



**Assessment of the Georgian Judicial System
(2012 - 2016)**

Transparency International Georgia

2016

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(October 2012 - August 2016)

1. Introduction

This report gives an overview of significant changes that have been planned and implemented in the Georgian judicial system in the past four years, which enables us to analyze and evaluate the overall situation within the judicial system.

Following the 2012 parliamentary elections, the new government announced restoration of justice, liberation of the judiciary from political influence and independence of judges as some of its top priorities. To this end, a gradual legislative reform was launched, the implementation of which was monitored by Transparency International Georgia. Throughout the process, civil society representatives actively responded to changes of the judicial system and provided the government with their feedback and recommendations.

The report covers the period from October 2012 until the end of August 2016, which almost completely coincides with the period between 2012 and 2016 parliamentary elections. The report brings together all of the main findings of research and assessment conducted by Transparency International Georgia and other organizations. These include: assessment of the existing regulatory framework and legislative amendments for reforming the judicial system, monitoring of handling of cases in courts, results of monitoring of the High Council of Justice, events surrounding the Constitutional Court and analyses of high-profile court cases.

2. Key Findings

The Georgian judicial system has seen significant improvements in certain areas over the last four years:

- **Significant legislative changes have been made.** The “first wave” of judicial reform resulted in de-politicization of the High Council of Justice, distribution of power that was previously concentrated with specific institutions, increased transparency of the system and role of judicial self-government.

- **The number of decisions made in favour of the state has been significantly decreased.** For example, the monitoring of administrative cases demonstrated that 79% of the disputes were decided in favour of the state in 2012, while in 2015 this number decreased to 53%.
- **The transparency of the High Council of Justice has been increased.** For example, in terms of publication of information on the meetings, availability of decisions and broadcasting of the meetings.

Despite some significant positive changes, a number of serious problems were also revealed during the reporting period:

- **A 3-year probation period was introduced for appointing judges,** which holds significant risks for the independence of the judiciary. **There have also been delays and interruptions in the “third wave” of judicial reform.**
- **Significant problems in terms of internal judicial independence have been detected.** A group of judges has formed in the judicial system that has real and effective leverage in influencing major decisions about the system. This has given rise to doubts about clan governance in the judiciary, which undermines the independence of individual judges.
- **Serious shortcomings have been detected regarding the activities of the High Council of Justice,** particularly in the process of selection/appointment of judges. On the one hand this is caused by the vagueness of the legislative framework regulating the activities of the Council, which gives the Council the leverages to make decisions in a nontransparent and unsubstantiated manner, and on the other hand by the failure of the Council to establish a good practice.
- **The doubt about the independence and impartiality of court has been raised regarding certain high-profile cases,** including the case of the TV Company Rustavi 2, the so-called “cables case” and the case of Rustavi Metallurgical Plant.
- **A possible case of improper use of pre-trial detention has been identified.** Former Mayor of Tbilisi, Gigi Ugulava, was kept in pre-trial detention for more than a year without pronouncing a judgement of conviction against him. The chronology of actions taken against Gigi Ugulava and the improper use of the legislative shortcomings on the imposition of a measure of restraint raised questions about political motivations behind the process.

- **The Constitutional Court has not been distanced from the political processes.** In the first months after 2012 Parliamentary Elections, the high-ranking government officials used to make positive statements regarding the Constitutional Court, although such rhetoric was soon changed after the Constitutional Court made decisions opposing to the political interests of the government. It was followed by changes in the legislation regulating the Constitutional Court, which significantly damaged the interests of the constitutional control in the country.

3. Judicial Reform

By October 2012, the Georgian judiciary was in need of significant reforms in several areas. More specifically, there was a need to empower individual judges and increase their role, change the rules for forming the High Council of Justice and the Disciplinary College, increase the transparency of the system, reduce the unjustifiably broad powers held by the Chairperson of the Supreme Court, and improve the rules for sending judges on mission to other courts, their selection and appointment, career development and disciplinary liability.¹

3.1. "First Wave" of Judicial Reform

Following the 2012 parliamentary elections, the first major legislative reform of the judicial system was implemented on May 1, 2013 (the "first wave" of the judicial reform). This included amendments to the Law on Common Court, Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges and Law on the High School of Justice. As a result:

- **The rules for selecting members of the High Council of Justice have changed.** According to new rules, the Council must be composed of politically neutral persons selected through competition, instead of the Parliament selecting MPs as Council members. In addition, the right to nominate candidates was granted to higher education institutions, non-governmental organizations and the Georgian Bar Association. These amendments were a clearly positive development, since their purpose was to ensure the Council's freedom from political influence.

¹ Judicial System in Georgia, Coalition for an Independent and Transparent Judiciary, 2012, <http://bit.ly/2bvktL6>

According to the draft law, the election of the same person as a Council member for two consecutive terms has also been prohibited.

- **The role of the Conference of Judges, a self-governing body of judges, was increased.** Prior to the amendments, the Chairperson of the Supreme Court had the exclusive right to nominate candidates for judge members of the High Council of Justice to the Conference of Judges. After the amendments, each member of the Conference of Judges was granted the right to nominate these candidates. In addition, the powers of the Administrative Committee, an administrative body of the Conference of Judges, were restricted so that it is no longer able to make important decisions in the name of the Conference during periods between sessions, such as selection of judge members of the High Council of Justice and members of the Disciplinary Panel. Such decisions currently require an extraordinary session of the Conference.
- **Public access to court hearings was increased.** The reform introduced an obligation to keep a record of hearing protocols (audio / video recordings) and disclose them to involved parties upon request. In addition, personal items of citizens are no longer being seized before entering a court building, which is a step towards transparency of the judicial system.² Finally, the amendments of March 6, 2013, also determined the rules for video recording and media coverage of court hearings.
- **The Disciplinary College was distanced from the High Council of Justice.** According to the amendments, a member of the High Council of Justice cannot also be a member of the Disciplinary College and non-judge members of the College are being elected by the Parliament instead of the Council. It is also determined that the judge members of the College are being elected directly by the Conference of Judges and the Chairperson of the Supreme Court was deprived of the exclusive right to nominate candidates for these positions. Finally, an obligation was introduced to publish the decisions of the Disciplinary College and the Disciplinary Panel.
- **The High School of Justice was distanced from the Chairperson of the Supreme Court.** The reform restricted the unjustifiably broad powers of the Chairperson of the Supreme Court with respect to the High School of Justice. According to new rules, the Chairperson of the Supreme

² *Overview of Three Years of Monitoring on Administrative Cases*, Transparency International Georgia, 2014, pp. 7-8, <http://bit.ly/2bx5sEi>

Court will no longer serve as the Chairperson of the Independent Board of the High School of Justice; instead, the latter will be elected by the Conference of Judges, while the remaining members of the Independent Board will be elected by the High Council of Justice instead of the Chairperson of the Supreme Court.

It is notable that a large part of the amendments adopted as part of the first wave of judicial reform were based on the criticism and recommendations offered by non-governmental organizations. As a result of the reform, an important step was made in terms of de-politicization of the High Council of Justice, power that was concentrated with specific institutions was redistributed (High Council of Justice, Chairperson of the Supreme Court), and transparency of the judicial system and the role of self-government of judges was increased. Overall, the reform was evaluated as a significant step forward³ and the emphasis was made on the necessity of continuation of the reform in the same as well as other areas.

3.2. "Second Wave" of Judicial Reform

The "Second Wave" of the judicial reform implies the legislative changes made on 1 August 2014. This reform was preceded by the changes carried out on 1 November 2013, which aimed at bringing the Organic Law of Georgia on Common Courts in line with the constitutional amendments that went into force on November 17, 2013. As a result:

- **Lifetime appointment of judges has been introduced**, according to which in case of a decision made by the High Council of Justice, the judge will be appointed before reaching the age determined by law (age of 65).
- **The reform introduced a mandatory 3-year probation period for all appointed judges.** According to these changes, at the end of each year during the probation period the High Council of Judges evaluates each judge and makes its final decision on lifetime appointment.
- **Clear rules for assessing judges that have been appointed on a probation period have been introduced and a Qualification Chamber of the Supreme Court was set up** which is an appeals body for judges, who were denied a lifetime appointment

³ *Comparative Analysis of the New Judiciary Reform*, Transparency International Georgia, 2013, <http://bit.ly/2b8llvJ>

Introduction of the probation period for judges was negatively received by local non-governmental organizations⁴ as well as the Venice Commission⁵. **The probation period bears serious risks for the judicial independence.** Among other criteria, judges are being assessed based on their decisions as well, which may affect the judge's independence and impartiality. Despite the criticism of international consulting bodies and local non-governmental organizations, currently there are more than one hundred judges on probation period in the Georgian court system. **In November 2016, the Council will start discussing lifetime appointments of 12 judges that were the first to be appointed with a probation period of 3 years.**

In order to achieve the goals of having a judicial system that is composed of qualified and independent judges, relevant authorities must improve mechanisms for judge selection/appointment and disciplinary responsibility, instead of resorting to probation periods for judges, which undermine their independence.

3.3 Draft “Third Wave” of Judicial Reform

First parliamentary committee hearings on the draft law for the “third wave of judicial reform” were held as early as September and October of 2015, but it is yet to be adopted into law⁶. The draft law was changed substantially several times, which weakened some of its positive initiatives. Nevertheless, the draft law contains a number of changes, which need to be adopted as soon as possible in order to rectify existing shortcomings in the judicial system. These changes include:

- Introduction of electronic case assignment, which implies random assignment of court cases and deprives court chairpersons of the possibility to intervene in this process;
- A possibility to appeal the decision of the High Council of Justice on denying a judge a 3 year appointment;
- Regulation of the issue of conflict of interest in the process of selecting judges;
- Improvement of rules on sending judges on mission to courts and introduction of additional guarantees in this regard.

⁴ *The Opinion of the Coalition Regarding the Appointment for an Indefinite Term*, Coalition for an Independent and Transparent Judiciary, 2013, <http://bit.ly/2btwUYY>

⁵ *Joint Opinion N°773/2014 of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Amendments to the Organic Law on General Courts of Georgia*, Strasbourg, 2014, <http://bit.ly/2bKgOJQ>

⁶ *The Coalition refers to the delay of the ‘Third Wave’ of Justice Reform*, Coalition for an Independent and Transparent Judiciary, 2016, <http://bit.ly/2b6nMsM>

Despite some important and progressive changes, the final version of the draft law does not reflect the essential recommendations issued by local non-governmental organizations and the Venice Commission:

- The final version of the draft law no longer states that the court chairpersons are to be elected by the judges and leaves this right with the High Council of Justice.
- According to the draft law, a new organizational unit – Department of Management will be set up in the High Council of Justice. It is unclear exactly what the function of this department will be, especially considering the fact that some of its functions overlap with those of the Council, manager and court chairperson. The draft law also envisions creating an Independent Inspector unit without determining the selection procedure and including vague and dangerous provisions on dismissal of the Inspector.
- The draft law significantly changes the rules for electing members of the High Council of Justice by the Parliament. According to current regulations, at least one Council member must be elected by a 2/3 majority. The proposed changes abolish this rule and simplify the procedure, by allowing the election of all 5 Council members through a simple majority during the first round of voting by the Parliament. This initiative is in complete contradiction with the necessity of having a consensus, which is an essential guarantee that the person appointed as the Council member is not a representative of any political party.
- Despite criticism from local civil society ⁷ and the Venice Commission ⁸, the minimum number of Supreme Court members (at least 16 judges) was still determined through an organic law.

The final version of draft law included in “the third wave of judicial reform” does not fully respond to challenges in the judicial system. It is nevertheless important that the positive changes included in the draft law are approved without delay. In addition, it is extremely important that future reform

⁷ *The Opinions of the Coalition Regarding the ‘Third Wave’ of the Justice Reform*, Coalition for an Independent and Transparent Judiciary, 2016, <http://bit.ly/2bFv8kG>;

⁸ *Joint Opinion N°773/2014 of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Amendments to the Organic Law on General Courts of Georgia*, Strasbourg, 2014, <http://bit.ly/2bKgOIQ>;

addresses problems regarding the activities and decision-making procedures of the High Council of Justice, as well as appointment, career development and disciplinary liability of judges.

4. Activities of the High Council of Justice

The High Council of Justice is the main constitutional body for administration in the judicial authority. The functions of the High Council of Justice are as follows: ensuring the independence of court (judge), quality and effectiveness of justice, appointment and dismissal of judges, organisation of qualification examinations for judges, preparation of proposals for implementing judicial reform and performance of other tasks determined by law.

The Transparency International Georgia has been monitoring the activities of the High Council of Justice since 2012 together with the Georgian Young Lawyers' Association. Four years of monitoring of the High Council of Justice has allowed us to identify problems as well as achievements. Overall, the tendencies identified in the activities of the Council during the reporting period in 2012-2014 and the improvements in certain specific areas did not continue after 2015⁹.

4.1 Composition of the High Council of Justice

Amendments to the Law on Common Courts made as part of the “first wave” of judicial reform significantly altered the procedure for selecting members of the High Council of Justice, both for the Conference of Judges and the Parliament. Therefore, the monitoring group paid special attention to the process of selecting new members of the Council, which was conducted in May-July 2013.

Following the legislative changes, there was an increased public interest in the Conference of Judges. The Conference lasted for two days. The monitoring group positively assessed both days of the Conference. There were no procedural violations and the process was transparent. However, most of the participants narrowly defined the authority of the Conference, as the high self-governance body and judges limited their power to approve the agenda and to pose questions to the candidates.

As for the competition announced by the Parliament of Georgia for the selection of non-judge members of the Council, it was not conducted in a transparent manner. The interested organizations

⁹ *Monitoring Report N4 of the High Council of Justice*, Georgian Young Lawyers' Association, International Transparency Georgia, 2016, <http://bit.ly/2bx4dd4>.

requested the Parliament to conduct a public interview with the candidates and familiarise with their views. Despite the request, **the interview with the candidates was conducted behind closed doors and the public was not given the opportunity to observe the process.**¹⁰.

Currently, the High Council of Justice comprises 14 members. The term of office of 10 members of which, including the secretary of the High Council of Justice, expires in the summer of 2017, accordingly the Council will be re-staffed at that time. It is notable that under the current legislation the same person may not be elected (appointed) as a member of the High Council of Justice for two consecutive terms.

4.2. Pluralism of Opinions and Engagement of the Third Persons in the Activities of the Council

The composition of the High Council of Justice was almost completely renewed in June of 2013, which was positively reflected on the discussions and the quality of work carried out in the Council. According to the High Council of Justice Monitoring Report in 2014, the discussion has been started on several important issues by the initiative of non-judge members, which led to the emergence of different opinions in the Council¹¹. In that respect, the condition of pluralism and representativeness achieved by the diversity of opinions between judge and non-judge members of the Council have gradually changed since 2015, and the positions of individual non-judge members of the Council have more frequently coincided with the positions of judge members. *The coincidence of the positions of the majority of members of the High Council of Justice since that period, as well as consultations carried out behind closed doors by members of the Council before making a decision, suggested that the decisions were being made in advance, rather than individually by each member, which is the main principle behind decision-making in a collegial body.*¹².

It is notable that in 2015, under a new chairperson, the engagement of stakeholders during Council meeting discussions increased. The chairperson would often request attending non-governmental and international organizations to express their opinions. This resulted in more active communication from non-judge Council members as well. In 2016, things changed for the worse. In

¹⁰ *Monitoring Report of High Council of Justice, Three-Year Summary (2012-2014)*, Georgian Young Lawyers' Association, Transparency International Georgia, 2015, <http://bit.ly/2b9ooZw>;

¹¹ *Monitoring Report N 3 of High Council of Justice*, Georgian Young Lawyers' Association, Transparency International Georgia, 2015, <http://bit.ly/2cbgioj>;

¹² *Monitoring Report N 4 of the High Council of Justice*, Georgian Young Lawyers' Association, Transparency International Georgia, <http://bit.ly/2bx4dd4>.

view of the criticism by the civil society regarding the process of selection/appointment of judges and other problematic issues, the attitude of the Council members, including the Council chairperson, has been changed. At the Council meetings the judge as well as non-judge members openly expressed their discontent with the criticism against the High Council of Justice and stated that the criticism was “excessive”. One Council member openly supported restriction of freedom of expression on the basis of protecting the court’s reputation.¹³

4.3. Transparency and Cases of Conflict of Interests

For the last four years significant improvements have been made in certain issues in terms of transparency of the Council. For example, in terms of publication of information on the meetings, availability of the decisions and broadcasting of meetings. Although, serious problems have also been identified, such as the absence of the rules regulating the procedure of closure of the Council meetings and the conflict of interests, the problems related to drawing up an agenda and preparing of meetings.

It was a step forward in terms of transparency, when the Council made a decision **to broadcast live the Council meetings** by means of the special closed network (intranet) operating within the system of common courts. The judges and non-judge members of the Council have access to the system¹⁴. This was evaluated as a clearly positive change.

The change, made in 2014 by Decision N308 of 9 October 2009 of the High Council of Justice, according to which ***the interviews with the candidates of judges is carried out at the closed Council meetings***, must be negatively evaluated¹⁵. It is notable that despite the general practice established by the Council, that interviews are carried out at open meetings, the interviews with 4 candidates were closed upon their request in 2016. This case proves the necessity of statutory regulation of the procedure of carrying out interviews with judges at open meetings. The interviews must be carried out in an open mode and the minutes of the meetings must be available for all interested parties. This is especially important in the situation where the Council is not obliged to

¹³ *Unfounded restriction of freedom of expression to protect the court’s authority is impermissible*, Transparency International Georgia, 2015, <http://bit.ly/2c7oUcF>;

¹⁴ *Monitoring Report of High Council of Justice, Three-Year Summary (2012-2014)*, Georgian Young Lawyers’ Association, Transparency International Georgia, 2015 <http://bit.ly/2b9ooZw>;

¹⁵ *Ibid*, <http://bit.ly/2b9ooZw>.

substantiate the decision on selection/appointment and the observation over the process of interview is the only mechanism to evaluate the decisions made by the Council¹⁶.

The issue of the conflict of interests was determined as a severe problem. During the process of competition of judges¹⁷, there were several cases where a Council member, who was participating in the competition, took part in the process related to the competition of candidates. The Council faced similar problems several times. The failure to regulate the issue questioned the independence of the activities and impartiality of the Council in the process of promotion of 7 judges at Tbilisi Court of Appeals as well as the appointment of judges¹⁸. The practice, established by the Council members regarding self recusal in the process of voting for the vacant places for which they have applied for themselves, must be positively evaluated. However, it is also notable that in order to ensure equal condition for all candidates, it is necessary to exclude other form of participation of the Council members in the competition, such as access to the documents of other candidates and participation in the interviews with them¹⁹.

4.4 Selection/Appointment of Judges and Transfer without a Competition

Several years' observation on the judge selection/appointment activities of the High Council of Justice revealed that one of the most important functions of the Council - the appointment of judges - is characterized by fundamental problems, which are caused by both legislative gaps ²⁰ and malpractice established by the Council, as well as by the neglect of its part of obligations by the government. The process of selection/appointment of judges is characterized with:

- *Low quality of transparency and publicity of the process of appointment of judges;*
- *Failure of the Council to substantiate the decisions made with regard to the appointment of judges;*

It is also notable that the attendance at the public meetings of the Council did not enable to evaluate the motive of each Council member to vote for a specific candidate or the motive of a Council member

¹⁶ *Monitoring Report N4 of the High Council of Justice, 2016*, Georgian Young Lawyers' Association, Transparency International Georgia, <http://bit.ly/2bx4dd4> ;

¹⁷ Ibid, <http://bit.ly/2bx4dd4>;

¹⁸ Ibid, <http://bit.ly/2bx4dd4>;

¹⁹ Ibid, <http://bit.ly/2bx4dd4>;

²⁰ *The Coalition for an Independent and Transparent Judiciary has appealed the current rules of selection/appointment of judges to the Constitutional Court of Georgia*, <http://bit.ly/2b7BJYG>.

to change his/her position regarding a specific candidate between the first and second rounds of the competition. The consultations between the Council members regarding these issues were carried out outside the meeting hall; for consultations the Council members would leave the room and were conduct discussions outside. The motive of the Council members to support or not to support a candidate is important not only in terms of transparency, but also for evaluation of the procedures and goals of the competition to appoint as a judge a professional person, with the skills and personal characteristics determined by law²¹.

The questions of the public about carrying out the process of selection/appointment of judges objectively and impartially were exacerbated by **a possible case of leaking the examination tests for judges from the Council**. On 2 February 2016 Mamuka Akhvlediani, the Chairperson of Tbilisi City Court, met the representatives of non-governmental organisations and informed them about the alleged leak of the tests of qualification examinations of judges, held on 21 November 2015, from the High Council of Justice. On 22 February 2016, the High Council of Justice dismissed Mamuka Akhvlediani from the position of the Chairperson of Tbilisi City Court and the Criminal Cases Panel of Tbilisi City Court. No opinion or explanation regarding the possible fact of leaking the tests has been made available for public yet.

According to 2011-2015 data, following the appointment of judges to office, the High Council of Justice was actively applying mechanisms of transfer of judges from one court to another as provided for by law: transfer, promotion and sending on mission without competition (as of January 1, 2015, sending judged on mission to other courts became impossible by law).²² By applying these mechanisms, almost half of judges of first instance courts and the Court of Appeal (115 out of 230 judges) were transferred without competition. In 2012-2013, the Council also established a malpractice of appointing and then reappointing judges in different courts. More specifically, candidates were first appointed by the Council as judges through a two thirds vote and then reappointed as judges in specific courts through a simple majority of votes.²³

The decisions of the High Council of Justice regarding the transfer/promotion of judges without a competition have been made without any substantiation, as a result of formally conducted

²¹ *Monitoring Report of High Council of Justice, Three-Year Summary (2012-2014)*, Georgian Young Lawyers' Association, Transparency International Georgia, 2015, <http://bit.ly/2b9ooZw> ;

²² Article 13(3) of the Law of Georgia on Allocation of Cases at Common Courts and Imposition of Duties on Other judges;

²³ *Monitoring Report of High Council of Justice N4, 2016*, Georgian Young Lawyers' Association, Transparency International Georgia, 2016, <http://bit.ly/2bx4dd4>;

procedures²⁴. The above mentioned circumstances raise a serious doubt that, by evading existing vacancies, the judges might be distributed to different courts in a purposeful and so-called strategic manner, by ignoring the universally recognized principle of irremovability of judges, which directly affects the independence and impartiality of judges.

4.5 Disciplinary Liability

Before 2012, disciplinary proceedings against judges were fully confidential, which excluded the monitoring of disciplinary proceedings conducted by the Council. In March 2012, significant changes were made to the legislation in this regard, which aimed at partial publicizing of disciplinary proceedings. These changes provided for an obligation to publish the decisions of the Disciplinary Board by concealing personal data, however, disciplinary proceedings themselves remained closed. After the legislative changes the High Council of Justice did not fulfil the requirement of the law in practice and did not publish the decisions of the Disciplinary Board on its web-site, which hindered the contextual evaluation of the disciplinary proceedings during that period. Moreover, the Council also did not disclose decisions made on disciplinary cases to the monitoring organizations.²⁵ The legislative changes prepared under the “Third Wave” of the Judicial Reform should also be noted, according to which judges are granted the right to require publicity of the meetings of the Disciplinary Board and the Disciplinary Panel of the Supreme Court and also publicity of relevant sessions of the High Council of Justice, except for the deliberation and decision making procedures²⁶.

The critically low number of reviews of disciplinary complaints submitted to the High Council of Justice point at the inefficiency of a system of accountability of judges. Hence, there are sufficient grounds to believe that the independence of judges and the accountability of judges have not been appropriately balanced. The non-transparency of disciplinary proceedings against judges and the existence of an inefficient system of accountability of judges, in turn, give the High Council of Justice a wide opportunity to abuse the mechanism of disciplinary proceedings against judges.²⁷

²⁴ Ibid, <http://bit.ly/2bx4dd4>.

²⁵ *Monitoring Report of High Council of Justice, Three-Year Summary (2012-2014)*, Georgian Young Lawyers' Association, Transparency International Georgia, 2015, <http://bit.ly/2b9ooZw>;

²⁶ Ibid, <http://bit.ly/2bx4dd4>;

²⁷ In 2011-2015 disciplinary liability was imposed on seven judges by the Council, <http://bit.ly/2bx4dd4>.

5. Independence of the Judicial System

The quality of independence of the judicial system is evaluated according to the quality of independence of an individual judge from the external as well as internal influence, and the proper functioning of the institutions responsible for ensuring judicial independence. In this regards the evaluation of the condition of the judicial system demonstrated that currently the judicial independence still faces significant challenges.

5.1 “Internal Aspect” of Judicial Independence

In the Report on the independence of the Judicial System (Part I) the Venice Commission stated that “Judicial independence is not only independence of the judiciary as a whole vis-à-vis the other powers of the State, but it has also an “internal” aspect. Every judge, whatever his place in the court system, is exercising the same authority to judge. In judicial adjudication he or she should therefore be independent also vis-à-vis other judges and also in relation to his/her court president or other (e.g. appellate or superior) courts²⁸.

At present, the judicial system faces serious challenges in terms of internal independence. In the second half of the reporting period it was identified that there is a group of judges within the judicial system, which has the leverage to influence the important decision making process related to the judicial system, including the decisions of the High Council of Justice.

This problem became especially evident in the process of selection/appointment of judges. On 25 December 2015 the High Council of Justice supported the election of Levan Murusidze at the Court of Appeals. According to the explanation, given by the non-judge members of the Council²⁹, main argument in favour of Murusidze was the support of judges toward him. This statement effectively confirmed doubts that the High Council of Justice made decisions about appointment of judges based on secret deals between its members and not based on legally prescribed criteria. Therefore, **the High Council of Justice, an institute that is supposed to guarantee internal and external independence of the court, is unable to keep itself independent from the dominant group of judges.**

²⁸ *Report on the independence of the Judicial System (Part I), Paragraph 71, Joint Opinion N774/2014 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*, Strasbourg, 2014, <http://bit.ly/2b7cVzP>;

²⁹ *The statement of non-judge members of the High Council of Justice*, 25 December 2015, <http://bit.ly/2bUCGn4> (accessed on 9 September, 2016).

The situation was further aggravated by the fact that the Parliament delayed the adoption of the “third wave” of judicial reform without any justification, which would have somewhat improved the procedure for appointing judges. **Such delay also confirms doubts that the government conceded to the dominant group of judges.** It is notable that On October 19, 2015, after the third wave draft laws prepared by the Ministry of Justice had been initiated in the Parliament, the Minister of Justice Tea Tsulukiani met with 160 judges, including the Secretary of the High Council of Justice Levan Murusidze. Chairperson of the Supreme Court Nino Gvenetadze was not invited to the meeting. After the meeting, the Minister of Justice listed several issues that were included in the third wave draft laws and stated that an agreement was reached with the judges to settle them in a different way. In addition, according to the Minister of Justice, many of the initiatives belonging to the Chairperson of the Supreme Court that were included in third wave draft laws would be revised, because the judges did not agree with the changes. As a result, the Parliament halted hearings on third wave draft laws.³⁰

The fact that the High Council of Justice and the dominant group of judges do not tolerate criticism from their peers is also a problem. This is confirmed by the case of the Chairperson of Tbilisi City Court, who was dismissed 2 months after making critical statements³¹. The events following Mamuka Akhvlediani’s statement confirms the fact that an individual judge’s criticism of the system is unacceptable for the majority of judges and is perceived as an attack on the judiciary. This gives rise to serious doubts about the existence of clan governance among court judges, which undermines the independence of individual judges.³²

The current situation, where the law does not provide for any objective criteria for selection/appointment, promotion and disciplinary liability of judges and the High Council of Justice is not obliged to substantiate its decisions, gives a certain group of judges and the High Council of Justice the leverages to make decisions in a nontransparent and unsubstantiated manner.

³⁰ *Monitoring Report of High Council of Justice N4*, Georgian Young Lawyers’ Association, Transparency International Georgia, 2016, pp. 68-69, <http://bit.ly/2bx4dd4>;

³¹ *The chronology of events from the first statement of Mamuka Akhvlediani to his dismissal*, Transparency International Georgia, 2016, <http://bit.ly/2b7iK05>;

³² *The Coalition files a disciplinary claim to the High Council of Justice*, Coalition for an Independent and Transparent Judiciary, 2016, <http://bit.ly/2bzenFU>.

In order to ensure the internal independence of the court and make sure that a certain group of judges does not amass unjustifiably broad power, the law must set specific criteria and principles, based on which the High Council of Justice will make its decisions, obligate the Council to substantiate each decision through objective criteria and introduce a real possibility for appealing these decisions.

5.2 Tendencies Identified in the Process of Review of Cases

The Transparency International Georgia has actively monitored main tendencies identified in the process of review of cases at courts. In 2011-2014 our organisation monitored administrative proceedings, and in 2013 we monitored prominent criminal cases. We also pay special interest to other cases of high public interest.

The monitoring showed that the number of decisions, made in favour of the state, has been significantly decreased since 2012 Parliamentary Elections, which may indicate the decrease of the facts of pressure from the government authorities and the increase of judicial independence. Nevertheless, there are certain question marks regarding the impartiality, independence and possible risks of corruption in the process of review of high-profile cases.

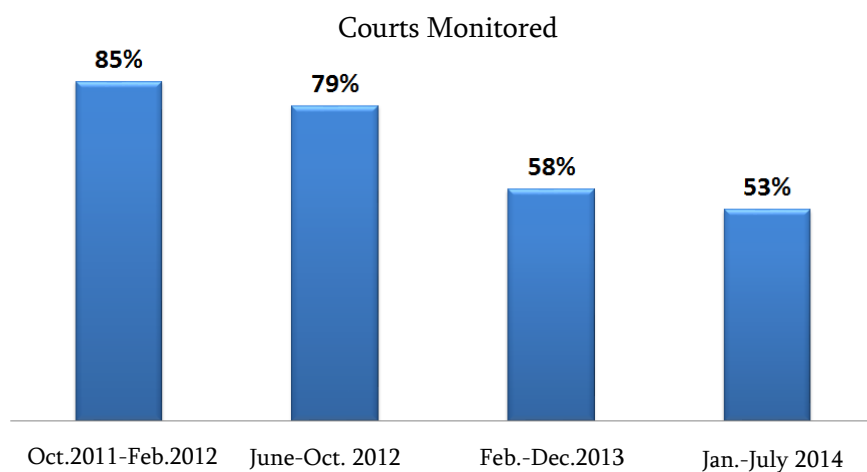


Chart No 1: monitoring of administrative cases, carried out in four stages, showed that in the first stage of monitoring 85% of disputes (92 cases out of 108) were decided in favour of the state, and in the fourth stage of monitoring 53% of disputes (141 cases out of 268) were decided in favour of the state³³.

³³ *Overview of Three Years of Monitoring on Administrative Cases*, Transparency International Georgia, 2014, p. 5, <http://bit.ly/2bx5sEi>

5.2.1 High-Profile Criminal Cases

Since the change of government in 2012, former public officials have become the subjects of criminal prosecution, giving rise to doubts, both inside and outside of the country, regarding the politicization of trials. Transparency International Georgia has been monitoring the hearings of high-profile criminal cases since February 2013. Three reports have been published in this time. The organization's observers have attended court hearings and documented trials for the purpose of further assessment.

Transparency International Georgia continues to observe case hearings in first instance courts. Currently, 11 criminal cases are being monitored; 22 cases have been completed.

Monitoring revealed the following trends and facts:

- The rule of imposition of a measure of restraint has been improperly applied. The problem of improper use of pre-trial detention became evident in the case of Gigi Ugulava. He was kept in pre-trial detention for more than a year without pronouncing a judgement of conviction against him. The chronology of actions taken against Gigi Ugulava and the improper use of the legislative shortcomings on the imposition of a measure of restraint indicated that the process was carried out on the basis of political motives. There was an impression that the main goal for the prosecutor's office at that moment was to keep the defendant in detention.
- In certain cases we observed a deliberate and strategic protraction of proceedings by both the prosecution and/or the defense. Protracting the proceedings by representatives of the prosecution is particularly unacceptable, as this clearly violates the right of the accused to swift justice. Postponing hearings on false precepts harms the reputation of the Prosecutor as an institution, and is indicative of political motives in its activities.
- There were many question marks regarding the procedure of allocation of cases. The current procedure actually enables to determine a judge, who will review a certain case, in advance.
- The issue of separation of witnesses was also a significant problem. As a rule, proper prevention of communication between witnesses during the hearings was not ensured. The witnesses called for the case would wait for the start of the hearing together in the hallway outside the courtroom, during which time they had the opportunity to communicate with one another.

- There were several cases where all interested persons were not able to attend the hearing. In certain cases the reason was the limited size of the courtroom, while in other cases the reason was a large number of attendees.
- There was a problem with the publicity of the accused's initial appearance in court, as this information was not always published in the official schedule of the courthouse. The monitoring team sought to obtain information about these hearings through the media.³⁴

5.2.2 Case of the TV Company Rustavi 2

Even though the case of Rustavi 2 bears the character of a private legal dispute, there is also a political context attached to it, creating risks of damaging media freedom. Rustavi 2 plays an important role in informing the public and in forming critical views about government policies. Accordingly, any interference in its activities raises doubts that the State may be exerting influence on the TV company.

On August 4, 2015, the former owner of Rustavi 2 Kibar Khalvashi appealed to court with a request to restore his property right. Several days later, the court impounded Rustavi 2's assets and limited the powers of its leadership. We believe that this decision of the court did not meet the reasonable doubt standard and resulted in a disproportionate restriction of a right.³⁵

During the case proceeding at Tbilisi City Court, Rustavi 2 repeatedly filed motions to recuse the judge Tamaz Urtmelidze. The main reason for recusation of the judge was a criminal case, which was being carried out against Judge Tamaz Urtmelidze's mother regarding a domestic incident, which, as the party stated, was used by the Prosecutor's Office and the government for putting pressure on the judge.

In the end, Tbilisi City Court decided the dispute on the property of Rustavi 2 in favour of the former owner of the Company, Kibar Khalvashi. In addition, the court delivered a ruling on appointment of a temporary administration of Rustavi 2, as a result of which current General Director and Head of the Financial Department would be replaced by temporary administrators. In our opinion, the above court ruling contradicted the civil procedure legislation. The ruling did not substantiate the necessity of application of the provisional measures to ensure enforcement. Besides, the circumstances stated by the judge in the substantiation of the ruling may be considered as an intervention in the editorial

³⁴ *The Third Trial Monitoring Report of High-Profile Criminal Cases*, 9 October, 2015, <http://bit.ly/2bJTffU>

³⁵ *NGOs respond to the Rustavi 2 asset freeze*, Transparency International Georgia, 2015, <http://bit.ly/2c31tnt>;

policy of an independent broadcasting company³⁶. Namely, the court stated that “during the coverage of information related to the issues of public interest, the method of objective and fair reporting should be used. Under the management of the Defendant (Broadcasting Company Rustavi 2 Ltd., Partners), this issue is questionable. Neglect of the indicated purposes consequentially jeopardizes the fundamental purpose of media in a democratic society.” We believe that such reasoning represents intervention in the formation of the editorial policy and has no relation to the ongoing lawsuit regarding the shares of Rustavi 2.

Important to note is that as a result of the ruling issued by judge Urtmelidze, the November 2, 2015 decision of the Constitutional Court was not enforced in practice. The Constitutional Court suspended the application of the rule of the Civil Procedure Code of Georgia, which determines one of the grounds for immediate enforcement of a ruling delivered by the court of first instance. Although the judge based his ruling on a norm different from the one the Constitutional Court had suspended, the result was the same for avoidance of which the decision of the Constitutional Court had been delivered.

On the grounds of a new constitutional claim, the Constitutional Court suspended the application of the rules of the Civil Procedure Code of Georgia, based on which the judge made a decision on appointment of temporary administrators of the TV company Rustavi 2. As a result, the ruling on appointment of temporary administrators has not been enforced.

The hearing of the case of Rustavi 2 at the Court of Appeals attracted much attention as well. In the end, the Court of Appeal upheld the decision of the first instance court and, on its own initiative, mailed the decision to the parties in an expedited manner. We believe that the process exhibited signs of political influence. More specifically, the court intentionally expedited the process, in order to reduce the time available to Rustavi 2 to appeal to the Supreme Court.³⁷

Currently the decision of Tbilisi Court of Appeals is being reviewed by the Supreme Court of Georgia. We hope that the Supreme Court of Georgia will review the case with full adherence to the law and the questions, existing in terms of the political interest in the case will be ruled out.

³⁶ *Statement regarding the Tbilisi City Court ruling on the case of Rustavi 2 rendered on November 5*, Transparency International Georgia, 2015, <http://bit.ly/2bKhSt4>;

³⁷ *Statement Regarding the Case of Rustavi 2*, Transparency International Georgia, 2016, <http://bit.ly/2bFtj82>;

5.3. Corruption Risks in the Judicial System

Recently, the talks on participation of judges in the corruption deals have been increased. This issue is being actively discussed in the business associations, which is subject of extremely great concern. Despite the absence of a specific fact of corruption, several notable circumstances should be pointed out.

In April 2015, in the interview given to the FINANCIAL newspaper the Ambassador of Switzerland in Georgia mentioned possible cases of bribery in courts with respect to the cases related to foreign investments and asked the government to pay attention to that issue³⁸. After that statement the Chairperson of the Supreme Court of Georgia met the Ambassador of Switzerland and promised to examine into the issue³⁹.

The **disputes regarding taking over Rustavi Metallurgical Plant** should also be noted, where the property of Rustavi Metallurgical Plant, worth tenth of millions, was seized without any substantiation, for securing the claim of GEL 4553.48, significantly hindering the activities of the Plant. The court decision made on that case raised reasonable doubts about the attempt to disrupt the functioning of the existing management of the plant. Besides, the actions agreed between certain related groups (inside as well as outside the judicial system) have been also detected, which points to an unhealthy environment within a specific part of judicial system.⁴⁰

5.4 Possible Attempts by Law Enforcement Authorities to Interfere with Court Activities

For the past four years there were several cases related to the attempt of law enforcement bodies to interfere in the activities of the court.

On 18 February 2013, **City Prosecutor's Office of Poti summoned the Chairperson of Poti City Court for questioning**. According to the reports, the prosecution was interested in a specific decision made by the court chairperson, Revaz Nadaraia. The case concerned a conviction of a person who was amnestied in October 2009. Even though the accused was supposed to be released from his liability as a result of an amnesty, the judge issued a conviction nevertheless. Later, the Court of

³⁸ *The Ambassador of Switzerland Applied to the Government: Stop Unfair Taxes and Bribery*, Tabula, 8 April, 2015, <http://bit.ly/2cIJ2VJ> (accessed on 9 September 2016);

³⁹ *The Chairperson of the Supreme Court meets the Ambassador of Switzerland*, the Supreme Court of Georgia, 22 April 2015, <http://bit.ly/2cixCH4>.

⁴⁰ *How matters stand in the Rustavi Metallurgical Plant – Review*, Transparency International Georgia, 2015, <http://bit.ly/2bdRKs3>.

Appeal reversed this decision and the accused was released from custody. The Transparency International Georgia made a special statement in this regards⁴¹. In this case the action of the Prosecutor's Office was unjustified because it directly violated Article 84 of the Constitution of Georgia, which refers to the independence of a judge and prohibition of interference in the activities of a judge.

In the same context the **events developed around Akhaltsikhe Regional Court should also be noted**. Reportedly, the court was reviewing the case against the former head of Borjomi Regional Department of the Ministry of Internal Affairs of Georgia and other persons, which was completed on 3 July 2013 by pronouncing a judgment of acquittal. Following the decision, the Chief Prosecutor's Office of Georgia issued a statement about the seriousness and content of the accusations made against the above mentioned persons. According to the statement of the Chief Prosecutor's Office, several months prior to delivering a judgement the judge Gocha Jeiranashvili met Givi Papuashvili, the Prosecutor of Samtskhe-Javakheti, upon his intuitive in an unofficial environment and advised him to conclude a plea agreement with the accused persons. Later on, the Supreme Court denied such fact and blamed the Chief Prosecutor's Office for purposeful dissemination of false information⁴².

On December 19, 2012, Chairperson of the Supreme Court made a special statement regarding yet another case of allegedly illegal communication between and influence by law enforcement officials of court employees. The statement was related to the **pressure put by the Special Services on the assistant to one of the judges** of Tbilisi City Court. According to the statement, an assistant to a judge at Tbilisi City Court was being pressured by special services to disclose information about internal administrative matters and the chairman of the City Court. Later, the Chief Prosecutor's Office stated that it had launched an investigation.

6. Constitutional Court

Following the 2012 parliamentary elections, the Constitutional Court of Georgia increasingly became the subject of public discussions. One of the reasons for this was the new government's open dissatisfaction with some of the decisions made by the Constitutional Court.

⁴¹ *Our explanations on the summoning of the Poti City Court Judge by the Prosecutor's Office*, Transparency International Georgia, 2013, <http://bit.ly/2b94a7i>;

⁴² *Statement on the Events Developed regarding Akhaltsikhe Regional Court*, Coalition for an Independent and Transparent Judiciary, 2013 <http://bit.ly/2baiRSZ>.

In the first few months after the 2012 parliamentary elections, senior officials of the new government (Bidzina Ivanishvili, Tea Tsulukiani) issued positive statements towards the Constitutional Court and positively evaluated its work during the previous government.

The relationship between the government and the Constitutional Court soured after the latter granted the **claim of the members of the Georgian Public Broadcaster's (GPB) Board of Trustees**. Government officials questioned the impartiality of some judges by stating that they had connections with the previous government. The dispute concerned constitutionality of pre-term termination of the authority of members of the GPB Board. It should be noted that the court's decision fully coincided with the position previously expressed by some of the NGOs at different stages of legislative review. In addition to critical statements made by government representatives, a protest rally was organized outside the Court building by citizens dissatisfied with the decision, during which the protesters insulted the Court with their statements and actions. The protesters also damaged the property of the Court, an incident that was left without a response by law enforcement authorities.

The Constitutional Court's decision **to grant the claim of Gigi Ugulava** was also met with harsh criticism from the government. This decision resulted in Tbilisi City Court releasing Ugulava from custody for a single day. After the announcement of the decision, chairman of the Constitutional Court Giorgi Papuashvili issued a statement saying that some judges and their family members had been threatened with physical violence by protesters that had gathered outside their homes. According to Papuashvili, the threats were related to the Constitutional Court's decision to grant Ugulava's claim about the unconstitutionality of imposing pre-trial detention longer than 9 months. Among other citizens, protest rallies also included employees of state-owned LLCs. Protesters threw various objects at the judges' houses. Despite statements issued by non-governmental organizations⁴³ and the President of the Venice Commission, law enforcement authorities did not respond to these incidents. Moreover, the Chairman of the Parliament Davit Usupashvili and other senior officials assessed the above actions as freedom of expression, while the Minister of Justice accused the Constitutional Court of procedural violations on the case of Giorgi Ugulava.⁴⁴ Even though, according to Georgian law, holding a demonstration outside the living quarters of a Constitutional Court judge

⁴³ *Statement of the Coalition on the Events Developed Recently around the Judicial Authority*, Coalition for an Independent and Transparent Judiciary, 2015, <http://bit.ly/2ceN7za>

⁴⁴ *Tsulukiani: There is a cascade of procedural violations in the Constitutional Court regarding Ugulava case*, Netgazeti, <http://bit.ly/2c6mY2w>, (accessed on 9 September 2016);

constitutes an administrative offense, while threatening a judge constitutes a criminal offense, law enforcement authorities did not respond to any of the above incidents.

The relationship between the government and the Constitutional Court grew even more strained after the latter, before making its final decision, ruled to suspend the legal norm that deprived **the National Bank** of its banking supervision authority. The disputed law that was adopted by the Parliament was vetoed by the President and opposed by non-governmental organizations, who sent an amicus curiae letter to the Constitutional Court supporting the decision to declare the disputed norm unconstitutional. The Constitutional Court later also suspended the norm on immediate enforcement in the case of **Rustavi 2**, which halted the immediate enforcement of the decision of the first instance court, which changed the ownership of the TV company.

The Constitutional Court decision to suspend the disputed norm in the case of Rustavi 2 was followed by an especially harsh criticism from the government. According to the Coalition for Independent and Transparent Judiciary, these statements were saturated with superficial political assessments and had nothing to do with substantiated legal criticism.⁴⁵ The coalition also stated that, in some cases, such statements may constitute an attempt to pressure judicial authorities, which is especially dangerous with regards to the cases reviewed or pending at the court.

In this context, the Minister of Justice made a preliminary announcement about concrete areas in which the Ministry planned to take steps in terms of reforming the Constitutional Court. According to the Coalition for Independent and Transparent Judiciary, the Minister's statement created the feeling that this was a reaction of the governing political power based on its dissatisfaction with a specific decision of the Constitutional Court.

In February 2016, the Chairman of the Constitutional Court stated that the Minister of Justice had offered him a deal in return for cooperation with the government. In particular, if he agreed to cooperate closely with the government, he and one more member of the Constitutional Court would have their status as members of the Venice Commission extended, and, also, the problem related to his apartment would be resolved.

⁴⁵ The Coalition for an Independent and Transparent Judiciary calls the politicians for being careful with the evaluation of the cases reviewed by the Constitutional Court, 2015, <http://bit.ly/2bEeuUN>

Eka Beselia, the Chairperson of the Human Rights and Civil Integration Committee of the Parliament, stated that the Parliament of Georgia would start discussing changes to the legislation related to the Constitutional Court. Part of the initiatives voiced by Eka Beselia coincided with the issues previously put forward by the Minister of Justice.

Despite the protest of civil society and the critical assessment of the Venice Commission, the above changes were nevertheless approved by the Parliament. The changes greatly damaged the interest of constitutional oversight in the country. More specifically, the changes threatened timely decision-making by the Constitutional Court Plenum (full composition of the Court), proper exercise of the authority of 4-judge Panels, decision-making on specific issues, and the rights and interests of parties involved in litigation. Most of these issues were also critically reviewed by the Venice Commission. Even though the President of Georgia vetoed the above changes, the President's comments did not fully reflect those of the Georgian civil society and the Venice Commission.

On July 21, 2016, Chairman of the Constitutional Court stated that the judges are being pressured through surveillance, interference in their commercial affairs, and blackmail involving the arrest of their relatives and disclosure of their personal information. According to the chairman, all these cases are linked to court cases of high public interest that are being reviewed by the court, and are aimed at pressuring judges into making decisions that benefit the government or delay the decision-making process. It should be noted on the same day several judges denied any pressure on them and said that they did not know any other judges that were being pressured. Based on the chairman's statement, the prosecutor's office launched an investigation and interviewed the judges. According to the interim report prepared by the prosecutor's office, all Constitutional Court judges denied being pressured. However, 4 judges publicly stated that they had information about one of the judges being pressured. It is important that the prosecutor's final report addresses this issue.

Besides, five Constitutional Court judges issued a statement, where they accused Papuashvili of trying to accelerate the review process of specific cases. According to the judges, the chairman of the Constitutional Court is not permitted to determine the court agenda unilaterally, without taking into account the opinions of other judges, in a way that would accelerate the decision-making process, especially in relation to cases with a political context. The remaining three judges strongly disagreed with this statement. Such public confrontation between judges damages the image and reputation of the Constitutional Court. It is therefore important for Constitutional Court judges to cooperate with each other in order to fulfill their constitutional role.