THE QUALITY OF REASONING OF COURT DECISIONS

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INTRODUCTION

The problem of the degree of reasoning of court decisions and the need for its improvement was first recognized by the judiciary itself in 2017, in the Judiciary Strategy Paper. The document deems the frequency of poorly reasoned decisions as a major challenge to judicial independence and impartiality, and the lack of application of the case-law of the Supreme, Constitutional or international/regional courts as a challenge to quality justice and professionalism.[1] At the end of 2019, following the monitoring of the selection of judges for the Supreme Court of Georgia, the recommendation issued by the OSCE concerning "the need to appoint well-known and experienced independent legal professionals"[2] emphasized that the issue of professionalism of judges may be reflected in the degree of reasoning of court decisions. This indicated the need for an in-depth study of the degree of substantiation of court decisions.

This USAID/PROLoG-sponsored research on Judicial Reasoning Quality Assessment aims to examine the degree of substantiation of judgments made by the common courts of Georgia, using a specially developed methodology to assess transparency in the administration of justice, protection of human rights, compliance with the law and international obligations and clarification of the rationale for decisions, as well as to identify problems and make recommendations for the social role of the judge in a democratic society.

The report is structured according to eight criteria developed for the evaluation of decisions. A separate section of the report covers the problems identified through an examination of the compliance of decisions with the developed criteria, and examples reflecting the problems identified are provided in the annexes to the report.

1 Judicial System Strategy 2017-2021, Paragraphs: 3, 9, 1.2.3., 4.3.4. and 4.1. http://www.supremecourt.ge/files/upload-file/pdf/sasamartlo-sistemis-strategia-2017-2021.pdf [21.11.2021]

2 The OSCE/ODIHR Office for Democratic Institutions and Human Rights monitored the selection and appointment of judges for the Supreme Court of Georgia at the request of the Public Defender of Georgia, which issued two monitoring reports on the selection process of judiciary: The report of the first stage of Nomination and Appointment of Judges of the Supreme Court of Georgia, June-September 2019 https://www.osce.org/files/f/documents/d/9/429491.pdf [20.11.2021] and the second report on the Nomination and Appointment of Judges of the Supreme Court of Georgia, June-December 2019 https://www.osce.org/files/f/documents/3/1/443497_0.pdf [20.11.2021]

RESEARCH METHODOLOGY

Two documents were developed for the evaluation of the quality of court decisions. The documents were prepared with the involvement of local and foreign experts participating in the study, whose brief biographical data are attached to the study (Annex 11).

Based on the methodology document, the full text of which is attached to this study (Annex 9), a total of 100 court decisions were studied. From among the decisions provided by the courts of Georgia, 50 decisions were selected; 22 decisions on high-profile cases were also studied; and the remaining 28 decisions were provided by lawyers. Of the decisions studied, 56 are verdicts delivered on criminal cases and 44 on civil-administrative disputes (16 civil, including commercial cases; 24 administrative cases, including election disputes; and 4 administrative offenses).

All decisions handed down during the pre-selected one or two months within the one year period of 2020-2021 were requested from courts. Out of the decisions provided by the courts, 50 decisions were selected by project experts using specially defined criteria.

As to the high-profile case decisions as well as decisions received from lawyers, the specific time range of their delivery was not limited. The decisions on high-profile cases as well as those provided by lawyers were selected by project experts.

Each decision was evaluated by two project experts, one of which is at least an expert with judicial experience. However, the results of the study cannot be subject to generalization considering that the decisions were not randomly chosen.

Using this methodology, the court decisions for the purposes of the study were selected from decisions provided by all courts in all instances of Georgia, except for the Tbilisi City Court, Tbilisi Court of Appeal and several other district courts, which did not provide any decisions. Accordingly, the decisions of the Tbilisi City Court and the Court of Appeals were examined only in high-profile cases and cases provided by lawyers.

The failure of selected courts to provide decisions reflects the problem of access to court decisions. For the purposes of the study, in the process of selecting court decisions, problems were identified related to the publicity of and access to the texts of court decisions. First, except for magistrate courts, 23 out of 36 courts in all appellate and cassation courts of Georgia responded to the request for public information in writing. Of these, 13 courts[3] provided the requested information in full and copies of court decisions; 7 courts[4] only partially issued copies of decisions; and 3 courts[5] refused to issue copies of the requested decisions. Partial delivery of copies of decisions, as well as the refusal to provide them, is usually explained by the courts by lack of adequate time and human resources, which in turn is related to the need to anonymize personal data in decisions.

Based on the analysis of the responses received from the courts, the following problems were identified in terms of access to copies of court decisions:

- Practice of anonymizing personal data in all decisions indiscriminately hinders access to court decisions. Virtually all large and busy courts, including the Tbilisi City and Appellate Courts, which are the most interesting for research purposes, refuse to issue copies of court decisions on this basis.[6]
- The Tbilisi City Court did not provide statistics on the number of decisions made by it during a short period of time. The reason provided was that the court does not produce such statistics.[7]

The decisions of the Tbilisi City Court were completely inaccessible for study purposes. Of the seven letters sent requesting public information of various types, the Tbilisi City Court did not issue public information in the form of copies of court decisions or statistical data. Similarly, the Tbilisi Court of Appeals did not provide information. In its response, the Court of Appeals indicated that the requested information could be obtained from the relevant website. However, on the website https://ecd.court.ge court decisions are incompletely published (decisions made during the period of interest for this research are not posted on the website).[8]

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3 The Supreme Court of Georgia; Tetritskaro District Court; Bolnisi District Court; Khelvachauri District Court; Tsageri District Court; Zestaponi District Court; Gurjaani District Court; Ambrolauri District Court; Poti District Court; Gori District Court; Sachkhere District Court; Ozurgeti District Court; Senaki District Court.

4 Letter №3-176-21 of the Supreme Court of Georgia of March 31, 2021; Letter №8-191 of Telavi District Court of March 29, 2021; Letter №0918 of Akhalkalaki District Court of March 25, 2021; Letter №40 of Akhaltsikhe District Court of March 26, 2021; Letter №390 of Samtredia District Court of March 29, 2021; Letter №215 $_{3/3}$ of Batumi City Court of March 29, 2021; Letters of the Tbilisi Court of Appeals: №2/7211 of May 24, 2021, №2/6061 of April 29, 2021, №3/4104 of April 24, 2021, №3/2182 of March 26, 2021.

5 Letter №3-0138/4460539 of Tbilisi City Court of March 18, 2021; Letter №295 of Zugdidi District Court of April 30, 2021; Letter №62101 of Kutaisi City Court of April 22, 2021; Letter №214-2/10 of Kutaisi Court of Appeals of April 28, 2021;

6 Letter №3-0138/4460539 of Tbilisi City Court of March 18, 2021; Letter №3/2182 of Tbilisi Court of Appeals of March 26, 2021;

7 Letter №2-0452/4637271 of Tbilisi City Court of May 18, 2021;

8 Letter №3-0138 / 4460539 of Tbilisi City Court of May 18, 2021; Letter №2-0452/4637271 of Tbilisi City Court of May 18, 2021; Letter №2-0440/4570560 of Tbilisi City Court of April 21, 2021; Letter №3-0470/4637287 of Tbilisi City Court of May 18, 2021; Letter №3-0469/4637413 of Tbilisi City Court of May 18, 2021; Letter №2-0451/4637256 of Tbilisi City Court of May 18, 2021; Letter №1-0133/7427 of Tbilisi City Court of March 18, 2021; Letter №2/7211 of Tbilisi Court of Appeals of May 24, 2021.

A serious problem has been identified in terms of access to information in commercial category disputes. Tbilisi and Kutaisi City and Appeal Courts refused to publicly release decisions in which the subject of the dispute exceeds GEL 500,000. The reason for the refusal was the need for excessive time and resources to process and file such decisions, which the court does not consider necessary at this stage.[9]

Evaluation criteria derive from national and international sources: the Constitution and legislation of Georgia; Opinion N11 of the CCJE; case law of the European Court of Human Rights; OSCE/Bureau of Democratic Institutions and Human Rights Trial Monitoring Report (Georgia) and others. Judicial decisions were assessed by evaluating the compliance of judgments with key criteria. The following eight criteria were used for evaluation:

- The social role of the judge;
- Hearing of a case within a reasonable time;
- Public hearing/oral hearing;
- Elements of court decisions;
- Enforcement of the decision;
- Quality of law;
- Evaluation of evidence;
- Justification of the amount of the sentence.

The evaluation criteria are attached to the study (Annex 10).

9 Letter №2-0452/4637271 of Tbilisi City Court of May 18, 2021; Letter №2/6061 of the Tbilisi Court of Appeals of April 29, 2021; Letter №62101 of Kutaisi City Court.

EXECUTIVE SUMMARY

Within the scope of research, 100 court decisions made by the common courts of all instances in Georgia have been studied, the results of which cannot be generalized to assess the general situation with respect to the substantiation of judicial decisions. Despite this fact, they do indicate the issues that, in even individual cases, create a striking picture.

Judges mostly follow a uniform court practice, which diminishes the individualism of a judge – both in terms of demonstrating an approach to a specific dispute as well as in terms of drafting the texts of decisions – is not evident in the decisions. The impression remains that a specific decision is made by the whole system rather than by an individual judge. In the reasoning part of decisions, we encounter a template and uniform substantiation pattern and even word-by-word repetitions.

The overall period of the decisions evaluated encompasses years from 2015 to 2021. The common problems and shortcomings identified in the decisions delivered by different courts and different judges indicate the lack of progress in the substantiation of judicial decisions.

The decisions are overloaded with legal citations and reasoning, interpretations of international judicial practice or legislation and issues that are not in question, are irrelevant to the specific case, or do not require additional clarification. This approach, on the one hand, unnecessarily overloads the text of court decisions and complicates its comprehension; on the other hand, it creates the impression that the judge is trying to present the decision as a well-reasoned document by shifting attention from the main issue (such as factual and legal analysis of main aspects of the case) to the volume of the document.

The typical approach to decisions by judges leaves the perception that they attach primary importance not to the decision being based on adversarial proceedings, to fully reflecting the dispute, to investigating, to clarifying the norm, or to establishing case law, but to fulfilling the obligation to resolve a particular dispute and reduce the number of cases, and/or meet the standard of a higher court.[10]

10 According to Article 8 of the Judges Ethics Code of Georgia: "A judge shall be obliged to perform his/her duties efficiently, in good faith and with due diligence." http://www.supremecourt.ge/judges-self-governance/judges-ethics-code [20.11.2021]

The full and comprehensive formulation of the substance of the case is a particular problem in criminal and administrative offenses, unlike civil proceedings. In particular, it was revealed that court decisions do not often focus on the background of both parties; in multi-defendant cases, the guilt of each accused person is not assessed and highlighted separately in the court decisions. The reasoning of the decision is unconvincing when the substance of the case remains unclear to the reader, i.e. whether the judge has analyzed all the important circumstances.

There are cases of superficial examination and/or unilateral assessment of evidence by judges. This creates the impression that the court refrains from responding to the arguments of the party for which it has no response.

A serious problem identified was the lack of adapting factual circumstances to certain elements of a legal norm by judges.

Judges pay less attention to the social role of the judge in a democratic society. Important issues are considered in isolation from the wider context; for example, there is less sensitivity to child rights cases; only formal-legal approaches to election disputes are evident. The strict state criminal policy, which was recognized as a serious problem by a number of international and local reports, is not reflected in the judicial decisions of the times. In contrast, there have been cases where judges are aware of their social role and do not avoid discussing the issues unless they conflict with the political will of the ruling government. The approach of judges to domestic violence cases is worth noting in this regard, when they take into account the problematic nature of this crime in Georgian society and the specifics of its investigation. In contrast, there are cases where the judge understands his or her social role, does not refrain from discussing the matter, yet, through inconsistent or unilateral reasoning, tries not to confront the policy imposed by the ruling government.

Violations of the deadlines set by the law for consideration of the case and the lack of application of the principle of the reasonable length of proceedings were also identified as a problem. Almost all decisions in civil and administrative cases are made in violation of the deadline set by the Procedural Code. The judges do not approach the issue of consideration of the case within a reasonable time on a case-by-case basis, not taking into account the circumstances and scope, or the complexity of each case. This may be due to the mismanagement of cases, including the lack of prioritization practices or the workload of justices.

Particularly noteworthy are several cases where the judge reviewed a case/issue in a hasty manner, raising suspicions of improper interference in specific cases and the judge's bias.

Usually, judges do not consider the purposes of the sentence or administrative penalty in relation to each person, individually.

ASSESSMENT OF THE QUALITY OF REASONING OF COURT DECISIONS

Criterion 1. Social Role of a Judge in Democratic Society

A judge in a democratic society governed by rule of law is an individual tool to protect people from unjust actions of the State authorities. The rule of law implies, inter alia, that the interference of the executive with individual rights must be subject to effective oversight by the judiciary.[11] Given this role, the judge does not merely apply the legal norm. In making a decision, the judge must take into account not only relevant legal material, but also consider non-legal concepts and realities related to the context of the dispute, such as ethical, social or economic considerations. This requires the judge to be aware of such considerations when deciding the case and the text of the decision shall reflect the judge's reasoning about such consideration.[12]

Only those decisions presented in this chapter revealed that, in addition to the legal aspect, these cases had a social aspect that the judge had to consider, although the judge did not mention/discuss or insufficiently discussed the social aspect of the case.

It was found that:

1.1. Judges decide specific cases ignoring or without mentioning relevant local and international reports and recommendations, which corroborate significant systemic problems around the issue. Judges decide specific cases without considering the larger context. Specifically, judges make decisions on drug crimes without mentioning the impact the harsh state policy has on the lives of individuals, the latest trends of drug policy liberalization, and the influence of these factors on the liability for drug-related crimes. Similarly, judges decide juvenile cases without mentioning the deplorable state of protection of children's rights reflected in reports (see annex 1, examples 1-5).[13]

11 Rotaru v. Romania, para. 59, ECHR 04.045.2000.

12 CCJE Opinion N11(2008) on the Quality of Judicial Decisions, para. 21- 23.

13 A similar problem was identified also in the following decision: Court decision N1/54 by Levan Nutsubudze, Senaki District Court judge, on a criminal case of November 10, 2020, (Article 1261(2) (b) and Article 111-151(2) (d)) – domestic violence, responsibility for a domestic crime).

As it is clear from Tbilaviamsheni case, in their complaint the applicants have pointed out the coercion against them, as well as the fear of illegal imprisonment and conviction, which persuaded them to give up their property for free. In spite of those statements made by the applicants, the judge delivered a decision on this case without mentioning multiple reports issued by international organisations and the Public Defender of Georgia concerning violation of property rights, illegal imprisonment, unlawful wiretapping and wrongful convictions happening in the country (see annex 1, example 3).

1.2. Judges ignore and do not discuss the possible political and social aspects of the case when it is evident that justice was exercised against a person in a pre-election context or that the case involves influential public figures or persons affiliated to them or those criticizing the government. The judges do not respond to the questions raised by the public around these issues, which reinforces suspicions on political justice (see annex 1, examples 6-12).

In the case of preventive measure against Ilichova and Melashvili,[14] there was political/ social and international context that was not mentioned / discussed by the judge. The case concerns the delineation of the border between Azerbaijani and Georgia in the territory belonging to the cultural and religious monument of David Gareja Complex. The problem of establishing a clear border with Azerbaijan has existed for many years, however, the investigation has started on this case shortly before the 2020 parliamentary elections. Namely, on October 7, 2020[15], the General Prosecutor's Office of Georgia arrested the former members of the Delimitation and Demarcation State Committee Iveri Melashvili and Natalia Ilichova. The so-called Cartographers' case has acquired political significance, when it was intensively used for pre-election purposes and was evaluated as politically motivated by different non-governmental organisations[16]. Considering the social context, an impression was created in the eyes of the large public that defendants were traitors of the country (see annex 1, example 6).

1.3. Judges disregard and do not discuss non-legal aspects of the case that are the cornerstone of democracy and democratic governance – protection of journalistic source; the chilling effect of the restriction of the freedom of expression; gender identity; the pre-election period and related events, and others (see annex 1, examples 13-19)

14 Judgment №10a/4258 by Davit Kurtanidze, the Tbilisi City Court Judge, of October 8, 2020, in a criminal case (Article 308(1) of CC, an anti-Georgian act aimed at separating a certain part of Georgia from the territory of the country, Natalia Ilychova and Iveri Melashvili's conviction, "The Cartographers case").

15 The parliamentary elections were held on October 31, 2020.

16 "An investigation is underway on an extremely sensitive topic for Georgian citizens during the pre-election period. Raising similar issues in the run-up to the elections may be aimed at influencing voters. "Statement by Thirteen NGOs, the Cartographers' Case – New Politically Motivated Investigation, October 8, 2020.
bit.ly/3pFjETX [20.11.2021]

In the Supreme Court decision related to the change of sex in the birth registry[17] the Chamber does not discuss the issue of gender identity (see annex 1, example 13).

In the case concerning the dismissal of Mamuka Akhvlediani, the claimant was the Chairman of Tbilisi City Court and the Criminal Case collegium, while publicly expressing critical views about the situation existing in the Georgian judiciary. This was exactly followed by his dismissal from the presidency of the court. The discussions on the problem of the judiciary are vital in the democratic society and it is important for everyone including judges to be able to express critical views without fear or expectation of negative consequences.

The plaintiff rightly pointed to the beneficial effect of the chairman's dismissal, which was not discussed by the court (see annex 1, example 16).

1.4. There are cases, in which judicial effort to discuss the non-legal aspects of the case is one-sided. The judge argues and considers the non-legal aspects of the case only in favor of one party and does not mention other aspects of the case and the balance between them (see annex 1, examples 20-22).

In high profile case of Metro Drivers, the judge explored the economic aspect of the case, while substantiating the decisions on granting the request of Ltd "Tbilisi Transport Company" on the postponement of the strike. However, the judge left without considering the social aspect of the case, which was connected to the labor relations between the employer and the employee. Without analyzing both aspects of the case, the judgment left a vacuum, which in the end constitutes a gap in the reasoning (see annex 1, example 20).

1.5. A positive trend, which must be welcomed, is the discussion of social aspects in cases of violence against women. In criminal cases related to domestic violence, judges also discuss the social context, the victim's syndrome and the high rate of domestic crimes, as well as other non-legal factors, which is relevant in the fight against domestic violence crime considering the Georgian social reality. For example, in a rape case the judge considered the particular importance of the testimony of the victim as well as the behavior of the victim, the complexity of obtaining testimony, as well as the influences of the social stereotypes, social and cultural factors, etc. (see annex 1, examples 23-25).

17 Judgment №ბს-579-579 (კ-18) of the Supreme Court of Georgia Judges Nugzar Skhirtladze, Maia Vachadze, Vasil Roinishvili of April 18, 2019, on an administrative case (refusal to change the gender information in the birth record).

Criterion 2. Hearing of Cases within Reasonable Timeframes

The criteria of a fair trial within a reasonable time assess whether the decision was made in accordance with the standards established by the Council of Europe (COE) and the caselaw of the European Court of Human Rights (ECtHR). This, inter alia, implies that the case was considered in observance of not only the timeframes established by the national legislation but also in consideration of the circumstances and complexity of the case described in its decision. We may conclude whether the case was heard in a timely or in a clearly accelerated manner.

The research identified cases in which:

2.1. Cases were heard in a clearly accelerated manner, which raises suspicion regarding undue interests towards the results of the case (see annex 2, examples 1-3).

In one of the cases, the decision regarding the stay of execution and liberation of debtor's property was adopted on the following day upon the filing of the claim filed by the party (the claim was filed on July 9, Friday). The law stipulates 5 days and 20 days (in total 25 days) time limit for checking the admissibility of the complaints. Thus the decision on the stay of execution and liberation of debtors' property from all types of restrictions was clearly adopted within an accelerated manner (see annex 2, example 3).

2.2. The decision is in violation of the timeframe established by the law or delayed in any other way (see annex 2, examples 4-11).[18]

18 A similar problem was revealed in the following court decisions:

- Judgment №ას-1527-2019 by Besarion Alavidze, Ekaterine Gasitashvili, Zurab Dzlierishvili, the Judges of the Supreme Court of Georgia, of June 22, 2020, in a case of civil law (imposition of money);
- Judgment №ᲒᲙ-409ᲐᲒ-19 by Giorgi Shavliashvili, Paata Katamadze and Besarion Alavidze, the Judges of the Supreme Court of Georgia, of November 08, 2019, in a criminal case (Article 109(2)(e) and Part 3(b)(c) of CC as well as Article 11[1], 109 (2)(e) and Part 3(b)(c) of CC − premeditated murder by a group with special cruelty, as well as damaging and destroying someone else's property, causing significant damage by setting fire; an intentional killing of a member of the family by another family member with particular cruelty by a group. Also, damaging and destroying someone else's property, causing significant damage by setting fire);
- Judgment №2ᲒᲙ-346ᲐᲒ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, of November 01, 2019, in a criminal case (Article 125 (1) − Beating, Article 344(1) − Illegal crossing of the state border of Georgia, Article 353(1) − resistance, threat or violence against the public defender or other representatives of the government, Article 362(1) − storage and use of a forged ID card);
- Judgment №2ᲒᲙ-258ᲐᲒ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, of October 03, 2019, on a criminal case (Article 126[1](1) of CC (the episode of January 8, 2018) and Article 11[1] of CC , Article 143(1)- domestic violence, threats, unlawful deprivation of liberty);
- Judgment №ას-1157-1103-2013 by Vasil Roinishvili, Levan Murusidze and Paata Silagadze, the Judges of the Supreme Court of Georgia, of September 08, 2014, in a case of civil law (reimbursement of the cost of the work performed).
- Judgment № ას-1296-1223-2012 by Vasil Roinishvili, Levan Murusidze, Paata Silagadze, the Judges of the Supreme Court of Georgia, of March 10, 2015, in a case of civil law (compensation for damages).
- Judgment №ას-1673-1569-2012 by Vasil Roinishvili, Levan Murusidze and Paata Silagadze, the Judges of the Supreme Court of Georgia, of October 09, 2013, in a case of civil law (compensation for damages);
- Judgment №ᲒᲙ-543ᲐᲒ-19 by Lali Papiashvili, Merab Gabinashvili and Mamuka Vasadze, the Judges of the Supreme Court of Georgia, of March 12, 2020, in a criminal case (Article 126(1) of CC − Violence);
- Judgment №3/117-2020 by Aleksandre Goguadze, the Batumi City Court Judge, of April 03, 2020, in a case of administrative law (obtaining confidential information about a person from a commercial bank);
- Judgment №3/201-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 14, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);
- Judgment №3/209-19 by Tsitsino Rokhvadze, Judge of Ozurgeti District Court, of October 16, 2020, in a case of administrative law (annulment of an administrative act/issuance of a new act);
- Judgment №2/748-17 by Marine Tsertsvadze, Judge of Telavi District Court, of October 13, 2020, in a civil case (imposition of money);

From the decision in the case Gigauri v. Khaindrava, it turns out that apparently the Court of Appeal considered this case for one year, which is not considered to be a reasonable time. This conclusion is drawn from the fact that the appellant was requesting from the court only the value-based judgment. The court did not establish facts or new circumstances nor examine the evidence. The need to hear the case within a short time was also necessitated by the fact that the trial court decision was made within three years from filing the application (see annex 2, example 4).

In a simple juvenile category case where there is one defendant and one episode of the offense, the administration of justice in the case is completed after four years (see annex 2, example 9).

2.3. The decision is anonymized or does not contain a reference to the circumstances, the disclosure of which is necessary to establish the reasonable time standard for consideration of the case (see annex 2, example 12)[19]

2.4. The case is considered within the statutory time limit, but the examination of specific circumstances demonstrates that the case hearing was delayed (see annex 2, examples 13-14)[20]

The sentence for the detained defendant expired at the end of the nine-month period when only a few witnesses were questioned in the case (see annex 2, example 14).

Criterion 3. Public and Oral Hearing of the Case

The criteria of a public and oral hearing of the case examine whether the judge has ensured the right to the public hearing. Also, whether the judge has heard all the parties before making a decision and ensured fair oral arguments when, based on circumstances of the case, there was a clear need for an oral hearing.

3.1. The study has identified that in several cases the judge limited the right to a public hearing without indicating in the decision the closure of the hearing or the reasons and causes for such closure (see annex 3, examples 1, 2).

19 A similar problem was revealed in the following decisions:
- Judgment №1/41 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, in a criminal case (Article 303(1) of CC – illegal cutting of trees and shrubs)
- Judgment №2ბ-698ა-19 by Lali Papiashvili, Merab Gabinashvili, Shalva Tadumadze, the Judges of the Supreme Court of Georgia, of March 05, 2020, on a criminal case (Article 19, 180 (2) (a) and part 3(b) of CC- attempted fraud);
- Judgment delivered in October 2020 (the details are classified) by Luiza Todua, Judge of Akhaltsikhe District Court, on a case of administrative law (annulment of an individual legal act);
- Judgment №1/82-20 by Nikoloz Margvelashvili, Judge of Kutaisi City Court, of April 02, 2020, in a criminal case (Article 1261 (1) of CC (two counts) and Article 111, 3811 (1) – responsibility for domestic violence, domestic violence);
- Judgment №1/1221-18 by Nino Nachkebia, Judge of Tbilisi City Court, of March 25, 2020, in a criminal case (Article 362 (1) of CC – producing, selling, using of a forged document)

20 Judgment №1/67-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 13, 2020, in a criminal case (Article 372(1) – Exerting influence on a victim);

The reason pointed out by the judge for the closure of the court hearing was information of private nature in the case, which, according to the decision, had nothing to do with the essence of the accusation (see annex 3, example 1).

3.2. The study has identified cases in which, while the law does not imperatively require an oral hearing, it was necessary for the judge to hear arguments of the parties and make a decision based on oral arguments. These are cases in which, despite the fact that the legislation does not prohibit the judge to hear matters such as securing a claim and enforcement measures in an oral hearing, the judges do not use this opportunity to hold a hearing when even circumstances of the case show the clear need (see annex 3, examples 3-8).

In the case №ბს-579-579(კ-18), it turns out that, although according to Article 401.1 of Civil Procedure Code the admissibility of a cassation complaint is examined by a court panel which is empowered to decide this issue without an oral hearing, based on the sensitivity of the issue it was appropriate for the judges to explain why they decided to wave oral hearing on the case of gender identity, the case having precedential importance for other transgender persons (see annex 3, example 6).

Criterion 4. The degree of Factual and Legal Substantiation of Court Decisions

The elements of the court decision are assessed based on the following criteria: the clarity and quality of factual and legal substantiation of the judgment that the court delivers. The assessment of court rulings according to these criteria has revealed the following key findings:

IN TERMS OF THE CLARITY OF COURT RULINGS, THE PROBLEMS IDENTIFIED ARE AS FOLLOWS:

4.1. The main subject of the case is unclear. The decision does not reconstruct what happened around which the lawsuit is pending:

The judge incompletely, only formally, describes the act committed and does not specify which participant to the proceeding perpetrated which action or what the defendant is accused of; the judgment does not elaborate upon each defendant/party, but applies his/her conclusions to all defendants/parties without specifying any circumstances of the case; the ruling cumulatively analyses all defendants, whose actions are supposed to be described and analyzed individually and separately. As a result, the judgments do not recreate the events that took place around the case under consideration (see annex 4, examples: 6; 9; 10; 18; 22; 35).[21]

21 A similar problem was identified in the following judgments analyzed:
· Judgment №10d/1889 by Teimuraz Sikharulidze, Judge of Tbilisi City Court, of April 28, 2021, in a criminal case (Article 182(2/d) and (3/b) of CC – misappropriation or embezzlement, Article 194 (2/a) and (3/c) – money laundering, imposition of a measure of restraint against the accused);

One of the cases does not actually reveal the most important components of the act. Specifically: the moment when the instrument of the crime – an item similar to a knife – appeared in the hands of the defendant, and whether he was holding it in his hand at the very beginning of the crime or he took it out later. These details in the verdict are vague in light of the fact that the court established that A. Tokhadze was seizing B.Zh's both hands. Since the instrument of the crime is crucial for qualifying the act as robbery, the court was obliged to determine the moment when the weapon appeared in the hands of the defendant and the moment when the victim saw it. Questions arise about the components of the robbery as well; in particular, what were the intentions of the accused when he decided to flee, just to flee or to steal a 100 GEL banknote obtained as a result of the theft (see annex 4, example 35).

- Judgment №10a/165-21 by Maia Shoshiashvili, Judge of Rustavi City Court, of May 20, 2021, in a criminal case (Article 126¹(1) of CC − domestic violence, imposition of a measure of restraint against the accused);
- Judgment №2ბ-309აბ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, of October 18, 2019, in a criminal case (Article 19, 109 (3)(b) of CC − Attempted premeditated murder);
- Judgment №1/15-21 by Levan Mishveliani, Judge of Samtredia District Court, of February 18, 2021, in a criminal case (Article 126(1) of CC − beating, which caused physical pain to the victim, but did not result in the consequence as per Article 120 of this Code);
- Judgment №1/167-20 by Murtaz Kapanadze, Judge of Samtredia District Court, of November 02, 2020, in a criminal case (Article 111-151(2)(d), Article 1261(1) of CC − Liability for domestic crime, domestic violence); Judgment №1/198-20 by Davit Svanadze, Judge of Samtredia District Court, of November 25, 2020, in a criminal case (Article 151(1) of the CC − Threat of death);
- Judgment №1/59-20 by Badri Niparishvili, Judge of Tetritskaro District Court, of October 06, 2020, on a criminal case (Article 1261(2)(a) of CC- Violence against a minor child);
- Judgment №1/236-2020 by Nana Chalatashvili, Judge of Gurjaani District Court, of January 29, 2021, in a criminal case (Article 1261 of CC − Domestic Violence);
- Judgment delivered by Levan Darbaidze, Judge of Gori District Court, on April 23, 2020, in a criminal case (Article 1261 (1)(2)(c) of CC − domestic violence, Article 111,151(2)(d) of CC- Threat of death against a family member when the person threatened develops a well-founded fear of being threatened);
- Judgment №2ბ-№603აბ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, delivered on January 08, 2020, in a criminal case, Article 111-138(4)(c) of CC − sexual violence against a family member);
- Judgment №2ბ-409აბ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, delivered on November 08, 2019, in a criminal case, (Article 109(2)(e) and Part 3(b)(c), as well as Article 111,109(2)(e) and Part 3 (b)(c) of CC − premeditated murder by a group, with special cruelty; as well as − damaging and destroying someone else's property, which caused significant damage, by setting fire; Premeditated murder of a family member by another member of the family by a group, with particular cruelty and damaging and destroying someone else's property, which caused significant damage, by committing a fire);
- Judgment №2ბ-258აბ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, delivered on October 03, 2019, in a criminal case (Article 1261(1) of CC (the episode of January 8, 2018) and 111, 143(1) of CC − domestic violence, threats, illegal deprivation of liberty);
- Judgment №1/67-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 13, 2020, in a criminal case (Article 372(1) − Exerting pressure on a victim);
- Judgment №4/323-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 29, 2020, on a case of administrative offense (Article 173 of the Code of Administrative Offenses − resistance by a person under the influence of alcohol to a lawful request of a law enforcer);
- Judgment №010100119003-56504 by Davit Mamiseishvili, Judge of Batumi City Court, of April 6 on a criminal case (Article 260(3)(a) of CC; Part 5(a), Part 6(a) (02 episodes) − illegal production, manufacturing, purchase, storage, transportation, transfer or sale of a narcotic drug, its analogue, precursor or new psychoactive substance);
- Judgment №1/41 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, in a criminal case (Article 303(1) of CC − Illegal logging of trees and shrubs);
- Judgment №1/151-20 by Nunu Nemsitsveridze, Judge of Gurjaani District Court, of February 26, 2021, in a criminal case (Article 236(3) of CC − Illegal purchase and storage of firearms and ammunition);
- Judgment №2ბ-346აბ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, Judges of the Supreme Court of Georgia, delivered on November 01, 2019, in a criminal case (Article 125(1) − Beating, Article 344(1) − Illegal crossing of the state border of Georgia, Article 353(1) − resistance, threat or violence against the public defender or other government officials, Article 362(1) − storage and use of a fake ID card).

4.2. The personal or other information about the parties in court rulings is classified to such an extent that it is impossible to make out the essence of the case (see annex 4, example 15 and 33).[22]

4.3. The decisions are not formulated in clear, unambiguous, and simple language:

complex and technical terms are not defined; the decisions are written in an incomprehensible Georgian language; the narration of events is contradictory, making the chronology of events unclear; those parts of the decision where the judge is trying to somewhat substantiate his/her arguments, it becomes particularly difficult to comprehend the opinion; views are communicated using weird sentences and phrases. The court decisions create the impression of an attempt to make up for the lack of a concrete argumentation with complex terminology (see annex 4, examples: 10; 15).[23]

In the high-profile case of Natalia Ilyichova and Iveri Melashvili (the so-called Cartographers' Case), the court discusses the formal (procedural) basis of the verdict by using a sentence containing 17 lines (p. 8). The court also abstractly points to the following factors that may exacerbate the risks unless pre-trial detention is ordered: "... Other possible interests, unidentified circumstances, a high likelihood of the origination of unhealthy interests..."(p. 10). The judge does not specify what is meant under the circumstances and interests or why the chances of their occurrence are real. Also, none of the rationales offered in the judgment have anything to do with any of the defendants. Moreover, the verdict does not discuss the defendants at all and attributes its summary findings to both accused without identifying relevant circumstances. The judge concludes that in the case of both defendants there is a risk of absconding and destruction of evidence. One can get an impression that the court collectively judges the two defendants, instead of separately and individually assessing the grounds for the application of the restraint measure (see annex 4, example 10).

22 A similar problem was identified in the following judgments:
- Judgment №1/44 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, in a criminal case (Article 303(1) of CC − Illegal felling of trees and shrubs);
- Judgment №010100119003-56504 by Davit Mamiseishvili, Judge of Batumi City Court, of April 6 in a criminal case (Article 260(3) (a); Part 5(a), Part 6(a) of CC (Episode 02) − Illegal manufacture, production, purchase, storage, transportation, transfer or sale of a narcotic drug, its analogue, precursor or new psychoactive substance).
- Judgment №1/41 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, in a criminal case (Article 303(1) of CC − Illegal logging of trees and shrubs);
- Judgment № 2ვ-698ა-19 by Lali Papiashvili, Merab Gabinashvili, Shalva Tadumadze, the Judges of the Supreme Court o Georgia, of March 05, 2020, in a criminal case (Article 19, 180(2)(a) and Part (b) − attempted fraud).

23 A similar problem was identified in the following judgments:
- Judgment №1/4959-17 by Lasha Chkhikvadze, Judge of Tbilisi City Court, of May 18, 2018, in a criminal case (Article 260(3)(a) and Part 4 − Illegal purchase, storage, and sale of narcotic drugs);
- Judgment №1/24-20 by Leila Gurguchiani, Judge of Tsageri District Court, of May 11, 2020, in a criminal case (Article 126^1(2)(a)(b)(c) − Domestic violence).

4.4. The descriptive and/or reasoning part of court rulings contain information that is not necessary for the case; the volume of decisions is artificially increased by facts and legal reasoning not relevant to the case, which gives the impression that the judge is trying to compensate for the absence of arguments on important facts and legal issues in the decision (see annex 4, examples: 32, 34).[24]

IN TERMS OF FACTUAL SUBSTANTIATION OF COURT DECISIONS, THE PROBLEMS IDENTIFIED WERE AS FOLLOWS:

4.5. Different arguments around specific facts are not logically reflected in the judge's conclusions; and/or it remains unclear what evidence the judge relied upon to reach a particular conclusion/decision; and/or the reasoning developed by the judge does not correspond to the factual circumstances established in the case.

(see annex 4, examples: 1; 2; 7; 9; 11; 27; 36; 37; 38).[25]

In terms of factual substantiation, the verdict passed in the case of Nikanor Melia does not clarify at all what circumstances, arguments, evidence the parties referred to or elaborated on during the trial. It is impossible to infer from the judgment

24 A similar problem was identified in the following judgments:
- Judgment №4/323-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 29, 2020, in an administrative offense case (Article 173 of the Code of Administrative Offenses − resistance of a person under the influence of alcohol to a lawful request of a law enforcement officer);
- Decision №4/312-20 by Marine Tsertsvadze, Judge of Telavi District Court, of October 18, 2020, in an administrative offense case (Article 173 of the Code of Administrative Offenses: verbal abuse against an isolator employee);
- Judgment № 3/97-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 06, 2020, in a case of administrative law (an electoral dispute);
- Judgment №3/98-2020 by Shota Nikuradze, Judge of Zestafoni District Court, of November 06, 2020, in a case of administrative law (an electoral dispute);
- Decision №3/99-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 08, 2020, in a case of administrative law (an electoral dispute);

25 A similar problem was identified in the following judgments:
- Judgment №1/190-20 by Nikoloz Margvelashvili, Judge of Kutaisi City Court, of April 21, 2020, in a criminal case (Article 11^1, Article 151(2)(d) of CC − Liability for a domestic crime);
- Judgment delivered by Nunu Nemsitsveridze (the details are classified), Judge of Gurjaani District Court, on February 22, 2021, in a criminal case (Article 151(1) of CC − Threat of death);
- Judgment №1/25-20 by Malkhaz Enukidze, Judge of Akhalkalaki District Court, of November 18 in a criminal case (Article 11^1, Article 126(1^2) and Article 126^1(1)- Domestic violence);
- Judgment №4/311-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 16, 2020, in an administrative offense case (Article 173 of the Code of Administrative Offenses − resistance to a legal request of a law enforcement officer);
- Judgment №4/312-20 by Marine Tsertsvadze, Judge of Telavi District Court, of October 18, 2020, on an administrative offense case (Article 173 of the Code of Administrative Offenses − Verbal abuse of an isolator employee);
- Judgment №4/319-20 by Mamuka Tsiklauri, Judge of Telavi District Court, of October 24, 2020, on an administrative violation case (Article 173 of the Code of Administrative Offenses − Resistance to a lawful request of a police officer);
- Judgment №4/323-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 29, 2020, on an administrative offense case (Article 173 of the Code of Administrative Offenses − Resistance by a person under the influence of alcohol to a lawful request of the law enforcer);
- Judgment №1/59-20 by Badri Niparishvili, Judge of Tetritskaro District Court, of October 06, 2020, on a criminal case (Article 126^1(2)(a) – Violence against a minor child);
- Judgment №1/24-20 by Leila Gurguchiani, Judge of Tsageri District Court, of May 11, 2020, on a criminal case (Article 126^1(2)(a)(b)(c) – Domestic violence);
- Judgment №1/41 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, on a criminal case (Article 303 (1) –Illegal logging of trees and shrubs);
- Judgment №3/97-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 06, 2020, on a case of administrative law (an electoral dispute);
- Judgment №3/98-2020 by Shota Nikuradze, Judge of Zestafoni District Court, of November 06, 2020, on a case of administrative law (an electoral dispute);

to what extent the prosecution met the burden of proving when demanding the imposition of the restraining measure (see annex 4, example 1).[26]

Most of the verdict in the high-profile Cables Case is devoted to a simple list of evidence. The judge shall narrate/describe the testimony of witnesses, the testimony of witnesses presented by the defense, the testimony of the accused and the content of other documentary evidence, without any reasoning, assessment and/or indication as to why he/she presents any evidence; Moreover, for example, most of the content of witness testimony does not relate at all to the factual circumstances of the case (for example, where and when the witness was appointed, what activities he was engaged in different years, etc.) (see annex 4, example 9).

4.6. The judge does not indicate any factual circumstances or evidence presented by the parties and/or counter-arguments of the other party; merely lists the objections of the parties, yet does not specify the factual circumstances/evidence on which the parties base their claims; enlists the evidence but does not explain why the evidence is relevant or important to the case, and what circumstances they confirm (see annex 4, examples: 1; 4; 5; 9; 10; 13; 28; 31).[27]

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26 According to Article 198, Paragraph 3 of the CPC, "the prosecution is obliged to substantiate the reasonableness of a preventive measure requested and the appropriateness of applying other less severe preventive measures."

27 A similar problem was identified in the following court decisions:

- Judgment №2b/401-19 by Amiran Dzabunidze, Genadi Makaridze, Gela Kiria, Judges of the Tbilisi Court of Appeals, of December 30, 2019, on a civil case (Defamation of honor, dignity and business reputation, "Publication of a notice in the form established by the court regarding the defamation of honor, dignity and business reputation, compensation for moral damages -" Eka Gigauri v. Giorgi Khaindrava");
- Judgment №2/12682 by Vladimer Kakabadze, Judge of Tbilisi City Court, of November 22, 2018, on a civil case (imposition of money);
- Judgment №2ბ-№603აპ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, Judges of the Supreme Court of Georgia, delivered on January 08, 2020, in a criminal case, Article 111-138(4)(c) of CC − Sexual violence against a family member);
- Judgment №2ბ-346აპ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, Judges of the Supreme Court of Georgia, delivered on November 01, 2019, in a criminal case (Article 125(1) − Beating, Article 344(1) − Illegal crossing of the state border of Georgia, Article 353(1) − resistance, threat or violence against the public defender or other government officials, Article 362(1) − storage and use of a fake ID card).
- Judgment №4/312-20 by Marine Tsertsvadze, Judge of Telavi District Court, of October 18, 2020, on an administrative offense case (Article 173 of the Code of Administrative Offenses − Verbal abuse of an isolator employee);
- Judgment №1/67-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 13, 2020, in a criminal case (Article 372(1) − Exerting pressure on a victim);
- Judgment №4/323-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 29, 2020, on a case of administrative offense (Article 173 of the Code of Administrative Offenses − Resistance by a person under the influence of alcohol to a lawful request of a law enforcer);
- Judgment №1/4959-17 delivered by Lasha Chkhikvadze, Judge of Tbilisi City Court, on May 18, 2018, in a criminal case (Article 260(3)(a) and Part 4 − Illegal purchase, storage, and sale of narcotic drugs);
- Judgment №1/4959-17 by Lasha Chkhikvadze, Judge of Tbilisi City Court, of May 18, 2018, in a criminal case (Article 260(3)(a) and Part 4 − Illegal purchase, storage, and sale of narcotic drugs);
- Judgment №1-522-19 by Ekaterine Partenishvili, Judge of Rustavi City Court, of February 06, 2020, in a criminal case (Articles 19, 137(1) of CC − Attempted rape);
- Judgment by Lela Shkubuliani, Judge of Tbilisi City Court, of February 25, 2020, in a criminal case (Article 179(2)(b) of CC − Robbery);
- Judgment №ას1527-2019 by Besarion Alavidze, Ekaterine Gasitashvili, Zurab Dzlierishvili, the Supreme Court Judges, of June 22, 2020, in a case of civil law (imposition of money).
- Judgment №1/151-20 by Nunu Nemsitsveridze, Judge of Gurjaani District Court, of February 26, 2021, in a criminal case (Article 236(3) of CC − Illegal purchase and storage of firearms and ammunition);
- Judgment №2ბ-543აპ-19 by Lali Papiashvili, Merab Gabinashvili, Mamuka Vasadze, the Judges of the Supreme Court of Georgia, of March 12, 2020, in a criminal case (Article 126(1) − violence);
- Judgment №1/236-2020 by Nana Chalatashvili, Judge of Gurjaani District Court, of January 29, 2021, in a criminal case (Article 1261 of CC − Domestic violence);
- Judgment №1-105-2020 by Darejan Kvaratskhelia, Judge of Senaki District Court, of November 03, 2020, in a criminal

The orders issued by the Batumi City Court in the cases №3/201-2020; №3/117-2020 and №3/123-2020[28]only refer to the evidence presented by the initiator of the motion. The positions and arguments of LLC F. are not given (see annex 4, example 31).

4.7. The judge did not respond to or ignored a significant factual circumstance/ circumstances and evidence brought by the party, or responded, incompletely or incorrectly, to the detriment of one of the parties (see annex 4, examples: 2; 3; 4; 5; 7; 9; 10; 12; 16; 20; 21; 25; 36,44, 45).[29]

The defense pointed to inconsistencies in witness testimony, inconsistencies, lack of genetic profile of the victim, and other important circumstances to which the judge did not respond (see annex 4, example 21).

4.8. The judge does not list and/or does not analyze the evidence that he/she uses to support his/her decision on the grounds that the evidence was not challenged by the parties (see annex 4, examples: 24; 29).[30]

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case (Article 111-151(2)(d)of CC- Responsibility for a domestic crime);
- Decision №3/117-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 03, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);
- Decision №3/201-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 14, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);
- Decision №3/123-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 03, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);
- Judgment №010100119003-56504 by Davit Mamiseishvili, Judge of Batumi City Court, of April 6 on a criminal case (Article 260(3)(a) of CC; Part 5(a), Part 6(a) (02 episodes) – illegal production, manufacturing, purchase, storage, transportation, transfer or sale of a narcotic drug, its analogue, precursor or new psychoactive substance);

28 Decision №3/117-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 03, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);
- Decision №3/201-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 14, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);
- Decision №3/123-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 03, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);

29 The same problem was identified in the following court decisions:
- Judgment №2b/401-19 by Amiran Dzabunidze, Genadi Makaridze, Gela Kiria, the Judges of the Tbilisi Court of Appeals, of December 30, 2019, on a civil case (Defamation of honor, dignity and business reputation, "Publication of a notice in the form established by the court regarding the defamation of honor, dignity and business reputation, compensation for moral damages -" Eka Gigauri v. Giorgi Khaindrava");
- Judgment №1/1473-19 delivered by Lasha Chkhikvadze, Judge of Tbilisi City Court, on September 25, 2019, in a criminal case (Article 260(6)(a) of the CC – Illegal purchase and storage of drugs);
- Judgment №1/164-2020 by Shota Nikuradze, Judge of Zestafoni District Court, of February 11, 2021, in a criminal case (Article 126(11)(c) of CC – Violence, beating, which caused physical pain to the victim, but did not result in the consequence as per Article 120 of the Criminal Code);
- Judgment №1/54-20 by Badri Niparishvili, Judge of TetriTskaro District Court, of October 01, 2020, in a criminal case (Article 300 (2) and (3) of CC – fishing with an electroshock device, which caused significant damage during the prohibited time);
- Judgment №1/57-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 27, 2020, on a criminal case (Articles 111, 126(2)(a), (d) and (j) of CC, Article 1261 (2) (a), (b) and (c), Article 111, Article 151 (2)(c) – domestic violence, responsibility for a domestic crime);
- Judgment №10a/165-21 by Maia Shoshiashvili, Judge of Rustavi City Court, of May 20, 2021, in a criminal case (Article 1261(1) of CC – domestic violence, imposition of a measure of restraint against the accused);
- Judgment №010100119003-56504 by Davit Mamiseishvili, Judge of Batumi City Court, of April 6 on a criminal case (Article 260(3)(a) of CC; Part 5(a), Part 6(a) (02 episodes) – illegal production, manufacturing, purchase, storage, transportation, transfer or sale of a narcotic drug, its analogue, precursor or new psychoactive substance);
- Judgment №3/99-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 08, 2020, in an administrative case (an electoral dispute);

30 Judgment №1/190-20 by Nikoloz Margvelashvili, Judge of Kutaisi City Court, of April 21, 2020, in a criminal case (Article 111, 151 (2)(d) of CC – Responsibility for domestic violence);
- Judgment №1/15-21 delivered by Levan Mishveliani, Judge of Samtredia District Court, on February 18, 2021, in a criminal case (Article 126(1) of CC – beating, which caused physical pain to the victim, but did not result in the consequence as per Article 120 of this Code);

In the criminal case, the judge outlined the principle of consolidating the evidence in the verdict, where the judge formally notes that despite the prejudice the evidence should still be assessed, yet actually the court does not do that. The judge only lists down the evidence obtained through the investigation, without providing any legal assessment thereof. For instance, the ruling holds that the commission of the crime has been confirmed under the protocols of the interrogation, the investigative experiment and the evidence attached to the case, yet the judge does not even name what evidence he/she means (see annex 4, example 24).[31]

4.9. The Cassation Chamber re-examined and established factual circumstances in the case (see annex 4, example: 30).[32]

In terms of legal substantiation of court decisions, the problems identified were as follows:

4.10. In the reasoning part, the judge entirely cites the domestic law of Georgia and does not make any reference to any standards/interpretation of international or European law, the case-law of the Constitutional Court or the constitutional principle and/or ignores a fundamental constitutional principle or legal aspect of the matter (see annex 4, examples: 1; 2; 6; 8; 13; 15; 23; 28; 39; 40).[33]

There is no unified approach to the qualification of murder with hooliganism in Georgian court practice and literature. Nevertheless, the judge does not refer to any international standard or principle of law in his reasoning (see annex 4, example 40).

· Judgment №1/44 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, in a criminal case (Article 303(1) of CC − Illegal logging of trees and shrubs);
· Judgment №1/41 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, in a criminal case (Article 303(1) of CC − Illegal logging of trees and shrubs);
· Judgment delivered by Levan Darbaidze, Judge of Gori District Court, on April 23, 2020, in a criminal case (Article 1261 (1) (2)(c) of CC − domestic violence, Article 111,151(2)(d) of CC- Threat of death against a family member when the person threatened develops a well-founded fear of being threatened);
· Judgment №1/82-20 by Nikoloz Margvelashvili, Judge of Kutaisi City Court, of April 02, 2020, in a criminal case (Article 1261(1) (two counts), and 111, 3811 (1) of CC – Responsibility for domestic violence, domestic crime);
· Judgment №1-105-2020 delivered by Darejan Kvaratskhelia, Judge of Senaki District Court, on November 03, 2020, in a criminal case (Article 111-151(2)(d) of CC − Responsibility for a domestic crime);
· Judgment №1/236-2020 by Nana Chalatashvili, Judge of Gurjaani District Court, of January 29, 2021, in a criminal case (Article 1261 of CC − Domestic violence);

31 In contrast to this, in a decision by the Tbilisi Court of Appeals (Judgment №1b/1613-19 delivered by Vepkhia Lomidze, Natia Barbakadze, Maia Tetrauli, the Judges of the Tbilisi Court of Appeals, on February 24, 2020, in a criminal case (Article 19, 109 (3)(a) of CC − Attempted premeditated murder), the evidence is not only listed but also examined and subsequently analyzed by the court. It is noteworthy that the Chamber not only listed the indisputable evidence considered relevant but also reviewed it individually. This judgment with its approach is completely different from the case law of the Court of First Instance, where the judge only lists the relevant indisputable evidence without elaborating on its content.

32 The same problem was revealed in the following court decision: Judgment №ას-1296-1223-2012 by Vasil Roinishvili, Levan Murusidze, Paata Silagadze, the Judges of the Supreme Court of Georgia, of March 10, 2015, in a case of civil law (compensation for damages).

33 A similar problem was revealed in the following court decisions:
· Judgment №1/41 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, in a criminal case (Article 303(1) of CC − Illegal logging of trees and shrubs);
· Judgment №2/15-922-21 by Liana Kazhashvili, Judge of Tbilisi City Court, of July 12, 2021, on a case of civil law (Complaint of David Zilfimian against “Holding Georgia” LLC as a measure of securing his claim against David Zilfimian against the suspension of the ongoing enforcement proceedings in favor of “Chemixem International” Ltd).
· Judgment №ას-1527-2019 by Besarion Alavidze, Ekaterine Gasitashvili, Zurab Dzlierishvili, the Supreme Court Judges, of June 22, 2020, in a case of civil law (imposition of money).

4.11. The judge refers to the national law, but merely lists or cites articles of the law without interpreting them, or interprets the provision incorrectly/arbitrarily and/or does not show the correlation of the norm with the specific circumstances of the case (see annex 4, examples: 6; 7; 10; 13; 14; 15; 17; 18; 19; 25; 26; 31; 33; 34; 42, 43, 44).[34]

To get a large amount of drugs, the judge combined the amount of drugs seized in the first episode and the second episodes, which is not legally correct. The charged episodes are independent episodes and it is not allowed to summarize the amount of drugs seized in these episodes in terms of qualification. The independent qualification of the episodes should be done at this time, with the relevant parts of the article (see annex 4, example 17).

In the decision on the criminal case where a person was charged with attempted premeditated murder, the judge indicates that the defense does not agree with the qualification of the crime, but does not dispute the fact of the fight. The judge does not mention specifically what the position of the defense is, why he/she disagrees with the indictment, and what main argument the defense has. Consequently, the court does not elaborate on the main argument of the defense, which would make it clear to the defense, and to the reader in general, why the court considered that attempted premeditated murder as a result of the quarrel did really take place (see annex 4, example 25).

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34 The same problem was identified in the following judgments:

- Judgment №1/1151-17 delivered by Lela Shkubuliani, Judge of Tbilisi City Court, on September 18, 2017, in a criminal case (Article 178(3)(d) and Part 4 (b) of CC − Robbery);
- Judgment №1ბ/235-19 delivered by Manuchar Kapanadze, Kakhaber Machavariani, Levan Tevzadze, the Judges of the Tbilisi Court of Appeals, on July 02, 2020, in a criminal case (Article 182(3)(b) of CC − Misappropriation or embezzlement of another person's property or property rights);
- Judgment delivered by Guga Kupreishvili, Judge of Gori District Court, on April 07, 2020, in a criminal case (Article 1261(1) of CC, two counts − domestic violence, Article 111, Article 151(2)(d) of CC–threat of death against a family member when the person being threatened develops a well-founded fear of being threatened);
- Judgment №3/123-2020 delivered by Alexander Goguadze, Judge of Batumi City Court, on April 03, 2020, on an administrative offense (obtaining confidential information about a person from a commercial bank);

Court decision №3/201-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 14, 2020, in an administrative case (obtaining confidential information about a person from a commercial bank);

- Court decision №3/117-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 03, 2020, in an administrative case (obtaining confidential information about a person from a commercial bank);
- Judgment №1/1151-17 delivered by Lela Shkubuliani, Judge of Tbilisi City Court, on September 18, 2017, in a criminal case (Article 178(3)(d) and Part 4 (b) of CC − robbery);
- Judgment №10a/165-21 delivered by Maia Shoshiashvili, Judge of Rustavi City Court, on May 20, 2021, in a criminal case (Article 1261(1) of CC − domestic violence, imposition of a measure of restraint against the accused);
- Judgment №1/164-2020 by Shota Nikuradze, Judge of Zestafoni District Court, of February 11, 2021, on a criminal case (Article 126, Part 11(c) of CC − violence, beating, which caused physical pain to the victim, but did not lead to the result provided for in Article 120 of the Criminal Code).
- Judgment №1/44 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020 in a criminal case (Article 303(1) of CC − Illegal logging of trees and shrubs);
- Judgment №1/151-20 by Nunu Nemsitsveridze, Judge of Gurjaani District Court, of February 26, 2021, in a criminal case (Article 236(3) of CC − Illegal purchase and storage of firearms and ammunition);
- Judgment by Nunu Nemsitsveridze, the Gurjaani District Court Judge, of February 22, 2021, in a criminal case (Article 151(1) of CC – Threat of death);
- Judgment №3/148 by Levan Nutsubidze, Judge of Senaki District Court, of November 07, 2020, on a case of administrative law (an electoral dispute);
- Judgment №1/57-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 27, 2020, on a criminal case (Articles 11^1, 126(2)(a), (d) and (j) of CC, Article 126^1 (2) (a), (b) and (c), Article 11^1, Article 151 (2)(c) − Domestic violence, responsibility for a domestic crime);

4.12. The judge cites a standard or interpretation of international or European law, specific right, case-law or constitutional principle of the Constitutional Court of Georgia, yet the reference is formal or arbitrary (the reference is incorrect, irrelevant, or the judge does not further correspond/link the mentioned standard/ case-law/right to the specific circumstances of the case in question) (see annex 4, examples: 4; 5; 7; 9; 10; 11; 12; 13; 14; 15; 16; 17; 25; 26; 41).[35]

In one of the cases, the court fails to assess the expediency of the disputed act. It is uncertain what the court means under the assessment of **expediency** and whether the judge equates this with the test of **proportionality**, the impression of which is created by the content of the ruling (see annex 4, example 13).

The judge rightly cites an excerpt from an ECtHR case which holds that "if there is a genuine public interest that, despite the presumption of innocence, can outweigh the person's right to liberty, the existence of such interest must be determined in each case based on the circumstances of the case." Nevertheless, the judge disregards the content of the extract and does not indicate the specific circumstances of the given case that could confirm the existence of public interest that outweighs the individual's right to liberty (see annex 4, example 4).

4.13. An attempt by the judge to rule in contrary to the applicable law (apply *contra legem* principle) in order to uphold fairness breaches the constitutional principles of limiting the judiciary by law and the distribution of powers. There have been cases where the judge went beyond the scope of administering justice and acted as a legislator. The judge is entitled to give a broad interpretation of the provisions, but the interpretation must be limited to the point where it becomes contrary to an explicit requirement of the law. The court must not deprive the law of its essence and purpose, nor change the concept clearly defined therein (see annex 4, example: 15).[36]

35 The same problem was revealed in the following court decisions:
- Judgment №2b/401-19 by Amiran Dzabunidze, Genadi Makaridze, Gela Kiria, Judges of the Tbilisi Court of Appeals, of December 30, 2019, on a civil case (Defamation of honor, dignity and business reputation, "Publication of a notice in the form established by the court regarding the defamation of honor, dignity and business reputation, compensation for moral damages -" Eka Gigauri v. Giorgi Khaindrava");
- Judgment №3/b-300-19 delivered by Gocha Abuseridze, Nana Kalandadze, Khatuna Khomeriki, the Judges of Kutaisi Court of Appeals, on November 14, 2019, on an administrative case (cancellation of the registration of property rights);
- Judgment №1/67-2020 delivered by Zurab Balavadze, Judge of Zestafoni District Court, on November 13, 2020, in a criminal case (Article 372(1) of CC − Exerting pressure on a victim);
- Judgment №1/57-20 delivered by Tamar Kapanadze, Judge of Telavi District Court, on October 27, 2020, on a criminal case (Article 11^1, 126(2)(a),(d) and (j) of CC, Article 126^1(2) (a), (b) and (c), Article 11^1, Article 151 (2) (c) − Domestic violence, responsibility for a domestic crime);
- Judgment №10d/1889 by Teimuraz Sikharulidze, Judge of Tbilisi City Court, of April 28, 2021, in a criminal case (Article 182 (2)(d) and 3(b)-misappropriation or embezzlement, Article 194(2)(a) and (3)(c) − Legalization of illegal income (money laundering), application of a measure of restraint against the accused);
- Judgment №1/236-2020 delivered by Nana Chalatashvili, Judge of Gurjaani District Court, on January 29, 2021, in a criminal case (Article 126^1 of CC − Domestic violence);

36 Compare for example the decisions of the German Federal Constitutional Court BVerfGE 96, 375 (394); BVerfGE 128, 193 (211).

The provision unequivocally states that a diploma of higher education obtained after the completion of a one-level, at least five-year educational program shall be equivalent to a Master's diploma degree, and a diploma obtained after the completion of a higher education program of less than five years shall be equal to a Bachelor's diploma. Contrary to this clear rule of law, the judge has in fact determined the conditions for conferring the academic degree of Master in the cases of recognition of the degree of higher education of judges (see annex 4, example 15).

Criterion 5. Ensuring the Effective Enforcement of Court Decisions

Enforcement of a court decision is an essential part of the right to a fair trial. This applies to both final and interim court judgments. Without enforcement, a court decision has no effect and its existence has no purpose. The court decision is considered to be effectively executed if its enforcement is not hampered, and it is implemented in a timely and comprehensive manner. This study has assessed whether the operative part of court decisions is formulated clearly, comprehensibly, and in detail so as not to impede the effective enforcement of the judgment and to avoid any undue delays.

5.1. The research has identified court decisions where the operative part is so incomplete or ambiguous that it is unclear who shall take specific actions to enforce the court rulings or what actions are required to execute a specific decision, or what other requirements shall be met to deem a particular court decision effectively enforced (see annex 5, examples 1-6).

The judge applied Article 32.4 of the Administrative Procedure Code, which grants the judge the right to annul an individual administrative act without resolving the dispute and to instruct the administrative body, after investigating and analyzing the circumstances, to issue a new act. The judge exercises this authority but without giving a specific task to the administrative body, which may hinder the execution of the court decision. In such cases, there is a high probability that the case will be returned to court again and the resolution of the dispute will be delayed (see annex 5, example 6).

Criterion 6. Scrutiny of the Quality of the Law Serving as the Ground for Court Decisions

The criterion for the assessment of the quality of the law analyzes the extent to which judges review the alleged unconstitutionality of the laws they are using, and whether they are exercising their authority to suspend case proceedings to file a motion with the Constitutional Court of Georgia when there is reason to believe that the applicable law contradicts the Constitution, or whether, in the presence of such prerequisites, judges interpret the provisions in favor of human rights and democratic development.

6.1. The study has revealed several cases where the deficiency of the legal provision to be used by the judge was apparent, yet the judge failed to apply the instruments at his/her disposal to eliminate the problem and did not elaborate in the court decision why he/she did not deem the alleged unconstitutionality of the law problematic or did not interpret the norm in line with human rights or democratic development (see annex 6, examples 1-10).

The decision of the Constitutional Court has determined the preconditions for resuming a case proceeding. This standard is ignored in the decision. The judge did not deliberate in compliance with the standard, nor did he resort to the methods of interpreting the provision and did not doubt the normative content of the norm (see annex 6, example 6).

Criterion 7. Assessment of Evidence

The criterion for assessing evidence implies an analysis of whether the judge properly and adequately evaluates the evidence, which is then used to substantiate his/her decision. This involves finding out if the evidence is merely listed in the court decision or if it is discussed by the judge to show why he/she considers a specific piece of evidence to be accepted or rejected, whether the judge explains why he/she considers that the testimony of a witness, beyond a reasonable doubt, confirms the circumstances provided by the witness, whether the court's decision examines the trustworthiness and consistency of the witness and the adherence to the standard of a body of evidence.

This chapter reviews and analyzes court decisions in which the judges elaborated on the evidence in the case. In all other judgments examined, the judges do not offer an assessment of the evidence.

The studied decisions have revealed the following issues:

7.1. The judge assesses the evidence, although incompletely; some important evidence is only mentioned and not assessed; the judge analyzes the evidence of one party only, this includes the cases where the judge assesses the evidence of only one party despite the fact that the other party challenges the credibility of the evidence (see annex 7, examples: 2-15).

The court does not specify who subjected the witness to pressure, how the pressure was manifested, who reprimanded him/her, and what relation this fact has to the defendant. The court, instead of deliberating on the connection, relevance, and reliability of the evidence, concludes that the witness might be pressured again, although the judge still does not indicate who initially pressured him/her, who might abuse him/her in the future, and what the connection this

may have with the accused. The court judgment does not include any reference to any other evidence (see annex 7, example 4).

The Court of Cassation assessed only the testimony of the defendant G.G., elaborated on its credibility, rejected the trustworthiness of the testimony and the credibility of the defendant, although the judge considered a part of the same testimony as credible and convincing for prosecuting another accused M.K without explaining why the court deemed this particular part of the previously rejected testimony as credible (see annex 7, example 15).

7.2. The judge's reasoning with respect to the evidence is contradictory, insufficient, erroneous, or incomprehensible (see annex 7, examples: 1, 3, 16-28).[37]

The judge explains, that the fact that representatives of the Ombudsman's Office were not allowed into the building of the school could not be construed to conclude that violations of children's rights or any kind of violence in the boarding school were systemic, which would have obligated the court to issue a temporary court ruling without hearing the case on the merits. The court decision does not contain any indication of what kind of evidence the complainant should have presented that would be sufficient for the "unequivocal" confirmation, nor does the court say anything if there exists any evidence that could have been available to and presented by the collective complainant to the court (see annex 7, example 3).

7.3. To confirm specific factual circumstances, the judge relies on evidence that is not relevant to this purpose (see annex 7, example: 1).

With regard to the circumstance "**whether Giorgi Mamaladze was carrying the cyanide**", the judge refers to the statement of witness B.K., who says that Giorgi Mamaladze had a company established in Spain and that the information extracted from Giorgi Mamaladze's mobile phone and computer contained personal information. The contents of the personal data mentioned in the decision have nothing to do with the case (see annex 7, example 1).

7.4. In assessing evidence, the judge refers to an international standard, the case-law of the Supreme Court or the Constitutional Court, or the legal aspect of the case, yet the reference is incorrect or arbitrary, or the case-law or standards are ignored (see annex 7, examples: 1 and 29).

The judge considered the explanation provided by a public servant in the case of administrative misconduct as highly credible, which is contrary to the principle of equality of arms guaranteed by Article 62, Paragraph 5 of the Constitution of Georgia (Article 62.5 of the Constitution of Georgia – a case proceeding shall be conducted under the principle of equality of arms and adversarial process) (see annex 7, example 29).

37 A similar problem was found in the following decision: Senaki criminal case №1/54.

Criterion 8. Substantiation of the Sentence in Criminal Cases

The criterion for the substantiation of the sentence analyzes court decisions to find out whether the judge sentenced a specific criminal defendant in accordance with the law and relevant international standards. The assessment has revealed that in several cases, the sentences imposed by the judge are not individualized and lack justification.

Substantiating the size of the sentence is crucial to ensure that the punishment imposed on a particular accused can achieve the goals provided in the law. According to Article 39 of the Criminal Code of Georgia, the punishment of a person shall have several purposes: to restore justice, to prevent the commission of a new crime, and to re-socialize the offender. The goal of the sentence shall not be the physical suffering of the person or the humiliation of his/her dignity.

Legislation of Georgia: According to Article 53 of the Criminal Code of Georgia, when imposing a sentence the judge must take into account mitigating and aggravating circumstances of the liability to be imposed on the offender. In particular, the judge should consider the motive and goal of the crime, unlawful desire manifested in the act, character and degree of the breach of obligations, the type, means and unlawful outcome of a criminal act (modus operandi), past history of the perpetrator, personal and financial circumstances, behavior of the offender after the offense, especially the offender's desire to compensate the damage and reconcile with the victim. A more severe form of sentence may be used only when a more lenient measure of punishment cannot achieve the goal of the sentence.

The following circumstances have been taken into consideration when assessing court decisions based on the criterion of substantiation of the sentence: whether the judge, when determining a sentence for a specific offender, only refers to the principles of sentencing (aggravating and mitigating circumstances of liability, the personality of the accused, the motive and intent of the offense, etc.) or also analyzes what role each factor played in selecting the sentence for a particular defendant. In this respect, the following issues have been identified:

8.1. Court decisions where the judge lists the legal principles of sentencing or refers to a relevant article of the law and provides the factors to be considered in selecting a sentence, yet fails to bring these factors in compliance with a particular convict's case and personal circumstances, thereby rendering the sentence formal and unsubstantiated. This includes verdicts where the judge sentenced the offenders to a more severe or lenient alternative sentence but did not mention any aggravating or mitigating circumstances or other factors that motivated the court to impose that particular sentence in that specific case,

which further strengthens doubts concerning the substantiation of the sentence (see annex 8, examples 1-11).[38]

In the case of Giorgi Rurua, the judge refers only to the legal principles of sentencing and cites Article 53 of CC (circumstances to be taken into consideration when sentencing a defendant) without applying these circumstances to the specific defendant and case. The judge says nothing about the personality of the accused, cannot find any mitigating and aggravating circumstances in the case, and notes that "G. Rurua is accused of committing less serious and serious crimes containing an increased threat to the public" (see annex 8, example 3).

In the verdict, the judge refers to only the general principles of sentencing and says nothing about the personality of the defendant, nor does he/she discuss mitigating or aggravating circumstances of the liability in the case. The judge only cites the principles of sentencing and does not analyze the extent to which the circumstances of the case had an impact on the process of selecting the sentence. It is not substantiated why a suspended sentence was imposed on the accused. According to Article 63 of CC, the imposition of a suspended sentence is the right and not an obligation of the judge.

38 A similar problem was identified in the following decisions:
- Judgment №1/1221-18 delivered by Nino Nachkebia, Judge of Tbilisi City Court, on March 25, 2020, on a criminal case (Article 362(1) of CC − Producing, selling, using a forged document);
- Judgment №1/160-20 delivered by Davit Svanadze, Judge of Samtredia District Court, on November 12, 2020, in a criminal case (Article 362(1), Article 180(2)(b) of CC − Producing, selling, using of a forged document, stamp, or form);
- Judgment №1-105-2020 by Darejan Kvaratskhelia, Judge of Senaki District Court, of November 03, 2020, in a criminal case (Article 111-151(2)(d) of CC − Responsibility for a domestic crime);
- Judgment №1/4959-17 delivered by Lasha Chkhikvadze, Judge of Tbilisi City Court, on May 18, 2018, in a criminal case (Article 260(3)(a) and Part 4 − Illegal purchase, storage, and sale of narcotic drugs);
- Judgment №1b/235-19 by Manuchar Kapanadze, Kakhaber Machavariani, Levan Tevzadze, Judges of the Tbilisi Court of Appeals, of July 02, 2020, in a criminal case (Article 182(3)(b)- misappropriation or embezzlement of someone else's property);
- Judgment by Tea Leonidze, Judge of Bolnisi District Court, of November 30, 2020, in a criminal case (Articles 19, 108 of CC − attempted premeditated murder);
- Judgment №1/24-20 delivered by Leila Gurguchiani, Judge of Tsageri District Court, on May 11, 2020, in a criminal case (Article 1261(2)(a)(b)(c) − Domestic violence).
- Judgment №1/236-2020 delivered by Nana Chalatashvili, Judge of Gurjaani District Court, on January 29, 2021, in a criminal case (Article 1261 of CC − Domestic violence);
- Judgment №1/67-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 13, 2020, in a criminal case (Article 372(1) − Exerting pressure on a victim);
- Judgment №1/15-21 delivered by Levan Mishveliani, Judge of Samtredia District Court, on February 18, 2021, in a criminal case (Article 126(1) of CC − beating, which caused physical pain to the victim, but did not result in the consequence as per Article 120 of this Code);
- Decision by Guga Kupreishvili, Judge of Gori District Court, of April 07, 2020, in a criminal case (Article 1261(1) of CC, two counts − domestic violence, Article 111, 151(2)(d) of CC – Threat of death of a family member when those who are threatened develop a well-founded fear of being threatened);
- Judgment №1/67-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 13, 2020, in a criminal case (Article 372(1) − Exerting pressure on a victim);
- Decision №4/312-20 delivered by Marine Tsertsvadze, Judge of Telavi District Court, on October 18, 2020, into an administrative offense case (Article 173 of the Code of Administrative Offenses: verbal abuse against an isolator employee).;
- Judgment №4/319-20 delivered by Mamuka Tsiklauri, Judge of Telavi District Court, on October 24, 2020, on an administrative violation case (Article 173 of the Code of Administrative Offenses − Resistance to a lawful request of a police officer);
- Judgment №4/323-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 29, 2020, on a case of administrative offense (Article 173 of the Code of Administrative Offenses − Resistance by a person under the influence of alcohol to a lawful request of a law enforcer);
- Court decision №1/88 by Levan Nutsubudze, Judge of Senaki District Court, of November 09, 2020, on a criminal case (Article 1261(2)(a)(b)- Domestic violence).
- Judgment №1/59-20 delivered by Badri Niparishvili, Judge of Tetritskaro District Court, on October 06, 2020, on a criminal case (Article 126^1(2)(a) of CC- Violence against a minor child);

Accordingly, the judge must pay considerable attention to justifying the sentence applied, especially in the case of a conditional sentence (see annex 8, example 5).

8.2. Court decisions where the judge refers to the individual circumstances taken into consideration in determining the punishment, but the sentence still cannot be considered well-founded because the judge's rationale regarding the factors is contradictory, incomplete, or are merely listed without any examination/scrutiny (see annex 8, examples 12-16).

In the verdict, the judge took into consideration the mitigating and aggravating circumstances of liability when imposing the sentence, and based on the accused's confession and reconciliation with the victim, imposed on the defendant a suspended sentence. Nevertheless, the court did not discuss the extent to which the suspended sentence would prevent the accused from committing a new criminal act against the victim considering that they were living in the same household (see annex 8, example 15).

8.3. Court decisions where a judge of the higher instance court upholds or changes the sentence imposed by the lower court, yet the judgment does not indicate why the judge thought the assessment of the lower court judge was/was not substantiated; or the decision of the higher court lacks the necessary substantiation (see annex 8, example 1 and example 17).[39]

The Court of Appeals upheld the imposition of a harsh sentence by the Court of First Instance without justification, even though the appellate party sought a commutation of the sentence, nor did the judgment of the Court of First Instance justify the use of a harsh sentence (see annex 8, example 1).

39 A similar problem was identified in the following court decisions:

- Judgment №2ბ-698ა-19 by Lali Papiashvili, Merab Gabinashvili, Shalva Tadumadze, Judges of the Supreme Court of Georgia, of March 05, 2020, in a criminal case (Article 19, 180(2)(a) and Part 3(b) – Attempted fraud).
- Judgment №2ბ-346ა-19 by the Judges of the Supreme Court of Georgia Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze of November 01, 2019, in a criminal case (Article 125 (1) – Beating, Article 344(1) – Illegal crossing of the state border of Georgia, Article 353(1) – resistance, threat or violence against the public defender or other representatives of the government, Article 362(1) – storage and use of a forged ID card);

Recommendations

For solving these problems, inter alia, it is advisable to take the following measures:

- Conduct studies from time to time regarding the substantiation of court decisions and their dynamics in order to increase the accountability of the judiciary.
- Initiate a discussion with the participation of the public on setting up an internal assessment system to determine the scale of the problems found in judicial decisions and their reasons.
- Establish a mechanism for the efficient allocation of internal resources to the judiciary to ensure better work of the judge and his/her staff.
- Identify the reasons for the perception of judicial bias.
- The principle of hearing cases within reasonable timeframes, rather than setting a specific time limit for the consideration of a case, should be established by law.
- Educate judges on the social role of judges, with the involvement of external professionals in the judiciary.

ANNEX 1

Criterion 1. Illustrative Examples of the Social Role of the Judge in a Democratic Society

EXAMPLE 1

In a decision related to the drug crime[40] we can see the effort of the judge, albeit incorrect, to discuss the non-legal aspects of the case. The judge pointed out the social danger of the conduct and clarified the following: "The guilty and unlawful conduct established by the court is of high social danger and the prevention of such crimes requires a stricter approach from the State". However, it would be important to show the individual approach of the judge towards the conduct described in the judgment and the factual circumstances as opposed to general and template statements. Namely, the position of the defense was that the defendant did not obtain any benefit from the sale of drugs, thus his conduct could not be classified as the sale of drugs. The judge failed to discuss the harsh criminal policy often used by the State on drug crimes interfering with civil rights[41].

EXAMPLE 2

In the case of Ninotsminda children boarding house, the judge did not take into consideration his/her social role in the decision. The judge limited himself only with the formal clarifications. The judge was silent on the rights of the children and did not argue the importance of the best interest of the child in considering this case. The judge applied the law formally and devoid of any purpose and ignored the deplorable state of children's rights, which is the subject of concern of the public defender and the NGOs working in the area of rights of children[42].

40 Decision №1/4959-17 by Lasha Chkhikvadze, Judge of Tbilisi City Court, of May 18, 2018, on a criminal case (Article 260(3)(a) of CC and Part 4 of the same Article – Illegal purchase, storage, sale of narcotic drugs).

41 Judgment №010100119003-56504 by Davit Mamiseishvili, Judge of Batumi City Court, of April 6 on a criminal case (Article 260(3)(a) of CC; Part 5(a), Part 6(a) (02 episodes) – illegal production, manufacturing, purchase, storage, transportation, transfer or sale of a narcotic drug, its analogue, precursor or new psychoactive substance);

42 Judgment № 4567073-21 by Baia Otiashvili, Judge of Tbilisi City Court, of April 26, 2021, in an administrative case of (N(N)LP "Partnership for Human Rights" v. Ninotsminda Boarding School).

EXAMPLE 3

As it is clear from Tbilaviamsheni[43] case, in their complaint the applicants have pointed out the coercion against them, as well as the fear of illegal imprisonment and conviction, which persuaded them to give up their property for free. In spite of those statements made by the applicants, the judge delivered a decision on this case without mentioning multiple reports issued by international organisations and the Public Defender of Georgia concerning violation of property rights, illegal imprisonment, unlawful wiretapping and wrongful convictions happening in the country.

EXAMPLE 4

In the case №603ა3-19,[44] the judge did not consider the non-legal concepts and realities connected to the case. The judge did not pay attention to the empirical research on the violence against children in Georgia, where one of the questions is the sexual violence committed by parents and family members against children[45].

EXAMPLE 5

In the case №1-105-220[46], the judge failed to take into account and discuss the non-legal concepts and realities concerning family violence. Numerous studies have been conducted in Georgia on the issue of family violence. In the given case, the judge could take into account the deplorable situation existing in the country concerning the violence against women. Only in the reasoning of the sentence, the judge noted that family violence mostly concerns family members and differs from other types of crime by closed space and repetitive nature.

EXAMPLE 6

In the case of a preventive measure against Ilychova and Melashvili,[47] there was political/social and international context that was not mentioned / discussed by the judge. The case concerns the delineation of the border between Azerbaijani and Georgia in the territory belonging to the cultural and religious monument of David Gareja Complex. The problem of establishing a clear border with Azerbaijan has existed

43 Judgment №2/9401-13 by Tbilisi City Court Judges Levan Mikaberidze, Zaza Martiashvili and Vladimer Kakabadze of July 26, 2017, and Judgment №2ბ/6084-17 by Otar Sichinava, Tea Sokhashvili-Nikolaishvili, Amiran Dzabunidze, Judges of the Tbilisi Court of Appeals, of December 6, 2019, in a civil case (Annulment of the minutes of the meeting of partners, annulment of the share transfer agreement, annulment of the orders on alienation of shares, return of ownership to Tbilaviamsheni").

44 Judgment №2ბ-603ა3-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, Judges of the Supreme Court of Georgia, of January 08, 2020, in a criminal case (Article 111-138, Part 4, Subparagraph C of the Criminal Code – sexual violence against a family member).

45 UNICEF report: Violence Against Children in Georgia, National Survey of Knowledge, Attitudes and Practices, 2013 uni.cf/3oEEq6E [20.11.2021]

46 Judgment №1-105-2020 by Darejan Kvaratskhelia, Judge of Senaki District Court, of November 03, 2020, in a criminal case (Article 111-151(2)(d)of CC- Responsibility for a domestic crime);

47 Judgment №10a/4258 by Davit Kurtanidze, Judge of Tbilisi City Court, of October 8, 2020, in a criminal case (Article 308(1) of CC, an anti-Georgian act aimed at separating a certain part of Georgia from the territory of the country, Natalia Ilychova and Iveri Melashvili's conviction, "The Cartographers case").

for many years, however, the investigation has started on this case shortly before the 2020 parliamentary elections. Namely, on October 7, 2020[48], the General Prosecutors Office of Georgia arrested the former members of the Delimitation and Demarcation State Committee Iveri Melashvili and Natalia Ilychova. The so-called Cartographers' case has acquired political significance when it was intensively used for pre-election purposes and was evaluated as politically motivated by different non-governmental organisations[49]. Considering the social context, an impression was created in the eyes of the large public that defendants were traitors of the country.

EXAMPLE 7

In the case of Giorgi Rurua[50], the judge should have considered the political context of the case, namely that the defendant was the founder of the critical TV media. Due to this fact, the case was under increased public scrutiny. In order to rule out any suspicion of a political prosecution, the judge should have duly examined why the investigative measures were not audio/video recorded in this case.

EXAMPLE 8

In the case of Gogi Tsulaia,[51] the judge did not argue the context that was significant for the case, not even for the purpose of excluding such context. What is meant here is the video address recorded and disseminated by Gogi Tsulaia using strong language against the son of the former Prime Minister Bera Ivanishvili. The nature of the specific charge required a more sensitive approach from the judge, particularly bearing in mind that the defendant is a politician and the judge has applied detention against the defendant.

EXAMPLE 9

In the decision delivered into the case of Nikanor Melia,52 it is clear that the judge is aware of his social role, yet only partially fulfills it. The judge, on the one hand, focuses on the influence of the accused as a political leader, and on the other hand, notes that there is a risk of committing violence but does not specify what risk he means.[53] The judge does not explain the specific situation that [he/she] envisions,

48 The Parliamentary Elections were held on October 31, 2020

49 "An investigation is underway on an extremely sensitive topic for Georgian citizens during the pre-election period. Raising similar issues in the run-up to the elections may be aimed at influencing voters. "Statement by Thirteen NGOs, Cartographers' Case – New Politically Motivated Investigation, October 8, 2020 bit.ly/3pFjETX

50 Judgment №1/308-20 by Valerian Bugianishvili, Judge of Tbilisi City Court, of July 30, 2020, in a criminal case (Article 236(3)(4) of CC – unlawful purchase, possession, carrying, manufacture, sale of firearms; Article 381, Part 1 – failure to enforce a judgment or other court decision or obstruction of its execution, accusation against Giorgi Rurua).

51 Judgment №10a/1170 by Zviad Sharadze, Judge of Tbilisi City Court, of March 19, 2021, in a criminal case (Article 138(1) of the Criminal Code – other sexual action (except rape), the first appearance of the accused Giorgi Tsulaia and imposition of a preventive measure);

52 Judgment №10a/3114 by Temur Gogokhia, Judge of Tbilisi City Court, of June 27, 2019, in a criminal case (Article 225(1)(2) of CC – organizing, directing or participating in group violence, restraint measure against Nikanor Melia).

53 Ibid. p. 7-8. The judge reasoned: "The Court considers that the threat of a new offense as a precondition for a preventive measure is based on a number of factors, including the nature of the alleged offense and the context in which the

instead the judge vaguely points to a kind of situation which is unknown and cannot be assumed by the reader. The judge is using the word “sensitive” to refer to the secret context and underline the importance of the matter. However, [he/she] does not say anything specific. Similarly, the judge did not specifically analyze the motive of the crime but hinted at some kind of context, which is quite unclear. The judge examined the influence of Nikanor Melia as a politician on public opinion but did not deal with the freedom of expression of the politician.

EXAMPLE 10

In the case №ას-1296-1223-2012[54] the complicated relationship between JSC Bank Kartu and LTD B and LTD A.M.K. coincides with the period when the State was prosecuting JSC Bank Kartu out of political considerations using different mechanisms. This can explain the simultaneous actions within a short period of time committed by LTD B and LTD A.M.K (which were interrelated) and relevant State agencies. There is a high likelihood that this was the reason for JSC Bank Kartu to lose the case in lower instance court. The court does not mention/ discuss the above-mentioned context, which is evident from the circumstances of the case.

EXAMPLE 11

In the case of Gigauri v. Khaindrava,[55] the allegation of the defendant concerned the indirect participation of the claimant in disbanding the citizens and the media participating in the protest demonstration of November 7, 2007. Despite the fact that the parties did not refer to the events which took place on that day, in order to evaluate specific expressions it was appropriate for the court to describe and evaluate publicly known events. By this, the court could inform the reader about the significance of the disputed expressions and, generally, the importance of this dispute to the parties.

EXAMPLE 12

The electoral dispute cases №3/97-2020, 3/98-2020, 3/99-2020[56] were resolved by the court on the sixth day after the election, during which the opposition parties, the

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offense was committed. The crime that Nikanor Melia is accused of is related to leading and participating in violent, group actions. The situation in the country should also be taken into account, at which time the issue of turning peaceful protest into violent action is particularly sensitive. Therefore, it is important to rule out the dangers of inciting citizens to commit similar crimes and violence and to conduct the process within the constitutional framework."Given Nikanor Melia's political activities, as well as the fact that he influences the will of quite a number of supporters, it is necessary to rule out the risk of him continuing to lead a group to alleged violent acts."

54 Judgment №ას-1296-1223-2012 by Vasil Roinishvili, Levan Murusidze, Paata Silagadze, Judges of the Supreme Court of Georgia, of March 10, 2015, in a case of civil law (compensation for damages).

55 Judgment №2b/401-19 by Amiran Dzabunidze, Genadi Makaridze, Gela Kiria, Judges of the Tbilisi Court of Appeals, of December 30, 2019, in a civil case (Defamation of honor, dignity and business reputation, publication of a notice, compensation for moral damages on the court decision – "Eka Gigauri v. Giorgi Khaindrava").

56 Judgment № 3/97-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 06, 2020, in a case of administrative law (an electoral dispute);

- Judgment №3/98-2020 by Shota Nikuradze, Judge of Zestafoni District Court, of November 06, 2020, on a case of administrative law (an electoral dispute);
- Judgment № 3/99-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 08, 2020, in a case of administrative law (an electoral dispute);

voters and part of the community was raising suspicion towards the results of the election. Simultaneously, finalizing records and records of correction were uploaded on the website of the Central Election Commission. As it was found out, there have been multiple mistakes corrected through correctional acts in the final reports of the election districts, which has even more increased the distrust of part of the community towards the election. Despite this fact, the judge considered the given dispute only in the light of the formal-legalistic approach.

EXAMPLE 13

In the Supreme Court decision related to the change of sex in the birth registry[57] the Chamber does not discuss the issue of gender identity as one of the most sensitive issues related to private life, which mostly has a significant impact to the family life as well. The chamber formally assessed the application of the law on the sensitive issue, the legal regulation of which is characterized by ethical and moral considerations. The chamber does not view this question from the viewpoint of the development of universally recognized human rights and the internal private feelings of an individual. In considering this specific question, the court did not take into account the scientifically proven considerations having principal importance:

a. Gender identity is not only defined by external sexual features and substantively depends on the self-identification of the person in the context of gender[58].
b. The surgery is important to corroborate gender identity but is not indispensable. What is important is how consistently the person lives with the desired gender and adapts himself to the situation[59].
c. Sex change surgery is related to serious health risks. Not all transgender individuals wish or can afford it. Even if the person is willing and capable, often it is not recommended to the health situation or age. The operation involves the removal of reproductive organs, which causes the sterilization of the human being[60].
d. Decisions of transgender persons are stable. The number of those people who return to the original gender after the change of sex is less than 1 percent[61].
e. Sexual orientation of transgender[62] can be hetero, homo, bisexual, etc[63].

57 Judgment №ბს-579-579 (კ-18) of the Supreme Court of Georgia Judges Nugzar Skhirtladze, Maia Vachadze, Vasil Roinishvili of April 18, 2019, on an administrative case (refusal to change the gender information in the birth record).

58 Compare BVerfGE 115, 1 (15); 128, 109 (124).

59 Compare VerfGE 128, 109 (116, 132 f.) (ibid, the reference on academic literature)

60 Compare A.P., Garcon and Nicot v. France, §120, 126; BVerfGE 128, 109 (116 ff, 131);

61 BVerfGE 128, 109 (118) (ibid, the reference to academic literature and research);

62 From the viewpoint of the gender to which they identify themselves;

63 For example: BVerfGE 128, 109 (115) – Lebenspartnerschaft von Transsexuellen;

EXAMPLE 14

In the case of TV Pirveli,[64] the judge does not discuss the context of the case and the decision is adopted without global evaluation of attending circumstances. The TV Pirveli has publicized secret recordings of conversations between Bera Ivanishvili, the son of former Prime Minister Bidzina Ivanishvili, and acting Prime Minister Irakli Garibashvili and head of State Security Service Anzor Chubinidze. They are discussing how to intimidate a 15-year-old juvenile due to the unpleasant comments made publicly with respect to Bera. Within 3 days after the dissemination of these recordings, Bera Ivanishvili indirectly corroborated the content of the recording in the interview with TV Imedi and said: "if somebody insults my mother, I will request such person to respond even today"[65]. The prosecutor's office started the investigation only with regard to the illegal wiretapping of private conversations, while the investigation was not interested by the content of the secret recordings. In the given ruling, the judge disregarded the fact that the motion of the Prosecutor's Office on the conduct of the investigative measure goes beyond the standard investigative measures and concerns the investigation of the media outlet, which also raises the issue of non-interference with the freedom of media. The judge did not evaluate the motion in the context of non-disclosure of journalistic sources established by the law and left without consideration the wide context involving the influential persons participating in the case[66].

EXAMPLE 15

In the case of Anna Dolidze, a non-judicial member of the High Council of Justice and Dimitri Gvritishvili, judicial member of the Council,[67] there was a heated discussion/ controversy between Dolidze and members of the Council over the state of the judiciary. Against this background, the dissemination of information about Dolidze by Gvritishvili, which presented her as a person acting in the interests of Russia and to the detriment of the interests of Georgia, was aimed at discrediting her rather than discussing the situation around the judiciary. Against this background, the court did not mention/discuss in the decision an important issue, such as the significance of the relationship between the claimant and the defendant and the mutual trust for ensuring the public confidence towards the judiciary, connected to the mission of HCOJ according to Article 64 of the Constitution. In the body ensuring the independence and effectiveness of common courts of Georgia, the mutual relationship between the members of HCOJ should enable substantive debates and discussions and activities

64 Judgment №11a/4297 by Lasha Kldiashvili, Judge of Tbilisi City Court, of March 09, 2021, in a criminal case (Article 158(1)(2) of CC − Violation of the secrets of private communication, the so-called "TV 1") .

65 Netgazeti, March 09, 2021, https://netgazeti.ge/news/525443/ [20.11.2021]

66 Judgment №11a/4297 by Tbilisi City Court Lasha Kldiashvili of March 09, 2021, in a criminal case (Article 158(1)(2) of CC − Violation of the secrets of private communication, the so-called "TV 1") .

67 Decision №2/14643-18 by Judge of Tbilisi Court Maia Gigauri of October 2, 2018, and decision №2b/7995-18 by Genadi Makaridze, Amiran Dzabunidze, Gela Kiria, Judges of Tbilisi Court of Appeals, of December 30, 2019, in a civil case (Denial of information insulting honor and dignity through the mass media, a dispute between Ana Dolidze and Dimitri Gvritishvili).

directed towards the improvement of the judicial system. The negative relationship between members creates a negative working culture which can significantly damage the fulfillment of the task assigned to this body. It is clear that the court could not discuss the publicly known confrontation between members of HCOJ. Despite that, reducing the constitutional mission of the members of HCOJ to the confrontation between private individuals means leaving without consideration the context as well as the ethical criteria.

EXAMPLE 16

In the case concerning the dismissal of Mamuka Akhvlediani[68], the claimant was the Chairman of Tbilisi City Court and the Criminal Case collegium, while publicly expressing critical views about the situation existing in the Georgian judiciary. This was exactly followed by his dismissal from the presidency of the court. It is true that formally the dismissal was made based on other grounds, but the existing context had to be taken into account. The discussions on the problem of the judiciary are vital in the democratic society and it is important for everyone including judges to be able to express critical views without fear or expectation of negative consequences. It is noteworthy that the defendant, referring to the caselaw of the ECtHR[69], rightly pointed out the chilling effect that can follow from sanctioning of the judge due to the expressed opinion. This is a factor that can deprive justification from application of sanction against a judge, who has the right to alert the public about the issues concerning judicial power[70].

EXAMPLE 17

In three decisions concerning election disputes,[71] the court does not consider the fundamental role of the elections in a democratic society, which is a requirement of the State governed by the rule of law. The ECHR particularly emphasizes the right to free elections, which is stipulated by Article 3 of the additional protocol of the European Convention, creation of proper conditions for the conduct of free elections has decisive meaning for the implementation and maintenance of effective and true democracy governed by the rule of law (...) "Yumak and Sadak v. Turkey, par. 105, [08.07.2008].

68 Judgment №3/2222-16 by Judge Davit Tsereteli of Tbilisi City Court of September 28, 2016, on a case of administrative law (dismissal of Mamuka Akhvlediani, Chairman of the Court and the Panel);

69 Kudeshkina v. Russia, ECHR no.29492/05, §98, 99;

70 Judgment №3b/1963-16 by Manana Chokheli, Giorgi Gogiashvili, Amiran Dzabunidze, Judges of Tbilisi Court of Appeals, of January 31, 2017, in an administrative case (annulment of an individual legal act).

71 Decision №3/68-20 by Davit Gelashvili, Judge of Poti City Court, of November 07, 2020, in an administrative case (an election dispute);
Judgment №3/67-2020 by Davit Kekenadze, Judge of Poti City Court, of November 07, 2020, in an administrative case (an election dispute);
Judgment №3/148 by Levan Nutsubidze, Judge of Senaki District Court, of November 07, 2020, on a case of administrative law (an electoral dispute);

EXAMPLE 18

Case №3/209-10[72] involved the recognition of the right of property on the land located in Bakhmaro. Bakhmaro is a unique natural resource and there is a high public interest for its consistent development and prevention of chaotic constructions in which public and private interests must be duly considered and respected. The court cited Article 5 (prima) par. 2 of the law on Recognition of Property of Lands Possessed by Physical and Legal Persons of Private Law, according to which while recognizing the property on the lands occupied arbitrarily, one must consider the requirements of special planning and compliance with the city construction plans. At the same time, the court limited itself only to the citation of this norm and did not explore the question of the observance of this law and the balance between private and public interests in this specific case. Neither did the court clarify whether, while issuing a new administrative act, the administrative body has weighed the given circumstance.

EXAMPLE 19

In the civil case №2/15922-21[73] the judge did not pay attention to the importance of suspension of execution of the court decision. The ruling did not explore the question of what effect can be triggered by the suspension of execution of the judgement, invalidation of an interim measure and reversal of conducted execution proceedings generally on legal stability of the country.

EXAMPLE 20

In high profile case of Metro Drivers,[74] the judge explored the economic aspect of the case, while substantiating the decisions on granting the request of Ltd "Tbilisi Transport Company" on the postponement of the strike. However, the judge left without considering the social aspect of the case, which was connected to the labor relations between the employer and the employee. Without analyzing both aspects of the case, the judgment left a vacuum, which in the end constitutes a gap in the reasoning.

EXAMPLE 21

In the decisions of Vano Ckhartishvilii case[75], the judge explored the question of the influence of the interim measure on the right to property guaranteed by Article 19 of the Constitution. However, the decision is silent on the economic aspects guaranteed

72 Judgment №3/209-19 by Tsitsino Rokhvadze, Judge of Ozurgeti District Court, of October 16, 2020, in a case of administrative law (annulment of an administrative act/issuance of a new act);

73 Judgment №2/15-922-21 by Liana Kazhashvili, Judge of Tbilisi City Court, of July 12, 2021, on a case of civil law (Complaint of David Zilfimian against "Holding Georgia" LLC as a measure of securing his claim against David Zilfimian against the suspension of the ongoing enforcement proceedings in favor of "Chemixem International" Ltd).

74 Judgment №2425047-18 by Giorgi Gogichashvili, Judge of Tbilisi City Court, of May 01, 2018, in a civil law case (on the statement of the Tbilisi Transport Company Ltd; On the postponement of the strike of the NNLP "Ertoba 2013"; Metro drivers strike").

75 Decision №2/18241-20 by Zaal Maruashvili, Judge of Tbilisi City Court, of September 8, 2020, (Eurasian Invest Ltd v. Gianway Fan, compensation) and Decision №2/18865-20 By Tamar Burjanadze, Judge of Tbilisi City Court, of September 15, 2020, in a civil case (Eurasian Management Group Ltd. v. CEFC Ltd., securing a lawsuit) (the so-called Vano Chkhartishvili case)

by Article 6 of the Constitution of Georgia concerning economic freedom and does not evaluate this question from the viewpoint of free entrepreneurship. The ruling interferes not only within the right to property, but also with entrepreneurial freedom, which was left without consideration by the judge.

EXAMPLE 22

In a highly publicized case concerning the recognition of judicial diplomas[76], the judge rendered the decision and while discussing the right to education equated the level of education received by the judge with the master's degree without even mentioning the critical public need to provide judicial power with duly qualified human resources. The consideration of this matter by the judge could have a decisive impact on the outcome of the case.

EXAMPLE 23

On the criminal case concerning family violence/domestic violence, the court clarified: "the refusal of the victim to testify cannot become an unconditional ground of the acquittal of the defendant and the court shall pay attention to the behavior of the victim." Initially, the victim was motivated to contribute to the objective investigation (was interviewed voluntarily, took part in procedural actions as well other investigative actions including the examination of a hand injury, participated in crime scene reconstruction), completely differing from [his/her] subsequent behavior when the victim refused to testify in court. The conduct of the victim truly resembles the classic behavior of the victims of domestic violence, who continue to live in permanent fear and tension. The victims of domestic violence are afraid of the aggressor and believe that taking a lenient position is the best way to neutralize the future danger, which contributes to the radical change of his/her initial willingness to contribute to the administration of justice and refusal to testify[77].

EXAMPLE 24

In substantiating the punishment in a family violence case[78] and individualizing the punishment, the judge paid attention to the stereotypes and challenges existing in the public, which characterize the behavior of the victim and public response to the violence. The judge also examined delayed response to the violence which is related to different opinions existing in the society, approved way of life, etc. The judge also argued the role of the State in such a situation, which turns the judgment of the court into a comprehensive and interesting document.

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76 Decisions by Judge of Tbilisi City Court Nino Buachidze of October 16, 2017, by Tbilisi City Court Judge Meri Guluashvili of October 17, 2018, and by Tbilisi City Court Judge Meri Guluashvili of February 27, 2019, into administrative law cases (the numbers are classified) (the disputes related to judges' diplomas / academic degrees).

77 Judgment №1-522-19 by Tea Leonidze, Judge of Bolnisi District Court, of November 11, 2020, in a criminal case (Article 1261, Part 1 (two episodes) and Article 151, Part 1 – Domestic Violence, Liability For domestic crime), p. 8.

78 Judgment №1/82-20 by Nikoloz Margvelashvili, Judge of Kutaisi City Court, of April 02, 2020, in a criminal case (Article 1261(1) of CC (two counts) and Article 111, 3811(1) – responsibility for domestic violence, domestic violence);

On this question, the judge developed the following reasoning: "the implementation of the law against domestic violence is hampered by the social attitudes and deeply-rooted patriarchal approaches and gender stereotypes existing in society, which are a cause of condoning attitude towards the gender-related violence. As to family violence, this is believed to be a personal matter as opposed to the public matter in most part of the country. As it is clear from the existing practice, the victims of family violence do not apply to the State for assistance until the situation gets extremely dangerous and the interference of law enforcement is the only way of rescuing their lives and their health. Often, the relatives and the family members who influence the free will of the victim contribute to the situation. The free will of the victim is paralyzed by many factors including the condolence based on love, the pressure from then relatives, the fear of the public reaction as well as the fear from the aggressor, fear of losing children or domicile. Based on all these considerations, the victims of domestic violence are not able to fully express themselves, which they later regret, but take the toll on their health often leading to fatal consequences. The safety of the victim and the children is threatened repeatedly and with higher intensity, when due to the severe social and economic conditions, fear or inadequate perception of the problem, the victims have to return back to the conflict situation, as if they voluntarily refused to abscond from the violent environment (p. 5-6). Based on the abovementioned, the responsibility to prevent family violence and adequate response lies upon the State within the reasonable framework".

EXAMPLE 25

In the case of attempted rape, the court granted special importance to the statement of the victim, in particular, the judge clarified the following: "we need to take into account the clarification provided in the decision of the Supreme Court n. 253 AP-15, dated 19.02.2015 concerning the probative value of the testimony of the victim in violent crimes. The decision has provided a citation from the cassation court's ruling. The cassation chamber noted the following: the crime under consideration, due to its character and nature, as a rule, is not public and is not characterized by a multiplicity of eyewitnesses, thus in such category of cases, it is particularly important to establish the consistency of the testimony of the victim, compliance with other evidence and the absence of the motive which may lead the court to conclude about the bias of the victim against the defendant"[79]

79 Judgment №1-522-19 by Ekaterine Partenishvili, Judge of Rustavi City Court, of February 06, 2020, in a criminal case (Articles 19, 137(1) of CC – Attempted rape) p.18;

ANNEX 2

Criterion 2. Illustrative Examples of Hearing a Case within a Reasonable Timeframe by a Judge

EXAMPLE 1

From the decision adopted on Metro Drivers' case[80], it is evident that LTD Tbilisi Transport Company filed a lawsuit with Tbilisi city court on May 1, 2018. The court considered the application and adopted the ruling on the same day. It is not clear from the ruling based on which legislative provision the court heard the application and adopted the decision on the same day. The ruling says that the court was guided by Article 284-285 of the Civil Procedure Code, which does not contain any special provision regulating the consideration of such types of cases.

It is true that Article 50 of the Labor Code stipulates the possibility of an accelerated hearing of an application, however, there is no specific norm regulating the matter, and the Law on Normative Acts of Georgia prohibits the application of special exceptional norms by analogy (according to Article 5.3 of the Law on Normative Acts of Georgia, exceptional norms cannot be applied by analogy). The restriction of a fundamental constitutional right in an exceptional way, without oral hearing and participation of the parties, is unacceptable.

EXAMPLE 2

The defendant Giorgi Mamaladze was arrested on February 10, 2017, and was applied detention as a preventive measure[81]. Taking into account the need to handle detention cases as a priority, the decision was adopted by the first instance court in observance of the norms of the Criminal Procedure Code within 6 months and 25 days[82]. However,

80 Judgment №2425047-18 by Giorgi Gogichashvili, Judge of Tbilisi City Court, of May 01, 2018, in a civil law case ("the postponement of the metro drivers' strike");

81 Judgment №1/b-972-17 by Natia Barbakadze, Murman Isayev, Manuchar Kapanadze, the Judges of the Tbilisi Court of Appeals, of February 13, 2018, in a criminal case (Article 18, 108, Part 2 of Article 236 of CC – Attempted murder, accusation of Giorgi Mamaladze, the so-called "cyanide");

82 Pursuant to Article 185(6) of the Criminal Code of Georgia, a court of the first instance renders a verdict no later than 24 months after the pre-trial judge decides to transfer the case for substantive consideration. Pursuant to Article 8(3) of the Code, the court is obliged to give priority to the criminal case in which detention is used as a measure of restraint against the accused.

we need to take into account that within this time period the investigation conducted multiple expert examinations (biological, video phonoscopic, habitoscopical, chemical, toxicological), the results of which are obtained as a rule after months in regular cases. Also, many witnesses were questioned on this case, thus, presumably, the investigation of this case was conducted within accelerated timeframes.

EXAMPLE 3

In one of the cases[83] the decision regarding the stay of execution and liberation of debtor's property was adopted on the following day upon the filing of the claim filed by the party (the claim was filed on July 9, Friday). The law stipulates 5 days and 20 days (in total 25 days) time limit for checking the admissibility of the complaints. Thus the decision on the stay of execution and liberation of debtors' property from all types of restrictions was clearly adopted within an accelerated manner.

EXAMPLE 4

From the decision in the case Gigauri v. Khaindrava, it is not clear when was the complaint filed in the Court of Appeal[84], however, according to the date of the appeals court decision, apparently the Court of Appeals considered this case for one year, which is not considered to be a reasonable time. This conclusion is drawn from the fact that the appellant was requesting from the court only the value-based judgment. The court did not establish facts or new circumstances nor examine the evidence. The need to hear the case within a short time was also necessitated by the fact that the trial court decision was made within 3 years from filing the application.

EXAMPLE 5

On the cases concerning the recognition of a Master's Degree obtained by the judge[85], the disputed act was issued on June 27, 2017; the court decision was issued on October 16, 2017. If we take into account the timeframes of appeal and consideration of the administrative-legal act in trial courts, the statutory deadline is violated. At the same time, it is not known whether this was caused by any objective fact which happened independently of the court.

83 Judgment №2/15-922-21 by Liana Kazhashvili, Judge of Tbilisi City Court, of July 12, 2021, on a case of civil law (Complaint of David Zilfimian against "Holding Georgia" LLC as a measure of securing his claim against David Zilfimian against the suspension of the ongoing enforcement proceedings in favor of "Chemixem International" Ltd).

84 Judgment №2b/401-19 by Amiran Dzabunidze, Genadi Makaridze, Gela Kiria, Judges of the Tbilisi Court of Appeals, of December 30, 2019, in a civil case (Defamation of honor, dignity and business reputation, publication of a notice, compensation for moral damages on the court decision − "Eka Gigauri v. Giorgi Khaindrava").

85 Decision by Judge of Tbilisi City Court Nino Buachidze of October 16, 2017, into an administrative law case (the number is classified) (the disputes related to judges' diplomas/academic degrees).

EXAMPLE 6

In the case of Tbilaviamsheni,[86] the first instance court decision does not contain information about when was the civil suit filed and what was the duration of the case. The registration number 2/9401-13 of the case file indicated on the decision reveals that the claim was filed to the court in 2013. At the same time, in par. 9 of the decision concerning interim measures, it is referred that on May 22, 2014, the applicants applied to the court with the joint motion requesting interim measure, thus we can reasonably assume that the civil claim was filed to the court before May 22, 2014, namely in 2013.

Only after taking the given case to Tbilisi Court of Appeals, the appellate court ruling of Dec. 6, 2019 (where the subject of the dispute was July 14, 2017 rulings of Tbilisi City Court Civil Case Collegium concerning the challenge of Levan Mikaberidze and the collegial panel of the court) reveals that on June 28, 2017, two members of the first instance court panel decided to disqualify Judge Soso Ghurtskaia, after which the case was delivered to the chairman of the same first instance court for the purpose of defining the new composition of judges. A new composition of judges was approved by the July 4, 2017 ruling of the Chairman of Tbilisi City Court, establishing a new panel of judges for the consideration of the civil case n. 2/940113: presiding judge Levan Mikaberidze and members Vladimer Kakabadze and Zaza Martiashvili.

Based on the facts provided in the decision the hearing of the case in the first instance court overall took three years. The decision does not enable us to understand what factors were influencing the delay of the proceedings. In the light of this timeframe, questions arise on how Levan Mikaberidze could complete the case within three weeks after his appointment to the new panel of judges (including the announcement of the operative part of the decision), particularly when it is visible from the decision that multiple witnesses were questioned and numerous evidences had to be examined and the case was complex as the panel of judges was assigned to the case in the first instance court.

In the case of Tbilaviamsheni, the ruling adopted by the Court of Appeals does not contain information of when the appellants filed the appellate complaint to the city court: whether or not it was sent to appellate court within statutory time and how much time was taken by the appellate trial.

The number which was assigned to the case №2ბ/6084-17 makes us think that the case was sent to Tbilisi appellate court together with the appellate complaint in 2017. Neither can we find in the decision any explanation of what factors were influencing the duration of the case (based on information provided in the court decision we can

86 Judgment №2/9401-13 by Tbilisi City Court Judges Levan Mikaberidze, Zaza Martiashvili and Vladimer Kakabadze of July 26, 2017, and Judgment №2ბ/6084-17 by Otar Sichinava, Tea Sokhashvili-Nikolaishvili, Amiran Dzabunidze, Judges of the Tbilisi Court of Appeals, of December 6, 2019, in a civil case (Annulment of the minutes of the meeting of partners, annulment of the share transfer agreement, annulment of the orders on alienation of shares, return of ownership to Tbilaviamsheni").

assume that the case was tried as a minimum for two years). As we can see from the ruling, an oral hearing was held but we cannot conclude whether the case was tried in multiple hearings and in case if there were several hearings what was the reason for their adjournment.

EXAMPLE 7

On the case of Nika Rurua,[87] the judgment was pronounced on July 30, 2020, which is 8 months and 12 days after charging and arresting the defendant. In the given case the defendant was in custody. The case was not of such complexity which would justify the lapse of 8 months including investigation and court hearing.

EXAMPLE 8

In the case of so-called gender recognition,[88] we cannot see from the ruling when the cassation complainant applied to the Supreme Court of Georgia. Considering the fact that the appellate court decision is adopted on 24.10.2017, it seems highly likely that the procedural deadline formulated by Article 34.4 of the administrative procedural code is violated (timeframe for admission of cassation complaint and taking a decision on administrative cases is 6 months).

In this context, we note that the case involved a very sensitive issue connected to the freedom of the individual. However, the Supreme Court did not change the existing caselaw, but maintained the outdated approach. In the case of X. v The Former Yugoslav Republic of Macedonia, the ECtHR held that "absence of transparent, rapid and accessible procedures for making changes in the birth registry for persons with transgender identity constitutes a violation of Article 8 of European Convention (X.v. Former Yugoslav Republic of Macedonia par. 70).

EXAMPLE 9

In the case №603აპ-19,[89] the cassation court ruling was issued on January 8, 2020, that is to say within four years from the start of investigation. The investigation was started in February 2016. It is true that the case was heard by three instances of courts, but four years is quite an excessive period, particularly when the case involves sexual violence against a juvenile.

87 Judgment №1/308-20 by Valerian Bugianishvili, Judge of Tbilisi City Court, of July 30, 2020, in a criminal case (Article 236(3)(4) of CC – unlawful purchase, possession, carrying, manufacture, sale of firearms; Article 381, Part 1 – failure to enforce a judgment or other court decision or obstruction of its execution, accusation against Giorgi Rurua).

88 Judgment №ბს-579-579 (კ-18) of the Supreme Court of Georgia Judges Nugzar Skhirtladze, Maia Vachadze, Vasil Roinishvili of April 18, 2019, on an administrative case (refusal to change the gender information in the birth record).

89 Judgment №2კ-603აპ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, Judges of the Supreme Court of Georgia, of January 08, 2020, in a criminal case (Article 11^1-138, Part 4, Subparagraph C of the Criminal Code – sexual violence against a family member).

In addition, the case involves one defendant and one episode of crime and is not particularly burdened with multiple pieces of evidence. We do not see any defense activities in the case which would trigger the delay of the case proceedings. The court did not disclose any reasons for the delay of the case attributable either to the court or to the State[90]. Despite the fact that the cassation complainant did not raise the issue of violation of reasonable time requirement, the court had the right to go beyond the submission of the party (**non ultra petitas)** and discuss this point based on the principle of which is grounded in the Venice Commission Opinion and the decision of the Constitutional Court[91].

EXAMPLE 10

In the case of №3/123-220,[92] the statutory timeframe for the consideration of such type of motions is two weeks, but it took one month. When the party is requesting information from the controlling agency, the party does have an interest in hearing this case within a short time. While issuing the ruling, the court checked the procedural preconditions presented only by one party. In this situation, hearing of the case within one month from the filing of the motion can be deemed as unreasonable time.

EXAMPLE 11

In the case of №3/15-19[93], the case was initiated by three plaintiffs, who filed a complaint to revise the legally valid court judgment of Lentekhi court that had entered into force in July 2018. Two more plaintiffs had joined the case in April 2019 after the merger of the cases. As a result for three plaintiffs the hearing of the case took 1 year and 3 months while for the remaining two plaintiffs the case was decided in six months. As it is clear from the ruling on this case, the delay of the hearing of the application was caused by multiple transfers of the case between Tsageri, Ambrolauri and Lentekhi Courts in the search of proper jurisdiction.

90 It is unknown what caused the four-year delay. The verdict does not show whether the reason was useless investigative actions, endless trials, or preparation of the minutes of the trial, the preparation of the verdict or other circumstances established by the case law of the European Court of Human Rights. Stefan Trechsel, Human Rights in Criminal Proceedings, 2009, P. 171 bit.ly/3lTlvmO [20.11.2021]

91 Constitutional submission of the Supreme Court of Georgia on the constitutionality of Part 4 of Article 306 of the Criminal Procedure Code of Georgia and constitutional submission of the Supreme Court of Georgia regarding the constitutionality of Article 297 (g) of the Criminal Procedure Code of Georgia, N3/1/608,609 bit.ly/3IxexxP [20.11.2021]

92 Decision №3/123-2020 by Batumi City Court Judge Alexander Goguadze of April 03, 2020, on an administrative case (Obtaining confidential information about a person from a commercial bank);

93 Judgment №3/15-19 by Leila Gurguchiani, Tsageri District Court Judge, of October 15, 2019, on an administrative case (annulment of the decision and resumption of the proceedings);

EXAMPLE 12

On the case №010100119003-56504[94] it is not clear from the judgment whether the case was decided within the statutory time because the defendants were arrested on July 17, 2019, while the year of issuance of the judgment is deleted and we can find only the following reference: „April 6, 2-2-„. Thus it is impossible to identify whether the judgment was issued on April 6 of 2020 or 2021.

EXAMPLE 13

In the judgment №1-522-19, according to the factual circumstances and conducted investigative measures it is clear that the investigation of this case must have started on June 1, 2019 (this is the date of the notification of the investigation).[95] The judgment was issued within one year, 5 months and 10 days from the start of the investigation, that is to say on November 20, 2020. It is true that the case was decided within the statutory period of two years, but considering the scope and low complexity of the case it was handled within an unreasonable time.

EXAMPLE 14

In the case N1/151-20,[96] it is true that the date of the beginning of the investigation is not shown, but the materials of the case indicate the date of the beginning of the prosecution, in particular the day and hour of the person's arrest. The accused was arrested on June 6, 2020. The verdict was handed down on February 26, 2021, almost 9 months after the arrest of the accused. It is clear from the verdict that the case was not complicated. Only a handful of witnesses were questioned in the case, whether an examination was conducted is not mentioned in the verdict. Even if the forensic report had been conducted, because detention had been used as a measure of restraint against the accused, the case must have been completed within a reasonable time, namely a maximum of four months. The handling of the case within nine months can be considered unreasonable if it can be completed within four months.

94 Judgment №010100119003-56504 by Davit Mamiseishvili, Judge of Batumi City Court, of April 6 on a criminal case (Article 260(3)(a) of CC; Part 5(a), Part 6(a) (02 episodes) – illegal production, manufacturing, purchase, storage, transportation, transfer or sale of a narcotic drug, its analogue, precursor or new psychoactive substance);

95 Judgment №1-522-19 by Tea Leonidze, Judge of Bolnisi District Court, of November 11, 2020, in a criminal case (Article 1261, Part 1 (two episodes) and Article 151, Part 1 – Domestic Violence, Liability For domestic crime), p. 4.

96 Judgment №1/151-20 by Nunu Nemsitsveridze, Judge of Gurjaani District Court, of February 26, 2021, in a criminal case (Article 236, Part 3 of CC – unlawful purchase and possession of firearms and ammunition)

ANNEX 3

Criterion 3. Illustrative Examples of Providing Public/Oral Hearings of the Case by Judges

EXAMPLE 1

The judgment adopted in the case of Giorgi Mamaladze[97] does not contain information about the publicity of the hearing. However, based on the information acquired in open internet sources, it is known that the case was heard by the judge without the participation of parties *(in camera proceeding)*[98].

As it is clear from the obtained materials, the closure of the case of Giorgi Mamaladze was justified by the need to protect personal data, personal life and security of the participants of the proceedings[99]. It is unclear what type of personal information became the ground for closure of the court hearing, however, the court decision talks about intimate information obtained from the telephone and computer belonging to Giorgi Mamaladze[100]. However, it is clear from the decision that the given information has no relationship with the charges against Giorgi Mamaladze (envisaged by Article 18-109.3.c and 236.2 of the Criminal Code of Georgia). Thus, the hearing was artificially fully closed for the public for the protection of personal information, while it was possible for the court to close the hearing partially and not fully.

97 Judgment №1/b-972-17 by Natia Barbakadze, Murman Isayev, Manuchar Kapanadze, the Judges of the Tbilisi Court of Appeals, of February 13, 2018, in a criminal case (Article 18, 108, Part 2 of Article 236 of CC – Attempted murder, accusation of Giorgi Mamaladze, the so-called "cyanide");

98 MediaNews, "Archpriest Giorgi Mamaladze's lawyers will appeal the judge's decision today", May 22, 2017, bit.ly/3GwQD3o [20.11.2021]
Statement of the Prosecutor's Office of Georgia: The Prosecution Service Arrests Archpriest Giorgi Mamaladze as the Defendant for the Preparation of Murder, February 13, 2017, http://old.pog.gov.ge/geo/news?info_id=1137 [20.11.2021]
Prosecutor's Office: We will demand the closure of Giorgi Mamaladze's trial, May 5, 2017, https://netgazeti.ge/news/191583/ [20.11.2021]

99 Letter of Ombudsman, dated May 3, 2017

100 Judgment №1/b-972-17 by Natia Barbakadze, Murman Isayev, Manuchar Kapanadze, the Judges of the Tbilisi Court of Appeals, of February 13, 2018, in a criminal case (Article 18, 108, Part 2 of Article 236 of CC – Attempted murder, accusation of Giorgi Mamaladze, the so-called "cyanide"); p.37;

EXAMPLE 2

From the decision on the case №1/88[101], we can see that the hearing was held by a judge without the participation of parties (in camera proceeding). It is true that there was a statutory ground for closure of the hearing, however, the judgment does not contain the explanation of the closure, neither any clarification of the initiating party or any argument in support of the closure, as well as the reasoning of the court in this respect.

EXAMPLE 3

The materials of the so-called Metro drivers' case[102] prove that by the time of the adoption of the ruling the judge did not possess the arguments of the opposing party. As is clear from the 01.05.2018 ruling, the strike was scheduled from May 3, thus the court had very short but still enough time to examine the case with an oral hearing (by the time when the ruling was adopted, Article 49.5 of the Labor Code contained a stipulation according to which in case of collective dispute, the parties must notify each other three days prior to the start of the strike or lockout to the Minister in writing, providing the time, place or nature of the strike or lockout). Thus, the judge could consider the application and adopt a decision following an oral hearing, which would be necessary in order to hear the arguments of both parties and strike a fair balance between them.

EXAMPLE 4

As it is clear from the ruling on Ninotsminda Children Boarding House[103] the decision was rendered without an oral hearing. It is true that neither the Civil Procedure Code nor Administrative Procedure Code requires the conduct of an oral hearing before adoption of such ruling, however, based on the best interest of the child it was appropriate to hold an oral hearing in this case, particularly considering the fact that the judge rejected the motion on the ground of absence of evidence and also non-corroboration of the fact that there are PWD children sheltered in the Boarding House probably subjected to violence.

The ruling does not show what type of evidence was requested by the judge and in case parties' failure to produce such evidence whether it was in the best interest of the child for the court to interfere or not to interfere in the process of the collection of evidence. The ruling does not show whether the requested evidence was accessible to the applicant or it was possible for the applicant to prove those facts brought in support of the motion with a high standard. Taking into account those circumstances,

101 Judgment №1/88 by Levan Nutsubidze, Judge of Senaki District Court, of November 09, 2020, in a criminal case (Article 1261, Part 2, Subparagraphs a) and b) – Domestic Violence);

102 Judgment №2425047-18 by Giorgi Gogichashvili, Judge of Tbilisi City Court, of May 01, 2018, in a civil law case ("the postponement of the metro drivers' strike");

103 Judgment №4567073-21 by Baia Otiashvili, Judge of Tbilisi City Court, of April 26, 2021, in an administrative case of (N(N)LP "Partnership for Human Rights" v. Ninotsminda Boarding School).

it would be appropriate to hold an oral hearing and decide upon these motions after hearing arguments from the parties.

EXAMPLE 5

In the Rustavi-2 case,[104] the court did not formally violate the procedural requirements. According to Article 267 (prima), part 1 of the Civil Procedure Code, the issues of the execution of the court judgment can be decided without an oral hearing.

However, in 2009 the ECtHR in the decision of Micallef v. Malta ([GC], §§ 80-86) extended the scope of operation of Article 6 of the European Convention to interim measures. The guarantees of Article 6 of the European Convention also cover the public hearing, which prevents from the secrecy of justice and ensures a fair trial[105]. While publicity of the court hearing is of fundamental principle, such publicity is not of absolute nature[106]. Open hearing in the trial court is important[107] unless there are exceptional circumstances that can justify the closure of the case hearing[108].

The given case involved the application of a specific measure directed towards ensuring the execution of the judgment, namely the appointment of the interim governor, and the case involved broad interpretation of procedural legislation as well as wide public interest, and thus it was appropriate to hold an oral hearing in this case.

EXAMPLE 6

In the case №ბს-579-579(კ-18)[109], although according to Article 401.1 of Civil Procedure Code the admissibility of a cassation complaint is examined by a court panel which is empowered to decide this issue without an oral hearing, based on the sensitivity of the issue it was appropriate for the judges to explain why they decided to wave oral hearing on the case of gender identity, the case having precedential importance for other transgender persons.

104 Judgment №2/15651-15 by Tamaz Urtmelidze, Judge of Tbilisi City Court, of November 5, 2015, in a civil case (Kibar Khalvashi and Panorama Ltd. statement on the use of court ruling securing measure; appointment of an interim administrator for management, governance and representation of Rustavi-2 TV).

105 Malhous v. the Czech Republic N33071/96, ECHR [GC] 07/12/2001, §§ 55-56

106 De Tommaso v. Italy N43395/09, EVHR [GC], 02/23/2017, §163

107 Fredin v. Sweden (no. 2) N18928/91, ECHR 02/23/1994, §§ 21-22; Allan Jacobsson v. Sweden (no. 2), N16970/90, ECHR 02/19/1998, § 46; Göç v. Turkey N36590/97, ECHR [GC] 07/11/2002, § 47; Selmani and Others v. the former Yugoslav Republic of Macedonia N67259/14, ECHR 09/05/2017, §§ 37-39.

108 Hesse-Anger and Anger v. Germany N45835/99, ECHR 06/02/2003; Mirovni Inštitut v. Slovenia N32303/13, ECHR 13/03/2018, § 36.

109 Judgment №ბს-579-579 (კ-18) of the Supreme Court of Georgia Judges Nugzar Skhirtladze, Maia Vachadze, Vasil Roinishvili of April 18, 2019, on an administrative case (refusal to change the gender information in the birth record).

EXAMPLE 7

In case №3/68-2020,[110]in contrast to Article 193 of the Civil Procedure Code, which stipulates that the application of an interim measure can be decided by the court without notification of the defendant, Article 197 prima of Civil Procedure Code, which regulates the issue of the appeal of the decision to use the interim measure, does not contain such reference.

Immediate application of an interim measure can be justified by the urgent nature of such measure but not in all circumstances. Examination of such an application without an oral hearing was not justified because, as it is seen from the ruling, the applicant has not argued for an urgent application of an interim measure without delay.

EXAMPLE 8

Cases №N3/123-2020, 3/201/2020 and 3/117-2020,[111] the court rulings were adopted without participation of the parties and without an oral hearing, in accordance with the procedure defined by the Administrative Procedure Code Article 21^{47}part 3. However, the second part of this article envisages the consideration of the case with the participation of the tax agency and the person who is subject of the informational request of the tax agency (except for cases when the parties cannot be summoned). In this case, it is unclear what the reason for the consideration of this case without the participation of the parties was, and the court's citation of part 3 is not sufficient justification.

110 Judgment №2/15-922-21 by Liana Kazhashvili, Judge of Tbilisi City Court, of July 12, 2021, on a case of civil law (Complaint of David Zilfimian against "Holding Georgia" LLC as a measure of securing his claim against David Zilfimian against the suspension of the ongoing enforcement proceedings in favor of "Chemixem International" Ltd).

111 Decision №3/117-2020 by Batumi City Court Judge Alexander Goguadze of April 03, 2020, on an administrative case (Obtaining confidential information about a person from a commercial bank);

- Decision №3/201-2020 by Batumi City Court Judge Alexander Goguadze of April 14, 2020, on an administrative case (Obtaining confidential information about a person from a commercial bank);
- Decision №3/123-2020 by Batumi City Court Judge Alexander Goguadze of April 03, 2020, on an administrative case (Obtaining confidential information about a person from a commercial bank);

ANNEX 4

Criterion 4. Illustrative Examples of the Degree of Factual and Legal Substantiation of Court Decisions by Judges

EXAMPLE 1

In terms of factual substantiation, the verdict passed in the case of Nikanor Melia[112] does not clarify at all what circumstances, arguments, evidence the parties referred to or elaborated on during the trial. It is impossible to infer from the judgment to what extent the prosecution met the burden of proving when demanding the imposition of the restraining measure.[113]

With respect to legal justification, the judge refers to the gravity of the accusation and the expected severe sentence, which can no longer serve as the ground for the application of the measure of restraint under the Georgian procedural law. This formal argument is also not taken into account by the European Court of Human Rights in Strasbourg when substantiating the application of the restraining measure. The court deemed the "gravity of the charges and the expected harsh punishment" as the "motivation for averting responsibility" and concluded that N. Melia could have had the motive not to return to court. It should be borne in mind that this reasoning is general in nature and does not rely on any specific identified/ investigated circumstances, and is, in fact, the only circumstance by which the judge substantiated the relevance of the application of the preventive measure.

In justifying the imposition of the preventive measure, the judge referred to merely one factual circumstance. The verdict indicates that N. Melia did not show up in the investigating body to receive the indictment. The court regarded this as a circumstance that could prevent the "availability of the accused," giving rise to "reasonable suspicion of resistance." The court also notes here that N. Melia appeared before the court voluntarily, but the judge does not assess this positively in contrast to the previous negative evaluation. The court interpreted Article 38, Paragraph 3 of the Criminal

112 Judgment №10a/3114 delivered by Temur Gogokhia, Tbilisi City Court Judge, on June 27, 2019, in a criminal case (Article 225(1)(2) of CC – organizing, directing, participating or inciting group violence, and preventive measure against accused Nikanor Melia).

113 According to Article 198, Paragraph 3 of the CPC, "the prosecution is obliged to substantiate the reasonableness of a preventive measure requested and the appropriateness of applying other less severe preventive measures."

Procedure Code (CPC) to the detriment of the defendant, by virtue of which N. Melia has the right to receive an indictment through his lawyer, exactly as he did. The court also misinterpreted the first sentence of the first paragraph of Article 198 of CPC, according to which the measure of restraint may be used in order to prevent the accused from failing to appear before the court, not before the investigative authority. Showing up at the investigating body is more of a right rather than an obligation of the accused, who does not have any legal obligation to "be accessible" and/or "obey" the investigation. The "availability of the accused," as an obligation, is an innovation introduced by this court ruling. The rationale presented by the judge at the beginning of the judgment with regard to the threat of absconding seems to be suggesting that a person's constitutional right to free movement cannot be construed against the accused unless the latter has illegal accomplices and influential connections abroad. However, the judge says nothing about whether Melia has any illegal connections and influences abroad, and despite this reasoning, concludes that the risk of absconding genuinely exists. The judge notes that the defendant's diplomatic privileges can make it easier for him to seek asylum, yet nowhere in the court ruling is it mentioned what diplomatic privileges the defendant enjoys and how they can help the accused in the asylum-seeking process, or what the connection between the two arguments is (p. 5).

The judge also fails to substantiate why he believes that a specific amount of bail can actually achieve the goals of the restraining measure, or why he decides upon a specific amount of bail without substantiating it based on the financial capabilities of the accused that the specific amount was appropriate. The judge discusses in detail the circumstances precluding detention using specific facts, although he does not refer to the specific extent of the accused's property, the analysis of which would make it clear whether the bail amount was appropriate or not.

In terms of the likelihood that the accused may influence the witnesses, the judge explains that the duty of the court is to "assess the intensity of this threat (pressure on witnesses) based on individual circumstances" and then, without any analysis of individual circumstances and their intensity, concludes that (p. 7) "the accused is aware of the content of the information provided by the witnesses to the investigation, as well as the information necessary for the identification of the witnesses. Considering that the defendant can indeed contact the witnesses and also has the motivation to evade responsibility, he may try to communicate with them unlawfully in order to force them to change their testimony," which is a formal and illogical argument. Based on the foregoing, the judge concludes that the accused may try to influence the witnesses, while the above rationale clearly indicates that the accused did not communicate with the witnesses, despite the fact that he had personal information of the witnesses and was well aware of what they reported to the investigation against him. Consequently, the judge made an inconsistent, illogical conclusion in contrast to his previous sentence/reasoning that the accused could perpetrate the above attempt while there is the clear fact that he did not try to communicate with the witnesses.

EXAMPLE 2

In terms of factual substantiation, the judge in the case of TV Pirveli[114] does not mention anywhere in the ruling any evidence referred to/presented/attached by the prosecution that could justify the conduct of the investigative action (search and seizure).[115]

As for the legal substantiation, the motion of the Prosecutor's Office is not reviewed within the framework of Article 17 of the Constitution of Georgia, Article 11 of the Law of Georgia on Freedom of Speech and Expression, and Article 10 of the European Convention on Human Rights, in particular, the obligation to protect a journalist's information source, which means fulfilling an important function of a public watchdog and protecting against any disclosure of the journalistic source.[116] The court ruling also does not cite the Committee of Ministers' Recommendation[117], which is a reference provided by the European Court of Human Rights regarding the non-disclosure of a journalist's information source. Besides, the court did not apply the law it should have applied, in particular, Article 50 (1) (h) of the Criminal Procedure Code, according to which a journalist is not obligated to be questioned as a witness and transfer an item, document, substance or other object containing information essential to the case in connection with the information obtained in the course of his or her professional activities.

The court ruling does not also specify the addressee of the verdict, which constitutes a violation of Article 112, Paragraph2 of the Criminal Procedure Code.[118]

In contrast to the Court of First Instance, the judge of the Investigative Panel of the Tbilisi Court of Appeals, in his or her judgment in the given case, emphasizes that the journalist does not have an obligation to provide information obtained in the course of his or her professional activities. Despite the emphasis, however, the court adds that the above must not restrict the journalist from providing information voluntarily to the investigation if he or she wishes so. According to the court, in such situations, the

114 Judgment №11a/4297 by Lasha Kldiashvili, Judge of Tbilisi City Court, of March 09, 2021, in a criminal case (Article 158(1)(2) of CC − Violation of the secrets of private communication, the so-called "TV 1") .

115 According to the content of Article 119 of CPC, seizure shall be carried out if there is a probable cause that an item, document, substance or other object containing information that is essential to the case is stored in a specific place, with a specific person and a search is required to find it. Pursuant to Article 3, Paragraph 11 of CPC, a probable cause is a totality of facts or information that, in the light of the totality of the circumstances of a given criminal case, would satisfy an objective observer to conclude that a person has allegedly committed a crime; an evidential standard for carrying out investigative activities and/or for applying measures of restriction directly provided for by this Code.

116 Ressiot and Others v. France N15054/07 ECHR 28/06/2012 §99; Goodwin v. the United Kingdom N28957/95 ECHR 11/07/2002 §39; Roemen and Schmit v. Luxembourg N51772/99 ECHR 25/02/2003 §57; Ernst and Others v. Belgium N33400/96 ECHR 15/07/2003 §91; Tillack v. Belgium N20477/05 ECHR 27/11/2007 §53.

117 Recommendation No R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information;

118 According to Article 112 of CPC, a court ruling shall include: the date and place of its preparation; the surname of the judge; the person who filed the motion with the judge; a decree on the conduct of an investigative action with a specific reference to its essence and persons it applies to; the validity of the ruling; the person or body responsible for the execution of the ruling; and the signature of the judge.

prosecution can offer the journalist to submit voluntarily any information and the court has the right to issue a ruling. This rationale of the court is fundamentally contrary to the national law, under which the judge's decision concerning the conduct of an investigative action is binding, and in case of non-compliance the information can be seized by force.[119]

EXAMPLE 3

In terms of legal substantiation, the claimant in the case of Tbilaviamsheni[120] indicated that the deed of gift had been signed under duress. Coercion is a matter of legal and not of factual assessment. The court imposed the full burden of proving the allegation of psychological abuse on the claimant and fully accepted the respondent's explanation and the statements of the witnesses –the testimonies of employees of the investigative body–arguing that no psychological violence had been used against Pantiko Tordia. The court failed to analyze the issue comprehensively to find out what impact the summoning to the investigative body could have had on the claimant.

EXAMPLE 4

In terms of factual substantiation, in the high-profile case of Gogi Tsulaia,[121] the judge does not refer to any arguments of the prosecutor about the existence of any grounds for the application of a specific measure of restraint. The judge only generally states that the prosecutor requested the preventive measure based on all three grounds (when there is a reasonable assumption that an accused will flee or will not appear in court, will destroy the evidence, or will commit a new crime) and that he or she substantiated those grounds. However, there is no indication/reference specifically to what the prosecutor talked about. Also, there are no information/references to what counterarguments the defense presented and the circumstances on which the defense based its reasoning. Consequently, the judgment does not indicate why the goal could not have been achieved by imposing a more lenient measure of restraint.

The judge only lists down the evidence related to the charges and says that the above list gives rise to a reasonable assumption that the accused has committed the offense he is charged with. The judge also adds that a prerequisite for the application of the measure of restraint is a specific standard of proof – a reasonable assumption, but

119 According to Article 120, Paragraph 4 of CPC, after a ruling, or in the case of urgent necessity, a decree, is presented, an investigator shall offer the person subject to the search, to voluntarily turn over an item, document, substance or any other object containing information that is subject to seizure. If an object that is subject to seizure is voluntarily provided, this fact shall be recorded in the relevant record. In the case of refusal to voluntarily hand over the requested object, or in the case of its incomplete provision, it shall be seized by coercion.

120 Judgment №2/9401-13 by Tbilisi City Court Judges Levan Mikaberidze, Zaza Martiashvili and Vladimer Kakabadze of July 26, 2017, and Judgment №2ბ/6084-17 by Otar Sichinava, Tea Sokhashvili-Nikolaishvili, Amiran Dzabunidze, Judges of the Tbilisi Court of Appeals, of December 6, 2019, in a civil case (Annulment of the minutes of the meeting of partners, annulment of the share transfer agreement, annulment of the orders on alienation of shares, return of ownership to Tbilaviamsheni").

121 Judgment №10a/1170 by Zviad Sharadze, Judge of Tbilisi City Court, of March 19, 2021, in a criminal case (Article 138(1) of the Criminal Code – other sexual action (except rape), the first appearance of the accused Giorgi Tsulaia and imposition of a preventive measure);

does not specify what factual circumstances each piece of evidence proves and, therefore, why the combined evidence creates a reasonable presumption that the person has committed the crime.

The judge only develops very meager and general theoretical reasoning by citing several provisions of the law and considers that the prosecutor's request is substantiated, although this theoretical rationale is based on merely two grounds: a. the risk of committing a new crime and b. the risk of impacting the witnesses. However, at the beginning of the ruling, the judge notes that the prosecutor's request is substantiated with regard to all three grounds. Nothing concerning the third ground can be found anywhere in the judgment.

From the point of legal substantiation, the judge rightly cites an excerpt from an ECtHR case which holds that "if there is a genuine public interest that, despite the presumption of innocence, can outweigh the person's right to liberty, the existence of such interest must be determined in each case based on the circumstances of the case." Nevertheless, the judge disregards the content of the extract and does not indicate the specific circumstances of the given case that could confirm the existence of public interest that outweighs the individual's right to liberty.

EXAMPLE 5

From the point of factual and legal substantiation, in the high-profile case of Vano Chkhartishvili,[122] the judge did not indicate any circumstances that, according to the law, could serve as the basis for the application of a measure to secure the claim.[123] The court argues that the applicant's claim to secure the claim is well-founded and should be upheld because the non-application of the security measure can make it difficult or impossible to enforce the court's decision, yet the judge fails to substantiate what legal considerations and circumstances support this conclusion.

In the given case,[124] the judge points out the need to adhere to the principle of proportionality in relation to the infringement of property rights, in particular, to ensure that the measure does not impose on the person an "individual and special burden," as cited in the relevant judgments of the European Court of Human Rights and the Supreme Court of Georgia. Thus, the judge is well aware of the principles to be applied, yet the application/compliance of the principles is arbitrary. In particular, the Court notes that the subject matter of the dispute is compensation for damages to the company caused by unlawful and culpable non-fulfillment of the obligation by one of the directors of the company; the management of the company requires the

122 Decision №2/18865-20 By Tamar Burjanadze, Judge of Tbilisi City Court, of September 15, 2020, in a civil case (Eurasian Management Group Ltd. v. CEFC Ltd., securing a lawsuit) (the so-called Vano Chkhartishvili case)

123 According to Article 191 of the Civil Procedure Code, a claim security measure is applied in cases if the non-application of the claim security measure makes it difficult or impossible to enforce the decision, exercise the violated or disputed right, cause irreparable and direct damage or damage that cannot be compensated by the defendant.

124 Decision №2/18241-20 by Zaal Maruashvili, Judge of Tbilisi City Court, of September 8, 2020, (Eurasian Invest Ltd v. Gianway Fan, compensation) (the so-called Vano Chkhartishvili case)

consent of both directors, and the defendant avoids performing his duties. The court refers to Article 6.5 of the company's charter, according to which, if the directors are unable to reach a decision on the matter, the decision shall be made by the general meeting of partners. According to the court, the issue concerns not a disagreement between the two directors over the issue but rather the improper and delinquent non-fulfillment of the obligation by one of the directors. This explanation of the court, without substantiating a relevant circumstance (what confirmed with "high probability" an improper and culpable non-fulfillment of the obligation by one of the directors), renders the court's conclusion arbitrary and creates the impression of unfair circumventing of the rule agreed by the partners of the company in relation to any dispute between the directors. As a result, the judge granted the request to secure the claim and assigned/imposed the fulfillment of all the powers of the director of the company solely on one person.

EXAMPLE 6

In terms of clarity of court decision, the deliberation of procedural issues in the high-profile case of Ninotsminda Children's Boarding School[125] is chaotic and inconsistent. The grounds for substantive consideration and admissibility of the motion, the measures for securing the claim, and the interim ruling are unclear. The judge cites the content of article 42 of the Constitution (old version establishing fair trial right), yet does not specify the context in which the court found it necessary to apply the norm. The judge also interprets Article 29 of the Administrative Procedure Code and notes the suspensive effect of appealing an individual administrative act, the connection of which with the case under consideration is not seen.

From the point of legal reasoning, the Court does not refer to any relevant norms of the Constitution or any provisions of the European Convention on Human Rights, nor the case-law of the European Court. The Court does not cite any international or national standards for the protection of a child's rights, nor does the Court mention the best interests of the child or the Code of the Rights of the Child and the Convention on the Rights of the Child. Therefore, the court's decision is very superficial and unsubstantiated, demonstrating the insufficient knowledge of child's rights and the lack of sensitivity of the court to the matter.

EXAMPLE 7

In terms of factual substantiation, in the high-profile so-called Cyanide case,[126] the court replies to the question of the defense as to why the genetic and dactyloscopic examinations of the seized cyanide were not carried out: "In an adversarial process,

125 Judgment № 4567073-21 by Baia Otiashvili, Judge of Tbilisi City Court, of April 26, 2021, in an administrative case of (N(N)LP "Partnership for Human Rights" v. Ninotsminda Boarding School).

126 Judgment №1/b-972-17 by Natia Barbakadze, Murman Isayev, Manuchar Kapanadze, the Judges of the Tbilisi Court of Appeals, of February 13, 2018, in a criminal case (Article 18, 108, Part 2 of Article 236 of CC – Attempted murder, accusation of Giorgi Mamaladze, the so-called "cyanide");

the defense could have requested these examinations to be conducted because in all such cases, we cannot oblige the prosecution to commission the examinations. Besides, in case of a genetic test, the defense would definitely claim that Giorgi Mamaladze had already touched the packaging during the search." This argument of the court is not convincing, since in a similar category of cases that concerns the preparation for the assassination of a person of high hierarchy (either clerical or secular), the failure to carry out the said investigative action, in addition to other circumstances of the case, can raise doubts if the accused really possessed the disputed item (cyanide) (p. 42). It is not at all clear from the case why the prosecution did not order the expert examination to at least establish the origin of the cyanide and the liability of a third party.

The court does not take into account the argument of the defense, according to which: even if the court confirmed the fact of the cyanide seizure, it could not have considered Giorgi Mamaladze as an accomplice since no other perpetrator was involved in the case and, even if there was any help, the assistant could not have been held responsible in a situation where a perpetrator does not exist in the case.

The defense argued in its appeal that Giorgi Mamaladze did not possess the cyanide, it was planted on him, and the seizure of the cyanide did not meet the sufficient standard for the authenticity of the evidence.[127] Although the court touched upon the issue to some extent in the ruling, it largely ignored and did not critically assess the following important circumstances of the case:[128]the fact that the luggage was seized without the participation of the owner (Giorgi Mamaladze), the time and circumstances under which the luggage was transported from the airport to the administrative building of the Prosecutor's Office of Georgia. The court failed to critically assess the fact that the luggage was searched a few hours after its seizure (the luggage was searched between 16:00-19:25 on February 10, 2017). The court did not inquire why the luggage had not been searched at the airport. In light of the fact that the investigation was launched into the preparation for the assassination in a foreign country and the luggage was seized under urgent necessity, it was critically important to search the baggage belonging to Giorgi Mamaladze on the spot to obtain clear evidence to confirm the crime.

The court ignored a serious circumstance indicated by the defense such as the covert investigative actions carried out against Giorgi Mamaladze since February 2, 2017.[129] During a covert investigation, law enforcement employees, as a rule, secretly tap the

127 In order to substantiate the circumstances that the cyanide was planted with Giorgi Mamaladze, the defense counsel referred to the following factual circumstances: 1) From February 2, 2017, covert investigative actions were officially carried out against Giorgi Mamaladze; 2) The investigation body learned about Giorgi Mamaldze's departure to Germany and although it was not established whether he had purchased cyanide or not, it was decided to arrest him in the airport; 3) Giorgi Mamaladze's luggage was confiscated without his presence; 4) The search was carried out a few hours later, on unsubstantiated grounds, and 5) No dactyloscopic and genetic expert examinations were performed on the removed material, etc.

128 Judgment №1/b-972-17 by Natia Barbakadze, Murman Isayev, Manuchar Kapanadze, the Judges of the Tbilisi Court of Appeals, of February 13, 2018, in a criminal case (Article 18, 108, Part 2 of Article 236 of CC – Attempted murder, accusation of Giorgi Mamaladze, the so-called "cyanide"); p.33.

129 Ibid. p.46

telephone conversations made by an individual in question. Irakli Mamaladze, the main witness of the prosecution, also participated in the secret investigation. The verdict does not establish the circumstances of where, from whom and under what circumstances Giorgi Mamaladze purchased the cyanide found during the search of his luggage. The fact that the information obtained as a result of the covert investigation does not confirm how Giorgi Mamaladze acquired the cyanide casts doubt on the purchase of the cyanide. This circumstance, as well as the fact that the luggage was seized without the participation of Giorgi Mamaladze and inspected a few hours after the removal, raises reasonable suspicions that Giorgi Mamaladze did not buy the cyanide and did not own it.

From the point of legal substantiation, the Chamber does not refer to the existence of signs of the crime under Article 229 of the Criminal Code (CC), which in the given case contradicts Article 108 of CC.

EXAMPLE 8

In terms of legal substantiation, the judge in the high-profile case of TV Company Rustavi-2,[130] imposed censorship on the broadcasting company per the provisions specified in the ruling. Article 24 of the Constitution of Georgia (the version in force at the moment of the dispute)[131] allows us to make this conclusion. In accepting the arguments of the applicant (Kibar Khalvashi and Panorama LLC), the judge indicated that:

- "Rustavi-2 should utilize the method of impartial and fair reporting when covering information on issues of public interest," and added that "under the management of the respondent (the partners of Rustavi-2 Broadcasting Company LLC) this is rather questionable. Ignoring these goals can ultimately jeopardize the main purpose of the media in a democratic society."
- The judge pinpoints that the primary interest of the respondent (the partners of Rustavi-2 Broadcasting Company LLC) is to protect its property rights and settle the dispute in their favor, and the court fears that during the management period, the respondent will try to direct the whole activity of the company to this end.
- The judge notes "there is a risk that the direction of the respondent's activities will be shifted mainly to covering issues around the given dispute. This will not only

130 Judgment №2/15651-15 delivered by Tamaz Urtmelidze, Tbilisi City Court Judge, on November 05, 2015, in a civil law case (The statement of Kibar Khalvashi and Panorama LLC on the application of the court ruling enforcement measure; appointment of an interim manager for the management and representation of TV Company Rustavi-2).

131 Article 24, Paragraph 1 of the Constitution of Georgia (the edition in force at the moment of deliberating the case): Everyone has the right to hold opinions, receive and impart information and ideas orally, in writing or in any other forms, and the second paragraph indicates the freedom of media and prohibition of censorship. The mentioned provision of the Constitution is the main constitutional guarantee of freedom of the media. This article protects human views, beliefs, information, as well as the means chosen for their expression and dissemination, including the press, television, and other means of disseminating information. "The Constitution of Georgia gives special importance to freedom of information and pays great attention to it. In a society where freedom of thought is recognized as protected by the Constitution, freedom of information is also protected. Without the freedom of information, it is inconceivable to ensure a life-long discussion and thought characteristic of the freedom of thought and free society. In order to formulate an opinion, it is necessary that the information is obtained, and the freedom of dissemination of information ensures that it is transmitted from author to audience"(Decision №2/3/406,408 of the Constitutional Court of Georgia of October 30, 2008 into the case of "*Public Defender of Georgia and the Georgian Young Lawyers' Association v. Parliament of Georgia,*" II-10).

have a negative impact on the company's rating and its financial standing but also create a serious risk that the media may lose its primary role and purpose – to be the watchdog to protect the public interest." The court remarks that under the current management, the likelihood that the media will fulfill its mission is seriously doubted (see p. 12 of the judgment).

The judge does not refer to the Georgian court's practice in appointing an interim administrator as a measure to secure the ruling but refers to the US law and case-law (court decisions in various US states) to substantiate the decision. It is noteworthy that the verdict was delivered in one day without any indication about the past use of the US law and practice in relation to the appointment of a temporary administrator.

The judge views the interim manager as an independent and neutral person (noting that "since the interim manager is not interested in the outcome of the dispute, he or she is in a better position than the parties to make impartial and beneficial decisions for the management and governance of the enterprise,")(See 10 p. third paragraph of the judgment). Nevertheless, it is noteworthy that the judge appointed to the office the persons proposed by the claimants without specifying the education, experience, qualifications, authority, reputation of these individuals, etc.

The judge does not base his/her judgment on European or domestic standards, including the case-law of the Constitutional Court of Georgia and the European Court of Human Rights as mandatory sourses of law. The court introduced a novel institution to the Georgian legal system in the form of a temporary manager without even discussing the matter in the framework of property rights (freedom of property and expression). The judge emphasizes in the judgment the benefits of appointing an interim administrator without explaining why the court deems it necessary to use the novel approach and digress from the established case-law and if any specific factual circumstances of the case justify this deviation.[132]In addition, the property rights enshrined in the Constitution can be restricted only in compliance with the principle of proportionality. The court did not reflect in this regard either.

132 The Constitution of Georgia, as well as Article 1 of the First Protocol to the European Convention on Human Rights, provides an important guarantee for the unimpeded use of property. According to the Constitution of Georgia, the right to property and inheritance is recognized and secured.
According to the Constitutional Court of Georgia, "the right to property is not only the basic of human existence, but also ensures his freedom, his ability and adequate realization of opportunities, to lead life at his own risk. All this legally determines the private initiatives of an individual in the economic sphere, which contributes to the development of economic relations, free entrepreneurship, market economy, normal and stable civil turnover "(Decision №1/2/384 of the Constitutional Court of Georgia of July 2, 2007 in the case *"Citizens of Georgia – David Jimsheleishvili, Tariel Gvetadze and Neli Dalalishvili v. Parliament of Georgia,"* II-5).

EXAMPLE 9

In terms of clarity of the decision, into the high-profile Cables Case,[133]the judge ascribes all the factual circumstances he/she provides to all defendants, and in elaborating on each action, says "the defendants committed" this or that action. For example, in one place (p. 145) the verdict reads, "as a result of a series of actions perpetrated by them (the defendants), the budget suffered a serious damage," etc. Thus, the ruling neither identifies the accused nor the actions committed by them. The verdict does not provide a description of the acts committed by a specific defendant, especially that the case has five defendants who held various offices in various departments of the Ministry of Defense. Consequently, they performed at least different roles, and the charges against them, the objective side of the action, must be different.

In addition, the court decision contains complex financial terminology regarding the judge's rationale that in some cases is unclear. The part of the judgment which accepts the conclusion of the financial expertise conducted by the prosecution and rejects the conclusion of the expert examination ordered by the defense is particularly problematic. The judge cites the expert conclusions without analyzing and communicating them in a language that the reader can understand.

From the point of factual substantiation, the judge does not respond to almost any evidence and circumstances presented by the defense and provided in the defense's closing statement. This was confirmed by the fact that the defense lawyer had to reiterate the same circumstances in the cassation appeal:

- The court ruling argues as if "Gizo Glonti, Head of the Procurement Department of the Ministry of Defense, did not research whether the Ministry of Defense would be able to carry out the work with its own resources. Despite this fact the judgment argues that 90 percent of the work the Ministry could carry out with its own resources (p. 110)."The verdict does not specify the evidence presented in the closing statement by the defense, according to which LEPL Delta had no experience in arranging the fiber-optic line, and the internal resources of the Ministry were not available in 2013.
- According to the ruling, "the request sent to the Procurement Department by accused N. Kaishauri for the purchase of an optical line, bypassing the J4 Department, is contrary to the rule prescribed in the Charter of the Ministry of Defense and the General Staff (the judgment, pp. 110-112)."This conclusion of a judge is made without responding to the defense's argument asserting that based on a Decree of the Minister of Defense a special group was set up, supervised by Zaza Broladze. It was the duty of the group to coordinate similar matters, so Nugzar Kaishauri had the right to send the letter to Z. Broladze. The court ruling ignores the arguments provided by the defense in its closing statement on how the procurement request

133 Judgment №1/1373-15 delivered by Besik Bugianishvili, Tbilisi City Court Judge, on May 16, 2016, in a criminal case (Article 182(2)(a) and (b) and Paragraph 3(b)) of CC -misappropriation or embezzlement; The so-called "Cables Case").

prepared by N. Kaishauri occurred in the Procurement Department (in particular, it was forwarded by Deputy Minister Zaza Broladze).

- According to the verdict (p. 120) "in the letter sent to the government, a linear building (real estate) and equipment were requested, but in the end, only the movable property was purchased. It was for this reason that the agreement was not sent to the government for prior consent."The judgment incorrectly explains the meaning of the optical line requested in the letter sent to the Ministry of Finance as a linear building/real estate (p. 120). In this respect, the defense's argument that the optical line does not refer to real estate but to the wires inside the cable is disregarded (Defense's concluding remark, p. 36).
- The verdict does not respond to the defense argument that, as required by Article 10 of the Rules of Procedure of the Government of Georgia, the Ministry of Finance should have sent the draft agreement together with the explanatory note and draft resolution to the Prime Minister and not to the Ministry of Defense on December 26, 2013.
- The court ruling presumes that all details of the criminal scheme were known to all the accused and agreed in advance among them. However, no evidence supporting the same is provided in the judgment.
- In his closing statement, the defense lawyer notes that the two main witnesses of the prosecution (A. Cholokava and G. Shengelia) did not meet the standard of trustworthiness as set out in Article 82 of CPC and points out their inconsistency and contradiction. In the ruling, the judge does not explain why, contrary to the arguments of the defense, the testimonies of the two witnesses met the standard of credibility and why the judge accepted their statements.

With respect to the elaboration on some evidence in the judgment, the defense argues that the evidence/testimony is falsely presented, altered, incorrectly cited. Since the judge recounts the statements of the witnesses in the third person, in his/her own language, and presumably incompletely, it is impossible to infer from the verdict how reliable the judicial interpretation of the content of the testimonies is.[134]

Most of the judgment is devoted to merely listing the evidence. The judge narrates/describes in the third person the statements of witnesses, the testimonies of witnesses presented by the defense, the testimonies of the accused, and the content of other material evidence without any reasoning, assessment and/or reference as to why he/she presents this or that evidence, especially that, for example, the majority of witness

134 When narrating about the evidence in the third person, the exact content of the witness testimony is usually lost, and it becomes impossible to determine how comprehensively the judge conveys the content of the testimony or whether all the evidence examined at the trial is presented, especially if the narration lacks in reference to the testimony, an audio recording of the trial minutes with an indication of a specific time, which can make it possible for the party to verify certain sections from the narrative. The downside of structuring a judgment in this manner is also the impossibility for a party to understand why the judge is elaborating on this or that testimony or why he or she is presenting the content of any documentary evidence, since the judge does not summarize of what he or she found through the evidence, or why it is necessary to quote a large part of the witness's statement, while the specific information related to the prosecution and presented in the testimony is much smaller. While formulating the verdict in this fashion, one develops an impression that the judge did hard work and presented a lot of evidence on the part of the prosecution in the case. Actually, only a small part of the verdict is devoted to the individual reasoning of the judge and the necessary "substantiation".

statements do not relate to the factual circumstances of the case under consideration (for example, where and when the witness was appointed to the office, what activities he/she performed at different periods, etc.). Therefore, most of the ruling is generally useless in terms of substantiation and evaluation of the evidence.

From the point of legal reasoning, the judgment cites the decision of the European Court of Human Rights,[135]which holds that the right to review the case files is not an absolute right. Case materials may not be handed over to the accused if it is required for national security. Other precedential decisions of the Court are cited[136]. The ruling also adds that the defense was entitled to file an administrative appeal to challenge the confidentiality of undisclosed information, which it failed to do. In assessing this matter, the judge does not adhere to the criterion of proportionality, in particular whether the non-disclosure of the requested information was necessary to protect the interest of national security. The judge notes that the defense had the right to have access to the case files at any stage of the case proceedings.

EXAMPLE 10

In terms of clarity of the court decision, in the high-profile case of Natalia Ilichova and Iveri Melashvili (the so-called Cartographers' Case),[137]the court discusses the formal (procedural) basis of the verdict by using a sentence containing 17 lines (p. 8). The court also abstractly points to the following factors that may exacerbate the risks unless pre-trial detention is ordered: "..Other possible interests, unidentified circumstances, a high likelihood of the origination of unhealthy interests..."(p. 10). The judge does not specify what is meant under the circumstances and interests or why the chances of their occurrence are real. Also, none of the rationales offered in the judgment have anything to do with any of the defendants. Moreover, the verdict does not discuss the defendants at all and attributes its summary findings to both accused without identifying relevant circumstances. The judge concludes that in the case of both defendants there is a risk of absconding and destruction of evidence. One can get an impression that the court collectively judges the two defendants, instead of separately and individually assessing the grounds for the application of the restraint measure.

In terms of factual substantiation, the verdict merely lists the evidence attached to the case and, on the basis of the list, holds that the formal ground for the application of the preventive measure does exist. The assessment of the evidence presented by the prosecution (pp. 8-10) is a substantive set of assumptions rather than a conclusion made on the basis of a comprehensive analysis. It reflects the subjective attitude of

135 Rowe and Davis v. The United Kingdom N28901/95 ECHR 16/02/2000

136 Including, Mirilashvili v Russia N6293/04 ECHR 11/12/2008

137 Judgment №10a/4258 by Davit Kurtanidze, Judge of Tbilisi City Court, of October 8, 2020, in a criminal case (Article 308(1) of CC, an anti-Georgian act aimed at separating a certain part of Georgia from the territory of the country) and Judgment №1c/1692-20 by Paata Silagadze, Judge of Tbilisi Court of Appeals, of October 13, 2020, in a criminal case (Natalia Ilichova and Iveri Melashvili's charge, "The Cartographers' case").

the judge, which does not rely on a *bona fide* and reasonable assessment of impartial data (p. 7). This is contrary to the standards established by the Constitutional Court regarding the interference with a person's liberty.[138]

The judgment of the first instance court also does not offer even a brief summary of the defense's arguments. The ruling of the Court of Appeals shortly describes the position of Iveri Melashvili's lawyer (pp. 2-3), confirming that the lawyer had presented important arguments and evidence to the Court of First Instance (e.g. the evidence of cooperativeness of the accused with the investigation; the impossibility to destroy evidence because all evidence had been seized; inability to influence witnesses due to their official and social status, etc.), which the court ought to have assessed. It should be noted that the arguments of Natalia Ilichova's lawyer are also vaguely stated in the judgment of the Court of Appeals.

The first instance court ruling is in fact dedicated to justifying the demand of the Prosecutor's Office. However, it is unclear what specific arguments the position of the Prosecutor's Office is based on or what counter-arguments the body presented in relation to the arguments of the defense. The court accepts the motion of the Prosecutor's Office without describing and critically analyzing its important aspects. For example, it is unclear what the following assessment is based on: "the prosecutor explained the possibility of interference on the defendants' part in the investigation and the invincibility, irreversibility and abundance of risk factors and therefore substantiated relevant and sufficient arguments" (pp. 9-10).

From the point of legal reasoning, the court ruling refers to an interpretation of the Constitutional Court as well as one of the precedential decisions of the ECtHR although irrelevantly, since the whole content of the verdict contradicts the aforementioned decision of the Strasbourg Court. In particular, the judgment cites the case of *Fox, Campbell and Hartley v The UK*[139]delivered in 1990, which is a precedential case where the concept of "reasonable doubt" was first defined by the Strasbourg Court. Reasonable suspicion means the existence of facts or information that can convince an objective observer that a person may have committed a crime, and what may be considered "reasonable" depends on all relevant circumstances. In the abovementioned case, the Court found a violation. In the so-called Cartographers' Case, the court merely cites the Strasbourg Court, yet does not refer to any circumstances in its reasoning (other than general assumptions and beliefs) that would convince an objective observer of the factual and formal grounds for the application of the measure of restraint.

It is true that the judgment contains the citation of the norms of procedural law; however, the mere reference to the provisions does not make the court ruling substantiated.

138 Compare: Judgment №2/1/415 of the Constitutional Court of April 6, 2009 in the case of the *"Public Defender of Georgia v. Parliament of Georgia,"* II-21.

139 Fox, Campbell and Hartley v. the UK N12244/86 N12245/86 N12383/86 ECHR 30/08/1990

EXAMPLE 11

In terms of factual substantiation, the accuracy of the information disseminated by the respondent's statement in the high-profile case between Ana Dolidze and Dimitri Gvritishvili[140] had not been confirmed. Nevertheless, the Court concluded that the respondent neither disseminated substantially erroneous facts nor committed obvious and gross negligence (3.2.2). The judge refers to an entry provided by the claimant in one of the applications: the name and the location of the organization – "South Ossetia/Moscow, Russia," position and nature of activities. This record does not provide a person of average intellectual abilities, especially a judge, a solid prerequisite for making a conclusion that the claimant was in Russia and was acting in the interests of Russia to the detriment of Georgia. Moreover, the defendant could clarify questions related to claimant Anna Dolidze's travel to Russia and other matters of the application by asking the clarification from his colleague Anna Dolidze. Instead, the information, or rather a version adapted to the interests of the defendant, was broadcast to the public via television without verification. Thus, at the minimum, we have a case of blatant and gross negligence.[141]

In terms of legal substantiation, both the first and second instance courts refer to national and international law, including specifically the case-law of the European Court of Human Rights, but in some sections, the reference is irrelevant and in others insufficient. Among the irrelevant references, the following should be highlighted:

- The Tbilisi City Court refers to Articles 19, 24 and 42 of the Constitution (presumably the old version), while the Court of Appeals relies on the decisions of the European Court of Human Rights only to point out that in a democratic society it may be necessary to restrict freedom of expression.
- Where the Tbilisi City Court mentions the need to strike a "balance" between freedom of expression and reputation,[142] it does not analyze these two virtues within the framework of the Constitution. This gap is significant in relation to the

140 Decision №2/14643-18 by Judge of Tbilisi Court Maia Gigauri of October 2, 2018, and decision №2b/7995-18 by Genadi Makaridze, Amiran Dzabunidze, Gela Kiria, Judges of Tbilisi Court of Appeals, of December 30, 2019, in a civil case (Denial of information insulting honor and dignity through the mass media, a dispute between Ana Dolidze and Dimitri Gvritishvili).

141 According to the ruling, the respondent disseminated the following information regarding the claimant (3.1.5): 1) The claimant was in Moscow and the territory of South Ossetia, which is confirmed by a document filled out by her; 2) She considers Samachablo to be South Ossetia, as she indicates this name in the document; 3) In South Ossetia, the claimant was collecting data for a Russian organization registered in the Netherlands. The claimant appeared to be a Russian-linked, Russian-affiliated organization that recognizes South Ossetia and has collected information detrimental to Georgia in the occupied territories. The following circumstances are clear from the court ruling (3.1.6.; 3.1.7): 1) The claimant had a contract with a Dutch organization; 2) The organization was investigating and responding to human rights violations by Russia; 3) The claimant was investigating human rights violations, which cannot be considered anti-state activities in a state governed by the rule of law; 4) The claimant was not in Moscow, nor is her so-called presence on the territory of South Ossetia confirmed.

142 The decision of the Tbilisi City Court can be read as follows: "The Court affirms that it is necessary to strike a balance between freedom of speech and expression on the one hand and the right to honor, dignity and business reputation on the other, but in the given case, the claimant failed to substantiate the fact of defamation inflicted against her. The court did not accept the claimant's position that the respondent disseminated a substantially erroneous fact and that the respondent had known about the error in advance. The court also held that the information disseminated by the respondent could not have been detrimental to the claimant because the statements were not assessed by the applicant as to be containing any false information. "

protection of reputation –the ruling does not explicitly indicate whether it considers a person's reputation a right protected by the Constitution and, if so, in what context. This issue deserves attention also because Tbilisi City Court's decision does not unequivocally show which methodology is used to assess the issue: is the ECtHR methodology applied in the sense that the court in a "classical" manner deliberates disputes in accordance with the principle of proportionality, in which case, Article 8 cannot be applied; or it applies the so-called "balancing of rights" test, where the threshold of seriousness must be confirmed. Perhaps the approach of the Tbilisi City Court complies with the latter in substance,[143] although the Court remains silent about the existence of the "threshold of seriousness."In addition, with respect to "balancing of rights," the judge failed to assess the respondent's statement from the point of his professional skills and abilities within the context of the "obligations and responsibilities" as provided under Article 10.2 of the European Convention on Human Rights.

EXAMPLE 12

As regards the factual reasoning, in the high-profile case of Giorgi Rurua,[144]the court did not elaborate on the following arguments of the defense:

- The defense states in its closing statement (p. 9) that the testimonies of the police officers contradicted each other as to where Roland Meskhi was and where he received the report, in particular, whether he was on Rustaveli Avenue or in his office. Here, the defense argues that no operative information existed for the search and the report was fabricated by police officers. The court neither reviewed this argument nor responded to it at all. In view of the foregoing, the following reference made by the court is also problematic: "There is no substantial contradiction in the testimonies of the witnesses in relation to the circumstances of the case, which is why it is unreasonable to assume that they are lying, especially that there is no logical reason to confirm the opposite."
- In the closing statement (p. 10), the defense points to an unusually short period of time (1 minute) during which a warrant to search Giorgi Rurua was issued, the accused was informed of the warrant and then the search was launched. The court did not respond to this argument of the defense.
- In the opinion of the defense, the biological samples were obtained in violation of the procedural legislation (see the concluding remarks of the defense, p. 19). This belief is substantiated by the defense in detail in its closing statement. The defense also refers to the circumstances based on which the likelihood that the sealed evidence packages were opened and manipulated cannot be ruled out. None of these matters are discussed in the court ruling.

143 This is based on the Court's statement: "The Court agrees with the parties to the dispute that the Russian-Georgian war and the Russian aggression are well-known facts and that any Georgians in alliance with Russia are viewed in a negative context."

144 Judgment №1/308-20 by Valerian Bugianishvili, Judge of Tbilisi City Court, of July 30, 2020, in a criminal case (Article 236(3)(4) of CC – unlawful purchase, possession, carrying, manufacture, sale of firearms; Article 381, Part 1 – failure to enforce a judgment or other court decision or obstruction of its execution, accusation against Giorgi Rurua).

- It is also problematic that the search was not recorded by technical means, although a number of police officers were present during the search, and it is also suspicious that the patrol police body cameras either did not work or the police officers "forgot" to switch them on. The court did not touch upon the matter at all.

The court prevented the defense from obtaining evidence relevant to the outcome of the case. In particular, according to the verdict, Giorgi Rurua argued that the firearm was found during his search, indicating that the search was carried out in the building of the police department and not at the place of his arrest, and that the firearm was "planted." Giorgi Rurua also explained at the court hearing that he did not see Giga Darsavelidze, the person who drew up the search report, at the Vake cemetery but saw him when the latter was giving testimony to the court. To check whether Giga Darsavelidze was present at the place of the search, the defense requested a detailed list of Giga Darsavelidze's movements per the cell towers. The court dismissed the motion on the grounds that the search report had been handed over to the defense from the date of the commencement of the investigation. In addition, Giga Darsavelidze prepared other procedural documents, including the protocol of Giorgi Rurua's interrogation, and the defense had a right to request a detailed list of Giga Darsavelidze's movements according to the cell towers prior to the hearing.[145] In the given case, it is true that Giga Darsavelidze, in addition to the search protocol, prepared protocols of various investigative and procedural actions and the defense must have been informed of the content of these documents before the substantive hearing. However, given that Giorgi Rurua was refusing to sign the investigative and procedural protocols arguing that the evidence was fabricated by the investigative authorities and the fact that he saw Giga Darsavelidze for the first time at the court hearing, the requested information was an important piece of evidence to check the credibility of the testimonies given by the police to the court and to disclose the truth around Giorgi Rurua's statements, especially that the accused challenged the fact of possession of the firearm and the prosecution in this part mainly relied on the testimonies of the police officers.[146]

The verdict does not provide any justification as to why the traffic jam and road block turned out to be an obstacle to drawing up the arrest report at the place of the detention, while the police officers managed to conduct a personal search of Giorgi Rurua in the same place and under the same circumstances. In addition, it is important to note that according to the arrest report Giorgi Rurua was detained immediately after the completion of his personal search, i.e. after he was placed in a vehicle for the search. Thus, the reason indicated in the detention report stating that the possible presence of the crowd at the place of detention, including acquaintances of Giorgi Rurua, posed

145 Ibid. p. 64

146 Pursuant to Article 39, Paragraph 7 of CPC, the accused has the right to obtain evidence independently or through a defense lawyer, which is necessary to dispel the charges or to mitigate the responsibility. Pursuant to Article 239, Paragraph 2 of the Code, in case of presenting additional evidence during the main hearing of the case, the court shall consider its admissibility upon the motion of a party and enquire about the reason for non-submission of evidence prior to the main hearing, based on which the court could make a decision on admissibility or inadmissibility of evidence in the case.

a threat to drawing up the report, is unrealistic – Giorgi Rurua and the person who prepared the arrest report must have been in the car at that moment and individuals outside the vehicle could not have known what was happening inside the car.[147]

In terms of legal substantiation, despite the decision of the Constitutional Court,[148]the verdict against Giorgi Rurua is based on physical evidence obtained as a result of the search carried out based on the operative information. The possession of the physical evidence by Giorgi Rurua is confirmed solely by the statement of the police officers who are the employees of the agency that initiated and conducted the criminal proceedings against Giorgi Rurua, and therefore could have been interested in the outcome of the case.

The references offered by the judge to the case-law of the European Court are irrelevant:

- The judge refers (p. 55) to the decision of the European Court (which appears to be a template) Barbera, Messegué, Jabardo v Spain, application no. 10590/93, paragraph 68, which states that the evaluation of evidence is the prerogative of national courts. It is not necessary though to cite every time the case-law of the International Court of Justice to confirm the fact that the evidence should be assessed by national courts.
- With regard to the charge under Article 381 of CC, the Court refers to the case-law of the European Court of Justice, according to which the forcible removal of biological samples from a person does not constitute a violation of the right against self-incrimination. Nevertheless, the court does not cite a specific ruling; it only refers to the case-law of the European Court in general (p. 68). We agree with the court's reasoning that in accordance with the case-law of the European Court of Human Rights the right against self-incriminating testimony must not apply to material evidence obtained against the will of the accused based on the authority to use coercive measures, (e.g. documents seized on the basis of a relevant court

147 According to the court ruling, Giorgi Rurua was arrested in the vicinity of Vake Cemetery on November 18, 2019 at 13:15. "The arrest report was drawn up by Giga Darsavelidze, who declares in the protocol that Giorgi Rurua was detained as soon as his personal search was over, in a calm and peaceful environment, without any resistance. Investigator Giga Darsavelidze also adds that the arrest report was not drawn up at the place of detention because due to the heavy traffic the traffic jam was created on the road and people started to gather, including those who may have been acquaintances of the detainee, and there was a real risk of obstructing the preparation of the report." Unlike the arrest report, Giorgi Rurua's personal search report was drawn up at the place of the search, in Tbilisi, near Vake Cemetery. According to witness Giga Darsavelidze, Giorgi Rurua's personal search on the street lasted for up to one minute, and then, due to the traffic jam, noise and road blockage, it was not reasonable to search Giorgi Rurua on the street, so the search was resumed in a Skoda vehicle parked nearby, during which time a search report was also drawn up in the vehicle.

148 According to the Court Ruling №2/2/1276 of the Constitutional Court of Georgia delivered on December 25, 2020, *(Giorgi Keburia v. Parliament of Georgia)*, the following has been declared unconstitutional:

- a) The normative content of the second sentence of Article 13, Paragraph 2 of the Criminal Procedure Code of Georgia, which allows using an illegal item seized as a result of search as evidence, provided that the possession of the seized item is confirmed only by the testimony of law enforcement officers and also if law enforcement officers could but did not take any appropriate measures to obtain neutral evidence for the credibility of the search, in relation to Article 31, Paragraph 7 of the Constitution of Georgia.
- b) The normative content of the second sentence of Article 13, Paragraph 2 of the Criminal Procedure Code of Georgia, which envisages the use of a testimony provided by a law enforcement officer, which relies upon an operative source ("Confident", "Informant"), or information provided by an anonymous person in relation to paragraph Article 31, Paragraph 7 of the Constitution of Georgia.

warrant, breath, blood or urine samples, or body tissue samples for DNA tests). However, in the given case we are not dealing with the evidence obtained by force, but with criminal charges imposed on the person for obstructing the enforcement of a binding court ruling.

EXAMPLE 13

In terms of factual substantiation, the judgment in the high-profile case of Mamuka Akhvlediani lists the factual circumstances and evidence that the court relies upon,[149]yet the critical analysis and assessment of them remain obscure. For example, it is unclear to what extent the circumstances gave rise to a compelling ground that firing the claimant was a useful, necessary and proportionate measure against the misconduct he was charged with. In addition, we learn from the judgment of the Court of Appeals that the claimant challenged the impartiality of several members of the High Council of Justice because they had previously expressed a negative attitude towards the claimant's statements.[150] The first instance court ignored this important circumstance altogether.

The list of evidence relied on by the court includes the explanation provided by the parties.[151] However, it is impossible to understand from the court decision the content of the important arguments or counter-arguments presented by them. The only explicit section states that the position of the plaintiff's representative regarding the interpretation of Article 55 of the Law of Georgia on Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings was analyzed.[152] In view of the above, it remains vague from the judgment whether the judge reviewed and considered all substantive arguments presented by the parties.

From the point of legal substantiation, the court's decision into the high-profile case of Mamuka Akhvlediani contains a controversial section in which the court fails to assess the expediency of the disputed act. [153]It is uncertain what the court means under the assessment of **expediency** and whether the judge equates this with the test of **proportionality**, the impression of which is created by the content of the ruling. This is a very important issue because the court's failure to apply the principle of proportionality is tantamount to breaching the constitutional principle of the rule of law.

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149 Court ruling №3/2222-16 by Davit Tsereteli, Judge of Tbilisi City Court**,** of September 28, 2016, in an administrative case (Mamuka Akhvlediani, the dismissal of the Court President and Chairman of the Panel), pp.2-4.

150 Decision №3b/1963-16 by Judges of Tbilisi Appeal Court Manana Chokheli, Giorgi Gogiashvili, Amiran Dzabunidze of January 31, 2017, in an administrative case (annulment of an individual administrative act, the dismissal of Mamuka Akhvlediani, the Court President and Chairman of the Panel) p.17;

151 Court ruling №3/2222-16 by Davit Tsereteli, Judge of Tbilisi City Court, of September 28, 2016, in an administrative case (Mamuka Akhvlediani, the dismissal of the Court President and Chairman of the Panel), p 4;

152 Ibid. p.10;

153 Ibid. p.12;

The court does not take into account the importance of the fundamental right to hold public office.[154]The citation (incomplete though) of decision №2/5/595 of the Constitutional Court[155] without taking into consideration the standards specified therein is not sufficient. This right protects against arbitrary, unjustified dismissal.[156] The material grounds for any dismissal must meet the requirements established by the Constitution.[157]A person should enjoy the minimum procedural guarantees that will be necessary and sufficient to protect against an unjustified dismissal.[158]

The court excluded the application of the Law on Disciplinary Liability of Judges of the Common Courts of Georgia and Disciplinary Proceedings and the General Administrative Code, i.e. the minimum **procedural guarantees** in the claimant's case.[159] Even if we share the approach that the duties of the Court President are of an organizational-administrative nature, it is still clear that at least the procedural guarantees provided for in the General Administrative Code should have been applied to the claimant. The judge does not explain why the decision of the Council to remove the official with the above functions was not considered as implementing the **administrative function**.[160]

After the exclusion of other laws, the "Organic Law on Common Courts" remains the only basis for assessment. The court notes that the meeting of the Council of Justice was held in accordance with the procedure established by the law.[161] Article 30, Paragraph 4 and Article 32, Paragraph 1 of the Organic Law provide the requirements for the dismissal of the chairperson of a court/chamber. However, the articles do not specify the standards to be followed by the Council when making relevant decisions. Therefore, it is impossible to ascertain on the basis of the Organic Law alone whether the claimant was exposed to arbitrary, unjustifiable dismissal.

Examining the **material ground** for dismissal, first of all, implies the principle of proportionality, which is the main material aspect of the rule of law. The court failed to review the proportionality of the Council's decision. It is not sufficient to check the

154 Article 29 of the Constitution of Georgia in force at that moment;

155 Court ruling №3/2222-16 by Davit Tsereteli, Judge of Tbilisi City Court, of September 28, 2016, in an administrative case (Mamuka Akhvlediani, the dismissal of the Court President and Chairman of the Panel), p 6;

156 Court ruling №2/5/595 of the Constitutional Court of August 4, 2016, in the case of *Natia Imnadze v. Parliament of Georgia,* II-4; Court ruling of the Constitutional Court of Georgia of May 23, 2014, into the case №3/2/574 *"Citizen of Georgia Giorgi Ugulava v. Parliament of Georgia*", II-19.

157 Court ruling №2/5/595 of the Constitutional Court of August 4, 2016, in the case of *Natia Imnadze v. Parliament of Georgia,* II-5;

158 Court ruling №2/5/595 of the Constitutional Court of August 4, 2016, in the case of *Natia Imnadze v. Parliament of Georgia,* II-5,6;

159 Court ruling №3/2222-16 by Davit Tsereteli, Judge of Tbilisi City Court, of September 28, 2016, in an administrative case (Mamuka Akhvlediani, the dismissal of the Court President and Chairman of the Panel), pp 8-11;

160 Article 3, Paragraph 2, Subparagraph "e" of the General Administrative Code of Georgia.

161 Court ruling №3/2222-16 by Davit Tsereteli, Judge of Tbilisi City Court, of September 28, 2016, in an administrative case (Mamuka Akhvlediani, the dismissal of the Court President and Chairman of the Panel), p.12;

compliance with the formal requirements of the legislation.[162] No agency, including a collective one,[163]shall be exempt from meeting the requirements of this principle.

The judgment refers to the case of *Olujic v. Croatia* but does not determine, based on the standards set forth in the same[164] and other cases,[165] the extent to which Article 6, Paragraph 1 of the Convention applies to the case under question. At the same time, when referring to the cases of the European Court of Human Rights,[166]the court holds that there is no violation of Article 6, Paragraph 1 of the Convention when a dispute over "civil rights and obligations" does not meet the requirements of this provision, and that such proceedings are subject to further judicial control which has full jurisdiction and is equipped with the safeguards of the first paragraph of Article 6. The court thus indirectly admits that the High Council of Justice may be considered as a court for the purposes of the Convention. The fact that a decision of the Council can be appealed in the court does not mean it is "sufficiently scrutinized," since the court has actually ruled out the legal framework that sets the procedural or substantive standards for review, rendering the review a formal procedure.

EXAMPLE 14

In terms of legal substantiation, in the high-profile Metro Train Drivers' case,[167] the judge, with respect to the postponement of the strike, referred to pp. 43-44 of a controversial decision of the European Court of Justice[168]. According to the decision, the right to strike exists but it can be exercised only when it does not disproportionately affect the freedom to carry out business[169] or to provide services. The decision was soon followed by the judgment of the ECtHR,[170]according to which the collective agreement is an integral part of Article 11 of the European Convention and any interference with the right to strike can be allowed only if it is strictly necessary for a democratic society. In the given case, the court should have elaborated on the expediency of restricting the right to strike in light of the above standard, since restricting the strike by the court for a specific timeframe based on the indicated grounds (creating an obstacle for the continuity of transport services for the population) did not change the essence

162 Ibid. p.6-7.

163 Ibid. p.12.

164 *Olujic v. Croatia,* no. 22330/05, ECHR 05/02/2009 §32-43.

165 Particularly – *Vilho Eskelinen a. O. V. Finland,* no. 63235/00, ECHR 19/04/2007 §61.62;

166 *Oleksandr Volkov v. Ukraine,* no.21722/11, ECHR 09/01/2013 §123; *Menarini Diagnostics S.R.L. v. Italy,* no. 43509/08 ECHR 27/09/2011; *Albert and Le Compte v. Belgium,* no. 7299/75; 7496/76 ECHR 10/02/1983 §29; *Tsfayo v. The UK.* no 60860/00, ECHR 14/11/2006 §42;

167 Judgment №2453275-18 by Giorgi Gogichashvili, Judge of Tbilisi City Court, of May 18, 2018, and Decision №2425047-18 by Giorgi Gogichashvili, Judge of Tbilisi City Court, of May 01, 2018, in a civil case ("the Metro Drivers' strike");

168 The decision into the case of *International Transport Workers' Federation, Finish Seamen's Union v. Viking Line ABP, OÜ viking Line Eesti,* 11.12.2007 has been criticized by several authors.

169 The right is provided in Article 16 of the EU Charter.

170 *Demir and Baykara v Turkey* N34503/97 ECHR 12/11/2008

of the case, since the risk would naturally continue to exist even after the expiry of the thirty-day timeframe.

Both the applicant and the judge only substantiate the legitimate aim of the restriction of the right and do not at all refer to the proportionality of the restriction. The court does not reflect on the extent to which the restriction of the constitutional right is proportionate.

The court ordered to have the judgment enforced promptly in order to ensure an immediate postponement of the strike. The court's decision does not contain any justification as to which provisions or factual circumstances the court relied on.

In addition, in another ruling on the Metro drivers' strike case, which concerns the restriction of the right to strike in order to secure the claim,[171]we find a problem with regards to legal justification. The case-law of the European Court of Human Rights[172]states that although the right to strike is not an absolute right it can be restricted by national laws. In the adjudicated case, the European Court pointed to an international consensus that transport in general and railways in particular are not considered to be vital services, the termination of which could harm the life or health of the population (ibid, § 72), and even it does, its necessity must be substantiated with a solid argument, and despite the economic loss it may not constitute sufficient ground for the complete prohibition (ibid, § 73).

In the given case, the court ought to have considered the reasonableness of restricting the right to strike, taking into account the specified standard. On the one hand, the restriction of the right to strike based on the above criterion (providing the population with transport services) does not meet international standards, and on the other hand, this measure actually abolishes the right to strike and is an unjustified interference with the realization of the fundamental right since it deprives the right of its essence considering that the drivers of electric trains of the N(N)LP "Ertoba 2013" were prevented from participating in the strike announced by the N(N)LP "Ertoba 2013" during the working hours determined by the Tbilisi Transport Company LLC.

Under Article 191, Paragraph1 of the Civil Procedure Code, the use of a measure for securing a claim is based on the judge's assumption that the claim may be satisfied. The court's opinion on the material and procedural preconditions of the claim shall not affect the final decision of the court. It is true that the court used the measure to secure the claim before the action was brought to court, yet the judge did not specify in the court decision any assumption serving as the basis for the satisfaction of the claim.

171 Judgment №2453275-18 delivered by Giorgi Gogichashvili, Tbilisi City Court Judge, on May 18, 2018, on a case of civil law (so-called "Metro drivers' strike").

172 *Enerji Yapı-Yol Sen v. Turkey,* N68959/01 ECHR 21/04/2009 §32, for example, constraints may be imposed to ensure the provision of essential services to the population, and the complete restriction requires solid preconditions (*Ognevenko v. Russia,* N44873/09 ECHR 20/11/2018 §§ 72-73).

EXAMPLE 15

An analysis of three judgments handed down in disputes related to diplomas/academic degrees of judges[173] revealed as follows:

In terms of the clarity of decision, it is unclear in all three rulings on what principles the data were classified. In addition to the numbers of the court decisions, the years during which the claimant studied at various higher education institutions were also classified, which makes it impossible to find out how many years of education the plaintiff received; the claimant's academic degree, faculty and the course of study are also encoded. These factual circumstances are essential for the resolution of the case.

In the court ruling that concerns the recognition of the higher education diplomas of justices,[174] the text in the summary part of the court decision as to the grounds for the annulment of the administrative act is incomprehensible and contradictory. The court, on the one hand, considers that "... The law provided for in Article 60[1] of the General Administrative Code of Georgia has not been violated ...," and on the other hand, adds: .."The regulation of the specific relationship reflected in the challenged individual administrative act does not correspond to the legal grounds for its issuance and contradicts the legal norms governing the given relations."

From the point of legal substantiation, an adequate interpretation of Article 89, Paragraph 8 of the Law on Higher Education, which regulates the equating of a higher education diploma obtained before the beginning of the academic year 2005-2006 with a Master's or Bachelor's Degree, was of paramount importance to the proper resolution of the dispute. The provision unequivocally states that a diploma of higher education obtained after the completion of a one-level, at least five-year educational program shall be equivalent to a Master's diploma degree, and a diploma obtained after the completion of a higher education program of less than five years shall be equal to a Bachelor's diploma. In all three cases under consideration, we encounter an attempt to develop *contra legem* with judicial law, which violates the constitutional principles of limiting the judiciary by law and the distribution of powers.

In all three decisions, the judge's attempt to substantiate the claimant's confidence in the law with Article 60[1], Paragraph 4 of the General Administrative Code is apparent. This provision regulates the cancellation of an illegal beneficial administrative act and its "adaptation" to the controversial relation, which is obviously of different content, as well as a *contra legem* interpretation of the law. In this context, the court's reference to the ECtHR,[175]since it deals with a case substantially different from that of the claimant's.

173 Decisions by Judge of Tbilisi City Court Nino Buachidze of October 16, 2017, by Tbilisi City Court Judge Meri Guluashvili of October 17, 2018, and by Tbilisi City Court Judge Meri Guluashvili of February 27, 2019, into administrative law cases (the numbers are classified) (the disputes related to judges' diplomas/academic degrees).

174 Decision by Judge of Tbilisi City Court Nino Buachidze of October 16, 2017 in an administrative law case (the number is classified) (the disputes related to judges' diplomas /academic degrees)

175 *Mürsel Eren v. Turkey N60856/00 ECHR 07/02/2006*

Even in the context of the interpretation proposed by the Court, Article 60[1], Paragraph 4 is still not relevant, as there is a significant violation of the public interest manifested in the administration of justice by unqualified persons.

It is true that the judges do not refer to the constitutional principle of protection of confidence, but we deem it necessary to focus on its most important aspects. This principle is an element of the principle of legal security and the rule of law, which maintains a person's confidence in the stability of the existing legal situation or legal position. At the same time, only legitimate and law-based expectations must be protected.[176] The principle of protection of confidence is not a mechanism to support the illegal desires of a person, to justify illegal actions undertaken by official bodies, or to legitimize any new unlawful actions.

It appears that the judges interpret Article 89, Paragraph 8 in the light of the constitutional right to education and the requirements of international law, yet they fail to take into account that the right to education does not impose an obligation on the state to recognize an academic degree that does not correspond to the education acquired by an individual. A claim based on the right to education may arise only when, despite the completion of a relevant level of higher education, the law still refuses to award a Master's Degree. In the reasoning part, the judge fails to note that the right to education does not imply an obligation to recognize an academic degree the person desires without meeting the relevant prerequisites.

In addition, one of the court rulings[177]does not clearly stipulate what constituted the legal basis for the administrative body's refusal to consider the issue of verifying the authenticity of the claimant's diploma, since it is impossible to fully assess the legality of the impugned act without focusing on that matter.

In the decision,[178] the court incorrectly refers to Article 88, Paragraph 1[1] of the Law on Higher Education, according to which "documents certifying the completion of an educational program issued by higher education institutions which are licensed or are considered as such under the law prior to the beginning of the academic year 2005-2006, shall be recognized by the State irrespective of the accreditation status of such institutions." The plaintiff's diploma was issued after the beginning of the academic year 2005-2006 and this norm did not apply to him/her.

176 Compare: Court ruling №2/3/522, 553 of the Constitutional Court of Georgia of December 27, 2013, into the case *"Grisha Ashordia LLC v. Parliament of Georgia",* II − 42, 43, 44, 65; Court ruling of the Constitutional Court of Georgia №1/2/569 of April 11, 2014, into the case "*Citizens of Georgia − Davit Kandelaki, Natalia Dvali, Zurab Davitashvili, Emzar Goguadze, Giorgi Meladze and Mamuka Pachuashvili v. Parliament of Georgia*", II − 33.

177 Decision by Tbilisi City Court Judge Meri Guluashvili of October 17, 2018, into an administrative law case (the number is classified) (the disputes related to judges' diplomas/academic degrees)

178 Judgment by Meri Guluashvili, Judge of Tbilisi City Court, of February 27, 2019, into an administrative law case (the number is classified) (the disputes related to judges' diplomas/academic degrees)

With the view to confirming the authenticity of an educational document issued in Georgia, it is necessary to determine whether:[179] 1) the person has completed an educational program that could serve as the basis for granting him or her qualification, and 2) the extent to which a diploma qualifies him/her in accordance with the law. The court instructed the respondent to issue an administrative act to confirm the authenticity of the plaintiff's diploma without establishing the existence of the above circumstances based on the assessment of the relevant evidence in the applicant's case.[180]

EXAMPLE 16

In terms of factual substantiation, the verdict in the criminal case №1b/55-20[181] describes/lists down the positions of the defense, yet it does not elaborate on one of the most important arguments/positions – why the main witness of the prosecution, who was accompanying the accused during the arrest (the only non-police witness to the main disputed circumstance, the place of detention) was not summoned and questioned at the trial. It is not clear what assumption this creates for the judge, and it remains vague why the witness was not interviewed and why his/her testimony was not published.

Analyzing the cassation complaint of the defense shows that the defense raises the issue of the credibility of the statement provided by the police witness. The court discusses the matter, although it limits itself to general argumentation that the statements of the witnesses are credible since the police officers have no apparent interest that could render the statements unreliable. This reasoning is not sufficient to establish the credibility of the evidence.

The court ruling does not show what position the prosecution had concerning the arguments brought forward by the defense, whether the court accepted their views or the court reached its conclusion unilaterally, without regard to the positions of the prosecution. The judgment in this regard does not show the competition between the positions of the parties.

From the point of legal substantiation, the judge refers to a decision of the Supreme Court but does not indicate the title of the decision, date and number of the case. Thus, it is impossible to understand how relevant the reference is. The court ruling also cites a decision by the European Court of Human Rights on the standard established concerning the importance, credibility, and truthfulness of police statements, but fails to discuss why the standard is considered in the given case. Accordingly, the citation is irrelevant.

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179 Article 25 of the Law on Quality Development of Education;

180 Decision by Tbilisi City Court Judge Meri Guluashvili of October 17, 2018, into an administrative law case (the number is classified) (the disputes related to judges' diplomas / academic degrees)

181 Judgment №1/b-55-20 delivered by Natia Barbakadze, Nino Sandodze, Vepkhia Lomodze, the judges of the Tbilisi Court of Appeals, on February 19, 2020, in a criminal case (Article 260(6)(a) of CC – Illegal purchase and storage of particularly large amounts of narcotic drugs).

EXAMPLE 17

From the point of legal substantiation, in the verdict on criminal case №1/4959-17,[182] the position of the defense is based on the circumstance that the sale of narcotic drugs did not take place, but instead the accused and the person who carried out a test purchase, a key witness, jointly purchased and consumed a narcotic drug. The ruling does not offer any grounds for the legal qualification of "sale" (Article 260, Paragraph 4 of CC).

The judge does not substantiate the qualification of the second charge (Article 260, Paragraph 3). As can be seen from the appeal, the defense challenged this qualification. The complaint states that in order to be able to charge the defendant with a large quantity of drugs, the judge combined the amount of narcotic drugs seized in the first and second counts, which is not legally proper. The charged counts are independent episodes and summing the amount of narcotic drugs seized in these episodes for the qualification of crime is not acceptable. In such cases, the episodes of the crime should be qualified separately based on relevant parts of the article.

The verdict refers to the decision of the European Court in the case of *Higgins v. France* (February 19, 1998). Rationale proposed in the judgment cannot be found anywhere in the cited decision.[183] The reference to paragraphs 28-29 of the decision in the case of *Ruiz Torija v. Spain* is incorrect as well, presumably, paragraph 30 should be indicated instead.

EXAMPLE 18

In terms of the clarity of decision, the verdict in the criminal case №1/1221-18[184] does not indicate the form of the charge and the motive of the crime committed. The failure to provide this information makes it difficult for a third party to comprehend the circumstances indicated in the court decision.

From the point of legal substantiation, the judge considered it established the fact of Z. K.committed a crime – purchased and utilized a forged official document. The court misinterpreted Article 362, Paragraph1 of CC and deemed the statement prepared by Z. S. on November 21, 2014, as an official document. As it appears from the judgment, the judge based this explanation on the fact that the statement was

182 Decision №1/4959-17 by Lasha Chkhikvadze, Judge of Tbilisi City Court, of May 18, 2018, on a criminal case (Article 260(3)(a) of CC and Part 4 of the same Article – Illegal purchase, storage, sale of narcotic drugs).

183 The judgment reads as follows: "The Strasbourg court in the case of *Higgins v. France* (February 19, 1998) held the lack of substantiation and pointed out that the lack of substantiation of the suspicions arising against the evidence in the case would be considered a violation of Article 6 of the European Convention. The judgment into" *Higgins and others v. France*" provides the following reasoning: Article 6§1 obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. The Netherlands* judgment of 19 April 1994, Series A no. 288, p. 20, § 61). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see the *Ruiz Torija v. Spain* and the *Hiro Balani v. Spain* judgments of 9 December 1994, Series A nos. 303-A and B, pp. 12, §29, and pp. 29–30, § 27).

184 Decision №1/1221-18 by Tbilisi City Court Judge Nino Nachkebia, of March 25, 2020, on a criminal case (Article 362(1) of CC – Producing, selling, using of a forged document);

verified by a notary.[185]Confirmation of the signature on the document does not mean that the facts indicated in the document are true. The person signing the document is solely responsible for the content of the document. In the given case, Z. S. indicated in the statement an explanation concerning the immovable property, which he could also have given orally during an administrative proceeding as a witness or in writing without notarizing his signature. The judge did not specify whether the statement of Z. S. constituted a forged official document and, therefore, an act punishable under Article 362 of CC. In addition, the list provided in the Decree №660 of the President of Georgia dated November 24, 2007[186] does not include a notarized statement as a document proving the right.

EXAMPLE 19

In terms of legal substantiation, in the case №1/1473-2019,[187] the judge does not explain why the lawful acquisition of the narcotic drugs by the accused was excluded and why the court interpreted an "unidentified situation" to the detriment of the defendant. In doing so, the judge violated the fundamental principle of the criminal proceeding – all suspicions shall be resolved in favor of the accused.

EXAMPLE 20

From the point of factual substantiation, in the criminal case №18/235-19,[188] the defense cited the law according to which the offender must exercise a lawful possession or administration of the property based on: official duties, contractual relations, or special assignments in order to qualify the act as a crime of misappropriation. The case files and the testimonies of the witnesses confirm that the defendant was not just possessing but lawfully owning the money under dispute. The defendant received the disputed amount of money lawfully from Nasu Oil LLC with the right to dispose of it, while legally the owner of the money was neither Nasu Oil LLC nor any other physical or legal person (see the concluding statement of the defense, p. 8.)). Therefore, the defense asserts that what took place is not misappropriation but non-fulfillment of the civil obligation, which can become a basis for a civil dispute. The court did not respond to this argument of the defense; on the contrary, the court refers to certain factual

185 According to Article 62, Paragraph 2 of the instruction on how to perform notary acts of the Law of Georgia on Notaries "a notary when verifying a document confirms that an application and/or signature genuinely belongs to an applicant. The notary shall not verify the authenticity of facts provided in a statement and therefore shall not be held liable for them."

186 Decree №660 of the President of Georgia of November 24, 2007, "According to Article 3, Paragraph 1 of the Rule of Decision-making on Legalization of Buildings or their Parts of Unauthorized and/or Constructed in Violation of the Project by a Project Contracting and Construction Permit Issuing Authority", the owner of the building or a part thereof or another authorized person (and in the case provided for in Article 1,Paragraph 21 of this Rule – the condominium of apartment owners) shall apply for the legalization of the building to the relevant body, which shall consider the matter through a simple administrative procedure and decide whether to legalize or refuse to legalize the building or a part thereof. Paragraph 2 of this article contains a list of documents that must be submitted by the applicant to the administrative body. "

187 Decision №1/1473-19 by Lasha Chkhikvadze, Judge of Tbilisi City Court, of September 25, 2019, on a criminal case (Article 260(6)(a) of CC– Illegal purchase, storage, sale of narcotic drugs).

188 Judgment №1b/235-19 by Manuchar Kapanadze, Kakhaber Machavariani, Levan Tevzadze, the Judges of the Tbilisi Court of Appeals, of July 02, 2020, in a criminal case (Article 182(3)(b) – Misappropriation or embezzlement of another person's property rights).

details regarding the transfer of the property in qustion which in fact refutes the court's assessment according to which the offender must exercise the legal possession or management of property in the form of official duties, contractual relations or special assignments in order to qualify the matter as a criminal violation (the verdict explicitly states that on July 9, 2013, Nada LLC purchased and Nasu Oil LLC sold 726 sheep with a total live weight of 30,357 kg; on July 19, 2013, Nasu Oil LLC transferred the value of the goods – GEL 125,000- to Nada LLC).

EXAMPLE 21

In terms of factual substantiation, in the criminal case №1/1151-17,[189] the judge did not specify the following important arguments of the defense in the court ruling:

- The verdict does not specify the position of the defense. A brief description of the statements provided by the defense witnesses (as given in the verdict) suggests that the defense possibly developed a version of an alibi according to which the accused could not have been at the crime scene as he was at home. The court develops a general argument that the testimonies of the witnesses presented by the defense are not trustworthy. But the judge fails to specify particularly which of the testimonies of the defense witness seems unreliable and based on which circumstances. The court elaborates on the unreliability of the statements of the accused's parents, although the judge does not mention why the statements of other witnesses who happened to be present in the house are credible.
- The study of the defense's appeal made it clear that the defense also disputed the amount of the stolen money since the amount is a qualifying element of the prosecution (paragraph 4 (b), a large amount).
- The defense also pointed out the inaccuracies and inconsistencies in the testimony given by the only direct witness, including in the description of the clothes and its inconsistency with the material evidence attached to the case- the clothes.
- The defense highlighted that despite the argument of the prosecution that a physical confrontation between the accused and the victim took place, the genetic profile of the accused was not found on the victim's clothes, just as the victim's genetic profile was not discovered on the defendant's clothes.

EXAMPLE 22

In terms of the clarity of the decision, in the criminal case[190] there is no clear factual circumstance regarding any accomplices in a robbery episode, namely, when, at what moment and under what circumstances they participated in the robbery to misappropriate the mobile phone. The ruling does not clearly indicate the specific

189 Judgment №/1/1151-17 by Judge of Tbilisi City Court Lela Shkubuliani of September 18, 2017, in a criminal case (Article 178 (3) (d) and Article 4 (b) of CC (robbery);

190 Judgment delivered by Lela Shkubuliani, Tbilisi City Court Judge, on February 25, 2020, in a criminal case (Article 179(2)(b) of CC – robbery).
Judgment delivered by Lela Shkubuliani, Tbilisi City Court Judge, on February 25, 2020, in a criminal case (Article 179(2)(b) of CC – robbery).

action perpetrated by each defendant and the constituent components of the actions. It only generally states that one of the accused asked the victim out and then others inflicted injuries as well; the fact is not at all described and established how or at what point the defendants took possession of the mobile phone. The verdict does not explicitly indicate the defendant's intent and its constituent elements to seize the phone through the robbery.

EXAMPLE 23

In terms of legal substantiation, in the case № -579-579(-18),[191] the judge's reference that the court is not obligated to give a detailed answer to each argument gives the impression that the court did not respond to a part of the claimant's arguments. It remains unclear which arguments were deemed insignificant or did not receive a detailed answer and why. It would be particularly important to find out whether the applicant referred to the decision of the European Court of Human Rights in the case of *A.P. Garcon and Nicot v. France*, which concerns a person in a similar situation to the claimant who was required to undergo surgical intervention.

According to the ruling, the Supreme Court requires that the changes undergone by a person in order to change his/her gender must be irreversible, which cannot be achieved by hormonal therapy alone, thus considering the surgery as a necessary requirement. This is contrary to the European Convention on Human Rights and the case-law of the European Court of Human Rights for the following reasons:

1. The scope of Article 8 of the Convention includes the legal recognition of the gender identity of those transgender individuals who did not undergo or do not wish to undergo medical procedures for gender reassignment. [192]

2. The state has a positive obligation to legally recognize gender reassignment and to determine an appropriate procedure.[193] The state is given some freedom in determining the conditions for legal recognition, although it must maintain a fair balance between competing goods.[194] When it comes to sterilizing a person or interfering with his/her physical inviolability on the one hand, and gender identity on the other, the discretion of the state becomes limited. [195]

3. The term "irreversibility" refers to the radical transformation that raises the issue of sterilization in the context of transgender people,[196] which is interference not only in the

191 Judgment №ბს-579-579 (კ-18) by Judges of the Supreme Court of Georgia Nugzar Skhirtladze, Maia Vachadze, Vasil Roinishvili of April 18, 2019, on an administrative case (refusal to change the gender information in the birth record).

192 A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 §94.

193 Compare also: BVerfGE 116, 243 (264); BVerfGE 128, 109 (124).

194 Hämäläinen v. Finnland, N37259/09 ECHR 16/07/2014 §64, 65; A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 §97, 99, 101.

195 Hämäläinen v. Finland, N37259/09 ECHR 16/07/2014 §67; A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 § 121, 123.

196 A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 § 117.

scope protected by Article 8 but also in the scope[197] of Article 3.[198] Sterilization without medical necessity and without the consent of the person violates his/her freedom and dignity.[199] A case in which a person is deprived of the opportunity to exercise his or her right to gender identity cannot be considered true consent[200] when he/she is compelled to consent to the interference with the right to physical inviolability in order to exercise this right.[201] Placing transgender people in this dilemma upsets the balance between public and individual interests. [202]

4. Refusing a transgender person to have the sex record changed on the grounds that he or she did not undergo a gender reassignment surgery resulting in sterilization amounts to a violation of the State to fulfill its positive obligation secured under Article 8 of the Convention.[203]

EXAMPLE 24

In terms of factual substantiation, in the decision of Tetritskaro District Court in the criminal case №1/54-20,[204] the judge outlined the principle of consolidating the evidence in the verdict, where the judge formally notes that despite the prejudice the evidence should still be assessed, yet actually the court does not do that. The judge only lists down the evidence obtained through the investigation, without providing any legal assessment thereof. For instance, the ruling holds that the commission of the crime has been confirmed under the protocols of the interrogation, the investigative experiment and the evidence attached to the case, yet the judge does not even name what evidence he/she means.[205]

EXAMPLE 25

From the point of legal justification, in the decision rendered by the Bolnisi District Court into the criminal case[206] where a person was charged with attempted

197 Prohibition of torture, inhuman or degrading treatment or punishment.

198 A.P., *Garcon and Nicot v. France*, N79885/12 ECHR 06/04/2017 § 127.

199 Soares de Melo v. Portugal, N72850/14 ECHR 16/02/2016 §§ 109-11; GB and RB v. Moldova, N16761/09 ECHR 18/12/2012 §§ 29-30, 32; A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 §128.

200 Van Kück v. Germany, N35968/97 ECHR 12/06/2003 §75; A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 §127.

201 A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 §131. Compare also: BVerfGE 128, 109 (125).

202 A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 §132; Compare also: BVerfGE 121, 175 (202); BVerfGE 128, 109 (133 ff.).

203 A.P., Garcon and Nicot v. France, N79885/12 ECHR 06/04/2017 §135;

204 Judgment №1/54-20 by Badri Luparishvili, Judge of Tetritskaro District Court, of October 01, 2020, on a criminal case (Article 300(2)(3) of CC- fishing with an electroshock device, which caused significant damage during the prohibited time);

205 In another case for example (Judgment №1b/1613-19 delivered by Vepkhia Lomidze, Natia Barbakadze, Maia Tetrauli, the Judges of the Tbilisi Court of Appeals, on February 24, 2020, in a criminal case (Article 19, 109 (3)(a) of CC – Attempted premeditated murder), the evidence is not only listed but also examined and subsequently analyzed by the court. It is noteworthy that the Chamber not only listed the indisputable evidence considered relevant but also reviewed it individually. It should be noted that this judgment with its approach is completely different from the case law of the Court of First Instance, where the judge only lists the relevant indisputable evidence without elaborating on its content.

206 Judgment delivered by Tea Leonidze, Judge of Bolnisi District Court, on November 30, 2020, in a criminal case (Articles 19, 108 of CC – attempted premeditated murder).

premeditated murder, the judge indicates that the defense does not agree with the qualification of the crime, but does not dispute the fact of the fight. The judge does not mention specifically what the position of the defense is, why he/she disagrees with the indictment, and what main argument the defense has. Consequently, the court does not elaborate on the main argument of the defense, which would make it clear to the defense, and to the reader in general, why the court considered that attempted premeditated murder as a result of the quarrel did really took place.

In terms of factual justification, the judge notes in the factual circumstances that the accused is physically stronger than the victim, while none of the evidence examined confirms the same. It is unknown why the judge considered this fact to be established. It should be noted that the fact has a significant impact on the qualification of the crime, as it can prove whether it was murder beyond necessary self-defense during the fight or attempted premeditated murder.

2. The judge deems as a fact that the defendant inflicted injuries on the victim with a knife, however, the knife, as substantial evidence, was not seized into the case. The judge does not explain why he/she deemed stabbing to be an established fact.

3. The judge considers that in case of murder beyond necessary self-defense, it is required to focus on the objectively existing reality, the intensity of the conflict, etc. The only witness, other than the victim, who was an eyewitness to the fight, said that during the confrontation, he/she saw how the victim and the accused were hitting each other and "as if the victim punched the accused." The Court does not refute the circumstance with any counterargument that could preclude the necessary self-defense. The reasoning does not mention this important factual circumstance at all.

In terms of legal reasoning, the ruling appears to be based on national law, yet erroneously; the rationale concerning the direct and indirect intent is confusing. The judge refers to one case of the ECtHR cites it correctly, but does not make clear why it was necessary to cite this excerpt. The reference to the case does not add anything substantial to the given judgment.

EXAMPLE 26

In terms of legal reasoning, in court ruling №010100119003-56504,[207] the judge applies the principle of *in dubio pro reo (rejecting the suspicion in favor of accused)*, which the court can use not in the process of analyzing the evidence, but after the completion of the assessment of all evidence. Nevertheless, the judge applied the principle before analyzing the evidence in the judgment (verdict 33), which is incorrect and impossible to do, because, after the examination of all evidence, the judge must conclude whether there are any doubts left that the person may not have committed the offense.

207 Judgment №010100119003-56504 by Davit Mamiseishvili, Judge of Batumi City Court, of April 6 on a criminal case (Article 260(3)(a) of CC; Part 5(a), Part 6(a) (02 episodes) – illegal production, manufacturing, purchase, storage, transportation, transfer or sale of a narcotic drug, its analogue, precursor or new psychoactive substance);

Although the court gives general comments concerning the composition of Article 260 and shares the opinion prevailing in the literature regarding the illegal purchase and sale of narcotic drugs and large quantities (Judgment, court's assessment 3), the judge does not make a legal assessment of the action actually committed. He/she completes the analysis only with the reference to the predominant opinion existing in the literature, e.g. what the objective side of drug crimes means, what is meant by storage, purchase. The judge also copied and pasted Article 27, Paragraph 2 of CC in relation to a group of persons, but in the ruling, the judge neither establishes the factual circumstances nor makes a legal assessment of the connection between them, what actually happened and when the connection took place.

EXAMPLE 27

In terms of factual substantiation, according to the decision of the Samtredia District Court in the civil case №2/13-21,[208] the need to alienate property belonging to a minor was necessitated by the fact that the parents' apartment was mortgaged, and the monthly repayment of the loan obligation reduced the amount of money available to meet the needs of the minor. The parents intended to fulfill the above-mentioned obligation by selling the property of the minor. The court accepted that the parents would do so. However, the court ruling does not confirm that the judge was provided with evidence to prove the mortgage and loan liabilities to the extent that, given the parents' income, they were unable to meet the needs of the minor and were required to sell the property of the minor.

EXAMPLE 28

From the point of factual substantiation, in the court rulings delivered into the electoral disputes №3/67-2020; №3/68-2020 by the Poti City Court and №3/148 by the Senaki District Court,[209] the court did not consider the arguments of the claimants as the judge ruled that the claimants' representative authority in the district election commission was defective. In this connection, the judge notes that the complainant considers that the dispute should be resolved in accordance with Article 78, Paragraph 21 of the Election Code, yet does not provide any analysis of complainants' claims. It was very important for the court to carefully consider the plaintiff's position on the matter and reflect it in the decision since this was the only circumstance that led to the rejection of the claim.

The judgment does not offer any legal justification on the part of the defectiveness

208 Judgment №2/13-21 delivered by Murtaz Kapanadze, Judge of Samtredia District Court, on February 19, 2021, in a civil case (issuing consent to the management of the real estate of a minor).

209 Judgment №3/67-2020 by Davit Kekenadze, Judge of Poti District Court, of November 07, 2020, on a case of administrative law (an electoral dispute);
Judgment №3/68-20 by Davit Gelashvili, Judge of Poti District Court, of November 07, 2020, on a case of administrative law (an electoral dispute);
Judgment №3/148 by Levan Nutsubidze, Judge of Senaki District Court, of November 07, 2020, on a case of administrative law (an electoral dispute);

of the representative authority (only a reference to the provisions to be applied). This is particularly problematic since the applicant was in fact denied justice (Denial of Justice). Nevertheless, the judge does not refer to any international act, standards, or practice of the Constitutional Court of Georgia.

EXAMPLE 29

With regard to factual substantiation, the judge of the Gori District Court in a criminal case[210]indicates that the parties deemed each piece of evidence to be indisputable, and the defendant admitted to two counts of domestic crime and denied the episode of threatening. Consequently, it is clear that different arguments were voiced during the court trial. Nevertheless, the judge only elaborates on the arguments in support of the prosecution and develops subjective reasoning concerning the victim's condition. The judge does not refer to any specific argument of the accused, nor does he/she respond to such. The judge highlights the position of the accused that he does not plead guilty to the charge of threatening. The court adjudicates the case without examining the evidence and bases the verdict on the materials of the investigation without reviewing them at the merits hearing, even though the verdict shows that the accused did not plead guilty to the charge of threat.

EXAMPLE 30

In terms of factual substantiation, the Cassation Chamber of the Supreme Court of Georgia in the case N698 -19[211]re-established and substantiated the factual circumstances, which it should not have done. Generally speaking, the Chamber must accept the factual circumstances described in the judgment of the Court of Appeals as established and should assess the legal issues within the limits established by law. Notwithstanding the above, the Cassation Chamber went beyond the requirements of the law, and instead of limiting itself to simply assessing the legal side of the evidence attached to the case, it actually examined the evidence. In particular, the Chamber retrieved some evidence from the case files and indicated it in the judgment, by doing so the court established new circumstances based on which it delivered a verdict acquitting L.K. We also find a number of extracts from covert surveillance reports in the judgment. The ruling does not specify whether the appellate court examined these records with the participation of the parties to the proceeding and whether the defendants were given the possibility to ask questions regarding the matter.[212]

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210 Decision by Guga Kupreishvili, Judge of Gori District Court, of April 07, 2020, in a criminal case (Article 1261(1) of CC, two counts – domestic violence, Article 11^1, 151(2)(d) of CC – Threat of death of a family member when those who are threatened develop a well-founded fear of being threatened);

211 Judgment №2_3-698ა3-19 by Lali Papiashvili, Merab Gabinashvili, Shalva Tadumadze, Judges of the Supreme Court of Georgia, of March 05, 2020, in a criminal case (Article 19, 180(2)(a) and Part 3(b) – Attempted fraud).

212 Such as: the record of August 24, 2016, according to which:
L. : Yesterday I called Z. about it, yesterday he could not answer, and today I will talk to him again.
V. : Ok, talk to him, they are phoning me asking what is happening about that matter.
L. : Okay.
V. : OK. And there we have to do the third stage.

EXAMPLE 31

In terms of factual substantiation, the orders issued by the Batumi City Court in the cases №3/201-2020; №3/117-2020 and №3/123-2020[213] only refer to the evidence presented by the initiator of the motion. The positions and arguments of LLC F. are not given.

From the point of legal justification, Article 21[46], Paragraph 1 of the Administrative Procedure Code should be explained by taking into account that the information concerning the funds of a taxpayer shall not be made available to anyone without the taxpayer's consent. The mere fact that, despite the appeal of the taxation authority, the taxpayer did not provide the agency with the required information within the prescribed timeframe does not constitute a self-sufficient legal basis for the judge's order. Only a formalistic interpretation of the provision of the Code can lead to upholding the motion of the tax authority in every case, which can deprive the judicial oversight of its essence. It is clear from the order that the request of the tax authority was not delivered to the taxpayer and was returned to the agency. It, therefore, remains debatable to what extent there was a refusal to provide information and to what extent Article 21[46]should have been applied to this dispute.

EXAMPLE 32

In terms of clarity of decision, in the court ruling on the civil case №2-748-17,[214] the judge explains the importance of the burden of proof, yet does not mention how the burden of proof was distributed among the parties, and why the court deemed it necessary to clarify the burden of proof in this particular case.

L. : What?
V. : We have to go to the third stage as well.
L. : Yes.
V. : The third stage is more "cool".
L. : Is it clear.
V .: Okay.
Or.
(See Judgment 26)
About the so-called, "Third stage "V. M. is talking with another man (see the consolidated records of October 16, 2016). In particular:
V. : Listen what I'm calling you about, tomorrow where will you and D. be somewhere after 12 o'clock?
M .: in S.
V: You will be both in S?
M.: Probably.
V. : So if I come, I can see you both. Regarding that matter, things have started to stir up and..
M: Well, call me, I do not think we might go anywhere and I will be in S. tomorrow.
V .: So, the third stage starts and for the third stage the applications start to arrive now and the work starts in January, but applications are starting now, of companies.
M: Yeah, ok come over and let's talk about it, let's see.
V .: Yes.
(See Judgment 28)

213 Judgment №3/117-2020 by Aleksandre Goguadze, Batumi City Court Judge, of April 03, 2020, in a case of administrative law (obtaining confidential information about a person from a commercial bank);
Judgment №3/201-2020 by Aleksandre Goguadze, Batumi City Court Judge, of April 14, 2020, in a case of administrative law (obtaining confidential information about a person from a commercial bank);
Judgment №3/123-2020 by Aleksandre Goguadze, Batumi City Court Judge, of April 03, 2020, in a case of administrative law (obtaining confidential information about a person from a commercial bank);

214 Judgment №2/748-17 by Marine Tsertsvadze, Judge of Telavi District Court, of October 13, 2020, in a civil case (imposition of money);

From the point of factual substantiation, the court notes that it relies on police materials and considers the disputed factual circumstances to be established. The court cites the principle of the burden of proof from the Civil Procedure Code, however, it is unclear why it deems the disputed factual circumstances to be established on the basis of police materials. The Court indicates that the counter-argument submitted by the party is inadequate, but does not note which requirement of the law the objection does not comply with (see page 4 of the judgment).

EXAMPLE 33

From the point of the clarity of decision, in the court ruling into an administrative dispute considered by the Akhaltsikhe District Court,[215] all the acts and letters attached to the case and examined by the court during the decision-making process are classified, not only as to the applicant natural person but also the respondent administrative body. The court had the right to classify the claimant's data in order to protect the personal information, which is questionable though, however, the ground why the court classified the data of the administrative body remains unclear.

In terms of legal reasoning, the judge assessed the violation of the timeframes set for the issuance of a legal act by the respondent administrative body as a refusal to grant the application and considered that the respondent issued a virtual act and discussed the unlawfulness of this act. The court declared the act invalid and instructed the administrative body to issue a new act. The judge refers to Article 32, Paragraph 4 of the Administrative Procedure Code and explains the grounds for the annulment of an administrative act, while in the previous paragraphs the court argues that the administrative body, having violated the deadline requirements for the issuance, actually refused to issue the act. The judge does not distinguish between a refusal to satisfy an application by issuing an act and a refusal to issue an act due to the violation of the deadline prescribed by law.

EXAMPLE 34

In terms of the clarity of decision, the court ruling into the case №4/323-20[216] is packed with theoretical legal considerations, interpretations of provisions and unnecessary citations, which only increase the volume of the judicial act and make it incomprehensible to the reader why it was necessary to use them in the decision. In particular: the goals, objectives, and scope of regulation of the Administrative Offenses Code are explained; Article 8 of the Code of Administrative Offenses is explained and cited twice in different places; the goals of the Law on Police are explained in detail; the judge refers to the precedents of the European Court of Human Rights, yet does not develop the reasoning about their compatibility to the particular case.

215 Court ruling rendered by Anait Oganesyan, the Akhaltsikhe District Court Judge, in October 2020 in an administrative case (the number is classified) (the compliance of an administrative act with the legislation).

216 Judgment №4/323-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 29, 2020, on a case of administrative offense (Article 173 of the Code of Administrative Offenses – resistance by a person under the influence of alcohol to a lawful request of a law enforcer);

From the point of legal reasoning, the judge cites Article 5, Paragraph 1 of the General Administrative Code, pursuant to which the administrative authority is not entitled to take any action contrary to the requirements of the law, and concludes that this is the prerequisite of good governance, and the burden of proof must be imposed on the respondent based on the adversarial principle. This conclusion of the court violates the principle of equality in legal proceedings enshrined by Article 62, Paragraph 5 of the Constitution of Georgia (Article 62.5 of the Constitution of Georgia – legal proceedings shall be conducted on the basis of equality of arms and adversarial process).

EXAMPLE 35

In terms of the clarity of decision, the court ruling into the case №1/2929-18[217] does not actually reveal the most important components of the act. Specifically: the moment when the instrument of the crime – an item similar to a knife – appeared in the hands of the defendant, and whether he was holding it in his hand at the very beginning of the crime or he took it out later. These details in the verdict are vague in light of the fact that the court established that A. Tokhadze was seizing B.Zh's both hands. Since the instrument of the crime is crucial for qualifying the act as robbery, the court was obliged to determine the moment when the weapon appeared in the hands of the defendant and the moment when the victim saw it. Questions arise about the components of the robbery as well; in particular, what were the intentions of the accused when he decided to flee, just to flee or to steal a 100 GEL banknote obtained as a result of the theft.

EXAMPLE 36

In terms of factual substantiation, the court ruling into the case №3/15-19[218] rendered by the Tsageri District Court does not correspond to the circumstances indicated by the parties. When deciding on the admissibility of a complaint, the court is obliged to check on its own initiative whether the deadlines for the application have been met and whether the applicant has the right to request the cancellation of the decision. The judgment does not examine whether the applicants complied with the one-month timeframe for filing the application, even though the opponent party was challenging this circumstance. The only sentence in the judgment that addresses this matter is as follows "they [the applicants] became aware of the existence of the decision on July 10, 2018, after which they applied to the court in writing with a request to be provided with the decision immediately."

The above-mentioned term is calculated by law from the moment when the applicant becomes aware of the existence of the grounds for the annulment of the decision. In

217 Judgment №1/2928-18 by Lili Mskhiladze, Judge of Tbilisi City Court, of October 31, 2018, on a criminal case (Article 179 (1) of CC – Robbery);

218 Judgment №3/15-19 delivered by Leila Gurguchiani, Judge of Tsageri District Court, on October 15, 2019, in an administrative case (Annulment of a decision and resumption of a case proceeding).

the decision №3/1/531 of the Constitutional Court of November 5, 2013, the Plenum of the Court clarified: "the Court must use clear and explicit criteria to examine and prove that the person did not know and could not have objectively known about the existence of any decision related to his/her interest. A person must be prevented from delaying the exercise of his/her right for no reason, he/she must be limited in his/her ability to apply to the court if he/she could have exercised this right in time, yet failed to use this opportunity." The judgment does not provide any reasoning regarding this matter.

It follows from the ruling that pursuant to the decision of 2005 annulled by the court, an administrative act was declared invalid, according to which real property (land parcels) was transferred to 13 households in one of the villages. Five of them the judge considered as the members of one of the households and completely invalidated the decision, while the other eight members of the household did not request to cancel the decision.

The judgment does not contain any factual substantiation that the land plots owned by the opponents on the basis of the impugned decision are exactly the land parcels (with the same area and location) that the applicants could have claimed.

EXAMPLE 37

In terms of factual substantiation, the court rulings into the cases №3/201-2020, №3/123-2020 and №3/117-2020[219] do not contain factual substantiation. The decisions are limited to a superficial description of the prerequisites for an appeal to the court. For example, it is not established whether the supervising authority requested the payer to voluntarily submit the banking information, the position of the payer is not indicated, and it is also unclear whether the payer was informed of the existence of the motion. The judge's reasoning is limited to the following sentence: "Based on the evidence presented in the case, the court considers that the motion is well-founded and must be upheld."

EXAMPLE 38

With regard to factual substantiation, in an administrative case №3/b-300-19,[220] the court refers to Article 390, Paragraph 3, Subparagraph "C" of the Civil Procedure Code[221]and notes that it agrees with the conclusions of the First Instance Court; but it

219 Judgment №3/117-2020 delivered by Aleksandre Goguadze, Judge of Batumi City Court, of April 03, 2020, in an administrative case (obtaining confidential information about a person from a commercial bank);
Judgment №3/201-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 14, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);
Judgment №3/123-2020 by Aleksandre Goguadze, Judge of Batumi City Court, of April 03, 2020, on a case of administrative law (obtaining confidential information about a person from a commercial bank);

220 Court ruling №3/b-300-19 delivered by Gocha Abuseridze, Nana Kalandadze, Khatuna Khomeriki, Judges of the Kutaisi Court of Appeals, on November 14, 2019, on an administrative case (annulment of the registration of the property rights).

221 The decision of the Court of Appeals, instead of the descriptive and motivational parts, should contain a brief substantiation on the annulment or leaving the appealed decision unchanged. If the Court of Appeals agrees with the analysis of the first and second instance courts and conclusions regarding the factual and/or legal matters, then the substantiation should be altered with a relevant reference.

does not specify the conclusions of the Court of First Instance, therefore, it remains obscure what the court agrees with. The court does not apply this procedural norm in accordance with the case-law of the Supreme Court. With regard to the application of Article 390, the Chamber of Cassation has stated that "the decision of the Court of Appeals, instead of the descriptive and motivation parts, must contain a brief justification as to why the appealed decision was annulled or left unchanged. The conclusion, in turn, must be based on an analysis of the circumstances set out in the complaint filed with the court."[222]

EXAMPLE 39

In terms of legal substantiation, the Court of Cassation, in the criminal case №346 - 19,[223] developed an approach incompatible with the standard of proof established by the Constitutional Court. The judge notes as follows: "Based on the conclusion, the Cassation Chamber considers that in the circumstances described above and other similar circumstances of the violent crime (including in cases of intentional or negligent loss of human life or causing damage of various degrees to bodily health), when there is no evidence, fact or data attached to the case that can serve as the ground for reasonable doubt that the victim could have received the injuries in a completely different circumstance, at a different time, from another person and not as a result of violence committed against him/her by the accused (convict), a forensic or other (e.g., biological) examination report, which directly and objectively can describe the traces and results of the violence committed by a perpetrator, acquires the importance of direct evidence and together with even one direct testimony of the victim (witness), as well as with other indirect evidence (including indirect statements), forms a body of evidence that can be absolutely sufficient for a guilty verdict beyond reasonable doubt." This approach is problematic because courts continue to use indirect testimonies of witnesses to substantiate a guilty verdict without taking into account the standard set by the Constitutional Court.[224]

EXAMPLE 40

In terms of legal substantiation, the Chamber of Cassation, in its decision №309 - 19,[225] did not discuss the opinions established in the case-law and literature of not only foreign countries but also of Georgia on the legal assessment of hooliganism. There is no unified approach to the qualification of hooliganism in the judicial practice

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222 Judgment №ას-1324-1262-2014 by Zurab Dzlierishvili, Teimuraz Todria, Besarion Alavidze, the Supreme Court Judges, of February 6, 2015, in a case of civil law (Property legal dispute).

223 Judgment №2ᲑᲙ-346-ᲮᲓ-19 by the Judges of the Supreme Court of Georgia Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze of November 01, 2019, in a criminal case (Article 125 (1) – Beating, Article 344(1) – Illegal crossing of the state border of Georgia, Article 353(1) – resistance, threat or violence against the public defender or other representatives of the government, Article 362(1) – storage and use of a forged ID card);

224 The judgment №1/1/548 delivered by the Constitutional Court on January 22, 2015, according to which using indirect statements to prove the guilt of a person was actually prohibited until the explicit settlement of the matter.

225 Judgment №2ᲑᲙ-309-ᲮᲓ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, of October 18, 2019, in a criminal case (Article 19, 109 (3)(b) of CC – Attempted premeditated murder);

and literature in Georgia. In the literature, it is believed that Article 239 of CC, which the Chamber of Cassation referred to in this decision, should not be used to interpret Article 109, Paragraph 2, Subparagraph "c". There is a belief among scholars that the place where the murder was committed, for example, a place of public gathering, must not have independent significance for the application of this paragraph. The key point here is to establish that the aforementioned anti-social feelings were the decisive and immediate cause of the intent to kill.[226]

EXAMPLE 41

From the point of legal justification, the court ruling №1/67-2020 does not indicate whether the judge examined the credibility of the confession of the accused, although it is a mandatory requirement of the law. The Court refers to the case-law of the European Court of Human Rights to justify its position that the plea agreement does not violate the requirements of Article 6 of the European Convention on Human Rights when the defendant refuses to exercise a number of his rights if the "minimum legal safeguards" are provided, and if the refusal to exercise the rights is certainly not contrary to the public interest."

However, the court does not specifically indicate and does not elaborate on why, after examining the confession of the accused at the merits hearing, it considered that the confession was voluntary, why the court deemed the accused as trustworthy, or why the judge believed the accused.[227]

EXAMPLE 42

From the point of legal substantiation, in the court rulings №4/323-20; №4/312-20; №4/311-20 in administrative offenses,[228] the Telavi District Court cites Article 5, Paragraph 1 of the General Administrative Code, pursuant to which an administrative body may not perform an action that is against the requirements of the law, and based on this provision assumes that this forms a presumption of good governance, thus imposing the burden of proving the contrary on the opponent party in accordance with the adversarial principle.

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226 The Court of Cassation held that the hooliganism did not take place because there was no "aspiration of the person that he wanted to grossly disrupt public order, to show his disrespect to the public and its members, without which the action cannot be qualified as hooliganism." The Cassation Chamber deemed as established that G. Ch. had no specific motive to kill the victim. However, since the evidence presented also shows that the defendant and the victim were traveling alone in an elevator and no one but them witnessed the crime, the defendant's actions did not show the necessary signs of the motive of hooliganism– apparent anti-social attitudes, the offender's clear desire to disrupt the public order and express his disrespect to the public or its members. In view of the foregoing, the mere fact that G. Ch. committed the crime without any specific motivation cannot be considered as hooliganism."

227 Judgment №1/67-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 13, 2020, in a criminal case (Article 372(1) − Exerting pressure on a victim);

228 Judgment №4/311-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 16, 2020, in an administrative case (Article 173 of the Code of Administrative Offenses − resistance to a legal request of a law enforcement officer);
Judgment №4/312-20 by Marine Tsertsvadze, Judge of Telavi District Court, of October 18, 2020, on an administrative case (Article 173 of the Code of Administrative Offenses − Verbal abuse of an isolator employee);
Judgment №4/323-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 29, 2020, on a case of administrative offense (Article 173 of the Code of Administrative Offenses − Resistance by a person under the influence of alcohol to a lawful request of a law enforcer);

The conclusion made by the court violates the principle of equality in legal proceedings enshrined by Article 62, Paragraph 5 of the Constitution of Georgia (Article 62.5 of the Constitution of Georgia –a legal proceeding shall be conducted on the basis of equality of arms and adversarial process) because it improperly conferred accessive importance to the testimony of the policeman in an adversarial proceeding.

ARTICLE 43

From the point of legal substantiation, the verdict in the case №2/15922-21[229] does not provide a rationale concerning the ground for granting the complaint. The judge states that the measure for securing the claim should be applied in compliance with the principles of equality of arms and adversarial process, yet he/she does not explain how the principles were taken into consideration in this case.

The judge explains that only two matters need to be identified as prerequisites for the application of the security measure: "First, whether the security measure can ensure immediate enforcement of the decision that will be rendered or any enforcement in general, and second, whether the requested measure is enforceable itself or not." However, the reason why the judge considers it reasonable to emphasize these only two issues is not specified.

In addition, the judge does not discuss at all the mandatory legal prerequisites for securing a claim, such as the assumption of satisfaction of the claim. This is particularly important in the given case, as the applicant's claim (to offset the counterclaims) is addressed not to the executor-creditor but to the company whose 100% shares are owned by the executor-creditor. The court ruling does not contain any reasoning as to whether there is a relevant legal basis for offsetting the claim of the partner in the enterprise (the creditor) against the debtor with the claim against the same enterprise debtor (a third party).

It is clear from the judgment that the claim for compensation of mutual claims at the time of rendering the court decision had not yet been brought by the claimant, neither was the executor-creditor involved in the case, and the court was unaware of the position on the concession of the claim against executor-creditor to a third party, or the transfer for any other reasons. The judge does not discuss whether it is mandatory to apply the security measure until the claim is clarified and the request is filed.

The court ruling does not explain at all on what legal grounds the security measures applied by the executor were canceled, which not only suspended the enforcement procedure at the specific stage but also restored the status quo before appealing to the enforcement body and left the claim, confirmed by a legally valid court decision, unsecured.

229 Judgment №2/15-922-21 by Liana Kazhashvili, Judge of Tbilisi City Court, of July 12, 2021, on a case of civil law (Complaint of David Zilfimian against "Holding Georgia" LLC as a measure of securing his claim against David Zilfimian against the suspension of the ongoing enforcement proceedings in favor of "Chemixem International" Ltd).

EXAMPLE 44

In terms of factual substantiation, in the case№3/99-2020,[230] the judge elaborated on the lawfulness of leaving the complaint by the District Election Commission unconsidered on the ground that the complaint was drawn up by an unauthorized person. However, the judge discusses the matter in the court decision without even mentioning the person or status (election bloc, initiative group, etc.) of the person who filed the complaint. The judge does not specify who he/she generally considers to be an authorized person to lodge a complaint.

In terms of legal substantiation, in the court decisions delivered in the electoral disputes №3/97-2020 and №3/98-2020,[231]the judge notes that: "The Election Code of Georgia" allows for the correction of errors in the polling and election results reflected in the final protocols, which is presented as an act of amendment drawn up by the commission, which must specify the correction of the data entered in the summary protocol and the date/time of drawing up this protocol. However, this should not be understood to mean that the respective authorized members of the commission should draw up final protocols without due diligence and ignoring the requirements of the law in the hope that the law gives them the possibility to rectify such errors." Despite this explanation, there is no longer any discussion as to whether such neglect can result in any legal consequences and whether this was the case in this particular dispute.

As regards the request to impose disciplinary liability, the court explains as follows: "The court considers that in the present case, the application of the requirement provided for in Article 28 of the Election Code of Georgia falls within the competence of the District Election Commission. The court considers that the evidence presented does not confirm exceeding and/or neglecting of the discretionary power as provided in the law, therefore, the District Election Commission made a lawful decision with respect to the request, which is why there is no legal basis to cancel the disputed act in this part."

The court's decision does not show the grounds on which this reasoning is based, what evidence the court examined, what the scope of discretionary power in a particular case was, and how the judge managed to determine the reasonableness of the respondent's action without establishing the aforementioned matters. The court then discusses the discretionary powers of the administrative body in determining a disciplinary sanction. However, it makes no sense to develop reasoning on the circumstances to be considered by the administrative body in selecting a penalty when the court refuses to oversee the lawfulness of the discretion exercised by the administrative body.

230 Decision №3/99-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 08, 2020, in a case of administrative law (an electoral dispute);

231 Judgment №3/97-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 06, 2020, in a case of administrative law (an electoral dispute);
Judgment №3/98-2020 by Shota Nikuradze, Judge of Zestafoni District Court, of November 06, 2020, in a case of administrative law (an electoral dispute);

EXAMPLE 45

In terms of factual substantiation, it is clear from Judgment[232] #ას-1527-2019 that the plaintiff's claim was a repayment of the principal amount of the loan (USD 2,670,000), interest (USD 1,143,955) and a fine (USD 611,228).The judgment is clear on the repayment part of the loan principal, where the Chamber of Cassation shares the reasoning of the lower courts that the fact of concluding the loan agreement in writing could not be proved in the case, which is why the relationship between the parties was rightly considered to be derived from tort law (unjust enrichment) as opposed to contract law. The Cassation Chamber shared the Court of Appeals' reasoning for refusing to impose a fine (by law, the fine and its amount must be agreed in advance by the parties in writing).

As for the imposition of interest, it is clear from the judgment that cassator also appealed to the Court of Cassation under Article 981.2 of the Civil Code, which envisages the obligation to pay damages not on the basis of contract but on the basis of unjust enrichment norms and stipulates that "interest must be paid on monetary debt". In this part, the court neither formulated the specific position of the cassator nor substantiated why the Chamber considered the cassator's claim to be unsubstantiated in this part (the cassation chamber discusses the other parts of the cassation appeal in detail). The response of the Chamber of Cassation to this request of the Cassator is limited to this proposal only: "As for the scope of return, in the context of Article 981.2 of the Civil Code, the cassation appeal does not contain a reasoned argument."

Also, it is not clear from the judgment whether Cassator filed a claim for damages for unjust enrichment at the stage of consideration of the case in the Court of Appeals.

232 Judgment №ას-1527-2019 by Besarion Alavidze, Ekaterine Gasitashvili, Zurab Dzlierishvili, the Supreme Court Judges, of June 22, 2020, in a case of civil law (imposition of money).

ANNEX 5

Criterion 5. Illustrative Examples of Ensuring the Effective Enforcement of Court Decisions by Judges

EXAMPLE 1

The resolution part of the court ruling rendered in the case of TV Pirveli[233] does not specify the property (company) where the investigative action approved by the court ruling shall be carried out, nor is the identity of the property owner indicated.[234]

The issue was also misinterpreted by the Court of Appeals,[235]which justified the non-reference of the addressee in the appealed decision and disregard by the judge of the above-mentioned norms by stating that relevant extract was attached to the prosecutor's motion enabling to identify the addressee and the location to where the specific investigative action ought to have been carried out. This argument of the court is contrary to national law because the respective provisions explicitly obligate the judge to indicate in the court decision the addressee of investigative action and the place where the investigative activity shall take place. An excerpt attached to the prosecutor's motion is not a document annexed to the court decision (not a single word can be found about the document in the decision). Moreover, the failure to specify the addressee of the court ruling and the place of the investigative action in the resolution part carries high risks of arbitrariness on the part of the person conducting the investigative action, as he may expose a wide circle of persons and territory to enforcement under the pretext of the investigative action, which, in turn, may lead to unfounded restrictions of their rights and legitimate interests.

233 Judgment №11a/4297 by Lasha Kldiashvili, Judge of Tbilisi City Court, of March 09, 2021, in a criminal case (Article 158(1)(2) of CC – Violation of the secrets of private communication, the so-called "TV 1") .

234 Based on the content of Article 112, Paragraphs 2 and 3 of the Criminal Procedure Code of Georgia, a court ruling, among other data, shall contain a warrant on conducting an investigative activity, with the specific indication of the essence of the action and the person it applies to; a person or a body responsible to enforce the judgment. The court ruling on search or seizure must also specify the immovable property where the investigative action is permitted and the natural or legal person who owns the property (if his/her identity is known).

235 Judgment №1c/300-21 by Giorgi Mirotadze, Judge of the Tbilisi Court of Appeals, of March 18, 2021, in a criminal case (Article 158(1)(2) of CC – Violation of the secrets of private communication, the so-called "TV 1")

EXAMPLE 2

Paragraph 11 of the operative part of the verdict into the Rustavi-2 case[236]holds that the temporary managers shall perform the duties of governing the company in good faith. Given that the content of the ruling itself contains provisions contrary to the Constitution, it remains unclear how the requirement should be enforced in good faith.

EXAMPLE 3

Pursuant to the operative part of the verdict passed in the case of Nikanor Melia,[237] additional obligations were imposed on the accused, among them "prohibition to make public statements in public places." It is noteworthy that the given restriction has never had any precedent in Georgian judicial case-law. Not only does the prohibition contradict with a fundamental human right – freedom of speech and expression – and is completely disproportionate if we juxtapose the individual's right to liberty and its legitimate restriction, it is unclear who and in what manner shall enforce this requirement, and who and in what way can decide that the requirement has been breached, and who and in what fashion shall forbid the accused from speaking, or how a politician can be banned from his activities when it is the expression of opinions that constitutes the occupation of the defendant and any of his expression of opinions is a public statement.

EXAMPLE 4

The operative part of the court verdict delivered in the case of Giorgi Mamaladze[238]and the sentencing part is explicitly drawn up, but based on the section determining the fate of the physical evidence, the items seized during the personal search of Giorgi Mamaladze, as well as two suitcases and a laptop computer, are ordered by the court to be returned to their rightful owner, without specifying the identity of the person. It is unclear who must determine the rightful owner and based on what criteria; the fate of other material evidence attached to the case has been decided in a similar way.

236 Judgment №2/15651-15 delivered by Tamaz Urtmelidze, Tbilisi City Court Judge, on November 05, 2015, in a civil law case (The statement of Kibar Khalvashi and Panorama LLC on the application of the court ruling enforcement measure; appointment of an interim manager for the management and representation of TV Company Rustavi-2).

237 Judgment №10a/3114 delivered by Temur Gogokhia, Tbilisi City Court Judge, on June 27, 2019, in a criminal case (Article 225(1)(2) of CC – organizing, directing, participating or inciting group violence, and preventive measure against accused Nikanor Melia).

238 Judgment №1/b-972-17 by Natia Barbakadze, Murman Isayev, Manuchar Kapanadze, the Judges of the Tbilisi Court of Appeals, of February 13, 2018, in a criminal case (Article 18, 108, Part 2 of Article 236 of CC – Attempted murder, accusation of Giorgi Mamaladze, the so-called "cyanide");

EXAMPLE 5

In the operative part of the court judgment №1/44,[239] the court invalidated the measure of restraint imposed on the accused, bail, yet did elaborate to the defendant how the bail amount should have been returned. In addition, it is not clear from the decision whether the bail amount had been deposited or not.

EXAMPLE 6

In the court decision delivered into the case №3/209-19,[240] the judge applied Article 32.4 of the Administrative Procedure Code, which grants the judge the right to annul an individual administrative act without resolving the dispute and to instruct the administrative body, after investigating and analyzing the circumstances, to issue a new act. The judge exercises this authority but without giving a specific task to the administrative body, which may hinder the execution of the court decision. In such cases, there is a high probability that the case will be returned to court again and the resolution of the dispute will be delayed.

239 Judgment №1/44 by Nana Jankhoteli, Tsageri City Court Judge, on October 01, 2020, in a criminal case (Article 303(1) of CC – Illegal logging of trees and shrubs);

240 Judgment №3/209-19 by Tsitsino Rokhvadze, Judge of Ozurgeti City Court, of October 16, 2020, in an administrative dispute (Annulment of an administrative act, issuance of an administrative act);

ANNEX 6

Criterion 6. Illustrative Examples of Scrutiny of the Quality of the Law Serving as the Ground for Court Decisions by Judges

EXAMPLE 1

Regarding the court ruling rendered in the case of Rustavi-2,[241] the official website of the Constitutional Court of Georgia provides information that on October 26, 2015, Rustavi-2 Broadcasting Company LLC and TV Company Georgia LLC filed a constitutional complaint (the registration number №675) with the Constitutional Court of Georgia. The applicants requested the Court to declare Article 268, Paragraph 1, Subparagraph "g" of the Civil Procedure Code of Georgia in relation to Article 21, Paragraph 1 of the Constitution of Georgia as unconstitutional.

The sitting of the First Panel of the Constitutional Court was held on November 2, 2015; the constitutional complaint №675 was accepted for substantive consideration ("*Rustavi-2 Broadcasting Company LLC and TV Company Georgia LLC v. Parliament of Georgia*") challenging the constitutionality of Article 268, Paragraph 1, Subparagraph "g" of the Civil Procedure Code of Georgia in relation to Article 21, Paragraph 1 of the Constitution of Georgia; the operation of Article 268, Paragraph 1, Subparagraph "g" of the Civil Procedure Code of Georgia was suspended from the moment the minutes of the hearing were announced in the courtroom of the Constitutional Court until the Court made a final decision on the case.

According to the Constitutional Court, Article 268 of the Civil Procedure Code of Georgia provides for the grounds for immediate enforcement of a decision delivered by a court of the first instance. Pursuant to subparagraph "g" of paragraph 1 of this Article, in a civil dispute, if the delay of enforcement of a decision due to extraordinary circumstances may cause substantial damage to the party requesting payment or if the delay may make the enforcement impossible, the court may, at the request of the parties, order immediate enforcement of the decision in full or in part.

241 Judgment №2/15651-15 delivered by Tamaz Urtmelidze, Tbilisi City Court Judge, on November 05, 2015, in a civil law case (The statement of Kibar Khalvashi and Panorama LLC on the application of the court ruling enforcement measure; appointment of an interim manager for the management and representation of TV Company Rustavi-2).

The Constitutional Court held that the impugned norm could have caused irreparable damage to the applicant because the immediate enforcement of the judgment rendered by the common court against the applicant in the constitutional claim might have resulted in the applicant's loss of ownership rights over the disputed property, and a new owner of the property would obtain the opportunity to immediately alienate, encumber, or make alterations to the property. Furthermore, the impugned norm did not contain any unequivocal, sufficient, and foreseeable guarantees that, in case of alienation or alteration of the property or the realization of financial resources, the property would be returned to the owner. Therefore, the complainants, provided that the disputed norm was declared unconstitutional by the Constitutional Court, would not have any foreseeable clear leverage for claiming their property (in this case, the TV Company).

Against the background of the decision of the Constitutional Court suspending the operation of the norm allowing the immediate enforcement of the decision rendered by the common courts in a civil case, the court not only referred to it and took it into account, but also used a measure that substantially supported the enforcement of the decision issued by the court of the first instance, through the application of another article of the Civil Procedure Code of Georgia. The City Court, by applying the provision regulating the measure of securing the court decision in this manner as it did in its judgment, created the same danger that the Constitutional Court strived to prevent when it suspended the contested norm that allowed for the immediate enforcement of the court decision.

EXAMPLE 2

In the case of Mamuka Akhvlediani,[242] the court prohibited the application of the Law on Disciplinary Liability of Judges of the Common Courts of Georgia and Disciplinary Proceedings and the General Administrative Code to the plaintiff's case. However, the court should have suspended the case proceedings and presented a well-reasoned constitutional submission to the Constitutional Court. This is because if there was no possibility to interpret the norms of these laws in compliance with the fundamental human right to hold public office, we would encounter a situation where the normative content of Article 7 of the Law on Disciplinary Liability of Judges of Common Courts of Georgia and Disciplinary Proceedings and Article 3, Paragraph 3 of the General Administrative Code, which preclude their application to the claimant's dismissal and minimal guarantees against any arbitrary dismissal, would infringe the right to hold public office and the standards set by the Constitutional Court. A clarification of this matter by the Constitutional Court was of great importance for the resolution of the dispute.

242 Court ruling №3/2222-16 by Davit Tsereteli, Judge of Tbilisi City Court, of September 28, 2016, in an administrative case (Mamuka Akhvlediani, the dismissal of the Court President and Chairman of the Panel);

EXAMPLE 3

With respect to the case of TV Pirveli,[243] the existence of procedural guarantees in the cases of identifying a journalistic information source is important.[244] The constitutionality of the law was problematic in the given case. Specifically, according to Article 112, Paragraph 8 of the Criminal Procedure Code, the verdict which requires disclosure of journalistic sources can be appealed in accordance with the procedure established by Article 207 – within 48 hours after the enforcement of the court decision. Such a provision renders the mentioned procedural guarantee ineffective.[245] This circumstance could have been a basis for the judge to suspend the case proceedings and present a well-reasoned constitutional submission to the Constitutional Court.

EXAMPLE 4

In the dispute concerning the equating of the acquired higher education to a Master's Degree,[246] in which the complainant is a judge of the common courts of Georgia, even if it was established that the applicant had taken the necessary course for obtaining a Master's Degree, the court would not have been able to interpret the norm in accordance with the Constitution due to the unambiguous content of Article 89, Paragraph 8 of the Law of Georgia on Higher Education. Thus, the judge, instead of interpreting the norm *contra legem*, was obliged to appeal to the Constitutional Court with a constitutional submission to challenge the constitutionality of the normative content of the provision that does not allow equating a diploma obtained as a result of a four-year educational program to a Master's Degree even if the person received the required education for a Master's Degree under the program.

The above dispute over the constitutionality of Article 89, Paragraph 8 could have also been held in relation to the principle of the rule of law, in particular, in the context of the protection of confidence and the prohibition of retroactive force. However, it is unlikely that the judge would have been able to properly substantiate the constitutional submission in this respect. The rationale provided in the decision concerning the protection of confidence creates the impression that the judge misinterprets the essence of this principle. With respect to the prohibition of retroactive force, the court considers the application of Article 89, Paragraph 8 as an instance of real retroactive force in the plaintiff's case. Therefore, the only mechanism was to file a constitutional submission instead of providing *contra legem* of the norm and adjusting it to the desires of the applicant, which, as the court put it, should not have been applied to the complainant.

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243 Judgment №11a/4297 by Lasha KIdiashvili, Judge of Tbilisi City Court, of March 09, 2021, in a criminal case (Article 158(1)(2) of CC – Violation of the secrets of private communication, the so-called "TV 1") .

244 Sanoma Uitgevers B.V. v. the Netherlands N38224/03 ECHR [GC] 14/09/2010 §88;

245 In the same context, please see ibid., §91; Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands, N39315/06 ECHR 22/11/2012 §98.

246 Decision by Judge of Tbilisi City Court Nino Buachidze of October 16, 2017, in an administrative case (the number is classified) (the disputes related to judges' diplomas/academic degrees).

EXAMPLE 5

In the dispute concerning the equating of the received higher education to a Master's Degree,[247] the court holds that the provisions on which the impugned act was based should have been interpreted in the light of the right to education. The interpretation of relevant norms in line with the version of the right to education offered by the court is actually a *contra legem* interpretation. The court ought to have appealed to the Constitutional Court and challenged the constitutionality of the above norms with regard to the right to education instead of providing a *contra legem* interpretation. Another issue is how successful a constitutional submission built on the misinterpretation of the right to education would be.

EXAMPLE 6

In the case of №3/15-19,[248]an amendment to the Civil Procedure Code invalidating the five-year period of appeal to the court does not fully reflect the constitutionality of the decision that became the ground for the amendment and, consequently, of the norm. The decision of the Constitutional Court has determined the preconditions for resuming a case proceeding.[249] This standard is ignored in the decision. The judge did not deliberate in compliance with the standard, nor did he resort to the methods of interpreting the provision and did not doubt the normative content of the norm.

247 Decisions by Tbilisi City Court Judge Meri Guluashvili of February 27, 2019, into an administrative law case (the number is classified) (the disputes related to judges' diplomas/academic degrees).

248 Judgment №3/15-19 delivered by Leila Gurguchiani, Judge of Tsageri District Court, on October 15, 2019, in an administrative case (Annulment of a decision and resumption of a case proceeding).

249 In order to rule out unreasonable doubts concerning the results of the implementation of justice, it is necessary to correctly identify relevant persons and cases provided for in the disputed norm. In this respect, we will focus on the need for several circumstances to coexist:
(A) Disputing the right over a court decision that has entered into effect poses a threat to such important public interests as security of justice, stability, the importance of the legal force of court judgment, and, in general, the credibility of the judiciary; A claim requesting the annulment of a court decision can be filed with a competent body when this is the real opportunity to protect the right, i.e. when the annulment of the decision can potentially ensure the restoration of the right in its original form or receive appropriate compensation, which would be impossible without the invalidation of the decision. An appeal to a court must not be purposeless, especially if it is a request for the annulment of a decision that has already entered into force and the resumption of the dispute. The final result of court proceedings can only be called into question in exceptional, rare cases, and may only be invalidated if it is a necessary way to restore the allegedly violated right or to protect it. Therefore, the mechanism of requesting the cancellation of a decision, based on its goals and purpose, is intended to be used only when it is a direct way to protect and restore the allegedly violated right. It is inadmissible for legislation to cast doubt on the consequences of justice without such grounds and, as a result, to create a legal basis for undermining the credibility of justice.
(B) Whereas the statute of limitations laid down in the disputed norm is related to legitimate aims, the existence and need for protection of which have not been called into question by this judgment, the court must use clear and tangible criteria to establish whether the person did not know and could not have objectively been aware of the existence of a decision relating to his or her interests. A person must be prevented from delaying the exercise of his/her right in time for no reason, he/she should be limited in his/her ability to apply to the court if he/she could have exercised this right in a timely manner but did not use it. Regardless of the limitation period, the possibility of protecting the right by invalidating the court decision should be conditioned only by a real and objective necessity and not by a person's negligence or indifferent attitude towards his/her own rights.
C) In addition, in order for the interested person envisaged under Article 422, (1)(c) (a relevant defendant and third parties through an independent complaint) in the above case to request after five years the annulment of the court decision that is into legal force, he/ she shall submit all relevant evidence that can indicate the existence of the grounds provided for in Article 423 of the Civil Procedure Code of Georgia.

EXAMPLE 7

In the cases №2ბ-346აპ-19 and №2ბ-603აპ-19,[250]it is problematic that the courts use indirect statements of witnesses to substantiate a guilty verdict, without taking into consideration and referring to the Constitutional Court's decision №1/1/548 of January 22, 2015, which prohibits the use of any indirect testimony to prove the guilt of a person until there is a clear resolution of the matter.

EXAMPLE 8

In the case of recognition of gender identity by the state,[251]due to the above-mentioned inconsistencies in the legal reasoning (See annex 4, example 23 of this report) the proposed interpretation of Article 78, subparagraph "g"[252] of the Law on Civil Acts contradicts human dignity, the right to personal development, physical inviolability and private life.

The court ought to have interpreted Article 78, Paragraph "g" in the light of the fundamental importance of these rights and in compliance with the Constitution and the European Convention on Human Rights. Provided that the content of the norm did not give the judge an objective possibility to do so, then the court should have filed a submission with the Constitutional Court.

EXAMPLE 9

With respect to the case №1b/235-19,[253] the Constitutional Court has established clear standards for determining the size of the sentence.[254] The state must not impose a sentence that is not necessary and/or cannot objectively achieve the goals for the fulfillment of which it has been selected. In such cases, a person becomes an instrument of criminal policy, and his dignity is humiliated by imposing inhuman, cruel punishment. In addition, the legislation should enable the court to adopt an individual approach in every defendant's case.

Article 182, Paragraph 3 of CC envisages deprivation of liberty from seven to eleven years, which is excessive when compared to sentences established by law for committing other serious crimes (Especially taking into account that the value of the

250 Judgment №2ბ-346აპ-19 by the Judges of the Supreme Court of Georgia Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze of November 01, 2019, in a criminal case (Article 125 (1) – Beating, Article 344(1) – Illegal crossing of the state border of Georgia, Article 353(1) – resistance, threat or violence against the public defender or other representatives of the government, Article 362(1) – storage and use of a forged ID card);
Judgment №2ბ-603აპ-19 by the Judges of the Supreme Court of Georgia Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze of January 08, 2020, in a criminal case (Article 11[1],138 (4)(c) of CC –Sexual violence against a member of family);

251 Judgment №ბს-579-579 (ბ-18) by Judges of the Supreme Court of Georgia Nugzar Skhirtladze, Maia Vachadze, Vasil Roinishvili of April 18, 2019, on an administrative case (Refusal to change the gender information in the birth record).

252 Changing the gender in a civil act record.

253 Judgment №1b/235-19 by Manuchar Kapanadze, Kakhaber Machavariani, Levan Tevzadze, the Judges of the Tbilisi Court of Appeals, of July 02, 2020, in a criminal case (Article 182(3)(b) – Misappropriation or embezzlement of another person's property rights).

254 For details, see: Judgment of the Constitutional Court of Georgia №1/4/592 of October 24, 2015, in the case "*Citizen of Georgia BekaTsikarishvili v. Parliament of Georgia*", II – 1-105.

item is considered to be large amount when it exceeds 10,000 GEL). A lighter sentence may be imposed on a person, for example, for a group robbery. Even the lowest limit of the sanction does not give the court a proper opportunity for an individual approach. By comparison, Austria has a much lower sanction for a similar offense and the judge can have an individual approach.[255] Thus, the ground for appealing to the Constitutional Court did exist.

EXAMPLE 10

In the case №1/67-2020 the accused was charged with the crime of asking a witness to change a statement.[256]The verdict does not describe the circumstances of the case, thus it is unknown which statements the accused asked the witness to alter. However, if we are talking here about replacing the false statement with correct testimony in favor of the interests of justice, then the judge should have challenged the constitutionality of the normative content of Article 372, Paragraph 1 of CC.

Article 372, Paragraph 1 of the Criminal Code provides as follows: "1. Asking or persuading an interviewee, witness, victim, expert or interpreter to provide, respectively, false information or false testimony, or a false conclusion, or to refuse to provide information or a testimony, and/or to provide incorrect translation, or to change the information or testimony or conclusion he/she has provided..."

The alternative composition of this article punishes any request made to a witness to make any alteration to his/her testimony. We can also envisage a case in which the witness provides false or knowingly false testimony in a preliminary investigation, and a third party asks the witness to correct the errors in the first statement or to give correct testimony to the investigation/court and tell the truth. This action is also punishable by the Criminal Code under Article 372.

On the other hand, Article 371[1] of CC was decriminalized in 2015, which envisaged the provision of substantially contradictory statements by a witness or a victim. Consequently, changing the testimony is no longer a crime; hence, asking a person to change the statement cannot be deemed a crime (this does not apply to giving false testimony, which has not been decriminalized).

255 Imprisonment for embezzlement of property over €5,000 is punishable by up to three years in prison, and for property over €300,000 from 1 to 10 years (StGB § 133 Abs. 2).

256 Judgment №1/67-2020 by Zurab Balavadze, Judge of Zestafoni District Court, of November 13, 2020, in a criminal case (Article 372(1) – Exerting pressure on a victim);

ANNEX 7

Criterion 7. Illustrative Examples of Assessing the Quality of Evidence by Judges

EXAMPLE 1

Most of the evidence in the court ruling delivered in the case of Giorgi Mamaladze (the so-called Cyanide case)[257] is assessed. However, this does not apply to all the important evidence in the case. The key evidence in the case is the seized cyanide and the secret video recording of the conversations between the defendant and Irakli Mamaladze, the witness.

The verdict raises doubts whether the seized evidence really belonged to the defendant, since the cyanide was not removed immediately and the investigative activity was delayed for several hours, the investigative activity was not video recorded, and the removed cyanide was not sent for dactyloscopy and DNA tests. Nevertheless, the court deemed the fact of possession to be confirmed beyond a reasonable doubt.

The court incorrectly refers to the decision of the ECtHR in assessing the credibility of witness testimonies which has no relation to the matter for which it is cited. The judge focused on the reliability of the statements of the witness police officers and cited decision №96ა3-17 of the Supreme Court of Georgia of May 10, 2017, which, in turn, contains a reference to the decision of the European Court ("*Ochelkov v. Russia*").[258] In accordance with this decision, the European Court, in light of the factual circumstances of the case, accepted the applicant's viewpoint that the statements of the police officers were of minor significance since they were not corroborated by any evidence. In the given case, the court cited the above decision to confirm the following: "The Chamber does not have any reason to doubt the testimony of the witnesses, the accuracy of the protocols of arrest, seizure and inspection because there are no signs of any interest shown by law enforcement officers towards the accused. It is not confirmed that the

257 Judgment №1/b-972-17 by Natia Barbakadze, Murman Isayev, Manuchar Kapanadze, the Judges of the Tbilisi Court of Appeals, of February 13, 2018, in a criminal case (Article 18, 108, Part 2 of Article 236 of CC – Attempted murder, accusation of Giorgi Mamaladze, the so-called "cyanide");

258 Ibid. p. 44.

role of Shorena Tetruashvili is so important to the law enforcement bodies that they might have fulfilled all the tasks based on her instructions…"[259]

Frequently, the evidence provided to substantiate a specific circumstance is irrelevant to corroborate that circumstance. For example, with regard to the circumstance "**whether Giorgi Mamaladze was carrying the cyanide**", the judge refers to the statement of witness B.K., who says that Giorgi Mamaladze had a company established in Spain and that the information extracted from Giorgi Mamaladze's mobile phone and computer contained personal information. The contents of the personal data mentioned in the decision have nothing to do with the case.

EXAMPLE 2

In the Tbilaviamsheni case,[260] the judge did not comprehensively investigate and analyze the disputable factual circumstances in the case, especially the fact that on the same day 21 individuals expressed the desire to donate property in their ownership to the state. In this respect, the statement of the notary that he/she does not work on Sundays except when a citizen requests to provide services is noteworthy. That very day, the notary received a phone call from the Ministry of Economy (page 26 of the court decision, the established disputed factual circumstances 4.2.1.). The court should have examined whether it was usual practice for the notary to work on Sundays and what services were provided.

EXAMPLE 3

In the court decision concerning the case of Ninotsminda Children's Boarding School,[261] the judge refers to the only evidence- a statement of the party about a significant violation that occurred in the boarding house in April 2021. However, the court does not touch upon or assess the evidence at all and does not mention whether the judge considered as established this factual circumstance. Nor does the court rulings show whether the judge deemed it necessary to consider a motion concerning this matter.

The court ruling is based solely on its conclusion that the factual substantiation that the case contains no evidence that could unequivocally confirm that the rights of the children living in the N(N)LP "Saint Nino Boarding School for Orphans, Waifs and Children in Need of Care" were breached, and the fact that representatives of the Ombudsman's Office were not allowed into the building of the school could not be construed to conclude that violations of children's rights or any kind of violence in the boarding school were systemic, which would have obligated the court to issue a temporary court ruling without hearing the case on the merits. The court decision

259 Ibid. p. 44.

260 Judgment №2/9401-13 by Tbilisi City Court Judges Levan Mikaberidze, Zaza Martiashvili and Vladimer Kakabadze of July 26, 2017, in a civil case (Annulment of the minutes of the meeting of partners, annulment of the share transfer agreement, annulment of the orders on alienation of shares, return of ownership to Tbilaviamsheni").

261 Judgment № 4567073-21 by Baia Otiashvili, Judge of Tbilisi City Court, of April 26, 2021, in an administrative case of (N(N)LP "Partnership for Human Rights" v. Ninotsminda Boarding School).

does not contain any indication of what kind of evidence the complainant should have presented that would be sufficient for the "unequivocal" confirmation, nor does the court say anything if there exists any evidence that could have been available to and presented by the collective complainant to the court.

It should be borne in mind that the case concerns children living in a closed environment in the boarding house, which makes it difficult to obtain information about the children's condition. In addition, the author of the motion presented information about the incident of April 15, 2021, according to which the representatives of the Public Defender, as well as a social care worker, were not allowed to carry out monitoring. Open sources prove that the Public Defender presented reports to the court describing the severe forms of violence against children.[262] From a type of institution that is closed to monitoring, it is naturally impossible to obtain any kind of evidence unless a relevant order for the protection of rights is issued by the court. Based on the public sources, we deem the court's decision as inadequate in the part where it argues that the authors of the motion were not able to confirm that children with disabilities were living in the boarding school and therefore, they, as a special complainant, were not eligible to file a lawsuit, as the Ombudsman had already presented a report claiming that some children in the boarding school had mental health problems.[263]

In addition, the judge initially allows the possibility of the special plaintiff to submit the motion and essentially analyzes the substantiation and merits of the motion. Nevertheless, in the subsequent reasoning, the court does not consider the presence of children with disabilities in the boarding school as a confirmed factual circumstance, and with regard to other children the court deems the author of the motion to be an unauthorized representative, which is a contradictory factual substantiation and does not indicate whether the judge considered the presence of children with disabilities in the boarding school to be confirmed, was unable to be determined or deemed this circumstance insignificant.

EXAMPLE 4

In the ten-page verdict rendered into the case of Nikanor Melia,[264] nowhere in the judgment does the judge refer to any evidence cited/presented/attached by the prosecution that could justify the requested and/or imposed restraining measure. On page 7 of the court ruling, the court remarks "it is noteworthy that one of the eyewitnesses, who has already been interviewed, notes that he/she was subjected to pressure and reprimand by a certain group of individuals." The court does not specify who subjected the witness to pressure, how the pressure was manifested,

262 Partnership for Human Rights, "PHR Appeals to the Court of Appeals to Protect the Rights of Children Living in Ninotsminda Boarding School," 28/04/2021, bit.ly/3ITARYJ [22.11.2021]

263 Ibid.

264 Judgment №10a/3114 delivered by Temur Gogokhia, Tbilisi City Court Judge, on June 27, 2019, in a criminal case (Article 225(1)(2) of CC – organizing, directing, participating or inciting group violence, and preventive measure against accused Nikanor Melia).

who reprimanded him/her, and what relation this fact has to the defendant. The court, instead of deliberating on the connection, relevance, and reliability of the evidence, concludes that the witness might be pressured again, although the judge still does not indicate who initially pressured him/her, who might abuse him/her in the future, and what the connection this may have with the accused. The court judgment does not include any reference to any other evidence.

EXAMPLE 5

In the court decision delivered into the case №1/164-2020, the judge lists and reviews in detail the content of the examined evidence, as well as the relation and connection between each other. However, the judge does not discuss the sufficiency of the evidence presented by the prosecution and does not evaluate the credibility of the victim's statement in conjunction with other evidence gathered in the case. The judge only assesses the credibility of the defendant's testimony, noting that due to the fact that he was being prosecuted his testimony was not trustworthy, which is an improper basis to conclude that defendant's testimony is not trustworthy. [265]

EXAMPLE 6

As a result of the assessment of the evidence described in the verdict concerning the case№1/115-20[266], the court held that the accused committed violence against a family member and did not accept as a fact that the victim had been exposed to permanent psychological violence for three months. Considering that the court ruling does not specify the position of the defense, it is difficult to conclude how thoroughly the evidence presented by the defense was analyzed and the factual circumstance established.

EXAMPLE 7

The court decision rendered in the case №3/209-19[267]shows that on the one hand the commission inspected the land parcel and found that there were no traces of any built or demolished constructions on it. On the other hand, according to the statements of the interested individuals and witnesses, as well as the photographs attached, the remnants of the foundation of a wooden house – poles- were present on the plot. Thus, the fact of the existence of a building on the land parcel before the enactment of the relevant law was not indisputably established and there was an obvious contradiction, the clarification of which would have vital importance for the resolution of the case. It should be noted that Articles 4 and 19 of the Administrative Procedure Code allow

265 Judgment №1/164-2020 by Shota Nikuradze, Judge of Zestafoni District Court, of February 11, 2021, on a criminal case (Article 126, Part 11(c) of CC – violence, beating, which caused physical pain to the victim, but did not lead to the result provided for in Article 120 of the Criminal Code), p.5.

266 Judgment №1-115-20 delivered by Tea Leonidze, Bolnisi District Court Judge, on October 02, 2020, in a criminal case (Article 126^1(1), Article 11^1, Article 151(2)(d) of CC – domestic violence, responsibility for domestic crime).

267 Judgment №3/209-19 by Tsitsino Rokhvadze, Judge of Ozurgeti District Court, of October 16, 2020, in a case of administrative law (annulment of an administrative act/issuance of a new act);

the court the right to gather additional information and evidence on its own initiative. The judge was entitled to commission an expert examination to find out if there had been any building on the land until September 20, 2007. Instead, the court applied Article 32, Paragraph 4 of the Code of Administrative Procedure without referring to the need for the examination.

EXAMPLE 8

The judge declares that the standard of reasonable doubt about the guilt of the individuals is created by the specific evidence, which he/she lists in the judgment.[268] However, the judge does not review what factual circumstances each piece of evidence contains and in which episode they indicate the liability of the individuals. The court ruling does not specify, for example, what factual circumstances the testimonies of specifically named witnesses indicate or what actual circumstances the protocol of the apartment search or the seized items revealed.

EXAMPLE 9

In one of the court judgments,[269] the court refers to the protocol of identification of the accused by the victim (presumably the owner of the moped, the other victim is not specified) as evidence for the indictment, yet it does not assess the credibility of the evidence. The identification protocol, in particular: to what extent the identifier could remember the physical appearance of the identifyee in the situation when he/she saw the accused during the night hours, how long the victim had the possibility to look at the offender until the latter walked into the bar from the street, especially that the court does not specify the time, distance, visibility, skills of the witness/victim to remember all these details. The court refers to the identification protocol as one of the key pieces of evidence without providing a relevant assessment (seethe judgment 3.1.7, 3.1.8.).

The judge, without any analysis, accepts the victim's statements and rejects the defendant's explanations regarding the misappropriation of the mobile phone. The court does not explain why the victim's testimony is convincing and the injured person is trustworthy.

EXAMPLE 10

The key issue in the case №ას-1527-2019,[270] the resolution of which required a thorough examination of the evidence, was to determine the ground of the plaintiff's claim (whether it was based on the contractual or condictio law). The court required

268 Judgment №10d/1889 by Teimuraz Sikharulidze, Judge of Tbilisi City Court, of April 28, 2021, in a criminal case (Article 182(2/d) and (3/b) of CC – misappropriation or embezzlement, Article 194 (2/a) and (3/c) – money laundering, imposition of a measure of restraint against the accused);

269 Judgment delivered by Lela Shkubuliani, Tbilisi City Court Judge, on February 25, 2020, in a criminal case (Article 179(2)(b) of CC – robbery).

270 Judgment №ას-1527-2019 by Besarion Alavidze, Ekaterine Gasitashvili, Zurab Dzlierishvili, the Supreme Court Judges, of June 22, 2020, in a case of civil law (imposition of money).

the confirmation of the existence of an oral loan agreement on the basis of a body of evidence. The court also deemed the evidence presented by the applicant as insufficient, yet there was not a specific critical assessment of the evidence in the verdict. The court ruling also does not refer to the standard that is required to be met to confirm the existence of an oral loan agreement.

EXAMPLE 11

The verdict only lists the evidence without elaborating the circumstances that it does or does not confirm or rule out.[271] The judge does not analyze why the evidence is credible and trustworthy, especially that the indictment for a narcotic drug sale relies on a substance acquired through a controlled purchase. It should be remarked that the defense disputed the credibility of this witness's statement because the witness changed the circumstances of the drug purchase twice during the court hearing, yet the verdict does not say anything in this respect.

In terms of adequate examination of the evidence, it should be noticed that the defense lawyer refers to the sections of the testimony of the key witness and cites some sentences and that the judge does not say anything, neither confirms nor rules them out, actually ignores them, which makes an impression that the substantial evidence was not properly assessed and analyzed.

The seizure of narcotic drugs during the personal search of the accused was confirmed by the testimony of police witnesses. The defendant declares that the police employees planted the drugs on him and doubts the credibility of the testimony of the witnesses. The issue of the trustworthiness of the police testimony is not mentioned in the verdict.

EXAMPLE 12

The judge states that the evidence of the prosecution is credible and consistent, while the defense's evidence is unreliable and inconsistent.[272] However, the analysis of the defense's appeal makes it clear (presumably the defense must have had the same position after the interrogation of the witnesses and in its closing statement) that the judge does not pay attention to the factual inconsistencies, certain inaccuracies of the prosecution witnesses, which the defense was pointing out (such as the absence of biological traces after defendant/victim altercation, or inconsistent testimonies related to the sum owned by the victim).

In contrast, the judge highlights some discrepancies found in some sections of the testimonies provided by the defense witness (providing an alibi) and draws the conclusion that the defense witnesses are not trustworthy, although the examination of the court ruling shows that these discrepancies are not of substantial nature. The

271 Decision №1/4959-17 by Lasha Chkhikvadze, Judge of Tbilisi City Court, of May 18, 2018, on a criminal case (Article 260(3)(a) of CC and Part 4 of the same Article – Illegal purchase, storage, sale of narcotic drugs).

272 Judgment №/1/1151-17 by Judge of Tbilisi City Court Lela Shkubuliani of September 18, 2017, in a criminal case (Article 178 (3) (d) and Article 4 (b) of CC – robbery);

exact timing of the defendant's going to bed can be explained by a human error. However, every defense witness stated that the defendant was in his home when the robbery was committed.

The court employs a different standard to the statements of the prosecution's witnesses and to assess their credibility: "The fact that G. M. seized M.O.'s handbag has been confirmed by the testimony of the victim, as well as by the statement of witness A. S., a person completely uninterested in the case, living nearby the crime scene. Having heard the noise, A.S. went outside and saw that a robber, who was holding a handbag, was leaving the spot. He also saw a woman (the victim) who was feeling unwell, asking for help and saying that her handbag was taken away. It should also be noted that A. S. not only saw the robber, but he also spoke to him. In view of the above, the court found credible the statement of A.S. declaring that he remembered the appearance of the burglar quite well and then confidently identified G.M. The court also pays special attention to the testimony of victim M.O., who noted that she chased the attacker and after flashing her mobile torchlight onto his face, she saw that it was G.M., from whom she demanded to return her bag. After that, G.M. hit M.O. with a dense blunt object in the head, due to which the victim felt sick. The fact that the victim got injured during the incident has been confirmed by the conclusion of the forensic examination, according to which M.O. received a concussion and a cut in the back of her ear. The given fact confirms that the victim received an injury to her head and exactly in the circumstances as she described. Particularly noteworthy is the fact that M.O. had known G.M., before, so the possibility that M. O. might have mistaken G.M. with someone else was virtually ruled out. It is an established fact that G. M. is a friend of B. B., M.O.'s brother-in-law; G.M. had been to M.O.'s residence more than once and knows both M.O. and her family members. This circumstance, apart from M.O., has been confirmed by the testimonies of the witnesses: Z.O., B.B., T.O., and accused G.M. Besides, the materials examined in the case did not reveal any possible motivation of M.O. to accuse the defendant of the crime."

EXAMPLE 13

The court ruling lists the evidence and to some extent analyzes its credibility, albeit insufficiently.[273] The primary argument of the judge concerning the reliability of the statements of police officers is that they do not contain any significant inaccuracies and no circumstances can be found that would indicate the interest of the police officers in the case. The verdict largely relies on the statements of witnesses, so it was of paramount importance to examine and evaluate the reliability and credibility of the testimonies, especially of the police officers and the statement of the only non-police witness.

273 Judgment №1/b-55-20 delivered by Natia Barbakadze, Nino Sandodze, Vepkhia Lomodze, the judges of the Tbilisi Court of Appeals, on February 19, 2020, in a criminal case (Article 260(6)(a) of CC – Illegal purchase and storage of particularly large amounts of narcotic drugs).

The cassation complaint shows that the defense lawyer challenged the trustworthiness of the police officers' testimony and focused on the identical parts in their statements (they may have been prepared in advance) and the sections where they did not seem prepared and therefore provided different information (the defense's questions). The judgment does not pay any attention to this rationale developed by the defense regarding the veracity of the evidence.

The court's decision does not explicitly show that the evidence/witness testimonies were carefully evaluated in terms of their credibility and authenticity. Special attention by the court to this matter was very important as the defense was arguing that the narcotic drugs were planted on the accused and the place of his detention did not coincide with the one described in the arrest protocol. Against this background, the court did not directly examine the testimony of the only non-police direct witness at the court hearing and published his testimony without giving any assessment thereupon.

EXAMPLE 14

In the case №603ბ3-19,[274] the Court of Cassation assessed only the statement of the minor victim, believed him/her, and substantiated the credibility of the victim based on the consistent testimony he/she provided during the case proceeding. The court then held, based on the expert examination, that the conclusion was in full compliance with the victim's statement. The Cassation Court gave a meager assessment of the defendant's testimony and the witness statements acquitting the accused; for example, the information provided by the witnesses that the juvenile victim testified against the defendant based on the advice of his/her grandfather and grandmother after receiving GEL 20 from them was not analyzed.

The Court of Cassation did not accept the above information provided by the defense witnesses and the accused, yet did not substantiate why the information was treated by the court as unreliable and unconvincing. Here, too, the only argument the court brings is the consistency of the victim's testimony and the fact that the minor had not raised a similar issue during the case proceedings.

The judgment of the Chamber of Cassation does not show whether the Court of Appeals gave a legal assessment of these testimonies and if their credibility was examined, whether the facts were studied (in particular, the witnesses themselves), the basis for their statements, and how they obtained the information.

In addition, no legal assessment is presented in connection with both indirect testimonies and circumstantial evidence. The only eyewitness is the victim, all other witnesses received the information from the victim. The Court does not juristically assess the evidentiary value of the testimony of indirect witnesses, nor is it clear from

274 Judgment №2ბ-№603ბ3-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, delivered on January 08, 2020, in a criminal case, Article 111-138(4)(c) of CC – sexual violence against a family member);

the judgment whether the Court used indirect testimony as factual evidence or solely for the legal assessment of the victim's statement. Identically, the expert conclusions and expert statements are not appropriately assessed from the legal point of view; the expert conclusion is accepted by the Court of Cassation, yet it is used not as evidence confirming the fact, which is of vital importance, but as the evidence to prove the credibility of the victim's testimony.

EXAMPLE 15

In the case №2ბ-409ბ3-19[275], the Court of Cassation assessed only the testimony of the defendant G.G., elaborated on its credibility, rejected the trustworthiness of the testimony and the credibility of the defendant, although the judge considered a part of the same testimony as credible and convincing for prosecuting another accusedM.K without explaining why the court deemed this particular part of the previously rejected testimony as credible.

The Court of Cassation did not also give a legal assessment to the indirect testimony which formed the ground for the indictment against M.K., did not take into consideration the relevant ruling of the Constitutional Court, and did not discuss why it accepted indirect testimony as evidence while the provider of the information to the indirect witness was the defendant, who was the primary source of information and was present at the court hearing.

The Chamber of Cassation neither elaborated on nor analyzed from the legal point of view why the indirect testimony was used as evidence while the defendants or the primary source of information were available and did not take advantage of the right to remain silent. The Constitutional Court in its decision in the case of *Mikadze v. Parliament of Georgia* challenged the possibility of using indirect testimony as evidence, arguing that the indirect testimony in accordance with the law can be used as evidence if the eyewitness of the crime (on whose words the indirect testimony is based) can be summoned to the court to testify or has already provided testimony. In such cases, the necessity and goal of using indirect testimony become dubious and obscure. Interrogating an indirect witness and disseminator of the information simultaneously may, in some cases, be conditioned by objective necessity, but it may also create a misperception due to the abundance of evidence and increase the likelihood of error. (p. 32)

Similarly, the conclusion of the expert examination is not assessed juristically and the judge accepts the report without analyzing it. The Cassation Court offers conclusions without giving a relevant legal assessment of the evidence.

275 Judgment №2ბ-409ბ3-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, delivered on November 08, 2019, in a criminal case, (Article 109(2)(e) and Part 3(b)(c), as well as Article 111,109(2)(e) and Part 3 (b)(c) of CC – premeditated murder by a group, with special cruelty; as well as – damaging and destroying someone else's property, which caused significant damage, by setting fire; Premeditated murder of a family member by another member of the family by a group, with particular cruelty and damaging and destroying someone else's property, which caused significant damage, by committing a fire);

EXAMPLE 16

The case of Ana Dolidze and Dimitri Gvritishvili[276] shows that the dispute revolved around the interpretation of evidence. In particular, the case concerns the plaintiff's Anna Dolidze's workplace, which the claimant specified in her CV as "Russian Justice Initiatives Foundation (South Ossetia/Moscow, Russia)" regarding which the respondent made the disputed statements.

The Tbilisi City Court notes in its ruling that the claimant's allegation that she did not physically visit Moscow is not disputable. The court then continues and adds that the entry "South Ossetia/Moscow, Russia" in the document may be perceived by a neutral observer that the person carried out activities in Moscow or is somehow associated with Moscow or Russia. The reasoning offered by the Tbilisi City Court is actually a pun because if the respondent's perception that the activities were carried out in Moscow served as the ground for the court's conclusion that materially incorrect information was disseminated, then the visit was also directly related to the same matter. In fact, the respondent, in a controversial TV program broadcast through the TV program "Pirvelebi" on TV Pirveli Channel on February 16, 2018, stated that claimant Ana Dolidze was "present," "visited" the specific territory.[277]

The court's conclusion that the plaintiff's activities could have been perceived by the respondent as "the activities related to Moscow or Russia" is not unequivocal due to the lack of relevant evidence and without hearing the arguments of the parties. It is true that the activities of an organization affiliated with Russia may be perceived as "pro-Russian" and therefore working there as a "weak moral aspect" of the person. Despite this, the Tbilisi City Court's argument "the claimant herself explained that she specified in the application the place of her studies, and we cannot require from other readers of the application to have such knowledge" is clearly unjustified. Here, we deal with the accuracy of the judge's understanding of the plaintiff's activities such as "collected data, interviewed victims, inspected the territories linked to the humanitarian mission during the Russian-Georgian conflict, and the data were used as a ground for joint action in the European Court of Human Rights." This fact-finding mission is similar to judicial activities, i.e. the intention to confirm facts. Thus, the good faith of the respondent ought to have been assessed precisely in the light of his professional skills.

As for the Tbilisi Court of Appeals, it held, unlike the court of the first instance, that the respondent made not a factual statement but offered evaluative reasoning –

276 Decision №2/14643-18 by Judge of Tbilisi Court Maia Gigauri of October 02, 2018, and decision №2b/7995-18 by Genadi Makaridze, Amiran Dzabunidze, Gela Kiria, Judges of Tbilisi Court of Appeals, of December 30, 2019, in a civil case (Denial of information insulting honor and dignity through the mass media, a dispute between Ana Dolidze and Dimitri Gvritishvili).

277 "She was in Moscow according to our information …", "… there is a specific link to the official document filled out by her where she is pleased to say that she has traveled. Among them she was in Moscow, in South Ossetia, as she puts it "because for me it is Samachablo. She was present in the territory of South Ossetia and was collecting data for the Russian organization registered in the Netherlands.

"a logical conclusion and viewpoint, which the respondent justly and reasonably formulated based on the claimant's application." According to the European Court of Human Rights, even in cases when the statement is evaluative reasoning, there must be a sufficient factual basis for doing so (*Pedersen and Baadsgaard v. Denmark* [GC], § 76; *De Haes and Gijsels v. Belgium*, § 42; *Oberschlick v. Austria* (no. 2), § 33; *Lindon, Otchakovsky-Laurens and July v. France* [GC], § 55). Even if we suppose that the story aired by Maestro TV intensified the respondent's belief, the Tbilisi Court of Appeals did not explain to what extent this belief of the respondent could give rise to the possibility for the respondent "to make a logical conclusion and reasoning" about the claimant's visit to Moscow, while the respondent was providing the audience with the information about a very specific fact based not only on the plaintiff's application but also other sources.[278]

EXAMPLE 17

According to the verdict handed down in the case 1/160-20[279], the prosecution charged J. Ch. in the first count with the storage of a forged ID card for the subsequent use and its usage, and in the second count, the production and storage of a fake ID card for the subsequent use. In both episodes of the indictment, the court deemed as established that J. Ch. stored and utilized an identity card prepared and issued by a relevant authorized state body, in which an incorrect date of birth was indicated based on inaccurate data stored in the electronic database of the Civil Registry.

It has been established that the accused twice applied to the Civil Registry with the request for an electronic ID card and in both cases, the Civil Registry issued an ID card containing incorrect data per the information stored in the electronic database. According to the law, even if the accused specified incorrect data (knowingly or unknowingly) in the application, the Civil Acts Registration Authority in any case had an obligation to review the application and make a decision in accordance with the law.[280]However, in the given case, the person was charged with the commission of an act that he did not actually perpetrate. After the application, J. Ch. was granted an ID card by the administrative body containing the information that was retrieved from the electronic database of the Civil Registry, and naturally, the accused kept the ID as an identity document and even applied it on demand. The court assessed the evidence superficially and based on the factual circumstances established by the court charged the accused with committing the offenses, which he did not commit.

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278 An excerpt from the disputed statements: "She was in Moscow and she was present there, according to our information …", "… there is a specific link to the official document filled out by her, where she is pleased to say that she has traveled. Among them, she was in Moscow, visited South Ossetia (…)

279 Judgment №1/160-20 delivered by Davit Svanadze, Judge of Samtredia District Court, on November 12, 2020, in a criminal case (Article 362(1), Article 180(2)(b) of CC – Producing, selling, using of a forged document, stamp, or form);

280 According to Article 2, Paragraph "i" of the Law of Georgia on Civil Acts, "electronic database of civil status acts is a database of civil status acts or part of it that is available in electronic form." Pursuant to Article 4 (2)(b) of the same law, "the powers of civil status registration authorities shall include the initial registration, as well as making changes, corrections, and/or additions to civil status records and re-registration of civil status acts." Pursuant to Article 16(1) of the Law of Georgia on Civil Acts, "the civil status registration authority shall consider applications for issues falling within its powers in the period determined by the General Administrative Code of Georgia unless otherwise provided for in the legislation of Georgia."

EXAMPLE 18

In the case №1/185-2020,[281] the judge held the commission of the crime by the defendant as confirmed beyond a reasonable doubt, and in this respect paid close attention to the coincidence between the testimonies of the witnesses (police officers) and the written evidence. In denying the possession of the firearm, the accused linked his arrest to a property dispute he had with parliamentary candidates who, as the accused declared, threatened him with "planting" narcotic drugs and firearms. The court notes in the judgment that no direct or circumstantial evidence can be found in the case to corroborate the testimony of the accused.

It is a basic legal principle that the circumstances within which the search was conducted should not raise questions regarding the credibility of the evidence seized. In this regard, it is important to determine "whether the physical evidence seized during the search was corroborated by evidence obtained from other sources. The court considers that none of the other pieces of evidence in the case files, in light of the absence of the search protocols, can be deemed sufficiently solid" (Megrelishvili v. Georgia (application №30364/09), Strasbourg, May 7, 2020, pp. 37-38)).In contrast to the foregoing, according to the circumstances of the case, the firearm was seized and the search was carried out in a place where no one but the police officers and the accused was present. As for the police officers, since they were acting against the accused at the initial stage of the case proceedings and were affiliated with the body that initiated the investigation, they were interested in the outcome of the prosecution. Their interest was particularly evident with respect to the defendant's allegations that the narcotic drugs had been "planted" on him. Nevertheless, their testimonies were automatically considered impartial, unlike the testimony of the accused, which was declined as unreliable (ibid, p. 38). In the given case, there was no neutral evidence corroborated with other evidences to confirm that the accused had committed the crime.[282]

EXAMPLE 19

The court ruling into the case №1/25-20[283]offers the list of evidence and a brief summary thereof (p.10). According to the factual circumstances of the case, the criminal proceeding was initiated based on narcotic drugs seized as a result of a personal search of the accused and his residential house. As the verdict shows, the prerequisite of the search was a report submitted by the Head of the 2nd Division of the Detectives Unit of the Tbilisi Police Department on February 23, 2019, claiming that certain individuals were storing, buying, and selling drugs in the residential

281 Judgment №1/185-2020 delivered by Davit Gelashvili, Poti City Court Judge, on November 17, 2020, in a criminal case (Article 236 (3) and (4) of CC – Unlawful purchase of firearms).

282 This may include video recordings, testimonies of witnesses independent of the parties, police body camera recordings, dactyloscopic and biological examination findings, and so on.

283 Judgment №1/25-20 by Malkhaz Enukidze, Judge of Akhalkalaki District Court, of November 18 (the year is classified) in a criminal case (Article 111, Article 126(12) and Article 1261(1)- Domestic violence);

houses. The investigative action- search of V.M – was conducted on February 28, 2019, without a prior court warrant. However, the report on the alleged drug-related crime was received on February 23, 2019, and there was sufficient time to obtain a court ruling allowing the search prior to the search on February 28, 2019.

The defense lawyer presented to the court an application filed by the accused with the Prosecutor's Office on October 29, 2018, alleging that a certain Sh.G., who was in confrontation with the defendant, was planning to provide the authorities with false information as if the accused was involved in a drug-related crime. Even though the accused had filed the statement several months earlier about the possibility of perjury against him as if he was committing a crime, the personal search was carried out on the basis of a police report without a relevant court warrant, and the prosecution mainly relied on the narcotic drugs seized as a result of the search and the statements of the witness police officers. In this regard, the decision №2/2/1276 of the Constitutional Court of Georgia of December 25, 2020, is noteworthy; that decision declared as unconstitutional the normative content of the second sentence of paragraph 2 of Article 13 of the Criminal Procedure Code of Georgia that allows an illegal item seized as a result of a search to be applied as evidence when the possession of the removed item is confirmed only by the testimony of law enforcement officers and when law enforcement officers could but did not take appropriate measures to obtain neutral evidence proving the credibility of the search, pursuant to Article 31, Paragraph 7 of the Constitution of Georgia.

The judge did not elaborate on the credibility and consistency of the statements provided by the witness police officers.

EXAMPLE 20

The acquittal verdict №1/54[284]is based on the lack of direct evidence for the prosecution. Therefore, the verdict must contain consistent and convincing reasoning that there is no direct evidence to prove the guilt of the person.

With respect to the testimony of the father, the judge notes that the father confirmed that the defendant had only verbal communication with the child. In contrast to the foregoing, in the part of the evidence (paragraph 12), the judge indicates that the father heard a noise, went upstairs, and saw that the defendant was holding his child by the hair. This is not merely verbal communication, but violence. The prosecution was also arguing that the accused pulled the victim by the hair and demanded her to go back home. The court decision does not show why the judge did not accept this part of the testimony or why he/she describes this statement differently in the reasoning part. The judge's analysis does not correspond to the evidence provided in the judgment.

284 Court decision №1/54 by Levan Nutsubudze, Senaki District Court judge, on a criminal case of November 10, 2020, (Article 1261(2) (b) and Article 111-151(2) (d)) – domestic violence, responsibility for a domestic crime).

EXAMPLE 21

In the verdict rendered into the case №1/88,[285] the court's rationale concerning the instrument of the crime is unclear. The person was charged with an assault on a minor child (Article 126[1] paragraph 2(a) of the CC), namely, hitting the minor on the head with a plastic bottle removed from the refrigerator. The parties had a heated dispute over whether the bottle was full of ice or empty. In this respect, the court clarifies as follows: "The fact whether the bottle was empty or full or whether the accused "hit" or lightly "tapped" him with it may not have any significance for pronouncing S.S. guilty". This reasoning developed by the court is faulty since the contents of the bottle and the manner of hitting may have a direct impact on the qualification of the act as a crime, as S.S.is charged with domestic violence, which caused physical pain.

The arguments of the defense are not provided in the judgment.

The judge's reasoning regarding the result of the crime (physical pain) is contradictory and unfounded. The Court noted the following:

"Having examined the evidence, the court has no grounds for doubting the testimony of the juvenile victim and must fully accept it as conclusive, corroborating evidence. As for the explanation provided by the minor victim that his head did not hurt after he was hit with the bottle and as if S. S.'s action was merely a call to do homework, cannot be accepted." The Court remarks that the violence against the child in this particular case for the sake of developing the quality of his studies cannot be considered a circumstance excluding or mitigating liability, because no interest can outweigh the child's right to be protected against a violent environment and be provided with a possibility for adequate development. As regards the pain, M.M. noted that after being hit with the bottle, he/she started crying. Accordingly, the court unequivocally established that the child's crying was the result of the pain caused by the blow of the bottle.

The court points out in its reasoning that there are no grounds for questioning the testimony of the victim. However, the victim declared at the court hearing that he/she did not feel any pain when struck by the plastic bottle. The judge considers the pain to be indisputably confirmed just because the juvenile victim cried. At the same time, the court notes that it does not matter the bottle was empty or full, the accused hit or lightly tapped the victim with the bottle.

285 Court decision №1/88 by Levan Nutsubudze, Judge of Senaki District Court, of November 09, 2020, on a criminal case (Article 1261(2)(a)(b)- Domestic violence).

EXAMPLE 22

The acquittal verdict in the case №1/24-20[286] is based on the circumstance that the case lacks direct evidence, however, a detailed analysis of the testimonies of two key witnesses/neighbors are missing from the discussion, in particular, the circumstances referred to by the witnesses as the eyewitnesses and as indirect witnesses, since the witnesses are not indisputably indirect witnesses because in some parts they heard, in some parts they saw, and in some parts they told a story.

EXAMPLE 23

In relation to the case №1/198-20,[287] it should be noted that Article 151 of the Criminal Code of Georgia criminalizes the threat of death when the person who is being threatened has a reasonable fear that the threat will be carried out. The victim is the only person who can provide the court with information on whether he/she perceived the threat as real and whether he/she experienced fear.

In the given case, the verdict does not assess the testimony of the victim, moreover, it is not even mentioned in the list of evidence. The content of the judgment also does not allow inferring whether the witnesses specified in the list of evidence were the eyewitnesses to the incident or whether the presented consolidated evidence met the standard of sufficient evidence to render a guilty verdict.

EXAMPLE 24

In one of the cases,[288]the court listed and reviewed in detail the content of the evidence examined, as well as the relation and connection between each of them. However, the evidence cannot be fully and adequately assessed because the position of the defense regarding the evidence is not clearly provided, in relation to which the court must respond and explain why it does not agree with the defense position.

EXAMPLE 25

The court decision №ას-1296-1223-2012[289] presents and assesses merely the position of the complainant. It is not clear whether the opposing party presented any evidence. Therefore, we cannot find an assessment of the evidence in the court ruling.

286 Judgment №1/24-20 by Leila Gurguchiani, Judge of Tsageri District Court, of May 11, 2020, in a criminal case (Article 1261(2)(a)(b)(c) – Domestic violence).

287 Judgment №1/198-20 by Davit Svanadze, Judge of Samtredia District Court, of November 25, 2020, in a criminal case (Article 151(1) of the CC – Threat of death);

288 Judgment №1-522-19 by Ekaterine Partenishvili, Judge of Rustavi City Court, of February 06, 2020, in a criminal case (Articles 19, 137(1) of CC – Attempted rape);

289 Judgment №ას-1296-1223-2012 by Vasil Roinishvili, Levan Murusidze, Paata Silagadze, the Judges of the Supreme Court of Georgia, of March 10, 2015, in a case of civil law (compensation for damages).

EXAMPLE 26

Only the position of the complainant is presented and evaluated in the decision №ას-1673-1569-2012.[290] The evidence presented by the opposing party and the position of the court thereof are unknown.

EXAMPLE 27

In the case №346აპ-19,[291] the court deemed the fact of violence/beating as confirmed on the basis of only two pieces of direct evidence (the commission of the crime by the accused was actually confirmed by merely one piece of direct evidence – the testimony of the victim) and noted as follows:

"When the Cassation Court does not accept the conclusion of the Court of Appeals claiming that there is no conclusive and sufficient evidence to confirm the guilt of R.U., accused of violence (beating) against the victim V.G. in the present case, the court takes into consideration the following circumstances: in the case, in addition to the direct testimony of the victim, there is also other credible evidence, one of which is impartial evidence, such as a forensic report detailing the injuries inflicted on the victim by the defendant as a result of a violent act. This is a piece of evidence that has been examined in court and unequivocally accepted, as well as obtained in full compliance with the procedural law, thus, there is no doubt about its possible falsity."

This matter is problematic given the fact that the guilty verdict was based on merely one piece of direct evidence. According to Article 82, Paragraph 3 of the Criminal Procedure Code, rendering a guilty verdict requires a combination of agreed evidence beyond a reasonable doubt.

290 Judgment №ას-1673-1569-2012 by Vasil Roinishvili, Levan Murusidze and Paata Silagadze, the Judges of the Supreme Court of Georgia, of October 09, 2013, in a case of civil law (compensation for damages);

291 Judgment №2Ბ-346აპ-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, Judges of the Supreme Court of Georgia, delivered on November 01, 2019, in a criminal case (Article 125(1) – Beating, Article 344(1) – Illegal crossing of the state border of Georgia, Article 353(1) – resistance, threat or violence against the public defender or other government officials, Article 362(1) – storage and use of a fake ID card).

EXAMPLE 28

In the court decision №603ა3-19,[292] the court gives a legal assessment to the victim's testimony and tries to substantiate the credibility of the statement only. Even the expert report is reviewed and assessed by the Cassation Court as the evidence confirming the credibility of the victim's testimony and not as the circumstance establishing the fact, which is incorrect because the forensic report should have been analyzed in conjunction with the victim's testimony as indirect evidence confirming the fact and not as evidence confirming the reliability of the victim's statement (the Cassation Chamber notes that the victim's statement is also corroborated by the biological (DNA, serology test) examination report according to which the light gray stains not only on the back and front parts of Z.N's underwear but also on the inner surface contain sperm).

EXAMPLE 29

In the court decision№4/319-20,[293] the judge considered the explanation provided by a public servant in the case of administrative misconduct as highly credible, which is contrary to the principle of equality of arms guaranteed by Article 62, Paragraph 5 of the Constitution of Georgia (Article 62.5 of the Constitution of Georgia – a case proceeding shall be conducted under the principle of equality of arms and adversarial process).

292 Judgment №2ვ-№603ა3-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, Judges of the Supreme Court of Georgia, delivered on January 08, 2020, in a criminal case, Article 111-138(4)(c) of CC – Sexual violence against a family member);

293 Judgment №4/319-20 delivered by Mamuka Tsiklauri, Judge of Telavi District Court, on October 24, 2020, on an administrative violation case (Article 173 of the Code of Administrative Offenses – Resistance to a lawful request of a police officer);

ANNEX 8

Criterion 8. Illustrative Examples of the Quality of Substantiation of the Size of Sentence by Judges

EXAMPLE 1

Giorgi Mamaladze[294] was found guilty under Articles 18, 108 and 236(2) of CC. Article 108 of the Criminal Code of Georgia envisages imprisonment for a term of seven to fifteen years, and the crime provided for in Article 236(2) is punishable by up to four years imprisonment.[295] Giorgi Mamaladze was sentenced to nine years in prison under Articles 18 and 108, and to two years of deprivation of liberty under Article 236(2). Pursuant to Article 59(2) of the Criminal Code of Georgia, a more severe sentence absorbed a less severe one, and based on the cumulativeness of the crimes Giorgi Mamaladze was sentenced to nine years in prison. The verdict does not specify why the accused was sentenced to a more severe punishment than a minimum sentence, and nothing is said about the mitigating and aggravating circumstances of the liability. Merely the following is offered: “With regard to the sentence imposed, the Court finds it fair and notes that there is no basis for the mitigation of the sentence.”

EXAMPLE 2

The judge in the Cables case[296]holds that the actions perpetrated by the defendants contain the elements of offense envisaged under Article 182 of CC, without offering any differentiation/separation/description of the roles of the accused; all of the defendants are imposed the identical punishment. When determining the sentence, the judge does not analyze any individual characteristics of the defendants or mitigating circumstances. In contrast, the judge notes that “the breach of official obligations by the defendants was of the same nature, which is why the same punishment should be imposed on all of them.” No other circumstances/personal characteristics about the defendants are indicated or taken into account. The verdict stereotypically provides

294 Judgment №1/b-972-17 by Natia Barbakadze, Murman Isayev, Manuchar Kapanadze, the Judges of the Tbilisi Court of Appeals, of February 13, 2018, in a criminal case (Article 18, 108, Part 2 of Article 236 of CC – Attempted murder, accusation of Giorgi Mamaladze, the so-called "cyanide");

295 Criminal Code of Georgia as of December 22, 2016.

296 Judgment №1/1373-15 delivered by Besik Bugianishvili, Tbilisi City Court Judge, on May 16, 2016, in a criminal case (Article 182(2)(a) and (b) and Paragraph 3(b)) of CC -misappropriation or embezzlement; The so-called "Cables Case").

the goals of the sentence – to restore justice, to prevent the commission of a new crime, and to re-socialize the offenders. The court's statement that the accused individuals can be sentenced to a more severe form of punishment if a less lenient sentence cannot ensure the achievement of the goals of the sentence is formal and boilerplate. The court's assertion that aggravating circumstances of the liability do not exist in the case of any of the accused is unsubstantiated, but despite this the court imposed the most severe sentence on all defendants.

EXAMPLE 3

In the case of Giorgi Rurua, the judge refers only to the legal principles of sentencing and cites Article 53 of CC (circumstances to be taken into consideration when sentencing a defendant) without applying these circumstances to the specific defendant and case. The judge says nothing about the personality of the accused, cannot find any mitigating and aggravating circumstances in the case, and notes that "G. Rurua is accused of committing less serious and serious crimes containing an increased threat to the public."[297]

EXAMPLE 4

The verdict[298]provides a lengthy discussion of the legal criteria based on which a sentence should be determined, yet it does not explain how these criteria were applied in the given case. The judge notes as follows:

"According to Article 259, Paragraph 1 of the Criminal Procedure Code of Georgia, the court verdict shall be fair. According to Paragraph 4 of the same article, a court verdict shall be considered fair if the sentence imposed is commensurate with the personality of the convicted person and to the gravity of the crime committed by the offender. The court holds that the fairness of the verdict is linked to the sentence provided by law. A sentence shall be deemed inappropriate to the gravity of the crime committed and personality of the accused, which, due to its form and size, excessive severity, or leniency, is considered unfair. Pursuant to Article 53, Paragraph 3 of the Criminal Code of Georgia, when choosing a sentence, mitigating and aggravating circumstances of the accused should be taken into account, in particular, the motive and goal of the crime, unlawful desire manifested in the act, character and degree of the breach of obligations, the modus operandi and results of the act, past history of the perpetrator, behavior of the offender after the crime. The court emphasizes the need to determine a fair sentence and holds that the sentence must be necessary and proportionate to the educational goals of the law so that the accused can understand the risks of the crime. The severity of the sentence should be commensurate with the reprehensibility

297 Judgment №1/308-20 by Valerian Bugianishvili, Judge of Tbilisi City Court, of July 30, 2020, in a criminal case (Article 236(3)(4) of CC – unlawful purchase, possession, carrying, manufacture, sale of firearms; Article 381, Part 1 – failure to enforce a judgment or other court decision or obstruction of its execution, accusation against Giorgi Rurua). p.71.

298 Judgment №/1/1151-17 by Judge of Tbilisi City Court Lela Shkubuliani of September 18, 2017, in a criminal case (Article 178 (3) (d) and Article 4 (b) of CC – robbery);

of the act committed. The court adds that the personality of the accused must be taken into account and the punishment must be individual and adequate in each particular case and strictly personal in nature. The sentence should be proportionate to the personality of the convict and the gravity of the crime committed by him/her."

"The court asserts that the sentence chosen for Garik Mkhitaryan should be thought-provoking for him so that he can better comprehend the nature and the degree of criminality of the act he committed, develop the responsibility before the rule of law and order, and reduce the risk of him committing a new crime. In the given case, Garik Mkhitaryan committed a crime under Article 178(3)("d") of CC and Paragraph 4 ("b") of the same Article, which envisages a serious (paragraph 3) and particularly serious (paragraph 4) category of crimes, for the commission of which the legislator has determined only deprivation of liberty. Based on the foregoing, taking into consideration of the mitigating and aggravating circumstances of the accused Garik Mkhitaryan, as well as the lower and upper limits of the sanction, the court considers it reasonable to sentence Garik Mkhitaryan under Article 178, Paragraph 3, Subparagraph "d" of CC and Paragraph 4, Subparagraph "b" to 7 (seven) years of imprisonment as a form and size of the punishment."

EXAMPLE 5

In the verdict,[299] the judge refers to only the general principles of sentencing and says nothing about the personality of the defendant, nor does he/she discuss mitigating or aggravating circumstances of the liability in the case. The judge only cites the principles of sentencing and does not analyze the extent to which the circumstances of the case had an impact on the process of selecting the sentence. It is not substantiated why a suspended sentence was imposed on the accused. According to Article 63 of CC, the imposition of a suspended sentence is the right and not an obligation of the judge. Accordingly, the judge must pay considerable attention to justifying the sentence applied, especially in the case of a conditional sentence.

EXAMPLE 6

In the verdict,[300] the judge formally indicates that there are no aggravating or mitigating circumstances in the case; however, we cannot find in the judgment whether these circumstances were examined and investigated during the substantive hearing of the case. When offering a rationale behind the imposed sentence, the judge cites Article 259, Paragraph 4 of the Criminal Procedure Code with respect to the fairness of the sentence, yet does not subsume the factual circumstances in determining the size of the sentence based on which he/she sentenced the accused persons

299 Judgment №1-522-19 delivered by Tea Leonidze, Bolnisi District Court Judge, on November 11, 2020, in a criminal case (Article 126[1](1) (two counts), Article 151(1) of CC – domestic violence, responsibility for domestic crime).

300 Judgment №010100119003-56504 by Davit Mamiseishvili, Judge of Batumi City Court, of April 6 on a criminal case (Article 260(3)(a) of CC; Part 5(a), Part 6(a) (02 episodes) – illegal production, manufacturing, purchase, storage, transportation, transfer or sale of a narcotic drug, its analogue, precursor or new psychoactive substance);

Kh. and O. to a higher sentence than the minimum: namely, Kh. was sent to prison for eight years, and O. for eleven years. The judge does not explain why he/she did not accept the defendants' confession as a mitigating circumstance in the two counts of the indictment. Confession-repentance is one of the mitigating circumstances, though not mandatory. The court does not also assess the criminality of either the act or the result. The judge's argument regarding the degree of reprehensibility of the act is not clear.

EXAMPLE 7

In the verdict,[301] the judge explains the guiding principles of sentencing and mentions Article 53, Paragraph 3 of CC. The court does not elaborate on the personality of the accused, and the argument "there are no significant circumstances in his past" is too weak to justify the verdict in this part.

EXAMPLE 8

In the verdict,[302] the judge refers to the guidelines for sentencing, in particular, Article 53, Paragraph 3 of CC. However, the court does not mention any mitigating and aggravating circumstances of liability. The court ought to have found the relevance of the cited principles of sentencing with the accused and offered more specific reasoning in this respect, the lack of which constitutes a weakness of the judgment.

EXAMPLE 9

In the verdict,[303] the judge cites only the legal principles of sentencing and does not analyze the impact of this or that circumstance of the case on the process of selecting the punishment. Article 151, Paragraph 1 of CC envisages a fine or community service for a term of 120to 180 hours, or correctional labor for a term of one year, or house arrest from six months to two years, or deprivation of liberty for up to one year, with or without the prohibition of firearms. Considering that the accused admitted to the crime and repented for the act he was charged with, did not dispute the factual circumstances of the case and had no aggravating circumstances of liability, the imposition of the most severe form of punishment (imprisonment for one year) on the accused is unsubstantiated. Neither is the issue of the suspended sentence substantiated by the judge.

301 Judgment №1/185-2020 delivered by Davit Gelashvili, Poti City Court Judge, on November 17, 2020, in a criminal case (Article 236 (3) and (4) of CC – Unlawful purchase of firearms).

302 Judgment №1/41 by Nana Jankhoteli, Judge of Tsageri District Court, of October 01, 2020, in a criminal case (Article 303(1) of CC – Illegal logging of trees and shrubs);

303 Judgment delivered by Nunu Nemsitsveridze, Judge of Gurjaani District Court, on February 22, 2021, in a criminal case (Article 151(1) of CC – Threat of death);

EXAMPLE 10

In the verdict,[304] the judge cites Article 53 of the Criminal Code.[305]He/she also offers a general formula in relation to domestic crimes.[306] However, neither the motive, the result of the crime, nor the needs of re-socialization of the offender are examined for the purpose of sentencing. The verdict simply states that the accused has no mitigating or aggravating circumstances. It is established that the defendant was under alcohol intoxication at the moment of committing the crime, yet this circumstance was not taken into account when sentencing.

EXAMPLE 11

In the verdict,[307] the judge points out that there are no aggravating and mitigating circumstances in the case, but nowhere in the court ruling can be found whether the matter has been studied and investigated or not. The court refers to general provisions in the judgment to determine and substantiate the selected type of sentence, e.g. the judge cites the following law: "When imposing a sentence, the court shall take into account the motive and goal of the crime, the unlawful desire demonstrated in the act, the nature and extent of the breach of obligations, the manner of committing the crime, the modus operandi and unlawful consequences, as well as the personality of the accused."However, none of the indicated matters have been examined, investigated, and assessed by the judge. The court does not either analyze the culpability of either the act or the threat. The judge's decision in the part of the imposition of the sentence is unjustified. The court does not explain why it sentenced the defendant to imprisonment and why the accused was not given a more lenient sentence that is provided in the respective article.

304 Judgment №1-105-2020 by Darejan Kvaratskhelia, Judge of Senaki District Court, of November 03, 2020, in a criminal case (Article 111-151(2)(d)of CC- Responsibility for a domestic crime);

305 When imposing a sentence, the court shall take into account the motive and goal of committing the crime, the unlawful desires revealed in the action, the nature and extent of the breach of duty, the type, manner, and unlawful outcome of the action, as well as the personality of the accused.

306 When selecting a sentence for an accused charged with a domestic crime, the goals of the punishment such as restoring the order, preventing the commission of a new crime, and re-socialization of the offender must be considered. In its sense, re-socialization is the main goal, in order to prevent new threats from the convict who will be released in the future. Re-socialization means unconsciously or inadequately understood assimilation by an individual of cultural values and social norms emerging at different levels of development of society. Re-socialization also involves the acquisition of individual values and beliefs that are radically different from those which the person holds. Therefore, the precise individualization of the type and size of the sentence is crucial in achieving the goals of the sentence.

307 Judgment №1/198-20 by Davit Svanadze, Judge of Samtredia District Court, of November 25, 2020, in a criminal case (Article 151(1) of the CC − Threat of death);

EXAMPLE 12

In the verdict, the judge recites only the legal principles of sentencing and says nothing about the personality of the offender. With respect to "mitigating and aggravating circumstances of the liability, "the judge notes that the accused has no mitigating or aggravating circumstances of liability,[308] although in the rationale for the sentence the judge indicates that the accused was convicted in the past.[309] It is not substantiated why a fine was used as a punishment against the accused, while based on the court ruling, the accused had been convicted in the past for a similar type of crime (Article 126, Paragraph 1).

EXAMPLE 13

In the verdict,[310]the judge highlights the aggravating and mitigating circumstances, namely alcohol intoxication (aggravating), and confession and sincere repentance (mitigating), but does not actually explain why he/she considered alcohol intoxication as an aggravating factor, did not examine the grounds for the drunkenness and did not discuss whether it can be deemed as an aggravating circumstance in every case. Similarly, with respect to the mitigating circumstances, it is true that the judge refers to confession and sincere repentance, but these factors were neither investigated nor studied to find out whether the confession-repentance of the accused was voluntary. The court does not either assess the unworthiness of the committed act or the result. The judge's decision in the part of the indictment of the sentence is completely unsubstantiated, as it is not clear what the court relies on when asserting the degree of reprehensibility.

In the part of sentencing, the judge points out the positive obligation of the state in terms of protection of human rights. While referring to a number of international acts, recommendations, guidelines, and case-law of the ECtHR the judge emphasizes the necessity of the state's immediate response to violence against women and praises the state for providing a timely response. However, this reasoning lacks relevance, as it is not clear what connection the aforementioned discussion has with sentencing, it does not prove whether the judge considered the above factors in assessing the charge or what everything said has to do with determining the size and type of punishment.

308 Judgment №1/164-2020 by Shota Nikuradze, Judge of Zestafoni District Court, of February 11, 2021, on a criminal case (Article 126, Part 11(c) of CC – violence, beating, which caused physical pain to the victim, but did not lead to the result provided for in Article 120 of the Criminal Code), p.7.

309 Ibid. p.8

310 Judgment delivered by Levan Darbaidze, Judge of Gori District Court, on April 23, 2020, in a criminal case (Article 1261 (1)(2)(c) of CC – domestic violence, Article 111,151(2)(d) of CC- Threat of death against a family member when the person threatened develops a well-founded fear of being threatened);

EXAMPLE 14

In the verdict,[311] the judge, on the one hand, agrees that the sentence is severe against the background of the financial situation of the defendant, which the court provides as a reference, and based on this it reduces the property sentence, a fine of GEL 1000 to a minimum of GEL 500. The judge also highlights the obligations of the parent to act in the best interests of the children, as defined by the international standards for the protection of the rights of the child; the judge elaborates that the accused would not be able to adequately fulfill the obligations of the parent in the best interests of the child in case of the use of fine. However, in the light of the foregoing, the judge does not elaborate on the reasonableness of using a fine to sentence the accused and why a suspended sentence is not appropriate.

EXAMPLE 15

In the verdict,[312] the judge took into consideration the mitigating and aggravating circumstances of liability when imposing the sentence, and based on the accused's confession and reconciliation with the victim, imposed on the defendant a suspended sentence. Nevertheless, the court did not discuss the extent to which the suspended sentence would prevent the accused from committing a new criminal act against the victim considering that they were living in the same household.

EXAMPLE 16

In court rulings rendered in two cases,[313] the judges noted that the aggravating circumstance was the commission of a crime against a family member. This legal reasoning is erroneous and contradicts the provision of law referred to by the judge regarding the imposition of a sentence, according to which any circumstance that qualifies the act as a crime cannot be considered an aggravating circumstance when sentencing. The committed act – violence against a family member – already contains a factor qualifying the act as a crime against the family member; hence, referring to it as an aggravating circumstance for the purposes of the sentence is a mistake and breaches the principles of criminal justice in terms of sentencing. On the other hand, although the judge considers the above-mentioned aspect as an aggravating circumstance, he/she does not apply the relevant principle when determining a sentence, according to which the imposed sentence should be at least one year longer than the minimum sentence.

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311 Judgment №2ბ-543ბ-19 by Lali Papiashvili, Merab Gabinashvili and Mamuka Vasadze, the Judges of the Supreme Court of Georgia, of March 12, 2020, in a criminal case (Article 126(1) of CC – Violence);

312 Judgment №1-115-20 delivered by Tea Leonidze, Bolnisi District Court Judge, on October 02, 2020, in a criminal case (Article 1261(1), Article 111, Article 151(2)(d) of CC – domestic violence, responsibility for domestic crime).

313 Judgment №1/82-20 delivered by Nikoloz Margvelashvili, Kutaisi City Court Judge, on April 02, 2020, in a criminal case (Article 1261(1)(two counts) and 111,3811(1) –responsibility for domestic crime, domestic crime);
Judgment №1/25-20 by Malkhaz Enukidze, Judge of Akhalkalaki District Court, of November 18 (the year is classified) in a criminal case (Article 111, Article 126(12) and Article 1261(1)- Domestic violence);

EXAMPLE 17

In the court verdicts delivered in two cases,[314] the Court of Cassation imposed the sentence without examining whether the mandatory requirements for sentencing were thoroughly examined by the Court of Appeals. It is not clear from the judgment of the Court of Cassation whether the Chamber of Appeals elaborated on the aggravating and mitigating circumstances of the defendant, the criminality of the committed act and its result, and whether the sentence was assessed from the legal point of view. For example, in the case №603, the judge resorted to the following conclusion: "With regards to the sentence, the Court of Cassation takes into consideration the type of the act committed, the gravity and its particularly immoral nature, the past life of the offender, his conviction, and considers that the maximum sentence for deprivation of liberty as provided under Articles 11^1, 137(4)(c) of CC, and the final sentence imposed on the accused based on the combination of the sentences is fair and there is no reason to overturn it."

EXAMPLE 18

In one of the cases,[315] the judge justified the sentence by assessing the individual report on the defendants, took into account relevant provisions of the Juvenile Justice Code, and discussed their relevance when determining the sentence. In deciding on the punishment, the court relied on an individual assessment report presented by the National Probation Agency (see the verdict p. 5.6).

314 Judgment №2_3-№603ა3-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, Judges of the Supreme Court of Georgia, delivered on January 08, 2020, in a criminal case, Article 111-138(4)(c) of CC – Sexual violence against a family member);
Judgment №2_3-409ა3-19 by Giorgi Shavliashvili, Paata Katamadze, Besarion Alavidze, the Judges of the Supreme Court of Georgia, delivered on November 08, 2019, in a criminal case, (Article 109(2)(e) and Part 3(b)(c), as well as Article 111, 109(2)(e) and Part 3 (b)(c) of CC – premeditated murder by a group, with special cruelty; as well as – damaging and destroying someone else's property, which caused significant damage, by setting fire; Premeditated murder of a family member by another member of the family by a group, with particular cruelty and damaging and destroying someone else's property, which caused significant damage, by committing a fire);

315 Judgment delivered by Lela Shkubuliani, Tbilisi City Court Judge, on February 25, 2020, in a criminal case (Article 179(2)(b) of CC – robbery).

EXAMPLE 19

In the verdict,[316] the judge refers to the sanctions provided for in relevant provisions of the Criminal Code, the norms related to sentencing, and aggravating and mitigating circumstances of liability, as well as the provisions of the Criminal Procedure Code regarding the fairness of the sentence. The court emphasizes the necessity and proportionality of the sentence to achieve the goals of the sentence, etc. The constitutional-legal significance of the proportionality of the sentence in the context of human dignity is rightly provided and the decision of the Constitutional Court is cited.[317] The case-law of the European Court of Human Rights is also indicated.[318] In addition, the Court refers to the Istanbul Convention and the obligation determined by the Convention to protect against violence. The court does not resort to merely discussing general matters and takes into consideration the number and systematic nature of the acts committed by the accused, the commission of the crimes in the presence of or against minor children, the manner of carrying out the act, etc. The court also indicates that the accused has not been previously convicted.

316 Judgment №1/57-20 by Tamar Kapanadze, Judge of Telavi District Court, of October 27, 2020, on a criminal case (Articles 11^1, 126(2)(a), (d) and (j) of CC, Article 126^1 (2) (a), (b) and (c), Article 11^1, Article 151 (2)(c) – domestic violence, responsibility for a domestic crime);

317 Constitutional Court of Georgia Judgment №1/4/592 of October 24, 2015, in the case "*Citizen of Georgia Beka Tsikarishvili v. Parliament of Georgia*", II-24,25.

318 Del Rio Prada v. Spain N42750/09 ECHR 21/10/2013 §82; Jamil v. France N15917/89 ECHR 08/06/95 §32; Kafkaris v. Cyprus N21906/04 ECHR 12/02/2008 §151; M. v. Germany N19359/04 ECHR 17/12/2009 §120;

ANNEX 9

Evaluation of Quality of Judicial Reasoning

Methodology

SELECTION OF DECISIONS:

The purpose of selecting judicial decisions for evaluation is to identify a variety of problems in judicial opinions. However, the aim of this project is not to conduct quantitative research, which would allow us to generalize the results from evaluating specific decisions to express opinions on judicial decisions in Georgia generally, but rather to qualitatively research the problems in specific cases. Considering the aforementioned, the judicial decisions to be evaluated will be selected by predefined criteria, not randomly.

METHODOLOGY FOR RETRIEVING THE DECISIONS:

1. The following three approaches for the retrieval of the decisions from the courts and other sources will be used:

    1.1. 50 decisions will be selected according to the methodology defined in Sections 2 below, by retrieval of decisions from all courts within a predetermined period. This category also includes retrieval of decisions from the commercial dispute resolution chambers/panels (Approach 1).

    1.2. An additional 50 decisions will be retrieved according to the methodology defined in Sections 3 and 4 below, from the following sources:
        a. Retrieval of problematic decisions through lawyer referrals (Approach 2);
        b. Retrieval/search for high-profile decisions from lawyers/media/other sources (Approach 3).

2. Approach One:

    2.1. Up to 50 decisions issued between February 2020 and March 2021 will be selected as follows:
        a. The decisions will come from all three fields of law (civil, administrative, criminal) and from all courts of all instances. Specifically, depending on the

size of court, all decisions made by the relevant court within a predefined period of either one or two months will be retrieved. This means that from large city courts decisions deliveded within a predefined one-month period will be retrived, while from smaller courts decisions delivered within a two-month period will be retrieved. These approaches exclude the possibility of decisions being selected by the courts themselves. Also, limiting the request for decisions to one or two specific months reduces the risk of courts refusing to provide decisions because of the large volume, which in practice has often been a reason for refusing to provide information.

b. Decisions from courts of different instances will be selected independently, the appeals of decisions selected from lower courts will not be selected for review.
c. Decisions will be retrieved from all courts of Georgia. This is necessary to guarantee that the required number of decisions are obtained at the early stage of research.

2.2. The following decisions will be excluded from the evaluation:

a. The parties do not have a dispute on factual and/or legal grounds (e.g. plea bargains; trials in absentia; non-disputable actions; the party does not dispute the evidence; etc.);
b. One of the parties of the dispute is in a clearly advantageous position;
c. It is obvious from the preliminary overview that the decision mostly is in compliance with the Assessment Criteria Document;
d. The law to be applied is clear (unambiguous), does not leave the room for judicial interpretation thus making the outcome of the case predictable.

2.3. The following criteria will be applied for the selection of 50 decisions received from the courts:

a. Dispute addresses either discrimination or violation of human rights (for example: freedom of expression, freedom of assembly, election disputes, child's rights disputes);
b. The defendant requests the replacement of the charge or violation, with a completely different qualification;
c. Accused requests an acquittal verdict;
d. Other circumstances point to the complexity of the case;
e. The decision is made by the chairpersons of the courts / panels / chambers, by the judges of the High Council of Justice, by judicial candidates promoted or nominated for promotion. The promotion should be close to the date of the decision, or should be considered questionable to the public, as evidenced by the media, NGO reports, possibly the Ombudsman or lawyers' feedback, or there was criticism expressed by a member of the High Council of Justice of Georgia on the

issues of promotion.

f. The decision-making judge is temporarily transferred from another panel/chamber/court, even though there is no shortage of judges with relevant specialization in this panel/chamber/court.

2.4. In addition to the abovementioned approaches, we will prioritize decisions received from the Commercial Dispute Resolution Panel/Chamber that:

a. Are higher value subject matter disputes;
b. Involve participation of a foreign investor in the dispute (if identifiable);
c. Involve business interests of politicians, their family members or party donors (if identifiable).

2.5. If there remain more cases than initially envisaged following aforementioned selection, for obtaining optimal number of decisions, priority would be given to the decisions that comply with more criteria.

3. Approach Two:

3.1. DIG will make written requests to the heads of the Bar Association, ALFG and the Legal Aid Service to disseminate information among their member lawyers requesting that lawyers interested in providing problematic decisions for research purposes should contact DIG individually.

3.2. The problematic decisions also will be sought from the party's attorneys, requested from the court, or obtained from other public sources.

3.3. The criteria established in the sections 2.2., 2.3. 2.4. and 2.5. will be applied for the selection of problematic decisions.

4. Approach Three:

4.1. The research team will compile a list of high-profile decisions of interest to evaluate based on the following criteria:

a. cases covered by the media;
b. cases with a political aspect;
c. cases mentioned as problematic in international reports.

4.2. The high profile decisions will be sought from the party's attorneys, requested from the court, or obtained from other public sources.

- *The project does not aim to study the appeals of first instance decisions that are selected for review. Similarly, the study does not aim to examine the earlier decisions of a judge on issues similar to those involved in a reviewed case or to check a judge's consistency.*

METHODOLOGY OF EXPERT WORK

1. Each decision will be evaluated by two experts, usually one expert with judicial experience and one non-judge expert.
2. For the assessment of controversial issues and to prepare final findings and recommendations, expert peer review will be conducted with the participation of the ten experts who are involved in the project. The controversial issues discussed by the experts will be decided by the majority of expert votes.
3. To avoid conflict of interests:
    a. An expert shall not participate in or otherwise be interested in the outcome of the case under evaluation; This applies to the expert who is directly involved in evaluation of respective decision.
    b. The expert or affiliated organization should not publicly comment on the decision being evaluated until the decision evaluation process is complete.

TERMS OF PUBLICIZING THE NAMES OF JUDGES

1. The name of the judge who delivered a decision will be publicized in certain circumstances:
    a. If the cases demonstrate certain tendencies of judicial behavior by a specific judge (for example, several decisions by the same judge are evaluated and they indicate the judge uses a formalistic approach that does not fully consider the circumstances of individual cases);
    b. If a judge's career changes or disciplinary proceedings have been identified, which experts consider to be in some way related to the decision;
    c. If a grave violation by a judge is identified through the evaluation.

ANNEX 10

General Criteria for Assessing the Reasoning of Court Decisions

When evaluating court decisions, the starting point should be whether the judge offers legally and factually supported reasoning concerning all key issues.

In assessing the content of the substantiation, the focus should be placed only on the legal correctness of the reasoning rather than on the rightness of the judge's internal belief towards evidence:

1. When the reasoning includes a legal substantiation of the case, then the correctness of the given substantiation should be assessed.

    - With regard to legal substantiation, the report will present cases involving issues related to international standards whether the court correctly (next bullet below) referred in the reasoning section to international standards[319] that are given in judgments delivered by the European Court of Human Rights and/or explanations provided by other international instruments developed on the basis of the treaties ratified by Georgia, such as the Council of Europe or the UN system with respect to human rights;
    - In those cases where the court has referred to international standards, the following will be considered: did the judge interpret the national law/provision in favor of a right even though the law/provision as written does not imply that right; did the judge refer to a specific international standard even though the national law/provision includes the same principle and the international standard is used only as an addition; did the judge interpret the national law/provision by referring to authoritative sources to reinforce the conclusion of applying a restrictive measure against a person; did the judge omit relevant internationally recognized legal principles or international standards that should have been taken into account.

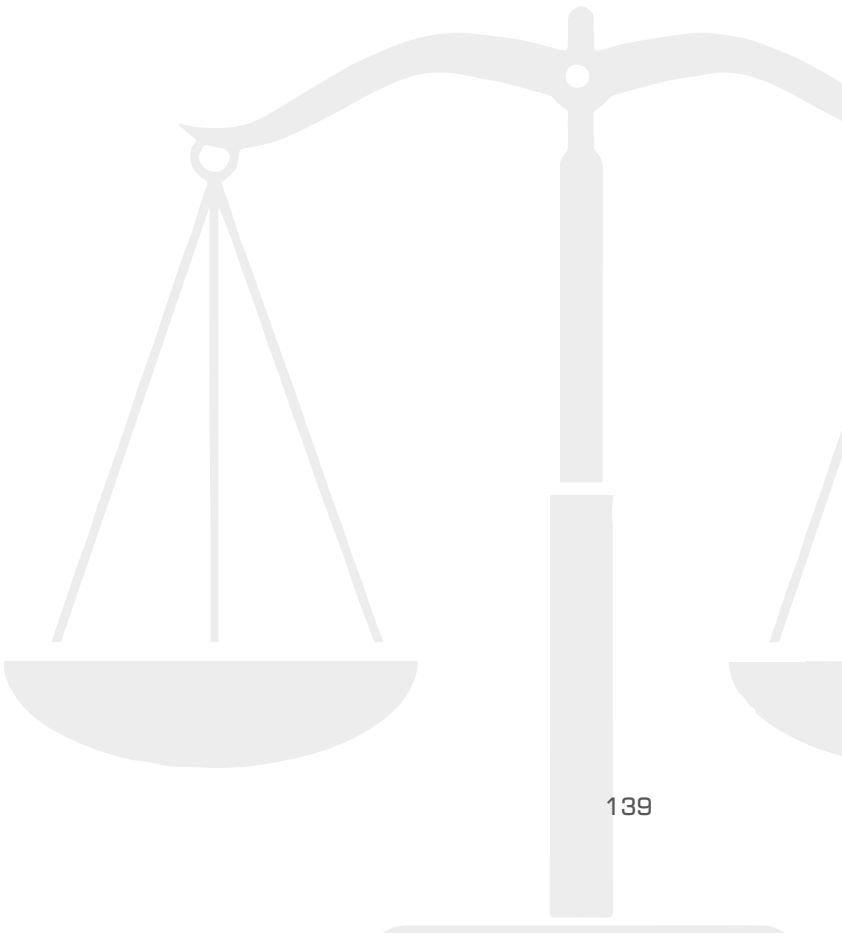
319 There are two reasons for this:
Some cases may not involve issues related to international standards that should be cited, so the court's failure to do so is not a problem
In other cases the court might cite to international standards many times, yet also fail to cite to them in important issues.

2. If the reasoning concerns the reliability of evidence based on the factual circumstances, then the accuracy of the given substantiation is not assessed – only the presence or absence of such reasoning is examined each time it is needed.
   - The purpose of illustrating the presence or absence of fact-based reasoning is to enable a person to draw his or her own conclusion about the judge's intent and objectivity – whether the judge is operating in good faith. Rendering such conclusions is not the goal of the report.
   - However, the assessment will consider whether evidence introduced by a party was ignored in the court's decision and whether the court considers a party's claim that available evidence was not provided by the opposing party.
3. The requirement to present substantiation for each element is based on the established international standard, according to which a judge shall present the reasoning in his or her decision concerning all important arguments.
4. The study will focus on individual judges and assess their individual decisions. The aim of the study is not to discuss systemic issues (e.g., the judicial training system, the assessment system of the judiciary, etc.).

	1
Assessment criteria	The social role of a judge
Characteristics	A judicial decision may need to take account of not only the relevant legal material but also to consider non-legal concepts and realities relevant to the context of the dispute such as, for example, ethical, social or economic considerations. This requires the judge to be aware of such considerations when deciding the case.
Assessment rule	A judge must not be a technical person who makes final decisions without assessing the case in the broader context of the society. The judge must be aware of the circumstances and views of the society, and may need to consider these when reaching in his/her decision. The general worldview of a judge will not be a subject of assessment. Only the extent to which the judge went beyond formalistic explanations and explained the circumstances broadly will be assessed. Whether a judge applies the law word for word or resolves the legal question. When a judge's decision follows internationally recognized human rights principles that are contrary to local public's opinion, the decision should address both the general public's views on the issue and established human rights principles so that an individual/vulnerable group is not deprived of its rights and the broader society is not left without a meaningful explanation for the court's decision (delicate balance). The role of a judge in a democracy is to protect the individual from abusive state action.
Sources	CCJE Opinion N11, para. 21, 22, 23 https://rm.coe.int/16807482bf

	2
Assessment criteria	Fair discussion of the case within a reasonable time
Characteristics	Whether a decision is given within a reasonable time in accordance with Article 6 of the ECHR can also be regarded as an important element of its quality. However, tension can arise between the speed with which a proceeding is conducted and other factors relevant to quality, such as the right to a fair trial, which is also safeguarded by Article 6 ECHR.
Assessment rule	a. In the context of criminal proceedings, was the time from when the person was charged or arrested until judgment was rendered and any applicable appeals or reviews were completed reasonable? If not, does it appear the delay was caused by the judge or other factors? b. In the context of civil proceedings, was the time from when the proceedings were instituted until the determination of the court became final and the judgment was executed reasonable? If not, does it appear the delay was caused by the judge or other factors? Note: It will be assessed whether the decision was delivered in an obviously accelerated manner, as well as cases of obvious delays, i.e. the delays that cannot be justified by the lack of resources.
Sources	1. CCJE Opinion N11, para. 26 2. Legal Digest of International Fair Trial Rights, OSCE/ODIHR, Chapter 9, Right to a Public, Reasoned and Timely Judgement. https://www.osce.org/files/f/documents/1/f/94214.pdf#page=208

	3
Assessment criteria	Public discussion / Oral hearing
Characteristics	a. A hearing should comply with all ECHR requirements, thus ensuring for parties and society at large compliance with the minimum standards of a properly designed and fair trial. The proper development of the hearing will have a direct impact on the parties and society's understanding and acceptance of the final decision. The hearing should also give the judge all the elements necessary for the proper assessment of the case; therefore it has a critical impact on the quality of the judicial decision. A hearing should be held whenever the case law of the ECHR so prescribes. b. A transparent and open hearing, as well as compliance with the adversarial principle and the principle of the equality of arms, are necessary prerequisites if the decision is to be accepted by the parties themselves and by the general public.



	3
Assessment rule	a. a. In the context of criminal proceedings, was the time from when the person was charged or arrested until judgment was rendered and any applicable appeals or reviews were comple If the decision includes concrete grounds for closure of the hearing, how well the closure is substantiated will become a matter of assessment. Was a decision delivered at a closed hearing, while there was no legal ground for that. If the decision demonstrates the clear need that an oral hearing should have been conducted, this matter will become the subject of assessment. ted reasonable? If not, does it appear the delay was caused by the judge or other factors? b. b. In the context of civil proceedings, was the time from when the proceedings were instituted until the determination of the court became final and the judgment was executed reasonable? If not, does it appear the delay was caused by the judge or other factors? Note: It will be assessed whether the decision was delivered in an obviously accelerated manner, as well as cases of obvious delays, i.e. the delays that cannot be justified by the lack of resources.

4	
Assessment criteria	Elements of court decision
Characteristics	a. Clarity – All judicial decisions must be intelligible, drafted in clear and simple language. b. Substantiation
Assessment rule	a. Clarity of judgments is a prerequisite to them being understood by the parties and the general public. This requires them to be coherently organized with reasoning in a clear style accessible to everyone. b. Each judge may opt for a personal style and structure or make use of standardized models, if they exist. b.a. The judge responded to arguments and motions of the parties. b.b. The judge specified the aspects that provide the justification for the judgment, thus rendering the latter lawful. b.c. The reasons must be consistent, clear, unambiguous and not contradictory. They must allow the reader to follow the chain of reasoning which led the judge to the decision. b.d. The reasoning must reflect the judges' compliance with the principles enunciated by the European Court of Human Rights (namely the respect for the right of defense and the right to a fair trial). In order to respect the principle of fair trial, the reasoning should demonstrate that the judge has carefully examined all the main issues which have been submitted to him or her. For instance, it would be improper if the court judgment describes in detail all arguments of the prosecution, yet it does not mention the arguments of the defense counsel (the unequal consideration of the arguments of the parties by the judge). b.e. The statement of the reasons must respond to the parties' submissions, i.e. to their different claims and defenses. Judges need only respond to relevant arguments capable of influencing the resolution of the dispute. The statement of reasons should not necessarily be long, as a proper balance must be found between conciseness and what is necessary for the proper understanding of the decision. The judge should explain why if he/she ignores arguments of the parties. b.f. The reasoning must be free of any insulting or unflattering remarks about the parties. b.g. The reasoning must include the rationale concerning facts and evidence as well as the rule of law, which is crucial to the dispute.

4	
Assessment rule	In particular, when examining factual issues, the judge may have to address objections to the evidence, especially in terms of its admissibility. The judge should also consider the weight of the factual evidence likely to be relevant for the resolution of the dispute. Examining the legal issues entails applying the rules of national, European and international law. The reasons should refer to the relevant provisions of the Constitution or relevant national, European and international law. Where appropriate, reference to national, European or international case-law, including reference to case-law from courts of other countries, as well as reference to legal literature, can be useful, or in a common law system essential. It is advisable to indicate the norm used in the decision specifically and not in general (reference to the act and article). The interpretation of a provision must not prejudice the principle of legal security, which means that the provision and its implementation should be foreseeable. In interpreting a provision, the judge must rely on the interpretative principles of provisions accepted at the national or international level (interpretative principles). In common law countries, they will be guided by any relevant precedent. In civil law countries, they will be guided by case law, especially that of the highest courts, whose task includes ensuring the uniformity of case law. If the judge's interpretation is different from the typical interpretation, the judge's reasoning should be explained. b.h. The judge refers to the provision consistently – whenever the judge decides to deviate from an earlier explanation, this should be clearly stated in his or her decision. b.i. The judicial decision clearly discusses the elements of a crime. The decision offers an explanation of how the established factual circumstances confirm the existence of each element of the crime based on the standard beyond a reasonable doubt.

4	
Sources	1. CCJE Opinion N11, para. 34-50 Legal Digest of International Fair Trial Rights, OSCE/ ODIHR, Chapter 9, Right to a Public, Reasoned and Timely Judgement. https://www.osce.org/files/f/documents/1/f/94214.pdf#page=208 2. Kuznetsov and Others v Russia, ECtHR, 11 April 2007, paras 84-85. 3. Guidelines for judges of common courts on the form of a judgment in a criminal case, its substantiation and the stylistic correctness of the text. Supreme Court of Georgia, 2015, p. 41

5	
Assessment criteria	Enforcement of court decision
Characteristics	Any order made by or following a judicial decision should be written in clear and unambiguous language, so as to be readily capable of being given effect or, in the case of an order to do or not do or pay something, readily enforced.
Assessment rule	a. Judicial decisions should be enforceable given their text: the wording clearly sets out the orders and obligations imposed by the court. The text does not allow for any different interpretation. b. The decision should be such that it can be timely executed by the enforcement system and provides for a provisional enforcement mechanism where appropriate. The enforcement procedure is simple and effective and envisages the possibility of considering and resolving any misunderstanding by the judge without imposing unreasonable costs on the parties.
Sources	CCJE Opinion N11, para. 11-13 Schmidt: Staatsorganisationsrecht, S. 297; Stern, in: Bonner Kommentar, Art. 93, Rn. 687; Zippelius: Deutsches Staatsrecht S. 523 Practice of constitutional court of Germany BVerfGE 4, 1 (6 f.); 42, 64 (72 ff.); 52, 131 (157 f.)

6	
Assessment criteria	The Quality of the Law, which was Basis for the Court Decision
Characteristics	Judge exercises his/her power to refer matters to the Constitutional Court where the wording of a provision could be unconstitutional
Assessment rule	Referral of a matter to the Constitutional Court is appropriate where: – There is a violation of procedural rights provided by the Constitution; – There is a neglect of fundamental rights and their significance in the application and interpretation of current law (for example, the court has not used an appropriate interpretation of the Constitution or fundamental rights); – There is an obvious error in the application of the law and this violates a fundamental right (for example, court clearly misinterpreted a current rule of law, which has led to a violation of any constitutional right).
Sources	CCJE Opinion N11, para. 11-13 Schmidt: Staatsorganisationsrecht, S. 297; Stern, in: Bonner Kommentar, Art. 93, Rn. 687; Zippelius: Deutsches Staatsrecht S. 523 Practice of constitutional court of Germany BVerfGE 4, 1 (6 f.); 42, 64 (72 ff.); 52, 131 (157 f.)

7	
Assessment criteria	Evaluation of evidence
Characteristics	The judge appears to have assessed the evidence properly and adequately.

7	
Assessment rule	a. The court judgment not only lists the evidence but also stipulates why the judge considered any evidence to be accepted or rejected (why he or she deemed the evidence credible). b. When an important circumstance in the judgment is supported by the statement of a witness, or the court judgment is based primarily on the testimony of a witness, the judge explains why he or she believes that the testimony confirms the fact beyond a reasonable doubt. c. The court judgment assesses the credibility and consistency of witnesses, particularly those providing disputed testimony (in contrast, the judgment only provides the summary of the witness statement; or the decision only lists the evidence on which the reasoning is based; or, the decision points out the reasons why the judge did not deem the testimonies of other witnesses credible).
Sources	Trial Monitoring Report Georgia, OSCE/ODIHR, 2014, chapter XIV Right to a Reasoned Judgment, page 85. https://www.osce.org/files/f/documents/6/a/130676.pdf

8	
Characteristics	The judicial decision adequately assesses the factors that the judge used in determining the sentence.
Assessment rule	The court decision not only cites the principles of sentencing (e.g., the judge took into account the aggravating and mitigating circumstances, the personality of the defendant, the motive and goals of the crime, etc.) but also analyzes the influence these factors had when determining the sentence and why.

9	
Assessment criteria	Other
Characteristics	Other significant flaws of the decision which are not covered by the above listed criteria but could be important for the overall assessment, as identified during the study.

ANNEX 11

SHORT BIOGRAPHIES OF EXPERTS

Neil Weinstein has 26 years of experience in access to justice, human rights, institutional strengthening, capacity development, criminal prosecutions, and project management. He has worked extensively in Asia, the Caucasus, Africa and Eastern Europe.

Neil has worked in Georgia for over 10 years, both through numerous consultancies and serving as Deputy Chief of Party for USAID-funded rule of law projects there; among his many tasks, Neil assisted civil society organizations to develop court monitoring programs for both criminal and administrative cases, assisted organizations in their preparation of research papers related to judicial institutions, conducted an analysis of the Code of Administrative Offenses, and established a judicial exchange program that brought Georgian judges to the United States. In Cambodia, Neil was the first U.S. government advisor to the Cambodian government after the ban on direct assistance was lifted, and demonstrated the ability to navigate sensitive political situations to increase dialogue and cooperation among governments, donors and CSOs. In Myanmar, he created the Legal Aid Toolkit that now serves as the basis for USAID's support for legal aid in the country. In Ukraine, he served as Co-Team Leader on the midterm evaluation of USAID's rule of law program. Neil is an accomplished educator, skilled at building the competencies of legal aid practitioners and organizations through training programs and mentoring. Neil was a prosecutor in New York City, a litigator in San Francisco, and is a graduate of Harvard Law School.

Maia Bakradze (Expert with judicial experience) – is Master of Law, practicing attorney on civil and administrative cases in addition with child rights specialization. Member of the GIAC arbitration council. She used to be a judge of Tbilisi Court of Appeals and Tbilisi City Court for 10 years. She has 8 years of experience in working as an expert on legal reforms, mostly regarding judiciary system of Georgia, as well as legislative research and drafting amendments to laws. She has been a Chairperson of the Unity of Judges of Georgia which aimed at overcoming the challenges at the judiciary system. As a Deputy head of the Commission on the Rehabilitation of Lawyers under the Criminal Prosecution and Persecution, GBA Ms. Bakradze evaluated cases initiated against lawyers, including the quality of the reasoning of those decisions.

Tamar Laliashvili (Expert with judicial experience) is the founder of the Georgian-Norwegian Rule of Law Association, 2002-2003, a member of the Government Commission for the Implementation of Criminal Justice in Georgia. Member of the commission working on the draft Criminal Procedure Code of Georgia. 2011-2013 Expert of Georgian Development Research Institute. Since 2019, he has been an expert on civic ideas. Tamar was a Judge of the Supreme Court (2001-2006); Judge of the Court of Appeals (2000-2001); Judge of the District Court (1999-2000); Prosecutor of the General Prosecutor's Office Division (1992-1999); Consultant of the Ministry of Justice of Georgia (1990-1992). Tamar in 1998 Graduated from Tbilisi State University, Faculty of Law. She passed the internship in K. The Bremen Prosecutor's Office and the City Court (1997-1998); Was a Friedrich-Ebert Foundation Fellow; Tamar in 2007-2010 years defended dissertation on the topic – "Comparative analysis of plea bargaining in accordance with the criminal proceedings in Germany, the United States and Georgia."

Besik Loladze (Expert with judicial experience) is a Professor at the Georgian National University (Constitutional Law, Fundamental Human Rights and Freedoms. Doctor of Law (University of Potsdam, Germany, summa cum laude). He worked in various positions in the Ministry of Justice of Georgia, including as Deputy Minister of Justice. He was a member of the High Council of Justice of Georgia, Deputy Chairman of the Constitutional Court of Georgia and Deputy Minister of Defense of Georgia, a fellow of the German Academic Exchange Service (DAAD) and the Max Planck Society. He has published many scientific papers.

Larisa Liparteliani (Expert with judicial experience) has been a member of the Georgian Bar Association since October 2017 and works in civil, administrative and criminal cases. In 2018 she graduated from the Faculty of Law and International Relations of the Georgian Technical University and was awarded the title of Master of Law. In 1996-2005 she worked as a lawyer and was a member of the Georgian Bar Association. From 2005 to 2015 Larisa served as a judge in the Rustavi and Tbilisi City Courts, during which he reviewed civil, administrative, and criminal cases. She worked as a prosecutor in the investigation unit of the Chief Prosecutor's Office of Georgia (2016-2017). She was a member of the temporary commission set up by the Georgian Bar Association "Commission for the Rehabilitation of Prosecuted (Repressed) Lawyers in the Near Past" (2018), which studied the issues of substantiation and legality of decisions made in criminal cases. Larisa is a co-author of the book "Comments on the Code of Criminal Procedure" and the article "Individual Criminal Liability under the Yugoslav Tribunal";

Natia Kutateladze (Expert with judicial experience) is a graduate of Akaki Tsereteli St. Kutaisi State University Faculty of Law (1998). Natia has held various positions in the Kutaisi and Tbilisi Courts of First Instance and Courts of Appeal (1999-2008). Natia has passed the exams for the employees of the Prosecutor's Office, lawyers and judges. She was a judge of the Samtredia District Court in 2008, a judge of the Kutaisi Court of Appeal (Chamber of Administrative Cases) in 2008-2011, and a judge of the Tbilisi Court of Appeal (Chamber of Administrative Cases) in 2011-2018.

Maia Mtsariashvili – (Expert with judicial experience) – since 2014 is a partner of the law firm BLB (Associate Office Tulloch & CO Solicitors, London), a member of the Bar Association. She is a graduate of Tbilisi State University, Faculty of Law; Is a Master of International Business Law (Diploma of Honor) from the University of Manchester School of Law (UK). Maya has been Head of the International Legal Relations Department at the Ministry of Justice at various times (1991-1997); State Adviser to the National Security Council (1997-2002), Member of the State Commission for Legal Reforms in Georgia (1998-2001), Lecturer at the Faculty of International Law, Tbilisi State University (2000-2001). Maya was also the chair of the Tbilisi District (Appeal) Court and the chair of the Criminal Appeals Chamber (2003-2005); Head of the Anti-Corruption and Investigation Unit of the Chief Prosecutor's Office of Georgia, Tbilisi Prosecutor (2012-2013).

Ekaterine Tsimakuridze is the Head of Democracy Index – Georgia with eight years experience working on judiciry reforms and human rights in non-governmental sector. Ekaterine holds an LL.M in Rule of Law and Democratic Governance from the Ohio Northern University, USA and specializes in civil and administrative law – passed the qualification exam for judges (2005, Georgia). Ekaterine is an author and co-author of several research/monitoring reports and policy documents on judicial independence and the reforms in the judiciary, participated in drafting the Judicial Strategy and Action Plan (2017, Georgia), Strategy and Action Plan for the School of Justice (2019, Georgia), worked as an assistent judge in Tbilisi City Court (2006).

David Jandieri is a Lawyer, Doctor of Law, Professor with many years of professional experience in public and private structures. He held the position of First Deputy Minister of Justice of Georgia (2012-2013). Until 2012, David was a successful lawyer. He was the applicant's lawyer in the well-known case of Enukidze and Girgvliani v. Georgia before the European Court of Human Rights in Strasbourg. Currently, David Jandieri advises various business corporations, actively participates in public discussions of important issues as an expert in the mass media, in projects managed by various expert institutions. Since 2018, he has resumed his advocacy work in cases of public importance at the European Court of Human Rights, including the so-called "process of the century" "Cyanide case" and the so-called The Case of Cartographers (I). David is a graduate of the University of Strasbourg and holds a Master's degree in European Law and Education. He holds a PhD in International Law from Tbilisi State University.

Eka Khutsishvili is a legal associate for the Immigration Service at Vision Consultancy. Most recently she worked for the Parliamentary monitoring project in the direction of democracy building, transparency, and open government. Before, she was a legal professional at the International Criminal Court, researching the victims rehabilitation issues in the Georgian legal framework. During her fellowship at American University Washington College of Law she worked on the witness and victims defense mechanism and later she published the article thereon in one of the Georgian Human Rights Review Journal (Editor, Konstantine Korkelia). Over the course of her work at Ombudsman's Office and Georgian Young Lawyers Association, she researched many problematic matters in the judiciary and law enforcement; she has worked on the parliamentary Ombudsman's reports of the court monitoring; she studied the allegedly politically motivated criminal cases.

Kakha Tsikarishvili is a member of the group of independent lawyers. He graduated from Tbilisi Ivane Javakhishvili Tbilisi State University in 1999, Faculty of Law,. Kakha graduated from American University, Washington College of Law, in 2004, where he was awarded with master's degree. 2004-2005, he worked for (EUJUST THEMIS) European Union Rule of Law Mission as the Legal Consultant. In 2005-2007 he was an Legal Adviser to the Norwegian Rule of Law Mission in Georgia. From 2007 to 2011, he served as Deputy Head of the Court Administration and Management Reform Project (USAID JAMR). Since 2005 he has been working as a lecturer in comparative criminal law at the Georgian Institute of Public Affairs. In 2012-2013, as well as in 2016-2018, he was a legal expert of the United Nations Development Program (UNDP), and in 2013-2015 he was a member of the Disciplinary Board of Judges of the Common Courts of Georgia, and in 2016 he was the Assistant to the Chairman of the Supreme Court of Georgia.

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