



# UNITY OF JUDGES OF GEORGIA

newsletter N 01  
february, 2014

## PRESENTATION OF A NEW OFFICE AND THE PROJECT “JUDGES FOR INDEPENDENT AND TRANSPARENT JUDICIARY”

„Unity of the Judges of Georgia” organized the presentation of its new office and the project „Judges for Independent and Transparent Judiciary”.

Chairman of the organization, Natia Gujabeze and executive director, Nazi Janezashvili talked about the priorities of the UJG on the presentation.

The organization started the implementation of the project „Judges for Independent and Transparent Judiciary” recently. The project aims to increase the role of judges, so that they could play important role to the establishment of an independent and transparent judiciary, as well as each judge could be able to reach out to the civil society, government and international organizations.



Konstantine Kublashvili, Head of the Supreme Court, Zakaria Kutsnashvili, Member of the Parliament Majority Alexander Baramidze, Deputy Minister of Justice attended the meeting.

## UNITY OF JUDGES OF GEORGIA

“Association - Unity of Judges of Georgia” is non-commercial (non-profit) organization registered on June 4, 2013. The organization is a voluntary association with 42 acting and reserve judges. Any acting or reserve judge may become a member of the “Unity of the Judges of Georgia”. Judge Natia Gujabadze holds a position of the Head of Organization and the Board members are Judges: Tamaz Urtmelidze, Maia Bakradze, Tea Khamkhadze and Alexandre Ioseliani. Nazi Janezashvili is the Executive Director of UJG.

**Aims of the organization are:**  
supporting the independence and transparency of the judiciary; improving justice administration process; organizing forums, international



among them, for the continuous professional development of Judges; strengthening Judges Corps and their involvement in judicial system development process, and with this aim, supporting and improving communication and exchange of ideas between judges of the different court instance; strengthening the role of the individual judge and enhancing independence in order to strengthen the judicial authority and their institutional independence; participation in the public processes; preparation, processing and presentation of the initiatives; identifying and supporting opinions of the judges, taking into account their professional interests; supporting the perfection and promotion of judicial ethics; deepening contacts with other professional legal associations; improving basic skills in order the court becomes part of the society - identifying the judge’s role, functions and responsibilities to raise public awareness; informing society and holding appropriate events to improve legal culture; supporting judges’ self-governance; improving contacts with associations of judges in other countries; planning and implementation of different cultural and sport activities at national as well as international level; implementation of any other appropriate activities in order to ensure the quality of justice.

The newsletter was made possible to publish by generous support of the American people through the United States Agency for International Development (USAID) and East-West Management Institute (EWMI).

The co-financing of the project “Judicial Independence and Legal Empowerment” is provided by the Open Society Georgia Foundation.

Responsible for the contents of the publication is “Association - Unity of Judges of Georgia”. The authors views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development (USAID), East-West Management Institute (EWMI) or Open Society Georgia Foundation.



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## **„UNITY OF THE JUDGES“ RELEASED A STATEMENT ON THE APPOINTMENT OF THE JUDGES**

On December 2, 2013 UJG released statement “Unity of Judges of Georgia considers that the High Council of Justice (HCOJ) has illegally appointed some of the judges. According to a statement issued by the UJG, the High Council of Justice held the meeting on November 29th where, among other topics, the issue of assignment of the judges was discussed.

„Unity of Judges of Georgia” state, that 12 judges has submitted the application for the vacant positions announced in different courts. Part of them requested to be appointed only in one particular court.

The HCOJ choose 12 judges on the November 19th, 2013 meeting, so that the question in which court they were appointed, was not solved. The Council continued discussing the topic on the November 29th, 2013 meeting and made the decision on the assignment of some of the judges with the majority of votes.

On the November 19th, 2013 meeting, according to one of the decisions made by the simple majority of votes, the judge, whose term expired at the administrative chamber of the Court of Appeal, had legal authority to continue proceedings under his responsibility and has filed the application to the same court had been appointed as a judge at the Mtskheta Regional Court and was transferred to Tbilisi City Court on the ground that the Court of Appeal did not have vacant positions and there was no need of judge in the administrative chamber of the same court. It should be mentioned, that the term of one of the 10 judges in the administrative chamber of the Court of Appeal in Tbilisi has expired

and was not appointed as a judge. As it was already mentioned, one judge was assigned to Gori Regional Court, and the head of the chamber does not participate in the discussion of cases. Thus, only 7 judges are working on the cases. There are two collegiums discussing the cases each involving 3-3 judges and one judge performing as the third, incomplete collegium. In this situation, when deciding the appointment of a judge of the Court of Appeal in Tbilisi the opinion of the Chairman of the Administrative chamber, that the panel lacked judges, was taken into account.

The Council while promoting the judges violated the principle of consideration of his/her career.

### **EXECUTIVE DIRECTOR OF „UNITY OF THE JUDGES OF GEORGIA“ CONSIDERS THE COURT SHOULD BE INDEPENDENT**



The Most important thing is that the country has fair and independent judiciary - stated Nazi Janezashvili, executive director of UJG during the conference on „Human Rights in Georgia - Future Plans“.

„Judiciary should be independent, as it is impossible to think of ongoing democratic processes in the country and that they are carried out properly, if there is no transparent judiciary“ - said Janezashvili.

## **„UNITY OF THE JUDGES OF GEORGIA“ ECHOES THE DEVELOPMENTS AROUND JUDICIAL SYSTEM**

On December 25, 2013 the statement was released by the UJG on the different issues about judicial system. In recent days, the facts of influencing and meddling in the judge’s activities has repeatedly emphasized. It is alarming that the High Council of Justice has not yet been interested in studying these facts, while their primary legal obligation is to ensure the independence of the judiciary and raise of public confidence in it.

„Unity of the Judges of Georgia” considers that any particular statement, indicating on meddling in a judge’s activities, shall immediately become the subject of discussion of the High Council of Justice.

Unfortunately, High Council of Justice ignored publicly stated facts of a former judge of the Supreme Court Lali Lazarashvili about interference of specific individuals - the chairman of the Supreme Court and his deputies into the activities of the judges.

The High Council of Justice remains inactive on the announcement of influencing the judge on the Tbilisi Mayor’s case. The statement of the Chairman of the Supreme Court that they can respond to the fact only after the investigation by the appropriate authorities is completely irrelevant. This kind of attitude undermines judicial independence and reputation and humiliates public confidence towards judiciary.

„Unity of the Judges of Georgia” wishes to remind society about the main obstacle to judicial independence. In the nearest past it was the influence of the executive branch of the government recognized by the judiciary authorities as well, leading to the loss court’s reputation.

## A BRIEF OVERVIEW OF THE COUNCIL OF JUSTICE MEETINGS

Representatives of “Unity of Judges of Georgia” were given a chance to attend 5 meeting of the Supreme Council of Justice (November, 19, November 29, December 6 and December 27) as well as the interview with the justice high school candidates starting on December 11 and lasting a week.

According to the agenda of the meeting on November 19, the discussion topic was appointment of judges. Only 13 out of 59 judges were appointed during the meeting. All the judges appointed received more than 10 votes.



On November 29 the issue of assigning those 12 judges appointed on November 19 with an anonymous voting session was discussed. It is worth mentioning, that the concept of assignment of judges is not familiar for the legislation. There were several cases, when the judge has indicated a particular regional (city) Court, but was assigned to another place. There have also been cases, when the same judge was sent to another Court at the discretion of Council members. It should also be said, that non-judge members of the Council expressed sharply negative attitude towards these facts, but their opinion was not taken into account.

December 6 meeting discussed topics regarding the general rules of electronic proceedings at the Common Courts. Mamuka Akhvlediani, Head of City Court of Georgia, invited as a guest of the meeting, talked about this system. Council members asked questions which were more or less answered, but the comprehensive answer was not given on any of the questions and the draft bill has passed. Only two members (Kakha Sophromadze and Eva Gotsiridze) did not support it, because the necessity of adopting the draft in such a hurry, arising too many questions which are hard to answer, was unclear for them. The agenda of the same meeting also included issues on disciplinary proceedings of the judges of Common Courts of Georgia and admission of candidates of Justice Hearers on the second stage. Council members decided to discuss these two topics on the closed session with the majority of votes. As the result, the attendants were not able to watch the progress of the session and we were obliged to leave the hall.

Interviews with the candidates of the High School of Justice hearers started on December 11th. We were given the opportunity to attend the interviews, as none of the candidates were against. Questions were quite diverse -from the work experience and professional skills to the favorite character from the literature. Council members were equally involved in the interviewing process.

Final session was held on December 27th, the agenda of which included 17 topics. One of the topics was 30% salary increase for the Court apparatus staff, resulting in a heated argument. Initiative of non-judge member of the Council, Kakha Sofromadze, regarding more salary increase for low-level workers was followed by a strong disagreement from Konstantine Kublashvili side. He noted that this kind of activity would not be fair, as all the staff members were expecting salary growth with 30%. During the meeting council members agreed on the 30% increase and postponed discussion of the non-judge member for the next meeting.

The second topic, also resulting in the argument and difference of opinions was the issue of the house rent for the judges. As it turned out, 69 judges rent a home, which amounts to approximately 277 000 Gel. Eva Gotsiridze expressed her opinion on the issue and noted, that the priority should be given to local candidates. Thus, they will avoid irrational spending of budget funds. Konstantine Kublashvili opposed the opinion noting, that giving priority to the local resources increases the risk of partiality and subjectivity of the judge. Council members also listened to the report of Dimitri Gegelia, Head of the Legal Entity of public Law Department of Common Courts.

### JUDICIAL CONFERENCE CONSIDERED THE INITIATIVE OF THE UNITY OF JUDGES OF GEORGIA

Judicial Conference was held on December 28th, 2013. Natia Gujabidze, judge and the chairman UJG initiated two new amendments to the project of statement submitted by the Judicial Conference. The Conference partially considered the initiative. According to the agenda of the conference, one of the discussion topics was development of the statement about the appointment of judges with 3-year trial term and their monitoring.

„Unity of the Judges of Georgia” considers that at this stage, appointment of the judges with trial term contradicts the independent judiciary, principle of the country democratic development and the challenges the country is facing.

„Unity of the Judges of Georgia” unequivocally condemns the opinion that in case of three-year appointment, biased attitude of the judges will be different. In particular, judges will not be able to be independent, impartial and are going to fall under the influence during the three-year trial period. Individual independence and judicial skills of the judge could not be changed according to the time he/she is appointed. Judge activity monitoring mechanism provided by law could be evaluated as violating the principle of judicial independence, is of a particular danger.

„Unity of the Judges of Georgia” considers that it is not disputable that the public confidence in the judicial system is very low. In this regard is particularly important such legal provisions which ensure the independence of judges. Criteria for the appointment of judges should be clearly defined, minimising the risks. The legislation should be providing such provisions, that public are unable to raise any doubt in judicial independence and impartiality.

In fact, on October 04, 2013, the Parliament adopted the amendments to the “Law on General Courts” on an expedited basis, according to which the three-year trial period before the perpetual appointment of the judges was defined. As the society already knows, adoption of this law was prompted by the note in the constitution allowing the “trial period” before the perpetual appointment of the judges.

# HUMAN RIGHTS DAY

On December 10th, 2013, under the International Human Rights Day, „Unity of judges” held a discussion on the topic „Pre-trial preventive measures - law and practice.“ Event was attended by judges, lawyers, prosecutors and representatives of civil society, as well as the Public Defender’s Office.

The representative of the organization, judge - Manuchar Kapanadze stated, that protection of human rights is very important and priority issue, particularly in criminal justice. He talked about the statistic data and researches, which were conducted in regard with the discussion topic. According to Manuchar Kapanadze, bail and custody are used most often as a preventive measure, while a personal guarantee - most rarely.

## The speech of Manuchar Kapanadze, Judge of Tbilisi Appeal Court

There are still many problems in regard with the procedures of the use of preventive measures (including amendment or revocation), that inevitably require the solution from legislative point of view, as well as in order of ensuring the establishment of a common practice. According to the Article 198 of the Criminal Procedure Code of Georgia, in the criminal proceedings, a preventive measure is the procedural coercive measure, which is used to ensure the accused is not able to avoid appearing in the Court, or prevent further criminal activities, as well as ensure the enforcement of the verdict.



Preventive measure in criminal proceedings is a procedural coercive measures which restrict the rights of a person, including one of the fundamental human rights - the right to liberty. Any form of restriction of liberty, including arrest should be legal, but when the legality of the detention becomes the subject of a dispute, in the first place, we must look at what is offered by the legislation, as well as controversial issues should be analyzed with respect to the existing practice and an optimal solution should be found. Today, we direct your attention to the problems of preventive measures such as the several use of one of the forms of preventive measures - detention.

It often happens in practice, that a prosecutor appeals to the court and asks for the preventive measure - custody against the person who is already detained under other criminal case. Obviously, the Court has to discuss the

reasonability of again using the custody. The legislation does not offer much in this regard. According to the Procedure Code, a particular type of preventive measure can be used for a particular criminal activity, but there is no record in the Procedure Case about the multiple use of preventive measure against one and the same person. It is interesting what the judicial practice is in this regard.

Practice analysis showed that there are different approaches to the problem (mostly in terms of the use of detention as a preventive measure), there are differing opinions even among practicing lawyers. If you look at the recent data, we will notice that at the initial stage during a certain period of time, the trial court rejected a petitions regarding multiple use of detention. Court decisions have been largely justified with the argument that the convicted person lacks availability to carry out the actions, for the prevention of which the preventive measures are used. Consequently, Court considered the re-use of preventive measures illogical.

Later, the judicial practice changes and we already have the cases when detention is used against a person already in detention. In these cases, the Courts considered, that each criminal activities committed by the person should be evaluated separately and the investigation and criminal proceedings for each case should be conducted independently. This created a possibility for preventive measures against one person to be used several times. Today’s trend is that in most of the cases the Courts reject Prosecutor’s application regarding use of preventive measures several times. However, there are exceptions too, which gives grounds to say that multiple use of detention against a person is possible and depends on the actual circumstances of the particular case. In particular, whether the re-use of detention should be used against a person or not should be decided taking into account what type of actual circumstances exist in criminal justice as well as in a particular case. Specifically, if a person is sentenced to imprisonment and it turns out that he has committed other crimes as well and the prosecutor’s office is requesting the use of detention as a preventive measure again, I believe that the application should be rejected for the following reasons:

As it was already mentioned, Article 198 of the Criminal Procedure Code of Georgia talks about the aim and ground of the preventive measure. The main thing is to ensure the proper behavior of the accused and that the comprehensive and objective investigation is carried out without hindering. In case, the accused fairly does not have the opportunity to carry out the actions resulting in the use of preventive measure, naturally, the use of a preventive measure against him is groundless. Considering the fact, that imprisonment is used against the accused as a preventive measure, there is no risk of absconding, intimidation of witnesses and threatening a proper enforcement of the judgment, re-using a preventive measure against him is devoid of any legal basis. In other words, if the legal status of the accused (among them, his imprisonment on other case) gives an opportunity of a comprehensive and impartial investigation to be carried out and it is impossible for the accused to abscond or in other way hinder the proceedings, the re-use of the preventive measure against him is illogical.

In many cases, the prosecutor’s mediation is justified by indicating that in case the accused is recognized innocent

for the criminal case in which a preventive measure - detention was used, and it is also possible that amnesty or pardon is used, the accused will remain on freedom which may hinder comprehensive and impartial investigation of other cases. Even in the cases like these, there is a solution. Particularly, none of the listed legal procedures (amnesty, pardon, acquittal) is used in a very short period of time, instantly. A certain period of time and appropriate procedures established by the law are required to implement them. If the opportunity of implementation of these circumstances is exposed, a Prosecutor has right to apply the Court with the request of using a preventive measure at any stage of the legal proceedings in accordance with the Article 206 of the Criminal Procedure Code of Georgia.


It is worth mentioning, that often Prosecutor's Office do not unify the criminal accusations committed by one and the same person in one case, the opportunity the Article 109 of the Criminal Procedure Code of Georgia. If the circumstances of the criminal cases give possibility the

cases should be unified. In this case, there will be no need of discussions around the use of imprisonment against a person several times.

It often happens in practice, that a prosecutor appeals to the court and asks for the preventive measure - custody against the person who is already detained under other criminal case. Practice analysis showed that the Court rejections have been largely justified with the argument that the convicted person lacks availability to abscond, commit new crime or in other way hinder the proceedings.


However, before the decision is made, those specific circumstances influencing the appropriateness of rejecting a preventive measure should be taken into account. One of these circumstances is remaining unserved term of the sentence and in case this term is short, using preventive measure towards a person is possible.

So, part of the problematic issues arising during the review of the applications on preventive measure was briefly presented. View of the practicing lawyers on the issue will be interesting to hear as well.

 The project "Judicial Independence and Legal Empowerment" was made possible by generous support of the American people through the United States Agency for International Development (USAID) and East-West Management Institute (EWMI). The co-financing of the project is provided by the Open Society Georgia Foundation. Duration of the project is 10 months.

**The main activities are:** working meetings with judges – Tbilisi, Kutaisi, Batumi, Signaghi; Creating working groups of judges; Publishing four reports; being involved in activities of High Council of Justice; Editing newsletter; Public statements



 Project "Strengthening Rule of Law through Building Independent and Transparent Judiciary in Georgia" is funded by the Embassy of the Kingdom of Netherlands in Tbilisi, the partner organization is the Netherland Helsinki Committee. Duration of the project 12 months.


**The main activities are:** round tables with journalists, lawyers, representatives of NGOs and students of legal faculty; Involvement in law-making process; Creating the network for people with legal profession and representatives of civil society; Working meetings for judges of South Caucasus countries; Trainings for judges held by Dutch judges; Forum for Standards of European Court, newsletter "Voice of Judiciary"



Kingdom of the Netherlands



NETHERLANDS HELSINKI COMMITTEE

 Project "Involvement of the Judges and the Civil Society in the Process of Strengthening the court" is funded by GIZ, duration of the project is 12 months.

**The main activities:** Supporting Continuing education of judges; Cooperating with German association of judges; Preparing informational videos; Organizing public discussions; Website; Seminars for journalists



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