

CORRUPTION RISKS IN GEORGIAN JUDICIARY

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I. KEY FINDINGS AND RECOMMENDATIONS

An analysis of the current state of the Georgian Common Courts system stipulates the necessity for the government to take effective measures to reduce opportunities for corruption. Indeed, while some indicators of judicial quality have improved in the past several years, there is a troubling trend of possible improper influence on impartial adjudication, particularly in high profile cases involving sensitive political matters and high value civil disputes. There is sufficient circumstantial evidence of such improper influence in these types of cases so as to create genuine public doubt about the judiciary's independence and impartiality - doubt that the courts have been unable to dispel. This circumstantial evidence derives from an in-depth study of the judiciary, including a detailed examination of existing legislation, a close analysis of several high profile cases in the past few years, interviews with several knowledgeable legal professionals, and recent public opinion data on the courts. Although suspected judicial corruption has been previously mentioned in the press and received attention in certain public opinion polls, this study is the first to combine several different analytical methods to investigate the problem.

Based on this research, the main factors that appear to contribute to these suspected cases of corruption are (a) ostensibly improper influence on judicial administration by a certain dominant group of judges, many of whom have maintained their positions since previous government; and (b) structural and other weaknesses of the Georgian court system caused by flawed legislation, which have not been remedied due to deep opposition from within and outside the judiciary.

Despite the significant public attention given to ostensible judicial corruption over the past few years, the findings of this study suggest that current Georgian government has failed to effectively tackle these phenomena. Indeed, while the present government seemed to display an initial determination to address the issue of undue influence in the judiciary, which existed during its predecessor, the past several years can be characterized as one of general accommodation with, or even support for, the current court leadership and the dominant group of judges identified in the study. In any event, the government has without question dragged its feet on certain legal reforms that would otherwise have curbed the excessive powers exercised by this dominant group of judges. Perhaps not coincidentally, such procrastination seemed to coincide with the pre-election period in 2016, during which the courts considered a number of politically sensitive cases.

Some of the members of this dominant group of judges, most of whom hold key administrative positions in judiciary, have individually been involved in hearing of a number of cases that have stirred public outrage in Georgia and received condemnation from international community. This group of judges, who are mostly current and former court Chairpersons, HCoJ members or judges presiding over a number of high profile cases in the years of 2004-2012 (and whose identities are widely known), were seen as having overtly championed ruling party interests during the previous government. For example, one of the judges closely identified with this group, Levan Murusidze, who presided over the highly criticized Girgvliani murder case, in which the European Court of Human Rights said that *the Court was struck by how the domestic courts together with different branches of state power acted in concert in preventing justice from being done in this gruesome homicide case*, served as Secretary of the High Council of Justice (HCoJ) from 2013 through 2017. More broadly, former judge members of the HCoJ and Court Chairpersons during the period 2004-2012, a period heavily criticized for biased rulings, have been appointed to senior administrative leadership positions in the succeeding

political era. For example, former Deputy Chief Justice and former member of HCoJ, Mikheil Chinchaladze, was appointed to the position of the Tbilisi Appeals Court Chairperson in 2017, which enabled him to retain significant powers over judiciary. This same group of dominant judges gained a majority within the High Council of Justice, the supreme governing body of the judiciary, in 2013, which gave them significant leverage over the entire judicial system. Since then, the actions of this group have revealed signs of improper use of powers in matters of judicial appointments, discipline, and case assignments. At the same time, there have been reasonable grounds to suspect the possible improper interference in a number of cases before court.

During the recent few years, questions have been raised about impartiality of judges in high value/high profile commercial cases, as well as potentially serious improper influence being exerted on them. Representatives of business associations, legal practitioners, and segments of the international community have raised questions about serious weaknesses in judicial integrity and competence in several such cases. Meanwhile, monitoring of politically sensitive court cases over the past several years strongly suggests possible improper government interference. For example, such questions have been raised in recent case of Rustavi 2, a TV company that has been critical of the government and the so called “cable case”.

In addition, the confidence in judicial independence and impartiality has been greatly damaged by the fact that for years, the institution of Court Chairperson has been dominated by a small group of judges who are regarded as the superiors to other judges. By this time, Court Chairpersons still hold excessive powers which enable them to have undue influence within the court system, including the ability to manipulate case assignments (even after enactment of the electronic case distribution system). In some cases, these Chairpersons appear to have influenced subordinate judges to reach the ‘right’ outcomes in particular cases, which obviously violates so-called “internal judicial independence,” and the ability of individual judges to exercise impartiality and obey their conscience in deciding cases. Allegations of such improper influence made news in February 2018, when Batumi City Court Judge Irakli Shavadze publicly announced that he was refused life tenure (following a standard three-year initial appointment period) by the High Council of Justice, because of a confrontation with the Court Chairman of Batumi City Court. According to Shavadze, the Chairman (who is an outspoken member and supporter of the dominant group of judges) has repeatedly tried to influence his court decisions. On March 1, the Coalition for an Independent and Transparent Judiciary urged authorities to investigate such allegations of wrongdoing; however no official response has been offered.

Currently, the dominant group of judges continues to exercise excessive administrative and managerial powers in the judicial system that is unchecked by existing accountability mechanisms or judicial review. In fact, the results of the study suggest that the power of the group is so extensive that it has the ability and opportunity to influence not only the outcome of individual cases but critical aspects of administration of the entire court system as well (including appointment, promotion and dismissal of judges, budgetary control, case management and case assignments). In a very obvious sense, this unchecked use of expansive powers increases informal influence of the dominant group of judges, which can amplify a number of other preexisting or potential weaknesses in judicial integrity, heightening systemic corruption risks illuminated by this study. Among these risks are the following:

- **Flawed regulation of the selection/appointment of judges increases risks of cronyism and conflicts of interest.** There are many serious gaps and ambiguities contained in the existing Organic Law on Common Courts of Georgia. First, the High Council of Justice holds unjustifiably broad discretion with regard to the appointment of judges, including

excessive authority to determine who will be enrolled to the High School of Justice and therefore who will be candidates for judgeship. Second, the functional and organizational independence of the High School of Justice is not ensured, which results in the HCoJ's ability to fully control the intake of new judges in the judiciary and opportunity to manipulate the process. In addition, the High Council of Justice is not obligated by law to substantiate its appointment decisions, while the simple vote-based appointment of judges enables the Council to turn down candidates that have received the highest scores throughout the selection process. Moreover, the Council has issued a regulation whereby not only are interviews with candidates not open to civil society representatives and the media, but the minutes of the interviews and the criteria for decision are not made public, even after a judge receives his or her appointment for life tenure. This lack of transparency in the appointments process undermines public confidence. Our observation of the High Council of Justice over the past 5 years revealed cronyism in the process of appointment of judges, rather than being merit-based. At the same time, as a rule, judges that are loyal to the dominant group are being appointed to strategic administrative and appellate positions. While judges who have been critical of the current situation have been gradually pushed out of the system, proving that voicing critical opinions is not tolerated in the judiciary.

- **Flawed regulation of the system of judicial accountability allows the High Council of Justice to use disciplinary proceedings for improper purposes.** The Law on Common Courts of Georgia fails to provide a sufficiently clear and precise definition of corruption offenses, and neglects to furnish sufficient independence guarantees for the Independent Inspector of the HCoJ (who is charged with conducting initial study of complaints against judges). And even in cases where the Independent Inspector provides a substantiated recommendation, the Law requires an unreasonably high number of minimum votes (majority) by the HCoJ members to initiate a disciplinary action against a judge suspected of disciplinary offence. At the same time, it should be noted that even with these flawed regulations, the current legislation does allow for the possibility of combating judicial corruption if there was such intent from the Council.
- **There is no effective system of pursuing suspected judicial corruption.** Over the years, business associations, civil society representatives and media, have raised questions about possible judicial corruption in Georgia. However, neither the High Council of Justice, (through disciplinary actions against judges), nor the Prosecutor's Office (through criminal prosecution) have tended to take action. The Prosecutor's Office did launch an investigation into the alleged leak of judicial qualification tests in early 2016, but no information about the results has been made public even after 2 years.
- **Inadequate social guarantees and working conditions for judges also create incentives for excessive dependence on HCoJ/Court Chairpersons and hence, for corruption.** The current system of salary supplements which are provided to judges at the discretion of HCoJ, poses a threat to their independence, while low pensions do not guarantee their financial stability. Difficult working conditions (excessive caseloads, insufficient court rooms, lack of office space) also create possibilities for the manipulation of judges through both rewards and punishments. For example, excessive case assignments can lead to overload and delays, which can result in disciplinary action.
- **The High Council of Justice is not open to review and criticism from civil society.** The High Council of Justice, which usually does not substantiate its decisions, is not open to civil society recommendations that can improve the system and raise the qualification of court employees. In 2017, despite the recommendations from the foreign donor organizations and Coalition for Independent and Transparent Judiciary, which composes of 39 local

NGOs, the Council refused to involve civil society representatives in working groups tasked with the implementation and monitoring of the 2017-2018 action plan implementing the judiciary's long term strategy (which had been adopted under the terms for the country's Association Agreement with the EU).

The preceding findings of this report strongly militate in favor of the government taking strong and effective measures to reduce opportunities for corruption in the judiciary. The most critical measures, which are elaborated on in the main body of this study, should include the following:

- **Comprehensive legislative amendments must be put in place that will curb excessive powers currently exercised by the High Council of Justice (including the power to appoint Court Chairpersons and control the process of enrolling judicial candidates to the High School of Justice).** Transparency in all key aspects of the appointment of judges must be guaranteed by law, and the institutional and functional independence of the High School of Justice must be ensured. Such independence would assist with the recruitment of proficient legal professionals to serve as potential judges. And with a more legally required process for substantiating the appointment of such judges based on integrity and competence, the ranks of the judiciary would be broadened to include more respectable and capable jurists—which in turn will build greater public trust in the courts.
- **Accountability mechanisms for judges must be strengthened.** Independence guarantees for the independent Inspector of the HCoJ should be significantly strengthened. Current broad and vague grounds for disciplinary proceedings against judges must be corrected and brought into conformity with international standards.
- **Investigative bodies and HCoJ should effectively respond to alleged cases of judicial corruption, while all ongoing investigations involving the judiciary and its personnel should be promptly concluded.** As a rule, statements of local and international community members (including respected CSOs, business associations, media outlets) regarding the risks of corruption in the Georgian judiciary are ignored. While there are some legal and institutional flaws contributing to such inaction, the main problem remains the absence of any real willingness of the Council or the Prosecutor's Office to effectively respond to alleged cases of corruption. The Prosecutor's Office should take prompt and effective measures to investigate every case where the independence and integrity of judges are in question.
- **The Court Chairpersons should have powers removed that enable them to manipulate the electronic system of case assignment.** Court Chairpersons should be stripped of the authority to unilaterally determine the composition of narrow specializations within panels of courts, which creates a strong risk of Chairpersons influencing case assignments in a manner contrary to the intent of the current case assignment system.
- **The problem of case overload in Georgian courts must be resolved and social guarantees for judges improved.** The High Council of Justice must carefully study current case management practices, key reasons for case delays, appropriate judicial staffing levels, and develop a comprehensive strategy for reducing case overload in the Georgian courts. At the same time, the amount of pension payments established for judges should be increased, and any salary supplement received by a judge should be appropriately substantiated according to predefined criteria; otherwise, salary supplements should be abolished altogether to decrease the risk of corruption.

- **Transparency of the court system must be increased.** The High Council of Justice must conduct interviews with judge candidates through open sessions and the possibility of decisions being made behind closed doors must be eliminated. The Council must involve the civil sector in the process of making important decisions, including working groups tasked with implementation of the judicial strategy and action plan.
- **The High Council of Justice should be required to carefully document and periodically publish assessments of its anti-corruption activities.** These assessments should be based on clear, measurable indicators in order to create an objective standard for gauging progress in the fight against corruption.

Combating corruption in the judiciary starts with the identification of problematic areas, followed by the selection of a correct reform direction and periodic assessment of progress.¹ Article 11 of the UN Convention Against Corruption obligates signatory states to take measures to reduce corruption risks in the judiciary in a way that does not endanger the independence of judges.²

Strengthening and increasing the powers of corrupt institutions without a systemic reform³ may, in fact, lead to more cases of corruption in the judiciary.⁴ This study has shown that corruption in Georgian courts can originate mainly from a strong formal and informal subordination between judges. In order to remedy this problem, strong political will is needed to implement the required comprehensive legislative amendments.

1 Reducing Corruption in the Judiciary, Office of Democracy and Governance – USAID Program Brief, 2009, p.9; Available at: <https://goo.gl/3t3jio>

2 United Nations Convention Against Corruption, United Nations Office on Drugs and Crime, 2014, article 11; Available at: <https://bit.ly/1NwzMLS>

3 Global Corruption Report 2007: Corruption in Judicial Systems, Transparency International, p. xxv; Available at: <https://goo.gl/ixXvMU>

4 Reducing Corruption in the Judiciary, Office of Democracy and Governance – USAID Program Brief, 2009, p.6-7; Available at: <https://goo.gl/3t3jio>

II. METHODOLOGY

Concern about alleged corruption in the process of executing justice in Georgia has been increasing. While direct evidence of improper influence in the assignment of cases, appointment of judges or administration of judiciary remains elusive, circumstantial evidence of the same has inexorably mounted in recent years, highlighted by a number of high-profile cases that have raised substantial doubts about possible unhealthy developments in judicial system on the part of court observers and participants alike.

Transparency International defines corruption as “abuse of entrusted power for private gain”. Judicial corruption includes any undue influence on the impartiality of the judicial process by any actor within the court system.⁵ While bribe-taking by a judge is the most obvious example of corruption, it is far more difficult to find other forms of improper interference in the judicial process. Such interference may come in the form of intimidation by government employees, as well as manipulation of the rules for appointment, dismissal, remuneration, and working conditions of judges.

This research aims to assess corruption risks in the Common Courts system of Georgia, evaluate evidence of ostensible corruption currently compiled and available, study existing sentiments based on reports by reputable organizations and available public surveys as well as interviews with legal professionals and practitioners selected for this study. Additionally, this research aims to identify factors that may influence the impartiality of judges and elaborate recommendations for legal, policy, and other reforms that can curb these problems. This type of research is the first of its kind in Georgia and its findings are current as of April, 2018. The scope of this report covers three main avenues of research, each of which has contributed to the findings and recommendations:

1. Identification of factors that facilitate corruption in the judiciary

This part of research was largely based on (a) Transparency International’s toolkit for Combating Corruption in Judicial Systems,⁶ which points to the main factors that increase corruption risks in the judiciary, and (b) the indicators and problematic issues listed in the USAID program brief on Reducing Corruption in the Judiciary.⁷ Using these guidelines for research, we were able to identify the shortcomings in the existing legal framework, as well as established legal practice and custom involving the courts in Georgia that may be facilitating improper interference in the handling of cases, management and self-governance of the judiciary. For the purposes of this report ‘internal judicial independence’ was also closely observed, which concerns the independence of individual judges vis-à-vis superior judges who hold power as a result of their position and ability to make decisions on judicial appointments, promotions, etc. During the process of elaborating recommendations, we took the local context and the specifics of the relationships among judicial system actors, into account.

5 Combating Corruption in Judicial Systems Advocacy Toolkit, Transparency International, 2007, p. xxi ; Available at: <https://goo.gl/afyTpd>

6 Combating Corruption in Judicial Systems Advocacy Toolkit, Transparency International, 2007; Available at: <https://goo.gl/afyTpd>

7 Reducing Corruption in the Judiciary, Office of Democracy and Governance – USAID Program Brief, 2009; Available at: <https://goo.gl/3t3jio>

2. Assessment of possible corruption risks through case patterns

The report includes close analyses of certain court cases with signs of possible corruption. Some of these cases are among those that have attracted significant public attention over the past few years and aroused widespread suspicion of judicial bias or improper influence. Some of these cases have been brought to our attention by the parties of the case, while others have been observed due to high public attention, through open sources. The report includes 7 such court cases.

3. Study of existing sentiments based on publicly available surveys and communication with legal professionals

In order to study corruption related sentiments in the judiciary, we conducted 7 in-depth interviews with various persons with connections to the court system: the Chairperson of the Supreme Court, an acting Court of Appeals judge with more than a decade of service on the bench, 2 former judges (retired within the past 5 years), 2 practicing attorneys who are one of the most active legal professionals at the time and a former member of the Disciplinary Committee of Judges. Interviews were conducted between October 10, 2017 and November 10, 2017. We agreed to leave some of our interviewees anonymous in order to ensure their openness and preserve confidentiality. In addition, the report covers an interview with the former Chairman of Tbilisi City Court, Mamuka Akhvlediani, about the accusations made against him. The views expressed during these interviews are presented thematically; however, **the findings of this research are not based on these interviews alone; instead, they serve the purpose of presenting general contextual views of the Georgian judiciary on the part of legal professionals.** For the same purpose, additional information, such as the surveys of the public are also cited in the report.

It must be noted that Tbilisi Court of Appeals judge Levan Murusidze, who is a former Secretary of HCoJ (2013-2017) and is widely considered to be an active member of the dominant group of judges, was also selected for an interview in order to reflect the full spectrum of existing sentiments; however, judge Murusidze refused to participate in the study.

1. VIEWS REGARDING INCREASING RISKS OF CORRUPTION IN THE GEORGIAN JUDICIARY

Although some judicial statistics, published by the High Council of Justice, point to significant increase in acquittals and court decisions made against state agencies since 2012,⁸ various surveys conducted over the past few years confirm that the judiciary in Georgia has been unable to gain a reasonable level of public trust. According to the results of a 2018 public opinion survey, commissioned by Transparency International Georgia, 35% of the respondents believe that the judicial system in Georgia is corrupt, while 58% believe that it is under the influence of the ruling party.⁹ The problem of low public trust towards the judiciary, and especially disciplinary proceedings against judges in Georgia, is emphasized by the Fourth Evaluation Round Report of the Group of States against Corruption (GRECO).¹⁰ Results

8 In 2016, natural persons won 64% of administrative cases against the Government of Georgia in the Supreme Court; in 2011 this number was 47%. The number of acquittals increased from 112 in 2008-2011 to 643 in 2013-2016. 53% fewer sentences of imprisonment were issued in 2013-2016 compared to 2008-2011. Report on the Judicial System (2013-2017), High Council of Justice of Georgia, 2017

9 Public Opinion Survey: Corruption, Trust in Institutions and Issues of Public Policy, Transparency International Georgia, 2018; Available at: <https://goo.gl/Xni1tE>

10 Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, 4th Evaluation Round, Evaluation Report for Georgia, GRECO, 2016; Available at: <https://goo.gl/siw2yr>

of the 2017-2018 Global Competitiveness Index are also of concern, with Georgia losing 24 positions in terms of perceived independence of judges compared to the previous year.¹¹

“

“Executive and legislative interference in the judiciary remains a substantial problem, as does a lack of transparency and professionalism surrounding proceedings” - The Freedom House, 2018*

“

“Although the constitution and law provide for an independent judiciary, there remained indications of interference in judicial independence and impartiality. Judges were vulnerable to political pressure from within and outside of the judiciary” - Country Reports on Human Rights Practices for 2017 (Georgia), U.S. Department of State**

“

“The constitution provides for an independent and impartial judiciary in civil matters, but the professionalism of civil judges and transparency of their adjudication are uncertain. Lingering Soviet-era corruption and ongoing Russian influence remain problematic” - The Heritage Foundation, 2018 Index of Economic Freedom***

“

“The Public Defender is particularly concerned about the events unfolding in the High Council of Justice of Georgia (the HCoJ). [...] council hearings behind closed doors and lack of transparency of these proceedings and heightened confrontation with NGOs working on issues related to the judiciary demonstrate the crisis the council finds itself in. [...] In the Public Defender’s opinion, without an institutional reform that is necessary for the judiciary, it will become impossible for the courts to function effectively.” - The Public Defender of Georgia, The Situation in Human Rights and Freedoms in Georgia 2017****

11 World Economic Forum Global Competitiveness Index 2017-2018; Available at: <https://goo.gl/B4VkiU>

* Freedom in the World 2018 (Georgia), Freedom House; <https://goo.gl/XV24xX>; see also: The Nations is Transit 2018 (Georgia); Available at: <https://goo.gl/8TCv65>

** Country Reports on Human Rights Practices for 2017 (Georgia), U.S. Department of State; Available at: <https://goo.gl/VYfdS4>

*** 2018 Index of Economic Freedom (Georgia), The Heritage Foundation; Available at: <https://goo.gl/6yD5h9>

**** The Situation of Human Rights and Freedoms in Georgia-2017, The Public Defender of Georgia; Available at: <https://goo.gl/e4yQgs>

IS THE JUDICIAL SYSTEM IN GEORGIA...?(%)

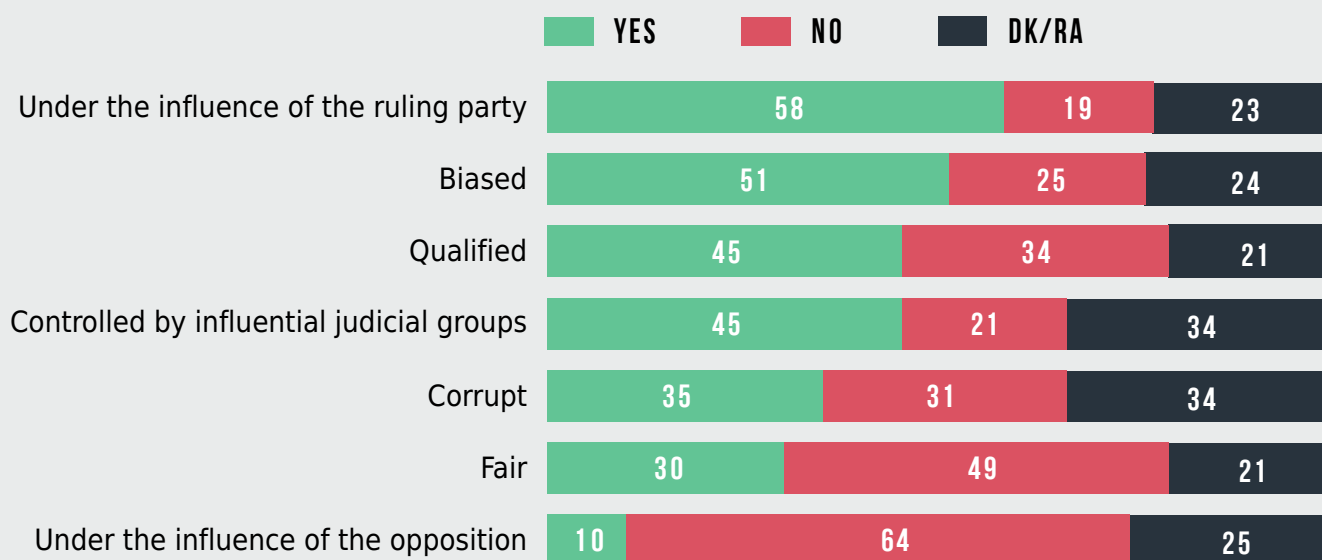


Figure 1: Results of Public Opinion Survey conducted in March, 2018 by CRRC Georgia and commissioned by Transparency International Georgia.

HOW WOULD YOU RATE THE PERFORMANCE OF THE COURTS? (q5)

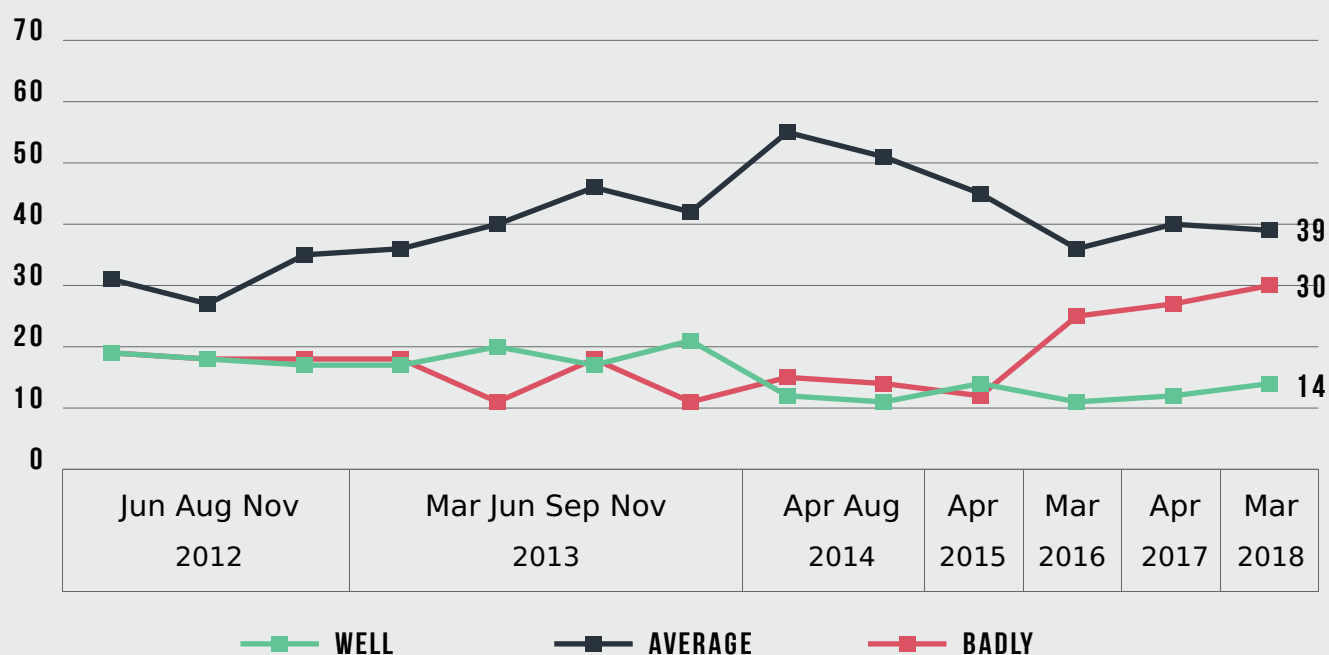


Figure 2: Results of 2012-2018 Public Opinion Polls in Georgia, NDI.

“During the previous government [2004-2012 [added by authors]], almost 100% of all cases were being controlled [by the government [added by authors]], which eliminated cases of bribery almost entirely; however, there were other types of interferences. If a judge made such a move, they would be discovered for sure because of all the filters. For example, Court Chairpersons were selected for one purpose - to find ‘unauthorised’ decisions and transfer them to Chinchaladze [then Deputy Chief of Justice [added by authors]], or other persons, who would then find a reason for the judge [to be punished[added by authors]], through the Prosecutor’s Office or “exile” them to another court. In short, this mechanism worked very well, and it minimized the risk of other types of corruption. After the change of government, not all cases are controlled this way anymore. The influential part of the judiciary decided that they needed to control only some of the cases that they had interest in. This situation creates an illusion that the judiciary has become independent, but in case of interest, it is very easy for them to bring about the desired result.”

Former Judge

“Previously [before the change of government in 2012 [added by authors]], the Prosecutor’s Office had interest in each and every case, which is no longer the case [...] The increased number of decisions against the state [in the past 5 years [added by authors]], are not surprising to me; the level of independence of judges in administrative and criminal cases has increased, unless there is a state or corruption interest involved.”

Practicing Attorney

In Recent years, representatives of the international community have voiced increasing concern about possible cases of corruption in the Georgian Common Courts system. According to minutes of the June 14, 2017 meeting of the Investors Council,¹² Janos Herman, Head of the EU Delegation to Georgia, spoke about the information the delegation has been getting about signs of corruption and undue interference in the judiciary.¹³

“Based on the increasingly alarming information EU Delegation has been getting recently, there is a misuse of selection, appointment and promotion of the judges, pre-agreement of their cases, flawed procedures, cronyism, corruptions, and undue interference.”

Janos Herman, Minutes of the Fifth Meeting of the Investors Council, June 14, 2017

Statements about alleged cases of corruption in the judiciary were made by business associations, including the International Chamber of Commerce.¹⁴ Additionally, a number

¹² Investors Council is an independent advisory body to the Prime Minister of Georgia, with the objective of promoting dialogue between the private business community, international organizations, donors and Government of Georgia for the development of a favorable, non-discriminatory, transparent and fair business and investment climate in Georgia; Available at: <http://ics.ge/en/home/>

¹³ Minutes of the Fifth Meeting of the Investors Council, June 14, 2017; Available at: <https://goo.gl/6EiuFy>

¹⁴ *The Georgian National Committee of the International Chamber of Commerce ICC-Georgia would like once again to address the recent developments in the judicial system of the country*, The Georgian National Committee of the International Chamber of Commerce ICC-Georgia, 2017; Available at: <https://goo.gl/8T4GN6>

of statements were made by local NGOs¹⁵ and international experts about possible undue interference in high profile cases.¹⁶ Finally, attorneys and business sector representatives have repeatedly voiced their concern about the increasing number of alleged corruption cases during closed meetings with Transparency International Georgia.

“This year, for the first time ever, we had new clients approach us with large cases that we had to turn down, because in addition to legal counseling, they expected from us to settle the cases with the court through ‘other means’.”

Practicing Attorney

“I know exactly which attorneys are fixing cases with Chinchaladze [Chairperson of Tbilisi Court of Appeals, former deputy Chief Justice[added by authors]] [...] if I wanted, I know exactly how and whom to approach to fix a case.”

Practicing Attorney

“After one of the large clients approached and told me to fix the case in court, I decided to study our reputation. I met a number of judges and attorneys and found that this was not our problem. The problem was with the perception of the society, which believes (and not unrealistically so) that if you want to win an important case in court, in addition to a good lawyer, you definitely need other contacts as well. After this incident, we simply do not accept large disputes, or tell such clients where to take their cases and who will help them do such a thing.”

Practicing Attorney

“Foreign businessmen do not trust the Georgian judiciary, which makes disputes very expensive for Georgian businesses, because it is very difficult to conduct a dispute through international arbitration. It is very expensive.”

Practicing Attorney

Attorneys, who were interviewed for this report, say that while the risk of bribery is not present in all categories of disputes, such questions do arise in high-value civil disputes. They also see increased risks of corruption specifically in District (City) and Appellate courts.

15 See the statements made by NGOs on the Cable Case (Available at:<https://goo.gl/7Tmv5C>) and the case of Rustavi 2 (Available at:<https://goo.gl/4t4uWr>).

16 Observations on the human rights situation in Georgia: An update on justice reforms, tolerance and non-discrimination, Council of Europe, Commissioner for Human Rights, 12 January, Strasbourg, 2016, par. 10; Available at: <https://bit.ly/2yFPxV1>

Attorneys have stated, that to their knowledge, corrupt deals are mostly made with the members of the dominant group of judges, known as ‘bosses’ inside the system. One of the attorneys further explained, that he is familiar with the scheme that is used settle cases and that, in case of such intent, the dominant group has the ability to assign a case to a judge who is under the influence. In this section, we would like to further clarify that **the findings of this research are not based on these interviews alone; instead, they serve the primary purpose of presenting existing sentiments in legal community.**

“The people we refer to as members of the influential group are called ‘bosses’ by judges themselves. These ‘bosses’ are engaged in corrupt deals and execution of orders from the government, while judges who are under their influence are executing their tasks. By influence I mean that these judges owe the ‘bosses’ for being appointed to their positions and for receiving salaries and are therefore obligated to follow their instructions without additional compensation.”

“As a rule, nowadays, the money does not reach the presiding judge. Deals are made with the ‘bosses’. In other words, for example, a member of the influential group receives money and then assigns the cases among the judges who are under their influence. If a case is assigned to a judge that is not under their influence, the number of which is very small, they will ensure that the case is handed over to a controlled judge. So far, the group has been unable to gain control of the Chamber of Civil Cases of the Supreme Court.”

Practicing Attorney

“I rule out any material benefits. I am saying this because I have contacts with my colleagues and I know their opinions on this topic. But as for the so-called elite corruption, the court is fertile ground for such activities. If the elite group is interested in making a corrupt deal on a specific case, they have the opportunity to do so because of internal influences and fully centralized governance.”

Former Judge

“The situation is very bad; judges are under absolute control in both the city and the appeals courts. Possibly at the Supreme Court level as well, but there’s less contact there... There are very respectable judges there whose independence I do not doubt, but there are also those who are being influenced.”

Practicing Attorney

In order for the judiciary to enjoy public trust, the public must feel that judges are impartial and highly qualified. Public sentiment about the existence of corruption, even if inaccurate, undermines the credibility of the judiciary. Whether or not the judiciary is perceived to be corrupt can also have great influence on the economic development of the country. Investors like to know that in case of a dispute, their case will be heard by an impartial and fair

court. Therefore, having an independent and corruption free judiciary is essential for the development of the investment and business environment.¹⁷

2. THE GOVERNMENT'S ROLE IN EXISTING UNDUE INFLUENCES WITHIN JUDICIARY

The main factor contributing to corruption risks in the Georgian judiciary is the absence of political will to fundamentally and thoroughly improve the system, which itself can be explained by the government's undue political interests. After the 2012 parliamentary elections, it was gradually revealed that the Georgian Dream coalition had finally come to support the group of judges that it had initially strongly criticized. Despite the several 'waves' of legislative amendments, the government failed to show strong political will to truly reform the judiciary. Regrettably, the reforms did not include changes that are necessary to improve the judiciary and ensure its independence (see the detailed analysis below). As a result of these incomplete reforms, the judicial system remains under the control of persons whose past actions had served as the main reason for the lack of public trust towards the courts.

2.1. GEORGIAN JUDICIARY PRIOR TO THE 2012 ELECTIONS

In the aftermath of the Soviet Union, the first attempt to reform the judiciary in Georgia was made in 1998, when the government introduced judicial qualification exams. However, this reforms did not continue, and corruption (in its most visible form of bribery) became widespread in the court system. In 2004, after the change of government, judge salaries were raised significantly and control over petty corruption cases was tightened. In 2004-2005, several judges were dismissed for taking bribes.¹⁸ These changes significantly reduced bribery, but gave rise to the problem of the executive branch, particularly the Prosecutor's Office, having strong influence over the judiciary.¹⁹ This was evidenced by the fact that the absolute majority of criminal and administrative cases during this period were concluded in favor of the state.²⁰ According to the 2006 report by the US Department of State, *ex parte* communication with judges was common in Georgia, when parties, including prosecutors, pressured judges to influence the case. The report compares this situation to the Soviet era "telephone-justice".²¹ Court decisions made during this period were subject to strong criticism

17 Global Corruption Report 2007: Corruption in Judicial Systems, Transparency International, p. xxii; Available at: <https://goo.gl/ixXvMU>

18 Countries at the Crossroads: Georgia, Freedom House, 2006; Available at: <https://goo.gl/SKJ9MU>

19 In 2015 interview the Chief Justice Nino Gvenetadze said that in the past years the practice of transferring judges to other courts was a way to punish judges-*What Is Changing in Judicial System*, Interview with the Chief Justice, Netgazeti, 2015; Available at: <https://goo.gl/XVWb8L>; In 2006 Nino Gvenetadze was expelled from the Supreme Court, as a result of a disciplinary action against several Supreme Court Justices, on grounds that they had incorrectly decided a case. Before she was expelled Nino Gvenetadze, together with 2 other Supreme Court Justices, publicly accused then Chief Justice Kublashvili (whom she later replaced in 2015) of pressuring judges and serving the interest of the General prosecutor's Office - *Judges Speak Out Against Pressure*, Civil.ge, 2005; Available at: <https://goo.gl/AVqSQg>; See also: Justice in Georgia, GYLA, 2010; Available at: <https://goo.gl/Y9jvyN>; 2004 Country Reports on Human Rights Practices-Georgia, US Department of State; Available at: <https://goo.gl/xsXsWn>; 2006 Country Reports on Human Rights Practices-Georgia, US Department of State; Available at: <https://goo.gl/GrSCfL>

20 Global Corruption Report 2007: Corruption in Judicial Systems, Transparency International, 2007, p. 205-206; Available at: <https://goo.gl/ixXvMU>

21 2006 Country Reports on Human Rights Practices-Georgia, US Department of State; Available at: <https://goo.gl/GrSCfL>

from both the European Court of Human Rights and local²² and international²³ organizations. Handling of the case of Sandro Girgvliani's murder in 2006 became cause for particular public outrage. The ruling of the European Court of Human Rights on this case states that *"the Court was struck by how the domestic courts together with different branches of state power acted in concert in preventing justice from being done in this gruesome homicide case."*²⁴ During the same period, systemic shortcomings were identified in court proceedings on criminal and administrative cases against possible political opponents of the government,²⁵ especially during the pre-election period.²⁶ This situation in the judiciary persisted until the change of government in 2012. A public opinion survey, conducted by Transparency International through its Global Corruption Barometer in September 2012, found that 51% of respondents named the judiciary as the most corrupt institution in the country.²⁷

2.2. GEORGIAN JUDICIARY IN 2012-2014

2.2.1. STRAINED RELATIONSHIP BETWEEN THE GOVERNMENT AND THE JUDICIARY

Following the 2012 parliamentary elections, one of the main promises of the new government was to create a fair judiciary.²⁸ The new government was initially highly critical of existing judges.²⁹ Government officials were particularly critical of those judges who had presided over high-profile cases during the previous government.³⁰

Within the first few days after coming to power, the Georgian Dream leader Bidzina Ivanishvili stated that he would challenge the judge *"who, during the pre-election period, issued 60 illegal judgments against Georgian Dream representatives"*.³¹ During the same period, candidate for Justice Minister, Tea Tsulukiani, called on judges, who, according to her statement, *had issued judgments that were shameful for the public and the country, to 'closely examine their conscience'*. Tsulukiani also stated that the government was unable to remove these judges from the system due to the principle of irremovability of judges.³² At the time, the absolute majority of judges had been appointed in 2005-2007, which meant that their ten-year term would expire in 2015-2017.

The relationship between the new government and the judiciary worsened significantly after the court began reviewing criminal cases of high-ranking officials of the former

22 Analysis of Criminal and Administrative Cases with Alleged Political Motive, Georgian Young Lawyers' Association, 2012; Available at: <https://goo.gl/VKQZMD>

23 Nations in Transit 2011, Georgia, Freedom House; Available at: <https://goo.gl/yad694>

24 Case of Enekidze and Girgvliani v. Georgia, European Court of Human Rights, Strasbourg, April 26, 2011; Available at: <https://goo.gl/yKYeZB>

25 Analysis of Criminal and Administrative Cases with Alleged Political Motive, Georgian Young Lawyers' Association, 2011; Available at: <https://goo.gl/6wdJwn>

26 General Environment Ahead of Elections, Transparency International Georgia, 2012; Available at: <https://goo.gl/V2wJa8>; Analysis of Pre-Election Environment, Transparency International Georgia, 2012; Available at: <https://goo.gl/BkCmNN>

27 Global Corruption Barometer 2013, Transparency International; Available at: <https://goo.gl/o7Brhp>

28 Election Program of the Election Block Bidzina Ivanishvili- Georgian Dream, 2012; Available at: <https://goo.gl/me3ku1>

29 "I have personally said, that I plan to sue one of the judges", Interview with Bidzina Ivanishvili, October 2, 2012; Available at: <https://goo.gl/pfFNwW>

30 Tea Tsulukiani: My advice to judges is to closely examine their conscience while there is still time, Information Portal For.ge, 2012; Available at: <https://goo.gl/mjQff2>

31 Bidzina Ivanishvili Calls on the Government to Replace Prison Staff with Patrol Police and Release Tamazashvili, Information Agency Interpressnews, 2012; Available at: <https://goo.gl/4qUK5i>

32 Tea Tsulukiani: My advice to judges is to closely examine their conscience while there is still time, Information Portal For.ge, 2012 - <https://goo.gl/mjQff2>

government. According to former Prime Minister Bidzina Ivanishvili, the judiciary was still being influenced and was trying to hinder the new government, as a result of which the Prosecutor's Office was unable to have the court sentence real criminals.³³ The fact that the acquittals³⁴ of former political officials were painful for the new government is confirmed by the following statement of the Justice Minister: "Society must understand that these people are being freed by Kublashvili's Court and not the Prosecutor's Office!"³⁵

In the beginning of 2013, the government submitted to the Parliament a draft law on setting up the Commission for Identifying Judicial Errors. According to the Justice Minister, such a commission was necessary in order to identify and correct the "criminal cases that were reviewed unfairly" during the previous government.³⁶ Prior to the opening of the Conference of Judges on June 16, 2013, Supreme Court Chairman Kote Kublashvili addressed the judges with the following statement: *"My position is that creating a parallel court is unacceptable and conclusions made by this court cannot be used as basis for punishing judges"*.³⁷

Parallel to this, in May 2013, legislative amendments known as the First Wave of Judicial Reform entered force. A large part of amendments within this First Wave of reform was based on prior criticisms and recommendations made by NGOs. This reform was an important step towards depoliticization of the High Council of Justice (eg. removing politicians from the council) and strengthening of the self-governance of judges (eg. judges were given right to directly nominate and vote for judge members of the HCoJ). As a result, the reform was assessed as an important step forward.³⁸ However, the existing tension between the government and the judiciary nevertheless led to the consolidation of the majority of judges against the ruling coalition.

2.2.2. ELECTION OF THE HIGH COUNCIL OF JUSTICE MEMBERS

In 2013, the First Wave of Judicial Reform introduced new rules for composing the High Council of Justice³⁹. According to the amendments, in June of the same year, the Conference of Judges⁴⁰ was to elect the Secretary of the Council (prepares and organizes Council meetings, manages the staff of the Council, etc.) and 7 of its judges members.⁴¹ According to Georgian law, the High Council of Justice is a constitutional body responsible for the appointment and dismissal of judges, as well as the independence of the judiciary as a whole.

Interest towards the election of the new judge members of the High Council of Justice was high, since the judicial reform over the next 4 years would largely be in the hands of the Council. The election was equally important for the judges, since for the majority of them the 10 year term would expire in 2015-2017 and the new Council would be the body deciding whether to reappoint them.

33 Interview with Bidzina Ivanishvili, GDS, 2015; Available at: <https://goo.gl/9mtvzH>

34 Court Acquits Bacho Akhalaia in a Second Case, Radio Liberty, 2013; Available at: <https://goo.gl/ZrrFm4>

35 Tea Tsulukiani: Society must understand that these people are being freed by Kublashvili's Court and not the Prosecutor's Office!, Information Portal For.ge, 2012; Available at: <https://goo.gl/WqzRWh>

36 Tea Tsulukiani: The Venice Commission issued a positive report on the draft law on the Commission for Identifying Judicial Errors, Information Agency Interpressnews, 2013; Available at: <https://goo.gl/KXcddm>

37 Kublashvili: Creation of a parallel court is unacceptable, Tabula, 2013; Available at: <https://goo.gl/hM2bR8>

38 Analysis of the New Judiciary Reform, Transparency International Georgia, 2013; Available at: <https://goo.gl/y9NphU>

39 The High Council of Justice is the highest constitutional body administering justice, which makes decisions on managing the court system, appointment/selection of judges, disciplinary actions and other important issues.

40 The Conference of Judges is the self-governing body of judges of the Common Courts of Georgia. The Conference of Judges consists of judges of the Supreme Court, Appeals and District (City) Courts.

41 The High Council of Justice consists of 15 members. The Common Courts are represented in the Council by the Supreme Court Chairperson and 8 members elected by the Conference of Judges, including the Secretary of the High Council of Justice. On June 9, 2013, the Conference elected 7 members of the Council, while one judge retained their position.

On June 9, 2013, the Conference of Judges held heated discussions. Council membership candidates were divided into two main groups. The first group included judges who had previously considered high-profile, allegedly politically motivated cases, and were often criticized by the new government. Judges from this group appealed to their colleagues by stating that they were opposed to categorization of judges (as worthy and unworthy of judgeship) and supported their automatic reappointment for life tenure without holding a competition.⁴² They also stated that the past activities of each of them were praiseworthy and that the government's initiative to set up a Commission for Identifying Judicial Errors could be motivated by retribution against judges.⁴³ The Supreme Court Judge Zaza Meishvili, who was eventually elected as a member of the Council in the very first round, reminded his colleagues of the interview given by the Justice Minister three days earlier. According to Zaza Meishvili, the decisions made by the Commission could be followed by disciplinary punishment of judges, which was unacceptable to him.

Excerpt from an interview with Tea Tsulukiani 3 days before the election of the Council:

*“This is going to be a temporary government commission that will examine some criminal case judgments issued in 2004-2012 and determine whether the judge had made a mistake [...] As you know, on June 9, the Conference of Judges will elect members of the High Council of Justice. The judges have the historic opportunity to free themselves from Kublashvili as well as Meishvili, Chinchaladze and accordingly the dictatorship of current leaders. [...] After that, together with the new composition of the Council we will begin to reform the disciplinary procedures. In the future, if the Commission finds an error in a judgment that has already entered into force, and if this is proved in court, then it will be up to the Disciplinary Panel to decide whether the judge responsible for the error is worthy of their position.”**

The second group of judges taking part as candidates for election to the High Council of Justice were mainly members of the Association - Unity of Judges. The Association was established several days before the Conference of Judges and its presentation was attended by the Minister of Justice.⁴⁴ The Association consisted of up to 50 judges who were critical towards the situation in the judiciary up to that point. The members of the Unity of Judges frequently attended and expressed their opinions at the sessions of the High Council of Justice.

The Unity of Judges was unable to obtain the required number of votes⁴⁵ necessary for electing any of their members at the June 9 conference. The majority decided to elect those judges to the High Council of Justice, who had been known for their decisions on high-profile cases, and who promised immunity to their colleagues for their past activities. Of interest is the fact that the Conference of Judges chose to compose the High Council of Justice with judges who had received the most criticism from the new government.

42 Zaza Meishvili's Appeal to the Conference of Judges, Minutes of the X (Extraordinary) Session of the Conference of Judges of Georgia, June 9, 2013

43 Levan Murusidze's and Zaza Meishvili's Appeals to the Conference of Judges, Minutes of the X (Extraordinary) Session of the Conference of Judges of Georgia, June 9, 2013

44 Tsulukiani: June 9 is an important day in the history of the Georgian judiciary, Tabula, 2013; Available at: <https://goo.gl/bNpKwD>

45 For example, during the second round of election, the Chairperson of the Unity of Judges, Maia Bakradze, received 100 votes, while Levan Murusidze gathered 159; Minutes of the X (Extraordinary) Session of the Conference of Judges of Georgia, June 9, 2013.

* How Did Tsulukiani Respond to Kublashvili, Information Portal For.ge, 2013; Available at: <https://goo.gl/tjz1FE>

IN 2013, THE CONFERENCE OF JUDGES CHOSE TO COMPOSE THE HCOJ WITH JUDGES WHO HAD RECEIVED THE MOST CRITICISM FROM THE NEW GOVERNMENT. THE NEW MEMBERS INCLUDED:



LEVAN MURUSIDZE

Presided over the high-profile cases of Sandro Girgvliani and Sulkhan Molashvili



TAMAR ALANIA

Presided over the juvenile case of Gvantsa Kuparadze, who, according to Tea Tsulukiani, was illegally convicted



SHOTA GETSADZE

In 2011, reviewed a case, which terminated Georgian citizenship of Bidzina Ivanishvili; he also reviewed cases of administrative proceedings involving fines imposed on the opposition parties, during the pre-election period in 2012



ILONA TODUA

Based on her decision, political parties that formed the coalition “Georgian Dream” were fined by GEL 2, 383, 097, in 2012



ZAZA MEISHVILI

Presided over the high-profile case of Sandro Girgvliani; after being elected to the Council, Tea Tsulukiani referred to him as the most odious figure in judicial system



PAATA SILAGADZE

In 2009, reviewed a case regarding property confiscation of private companies owned by Kibar Khalvashi

* The European Court of Human Rights found no violation of the Convention in the case of Gvantsa Kuparadze.

The Minister of Justice called the decisions of the Conference of Judges “odd” and stated that she was most surprised by the fact that the “most odious figure was elected in the very first round without any problems”. The Minister also appealed to the Parliament stating that the election results for the judge members of the High Council of Justice made it even more important for the Parliament to elect independent, competent and impartial members to the Council.⁴⁶

“After coming to power in 2012, the new government outright attacked the judiciary, which resulted in the judicial system being forced to gather around some kind of a group. The authorities labeled judges who did not make favorable decisions as UNM supporters and so on. This was mostly done by the Minister of Justice. These judges did not want to consider high-profile cases because they knew that their biographies would be placed under a spotlight once again and that they would find themselves in big trouble. This situation resulted in the judiciary coming together, but not in a good way, since siding with the government at the time would basically cause the destruction of the judicial system.

In the same period, another group of judges separated itself from the rest. These were mostly members of the Unity of Judges whose term was about to expire. This process was also wrong because they had connection with the government. I know that they had meetings with the Minister of Justice, who, in turn, supported them. This was used very well by the Chinchaladze-Murusidze group, which managed to unite the remaining judges against the former group. Unfortunately, the majority made a choice in favor of the Chinchaladze-Murusidze group. A part of the responsibility for the creation of the existing Council lies with me and many others like me. This group did not have great difficulty in coming to a position of power, because they were telling judges that the other group had not considered any serious cases, did not have problems in this regard and would therefore be unable to protect them. They were telling judges: “we gave you tasks, you executed them, so if we win, we will be the ones to protect you”. This feeling of guilt united the judiciary and we ended up getting the Council and Court that we got. This was the point after which the government decided to negotiate with this group.”

Former Judge

“Initially, some judges were even angry and complained about why they were making decisions that angered the government. According to these judges, if they did not have a problem during the previous government, then it should not have made any difference with the new one... they were trying very hard to integrate with the new government. This was the demand on the side of the judiciary and this group came together for this exact purpose of selling themselves to the government for a higher price. At this point, I have serious doubts that instead of the government dictating conditions, it is this group of judges that is dictating and bargaining with the government.”

Former Judge

46 Tsulukiani Calls the Decision of the Conference of Judges Odd, Tabula, 2013; Available at: <https://goo.gl/y8Da4K>.

2.2.3. WEAKENING OF THE POLITICAL WILL TO IMPROVE THE JUDICIARY

Election of the judge members of the High Council of Justice demonstrated that the critical rhetoric of the government towards some of the judges had led to a tactical unity of the judiciary. This in turn signaled to the government that taking an overtly harsh line with the judiciary would not gain the latter's confidence or support.

Following the 2013 HCoJ elections, legislative amendments of the judicial reform became inconsistent. After the positive "first wave" of judicial reform, in November 2013, the 3 year probation period for judges entered into force. According to the amendment, all judges appointed afterwards would have to go through probationary period until receiving life tenure. Judges appointed for the probation period would be evaluated by the High Council of Justice at the end of each year; the Council would then make the final decision on whether to appoint the judge for life, creating further obvious risks for the independence of judiciary. The Minister of Justice supported this initiative by making the following statement:

*"Our initiative involves appointing judges for a three-year probation period so that they can show to the public that they are impartial and worthy of a judge's mantle. Even though a reasonable argument has been made that newly appointed judges may try to gain the favor of the High Council of Justice, the benefits of this approach outweigh such risks for us. If newly appointed judges feel that they have been appointed for life, we may regret the appointment of specific judges; therefore, having a probation period is better."*⁴⁷

The 'Second Wave' of the Judicial Reform was implemented in 2014. Instead of abolishing the probation period, the reform retained this practice and instead specified rules for assessing the performance of judges appointed through this procedure. The probation period holds significant risks for the independence of the judiciary, and therefore received negative assessments from local NGOs⁴⁸ as well as the Venice Commission.⁴⁹ In 2013-2016, about 2/3 of all judges (whose 10 year term was expiring) were re-appointed for a probation period, which made them even more vulnerable to the influences of the High Council of Justice and the government.

2.3. GEORGIAN JUDICIARY SINCE 2015

2.3.1. POLITICAL SUPPORT FOR THE DOMINANT GROUP OF JUDGES AND SUSPENDED REFORM

In 2014, the Minister of Justice presented a package of legislative amendments as part of the Third Wave of Judicial Reform, parts of which (e.g. clearer procedures for the appointment and transfer of judges) were positively assessed by the Venice Commission. In 2015, Chief Justice Konstantine Kublashvili, whose 10 year term expired, was replaced by Nino Gvenetadze (elected by the parliament at the recommendation of the president) as the head of the Supreme Court. Gvenetadze had left the system in 2006 as a "rebellious judge".⁵⁰ The new head of the Supreme Court proposed to government the addition of the following important legislative amendments to the Third Wave of reform: introduction of an electronic

47 Tea Tsulukiani - Acting Judges Will Not Be Appointed for Life, Information Agency Interpressnews, 2013; Available at: <https://goo.gl/uxPDvf>

48 Statement on the Appointment of Judges for a Probation Period, Coalition for an Independent and Transparent Judiciary, 2013; Available at: <https://goo.gl/NmEVA6>

49 Joint Opinion N°773/2014 of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on Amendments to the Organic Law of Georgia on General Courts, CDL-AD (2014) 031, 2014; Available at: <https://bit.ly/2btDWgo>

50 Supreme Court Judges Protest Government Pressure, Civil.ge, 2005; Available at: <https://goo.gl/yynVgi>

case assignment system, creation of an Independent Inspector position (which conducts initial study of disciplinary complaints against judges and proposes recommendations to the HCoJ) and a Department of Court Management in the HCoJ. The majority of judiciary, consolidated around the judge members and Secretary of HCoJ, opposed some of the initiatives included in the reform package, which delayed the process and led to mobilization of the dominant group of judges against the proposed changes.

In July 2015, **Prime Minister Irakli Gharibashvili held a closed meeting with the Secretary of the High Council of Justice Levan Murusidze**. As they later commented to the media, during the meeting the Prime Minister received feedback from judges on the Third Wave of Judicial Reform, which differed from that of Nino Gvenetadze.

On October 19, 2015, after the Third Wave draft laws developed by the Ministry of Justice had already been initiated in the Parliament, the Minister of Justice Tea Tsulukiani held a meeting with 160 judges, which included the Secretary of the High Council of Justice Levan Murusidze, **but not the Supreme Court Chairperson Nino Gvenetadze**. After the meeting, Tsulukiani stated that **a number of initiatives in the Third Wave draft laws initiated by the Supreme Court Chairperson would be reconsidered, because judges did not agree with them** (this included postponement of electronic case assignment system and refusing to change the law so that the court Chairperson would be elected by their peers, instead of being appointed by HCoJ). As a result, Parliamentary discussions of the Third Wave draft laws were suspended.⁵¹

The judicial reform that was launched in 2014 eventually became law only in February 2017. During this period, the draft laws, constituting the Third Wave of reform, periodically underwent changes, the basis for which were vague and preceded by closed meetings of the government officials (including the PM and the Minister of Justice) with the representatives of the judiciary. During efforts at passage of the Third Wave of reform, the government showed political support towards the dominant group of judges (represented in the HCoJ and their supporters), which resulted in the disappearance of a number of initiatives from the legislative package and delay of specific critical reforms.

As a result of the delay of the Third Wave of Judicial Reform:

-  Over 100 judges were appointed through a flawed procedure in 2014-2016;
-  The electronic case assignment system was postponed;
-  The 3-year probation period for all judges was retained;
-  The High Council of Justice retained the authority to appoint Court Chairpersons, instead of Chairpersons being elected by their peer judges;
-  Flaws in the judicial appointment rules that allow the High Council of Justice to make subjective decisions were not corrected (see subsection 3.1. of this report);
-  Entry into force of the independent Inspector's position was postponed.

51 Delayed Judicial Reform and Related Political Processes, Coalition for Independent and Transparent Judiciary, 2016; Available at: <https://goo.gl/yGf91M>

PROCESS OF ADOPTING THIRD WAVE OF JUDICIAL REFORM

October, 2014

The Minister of Justice submitted a package of draft laws prepared within the framework of the Third Wave of Judicial Reform to the Venice Commission.

March, 2015

Chief Justice Konstantine Kublashvili was replaced by Nino Gvenetadze. Upon Nino Gvenetadze's proposal several important draft amendments were added to the Third Wave of Judicial Reform. Some of these initiatives were strongly opposed by the members of the judiciary. Among other issues, the subject of disagreement was the electronic case assignment system as well as the position of independent Inspector.

June, 2015

The Government approved the renewed draft package of the Third Wave of Judicial Reform.

July, 2015

Prime Minister Irakli Gharibashvili held a meeting with the Secretary of the High Council of Justice, Levan Murusidze, and received feedback from judges on the package of Third Wave draft laws, which differed from that of Nino Gvenetadze.

September, 2015

The Parliament started reviewing legislative package of the Third Wave of Judicial Reform.

October, 2015

The Minister of Justice held a meeting with 160 judges, which included the Secretary of the HCoJ Levan Murusidze. The Supreme Court Chairperson Nino Gvenetadze was not invited to the meeting. After the meeting, Tsulukiani stated that a number of initiatives in the Third Wave draft laws, initiated by the Supreme Court Chairperson, would be reconsidered.

December, 2016

The Parliament adopted the legislative package of the Third Wave of Judicial Reform, on the third hearing. Since it was submitted to the Parliament, the initial legislative package periodically underwent sudden changes, without public discussions. This resulted in disappearance of initiatives, which had been positively assessed by the Venice Commission(e.g. Chairpersons being elected by their peer judges).

January, 2017

The President sent the legislative package back to the Parliament, with his proposed amendments. The President called on the Parliament to return the initiative, which allowed Chairpersons to be elected by their peer judges, back to the package and to change the rule of appointing judges for probation period.

February, 2017

The Parliament rejected President's proposals and finally adopted the laws constituting the Third Wave of Judicial Reform.

2.3.2. BEGINNING OF “COOPERATION” BETWEEN THE JUDGE AND NON-JUDGE MEMBERS OF THE HIGH COUNCIL OF JUSTICE

Parallel to the delay of the Third Wave of Judicial Reform, the initial confrontation (which existed in 2013-2014) between the judge and non-judge members (elected by the Parliament) of the High Council of Justice gradually disappeared, to the point where they came to share opinions on almost all issues.⁵² A clear confirmation of this was the appointment of Levan Murusidze as a judge by the High Council of Justice on December 25, 2015, despite strong public protest.⁵³ According to Georgian legislation, 2/3 of votes are required to appoint a judge, including at least 1 non-judge member's vote. In the above case, non-judge members elected to the High Council of Justice by the Parliament supported the appointment to the Court of Appeals of a judge that presided over the most infamous case in the modern history of Georgia (Case of Girgvliani's Murder). Non-judge members explained that even though they did have questions regarding Murusidze's professional reputation, their decision was based on the support he enjoyed from judges. This statement⁵⁴ confirmed concerns that the Council's decisions were influenced by the dominant group of judges, and were not based on legally defined criteria of competence and integrity. Later, one of the non-judge members further explained that the reason behind her support to Murusidze was the fact that many judges were identifying themselves with him and if Murusidze was made to leave the system those judges might have started using the remaining years of their terms 'inadequately'.⁵⁵ A few days after the appointment of Levan Murusidze, former Prime Minister Bidzina Ivanishvili stated during a television interview that "Girgvliani was a victim of the system, and not as it is said today as if Murusidze was responsible for the whole thing".⁵⁶ This statement further confirmed that the government was changing its rhetoric and seemed to make concessions to the dominant members of judicial branch, which it had harshly criticized few years ago.

2.4. CONNECTIONS BETWEEN THE PARLIAMENT AND THE DOMINANT GROUP OF JUDGES

Supporting the formation of an elite group of judges, which will in turn serve the political interests of the government, is one way of having political influence on the judiciary.⁵⁷ Circumstantial evidence suggests that the dominant group of judges has close ties with several representatives of the Parliament. One of the MPs with close ties with judiciary is **Vano Zardiashvili**, First Deputy Chairperson of the Legal Issues Committee. Vano Zardiashvili was Head of Staff at Tbilisi City Court in 2010-2012. In the pre-election period of 2012, members of the Tbilisi City Court staff publicly accused Zardiashvili of political pressure. According to these court employees, they were forbidden from attending Georgian Dream rallies and in case of refusing such demands, were subject to threats and verbal abuse. According to them, they were also asked to attend rallies organized by the UNM.⁵⁸ Additionally, Zardiashvili happens to have close friendship and family ties⁵⁹ with Mikheil Chinchaladze, who is considered to be

52 The Judicial System: Past Reforms and Future Perspectives, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/kbMoyp>

53 Opposition and Civil Society Unite Against Levan Murusidze, Radio Liberty, 2015; Available at: <https://goo.gl/JMNRs3>

54 Statement of Non-Judge Members of the High Council of Justice, 2015; Available at: <https://goo.gl/6Qq8Ko>

55 Eva Gotsiridze: Murusidze's case was out of criteria and standards, Liberali, 2017; Available at: <https://goo.gl/4rWZ6o>

56 Ivanishvili: Girgvliani was a victim of the system and not a specific judge, Netgazeti, 2015; Available at: <https://goo.gl/YLZKca>

57 The International Bar Association Judicial Integrity Initiative: Judicial Systems and Corruption, 2016, p. 24; Available at: <https://goo.gl/jDJcoK>

58 Protest in the Court, TV9, 2012; Available at: <https://goo.gl/pHLYi8>

59 Murusidze: The Supreme Court is not under pressure from Chinchaladze and Zardiashvili, Netgazeti, 2016; Available at: <https://goo.gl/nNFoWW>

the most influential person in the judiciary. Finally, the wife of Vano Zardiashvili is the Head of the Department on Management of Judicial Performance Evaluation at the High Council of Justice.

The past working experience of Vano Zardiashvili and his family ties with representatives of the court system creates risks for conflict of interest, where strong informal connections⁶⁰ between representative of the Parliament and the Judiciary may be used for private or political gain.

“I have known Vano Zardiashvili for a very long time and this type of relationship is all he can do. To my knowledge, he acted as a connection between the government and the security service during the previous government as well. He helped collect information on judges and would also be the one transfer information on judges that proved to be disobedient. This mechanism is complex and is generally difficult to expose.”

Former Judge

“The bosses have connections with the Prosecutor’s Office, the State Security Service and the Parliament; they do not act alone and have a guarantee that their corruption schemes will not be investigated. Not everyone in the government likes this situation that the judiciary is in.”

Practicing Attorney

2.5. POSSIBLE GOVERNMENT INTERESTS IN POLITICALLY SENSITIVE CASES

Government’s apparent support of the dominant group of judges coincided with the 2016 pre-election period and the consideration of a new cluster of politically sensitive cases by the judiciary.

- In March 2015, the court sentenced the former Tbilisi Mayor **Gigi Ugulava** to pre-trial detention based on the norm that was later declared unconstitutional.⁶¹ As a result, Ugulava spent more than a year in pretrial detention without a verdict. The chronology of actions carried out against Gigi Ugulava and the abuse of a legislative shortcoming related to pre-trial detention suggested that the process was politically motivated.⁶²
- In 2015, the court launched the consideration of a criminal case against high-ranking officials of the Ministry of Defense. The indictment was preceded by open confrontation between the then-Minister of Defense, Irakli Alasania, and the former Prime Minister, Bidzina Ivanishvili, which finally ended with the dismissal of Alasania from the position on November 4, 2014.⁶³ Circumstances surrounding the **Cable Case** created a feeling that the

60 Informal Meeting Between the MPs of Majority and Representatives of Judiciary 1 day prior to the HCoJ meeting, Rustavi 2, 2017; Available at: <https://goo.gl/cNEHd3>

61 CSOs react to extension of pre-trial detention for Gigi Ugulava, 2015; Available at: <https://goo.gl/FLNrEQ>

62 Country Reports on Human Rights Practices for 2014, Georgia, U.S Department of State; Available at: <https://goo.gl/MfLtGj>

63 Irakli Alasania Dismissed from the Position of Minister, Netgazeti, 2014; Available at: <https://goo.gl/dxtf7A>

administration of justice was deficient and the process was politicized (see more details about the case in the Annex).

- The case of TV Company **Rustavi 2** provided the strongest grounds for questioning the impartiality of the court.⁶⁴ Questions about the politicization of the case were raised in 2015 after the court issued rulings that fully froze the property of a TV company that was critical of the government and became a precedent of clear interference in the editorial policy of an independent television.⁶⁵ In March, 2017 the European Court of Human Rights intervened by suspending enforcement of the Supreme Court's decision on Rustavi 2 case and ordering the authorities to abstain from interfering with the TV company's editorial policy in any manner.⁶⁶ According to a April, 2017 public opinion survey carried out for the NDI, 56% of respondents agreed to the statement that 'there was government interference in the Rustavi 2 case'.⁶⁷

3. THE ROLE OF THE DOMINANT GROUP OF JUDGES IN THE EXISTENCE OF CORRUPTION RISKS

Following the 2013 election of the High Council of Justice, a specific group of judges managed to obtain uncontrolled authority over judicial administration, which, on many occasions, they have subsequently misused. As a result, the body that is supposed to ensure the judiciary's independence and freedom from corruption is itself associated with improper influences. This dominant group of judges currently holds multiple leverages to influence judges, including: their appointment, dismissal, promotion, discipline, remuneration (through salary supplements) and appointment of Court Chairpersons, which is often used by the Council selectively.

"Instead of ensuring independence, the Council ensures that judges are dependent. The system is managed by the Council, i.e., it is the highest body tasked with managing the court system. The Council has the ability to make the process transparent, make disciplinary measures public. If the law prevents them from doing so, they can propose relevant legislative changes as well. For example, they could have introduced electronic case assignment long ago, together with numerous other improvements, in order to restore public trust towards the judiciary."

Practicing Attorney

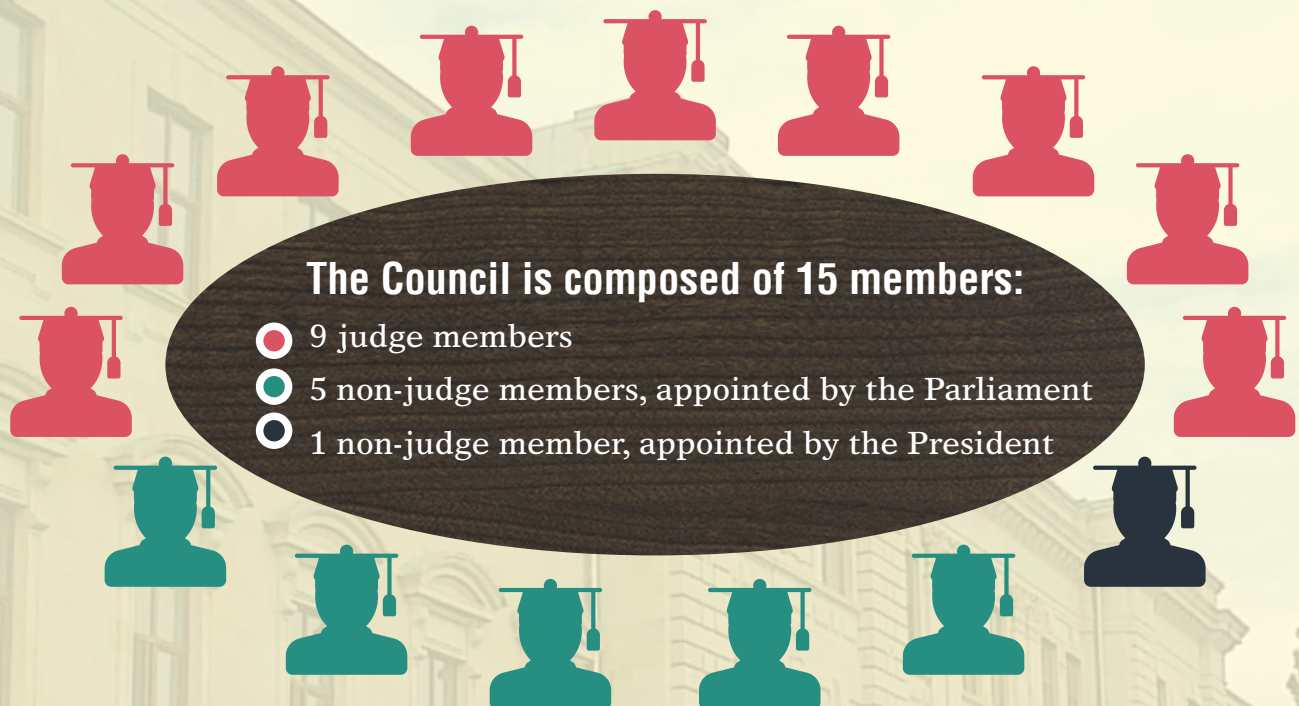
64 Country Reports on Human Rights Practices for 2015, Georgia, U.S Department of State; Available at: <https://goo.gl/jGnXMB>

65 A full description of the Rustavi 2 Case can be found in the Annex.

66 ECHR Suspends Supreme Court's Rustavi 2 Decision, 2017, Civil.ge; Available at: <https://goo.gl/PboiV4>

67 Public Attitudes in Georgia, Results of a April 2017 survey carried out for the NDI by CRRC Georgia; Available at: <https://goo.gl/iaA3Gc>

COMPOSITION OF THE HIGH COUNCIL OF JUSTICE



The Powers of the High Council of Justice:

- ✓ Appointment of judges
- 📋 Enrolling students to the High School of Justice
- 📋 Holding qualification exams for judges
- ✗ Dismissal of judges
- ⬆ Promotion of judges
- ↔ Transfer of judges to other courts
- 🏠 Determining salary supplements to judges
- 👤✗ Launching disciplinary action against judges
- 🛡 Appointment/dismissal of the Independent Inspector
- 🏛 Appointment/dismissal of court Chairpersons
- ⚙ Defining specialized panels within courts

Launching Disciplinary Action Against Judges and Appointment of Judges Require
MINIMUM OF 10 VOTES

“The existence of an elite group of judges has given rise to the term “regular judge”. There are two groups of judges: 1. judges who feel much better compared to previous years, are able to exercise their authority more freely, independently and honestly, and who feel that this is worth them voting for specific individuals in some collegiums and the High Council of Justice once every 4 years. The second group makes these decisions willingly, but in exchange they wish to gain the favor of the elite group. However, I do not think even this is independently organized by them. This is most probably directed from above and not from below.”

Former Judge

3.1. FAVORITISM DURING APPOINTMENT OF JUDGES

Unqualified judges who are appointed through political patronage or hidden corruption deals are the biggest obstacle to an independent, trustworthy and accountable judiciary. For this reason, correct procedures for selection/appointment of judges are crucial for combating corruption.⁶⁸

The main problem with the process of judicial appointment in Georgia is the misuse of the authority held by the High Council of Justice, which is made possible due to flawed legislation that gives rise to risks of corruption, including favoritism, in the administration of judiciary.

Despite three “waves” of legislative reforms since 2013, shortcomings remain in the following areas:

- The High School of Justice is not functionally and organizationally independent from the High Council of Justice, which fully controls judicial qualification exams, announcement of competition and actual admission of students to the High School of Justice. Low scholarships and inflexible schedule of the HSoJ are also a problem;
- A legal shortcoming allows the High Council of Justice to refuse a contestant’s request to consider their appointment at the initial stage of competition, which is not subject to appeal;
- The law does not oblige the High Council of Justice to elaborate a detailed decision on each criterion; Furthermore, the rules and sources for examination of the criteria for selection of judges are not defined;
- A vote based appointment of judges allows the Council to turn down most qualified candidates;
- The High Council of Justice has issued an order, whereby interviews with candidates are closed to the public, which fails to ensure adequate transparency of the appointment of judges.

The appointment of judges through an impartial and merit-based procedure is an important instrument for combating corruption, because it increases the chances of selecting candidates that will resist influence and refuse to make corrupt deals. According to Georgian law, the Council must examine the competence and integrity of candidates for judgeship, including their personal qualities and professional reputation, prior to their appointment.

68 Reducing Corruption in the Judiciary, Office of Democracy and Governance – USAID Program Brief, 2009, p. 9; Available at: <https://goo.gl/3t3jio>

“Two important components keep corruption under control: external control and internal control, which also includes ethics related issues. Judges must be able to control themselves. 80-90% of this goal must be fulfilled by internal control. The best way to ensure that judges are ethical is to appoint ethical judges in the first place. If you select unethical judges from the very beginning, you will be left with ineffective mechanisms. Integrity control must take place at the appointment stage. If done properly, the chances of such judges taking bribes is very low; and if some dishonest people slip inside the judiciary, then you have to strengthen external control.”

Former Member of the Disciplinary Committee of Judges

Monitoring of the High Council of Justice revealed that the Council often misuses its authority.⁶⁹ **A number of opportunities to appoint only qualified and trustworthy judges were missed due to allegedly uncontrolled corporate interests of a dominant group of judges and their desire to strengthen their positions.**

Over the last 5 years, 2/3 of all judges took part in vacancy competitions and were reappointed through a non-transparent process.⁷⁰ Promotion of judges was also criticized, when certain judges were transferred to the appellate instance through a flawed procedure and without proper substantiation.⁷¹ Over the course of judge competitions, concerns were raised that large number of judges were being appointed to strategic administrative positions based not on merit but on their relationship with the dominant group of judges, and that the decisions were made in advance behind closed doors.⁷² Decisions to reappoint or, in some cases, promote judges, whose past decisions had been harshly criticized by local and international communities, could be a one of the major reasons behind deteriorating public trust towards courts, in the past few years.⁷³

Appointment of Davit Mamiseishvili

The appointment of Davit Mamiseishvili as a Batumi City Court judge is one example of the preferential treatment by the High Council of Justice of persons with close ties with its members. In 2016, Davit Mamiseishvili, who at the time was also the Court Chairperson, applied to the only vacancy announced in Batumi City Court on its Civil Cases Panel. Mamiseishvili had previously worked on criminal cases, but expressed his wish to change Panels in his application. A few weeks after his transfer, it became known that despite being appointed in the Civil Cases Panel he had been reviewing criminal cases by his own order.⁷⁴ Several weeks after the end of the competition, the High Council of Justice returned Davit Mamiseishvili to the Criminal Cases Panel, at his request, without asking reasons for applying in Civil Panel, if he did not intend to serve there. In this case Mamiseishvili was probably

69 Monitoring Report of the High Council of Justice #5, Georgian Young Lawyers Association, Transparency International Georgia, 2017; Available at: <https://goo.gl/2gnMgY>

70 The Coalition Evaluates the Judicial Selection Competition, Coalition for an Independent and Transparent Judiciary, 2016; Available at: <https://goo.gl/1vqx1F>

71 NGOs Question Ongoing Promotion of Judges in the High Council of Justice, 2015; Available at: <https://goo.gl/3UafdG>

72 Monitoring Report of the High Council of Justice #5, Georgian Young Lawyers Association, Transparency International Georgia, 2017; Available at: <https://goo.gl/2gnMgY>

73 Public Attitudes in Georgia, Results of a March 2018 survey carried out for the NDI by CRRC Georgia; Available at: <https://goo.gl/RzRquE>

74 Monitoring Report of the High Council of Justice #5, Georgian Young Lawyers Association, Transparency International Georgia, 2017; Available at: <https://goo.gl/2gnMgY>

aiming at faster reappointment (until the expiration of his tenure) and was not sincere in his explanation before the Council that he wished to change panels. Such practice raises doubts about the existence of prior informal agreements between judges and Council members.

Appointment of Mikheil Chinchaladze to the Court of Appeals

At the final stage of discussion of the Third Wave of Judicial Reform, the draft law was suddenly amended through a procedural violation to enable former judges of the Supreme and Constitutional Courts to be appointed without any probation period. This amendment raised doubts that the government had acted for the personal gain of the dominant group in judiciary, since it coincided with the expiration of the term of a Supreme Court judge Mikheil Chinchaladze (who is considered to have the most informal influence over the judiciary). On May 11, 2017, the High Council of Justice held a closed interview with Mikheil Chinchaladze and used this amendment to appoint him for life as a Tbilisi Court of Appeals judge. Prior to the appointment, non-governmental organizations made a statement about the unreasonably low number of cases that were considered by Chinchaladze during his term as a Supreme Court judge, which also raised questions about his past professional activities.⁷⁵

Lifetime Appointment of 34 Judges

On February 15, 2017, the Constitutional Court ruled that the use of a probation period was unconstitutional for judges with more than 3 years of work experience and whose appraisal for a lifetime appointment was possible without a probation period.⁷⁶ Despite these positive changes, the High Council of Justice has been unable to obtain public trust towards the lifetime appointment of judges, as well.⁷⁷

Specifically, on October 20, 2017, the new composition of the Council appointed an additional 34 judges for life. Transparency International Georgia's observation of the process suggests that the new composition of the Council (elected in 2017) is also subjective in its decisions on appointment of judges. Worth noting is that, these 34 judges who were appointed for life, out of more than 150 total judges on probation period, included members of the dominant group of judges: 3 members of the High Council of Justice, who are also Chairpersons of the Administrative Cases Panel of Tbilisi Court of Appeals, Tbilisi City Court and Kutaisi Court of Appeals. Lifetime appointments were also granted to Chairpersons of Batumi and Rustavi City Courts, Samtredia District Court, and 2 judge members of the previous composition of the Council. Our observation suggests that the process of appointing judges for life by the High Council of Justice was not aimed at recruiting qualified and trustworthy judges. For example, lifetime appointment was granted to the Chairperson of Tbilisi City Court and member of the High Council of Justice, who incorrectly answered the only simple legal question asked during his interview.⁷⁸ Lifetime appointment was also granted to those judges whose past performance pointed to unsatisfactory professional reputation. Such practice suggests that the criteria used for appointing these particular judges were non transparent.

75 The Coalition Negatively Assesses the Ongoing Processes in the Judiciary, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/PZMa6q>

76 Decision of February 15, 2017 of the Constitutional Court of Georgia on the Case of Citizen of Georgia Omar Jorbenadze v. Parliament of Georgia

77 Coalition Addresses the Hearing of Legislative Amendments on Lifetime Appointment of Judges, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/G4Gdpe>

78 The Process of Lifetime Appointments of Judges is Flawed, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/ahwxyG>

“As for lifetime appointments, it will be difficult to change the situation now, because these judges have found themselves under the influence of this group for the second time already. It is possible that they lose this mechanism of lifetime appointments after a while, but there are disciplinary proceedings, or they could even start rumors and create enough problems that judges will no longer be able to stay in the system. It is very difficult for any one judge to offer opposition when this is done collectively. This is a common Soviet method.”

Former Judge

Favoritism during the Appointment of Court Chairpersons

Currently, the appointment of Chairpersons in various Courts and Panels/Chambers is not transparent. There are no legally defined criteria that the High Council of Justice has to use for selecting Court Chairpersons. For years, the positions of Chairpersons have been dominated by a small group of judges, who are considered as ‘superiors’ to other judges.⁷⁹ Monitoring of the High Council of Justice revealed that mostly members of the dominant group of judges or people especially loyal to it are being appointed as Court Chairpersons. Also a problem is the practice of appointing acting Chairpersons, which allows the Council to have the same person hold the position of Court Chairperson indefinitely. The assumption that the current rule that allows the HCoJ to appoint Court Chairpersons is an important leverage for the Council is confirmed by the categorical opposition of the judge members of the Council to the idea of having chairpersons be elected by the judges themselves. When appointing Court or Panel/Chamber Chairpersons, as a rule, the Council considers a single candidate and does not substantiate its final decision. Suspicions about the formal nature of the process and existence of pre-agreed decisions were especially strengthened by the appointments of **Mikheil Chinchaladze** as Chairperson of Tbilisi Court of Appeals and **Vasil Mshvenieradze** as Chairperson of Tbilisi City Court.

Mikheil Chinchaladze was appointed as the Chairperson of Tbilisi Court of Appeals a few days prior to the expiration of 4 year term of the High Council of Justice members. This decision raised doubts that the Council was trying to fill important administrative positions with favorable candidates before the expiration of its term. This suspicion was further strengthened by the unexpected resignation of the previous Chairperson of Tbilisi Court of Appeals (4 months before the expiration of his term) a few days prior to Chinchaladze’s appointment; the resignation allowed the Council to appoint Mikheil Chinchaladze for a 5-year term.⁸⁰

Vasil Mshvenieradze was appointed as Chairperson of Tbilisi City Court and the Administrative Cases Panel on the very first session held by the new composition of the Council. Mshvenieradze was appointed without competition. A combination of circumstances created a feeling that the decision was made in advance, behind closed doors, and that the interview with the candidate was only a formality.⁸¹ The new composition of the Council was

79 “the weaknesses of the Georgian judiciary are mostly coming from the inner system. Individual judges are getting “directives” on specific cases from chairmen of courts at the traditional so-called “internal hearings”. Disobedience of such “directives” triggers various mechanisms such as assignment of an individual judge to another court”. Justice in Georgia, GYLA, 2010; Available at: <https://goo.gl/Y9jvyN>;

80 The Coalition Calls on the High Council of Justice Not to Appoint Court Chairs Using Opaque Processes, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/qHAHYL>

81 Non-transparent Process and a Pre-agreed Candidate – Civil Society Assesses the Appointment of Vasil

not provided with important information about Vasil Mshvenieradze; Some of the Council members had not even seen the candidate's biography.

"They own all branches of the court, the High School of Justice, the Disciplinary Chamber, the Council. They deliberately had one Council member resign in order to have a trustworthy person in the Qualification Chamber. They are doing all this to insure everything... the process of appointing Panel and Chamber Chairpersons... they are supposed to be appointed for a 5-year term, but most of them were appointed in 2007 and were chairpersons for 10 years. They simply rotate. Why is this position so important that only these people should be appointed there? Having an answer to this question would be interesting."

Former Judge

"The Council's authority must be curtailed while that of judges must be increased. For example, the Council must be deprived of the right to appoint Court Chairpersons and it must be given to the judges. This may weaken the Council's leverage to influence judges."

Practicing Attorney

Alleged Leak of Tests for Judicial Qualification Exams

It is of concern, that a possible case of misuse of power was also revealed at the stage of judicial qualification exams. On February 2, 2016, Tbilisi City Court Chairperson Mamuka Akhvlediani met with NGO representatives and informed them about an alleged leak of tests for the qualification exams of November 21, 2015, from the High Council of Justice.⁸² Allegedly, the leak was in favor of a specific candidate and was connected to the Supreme Court Chairperson,⁸³ who, in an interview with Transparency International Georgia, ruled out any connection with the leak and explained that as the Chairperson of the High Council of Justice, she was responsible for the rules for conducting judicial qualification exams, the examination program, composition of the Examination Commission, etc. Additionally, Nino Gvenetadze specified that the High Council of Justice had addressed the Prosecutor's Office about the alleged leak of tests used for the qualification exam of November 21, 2015. Even though the investigation of this incident was launched 2 years ago, no information has been disclosed about its results. The fact that the investigation of this case by the Prosecutor's Office is not transparent and effective raises legitimate questions about the possibility of using this lingering investigation for manipulating specific individuals.

Mshvenieradze, Rustavi 2, 2017; Available at: <https://goo.gl/fsuAby>

82 Akhvlediani Comments on the Leak of Judicial Tests, Tabula, 2016; Available at: <https://goo.gl/nCpYfB>

83 Mamuka Akhvlediani: Nino Gvenetadze had access to the Tests for Qualification Exams, Netgazeti, 2016; Available at: <https://goo.gl/FHM3bW>

3.2. SUPPRESSION OF CRITICAL OPINION IN THE JUDICIARY

Confrontation of the Dominant Group with Members of the Unity of Judges

The June 9, 2013 elections of the High Council of Justice became a turning point for the reduction of pluralism in the judiciary. Since then, members of the Association Unity of Judges, who were critical of the situation in the judiciary, were slowly pushed out of the system.⁸⁴ Unity members were repeatedly refused re-appointments,⁸⁵ while some of them were subjected to disciplinary prosecution,⁸⁶ which played an important role in the gradual disappearance of critical opinion in the judiciary. Members of the HCoJ often referred to the Unity of Judges in a negative manner during Council sessions and public speeches.⁸⁷

Currently, the Association has no acting judge members (some of the judges were not reappointed on the position after expiration of their tenure and others left the association voluntarily).⁸⁸ In May 2017, after the Association issued a statement criticizing the appointment process of judges and Court Chairpersons by the Council, up to 20 members left the Unity of Judges,⁸⁹ which further strengthened doubts that the system is not tolerant to critical opinions. The absolute majority of judges are currently members of the Association of Judges, which is chaired by Levan Murusidze, while its Board is composed of members of the High Council of Justice and other influential judges.⁹⁰ The fact that all decisions have been made almost unanimously and without any real discussion at every Conference of Judges since 2013, confirms that the judiciary has gradually become closed and monolithic.

The selective approach towards appointments demonstrated by the Council acted as a clear message to ordinary judges about the importance of displaying loyalty towards the dominant group. Manipulating judges by reappointment and disciplinary proceedings is clear example of violating internal independence of judiciary, which is just as dangerous as external pressures.

84 The Judicial System: Past Reforms and Future Perspectives, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/kbMoyp>

85 Amicus Curiae on the case of M. B. No. 3/4971-17, Public Defender of Georgia; Available at: <https://goo.gl/A2vZc3>

86 The Recent Precedents Set by the Latest Decisions of the Disciplinary Collegium and Chamber Pose Danger to Judicial Independence, Coalition for an Independent and Transparent Judiciary, October 2016; Available at: <https://bit.ly/2Hp4lGU>

87 “The goals of this association were quite far-reaching and unhealthy [...] the association aimed to clear the system of so-called ‘unworthy’ judges [...] many of the judges that joined this association were misled” - Statements made by Judge Member of the High Council of Justice, Dimitri Gvritishvili, on Imedi TV, Kronika, 2017; Available at: <https://goo.gl/nBvZBF>

88 In 2017, a total of 30 members left the Unity of Judges. One member applied for the termination of membership on February 16, 2017, 9 members did the same on June 1; and the remaining 20 members left the union after issuing a public statement on May 3.

89 20 Judges Leave the Unity of Judges, Rustavi 2, June 2017; Available at: <https://goo.gl/N1YeJp>

90 Board Members of the Association of Judges of Georgia (ID 202953321) are: Levan Murusidze (Chairperson), Levan Tevzadze, Davit Mamiseishvili, Irakli Shengelia, Dimitri Gvritishvili, Temur Gogokhia, Vasil Roinishvili, Miranda Eremadze and Giorgi Mirotadze; Extract from the Registry of Entrepreneurial and Non-Entrepreneurial (Non-Commercial) Legal Entities; 01.08.2016.

“The fact is that there is no freedom of expression in the system, because critical opinion is not tolerated. There is an dominant group that has a certain policy and no one opposes it. However, this is not new; such a group existed before 2012 as well, which used harsh methods to satisfy outside interests. After 2012, the government no longer showed interest in ordinary cases, so the dominant group changed its policy. Internal power emerged as a result [...] The current mechanism is that they might not give direct benefits to judges, but can make favorable decisions during reappointment and disciplinary proceedings. Honest judges are in a better position now. The only thing that is requested from them, in return, is to cast their vote once in every 4 years in favor of those individuals who enable them to enjoy this “better position”.”

Former Judge

Public trust towards the process of selecting judges is crucial for lowering the perception of corruption in judiciary. In a situation where judges are being appointed based on undue influence and where critical opinion is being suppressed, there can be no expectation that the public will trust the selected candidates. Such practice creates reasons to suspect that the authority to make appointment decisions is an important leverage used by the High Council of Justice to influence judges.

Practice of Arbitrary Dismissal of Court Chairpersons

In addition to criticizing the practice of appointing judges based on subjective grounds, civil society harshly criticized **arbitrary dismissals of Court / Panel Chairpersons**. In one case, the High Council of Justice dismissed the Chair of Tbilisi City Court Mamuka Akhvlediani through significant procedural violations, 2 months after he had made critical statements.⁹¹ In another case, Chair of the Criminal Cases Panel of Tbilisi City Court was dismissed in violation of the law and disciplinary procedures, and under the pretense of a reorganization process.⁹²

Allegations made by Judge Irakli Shavadze

In February 2018, Batumi City Court Judge Irakli Shavadze made public allegations that he was refused life tenure by the the High Council of Justice, because of his confrontation with the Chairman of Batumi City Court. According to Judge Shavadze, Chairman of Batumi City Court (an outspoken member and supporter of the dominant group of judges⁹³) has repeatedly tried to influence his court decisions.⁹⁴ Shavadze has alleged that after he refused to obey Mamiseishvili’s directions, he became victim of disciplinary actions against him as well as isolation (the Chairman and staff members stopped communicating with him) in the workplace.⁹⁵ On March 1, 2018 the Coalition for Independent and Transparent Judiciary

91 The High Council of Justice dismissed Mamuka Akhvlediani in violation of the law, Coalition for an Independent and Transparent Judiciary, 2016; Available at: <https://goo.gl/HM4gLw>

92 The Coalition Strongly Criticizes Arbitrary Dismissal of Tbilisi City Court Criminal Collegium Chair, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/Dtq4JG>

93 We are Levan Murusidze: Members of Judiciary Support Levan Murusidze, Rustavi 2, 2015; Available at: <https://goo.gl/VZQaFE>

94 Judge of Batumi City Court talks about pressure and accuses David Mamiseishvili of abuse of power, Rustavi 2, 2018; Available at: <https://goo.gl/Kqk3cu>

95 Judge in Batumi Speaks about Clan Governance and Appeals to GYLA to Protect His Rights, NETGAZETI, 2018; Available at: <https://goo.gl/TV9Zt9>

urged authorities to investigate the possible crime in this case, however no official response has been made yet.⁹⁶

3.3. UNDUE INFLUENCE ON CASE ASSIGNMENTS

For years, the main challenge in the process of judicial management has been ensuring the internal independence and autonomy of courts. The main source for this challenge has been the institution of a Court Chairperson and its strong administrative leverage. The fact that Court Chairpersons have authority over various important areas, including ability to influence case assignment, has made this position valuable for the dominant group of judges. Despite the new system of electronic case assignment, problems in this regard still remain.

“It would be wrong to think that Chinchaladze summons judges to give them orders directly. There is a certain group of judges, about 5-6 people, who are tasked with informing the Chairpersons. These people take the information to the Chairpersons, who then assign cases to favorable judges. The courts today are being governed through chairpersons.”

Former Judge

For years, flawed regulation of case assignment (before enactment of electronic case assignment system) was harshly criticized by local and international organizations.⁹⁷ These regulations made it possible to pre-select a judge that would receive a specific case.⁹⁸ For this reason, dominant group inside the judiciary has always opposed the idea of reforming the system of appointing Chairpersons and making the position elected by the judges of relevant courts. For example, the original version of the draft law of the Third Wave of Judicial Reform, which envisioned the election of Court Chairpersons by their peer judges, and which was positively assessed by the Venice Commission’s 2014 report,⁹⁹ was changed to remove this specific amendment,¹⁰⁰ most likely as a result of demands from the dominant group inside the judiciary. The introduction of elected Court Chairpersons was also removed from the long-term judicial strategy document by the High Council of Justice at the very final stage of its elaboration.¹⁰¹

Parties in a number of high-profile cases pointed to the problem of manipulation of case assignment system by the Court Chairperson.¹⁰² This was done on several occasions by the

96 The Coalition is Starting “Make Courts Trustworthy” Campaign, The Coalition for Independent and Transparent Judiciary, 2018; Available at: <https://goo.gl/qteHBe>

97 OSCE, Office for Democratic Institutions and Human Rights: Trial Monitoring Report - Georgia, Warsaw, 2014; Available at: <https://goo.gl/grxaFD>

98 Until the electronic system of case assignment took full effect in 2018, cases in district (city) and appellate courts were distributed sequentially among judges by court chairpersons, making it foreseeable which case would end up with which judge.

99 JOINT OPINION OF THE VENICE COMMISSION AND THE DIRECTORATE OF HUMAN RIGHTS (DHR) OF THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW (DGI) OF THE COUNCIL OF EUROPE ON THE DRAFT LAW ON AMENDMENTS TO THE ORGANIC LAW ON GENERAL COURTS OF GEORGIA, CDL-AD(2014)031, 2014; Available at: <https://goo.gl/S8A3Bk>

100 Coalition Calls on Parliament to Consider President’s Objections in Relation to the “Third Wave” Judicial Reform Bill, The Coalition for Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/eFCMie>

101 The Coalition calls on the High Council of Justice not to appoint Court Chairs using opaque processes, The Coalition for Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/YWiipf>

102 The Judicial System: Past Reforms and Future Perspectives, The Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/kbMoyy>

attorneys in the case of Gigi Ugulava and other high-ranking officials.¹⁰³ In the case of Bachana Akhalaia, all three presiding judges (Besik Bugianishvili, Davit Mgeliashvili and Giorgi Darakhvelidze) were transferred to Tbilisi City Court from three different courts on the same day just before the case hearing, raising doubts about the manipulation of case assignment system.¹⁰⁴ Questions were raised in the case of Rustavi 2 as well, regarding the change of the panel of judges at the appellate stage.¹⁰⁵

The judiciary did recognize this problem and started working on an electronic system of case assignment. According to the Supreme Court Chairperson Nino Gvenetadze: *“Flaws in the system of case assignment have resulted in the loss of public trust towards the judiciary. Parties involved and external observers have complained that Chairpersons were assigning cases based on certain interests. This brought us to the decision to introduce electronic case assignment.”*¹⁰⁶

“When Akhvlediani was a Chairperson, a well-known attorney told my client about the details of a case that he should not have known about. Presumably, this attorney had access to information related to case assignment through the Chairperson. This attorney also told my client that he could somewhat control the outcome of the case.”

Practicing Attorney

Opportunities to Influence Case Assignment After Introducing Electronic System

The electronic case assignment system was introduced to all courts since 2018. This new method of case assignment is clearly a progressive change and its proper implementation is important for ensuring the independence of the judiciary and its ability to gain public trust. However, possible risks of interference must nevertheless be considered:

- According to the new rule, a Court Chairperson is authorized to use the old sequential procedure of case assignment if the new electronic system exhibits delays;
- In large courts, where Panels are further divided into specializations, there is possibility to define compositions of each specialization with particular judges. Under the existing regulation, the High Council of Justice determines the narrow specializations in the Panels, where the composition of judges is unilaterally determined by the order of the chairperson of the court. This creates real risks of influencing case assignment.¹⁰⁷
- The new system will not eliminate opportunities for attorneys to manipulate case assignment using procedural norms. For example, if a party simultaneously registers several cases of similar nature, it can wait to see which judges get assigned the cases and then withdraw all except the one case that got assigned to a favorable judge. Another risk is related to the existence of narrow specializations, which allows parties to raise artificial claims to try to have their case be assigned to the right judge. (A possible example of this

103 The Third Trial Monitoring Report of High-Profile Criminal Cases, Transparency International Georgia, 2015; Available at: <https://goo.gl/rqghSa>

104 Transparency International Georgia released the second trial monitoring report of high-profile criminal cases, Transparency International Georgia, 2014; Available at: <https://goo.gl/riqUPZ>

105 The Gyla Responds to Changes in The Composition of Panels of The Court of Appeals That Were Considering The Case Of Rustavi 2, GYLA, 2016; Available at: <https://goo.gl/b4CWUs>

106 Shortcomings of the Case Assignment Process, Liberali, 2015; Available at: <https://goo.gl/QFivuY>

107 How does the new system of court case distribution work, Human Rights Education and Monitoring Center, 2017; Available at: <https://goo.gl/ktozJG>

was the case of Rustavi 2, which got assigned to judge Tamaz Utrimelidze due to one of the claims being related to copyright; however, case proceedings revealed that disputing copyright was never the party's goal.)

“If the judiciary wanted to make case assignment more transparent, they would do this easily with an electronic system. However, Council's decision to create a group of 4 judges on the city court level that considers large cases [meaning specialization of commercial disputes worth over GEL 500,000, which has been created in Tbilisi City Court [added by authors]] has basically killed this electronic assignment, because we know that only these 4 judges will consider all important cases and there is no other choice.”

Practicing Attorney

“Influential groups have set up the system in a way that ensures that a message is received only by a very specific judge and that it has a 100% outcome. Despite new rules for case assignment, they are able to control this process throughout the country. Besides, The movement of judges is fully in their hands. They can have a specific case end up with a specific judge in any court.”

Former Judge

Unequal distribution of cases is also a problem. For example, during his 10-year term, Deputy Chairperson of the Supreme Court and Chairperson of the Chamber of Administrative Cases, Mikheil Chinchaladze, considered only 250 cases (about 2 cases per month); while Mzia Todua, also a Deputy Chairperson and Chairperson of the Civil Cases Chamber, has considered twice this number of cases in a five times shorter period, and Nino Gvenetadze, Supreme Court Chairperson, has considered 7 times more cases in the same period.¹⁰⁸ After introducing the electronic case assignment system, the HCoJ issued an order defining significant benefits for Chairpersons regarding the number of cases assigned to them.¹⁰⁹

Unforeseeable Process of Scheduling the Sequence of Hearing Cases

Considering the reality where courts, especially Tbilisi City Court, are overloaded with cases, it is necessary to create an instruction on scheduling the sequence of cases. Some judges are considering 800-900 cases simultaneously, which leads to a situation where court sessions for some cases are scheduled as much 2 years after their submission. **Currently, it is up to the judges to decide on the sequence of hearing cases, which contains corruption risks.** In order for the process to enjoy public trust, it must be based on transparent and objective criteria. The instruction for scheduling the sequence of cases must also include the list of reasons why a specific type of case may be considered earlier than a case that was submitted ahead of it.

108 NGOs Oppose the Appointment of Mikheil Chinchaladze as Judge, Netgazeti, 2017; Available at: <https://goo.gl/KnPrFU>

109 Decision N1/56 of May 1, 2017 of the High Council of Justice On the Approval of the Rule for Automatic Case Assignment through the Electronic System in the Common Courts of Georgia.

4. INEFFECTIVE SYSTEM OF JUDICIAL ACCOUNTABILITY

Over the years, questions were raised about possible corruption deals in a number of court cases. However, neither the High Council of Justice nor the Prosecutor's Office has responded effectively. As a rule, statements of local and international community members regarding the risks of corruption in the Georgian judiciary also remain unanswered.

Having a correct understanding of and balance between the principles of judicial independence and accountability enables the creation of a fair, objective and transparent system and significant reduction in corruption risks. Unlike other branches of government, any interference in the judiciary requires special caution in order not to endanger judicial independence.¹¹⁰ For this reason, finding a correct balance between the independence and accountability of the judicial system is a major challenge when trying to introduce mechanisms for combating corruption.¹¹¹

4.1. FLAWED REGULATIONS ON JUDICIAL ACCOUNTABILITY

The existing system of disciplinary proceedings against judges has repeatedly come under harsh criticism from local and international organizations.¹¹² One reason for this is flawed legislation regulating judicial accountability, which allows the High Council of Justice to misuse disciplinary mechanisms.

Opportunity to Misuse Authority due to Unforeseeable Definition of a Corruption Offense

While current legislation does allow for the possibility to combat judicial corruption, its shortcomings do not ensure that the High Council of Justice does not misuse disciplinary mechanisms that are at its disposal. According to the Law on Common Courts of Georgia, one type of disciplinary misconduct is a corruption offence or misuse of one's official status to the detriment of the interests of justice and the office held. A corruption offence constitutes an infringement under the Law of Georgia on Conflict of Interests in Public Service, unless it entails criminal or administrative liability.

This practice of using a general reference to the violation of the Law on Conflict of Interest and Corruption in the Public Service, as a basis for holding judges liable, contains risks for selective use of disciplinary proceedings. The law prescribes broad and unforeseeable norms, such as the obligation of a public servant to perform their duties impartially and in good faith, which creates risks of selective application.

In an interview with Transparency International Georgia, the Chairperson of the Supreme Court stated that: *"it is important to separate and more clearly define the types of judicial accountability and their grounds. The bases for disciplinary liability must be defined in a way that judicial independence and freedom do not come under undue pressure. Norms under the Criminal Code must also be improved to specify which actions of a judge go beyond disciplinary limits. Balanced and fair disciplinary grounds must be elaborated that ensure that judges are not held liable for the execution of justice, content of their decisions or legal error."*

110 UN Anti-Corruption Toolkit, UN office on Drugs and Crime, 2004, p. 28; Available at: <https://goo.gl/wxrif>

111 N Anti-Corruption Toolkit, UN office on Drugs and Crime, 2004, p. 35; Available at: <https://goo.gl/wxrif>

112 OPINION ON THE LAW ON DISCIPLINARY RESPONSIBILITY AND DISCIPLINARY PROSECUTION OF JUDGES OF COMMON COURTS OF GEORGIA adopted by the Venice Commission at its 70th Plenary Session, CDL-AD (2007)009; Available at: <https://goo.gl/48ePA6>

Insufficient Independence Guarantees for the Inspector

The institution of an Independent Inspector of the HCoJ was created as part of the Third Wave of Judicial Reform for the purpose of an objective and impartial initial examination of possible misconducts by judges and to increase public trust towards the system of judicial accountability. However, the legislation does not provide the Inspector with sufficient independence guarantees. More specifically, the inspector is being appointed and dismissed by the High Council of Justice, which makes the Inspector fully dependent on the Council. The legislation also provides for a general basis for the Inspector's dismissal without a clear possibility to challenge the Council's decision.¹¹³

Since the Inspector does not have sufficient legal guarantees of independence, it is especially important that the selection process is transparent and the Inspector enjoys public trust. The very first competition for selecting the Inspector (held on May 8, 2017) failed for reasons unknown to the public. On November 20, 2017, the Council appointed the Inspector without making candidate identities or interviews public, which strengthened doubts about the Council's undue interest in the result of the competition.¹¹⁴

“As far as I know, Gvenetadze wanted to have Dato Sulakvelidze as the Independent Inspector. This was followed by a big confrontation between Gvenetadze and the ‘bosses’, which resulted in a failed competition. Disciplinary prosecution is used to influence judges and so the ‘bosses’ do not want not to be able to control the Inspector.”*

Practicing Attorney

High Number of Votes Required for Launching Disciplinary Proceedings against Judges

Approval of 2/3 of the full composition of the High Council of Justice is required to launch disciplinary proceedings against a judge. This number is too high and may be hampering the legitimate goal of the disciplinary mechanism. This also creates a risk that the judge members of the Council do not respond to complaints due to the corporate interests. Official statistics reveal that out of the 1,039 complaints received by the High Council of Justice in 2013-2016, it has submitted only 2 of them to the Disciplinary Committee.¹¹⁵ The Venice Commission has also recommended using a simple majority vote for launching disciplinary proceedings.¹¹⁶

113 The Judicial System: Past Reforms and Future Perspectives, Coalition for an Independent and Transparent Judiciary, 2017, pp. 124-125; Available at: <https://goo.gl/kbMoyp>

114 The Coalition criticizes the independent inspector selection competition for lack of transparency, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/q353Ad>

115 The Judicial System: Past Reforms and Future Perspectives, Coalition for an Independent and Transparent Judiciary, 2017, pp. 125-126; Available at: <https://goo.gl/kbMoyp>

116 Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on making changes to the Law on disciplinary Liability and disciplinary Proceedings of Judges of General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session, CDL-AD(2014)032, §24; Available at: <https://goo.gl/oQeD8o>

* Former Supreme Court Justice dismissed from the system in 2006 as a “Rebellious Judge”, together with current Chief Justice Nino Gvenetadze.

Shortcomings Regarding the Standard of Proof in Disciplinary Proceedings

The current legislation regulates neither the question of the standard of proof nor the nature of evidence permitted in disciplinary proceedings. The law does not contain any provision referring to use of any respective regulations by analogy either. Therefore, standards are not clear for relevance and admissibility of evidence as well as a combination of evidence required for imposition of a disciplinary measure. For instance, it is unclear whether evidence which is considered inadmissible by other procedural rules (criminal, civil, administrative) is acceptable in disciplinary proceedings.¹¹⁷

4.2. INEFFECTIVE MONITORING OF JUDGES' FINANCES

According to the Law on Conflict of Interest and Corruption in the Public Service, judges, as well as other public officials, are obligated to file asset declarations once a year.¹¹⁸ These regulations aim to ensure the transparency of judicial finances and reduce corruption activities. The mechanism for monitoring the accuracy of public officials' asset declarations was introduced only in 2017, when this function was given to the Civil Service Bureau. However, since no more than 5% of all public officials are to be monitored each year, chances are high that the selected officials will not include any judges. This makes it difficult to say that judicial finances are being subjected to effective control.

“Cases of bribe-taking by judges can only be revealed through investigation; there is no special prevention, monitoring method for this. We would need to study the approach and practices used by European countries or the United States, in order to create a special service without it having the ability to influence judges.”

Court of Appeals Judge

4.3. INSUFFICIENT RESPONSE TO POSSIBLE CORRUPT ACTIVITIES

Unwillingness of the High Council of Justice to Use Disciplinary Mechanisms

Public trust is especially low towards judicial disciplinary proceedings carried out by the High Council of Justice.¹¹⁹ The Council has failed to investigate a number of cases that raised serious questions about the impartiality and independence of the court. **According to information received from the Council, in 2006-2017, not a single judge has been charged with a corruption offense.** As a rule, the Council does not respond to information on possible cases of corruption and does not try to answer legitimate questions that are raised by the public.

117 The Judicial System: Past Reforms and Future Perspectives, Coalition for an Independent and Transparent Judiciary, 2017, pp. 128; Available at: <https://goo.gl/kbMoyp>

118 Law on Conflict of Interest and Corruption in the Public Service, Article 14

119 Corruption prevention in respect of members of parliament, judges and prosecutors, 4th Evaluation Round, Evaluation Report for Georgia, GRECO, 2016; Available at: <https://goo.gl/siw2yr>

“The impudence of judges in their decisions can clearly be seen today. They are not afraid of anything and can claim that black is white. They have a sense of impunity, which further aggravates the situation. [...] One time when I had a suspicion that corruption was involved, my client addressed the Council to initiate disciplinary prosecution, but the Council promoted the judge instead.”

Practicing Attorney

The Council has also failed to react to recent cases of alleged misuse of court resources by judges:

Misuse of Court Resources by Valeri Tsertsvadze

The High Council of Justice did not react to the misuse of court resources by Valeri Tsertsvadze. Tsertsvadze used a state vehicle in a commercial for a company connected with his family. The same commercial also showed the vehicle being driven by an employee of the Court of Appeals. Such use of a state vehicle, that was transferred to a judge for official use, unambiguously constitutes misuse of public resources. In November 2016, Transparency International Georgia submitted a disciplinary complaint to the High Council of Justice, however the Council failed to react to the incident .¹²⁰



Photo 1: Chairperson of the Court of Appeals Valerian Tsertsvadze used a state vehicle in a commercial for a company (iTechnic) connected with his family.

¹²⁰ It is necessary to launch disciplinary proceedings against the Chairperson of the Tbilisi Court of Appeals, Transparency International Georgia, 2016; Available at: <https://goo.gl/ySzs9P>

Allegations against Mamuka Akhvlediani

Another example of ineffective use of the disciplinary mechanism by the High Council of Justice is the case of former Chairperson of Tbilisi City Court **Mamuka Akhvlediani**, who received a number of direct and indirect accusations from members of the Council about misusing equipment and mispending funds allocated for the implementation of the electronic system of case management during his chairmanship. Despite serious allegations, the Council has yet to investigate this issue. Mamuka Akhvlediani has denied these allegations and requested the Council to present relevant evidence.

“A Court Chairperson does not have authority in budgeting matters. Finances are being governed by the High Council of Justice and its management, which was also the case during the previous government. I have not participated in the announcement of tenders, selection of suppliers, or any commission related to the document management system or the server. No more than half a million was spent on this program and most of it was funded by GIZ. There were no millions involved. If the program had not been updated since 2007-2008, when it was created, it is no surprise that the system would have technical problems. Nobody is working on updating the program. I addressed the Council several times with this concern, including the need to create a reserve datacenter, but I did not get any support.”

Mamuka Akhvlediani, Former Chairperson of Tbilisi City Court

Questions about the impartiality of the judiciary were raised in a number of recent high value commercial cases as well. However, the High Council of Justice did not respond to any of them:

The Case of Philip Morris

In 2016, Judge Vladimer Kakabadze imposed a fine of GEL 93 million on Philip Morris in favor of JSC Tbilisi Tobacco on the basis of an decision, which lacked legal and factual argumentation.¹²¹ This decision was subsequently annulled by the Court of Appeals. Even though the case proceeded with considerable procedural violations and serious questions were raised about court bias, the Council did not investigate the matter. Parallel to this, on September 21, 2017, Tbilisi City Court fined the National Committee Chairperson of the International Chamber of Commerce, Fadi Asli, for GEL 3,000 for criticizing the above case.¹²² Fadi Asli had referred to the presiding judge as “corrupt”. This precedent was dangerous, since in a system with ineffective accountability mechanisms, where strong public protest remains one of the few means of identifying problems, restriction of freedom of expression (on the basis of protecting the judicial reputation) may aggravate existing problems and increase risks of corruption.

The Case of Ltd. Transcaucasus Crystal

Transparency International Georgia studied a dispute between Ltd. Megako and Ltd. Transcaucasus Crystal, which involved Niaz Khalvashi, brother of a government associated

121 The Case of Philip Morris - A full description can be found in the Annex

122 Fadi Asli was Fined GEL 3,000 for Accusing a Judge of Corruption, Netgazeti, 2017; Available at: <https://goo.gl/icW1Na>

businessman Kibar Khalvashi. Circumstances of the case have raised a suspicion that the judiciary, together with various state bodies, acted in favor of Niaz Khalvashi, who was able to purchase a property worth several million from Ltd. Transcaucasus Crystal for just GEL 942,600 through a public auction.¹²³

The July 24, 2017 decision of the High Council of Justice to set up a narrow specialization for commercial disputes (worth over GEL 500,000) in the Civil Cases Panel of Tbilisi City Court was a kind of recognition of problems in high value civil disputes.¹²⁴ According to the Secretary of the High Council of Justice, the specialization on commercial disputes serves the purpose of improving the investment and business environments in the country.¹²⁵

While the existence of a narrow specialization on high-value commercial disputes in Tbilisi City Court may indeed hasten proceedings and, to some extent, increase the level of substantiation of decisions, the rules for composing such Chambers remain a problem. The criteria used to select the judges in the new specialization have not been made public. In cases when a group of judges is selected for considering specific types of disputes without the use of transparent and objective criteria, there is always a risk that certain groups may try to influence the process.

For example, one of the judges with the specialization in commercial disputes was involved in several cases examined by Transparency International Georgia. In the case of **Rustavi Metallurgical Plant**, this judge first granted the plaintiff's request and imposed a ban on company property worth tens of millions of Lari in order to secure the claimed GEL 5,000, hampering the operation of the company by doing so, and then invalidated agreements the legality of which had been confirmed by the Supreme Court.¹²⁶ The same judge considered the dispute between Ltd. Aka and Davit Dzotsenidze, where he renewed the dispute without offering proper substantiation and invalidated a decision that he himself had made in 2010.¹²⁷

“The new commercial chamber was mostly filled with judges who are under the influence. Consequently, the risk of undue, including corruption related, influence on these judges in high value cases is very real.”

Practicing Attorney

123 The Case of Ltd. Transcaucasus Crystal - A full description can be found in the Annex.

124 Judges of the newly created specialization consider cases of property, entrepreneurship, bankruptcy and obligations related legal disputes that are over GEL 500,000.

125 Statement of the High Council of Justice, August 3, 2017; Available at: <https://goo.gl/oHnWd4>

126 The Case of Rustavi Metallurgical Plant – A full description can be found in the Annex

127 The Case of Davit Dzotsenidze vs. Ltd. Aka - A full description can be found in the Annex

“The Ministry of Justice started working on creating commercial chambers some time ago. How did the judiciary react to this? They created a group of judges tasked with considering cases above GEL 500,000. As for who these judges are, the public may get an idea if the Council discloses the number of disciplinary complaints that have been submitted against them and the reason why they were promoted.”

Practicing Attorney

Insufficient Response to the Violation of Communication Rules

In 2016, an audio recording of a conversation between then Chairperson of Tbilisi City Court and the Executive Director of TV company Rustavi 2 was leaked, where participants spoke about an ongoing court case.¹²⁸ At the next session of the High Council of Justice, members stated that the recording contained signs of corruption.¹²⁹ The Council responded with a public statement as well, where it expressed outrage about the communication between the Court Chairperson and a party to a dispute, and announced measures to prevent such violations, including further strengthening of judicial ethics trainings, ethics control and increase of judicial accountability.¹³⁰ However, since then this issue has not been discussed by the Council and the public has not been informed about any steps that have been taken to prevent such incidents.

“I was not present at discussions over this 6 million, this conversation happened between two other people. The meeting took place at a dinner table through the invitation of a close relative. This talk about money was staged so that it could be used against me if necessary.”

Mamuka Akhvlediani, Former Chairperson of Tbilisi City Court

Another possible case of a violation of communication rules with judges was brought up by **Davit Mamiseishvili**, Chairperson of Batumi City Court, according to whom Mamuka Akhvlediani had called and asked him to use a non-custodial measure against the accused in an ongoing criminal case.¹³¹ Mamuka Akhvlediani has commented that the accused, who happened to be his relative, had been arrested as a way to influence him and denied having any communication with Davit Mamiseishvili about the case. Mamuka Akhvlediani also publicly commented, that this was the very same case about which Batumi City Court Judge Irakli Shavadze later accused Davit Mamiseishvili of pressuring him.¹³²

128 Nika Gvaramia Claims to Have Recorded the Conversation with Mamuka Akhvlediani himself, Netgazeti, 2016; Available at: <https://goo.gl/96q4zf>

129 This Looks Very Much Like Corruption – the High Council of Justice is Discussing the Case of Akhvlediani, Netgazeti, 2016 ; Available at: <https://goo.gl/S6a52M>

130 Statement by the High Council of Justice, October 5, 2016; Available at: <https://goo.gl/f5zXzY>

131 Mamiseishvili: Mamuka Akhvlediani Tried to Pressure Me on the Case of Artmeladze, Netgazeti, 2017; Available at: <https://goo.gl/zCMjkD>

132 Interview with Mamuka Akhvlediani, Iberia TV, 2018; Available at: <https://goo.gl/qKyv1N>

“After the arrest, Davit Mamiseishvili explained to the family of the accused what he wanted from them. He directly told them, “stop Akhvlediani”. He gave them direct hints and tried to influence me to stop, through them.”

Mamuka Akhvlediani, Former Chairperson of Tbilisi City Court

Important to note is that Davit Mamiseishvili was himself obligated by law to inform the High Council of Justice and relevant authorities of any unlawful communication with him. It is troubling that no relevant body has responded to or launched an investigation into either allegations made by Mamiseishvili or the ones against him.

According to the High Council of Justice, no cases of a violation of the rules of communication by judges have been identified since the law entered into force; therefore, disciplinary proceedings have not been launched against any judge on these grounds.

4.4. ROLE OF THE APPELLATE COURTS IN COMBATING CORRUPTION

According to UN recommendations,¹³³ judges of the Court of Appeal may also play an important role in detecting corruption. Since the Court of Appeal is tasked with reviewing decisions of lower courts if appealed, judges at the appellate level must have the right to inform the High Council of Justice about decisions that are sufficiently contrary to law and existing judicial practice to give rise to reasonable suspicion of bias or corruption. According to the recommendation, in such cases, the Council must be able to investigate possible cases of corruption, without assuming the role of a higher instance court and without considering the content of the decision. Regarding this matter, the Chairperson of the Supreme Court has stated that, *“motivating appellate level judges to report suspicious decisions of lower courts to the High Council of Justice by granting them the legal authority to do so for the purpose of improving the mechanism of detecting and responding to cases of judicial corruption is worth consideration”*. The Supreme Court Chairperson went on to say that, *“the existing legislation does not rule out the discretion of appellate level judges to inform the High Council of Justice / Independent Inspector of a suspicious decision of a lower court. As for actual practice, I cannot recall any cases when an appellate level judge has exercised this opportunity/right.”*¹³⁴

133 UN Anti-Corruption Toolkit: The Global Programme Against Corruption, Vienna, September 2004, page 32; Available at: <https://goo.gl/wxrif>

134 The position of the Chairman of the Supreme Court on this issue can be further examined in the Attachment (Notes), published together with this report.

“If you have dishonest judges in the system, then external control becomes more important. There are several mechanisms to reduce corruption risks in this situation. For example, you can look for exceptions to the practice that has been established by judges. You can also have appeal or cassation judges provide relevant information. At the appeal level it is possible to detect which judges might be making money at the lower level.”

Former Member of the Disciplinary Committee of Judges

“In 2015, I definitely came across cases when the Court of Appeal received decisions that differed from established practice. But I cannot really speak about the circumstances that lead to this difference.”

Court of Appeals Judge

“When a judge has an established practice, i.e. makes decisions with the same approach, then suddenly turns away from this practice on one case and then returns to it again and does this in favor of the same party, this judge raises suspicion. In such cases, the Council should be able to launch a probe and establish two things: 1. Whether the judge actually raised suspicion (by consulting with attorneys, parties, looking into the judge’s practice); 2. Whether the judge has received any benefit from this case or has been subjected to any undue influence.”

Former Member of the Disciplinary Committee of Judges

The Court of Appeals can play an effective role in detecting cases of corruption only if its judges there are independent and impartial. Nowadays, majority of members of the dominant group of judges, who might themselves be the ones imposing undue influence, serve at Tbilisi and Kutaisi Appeals Courts.

“The main core of the influential group has already been moved to the Court of Appeals, which is a strong filter for changing undesirable decisions.”

Former Judge

“The public has a feeling that judges of the Court of Appeals are under influence to a greater degree. As for the Kutaisi Court of Appeals, I can say with certainty, that it has a problem with independence and impartiality of judges.”

Practicing Attorney

DOMINANT GROUP OF JUDGES, MAJORITY OF WHICH SERVE AT APPELLATE COURTS



MIKHEIL CHINCHALADZE
Chairperson of Tbilisi Court
of Appeals since 2017



LEVAN MURUSIDZE
Former member of the
HCoJ; Judge at Tbilisi
Court of Appeals since 2016



LEVAN TEVZADZE
Former member of the
HCoJ; Judge at Tbilisi Court
of Appeals since 2013



DIMITRI GVRITISHVILI
Member of the HCoJ;
Chairperson of Kutaisi Court
of Appeals since 2016



SHOTA GETSADZE
Former member of the
HCoJ; Judge at Tbilisi
Court of Appeals since 2015



IRAKLI SHENGELIA
Member of the HCoJ;
Judge at Tbilisi Court
of Appeals since 2007



VASIL MSHVENIERADZE
Member of the HCoJ;
Chairperson of Tbilisi City Court



SERGO METOPISHVILI
Member of the HCoJ;
Chairperson of the Civil
Cases Panel of Tbilisi
City Court



DAVIT MAMISEISHVILI
Chairperson of Batumi
City Court



GIORGI MIKAUTADZE
Secretary of the HCoJ



Judges at Appellate Courts



Judges at City Courts

4.5. DISTRUST TOWARDS THE HIGH COUNCIL OF JUSTICE AS A HINDRANCE FOR WHISTLEBLOWING

Whistleblowing is one of the most important mechanisms for reducing corruption risks in public institutions, including the judiciary. Encouraging this practice by ensuring legal protection and clear procedures helps detect corrupt actions in both public and private sectors.¹³⁵ The main purpose of regulatory norms in this area is to protect whistleblowers from pressure and unjust treatment. The most effective method of protecting whistleblowers is to keep their identity confidential.¹³⁶

Whistleblowing in Georgia is regulated by the Law on Conflict of Interest and Corruption, which allows for the anonymity of whistleblowers.¹³⁷ Legal protection of whistleblower anonymity is a strong guarantee that whistleblowers do not face problems for reporting information. However, in order for this guarantee to be real and for whistleblowers to decide to rely on it, they must have confidence that the reviewing body will protect their anonymity.

Current level of public trust towards the High Council of Justice is quite low. This mistrust is strengthened by specific incidents, such as Nazi Janezashvili, a non-judge member of the Council, speaking about her suspicion that confidential information related to her negative assessment of the integrity of specific judicial candidates was made available to other members of the Council. According to Nazi Janezashvili, the disclosure of this information led to insulting and threatening statements towards her, made by several judges before the Council meeting.¹³⁸ **The High Council of Justice has not investigated this incident.**

Such alleged cases of disclosure of confidential information strengthen distrust towards the judiciary and reduce the chances of whistleblowing. The lack of trust towards the High Council of Justice could be one of the reasons why it has not received any whistleblower reports since 2009.¹³⁹

4.6. INSUFFICIENT RESPONSE OF THE PROSECUTOR'S OFFICE TO POSSIBLE CASES OF CORRUPTION

In order to ensure judicial independence, the government must send a clear signal towards judges that they will not be unjustly punished, but will be held responsible for involvement in corruption. Unfortunately, the Prosecutor's Office has been inactive in investigating cases of possible corruption in the judiciary. For example, during consideration of the case of Rustavi 2, **media reports claimed that Mamuka Akhvlediani, Chairperson of Tbilisi City Court, had received money as a result of a corruption deal.** The authors of this allegation pointed to the leaked audio recording of a conversation between Akhvlediani and the director of TV Company Rustavi 2, and the purchase of expensive real estate by Akhvlediani as evidence for this deal. More specifically, the allegation was related to the origin of funds used by Mamuka Akhvlediani to purchase the school Olimpi in 2016.¹⁴⁰ Following the leak of the audio recording, statements about the signs of corruption in the case were made by members

135 Whistleblower Protection, International Practice and Recommendations for Georgia, Transparency International Georgia, 2015; Available at: <https://goo.gl/yBt12z>

136 UN Anti-Corruption Toolkit: The Global Programme Against Corruption, Vienna, 2004, p.129; Available at: <https://goo.gl/wxr1of>

137 Law on Conflict of Interest and Corruption in the Public Service, Article 20³, Paragraph 3

138 Nazi Janezashvili Suspects a Leak of Confidential Information on Assessment of Candidates, Liberali, 2017; Available at: <https://goo.gl/CeH71p>

139 Response N1262/2568-03-მ, High Council of Justice, November 6, 2017

140 Mamuka Akhvlediani Plans to Sue High Ranking Officials, Netgazeti, 2017; Available at: <https://goo.gl/txgHkf>

of the High Council of Justice as well.¹⁴¹

Mamuka Akhvlediani has denied involvement in any corruption deal or having any illegal income. According to him, he purchased the property through a bank loan (terms of which was offered by the bank), which he pays using income earned from the school. **The public has not been provided sufficient information about the case, since no investigation has been launched and neither has the High Council of Justice issued any conclusion.**

“The previous owner of the school had a bank debt of half a million, which he was unable to pay. At the time, 1/3 of the school belonged to my son-in-law. I asked the bank to extend the payment period to up to 10 years. The bank agreed, but doubled the loan. From this increased loan, the bank directly covered the mortgage debt of the previous owner and transferred 2/3 shares of the school to me. The loan is being repaid by the school itself.”

Former Court Chairperson Mamuka Akhvlediani

The investigation was launched but no results were made public about the case of **leaked judicial qualification tests**,¹⁴² which allegedly involved the Chairperson of the Supreme Court. Such ineffectiveness of investigation damages the interests of judiciary, since it creates a sense of impunity, and at the same time increases risks of pressure against specific individuals.

Transparency International Georgia requested the Prosecutor’s Office to disclose information about investigations (and their results) launched against judges since 2011. The Prosecutor’s Office replied that it does not keep such statistics.

“Let’s consider a scenario where a high-profile case is assigned to a judge who knows what decision is expected. Then let’s say the same judge makes a corruption deal in another case. No one will touch them. When a judge makes a deal with the government on a specific case, this judge acquires immunity for all other cases. If an investigation is launched into corrupt activities of this judge, then all of their previous decisions come under question. Therefore, the government will not place itself in such danger. This is why these connections and clan governance create corruption risks.”

Former Judge

5. INADEQUATE WORKING CONDITIONS FOR JUDGES

The level of corruption in the judiciary can be significantly reduced by granting adequate social guarantees and creating better working conditions for judges. Not doing so raises the risks of individual judges getting involved in corrupt activities, since poor conditions (salary, office space, excessive caseload etc.) can create both a desire to acquire more wealth

141 This Looks Very Much Like Corruption – the High Council of Justice on Akhvlediani, Netgazeti, 2016; Available at: <https://goo.gl/i7HfzB>

142 The Prosecutor’s Office Launches Investigation into the Alleged Leak of Judicial Tests, On.ge, 2016; Available at: <https://goo.gl/cPrZP2>

or resources and a dependency on more powerful judges with the ability to dispense such resources.¹⁴³

5.1. POSSIBILITY OF MANIPULATING JUDGES USING SOCIAL GUARANTEES

Labor remuneration of judges in the Common Courts of Georgia consists of their monthly salary and salary supplements. The amount of monthly salary is strictly prescribed by law and is based on court instances, but the system of salary supplements has room for a selective approach. The amount of supplements received by first and appellate instance judges is determined by the High Council of Justice, while the same is done for the Supreme Court by its own Plenum. In order not to endanger the independence of individual judges, the Supreme Court Plenum and the High Council of Justice must be obligated by law to determine the amount and rules for issuing salary supplements in accordance with predefined procedures and based on objective criteria. Alternatively, it is recommended to abolish salary supplements altogether and have all Common Courts judges receive their legally defined monthly salaries alone. The Venice Commission also shares this approach.¹⁴⁴

“In previous years, number of judges applied to the Council and requested that the supplement be included in the salary, but the Council was not interested. It seems that individual supplements were also being issued, but we did not know this at the time. One year, they issued supplements based on the number of cases considered, but that was it. They say that individual orders always existed, but nobody has seen them publicly.”

Former Judge

It is considered good practice for the standards on judge salaries to also apply to their pensions, in order for judges to have adequate financial security after the expiration of their term.¹⁴⁵ The pension age for judges in Georgia is 65 years. Judges of different court instances receive different amounts of pension. Supreme Court judges receive a fixed GEL 1,200 per month, while other Common Courts judges receive no more than GEL 560 based on their position and length of service.¹⁴⁶ These amounts cannot ensure financial stability of judges after the expiration of their term and cannot be considered as adequate social guarantee.

Former judges interviewed as part of this research have pointed to the high risk of judges being dismissed from their position in case of confrontation with the system and the dominant group. Since this means being left with low possibility of social adaptation, judges are forced to conform.

143 UN Anti-Corruption Toolkit: The Global Programme Against Corruption, Vienna, September 2004, page 34; Available at: <https://goo.gl/wxrif>

144 Report on the Independence of the Judicial System Part I: The Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session, CDL-AD(2010)004, para. 51; Available at: <https://goo.gl/HfJVke>

145 Transparency International Advocacy Toolkit: Combating Corruption in Judicial Systems, page 41; Available at: <https://goo.gl/afyTpd>

146 Law of Georgia on State Compensation and State Academic Scholarship

“When judges saw that the clan gained control over appointments and other issues, they realized that it had power over them. Judges have a good status, salary, some of them have bank loans, and one day they can lose all this without any guarantee. So they are forced to obey the system.”

Former Judge

“Judges have one of the highest salaries; the position is also the most stable due to lifetime appointment, so they do not have to worry about changes of government. To maintain this stability, however, one needs to maintain good relations with 10-15 people. If you do this, then you won’t be dismissed. Even though this cooperation may create problems for you, for example, a difference of opinion with the group, you cannot do anything, because that would mean losing your position. If we look at judges who have lost their positions and were left outside the system, the best they can do is work as attorneys, but even then you have work in the system that you have offended.”

Former Judge

The judiciary does recognize the problem with judge remuneration and the necessity to improve the pension system. The 2017-2021 Strategy for the Judicial System refers to the necessity to increase social guarantees for judges and to generally improve this system in accordance with international standards. The Strategy Implementation Action Plan includes activities such as increasing financial guarantees and determining fixed salaries for judges.¹⁴⁷

5.2. RISKS OF INFLUENCING JUDGES THROUGH CASE OVERLOAD

According to the Judiciary, the main challenge of the system is lack of judges and case overload, which affects the quality of judicial decisions and increases the duration of disputes.¹⁴⁸ While the judiciary does face significant case overload (for example, 105 judges of Tbilisi City Court considered a total of 60,000 cases in 2016),¹⁴⁹ no comprehensive study of statistics and reasons behind case delays has been conducted yet, and the High Council of Justice has not taken effective steps to solve this problem.¹⁵⁰

“Case overload is very useful for the Council. For example, when a judge imposes an enforcement measure on company property and does not consider the case for years, it often forces businesses to resort to deals and concessions. They can justify anything with case overload.”

Former Judge

147 2017-2021 Strategy of the Judicial System and its 2017-2018 Implementation Action Plan, Decision N1/162 of the High Council of Justice, May 29, 2017, Paragraphs 1.1.1.6 and 1.2.4.1

148 Legal Problems – Business Circle Representatives Meet with New Members of the High Council of Justice, Rustavi 2, 2017; Available at: <https://goo.gl/LLfGWA>

149 Report of the Judicial System 2013-2017, High Council of Justice, 2017

150 The Judicial System: Past Reforms and Future Perspectives, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/kbMoyp>

Case overload is considered to be leverage for influencing judges and endangers judicial independence.¹⁵¹ It raises the probability of mistakes (for example, violation of important procedural deadlines) or improper implementation of procedural measures by judges that can be used to launch disciplinary proceedings against them or threaten them with doing so. These risks are especially high when the system of disciplinary liability of judges in Georgia does not ensure a transparent, foreseeable process, compliant with international standards.¹⁵² In 2017, for the first time in the last 5 years, the High Council of Justice found a judge guilty of unjustifiably delaying a case.¹⁵³ Considering the fact that many judges are having to violate procedural deadlines due to case overload, such decisions of the Council may have a negative effect on judicial independence.

“Currently, all judges violate the law. All of them go over the deadlines for considering cases. This means that the Council has the legal opportunity to use disciplinary measures against them. In other words, they have judges under control and can go after them with disciplinary measures any time they want.”

Practicing Attorney

There is also a reason to suspect that the Council deliberately facilitated case overload by enrolling a minimum number of students in the High School of Justice (in 2013-2016) and thus reducing the number of potential judicial candidates.¹⁵⁴ This could have been done in order to reduce competition during the selection of judges (since it was easily foreseeable that most of the judges would expire their term in 2015-2017), as well as to create the possibility of influencing judges through case overload.

“The majority of judges were appointed in 2005-2007. These judges had their terms expire in 2015-2017, which the Council used very well. Terms were expiring for 150 of the 200 judges and there was talk about a deficit of 100 more judges. However, only 30-40 applicants graduated from the High School of Justice in this period. This was done for the sole purpose of reducing competition for existing judges. In addition, the Council changed its practice and did not extend the terms for judges, who had completed their 10 year term, until the completion of their ongoing cases, which further increased the number of cases and created a serious crisis of case overload. They basically created a situation where there was no alternative to the reappointment of existing judges. The Council began to dictate terms to the government, took advantage of the situation and appointed favorable judges. The fact that they were not guided by a judge’s professional qualities was evident from the very beginning when they appointed certain judges to appellate courts and did not appoint those with impeccable reputation.”

Former Judge

151 Global Corruption report 2007, Transparency International, p.6; Available at: <https://goo.gl/v2gjNN>

152 The Judicial System: Past Reforms and Future Perspectives, Coalition for an Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/kbMoyp>

153 Decision №1/01-17, Disciplinary Committee of the Common Courts Judges of Georgia, April 21, 2017; Available at: <https://goo.gl/UN5UDQ>

154 In the period of 2013-2016 only 43 students have enrolled in the High Council of Justice - Report on the Implementation of the Reform 2013-2016, High School of Justice, 2017; Available at: <https://goo.gl/LTJsEV>

6. INSUFFICIENT TRANSPARENCY OF THE JUDICIAL SYSTEM

In order to dispel doubts that decisions in the judiciary are made by an influential group behind closed doors, judicial processes must become as transparent as possible and decisions must be made through open discussions with the involvement of civil society (in the process of HCoJ activities, drafting and implementing of judicial strategies, action plans and policy decisions, etc.).

6.1. INSUFFICIENT INVOLVEMENT OF THE CIVIL SOCIETY IN JUDICIAL OVERSIGHT

Civil society, media and non-governmental organizations should play a special role in strengthening the accountability of the judicial system. The involvement of civil society, including through assessment of certain administrative and managerial decisions, facilitates the analyses of corruption risks in the judiciary.¹⁵⁵ For years, Transparency International Georgia and the Coalition for Independent and Transparent Judiciary have been studying the Georgian judiciary and issuing recommendations to relevant institutions.

The necessity for civil society to be involved in judicial processes is amplified by the seriousness of challenges facing the judiciary in Georgia, that include growing opportunities for corruption, improper influence of a dominant group of judges and lack of a well-functioning judicial accountability mechanisms. Even though the Council tries to create a feeling that the judiciary is open for cooperation with the civil sector, this is illusory in many cases. For years, the civil sector has been expressing serious doubts that the most important decisions (management related, as well as individual decisions on appointing and promoting judges) in the judiciary seem to be made behind closed doors, as a result of informal negotiations, and that subsequent discussions at the open sessions of the High Council of Justice is merely a formality. As a rule, the Council ignores critical assessments and recommendations of the civil sector and considers them to be an attack on the judiciary.¹⁵⁶

Especially troubling was the decision made by the High Council of Justice in 2017 that excluded the civil sector from working groups tasked with the implementation and monitoring of the 2017-2018 action plan of the judiciary's long term strategy.¹⁵⁷ The action plan includes activities such as: analysis of perceptions and risks of corruption in the Common Courts system, introduction of renewed rules for asset declarations and strengthening accountability mechanisms. These documents contain a number of positive and important initiatives; however, as of the April, 2018 no effective steps have been taken to accomplish these goals. For example, even though the analysis of perceptions of corruption and risk assessment was supposed to be completed by the end of 2017, no such document exists. Considering the importance of issues included in the action plan, the High Council of Justice must ensure the involvement of the civil sector in working groups tasked with the implementation and monitoring of the action plan, while decisions must be made through broad public discussion.

155 Transparency International Advocacy Toolkit: Combating Corruption in Judicial Systems, page 3; Available at: <https://goo.gl/wxrlof>

156 Address of the Conference of Judges of Georgia to the Public, Government and Civil Sector, 16th Conference of Judges, February 1, 2016; Available at: <https://goo.gl/t3BbEN>

157 Decision N1/260, High Council of Justice, October 16, 2017; Available at: <https://goo.gl/YjnRsn>

“If a large part of the public is active enough, change may start from here too. Compared to the other two branches of government, which are prohibited from interfering with judicial activities, the public can have a greater influence on the judiciary. This is one way to encourage the judiciary to become more accountable.”

Former Judge

6.2. DANGER OF RESTRICTING FREEDOM OF EXPRESSION

Speaking openly about the problems of the judiciary can significantly reduce corruption and facilitate the improvement of the system. Placing restrictions on freedom of expression will make it harder to identify, and therefore solve, these problems.

In 2015, the judiciary launched discussions on restricting freedom of expression and imposing a limit of “acceptable criticism” towards judges. The initiative belonged to then member of the High Council of Justice Eva Gotsiridze, who was later appointed as the Constitutional Court judge by the Parliament.¹⁵⁸ Other members of the Council also actively supported this proposal. The initiative was challenged by the civil sector,¹⁵⁹ Public Defender, Charter of Journalistic Ethics, and a number of politicians,¹⁶⁰ since it could have been used to limit public discussion on serious problems of the judiciary.¹⁶¹

September 21, 2017 saw the first precedent of freedom of expression being restricted for expressing criticism towards a judge. Tbilisi City Court fined Fadi Asli, Chairperson of the National Committee of the International Chamber of Commerce, GEL 3,000 for criticizing Judge Vladimer Kakabadze. Fadi Asli had accused the judge of corruption for his decision on the case of Philip Morris.¹⁶² Tbilisi City Court made the following official statement before the decision entered into force (and there was still time left for appeal):

“

“A judge restores his tarnished dignity

Tbilisi City Court has made a precedential decision. For the very first time in the history of justice, a judge was able to restore his honor and dignity that had been tarnished by a businessman, with the help of the court. [...] According to the complaint, a person who was dissatisfied with a court decision made unjustified statements that not only damaged the professional reputation of a single judge but were also aimed at discrediting the judiciary and the court as a whole, thus grossly violating the presumption of innocence.”

158 Parliament Elects Eva Gotsiridze as a Constitutional Court Judge, Netgazeti, 2017; Available at: <https://goo.gl/5LPVuk>

159 Statement of the Coalition for Independent and Transparent Judiciary Responds to the Initiative Limiting Freedom of Expression to Protect the Court’s Reputation, Coalition for Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/xdUqJN>

160 Freedom of Expression within “Acceptable Criticism”, Radio Liberty, 2017; Available at: <https://goo.gl/EXjRj>

161 Unfounded restriction of freedom of expression to protect the court’s authority is impermissible, Transparency International Georgia, 2015; Available at: <https://goo.gl/CLZbJz>

162 The Case of Philip Morris – A full description of the case can be found in the Annex

In addition to Tbilisi City Court, members of the High Council of Justice also expressed their sentiments on the case, in this way potentially influencing the decision of the Court of Appeal. During the interview with Judge Vladimer Kakabadze, prior to his lifetime appointment, some members of the Council assessed the above decision as “important” and “precedential”.¹⁶³ Important to note is that the court considered the above case and issued a decision within a short period of time (5 months), while a case of a similar category filed by the Executive Director of Transparency International Georgia against Goga Khaindrava and Guram Adamashvili has been held in the first instance court for more than two years.

163 The Process of Lifetime Appointments of Judges is Flawed, Coalition for Independent and Transparent Judiciary, 2017; Available at: <https://goo.gl/Qcm55R>

Corruption Risks in Specific Cases

1. The Case of Davit Dzotsenidze vs. Ltd. Aka

Transparency International Georgia examined the legal dispute between the shareholders of Ltd. Aka and concluded that the renewal of the dispute due to newly discovered circumstances in 2016 raises questions about the independence of the judicial process.

Ltd. Aka was established in 1992 and is the official representative of Mercedes-Benz in Georgia. Founders of the company were Salome Asatiani, Maka Asatiani, Gocha Leladze, Kakhi Asatiani and Davit Dzotsenidze, who also held the position of director. At the shareholder meeting of March 15, 1996, Davit Dzotsenidze was dismissed from the position of director and subsequently stripped of his 20% share in the company. According to Dzotsenidze, the meeting did not involve any discussion about the latter decision, of which he learned only in 2008 and appealed to court to restore his ownership rights. **Dzotsenidze did not dispute the decision to dismiss him from the position of the director, but the loss of his shares alone.** The court ruled in favor of Davit Dzotsenidze and restored his ownership right to 20% of company shares. The decision remained unchanged by the next two court instances and entered into force on February 28, 2012.

In 2016, **Tbilisi City Court renewed the dispute based on newly discovered circumstances** upon request of Luiza Tavartkiladze¹⁶⁴ Maka Asatiani, Salome Asatiani and Ltd. Aka. The plaintiffs submitted the original version of shareholder meeting protocol (#2) from March 15, 1996, which indicated that Davit Dzotsenidze had voluntarily relinquished his shares in the company. The court changed the previous ruling on the basis of this document and stripped Davit Dzotsenidze of the 20% share in the company.

The court decision raised a number of concerns:

Renewal of the dispute was unsubstantiated. The decision to renew the case was based on the original version of the March 5, 1996 Protocol #2, which indicated that Davit Dzotsenidze had voluntarily relinquished his shares in the company on March 15, 1996. According to the court, “if the original protocol of the shareholder meeting had been submitted to court during the original review of the case, it would have, in conjunction with other evidence, resulted in a decision favorable to the defendants.”

However, after admitting and reviewing the copy of the same protocol in 2008, the court had concluded that **“the signatures on the document have not been verified by a notary, the facts contained within contradict both the appellant’s position and the chronology of events, its contents became known to the plaintiff only a few years after the document’s date, and the delivery field designated for D. Dzotsenidze is empty”**. Even though the document submitted in 2016 was identical to the document, to which the above assessment refers to, Tbilisi City Court nevertheless renewed the dispute and came to a different decision. In addition, both cases were presided by the same judge Lasha Kochiashvili.

164 Luiza Tavartkiladze is the wife of Kakhi Asatiani and inherited his shares in Ltd. Aka after his death.

During the original dispute in 2008, the court had requested the original version of the protocol from the Business Registry, but discovered that it was not included among the documentation on Ltd. Aka. The original version of the protocol was discovered by **the Prosecutor's Office** among the materials of the Archives Division at the Administrative Department at the Revenue Service (Ministry of Finance) only in 2015 (the document was being used as evidence for a criminal case). According to Davit Dzotsenidze's representatives, they appealed to the Revenue Service and requested information on when the Ministry of Finance had received the document, and whether it had evidence to prove this reception, e.g. a record in a journal. In response, **the Revenue Service stated that it was unaware of when and who had submitted the protocol.**

In addition to the fact that the court resumed the dispute without proper substantiation, the decision to do so did not include any reasoning in relation to the following important circumstances:

Information contained in the newly presented protocol contradicted the information provided by the shareholders of Ltd. Aka during court hearings. According to the protocol, "company shareholders declared their distrust towards Davit Dzotsenidze and made the decision to abolish his shareholder status and dismiss him from the position of director". However, **the shareholders themselves stated that Davit Dzotsenidze had voluntarily relinquished his shares.**

The content of the protocol contradicts the testimony of one of the shareholders - Gocha Leladze. The protocol indicated that Gocha Leladze was present and expressed his opinion at the March 15 meeting of shareholders, while Leladze himself stated that he was not in Georgia at that time, that he lived in Germany and therefore **did not attend the meeting.**

The court based its ruling on the testimony of witness M.J., even though its conclusion could not be inferred from this testimony. The witness explained that he attended the shareholder meeting on March 15 and remembers that the agenda included the issue of dismissing Davit Dzotsenidze from the position of director and canceling his shareholder status. However, the witness also stated that **he spent about an hour and a half at the meeting, after which he left, and that he does not remember who chaired the meeting and who issued the protocol.** The court used this testimony to rule that on March 15 the shareholder meeting had made the decision to expel Davit Dzotsenidze from the partnership.

During the formulation of its decision in 2016, the court neglected to assess the fact that the submitted protocol had not been notarized. At the time, having the decision to change the list of shareholders notarized was a required precondition for proving the authenticity of the document. The protocol also does not include the signature of Davit Dzotsenidze himself, who, according to indisputable factual circumstances, was present at the meeting.

It should also be noted that the October 13, 2016 decision of Tbilisi City Court was upheld by the Court of Appeals¹⁶⁵ and the dispute is currently considered by the Supreme Court.

The decision of the court to consider a piece of evidence from a previous ruling that had already entered legal force as newly discovered circumstance and to use this as a basis to renew the dispute raises questions about the impartiality of justice. Furthermore, the October 13, 2016 ruling of the city court, which canceled the previous ruling and adopted the new one, includes neither adequate examination of important factual circumstances nor the court's assessment of them.

165 December 15, 2017 Decision of Tbilisi Courts of Appeals

On September 25, 2017, the legal review company Todria and Partners prepared a report of its examination of the above case. The company's director is the former Supreme Court Judge Teimuraz Todria. The legal positions indicated in the report are fully in line with the evaluation presented by Transparency International Georgia.

The case file also includes an alternative report prepared by the former Supreme Court Judge Nunu Kvantaliani on November 2, 2017, which includes a different assessment of circumstances. However, this report does not discuss the main issue – whether the newly discovered evidence was enough to substantiate the renewal of the dispute. Legal assessments are made only on whether the party could request the renewal of the dispute on the basis of newly discovered circumstances in the manner prescribed by the Civil Procedure Code. According to the report, since the ruling on the resumption of the dispute had already entered into force, the issue no longer required practical research.

2. The Case of Rustavi Metallurgical Plant

The Rustavi Metallurgical Plant was purchased by Badri Patarkatsitshvili for USD 36 million back in 2005. Following Mr. Patarkatsishvili's death in February 2008, all 100 % of the JSC Georgian Steel (owner of Rustavi Metallurgical Plant) shares were transferred to Joseph Kay. Since then, several disputes between the Patarkatsishvili family and Joseph Key have been brought before courts in jurisdictions outside of Georgia with proceedings going on for several years.

On September 30, 2011, the new management of JSC Georgian Steel, which took over the enterprise afresh with significant debts, requested the opening of insolvency proceedings due to over GEL 82 million debt payable to creditors. Consequently, the creditors approved a debt rehabilitation plan for JSC Georgian Steel on December 21, 2011. Pursuant to the rehabilitation plan, the Metallurgical Plant assets owned by JSC Georgian Steel (land, buildings and movable property) were assigned to Ltd. Rustavi Steel (a company belonging to Badri Patarkatsishvili's family) under a contract of purchase signed on December 27, 2011. On the same date, Ltd. Rustavi Industrial Group (another company belonging to Badri Patarkatsishvili's family) signed another contract with JSC Georgian Steel to purchase bulk slag and ash that were in the latter's possession. Rustavi Industrial Group, in turn, sold the above property to Rustavi Steel, which, by that time, already owned the Rustavi Metallurgical Plant.

It was during that period that Badri Patarkatsishvili's family regained the ownership of the Rustavi Metallurgical Plant (the enterprise proper as well as its property) undertaking thereby to clear the multimillion arrears with JSC Georgian Steel.

Legal disputes against the companies owned by the Patarkatsishvili family started in 2013 (after groups associated with Joseph Key allegedly regained control over JSC Georgian Steel) and were aimed at invalidating the sale of the Georgian Steel assets and identifying it as the owner of the Metallurgical Plant. It is worth noting that Georgian Steel, the company controlled by Joseph Kay, and its representatives resorted to challenging the actions that took place in 2011 (the metallurgical plant and slag and ash purchase contracts) only in 2013. Altogether, there have been 3 legal disputes since 2013. The plaintiffs claimed that alienation of assets during the rehabilitation of the plant was illegal.

In all three cases, Rustavi Steel (the current owner of the Rustavi Metallurgical Plant) lost the lawsuits in the first instance courts. The judge in all three cases was Lasha Kochiashvili. The Georgian Supreme Court overturned the lower court decisions in two cases. While the Supreme Court's decision confirmed the legitimacy of the asset sale, Ms. Eter Mtvralashvili filed a new suit on December 29, 2014, thereby requesting to nullify the contract of purchase of the assets (slag and moveable and immovable property).

Importantly, Eter Mtvralashvili acquired the requested right from Ltd. Metacom on December 26, 2014 and became a JSC Georgian Steel creditor (Metacom never articulated any claims against the parties in the dispute). Metacom is the creditor of the 4th level, and the deadline for satisfying its credit expires in 2019. As for Eter Mtvralashvili's right of claim, it amounts to GEL 4,553.48.

The plaintiff requested the court to impose a ban on Rustavi Steel's right to dispose of or register title of the immovable property owned by it. In response, Rustavi Steel requested the court to change the interim remedy offering it to deposit GEL 4,553.48 on the court's account, since the plaintiff's officially declared interest was to obtain the sum in the amount of GEL 4,553.48.

The court rejected the defendant's request to change the interim remedy, highlighting that such a change would put the enforcement of the decision at risk in the event the court decided in favor of the claimant. **Consequently, the court granted the plaintiff's request and imposed a ban on the property worth tens of millions of Lari in order to secure the claimed GEL 4,553.48.**

The court decision raised considerable doubts as to its proportionality. It was not clear what risks the court was trying to safeguard against there being no real peril for Ms. Mtvralashvili's petty claim to be rejected. It was not clear either what caused the rejection of the suggested alternative interim measure. The alternative measure was fully safeguarding against the risks that the applicant referred to. When making such decisions, it is essential to build them on comprehensive and logical reasoning; any reasonable risk that the court seeks to insure against by its decision must be clearly specified.

The court upheld Ms. Mtvralashvili's claim by its February 24, 2015 decision and annulled the disputed contracts. **It should be pointed out that the Supreme Court had confirmed the legality of the contracts annulled by the lower court.** The annulment of the same contracts on the same grounds and against the same defendants by the first instance court raised additional questions in connection with the above case. The developments around the Rustavi Metallurgical Plant suggested that there was a new attempt on the part of the group associated with Joseph Kay to gain possession of the Plant.

This series of concerted actions aimed at gaining control over the Metallurgical Plant undermine any impression that legal actions being taken are based on the principle of fairness. Moreover, the above processes gave the present management of the enterprise sufficient grounds to suspect attempts aimed at deterring the functioning of the Plant through initiating an artificial and groundless dispute. We can also discern concerted actions of certain interconnected groups (both inside and outside the judiciary), which may be indicative of an unhealthy atmosphere within parts of the judiciary.¹⁶⁶

166 How matters stand in the Rustavi Metallurgical Plant – Review, Transparency International Georgia, 2015 ; Available at: <https://goo.gl/sm9j5T>

3. The Case of Philip Morris

Transparency International Georgia studied the decision of Tbilisi City Court, dated February 10, 2017, based on which Philip Morris was instructed to pay up to GEL 93 million to JSC Tbilisi Tobacco. The fact that the court proceedings were held in an expedited manner and with possible procedural violations raises legitimate questions about the objectiveness of the examination and partiality of the court.¹⁶⁷

According to JSC Tbilisi Tobacco, from September 1, 2013, Ltd. Philip Morris Georgia started selling BOND STREET cigarettes at below cost price, as a result of which the sales of JSC Tbilisi Tobacco decreased significantly and the company sustained material damages.

According to Ltd. Philip Morris Georgia, the retail sale prices of their brand cigarettes were higher than those of the cigarettes produced by JSC Tbilisi Tobacco in the majority of cases in the disputed period, while the decrease of sales, in their opinion, was associated with management, marketing problems, product quality and other factors.

Tbilisi City Court found that Philip Morris had set dumping prices in order to drive its competitors out of the market. As a result, JSC Tbilisi Tobacco sustained material damages.

It should be noted that despite the volume of the sum requested by the claimant and the complexity of the dispute, court proceedings were held in an expedited manner and with possible procedural violations.

- The Court failed to take the Report of the Competition Agency into account and established the violation of the Law on Competition without proper justification.

The Court did not attach to case file, and did not take into account in its decision, the Report of the Competition Agency presented by Philip Morris, according to which, no violation of the Law on Competition was found on the tobacco market. This report could initially be found on the Agency's official website, but was later removed due to unknown reasons.

The court decision did not include the reasoning on whether Philip Morris held a dominant position on the market. Proper substantiation was necessary here, since the court evaluated the actions of Philip Morris as abuse of dominant position, which is prohibited by the Law on Competition.

Moreover, the court found a violation of law due to setting of dumping pricing, despite the fact that there is no law regulating dumping in Georgia.

- The court decision does not include the reasoning on why the Law on Tobacco Control was applied to the resolution of a dispute between private entities.

The evaluation of the court, based on which Philip Morris violated the Law on Tobacco Control, resulting in the breach of the rules of competition on the tobacco market, lacked substantiation. Pursuant to this Law, control over its implementation is maintained in accordance with the laws of Georgia. This means that in case of violation of the Law on Tobacco Control only the state is authorized to apply sanctions envisaged under the Law against a tobacco producer.

- The amount granted to JSC Tbilisi Tobacco by the court significantly exceeds the alleged

167 The Court decision on the imposition of up to GEL 93 million on Philip Morris raises questions, Transparency International Georgia, 2017; Available at: <https://goo.gl/SWN7vK>

damages sustained, even if we assume that the company violated Georgian law.

Even if Philip Morris had violated Georgian law, the court granted JSC Tbilisi Tobacco much more than the actual possible amount of damages. The imposition of up to GEL 43 million on Philip Morris as compensation for possible damages over next 10 years, and the instruction to further pay GEL 15 million based on the norms related to unjust enrichment, are particularly deprived of justification. In total, the sum imposed by the court amounted to over GEL 90 million when, based on the circumstances of the case, the damage actually inflicted on JSC Tbilisi Tobacco could have been GEL 8,571,954 and the annual 10% of this amount, i.e. profit and lost income.

Representatives of Philip Morris appealed the decision to the Court of Appeals. The court satisfied the complaint fully on June 9, 2017 and canceled the first instance decision. On July 11, 2017, JSC Tbilisi Tobacco applied to the Supreme Court to revoke the decision, but later, after paying the amount of GEL 8,000 as duty, withdrew the cassation complaint.

The court decision being insufficiently substantiated, as well as the proceedings being held in an expedited manner and with possible procedural violations, raises legitimate questions in relation to the objective examination of the case and reaffirms doubts in relation to the impartiality of the court.

4. The Case of Ltd. Transcaucasus Crystal

Upon examining the events surrounding Ltd. Bison, a company belonging to Kibar Khalvashi's¹⁶⁸ brother Niaz Khalvashi, Ltd. Transcaucasus Crystal and Ltd. Megako, Transparency International Georgia believes that there are signs of corruption through possible concerted actions of various public institutions.¹⁶⁹

According to media reports,¹⁷⁰ the dispute between Niaz Khalvashi and the owners of Ltd. Transcaucasus Crystal was launched three years ago. Khalvashi accused the company of appropriating property that belonged to him since 2006 and that he lost in 2010 due a mortgage agreement with TBC Bank (land plot with accompanying real estate located in the Khelvachauri settlement of the city of Batumi). Transcaucasus Crystal purchased the property in 2012 and owned it until 2017. Transparency International Georgia found that Niaz Khalvashi had expressed interest in retrieving this property several years ago and offered USD 1,100,000 to the company, however, the deal failed due to the price being too low. The owners of the company had wanted to sell the property for USD 3,500,000 at the time. According to information provided to us by representatives of Transcaucasus Crystal, after the deal failed, a government representative, left unspecified by our source, had contacted the owners of the company and warned them to sell the property to Niaz Khalvashi. After this, the company reduced its offer to USD 2,500,000, but Khalvashi refused to pay more than USD 1,100,000.

The final failure of the above deal coincided with the launch of a dispute between Ltd. Megako¹⁷¹, a company associated with TBC Bank. Megako demanded compensation of GEL 1,297,914 from Transcaucasus Crystal for its failure to meet contractual obligations. A number of shortcomings were identified during the consideration of the case, which raised serious questions about court bias.

- Tbilisi City Court partially satisfied the claim and obligated the company to pay GEL 802,526. The court imposed compensation for damages even on work that had been, as already agreed between the parties, properly implemented by the contracted company. This decision was later partially overturned by the Court of Appeals and Ltd. Transcaucasus Crystal was fined to pay GEL 635,453 to Ltd. Megako.
- Tbilisi City Court court fully accepted the report¹⁷² of an examination carried out by the National Forensics Bureau (submitted as evidence by Ltd. Megako), according to which, the work performed by Transcaucasus Crystal was not in line with the agreed project. A number of inconsistencies were identified in the report during case proceedings. While the report stated that the entire disputed building had been examined, an April 22, 2016 letter¹⁷³ by the National Forensics Bureau stated that it was examined only partially.

168 Kibar Khalvashi is the former owner of Rustavi 2 TV company. Khalvashi launched a dispute to retrieve the company in 2015. Georgian courts of all three instances ruled for Rustavi 2 shares to be transferred to Khalvashi and his company, however, the ruling was suspended by the European Court of Human Rights.

169 Signs of corruption in the case of Niaz Khalvashi against Ltd. Transcaucasus Crystal, Transparency International Georgia, 2017; Available at: <https://goo.gl/kFAEHx>

170 The Brother of Kibar Khalvashi does not plan to leave Ltd. Transcaucasus Crystal, while the founder is filing a complaint against him, Rustavi 2, 2017; Available at: <https://bit.ly/2IoX3mQ>

171 Ltd. Megako was registered in 1995 and 30% of its shares are held by the wife (15%) and daughter (15%) of Mamuka Khazaradze.

172 Report N 004274914 of LEPL Levan Samkharauli National Forensics Bureau, August 15, 2014; Available at: <https://goo.gl/t5Pib3>

173 Report N 5002177016 of LEPL Levan Samkharauli National Forensics Bureau, April 22, 2016; Available at: <https://goo.gl/Pbryy1>

- The report states that the “armature in the unfinished upper portion of the building” was also examined, while the examination expert testified in front of the Tbilisi City Court that he was unable to examine that part of the building **due to lack of a ladder**.

Despite the above inconsistencies, the court fully accepted the report of the National Forensics Bureau and satisfied Ltd. Megako’s claim. As a result, the property of Ltd. Transcaucasus Crystal was sent to enforcement and Niaz Khalvashi was able to purchase the property for a price (GEL 942,600) much lower than USD 1,100,000.

Questions were also raised regarding actions of the National Bureau of Enforcement during the course of the dispute. For example, even though Transcaucasus Crystal appealed to the Bureau and provided a list of property, the disposal of which would satisfy the creditor, while resulting in the least possible damage to the company, the Bureau of Enforcement, upon request of Megako, decided to auction off precisely that piece of property which Niaz Khalvashi had originally wanted to buy. As a result, Khalvashi purchased the property through a public auction for GEL 942,600.

Actions of the Ministry of Internal Affairs also raised questions. Transparency International Georgia was provided information, according to which, **at 12:00 am on March 29 patrol police arrived at the property based on Niaz Khalvashi’s telephone call and took the company’s security guards to the police station.** The police had told the security guards that they had to verify their labor agreements and determine the legality of their presence at the property. However, Transcaucasus Crystal claimed that the Ministry actually allowed Niaz Khalvashi and his representatives to enter the area by removing the security guards who had previously barred them from entering the territory.

The above circumstances create a suspicion that Niaz Khalvashi was able to get hold of a piece of property in the Khelvachauri settlement of the city of Batumi through concerted actions of various public institutions.

5. The Case of Ltd. Georgian Manganese

Transparency International Georgia examined Tbilisi City Court Order dated May 11, 2017, according to which, a special manager was appointed at Ltd. Georgian Manganese for the purpose of ensuring compliance with licenses and permits. The request to appoint a special manager in the company was submitted to Tbilisi City Court on May 10, 2017 by the Ministry of Environment and Natural Resources Protection and LEPL National Environmental Agency, which claimed that Georgian Manganese had violated the norms established under the Law on Licenses and Permits. We believe that taking into account the volume and complexity of the case, the dispute may have been reviewed in an accelerated pace, with a number of procedural violations and without considering the interests of the party.¹⁷⁴ In addition, the part of the Court Order with which the special manager is granted unjustifiably broad authority deserves special emphasis. Our observation of the case revealed the following problems:

- **Even though the court did consider the merits of the case and come to a decision, the issue was nevertheless settled with a temporary order.** A temporary order is a type of enforcement measure used to enforce the main claim. However, considering the fact that the case did not contain a main claim and the dispute resolved substantively, the purpose of using the temporary order was unclear.
- Despite the fact that the motion, including the evidence, was 1,195 pages in volume and fell under the complex legal category, the judge reviewed the case in 24 hours **without oral hearing and without notifying the party.**
- **The Order was executed immediately.** The special manager was designated as the authorized person for managing/representing the company before the end of legal proceedings. This limited the party's access to evidence that may have been kept at the company and could have been used by the party during the review of the dispute at the appellate instance.
- **According to the operative part of the Order, the court granted the special manager unlimited authority without proper substantiation.** The court granted the special manager the authority of all the three branches of the company's management – the Director, the Supervisory Board and the General Meeting of Shareholders.

Despite the fact that the practice of appointing special managers is established by the Supreme Court,¹⁷⁵ we believe that the review of the voluminous and legally complex case in 24 hours without notifying the party and designating such Order for immediate enforcement harms the interest of the other party and limits the right to fair trial. Although Georgian legislation does not contain norms regulating the appointment of a special manager, nevertheless, the court could have relied on the norms most related to the substance of the dispute and reviewed the case in such a manner that would provide the party with the opportunity to present its own position and evidence in a reasonable time-frame. In addition, we believe that the ruling must contain whole and comprehensive reasoning as to why it was necessary to grant the special manager such broad authority.

The subject of our examination in the given case was not the issue of whether Georgian

174 Court Order regarding the appointment of the Special Manager at Georgian Manganese is unsubstantiated, Transparency International Georgia, 2017; Available at: <https://goo.gl/BxLyJi>

175 July 13, 2009 Decision of the Chamber of Administrative and Other Cases of the Supreme Court of Georgia on the case N 06-689-655(3-36-09)

Manganese violated the norms established under the Law on Licenses and Permits and to what extent the motion submitted to the court by the Ministry of Environment and LEPL National Environmental Agency was substantiated. This case points to alleged violation of procedural and internationally recognized norms by the court.

6. The Cable Case

On May 16, 2016, Tbilisi City Court found five high-ranking officials of the Ministry of Defense guilty in the so-called Cable Case and sentenced them to seven years of imprisonment. Tbilisi Court of Appeal later requalified the case against former defense officials from embezzlement to abuse of authority, which reduced their sentence.¹⁷⁶ Finally, the President pardoned the persons convicted for the case.¹⁷⁷

The public had been observing the development of this case for a long time,¹⁷⁸ resulting in questions raised by both the indictment and the events that developed during the trials regarding the substantiation of the charges, legal grounds for the preventative measure, existence of reliable evidence, and fair consideration of the case. Ultimately, these circumstances created a feeling that the administration of justice was deficient and the process was politicized.

From the very beginning, the aforementioned doubts were reinforced by the context and situation that existed in parallel with the development of the case. The indictment was preceded by open confrontation between the then Minister of Defense, Irakli Alasania, and the former Prime Minister, Bidzina Ivanishvili, which finally ended with the dismissal of Mr. Alasania from the position on November 4, 2014.¹⁷⁹

As for the charges brought against the officials of the Ministry of Defense, the Prosecutor's Office accused them of acting as an organized group and embezzling state funds in large amounts. There were several circumstances that raised questions in this regard:

- The positions and official status of the convicts indicated that they were not top-level officials of the Ministry of Defense and, therefore, they could not have possessed and managed the funds, the embezzlement of which the Prosecutor's Office was referring to. Therefore, they would not have been able to make the final decision independently.
- It is unclear on what basis the Prosecutor's Office ruled out the possible involvement of the then top-level officials of the Ministry of Defense in this case and why it did not ask a single question to the former Minister of Defense.
- It is also noteworthy that the judge made the decision only in two non-working days after 18 months of consideration.
- The aforementioned legal circumstances and the questions related to the charges, as well as the preconditions of detention of the convicts and the context that existed during the development of the case, in conjunction with individual deficiencies revealed during the consideration of the case, create an impression that justice was administered in an inappropriate and biased manner in the Cable Case, which may have been caused by political influences.

176 Court Decides to Release Persons Arrested for the Cable Case in 2 Months' Time, Netgazeti, 2017; Available at: <https://goo.gl/2y2NmJ>

177 The President Pardons Persons Convicted in the Cable Case, Netgazeti, 2017; Available at: <https://goo.gl/SFm3VL>

178 Joint statement of NGOs regarding the "cable case", 2016; Available at: <https://goo.gl/CtfVTd>

179 Irakli Alasania Dismissed from the Position of Minister, Netgazeti, 2014; Available at: <https://goo.gl/dxtf7A>

7. The Case of Rustavi 2

Transparency International Georgia has made a number of critical statements regarding court proceedings on the case of television company Rustavi 2.¹⁸⁰ Violations identified at various stages of consideration of this dispute have raised suspicions about the court's bias and politicization of the case:

- On August 5, 2015, upon request of Rustavi 2's former owner Kibar Khalvashi and his company Ltd. Panorama, Tbilisi City Court ordered to freeze the assets of TV company Rustavi 2 and restricted the functions of its director and stakeholders. The decision to freeze the assets was unsubstantiated. According to OSCE Representative on Freedom of the Media Dunja Mijatović, "the court injunction may negatively affect Rustavi's ability to operate freely". She assessed the decision to be "disproportionate" and "excessive".¹⁸¹
- The Rustavi 2 process in court was notable for the judge's biased attitude. Explicit example of this was Judge Tamaz Urtmelidze's ruling of November 5 to appoint an interim director. The ruling contradicted Georgian legislation, while the reasoning contained in it constituted blatant interference in the formation of the editorial policy and bore no relation to the ongoing lawsuit regarding the shares of Rustavi 2.
- At every stage of the case, there were questions regarding the independence and impartiality of judges.
- The Grand Chamber reached a decision in an extremely short period of time. On November 22, 2016, the case of Rustavi 2 was sent to the Grand Chamber of the Supreme Court. The composition of the Grand Chamber was made known only 3 days prior to the final decision. It is unclear how a newly composed chamber managed to reach a decision on a case of multiple volumes in just three days.
- The decision is not consistent with the established practice of the Supreme Court. The decision of the Grand Chamber differs from the previous ruling of the Chamber of Civil Cases on a similar case (№06-1224-1149-2015) on May 20, 2016.¹⁸²
- Worth noting is the decision of the European Court of Human Rights to suspend the enforcement of the Supreme Court ruling, by which the Supreme Court court granted Rustavi 2 to its former owner Kibar Khalvashi and his company.

The political context of the case was further aggravated by the fact that Rustavi 2 is the most-watched, private TV channel in Georgia that is critical of the government, and that high level government officials also never refrained from openly criticizing the station. **High ratings and critical editorial policy of Rustavi 2 would explain the government's political interest in the case.**

The assessment offered by the Council of Europe's Commissioner for Human Rights regarding the Rustavi 2 case was harsh.¹⁸³ The Commissioner negatively assessed the decision to interfere

180 Opinion of Transparency International Georgia on Rustavi 2 Case, Transparency International Georgia, 2017; Available at: <https://goo.gl/FJtsHa>

181 OSCE Representative says excessive court measures against television station in Georgia may pose a threat to media pluralism, OSCE, 2015; Available at: <https://goo.gl/WFs47C>

182 The position of the Chairman of the Supreme Court on the case of *Rustavi 2* can be found in the Attachment (Notes), published together with this report.

183 Observations on the human rights situation in Georgia: An update on justice reforms, tolerance and non-discrimination, Strasbourg, 12 January 2016; Available at: <https://goo.gl/dvXDXh>

with the editorial policy and change the management board of the television company. He stressed that allegations of unlawful interference with the work of judges should be adequately dealt with and sanctioned through relevant procedures. The Commissioner also called on the authorities to ensure a conducive work environment for judges.

