UNITY OF JUDGES OF GEORGIA

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"UNITY OF JUDGES OF GEORGIA" TALKS ABOUT NECESSITY OF CHANGING PRACTICE OF RESERVE JUDGES

"Unity of Judges of Georgia "applied to the High Council of Justice to appoint reserve judges on the vacant positions.

According to the information the organization holds, the High Council of Justice of Georgia has completed the registration of candidates for the competition of judges announces to fill 35 vacant positions. The organization considers, that the judicial system need far more personnel.

"Nowadays, there are 5 judges in the reserve, who are unable to perform the duties. In order to solve the issue, "The Unity of Judges" has applied to the High Council of Justice to appoint reserve judges on the vacant positions.

According to current legislation, in case of staff reduction or the elimination of the position, the judge, with his prior written consent, is transferred to the reserve. Judge is enlisted in the reserve until the expiry of his judicial term and gets the reserve salary equal to 500 GEL. Disciplinary measures, and among them exclusion from the reserve, can be used against a reserve judge.

It is noteworthy, that **the limitations for the reserve judges are the same as for the acting ones.** According to the Article 86 of Constitution of Georgia, the position of a judge is incompatible with any other occupation or paid activity, except for pedagogical and scientific activities. Though, the scope of professional activities, as well as financial position of the reserve judges is limited.

Each judge nowadays in reserve is there already for years. In spite of the permanent lack of judges, the reserve judges are receiving undocumented refusal for the appointment. It should also be noted, that these people are the judges chosen as a result of a contest and were removed from duty before the term expiry against their will. Judges left in reserve, while there are open vacancies, prove the fact, that their removal from the duty had no impartial reasons, but was due to subjective basis and did not serve legal purposes of the institution.

Unfortunately, this practice violates the principles of independence and irreplaceability of the judges, protected with the Georgian Constitution and international regulations. European Charter states on the status of judges, that transferring a judge to another court or changing his functions without his free consent is unacceptable.

"The Unity of Judges of Georgia" thinks, it is important to change the current attitude towards the reserve of judges and eradicate a faulty practice, placing reserve judges in an uncertain position for several years, which, on its hand negatively reflects n the role of individual judge and quality of the judiciary" - the statement declares.

22 FEBRUARY 2014

EXECUTIVE DIRECTOR OF "THE UNITY OF JUDGES" TALKS ABOUT THE NEW CONTEST FOR JUDGES

As Executive director of "The Unity of Judges", Nazi Janezashvili explained, that discontent of the judges was caused by the fact that the competition was conducted in two stages, despite the fact that the law provides for only one stage.

As she also said, „Tomorrow's contest is even more important because of the fact that the Board is not trying to change the current practice."

"According to the practice established by the Council of Justice, the appointment of judges is carried out in two stages. On the first stage, the High Council of Justice grants a status of a judge to a person and later, on the second meeting a judge is assigned to a specific court. During the first appointment, it is necessary to receive 2/3 of the total votes, so higher legitimacy and bigger number of votes is required to make a decision concerning a specific judge. On the next meeting, when the destination court of the judge is determined, the decision is made by the majority. Therefore, the problem is that the final decision is made by the member judges of a High Council of Justice" - stated Janezashvili during the interview with "frontline" and added, that the absence of specific criteria for the appointment of judges is also a big problem.

She also noted, that The High Council of Justice does not provide the possibility of career advancement. So the judges on duty, who have applied for the contest, are often being ignored.

„Often qualified people are not re-appointed on the positions. If their activities are negatively evaluated, this should also be based on some kind of criteria. Otherwise, a candidate can never understand why he/she was rejected. However, telling the reason is necessary, as if the reason of refusal is education, experience or personal skills of the candidate, this person should know about it" - stated CEO of „The Unity of Judges".

She also noted, that The High Council of Justice does not provide the possibility of career advancement. So the judges on duty, who have applied for the contest, are often being ignored.

As Nazi Janezashvili states, it is also a vicious practice, when a judge applies for the position of judge at one court, and is appointed to another.

In addition, she also highlights assignment practice.

"It is vicious practice, when a judge applying for a vacant position in a specific court is seldom appointed at the court he has applied to. A person may be appointed to a specific court and at the same day assigned to another city and another court. Assignment practice has become even more vicious in the process of appointment. Earlier, nobody knew where and why the High Court of Justice would as-

sign them - this was a result of a vague decision and discussions. According to a current practice, they are appointed to a specific court and at the same day sent to other. I have personally witnessed when during the meeting candidates were called and asked whether they wished to work at the specific courts. This should not be like this. These people should be invited and asked personally. Making decision on such topics via phone calls is very strange. This is the Council of Justice, making important decisions" - States Janezashvili.

She also said, the argument of judicial authorities is also unclear, that justice system is having hard times and this is a reason for the assignment practices.

"Personally for me, his practice is very vague. What does it mean system is having hard times? Is this based on any specific research, survey criteria or is it general conclusion? I can say, that in most cases, this was very general - any member of the Council could say that the system is having hard times and later decide to assign the judge somewhere. Problems are very diverse, but often the decisions taken by the Council of Justice is based on the vague basis and discussions and is not made as a result of studies" - says Janezashvili.

As she also noted, often opinion of the non-judges members of the High Council is not taken into account.

"Last year there were amendments to the legislation and non-judge members were added to the composition of the High Council. They are representatives of civil society and academic circles. I can hardly remember the case, when their opinion was taken into account. Non-judge members' positions on important issues has never been considered" - stated Janezashvili.

While talking to Front News, the executive director of "The Unity of Judges" focuses on one more problems - overloading of the judges. Janezashvili thinks, this is reflected on the quality of justice as well.

"Judge should have reasonable time to discuss, think and study the case. Judges are working on very important topics. They sometimes decide a fate of a person. It is not acceptable, that a person, holding any kind of position, has such limited timeframes. Unfortunately, the number of judges in Georgia is fixed. This should be studied and estimated, which is not a real problem if there is a will and mobilization of relevant resources. Overloading of the judges is unacceptable as it negatively reflects on the quality of justice" - says Janezashvili.

"THE UNITY OF JUDGES" CALLS FOR THE COURT CHAIRMEN, TO REFRAIN FROM BEING INTERESTED IN THE CASES THEY ARE NOT PARTICIPATING IN

"Unity of the judges" echoes the topics presented by the Chairman of the Supreme Court at a press conference. The organization notes, the Supreme Court chairman attitude regarding the full independence of the judiciary is welcomed, however, some of his attitudes resulted in complaints from the judges. In particular, the Supreme Court chairman noted, that he receives information on the cases submitted to the Supreme Court that makes obvious that if the judge was more independent, it would be resulted in a different decision.

"The Unity of Judges" Calls for the Court chairmen, to respect the reputation and authority of the judges hearing the cases.

"The Unity of Judges" considers, that the society has right to criticize a judge. However, government authorities have much more responsibilities in this regard.

Making public the opinion, that Supreme Court explains the wrong results of a judge decision as a result of insufficient degree of independence questioning a competency of the lower courts. In addition, all parties unhappy with the decisions have feeling that insufficient independence of a judge hearing their cases became a reason of failure, reducing a public trust in the judiciary.

In addition, **it is unclear how the head of the Supreme Court receives information about the materials of the cases submitted to the court in such details that is enough to discuss the sufficiency of the lower court decision.** It is also noteworthy, that the head of the Supreme Court does not participate in the discussion of cases himself, except for the cases, which are not discussed by the Big Chamber. There was only one case heard by the Big Chamber during 2013-2014.

„The Unity of the judges" says the interpretations of the Supreme Court chairman have once again demonstrated that the specific cases and decisions of judges are still subject of interest and evaluation by the court administrative officials. Such practice will significantly hinder internal independence of judges.

„The Unity of the judges" highlights, that, in accordance to existing legislative regulations and in line with international acts, access **to the specific case is only permissible for those higher instance judges, who discuss parties**' complaint in regard with the specific case; and holding administrative position should not be enough for the higher instance judge to be eligible to become familiar with the case materials, and moreover - publicly discuss the legitimacy of the decisions taken.

"The Unity of Judges" Calls for the Court chairmen, to refrain from being interested in the cases they usually are not participating in and respect the reputation and authority of the judges hearing the cases.

GEORGIAN YOUNG LAWYERS ASSOCIATION AND "THE UNITY OF JUDGES OF GEORGIA" MAKE A STATEMENT REGARDING DECISION TAKEN BY THE HIGH COUNCIL OF JUSTICE

Georgian Young Lawyers Association and "The Unity of Judges of Georgia" echo the meeting held at the High Council of Justice on March 18, 2014 and negatively assess leaving an issue of pressure on judges in 2005-2006 without any response from the side of Council judge members. In particular, Council did not react on the report of Human Rights and Civil Integration Committee, sent by the Parliament of Georgia to High Council on 13 December, 2014. The document refers to illegal early termination of duty of the Supreme Court members and former judges - Merab Turava, Nino Gvenetadze, Tamar Laliashvili and Murman Isaev.

Conclusion made by the Parliament Committee says, that disciplinary pursuits were illegally carried out against named judges from the previous government for political reasons, illegally in 2005-2006... Constitutionally guaranteed independence and human rights of judges has been violated during the disciplinary pursuit.

The report also notes that during the disciplinary pursuits they were repeatedly invited and forced to voluntarily write a statement... The fact of pursuing these judges with the political reasons is confirmed from all three parties of former government.

It should be noted that the report also indicated negative evaluations of the Venice Commission and other international organizations regarding the disciplinary dismissal of the judges.

On the same meeting, non-judge members of the High Council of Justice presented the findings on the case of disciplinary proceedings against these judges in the matter, analysing legal aspects of the case in more details. The report was accompanied by a draft decision of the Supreme Council of Justice, indicating the case was infringement of judicial independence; draft decision also negatively assessed practice of influencing judges widespread during previous years. Non-judge members of the Council think, the Council should also have addressed the Parliament proposing the implementation of the legislative changes, in order to determine the possibility of a revision of the decision on the disciplinary case due to newly discovered circumstances.

We believe that the assessment of the facts given in conclusion is not equal to the High Council of Justice reviewing the decision made several years ago o disciplinary cases. Judge members of the Council appealed the same and this was also a reason that none of the recommendations submitted by the non-judge members was supported. We think, that taking into account the content, severity and function of the Council defined by the law,

the High Council of Justice should have discussed the legal aspects of facts and topics given in the report, which would become the basis for further action under its authority. Judge members of the Council could share the attitude of non-judge members at the meeting. For example, the one that it is impermissible to offer pensions or other benefits to the judges in order to persuade them voluntarily leave the job; that is impermissible to use disciplinary proceedings to harm independence of judges, or with the aim of their intimidation and suppression.

We think the Supreme Council of Justice should do their best in each particular case to protect judges, restore their violated rights as well as to implement reforms necessary for the judiciary. Position of the Council towards important issues in justice should be consistent, uniform, the principal, standing far away from any kind of political or narrow minded group interests.

Despite this, the High Council of Justice could discuss the need of legislative amendments to the disciplinary proceedings system and prepare corresponding recommendations or submit the legislative suggestions to the parliament. However, judge members of the High Council members noted that the legislative work is the authority of Parliament. Such an approach to the problem shows the inconsistent policy, as in the past, the Council has prepared a draft law several times and expressed its opinion on different topics to be discussed in the parliament.

We think the Supreme Council of Justice should do their best in each particular case to protect judges, restore their violated rights as well as to implement reforms necessary for the judiciary. Position of the Council towards important issues in justice should be consistent, uniform, the principal, standing far away from any kind of political or narrow minded group interests. Only such approach to each individual case will create a base for the High Court of Justice properly performing its highly critical constitutional functions and successfully deal with the challenges the judicial system faces.

21 MARCH 2014

INDEPENDENCE STILL REMAINS A MAJOR CHALLENGE FOR THE JUDGES

Challenges the judges are facing and social guarantees for their protection - These are the topics of the roundtable discussions of judges from Tbilisi and Kutaisi held at Kutaisi CCE Office. The meeting was held with the initiative of „The Unity of Judges".

„Such meetings with judges are held periodically, allowing them to get acquainted to the news the organization offers. Each judge must feel they are strong and independent"- said the head of the organization, Nazi Janezashvili.

As the organization members state, social guarantees for the judges should be protected on a legislation level. Judges name independence as a major challenge for them.

„The Unity of Judges" was founded in June 2013 and nowadays is implementing three projects with the support of international organizations.

1 FEBRUARY 2014

THE UNITY OF JUDGES OF GEORGIA MEETING JUDGES, LAWYERS AND CIVIL SOCIETY MEMBERS IN RUSTAVI

Main topics of the meeting: Appointment, promotion and assignment of judges - existing gaps of the legislation and practice.

"The Unity of Judges of Georgia" thinks it is necessary to change the existing legislation and improve procedures of appointment of judges. In this regards, there are gaps in the legislation, as well as in practice.

Under the current legislation, appointment of judges means imposing judicial responsibilities on a judge for a particular position, decision on which must be taken by 2/3 of the members of Board Members. However, the Supreme Council of Justice, on the basis of the recent competition, appointed 12 judges without resolving the question of destination courts they were assigned to. Actually, they were given the status of a judge. The Council continued discussing the topic on the next meeting and although the legislation defines the decision should be made with 2/3 of votes, made a decision on assignment of judges with the votes of simple majority.

Despite this, "The Unity of Judges of Georgia" considers the number of judges as the most important topic. The number of judges required in the country is still unclear. It should also be noted, that overloading of judges is a problem requiring to be solved.

It should be noted that the current legislation envisages the regulations regarding reserve judges. The judge released from the position no later than 2 month after the staff reduction or elimination of the position with the prior written consent, is enlisted in the reserve with three-year term, but no longer than expiration of his judiciary term. A judge, released in accordance to these procedures and enlisted in the reserve, receives remuneration defined by the legislation. He, with prior written approval and in accordance to the legislation, may at any time be assigned to other court within the exercise of his judicial tenure. In this case, he will be excluded from the reserve for the period of time of the appointment.

Although there are 5 people in the reserve, they are not being appointed on the positions, what is absolutely unclear, as at the same time there are open vacancies for the position of judges. The aforementioned practice puts reserve judges is uncertain position, constantly being in standby mode, and hoping to be appointed to the positions. In addition, the same restrictions apply to judges in the reserve, which is the current judges. In addition, the same restrictions apply to the reserve judges as to the active ones.

The position of a judge is incompatible with any other occupation or paid activity, except for the exceptions envisaged by the law.

The Unity of Judges of Georgia thinks it is necessary to change criteria and rules for appointment of judges. It is also crucial to regulate and define number of judges needed in the country. Most importantly, reserve should be refined and the faulty practice of keeping judge in the reserve for years eliminated.

7 FEBRUARY 2014

"THE UNITY OF JUDGES OF GEORGIA" MEETING WITH STUDENTS

Natia Gujabidze, Maia Bakradze, Alexander Ioseliani and Davit Ghibradze, member judges of "The Unity of Judges" met with the law faculty students on 7 February, 2014. Students from Ilia State University (also ELSA member), Free University and Tavartkiladze University attended the meeting.

The first issue on the agenda was the introduction of the organization's work and priorities to the students, presented by the executive director of UJG Nazi Janezashvili. The second topic of the agenda was "The judge - a main figure of the judiciary, legislative regulations and existing gaps". Natia Gujabidze, head of the executive council of UJG and Alexander Ioseliani, member of the executive council were the speakers around the topic.

At the beginning of the meeting Nazi Janezashvili introduced the organization's work to the students, talked about the working groups and projects, implemented by the organization. She also mentioned organization future plans and priorities, main aim of which is eradication of the gaps existing in the judiciary.

As for Natia Gujabidze's presentation, she explained to the student, that strengthening the role of private judge is crucial for the correct justice and independent judiciary. She discussed the problems currently existing in the justice, and particularly highlighted incompetence of the courts chairmen and the High Council of Justice. Natia Gujabidze stated, that High Council of Justice implements many illegal activities and often takes illegal decisions, threatening the strength of the Court and Justice independence.

Alexander Ioseliani Also talked about the gaps. As he mentioned during his meeting with students, in order to eradicate these problems, it is necessary to prepare the recommendations for the authorized organizations.

20 FEBRUARY 2014

MEETING AT THE US EMBASSY

With the U.S. Ambassador Richard Norland's invitation, Jonthun Hames Minesota federal judge met with the chairmen and judges of the Constitutional, Supreme, Appellate and Municipal Court, as well as the representatives of the diplomatic corps and donor organizations.

Members of "The unity of Judges of Georgia" also attended the meeting.

Participants talked about ongoing reforms and current challenges in Georgian justice system. Importance of United States' support and contribution in the process, as a partner state, was also highlighted.

28 JANUARY 2014

"THE UNITY OF JUDGES OF GEORGIA" MEETING WITH NGOS AND INTERNATIONAL ORGANIZATIONS

The Unity of Judges of Georgia meeting with NGOs and international organizations at the organization office on January 28.

Nazi Janezashvili the executive director of the organization talked about the aim, ongoing projects and future plans of the organization. She also expressed their readiness and willingness to cooperate.

The meeting continued with the report by Maia Bakradze. She noted, that association members

has been supporting justice reform since the very beginning. Maia Bakradze spoke about the structure, activities and functions of the High Council of Justice, as well as problematic issues, currently existing in the system.

Nazi Janezashvili asked guests to express their opinions and be involved in the discussions.

Kakha Kojoridze said, the judges raising the problematic issues is very important for in-depth analysis, as they are most aware of these problems. He was interested whether a specific strategy on solving the issues exists.

Inga Tordia noted, it would be good, if there will be a possibility to invite members of "Association of Judges of Georgia" with joint efforts and individual approaches.

Vakhushti Menabde was interested, how it is possible to focus on strengthening the content of the judiciary, as on the next level of the justice reform, and if there is a possibility of cooperation in this regard. Maia Bakradze note on this, that, in case all the existing problems are solved, this will strengthen content of the judiciary by itself.

17 JANUARY 2014

"THE UNITY OF JUDGES OF GEORGIA" MEETING WITH FORMER JUDGES

Maia Bakradze, member of "The Unity of Judges of Georgia" introduced the aim and activities of the organization to the former judges. She also talked on the future plans and focused on the importance of cooperation with them. Guests were given a questionnaires at the beginning of the meeting. Maia Bakradze asked them to express their opinion on the topics indicated in the questionnaire, as well as the criteria appointment of judges.

Tamar Laliashvil noted that taking into account the principle of career promotion is necessary.

In Nino Gventadze's opinion, research on other countries' criteria should be conducted and the local criteria developed subsequently. However, she believes that full development of these criteria is almost impossible. Professional circles should also be surveyed, as their opinion is very important.

Besik Sisvadze stated, if there is responsibility of written reporting on the appointment or non-appointment of judges, the Council will at least feel discomfort from this.

As Mariam Tsiskaridze noted on this, there are indication in reports of several organizations that the decision on appointment, as well as release of the judges should be stated and published in a written manner. Candidates should have the possibility to appeal the decision. Tsiskadze also stated that a list of candidates should be published.

Nunu Kvantaliani thinks, the most important topic is justification of the positive reply. The competent authority, in charge of appointing a judge, should have investigated his personality.

Regarding the qualification exams of the judges, Nunu Kvantaliani expressed her opinion and said, the expert council should be established, which will check tests and case studies of the exams.

As Tamar Laliashvili stated, it would be better if "Court Friend Group" is created. The group will unite people, who were unfairly treated.

Murtaz Kapanadze, the Judge of Kutaisi Appeal Court

OPINIONS AND COMMENTS ON ARTICLES OF GENERAL PART OF THE CRIMINAL CODE REGARDING THE USE OF CONDITIONAL SENTENCES AND CONSECUTIVE PUNISHMENT PRINCIPLE

There is no doubt that perfection of the legislation and refinement of each standard is of great importance in order to ensure that they are correctly and homogenously perceived by all practicing lawyers. Several There is a disagreement about some of the provisions of the general part of the Criminal Code while using them in judiciary practice, which could be eliminated with the editorial changes to the corresponding standards or interpreted by the Supreme Court in a manner to avoided different understanding of the contested provisions.

According to the part 5 of the Article 67 of Criminal Code, in case a person commits a deliberate crime during the conditional sentence, a court will revoke conditional sentence and will impose a sentence provided under the Article 59 of the same Code.

As it seems from the standard, the legislator does not link suspension of the conditional sentence for the previous offence and imposition of the final sentence for the set of verdicts to the date of a new offence committed during the conditional period.

However, according to a widespread practice of recent years, the courts relate the enactment of this provision not to committing a new crime during the probationary period, but to the date of setting a sentencing for this new crime. In particular, in case the probation period of a person has expired by the time of a verdict is announced, although there is a condition required for the mandatory enactment of the legislation - or committing a crime during the probation period, a court did not annul conditional sentence in accordance to part 5 of the Article 67, On the grounds that the probation period had expired and there was no conditional sentence any longer.

We think, with such interpretation of the law, a conditional sentence will lose its effect of discouragement from committing a new and, moreover, hidden offenses while the aim of conditional sentence is to prevent an offender from re-offending during the probation period. Given the context of the standard, we think, **annulling conditional sentence is not connected to estimation of the date for a new crime at all, and for example, in the case of unsolved crimes or other objective or subjective reasons, it is possible to be imposed even a few years later and due to this, expiration of the probationary sentence cannot affect a revocation of a conditional sentence.** It is also noteworthy, that, according to the law, the flow of a probation period for the conditional sentence do not count as serving a sentence, or in other words, expiration of the probation period does not equal to the served sentence, but legislation pardons the offence to the offender

with the condition that he will not reoffend during the probation period.

annulling conditional sentence is not connected to estimation of the date for a new crime at all, and for example, in the case of unsolved crimes or other objective or subjective reasons, it is possible to be imposed even a few years later and due to this, expiration of the probationary sentence cannot affect a revocation of a conditional sentence.

We believe that adding sentence to the convict, as well as the distribution of any privileges, should only be linked to objective circumstances. This kind of important issues should not be related to such subjective factors, such as the length of investigation or trial proceedings, and of course, it must not influence the sentence of a convict.

4 appeals of such verdict were submitted to the Criminal Chamber of Kutaisi Court of Appeals for the last 6 months by the prosecution party, when the courts, in spite of the deliberate crime committed during the probation period, did not revoke the verdict dues to the reasons mentioned above. The Chamber satisfied all four complaints. Three cases of these four are submitted to the Supreme Court of Georgia by the defendant party and the highest instance of the country will express its position on the cases in the nearest future.

The discussion of the issue could be more interesting if we draw parallel to **part 5 of the Article 63 of the Criminal Code of Georgia** according to which, if the offender is not yet 18 by the time of sentencing for the less grieve and grieve crime and it is a first time offence, the court is eligible to impose a conditional sentence.

It is obvious, that the content of this standard cannot stand critics, as it relates the privileges for the juvenile to absolutely inappropriate fact - the date of a verdict that may be related to the circumstances, which has nothing in common with the re-socialization of the offender. This is approximately the same, if we link the reduction of punishment for the juveniles under the Article 88 to the date of the verdict, but not of the offending. Therefore, **we believe that the law needs to be changed and the privilege under part 5 of the Article 63 of the Criminal Code should be applied to every person, being a juvenile at the time of offending.** Kutaisi Court of Appeals did have a case in its practice, when the Chamber, in line to the law, was obliged to change a conditional sentence used towards the juvenile for the grieve crime with the real sentence only because a person was already over 18 at the time of the verdict was announced (the reason of which was that investigation and court hearings lasted several months).

The new edition of Article 59 of the Criminal Code coming into force, determining procedure of imposing the punishment for the set of crimes and sentences, undoubtedly contributed to the liberalization of criminal law, having many positive effects. However, using some of its standards in practice still causes contradictions.

The new edition of Article 59 of the Criminal Code coming into force, determining procedure of imposing the punishment for the set of crimes and sentences, undoubtedly contributed to the liberalization of criminal

law, having many positive effects. However, using some of its standards in practice still causes contradictions. This especially refers to the part 5 of the Article, according to which, "in case of cumulative sentences, while imposing a punishment, a court will partially or fully add unserved part of the previous sentence to a new sentence, or the latest sentence will absorb unserved part of the previous sentence".

In particular, this provision does not impose any restriction for the share of unserved part of previous sentence to be added what may result in the fact that punishment imposed for the cumulative sentences appear smaller than the unserved part of the previous sentence. In other words, prisoners is given a chance to considerably shorten his/her sentence by commit new crime. For example, if drug dealer, having 15-year sentence to serve, commits some minor offences and will get new 1-year sentence. When imposing punishment for the cumulative sentences, the judge will not violate the law, if he will add 5 years from the previous sentence to the new 1-year one and finally impose 6 year deprivation of liberty, meaning the offender gets sentence decreased with 9 years. Same example can be used in case of when unserved part of the sentence absorbs a newly imposed sentence. It is noteworthy, that such facts are not seldom in judicial practice (Since a new law came into force, there have been 4 cases when cumulative sentence was longer than the sentence imposed earlier) and **this provision of the law needs clarification ,at least a note should be added to part 5 of the Article 59 of the Criminal Code of Georgia saying, that** "length of the cumulative sentence should not be shorter than a sentence imposed for a newly committed crime, as well as the unserved part of the previous sentence".

Part 2 of the Article 59 of Criminal Code, on the mandatory absorption of the sentences in case of cumulative crimes and convictions against a person with no criminal record, seems too liberal and inconsistent with the purposes of the Criminal Code as well. In our opinion, existence of such standard does not prevent, but encourage a person with a criminal mentality to commit new crime, as he is sure that in case of multiple crimes he will only be punished for just one offence. We believe that this standard deprives the law of preventive functions and needs corresponding amendments. **As it became known, the draft law has been already prepared, according to which, in case of multiple crimes committed, when imposing final sentence, partial or full sum-up of sentences will be possible, during which the sentence shall not exceed the maximum punishment envisaged for the most grieve crime.**

10 FEBRUARY 2014

MAIA BAKRADZE, JUDGE: „ADEISHVILI HAS NEVER CALLED ME, BUT JUDICIARY WAS UNDER THE INFLUENCE OF THE PROSECUTOR'S OFFICE“

"Front news" talked to the judge, member of the "Unity of Judges of Georgia", Maia Bakradze about the judicial reform, pressure taking place during recent years and problems still unsolved.

- Ms Maia, you were the judge during the previous government, as well as you are now. Do you agree with the opinion, that previous government was controlling the court, and has the situation improved since the change of the government?

- Of course, there are changes. The facts, that the judiciary was not fully independent, has been declared by the internal bodies, as well as by international partners. This change, first of all, reflected in the governmental will, and therefore, on the legislative level. In fact, the status of the judges was step by step humiliated in 2005-2006. The legislative regulations were designed so, that the role of judges, as the guarantors of independence, was not privileged role. Necessary condition for the independence is a strong social guarantees

which was envisaged by the law; Also, the compensation was judge retained after the expiry of the judicial term; Support was also provided in case of health problems. These was annulled by the parliament and the judges were left with the salary inconsistent to their activities. From 2005 until 2013 their salaries increased only twice with just only 10%. Disciplinary punishments of the judges did not serve the purpose of disciplinary proceedings - namely, protection of society from the judges who were mistaken. Actually, it was a tool used against the judges' independence. Assignment rule, or moving a judge from one court to another, was used with the same purpose as well. This is envisaged by the legislation, but the rule of assignment should only be used in case of hindering exist during legal proceedings at the current court. The assignment should be short term. Actually, the judges were moved from one district to another against their will, and it lasted five, six years, or sometimes even till the end of their judicial term. The aim of this was that the judge would fear to be left at the assigned post or the assignment could have been annulled. In fact, their job place was being changed against their will. All this was permitted by the law, but has not been used in good faith and reasonably.

- Some of your colleagues also name the judges reserve as similar tool...

- Reserve is the category of judges enlisted there due to staff reduction or elimination of the court. They are the judges, elected as a result of the contest and who are not able to conduct judicial activities independently of their will and are waiting for a vacancy. After the vacancy is announced, the council has right to employ them without a contest. Often judges stayed in reserve for 7-8 years. During this period, like the active judges, they are not eligible to have another paid job, except of pedagogical. They get 500 Gel compensation from the state. According to the international regulations, removing a judge from the post prior to the end of judicial term is unacceptable. Due to staff reduction or elimination of the post, this people left their jobs against their will, so the state took the responsibility to pay them compensation. There were 27 people in the reserve, nowadays only 5 are left. Judicial term of majority of the reserve judges has expired, only few were employed. At the same time, vacancies existed permanently, but they said they could not choose between the candidates. It is hard to imagine a reserve and vacancy at the same time - If the vacancy exists, you should employ the reserve. Despite the fact, that some of the judges expressed their will to work in any region available, they were not employed. In our opinion, the reason was the inappropriate use of the reserve institute, or all the regulations were inappropriate and was transformed into the punishment.

- Regarding the direct control of the Court and Judges, the opposition party of that time, as well as others, stated that the Court was controlled by Zurab Adeishvili and Kublashvili brothers. Do you have any information in this regard?

- I should have witnessed some kind of conditions to confirm. Adeishvili has never called me, if this is what interests you. The main reason of this situation was system arrangement. It is no secret that the court was influence by the prosecutor's office, which influenced not only specific cases, but also reflected on the court personnel policy. There were interventions in the personnel policy. I cannot list the names, blaming individual persons probably would not be reasonable. This was a problem of the system. The judicial system should be arranged in a manner, that it does not matter which government is tempted to take control over it, it should not be

possible. It is impossible for one man to control 240 judges. Intermediate link has always been there, and we can consider that these were people holding administrative positions within the courts, chairmen of the courts and chambers, creating and strengthening this system. People with such "mission" did not carried judicial activities, but were busy with administrative functions. Of course, I do not mean everyone. Even today, they do not hear cases and I do not know if they even intend to return to the judicial activities. Court chairmen, together with private judges, should be united. I cannot say, they are under somebody's influence today, but when talk about the system, we have a big experience. We cannot say that a particular person had pressured another particular person. The system, in general was arranged, bound, locked in this way. This was why influencing someone was so easy. This kind of arrangement should not exist, as we never know when and which government will have the wish to attempt and influence the judiciary.

- It is also often said, that sometimes the judges took decisions on particular cases according to the phone calls received from the particular people...

- There was no need of phone calls and communication around the specific topic. When I say, that the system was designed this way, I mean exactly this. The judge was separated from the family. The judge is an ordinary human, having a family and he/she may fear the danger towards the children. I cannot say, that there were phone calls, I do not have any proves or evidence of it.

- Nowadays, do you exclude the possibility of pressure using the tools you have mentioned?

- The fact, that situation has improved does not allow us to relax. Strengthening the role of individual judge is important. When this happens, „hierarchical" arrangement will be eliminated and there will not be „ordinary" and „privileged" judges, the judges who hear the cases and the judges who do not. Then the situation will be much better and hopeful.

- Ms. Maia, one of the high-profile cases you were involved in, together with some other judges, was on Kibar Khalvashi property "Art" and "Livo Group". In one of the interviews, Khalvashi's attorney called all the judges involved in the case offenders…

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- Probably, you mean the cases concerning tax disputes. There have been state tax disputes from the specific enterprises towards the tax authority. I led one of these cases you mentioned. Naturally, I cannot make any comment, even on the case I was hearing myself. This will look like making a judge accountable for a specific case. The court conclusion on the case does exist and my opinion is also reflected in it.

- Regarding the latest amendments to the Law on General Courts, about the election procedures for the members of the High Council of Justice, what do you think about it?

- The election procedure of the Council of Justice has significantly improved. The judges were given the right to nominate a candidate. Initially, judge were voting for a person offered by the Supreme Court in an open voting process. They did not have the right to nominate their preferred candidate. Now each judge has the right to nominate a candidate. This is very important in terms of self-government implementation. However, we are protesting the rule of voting, as the law determined a separate „quota" for the deputy chairmen of the Courts, and the chairmen of the Boards and Chambers at the Council of Justice and a separate ballot was estab-

lished for them. In my opinion, all nominated judges should have participated in one ballot, so that each of the Board member candidates were treated equally. According to existing regulations, candidates holding administrative positions have bigger chance of winning. In other words, nowadays, when there are those judges at the courts, who do not hear cases and are only involved in managerial functions, are also privileged when nominated as a member of the Council.

- Can you specify which judges did not carry out judicial activities?

- Chairman and deputy chairmen of the Supreme Court, as well as the chairmen of the Court of Appeals, chairmen of the Chambers, Chairman of the Tbilisi City Court, Chairmen of some Boards and etc. do not personally take part in the hearings. I do not mean, that all of them are like this, but there are chairmen of big courts, who do not carry out judicial activities. The law does not define that the court chairman is responsible of participating in the hearings, but these people are holding the status of a judge and the judge is meant to carry out judicial activities. Moreover, when the court is extremely busy and, at the same time, the judges in the system do not hear the cases, this creates an awkward collegial attitude. They probably feel it themselves, as some of them tried to "balance" this awkwardness by assigning some of the cases to themselves. But this was only in just a few cases.

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- As for the procedure for appointment of judges, part of the judges, and you among them, protest splitting the process into two parts...

- We protested artificially splitting this process. On its first meeting, the board has discussed who can be called a judge, or in other words, did not appointed them, but called 12 person the judges as a result of 2/3 of the total votes. The second meeting was held after a week and an issue of appointment of these judges on the particular positions has been decided by a simple majority. Therefore, there are two decisions regarding these 12 judges - from November 19th, approved by 2/3 of the total votes, and from November 29th, approved by the simple majority, regarding their appointment to the specific districts. The law does not envisage this kind of procedures. It was artificial interpretation, which cannot be considered under any of the legal frameworks. We have been saying that the judge was due to be voted in a particular place, a particular region, in a particular board.

- There are different opinions over a lifetime appointment of the judges and three-year probation term. The Chairman of the Supreme Court does not agree to probationary period and supports the term extension in favour of acting judges. The Minister of Justice also has different opinion. Which version do you support?

- I think there should be a common standard for all judges. According to the Constitution, the Supreme

Court judge is appointed for 10 years, while other judges have lifetime terms. However, there is an exception as well, as according to the constitutional law, the lifetime appointment does not apply to the acting judges. This was recorded directly this way and the Constitution came into force in this manner. In addition, the organic law established a three-year term. In case the acting judges participate in the contest again, we will be appointed with a lifetime term, but with three-year probation period. The possibility, that the new standards of the constitution is applied to us, was ruled out by the constitutional law itself. As for Konstantine Kublashvili, in his 2010 interview („Justice and Law" magazine #3), he considered these constitutional changes extremely successful and said, that probation term is very good and well-proven method in many other countries. Deputy Chairman of the Supreme Court and Secretary of the Council of Justice of that time were also members of the Constitutional Commission working on these amendments and highly approved these changes. It is very good, that today they have changed this opinion, but it would have been better that the court had timely expressed its sharp position and there would not have been a constitutional record. So the positions of Minister of Justice and Chairmen of the Supreme Court of that time on three-year term are not controversial, but they coincide.

- Ms Maia, often there are talks about the insufficient number of the judges. Do you think, this is a real problem?

- Everyone is complaining that the cases are delayed, not discussed on time etc. When there are 240 judges in the country and they were deliberately decreasing number of positions, this was also served the purpose, that with the loads of cases, the judges would make more mistakes. Again, we go back to the punitive measures. There should be a sufficient number of judges, they should be systematically trained in order to evolve their skills in the field, there should be exchanges, their linkages with the leading countries the development of Justice in the country depends on these factors.

- And lastly, to sum up, what has changed with the new government, what has improved and what needs to be improved?

- I do not know how much it did or did not please the public, but since January the judges' salaries have increased, which is important for the independent judiciary. Probably, this should be connected to the changes that have taken place in the country, because it was the government initiative expressed by the end of 2012. During recent period, it was for the first time the publicly revealed will which the court should be independent, was expressed through legislative regulations. One of the components is social provision.

During recent period, it was for the first time the publicly revealed will which the court should be independent, was expressed through legislative regulations. One of the components is social provision. In addition, at this stage there are no signs of pressure on the judges, or any kind of tension, etc. If you check the latest decisions of the Council of Justice of 2012, you will notice, that almost every judge, who was assigned, was appointed for the term of exercise of judicial authority on one and the same place. In other words, the assignment problem was somehow solved. However, until there is a legislative record, the mechanism of inappropriate use exists. The difference is that in January, when the judges were appointed, they were at least asked through the phone, whether they agree to the transfer to specific region or not. Until 2012 the transfer took place in a following manner: the judges would come to the job in the morning and was told he/she was assigned to some region. There was no tool for confrontation. We really move forward, it is impossible not to see it. Just the requirements are much bigger and I deeply hope will achieve everything. When a Court stands on its height and does its work, it will be good for everyone.

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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, Sighnaghi; Publishing reports by working groups of judges on following issues:1) Appointment, promotion, estimation and assignment of judges; 2) Case distribution; 3) Disciplinary proceeding; 4) Social guarantees; 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" id funded by the Embassy of the Kingdom of Netherlands in Tbilisi, the partner organization is the Netherland Helsinke 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" id 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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