

ARTICLE

Special Issue: Informal Judicial Institutions—Invisible Determinants of Democratic Decay

Constructing the Pyramid of Influence: Informal Institutions as Building Blocks of Judicial Oligarchy in Georgia

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(Received 21 September 2023; accepted 29 September 2023)

Abstract

This Article gives a cautionary account of the rise of judicial oligarchs in Georgia, highlighting how their rule distorts judicial governance and undermines judicial independence. The Georgian judiciary is portrayed as a pyramid-like structure where judges' positions are determined by their influence on judicial governance and decision-making. Judicial oligarchs are a select few judges at the top that have acquired system-wide influence over the judiciary through their trusted affiliates, leaving other judges with minimal influence at the bottom of the pyramid. Research indicates that judicial self-governance bodies, such as judicial councils, can easily be manipulated by a handful of judges independently or through collusion with politicians. This can occur especially when most judges have little interest and the ability to participate meaningfully in governance. The Article explains how judicial oligarchs get judges to elect them and their affiliates as judicial council members. Informal networks and institutions contribute to their electoral success. There appears to be a shared expectation that judges will not challenge the oligarchs' authority by publicly disagreeing with them or competing with them in elections, or else face sanctions. Research also cautions that de-politicization in the sense of excluding politicians from the bodies of judicial governance will not necessarily prevent politicians' informal meddling with judicial decision-making. Collusion between judicial oligarchs and ruling party politicians forms part of the broader strategy of weakening the checks and balances and allowing the ruling party to operate without constraints. Thus, judicial oligarchs help to perpetuate oligarchization in the political sphere.

Keywords: Oligarchization of Judicial Governance; informal judicial institutions; Post-Soviet judiciaries; judicial assertiveness; judicial capture

A. Introduction

In April 2023, the United States Department of State put four Georgian judges on the sanctions list over “significant corruption,” precluding them from entering the country.¹ Secretary of State Antony Blinken said on April 5, 2023: “These individuals abused their positions as court chairmen

¹U.S. EMBASSY IN GEORGIA, Press Statement, Antony J. Blinken, Secretary of State, Public Designations of Mikheil Chinchaladze, Levan Murusidze, Irakli Shengelia and Valerian Tsertsvadze, Due to Involvement in Significant Corruption (Apr. 5, 2023), <https://ge.usembassy.gov/public-designations-of-four-individuals-associated-with-the-georgian-judiciary-due-to-involvement-in-significant-corruption/>.

and members of Georgia's High Council of Justice,² undermining the rule of law and the public's faith in Georgia's judicial system.³ Georgian civil society has long claimed that these few judges are leaders of the influential "clan" of judges that has governed the Georgian judiciary since the mid-2000s, through the support of the ruling parties—first the National Movement (2004–2012) and then the Georgian Dream (2012–present).⁴ In its March 2023 opinion, the Venice Commission called for substantial reform of the Georgian Judicial Council, stressing that "the organization of a council should not allow for judicial corporatism to serve the self-interests of one group of judges to the detriment of other groups of judges."⁵

Judges' conformism and lack of assertiveness⁶ in and outside courtrooms, persisting notwithstanding reforms meant to protect and shield them, are often attributed to the informal institutions created and enforced by a handful of powerful judges. While observers believe that informal rules are in place and guide judicial behavior,⁷ the actual mechanics of their creation, communication, and enforcement, as well as their interplay with the formal rules, have not been studied. The Georgian judiciary has attracted some scholarly attention,⁸ but still far less than the judiciaries in Ukraine and Russia.⁹

This article looks at Georgian judges' behavior outside the realm of the formal framework in an effort to fill in the gaps in the knowledge about informal institutions. It traces informal acts, isolated incidents, and practices—acts that are regular and repetitive, forming patterns. Not all patterned practices constitute informal institutions. The ones that do respond to established rules, the violation of which generates some kind of sanction.¹⁰ Therefore, I differentiate between simple behavioral regularities and the ones that have been made into informal institutions, as evidenced

²This body is referred to throughout this Article as the Judicial Council.

³Katharine Jackson & Kanishka Singh, *US Blocks Four Georgian Officials from Entering over Corruption—Blinken*, REUTERS (Apr. 5, 2023), <https://www.reuters.com/world/us/us-blocks-four-georgian-officials-entering-country-over-corruption-blinken-2023-04-05/>.

⁴TRANSPARENCY INT'L GEOR., CORRUPTION RISKS IN THE GEORGIAN JUDICIARY (2018), https://www.transparency.ge/sites/default/files/corruption-risks-eng_0.pdf [hereinafter CORRUPTION RISKS].

⁵EUR. COMM'N FOR DEMOCRACY THROUGH L., FOLLOW UP OPINION TO FOUR PREVIOUS OPINIONS CONCERNING THE ORGANIC LAW ON COMMON COURTS para. 17 (MAR. 14, 2023), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)006-e).

⁶See Lisa Hilbink, *The Origins of Positive Judicial Independence*, 64 WORLD POL. 587, 588 (2012) (defining "judicial assertiveness" as the practice of "courts challenging powerful actors in their rulings").

⁷Scholarship on informal institutions shaping judicial governance and judicial institutions is limited but growing. For negative informal practices, such as patronage, corruption, and nepotism, see Santiago Basabe-Serrano, *Informal Institutions and Judicial Independence in Paraguay, 1954–2011*, 37 LAW & POL'Y 350, 350–78 (2015). For positive informal practices such as judicial mobilization and alliance-building, see Onur Bakiner, *Judges Discover Politics: Sources of Judges' Off-Bench Mobilization in Turkey*, 4 J. L. & CTS. 131, 131–57 (2016); Claudia Y. Matthes, *Judges as Activists: How Polish Judges Mobilise to Defend the Rule of Law*, 38 E. EUR. POL. 468, 468–87 (2022); Katarina Šipulová, *Under Pressure: Building Judicial Resistance to Political Interference*, in THE COURTS AND THE PEOPLE: FRIEND OR FOE? THE PUTNEY DEBATES 2019, 153, 153–70 (DJ Galligan ed., 2021); Alexei Trochev & Rachel Ellett, *Rethinking Judicial Autonomy through the Prism of the Off-Bench Resistance*, 2 J. L. & CTS. 67, 67–91 (2014).

⁸See Nino Tsereteli, *Judicial Recruitment in Post-Communist Context: Informal Dynamics and Façade Reforms*, 30 INT'L J. LEGAL PRO. 37, 37–57 (2023); Nino Tsereteli, *Backsliding into Judicial Oligarchy? The Cautionary Tale of Georgia's Failed Judicial Reforms, Informal Judicial Networks and Limited Access to Leadership Position*, 47 REV. CENT. & E. EUR. L. 167, 167–201 (2022).

⁹See, e.g., Peter H. Solomon Jr., *Informal Practices in Russian Justice: Probing the Limits of Post-Soviet Reform*, in RUSS., EUR. & RULE L. 79, 79–92 (Ferdinand Feldbrugge ed., 2006); Peter H. Solomon Jr., *Authoritarian Legality and Informal Practices: Judges, Lawyers and the State in Russia and China*, 43 COMMUNIST & POST-COMMUNIST STUD. 351, 351–62 (2010); MARIA POPOVA, *POLITICIZED JUSTICE IN EMERGING DEMOCRACIES: A STUDY OF COURTS IN RUSSIA AND UKRAINE* (2012); Alexei Trochev, *Patronal Politics, Judicial Networks and Collective Judicial Autonomy in Post-Soviet Ukraine*, 39 INT'L POL. SCI. REV. 662, 662–78 (2018).

¹⁰Gretchen Helmke & Steven Levitsky, *Informal Institutions and Comparative Politics: A Research Agenda*, 2 PERSPS. ON POL. 725, 727 (2004).

by socially shared behavioral expectations and the application of sanctions to judges that fail to meet those expectations.¹¹ My research traces how informal institutions are created and enforced in the Georgian context and how they structure judges' interactions among themselves as well as those with external actors. The research also shows how informal institutions co-exist with the increasingly expanding formal framework and how they hinder judicial empowerment.

The Georgian case study tells a cautionary tale about the rise of judicial oligarchs and the ways in which their rule has distorted judicial governance and judicial decision-making. It identifies two characteristics distinguishing oligarchs from other judges: (1) the ability to acquire system-wide control over the judiciary/judges by installing loyal affiliates in the Judicial Council and getting them appointed as court presidents; and (2) the ability to secure favorable legislative changes and other types of support from a ruling party. The strength of oligarchs lies not in their own formal powers as court presidents or Judicial Council members, but in the more far-reaching informal influence they exert on the Council's decision-making and judges' behavior through their affiliates. Concentration of powers in the Council and centralization of appointments of court presidents allowed them to monopolize all formal positions of power. These features of the system of judicial self-governance that helped judicial oligarchs to maximize their power were not seen as controversial by the Venice Commission and were even recommended.¹²

This Article visualizes the Georgian judiciary as a pyramid-like structure. Judges' positions depend on their role in judicial governance and their influence, both formal and informal, on other judges. Judicial oligarchs are placed at the top of the pyramid as the most influential. Most judges have minimal influence and, hence, end up at the bottom of the pyramid. The overwhelming majority of these judges have been handpicked by judicial oligarchs themselves and are their supporters, voting for them and their affiliates in elections or supporting them otherwise in exchange for protection, promotions, or other benefits. The number of dissenters, judges that are willing and able to challenge the concentration of power in the hands of judicial oligarch, is very low.

The research reveals that informal institutions are essential for sustaining judicial oligarchy: Judicial oligarchs use them to secure conformism, and to suppress criticism and dissent, including any collective mobilization by judges through associations or otherwise to challenge oligarchs' rule. The research also shows that well-entrenched informal institutions can undermine new legislative provisions introduced to facilitate the meaningful engagement of judges in governance and shield them from pressures as regards decision-making in sensitive cases. Such institutions will not change unless a substantial number of judges are willing to deviate from them knowing that they will be subjected to sanctions. Such shift is highly unlikely where the decision-making bodies intentionally recruit judges based on their loyalty to the judicial oligarchs and willingness to obey the rules, as has been the case in Georgia.¹³ The size of the Georgian judiciary—its being extremely small with only about 300 judges—has a bearing on how informal institutions are created, communicated, and enforced. It is much easier to impose and enforce informal institutions on a small judiciary where judges are closely connected professionally and socially.

¹¹GRETCHEN HELMKE & STEVEN LEVITSKY, *INFORMAL INSTITUTIONS AND DEMOCRACY: LESSONS FROM LATIN AMERICA* 7 (2006).

¹²The Venice Commission acknowledged local interlocutors' concerns about the concentration of powers in the hands of particular judges due to their holding several leadership positions simultaneously. However, it did not consider those concerns to be sufficiently weighty to justify the complete exclusion of sitting court presidents from the Judicial Council. It insisted on as few restrictions on the right of judges to elect their representatives as possible, noting "if the Council were to represent the judiciary as a whole then in principle it seems wrong to exclude any member of the judiciary from the possibility of being elected." The Commission did, however, accept that the law could limit the maximum number of court presidents that could sit in the Council; see EUR. COMM'N FOR DEMOCRACY THROUGH L., *DRAFT OPINION ON THE DRAFT AMENDMENTS TO THE ORGANIC LAW ON COURTS OF GENERAL JURISDICTION OF GEORGIA* paras. 46–51 (2013), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2013\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2013)008-e) [hereinafter *DRAFT OPINION OF THE VENICE COMMISSION*].

¹³Nino Tsereteli, *Factors Encouraging Nepotism and Cronyism in The Judiciary of Georgia*, *GEORGIAN COURT WATCH* (Sept. 22, 2022), <https://courtwatch.ge/en/articles/nepotysm-cronyism/file/e414db4ce64c2e3187c8f02f039a911d/>.

The case study on the Georgian judiciary warns that depoliticization, in the sense of excluding politicians from the bodies of judicial governance, will not necessarily prevent politicians from informally meddling with judicial decision-making. It emerges that, in Georgia, politicians have been able to influence the outcomes of court proceedings through collusion with judicial oligarchs, without directly interfering in the day-to-day governance of the judiciary. In this way, they were able to create the illusion of the hands-off approach and to appease international and national observers that demand respect for judicial independence.

This Article is organized as follows: Section B explains how I collected data on informal institutions. Section C explains the evolution of the Georgian judiciary in order to provide context for the emergence of a judicial oligarchy. Section D explains the power pyramid, with judicial oligarchs at the top. Section E outlines internal judicial informal institutions created and enforced by judicial oligarchs and their affiliates. Section F reflects on the mixed judicial dimension of informality, with a focus on judges' interactions with politicians and civil society. Section G shows how formal and informal judicial institutions interact and shape judicial governance. Section H concludes.

B. My Approach to Studying the Informal Dimensions of Judicial Governance

To discern patterns in judicial behavior, I have accumulated and analyzed information about judges' behavior on and off the bench. I have collected and examined voting and discussion records from the judicial self-governance bodies—such as the Judicial Council and the Conference of Judges—as well as the texts of the relevant decisions of those bodies. Where information was not proactively published by such bodies on their websites, I filed requests for public information. I have attended numerous meetings of the Judicial Council and Conferences of Judges and watched recordings of recruitment interviews. I have also relied on the reports monitoring these meetings compiled by non-governmental organizations.¹⁴ I have also collected public statements of sitting and former judges, both individually and collectively—including those made through judicial associations.

I have relied on newspaper articles to trace patterns in the interaction between politicians and judges, including any exchanges over legislative drafts. I have relied on interviews with judges to understand how they perceive patterns in behavior. All interviews were subsequently transcribed, coded, and analyzed. To protect the research participants, I anonymized the interviews. The first round of interviews took place in person in Tbilisi, Georgia, except for one interview conducted in Batumi, Georgia. The second round of interviews were conducted online. In the first round of interviews, between May 2018 and January 2019, I questioned six sitting judges, including three from the Supreme Court, one from the Appellate Court, and two from the district/city courts, and three former judges, including two former court presidents who had left their positions within the past few years. In the second round of interviews, from February to April 2022, I, together with a group of researchers, interviewed eight sitting and two former judges.¹⁵ With these interviews, I have sought to establish whether, according to these judges, patterns in judicial behavior embodied informal rules—those rooted in shared expectations—and whether judges expected to be sanctioned in the event of their failure to meet those expectations.

¹⁴Monitoring reports on the activities of the Georgian Judicial Council have been issued annually since 2013. They are prepared by the Georgian Young Lawyers' Association and Transparency International Georgia; see, e.g., GEOR. YOUNG LAWYERS ASS'N, MONITORING REPORT OF THE HIGH COUNCIL OF JUSTICE NO. 11 (2023), <https://gyla.ge/en/mod/publications/25> (follow "Monitoring Report of the High Council of Justice No. 11" hyperlink).

¹⁵These interviews were part of a broader study about nepotism and cronyism in the Georgian judiciary; see Tsereteli, *supra* note 13.

C. Evolution of the Georgian Judiciary and How Reform Facilitated the Rise of Judicial Oligarchy

The Georgian judiciary has been transformed through a series of legislative changes implemented since the late 1990s. Prior to the reform, the Ministry of Justice managed judicial recruitment and careers. In 2007, the Georgian Judicial Council was established as an independent body fully in charge of judicial recruitment and careers, having hitherto been merely an advisory body to the president. Academic commentary viewed the lack of accountability of the powerful Council as a major challenge early on.¹⁶

Initially, while judge members had a majority in the Judicial Council and the Supreme Court president was its chairperson, politicians—the Minister of Justice and members of the Parliament—were still Council members.¹⁷ In addition, the ruling National Movement relied on loyal judges to guarantee other judges' obedience and ensure that case outcomes were consistent with their preferences. Judges connected to the ruling party were mostly former prosecutors¹⁸ who had moved to the judiciary in the mid-2000s—when the National Movement came to power—and immediately occupied leadership positions.¹⁹ In the absence of legislative constraints, they could simultaneously be court presidents and council members. At the time, convening the Conference of Judges and holding elections to fill judge-members' seats in the Council was not mandatory: The Administrative Committee of the Conference chaired by the Supreme Court president could elect judge members of the Council.²⁰ The Council appointed court presidents without any competition among judges and behind closed doors.²¹ As a consequence, such positions were essentially monopolized by judges with political affiliations, leaving other judges without meaningful opportunities to engage in governance.

From 2013 on, Georgian Dream, a new ruling party, re-opened the judicial reform processes. Early reform proposals were driven by hostility towards influential judges whom Georgian Dream associated with its predecessor, the National Movement. The 2013 legislative changes were meant to avoid the concentration of powers in the hands of a handful of judges, for example, by precluding them from serving as court presidents and judicial council members at the same time.²² This legislation also limited to three the number of judges that could remain presidents of court divisions after being elected to the Council. This was to give opportunities to all judges for meaningful engagement in judicial governance. Convening the Conference of Judges became mandatory when judge members of the Council were to be elected.²³ The new legislation enabled all judges to nominate themselves or their peers.²⁴

Subsequent developments showed that legislative changes can instigate shifts in judges' behavior and make them more assertive, despite having been passive for years. A few judges openly condemned the monopolization by a handful of judges of all positions of power and the

¹⁶See, e.g., Lydia F. Muller, *Judicial Administration in Transitional Eastern Countries*, in JUDICIAL INDEPENDENCE TRANSITION 937, 944 (Anja Seibert-Fohr ed., 2012).

¹⁷Around 2013, the members of the Parliament on the Council were replaced by Parliament-appointed lawyers.

¹⁸Eight prosecutors from a single division of the prosecutor's office moved almost simultaneously to the judiciary, directly into leadership positions in specific courts. Five of these eight judges were subsequently elected to the Judicial Council.

¹⁹A former appellate court judge interviewed for this study highlighted the trend of appointing former prosecutors as judges and placing them in leadership positions immediately. She likened this practice to "airborne troops landing." See Interview with Former Appellate Court Judge (Dec. 12, 2018).

²⁰Organic Law of Georgia on Common Courts [Law on Common Cts.] art. 64(3) (Geor.). The Activity Report of the Judicial Council (indicates that eleven Conferences were convened between 2013 and 2017, whereas there were only two held between 2008 and 2012. REPORT OF THE JUDICIARY 2013–2017, PREPARED BY THE HIGH COUNCIL OF JUSTICE OF GEORGIA (2017), <http://hcoj.gov.ge/files/news/Report%20of%20the%20Judiciary%202013-2017.pdf>.

²¹Muller, *supra* note 16, at 967.

²²Law on Common Cts. art. 47(4) Law no. 580ii-s (Geor.) (amended May 1, 2013).

²³*Id.* at art. 66(1).

²⁴*Id.* at art. 65(2). Subsequent changes, however, precluded judges serving a probationary term from being elected, unless they had five years' experience as judges.

exclusion of the rest of the judiciary from governance.²⁵ One group of judges also formed a new association called the “Unity of Judges,” and competed for the seats in the Judicial Council in the June 2013 elections. While the elections were competitive—with twenty-four candidates competing for seven seats—influential judges that had controlled the Council since the mid-2000s succeeded in retaining control over it. That the mandates of judges that had been appointed for ten years in the mid-2000s were about to expire worked to the advantage of those influential judges. The prospect of losing their jobs made most judges vulnerable and susceptible to influence. Influential judges seeking to stay in power reportedly promised them re-appointment in exchange for their votes. Importantly, while the 2010 constitutional amendments introduced lifetime appointments for judges, such appointments were made conditional upon the successful completion of probationary terms. Between 2013 and 2017, all judges, notwithstanding the length of their prior judicial experience, were appointed for a three-year probationary term and had to demonstrate their fitness for office before being considered for life appointment. In 2017, the legislation was amended to allow judges with at least three years’ experience to be appointed directly for life.²⁶ Sitting judges who had accumulated such experience could ask for life appointment even before the end of their probationary period.²⁷ In the absence of legislative demands regarding transparency, the Council members were not much constrained in their decision-making, especially when appointing experienced judges directly for life.²⁸ Influential judges could then use this power to guarantee success at subsequent elections by accumulating judicial support and could also sanction disobedient judges by refusing appointments.

Control over the Judicial Council gave influential judges a good bargaining position vis-à-vis the Georgian Dream. Their position was further strengthened as judges started ruling against the interests of the new government in certain criminal cases involving former government officials.²⁹ Consequently, the ruling party changed its rhetoric and started cooperating with those judges they were once hostile towards.

This cooperation manifested itself in greater convergence between the judicial faction of the Council and its non-judge members appointed by the Parliament since 2015. In 2015, the re-appointment of the Council Secretary, Levan Murusidze, as a judge was made possible thanks to the votes of the three parliament-appointed non-judge members, notwithstanding civil society expressing concern about his integrity. In April 2017, the Parliament even picked the candidate closely affiliated with the influential judges as a non-judge member of the Judicial Council.³⁰ Even though the four-year terms of non-judge members expired in 2021, the Parliament delayed the election of their successors without any explanation, enabling the judicial faction of the Council to make key decisions—including on judicial appointments—without any oversight or objection. The three successors were elected only in May 2023.³¹ Civil society studied the biographies of newly elected members and found connections with judicial oligarchs.³²

²⁵In June 2013, two of the Supreme Court Judges issued a statement highlighting the “minimum participation of judges in administering the judiciary.” See *Statement of Two Supreme Court Judges About the Conference of Judges*, NETGAZETI (June 3, 2013), <https://netgazeti.ge/opinion/22424/>.

²⁶Law on Common Cts. art. 36(4¹) (Geor.).

²⁷*Id.* at art. 79⁴.

²⁸For more details about the practice, see Tsereteli, *supra* note 8.

²⁹Nona Mchedlishvili, *The Court Acquitted Bacho Akhalaia in the Second Case*, RADIO LIBERTY (Oct. 31, 2013), <https://www.radiotavisupleba.ge/a/bacho-akhalaia-gaamartles/25153778.html>.

³⁰In April 2019, Studio Monitor journalists found that a non-judge member of the Judicial Council, whom the Parliament had elected in 2017 out of thirty-three candidates competing for four seats was a close friend of a judge member of the Council; see *The Legality of the Appointment of a Member of the Council of Justice has Become a Subject of Dispute*, RADIO LIBERTY 70 (Apr. 24, 2019), <https://www.radiotavisupleba.ge/a/29901288.html>.

³¹Most opposition members of the Parliament did not vote and walked out which enabled the ruling party to reach the necessary threshold.

³²*Civil Society Coalition Responds to the Amendments to the Organic Law on Common Courts*, COAL. FOR INDEP. & TRANSPARENT JUDICIARY (June 23, 2023), http://coalition.ge/index.php?article_id=293&clang=0.

Political support also manifested itself in the reversal of some of the earlier legislative changes meant to avoid concentration and abuse of power and in the delaying or cancelation of some other changes that were to serve the same purpose. For example, the specification of judicial selection criteria and procedural requirements was delayed by three years to 2017. In 2017, the restriction on electing court presidents to the Judicial Council was removed in spite of concerns that this would embolden court presidents, reinforce internal hierarchies, and make the Council less representative.³³ The maximum number of judges that could be elected to the Judicial Council without losing their leadership positions in courts increased from three to four.³⁴ The ruling party also dropped a draft amendment taking the power to appoint court presidents away from the Council and allowing judges to elect court presidents from among themselves.³⁵ The Parliament went only so far as to impose the obligations to conduct consultations with judges and substantiate decisions to appoint court presidents.³⁶ In December 2021, the Parliament removed the restriction on being elected as a judge member of the Judicial Council twice in a row, another provision meant to avoid concentration of powers in the hands of some judges.³⁷ The same set of amendments gave the Council instruments with which to pressurize disobedient judges; it allowed the Council to request the removal of a judge from a case if disciplinary proceedings had been initiated against him until those proceedings were closed.³⁸ The same set of legislative provisions now allows judges to be transferred to a different court without their consent.³⁹

After several influential judges—that fit my definition of judicial oligarchs—were sanctioned by the US Department of State on account of “significant corruption,” the ruling party blocked the creation of the investigative committee that would look into corruption practices in the judiciary: The party members did not register to vote and hence there was no quorum.⁴⁰ One of the leaders of the ruling party characterized this as “an act of solidarity” towards those judges.⁴¹

All these changes worked to the advantage of those influential judges, allowing them to monopolize positions of power and keep control over the Council. By allowing the concentration of formal powers in the hands of these few judges, the ruling party essentially made judicial oligarchy possible. The ruling party politicians must have benefited from the cooperation as well, presumably through obtaining favorable outcomes in cases of interest.

The formal rules highlighted above are, however, only partly responsible for the entrenchment of judicial oligarchy. Oligarchy thrives also thanks to informal networks and institutions, as explained in subsequent sections.

D. Power Pyramid with Judicial Oligarchs on Top

This Section outlines the structure of the Georgian judiciary, categorizing judges based on their influence on judicial careers and decision-making. It is argued that the Georgian judiciary currently has a pyramid-like structure, with a handful of judicial oligarchs at its top. As explained below, oligarchs’ influence emerges out of their being in formal positions of power—such as

³³Law on Common Cts. art. 47(4), Law no. 255 ii-s (Geor.) (amended Feb. 8, 2017).

³⁴*Id.*

³⁵*Id.* at arts. 23(6), 32(1). The Venice Commission approved of the proposed changes, noting that they would increase the role of individual judges in judicial self-government; see EUR. COMM’N FOR DEMOCRACY THROUGH L., OPINION ON THE DRAFT LAW ON AMENDMENTS TO THE ORGANIC LAW ON GENERAL COURTS para. 84 (2014), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)031-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e).

³⁶Law on Common Cts. arts. 23(6), 32(1), Law no. 5569-is (Geor.) (amended Dec. 13, 2019).

³⁷*Id.* at art. 47, Law No. 1346 (amended Dec. 30, 2021).

³⁸*Id.* at art. 45 (amended Dec. 30, 2021).

³⁹*Id.* at art. 37¹(2) (amended of Dec. 30, 2021). Transfers were commonly used to punish judges prior to 2013. Then legislation changed to introduce a consent requirement.

⁴⁰*Georgian Dream Continues to Protect the Interests of the Court Clan*, COAL. FOR INDEP. & TRANSPARENT JUDICIARY (Apr. 19, 2023), http://coalition.ge/index.php?article_id=285&clang=0.

⁴¹*Id.*

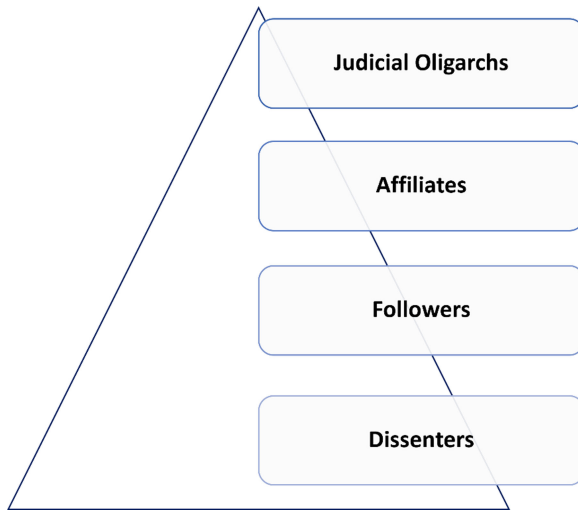


Figure 1.

Council members or court presidents—reliance on trusted affiliates among judges whom they can install in such positions of power to maximize their influence and reach, social capital in the form of support among rank-and-file judges, and political connections. Most judges are at the bottom of the pyramid, as they have minimal influence on judicial governance. While those who actively support judicial oligarchs have a chance to move up the ladder—“followers”—, those few judges who see oligarchy as problematic—“dissenters”—will not have such an opportunity.

The rest of this Section highlights the basic characteristics of each of the groups.

1. Judicial Oligarchs

Judges that currently hold the most power in the Georgian judiciary, judicial oligarchs, are mainly⁴² former prosecutors that were appointed as judges in the mid-2000s.⁴³ Their concerted move to the judiciary has been likened to “airborne troops landing.”⁴⁴ Political connections and willingness to secure case outcomes favorable to the ruling party—then Mikheil Saakashvili’s National Movement—in exchange for political backing immediately propelled those judges into positions as court presidents and into the seats in the Judicial Council. They have held such positions, often several simultaneously, ever since. However, judicial oligarchs’ strength lies not only in their *own* formal powers but in the informal influence they exert through their affiliates whom they install in the Judicial Council and as court presidents. As noted above, prior to 2013, convening the Conference of Judges to elect judge members of the Council was not mandatory. Judicial oligarchs handpicked judge-members of the Council, constituting the majority, and then could easily get the Council to appoint loyal judges as court presidents through processes that were non-competitive and non-transparent.

⁴²Not all oligarchs moved to the judiciary from the prosecutor’s office, but those who did not still had some prior professional or social ties with those former prosecutors.

⁴³At least eight judges who currently have the most influence moved to the judiciary from the same division of the prosecutor’s office around the same time in the mid 2000s. The head of this division is viewed as one of the oligarchs. He served ten years at the Supreme Court and is currently the president of one of the two appellate courts. All others from the same unit have also held positions in courts or court divisions ever since. Several of them were elected as members of the Judicial Council.

⁴⁴Interview with Former Appellate Court Judge (Dec. 12, 2018) ; *see also* Interview with Former Judge and Court President (Jan. 4, 2019) (“Many from this group worked at the Prosecutor’s office ... then this group moved to the judiciary and became court presidents. This group governs the judicial system today.”).

Being in positions of power for years allowed judicial oligarchs to accumulate considerable authority over judges. This authority allowed them to keep control over the Council after 2013 when reform implemented by the new ruling party made convening the Conference of Judges and holding elections to pick the Council's judge members mandatory. Judicial oligarchs' promise to judges to provide protection against politicians' calls for judicial accountability guaranteed them success in the 2013 and 2015 elections that were competitive. In the subsequent elections, the number of candidates was the same as the number of vacancies,⁴⁵ showing that judges were no longer willing to challenge the oligarchs' rule and compete with their candidates. This signaled the consolidation of their power.

Having acquired the guaranteed support of the judicial faction of the Council, who are in the majority, judicial oligarchs were then able to continue appointing their trusted affiliates as court presidents; such decisions require only a simple majority. This resulted in system-wide influence, as the judicial oligarchs gained the ability to closely monitor the behavior of all judges through their affiliates and react if those judges do not meet their expectations in terms of on- and off-the-bench behavior. Court presidents can mobilize judges of their respective courts to support oligarchs' candidates at the elections or otherwise.

The recruitment by the Council of new judges based on loyalty and obedience has, in the past few years, created an even stronger following for the judicial oligarchs among judges.⁴⁶ It has guaranteed that the candidates of judicial oligarchs will continue to be successful in subsequent elections and has cemented them in positions of power. This has meant emphasis being placed on candidates with whom judicial oligarchs share professional and social ties and the further cultivation of those ties.

Furthermore, judicial oligarchs' political clout and connections have enabled them to engage in informal dealings with the ruling party politicians, thereby securing favorable legislative changes or other types of political support and further consolidating their powerful position inside the judiciary. Consequently, the oligarchs are also able to signal to potential allies that they will be protected and to potential opponents that resistance would be futile.

II. Oligarchs' Affiliates

Oligarchs rely on a small group of loyal and trusted affiliates to govern the judiciary. They handpick the members of the Judicial Council and court presidents from among judges with whom they have superior/subordinate relationships—such as former law clerks—or familial and other social ties.⁴⁷ Because affiliates are so closely connected with oligarchs and with each other, their actions are well coordinated and concerted. It seems that the degree of influence of specific affiliates varies depending on the length and type of their connection with the oligarchs. In exchange for loyalty, they can count on material and other benefits attached to leadership positions, for example, reductions in caseloads as judges and the ability to decide on the careers of other judges.

Many of these trusted affiliates remain in such positions for long periods and are sometimes rotated. They should be prepared to leave positions prematurely whenever asked, to free them up for judicial oligarchs themselves or for whomever judicial oligarchs want in those positions. For example, at the October 2021 Conference of Judges, two seats on the Judicial Council became vacant after the premature resignations of two female judge members, one of whom had been elected only a year earlier. The same happened at the October 2022 elections, which brought one of the judicial oligarchs and one other highly influential judge back to the Council. The judges that

⁴⁵For details, see Tsereteli, *supra* note 8.

⁴⁶Tsereteli, *supra* note 13.

⁴⁷A highly influential judge once noted that he regarded judges as "family members," "knows their hardships and successes," and "tried to help them if needed"; see *Levan Murusidze: I Consider Judges to be Members of My Family*, LIBERALI (Dec. 28, 2018), <https://liberali.ge/news/view/42240/levan-murusidzemimachnia-rom%20-mosamartleebi-chemi-ojakhis-tevrebi-arian>.

left the Council prematurely did not provide any explanation, but their immediate replacement by very influential judges reinforces the suspicion that they were asked to free those seats up.

Affiliates cannot get away with deviating from the expectations of the oligarchs or challenging their rule. There have been instances where court presidents were dismissed for that reason. For example, in 2016, the Judicial Council dismissed the president of one of the largest courts soon after the latter had discussed problems in the judicial system with the representatives of NGOs and the media.⁴⁸ The NGO coalition argued that court presidents could be removed prematurely only through disciplinary proceedings and that this dismissal clearly violated the law, showing that the Council would not tolerate criticism and that it would resort to repressive measures with regard to judges who expressed critical viewpoints.⁴⁹

III. Oligarchs' Followers

Most judges are followers in the sense that they do not challenge the rule of judicial oligarchs and meet their expectations in on- and off-the-bench behavior. They are at the bottom of the pyramid due to their limited influence on judicial governance. In this respect, their role is limited to voting for the candidates that judicial oligarchs nominate. These may include district, appellate, and even Supreme Court judges. Followers can be divided into two sub-groups: (1) active supporters of judicial oligarchs, and (2) judges that are passive and obedient to judicial oligarchs out of fear for their careers.⁵⁰ Judges from the former sub-group have the chance to rise in the hierarchy by showing loyalty to judicial oligarchs, for example, by defending them against criticism from civil society or by attacking peers that disobey judicial oligarchs. Where a vacant position in leadership is unavailable, loyal judges may instead be promoted to the appellate courts or to the Supreme Court. The proportion of followers of judicial oligarchs has massively increased in the past few years: It is widely believed that the Council has been picking candidates that are loyal and obedient to judicial oligarchs.⁵¹ The pool of candidates that have a chance to be picked is hence limited to those whom oligarchs already know in person.

IV. Dissenters

Many judges who were willing and able to challenge the rule of judicial oligarchs ("dissenters") through individual assertiveness or collective mobilization were pressured and forced to resign or were refused re-appointment for life. Such incidents had a chilling effect on other judges, especially as their ten-year mandates were expiring around the mid-2010s and re-appointments were in order. A sitting Supreme Court judge explained the vulnerability of judges around that time:

They had no guarantees that they would continue being judges if they openly and clearly stated their different, critical position, the position that would be different from that of the majority or from that of the group that acts in agreement with the executive.⁵²

A small number of dissenters remaining in the system started acting contrary to the oligarchs' expectations only after having been appointed for life, but rather carefully and subtly. As an example, when interviewed by the Judicial Council for a Supreme Court position in December 2020, one judge problematized too much judicial unity, manifested in the silence and passivity of her peers, in the lack of diversity of opinions inside the judiciary as well as in the lack of

⁴⁸For details, see COAL. FOR INDEP. & TRANSPARENT JUDICIARY, *THE JUDICIAL SYSTEM: PAST REFORMS AND FUTURE PERSPECTIVES* (2017), http://coalition.ge/files/the_judicial_system.pdf [hereinafter *THE JUDICIAL SYSTEM*].

⁴⁹*The High Council of Justice Released Akhvediani in Violation of the Law*, COAL. FOR INDEP. & TRANSPARENT JUDICIARY (Feb. 23, 2016), http://www.coalition.ge/index.php?article_id=74&clang=0.

⁵⁰Interview with Sitting Supreme Court Judge (June 6, 2018).

⁵¹For details, see Tsereteli, *supra* note 13.

⁵²Interview with a Sitting Supreme Court Judge, *supra* note 50.

competitiveness in elections for the Council's judge members.⁵³ In October 2022, several judges publicly disagreed with one of the judicial oligarchs who claimed that study visits by Georgian judges to the United States were useless.⁵⁴ However, the number of such outspoken judges is not high enough for them to collectively mobilize and change the situation. These judges do not openly challenge the rule of judicial oligarchs, most likely fearing negative consequences for their careers. Such judges will lose out to oligarchs' affiliates and loyal followers in terms of promotion or nomination to various external expert bodies such as, for example, the European Commission for the Efficiency of Justice (CEPEJ).⁵⁵

E. The Use by Judicial Oligarchs of Informal Institutions to Shape Judges' Behavior

This Section discusses the use of informal tools to sustain and reinforce judicial oligarchy. In particular, it covers informal acts, practices, and institutions that shape judges' behavior on- and off-the-bench.

I. Informal Institutions that Shape the Behavior of Judges on the Bench

Most judges do not need to be pressured into deciding cases in a particular way. Judicial oligarchs can ensure that cases are assigned to loyal or obedient judges, for example, by assigning such judges to narrow specializations at the appellate courts.⁵⁶ There have been reports confirming that court presidents ask judges to decide cases in a particular way.⁵⁷ To influence outcomes in politically sensitive cases, judicial oligarchs have reportedly approached the ruling party leaders and sought the help of the security services where judges deciding on sensitive cases did not follow instructions. Recently, the former deputy head of the State Security Service confirmed in a social media post that, in 2017, an appellate court president, whom many consider as one of the judicial oligarchs, had asked the Service to exert pressure on a—now former—Supreme Court judge in connection with a case involving an opposition media channel and implicating the ruling party's interests.⁵⁸ According to this former official, the ruling party gave the Security Service an instruction to meet the judge and convince him to decide in its favor by offering him life appointment and material benefits and, in the event of a refusal, to threaten that “he would have problems.”⁵⁹ He confirmed that several such meetings took place and recordings were sent also to the appellate court president in question. A few days earlier, the Supreme Court judge had stated in an interview that he had been pressured by influential judges to decide cases in line with governmental preferences.⁶⁰

⁵³Hearing of Ketevan Meskhishvili, Candidate for the Position of Judge of the Supreme Court of Georgia, YOUTUBE (Dec. 28, 2020), <https://www.youtube.com/watch?v=0jmHEDL10FY> [hereinafter *Hearing of Ketevan Meskhishvili*].

⁵⁴Jaba Ananidze, *Answers of Several Judges to Murusidze, Who Considers His Visit to the USA to be “Viewing Buildings”*, NETGAZETI (Oct. 27, 2022), <https://batumelebi.netgazeti.ge/news/444697/>.

⁵⁵For more information, see *A Group of Independent Lawyers*, *infra* note 89.

⁵⁶See *Forms of Narrow Specialisations in Georgian Common Court System*, TRANSPARENCY INT'L GEOR. (Dec. 25, 2020), <https://www.transparency.ge/en/post/forms-narrow-specialisations-georgian-common-court-system> (problematizing the practice of judges being assigned to narrow specializations by court presidents, at their sole discretion in ways that are unpredictable and unsubstantiated).

⁵⁷As the Batumi City Court Judge, Irakli Shavadze, pointed out: “When I was appointed, he [the court president] imposed an ultimatum: ‘you will either be a member of our team or you will be alone and ostracized.’ I was not going to confront him, but he wanted to influence my decisions, to dictate me how to decide.” This judge was refused appointment for life after his probationary term; see Jaba Ananidze, *A Judge Asks GYLA and Transparency International for Help in Defending His Rights*, NETGAZETI (Feb. 23, 2018), <https://batumelebi.netgazeti.ge/news/118104/>.

⁵⁸Soso Gogashvili: *I Confirm Pressure on Judge Alavidze*, INTERPRESSNEWS, (Sept. 20, 2022), <https://www.interpressnews.ge/ka/article/726986-soso-gogashvili-vadastureb-mosamartle-besarion-alavizis-mier-interviushi-moqvanil-zecolis-pakts-es-ganvaxorcielet-sus-ma-mixeil-chinchalazis-motxovnis-shemdeg/>.

⁵⁹*Id.*

⁶⁰A Former Judge about the Pressure from a Clan, TABULA (Sept. 18, 2022), <https://tabula.ge/ge/news/691489-dabareba-kabinetshi-kuchurad-sakmis-garcheva>.

Because judges rarely report such instances, especially while still in post, the scale of such practices is hard to ascertain. At this point, there is some evidence of isolated informal acts, but not fully formed behavioral patterns. However, if court presidents routinely ask judges to decide cases in a particular way and if reluctance to obey triggers sanctions, informal institutions expecting judges to follow instructions may very well be in place.

II. Informal Institutions that Shape the Behavior of Judges Off-the-Bench

Judges are expected to vote in favor of whomever judicial oligarchs nominate as Judicial Council members. There are typically as many candidates as there are vacancies at the elections to the Council. The same applies to the selection of court presidents: There is typically only one candidate, supported by judicial oligarchs, whom judges automatically approve, when consulted by the Council that ultimately makes decisions.

There is some evidence showing that judges are expected to speak out only in support of judicial oligarchs and refrain from publicly disagreeing with them. Judges often show up when oligarchs need to demonstrate to the ruling party that they enjoy internal support or make public statements in support of oligarchs. Public statements or social media posts in which judges challenge the rule of judicial oligarchs are rare.

These patterns in judicial behavior are far from accidental. Judges appear to be aware of the expectations as to their off-the-bench behavior and the consequences they will likely face if they deviate from it. Judicial oligarchs and their affiliates rigorously promoted the idea of judicial unity. This idea presupposes the judiciary's internal consolidation and lack of disagreement. Oligarchs argued that *any* internal division would be unhealthy and weaken the judiciary.⁶¹ As one of the judges affiliated with oligarchs explained:

Whenever there is external pressure, the collective comes together. You perceive it as if your colleague is being attacked, the entire system is being attacked and you are being attacked too This hinders internal filtration; you are afraid of revealing your flaws.⁶²

This argument was an easy sell as most judges were not used to being vocal and assertive. Oligarchs' rhetoric that the judiciary was under attack added to the judges' vulnerability and made critical input on their part even more unlikely. While oligarchs have insisted that convergence of judges was voluntary, the fact that judges are sanctioned for disagreeing with oligarchs points to the contrary.

In an effort to suppress internal dissent and avoid having their rule challenged, oligarchs also vilified new judicial associations that were beyond their control, such as the Unity of Judges established in 2013.⁶³ This rhetoric appears to have shaped the thinking and behavior of rank-and-file judges. It is telling that by 2016 judges had started distancing themselves from the Unity of Judges, first by avoiding the events the association organized,⁶⁴ and then by resigning altogether.

⁶¹The former Secretary of the Judicial Council, Judge Murusidze declared: "[T]here is no clan in judiciary. I am the leader of this judiciary that unites judges." George Diasamidze, *Levan Murusidze: There is No Clan in the Judiciary*, NETGAZETI (Dec. 27, 2018), <https://netgazeti.ge/news/332086/>; Another influential judge, Mikheil Chinchaladze emphasized that there was a difference between clan governance and the corporate unity of judges, insisting that the former does not exist in Georgia; see *Chinchaladze: Clan Governance does not Exist*, IMEDI TV (June 24, 2017), <https://imedineews.ge/ge/samartali/17341/chinchaladze-klanuri-mmartveloba-ar-arosebobs>.

⁶²Interview with Sitting Supreme Court Judge (Dec. 13, 2018).

⁶³Television Interview by Tea Sichinava with Dimitri Gvritishvili, Council Member and Acting President, Kutaisi Appellate Court, TV IMEDI, KRONIKA (Nov. 11, 2017) ("The purposes of this association were quite far-reaching and unhealthy This association had the aim of cleaning the system of judges lacking integrity Many of the judges that joined this association were intentionally drawn into the confusion."). The recording of this interview is no longer accessible online, but is available to the author.

⁶⁴See Interview with Former Appellate Court Judge, *supra* note 19.

This process came to a head in May 2017, when the Unity of Judges criticized the process of making judicial appointments.⁶⁵ After this, all the sitting judges left the association. One judge interviewed for this study insisted that such associations are “externally imposed” and established “for political purposes.”⁶⁶ Another one argued that “there should not be several associations in the judicial system” and that “there should be a system unified around certain ideas.”⁶⁷ This meant that the judicial oligarchs had closed the channels of mobilization for potential competitors. At the same time, they continued using the association under their control as an instrument of judicial mobilization, requiring all newly appointed judges to join the association immediately.⁶⁸

It emerges from the interviews that court presidents appointed by the Council—judicial oligarchs’ affiliates—ensure that the judges of their courts do not challenge the oligarchs’ rule. They explain to judges what is expected of them and monitor their behavior,⁶⁹ including their public statements, social activities, and Facebook profiles, in order to keep the Council informed. As noted by a former court president in an interview:

The court staff, as well as judges, control who ‘shares’ what, who ‘likes’ what, and then these judges are invited and ask to delete posts, asked why they do it and if they do not get the message after the first warning, they slowly begin to be harassed, even to the extent that they are willing to leave the judiciary.⁷⁰

Another respondent suggested:

If 2–3 judges meet, the Council will know about it, because they are afraid of such gatherings The court presidents are informally clan members and provide information to the clan about judges They probably know everything about every judge, where they move to, who they are friends with, and so on.⁷¹

It is made clear to judges that if they follow the rules—as in do not challenge judicial oligarchs—they “will not have any problems with appointments for life, or anything else.”⁷² If they do not, they are subjected to informal sanctions. They may be verbally assaulted on the judiciary’s intranet⁷³ or excluded from social events.⁷⁴ They can be criticized by the Council members and by judges of their respective courts, often unjustifiably and selectively. One judge had her mandate in the European Commission for the Efficiency of Justice (CEPEJ) terminated prematurely, as part of an orchestrated campaign against her, only to have her replacement picked through a completely non-transparent process.⁷⁵ Informal pressure—for example, in the form of verbal attacks,

⁶⁵Over Twenty Judges Have Left the Unity of Judges, RUSTAVI 2 (June 1, 2016), <https://www.rustavi2.ge/en/news/77081>.

⁶⁶Interview with Appellate Court Judge (June 28, 2018).

⁶⁷Interview with District Court Judge (Dec. 21, 2018).

⁶⁸As one sitting judge recalled: “On the very first day they brought me an application for membership of the Association of Judges. They are stronger, because they stand together. If we are not together, we’ll have to leave.” See Interview with Judge (June 7, 2018).

⁶⁹For more details, see Ananidze, *supra* note 57.

⁷⁰Interview with Judge, Supreme Court of Georgia (Jan. 4, 2019).

⁷¹Interview with Former Non-Judge Member, Disciplinary Collegium (Jan. 4, 2019).

⁷²Interview with District Court Judge (June 7, 2018).

⁷³See *The Judicial System*, *supra* note 48.

⁷⁴Interview with District Court Judge, *supra* note 72.

⁷⁵A Group of Lawyers Asks the Government Not to Terminate the Mandate of Nino Bakakuri in European Institutions, PUBLIKA, (Aug. 29, 2022), <https://publika.ge/iursitebis-jgufi-khelisuflebas-mouwodebs-mosamartle-nino-baqaqurs-evropul-institutebshi-uflebamosileba-ar-sheuwvyitos/>.

constant confrontation, and the creation of conditions under which it is difficult to work—has even forced judges to leave the judiciary prematurely.⁷⁶

If the judge in question does not get the message after being subjected to informal sanctions, formal procedures can be employed to force said judge out of the judiciary. Control over the Council enables judicial oligarchs to force out those few judges who openly challenged their rule by refusing to appoint them for new terms.⁷⁷ As a former judge noted:

If you go against the clan, disagree with them ... this does not apply only to the decisions but also for example, legislative amendments ... if you have a different opinion and openly express it, the clan knows about it and you become undesirable. You are ready that when your mandate expires, the Council will not vote for you and you will not be re-appointed.⁷⁸

The fear of being refused re-appointment must have dissuaded other judges from disagreeing with the leadership.⁷⁹ Such instances, even if rare, warn the rest of the judicial community about the consequences of breaking the rules.

The period between 2013 and 2015 was marked by challenge to the oligarchs' rule, which manifested itself in a couple of competitive elections and in a new judicial association publicly criticizing the Council's approaches. However, support for these new patterns in judicial behavior was not enough to lead to a shift in judges' behavior and normalize judicial assertiveness. Once the judges that contested the oligarchs' rule were forced out of the judiciary, their rule was consolidated.

Since 2016, instances of judges deviating from the rule have been rare. As an example, when interviewed by the Council for a Supreme Court position in December 2020 one judge problematized too much judicial unity, manifested in the silence and passivity of her peers, in the lack of diversity of opinions inside the judiciary, as well as in the lack of competitiveness in elections for the Council's judge members.⁸⁰ Some of the judge members gave her low scores as a result and she ended up not being nominated. More recently, after the EU delegation⁸¹ and the US Embassy⁸² criticized the October 31, 2021 elections to the Council as being neither transparent nor competitive, a handful of judges distanced themselves from a statement by the Administrative Committee of the Conference of Judges characterizing the foreign diplomats' statements as

⁷⁶The Supreme Court president, Nino Gvenetadze, was nominated in 2015 by the President, prior to the transfer of that power to the Judicial Council. Gvenetadze left her position in 2018, three years into her mandate. While she invoked health reasons, it is not unreasonable to argue that she was forced to leave following years of confrontation with other judge members of the Council. In November 2017, Gvenetadze declared that she was being subjected to psychological pressure from those judge members and found it hard to work under such conditions. *Nino Gvenetadze: I am a Victim of Violence from Colleagues*, RUSTAVI 2 (Nov. 6, 2017), <https://rustavi2.ge/ka/news/89171>.

⁷⁷A former appellate Court judge, Maia Bakradze, is often named among such judges.

⁷⁸*Interview with a Former Judge: Natia Kutateladze's Solution*, COURTWATCH (July 27, 2022), <https://courtwatch.ge/articles/natiaqutateladze/>.

⁷⁹A former court president noted: "If you resist them, you will not get a job, not only in the judicial system, but anywhere else, especially in governmental institutions. They will set an example, showing that whoever opposes them will find themselves in a difficult situation." See *Interview with a Former Judge and Court President*, *supra* note 44. Another interviewee noted: "The people in the judiciary today are not sufficiently qualified to find other jobs, if they have to leave the judiciary. Accordingly, they are very vulnerable. They have many benefits now and they want to keep them and it does not matter for them who gives them guarantees to stay in the system and whose instructions they follow"; see *Interview with the Former Deputy Public Defender* (June 5, 2018).

⁸⁰See *Hearing of Ketevan Meskhishvili*, *supra* note 53.

⁸¹DELEGATION OF THE EUROPEAN UNION TO GEORGIA, REMARKS BY EU AMBASSADOR CARL HARTZELL FOLLOWING THE APPOINTMENT OF TWO MEMBERS OF THE HIGH COUNCIL OF JUSTICE (Nov. 2, 2021), https://www.eeas.europa.eu/delegations/georgia/remarks-eu-ambassador-carl-hartzell-following-appointment-two-members-high_en.

⁸²U.S. EMBASSY IN GEOR. U.S. EMBASSY STATEMENT ON CONFERENCE OF JUDGES, (Oct. 30, 2020), <https://ge.usembassy.gov/u-s-embassy-statement-on-conference-of-judges-2/>.

unjustified and inappropriate.⁸³ This reaction of judges did not directly challenge the oligarchs' rule, but still was contrary to the oligarchs' expectations.

Overall, it does not seem that dissent is on the rise and assertiveness is becoming a norm. It is telling that immediately after, in December 2021, the Parliament adopted amendments to the Law on Common Courts allowing the Council to transfer a judge to a different court without their consent.⁸⁴ The same set of amendments allowed the Council to suspend a judge if disciplinary proceedings had been initiated against them.

F. Mixed Judicial Dimension of Informality

This Section shifts attention from the internal dynamics and addresses judges' external interactions, focusing first on those with politicians and then on those with civil society and on judicial reform projects funded by the European Union and United States Government.

I. Judges' Informal Interactions with Politicians

As noted above, the ruling party benefits from having judicial oligarchs at the top as they can guarantee that political preferences are taken into account without direct involvement in the day-to-day running of the system. This allows the ruling party to avoid accusations of meddling with judicial governance and judicial decision-making. Meetings between judicial oligarchs and high-level politicians to discuss reform have been reported.

However, much of the interaction is not publicized. Civil society reports indicate that such interactions were at times facilitated by a politician from the ruling party with whom judicial oligarchs had a close friendly relationship and whose wife had a managerial position at the Judicial Council.⁸⁵ The politician enabled judicial oligarchs to influence the pace and content of reforms. Some of the meetings were immediately followed by the blocking of changes that could constrain judicial oligarchs and undermine their rule. As an example, in October 2015, the Minister of Justice met 160 judges led by the Council Secretary, Levan Murusidze. After the meeting, the Ministry announced that, in light of the judges' objections, the legislative process would be stopped and certain proposed changes would be reviewed.⁸⁶ Ruling party politicians openly defended judicial oligarchs who were sanctioned by the US Department of State and have even blocked the creation of the Committee of Inquiry that was to investigate corruption in the judiciary.

II. Judges and Other External Actors

This Section highlights judges' engagement with non-political actors such as civil society and judicial reform projects funded by the EU and the US government.

Civil society organizations ("CSOs") closely follow developments in the judiciary, including the activities of the Judicial Council.⁸⁷ They have sought to influence reform by providing comments

⁸³See *Judges: Everyone Must Acknowledge that the Decision of the Conference of Judges is Not a Step Backwards, But an Expression of Independence of Judicial Power*, INTERPRESSNEWS (Nov. 4, 2021), <https://www.interpressnews.ge/ka/article/682095-mosamartleebi-qvelam-unda-gaacnobieros-rom-mosamartleta-konperenciis-gadacqveteleba-arc-gaugebari-da-arc-ukan-gadadgmuli-me-5-nabijia-aramed-is-aris-sasamartlo-xelisuplebis-damoukideblobis-gamoxatuleba> [hereinafter *Judges*]; Mikheil Gvadzabia, *Sixteen Judges have Distanced themselves from Criticisms of Embassies by Other Judges*, NETGAZETI (Nov. 5, 2021), <https://netgazeti.ge/law/573920/>.

⁸⁴Law on Common Cts. Art. 37¹, Law no. 1346-VIIRS-XMP- (amended Dec. 30, 2021).

⁸⁵CORRUPTION RISKS, *supra* note 4.

⁸⁶THE JUDICIAL SYSTEM, *supra* note 48.

⁸⁷For more information about the activities of the civil society coalition working on the judiciary, see Coalition for Independent and Transparent Justice Home Page, <http://www.coalition.ge> (last visited Aug. 5, 2023).

and suggestions on the legislative drafts. They have claimed, however, that legislative processes were not sufficiently inclusive because their voice was not heard.⁸⁸ CSOs have defended judges sanctioned by judicial oligarchs—criticized or dismissed—for being proactive or assertive in some way. This has taken the form of public statements and appeals to the ruling party, the Council, or international organizations.⁸⁹ CSOs are also willing to support national and supranational litigation efforts on behalf of such judges.⁹⁰ However, civil society organizations can do very little if judges do not speak out and seek allies outside the judiciary. Judges typically do so only after they leave the judiciary, and hence their proactive engagements have no bearing on the internal dynamics of the judiciary. Judicial oligarchs have been hostile towards CSOs, accusing them of damaging the Georgian justice system by unjustified criticism.⁹¹

Judicial reform projects funded by the EU and the US government have sought to informally influence legislative changes, specifically to improve the quality of procedures. Judicial reform through inclusive processes was a key item on the list of twelve conditions Georgia had to fulfil to obtain EU candidate status. However, the ruling party did not acknowledge that there were actual problems and, hence, the reforms it proposed were not entirely adequate.⁹² Reform projects have also sought to create agents of change inside the judiciary by funding training as well as study visits.⁹³ Judicial oligarchs have argued that study visits by Georgian judges to the United States are useless.⁹⁴ After the EU delegation and the US Embassy criticized the October 31, 2021 elections to the Council as being neither transparent nor competitive,⁹⁵ judicial oligarchs responded by accusing them of undue interference.⁹⁶

G. How Do Formal and Informal Institutions Co-Exist?

This Section gives an example of judicial oligarchs undermining the formal framework by using informal institutions, with the ultimate goal of reinforcing the oligarchy. It proceeds to explain the potential for a complementary relationship between the formal and informal institutions.

I. Informal Institutions Undermining the Formal Framework

As explained above, informal practices and institutions are central to the judicial oligarchs' success in capturing the judiciary. They flourished in the absence of adequate formal rules and persist even after the adoption of such rules. This can be demonstrated by the example of judicial appointments. Specification of criteria and procedures in law could have guaranteed the merit-

⁸⁸CORRUPTION RISKS, *supra* note 4.

⁸⁹A *Group of Independent Lawyers Campaigned against Premature Termination of the Mandate of Nino Bakakuri as a CEPEJ member*, INTERPRESSNEWS (Aug. 29, 2022), <https://www.interpressnews.ge/ka/article/724126-damoukidebeli-iuristebis-jgupi-xelisuplebas-moucodebs-mosamartle-nino-bakakurs-evropul-institutebshi-cevrobis-uplebamosileba-vadaze-adre-ar-sheucqvitos/> [hereinafter *A Group of Independent Lawyers*].

⁹⁰Maia Bakradze, one of the leaders of the Unity of Judges who was refused appointment to a new term after her initial ten-year term had expired, has her case pending before the European Court of Human Rights. She challenges procedural flaws in the process and argues that she was discriminated against due to her disagreement with the Council members.

⁹¹*Levan Murisidze on NGOs: They are Irresponsible, Rude, Their Name is Legion—if the cursing, swearing, bullying of judges continues, we will not only defend ourselves, but we will call everything by its name*, PUBLIKA (Oct. 25, 2022), <https://www.interpressnews.ge/en/article/122238-levan-murisidze-on-ngos-they-are-irresponsible-rude-their-name-is-legion-if-the-cursing-swearing-bullying-of-judges-continues-we-will-not-only-defend-ourselves-but-we-will-call-everything-by-its-name/>.

⁹²*Informal Powers as Barrier to EU Accession: Nino Tsereteli on Georgia's EU Candidacy*, REV. OF DEMOCRACY PODCAST (Dec. 2022), <https://revdem.ceu.edu/2022/12/12/nino-tsereteli-on-georgias-eu-candidacy/>.

⁹³The USAID-funded organization Promoting Rule of Law in Georgia (PROLoG) supported such activities, as did the EU-funded EU4Justice. These projects also advised on legislative reforms. While these various projects converge in some respects, they may diverge in others, due to the differences in U.S. and European standards and approaches.

⁹⁴See Ananidze, *supra* note 54.

⁹⁵For additional information about these reactions, see *supra* notes 74–75.

⁹⁶See *Judges*, *supra* note 83.

based selection of judges. However, in practice, judicial oligarchs and their affiliates have applied informal rules instead, contradicting and defeating the purpose of the new formal rules. While, according to the law, the members of the Judicial Council, a body in charge of judicial appointments, should select judges based on their competence and integrity, in practice it is widely believed that Council members choose judges based on their loyalty to judicial oligarchs, their reliability, obedience, and predictability.⁹⁷

The legislation presumes that, having interviewed candidates and studied relevant documents, the members of the Judicial Council will make individualized, merit-based assessments of candidates in light of the pre-determined criteria. However, interviews with a former judge and non-judge members of the Council have revealed that judge members of the Council and some of the non-judge members informally discussed scores and votes before they formally reported evaluations, as required by the law.⁹⁸ The results of these informal dealings were then rubber-stamped in formal settings. This was to guarantee the appointment of the candidates that fit the above-indicated informal criteria of loyalty and obedience. This means that the part of the process that was open to the public constituted a charade with no real bearing on the outcome.⁹⁹

II. Informal Practices Complementing Formal Ones

There may be scenarios in which informal institutions developed by judges are consistent with the letter and spirit of the formal changes meant to strengthen individual judges. Thus, formal and informal institutions form a complementary relationship and are mutually reinforcing. The Georgian case study shows that new formal rules may instigate changes in judicial behavior. As an example, the legislative changes of May 2013—allowing judges to nominate candidates, precluding court presidents from competing for the seats, and restricting the number of judges that could hold other leadership positions at the same time as Judicial Council membership—changed the informal dynamics within the judiciary, prompting rank-and-file judges to become more vocal and demand meaningful involvement in governing the judiciary.¹⁰⁰

As noted above, one group of judges established an association named the Unity of Judges and stood in the elections against the candidates of the judicial oligarchs that, up to that point, had monopolized leadership positions.¹⁰¹ In addition to seeking to make use of the new formal prerogatives, these judges sought to lay the foundations for new informal rules of behavior regarding participation in the process leading up to the voting itself, which remained unregulated. They also sought to challenge the culture of passive observance which judicial bosses had cultivated for years by marginalizing rank-and-file judges. They encouraged other judges to actively get involved, to demand that candidates present their respective plans, and to pose questions during the lead-up to the elections in order to form opinions about the candidates.

Accordingly, legislative changes prompted changes in the internal dynamics, and made the Conference(s) of Judges, which had been rare and largely uneventful, into lively forums for debate and contestation. While initiatives did garner some approval, however, they were not supported

⁹⁷See Tsereteli, *supra* note 13.

⁹⁸Interview with Former Court President and Judicial Council Member (June 1, 2018). NGO monitors witnessed that the judicial council members left the meeting room to negotiate; see Monitoring Report 2012–2014, *supra* note 14, at 6–7.

⁹⁹This was confirmed by two non-judge members of the Judicial Council that were not allied with judge members. Interviews with Non-Judge Members of the Judicial Council (May 31, 2018 & June 5, 2018).

¹⁰⁰Two of the Supreme Court Judges issued a public statement in advance of the Conference, highlighting “minimum participation of judges in administering the judiciary.” They also expressed concern that the legislation governing elections to the Council still worked to the advantage of judges holding leadership posts and created an uncompetitive environment; see *Statement of Two Supreme Court Judges About the Conference of Judges*, *supra* note 25; *Political Agreement and Unequal Election Environment for Judges*, NETGAZETI (June 4, 2013), <https://netgazeti.ge/news/22476/>.

¹⁰¹See Interview with Former Appellate Court Judge, *supra* note 19 (“We started campaigning, organizing meetings in the regions Our plan was to strengthen individual judges We did not plan to kick someone out or something like that. We distributed our programme.”).

by a sufficient number of judges.¹⁰² As a result, these attempts to replace the existing behavioral patterns with ones that would be consistent with the spirit of legislative reform in the long term and in a sustainable fashion failed.¹⁰³

H. Conclusion

The Georgian case study presents a cautionary account about the risks of concentrating power in the hands of judicial oligarchs, highlighting how their rule distorts judicial governance and undermines judicial independence. The Georgian judiciary is portrayed as a pyramid-like structure where judges' positions are determined by their influence on judicial governance and decision-making. Judicial oligarchs are a select few judges at the top that have acquired system-wide influence over the judiciary through their trusted affiliates, leaving other judges with minimal influence at the bottom of the pyramid. While active supporters of judicial oligarchs ("followers") have a chance to move up the ladder, those few judges who see oligarchy as problematic ("dissenters") will not have such an opportunity.

Research provides evidence that bodies of judicial self-governance, such as judicial councils, can easily be hijacked and misused by a handful of judges,¹⁰⁴ independently or through collusion with politicians, where overwhelming numbers of judges are neither interested nor able to meaningfully participate in governance. The more powerful these bodies are, the higher the risk that they will be captured and the greater the potential damage to the independence of individual judges.

In the Georgian context, the features allowing judicial oligarchs to cement themselves and their affiliates into positions of power, such as the accumulation of competences in the Judicial Council, centralized the appointment by the Council of court presidents, and the ability to sit in the Council while simultaneously serving as court and court division presidents was seen as unproblematic or recommended by the Council of Europe bodies.¹⁰⁵ The Georgian experience signals that while transfer of powers to judge-dominated bodies can help insulate judges from external pressures, the risk of aggrandizement of certain judges and internal pressures on others should not be underestimated.

How do judicial oligarchs in Georgia get judges to vote them and their affiliates onto the Council since Council membership became elective? The Georgian case study signals that informal networks and institutions have facilitated electoral success. The key to such success was a strong following among judges that was created through the selection of newcomers to the system on the basis of loyalty and obedience. There appears to be a shared expectation that judges will not challenge the authority of judicial oligarchs by publicly disagreeing with them or competing with them in elections, or else they will be sanctioned. Most judges vote for oligarchs and their affiliates out of loyalty or out of fear for their careers. As a consequence, legal provisions meant to facilitate the meaningful engagement of judges in governance are rendered useless. There have been a few isolated instances of judges acting contrary to the expectations of oligarchs. However, the status quo will only change if many judges deviate despite the risk of being sanctioned, thereby normalizing judicial assertiveness over time.

The likelihood that new informal institutions that call for judicial assertiveness will emerge could increase if: (a) the system of judicial governance were to become less centralized, more bottom up, leveling the playing field for judges unaffiliated with oligarchs and creating

¹⁰²The initiative about allowing judges to pose additional questions was supported by only sixty-four judges out of around 250. The Chairman of the Supreme Court declared that he could not oblige candidates to answer questions. See *The High Council of Justice Elections Started*, NETGAZETI (June 9, 2016), <https://netgazeti.ge/news/22608/>.

¹⁰³*Id.*

¹⁰⁴For the experience of other countries, see, e.g., Samuel Spáč, Katarína Šipulová & Marína Urbániková, *Capturing the Judiciary from Inside: The Story of Judicial Self-Governance in Slovakia*, 19 GERMAN L.J. 1741 (2018).

¹⁰⁵See, e.g., *Draft Opinion of the Venice Commission*, *supra* note 12.

opportunities for broader judicial engagement; (b) the judiciary were diversified in the sense that not all new judges were system insiders; (c) external triggers, such as the engagement of judges in transnational judicial networks, study visits abroad, or civil society support, as well as developments inside the system such as the emergence of agents of change that are willing to practice assertiveness, lead the mobilization and transformation of judicial behavior over time.

The case study on the Georgian judiciary also warns that depoliticization in the sense of excluding politicians from the bodies of judicial governance will not necessarily prevent politicians' informal meddling with judicial decision-making. The ruling party has pursued reforms securing depoliticization only to appease the European institutions and create an appearance of willingness to respect judicial independence. Informal dealings between judicial oligarchs and ruling party politicians still make judges vulnerable to interference. Such collusion is part of the broader strategy of the ruling party to weaken the checks and balances¹⁰⁶ and operate without constraints.

Oligarchization—the concentration of power in the hands of a small number of individuals often through reliance on informal institutions—is very prevalent in Georgia, even beyond the judiciary. Judicial oligarchs are part of the machinery that sustains oligarchization in the political field. This is attested to by rigorous defense of these influential judges by the ruling party leaders. According to the opinion of the Venice Commission of June 2023, oligarchic influence “seems to have taken root and could represent a hurdle for democratic functioning of the institutions of the state, including the courts.”¹⁰⁷ The Commission also suggested that holistic reform of the judicial system to reinforce its independence would be a critical step in fighting oligarchization.¹⁰⁸

Acknowledgements. The author declares none.

Competing Interests. The author declares none.

Funding Statement. The research leading to this article has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (INFINITY, grant no. 101002660).

¹⁰⁶See FREEDOM HOUSE, NATIONS IN TRANSIT 2023: WAR DEEPENS A REGIONAL DIVIDE (2023) https://freedomhouse.org/sites/default/files/2023-05/NIT_2023_Digital.pdf.

¹⁰⁷EUR. COMM'N FOR DEMOCRACY THROUGH L., FINAL OPINION ON THE DRAFT LAW “ON DE-OLIGARCHISATION” para. 18 (2023), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2023\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2023)017-e).

¹⁰⁸*Id.* at para. 49.

Cite this article: Tsereteli N (2023). Constructing the Pyramid of Influence: Informal Institutions as Building Blocks of Judicial Oligarchy in Georgia. *German Law Journal* 24, 1469–1487. <https://doi.org/10.1017/glj.2023.74>