



ACCESSIBILITY OF JUDICIAL ACTS: PROGRESS AND KEY CHALLENGES

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ACCESSIBILITY OF JUDICIAL ACTS: PROGRESS AND KEY CHALLENGES

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INTRODUCTION

Ensuring access to court decisions for the general public is important both from the point of view of freedom of information and the realization of the right to a fair trial.¹ In addition, access to court decisions contributes to the transparency and accountability of the judiciary² and public trust in the justice system.³

Since 2015, the situation in terms of accessibility of decisions made at open sessions has significantly deteriorated in Georgia.⁴ After thoroughly examining the practice,⁵ Institute for Development of Freedom of Information (IDFI) applied to the Constitutional Court of Georgia.⁶ Although the Constitutional Court upheld the constitutional claims of IDFI and the Media Development Foundation in 2019,⁷ the implementation of the Constitutional Court's decision by the Parliament was unreasonably delayed.⁸ IDFI's strategic litigation aimed to recognize the increased constitutional interest in access to judicial acts and to remove artificial barriers to public access to judicial acts delivered at open sessions. These objectives were fully achieved. The Constitutional Court confirmed that the act of the court is a special type of public information that is subject to increased/special public interest. At the same time, the Constitutional Court pointed out that access to the act adopted at the open session for reasons of personal data protection may only be limited in special/exceptional circumstances.

¹ The European Commission for Democracy through Law (the Venice Commission), Follow-up Opinion to Four Previous Opinions Concerning the Organic Law On Common Courts, March 14, 2023, para. 47, available at: <https://shorturl.at/fkuyE>, access date: 20.02.2024.

² Ibid.

³ The Institute for Development of Freedom of Information (IDFI), Transparency of the Judiciary in Georgia, 2021, p. 1, available at: <https://shorturl.at/eCLV2>, access date: 20.02.2024.

⁴ See The Institute for Development of Freedom of Information (IDFI), Access to Court Decisions in Georgia: Analysis of the Common Court Practice, 2016, available at: <https://shorturl.at/aSU35>, access date: 20.02.2024.

⁵ Ibid.

⁶ See The Institute for Development of Freedom of Information (IDFI), The Institute for Development of Freedom of Information (IDFI) Files a Constitutional Complaint, 2016, available at: <https://shorturl.at/bAFPR>, access date: 20.02.2024.

⁷ See The Institute for Development of Freedom of Information (IDFI), Access to Court Decisions – Constitutional Court Grants the Appeal of IDFI, 2019, available at: <https://shorturl.at/htyCI>, access date: 20.02.2024.

⁸ See The Institute for Development of Freedom of Information (IDFI), From 2024, Court Decisions will Become Accessible Again: an Overview of the Problem and the Chronology of their Resolution, 2023, available at: <https://shorturl.at/hszDQ>, access date: 20.02.2024.

Later, the issue of ensuring the accessibility of the decisions made at the open session was reflected in the so-called “Charles Michel Agreement” of April 19,⁹ and then, the accessibility of judicial acts was determined as one of the elements of the implementation of the priorities set for Georgia by the European Commission on June 17, 2022.¹⁰

With the support of USAID Rule of Law Program, as a result of IDFI’s successful strategic litigation and long-term advocacy, in June 2023, the Parliament adopted legislative amendments that substantially improved the accessibility of judicial acts adopted at the open session at the normative level, and January 01, 2024, was set as the date of entry into force of the amendments.¹¹

Notwithstanding the essentially positive legislative changes, on the one hand, the legislative framework still needs to be improved, and on the other hand, systemic challenges of crucial importance are revealed in terms of the implementation of the already adopted changes in practice.

The purpose of this report is to present a chronology of the events leading up to the legislative changes adopted in June 2023, to assess the existing normative framework, and to present the systemic challenges that are revealed in practice in terms of the implementation of the legislative amendments.

The report consists of four main parts: the first chapter is devoted to the description and assessment of the events that developed from 2015 to January 1, 2024; The second and third chapters are devoted to the review and analysis of the results of the implementation of the legislative changes in practice from January 1, 2024. In particular, the second chapter includes the analysis of the findings and challenges identified in terms of receiving judicial acts, having legal force and being heard by the common courts at open session, through the public information requests, and the third chapter assesses the current situation in terms of publication of judicial acts. As for the fourth chapter, it includes a conclusive legal assessment of the key legislative and practical challenges in terms of accessibility of judicial acts.

⁹ A way ahead for Georgia 2021, p. 5, available at: <https://shorturl.at/S1689>, access date: 20.02.2024.





¹⁰ See The Institute for Development of Freedom of Information (IDFI), From 2024, Court Decisions will Become Accessible Again: an Overview of the Problem and the Chronology of their Resolution, 2023, available at: <https://shorturl.at/hszDQ>, access date: 20.02.2024.

¹¹ See Organic Law of Georgia on the Amendments to the Organic Law of Georgia on Common Courts, June 13, 2023.

MAIN FINDINGS



- ▶ The legislative framework which entered into force on January 1, 2024, establishes the improved standards of accessibility of judicial acts through public information requests;
- ▶ It remains a key challenge to ensure timely access to judicial acts at the normative level (both in terms of public information and proactive publication as well);
- ▶ The legislative amendments established the accessibility of not only court decisions but all judicial acts in general;
- ▶ If the court decisions were to be published on the website within 1 month after the reasoned decision was sent to the parties, from January 1, 2024, the acts will be published only after the final decision on the case enters into force;
- ▶ As of February 29, 2024, the common courts fail to enforce the legislative amendments that entered into force on January 1, 2024 (after two months of entry into force of the legislative amendments, the actual accessibility of judicial acts remains to be an important systemic challenge);
- ▶ Despite the fact that the legislative amendments were adopted on June 13, 2023, and entered into force on January 1, 2024, both the High Council of Justice and the common courts failed to take effective steps to ensure the enforcement of the law;
- ▶ If before the entry into force of the legislative amendments, only one of the 36 public information requests of IDFI (which concerned various types of judicial acts) was granted, after the entry into force of the amendments, all common courts of Georgia left the public information requests unanswered – a total of 36 requests;
- ▶ The subordinate normative acts that regulate the proactive publication of judicial acts need to be brought in line with the legislative amendments;
- ▶ Despite the fact that the new regulation entered into force, the process of publication of judicial acts on the website (ecd.court.ge) has not been renewed;
- ▶ Only the Supreme Court of Georgia from the system of common courts ensures proactive access to the depersonalized texts of its decisions on its own electronic platform.





RECOMMENDATIONS

-  The Parliament of Georgia should ensure timely access to judicial acts through legislative amendments, in terms of access through public information requests and proactive publication as well; The accessibility of judicial acts should not depend on the entry into legal force of the final decision made in the relevant case;
-  The High Council of Justice should adopt/amend the rules of proactive publication of judicial acts;
-  The common courts should cease the systemic violation of the Constitution and the Organic Law and start issuing judicial acts in the form of public information;
-  The High Council of Justice should renew the process of publication of judicial acts on the platform ecd.court.ge. The acts delivered after May 1, 2020, should also be published on the platform.

METHODOLOGY

During the preparation of this report, IDFI employed the following methods and sources of information:

-  Analysis of the legislation - the report analyzes the main legislative framework from 2015 to February 29, 2024, and the draft laws in the development stage during this period;
-  Analysis of subordinate normative acts - to assess the issue of publication of court decisions in practice, the report was based, *inter alia*, on the analysis of the decision of September 12, 2016, of the High Council of Justice and the order of March 7, 2019, of the Chairman of the Common Courts Department;

-  Analysis of the recommendations issued by international organizations – the assessments presented in this report, *inter alia* are based on the conclusions and assessments made by the European Commission and the Venice Commission regarding Georgia;
-  One of the objectives of IDFI was to evaluate the current situation in terms of receiving judicial acts as public information, which, among other things, involved studying the efficiency of receiving judicial acts as public information and the results of legislative amendments at the practical level. For this purpose, IDFI has developed a methodology that became the basis for assessing the practical accessibility of judicial acts. Namely, the methodology implied sending public information requests to all common courts in Georgia (in all three instances), firstly, before the entry into force of the legislative amendments, and later – with repeated requests – after the entry into force. The standard templates of public information applications were elaborated in such a way that allowed us to assess the possibility of receiving court decisions in the form of public information from different points of view and by various criteria;
-  Monitoring of the decisions search system at www.ecd.court.ge – one of the objectives of this report was to assess the existing situation regarding the publication of judicial acts. Therefore, in this context, one of the sources of information was this website;
-  Previous reports and assessments of IDFI regarding the accessibility of judicial acts – During the period between 2015 and February 29, 2024, IDFI has prepared and published a number of reports and assessments regarding the accessibility of judicial acts, including in light of the decision of June 7, 2019, of the Constitutional Court of Georgia on the constitutional complaints of IDFI and MDF. Therefore, these documents were important sources in the preparation of this report.

1. NEW LEGISLATIVE REGULATION OF ACCESS TO JUDICIAL ACTS

Georgia has come a long way to improve the standard of accessibility of judicial acts at the legislative level. It can be said that, on the one hand, the decision of the Constitutional Court of Georgia of June 7, 2019, and, on the other hand, consideration of its implementation in Georgia's European integration agenda have been crucial in this process.

Although the current legal framework has been substantially improved, there is still a need for its enhancement.

This chapter reviews the steps that have been taken to improve the legislative framework. At the same time, it will focus on those aspects which, among others, based on the conclusions of the European Commission and the Venice Commission, still need to be improved.

1.1. SIGNIFICANT DETERIORATION SINCE 2015 AND STRATEGIC LITIGATION IN THE CONSTITUTIONAL COURT

In Georgia, the accessibility of court decisions has deteriorated significantly since October 2015 and the practice of refusal to disclose court decisions referring to personal data protection was established.¹²

Back in 2016, IDFI did an in-depth study of the existing legal framework and practice, based on which a number of systemic problems were identified.

Particularly, the analysis of the legislative framework as of October 30, 2016 revealed that the legislation considered court decisions to be ordinary public information and did not take into account the legitimate interests of the transparency of and trust towards the judiciary.¹³ Furthermore, the legislation restricted the issuance of court decisions even in the cases which were tried during the open session.¹⁴ The Legislation gave unconditional priority to personal data protection.¹⁵

¹² See, Institute for Development of Freedom of Information (IDFI), Access to Court Decisions in Georgia: Analysis of the Common Court Practice, 2016, available at <https://shorturl.at/wJPu8>, access date: 20.02.2024.

¹³ Institute for Development of Freedom of Information (IDFI), Access to Court Decisions in Georgia: Analysis of the Common Court Practice, 2016, p.4, available at <https://shorturl.at/wJPu8>, access date: 20.02.2024.

¹⁴ Ibid.

¹⁵ Ibid.

As of the practice, the study showed, among other things, that the common courts would widely interpreted the concept of personal data and would not consider high public interest toward certain cases.¹⁶ This practice resulted in a disruption of the balance between personal data protection and access to public information.¹⁷ Furthermore, the common courts would refuse to release decisions in a depersonalized manner, referring to the lack of resources and/or inability to depersonalize them.¹⁸

After an in-depth examination of the issue, IDFI considered that, back then, the regulation of access to court decisions contradicted the Constitution of Georgia.¹⁹ According to the Constitution of Georgia, court hearings are public. The hearing shall be held in camera under exceptional circumstances. The disputed norms prohibited the disclosure of court decisions containing personal data even in cases when decisions were made at open session.²⁰ Based on this, IDFI filed a constitutional complaint on November 22, 2016²¹ and based it on the following grounds:



The disputed norms prohibited the disclosure of court decisions containing personal data, if an applicant could directly or indirectly obtain information about the persons that were affected by the decision;



The disputed norms prohibited the disclosure of personal data even if it concerned former/current high ranking state-political officials.²² Moreover, the disputed norms did not even permit the access to decisions, if there was an increased public interest in the case;²³



Due to the fact that all court decisions contain personal data, the disputed norms established a general rule of non-disclosure of court decisions, according to which the interested parties did not have the possibility to familiarize themselves with the court decision on specific cases.²⁴

¹⁶ Ibid.

¹⁷ Ibid, p.5.

¹⁸ Ibid, pp. 14–18.

¹⁹ The Institute for Development of Freedom of Information (IDFI) Files a Constitutional Complaint, 2016, available at: <https://shorturl.at/gvJS7>, access date: 20.02.2024.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

IDFI's constitutional complaint was combined with the complaint of the Media Development Foundation filed on the same issue.²⁵

1.2. THE DECISION OF THE CONSTITUTIONAL COURT AND THE DELAY IN ITS IMPLEMENTATION

On June 7, 2019 the Constitutional Court of Georgia granted the constitutional complaints of the Institute for Development of Freedom of Information, IDFI and Media Development Foundation, MDF on the subject of access to court decisions.²⁶ The Constitutional Court found that the disputed norms violated freedom of information ensured by the Constitution of Georgia and declared them unconstitutional.²⁷

According to the Constitutional Court of Georgia, court decisions constitute the type of information kept at a state institution which is subject to high public interest by default.²⁸ The Constitutional Court further deliberated that access to court decisions is crucial for ensuring public oversight of the judiciary, trust to it, safeguarding the protection of the constitutional interests of the right to a fair trial and legal certainty.²⁹

In addition, the Court indicated that under exceptional circumstances, taking into consideration sensitivity of information included in court decisions, redacting personal data might be necessary, however, this should not have a universal character.³⁰ In each individual case when discussing the issue of accessibility of a court decision, the impact of personal data disclosure on the privacy of an individual concerned must be considered and evaluated whether it outweighs the high public interest of accessing court decisions.³¹

The court held that the disputed norms would be void from May 2020 and thus gave the Parliament time to harmonize existing legislation with the requirements of the Constitution.³² Although the Parliament of Georgia had almost a year to implement the decision of the Con-

²⁵ Institute for Development of Freedom of Information (IDFI), Access to Court Decisions – Constitutional Court Grants the Appeal of IDFI, 2019, available at: <https://shorturl.at/agFS9>, access date: 20.02.2024.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

stitutional Court, the process was unreasonably delayed, despite numerous calls.³³ Furthermore, on a practical level, the accessibility of the court decisions significantly worsened.³⁴

1.3. ACCESS TO JUDICIAL ACTS - BECOMING PART OF EUROPEAN INTEGRATION AGENDA

In 2021, the implementation of the decision of the Constitutional Court and the ensuring access to judicial acts became part of the so-called “Charles Michel’s agreement” of April 19, 2021. Namely, one of the elements of an ambitious judicial reform was the adoption of the legislation implementing the ruling of the Constitutional Court of Georgia from June 2019 by setting rules for the publication of judicial decisions.³⁵

In June 2021, IDFI held a working meeting with the legal affairs committee of the Parliament of Georgia.³⁶ Within the framework of the meeting, the basic model for the implementation of the Constitutional Court decision was developed, according to which the Parliament should have developed a package of relevant legislative amendments.³⁷

On July 1, 2021, the bill initiated by the members of the Parliament of Georgia was registered, which, based on the IDFI’s assessment, did not meet the standards set by the Constitutional Court.³⁸ In addition, the draft law created significant administrative barriers to obtaining court decisions in the form of public information.³⁹ Adoption of the amendments in its version did not ensure the achievement of the legitimate aims for the protection of which the Constitutional Court had declared those norms that were solely focused on the protection of personal data unconstitutional.⁴⁰ At the same time, the adoption of the bill without amendments created a threat of violating the right of access to court decisions and the right to

³³ Institute for Development of Freedom of Information (IDFI), From 2024, Court Decisions will Become Accessible Again: an Overview of the Problem and the Chronology of their Resolution, 2023, available at: <https://shorturl.at/bQZ34>, access date: 20.02.2024.

³⁴ Ibid.

³⁵ A way ahead for Georgia, 2021, p. 5, available: <https://shorturl.at/S1689>, access date: 20.02.2024.

³⁶ Institute for Development of Freedom of Information (IDFI), Working Meeting on the Accessibility of Common Court Acts 2021, available at: <https://shorturl.at/cktG5>, access date: 22.02.2024.

³⁷ Ibid.

³⁸ IDFI’s Assessment on the Initiated Amendments to the Organic Law of Georgia on Common Courts, 2021, available at: <https://shorturl.at/dgknx>, access date: 23.02.2024.

³⁹ Ibid.

⁴⁰ Ibid.

the protection of personal data, as well as a real risk of judicial overload.⁴¹ IDFI submitted its written opinion along with two alternative bills to the Parliament.⁴²

On March 3, 2022, Georgia submitted its application for membership of the European Union and the European commission published its conclusion regarding Georgia's application on June 17, 2022.⁴³ Among other issues, the document noted that "open access to reasoned court decisions in compliance with data protection rules has yet to be fully ensured."⁴⁴ Based on this document, access to judicial acts became part of the implementation of 12 priorities set by the EU to Georgia.⁴⁵

1.4. LEGISLATIVE AMENDMENTS ELABORATED BY THE PARLIAMENT OF GEORGIA IN 2023 AND THE FOLLOWING ASSESSMENTS OF THE EUROPEAN COMMISSION AND THE VENICE COMMISSION

The Legal Affairs Committee of the Parliament of Georgia, after the completion of the work in the working group on the judicial system, initiated a draft law on November 9, 2022, which, among other things, provided for the regulation of access to judicial acts.⁴⁶ This draft law was identical to the bill registered on July 1, 2021, and replicated the complicated and time-consuming model criticized by IDFI.⁴⁷

On November 22, 2022, the draft law was sent to the Venice Commission.⁴⁸ The Venice Commission's opinion of March, 2023, indicated that the draft law provided for "a detailed and rather complex regulation" that made access to court decisions "a complicated and prolonged process."⁴⁹ The Venice Commission considered that the law could provide more

⁴¹ Ibid.

⁴² Ibid.

⁴³ European Commission Opinion on Georgia's application for membership of the European Union, 2022, available at: <https://shorturl.at/BHJ49>, access date: 23.02.2024.

⁴⁴ Ibid., p. 7.

⁴⁵ Institute for Development of Freedom of Information (IDFI), From 2024, Court Decisions will Become Accessible Again: an Overview of the Problem and the Chronology of their Resolution, 2023, available at: <https://shorturl.at/bQZ34>, access date: 20.02.2024.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ European Commission for Democracy Through Law (Venice Commission), Follow-up Opinion to Four Previous Opinions Concerning the Organic Law on Common Courts, March 14, 2023, para. 1, available at: <https://shorturl.at/fkuyE>, access date: 20.02.2024.

⁴⁹ Ibid, para.48.

practical solutions to facilitate the use of the right of access to a court decision.⁵⁰ The Commission also indicated “the need to ensure that access be given to past decisions as well as to future ones.”⁵¹

It is appreciated that during the committee hearings of May 11, 2023⁵² and May 15, 2023,⁵³ the Parliament addressed the recommendations of the Venice Commission and IDFI, rejected the proposed amendments and submitted the rather new, significantly simplified model, which was adopted by the Parliament by third hearing on June 13, 2023.⁵⁴ January 1, 2024, has been set as the date for entering into force of the legislative amendments.⁵⁵

With the adopted amendments, the complex model envisaged by the initiated version of the draft law was rejected, according to which the issue of access to judicial acts was completely excluded from the regulatory sphere of freedom of public information, the increased interest of access to the judicial acts was neglected, the right to appeal the refusal to disclose the decision was limited, as well as there was a real risk of overloading the court and prolonging the cases, as the judge had to decide on the accessibility of the acts adopted in each case.⁵⁶

Furthermore, it became easier to receive court decisions in the form of public information, as the judicial acts will be issued as a public information based on the Organic Law of Georgia On the General Courts, the judge will not be involved in the decision-making process of this issue and the personal data protection legislation will no longer be used as an artificial basis for limiting right.⁵⁷ The legislation established the general rule of openness of court acts and prescribed the obligation to proactively publish not only court decisions but also judicial acts in general.⁵⁸

Despite significant positive changes, timely access to court decisions and other acts remained a challenge. In particular, court decisions will become available only after the final

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Video recording of the committee sitting of May 11, 2023, available at: <https://shorturl.at/fqzYl>, access date: 23.02.2024.

⁵³ Video recording of the committee sitting of May 15, 2023, available at: <https://shorturl.at/krt18>, access date: 23.02.2024.

⁵⁴ The Organic Law of Georgia on Amending the Organic Law of Georgia On Common Courts, June 13, 2023, available at: <https://shorturl.at/brR48>, access date: 23.02.2024.

⁵⁵ Ibid.

⁵⁶ Institute for Development of Freedom of Information (IDFI), From 2024, Court Decisions will Become Accessible Again: an Overview of the Problem and the Chronology of their Resolution, 2023, available at: <https://shorturl.at/bQZ34>, access date: 20.02.2024.

⁵⁷ Ibid.

⁵⁸ Ibid.

decision on the case enters into force⁵⁹ – when the possibility to appeal in all three instances is exhausted and a final decision is made on the case.

On June 23, 2023, one of the Committees of the Parliamentary Assembly of the Council of Europe (PACE) requested an opinion of the Venice Commission on the amendments to the Organic Law of Georgia on Common Courts as adopted by the Parliament of Georgia on June 13, 2023.⁶⁰ By letter of 22 September 2023, the Chairman of the Parliament of Georgia asked the Venice Commission to assess additional draft amendments to the same Law.⁶¹ Therefore, the Commission assessed both adopted and newly proposed amendments.

In its opinion of October 9, 2023, the Venice Commission notes that by way of preliminary assessment, “this change follows the Commission’s recommendation since it establishes a simpler method ensuring court decisions’ accessibility.”⁶² Furthermore, the Commission appreciated draft amendments of September, 2023 as, according to them, judicial decisions will be public as from the moment of their adoption.⁶³ It should be also noted that as of February 29, 2024, the so-called September amendments have not been reflected in the legislation. The opinion notes that “it remains to be seen if these improvements will prove to be effective and the right of access to court decisions will be free of practical obstacles.”⁶⁴

The new regulation regarding access to judicial acts was also assessed by the European Commission in its report on Georgia of November 8, 2023. Namely, when analyzing transparency of the judiciary, the Commission noted that in regard to both FOI requests and proactive publication, “the decisions will only be available after final resolution of the case, which can take years.”⁶⁵ The Commission denotes that this process remains to be brought in line with European standards and Venice Commission recommendations.⁶⁶

⁵⁹ The Organic Law of Georgia on Amending the Organic Law of Georgia On Common Courts, June 13, 2023, available at: <https://shorturl.at/brR48>, access date: 23.02.2024.

⁶⁰ European Commission for Democracy Through Law (Venice Commission), Follow-up Opinion to Previous Opinions Concerning the Organic Law on Common Courts, October 9, 2023, available at: <https://shorturl.at/yBST9>, access date: 20.02.2024.

⁶¹ Ibid.

⁶² Ibid., para. 46.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ European Commission, Georgia 2023 Report of November 8, 2023, p.24 available: <https://shorturl.at/oLSX6>, access date: 23.02.2024.

⁶⁶ Ibid.

2. ACCESSIBILITY OF JUDICIAL ACTS THROUGH PUBLIC INFORMATION REQUESTS

As it was mentioned above, the legislative changes of June 13, 2023⁶⁷ established the new regulation on accessibility of judicial acts through public information requests. The normative framework that, for many years, restricted access to judicial acts, adopted during the open session, has been changed and the new law established publicity of judicial acts as a default rule.

Namely, according to the new version of article 13, sub-article 3¹ of the Organic Law of Georgia On Common Courts: “The full text of a judicial act made by a court as a result of an open court session shall be publicly available immediately after the entry into force of the final court decision in the relevant case and shall be issued in the manner prescribed by the General Administrative Code of Georgia.” In other words, under the new framework, any act delivered by the court, from the moment of entry into force of the final decision, will be public information by default and there are no normative barriers in this regard anymore.

One of the objectives of IDFI was to evaluate the current situation in terms of receiving judicial acts as public information, which, among other things, involved studying the efficiency of receiving judicial acts as public information and the results of legislative amendments at the practical level.

For this purpose, IDFI has developed a specific methodology that became the basis for assessing the practical accessibility of judicial acts. Namely, the methodology implied sending public information requests to all common courts in Georgia (in all three instances), firstly, before the entry into force of the legislative amendments, and later – with repeated requests – after the entry into force. The standard templates of public information applications were elaborated in such a way that allowed us to assess the possibility of receiving court decisions in the form of public information from different points of view and by various criteria.

According to the methodology, based on primary answers received from the addressee courts, the project team would have evaluated the baseline that had been at place previous to the legislative reform, including the comprehensiveness of the answers, indicator of providing the full text of decisions, consideration of public interest test, etc.

⁶⁷ The Organic Law of Georgia on Amending the Organic Law of Georgia On Common Courts, June 13, 2023, available at: <https://shorturl.at/brR48>, access date: 23.02.2024.

Based on the received responses, the methodology prescribed that the repeated responses would be sent to the same addressee courts, including, where necessary, modifying the standard applications of public information requests in such a way that would make it possible to assess the practical effect of legislative amendments in dynamics in light of accessibility of public information.

After the elaboration of this methodology, IDFI started its direct implementation from October, 2023. This chapter reviews the process of implementation and the main findings that were revealed in the context of the accessibility of public information. Moreover, the purpose of this chapter is to assess the degree of real access to judicial acts on a practical level both before and after the entry into force of the legislative amendments of June 13, 2023, to show how enforceable the new normative regulation is, and to highlight the existing systemic challenges.

2.1. SENDING THE PRIMARY REQUESTS AND THEIR SUBSTANTIVE REVIEW

At the first stage, on October 5, 2023, IDFI sent standard public information requests to all 29 common courts of Georgia (26 District/City Courts, 2 Courts of Appeals and 1 Supreme Court) to receive court acts/decisions based on general criteria.

These FOI requests were formulated in a manner that made it possible to evaluate the accessibility of judicial acts based on various substantive criteria. The requests sent to District/City Courts included 39 clauses, to the Courts of Appeal – 25 clauses, and to the Supreme Court – 14 clauses.⁶⁸

There was a specific reason, logic and indicator behind each clause. The substantive categorization of the requests and the would-be results to be evaluated by them are presented in the table:

⁶⁸ The difference between the number of clauses in FOI requests is caused by the different number of potential judicial acts that can be delivered by either district/city courts, courts of appeals and the Supreme Court.

CATEGORY OF REQUESTS	EXAMPLES OF FORMULATED REQUESTS	WHAT IT EVALUATES
Any decision adopted by a court	The most recent decision delivered on a civil law dispute	<ul style="list-style-type: none"> - Accessibility of any decision delivered by a court, without substantive specifications; - Indicator of providing a full text of a decision (without depersonalization).
	The most recent decision delivered on an administrative law dispute	
	The most recent decision judgment on a criminal case	
Decisions categorized by disputed parties	A decision where either claimant or respondent was the Public Defender's office	<ul style="list-style-type: none"> - Accessibility of judicial acts by parties/categories of parties (especially, in cases where a party is an administrative body) - Indicator of providing a full text of a decision
	A decision on an administrative dispute where both claimant and respondent were administrative bodies	
Decisions categorized by case's content-wise substantive criteria /legal issue	A decision on the issuance of public information	<ul style="list-style-type: none"> - Accessibility of a decision when an applicant in one way or another (be it specific article of the Criminal Code of Georgia, identifying relevant body having special mandate of investigation or otherwise identifying any legal issue) specifies types of decisions on a content-based criterion. - Indicator of providing a full text of a decision
	A decision on the cases of Disorderly Conduct ("Petty Hooliganism"), prescribed by the article 166 of the Administrative Offences Code of Georgia	
	A judgment on criminal cases under the jurisdiction of the Special Investigation Service	
	A decision on the annulment of a final judgment or ruling or on a retrial of the case due to newly discovered circumstances	

CATEGORY OF REQUESTS	EXAMPLES OF FORMULATED REQUESTS	WHAT IT EVALUATES
Decisions, access to which could be problematic	A judgment on the cases of minors who are in conflict with the law	<ul style="list-style-type: none"> - Accessibility of the full text of a decision, disclosure of which could be in conflict with other legitimate interest (i.e. personal data of minors; the legitimate aim for the closure of a court hearing); - Indicator of providing a non-summary decision; - The indicator of applying the public interest test by a court.
	A decision on the closure of a hearing	
Decision which are adopted through specific/extraordinary proceedings	A decision adopted through Simplified legal proceedings on an administrative dispute	<ul style="list-style-type: none"> - Accessibility of decisions where an applicant identifies procedural specifications/peculiarities of a case - Indicator of providing a full text of a decision
	A judgment adopted in the absence of the accused	
	A judgment adopted without an oral hearing (by plea bargain)	
Decisions in which external legal mechanisms are employed during the proceedings	The most recent decision/judgment where an <i>amicus curiae</i> of the Public Defender was submitted	<ul style="list-style-type: none"> - Accessibility of decisions where external legal mechanisms are exercised, including, <i>amicus curiae</i> of the Public Defender or a constitutional submission of a common court. This criterion was introduced because of the high public importance of these mechanisms.
	The most recent decision/judgment where a court applied to the Constitutional Court of Georgia with a constitutional submission	

CATEGORY OF REQUESTS	EXAMPLES OF FORMULATED REQUESTS	WHAT IT EVALUATES
<p>Judicial acts which are not summary acts - decisions or judgments</p>	<p>A ruling on applying measure of restraint</p>	<ul style="list-style-type: none"> - Accessibility of judicial acts which do not decide the case on its merits; - Application of the article 13, sub-article 3' of the Organic Law of Georgia "On Common Courts" to all acts adopted by common courts, including interim rulings; - Indicator of accessibility a full text of non-summary judicial acts
	<p>A ruling on conducting covert investigative actions</p>	
	<p>A ruling on imposing restrictive measures (on the seizure of the property, on removing the accused from his/her position, etc.)</p>	
	<p>A ruling on provisional measures</p>	
	<p>An Interlocutory ruling on the issuance of administrative acts or on performance of actions</p>	
<p>Decisions which do not concern the resolution of a dispute on the merits of the case</p>	<p>A decision on the deferral of a sentence</p>	<ul style="list-style-type: none"> - Accessibility of judicial acts, which, by their essence, do not resolve a dispute on the merits, although they are final and not of an interim nature.
	<p>A ruling on release on parole</p>	
	<p>A ruling on the Interpretation of a judgment</p>	

CATEGORY OF REQUESTS	EXAMPLES OF FORMULATED REQUESTS	WHAT IT EVALUATES
Summary acts which are not “decisions”	A ruling on terminating an investigation and/or a criminal prosecution	<ul style="list-style-type: none"> - Accessibility of judicial acts which are not of interim nature, finalize proceedings but are not “decisions” - This criterion evaluates the accessibility of other judicial acts besides “decisions” for the purposes of the article 13, sub-article 3’ of the Organic law of Georgia “On Common Courts”.
	A ruling on termination of Proceedings or a ruling on leaving the claim untried	




These FOI requests, which can be called standard requests, were sent to all common courts, with the same content. The standard requests would evaluate the accessibility of judicial acts based on general substantive criteria.

Besides this, **7 FOI requests** were sent to the Supreme Court of Georgia, Tbilisi Court of Appeals, Kutaisi Court of Appeals, Tbilisi City Court, Batumi City Court, Kutaisi City Court and Zugdidi District Court in order to receive specific decisions of high public interest. In this regard, the requests were formulated in a manner that they referred not to the decisions under certain general criteria, but to specific decisions, which, based on their public interest could become a subject of potential interest of a citizen, requesting public information. Such FOI requests can be called specific requests.

One example of specific requests to each court is presented in the table:

NAME OF THE COURT	DECISION
Tbilisi City Court	All judgments of conviction on the cases of violence against journalists during the "Tbilisi Pride" on July 5, 2021.
Tbilisi Court of Appeals	All decisions on upholding judgments of conviction against former Minister of Internal Affairs of Georgia, Ivane Mera-bishvili.
The Supreme Court of Georgia	The decision of the Supreme Court of Georgia on the case of former prosecutor general, Nika Gvaramia, on abuse of powers.
Kutaisi Court of Appeals	The decision of the Court of Appeals on the annulment of the decision of Batumi City Hall on the refusal to grant the construction permit of a new mosque.
Batumi City Court	All judgments of conviction against former mayor of Batumi, Giorgi Ermakovi and six other civil servants regarding the so-called "Cheap House" project.
Kutaisi City Court	All decisions of Kutaisi City Court against the activists of the movement "Rioni Valley Guards" on the cases of administrative offenses.
Zugdidi District Court	The judgment of conviction against Badri Esebua on the assault on the "Bank of Georgia", Zugdidi branch.

Through sending standard and specific FOI requests, the project team would have been able to assess the accessibility of judicial acts on a practical level, both based on general substantive criteria, as well as in terms of decisions delivered on specific high-interest cases. Based on the received responses, if necessary, changes would have been reflected in the secondary FOI requests, sent after the entry into force of the legislative amendments. The initial and repeated requests would allow to assess:

-  The effect of changes on the accessibility of the full texts of judicial acts, including the dynamics in terms of personal data processing;
-  Accessibility of all types of judicial acts, including interim and non-summary judgments;
-  Practical application/interpretation of the “court decisions” and “judicial acts” of, respectively, old and new versions of the article 13, sub-article 3¹ of the Organic Law On Common Courts.

It should be noted that the FOI requests referred only to those decisions that were adopted through open court sessions. As the standard requests included a wide range of judicial acts potentially adopted by the common courts, each FOI application contained a specific note that if a court had not delivered any of the acts identified by any clause(s), to provide information about the non-existence of such acts so it would not become an obstacle in regard to the information requested by other clauses.

Furthermore, considering the large volume of information and the time and human resources required for its collection/processing, each request contained a reservation that IDFI was ready to receive information at an agreed periodicity, including periodicity beyond the maximum term for providing public information established by the General Administrative Code of Georgia.

In other words, at the stage of formulating FOI applications, the project team addressed the practical or legal risks that could potentially become a basis for refusing requests.

2.2 RESULTS OF PRIMARY REQUESTS - THE SITUATION PRIOR TO THE ENTRY INTO FORCE OF THE LEGISLATIVE AMENDMENTS

All but one of the applications of October 5, 2023 remained unanswered. Only the Signaghi District Court issued public information. Namely, by the letter of November 2, 2023⁶⁹ of the person responsible for ensuring the issuance of public information of the court, IDFI was provided by judicial acts, including not only summary acts (decisions/judgments), but other types of interim/non-summary acts as well (rulings on applying a measure of restraint, interlocutory ruling on the issuance of administrative acts, etc.). The letter also provided information that specific types of acts identified in IDFI’s request had never been delivered by the

⁶⁹ The letter of Signaghi district court N521 of November 2, 2023 (annex in 329 pages).

court (for example, judgments on cases under the jurisdiction of the Special Investigation Service, ruling on postponement of sentences, etc.).

However, it has to be noted that all acts provided by the court, regardless of the nature of the act, the parties involved or the legal relationship, were provided in a depersonalized manner (personal data was covered). Among them, identification data of both natural persons and legal entities and, in some cases, (for example, in cases concerning the accessibility of public information), even of public institutions were covered. The court named article 44 of the General Administrative Code of Georgia as a legal basis for depersonalization as they “did not have written permission of the parties.”

As for the interim answers (about requesting a 10-day period defined by the General Administrative Code), only Rustavi City Court sent a letter, noting that the requested information would be provided to the applicant within the 10-day period established by law. However, after this interim response, the court did not send the requested documents.

Apart from Signaghi District Court, no other court has provided information on either standard or specific requests. Moreover, all FOI requests remained unanswered, the courts did not even notify in a writing manner that the FOI requests were denied. Therefore, the baseline that existed before the legislative changes was problematic and practically could not be subjected to substantive assessment. Only based on the example of the Signaghi district court was it possible to evaluate the quality of the information provided and evaluate the effect of the legislative reform from this point of view.

2.3. SECONDARY REQUESTS AFTER THE LEGISLATIVE CHANGES ENTERED INTO FORCE AND THE FINAL RESULTS

The repeated FOI requests were sent following the entry into force of the legislative amendments. On January 23, 2024, the project team repeated FOI requests with the same content and formulation to all 29 common courts. Only the request to the Signaghi District Court underwent a change – taking into account the information provided on the primary request. Namely, in the new FOI requests, those clauses were no longer included, about which it became known to us that the court has never adopted such types of acts. The clauses that were not addressed by primary response remained in the new request. Besides that, the new FOI request repeated the clauses that were granted by the court’s letter of November 2, 2023, however the specific disclaimer was added – to provide the information without any kind of depersonalization.

The responses to the requests of January 23, 2024 would have provided IDFI with the opportunity to evaluate to what extent the new normative regulation⁷⁰ was subject to enforcement in practice and to what extent the common courts followed the requirements of the new law.

As of February 29, 2024, only Rustavi City Court sent an interim response, informing us that we would be provided with the requested documents within 10 days prescribed by law. However, after the interim response, no information was provided yet. No court sent a response to IDFI's repeated FOI requests. Common courts left all 36 requests⁷¹ unanswered.

As a result, it can be said that despite the positive changes made in the legislation and the resolution of the normative problem of access to judicial acts in the form of public information, in practice these changes are not subject to real enforcement by the common courts. In fact, the change in the normative basis for the accessibility of judicial acts as public information did not lead to a change in the practice of issuance of the decisions by the common courts. 2 months after the entry into force of the new version of Article 13, Paragraph 3¹ of the Organic Law On Common Courts, the actual accessibility of judicial acts in the form of public information remains an important systemic challenge which has yet to be addressed.

⁷⁰ From January 1, 2024 the new version of the article 13, sub-article 3¹ entered into force, which abolished the normative obstacle that, for many years, restricted the access to judicial acts.

⁷¹ Standard requests sent to all 29 courts and, additionally, specific requests sent to 7 courts.

3. NORMATIVE REGULATION AND EXISTING PRACTICE OF THE PROACTIVE PUBLICATION OF JUDICIAL ACTS

As already mentioned, within the framework of the implementation of the priorities defined for Georgia by the European Commission, the Parliament adopted the amendments to the Organic Law of Georgia on Common Courts, according to which, from January 1, 2024, a new model for proactive publication of judicial acts was enacted, which provides for proactive publication of judicial acts after the final decision on the case enters into legal force.⁷²

The purpose of this chapter is to review and evaluate both the normative regulation of the new and previously existing model of proactive publication of decisions and its implementation at the practical level.

3.1. RULES AND PRACTICES FOR PROACTIVE PUBLICATION OF COURT DECISIONS THAT EXISTED BEFORE JANUARY 1, 2024

To make court decisions accessible, the obligation to create a unified register of court decisions and publish decisions in the register was determined by the decision of the High Council of Justice of Georgia on September 12, 2016.⁷³ With the amendments of February 8, 2017, Article 13 of the Organic Law of Georgia on Common Courts was added with 3¹ clauses, which indicated that a court decision made as a result of consideration on the merits at the open session shall be fully published on the website of the court.⁷⁴

The publication of decisions of common courts in a single database and the creation of a search system were also reflected in the 2018–2019 Action Plan of the Open Governance Georgia.⁷⁵ And, in 2019, to improve the transparency of the judicial system and promote access to

⁷² See Organic Law of Georgia on the Amendments to the Organic Law of Georgia on Common Courts, June 13, 2023.

⁷³ Decision NI/250 of September 12, 2016 of the High Council of Justice of Georgia On approval of the Procedure for Issuing and Publishing Court Decisions by Common Courts”, article 4, para. 1.

⁷⁴ Organic Law of Georgia on the Amendments to the Organic Law of Georgia on Common Courts, February 8, 2017, available at: <https://shorturl.at/loIO>, access date: 21.02.2024.

⁷⁵ See Resolution No. 537 of the Government of Georgia of November 12, 2018 on the approval of the 2018–2019 Action Plan of the Open Government Partnership of Georgia.

court decisions, the website ecd.court.ge⁷⁶ was created, and from this period, the proactive publication of decisions on the electronic portal began, with redacting the personal data.

Apart from the decisions made during that period, decisions made in previous years should have also been gradually added to the unified register of decisions on the website of the electronic system of case management of the court (ecd.court.ge),⁷⁷ However, the website's search engine does not include decisions made before January 1, 2018.

As of May 1, 2020, the publication of redacted texts of court decisions on the electronic platform ecd.court.ge completely stopped.⁷⁸ Currently, only the decisions of the common courts rendered from January 1, 2018, to April 30, 2020, are available on the website.⁷⁹

It should be noted that after May 1, 2020, only the Supreme Court of Georgia from the system of common courts ensures proactive access to the depersonalized texts of its decisions on its own electronic platform: supremecourt.ge.⁸⁰ It should also be mentioned here that before the creation of the website ecd.court.ge and the introduction of the practice of publishing the decisions of the courts of all three instances, the decisions of the Supreme Court of Georgia were proactively published on the court's electronic platform for years.

The termination of the practice of proactive publication of decisions on ecd.court.ge coincided with the period when the normative contents of certain provisions of the Law on Personal Data Protection, which restricted the release of the full text of court decisions obtained as a result of an open court session in the form of public information, were declared unconstitutional by the decision of the Constitutional Court of Georgia on June 7, 2019.⁸¹ The Parliament of Georgia had to introduce amendments to the legislation in accordance with the above-mentioned decision of the Constitutional Court and the requirements of the Constitution until May 1, 2020, but this date passed without any results, and the publication of decisions on the website was completely stopped.

⁷⁶ See the website of the High Council of Justice, news section, From today, users have the opportunity to learn about court decisions on the new website, available at: <https://shorturl.at/agAEI>, access date: 21.02.2024.

⁷⁷ Ibid.

⁷⁸ The search engine of the website of the electronic system of case management of the court - ecd.court.ge as of February 29, 2024.

⁷⁹ Ibid.

⁸⁰ It should be clarified here that the purpose of this report was not to assess how well the Supreme Court publishes its decisions. Therefore, for the purposes of this report, reference to the fact of publication of decisions does not imply an assessment of whether or not the Supreme Court fully publishes decisions on its website.

⁸¹ The decision №1/4/693,857 of 7 June 2019 of the Constitutional Court of Georgia on the case of Media Development Foundation and the Institute for Development of Freedom of Information against the Parliament of Georgia, available at: <https://shorturl.at/lmqj0>, access date: 21.02.2024.

3.1.1. Subordinate normative acts regulating the publication of court decisions

Until January 1, 2024, apart from the legislative regulation in terms of publication of decisions, the issue was regulated by the Decision of the High Council of Justice of Georgia and the Order of the Chairman of the Department of Common Courts of Georgia.⁸²

Both of the aforementioned subordinate normative acts were provided by the High Council of Justice itself to IDFI in response to a public information request dated February 15, 2023, by which the organization requested from the Council the legal acts regulating the proactive publication of decisions.⁸³ According to the information available, the Decision No. 1/250 of the Council of September 12, 2016 and the Order of the Chairman of the Department of the Common Courts No. 17 of March 7, 2019, are still valid in the part of the proactive publication of court decisions (release of judicial acts as public information from January 1, 2024, must be done in accordance with the procedure established by the General Administrative Code of Georgia).⁸⁴

As already noted, the creation of a unified register of court decisions for the purpose of ensuring access to court decisions was determined by the decision of the Council.⁸⁵ Final decisions of District (City) courts and Courts of Appeals, as well as the Supreme Court of Georgia, should be included in the register.⁸⁶ The Department of Common Courts of the High Council of Justice was determined as the entity responsible for managing the website of the registry and ensuring its proper functioning.⁸⁷

It is important to note that according to Article 5(4) of the Decision of the Council, the deadline for placing decisions in the register is 1 month from the moment when the reasoned decision of the court was sent to the parties.⁸⁸ The mentioned rule provides for the publication of

⁸² Decision NI/250 of September 12, 2016 of the High Council of Justice of Georgia on approval of the procedure for issuing and publishing court decisions by common courts, and Order No. 17 of March 7, 2019 of the Chairman of the Department of the Common Courts on the creation of a working group for the development of software modules necessary for the creation of an electronic search system for proceedings in common courts.

⁸³ Letter of the High Council of Justice of Georgia to the Institute for Development of Freedom of Information, February 22, 2023.

⁸⁴ FOI-01/24-056 of January 23, 2024 of the Institute for Development of Freedom of Information to the High Council of Justice. With the FOI request, IDFI requested the release of legal acts defining the rules and procedure of proactive publication of judicial acts as public information.

⁸⁵ Decision NI/250 of September 12, 2016 of the High Council of Justice of Georgia on approval of the procedure for issuing and publishing court decisions by common courts, article 4, para. 1.

⁸⁶ *Ibid*, para. 2.

⁸⁷ *Ibid*.

⁸⁸ *Ibid*, article 5, para. 4.

decisions within a reasonable period of time (regardless of their entry into legal force), which was in accordance with Article 13, paragraph 3¹ of the Organic Law of Georgia on Common Courts valid until January 1, 2024.

The decision of the High Council of Justice defines the procedures related to the publication of the court decisions, including the data that should not be included in the text placed in the register. For example, court decisions should be published without data that allows direct or indirect identification of a person.⁸⁹

3.1.2. IDFI's administrative dispute against the High Council of Justice of Georgia

According to subparagraph "t" of Article 9 of the Regulations of the High Council of Justice of Georgia, the Council makes decisions on issues related to the proper functioning and administration of the system of common courts.

The publication of judicial acts on the website falls within the scope of the Council's administrative activities, although it has not fulfilled this obligation since May 1, 2020.

In April 2023, IDFI sent the statement⁹⁰ to the Council and requested the renewal of proactive publication of decisions, however, the request remained without a response from the Council, and the organization did not even receive an answer to the statement. IDFI filed an administrative complaint against the Council due to its inaction,⁹¹ but IDFI did not receive any notice of the administrative complaint being reviewed either. In August 2023, the organization appealed to the Tbilisi City Court with a lawsuit against the High Council of Justice and requested the Council to renew the proactive publication of the judicial acts, as well as to ensure the proactive publication of the unpublished acts from May 1, 2020. The claim has been admitted, but the court hearing has not been scheduled as of February 29, 2024.

⁸⁹ Ibid, article 6, para. 1(d).

⁹⁰ Statement N20230409 of the Institute for Development of Freedom of Information of April 21, 2024 to the High Council of Justice.

⁹¹ Administrative complaint CPT20130409 of Institute for Development of Freedom of Information of 21 June, 2023 to the High Council of Justice.

3.2. THE NEW RULE OF PROACTIVE PUBLICATION AND ITS NON-ENFORCEMENT IN PRACTICE

With the legislative amendments adopted in June 2023, which came into force on January 1, 2024, the issues of proactive publication of judicial acts are regulated differently. In particular, after the final decision on the case enters into legal force, the acts must be published on the website in a depersonalized form.

According to the legislation, depersonalization of the text of a judicial act means the complete depersonalization of the following information contained in it: a) the identity of a person, name, date of birth, personal number, identification number, number of an identity document, name of the place of work and position held; b) address of a person's place of registration, location, place of residence and place of work; c) phone number and email address of the person.⁹² Besides, the High Council of Justice of Georgia has been granted the authority by the Organic Law to determine and add to the above-mentioned list "other types of information" which are related to personal data.⁹³ IDFI applied to the High Council of Justice with a statement twice and requested the handing over of a legal act that would define "other types of information", but the requests remained unanswered.⁹⁴

Positive changes were introduced in the legislation, including the obligation to proactively publish not only court decisions but also judicial acts in general,⁹⁵ which is a step forward in terms of ensuring openness of the system. Unfortunately, with legislative changes, a new challenge has emerged in terms of timely proactive publication of depersonalized judicial acts. In particular, the proactive publication of judicial acts will take place only after the final decision on the case enters into force (it may take several years for a dispute to be finally resolved), which is a significant obstacle in terms of ensuring accessibility. According to the regulation which was into force until 2024, the publication of court decisions on the website should have been done within 1 month after the reasoned decision was sent to the parties.

Despite the fact that 2 months have already passed since the new legislation entered into force, the publication of judicial acts on the website of the electronic system of case management of the court - ecd.court.ge has not been renewed, and the latest judicial act placed in the search engine is still dated April 30, 2020.

⁹² Organic Law of Georgia On Common Courts,, article 13, para. 3¹.

⁹³ *Ibid.*, subsection "d".

⁹⁴ Institute for Development of Freedom of Information, FOI-10/23-006 request of 05 October 2023 to High Council of Justice; Institute for Development of Freedom of Information, FOI01/24-056 request of 23 January, 2024 to High Council of Justice.

⁹⁵ According to paragraph 3¹ of the Article 13 Organic Law of Georgia On Common Courts, for the purposes of this paragraph, a judicial act is any decision of a common court, including a decision that does not resolve the case on the merits.

4. THE CONCLUSIVE LEGAL ASSESSMENT OF THE NORMATIVE AND PRACTICAL CHALLENGES TO ACCESSIBILITY OF JUDICIAL ACTS

Previous to the decision of June 7, 2019, the Constitutional Court of Georgia, the substantive issues regarding the accessibility of judicial acts were subject to legal discussions, however, there were no clear indicators of the assessment of constitutional lawfulness of the substantive resolutions of identified issues. Such indicators were introduced only after the adoption of the mentioned decision – through establishing constitutional standards.

Therefore, in this chapter of the report, we will review the key challenges to the accessibility of judicial acts following the establishment of constitutional standards (on June 7, 2019). The review of key challenges should be started by noting the reasons that caused the postponement of the implementation of this decision. The Court established that the right to access judicial acts is not an absolute right and can be subject to interference to defend other important interests,⁹⁶ including, among others, the cases when “the identified acts contained the information, disclosure of which could probably have an important negative impact on one’s right to private life and the interest of confidentiality could outweigh the public interest of accessing judicial acts.”⁹⁷ Therefore, the Constitutional Court noted that if unconstitutional norms had become void from the moment of the decision was adopted, there would have been no legal ground for the protection of personal data anymore, which could lead to the violation of the right to privacy.⁹⁸

In other words, the Constitutional Court considered that the current legal framework, by the time of delivering the decision, without the unconstitutionally recognized norms, did not provide for proper protection of the right to privacy, including the cases when the right to privacy would outweigh the interest of the openness of judicial acts.

Based on this, the Constitutional Court determined the period of almost one year (from June 7, 2019 to May 1, 2020),⁹⁹ and within this period Parliament could adopt legislative regulation that would allow the common courts, in exceptional cases, in accordance with constitutional standards, to give priority to a person’s privacy. It should be emphasized that the implementation of the decision of the Constitutional Court has not been delayed in order to ensure the

⁹⁶ Judgment of the Constitutional Court N1/4/693,857 of 7 June 2019 on the case of “n(n)le Media development foundation” and “n(n)le institute for Development of Freedom of Information” against the Parliament of Georgia, par II-69.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid. par. II-70.

right of access to the judicial act.

The Parliament of Georgia is a political body, and from this point of view, law-making is a political activity. Decisions made by the Parliament of Georgia or any of its members, within the framework of the exercise of the parliamentary mandate, have relevant political and/or legal consequences, however, it is incompatible with the principles of separation of powers for the Court to oblige the Parliament of Georgia to adopt any law.

The Parliament, for many years, failed to adopt the legislation, alternative to the unconstitutionally recognized norms and, it is natural that this was a political decision, which is not subject of legal considerations, however, the constitutional order considers occasions similar to this and does not subject the realization of fundamental rights to mere political agenda. Namely, the existence/non-existence of fundamental rights, in general, is not dependent on the political processes that take place in the legislative body. According to article 4, sub-article 2 of the Constitution of Georgia, "The State acknowledges and protects universally recognised human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State shall be bound by these rights and freedoms as directly applicable law." On the one hand, this basic provision of the Constitution refers to the legal concept of fundamental natural human rights, on the other hand, it establishes the direct effect of constitutional rights. "The fact that some of the constitutional rights are not always regulated in detail by the respective subordinate normative acts, could not establish the refusal to the exercise of these rights. The doctrine of the human rights to be directly applicable law is not a novation introduced by the Constitution of Georgia. This constitutional norm-principle is derived from the concept of fundamental natural human rights and the idea of the legal state."¹⁰⁰

Receiving a judicial act in the form of public information is recognized by the article 18 of the Constitution of Georgia, and the right to privacy is recognized by the article 15. Therefore, regardless of the fact that the Parliament did not take a political action, public institutions, namely, common courts, in this case, were obliged to fulfill the requirements of the Constitution of Georgia and the current legislation. To be more specific, the Parliament's failure to amend the legislation within the period set by the Constitutional Court did not exempt the common courts from compliance with the relevant requirements of the legislation.

In this case, the common courts should have acted in accordance with the Constitution of Georgia, Organic Law on Common Courts and the Administrative Code of Georgia and issue legal acts in the form of public information. The common courts should also have acted as

¹⁰⁰ G. Davituri, G. Davitashvili, editor T. Tugushi, Practical handbook on the use of the instrument of the constitutional submission by the common court, 2021, p. 72, available at: <https://shorturl.at/clAKQ>, access date: 26.02.2024.

of article 15 of the Constitution of Georgia and ensure the proper protection of the right to privacy.

Based on this consideration, we believe that the non-accessibility of judicial acts in the period from May 1, 2020 to January 1, 2024 was a critical failure of the administration of justice, which essentially damaged the constitutional interests of the transparency of justice. After January 1, 2024, the maintenance of the described practice can be considered as a complete disregard of the Constitution and legal order of Georgia.

The cessation of proactive publication of judicial acts should be assessed separately. First of all, it should be noted that the reasoning in this paragraph does not concern the Supreme Court of Georgia, since the Supreme Court did not cease to publish its decisions on its website. The cessation of publication of the depersonalized decisions adopted by the first and second instance courts was a clear and continuous violation of the Organic Law of Georgia, which has continued until the reporting period (February 29, 2024). To be more specific, the norms that were recognized as unconstitutional and void by the decision of the Constitutional Court of Georgia did not regulate the proactive publication of judicial acts at all.

CONCLUSION

The legal framework for access to judicial acts in the form of public information has been significantly improved by the amendments to the legislation adopted by the Parliament of Georgia on 13 June 2023, which entered into force on 1 January 2024.

Ensuring timely access to judicial acts at the legislative level remains a challenge, as the amended legal framework establishes the entry into legal force of the final judicial acts as a prerequisite for accessibility, both in terms of issuing as public information and proactive publication.

The monitoring of the implementation of the new legal framework in practice revealed that as of February 29, 2024, the common courts and the High Council of Justice are neglecting the constitutional and legislative order. In particular, despite the entry into force of the new legislative changes, the request for public information sent by IDFI to each court across the country was left unanswered by all of them. Furthermore, the proactive publication of judicial acts has not taken place since May 01, 2020. An exception is the Supreme Court of Georgia, which has not stopped publishing decisions on its website.

Based on all of the abovementioned, we believe that legislative changes are still necessary to ensure timely access to judicial acts. In addition, the common courts and the High Council of Justice must stop the systematic violation of the requirements of the Constitution and the Organic Law and ensure the accessibility of judicial acts as public information, as well as the proactive publication on the website of judicial acts rendered after May 1, 2020.

POST REPORTING PERIOD DEVELOPMENTS: 1 - 26 MARCH, 2024

The report states that on 23 January 2024, requests for public information were sent to all courts operating in Georgia and that the common courts left all of IDFI's requests unanswered. On 4 March 2024, IDFI filed administrative complaints against the unanswered requests.

Following the submission of administrative complaints, several courts provided IDFI with judicial acts. As of March 26, 2024, these courts are: Zugdidi, Senaki, Tetrtskaro, Gali-Gulripshi and Ochamchire-Tkvarcheli, Sokhumi and Gagra-Gudauta, and Khelvachauri District Courts, as well as Batumi and Rustavi City Courts. At this stage, IDFI has not assessed the extent to which the substantive requirements of the legislation on the accessibility of judicial acts are being met.

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