



Forms of Narrow Specialisations in Georgian Common Court System



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Main Findings

- **Current forms of narrow specialisation are problematic and are contrary to the internationally recognised standards. The decisions establishing narrow specializations are usually unsubstantiated and are not based on in-depth examination of issues.** Legal disputes in Tbilisi City Court and Tbilisi Court of Appeals are narrowly specialised in all spheres, which does not comply with the international standards. The creation of narrow specialisation should be regulated based on need. Specialisation can be justified only if it facilitates efficient administration of justice.
- **Court chairpersons assign judges to narrow specialisations at their sole discretion.** Such practice is dangerous because the existence of this kind of levers generates risks of manipulating the electronic distribution of cases. It should be noted that there is no normative act establishing the rule of assigning judges to narrow specialisations. Correspondingly, the formation of the composition of narrow specialisations depends solely on the individual discretion of court chairpersons.
- **The practice of appointing judges to narrow specialisations is unsubstantiated and is not based on any pre-defined objective criteria.** Judges must be assigned to narrow specialisations based on their thorough knowledge and experience in a given sphere. According to international standards, before assigning a judge to a specialisation, it is important to evaluate the experience he or she had gained while working as a specialist lawyer or a judge. It is also important to have criteria elaborated beforehand for concrete specialisations in order to minimise the risk of arbitrariness.
- **Rotation of judges between narrow specialisations is unpredictable and unsubstantiated.** According to the current rule, a court chairperson can at any time change the narrow specialisation of a judge. The chairperson does not have an obligation to substantiate such a decision. It is important that the rotation of judges between narrow specialisations is based on a predictable rule. In this process, the risks of selective approach and abuse of power against the interests of administration of justice must be minimised.
- **The High Council of Justice stated that the reason for the creation of narrow specialisations in the common court system was a case overload. However, the Council has not carried out corresponding measures to address this problem in years. For example, the system has not been replenished with a sufficient number of judges.** Our research has demonstrated that the real goal for the Council may be to allow influential judges use this mechanism for unsound reasons rather than addressing the problem of case overload. It is also important that the Council is seriously aggravating the problem of overload by unsubstantiated and chaotic transfers of judges without competition.
- **Introducing narrow specialisations in Tbilisi Court of Appeals has created a perception that the group of influential judges has not given up on the possibility of manipulating the system of case distribution.** It should also be noted that the main group of the influential judges is concentrated precisely in Tbilisi Court of Appeals. It is also interesting that narrow specialisations in Tbilisi Court of Appeals were created soon – about four months – after the launch of the electronic system of case distribution.
- **According to the explanation offered by the judges, narrow specialisations help judges with time management and administration of cases.** An absolute majority of judges who participated in the research said that, against the background of the case overload, they are more comfortable to consider cases that fall into a narrow sphere. According to their explanation, when narrow specialisations are in place, they manage to examine issues more thoroughly and exhaustively. However, the main reason causing the overload is the lack of judges in the common court system. According to a study conducted in 2018, the number of judges

was supposed to be increased by approximately 100 compared to the current number.¹ The overload problem is further exacerbated by frequent and unsubstantiated rotation of judges.

- **It merits a positive assessment that the narrow specialisations are not introduced in courts where the number of judges is small.** Narrow specialisations are currently in place only in Tbilisi City Court and Tbilisi Court of Appeals. Creation of narrow specialisations in the courts where the number of judges is small would further increase the risks of manipulating the electronic system of case distribution.

Narrow specialisation for commercial disputes

- **The creation of a narrow specialisation for commercial disputes was speeded up and it has failed to attain the set goal.** The goal of the government initiative which was voiced in 2016 and envisaged the creation of commercial and tax chambers was to ensure rapid and high-quality administration of justice for business disputes. In addition, the initiative established specific criteria and rules for appointment of judges to these chambers, which would ensure the appointment of qualified people. In parallel with this process, the creation by the High Council of Justice of the narrow specialisation for commercial disputes has failed to address the challenges existing in this area.
- **Narrow specialisation for commercial disputes concerns consideration of disputes above GEL 500,000, correspondingly, not only business cases but also cases of other categories could fall under this category.** Since the declared goal of the Council was to address the problems prevailing with regard to business disputes and improve the investment climate, it is not clear why this form of specialisation was introduced. This once again confirms that specialisation was created hastily and without rigorously studying the issue.
- **The qualification of judges assigned to narrow specialisations for commercial disputes fails to meet the standards established by the international best practice.** Judges are assigned to these specialisations without any criteria. After studying their biographies, it can be said that the assignment of specific judges to narrow specialisations for commercial disputes is unsubstantiated and raises certain questions.
- **Since the creation of narrow specialisations for commercial disputes, no evaluation has been conducted of whether the efficiency of justice administration with regard to business disputes has actually improved, and how the existence of such a specialisation has affected the investment climate.** The High Council of Justice has not examined to this day the effects caused by the existence of narrow specialisations for commercial disputes in Tbilisi City Court in 2016-2018. In addition, the Council's decision to create the same kind of specialisation in the Court of Appeals was not based on any specific research or statistical data.
- **In the absence of a fair and efficient system of justice administration, the speedy creation of a narrow specialisation solely for commercial disputes has failed to improve business climate and to promote trust in the judiciary.** The decision by the High Council of Justice to introduce narrow specialisations for commercial disputes in the common court system was, in reality, a step taken in response to the government, a counterweight to its idea to create commercial and tax chambers. The narrow specialisation created by the Council did not serve the resolution of fundamental institutional and systemic problems of the judicial system; rather, it served to neutralise the criticism of a specific group.

¹ Assessment Report on the Need for Judges in Georgia, *Promoting Rule of Law in Georgia (PROLoG)* project of the East-West Management Institute, 2018.

Recommendations

- ❖ The existing forms of narrow specialisations must be abolished. The creation of narrow specialisation for a specific area must be based on the objective need established as a result of research;
- ❖ The High Council of Justice rather than court chairpersons must assign narrow specialisations to judges;
- ❖ The criteria for assigning narrow specialisations to judges must be established. It is important to consider qualification of judges in corresponding areas and specific skills required by concrete specialisations;
- ❖ The need for decisions to assign/change the specialisation of a judge must be properly substantiated in each specific case;
- ❖ The legal scope of the narrow specialisation for commercial disputes needs to be refined so that it is not linked solely to an amount;
- ❖ The problem of overload must be addressed by increasing the number of judges and correct management of common courts, not by introducing narrow specialisations.

Methodology

In different countries, specialist judges and/or specialised courts is common practice.² Opinion No 15 of the Consultative Council of European Judges (CCJE) is dedicated to this topic. According to the Opinion, there are both positive and negative aspects to the existence of narrow specialisations in courts.

The aim of this study is to examine narrow specialisations in Georgia, determine their efficiency and identify the risks which the existing forms of specialisations could involve.

The findings presented in the study reflect the situation before August 2020. For the purposes of the study, the project team used a number of methods and sources of obtaining and processing information:

Analysis of the legislation and decisions of the High Council of Justice: In the course of the study, Transparency International Georgia analysed the issue of the possibility of creating narrow specialisation established by the Organic Law on Common Courts as well as the decisions provided by the High Council of Justice based on which the forms and the content of narrow specialisations have been created and changed over the years.

Processing statistical data: The research team requested public, including statistical, information from the Kutaisi, Tbilisi, Batumi and Rustavi City Courts, also from Kutaisi and Tbilisi Courts of Appeal, the Supreme Court of Georgia and the High Council of Justice. The findings in this study are based, among others, on the analysis of the data obtained through public information requests.

In-depth interviews with professional circles: The research team used the in-depth interview format to speak with the total of 24 respondents:

²Consultative Council of European Judges (CCJE), *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialisation of Judges*, 13 November 2012, para 4. <https://bit.ly/3ltLv6y> [Last Viewed: 10.08.2020]

- The organisation invited 223 judges to participate in the research; of those, 16 judges of Tbilisi Court of Appeals agreed to participate;
- The research team also talked to five lawyers, including two specialists in criminal law and three specialists in civil law;
- Two members of the High Council of Justice – Nazi Janezashvili and Revaz Nadaraia – were interviewed. Giorgi Mikautadze, secretary of the High Council of Justice, and Dimitri Gvritishvili, judicial member of the High Council of Justice, were also asked to participate in the study but they refused citing their busy schedule as the reason;
- The research team spoke with George Jugeli, legal expert at the Secretariat of the Investors Council;
- The organisation asked the Ministry of Justice to participate in the study but received no response.

It should also be noted that the identity of the four lawyers and two judges of Tbilisi Court of Appeals will not be revealed in this study. This decision was made in accordance with their wishes.

The research team studied the practice of the countries with common law and civil law systems, which was used in the process of elaborating the recommendations.

Introduction

The goal of this study is to determine the efficiency of narrow specialisations in Georgian common court system and to identify the risks which could endanger the independence of judges. A large part of the study, given the significance of the issue, is also dedicated to examining the efficiency and the structure of narrow specialisations for commercial disputes. At the stage of developing both findings and recommendations, the researchers considered the situation that prevails in the common court system today, the general context as well as the fact that the system is, in reality, governed by a small group of influential judges.

In 2020, the Georgian justice system is still facing difficult challenges. The government, which came to power in 2012 with a promise of creating a fair judiciary, for years now has not shown the political will to create a respected, independent justice system seeking to protect human rights.

After the 2012 parliamentary elections, the Georgian Dream party carried out “four waves” of judicial reform. Despite the fact that some of the reforms envisaged positive initiatives, the government’s approach has been mostly fragmented and inconsistent. In some cases, the reform only served to strengthen the interests of a small group. Observing the judiciary for years has shown that the government has gradually gave up on the idea of creating an independent judicial system.³

The 2013 elections to the High Council of Justice proved to be a turning point for the system. In these elections, one group of quite influential judges assumed power and continued consolidating it in the course of following years.⁴ Since this period, dissenting views have been gradually expelled from the system⁵ while important administrative posts were filled by representatives or people close to the group of influential judges.⁶ Currently, the administration of courts is fully in the hands of this small group, including: the mechanisms of appointing/dismissing, promoting, judges, imposing disciplinary measures on them, determining their salary supplements and appointing court

³ For details, see: Transparency International Georgia, *Corruption Risks in Georgian Judiciary*, 2018, pp. 18-31, <https://bit.ly/2Pxr21T> [last viewed on 10.08.2020]

⁴ Ibid. pp. 32-34.

⁵ Ibid. p. 40.

⁶ Ibid. pp. 35-39.

chairpersons, often used selectively by the Council of Justice. Today, this group of judges is referred to as the so-called clan.⁷

Ultimately, the private interests of influential judges in the judicial system and direct or indirect support they enjoyed from the government were, effectively, made obvious by the process of selecting the judicial composition of the Supreme Court in 2019-2020. As a result of a difficult and faulty process⁸, the Parliament of Georgia selected 14 Supreme Court judges, most of whom had significant problems with regard to integrity and qualification.⁹ The candidates were nominated to the Parliament by the High Council of Justice and most of them were precisely the influential judges or persons who were close to them.¹⁰ By appointing these judges to the Supreme Court, the government effectively increased the power of the group of influential judges in the common court system.

The power of the group of influential judges also increased in the Constitutional Court. On 3 April 2020, the Supreme Court Plenum, in which the majority of the members are precisely the “influential judges”, during the state of emergency, in a speeded-up manner and without a public discussion, appointed Khvicha Kikilashvili a judge of the Constitutional Court.¹¹ Despite the fact that the vacancy had existed since 5 December 2019, the Plenum essentially took advantage of the state of emergency and filled the vacancy when the public was not as alert due to the situation prevailing in the country.¹² This step taken by the Supreme Court Plenum further strengthened the distrust towards the judiciary. The member appointed precisely during this period, Khvicha Kikilashvili, was the one to finally decide the fate of the lawsuit filed by the Public Defender concerning the unconstitutionality of the procedure of selection to the Supreme Court. The lawsuit was dismissed, with the dismissal supported by four out of eight judges: Merab Turava, Khvicha Kikilashvili, Eva Gotsiridze and Manana Kobakhidze. Four judges: Teimuraz Tughushi, Irine Imerlishvili, Giorgi Kverenchkhiladze and Tamaz Tsubutashvili wrote the dissent opinion.¹³¹⁴ The Public Defender responded to the decision, too, stating:

“[Khvicha Kikilashvili] was selected during the state of emergency, through an opaque procedure and precisely by the judges who were appointed to the Supreme Court based on controversial norms. This factor merits particular emphasis when assessing the decision made by the Constitutional Court and raises suspicions with regard to the motives behind this decision.”¹⁵

Nino Lomjaria
Public Defender

International Standards for Creating Narrow Specialisations

⁷ Studio Monitor, *Chinchaladze’s Clan – Judicial Reform Fiasco*, 2018, <https://bit.ly/3kt4IoD> [last accessed on 10.08.2020]

⁸ Transparency International Georgia, *The Chronology Of The One-year-long Process Of Selection Of Judges Of The Supreme Court*, 2020, <https://bit.ly/33AYnBg> [last accessed on 10.08.2020]

⁹ Coalition for an Independent and Transparent Judiciary, *Assessment of Candidates for Supreme Court Judges*, 2020, <https://bit.ly/3kpRFEg> [last accessed on 10.08.2020]

¹⁰ Coalition for an Independent and Transparent Judiciary, *Assessment of the Process of Hearing of the Judicial Candidates for Supreme Court by the Legal Issues Committee*, 2019, <https://bit.ly/33H9LvH> [last accessed on 10.08.2020]

¹¹ On 3 April 2020, Khvicha Kikilashvili was appointed a judge of the Constitutional Court, <http://www.supremecourt.ge/news/id/2062> [last accessed on 10.08.2020]

¹² Transparency International Georgia, *Managing the Challenges of COVID-19 - Government Actions Evaluation Report*, 2020, <https://bit.ly/2Esl54f> [last accessed on 10.08.2020]

¹³ The Dissent Opinion of the Members of the Constitutional Court of Georgia Teimuraz Tughushi, Irine Imerlishvili, Giorgi Kverenchkhiladze and Tamaz Tsubutashvili Regarding the Judgment N3/1/1459,1491 dated July 30, 2020, of the Plenum of the Constitutional Court of Georgia, <https://bit.ly/3jaXgNf> [last accessed on 10.08.2020]

¹⁴ Four Judges of the Constitutional Court Disagree with Court Decision and Criticise Substantiation, 12 August, 2020, <https://bit.ly/3goZSp8> [last accessed on 10.08.2020]

¹⁵ Lomjaria Calls Dismissal of Lawsuit by Constitutional Court Extremely Alarming, 30 July 2020, <https://bit.ly/2YwexbL> [last accessed on 10.08.2020]

Globally, in the countries with both the common law and civil law systems, there is a trend of specialisation, which is mostly the result of the development of the economy and the law.¹⁶ The more complex and specific the law and the more modernised the economic environment, the greater the need for specialisation. Various studies have shown that specialisations in courts are important for considering cases which are complex and require specific knowledge and experience.¹⁷

A specialist judge is a person who considers disputes only from limited areas of the law.¹⁸ The most common areas of specialisation are criminal law, tax law, family law, intellectual property law, insolvency law and commercial law.¹⁹ Specialisation can be an important means for the development of justice and to support sound processes, however, it is of decisive importance to choose a correct form of specialisation and to use it appropriately.²⁰

Specialisation is rarely a purposeful choice, more often it derives from the need to adapt to the amendments made to the law. Specialist judges and/or specialised courts should only be introduced if there is such need due to the complexity and specificity of the law or a case so that the goal of efficient administration of justice is attained.²¹

Positive and Negative Aspects of Specialisation

Frequent changes to international norms and legislation, establishment of new precedents and doctrine render the legal science more extensive and complex.²² It may be difficult for a judge to master all areas, especially given that the demand for more professional and efficient court on the part of the public and plaintiffs grows every day. In the conditions of specialisation, judges are more easily able to keep up with the changes and, correspondingly, they have the necessary specific knowledge and experience in a concrete area.

In the conditions of specialisation, qualification of judges and their in-depth knowledge of a corresponding area of the law improve along with the quality of decisions made by the court, which may cause an increase in the level of trust in the judiciary and improve its reputation along with making court decisions [better] substantiated.²³ The judges who deal with the same kind of cases are better equipped to thoroughly examine the issues under consideration, elaborate a multidisciplinary approach when deciding on a dispute, consider technical, social and economic aspects of the issue and make decisions which would be more appropriate for a given reality.²⁴

In addition, concentration of cases from a concrete area in the hands of a group of highly qualified and scrupulous specialist judges contributes to the consistency of court decisions and establishment of uniform practice.²⁵ There is an opinion that when legal predictability and trust in the judiciary increase, the number of appeals against court

¹⁶ Lawrence Baum, *Specializing the Courts*, University of Chicago Press, 2011.

¹⁷ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013. <https://bit.ly/3bccQpi> [last accessed on 10.08.2020]

¹⁸ Consultative Council of European Judges (CCJE), *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges*, 13 November 2012, para. 5. <https://bit.ly/3ltLv6y> [last accessed on 10.08.2020]

¹⁹ *Ibid.*, para. 42.

²⁰ Dory Reiling, *Court Specialization or Special Courts? A Toolkit for Development*, Justice Reform Practice Group (LEGJR), World Bank. <https://bit.ly/3jtSc6G> [last accessed on 10.08.2020]

²¹ Consultative Council of European Judges (CCJE), *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges*, 13 November 2012.

²² Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

²³ Consultative Council of European Judges (CCJE), *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges*, 13 November 2012, para. 9.

²⁴ Consultative Council of European Judges (CCJE), *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges*, 13 November 2012, paras. 10-12.

Markus B. Zimmer, *Overview of Specialized Courts*, International Journal for Court Administration, August 2009.

²⁵ *Ibid.*

decisions in the courts of appeal decreases.²⁶ Thus, by increasing the level of competence of judges, through improving the administration of cases and management, the efficiency of justice can be improved.²⁷

Despite positive aspects of specialisation, one needs to consider the dangers that may be caused by specialisation. In the conditions of excessive individual specialisation, judges are detached from the legal events unfolding in other, even adjacent areas of the law, due to which their area of knowledge gradually becomes more limited.²⁸ They are potentially isolated from other areas of the law, which restricts versatility and flexibility of judges – qualities necessary for their profession²⁹. Ultimately, this impedes professional development of judges, which may pose different challenges to the judicial system (particularly with regard to its administration).

Further, the lack of general knowledge and experience in areas of law makes specialist judges less able to meet competition compared to other judges, which reduces their chances of mobility and career development.³⁰

In addition, when considering cases, narrowly specialized judges may wish to repeat the decisions they made before, which could impede the development of precedent law.³¹ Specialist judges who are focused on narrowly defined legal issues are often deprived of an opportunity to familiarise themselves with other kinds of legal perspectives. In the conditions of doctrinal isolation, they may develop a one-sided view of an issue, which poses a risk to their objectivity. Critical verification, improvement, development of an application of a legal norm or a previously developed deliberation, introduction of new approaches are vitally important for the development of both individual judges and the precedent law. Narrowly specialised judges, however, are considering legal issues of the same content. As a result, making decisions becomes a mechanical process in which previous decisions influence the final outcome of the new disputes. Furthermore, the narrow nature of the issues to consider and legal isolation could render specialised judgeship less attractive, hampering the inflow of new, talented and qualified lawyers.³² On account of these factors, there is a danger that the precedent law would not develop and decisions made by judges would not change over time. The risk becomes particularly high when decisions are made by a small group consisting of the same judges.

In some cases, specialisation can be an impeding factor for the unity of the judicial system. Specialist judges may develop a perception that they are different from other judges and represent part of a judicial elite.³³ Also, the public may develop a perception that there are “super judges” in the judicial system, which could cause a loss of trust in the judges who do not belong to the category of specialist judges.³⁴ For example, the creation of a specialised business court could make the population think that business circles have access to better judicial services and are given preference compared to the rest of the population.³⁵

²⁶ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

Markus B. Zimmer, *Overview Of Specialized Courts*, International Journal For Court Administration, August 2009.

²⁷ Consultative Council of European Judges (CCJE), Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges, 13 November 2012, para. 13.

Dory Reiling, *Court Specialization or Special Courts? A Toolkit for Development*, Justice Reform Practice Group (LEGJR), World Bank. <https://bit.ly/3jtSc6G> [last accessed on 10.08.2020]

²⁸ European Commission for the Efficiency of Justice, *Territorial Jurisdiction*, 5 December 2003. <https://bit.ly/2QCEm5B> [last accessed on 10.08.2020]

²⁹ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

³⁰ *Ibid.*

³¹ Consultative Council of European Judges (CCJE), Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges, 13 November 2012, para. 15.

³² Markus B. Zimmer, *Overview Of Specialized Courts*, International Journal For Court Administration, August 2009.

³³ Consultative Council of European Judges (CCJE), Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges, 13 November 2012, para. 18.

³⁴ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

³⁵ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

The goal (or result) of creation of narrow specialisation could be to influence or put pressure on judges on the part of parties, interest groups or state agencies.³⁶ If the law is narrowly specialised or specialisation concerns a topical area of the law, there is an increased risk that judges would be selected based on political interests or interest of influential groups. Assigning specialisation to a specific candidate could require special effort or intensive lobbying. In exchange for support, such judges may in the future make decisions favourable to the interest groups.³⁷ Furthermore, the judicial system may fall under the influence of the specialist judges who have their own agenda and priorities. Due to the fact that a small group of judges, lawyers and experts participate in the consideration of cases of narrow specialisation, there is a risk that the participants in the process will develop familiarity which, in turn, generates a risk of covert influence and corruption.³⁸ Merging similar areas of the law together and consolidation of jurisdictions of specialised courts are considered one of the ways of avoiding these risks.³⁹

Of course, specialisation significantly improves qualification of judges and the quality of their decisions, however, when decisions are made, the potential risks that specialisation could involve must be considered. In order for specialised courts to operate efficiently, a relevant model and strategy of specialisation, selection of judges, procedures for evaluating and promoting them are of utmost importance.

Forms of Specialisation

In some jurisdictions, specialised courts exist separately from common courts; in other cases, specialised courts can be part of a larger groups of courts.⁴⁰ They can also be created within a judicial system as a specialised chamber, panel or division.⁴¹ The form and structure of specialisations are, in part, conditioned by historical peculiarities and the type of the legal system and, in part, by the need for a concrete type of a specialised court.

One of the forms of specialisation is the creation of specialised courts or a judicial system. For example, German common courts consider cases under criminal, civil and family law. In these courts, specialisation occurs according to the following areas: family law, issues of wills and inheritance, juvenile cases, immigration and asylum seekers cases, agriculture issues, patent, copyright and trademark disputes, commercial disputes, insolvency law, courts considering serious crimes and courts which monitor investigations.⁴² In addition, there are specialised courts which are focused on administrative, labour and tax disputes. These courts, both at the level of the first instance and of appeals, are separate specialised courts which have an independent system, finances and organisational structure.⁴³

Markus B. Zimmer, *Overview Of Specialized Courts*, International Journal For Court Administration, August 2009.

Goran Koevski and Darko Spasevski, *Trends in Respect of Specialization of Commercial Disputes Judiciary*, 2019. <https://bit.ly/3hKZ3lx> [last accessed on 10.08.2020]

³⁶ Consultative Council of European Judges (CCJE), Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges, 13 November 2012, para. 19.

³⁷ Markus B. Zimmer, *Overview Of Specialized Courts*, International Journal For Court Administration, August 2009.

³⁸ Lawrence Baum, *Probing the Effects of Judicial Specialization*, (2009) 58 Duke Law Journal 1667.

Friederike Henke, *Specialised Court Systems. Comparative Paper Analysing the Possibilities of Implementing a Specialised Court System in India*, 2005.

³⁹ Markus B. Zimmer, *Overview of Specialized Courts*, International Journal for Court Administration, August 2009.

⁴⁰ Consultative Council of European Judges (CCJE), Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges, 13 November 2012.

⁴¹ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

⁴² Consultative Council of European Judges (CCJE), Questionnaire with a View of the Preparation of Opinion No. 15 on Specialisation of Judges and Courts, Replies from Germany, 16 December 2011.

⁴³ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

In France, specialisation of the court system occurs through the creation of specialised courts or through the creation of chambers, divisions within courts and by assigning specialisations to individual judges.⁴⁴ In addition, there are courts created outside of the common court system, although their number is not very high.⁴⁵

In the United States of America, there is a system of federal courts and a state court system. Among specialised federal courts, we should note US Tax Court, US Court of Appeals for the Armed Forces, Bankruptcy Courts, US Court of International Trade.⁴⁶

The US court system is the main forum for considering various kinds of disputes. The United States has a different court system, there is no universal standard of their establishment and operation. The US court system has common courts and specialised courts, which are divided according to the following areas: family, environmental, tax, land issues, administrative and juvenile cases.⁴⁷

In the second half of the 20th century, a “case flow management” model was developed in the United States of America, which allowed court chairpersons to allocate more judges to the cases of a specific category depending on the number of cases and load.⁴⁸ This model is common in the United States, Canada and several European states with common law systems.

Thus, there is no universal form of specialised courts, and they differ depending on jurisdiction, model, size of court composition and case management.⁴⁹ However, a common trait for all models that have been researched is that they are created based on need. Specialisation can be determined based on various criteria. For example, according to the essence of dispute – specialisation according to criminal, commercial, family or insolvency law; according to persons involved – cases concerning juveniles or immigrants; according to geographic location, stages of court and so on.⁵⁰

As a rule, the need for specialisation arises only in the courts of first instance. At the higher levels of the court structure, specialisation of judges is allowed only if broad specialisations are defined. Cases must not be considered by a very small group of judges which could cause a one-sided interpretation of norms and thus hamper the development of the law.⁵¹ Preference should be given to the consideration of an appeal by a universal judge, during which the decision would be based on the analysis and evaluation of various areas of the law.⁵²

The creation of a specialised division must be dictated by the needs existing on a specific territory. For example, in port cities, specialised courts for consideration of disputes under maritime law, or courts to consider business disputes in regional commercial centres can be created. In the Kingdom of the Netherlands, there is an institution of so-called “travelling judges”. Such judges travel to various regions of the country to decide on cases of

⁴⁴ Consultative Council of European Judges (CCJE), Questionnaire with a View of the Preparation of Opinion No. 15 on Specialisation of Judges and Courts, Replies from France, 16 December 2011.

European Commission for the Efficiency of Justice, *Territorial Jurisdiction*, 5 December 2003. <https://bit.ly/2QCEm5B> [last accessed on 10.08.2020]

⁴⁵ *Ibid.* Administrative and immigration courts are this kind of courts.

⁴⁶ Markus B. Zimmer, *Overview of Specialized Courts*, International Journal for Court Administration, August 2009.

⁴⁷ *Ibid.*

⁴⁸ David C. Steelman, John A. Goerdts, and James E. McMillan, *Caseflow Management. The Heart of Court Management in the New Millennium*, National Center for State Courts, 2000.

⁴⁹ Lee Applebaum, *the Steady Growth of Business Courts*, the National Center for State Courts, 2011. <https://bit.ly/3hJmfH4> [last accessed on 10.08.2020]

⁵⁰ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

⁵¹ Consultative Council of European Judges (CCJE), Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges, 13 November 2012, para. 45.

⁵² Markus B. Zimmer, *Overview of Specialized Courts*, International Journal for Court Administration, August 2009.

similar nature. In addition, there are centralised court divisions (*Noordelijke Fraudekamer* – specialised court for fraud cases) which consider disputes throughout the country.⁵³

The need for specialisation may arise due to specific goals of case management process. For example, the proceedings related to family or underage persons require the knowledge of psychology along with the law. They are often conducted in an informal environment, and the main goal is to reconcile the parties. This is why the need for specialisation and additional training may arise with regard to cases in this category.

In several states in Australia, there are courts that deal with domestic violence and sexual violence against children.⁵⁴ Through specialisation and specialised trainings, sensitisation towards domestic abuse has increased and coordination with other agencies has improved; through regular feedback between courts and other agencies, the practice and the law have been refined, the legal status of the victims has improved, case distribution has become a lot more efficient, and decisions – more consistent.⁵⁵

In the area of criminal law, the need for a specialisation may arise on account of considering cases which are particularly complex or when communication with witnesses and the injured parties requires specific knowledge. Such cases could be those concerning organised crime or high-level corruption.⁵⁶

Criteria for Creating Specialisations

Making a decision on the creation of a specialisation depends on many external and internal factors. To establish which form of specialisation is the most acceptable and efficient one, special research needs to be conducted with an appropriate emphasis placed on examining the need for the court, problems prevailing in the system of justice and their social and economic causes.⁵⁷

In the 1980s, the US Congress created a committee to examine federal courts; its aim, among others, was to examine the work of specialised courts.⁵⁸

According to the report, specialised courts can be created if:

- One area of the law can be separated from other areas;
- There is a particularly large number of disputes in this area of the law, and by creating a specialisation, an effective administration of justice would be possible;
- Consideration of concrete disputes requires scientific, technical or other specific kinds of knowledge. Also, it should be possible to improve the qualification of a judge making decisions as a result of specialisation;
- There is no uniform legal practice in a given area of the law.

⁵³ Elaine Mak, *Balancing Territoriality and Functionality. Specialization as a Tool for Reforming Jurisdiction in the Netherlands, France and Germany*, International Journal for Court Administration, October, 2008.

⁵⁴ Australian Law Reform Commission, Family Violence Improving Legal Frameworks <https://bit.ly/2YLlBla> [last accessed on 10.08.2020]

⁵⁵ Australian Law Reform Commission (ALRC), Family Violence – A National Legal Response <https://bit.ly/34lV8bH> [last accessed on 10.08.2020]

⁵⁶ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

⁵⁷ Markus B. Zimmer, *Overview of Specialized Courts*, International Journal for Court Administration, August 2009.

⁵⁸ Federal Reports Study Committee, *Report of the Federal Courts Study Committee*, Connecticut Law Review 22 (4), 1990.

Specialisation should be introduced after conducting a thorough research and carrying out a successful pilot project.⁵⁹ Before the decision is made, it should be established whether or not the need for specialisation truly exists and how it would influence judges, parties and the population.

Prior to making a decision on specialisation, the following information must be analysed in-depth:⁶⁰

- The positions and attitudes of judges, parties and various interest groups with regard to specialisation; analysis of internal and external factors, appeals and evaluations; focus group interviews;
- The reasons why specialisation is necessary (complexity of cases, number of cases, need for a simpler and more informal process or other interests of justice);
- Number of cases and deadlines for their consideration depending on the category of cases, location of courts and court instances;
- Assessment of the advantages of a specific form of specialisation and its expected medium- and long-term impact;
- Analysis of pilot projects and experience of courts with regard to specialisation;
- Means of improving qualification of judges and court officials after specialisation;
- Identification of shortcomings in the judicial system and encouragement of legal amendments to improve the efficiency of the judiciary.

In addition, when deciding on introducing specialisation, it should be established whether there is a sufficient number of judges and court officials with appropriate skills so that the court would efficiently fulfil its role; It must be defined in advance what kind of experience is required to be appointed to a specialised court; whether the number of cases provide justification for creating specialisations only on defined territories and whether other plaintiffs would have adequate means of accessing the court; whether the specialised court necessitates the establishment of different rules.⁶¹

As a rule, specialisation is only possible to introduce in institutions with a lot of resources and broad organisational set-up. The creation of specialised courts is possible within the courts where the number of judges is sufficient.⁶² **A specialised court must have at least 10 judges.**⁶³ The larger the court composition, the greater the possibility to introduce specialisations according to various areas.⁶⁴

To successfully introduce specialisation, judges and court officials must be selected correctly. First and foremost, corresponding criteria must be established, based on which the judges will be evaluated and appointed to specialised courts. It needs to be defined what kind of experience, knowledge and skills would be required for the specialist

⁵⁹ Antony Altbecker, *Justice through Specialisation? The Case of the Specialised Commercial Crime Court*, Institute for Security Studies, 2003.

⁶⁰ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

Dory Reiling, *Court Specialization or Special Courts? A Toolkit for Development*, Justice Reform Practice Group (LEGJR), World Bank. <https://bit.ly/3jtSc6G> [last accessed on 10.08.2020]

⁶¹ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

⁶² Consultative Council of European Judges (CCJE), Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges, 13 November 2012, para. 17.

⁶³ European Commission for the Efficiency of Justice, *Territorial Jurisdiction*, 5 December 2003. <https://bit.ly/2QCEm5B> [last accessed on 10.08.2020]

⁶⁴ Dory Reiling, *Court Specialization or Special Courts? A Toolkit for Development*, Justice Reform Practice Group (LEGJR), World Bank. <https://bit.ly/3jtSc6G> [last accessed on 10.08.2020]

judgeship.⁶⁵ It is advisable for a panel to define the number and identity of specialist judges for the specialised court after the evaluation.⁶⁶

In addition, judges should express their willingness and readiness to work within a concrete specialisation. A well-developed system of continuing education and improvement of qualification for judges and court officials is particularly important for countries with developing democracies. Furthermore, court specialisation should be accompanied by the judges' participation in trainings, seminars, conferences and other kinds of activities which would enrich their knowledge and experience and, eventually, have an impact on the process of trial and the quality of decisions.⁶⁷

Models of Business Courts: Examples from Various Countries

The rapidly growing complexity of the law, frequent amendments to the law and globalisation of business are the main factors which have generated the need for the creation of business courts.⁶⁸ Over the past decades, the creation of business courts or commercial courts within the court system has become a global trend.

In 2004, to ensure rapid and efficient hearing of business disputes, a commercial court was set up in Ireland.⁶⁹ A commercial court judge who is highly qualified and has a considerable experience of ruling on business disputes, considers commercial disputes worth over EUR 1m. The litigation mainly concerns commercial contract issues, air, maritime, land transport, extraction of natural resources, machine manufacturing, insurance service, stock markets and investments. The court can also set a matter for hearing if a commercial dispute worth less than EUR 1m is at issue. The court sets cases related to copyright issues for hearing regardless of their value.⁷⁰

In business court, the rules of proceedings are developed in such a way as to give the parties enough time on the one hand and to speed up the consideration of cases and avoid case delays on the other.⁷¹ The efficiency of case management and restricted timeframes for case consideration represent one of the characteristics of the commercial court. Approximately 90 percent of cases set for hearing are completed within a year.⁷²

After setting a lawsuit for hearing, the judge instructs the parties from the outset that they must define the exact subject of the dispute, agree on the issues which they do not contest, exchange with each other the documents pertaining to the lawsuit, including the written testimonies of the witnesses who are set provide oral explanations in court. In order to avoid wasting the resources of the court, the judge has the authority to postpone a hearing for up to 28 days with the aim of facilitating mediation or a settlement. All stages of a case are considered by the

⁶⁵Lawrence Baum, *Probing the Effects of Judicial Specialization*, 58 Duke Law Journal 1667, 2009.

European Commission for the Efficiency of Justice, *Territorial Jurisdiction*, 5 December 2003. <https://bit.ly/2QCEm5B> [last accessed on 10.08.2020]

⁶⁶ Consultative Council of European Judges (CCJE), Questionnaire with a View of the Preparation of Opinion No. 15 on Specialisation of Judges and Courts, Replies from Germany, 16 December 2011.

Consultative Council of European Judges (CCJE), Questionnaire with a View of the Preparation of Opinion No. 15 on Specialisation of Judges and Courts, Replies from Poland, CCJE (2011)7.

⁶⁷Lawrence Baum, *Probing the Effects of Judicial Specialization*, 58 Duke Law Journal 1667, 2009.

European Commission for the Efficiency of Justice, *Territorial Jurisdiction*, 5 December 2003. <https://bit.ly/2QCEm5B> [last accessed on 10.08.2020]

⁶⁸ Lee Applebaum, *The Steady Growth of Business Courts*, the National Center for State Courts, 2011.

Sundaresh Menon, *International Commercial Courts: Towards a Transnational System of Dispute Resolution*, 2015 <https://bit.ly/3bh5bG3> [last accessed on 10.08.2020]

⁶⁹John O'Riordan, *Ireland's Commercial Court: An Inside View*, 2013. <https://bit.ly/2YOI9RY> [last accessed on 10.08.2020]

⁷⁰McCann Fitzgerald, *A Guide to Ireland's Commercial Court, A Decade of Innovation and Commercial Litigation*, 2017. <https://bit.ly/2YPNWqt> [last accessed on 10.08.2020]

⁷¹ The Courts Service of Ireland <https://bit.ly/3b9YK7G> [last accessed on 10.08.2020]

Citizens Information, *Commercial Court*. <https://bit.ly/3ltyA4y> [last accessed on 10.08.2020]

⁷²John O'Riordan, *Ireland's Commercial Court: An Inside View*, 2013. <https://bit.ly/2YOI9RY> [last accessed on 10.08.2020]

deadlines set in advance, without delays. The court makes the losing party cover the costs of breaching the deadlines.⁷³

Singapore International Commercial Court (SICC) which was created in 2015 is a highly reputable, objective, efficient and client-oriented court which makes its decisions within 150 days on average.⁷⁴ The SICC considers transnational commercial disputes.⁷⁵ The court jurisdiction covers cases which are of international and commercial nature and whose parties agree on applying the jurisdiction of the SICC or if the court of the first instance in Singapore passes the case on to the SICC.⁷⁶

The SICC has many advantages, including the consideration of cases by local and foreign judges or a panel, flexible procedures of evidence examination that can be adapted in accordance with an agreement between parties, the legislation of a foreign country can be used in consideration of disputes, a lawyer from a foreign country can participate in a court hearing, if parties agree, the hearing can be conducted at a closed session of the court.⁷⁷ In the Court of Appeals, the decisions of the SICC are considered by a panel consisting of three or more judges which includes at least one foreign judge.⁷⁸

In 2010, a specialised International and European Court Chamber was established within the Commercial Court of Paris with the goal of considering complex international commercial cases.⁷⁹ Despite the fact that the cases considered by the Chamber fall under the French legislation, if parties agree, the proceedings can be conducted in English. In 2018, the International Chamber of the Paris Court of Appeal was created. One of the goals of creating these courts was to improve the recognition of these courts and their competitiveness vis-à-vis commercial courts of other countries.⁸⁰

The specialised chamber is staffed with permanent judges who have appropriate experience in commercial, financial and economic cases, have sufficient knowledge of not only the French law but also the law of foreign countries and have skills to conduct hearings in English.⁸¹

Litigation in the specialised chamber is shorter and more efficient. The judges schedule court sessions by agreeing them with the parties and their representatives. Witnesses and experts may be summoned to court for testimony and cross-examined, which is not typical for the French commercial court proceedings. The court decision is composed in the French language and is accompanied by a certified English translation.⁸² The simplified process saves time and resources, which stimulates the interest of English-speaking lawyers and experts in this court.

⁷³ Mccann Fitzgerald, a Guide to Ireland's Commercial Court, a Decade of Innovation and Commercial Litigation, 2017. <https://bit.ly/2YPNWqt> [last accessed on 10.08.2020]

⁷⁴ Singapore International Commercial Court <https://bit.ly/3gJfqUO> [last accessed on 10.08.2020]

⁷⁵ Overview of the Singapore International Commercial Court <https://bit.ly/31JenA2> [last accessed on 10.08.2020]

⁷⁶ Man Yip, *the Singapore International Commercial Court: The Future of Litigation?* Erasmus Law Review, Vol. 12, No. 1, 2019. <https://bit.ly/2EHMsaT> [last accessed on 10.08.2020]

⁷⁷ *The Singapore International Commercial Court: A Challenge to Arbitration?* Banking and Finance Disputes Review. <https://bit.ly/32BRgXi> [last accessed on 10.08.2020]

Man Yip, *the Singapore International Commercial Court: The Future of Litigation?* Erasmus Law Review, Vol. 12, No. 1, 2019. <https://bit.ly/2EHMsaT> [last accessed on 10.08.2020]

⁷⁸ *Ibid.*

⁷⁹ Ioana Knoll-Tudor (Jeantet), Specialised Chambers for International Commercial Disputes: Paris in the Spotlight, Kluwer Arbitration Blog, 2018. <https://bit.ly/2EJQUpc> [last accessed on 10.08.2020]

In 2018, the name of the chamber was changed (International Chamber of the Paris Commercial Court) and special rules and procedures for considering disputes were defined, <https://bit.ly/32HiY4G> [last accessed on 10.08.2020]

⁸⁰ Ioana Knoll-Tudor (Jeantet), Specialised Chambers for International Commercial Disputes: Paris in the Spotlight, Kluwer Arbitration Blog, 2018. <https://bit.ly/2EJQUpc> [last accessed on 10.08.2020]

⁸¹ International Chamber of Paris Commercial Court and International Chamber of Paris Court of Appeal: One Year Later. <https://bit.ly/34LTCW9> [last accessed on 10.08.2020]

⁸² First decision of the International Commercial Chamber of the Paris Court of Appeal: Clarifications on the Arbitrator's Duty of Disclosure <https://bit.ly/2Eworne> [last accessed on 10.08.2020]

Commercial courts of similar nature and role operate in other European states as well, including the United Kingdom⁸³, the Kingdom of the Netherlands (Netherlands Commercial Court) and Belgium (Brussels International Business Court)⁸⁴.

Various forms of commercial courts also exist in the United States of America. The Delaware Court was the first court to specialise in consideration of commercial disputes. Also, according to the model which is common for New York (for example, New York's Commercial Division), a case can fall into a specialised jurisdiction category if it has a set amount as a subject of dispute and, based on its substance, it belongs to the category of disputes specific for a business court. According to another model (for example, Maryland's Business and Technology Case Management Program), for the technological, commercial, business or other kinds of disputes to be considered [by a specialised court], a case must be complex.⁸⁵ There are also so-called hybrid models (for example, North Carolina Business Court), according to which cases in specific categories automatically fall under the jurisdiction of business court while in order to set other kinds of disputes for hearing, the cases need to be particularly complicated.⁸⁶

The creation of commercial courts was caused by the diversity of the norms of the international and European law, globalisation and increased competition between judicial systems and court systems against this background. An increase in the number of specialisations is linked to the complexity and variety of substance of disputes. Despite the fact that specialisation is often assessed positively, it is erroneous to assert *a priori* that specialisations are a guarantee of efficiency.⁸⁷

Forms of Narrow Specialisations in Georgia

History of Creation of Narrow Specialisations

According to the Organic Law on Common Courts, narrow specialisations in the courts of first and second instances are determined by the High Council of Justice.⁸⁸ The power of determining which judges are to staff specialisations, in case of Tbilisi Court of Appeals, is vested with the chairperson of this court on the basis of the Council's decision.⁸⁹ In case of Tbilisi City Court, no such powers are directly envisaged for its chairperson by the law or by the decision of the High Council of Justice.

International Chamber of Paris Commercial Court and International Chamber of Paris Court of Appeal: One Year Later. <https://bit.ly/34LTCW9> [last accessed on 10.08.2020]

International Commercial Chamber of the Paris Courts and Their Innovative Rules of Procedure <https://bit.ly/2GcreCp> [last accessed on 10.08.2020], also <https://bit.ly/3gG7UKf> <https://bit.ly/3glpuxp> [last accessed on 10.08.2020]

⁸³ Justice on GOV.UK <https://bit.ly/2QCGSJ5> [last accessed on 10.08.2020]

⁸⁴ Ioana Knoll-Tudor (Jeantet), Specialised Chambers for International Commercial Disputes: Paris in the Spotlight, Kluwer Arbitration Blog, 2018. <https://bit.ly/2EJQUpc> [last accessed on 10.08.2020]

International Commercial Chamber of the Paris Courts and Their Innovative Rules of Procedure <https://bit.ly/2GcreCp> [last accessed on 10.08.2020]

⁸⁵ Lee Applebaum, *the Steady Growth of Business Courts*, the National Center for State Courts, 2011.

⁸⁶ Mitchell Bach and Lee Applebaum, *a History of the Creation and Jurisdiction of Business Courts in the Last Decade*, the Business Lawyer 60(1), 2004, 147.

Markus B. Zimmer, *Overview of Specialized Courts*, International Journal for Court Administration, August 2009.

⁸⁷ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

Goran Koevski and Darko Spasevski, *Trends in Respect of Specialization of Commercial Disputes Judiciary*, January 2019. <https://bit.ly/3hkZ3lx> [last accessed on 10.08.2020]

Dory Reiling, *Court Specialization or Special Courts? A Toolkit for Development*, Justice Reform Practice Group (LEGJR), World Bank. <https://bit.ly/3jtSc6G> [last accessed on 10.08.2020]

⁸⁸ Law of Georgia on Common Courts, para. 2¹ of Article 23, and para. 2 of Article 30.

⁸⁹ High Council of Justice, Decision N1/175 dated 30 April 2018, para. 9, <https://bit.ly/2Dkx4AF> [last accessed on 10.08.2020]

In the court of first instance, the law envisages the creation of narrow specialisations since 1997. Even in the 31 July 1997 version of the Law on Common Courts we can find a provision⁹⁰, according to which, based on the decision by the Council of Justice of Georgia, a narrower specialisation of judges can be introduced in a district (city) court which has more than two judges.

In Tbilisi City Court, narrower specialisations have been operating since 2006.⁹¹ By the High Council of Justice decision, the first narrow specialisations were introduced in Tbilisi City Court's panels for civil and administrative cases.⁹² In the panel for criminal cases, the system of narrow specialisations was created in 2013.⁹³ As for Tbilisi Court of Appeals, the creation of narrow specialisations there is a more recent occurrence. The High Council of Justice created narrow specialisations in the Court of Appeals on the basis of the legislative amendments passed in 2018. Despite the criticism expressed by the non-governmental sector⁹⁴, the Parliament approved the draft law and, soon after, by the Council's decision, narrow specialisations were created in Tbilisi Court of Appeals.⁹⁵

“Back when narrow specialisations were created in Tbilisi City Court, this may have truly had some positive goal. However, when this happened in Tbilisi Court of Appeals, I think that it was in order to assign categories to specific judges.

“Ordinarily, when we have an electronic system of [case] distribution, a case is assigned to a judge, but in the conditions of narrow specialisations, the reality that we have as a result is that judges themselves are assigned to cases.

“Given the fact that the chairperson can replace judges within specialisations and this is not stable, one can lead a judge to a case.”

Nazi Janezashvili
Non-Judicial Member of the High Council of Justice

Creation of Narrow Specialisation in Tbilisi Court of Appeals

Introducing narrower specialisation for judges in Tbilisi Court of Appeals is problematic because the existence of narrow specialisations poses a significant threat to the electronic system of case distribution which is based on the random selection principle.

On 7 March 2018, by the amendments made to the Organic Law on Common Courts⁹⁶, the High Council of Justice was given the power to create narrower specialisations in the courts of appeal. The Council was quick to take advantage of this possibility and, by the decision of the 30 April 2018⁹⁷, narrow specialisations were created in Tbilisi Court of Appeals.

⁹⁰ Organic Law on Common Courts, para. 3 of Article 14 [version of 31 July 1997].

⁹¹ High Council of Justice, Decision N1/92-2006 dated 3 October 2006; available at: <https://bit.ly/3gxoAEu> [last accessed on 10.08.2020]

⁹² *Ibid.*

⁹³ High Council of Justice, Decision N1/28 dated 1 March 2013, <https://bit.ly/3fC7eFh> [last accessed on 10.08.2020]

⁹⁴ Coalition for Independent and Transparent Judiciary, *Opinion on the Fourth Wave of Judicial Reform Legislative Package*, 2018, available at: <https://bit.ly/33D5qtg> [last accessed on 10.08.2020]

⁹⁵ High Council of Justice, Decision N1/175 dated 30 April 2018, <https://bit.ly/2Dkx4AF> [last accessed on 10.08.2020]

⁹⁶ Organic Law of Georgia on Amendments to the Organic Law of Georgia on Common Courts; adopted on 27 March 2018, <https://bit.ly/31xujKN> [last accessed on 10.08.2020]

⁹⁷ High Council of Justice, Decision N1/175 dated 30 April 2018; available at: <https://bit.ly/2Dkx4AF> [last accessed on 10.08.2020]

The process was accompanied by civil protest and criticism. The position of the civil society was that the creation of narrow specialisations in Tbilisi Court of Appeals and giving the court chairperson the power to assign judges to these specialisations endangered the process of the random selection of cases by the electronic system.⁹⁸

The explanatory note of the draft law indicated that “consideration of cases within a uniform category by a judge is connected to rapid administration of justice. It also ensures the improvement of qualification of a judge in a specific area of the law, which, in turn, significantly contributes to the improvement of the quality of justice.”⁹⁹ According to the judicial member of the High Council of Justice, Revaz Nadaraia, the aim of introducing narrow specialisations was rapid and efficient justice.

According to the Opinion No15, Paragraph 38 of the Consultative Council of European Judges (CCJE), specialisation can only be justified if it facilitates administration of justice or if it would be expedient for **ensuring high quality of the decision-making process** and case management in court. The Opinion does not consider narrow specialisations to be the means for addressing the problem of court overload and case delays.

According to the Opinion mentioned above, specialist judges and specialised courts should only be introduced if there is such need based on the complexity of the legislation or facts or their specificity, in order to fulfil the goal of proper administration of justice.

According to the judicial member of the High Council of Justice, Revaz Nadaraia, the “need” to create narrow specialisations in Tbilisi Court of Appeals was never studied or researched in any way. In the process of making this decision, they relied on the information, including the statistics, available within the Council itself and, since narrow specialisations were introduced in Tbilisi City Court years ago¹⁰⁰, they compared the data to the courts in which such specialisation did not exist.

Based on the British legal system, the following questions must be answered when deciding on the introduction of specialisation:¹⁰¹

- Is specialisation created temporarily or with at least medium-term prospects?
- Are there studies or pilot projects which indicate that a specific type of specialisation operates successfully?
- Is the need for specialisation caused by an increase in the case flow and is specialisation an efficient way of addressing the problem?
- Are there inconsistent decisions in a specific area of the law?
- Did such decision increase or reduce the frequency of the recourse to court?
- If there is a high number of delayed cases in court, what is its effect for the court and the population?
- Are the parties, interested actors or the population discontent with the work of the court?

In order to collect and assess information, select the most compatible form of specialisation, create its pilot model, evaluate the shortcomings in the process of operation and improve it, working groups need to be created.¹⁰² These

⁹⁸ Coalition for Independent and Transparent Judiciary, *Expanding Mikheil Chinchaladze’s Authority Endangers Random Selection Principle for Court Cases*, 2018. <https://bit.ly/30Bf0Li> [last accessed on 10.08.2020]

⁹⁹ See Explanatory Note <https://bit.ly/2R45XNr> [last accessed on 10.08.2020]

¹⁰⁰ The first narrow specialisation in Tbilisi City Court was first put into operation in 2006. See High Council of Justice Decision N1/92-2006, dated 3 October 2006, <https://bit.ly/3gx0AEu> [last accessed on 10.08.2020]

¹⁰¹ Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, The International Bank for Reconstruction and Development/The World Bank, 2013.

Edward Cazalet, *Specialised Courts: Are They a ‘Quick Fix’ or a Long-Term Improvement in the Quality of Justice?* World Bank, 2001.

¹⁰² *Ibid.*

should be high-level decision-making bodies, authorised to collect data, issue recommendations and define specific ways of implementation.¹⁰³

After the interview with the Judge Revaz Nadaraia, it remained unclear for the research team what the concrete process which was ultimately conducted was and crosschecking which data served as the basis for the decision made by the High Council of Justice. Transparency International Georgia also talked about it to Nazi Janezashvili, non-judicial member of the Council, who said:

“The procedure for creating narrow specialisations is very general. One of the judges, in most cases the secretary of the Council, usually presents a project and simply tells us: this is what is required. For example, I remember them saying that some type of changes in those specialisations were necessary in the run-up to the elections. There is nothing of substance, no preliminary research or statistical information, or any analysis that would convince us that, yes, these specialisations need to be created. There is only a project and then an oral discussion is held, which is very general. No assessment of needs is conducted.”

Nazi Janezashvili
Non-Judicial Member of the High Council of Justice

After studying the issues, it can be said that the decision made by the High Council of Justice to introduce narrow specialisations in Tbilisi Court of Appeals in 2018 was not based on concrete objective needs identified by research, which should be considered a problem.

Current Forms of Narrow Specialisations

At present, district (city) courts are divided into panels, while courts of appeal – into chambers and investigative panels. In turn, in Tbilisi City Court and Tbilisi Court of Appeals, all litigation areas within relevant panels and chambers are narrowly specialised.

In Tbilisi City Court, the Panel for Civil Cases is divided into six specialisations, the Panel of Administrative Cases – into five, and the Panel for Investigation of Criminal Cases, Preliminary Hearings and Trials – into six specialisations.

In Tbilisi Court of Appeals, the Chamber of Civil Cases is divided into four specialisations, the Chamber of Administrative Cases – into three, and the Chamber of Criminal Cases – into three specialisations.

The analysis of information received from Tbilisi Court of Appeals on 28 February 2020¹⁰⁴ revealed that, as of that date, Mikheil Chinchaladze, chairperson of Tbilisi Court of Appeals, was the only judge who was not assigned to any specialisation.

To compare, Tbilisi City Court chairperson is assigned to Tbilisi City Court Panel for Investigation of Criminal Cases, Preliminary Hearings and Trials specialisation of category “B”.¹⁰⁵

The research has shown that narrow specialisations in Tbilisi City Court as well as Tbilisi Court of Appeals are not exceptions, their creation did not occur based on need and all areas of litigation in these courts are narrowly specialised. Based on the information received as a result of in-depth interviews with judges as well as the Council

¹⁰³ *Ibid.*

¹⁰⁴ Information as of 28 February 2020. See Tbilisi Court of Appeals Letter N3/1361, dated 28 February 2020. See <https://bit.ly/3qF3idy>

¹⁰⁵ Information as of 24 February 2020. See Tbilisi City Court Letter N3-0623/2308906, dated 24 February 2020. See <https://bit.ly/3ndHFiB>

members, we can say that one of the declared goals of the Council in the process of creating narrow specialisations was addressing the problem of case overload.

As concerns the issue of creating narrow specialisations in regional courts, the research team spoke with Shota Getsadze, judge of Tbilisi Court of Appeals and former member of the High Council of Justice, who explained:

“As far as I know, only two or three judges administer justice in these courts. In Gori Court, which I mentioned, there was one person who, as I know, considered administrative cases, so we should forget about specialisation there. Unless the number of judges is increased, we are going to face the same unfortunate situation in the courts that we listed. I cannot rule out that the willingness would not be as strong either. It is possible that... for example, we have Article 37 in the Law on Common Courts and this is also the way to staff large and busy courts with more judges, and this would allow us to think about narrow specialisations.”

Shota Getsadze
Judge of Tbilisi Court of Appeals

Revaz Nadaraia, judicial member of the Council, explained the fact that there were no narrow specialisations in courts other than Tbilisi City Court and Tbilisi Court of Appeals by a small number of judges in these courts, which merits a positive assessment. Introduction of narrow specialisations in courts which have few judges would further exacerbate the risks which narrow specialisations generally pose to the electronic system of random distribution of cases at present.¹⁰⁶

Given the fact that, according to the CCJE Opinion No 15, the creation of narrow specialisations is justified in exceptional cases and should be based on objective needs, it can be said that the forms of narrow specialisations which exist in the Georgian common court system today significantly differ from the internationally recognised standards and offer a different model of regulation. The expediency, efficiency and risks associated with the existing model are discussed in detail in this study.

Standards of Appointing Judges to Narrow Specialisations

The appointment of judges to narrow specialisations is not based on criteria determined in advance, it is often unsubstantiated and incomprehensible.

The rule of appointing judges to narrow specialisations is not defined by the Organic Law on Common Courts. In case of Tbilisi Court of Appeals, this power lies with the chairperson of this court based on the decision made by the High Council of Justice. The chairperson of Tbilisi City Court was not authorised by either the law or the High Council of Justice.¹⁰⁷ The Tbilisi City Court chairperson uses a general norm of the Law on Common Courts¹⁰⁸ as a basis for the orders, which is problematic. Furthermore, no criteria are defined based on which judges should be assigned specific narrow specialisations.

¹⁰⁶ This issue is discussed in detail in the chapter of this study titled *Negative Influence of Specialisations on Electronic System of Case Distribution*.

¹⁰⁷ The Organic Law of Georgia on Common Courts is implied.

¹⁰⁸ Law of Georgia on Common Courts, Article 32, para. 2, sub-para. “g”: The chairperson of a district (city court): organises the operation of the court, studies and generalises information about case flow management (including indicators of case submission and completion, timeframes of case management, reasons for postponement of sessions and delays in case management) and presents this information to the judges and the High Council of Justice of Georgia at least once a year; within the scope of his or her competence, carries out measures to address the systemic causes of delays in case management;

sub-para. “h” of the same Article: fulfils other duties envisaged by the Georgian legislation.

According to the CCJE Opinion No 15, the judges' experience and in-depth knowledge of a corresponding area should be the basis for appointing them to concrete specialisations.

One of the judges of Tbilisi Court of Appeals said in an in-depth interview that s/he agrees with the CCJE Opinion and stated that judges should be appointed to concrete specialisations on the basis of their experience in a specific area and thorough knowledge of a corresponding field.

Judge Shota Getsadze, too, spoke about the need for criteria in the process of assigning judges:

“Unfortunately, such rule did not exist and still does not exist. I would wish for this issue to be regulated. For example, in the Court of Appeals¹⁰⁹, a judge is offered, asked whether he or she would like to be transferred to a specialisation. If a judge expresses such a wish, he or she will move to the given specialisation. This is the way it was before, this is the way it is now but for me personally, as a lawyer, as a judge, this is not adequately regulated. More precisely, this is not regulated at all. I would wish for it to be defined at a normative level, stipulating the rules according to which it should happen and how often.

“For example, there is no rotation. I was trying to enforce the principle of rotation when I was working in Tbilisi City Court,¹¹⁰ but it had no solid basis.”

Shota Getsadze
Judge of Tbilisi Court of Appeals

Judge Kakhaber Machavariani had a somewhat different view on the matter. In his opinion, when narrow specialisations were created in Tbilisi Court of Appeals in 2018, using an experience- and knowledge-based approach in the process of assigning judges to these specialisations would have been unethical:

“Dividing judges according to their in-depth knowledge of concrete areas is unethical. In 2018, when narrow specialisations were created in Tbilisi Court of Appeals, its judges had already had at least 10 years of experience. Correspondingly, it would be unethical to say to them that they are more knowledgeable in a concrete area and other judges are less knowledgeable in it, and then appointing them based on this.”

Kakhaber Machavariani
Judge of Tbilisi Court of Appeals

An absolute majority of judges who were interviewed said that they received information about their appointment to narrow specialisations in the form of a notice. They also said that the judges' wishes were/would have been considered if they had them. Only one judge of Tbilisi Court of Appeals, Manuchar Kapanadze, provided us with a radically different information, stating that a ballot was held when judges were allocated and that he was assigned to a concrete specialisation as a result of the ballot. At the time, he was a judge in the Chamber for Criminal Cases in Tbilisi Court of Appeals.

“Pieces of paper were cast and [judges] were allocated based on what they got.”

¹⁰⁹ Only Tbilisi Court of Appeals is implied since no narrow specialisations have been created in Kutaisi Court of Appeals.

¹¹⁰ In 2011-2015, Judge Shota Getsadze held the post of the chairperson of the Panel for Administrative Cases in Tbilisi City Court; his biography is available at: <https://bit.ly/2DKfLbM> [last accessed on 10.08.2020]

Levan Tevzadze, chairperson of the Chamber for Criminal Cases in Tbilisi Court of Appeals, who held the same post at the time, said in the interview that he himself compiled a list and informed the judges at a meeting. He did not mention any form of random allocation. The wishes of the judges who preferred to be assigned to specialisations different from those indicated in the list were taken into consideration.

“I was the chairperson of the Chamber here when the Council made this decision. As I said, I studied the issue, looked at the practice of others, the way it worked in the City Court, determined the number of judges, let us say, [according to] how many cases would be submitted. I weighed the cases – also by myself – because consideration of a murder case takes its own amount of resources and that of theft – its own.

“I also determined how many cases need panel compositions and then decided how many judges I had to re-allocate. I made this decision, no one told me to.

“I then met with the judges, agreeing with the chairperson beforehand that I would meet with them and clarify things. This was the situation, I can say directly. One or two judges did not want to hear murder cases. They openly asked: please, maybe we could avoid murder [cases], otherwise, as you decide. One or two judges did not want to consider fraud and similar cases because, as they said, they were unable to master such cases. I took these issues into account.

“When I allocated these judges, I took the list to the chairperson and we agreed on it. All of this happened during a meeting – the first re-allocation. This re-allocation continued for about half an hour with me, in my office.”

Levan Tevzadze
Judge of Tbilisi Court of Appeals

According to the CCJE Opinion No 15, judges are appointed to various areas based on their career and they have to consider various topics, which provides them with wide experience in different areas of the law. Despite this, in certain areas, legislation has become very complex and specific, which demands higher degree of specialisation from judges. Therefore, it is recommended to prepare appropriately qualified judges who are specialising in certain areas.¹¹¹

Considering the given standard, it is important that, first and foremost, specialisations are created as an exception, only if there is such need and there is substantiation for it, and also that judges are appointed to these specialisations based on established criteria. The criteria should be mostly based on the judges’ experience and knowledge in a corresponding area.

It is also important that the right of determining the judicial composition of specialisations lies with the High Council of Justice rather than the court chairpersons. Representatives of the civil society have, on more than one occasion, expressed their negative attitude concerning the role of the court chairpersons, who are appointed on the basis of unclear and opaque rules, represent a privileged group of judges and are considered superior to and controllers of

¹¹¹ Consultative Council of European Judges (CCJE), *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges*, 13 November 2012.

other judges. Correspondingly, giving levers of such significance to court chairpersons merits a negative assessment. Furthermore, transferring this power to a constitutional collegiate body will increase the degree of openness and create more mechanisms of oversight.

Shota Getsadze, judge of Tbilisi Court of Appeals, agrees with the idea that narrow specialisations should be staffed by the Council, too. Asked who or which agency should define compositions of narrow specialisations, he responded:

“For example, the High Council of Justice which could announce [a call for] the expression of interests or a competition, or internal mobility – the name is not important – where it would ask ‘which one of you wants to be assigned to this specialisation?’ and then select one or several judges from among those who expressed such wish. This rule should be defined in great detail and be transparent to prevent anyone from having any grounds for doubt.”

It can be said that the process of appointing judges to specialisations does not meet internationally recognised standards, is chaotic and often unsubstantiated. One of the key criteria for appointing judges should be their in-depth knowledge of a corresponding area. For successful introduction of a specialisation, selecting judges correctly is necessary. Corresponding criteria must be established based on which the judges will be evaluated and assigned to specialised courts. It needs to be determined what kind of experience, knowledge and skills the specialist judges will need to have.

The information received from Levan Tevzadze, chairperson of the Chamber for Criminal Cases in Tbilisi Court of Appeals, makes it clear that the wishes of the judges were considered in the process of their allocation but their qualifications in specific specialisations were never examined. Correspondingly, the current rule of assigning judges to specialisations should be assessed negatively.

Tackling Problem of Overload by Introducing Narrow Specialisations

During in-depth interviews, an absolute majority of interviewees cited rapid and efficient administration of justice as a legitimate reason for creating narrow specialisations. According to Revaz Nadaraia, judicial member of the High Council of Justice, narrow specialisations were created in Tbilisi Court of Appeals precisely for the purpose of rapid administration of justice since there was a successful example of Tbilisi City Court.

Most of the judges said that, for them, narrow specialisations facilitated timely and quality administration of justice. If they had a small number of cases, they would have been able to ensure timely and quality administration of justice without specialisations. Since the number of cases is currently high and there are deadlines for trials, it is easier for them to handle the case flow precisely with the help of specialisations.

Based on the interviews conducted with judges, it is possible to say that they see the need for narrow specialisations because of the case overload. Most judges said that they can, for example, consider equally well all areas of criminal law if the number of cases they have to consider is reasonable and they are able to allocate enough time to each case.

Addressing the problem of overload in the judiciary requires a complex approach. Introducing narrow specialisations to solve the problem of overload while important steps needed to solve it have not been taken in years should be assessed as unjustified.

According to a 2018 study, the common court system at this stage needs approximately 100 additional judges.¹¹² Despite the fact that the system has been suffering from the lack of judges for years and judges in especially large courts have to hear a critically high number of cases, the High Council of Justice did not announce a competition for two years, which is hard to understand. The Council announced a competition for a judicial vacancy first on 30 July 2018¹¹³ and then on 26 June 2020¹¹⁴. According to Revaz Nadaraia, judicial member of the High Council of Justice, this year has been particularly busy, they had to select candidates for the Supreme Court judgeship, which had effectively taken up the whole year and, correspondingly, they never managed to announce a competition.

As mentioned earlier, no competition for judicial vacancies in the High Council of Justice was announced in the period between 30 July 2018¹¹⁵ and 26 June 2020¹¹⁶. Indeed, a competition to select judicial candidates for the Supreme Court was under way in the Council during this period, however, this process lasted four months. The competition in the Council began on 11 May 2019¹¹⁷ and ended with voting on 4 September of the same year¹¹⁸. Correspondingly, the argument about the Council being particularly overloaded during this period (almost two years) should not be acceptable. It is true that the competition announced on July 30, 2018 officially ended on May 24, 2019, although there is a reasonable suspicion that the competition was artificially delayed.¹¹⁹

Nazi Janezashvili, non-judicial member of the Council, talked about the problem of the protraction of cases and the role of the High Council of Justice, too:

“In general, the policy that prevails in the judicial system does not allow me to think that anyone wants to eliminate the problem of case delays in the court. Pointing to this is, first and foremost, the existence of over 100 vacancies in the system at present and the fact that there has been no competition announced in the judiciary for over a year. Had anyone wanted to ease the workload of courts by appointing judges, they would have already done this.”

Nazi Janezashvili
Non-Judicial Member of the High Council of Justice

Furthermore, it is also important that, during this period, the process of transferring judges to other courts without competition was actively under way. Revaz Nadaraia, a member of the HCoJ, explained this fact by saying that the appointment of judges by competition is a much more difficult process than transferring them without competition. This practice of transferring judges (without competition) from one court to another in such a manner has been a subject of criticism for years.¹²⁰ The decisions about transfers are made by the High Council of Justice, however, these decisions are unsubstantiated and often incomprehensible. For example, at the session held on 25 June 2018, the chairperson of Rustavi City Court requested to assign or appoint without a competition a judge to the vacant post on the Panel for Civil Cases on account of a large number of cases in the court. Despite the fact that Council Member Irma Gelashvili supported an appointment of a judge to this post by holding a competition, the Council selected Maia

¹¹² Assessment Report on the Need for Judges in Georgia, a study prepared on commission by the project *Promoting Rule of Law in Georgia (PROLoG)*, 2018, <https://bit.ly/2DF6guK> [last accessed on 10.08.2020]

¹¹³ High Council of Justice Decision N1/238, dated 30 July 2018, <https://bit.ly/3hmvRXK> [last accessed on 10.08.2020]

¹¹⁴ High Council of Justice Decision N1/89, dated 26 June 2020, <https://bit.ly/3gbNcBF> [last accessed on 10.08.2020]

¹¹⁵ High Council of Justice Decision N1/238, dated 30 July 2018, <https://bit.ly/2F1XpUw> [last accessed on 10.08.2020]

¹¹⁶ High Council of Justice Decision N1/89, dated 26 June 2020, <https://bit.ly/3iilCt9w> [last accessed on 10.08.2020]

¹¹⁷ *Process of accepting applications from candidates to be nominated for selection to the post of the Supreme Court judge has begun*, High Council of Justice, 11 May 2019, <https://bit.ly/3ijQ3tP> [last accessed on 10.08.2020]

¹¹⁸ *Supreme Court: Council of Justice To Send 20-Strong List to Parliament*, Radio Liberty, 4 September 2018, <https://bit.ly/2Pwc6ku> [last accessed on 10.08.2020]

¹¹⁹ “The So-called Clan is forced to compromise”- Nazhi Janezashvili interview with *Netgazeti*, 24 May, 2019. Available at: <https://bit.ly/2L50KoH> [Last viewed: 10/08/2020]

¹²⁰ Transparency International Georgia and Georgian Young Lawyers’ Association, Monitoring Report of the High Council of Justice No 7, 2019, p. 30, <https://bit.ly/2PpCvAD> [last accessed on 10.08.2020]

Shoshiashvili, judge from Tbilisi City Court. It is not clear what were the grounds for making the decision to transfer a judge from one of the busiest courts.¹²¹ The question becomes even more pressing due to the circumstance that, when a judge is transferred from one court to another, his or her cases are assigned to the remaining judges by the electronic system of case distribution. According to the practice of Tbilisi Court of Appeals, when a judge is transferred from the court, the consideration of his or her cases, usually, starts from the beginning¹²², which, naturally, exacerbates the delays of cases and case overload in the court.

“When a judge is transferred from one court to another, no vacancy is announced in the former and the cases of this judge are allocated between the remaining judges who are already very busy.

“The fact that the Council is not concerned by this issue is confirmed by the fact that a competition is not announced automatically; rather, this post could remain vacant for a year or more and no competition would be announced. This makes me think that the idea of easing [the load for] the court does not exist in the system at all.”

Nazi Janezashvili
Non-Judicial Member of the High Council of Justice

The Council frequently practiced transferring judges without competition in 2019 as well, transferring the total of 46 judges this way. According to Council Member Revaz Nadaraia, in all such cases, the Council studies the needs of concrete courts and only makes its decisions after. However, this information has not been made available to the public, including for the organisations which have been monitoring the Council for years, and neither were these issues discussed at the Council sessions. The Council’s non-judicial member, Nazi Janezashvili, confirmed this and said that the Council does not study the needs of concrete courts, and judges are transferred in a chaotic manner.

“I cannot recall anyone presenting statistical information at a Council session [explaining] how these cases would be handled as a result of transferring this or that judge and by how many percent the case load of other judges would increase. When they do not want to appoint someone, then the argument is used that a transfer cannot happen because there are few judges in a given court.”

Nazi Janezashvili
Non-Judicial Member of the High Council of Justice

The chronology and analysis of events indicate that the High Council of Justice often fails to take a whole number of important and necessary steps in order to solve the problem of overload. And, in a number of cases, on the contrary – the decisions made by the Council exacerbate the problem. Against this background, addressing the problem by introducing narrow specialisations should be assessed as unjustified. This view is strongly backed by the fact that the system of narrow specialisations in its current form poses a significant danger to the distribution of cases electronically, based on the random selection principle.¹²³

Negative Effects of Specialisations for Electronic System of Case Distribution

The electronic system of case distribution was part of the draft law on the “third wave” of judicial reform. Its final adoption was significantly delayed as a result of opposition on the part of the judiciary. It was eventually launched

¹²¹ Ibid.

¹²² We were able to obtain this information within the framework of in-depth interviews conducted with judges.

¹²³ This issue is discussed in detail in the chapter of this study titled *Negative Influence of Specialisations on Electronic System of Case Distribution*.

on 31 December 2017.¹²⁴ Naturally, this change merits a positive assessment. Its operation was to significantly improve the process of case distribution in courts, however, some regulations that are still in force are problematic as they pose a threat to the full-fledged functioning of the system.

“Immediately after the electronic system of case distribution was launched, the Council made the decision on the introduction of narrow specialisations in the Court of Appeals. I think that this decision was linked to the electronic system of case distribution aiming to limit the random selection principle as much as possible. That is to say, when you know that cases are distributed between five or six rather than 20 judges, it is obvious that the principle of random selection is weakened and limited to the maximum. This was probably the goal in the Court of Appeals.”

Nazi Janezashvili
Non-Judicial Member of the High Council of Justice

One of the regulations that we can consider problematic for the electronic system of case distribution is precisely the existence of narrow specialisations and the existing model of such specialisations. As mentioned above more than once, narrow specialisations in the common court system are created by the High Council of Justice, while judges are appointed to these specialisations by the chairpersons of the corresponding courts. If a chairperson makes an arbitrary decision, there is a risk that the goal of electronic, random distribution will not be achieved. This view is backed by the circumstance that a court chairperson can change the judicial compositions of narrow specialisations without any substantiation, at any time and with any frequency. To illustrate the possibility of manipulating the electronic system of case distribution, we can cite the following simple examples:

Example 1:

The Category “g” of the Chamber for Administrative Cases in Tbilisi Court of Appeals considers cases of administrative offences. There are three judges assigned to this specialisation: Levan Murusidze, Lasha Tavartkiladze and Shorena Kavelashvili.¹²⁵ According to the current procedure,¹²⁶ the cases concerning the offences that are submitted to Tbilisi Court of Appeals should be distributed only among these three judges. If the government or the influential judges within the system would want a concrete case to go to a concrete judge among these three, transferring the other two judges, if only temporarily, to other specialisations would be enough to have this case land with the judge desirable for the government or the so-called clan.¹²⁷

Example 2:

If a desirable judge is not assigned a corresponding specialisation, the court chairperson can re-allocate judges to ensure that a concrete judge receives the case within a concrete specialisation.

During interviews, all judges were asked a question in the form of the aforementioned example. Specifically, whether they saw such a risk and whether they considered it possible that, in theory, certain manipulations could take place. Some of the judges considered this a theoretical risk and agreed with the research team that the increase in the

¹²⁴ On 1 July 2017, the electronic system of case distribution was launched in a pilot mode in Rustavi City Court.

¹²⁵ Information as of 28 January 2020. Tbilisi Court of Appeals Order No 06-s, dated 28 January 2020.

¹²⁶ High Council of Justice of Georgia Decision N1/56, dated 1 May 2017, Article 4, para. 8¹ “On Approval of the Rule of Automatic Distribution of Cases by Means of an Electronic System in Common Courts of Georgia”, <https://bit.ly/35fTz58> [last accessed on 10.08.2020]

¹²⁷ During the reporting period, the court chairperson issued orders to change the judicial composition of narrow specialisations six times, including replacing himself three times. The largest-scale rotation was recorded in the panel for criminal cases [p. 21, reporting period: 1 January - 31 December 2018], <https://bit.ly/3b8L8cZ> [last accessed on 10.08.2020]

number of judges would, to a degree, insure against this risk. Other judges ruled out such cases even in theory. Also, an absolute majority completely ruled out such a possibility in practice.

In the opinion of Judge Besik Bugianishvili, manipulating case distribution in such a manner is theoretically possible, however, he ruled out that this could happen to him in practice.

“If someone wants to manipulate this, of course, they would do it, in theory, such a risk exists. [...] If someone wished to do something maleficent, they would definitely manage to do it. One should just be honest and not want to do it. [...] I cannot picture any judge who would not want to be scrupulous, objective, honest, competent and worthy of applause on the part of the public, saying what a great judge you are. [...]

“If one wanted to do it, one would do it, this is hardly difficult when there are four judges. But one should not want to.”

Besik Bugianishvili
Judge of Tbilisi Court of Appeals

Judge Revaz Nadaraia ruled out even a theoretical possibility of manipulation according to this scenario:

“Even if a single judge is left [within specialisation], I can see no risk in that – why would you doubt that one judge?!”

According to the Council’s Judicial Member Revaz Nadaraia, in order to carry out such manipulation, “a chain so huge” would need to be built, that having suspicions with regard to narrow specialisations because of it would be irrational.

Revaz Nadaraia
Judicial Member of the High Council of Justice

The law does not consider the judges’ consent obligatory when transferring them from one specialisation to another, fully authorising court chairpersons to conduct the transfers. The researchers talked to lawyer Keti Chomakhashvili about this issue, who said that the existing system of narrow specialisations is problematic and endangers the electronic system of case distribution. The respondent saw the way of addressing this problem in merging specialisations and creating such specialisations which would have at least 12-15 judges in their composition.

Determining the judicial composition for narrow specialisations is particularly problematic for hearing the cases in the Court of Appeals where, as a rule, cases are considered by a panel which consists of three judges. According to the procedure of electronic, random selection of cases, when distributing cases in the Court of Appeals, the software selects only one judge from the panel – the reporting judge.¹²⁸ The in-depth interviews conducted with judges revealed that, in practice, there are stable panels in Tbilisi Court of Appeals where the remaining two judges, based on the existing practice, are specified (without using the software of electronic distribution). In the event the issue of the recusal of one of the judges is raised, he or she would be replaced applying informal procedure by another judge from the same specialisation on the basis of the reporting judge’s request. Furthermore, the court chairperson can change the composition of a narrow specialisation and appoint to it a judge desirable to him or her at any time

¹²⁸ Paragraph 9 of Article 4 of the Decision N1 / 56 of the High Council of Justice on the Approval of the Rule of Automatic Distribution of Cases in the Common Courts of Georgia, May 1, 2017; Available at: <https://bit.ly/33OHJh2> [Last viewed: 10.08.2020]

and without providing any substantiation, which could result in the change of the panel considering a case. Naturally, when a case is being considered by a collegiate body, the decisions are made by the majority of votes,¹²⁹ and it is precisely the two judges who were not assigned through an electronic system who can have a decisive influence on the outcome of the case, this rule represents a problem.

This arrangement is problematic from the viewpoint of Tbilisi Court of Appeals Judge Shota Getsadze, too:

“The issue of staffing a collegiate body is open, this depends fully on the verbal mutual agreement between the judges and the court chairperson. Incidentally, this issue is not topical in the Court of Appeals alone, this is the way it is in the Supreme Court as well. That is to say, this requires a comprehensive solution. The way it is happening now is that I could be hearing one case together with, for example, Judges Peter and Paul, the second case – together with two other women, there is no stable composition.

“Let me demonstrate how dangerous this actually is: for example, I know one of my colleague’s position on a given judicial issue and we disagree on it. I could simply ask another judge, who agrees with me, to participate in the trial. Such theoretical possibilities exist and such possibilities can be ruled out by establishing stable compositions.”

Shota Getsadze
Judge of Tbilisi Court of Appeals

In Tbilisi Court of Appeals, narrow specialisations were created soon – about four months – after the launch of the electronic system of case distribution. Initially, the judiciary opposed the introduction of the electronic system of case distribution. The faulty procedure of case distribution (before the electronic system of distribution was launched) had been criticised for years by both local and international organisations.¹³⁰ In many high-profile cases, the parties pointed precisely at the manipulation of the case distribution rule by the court chairpersons.¹³¹ The creation of narrow specialisations in Tbilisi Court of Appeals, where the main part of the group of influential judges is concentrated¹³², and authorising the court chairperson to assign judges to these specialisations after the electronic system of case distribution had been put into operation creates a perception that this group of judges did not give up on the possibility of manipulating the system of case distribution.

Interim Conclusion

Overall, as a result of studying the forms of narrow specialisations that exist in the Georgian common court system and their efficiency, it can be said that the **current forms of narrow specialisations significantly differ from the internationally recognised standards and suggest a different model of arrangement. According to international standards, narrow specialisations should be created based on a concrete and objective need as an exception. Nevertheless, all areas of litigation in Tbilisi City Court and Tbilisi Court of Appeals are specialised.**

¹²⁹ Article 11 of the Organic Law of Georgia on Common Courts, [30.09.2020 edition]; Available at: <https://bit.ly/3lTceZp>

¹³⁰ Organisation for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), *Trial Monitoring Report Georgia*, 2014, <https://goo.gl/13yLBz> [last accessed on 10.08.2020]

¹³¹ Transparency International Georgia, *Corruption Risks in Georgian Judiciary*, 2018, pp. 42-43, <https://bit.ly/3kp65of> [last accessed on 10.08.2020]

¹³² Transparency International Georgia, *Corruption Risks in Georgian Judiciary*, 2018, p. 55, <https://bit.ly/3kp65of> [last accessed on 10.08.2020]

Contrary to the internationally recognised standards, the decision by the High Council of Justice to introduce narrow specialisations in Tbilisi Court of Appeals in 2018 was not based on the concrete objective need determined by research.

The current rule of assigning judges to narrow specialisations merits a negative assessment. According to international standards, the judges' thorough knowledge in a corresponding area should serve as one of the key criteria for their appointment. However, in Tbilisi City Court as well as Tbilisi Court of Appeals, the knowledge and experience of judges in concrete areas of the law were not evaluated prior to their assignment to narrow specialisations. Only the judges' wishes were considered in the process of their re-allocation. Furthermore, there is no concrete objective criterion based on which the judges would be assessed and assigned to a narrow specialisation.

The current practice of staffing narrow specialisations involves risks of manipulating the electronic system of case distribution. The problem that the law does not define concrete objective criteria for assigning judges to narrow specialisations is further exacerbated by the fact that the allocation of judges to specialisations is up to the court chairperson. At present, there is no procedure regulated through a normative act concerning the assignment of judges to narrow specialisations. Correspondingly, even though the cases are distributed among judges of narrow specialisations by an electronic system, which judges are going to be in the [specialisation] composition depends on a unilateral decision of the court chairperson. This rule entails real risks of influencing the outcomes of the cases considered within narrow specialisations.

Overall, it can be said that the current model of narrow specialisations runs contrary to the international principles, needs to be changed and properly regulated, including through legislation. This includes the need to improve the procedure of defining the composition of narrow specialisations. Considering the existing international standards, it would be best for the composition of specialisations to be formed by a collegiate body – the High Council of Justice – through a predictable process.

Narrow Specialisations for Commercial Disputes

In early 2017, within the framework of the judicial reform, the government voiced the initiative to create the commercial and tax chambers. The initiative was preceded by the criticism of the government on the part of business associations and professional circles on account of high-profile business dispute cases.¹³³ Representatives of the international society, too, had been drawing attention to the possible corruption cases and undue interferences in the general court system.¹³⁴ The government's initiative concerning the creation of specialised commercial and tax chambers can be assessed precisely as the steps taken in response to this criticism.

In parallel with the work on and discussions of the creation of commercial and tax chambers, the High Council of Justice, without properly studying the issue or involving the business sector, created a narrow specialisation for commercial disputes within the common court system. The Council's decision can be assessed as a step in response, a counterweight to the government's idea to form a commercial and tax chambers.

¹³³ Including the high-profile business dispute concerning the case of Philip Morris. Information about this dispute is available at: <https://bit.ly/3gnoQ8F> [last accessed on 10.08.2020]

¹³⁴ "At the Fifth Meeting of Investors Council, High-Ranking Representatives of International Organisations, Including Janos Herman, Criticised the State of Affairs in Georgian Judiciary", <https://bit.ly/3gm98tR> [last accessed on 10.08.2020]

Government's Initiative – Commercial and Tax Chambers

In October 2016, the government identified the creation of a specialised chamber for consideration of commercial disputes as the main priority in the area of judicial reform. The plan was to present the legislative package to the Parliament of Georgia in the first half of 2017. The Ministry of Justice, which had initiated this proposal, stated that the aim of the reform was to increase the speed and improve the quality of justice administration with regard to the disputes of commercial nature, which would also considerably ease the case load for panels for civil cases. The ideas of creating a commercial and a tax chambers both within the common court system as well as outside of it, independently from the High Council of Justice, were also discussed.

In early 2017, the government became a target of now open criticism on the part of business associations which talked about alleged cases of corruption in the judiciary, undue interferences and favouritism.¹³⁵ Representatives of the international society, too, started talking increasingly frequently about alleged instances of corruption in the common court system by that time.

“...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, Investors Council meeting, 14 June 2017.¹³⁶

At the Fifth Meeting of the Investors Council¹³⁷ in June 2017, the issues of judicial reform were discussed among others.¹³⁸ At the meeting, the Investors Council agreed that the situation prevailing in the judicial system is unfavourable, which would have a negative influence on the investment reputation of the country. At the same meeting, it was voiced that the judicial reform was inevitable and necessary and that one of the ways of achieving it was the Justice Ministry's initiative on the creation of commercial and tax chambers.

It was stated during the meeting that a concept for commercial chambers was developed as a result of cooperation between the international consulting company Dechert and the Ministry of Justice. A technical assistance project was also developed, which included, along with a package of legislative amendments, a risk-benefit analysis and elaboration of structural/organisational, technical and financial plan. Several donors expressed interest in this initiative, including the UK Government and the European Bank for Reconstruction and Development (EBRD), who said they were ready to support the initiative.

The creation of commercial and tax chambers faced two main challenges. First and foremost, it had to be considered whether the new chambers, which would remain under the High Council of Justice, would be effective and efficient. Also, given the complex nature of commercial and tax disputes, the main challenge was the need for competent, scrupulous judges.

As we mentioned earlier, after the 2012 elections, the government has made several attempts at implementing fundamental judicial reforms. However, after the 2013 elections to the High Council of Justice¹³⁹, the political will to

¹³⁵ The statement by the president of the Business Association of Georgia on trust in courts is available at: <https://bit.ly/2XMJlzy> [last accessed on 10.08.2020]

¹³⁶ Protocol of the Fifth Meeting of the Investors Council, <https://bit.ly/2Al7Pwu> [last accessed on 10.08.2020]

¹³⁷ The Investors Council is an independent consultative body under the prime minister of Georgia responsible for ensuring there is a constructive dialogue and exchange of opinions between, on the one hand, the prime minister, ministers, heads of state agencies subordinated to them and, on the other hand, the private sector, in order to improve and stimulate sound investment climate in the country; the prime minister of Georgia is a permanent member and the chairperson of the Council.

¹³⁸ Protocol of the Fifth Meeting of the Investors Council, <https://bit.ly/2Al7Pwu> [last accessed on 10.08.2020]

¹³⁹ On 9 June 2013, by the decision of the majority of judges, appointments to the High Council of Justice were awarded to the judges who were known by the decisions they made on high-profile cases and who were criticised most frequently by the new government, including Levan Murusidze.

improve the judicial system gradually weakened¹⁴⁰. It could be said that [the government] caved in to the group of influential judges whom it had criticised in the past.¹⁴¹ A perception appeared among the public that, by creating commercial and tax chambers, the government tried to set up an agency independent from the influence of the High Council of Justice. The aspect of independence from the Council was underscored at the Investors Council meeting, too. This reform was considered to be a certain reasonable solution which would create a new institution, outside of the common court system, that would enjoy a high degree of trust. This model, however, also required corresponding constitutional amendments.

"The Commercial Courts are a significant move forward. [...] Ideally they should operate independently from the High Council of Justice." Michael Cowgill, President of the American Chamber of Commerce, Investors Council Meeting, 14 June 2017.

Justin McKenzie Smith, Ambassador of the United Kingdom to Georgia "Expressed British Government's willingness to support this initiative, provided that the Government of Georgia is committed to the reform, and there is more clarity on certain aspects of the concept, including the Chamber's relationship with the High Council of Justice." Investors Council Meeting, 14 June 2017.

As noted above, one of the key challenges to successful implementation of the reform was finding qualified, scrupulous judges. Minister of Justice Tea Tsulukiani as well as then Prime Minister Giorgi Kvirikashvili emphasised the importance of competence. They explained that the chamber judges would need to have in-depth knowledge in the area of commercial law.¹⁴²

Recent events have demonstrated to the public with particular clarity the problem of qualification of judges working in the common court system.¹⁴³ We are referring to the events that unfolded in 2018-2019 around the appointment of judges to the Supreme Court, which ended with the Parliament selecting 14 judicial candidates for the Supreme Court on 12 December 2019.¹⁴⁴ It was precisely due to the lack of qualification that the Ministry of Justice appealed to the EBRD during the process of implementation of the initiative as early as in the beginning of 2017. The EBRD would provide the government with the financial assistance to select new judges and organise training programmes for them.¹⁴⁵

Eventually, on the government's initiative, the concept of the commercial and tax chambers was defined as follows:

- The jurisdiction for the cases to be considered by commercial and tax chambers was to be defined by the law. The chambers were to consider not only sizeable business disputes but also ones with complex content.
- It was planned to establish special time frames for proceedings, which would ensure more rapid consideration of similar disputes.
- In order to avoid constitutional amendments, the chambers were to be created within the common court system. However, two instances were envisaged for them.

¹⁴⁰ Transparency International Georgia, *Corruption Risks in Georgian Judiciary*, 2018, pp. 14-26, <https://bit.ly/3kp65of> [last accessed on 10.08.2020]

¹⁴¹ *Ivanishvili: Girgvliani Was a Victim of the System, Not of a Concrete Judge*, 2015, <https://goo.gl/YLZKca> [last accessed on 10.08.2020]

¹⁴² Protocol of the Fifth Meeting of the Investors Council, <https://bit.ly/2Al7Pwu> [last accessed on 10.08.2020]

¹⁴³ For the chronology of events related to the appointment of Supreme Court judges, see link: <https://bit.ly/3faUeGO> [last accessed on 10.08.2020]

¹⁴⁴ ODIHR Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia, June – September 2019, <https://bit.ly/323tDYo> [last accessed on 10.08.2020]

¹⁴⁵ Protocol of the Fifth Meeting of the Investors Council, <https://bit.ly/2Al7Pwu> [last accessed on 10.08.2020]

- The criteria for selecting judges were to be strictly regulated. A judge within the composition would have to have corresponding education and work experience in a similar area.
- It was planned to introduce a two-tier system of selecting judges, which would serve as a guarantee of high qualification of judges in the chambers. Specifically, a corresponding commission consisting of the representatives of international organisations, donors and various actors would conduct a preliminary selection of candidates. Eventually, the High Council of Justice would make nominations from the pool of selected candidates.

“The goal of this initiative was to create a small-scale model of a well-functioning judicial system. [...] However, as I learned from the Ministry of Justice, the judiciary was opposed to this initiative. Perhaps, the Council felt threatened that the candidates would, so to say, come from outside and would not be the “firstborn” of the system.” **George Jugeli, Legal Expert, Secretariat of the Investors Council**

Overall, it should be noted that the government has still not officially given up on the decision to create the commercial and tax chambers. Once in a while, the government comes back to this initiative. For example, in June 2018, the prime ministerial candidate, Mamuka Bakhtadze, said when presenting the government plan that the quality and speed of justice administration with regard to commercial and tax disputes would increase sharply thanks to the creation of chambers which would consider disputes of this nature.¹⁴⁶ The initiative was also mentioned in the 2018 Report on the Implementation of the Government Action Plan for the Protection of Human Rights.¹⁴⁷ According to the statement made in 2018 by Eka Beselia, former head of the Legal Issues Committee, the component of sharing international experience was included into the reform plan, and British experts had already been involved in the process.¹⁴⁸

The Ministry of Justice explained that that the draft law would be presented to the Parliament by September 2018. However, the work on the draft law has not been completed, and the working process has been suspended. Correspondingly, the government’s plans with regard to the initiative of creating commercial and tax chambers are unknown.¹⁴⁹ It should also be noted that, in the process of conducting this research, Transparency International Georgia addressed the Ministry of Justice in order to learn the government’s plan concerning this initiative but never got a response.

“As far as I know, the implementation of such an initiative is no longer planned at this stage. I do not know what will happen after the elections but there is no plan to implement this initiative at this time.” **George Jugeli, Legal Expert, Secretariat of the Investors Council**

“As for my general opinion and attitude towards narrow specialisations, especially in the area of commercial disputes, I support this concept. I had many questions about the government’s concept, for example, I thought it inconceivable to integrate this into the existing model of common courts in a way that would ensure real independence of these chambers without constitutional amendments which were not envisaged by this model. Thus, as a lawyer, I would not have been able to support the model itself, even though I supported the concept.”

¹⁴⁶ For information about the government’s initiative, see link: <https://bit.ly/2XUKhHT>

¹⁴⁷ 2018 Report on the Implementation of the Government Action Plan for the Protection of Human Rights, p. 14, <https://bit.ly/2UzOCOp> [last accessed on 10.08.2020]

¹⁴⁸ According to Eka Beselia, *Chambers of Commerce Will Begin Working in 2018*, <https://bit.ly/3fMOxzl> [last accessed on 10.08.2020]

¹⁴⁹ Statement by the Ministry of Justice on the draft law on the Chamber of Commerce, <https://bit.ly/2XSTFM7> [last accessed on 10.08.2020]

“There was also one component which envisaged bringing in foreign judges. I do not know whether the final initiative provided for it but I disagree with this. I think that, while the issue of inflow of local qualified manpower into the system remains unresolved, it would not be right to select foreign judges just because they are foreigners. Being a foreigner in itself is not a guarantee of impartiality. The system creates conditions for transparency, not persons.” A practicing lawyer

High Council of Justice – Narrow Specialisations for Commercial Disputes

On 3 August 2017, Giorgi Mikautadze, secretary of the High Council of Georgia, held a press conference on the creation of a specialisation for commercial disputes in the Panel for Civil Cases in Tbilisi City Court. The Council secretary explained that a narrow specialisation for commercial disputes was being created, which would ensure that the speed and the quality of justice administration concerning such disputes would be improved, the quality of substantiation of decisions would become better, and the disputes would be considered as rapidly as possible. Ultimately, the existence of specialisation would improve business climate in the country, facilitate economic development and encourage investment.¹⁵⁰ It was said at the same press conference that, since hearing commercial disputes required corresponding qualification and knowledge, the judges in the newly created specialisation for commercial disputes would be appropriately trained.

“I would like to openly state that the High Council of Justice is ready to meet with the representatives of the business sector, hear their views about the problems that prevail in the judiciary, and respond in a timely manner in order to address them.” Giorgi Mikautadze, Press Conference held on 3 August 2017

By that time, the Council had been aware of the work and discussions about the creation of commercial and tax chambers.¹⁵¹ Despite this, it had hastily decided to create a narrow specialisation for commercial disputes within Tbilisi City Court without properly studying this issue and without the participation of the business sector.

In the district/city courts which have a particularly intensive case flow and more than two judges, narrower specialisation of judges can be introduced or specialised judicial panels can be created based on the decision of the High Council of Justice of Georgia.¹⁵² The following was defined as the jurisdiction of the narrow specialisation for commercial disputes created within the common court system: property litigation, corporate litigation, law of obligations, and bankruptcy cases exceeding GEL 500,000.

It is true that the Council’s decision is conceptually similar to what the Ministry of Justice had planned to implement. However, the government initiative envisaged the creation of tax and commercial chambers with more refined jurisdiction. Furthermore, the judicial composition would have been determined based on the criteria which would ensure quality administration of justice.

“The introduction of a narrow specialisation for commercial disputes has not solved systemic problems. Things are happening the same way: depending on the judge the case is assigned to, you might get quality justice administration or not, the same way it was before. Personally, I cannot see any improvement in this regard.” A practicing lawyer

¹⁵⁰ The Council’s statement on the creation of narrow specialisations for commercial disputes, 2017, <https://bit.ly/30moVob> [last accessed on 10.08.2020]

¹⁵¹ Revaz Nadaraia, Judicial Member of the Council, confirmed this information during an in-depth interview.

¹⁵² Organic Law of Georgia on Common Courts, Article 30, para. 2.

“It is obvious that the Council of Justice made a countermove when it started introducing specialisations within the judicial system. It was a move to achieve strategic goals, not real improvement. [...] Improving the quality of justice administration is not what the Council aims to do, this is a countermove against some sort of a potential reform which could, to a certain extent, have negative consequences for the influence of a specific group within the judiciary.” **A practicing lawyer**

“As concerns the government initiative, Tea Tsulukiani (minister of justice) and Giorgi Kvirikashvili (then prime minister) knew full well what kind of corruption there was in the judiciary, which is why they were not supportive of it as they were not involved in it. Correspondingly, they wanted to take the disputes which affected business environment and involved corruption risks away from Chinchaladze.¹⁵³ This is what they came up with. They could not send Chinchaladze home or arrest even a single judge. So, they found this solution. At first glance, the creation of specialised court is not a good method but there are two ways of tackling corruption in the judiciary: either you have to arrest the judges who are implicated in it or simply remove these cases from them. They chose the latter course. In reality, this was a struggle between keeping these cases in court and taking them to the new chamber.” **A practicing lawyer**

It should also be noted here that, prior to 30 April 2018, narrow specialisations for commercial disputes existed only in Tbilisi City Court. After 30 April, by the decision of the High Council of Justice, this specialisation was created in Tbilisi Court of Appeals as well. It is interesting that the Council’s decision to create the same specialisation in the Court of Appeals was not based on any specific research or statistical data. The Council did not thoroughly examine the effect of the existence of narrow specialisation for commercial disputes in Tbilisi City Court in 2016-2018. Specifically, it did not evaluate whether the quality and efficiency of justice administration with regard to business disputes had, in fact, improved and how rapidly such disputes were considered in the court of first instance after this specialisation had been created.

The Council still has not evaluated the efficiency of narrow specialisations for commercial disputes in general in the courts of only two instances. Namely, whether the existence of this specialisation influenced business environment in general and whether it made a difference to business representatives in terms of the time frames of considering their disputes.

“The judiciary did not examine, did not evaluate whether the creation of this specialisation had an effect, there is no such evaluation. The only thing I know from the other side – as information coming from business representatives who had serious disputes in the court and whose participation in the proceedings ended very unsuccessfully. [...] [Judging by the information] I received proactively and from various communications that I have had, business has a very negative opinion about the court in this category.” **Nazi Janezashvili, Non-Judicial Member of the High Council of Justice**

During an in-depth interview, Revaz Nadaraia, judicial member of the Council, expressed a position different from those of the lawyers, a non-judicial member of the Council and a representative of the Investors Council. He gave a positive assessment to the existence of a narrow specialisation for business disputes:

“The problem of protraction of cases has not been fully eliminated but the existence of this specialisation has significantly changed the prevailing situation and has considerably speeded up the consideration of cases. The first

¹⁵³ Mikheil Chinchaladze is the chairperson of Tbilisi Court of Appeals and one of the leaders of the so-called clan in the judiciary. See detailed information at: <https://bit.ly/3kZlhZn> [last accessed on 10.08.2020]

instance is effectively fully oriented to consider disputes in this category and hearings are scheduled and held as speedily as possible, including appeals. This is not my subjective attitude, this is the way it is according to the general opinion, too. This has not taken us to the level of hearing a case in three instances within three months but this could not happen anyway due to the complexity of the cases.” **Revaz Nadaraia, Judge of Tbilisi Court of Appeals, Member of the High Council of Justice**

Standards of Appointing Judges to Narrow Specialisation for Commercial Disputes

There is no law regulating a formal procedure and stages of assigning judges to narrow specialisations. Judges in a narrow specialization are appointed by the unilateral decision of the court chairperson. Such power of the court chairpersons in the narrow specialisations for commercial disputes is alarming and problematic as there is a greater probability of state, business or private interests being involved in this area.

According to the government initiative, corresponding education and/or experience in the given area was to be the main criterion for appointing judges to the commercial and tax chambers. At present, there is no procedure regulated by a normative act concerning the criteria for assigning judges to narrow specialisations. In practice, judges are assigned to concrete narrow specialisations based on their wishes. Moreover, their qualification and experience in a concrete area of the law are not evaluated in the process. Revaz Nadaraia, member of the Council and judge considering commercial disputes in Tbilisi Court of Appeals, said during an in-depth interview that the judges' qualification and work experience in this area are taken into account when they are appointed to this specialisation. However, Revaz Nadaraia himself was a judge hearing criminal cases for years and, since 2018, when the narrow specialisation for commercial disputes was created in the Court of Appeals, he has been working in this specialisation in the Chamber for Civil Cases. During an in-depth interview with him, Nadaraia explained his assignment to this specialisation by the condition of his health. He said that working in the criminal law category was particularly stressful for him, so, on his own request, the court chairperson appointed him to the category of civil cases.

“It is a fact that I have not heard any questions concerning this issue (qualification of judges is implied). Perhaps, there are such questions but I have not heard them. I think that this issue is not topical today. [...] Everything is considered before assignment to this specialisation, the wishes of a judge and all components (the need for special knowledge and experience in the area of commercial disputes is implied).” **Revaz Nadaraia, Judge of Tbilisi Court of Appeals, Member of the High Council of Justice**

“Even the Council member judges are part of this specialisation in the [Court of] Appeals; also, in the court of first instance, there are such judges in this composition that I cannot understand the principle based on which these persons were selected for this specialisation. Neither can I understand how do we achieve that these people are free from the influence of the Council. [...] If there was an independent body, completely removed from this system, which would make decisions concerning the appointment/dismissal of judges, I think that it would not be inexpedient in this situation. The Council would lose this lever. The current state of affairs and the Council's work today make me think so.” **A practicing lawyer**

When the narrow specialisation for commercial disputes was launched in Tbilisi City Court, it was staffed with four judges.¹⁵⁴ The rule and criteria of the initial staffing are unclear and vague; the court chairperson's decisions to change the composition of a specialisation also remain unsubstantiated.

It is with similar procedural shortcomings that the judges are appointed to the narrow specialisation for commercial disputes in Tbilisi Court of Appeals. There are eight judges in the specialisation at the moment: Amiran Dzabunidze, Revaz Nadaraia, Merab Lomidze, Gogita Totosashvili, Gela Kiria, Genadi Makaridze and Shorena Tsikaridze. It should be noted that the composition of the specialisation has changed six times since 2018, including the change of 15 July 2019 when Tea Sokhashvili-Nikolaishvili was replaced in the specialisation by Levan Mikaberidze.¹⁵⁵ Mikaberidze was appointed to the Court of Appeals by the decision of the High Council of Justice without competition.¹⁵⁶ In addition, he was a member of the narrow specialisation for commercial disputes in Tbilisi City Court. Despite the fact that Tea Sokhashvili-Nikolaishvili remains a judge in Tbilisi Court of Appeals, it is unclear why she was replaced and based on what criteria. Otar Sichinava, incumbent judge of Tbilisi Court of Appeals, was also removed from this composition on 18 September 2019. He was working in the narrow specialisation for commercial disputes since the day of its creation. Based on the chairperson's decision, Sichinava was replaced in the team by Gela Kiria and Genadi Makaridze.

Goal of Efficient and Quality Justice Administration of Narrow Specialisation for Commercial Disputes

The criticism of the process of considering business disputes expressed by the representatives of the Business Association was directed at the qualification of judges as well as the undue interference in the process of case consideration.¹⁵⁷ Correspondingly, the issue of qualifications of the judges was emphasised many times and as early as the government initiative on the creation of commercial chambers was voiced.

*"As a result of the creation of the narrow specialisation for commercial disputes, the judges will ensure the improvement of the speed and quality of justice administration concerning such cases, decisions will be better substantiated, and disputes will be considered as rapidly as possible. This process will ultimately facilitate the improvement of the business environment in the country, enhance economic development and investments." **Press conference on the issue of creating a specialisation for commercial disputes on the Panel for Civil Cases in Tbilisi City Court, 3 August 2017***

The publicly declared goal of the Council when creating the narrow specialisation for commercial disputes was to improve the quality of justice and enhance the level of substantiation of decisions. However, the qualification of the selected judges and the decisions made do not support this [claim].¹⁵⁸ The qualifications of judges are not checked at any stage of their appointment to narrow specialisations. The court chairperson's orders are merely templates listing who is to be appointed to the judicial composition of a narrow specialisation for commercial disputes without providing any substantiation. As a result, the determination of the judicial composition of a narrow specialisation based on a personal decision of the court chairperson without any criteria or substantiation involves real risks of affecting the process of case distribution and the eventual outcome of disputes.

¹⁵⁴ Tamar Burjanadze, Levan Mikaberidze, Lasha Kochiashvili and Soso Ghurtskaia.

¹⁵⁵ Currently, Levan Mikaberidze is a judge in the Georgian Supreme Court and a member of the Disciplinary Chamber. For detailed information, see: <https://bit.ly/3izcqwm> [last accessed on 10.08.2020]

¹⁵⁶ Law of Georgia on Common Courts, Article 37.

¹⁵⁷ The statement by the president of the Business Association of Georgia on trust in courts is available at: <https://bit.ly/2XMJlzy> [last accessed on 10.08.2020]

¹⁵⁸ See Annex for detailed information about the judges.

At the press conference held on 3 August 2017, where the Council announced the creation of the specialisation to the public, it was said that consideration of complicated commercial disputes required corresponding qualification and knowledge which is why the judges in the newly created specialisation for commercial disputes would receive appropriate training. However, the qualification of the judges who have been assigned to the specialisation since its creation in this concrete area of the law raises questions. For example, there are instances when a judge appointed to the composition is a specialist of the criminal law, not even of the civil law.¹⁵⁹

“Honest judges do not want to be assigned to big-money chambers because they want to avoid conflict with Chinchaladze and other influential judges as they will probably be unable to always fulfil certain tasks for them. This is why the judges who are assigned to this specialisation are the ones close to the judicial clan and can fulfil these tasks. Unfortunately, this kind of judges are not particularly qualified, but there is always one judge who will write up the decision. For example, Otar Sichinava recused himself from one of my cases, he simply said he could not consider it. [...] To be honest, I cannot see any improvement in the quality, on the contrary, as I deal precisely with disputes in this specialisation, [I can say] that less qualified judges have been assigned to this specialisation.” **A practicing lawyer**

“I definitely cannot say what is happening inside, I do not know, but from the outside the impression I have for sure is that it is a tasty morsel offered to the judges who have certain ‘merits’.” **A practicing lawyer**

Rapid Justice Administration Goal of Narrow Specialisation for Commercial Disputes

According to the High Council of Justice, an important goal of creating the narrow specialisation for commercial disputes was to ensure rapid administration of justice for business disputes. Within the framework of this research, the organisation requested from Tbilisi City Court and Tbilisi Court of Appeals the information about delays in commercial disputes to be considered within the narrow specialisation. ***The letter from Tbilisi City Court dated 10 July 2020 stated that they did not process this kind of statistics.¹⁶⁰ This circumstance has once again made us think that it is unclear what information the High Council of Justice relied on in its decision to create a narrow specialisation for commercial disputes in Tbilisi Court of Appeals in 2018 using an example of Tbilisi City Court.***

As for Tbilisi Court of Appeals, in a letter dated 11 August 2020, we received a list of cases set for hearing and completed since 2017, with the indication of corresponding dates.¹⁶¹ Based on the information provided, we can say that it takes, on average, up to one year to complete a case in this specialisation at the stage of appeals alone. In addition, based on the information we received, we can say that, in a number of cases, the appeal lawsuits that began in 2018 are still in progress and have not been completed. It should also be noted here that there is no narrow specialisation for commercial disputes in the Supreme Court of Georgia. Correspondingly, this kind of cases have no priority over other cases and they are considered in the ordinary course of business.

Also, as we know, as a result of the legislative amendments passed in 2017¹⁶², the institution of Independent Inspector was introduced in the common court system. The Inspector was authorised to institute disciplinary

¹⁵⁹ See Annex for biographies of judges in the judicial composition.

¹⁶⁰ Tbilisi City Court Letter N3-0460/3758754, dated 10 July 2020. Available at <https://bit.ly/2VSYJmF>

¹⁶¹ Tbilisi Court of Appeals Letter N2/8906, dated 11 August 2020. Available at <https://bit.ly/3mVMrAW>

¹⁶² Law of Georgia on Disciplinary Responsibility and Disciplinary Case Management Concerning Judges of the Common Courts of Georgia; as a result of amendments adopted on 20 April 2018, the Law of Georgia on Disciplinary Responsibility and Disciplinary Case Management Concerning Judges of the Common Courts of Georgia was declared invalid and Chapter XIII¹ regulating the issues of disciplinary case management was added to the Organic Law of Georgia on Common Courts.

proceedings against a judge and conduct a preliminary check/investigation of a disciplinary case independently from the Council. The Office of the Independent Inspector, as part of its working process, publishes statistical information about the applications/complaints received by the office in the course of a year. Based on this information, we can say that 55 percent of cases in 2017-2019 were in the category of the civil law.¹⁶³ In addition, according to the statistical report for the first quarter of 2020 prepared by the Office of the Inspector, 40 out of 60 complaints concerned delays.¹⁶⁴

Among representatives of professional circles, rapid administration of justice for business disputes is still perceived to be a problem. Furthermore, the judiciary has not yet studied the concrete statistics and reasons for delays in common courts.

*“As concerns the speed of hearing the disputes, if you look at the statistics, these disputes are being considered more rapidly because [these judges] are assigned six times fewer cases than other judges. However, in the Supreme Court, these cases have no priority at all. (In the respondent’s opinion, these disputes should not have any priority in the court of higher instance). Ultimately, the disputes are considered more quickly in the lower instances but, because these cases are protracted in the Supreme Court, the difference in the duration is minuscule. It would be naïve to expect a court case to be completed within a year in the current conditions. Simply, while other disputes may take four years, this kind of disputes may take two years. This time is nevertheless bruising for business. This is why these time frames are not acceptable for business either.” **A practicing lawyer***

*“To be frank, I do not have any statistics about this but, since the creation of these chambers (the narrow specialisation created by the High Council of Justice is implied), business does not think that this has addressed the prevailing problems. [...] As far as I know, the situation is the same, there has been no improvement of any sort – naturally, this could not have been concealed. One thing I can confirm is that, in the opinion of businessmen and investors, if anyone is thinking seriously about the investment climate, without addressing the problem of the judiciary, would not bring optimal results [...] There is no doubt that there are problems in the judicial system.” **George Jugeli, Legal Expert, Secretariat of the Investors Council***

Interim Conclusion

Given the existence of a narrow specialisation for commercial disputes in the common court system, the following merits a positive assessment:

- Considering the complexity of business disputes, specialisation will help judges, as a result of considering similar cases multiple times, to better analyse the realities of the cases presented to them, which is important in the conditions of a constantly rising number of cases;

The following merits a negative assessment:

¹⁶³ It should be noted that, as a rule, the issue of disciplinary responsibility of a judge is not raised because of this violation. However, on the other hand, there are real grounds to hold any judge responsible. From this point of view, the problem of protraction of case hearings directly affects independence of courts.

¹⁶⁴ Annual statistical reports by the Independent Inspector are available at the following link: <https://bit.ly/3iDr99z> [last accessed on 10.08.2020]

- The Council’s decision to create narrow specialisations for commercial disputes only in Tbilisi City Court and Tbilisi Court of Appeals is unsubstantiated;
- Defining the judicial composition of narrow specialisations by a personal decision of the court chairperson involves real risks of the chairperson influencing the process of electronic distribution of cases and the final outcomes of litigations;
- There are no concrete criteria for selecting judges, which makes it unclear what the court chairperson relies on in the process of defining the judicial composition;
- The qualification of the majority of judges assigned to the specialisation raises questions, which ultimately makes it impossible to provide for quality administration of justice;
- Given the complexity of business disputes, the lack of qualification among judges ultimately hampers rapid administration of justice;
- Commercial litigation is given no priority in the Supreme Court; commercial disputes are considered in accordance with standard procedure, which ultimately accounts for a relatively small difference in terms of the overall timeframes.

The creation of chambers for commercial disputes has been caused by the diversity of the norms of international and European law, globalisation and increased competition between judiciary systems against this background. The developed countries are trying to establish acceptable and efficient judicial services for resolving disputes between parties. This, in turn, contributes to the improvement of the economic and investment environment of a country.

Unlike the global trend, the creation of narrow specialisations for commercial disputes by the High Council of Justice was a response to the government to counterweight the idea of establishing an independent commercial chamber. It can be said that the Council’s goal was not the existence of rapid and quality administration of justice. It should also be noted that the government initiative (concerning the formation of the commercial and tax chambers), too, could have caused positive changes, creating a stimulus for improving a concrete area of justice. However, this would not have ensured a resolution of fundamental institutional and systemic problems; rather, it was aimed at only partially addressing the problem. This kind of an approach clearly demonstrates that precisely the government policy is the source of the crisis in which the judicial system has been operating to this day.

No research has been done concerning the need and necessity for the creation by the Council of the narrow specialisations for commercial disputes only in Tbilisi City Court and Tbilisi Court of Appeals. The current rule whereby the judicial composition of specialisations is determined personally by the court chairperson is also problematic and involves risks of influencing the final outcomes of disputes. Correspondingly, it is our opinion that narrow specialisations for commercial disputes cannot ensure rapid and quality administration of justice. It can be said that this decision by the High Council of Justice has failed to address the problems voiced by business associations since as early as 2015.¹⁶⁵

“...Specialisation can only be justified if it promotes the administration of justice, i.e. if it proves preferable in order to ensure the quality of both the proceedings and the judicial decisions.” CCJE Opinion No 15 (2012), Paragraph 38

¹⁶⁵ See Transparency International Georgia, *Corruption Risks in Georgian Judiciary*, 2018. The study assessing the risks of corruption in the common court system of Georgia was prepared in Georgia for the first time and its findings reflect the situation as of April 2018, <https://bit.ly/2OPOJ5b> [last accessed on 10.08.2020]

Conclusion

Specialist judges and specialised courts is a growing trend dictated by an increasing complexity of the law and public demand for efficient justice. **A well-organised form of specialisation can become a basis for a certain improvement of efficiency of justice, but it is not a unique means of addressing problems that prevail in the judiciary. The practice of groundless delays of proceedings, weak management of case distribution, corruption, inadequate remuneration, absence of physical infrastructure, poor qualification of the judicial staff are all considered to be the causes of inefficient justice, and it is impossible to address them simply by introducing specialisations.**¹⁶⁶

Introducing specialisation in one area of the law can be the means to assess how a concrete form of specialisation affects the quality of justice. Unless negative and positive outcomes of specialisation are properly analysed, introduction of specialisations would only be a formality. At first glance, introducing specialisations in response to the criticism of ineffective justice is a quick and easy solution to the problem, but the goal in this case is carrying out superficial rather than real changes in response to the criticism.

Specialisation is justified only if its goal is to facilitate the administration of justice, including if specialisation would provide for higher quality justice and decisions would be better substantiated.¹⁶⁷ “Universal” judges should be given a dominant role in considering court cases while specialist judges and specialised courts should be introduced only based on need – the complexity or specifics of the law or facts.¹⁶⁸

The creation of specialised courts, chambers or panels must be strictly regulated. It must be analysed which areas of the law need specialisation, which model of specialisation is valid, and the models of assignment of judges and improvement of their qualifications must be defined. An excessively narrow specialisation could cause estrangement from other areas of the law and undue familiarity with the participants of the proceedings. This kind of courts could become subject of particular interest which creates a danger of them falling under undue influence. Furthermore, this kind of courts are perceived by the public as an institution promoting the interests of a concrete group.

Increased mobility and rotation are a way to eliminate the shortcomings that are typical for specialisations. A judge, in the course of his or her career, must be able to change courts or specialisations, move from considering disputes within narrow specialisations to general specialisation disputes and vice versa.¹⁶⁹ However, it should also be considered that frequent mobility must not encroach on the principles of timely hearings, impartiality and irremovability of judges.¹⁷⁰

¹⁶⁶ Dory Reiling, *Court Specialization or Special Courts? A Toolkit for Development*, Justice Reform Practice Group (LEGJR), World Bank. <https://bit.ly/3jtSc6G> [last accessed on 10.08.2020]

¹⁶⁷ Consultative Council of European Judges (CCJE), *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges*, 13 November 2012, para. 38.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*, para. 36.

¹⁷⁰ Consultative Council of European Judges (CCJE), *Opinion (2001) No. 1 of the Consultative Council of European Judges on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges*, 23 November 2001, paras. 57-60.

Annex

Judges appointed to narrow specialisation for commercial disputes

The Opinion of the Consultative Council of European Judges (CCJE) on specialisation of Judges states: “Professional judges may become specialist judges by several means. It may be by means of experience gained either as a specialist lawyer before appointment as a judge or as a result of experience in specialist work following the appointment as a judge. Alternatively, the specialist judge may have received specific training in a specialist area of the law or in a non-legal area and then been appointed to a specialist court or deal with specialist cases in a general court.”¹⁷¹

Since the establishment of the Commercial Chamber, its composition in both Tbilisi City Court and Tbilisi Court of Appeals have changed several times. As mentioned above, the change of the composition depends on a personal decision of the court chairperson. Correspondingly, it is important to analyse the criteria for the selection of judges for narrow specialisations and whether their qualification meets international standards, as indicated in the CCJE Opinion above. It is also important to evaluate the qualification of these judges, which is a significant component of rapid and quality justice.

** Information on the composition of the narrow specialization for commercial litigation covers the period 2017 - 2020.*¹⁷²



Iveri Abashidze

Judge of Tbilisi City Court for three-year trial period.

2000 – graduated from the Law Faculty of Ivane Javakhishvili Batumi Institute of Law, specialising in jurisprudence;

2008 – successfully passed bar examination, specialising in civil law;

2010 – took a course for court managers in LEPL High School of Justice and passed the tests envisaged by the programme;

2011 – visited the United States (Washington [DC], Boston) within the framework of the Open World programme, attending seminars in management skills;

2012 – successfully passed judgeship qualification exams, specialising in civil and administrative law;

2016 – visited the Court of Cassation of France in Paris during a study visit organised for officials of common courts of Georgia;

21 November 2016 – 21 May 2017 – student of the High School of Justice;

December 2016 – visited Hamburg, Germany as a participant of a study visit organised for students of the High School of Justice;

April 2017 – visited Strasbourg, France as a participant of a study visit organised for students of the High School of Justice.

Work Experience:

1999 – 2000 – inspector in Shuakhevi District Tax Inspectorate;

2004 – 2005 – guard in Khelvachauri District Court;

2005 – 2009 – judicial assistant in Khelvachauri District Court;

2009 – 2010 – chief of staff in Khelvachauri District Court, head of the Department for Human Resources and Organisational Issues;

¹⁷¹ Consultative Council of European Judges (CCJE), *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialization of Judges*, 13 November 2012, para. 44.

¹⁷² Information provided by the Tbilisi City and Tbilisi Appeals Courts on the composition of the narrow specialization for commercial dispute resolution; Available: <https://bit.ly/36ZV3KB>, <https://bit.ly/3qF3idy>

1 October 2010 – appointed a manager of Khelvachauri District Court;
2011 – 2018 – manager of Batumi City Court, head of the Department of Human Resources and Organisational Issues;
Since 18 January 2018 – appointed as a judge to the Panel for Civil Cases in Tbilisi City Court for a period of three years.

According to the biography posted on the website of Tbilisi City Court, between 2009 and the judicial appointment, Iveri Abashidze's work experience was linked to managerial positions. Correspondingly, prior to his appointment to the narrow specialisation for commercial disputes, Iveri Abashidze had no work experience of any kind in this area; in addition, his biography does not state that he had participated in any professional training in this area of the law before being assigned to the narrow specialisation. No high-profile cases considered by him could be identified.



Tamar Burjanadze

Judge of Tbilisi City Court appointed for an indefinite period.

1998 – graduated from the Law Faculty of Ivane Javakhishvili Tbilisi State University;
2007 – passed a judicial qualification examination, specialising in civil and administrative law;
2007 – 2009 – studied in the High School of Justice of Georgia.

Work Experience:

1999 – 1999 – session secretary at Tbilisi District Court;
1999 – 2007 – various positions in the Constitutional Court of Georgia;
2009 – 2016 – served as a judge in various city courts;
Since October 2017 – appointed for an indefinite term, until reaching the age determined by the law.

In 2019, Tamar Burjanadze was a judicial candidate for the Supreme Court of Georgia who made it to the 50-strong list to be presented to the Parliament.¹⁷³ Eventually, the High Council of Justice did not present her candidacy to the Parliament. The biography of Tamar Burjanadze as a candidate for the Supreme Court judgeship is public and available to any interested person. Correspondingly, according to the application she submitted, since 2015, before she had been appointed to the narrow specialisation for commercial disputes, Burjanadze participated in many seminars, courses and trainings in corporate/enterprise as well as bankruptcy law.¹⁷⁴ No high-profile cases considered by her could be identified.

¹⁷³ See article 50 candidates selected from 137 for Supreme Court judgeship, available at: <https://bit.ly/32oY1NK>;

¹⁷⁴ See attached file: Tamar Burjanadze's certificates.



Gocha Didava

Judge of Tbilisi City Court appointed for an indefinite period.

2000 – graduated with distinction from the Faculty of Law of Ivane Javakhishvili Tbilisi State University, specialising in jurisprudence; received qualification of a lawyer;

2013 – passed a judicial qualification examination, specialising in civil and administrative law;

2014 – graduated from the High School of Justice.

Work Experience:

1994 – 1997 – lead specialist in the Committee for Human Rights and International Relations of Georgia;

1998 – 1999 – chief of the Minister’s Bureau at the Ministry of Justice of Georgia;

1999 – 2016 – head of the General Department of the Supreme Court of Georgia;

2002 – 2004 – chief of staff of the Supreme Court of Georgia;

2016 – 2019 – judge on the Panel for Civil Cases in Kutaisi City Court;

Since 9 July 2019 – judge on the Panel for Civil Cases in Tbilisi City Court.

According to the biography published on the website of Tbilisi City Court, before his appointment to the narrow specialisation for commercial disputes, Judge Gocha Didava did not have any work experience in this area. Also, his biography does not confirm that he had participated in any professional training in this area of the law prior to his assignment to this narrow specialisation. No high-profile cases considered by him could be identified.



Zaal Maruashvili

Judge of Tbilisi City Court appointed for an indefinite period.

1996 – graduated from the Faculty of Law of Ivane Javakhishvili Tbilisi State University.

Work Experience:

Since 1 June 1995 – advisor to the head of administration of Terjola District in legal issues;

1999 – 2001 – judicial assistant in Terjola District Court, then in Poti City Court;

Delivered lectures on property and corporate law at the Poti branch of Ivane Javakhishvili Tbilisi State University;

2002 – 2006 – judge on the Panel for Civil Cases in Kutaisi District Court;

At various times, worked as a lawyer at Intertransservice – Maritime Trade JSC, Shota and Company LLC, JE-IS LLC;

Since May 2017 – judge on the Panel for Civil Cases in Tbilisi City Court.

In 2019, Zaal Maruashvili was a judicial candidate for the Supreme Court of Georgia and made it to the 50-strong list to be presented to the Parliament, too.¹⁷⁵ Eventually, the High Council of Justice did not present his candidacy to the Parliament. Zaal Maruashvili’s biography, on account of his being a candidate for the Supreme Court judgeship, is public and available to any interested person. Correspondingly, according to the application he had submitted, in 2017, Maruashvili participated in the training in corporate/enterprise

¹⁷⁵ See 50 candidates selected from 137 for Supreme Court judgeship, <https://bit.ly/32oY1NK> [last accessed on 10.08.2020]

law.¹⁷⁶ In addition, his work experience is linked to enterprise law. No high-profile cases considered by him could be identified.



Soso Ghurtskaia

Judge of Tbilisi City Court appointed for an indefinite period.

2000 – graduated from the Faculty of Law of Ivane Javakhishvili Tbilisi State University.

Work Experience:

2001 – 2002 – advisor at the Control and Audit Directorate of the Internal Control Service at the Ministry of Justice of Georgia;

2002 – 2004 – lawyer at Veko, LLC, Tbilisi-based international law firm;

2004 – lawyer at Vega, LLC, international law agency;

2004 – 2006 – aide to a Council Member at the High Council of Justice of Georgia;

2006 – 2007 – consultant at the Directorate for Disciplinary Proceedings on Civil Law Cases at the Department of Judicial Ethics of the High Council of Justice of Georgia;

2007 – 2008 – appointed as a judge first to Mtskheta District Court, then to Tsalenjikha District Court;

Since 2009 – served as a judge in Tbilisi City Court;

Since 2011 – appointed as a judge in Tbilisi City Court.

In 2019, Soso Ghurtskaia was a judicial candidate for the Supreme Court of Georgia and made it to the 50-strong list to be presented to the Parliament, too.¹⁷⁷ Eventually, the High Council of Justice did not present his candidacy to the Parliament. The biography of Soso Ghurtskaia, on account of his being a candidate for the Supreme Court judgeship, is public and available to any interested person. Correspondingly, according to the application he had submitted, Soso Ghurtskaia never participated in any training, seminar or course in this area of the law either before or after his appointment to the specialisation.¹⁷⁸ In addition, prior to becoming part of the judicial system, he had no experience of working in the area of corporate/enterprise law. It should also be noted here that Ghurtskaia has been in the composition of the specialisation for commercial disputes since the day of its creation. No high-profile cases considered by him could be identified.



Maia Kutkhashvili

Judge of Tbilisi City Court appointed for an indefinite period.

1996 – from the Faculty of Law of Ivane Javakhishvili Tbilisi State University;

2005 – passed a judicial qualification examination, specialising in criminal law;

2013 – passed a judicial qualification examination, specialising in criminal law

Work Experience:

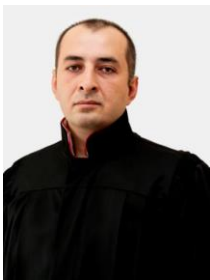
¹⁷⁶ See attached file: Zaal Maruashvili's application.

¹⁷⁷ See 50 candidates selected from 137 for Supreme Court judgeship, <https://bit.ly/32oY1NK> [last accessed on 10.08.2020]

¹⁷⁸ See attached file: Soso Ghurtskaia's application.

1999 – 2003 – judicial assistant on the Panel for Civil, Corporate and Bankruptcy Cases in Tbilisi District Court;
2003 – 2005 – judicial assistant on the Panel for Criminal Cases in Tbilisi District Court;
2005 – 2014 – at various times, judicial assistant in the Chamber for Criminal Cases and Investigative Panel in Tbilisi Court of Appeals;
2015 – 2016 – judicial assistant on the Panel for Criminal Cases in Tbilisi City Court;
Since January 2016 – judge in Gori District Court;
Since 2 December 2019 – judge on the Panel for Civil Cases in Tbilisi City Court.

Maia Kutkhashvili's work experience is mostly linked to the area of criminal law. However, in 2016, she was appointed to the Panel for Civil Cases in Gori District Court. Since December 2019, she has been assigned to the Panel for Civil Cases in Tbilisi City Court. Correspondingly, prior to her appointment to the narrow specialisation for commercial disputes, Judge Maia Kutkhashvili did not have any work experience in this area. In addition, her biography does not confirm that she had had any professional training in the area of corporate/enterprise/insolvency law before she was assigned to the narrow specialisation. No high-profile cases considered by her could be identified.



[Bidzina Sturua](#)

Judge of Mtskheta District Court and its chairperson.

2002 – graduated from the Faculty of Law of Akaki Tsereteli Kutaisi State University;
2003 – 2005 – postgraduate programme at Tinatin Tsereteli State and Law Institute, Georgian Academy of Sciences;
2005 – received a Master's Degree (LLM) from the Faculty of Law at the University of Münster (Westfälische Wilhelms-Universität Münster), Germany;

Since 2015 – doctoral student at Ivane Javakhishvili Tbilisi State University;

21 June – 20 August 2018 – conducted academic research at the Faculty of Law at Friedrich Schiller University Jena with the funding from the German Academic Exchange Programme (DAAD);

2001 – 2002 – with the support from the International Committee of the Red Cross, conducted a series of seminars “Obligation to comply with international humanitarian law during armed conflicts” for soldiers and officers of the Georgian Armed Forces;

2004 – participated in the conference Religious Tolerance in Contemporary Societies held in Berchum (Germany);

2004 – 2005 – fellow of the German Academic Exchange Programme (DAAD).

Work Experience:

2006 – 2010 – judicial assistant in the Chamber for Civil Cases in Kutaisi Court of Appeals;

2009 – passed a judicial qualification examination, specialising in civil and administrative law;

2006 – 2010 – associate professor at Kutaisi University of Law and Economics;

31 March – 13 April 2019 – internship at the administrative court of first and second instances in Berlin on invitation from the German Foundation for International Cooperation (IRZ-Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit);

2011 – appointed as a judge in Khelvachauri District Court;

Since 3 December 2012 – appointed as a judge to Ozurgeti District Court within his judicial term;

Since 3 December 2012 – mandated to carry out the duties of the chairperson in Ozurgeti District Court;

Since 13 March 2013 – appointed as the chairperson of Ozurgeti District Court;

Since 2 April 2018 – by decision No 1/167 of the High Council of Justice of Georgia, appointed as the chairperson of Ozurgeti District Court;

Since 18 September 2019 – dismissed from the post of a judge in Ozurgeti District Court and, within his judicial term, appointed as a judge to the Panel for Civil Cases in Tbilisi City Court;

Since 2 December 2019 – mandated to carry out the duties of the chairperson of the Panel for Civil Cases in Tbilisi City Court;

Since 26 December 2019 – appointed as a judge to the Panel of Administrative Cases in Mtskheta District Court and its chairperson.

Prior to his assignment to the narrow specialisation for commercial disputes, Judge Bidzina Sturua had no work experience in this area. Furthermore, his biography does not confirm that, before being appointed to the narrow specialisation, he had participated in any professional training in the corporate/enterprise/insolvency area of the law. No high-profile cases considered by him could be identified.



Amiran Dzabunidze

Judge of Tbilisi Court of Appeals appointed for an indefinite period.

1997 – graduated from the Faculty of Law and Economics of Tbilisi University of Business and Socio-Economic Management, specialising in law and management;

2011 – graduated from the High School of Justice.

Work Experience:

1994 – 1999 – lawyer at the Foundation for the Development of Small Business under the Ministry of Economy of Georgia;

2001 – 2002 – session secretary in Tbilisi District Court;

2003 – 2006 – lawyer at the law firm Mtatsminda Attorneys;

2006 – 2007 – lawyer at FINCA Georgia, affiliate of the foundation FINCA International;

2007 – 2009 – chief of staff at Mtskheta District Court;

2011 – 2013 – judge at Mtskheta District Court;

2013 – 2015 – judge and chairperson of Khelvachauri District Court;

Since December 2015 – judge in Tbilisi Court of Appeals;

2017 – 2019 – chairperson of the Disciplinary Panel of Common Court Judges.

In 2019, Amiran Dzabunidze was a judicial candidate for the Supreme Court of Georgia and made it to the 50-strong list to be presented to the Parliament, too.¹⁷⁹ Eventually, the High Council of Justice did not present his candidacy to the Parliament. As a judicial candidate for the Supreme Court, Amiran Dzabunidze's biography is public and available to any interested person. Correspondingly, according to the application he had submitted, he never participated in any training, seminar or course in this area of the law either before or after his appointment to the specialisation.¹⁸⁰ As for his work experience, it is linked to the area of enterprise law. It should also be noted here that Dzabunidze has been part of the composition of the specialisation for commercial disputes in Tbilisi Court of Appeals since 2018, that is, since the creation of this specialisation. No high-profile cases considered by him could be identified.

¹⁷⁹ See *50 candidates selected from 137 for Supreme Court judgeship*, <https://bit.ly/32oY1NK> [last accessed on 10.08.2020]

¹⁸⁰ See attached file: Amiran Dzabunidze's application.

It is also interesting that Tbilisi Court of Appeals Judge Amiran Dzabunidze participated in the competition three years prior to the end of his term in office. He applied to the vacancies in different specialisations, including the vacancy for a judgeship in the Magistrate Court. As Amiran Dzabunidze said during an interview, it was important for him to receive a re-appointment for an indefinite period and it did not matter much whether he would be a judge in a court of first instance or in a court of appeals. Eventually, by the Council's decision, he was appointed to the Investigative Panel in Tbilisi Court of Appeals. Several days later, by the Council's decision, Amiran Dzabunidze was transferred to the Chamber for Civil Cases again.¹⁸¹



Revaz Nadaraia

Judge of Tbilisi Court of Appeals appointed for an indefinite period, member of the High Council of Justice.

2001 – graduated from the History and Law Faculty of the Sokhumi branch of Tbilisi State University, specialising in jurisprudence;

2007 – 2009 – studied in the High School of Justice of Georgia;

Work Experience:

2002 – 2005 – lawyer at the Lawyers' Union XXI;

2005 – 2006 – session secretary for the Panel of Criminal Cases in Tbilisi City Court;

2006 – 2007 – judicial assistant for the Panel of Criminal Cases in Tbilisi City Court;

2009 – 2010 – judge in Chkhorotsku District Court and seconded to exercise judicial powers in Poti City Court;

2010 – 2016 – judge in Poti City Court;

2012 – 2016 – chairperson of Poti City Court;

Since February 2016 – judge in Tbilisi City Court;

March 2016 – appointed to the post of a chairperson of Panel of Investigative and Pre-Trial Session in Tbilisi City Court;

April 2017 – elected as a member of the High Council of Justice of Georgia by the Judicial Conference of Georgia;

Since 22 February 2018 – judge on the Chamber for Criminal Cases in Tbilisi Court of Appeals;¹⁸²

Since October 2018 – assigned to the Chamber of Civil Cases in Tbilisi Court of Appeals.¹⁸³

Revaz Nadaraia has been a member of the High Council of Justice since 8 April 2017. According to his biography, between 2005 and 2018, his work experience was linked to criminal law. He was also the chairperson of the Panel of Investigative and Pre-Trial Session in Tbilisi City Court. Since October 2018, he has been assigned to the Chamber for Civil Cases in Tbilisi Court of Appeals. Correspondingly, before being appointed to the narrow specialisation, Judge Revaz Nadaraia had no work experience in this area, and his biography does not confirm that he had participated in any professional training in the area of corporate/enterprise/insolvency law prior to being assigned to the narrow specialisation. No high-profile cases considered by him could be identified.

¹⁸¹ Transparency International Georgia, Monitoring Report of the High Council of Justice No 6, 2018, p.48.

¹⁸² High Council of Justice decision of 22 February 2018, <https://bit.ly/3ezl35P> [last accessed on 10.08.2020]

¹⁸³ High Council of Justice decision of 1 October 2018, <https://bit.ly/3fGP8Tw> [last accessed on 10.08.2020]



Merab Lomidze

Judge of Tbilisi Court of Appeals appointed for an indefinite period.

2000 – graduated with distinction from the Faculty of Law of Ivane Javakhishvili Tbilisi State University;

2003 – completed with distinction the post-graduate programme of the Faculty of Law of Ivane Javakhishvili Tbilisi State University (Department of Civil Law).

Work Experience:

2000 – 2002 – aide in legal issues to the MP elected from the single-seat district of Kareli;

2002 – 2003 – judicial assistant for the Chamber of Administrative Cases and Cases of Other Categories in the Supreme Court of Georgia;

2003 – 2007 – head of the secretariat of the Chamber of Administrative Cases and Cases of Other Categories in the same court;

June – November 2007 – aide to the chairperson of the Chamber of Administrative Cases and Cases of Other Categories in the Supreme Court of Georgia;

2007 – 2012 – judge in Tbilisi City Court;

2010 – 2012 – seconded to Tbilisi Court of Appeals;

Since 2012 – judge in Tbilisi Court of Appeals;

2012 – 2019 – judge in the Chamber for Administrative Cases in Tbilisi Court of Appeals;

Since June 2019 – exercises [judicial] powers in the Chamber for Civil Cases in Tbilisi Court of Appeals.

In 2019, Merab Lomidze was a judicial candidate for the Supreme Court of Georgia. Eventually, the High Council of Justice did not present his candidacy to the Parliament.¹⁸⁴ On account of his being a judicial candidate for the Supreme Court, his biography is public and available to any interested person. Correspondingly, according to the application he had submitted, his work in the common court system between 2002 and 2019 was linked to the area of administrative law. At various times, he was a member of the Chamber/Panel for Administrative Cases in Tbilisi City Court and Tbilisi Court of Appeals. In June 2019, he was assigned to the Chamber for Civil Cases and to the composition of the narrow specialisation for commercial disputes in Tbilisi Court of Appeals. Thus, prior to his appointment to the narrow specialisation, Merab Lomidze had no work experience in this area. Furthermore, his biography does not confirm that he had received any professional training in corporate/enterprise/insolvency law before being assigned to the narrow specialisation.¹⁸⁵ No high-profile cases considered by him could be identified. It should also be noted that, while working in the Supreme Court in 2002-2007, Merab Lomidze was an aide to Mikheil Chinchaladze.¹⁸⁶

¹⁸⁴ See *50 candidates selected from 137 for Supreme Court judgeship*, <https://bit.ly/32oY1NK> [last accessed on 10.08.2020]

¹⁸⁵ See attached file: Merab Lomidze's application.

¹⁸⁶ Mikheil Chinchaladze is considered one of the leaders of an influential group within the judiciary. See Transparency International Georgia blog *Dream Court Anatomy*, available at: <https://bit.ly/32BAZDm> [last accessed on 10.08.2020]



Gogita Totosashvili

Judge of Tbilisi Court of Appeals appointed for an indefinite period.

1998 – graduated with distinction from the Faculty of Law of Ivane Javakhishvili Tbilisi State University;

Passed the prosecutorial qualification examination and general bar test.

Work Experience:

1999 – 2001 – lawyer at Simartle, LLC;

2001 – 2003 - lawyer at the law firm Lawyers' Union XXI;

2003 – 2005 – lawyer at the Kaspi Bureau of the Georgian Bar Association;

2006 – consultant at the Department of Judicial Ethics and Disciplinary Proceedings in the High Council of Justice of Georgia;

2006 – 2007 – judge in Gori District Court;

2007 – 2012 – judge in Samtredia District Court;

2010 – 2012 – seconded to Telavi District Court to exercise judicial powers;

2012 – 2015 – judge in Telavi District Court;

2014 – 2015 – seconded to the Panel for Criminal Cases in Tbilisi City Court to exercise judicial powers;

2015 – 2016 – judge in Tbilisi City Court;

Since 2016 – judge in the Chamber for Civil Cases in Tbilisi Court of Appeals.

In 2019, Gogita Totosashvili was a judicial candidate for the Supreme Court of Georgia and made it to the 50-strong list to be presented to the Parliament, too.¹⁸⁷ Eventually, the High Council of Justice did not present his candidacy to the Parliament. As a judicial candidate for the Supreme Court, Gogita Totosashvili's biography is public and available to any interested person. Correspondingly, according to the application he had submitted, Totosashvili never participated in any training, seminar or course in this area of the law either before or after his appointment to the specialisation.¹⁸⁸ Before joining the judicial system, he had no experience working in the area of corporate/enterprise law. Moreover, for years, Totosashvili exercised the powers of a judge for criminal cases.

Gogita Totosashvili considered a case concerning a dispute between Procredit Bank and a citizen. The bank's lawyer was the wife of the judge, Tea Ghviniashvili, however, Gogita Totosashvili did not recuse himself and upheld the decision in the bank's favour.¹⁸⁹



Gela Kiria

Judge of Tbilisi Court of Appeals appointed for an indefinite period.

1993 – graduated from the Faculty of Law of Ivane Javakhishvili Tbilisi State University.

Work Experience:

1993 – 1998 – worked as intern-investigator, investigator, chief investigator and deputy military prosecutor at the Sokhumi Regional Military Prosecutor's Office;

¹⁸⁷ See *50 candidates selected from 137 for Supreme Court judgeship*, <https://bit.ly/32oY1NK> [last accessed on 10.08.2020]

¹⁸⁸ See attached file: Gogita Totosashvili's application.

¹⁸⁹ See investigative journalism piece by. Freedom Monitor at the following link: <https://bit.ly/20IjDMl> [last accessed on 10.08.2020]

1999 – 2005 – judge in the High Court of the Autonomous Republic of Abkhazia;
2005 – 2006 – judge in the High Court of Appeals of the Autonomous Republic of Abkhazia;
2006 – 2009 – judge in Gagra City Court and Gudauta District Court;
2009 – 2010 – judge in the District Court of Gali-Gulripshi and Ochamchire-Tkvarcheli;
2010 – 2012 – judge and chairperson of the Chamber for Administrative Cases in Kutaisi Court of Appeals;
2012 – 2015 – chairperson of Zestaponi District Court;
Since 2015 – judge in Tbilisi Court of Appeals;
Since October 2019 – appointed for an indefinite term, until reaching the age determined by the law.

In 2019, Gela Kiria was a judicial candidate for the Supreme Court of Georgia and made it to the 50-strong list to be presented to the Parliament, too.¹⁹⁰ Eventually, the High Council of Justice did not present his candidacy to the Parliament. As a judicial candidate for the Supreme Court, his biography is public and available to any interested person. Correspondingly, according to the application he had submitted, Gela Kiria was for years exercising the judicial powers in the area of administrative law.¹⁹¹ However, in 2016, he participated in a seminar on corporate and enterprise law. No high-profile cases have been identified.



Genadi Makaridze

Judge of Tbilisi Court of Appeals appointed for an indefinite period.

1998 – graduated from the Niko Muskhelishvili Kutaisi Technical University, specialising in the technology of processing of secondary raw materials;
2006 – graduated from the Faculty of Law of Kelbakiani Kutaisi University of Law and Economics.

Work Experience:

2004 – 2005 – guard at Terjola District Court;
2005 – 2007 – courier for the Panel for Civil Cases in Tbilisi City Court;
2007 – 2008 – court session secretary, then judicial assistant for the Panel for Civil Cases in Tbilisi City Court;
2008 – 2010 – head of the civil cases sector of the Chancellery Department of Tbilisi City Court;
2010 – 2011 – studied in the High School of Justice;
2012 – consultant at the Supreme Court of Georgia;
2012 – 2018 – judge in Kutaisi City Court;
2018 – 2019 – judge on the Panel for Civil Cases in Tbilisi City Court;
Since September 2019 - appointed as a judge in the Chamber for Civil Cases in Tbilisi Court of Appeals for an indefinite term, until reaching the age determined by the law.

Genadi Makaridze has been assigned to the narrow specialisation for commercial disputes since 2019. In 2019, Makaridze was a judicial candidate for the Supreme Court of Georgia and made it to the 50-strong list to be presented to the Parliament, too.¹⁹² Eventually, the High Council of Justice did not present his candidacy to the Parliament. As a judicial candidate for the Supreme Court, his biography is public and available to any interested person. Correspondingly, according to the application he had submitted,

¹⁹⁰ See *50 candidates selected from 137 for Supreme Court judgeship*, <https://bit.ly/32oY1NK> [last accessed on 10.08.2020]

¹⁹¹ See attached file: Gela Kiria's application.

¹⁹² See *50 candidates selected from 137 for Supreme Court judgeship* <https://bit.ly/32oY1NK> [last accessed on 10.08.2020]

Makaridze never participated in any seminars/courses in the area of corporate/enterprise/insolvency law either before or after his appointment to the narrow specialisation.¹⁹³ Furthermore, his work experience is not linked to this area of the law. No high-profile cases considered by him could be identified.



Lasha Kochiashvili

Judge of Tbilisi Court of Appeals appointed for an indefinite period.

1999 - graduated from the Faculty of Law of Ivane Javakhishvili Tbilisi State University

Work Experience:

1999 – 2005 – judicial assistant in Terjola District Court;

2005 – 2007 – judicial assistant in Tbilisi City Court;

2007 – appointed as a judge in Sachkhere District Court and seconded to exercise judicial powers in Zestaponi District Court and Kutaisi City Court;

2008 – 2019 – at various times, judge in Borjomi District Court, Kutaisi City Court, Tbilisi City Court;

Since December 2019 – judge in the Chamber for Civil Cases in Tbilisi Court of Appeals.

Lasha Kochiashvili was part of the composition of the narrow specialisation for commercial disputes first since the day of its creation Tbilisi City Court, then, after moving to the Court of Appeals, joined the same specialisation in December 2019.

In 2019-2020, he was a candidate for the Supreme Court twice. Ultimately, the Council did not present his candidacy to the Parliament. According to his biography, in 2007-2019, he participated in several trainings/seminars in the area of corporate/insolvency/bankruptcy law.¹⁹⁴

The name of Lasha Kochiashvili, judge and candidate for the Supreme Court judgeship, is linked to many high-profile cases:¹⁹⁵

- Lasha Kochiashvili's name is linked to the case of Rustavi Steel, namely, the company accused him of bringing it to the brink of shutting down. The unsubstantiated decisions that Lasha Kochiashvili made at the time generated suspicions of the court being biased;
- Lasha Kochiashvili was a judge in the case of Studia Maestro, LLC. Specifically, on 15 March 2016, precisely Lasha Kochiashvili made the decision on suspending the proceedings concerning the insolvency of Studia Maestro, LLC. The decision by the court of the first instance is linked to the changes in the management and editorial policy of Maestro;
- Kochiashvili considered the case of Aka, LLC: his decision, among other factors, raised suspicions of the court being biased;
- Kochiashvili is also considering the lawsuit of Nino Nizharadze, owner of 9 percent of shares in Rustavi2. One of the demands posed by Nizharadze was to terminate the powers of the general director of the TV

¹⁹³ See attached file: Genadi Makaridze's application.

¹⁹⁴ See attached file: Lasha Kochiashvili's application.

¹⁹⁵ See portfolio of Lasha Kochiashvili, judicial candidate for the Supreme Court of Georgia, prepared by Open Society Georgia Foundation, <https://bit.ly/2OEmshN> [last accessed on 10.08.2020]

company, Nika Gvaramia. Then management of Rustavi 2 considered this lawsuit a war waged by the government against the TV channel.



Shorena Tsikaridze

Judge of Tbilisi Court of Appeals appointed for an indefinite period.

2004 – graduated from the Faculty of Law of Ivane Javakhishvili Tbilisi State University.

Work Experience:

2005 – 2006 – internship at the Gldani-Nadzaladevi District Prosecutor’s Office in Tbilisi;

2006 – 2009 – prosecutor at the Gldani-Nadzaladevi District Prosecutor’s Office in Tbilisi;

2011 – 2016 – judge in Gori District Court;

2016 – 2019 – judge on the Panel for Civil Cases in Tbilisi City Court;

Since December 2019 – judge in the Chamber for Civil Cases in Tbilisi Court of Appeals.

Prior to her appointment to the narrow specialisation for commercial disputes, Judge Shorena Tsikaridze had no work experience in this area. Furthermore, her biography does not confirm that she had received any professional training in corporate/enterprise/insolvency law prior to her assignment to the narrow specialisation. Before her appointment to the Panel for Civil Cases, she was a judge considering criminal cases. No high-profile cases considered by her could be identified.



Otar Sichinava

Judge of Tbilisi Court of Appeals appointed for an indefinite period.

1989 – 1994 – studied at the Faculty of Law of Ivane Javakhishvili Tbilisi State University;

2001 – 2002 – studied at the Faculty of Law of the University of Paris within the framework of the Tempus Programme.

Work Experience:

1993 – 1996 – secretary at the Chancellery of Tbilisi Prosecutor’s Office;

1996 – 1998 – intern at the Saburtalo District Prosecutor’s Office in Tbilisi;

1999 – 2000 – lawyer at the Investment Centre of Georgia;

2000 – 2005 – assistant at the Department of Legal History of Ivane Javakhishvili Tbilisi State University;

February 2005 – October 2006 – member of the High Council of Justice;

October 2006 – elected a judge of the Constitutional Court of Georgia.

In 2017, the Government of Georgia selected Otar Sichinava for the elected judicial position in the Strasbourg Court.¹⁹⁶ Sichinava was the judge considering the case of Gigi Ugulava and the so-called “Cables Case” in the Constitutional Court. He became known to the public because the hearing scheduled at the Constitutional Court where a unified case of Gigi Ugulava and the cables was going to be considered was

¹⁹⁶ Eventually, the Assembly selected Lado Chanturia as the Georgian judge in the European Court of Human Rights, <https://bit.ly/3jpNUhx> [last accessed on 10.08.2020]

thwarted because the sufficient number of judges failed to gather. Among those who failed to arrive at the session was Otar Sichinava, who was in Tbilisi.¹⁹⁷

In 2017, after his term in the Constitutional Court had expired, Sichinava was appointed for an indefinite period to the Chamber for Civil Cases in Tbilisi Court of Appeals. He was in the composition of the narrow specialisation for commercial disputes since the day of its creation in the Court of Appeals.

Tea Sokhashvili-Nikolaishvili

Judge of Tbilisi Court of Appeals appointed for an indefinite period.



1996 – graduated from the Faculty of Law of Ivane Javakhishvili Tbilisi State University; Published a legal article “Non-commercial (Non-Entrepreneurial) Legal Persons in the New Civil Code” (*Human and Constitution* journal, No 3, 1998).

Work Experience:

1997 – 2006 – member of the Georgian Bar Association, lawyer in the area of civil and enterprise law;

1999 – 2006 – founding partner of the law firm Legal Cooperation – Status Quo, LLC;

2000 – 2004 – legal consultant of the Georgian Enterprise Support Project funded by the United States Agency for International Development (USAID);

2001 – 2004 – legal consultant of the micro credit programme of the Women and Business association funded by the Norwegian Refugee Council;

2003 – participated in the projects concerning customs law issues implemented by the Young Economists’ Association and Institute for Polling and Marketing;

2004 – participated in the programme of assistance to pre-schoolers of the representative office of the French association Caucasus Gardens;

2006 – 2010 – judge in Tbilisi City Court;

Since 2011 – judge in Tbilisi Court of Appeals;

Since October 2017 – appointed for an indefinite term, until reaching the age determined by the law.

Tea Sokhashvili-Nikolaishvili was working in the narrow specialisation for commercial disputes in Tbilisi Court of Appeals since its creation in 2018. However, in 2019, she was replaced by Levan Mikaberidze.

Despite the fact that her work experience before joining the common court system was entirely within the area of enterprise law, currently, by the decision of the chairperson, she is no longer part of the composition of this narrow specialisation. No high-profile cases considered by her could be identified.

¹⁹⁷ R2: Instead of Being Present in Batumi, Constitutional Court Judge is in Tbilisi, Walking His Dog, <https://bit.ly/39d9Ho7> [last accessed on 10.08.2020]



Levan Mikaberidze

Judge of the Supreme Court of Georgia appointed for an indefinite period, member of the Qualification Chamber.

2005 – graduated with distinction from the Faculty of Law of Ivane Javakhishvili Tbilisi State University, specialising in jurisprudence. Received the qualification of a lawyer.

2005 – graduated from the Faculty of Geography of Ivane Javakhishvili Tbilisi State University, specialising in meteorology, atmospheric ecology. Received a Bachelor's degree and was awarded a qualification of a meteorologist-climatologist.

Work Experience:

2006 (March – June) – courier for the Chancellery and Citizens' Reception (Department) in Tbilisi Court of Appeals;

2006 – 2007 – specialist at the Chancellery of the Bureau of the Panel for Administrative Cases in Tbilisi City Court;

2007 – 2009 – session secretary for the Panel for Civil Cases in Tbilisi City Court;

2009 – 2011 – judicial assistant at the Panel for Civil Cases, then Panel for Administrative Cases in Tbilisi City Court;

2011 – 2012 – head of sector for the Panel for Administrative Cases at the Chancellery of Tbilisi City Court;

2012 – 2013 – studied at the High School of Justice;

November 2013 – consultant at the Secretariat of the Chamber for Civil Cases in the Supreme Court of Georgia;

2013 – 2016 – judge in Batumi City Court;

2016 – 2019 – judge on the Panel for Civil Cases in Tbilisi City Court;

July 2019 – 12 December 2019 – was a judge of Tbilisi Court of Appeals appointed for an indefinite term, until reaching the age determined by the law.

Since December 2019, Levan Mikaberidze is a judge of the Supreme Court of Georgia appointed for an indefinite term. On account of his being a candidate for the Supreme Court judgeship, Levan Mikaberidze's biography is public and available to any interested person. Correspondingly, according to the application he had submitted, since 2016, Mikaberidze has participated in many seminars, courses and trainings in corporate/enterprise as well as bankruptcy law. In addition, his work experience is linked exclusively to the common court system.¹⁹⁸

As for the high-profile cases he has considered: on 26 July 2017, the Panel for Civil Cases of Tbilisi City Court chaired by Levan Mikaberidze ruled on the case of transferring the shares of Tbilaviamsheni, JSC [Tbilisi Aircraft Manufacturing, JSC] to the state in the form of a gift. In this dispute, along with other important circumstances, the parties pointed at the pressure exerted by the government, which the court had to assess in the context of the issue of the statute of limitation. Specifically, it was to determine the issue of time limits for challenging after the change of the government. Tbilisi City Court did not uphold the claim.¹⁹⁹

¹⁹⁸ See attached file: Levan Mikaberidze's application.

¹⁹⁹ See portfolio of Levan Mikaberidze, judicial candidate for the Supreme Court of Georgia, prepared by Open Society Georgia Foundation, <https://bit.ly/32D7Zef> [last accessed on 10.08.2020]