of legal norms;
(b) skills and ability in legal reasoning;
(c) writing skills;
(d) oral communication skills;
(e) professional skills, including conduct in the courtroom;
(f) academic achievements and professional training; and
(g) professional activities.

43. Paragraph 10 of the HCJ decision stated that members of the HCJ were to be guided in the selection process by the principles of objectivity, fairness and impartiality and had to use uniform evaluation standards with respect to all candidates. The evaluation had to be based on the documents submitted by the candidates, on other information obtained by the HCJ and on the results of the interviews.

B. Anti-discrimination proceedings

44. On 2 May 2014 the Act on the elimination of all forms of discrimination ("the Discrimination Act") was adopted by the Parliament of Georgia. Section 10 of the Discrimination Act entitles any individual who is subjected to any form of discrimination to bring a civil claim seeking (a) the cessation of discriminatory actions and/or measures to rectify the discrimination and its consequences; and (b) compensation for pecuniary and non-pecuniary damage. Anti-discrimination proceedings are conducted in accordance with the procedure provided for by the Code of Civil Procedure. The question of the distribution of the burden of proof in discrimination cases is addressed under Article 363^3 of the Code of Civil Procedure, which reads as follows:

> "When lodging a claim with a court, a person shall present facts and relevant [pieces] of evidence which would constitute the basis for supposing/presuming that a discriminatory act has occurred; after this, the defendant shall bear the burden of proving that discrimination has not taken place."

II. RELEVANT INTERNATIONAL MATERIALS

A. United Nations

1. The Basic Principles on the Independence of the Judiciary

45. The United Nations (UN) Basic Principles on the Independence of the Judiciary, adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, provide, in so far as relevant, as follows:

Freedom of expression and association

"8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organisations to represent their interests, to promote their professional training and to protect their judicial independence."

Qualifications, selection and training

"10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory."

2. The UN Special Rapporteur on the independence of judges and lawyers

46. On 24 June 2019 the UN Special Rapporteur on the independence of judges and lawyers, Mr Diego García-Sayán, submitted his Report on freedom of expression, association and peaceful assembly of judges and prosecutors to the UN Human Rights Council. He made the following recommendations, in so far as relevant:

"101. In exercising their freedom of expression, judges and prosecutors should bear in mind their responsibilities and duties as civil servants, and exercise restraint in expressing their views and opinions in any circumstance when, in the eyes of a reasonable observer, their statement could objectively compromise their office or their independence or impartiality.

102. As a general principle, judges and prosecutors should not be involved in public controversies. However, in limited circumstances they may express their views and

opinions on issues that are politically sensitive, for example when they participate in public debates concerning legislation and policies that may affect the judiciary or the prosecution service. In situations where democracy and the rule of law are under threat, judges have a duty to speak out in defence of the constitutional order and the restoration of democracy."

B. Council of Europe

47. The relevant extract from the Recommendation CM Rec (2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, adopted on 17 November 2010, reads as follows:

"48. ... Procedures of [the authority taking decisions on the selection and career of judges] should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made."

48. The Explanatory Memorandum to this recommendation further provides as follows:

"50. It is essential that the independence of judges be guaranteed when they are selected and throughout their professional career, and that there should be no discrimination. All decisions concerning the careers of judges should be based on objective criteria, free from considerations outside their professional competence ..."

49. The relevant extract from the Opinion of the Venice Commission on the provisions on the prosecutorial council in the draft Georgian Act on the prosecutor's office and on the provisions relating to the High Council of Justice in the existing Georgian Courts Act, adopted by the Venice Commission at its 117th Plenary Session (Venice, 14-15 December 2018, CDL-AD(2018)029), reads as follows:

B. The High Judicial Council

"44. An overall assessment of the relevant provisions of the new Constitution and of the existing Organic Law of Georgia on General Courts, with amendments ... regulating the composition and activity of the HCJ permit to conclude that these are mostly in line with international standards and, if interpreted and implemented in good faith, can ensure the independence and efficiency of the judiciary.

45. However, in order to ensure public confidence in the HCJ, it is important that the provisions set out a clear and transparent procedure, including deadlines for the adoption of individual and normative acts, which will include the consultation of interested parties and will ensure the right of interested persons to be heard. Individual acts, especially acts concerning the career of judges, must be reasoned.

...

50. Under Article 50 of the Law, it seems that in all cases – including for cases on the career or disciplinary responsibility of judges – decisions are adopted by vote and the members have full discretion. In any case, all decisions of the HCJ should be reasoned.

...

52. Another issue is accountability of the HCJ. Article 64(3) of the new Constitution provides that the rules for accountability must be established by the organic law. Article 47(11) of the Law states that "The High Council of Justice of Georgia is accountable before the Conference of Judges of Georgia", which is not sufficient for this purpose. Accountability of the HCJ to the Conference of Judges appears problematic as reflecting excessive corporatism and self-governance of the judicial sector. The HCJ should be an independent body with a substantial participation of non-judicial members. If, as was indicated to the delegation of the Venice Commission, the accountability is a reporting obligation only, that should be more clearly set out in the Law."

50. At its 74th plenary meeting held from 28 November to 2 December 2016 in Strasbourg, the Council of Europe Group of State Against Corruption (GRECO) adopted its Fourth Evaluation Report on Georgia, concerning corruption prevention in respect of members of parliament, judges and prosecutors (Greco Eval IV Rep(2016)3). The report published on 17 January 2017 made the following remarks on the appointment of judges (footnotes omitted):

"92. The GET [GRECO evaluation team] notes that the rules on judges' recruitment have, in recent years, been subject to quite substantial reforms which introduced the principle of lifetime appointment and detailed regulations on the assessment of judges during the probationary period, as well as procedural rules and criteria to be applied when deciding on appointment for life. However, it very much regrets that the procedure and criteria for the selection of candidates and their appointment for the probationary period – i.e. the first stages of judges' recruitment – is much less regulated. The GET was concerned to hear that the absence of clear rules at this stage of the process, as well as the recent practice of the HCJ, have fuelled citizens' mistrust in the system. In particular, different representatives of civil society interviewed by the GET criticised the decision-making process within the HCJ for not being transparent, given that interviews with candidates were often held behind closed doors, voting within the HCJ was secret and reasons for its decisions were not publicly available. They also stated that in some cases, HCJ members who had a conflict of interest had participated in the process, and that the current regime did not guarantee objective decision-making. The authorities stress for their part that NGOs and journalists are free to attend HCJ hearings and to monitor the selection process of judges, and that the HCJ usually publishes lists of candidates, biographies and the interview schedule on its website.

93. In this connection, the GET was pleased to learn that the third stage of the reform of the judiciary foresees several amendments to the recruitment of judges. In particular, it is planned to introduce detailed criteria for the evaluation of judicial candidates by the HCJ, which are similar to those applied when deciding on lifetime appointment (focussing on integrity and competence); to regulate conflicts of interest of HCJ members, including obligatory self-recusal and the right of the candidate to challenge the objectivity of an HCJ member; and to give an unsuccessful candidate the right to appeal the HCJ's decision to the Chamber of Qualification of the Supreme Court. The GET is of the opinion that such amendments are clearly necessary in order to provide for objective and transparent procedures and to restore public confidence in the judiciary. It furthermore sees a need for introducing additional transparency measures, *inter alia*, requiring the HCJ to justify its decisions and to make the reasons available to the applicant. In this context, it draws attention to European standards according to which decisions concerning the selection and career of judges must be based only on

objective and preestablished criteria, notably on merit, following transparent procedures with reasons for decisions being made available to applicants on request, and unsuccessful candidates are to be given the possibility to challenge decisions taken (or at least the procedure) in the recruitment process. Regarding the selection criteria, the GET would have a preference for enshrining them in the law itself, in order to ensure that the objective criteria prevail over political considerations and are effectively taken into account by the HCJ in practice."

51. The European Committee of Social Rights of the Council of Europe, which is the supervisory body of the European Social Charter (ratified by Georgia on 22 August 2005), has held that domestic law should provide for the reversal of the burden of proof in favour of the plaintiff in discrimination cases (see Conclusions 2002, France, p. 24). It later reiterated that, in discrimination cases, the burden of proof must not rest entirely on the requesting party and must be the subject of an appropriate adjustment (see Digest of the case law of the European Committee of Social Rights, December 2018, p. 232).

52. Opinion No. 25 (2022) on Freedom of Expression of Judges adopted by the Consultative Council of European Judges ("CCEJ") on 2 December 2022, reads in its relevant part as follows (footnotes omitted):

"IV. General principles

...

26. The CCJE takes a broad view on the personal scope of the right to freedom of expression of judges as an individual right. Accordingly, a judge enjoys the right to freedom of expression like any other citizen. The right to free expression of judges extends to personal opinions expressed in connection with the exercise of their office and entitles judges to make statements out of court as well as in court, both in public and in private, and to engage in public debates and in social life in general.

27. However, the institutional and governmental nature of the judicial office gives an ambivalent character to the freedom of expression of an individual judge. Statements of judges may have an impact on the public image of the justice system, as the public may generally perceive them not only as subjective but also as objective assessments and ascribe them to the entire institution.

28. In their official function, judges have a prominent role in society as guarantors of the rule of law and justice. The very essence of being a judge is the ability to view the subjects of disputes in an objective and impartial manner. It is equally important for judges to be seen as having this ability. This is because they need the public's trust in their independence and impartiality in order to be successful in carrying out their duties and in preserving the authority of the judiciary to resolve legal disputes or to determine a person's guilt or innocence on a criminal charge. It follows that judges have to affirm these values through their conduct. It is therefore legitimate for the state to impose on judges a duty of restraint that pays due regard to their role in society.

29. Given the above-mentioned premises, the "duties and responsibilities" referred to in Article 10(2) of the ECHR assume a special significance for statements of judges. For legal restrictions on judges' freedom of expression, this Article provides that these must be prescribed by law and are necessary in a democratic legal order for serving a legitimate purpose ...

31. It follows that a balance must be struck between the fundamental right of an individual judge to freedom of expression and the legitimate interest of a democratic society to preserve public confidence in the judiciary. The Bangalore Principles formulate two fundamental considerations in this respect. The first is whether the judge's involvement could reasonably undermine confidence in his/her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attacks or be inconsistent with the dignity of judicial office. If either is the case, the judge should avoid such involvement. The question to be asked is therefore, whether in a particular social context and in the eyes of a reasonable and informed observer, the judge has engaged in an activity, which could objectively compromise his/her independence or impartiality. Important criteria to be considered are the wording of the statement and circumstances, context and overall background against which a statement was made, including the position of the relevant judge.

...

V. Limitations on the freedom of expression / controversial cases

...

2. Statements regarding public debates

45. The principles of democracy, separation of powers and pluralism call for the freedom of judges to participate in debates of public interest. However, the principle of separation of powers requires judges to refrain from acting as politicians themselves when speaking in public. Thus, a reasonable balance needs to be struck between the degree to which judges may be involved in public debates and the need for them to be and to be seen to be independent and impartial in the discharge of their duties. The content and context of a given statement assume special relevance in this regard.

46. Due to their unique position in a democracy based on the rule of law, judges have the expertise and ensuing responsibility to contribute to the improvement of the law, the defence of fundamental rights, the legal system and the administration of justice. Hence, subject to preserving their impartiality and independence, they should be permitted and even encouraged to participate in discussions on the law for informative and educational purposes and to express views and opinions on weaknesses in the application of the law and improving the law, as well as the legal system.

47. In all public statements on matters of public interest, judges should express themselves with prudence, moderate in tone, balanced and respectful manner. They should refrain from discrimination, political, philosophical, or religious proselytising or militancy.

3. Statements regarding matters of concern for judiciary as an institution

48. Judges have the right to make comments on matters that concern fundamental human rights, the rule of law, matters of judicial appointment or promotion and the proper functioning of the administration of justice, including the independence of the judiciary and separation of powers. If the matter directly affects the operation of the courts, judges should also be free to comment on politically controversial topics, including legislative proposals or governmental policy. This follows from the fact that the public has a legitimate interest in being informed about these issues as they involve very important matters in a democratic society. Judges in leadership positions or those holding a position in judges' associations or the council for the judiciary are in a prominent position to speak out on behalf of the judiciary.

…

VI. Defending judicial independence as a legal and / or ethical duty of judges, associations of judges and councils for the judiciary

58. In line with CCJE Opinions No. 3(2002) and No. 18(2015), the CCJE asserts that each judge is responsible for promoting and protecting judicial independence, which functions not only as a constitutional safeguard for the judge but also imposes on judges an ethical and/or legal duty to preserve it and speak out in defence of the rule of law and judicial independence when those fundamental values come under threat. It extends to both matters of internal and external independence.

...

61. Since the duty to defend flows from judicial independence, it applies to every judge. When a judge makes such statements not only in his or her personal capacity, but also on behalf of a judicial council, judicial association or other representative body of the judiciary, the protection afforded to that judge will be heightened. Taking this into account and depending on the issue and context, the council for the judiciary, associations of judges, court presidents or other independent bodies may be best placed to address these issues, for example high-level constitutional issues. Judges may also express their views within the framework of an international association of judges."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 14 AND OF ARTICLE 1 OF PROTOCOL NO. 12

53. The applicant complained under Articles 10 and 11 of the Convention in conjunction with Article 14 and under Article 1 of Protocol No. 12 that she had been discriminated against in the course of the two judicial competitions on account of the criticism and publicly expressed views on the state of the judiciary in Georgia in her capacity as a founding member and the President of Unity of Judges.

54. The Court observes that the applicant's complaint is based on an allegation that the HCJ had refused to reappoint her to a judicial post on account of her role in Unity of Judges and her critical views of the HCJ and its policies on the judiciary. The national courts examined the applicant's complaints before them as a claim about discrimination and the applicant has framed her grievances before the Court in that sense. Therefore, the salient issue in the present case is the applicant's allegation that she suffered discrimination as compared with other judicial candidates because of her affiliation with Unity of Judges. The Court being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 112-26, 20 March 2018), considers that the applicant's complaint falls to be examined under Article 14 of the Convention read in conjunction with Articles 10 and 11, which read, in their relevant parts, as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

1. The parties' submissions

55. The Government disputed the admissibility of the applicant's complaint, arguing that it was manifestly ill-founded and inadmissible *ratione materiae*. They argued that the applicant's claim of discrimination was completely unsubstantiated, as nothing in the attitude of the relevant national authorities demonstrated that she had been treated differently or less favourably because of her critical views. They also submitted that the complaint was incompatible *ratione materiae* with the Convention as the applicant had failed to substantiate her allegation that the refusal of the HCJ to appoint her had constituted an interference with her rights under either Article 10 or Article 11 of the Convention. There was no evidence demonstrating that the decisions refusing the applicant's reappointment to the appeal court had been related to the exercise of her rights of freedom of expression and/or freedom of association. They reiterated that her

applications for reappointment had been dismissed solely for reasons relating to her performance during the competitions.

56. The applicant disagreed. She maintained that her ability to substantiate her allegations of discrimination had been impaired on account of the deficient and non-transparent judicial selection procedure, which did not require the HCJ to issue written reasoned decisions concerning the appointment of or the refusal to appoint or reappoint individual candidates. Moreover, the domestic courts, although they would have been expected to do so, had refused to obtain evidence which would have allowed them to verify and determine whether or not the HCJ had treated all judicial candidates equally and had applied uniform evaluation standards. The applicant submitted that nonetheless she had furnished sufficient evidence to show that the decisions of the HCJ had not been based on the evaluation of her integrity and competence but had rather been motivated by disapproval of her activities and public statements relating to her role within Unity of Judges, thus engaging her rights under Articles 10 and 11 of the Convention. This amounted, in the applicant's view, to discrimination as she had suffered unfavourable treatment from the HCJ on account of her critical views and her role in Unity of Judges.

2. The Court's assessment

57. The Court reiterates that the refusal to appoint a person as a public servant cannot, as such, provide the basis for a complaint under the Convention (see *Cimperšek v. Slovenia*, no. 58512/16, § 56, 30 June 2020, with further references). However, the applicant did not complain about the domestic authorities' refusal to reappoint her to a judicial position as such, but argued that the disputed decisions had constituted a reprimand for her exercise of the freedom of expression and freedom of association and complained in that respect of a violation of Articles 10 and 11 of the Convention taken in conjunction with Article 14. The Court observes that the applicant's essential objective, both in the domestic proceedings and in her application, was to challenge the way she had been treated by the HCJ on the grounds that it had been discriminatory. Such complaints may lead to a finding that there has been an interference with the rights protected by Articles 10 and 11, taken alone or in conjunction with Article 14, where the facts disclose that the disputed decision was in reaction to, for example, views held or statements made (ibid., §§ 58-59; see also *Harabin v. Slovakia*, no. 58688/11, § 149, 20 November 2012, with further references; *Baka v. Hungary* [GC], no. 20261/12, §§ 140-42 and 144, 23 June 2016; and *Hajibeyli and Aliyev v. Azerbaijan, nos. 6477/08 and 10414/08,* §§ 52-53, 19 April 2018) or in other similar circumstances. The Court, accordingly, dismisses the Government's objection of inadmissibility *ratione materiae.*

58. As to the second limb of the Government's inadmissibility argument, the Court finds that the applicant's complaint under Article 14 of the

Convention in conjunction with Articles 10 and 11 raises complex issues of fact and law which cannot be determined without an examination of the merits. It finds that the above complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

59. The applicant maintained that the refusal to reappoint her to a judicial post was not the result of the HCJ's evaluation of her judicial qualifications and competencies but a consequence of her activities and role in Unity of Judges, that organisation's criticism of the HCJ and its policies on the judiciary. She asserted that all Unity of Judges' public statements had concerned the functioning of the judiciary, which was a question of public interest, so that debate about it was protected under Article 10 of the Convention. The refusal to reappoint her therefore amounted to an interference with her rights to freedom of expression and freedom of association.

60. The applicant further submitted that information regarding the refusal of the HCJ to reappoint members of Unity of Judges to judicial positions was particularly relevant to the examination of her discrimination allegations. With reference to the relevant statistical data, she noted that out of seven members of the executive council of Unity of Judges, only one had been reappointed to a judicial post while four others, including herself, had been refused reappointment. Other members of Unity of Judges had been reappointed only after having participated in two or three judicial competitions. Moreover, in 2015-2016 41% of judges who were members of Unity of Judges had been refused reappointment, while the corresponding figure for judges who did not belong to that organisation was only 18%. The applicant alleged that the HCJ had been less favourable towards, in particular, those members of Unity of Judges who had been active and vocal in representing the organisation and in criticising the HCJ. Furthermore, according to the applicant, all the members of Unity of Judges who had been appointed or reappointed to judicial positions had later been forced to leave the organisation.

61. As regards the interviews she had had with the HCJ during the disputed competitions, the applicant submitted that the questions she had been asked were another indicator of bias against her on the part of the HCJ. Most of the questions, according to the applicant, had concerned her role within Unity of Judges and had been aimed at criticising the activities and objectives of that organisation. She had also been asked to comment on the critical positions of other individual members of Unity of Judges. The applicant alleged that the tone of some of the questions had been accusatory

and that some of the HCJ members, rather than asking questions, had started criticising Unity of Judges. The applicant further raised essentially the same arguments as those that she had made in the domestic proceedings, including referring to several international reports which had raised concerns that the decision-making process within the HCJ was not transparent and was potentially arbitrary, and argued that the courts had not properly addressed those concerns.

62. The applicant further submitted that in the absence of written reasoned decisions by the HCJ on the issue of the appointment and rejection of judicial candidates, and in view of the refusal of the domestic courts to obtain and examine the interviews conducted with all the judicial candidates, the courts had been prevented from properly assessing the manner in which the judicial competitions had been conducted and had not been able to verify whether or not the HCJ had applied uniform evaluation standards and/or whether it had been biased. She contended in that connection that the domestic courts had failed to properly distribute the burden of proof in respect of her allegations of discrimination and had limited her access to vital evidence. They had required the applicant to show that discrimination had actually occurred, thereby placing the HCJ in a more favourable position than her.

63. The Government, on their part, asserted, with reference to the relevant national legislation and the Court's case-law, that the applicant had had the burden of submitting evidence to show that she had suffered a prima facie case of discrimination on account of her membership of Unity of Judges and/or views she had expressed in that capacity; she had, however, failed to do so. Both decisions refusing her reappointment to a judicial position had been solely based on the evaluation of her performance during the relevant judicial competitions.

64. The Government further argued that the statistical data, according to which seventeen out of the thirty-three members of Unity of Judges had been appointed/reappointed to various judicial posts in the years 2013-2016, were indicative of the lack of any unfavourable treatment with respect to that organisation. As to the questions, providing a copy of the video recordings of both the applicant's interviews, the Government noted that she had been asked a variety of questions concerning, among other things, her legal education and experience, academic achievements, personal characteristics and professional ethics, as well as questions concerning her views on the functioning of the justice system in Georgia and the activities and aims of Unity of Judges, including her assessment of several of its public statements. Taking into account that it was the applicant who bore the initial burden of proof, the Government submitted that she had failed to submit sufficient material to make a prima facie case of unfavourable treatment.

65. The Government also submitted that publishing insulting comments about the judiciary or participation in such activities constituted a basis, under national legislation, for refusing appointment to a judicial post and that such

a principle met the requirements of legitimacy and proportionality under the Convention. Without citing any specific examples, the Government observed that the statements discussed during the interviews had mostly been made by one particular member of Unity of Judges in her personal capacity. These statements had not been attributable to the applicant and their examination during the interviews had only been used to assess the applicant's attitude towards the judiciary and its function.

2. The Public Defender of Georgia

66. The Public Defender of Georgia provided information about the practical functioning of the HCJ, identifying a lack of transparency and integrity and arbitrary decision-making process as being among the central problems within the authority responsible for, among other things, the recruitment of judges.

3. The Court's assessment

(a) Relevant general principles

67. The relevant general principles under Articles 10 and 11 of the Convention have been summarised in *Tuleya v. Poland* (nos. 21181/19 and 51751/20, §§ 515-518, 6 July 2023), *Gorzelik and Others v. Poland* ([GC], no. 44158/98, §§ 88-96, ECHR 2004-I), and *Baka*, (cited above, §§ 140-42). The Court notes that it has on many occasions emphasised the special role in society of the judiciary which, as the guarantor of justice, a fundamental value in a State governed by the rule of law, must enjoy public confidence if it is to be successful in carrying out its duties (see *Baka*, cited above, § 164, with further references; see also *Eminağaoğlu v. Turkey*, no. 76521/12, §§ 76-78, 9 March 2021, and *Bilgen v. Turkey*, no. 1571/07, § 58, 9 March 2021). It reiterates that judges enjoy the protection of Article 10 (see *Wille v. Liechtenstein* [GC], no. 28396/95, § 42, ECHR 1999-VII, and *Harabin*, cited above, § 149 with further references) and are not precluded from participating in public debates which may affect their institutional and/or individual independence and status (see *Baka*, cited above, § 168). In doing so, they not only enjoy freedom of expression but are free to form or join associations of judges or participate in other organisations representing the interests of judges (see *mutatis mutandis*, *Maestri v. Italy* [GC], no. 39748/98, §§ 23-24, ECHR 2004-I). At the same time, judges must employ discretion and restraint when it comes to exercising their freedom of expression in situations where the authority and impartiality of the judiciary are likely to be called into question (see *Wille*, cited above, § 64; *Kayasu v. Turkey*, nos. 64119/00 and 76292/01, § 92, 13 November 2008; *Morice v. France* [GC], no. 29369/10, § 128, ECHR 2015; and *Baka*, cited above, § 164).

68. The relevant principles in respect of the prohibition of discrimination have been summarised in *Beeler v. Switzerland* ([GC], no. 78630/12, § 93,

20 October 2020) and *Molla Sali v. Greece* ([GC], no. 20452/14, §§ 133-37, 19 December 2018, with further references; see also *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021-002, the French *Conseil d'État*, § 72, 13 July 2022).

69. As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that it was justified (see, for example, *Molla Sali*, cited above, § 137; see also *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV). This corresponds to the position of the European Committee of Social Rights of the Council of Europe regarding the need to reverse the burden of proof in discrimination cases (see paragraph 51 above).

70. As regards the question of what constitutes prima facie evidence capable of shifting the burden of proof on to the respondent State, the Court stated in *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII) that in proceedings before it there were no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment (see also *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, §§ 211-12, 26 May 2020). Where a difference in the effect of a general measure or a *de facto* situation is alleged, the Court has previously relied extensively on statistics produced by the parties to establish a difference in treatment (see *D.H. and Others*, cited above, §§ 175-80). The Court considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the *prima facie* evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence (ibid., § 188). Reliable national or international reports can also be used to that effect (see, *mutatis mutandis*, *D.H. and Others*, cited above, § 113, and *Y and Others v. Bulgaria*, no. 9077/18, § 122, 22 March 2022).

(b) Application in the present case

71. The applicant's complaint relates to the HCJ treating her less favourably than other judicial candidates on account of her role in Unity of Judges and her critical views of the state of the country's judiciary. The Government argued that she had not been treated differently from other judicial candidates and that the only reason for not reappointing her had been her performance in the competitions.

72. The Court starts by observing that the judicial competitions at the heart of the present application were organised and conducted by the HCJ, a

constitutional body the majority of whose members are judges (see paragraph 38 above). The relevant legal provisions, as examined in detail by the domestic courts, provided for a detailed and well-regulated judicial selection procedure with explicitly and clearly worded evaluation criteria (see paragraph 41 above). The applicant did not challenge the quality of law as such but rather its application in her case.

73. Turning to the circumstances of the present case, the Court observes, having regard to the general principles outlined above (see paragraphs 68-70 above), that the applicant provided a number of elements in support of her discrimination claim. Firstly, she submitted that the statistical data were indicative of unfavourable treatment of members of Unity of Judges, who were less likely to be appointed or reappointed to judicial positions on account of their critical views. Secondly, she submitted that the questions she had been asked by members of the HCJ were biased, having been focused on eliciting any critical views she might have of the HCJ's policies and the state of the judiciary rather than on evaluating her professional skills. Lastly, she submitted that the document prepared by a non-judicial member of the HCJ and other corroborating pieces of evidence submitted by, among others, the Public Defender of Georgia, provided an indication of discriminatory policies within the HCJ.

74. Starting with the statistical data, the Court considers that those data in and of themselves did not disclose any conclusive proof of differences in treatment between the judicial candidates who belonged to Unity of Judges and those who did not. At the same time, the Court recognises the importance of official statistics in this type of case (see *D.H. and Others*, cited above, §§ 190-95). In view of the information available in the case file (see paragraphs 36-37 above) and while noting that the applicant was not just any member of Unity of Judges, but its founder and the President, the Court considers that the figures provided by the applicant warranted a thorough examination in conjunction with other elements suggesting that leading members of Unity of Judges were specifically targeted as a group in judicial competitions.

75. Turning to the issue of the interview questions, the Court notes that the relevant domestic regulations, as interpreted by the domestic courts, gave the HCJ a discretion, during judicial competitions, to ask wide range of questions from the legal sphere or from outside it (see paragraphs 18, 21-22, and 25 above). These questions, however, should have been asked for the purpose of assessing the skills, qualifications, and integrity of judicial candidates, according to uniform evaluation standards (see paragraph 41 above). The Court observes that many of the questions put to the applicant during both interviews concerned Unity of Judges, and, in particular, the applicant's role in that organisation and her attitude towards its vocal criticism of the HCJ and its policies (see paragraphs 9 and 12 above). The applicant was separately asked to comment on private Facebook posts by the

executive director of the organisation (see the first interview, paragraph 9 above). Some of the questions had accusatory overtones and at least on one occasion the applicant was directly criticised for her role in Unity of Judges (ibid.: when one member of the HCJ told the applicant that she should have been held personally responsible for the insulting remarks made by the executive director of Unity of Judges). Contrary to the Government's claim, the applicant did voice her dissatisfaction with these questions during her first interview, questioning their relevance to the assessment of her professional skills (ibid.).

76. The national courts did not examine the questions related to Unity of Judges separately in detail. They did, however, reach a general conclusion to the effect that all questions asked during the interviews had been relevant to testing the applicant's judicial competence and integrity.

77. The Court notes in this regard that in view of the special role of the judiciary in society, judges must employ discretion and restraint when it comes to exercising their freedom of expression in situations where the authority and impartiality of the judiciary are likely to be called into question (see general principles cited in paragraph 67 above; see also Opinion No. 25 (2022) of the CCEJ on the Freedom of Expression of Judges, paragraph 52 above). This duty is directly related to the requirement of judicial integrity, which constitutes, alongside independence and impartiality, one of the cornerstones of the judiciary in a democratic society under the rule of law. Noting that Unity of Judges was at the relevant time very vocal in criticising the HCJ for its policies on the judiciary (see paragraphs 27-34 above), the Court considers that it was legitimate that some questions concerning the compatibility of public statements made by an association of judges with the judicial duty of restraint be asked and that the HCJ invited the applicant to comment on how she, as a judicial candidate, saw that duty and its limits. However, the Court considers that this cannot explain the fact that the questions related to Unity of Judges took more than two-thirds of the time during the first interview and about half of the time during the second interview. It is also obvious that judicial competence and integrity could have been tested by putting questions about other hypothetical or real situations in which a judge might be required to be careful in expressing his or her views.

78. In view of the above, the Court considers that the applicant could justifiably perceive as discriminatory the HCJ's choice to devote a significant part of the interviews to the activities of an association which had actively criticised the HCJ and whose member she was, instead of testing her integrity – if that was the aim of the questions concerned – in a more neutral manner. The Court notes in this connection that it is precisely in the area of the debate on the functioning of judicial systems – which was the subject matter of the statements issued by Union of Judges – that judges' duty to exercise restraint does not imply their not participating in such a public debate (see general principles cited in paragraph 67 above; see also Opinion

no. 25(2022) of the CCJE on the Freedom of Expression of Judges, paragraph 52 above). It refers in this connection to the principle recently developed in its case-law, according to which the general right to freedom of expression of judges to address matters concerning the functioning of the justice system may be transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence when those fundamental values come under threat (see *Żurek v. Poland*, no. 39650/18, § 222, 16 June, and *Baka*, cited above, §§ 165-71; see also Opinion no. 25(2022) of the CCJE on the Freedom of Expression of Judges, paragraph 52 above). The importance of this principle clearly mandated for a careful approach by the HCJ. In the Court's view, the HCJ's failure to follow a balanced and more neutral approach undermined the probability that Unity of Judges-related questions were nothing more than an attempt to test the applicant's integrity, in the sense of her attitude to the judges' duty of restraint.

79. In view of the above mentioned and noting the manner in which the two interviews with the applicant were conducted, stressing in particular the nature and number of questions which were asked in relation to Unity of Judges, the Court considers that these questions went beyond the purpose of testing the applicant's integrity and demonstrated bias and prejudice on the part of individual members of the HCJ vis-à-vis the applicant on account of her role in the organisation and activities related to it.

80. The Court further observes that in the domestic courts the applicant relied on the evidence of V.M., a non-judicial member of the HCJ, to support her allegations that she had been discriminated against because of her membership of and role in Unity of Judges. V.M. claimed that the HCJ had prevented members of Unity of Judges who had successfully passed the competency and integrity requirements from being appointed to vacant judicial positions (see paragraph 17 above). In the anti-discrimination proceedings, the Public Defender also spoke of a risk of individual members of the HCJ taking biased decisions, particularly given the absence of reasons in the HCJ decisions on judicial appointments and given the secret nature of the voting procedures (see paragraph 16 above).

81. Taking into account the above evidence together with the manner in which both the applicant's interviews were conducted, the Court is satisfied that the applicant had made a *prima facie* case for having been treated differently during the judicial competitions on account of her role in Unity of Judges and related activities.

82. Since the applicant had demonstrated a *prima facie* case of discrimination, the burden of proof should have been shifted to the relevant state authorities (see the relevant general principles cited in paragraph 69 above), and the HCJ, which had the relevant evidence in its control, should have had to demonstrate that the alleged difference in treatment had an objective and reasonable justification. However, the domestic courts found

the applicant's allegations of discrimination unsubstantiated and refused to shift the burden of proof onto the HCJ (see paragraphs 18, 23 and 25 above).

83. The Court reiterates that if the onus of demonstrating that a difference in treatment was justified does not shift to the respondent, it will in practice be extremely difficult for an applicant to prove discrimination. In the present case, the shifting of the burden of proof onto the HCJ should have entailed thorough judicial scrutiny of both interviews, with the HCJ being required to provide reasonable and objective justification for asking the applicant Unity of Judges-related questions, particularly given their nature and the number of them, and establish that the HCJ applied uniform evaluation standards, as was expected from it under the relevant domestic legislation (see HCJ Decision of 9 October 2009, cited in paragraphs 42-43 above). The Court stresses that a thorough examination of the above mentioned issues in the discrimination proceedings was essential in the circumstances of the present case, where the HCJ decisions refusing to reappoint the applicant contained no reasons and were moreover not subject to judicial review.

84. To sum up, the Court considers that the specific circumstances of the applicant's interviews, which were corroborated by further evidence, were such that an independent observer could reasonably have drawn an inference that the activities of the applicant that were related to Unity of Judges played a significant role in the HCJ's decisions not to reappoint her (compare, *mutatis mutandis, Hoppen and trade union of AB Amber Grid employees v. Lithuania,* no. 976/20, §§ 231-37, 17 January 2023). The manner in which the questions concerning Unity of Judges were asked during the applicant's interviews fed, in the Court's view, into the perception that the decisive if not significant factors in assessing the applicant's candidacy were her role in Unity of Judges and related activities. In such circumstances, the domestic courts should have addressed the applicant's discrimination complaint with proper attention so as to ensure her real and effective protection from any potential bias and discrimination on the part of individual members of the HCJ. Given the fact that the applicant had made out a *prima facie* case of discrimination, they should have shifted the burden of proof onto the HCJ and asked it to dispel any perception of bias and demonstrate that the difference in treatment that affected the applicant on account of her role in Unity of Judges had been justified by objective reasons. They failed, however, to do so.

85. The Court accordingly concludes that there was insufficient judicial review by the judicial authorities of the applicant's allegations of discrimination on account of her role in Unity of Judges and that this leads to a violation of Article 14 of the Convention taken in conjunction with Articles 10 and 11.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

87. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

88. The Government submitted that the amount claimed was unreasonable and excessive. They stressed that in the domestic anti-discrimination proceedings the applicant had requested a merely symbolic amount of about EUR 5 on account of the non-pecuniary damage suffered.

89. The Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

90. The applicant did not make any claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 14 of the Convention in conjunction with Articles 10 and 11 admissible;

2. *Holds* that there has been a violation of Article 14 of the Convention in conjunction with Articles 10 and 11;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred) plus any tax that may be chargeable, in respect of non-pecuniary damage**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mattias Guyomar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge M. Elósegui is annexed to this judgment.

CONCURRING OPINION OF JUDGE ELÓSEGUI

Introduction

First of all, I would like to indicate that I am fully in agreement with the judgment.

In fact, this is a pioneering judgment on the issue of avoiding arbitrariness and discrimination in the appointment and promotion of judges. I am expressing a concurring opinion to emphasise the importance and value of statistics and other forms of evidence in matters related to indirect discrimination under Article 1 of Protocol No. 12 and under Article 14 in conjunction with other Articles of the Convention.

The applicant's complaint

The applicant complained that the High Council of Justice ("HCJ") had treated her less favourably than other judicial candidates on account of her role in the "Unity of Judges" NGO and her critical views on the state of the country's judiciary. On the other side, the Government argued that she had not been treated differently from other judicial candidates and that the only reason for not reappointing her had been her performance in the relevant competitions (see paragraph 71). I find the reasoning of the judgment very compelling and see no need to reproduce it here.

The need for clear and objective judicial selection criteria in both practice and theory. Discretion must not be used as a cover for arbitrariness.

What I would like to emphasise is what is said in paragraph 72 of the judgment. It is crucial to have clear evaluation criteria in judicial selection procedures, not only in theory but also in their application. Thus, the applicant did not challenge the quality of the law as such but rather its application in her case.

I have concerns with regard to the use of discretion by judicial selection bodies. One can accept the idea of discretion when it is a matter of taking into account objective criteria, like seniority, for instance, but also certain other qualifications, such as managerial skills. However, there is a danger that discretion will descend into arbitrariness and discrimination. The selection process must therefore be clear, public and transparent. It must also be based on objective professional criteria to avoid retaliation for criticism of corruption or oligarchies in the judiciary, or of other matters.

While it is true that the Court is not a first-instance court and cannot examine the domestic process of judge selection and promotion in detail, it is nevertheless its role to be vigilant about the fairness of this process and the judicial guarantees afforded to judges when they have applied for a position in domestic systems and there is a suspicion of discrimination.

The evidence of prima facie discrimination

Given that indirect discrimination is difficult to prove, I welcome the judgment's reasoning where it recognises that the applicant demonstrated a prima facie case of discrimination, whereas the domestic courts had found her allegations of discrimination unsubstantiated and had refused to shift the burden of proof (see paragraph 82, referring to paragraphs 18, 23 and 25 of the judgment).

As evidence of discrimination against her, the applicant submitted statistical data and the questions she had been asked during her interview.

Concerning the first form of evidence, I agree with the judgment in saying that statistical data in and of themselves are often insufficient and have to be examined together with other evidence. This is what has been done in the present assessment. In this particular case, it is crystal clear that the figures provided by the applicant were sufficiently strong in themselves to suggest that members of Unity of Judges were specifically targeted as a group in judicial competitions. The consequences of this can be seen in the chilling effect it has had, to the point that the association has disappeared. As stated in the judgment:

> "By July 2017 Unity of Judges had only non-judicial members. By the end of October 2027, the organisation had ceased to exist" (paragraph 34; see also the relevant facts mentioned in paragraphs 27-34)."

The second form of evidence supplied was the applicant's interview questions. Here, I think that the Court's reasoning lays down some guidelines for striking a fair balance when assessing the discretion and restraint judges are required to display in the exercise of their "freedom of expression in situations where the authority and impartiality of the judiciary are likely to be called into question" (paragraph 77). In the present case, the Court had access to the content of the interview (see paragraph 9) and the judgment concludes as follows:

> "... the applicant could justifiably perceive as discriminatory the HCJ's choice to devote a significant part of the interviews to the activities of an association which had actively criticised the HCJ and whose member she was, instead of testing her integrity ... in a more neutral manner" (paragraph 78).

In conclusion, it could be said that, although the composition of judicial bodies is a matter for each State to decide and no model is ideal, it is important to avoid favouritism and to use objective professional criteria in the selection and promotion of judges. This is necessary to avoid corruption and to keep the relevant body from allowing judicial corporatism to serve the self-interests of one group of judges to the detriment of other groups of judges through the use of friendship and networking as the main criteria in the

selection and promotion of judges, rather than looking for the best professionals for the bench[1]. The present case is just the tip of the iceberg.

[1] See, among several other sources, "Constructing the Pyramid of Influence: Informal Institutions as Building Blocks of Judicial Oligarchy in Georgia", by Nino Tsereteli, *German Law Journal* (2023), no. 24, pp. 1469-1487. See also European Commission for Democracy through Law (Venice Commission), Follow-up opinion to four previous opinions concerning the organic law on common courts, 14 March 2023, § 17, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(20023)006-e.