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THE PROBLEM OF CASE DELAY IN COMMON COURTS OF GEORGIA

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GIL

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We hope that the present study will create a basic premise for conducting a broad discussion on the problem of case delay in the courts of Georgia, developing the right approaches and overcoming the problems.

CONTENTS

INTRODUCTION

The goal of the research is to identify the scope and reasons of the case delay in common courts of Georgia, as well as the normative mechanisms which can be used against delay. The research has identified the results of the implementation of legislative changes and judicial reforms in practice in recent years.

The present research is composed by summary, methodology and five chapters. The first chapter highlights the importance of trial of the case within reasonable time and negative consequences of delayed justice. The second chapter provides answer to the question on the scope of case delay in Georgia and fluctuation of the duration of the proceedings in the recent years. In order to evaluate the scope of the problem, the data from several European countries are presented for comparison. As far as the excessive workload of judges is considered to be a cause of the case delay in courts, third chapter has been fully allocated to the analysis of the workload of the judges. The workload of the judge has been measured through comparing the number of cases to the number of judges and it reflects number of incoming cases per judge in consideration of the inflow of cases over the years. In order to evaluate the workload of the judge the data from several European countries have been presented. Chapter 4 outlines court administration, it's legislative basis and it's role in effective caseflow management. It describes the operation of the court management and it's role in timely adjudication of the cases. It also describes the mobilization of necessary resources, measuring the effectiveness of the different approaches as well as the application of mechanisms of accountability and development of alternative mechanisms of dispute resolution. Chapter 5 and chapter 6 deal with the caseflow management by the judge analyzing the practice of case management exercised by the judges, the legal mechanisms, which may be used by the to delay the case and reaction from the judges, their motivation and commitment towards timely consideration of the cases.

The research is accompanied by compilation of international standards with reference to relevant sources, through which interested persons will have easier access to international recommendations on these issues.

SUMMARY

In Georgia the case delay in common courts is deemed to be problematic for years. The research has identified that the problem of case delay is experienced by representatives of different groups as well as professional community - lawyers and individual judges. On the other hand, the policymaking bodies, parliament and High Council of Justice recognize the problem of excessive workload of judges as a single cause of a case delay.

As it was revealed, the lack of the number of judges is not the sole or decisive reason of the case delay. In several countries of Europe, where judicial workload is very high, in spite of the tendency of the increased duration of the case proceedings, the courts are coping with the case flow more effectively than Georgian courts. Similar picture was observed by comparing different Georgian courts to each other. As it was found out, several courts with more workload cope with the incoming cases more effectively than less overloaded courts.

The legislative changes adopted in 2012 - 2022 provided the regulations directed towards the effective management of the cases in court. A centralized body in charge of the caseflow management - a department of the High Council of Justice was created, electronic case management system and case distribution system was implemented The financial compensation of the students of High School of Justice and judges was increased (which constitutes the additional factor in order to attract new people to the court and increase the motivation of the judges), the grounds for disciplinary liability of the judge due to the case delay was specified, the procedure for transfer of judges was modified twice, the changes also affected the mechanisms of the alternative dispute resolution. In spite of these changes the general picture of case delay remained the same.

The creation of the unified system of the court management has not resulted in acceleration of the cases. As it was found out there's no unified policy for effective caseflow management and no system designed to take regular measures for the prevention of the case delay. The caseflow management is possible only by application of individual approaches and efforts by judges. On the other hand, the individual approaches of the judges are not uniform and in many cases do not take into account international standards. No training or discussions are conducted for judges on new approaches, international standards and good practices of effective Case management.

In 2017-2022 The High Council of Justice was taking hundreds of individual and normative decisions affecting caseflow management. However, they were not oriented towards result-based management and in some cases were counter-effective. The decisions concerning the human resource policy and mobilization of judges as well as distribution of existing judicial resources were in many cases inconsistent. In some cases the number of Judges was increased in less overloaded courts at the expense of the decrease of the number of judges in more overloaded courts.

The national legislation does not envisage effective remedies against case delay. The legislation does not envisage either compensatory or acceleratory mechanisms as the result of which it is not in compliance with the European Convention of Human Rights. The existing system of the disciplinary liability of judges is not effective to cope with the violation of procedural deadlines. Instead of making judges accountable to the community they are oriented to make judges accountable towards the leadership. The possibility of various interpretations of the law produces the risk of selective approach towards judges.

Judges do not have adequate support. Despite the fact that judges are supported by staff and electronic case management system is operational as well as relevant procedural legislation is in place, these mechanisms are either insufficient or outdated to cope with the existing challenges.

Civil and administrative cases are delayed mostly during the preparatory stage. Telephone interviews or video conferences with the parties are rarely used in order to prepare the case. The written communication with the parties for preparation of the case is not actively used. Preparatory hearings are scheduled almost for every case and they do not end up with one session.

Case delay is also caused by unjustified and long periods of trial postponements, as well as long periods of inactivity. During the management of the case the judge gives priority to the wishes of the parties over the economy of the time and material resources and this is expressed in too lenient approaches. The judges very rarely give assignments to the parties and deadlines for the production of evidence, or apply mechanisms of effective control and sanctions against the parties.

The behavior of the lawyers depends on their personal interest and the interests of the client. In some cases they easily apply the mechanisms of the case delay while in some cases they try to accelerate the case. There is a lack of clear regulations of professional liability in case of intentional delay caused by the lawyers.

The cases in which the judge is bound by strict procedural deadlines (for example the cases, where defendant is under detention) are heard more rapidly. In order to observe procedural deadlines the prosecutor and the judge act jointly in the interest of the fast resolution of the case, in difference with custodial cases or the cases where the evidence is weak (where defendant may be acquitted), where the prosecutors are less interested in acceleration of the case or on the contrary are actively using procedural mechanisms to delay proceedings.

Whether or not the complaint has any prospect of success, the administrative bodies are appealing the unfavorable decisions of the court and this practice places burden on the high instance courts and results in unjustified waste of resources.

Recommendation

The problem of the case delay should be understood as a comprehensive problem, which is caused by multiple factors. Different activities must be planned in order to cope with these factors in a way that the caseflow management is done by the system and exclusively by the judges diligently with the contribution of other actors and in compliance with contemporary standards. thus it is recommended:

- to improve legislation and bring in compliance with contemporary standards of case management;
- to improve procedural legislation, inter alia, modify unrealistic time frames, also introduce mechanisms for the prevention of trial adjournments, improve the effectiveness of case Management, reflect the principle of early and continuous control of the case by the judge and the principle of cooperation between the judge and the parties in planning of the case. For example, the procedural legislation may clearly describe the mechanisms for drawing procedural calendars by the judge in cooperation with the parties and monitoring its implementation;
- to elaborate evidence-based policy to measure the effectiveness of the activities and implemented measures for the acceleration of the cases;
- to revise and improve the processing and proactive publication of the courts statistics;
- to calculate, publish and periodically update data on intermediate and overall duration of the case proceedings;
- to analyze the need of the human resources and provide adequate resources and effective use of the existing resources;
- to organize discussions within professional associations for professional liability for intentional protraction of the case;
- to introduce acceleration and compensatory mechanisms in response to the case delay.

Definition of terms used

Incoming cases (I) - cases filed (added) in a specific period of time[1].

Completed cases (R) - cases completed in a specific period of time[2]

Backlog (UR) - number of pending cases recorded at the end of a specific period of time[3].

Cases under consideration (**PE**) - the sum of the number of cases received during a specific period of time and the backlog of the previous period (PE=UR+I)[4]

Clearance rate (**CR**) - expresses how the court deals with the flow of incoming cases in a specific period of time. Calculated as the ratio between the number of cases completed and the number

[1] CEPEJ European Commission for the Efficiency of Justice (Backlog Reduction Tool, 2023), p.. 7 https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 29.08.2023]

[2] Ibid, p. 9

[3] Ibid, p. 8

[4] Ibid, p. 7, also designated as caseload

of cases received in a specific period of time expressed as a percentage (the number of cases completed divided by the number of cases received multiplied by 100) (CR=(R ÷ I) × 100)[5]

CR≥1, the court deals succesfully with the cases received during the year.

Average workload of a judge - the number of cases pending in the court during the reporting period divided by the number of judges.

Disposition time (DT) - expresses the estimated number of days required to complete the backlog of cases at the end of the year. This indicator is also used to calculate the estimated number of days required to process each of these cases. This indicator is used by the European Commission for the Efficiency of Justice to estimate the average duration of cases. It is calculated - the ratio between the backlog at the end of the year to the number of cases completed during the reporting period multiplied by 365 (unit of measurement - day)[6]

Research methodology

The present study was conducted using quantitative and qualitative methods of research, the combined use of which helps us to get a more complete picture than when using quantitative or qualitative research methods alone.

- Qualitative method - in-depth interviews and focus groups - allows us to understand informants' views, experiences, interpretations, often unconscious internal mental dispositions (predispositions, values, moods, expectations, attitudes, etc.); At the same time, the use of this method provides an opportunity to phenomenologically explore the feelings of the representatives of the target group and understand the situation through the eyes of an eyewitness.
- The material obtained by the qualitative method was analyzed using the content analysis method. In the analysis, both techniques of content analysis were used: qualitative content analysis (for interviews and focus groups) and quantitative content analysis (for document analysis).
- Quantitative method - survey using a self-administered questionnaire

[5] Ibid, p. 5

[6] Ibid., p. 6. (This indicator estimates how many days should be required to resolve the pending cases based on the court's current capacity to resolve cases. It is used as a forecast of the length of judicial proceedings). For example, if the court completed 500 cases during the year and 1,000 remained pending, the estimated duration of cases (DT) will be 1000:500*365=730 days (i.e. two years), thus, if the court continued working at this pace, then each case will take an average of 2 years.

Research period:

The study covers data from January 2017 to December 2022. The 6-year period of the study was chosen based on the idea that, on the one hand, it included the period of completion of the four waves of reform, and on the other hand, the regulations caused by the Covid pandemic did not distort the research picture[7].

The research was conducted in three stages. The first stage **-** desk research - materials related to the issue were processed - information was sought through public sources - reports, media products, public information was requested from the courts, the High Council of Justice, about 200 decisions on delayed cases published on the website of the Supreme Court, 50 decisions made within the framework of disciplinary proceedings, study of up to 50 case materials provided by lawyers, research of statistics and other databases. The decisions published on the website of the Supreme Court are selected from the cases appealed to the Supreme Court with a cassation complaint, concluded with a substantive review and allow the generalization of the results of the study in the mentioned segment.

Protracted cases that ended in the cassation instance from September 1, 2021 to January 1, 2023 were selected for the study.

Those cases which have been completed in individual courts in violation of the time limit established by the procedural law, or which have been considered altogether in all three instances at least within the following time limits, are considered as protracted.

- The term of consideration of criminal cases - 3 years.
- The term of consideration of civil law cases - 2 years.
- Term of consideration of administrative law cases - 2 years.

Decisions were found in the electronic search engine of Supreme Court among randomly selected from September 1, 2021 till January 1 2023[8].

A total of 187 decisions (55 criminal, 58 civil, 74 administrative) were selected using the mentioned method.

Also, protracted case materials (in electronic and physical form) were requested from lawyers for research purposes.

9 pilot courts were selected to illustrate the situation and study the workload of judges and courts, clearance rates and expected length of cases.

- Zugdidi District Court
- Kutaisi City Court

[7] Thus the research covered the period prior to, during and after the pandemic.

[8] In the electronic searching database of Supreme Court Decisions http://prg.supremecourt.ge/Default.aspx the case number was inserted (e.g. for civil cases - „2017“ , criminal cases - „.17“ and administrative cases- „K-17“ together with appropriate time period (from September 1, 2021, till January 1, 202).

- Gori City Court
- Mtskheta District Court
- Rustavi City Court
- Gurjaani District Court
- Tbilisi appellate court
- appellate court of Kutaisi
- Supreme Court of Georgia

The courts to be studied for the purposes of the research were selected according to the following criteria:

- Instance (first instance, appellate, Supreme Court)
- Geographical distribution (West Georgia, East Georgia)
- Workload of judges (high, medium and low)

In the second stage - "Excel" tables were created, in which the decisions obtained by the project were entered, where the characteristics of the case were described in a standard way (number of parties, dates of filing and completion of the case, complexity of the case[9], etc.). Cases requested from lawyers were also processed in separate schemes.

In the third stage - In order to study the factors causing delays in cases, a guide for qualitative research (in-depth interview and focus group) was developed in advance.

5 focus group meetings were conducted during the research process. 2 focus group meetings were conducted at the beginning of the study. Three more focus group meetings were conducted after studying the retrieved materials and updating the questionnaire based on the results of the focus groups. At the request of people involved in the research process, focus groups were conducted online.

Participants of focus groups are lawyers, mediators and arbitrators, representatives of administrative bodies. Participants in focus groups were invited both individually and through public invitation.

Face-to-face interviews were conducted with judges, lawyers, arbitrators, and mediators.

Based on the analysis of the results obtained from the qualitative research, a questionnaire was developed for the quantitative research (survey). The questionnaire was sent to 3,000 practicing lawyers, 27 prosecutors and 187 judges. The online questionnaire was filled by 198 lawyers, 27 prosecutors and 4 judges.

In the last phase of the research, a written interview of 10 lawyers (Tbilisi City Hall Legal Assistance Service - "My Lawyer") was additionally conducted on administrative cases. Advocates were sent pre-prepared written open-ended questions regarding specific issues identified in the later phase of the project.

[9] For the assessment of the complexity of the case several criteria was used including the number of disputed factual and legal issues, motions of the parties, number of witnesses, number of forensic examinations.

Target group/type of respondent	Research method	Number of respondents
lawyers working on civil and administrative cases	focus group	8
lawyers working on criminal cases	focus group	2
lawyers of Legal Aid Service	focus group	10
lawyers of administrative bodies	focus group	6
lawyers	Online survey	198
prosecutors	Online survey	27
judge	Online survey	4
judge	Face-to-face interview	12
lawyer	Face-to-face interview	8
member of the Association of Arbitrators	Face-to-face interview	2
mediator	Face-to-face interview	1
lawyers (my lawyer service)	Written interview	10

As a result of quantitative research through self-administered questionnaires, the most frequently named and/or systemic factors of case delay were identified, described and analyzed with reference to sources.

Based on the analysis, the factors causing the delay were grouped as follows:

- reasons related to overcrowding of courts;
- reasons related to the management of the justice system;
- conduct of judges;
- behavior of other participants in proceedings.

Analyzing each factor, the relationship of the factor with the legislation was assessedD as well as to what extent the management of the caseflow is conducted in accordance with international standards and what impact the changes related to court administration had on timely consideration of cases.

Experts involved in the research, who participated in the analysis of the legislation, presented relevant conclusions as a result of the study of case materials.

An expert sociologist was involved in the study, who provided consulting assistance to the research team, including the development of research methodology, the selection and proper use of methods, and the analysis of results.

Limitation of the study:

Can be considered as factors limiting the study: the lack of desire for feedback from the judiciary and refusal to provide public information within the scope of the research.

Attempts have been made to overcome this limitation by further searching publicly available sources, as well as statistical data processing and recalculation. Considering this factor and due to possible inaccuracies in the statistical data, the quantitative data indicated in the study may contain minor inaccuracies that do not affect the overall picture and findings of the study.

1. CASE DELAY, ITS PREJUDICIAL EFFECTS AND REASONABLE TIME STANDARDS

The consideration of a case by a judge/court within a reasonable time has two dimensions: administration of justice and administration of courts. Accordingly, in the sense of the administration of justice, consideration of the case within a reasonable period of time is a human right, and in the sense of the administration of courts, it is the effective implementation of justice, which in turn determines the public's trust in the judicial system.

The right of the detainee and the accused to be immediately brought before a judge and to have his case heard by the court within a reasonable time is recognized by Article 9 of the 1966 UN International Covenant on Civil and Political Rights.[10] Georgia is a contracting party, along with more than 170 other states. However, this right originates from the "Great Charter of Liberty" of the 13th century, which indicated that no one can be denied or delayed justice.[11]

Case delay is both damaging to the individual and has negative effects on society at large. The damage caused by unresolved civil disputes to the economic and social development of States is immeasurable, notes one of the authors and points to a special section of the World Bank that measures the damage caused by the ineffectiveness of civil justice systems to individuals and the economic development.[12] Cases concern contractual, property, family and other non-criminal category disputes. Two main areas of harm caused by delays indicated by authors are: access to courts and low public confidence in civil justice.[13]

The literature suggests that access to civil justice is no longer only a distant concern of litigants and court administrators. It is impossible for society to ignore the problem because it affects everyone.[14] In the same source, for example, the cases of protracted civil proceedings are cited, when the victim of a traffic accident is not able to receive timely treatment or undergo

[10] International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI), 1966 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

[11] English Translation of Magna Carta, para. 40 https://www.bl.uk/magna-carta/articles/magna-carta-english-translation

[12] R. Lee Akazaki, Unconscionable Delay of Civil Justice: Is It Also Unconstitutional, 32 ADVOC. Q. 277 (2007). P.279-280

[13] Reforming Civil Justice Systems: Trends in Industrial Countries, The World Bank, October 2000 https://documents1.worldbank.org/curated/en/668441468164970090/pdf/21602-BRI-REPLACEMENT-premnote46-PUBLIC.pdf

[14] R. Lee Akazaki, Unconscionable Delay of Civil Justice: Is It Also Unconstitutional, 32 ADVOC. Q. 277 (2007). P.279-280

rehabilitation, as he/she is waiting for the court's decision on the compensation case; or when a shareholder of an enterprise whose conversion, merger, or other significant transaction is delayed by pending litigation suffers financial loss or other personal injury. Also, the civil justice system must take into account that crime control is as important to a country's GDP as, for example, title or mortgage documents to land registration.[15]

Many countries are trying to make doing business and trade easier. This is directly influenced by the delay in the consideration of cases in the court and the excessive workload of judges. Delayed resolution of disputes in civil relations hinders investment in the economy, causes suspension of economic projects, decrease of budget revenues and increase of costs related to legal disputes.[16]Speedy enforcement of contracts, easy enforcement of financial claims, and the award of fair compensation for damages are critically important for encouraging investment and economic activity, which necessarily involve financial and enforcement risks. Thus, a stable, effective and credible dispute resolution mechanism is absolutely necessary for the economic development of any country.[17]

A protracted dispute partially paralyzes the business activities of the disputing parties. In the face of an ongoing important civil dispute, they do not know how to proceed, whether to expand their business or, on the contrary, to reduce costs, reserve capital or invest. However, the prolongation of disputes also leads to a weakening of respect for the courts and, in a broader sense, for the law, which in turn also implies a weakening of respect for the practitioners of the administration of justice. Often, by delaying the consideration of the case, the party who violates the law sees the benefit, since the delay in the consideration of the case is most often favorable for the delinquent or criminal defendant.[18]

Special mention should be made of the delay in the categories of disputes that most often occur and concern compensation for damages caused to individuals (eg, car accidents, personal injury, etc.), delaying such litigation poses a serious threat to the confidence of citizens in the administration of the courts and, ultimately, lawyers.[19]

Consumers of justice need fast and affordable justice. In the absence of this, instead of resorting to the law, they take it upon themselves to enforce the law. This is what the court system should avoid, so that people do not resort to non-legal methods to resolve their disputes and obtain damages.[20]

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[15] Ibid.

[16] Arifa Zahra, Delay of Corporate Justice: Need of an Hour to Review Indian Judicial System, 2 INDIAN J. INTEGRATED Rsch. L. 1 (2022).

[17] ibid.

[18] Delay in the Administration of Justice , 7 NOTRE DAME LAW. 284 (1932).

[19] Benjamin Landis, Jury Trials and the Delay of Justice, 56 A.B.A. J. 950 (1970).

[20] Arifa Zahra, Delay of Corporate Justice: Need of an Hour to Review Indian Judicial System, 2 INDIAN J. INTEGRATED Rsch. L. 1 (2022).

The negative effects of protracted criminal justice are no less alarming. It is mentioned in many sources that the delay in the administration of the case in the adversarial criminal justice system destroys justice: witnesses forget the facts, they are no longer available to the parties, costs related to the proceedings increase, the influence of timely justice on the efforts to deter crime and re-socialize the offender is lost. However, it is also noted that programs to avoid delays should not undermine the principle of fair process and should take into account the risks that may accompany the speeding up of cases for the achievement of justice. For example, justice will not be achieved if we force an unprepared lawyer to participate in the trial of the case. For this, specific solutions are also offered in the literature.[21] For example, the so-called administration two-channel system, which is the subject of a separate study and is not related to the purpose of the present study.[22]

The reasonableness of the trial period is determined by law and/or assessed by the judge on a case-by-case basis. Countries have developed different approaches to assessing the reasonableness of the trial period. However, before reviewing these approaches, it is important to note that statutory limitation does not serve to protect a fundamental right, but rather offers a general legislative balance between the goal of administration of justice and administration of courts.[23] Therefore, the timeframe predetermined by the law does not in itself mean its reasonableness.[24] Thus, from the point of view of protection of the right, it is important to assess the reasonableness of the time frame for consideration of the case in each specific case, and not in general.[25]

The US Supreme Court, in a 1972 decision, developed a four-step test to determine delay:[26] A. Length of delay, b. Cause of delay, c. Complaint of the accused, and d. Prejudicial effect of delay on the accused. Following this US Supreme Court decision, the federal Speedy Justice Act went

[21] Ernest C. Freisen , Maurice Geiger, Joseph Jordan & Alfred Sulmonetti, Justice in Felony Courts: A Prescription to Control Delay - A Report on a Study of Delay in Metropolitan Courts During 1978-1979 , 2 WHITTIER L. REV. 7 (1979).

[22] This two track system made it possible to force choices on the lawyers to estimate the time they have available as they accept new cases while giving older cases firm dates for conferences and for trial through direct negotiation with lawyers, minimizing the conflicts which potentially occur as a result of running two tracks.

[23] On this point, see: Roger Townsend, Pre-Accusation Delay, 24 S. TEX. L.J. 69 (1983), p.70.

[24] Determining by law the timeframes for consideration of the case and execution of procedural actions has another purpose, which derives from the following legal principle: Interest Reipublicae Ut Sit Finis Litium ("in the interest of the society as a whole, the litigation must come to an end"), the discussion of which is beyond the scope of this research.

[25] On the example of Georgia, the flaw of the approach of the law is that in some cases the deadlines for consideration of the case are inflexible and do not take into account the individual characteristics of the case. In some cases, the terms stipulated by the law are unrealistically short and their observance is practically impossible. For example, according to Article 59 of the Code of Civil Procedure, cases regarding the payment of alimony, compensation for damages caused by mutilation or other health damage or the death of the breadwinner, claims arising from labor relations, "Relations arising from the use of a residential premises" and the claim of immovable property from illegal possession should be adjudicated no later than 1 month. Taking into account the stages of the civil process and their minimum duration, it is impossible to observe the one-month deadline stipulated by the law for the consideration of the mentioned cases.

[26] Barker v. Wingo, 407 U.S. 514 (1972) https://supreme.justia.com/cases/federal/us/407/514/ [last seen on 18.10.2023]

into effect in 1974,[27] which to a certain extent changed the established approaches of the Supreme Court regarding delayed justice, on the one hand, it established the statutory time of delay, and on the other hand, it introduced an open list of justified cases when the delay in the consideration of the case excludes the termination of criminal proceedings against the accused.

Like the US Supreme Court, the Canadian Supreme Court has developed a four-step test to assess the violation of the right to a reasonable trial. It is interesting that the third component of the test - the reasons for the delay - in turn consists of the following components: the period naturally required for consideration of the case; actions of the accused; actions of the prosecution; limit of institutional resources (resources are not unlimited); other reasons. Canadian jurisprudence has developed a critical argument that when assessing the harm to the accused by delay, one should take into account not only the harm that is inherent in the hearing of the case within a reasonable time (stigmatization, violation of the right to privacy, stress and anxiety, etc.), but also other damages in the case of a specific accused (damage caused by pre-trial detention, loss of a specific witness, etc.).[28] Later, the Supreme Court of Canada changed this test due to its complexity and other shortcomings and established the principle of "presumptive ceiling", which is as follows: the court has determined in advance the time for the trial of the case from the filing of the charge to the delivery of the sentence (18 months for the trial courts and 30 months in the High Court) and if the total duration of the trial minus the duration of the delay caused by the defense exceeds the mentioned ceiling, it is assumed that such delay is unreasonable.[29]

What kind of delay can be considered as violation of the right to trial within a reasonable time, i.e. problematic delay, there is no universal approach to this question. Given the provision that the ultimate goal of courts is to achieve justice and not speed, the process of a case for a year or two, in isolation, does not indicate a delay in justice.[30] This refers to cases of delay that occur at the request of the parties (until compensation for damages, settlement, etc.), which is a necessary or valuable reason for the delay. However, the problem is when the case is ready for trial but it is hindered by improper reasons such as a lack of certain skills (improper case management by an individual judge, when one judge has too many pending cases compared to another judge; a systemic management problem such as uneven distribution of cases among courts; and others) or indifference. Artificial protraction of the case caused by lawyers (offering unreasonable terms of settlement; request to postpone the case due to overload of the lawyer;

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[27] US Speedy Trial Act of 1974 https://www.ojp.gov/ncjrs/virtual-library/abstracts/speedy-trial-act-1974-defining-sixth-amendment-right#:~:text=SPEEDY%20TRIAL%20ACT%20OF%201974%20%2D%20DEFINING%20THE%20SIXTH%20AMENDMENT%20RIGHT,-NCJ%20Number&text=THE%20SPEEDY%20TRIAL%20ACT%20OF,OF%20EXCLUDABLE%20PERIODS%20OF%20DELAY

[28] For a detailed overview of the reasoning developed in the precedential decisions of the Supreme Court of Canada on this issue, see: Trial Within a Reasonable Time: a working paper prepared for the Law Reform Commission of Canada, 1994, from page 115 https://publications.gc.ca/collections/collection_2022/jus/j32-1/J32-1-67-1994-eng.pdf [last seen on 18.10.2023]

[29] Colton Fehr, Remedying Unreasonable Delay, 60 ALTA. L. REV. 739 (2023).

[30] George S. Reynolds, Court Delay Delineated, 12 Washburn L.J. 12 (1972).

unpreparedness of the lawyer for the case; presentation of unnecessary arguments or facts, etc.) are also considered as problematic causes of delay.[31]

Unlike the judicial practice developed in countries mentioned above, **according to the regulations in force in Georgia, the reasonableness of the consideration of cases is not evaluated by the courts. In Georgia, the case is considered to be delayed if, as a result of the consideration of the case, the deadline set by the law was violated. The legislation of Georgia, both criminal, civil and administrative procedural codes, establishes general deadlines for consideration of cases in the courts of all three instances.** In some cases, the legislation provides for interim terms of consideration of the case established by law. Article 75^1 of the Law on Common Courts envisages this approach[1] (par. 8, sub-paragraph v.a.) according to which the violation of the time limit established by the procedural legislation of Georgia by the judge for unjustified reason will be considered as a disciplinary offense.[32] On the other hand, if the judgment is rendered within the period prescribed by law, it cannot be considered delayed, even if it can be deemed delayed according to other approaches. For example, if the court rendered a verdict in a simple case within a period of 1 year and 11 months, it cannot be considered prolonged (paragraph 6 of article 185 of the Code of Criminal Procedure provides for a 24-month deadline for rendering a verdict).

The European Court of Human Rights has a voluminous case-law for assessing the reasonableness of the duration of proceedings. The European Court of Human Rights assesses the length of proceedings as a whole, even when specific procedural deadlines are set by national law. The European Court of Human Rights evaluates the reasonableness of the case review period with the following criteria: a. Complexity of the case b. The interest of the applicant (what is at stake for the applicant). c. applicant's conduct d. Conduct of relevant state bodies. For more detailed information on the practice of the European Court, see Annex N2.

[31] On the causes of trial delay generally, see: George S. Reynolds, Court Delay Delineated, 12 Washburn L.J. 12 (1972).

[32] Under the version valid until December 2019, the misdemeanor was formulated differently and provided for unreasonable delay in the consideration of the case by the judge.

2. THE PROBLEM OF DELAY AND ITS SCALE IN GEORGIA

Main findings

- **The case delay in Georgian courts has been widely acknowledged and perceived as a serious challenge by the public.**
- **The magnitude of the delay in the consideration of cases in court is mainly due to the delay in administrative and civil cases in the courts of first instance. The estimated average length of hearing of civil and administrative cases has been increasing over the years, from 2018 to 2020 it increased by 1.5-2 times and exceeded 400 days. In 2021-2022, the duration of civil cases is decreasing, while the duration of administrative cases is still increasing. The estimated duration of civil and administrative cases in the courts of first instance and cassation is much longer and in the courts of appeal it is close to the European average.**
- **Despite the increase in the average length of criminal cases, their delay does not become a large-scale problem and is in line with the European average.**

2.1. The extent of delay of cases in court

Case delay in Georgian courts is recognized as a systemic problem by virtually all subjects connected with the issue of judicial reform, namely:

- The 2017-2021 strategy of the judicial system[33] recognizes the problem of delay in processing cases. Also, the problem is indicated in the report of Vakhtang Mchedlishvili, a non-judge member of the High Council of Justice in 2013-2017: "The problem of access to justice, its causes and possible remedies" (2017)[34].
- The ruling party "Georgian Dream" in the "Judicial Reform Strategy and Action Plan" document points to the problem of delay in the consideration of cases.[35]
- The annual reports of the Public Defender on the state of human rights and freedoms in Georgia reflect the scale of violations of procedural deadlines in various courts.[36].

[33] See the strategy of the judicial system for 2017-2021, p. 21 "One of the tasks of the strategy is to reduce the extent of delay and accumulation of cases" - https://shorturl.at/djkxY [last seen: 29.09.2023]

[34] Mchedlishvili V. The problem of access to justice, its causes and ways to solve the problem, 2017https://shorturl.at/iBDI9 [last seen: 29.08.2023]

[35] https://web-api.parliament.ge/storage/files/shares/Komitetebi/iuridiuli/samushao_jgufebi/shedegebi/sasamartlo_reformis_strategia_da_samoqmedo_gegma.pdf [last seen: 29.09.2023]

[36] The reports talk about the systematic violation of the term established by law.
The 2022 report of the Public Defender on the state of protection of human rights and freedoms: "In the Kutaisi appellate court, almost every second case is considered in violation of deadlines, and in the Supreme Court, violation of deadlines is the norm, and its protection has become an exception." p. 115
The 2021 report of the Public Defender on the state of protection of human rights and freedom: "In the first nine months of 2021, out of 1,257 complaints registered in the Civil Chamber of the Tbilisi appellate court, only 213 (16.9%) cases were

- According to the public opinion survey, among the barriers to access to the court, citizens first mentioned the duration of the trial (58%), which is slightly higher than a barrier of trial costs (57%).[37]

- Civil society also considers the delay of cases as a problem, which is reflected, for example, in the report of the Association of Young Lawyers of Georgia: "Results of 4-year monitoring of criminal trials, 2021[38]"

- Representatives of the business circles believe that the delay in the consideration of court disputes in Georgia is a widespread and well-known problem, which damages the justice process in many ways.[39]

- In the evaluation document of June 17, 2022 the European Commission highlights the problem of increase of estimated duration cases in Georgian courts and reduction of clearing rate.[40]

The statistics regarding judges' disciplinary proceedings also show the delay of cases as a problem perceived by the society. In particular, in 2020-2022, the number of disciplinary complaints filed against judges to the Independent Inspector of the High Council of Justice of Georgia is increasing. Almost half of them refer to unjustified violation the deadline set by the procedural legislation, as opposed to the rest to all other violations[41].

handled within 2 months, and 272 (21.6%) within 5 months. Accordingly, examination of at least 61.5% of the complaints registered in 2021 in the Civil Chamber of the Tbilisi appellate courts was not completed within the time limit set by the procedural legislation" (. . .) "1106 complaints were filed in the Administrative Chamber of the Court of Cassation in 2021, out of 384 cases 297 (77%) complaints were declared as inadmissible in violation of the 3 months statutory term. Out of 722 cases known to be admissible, the Supreme Court of Georgia completed only 1 case within 6 months." p. 105-106
The reports of the public defender see on the link https://ombudsman.ge/geo/saparlamento-angarishebi [last seen: 29.09.2023]

[37] Court accessibility, population survey results 2020 p. 19 https://idfi.ge/public/upload/EU/CRRC-EMC-IDFI%20report_29.04.2020_small%20size%20file.pdf [viewed on 25.10 2023]

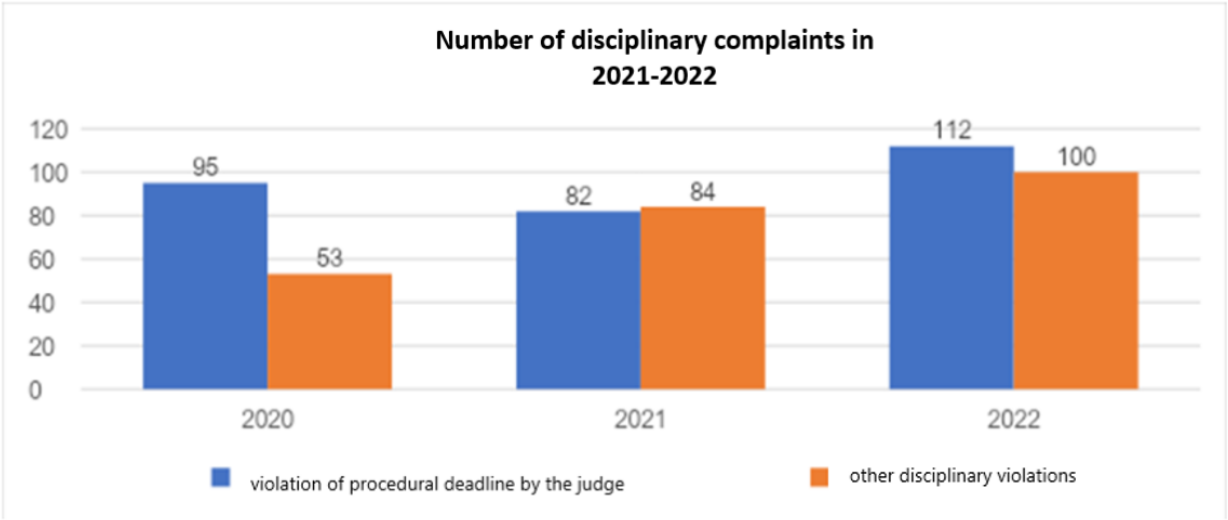
[38] Georgian Young Lawyers' Association, "Results of 4-year Monitoring of Criminal Trials, Trends and Existing Challenges", 2021, p. 14 https://shorturl.at/lDUZ2 [Last viewed: 29.09.2023] "Protraction of criminal court hearings is an important flaw revealed as a result of judicial monitoring by GYLA. A number of cases have been going on for years in such a way that there is no concrete legal result. There is a problem of violation of deadlines defined by legislation, as well as cases when deadlines are not directly violated, however, in the eyes of an objective observer, reasonable time requirement is clearly violated".

[39] USAID Economic Governance Program, Views of Busyness on the Judiciary in Georgia, October 31, 2021, https://pdf.usaid.gov/pdf_docs/PA00ZMH5.pdf [last seen: 29.08.2023]

[40] European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Brussels, 17.6.2022 COM(2022) 405 final, p.8. "In terms of efficiency, the disposition times of civil and commercial disputes has increased from 274 days (according to 2018 data) to 433 days. The clearance rate decreased (from 91 percent in 2018) to 87 percent. The duration of cases remains a major concern."https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Georgia%20opinion%20and%20Annex.pdf [last seen: 29.09.2023]

[41] Source: Annual Reports of the Independent Inspector of the High Council of Justice https://dis.court.ge/category/annual-reports/ Until 2020, the violation of the deadlines of proceedings was qualified as 2 different misdemeanors: unreasonably delaying the consideration of the case and undue performance of the duty of the judge (which in turn included other misdemeanors). Accordingly, accurate statistical data on the delay of cases until 2020 are not available. see Rights Georgia, Monitoring of the Independent Inspector and the High Council of Justice in the process of disciplinary proceedings, report and recommendations, 2021, p. 71, 81https://drive.google.com/file/d/1S8mUnkbdyhOuVxxBe-lek2X4a-D3IZfz/view [Last viewed:

Graph #1



As the result of the study of the 2022 disciplinary practice of the High Council of Justice[42], it was found that **90% of the cases submitted by the Independent Inspector to the Council were related to civil and administrative cases and only 10% were related to delays in criminal cases.** Among the lawyers interviewed online[43] on the extent of delays 94% believe that almost all cases or most cases are delayed. Only 5% of lawyers believe that a small number of cases are delayed/cases are rarely delayed, and 1% believe that no case is delayed.

When talking about criminal law cases in the focus groups, the lawyers drew attention to the so-called delay of non-custodial cases and this situation was explained by the ineffectiveness of the law:

"Non-custodial cases are delayed considerably. I had one for 5 years. Two judges have been changed without a hearing being scheduled[44]"

"According to the procedural legislation, a non-custodial case must be heard within 24 months, although the violation of this period will not have any specific legal consequences. Some of the judges try to follow this deadline, while some do not. Legislation should specify the consequences of violating this term[45]*"*

29.08.2023]. See 2019 Annual Report of the Independent Inspector of the High Council of Justice, p. 12 https://dis.court.ge/wp-content/uploads/2020/07/dis2.pdf

[42] As part of the research, Disciplinary decisions of 2022 were studied on the website of the Council of Justice www.hcoj.gov.ge, which were related to the ongoing disciplinary proceedings on the delay of the case.

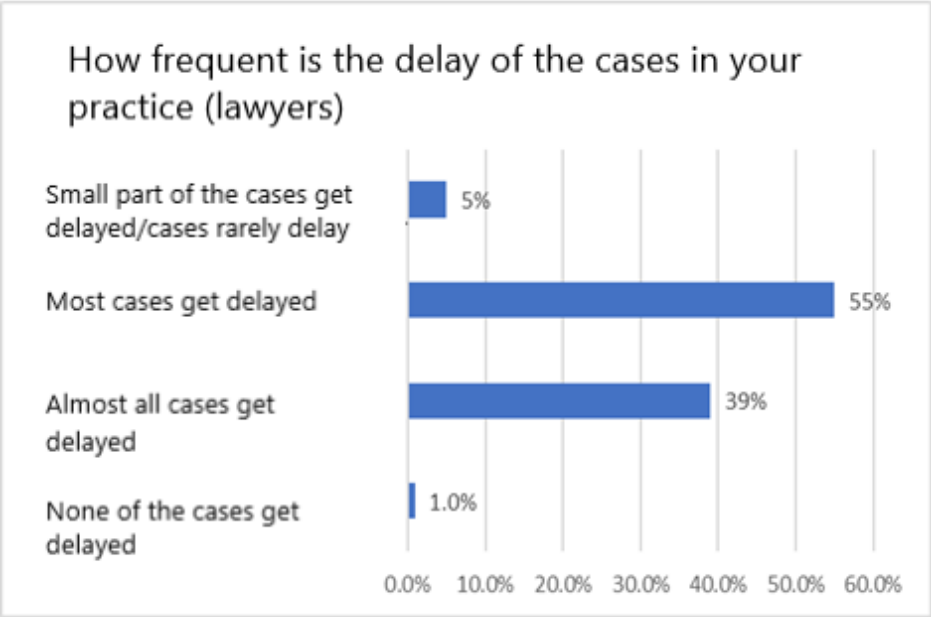
[43] 198 lawyers participated in the online survey.

[44] December 15 focus group, lawyers.

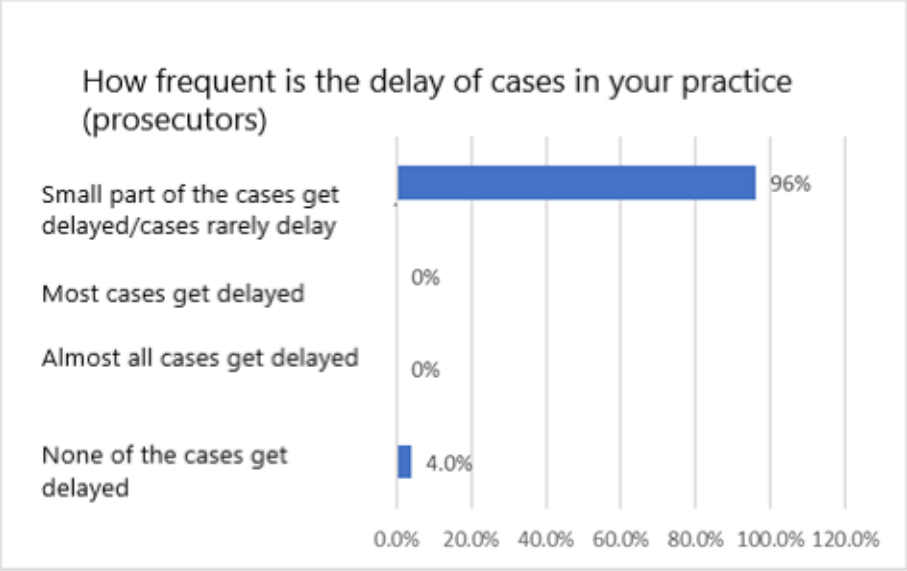
[45] December 15 focus group, lawyers.

Prosecutors have a different view[46]. 96% of the interviewed prosecutors believe that a small number of cases are delayed/cases are rarely delayed. 4% believe that no case is delayed. Not a single respondent believes that most cases are delayed.

Graph #2



Graph N3



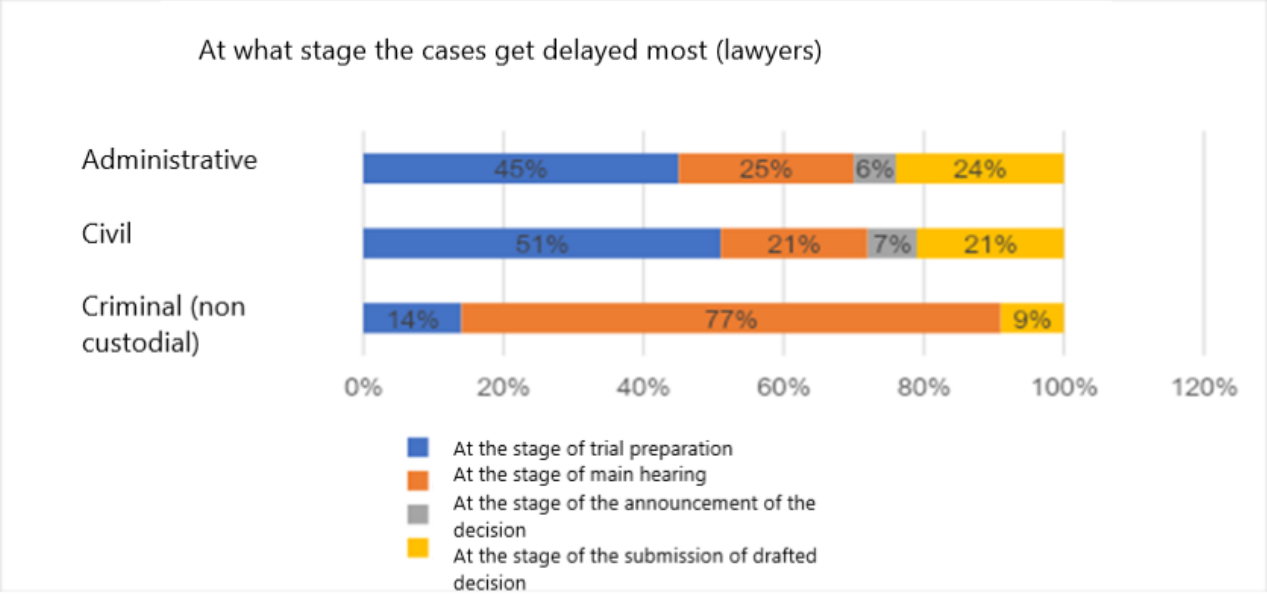
[46] 27 prosecutors participated in the online survey

At the same time, the majority of prosecutors indicate that first instance criminal cases are finished within 6 to 15 months.

Different opinions of prosecutors should be explained by the peculiarities of criminal cases. Courts and prosecutors try as much as possible to complete the case within the 9-month period of imprisonment established by law in cases where the accused is under detention,[47] which reduces the number of protracted criminal cases. As to so-called non-custodial cases, where the 24-month period is stipulated by law,[48] the prosecutors do not consider the completion of the case close to statutory deadline as a delay. The adjournment of hearings in criminal cases seem to be mostly due to the prosecution's cause,[49] which reduces this party's claim towards timely completion of cases.

When asked at which stage the cases are delayed the most, the lawyers answered as follows:

Graph N4



[47] Paragraph 5 of article 13 of the Constitution of Georgia: the term of imprisonment of the accused shall not exceed 9 months.

[48] see paragraph 6 of article 185 of the Code of Criminal Procedure: The court of first instance renders its verdict no later than 24 months after the decision of the judge of the pre-trial session to transfer the case for substantive consideration.

[49] Regarding the reasons for postponement of hearings in criminal cases, see below, the report of the Association of Young Lawyers of Georgia: "Results of 4-year monitoring of criminal cases "https://shorturl.at/lDUZ2

As we can see from here, the largest percentage of respondents report the delay of civil/administrative cases at the stage of case preparation, and the delay of criminal cases at the stage of substantive hearing.

2.2. Average length of adjudication of cases in Georgian courts

The judicial system of Georgia does not publish (and probably does not process) the information on the length of proceedings on various categories of cases. Therefore, within the framework of the research, information from three different sources was processed to produce a picture on the length of the proceedings. These are:

A. results of the survey of lawyers and prosecutors;

b. analysis of judicial statistics;

c. data gathered by the European Commission for the Efficiency of Justice (CEPEJ) about Georgia.[50]

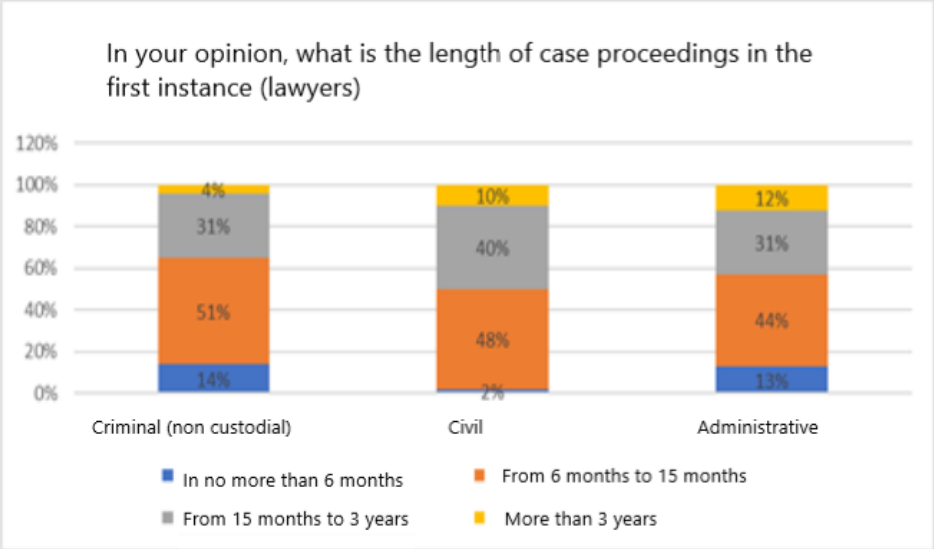
More than 70% of the lawyers interviewed online[51] indicate that for all three categories of cases **in the first instance** the review period **ranges from 6 months to 3 years**. In addition, the number of responses favorable to less than 6 months or more than 3 years period (in the first instance) is minimal . For majority of respondents (51% of lawyers and 75% of prosecutors) **the period of consideration of a criminal case in the court of first instance ranges from 6 to 15 months.**

More than 75% of the interviewed lawyers consider that the period of consideration of civil and administrative cases in the courts of first instance is between 6 months and 3 years.

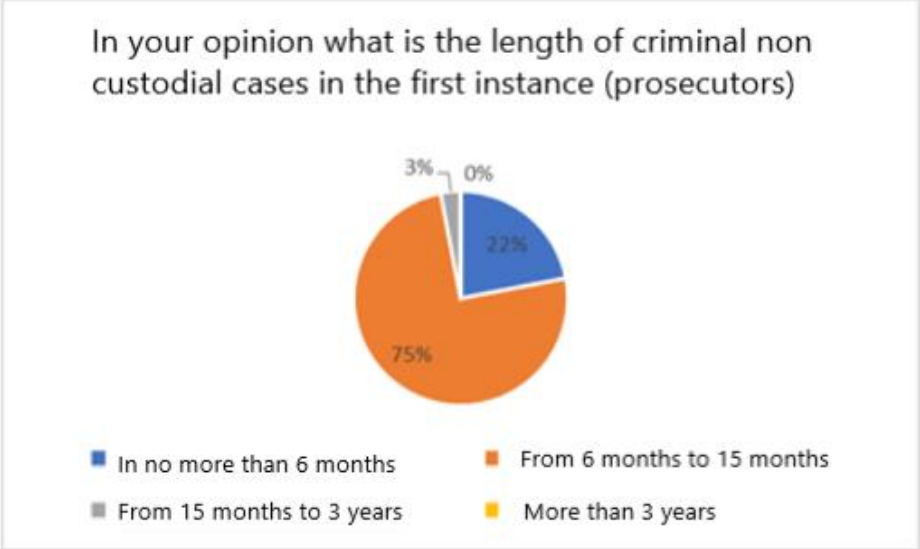
[50] The last report covers the period of 2020: European Judicial Systems, CEPEJ evaluation report 2022, part 1, (tables graphs and analysis), p. 134, 140, 151 https://www.coe.int/en/web/cepej/special-file-report-european-judicial-systems-cepej-evaluation-report-2022-evaluation-cycle-2020-data- [Last seen: 29.08.2023

[51] A total of 198 lawyers were interviewed online

Graph #5



Graph #6



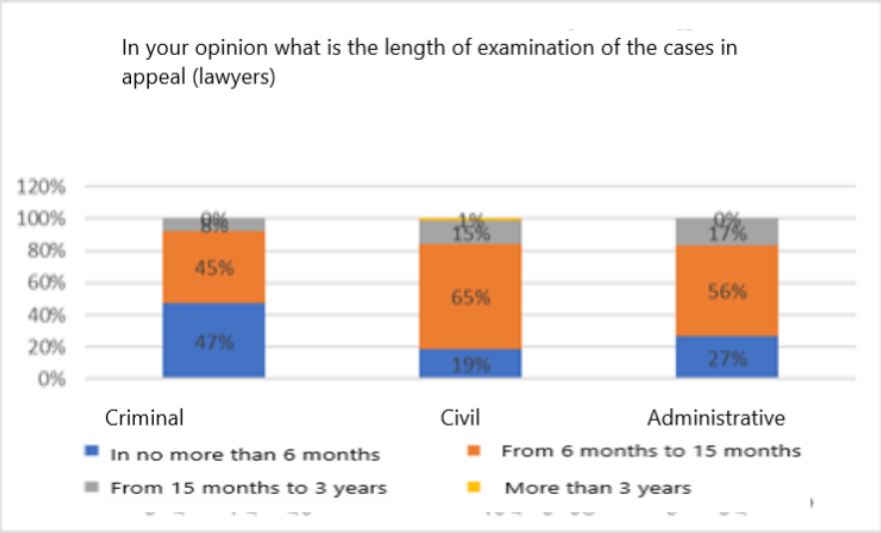
According to the respondents surveyed online, the length of proceedings of the cases are shorter **in the appellate instance** than in the first instance. Almost half of the respondents believe that criminal cases are completed in the appellate court within 6 months. Compared to the first instance, the number of answers favorable less than 6 months duration of civil and administrative cases has increased, and the number of answers favorable to more than 15 months has decreased. Thus, it can be said that **according to the interviewed respondents, the average**

duration of consideration of cases of all three branches of law in the appeal courts is less than in the first instance and is usually less than 15 months.

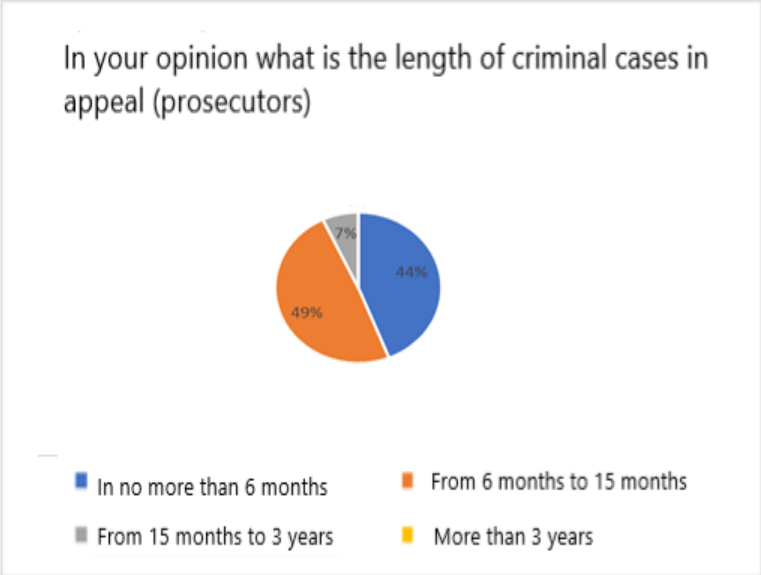
The differences between the duration of cases by case category in the appellate court repeat the logic of the first instance. **Almost half of the surveyed prosecutors and lawyers consider the average period required for consideration of the case in appeal to be no more than 6 months**.

Most lawyers consider the period between 6-15 months as the duration of civil and administrative law cases in the appellate instance.

Graph #7



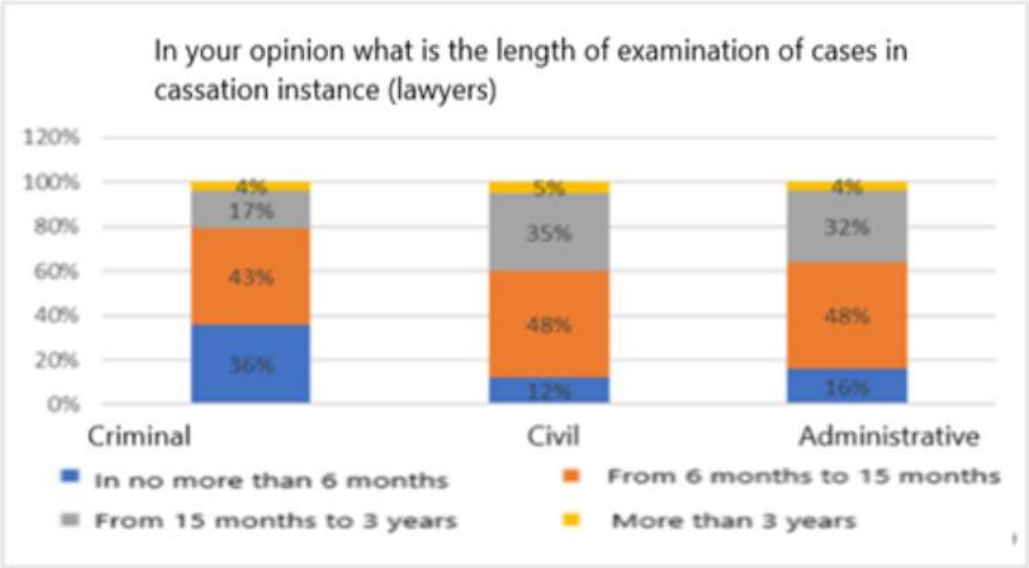
Graph #8



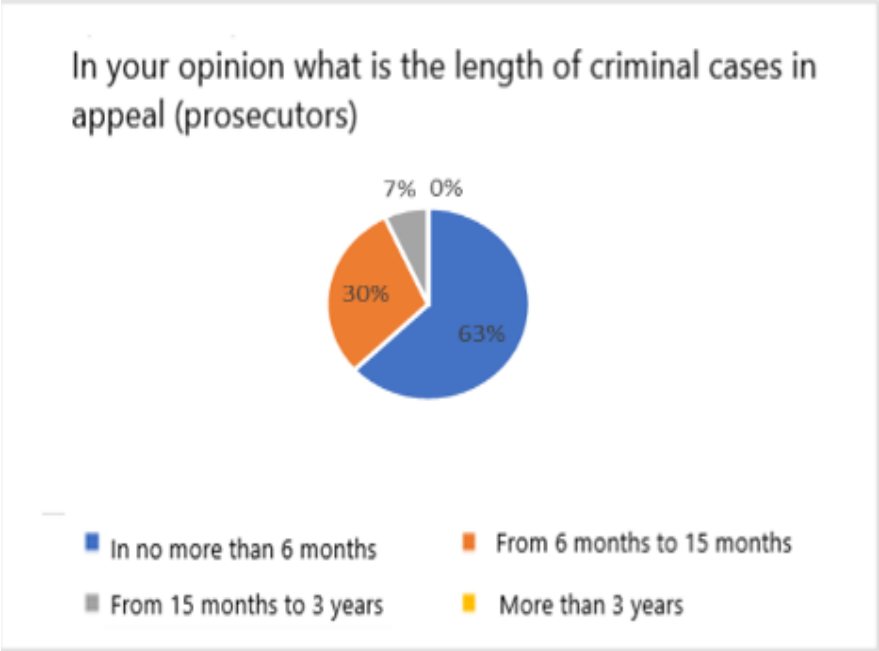
Only 12-16% of respondents believe that the cassation proceedings last up to 6-months in civil and administrative cases. In the opinion of more than 80%, the term established by law is violated in the court of cassation, although in more frequent cases it does not exceed 15 months.

As to the criminal law cases, **63% of prosecutors and 36% of lawyers believe that they will be completed in the cassation instance within 6 months.**

Graph #9



Graph #10



It can be said that in the opinion of the respondents, criminal cases are more likely to be delayed in the courts of the first instance, while in the higher instances, as a rule, the terms of their examination are shorter. Compared to civil cases, more administrative cases are heard in less than 6 months. Also, compared to civil cases, there are more administrative cases being considered in the excess of 3 years.

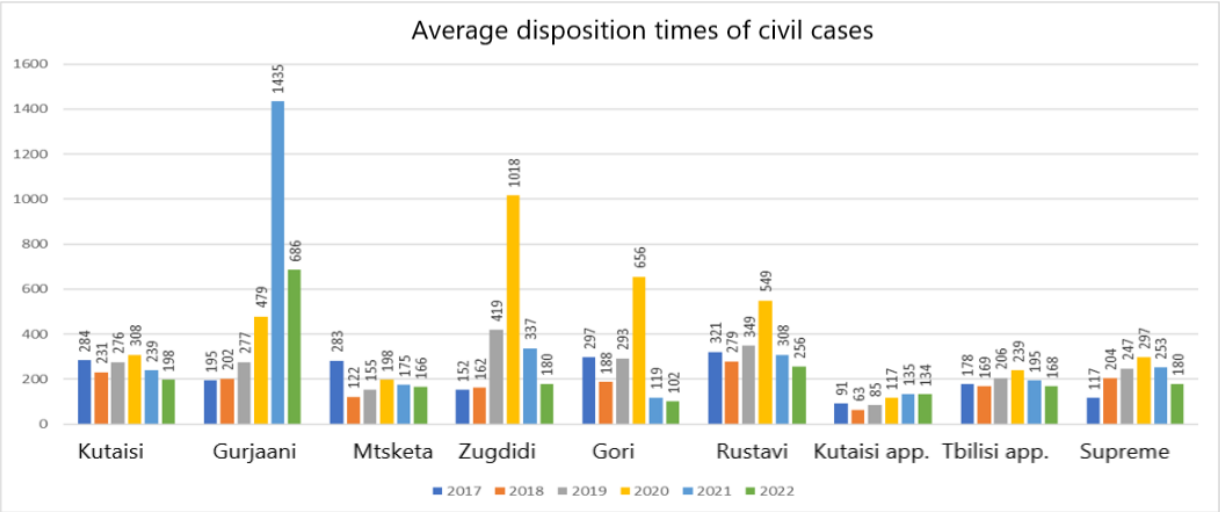
According to respondents, civil and administrative cases are considered faster in the appeal instance than in the cassation instance.

The project studied disposition times (DT) in 2017-2022 9 pilot courts based on official court statistics and in application of CEPEJ methodology[52]. The study produced following results:[53]

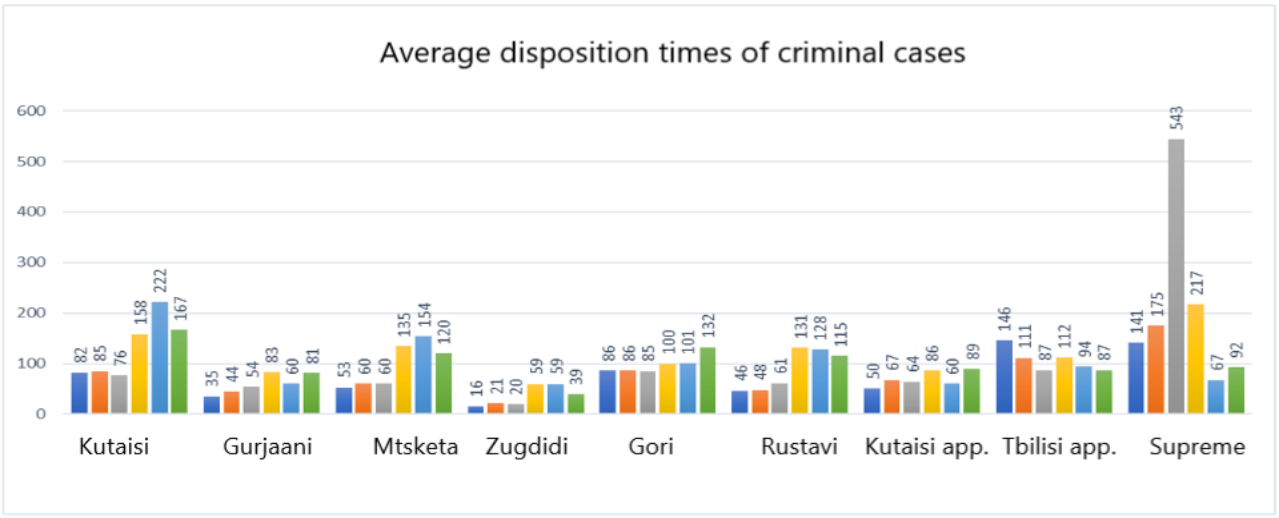
[52] Disposition time (DT): The ratio of the number of pending cases to the number of completed cases multiplied by 365. (measurement unit - day). see European Commission for Justice Efficiency, Backlog Reduction Guidelines, 2023, A.https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 29.08.2023]
The data about Georgia is taken from the website of the Supreme Court https://old.supremecourt.ge/statistics/, as well as from the statistical data provided by the Supreme Court. Letter of the Supreme Court dated April 4, 2023, p. 248-23, as well as the letter of the Supreme Court of June 15, 2023, ȝ. 499-23. The duration of consideration of civil cases in appellate courts does not include recognition and enforcement of arbitration decisions, which was calculated separately and compared to other categories of civil cases. see Below - graphs N. 49, 50

[53] The numbers on the graph columns represent the number of days.

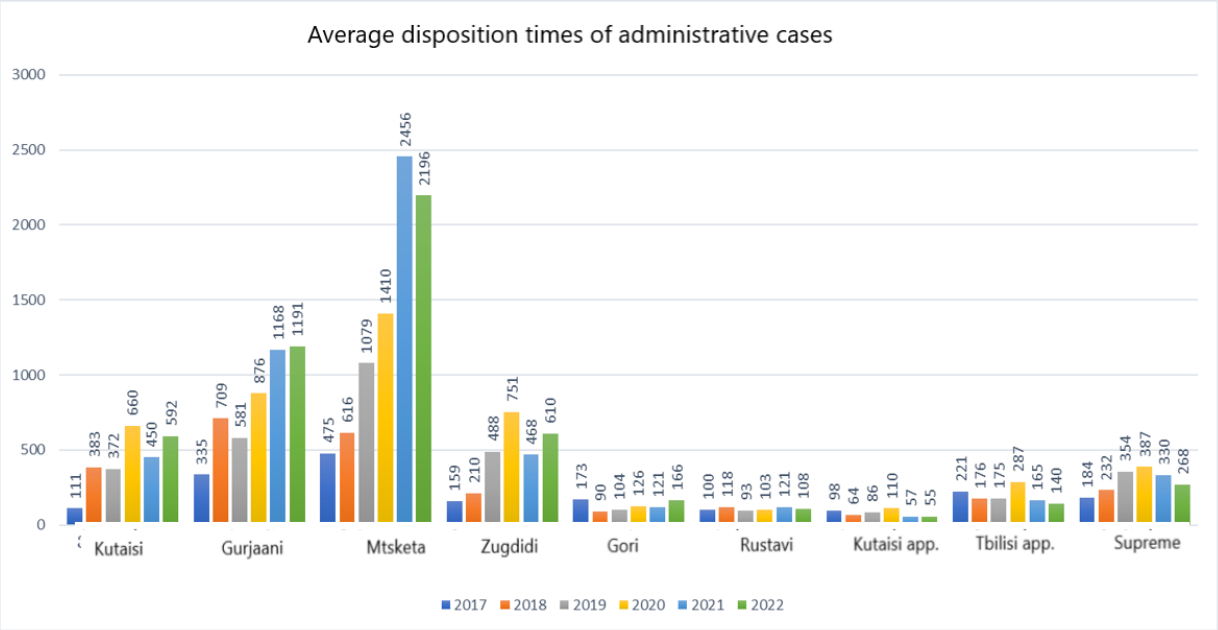
Graph #11



Graph #12



Graph #13



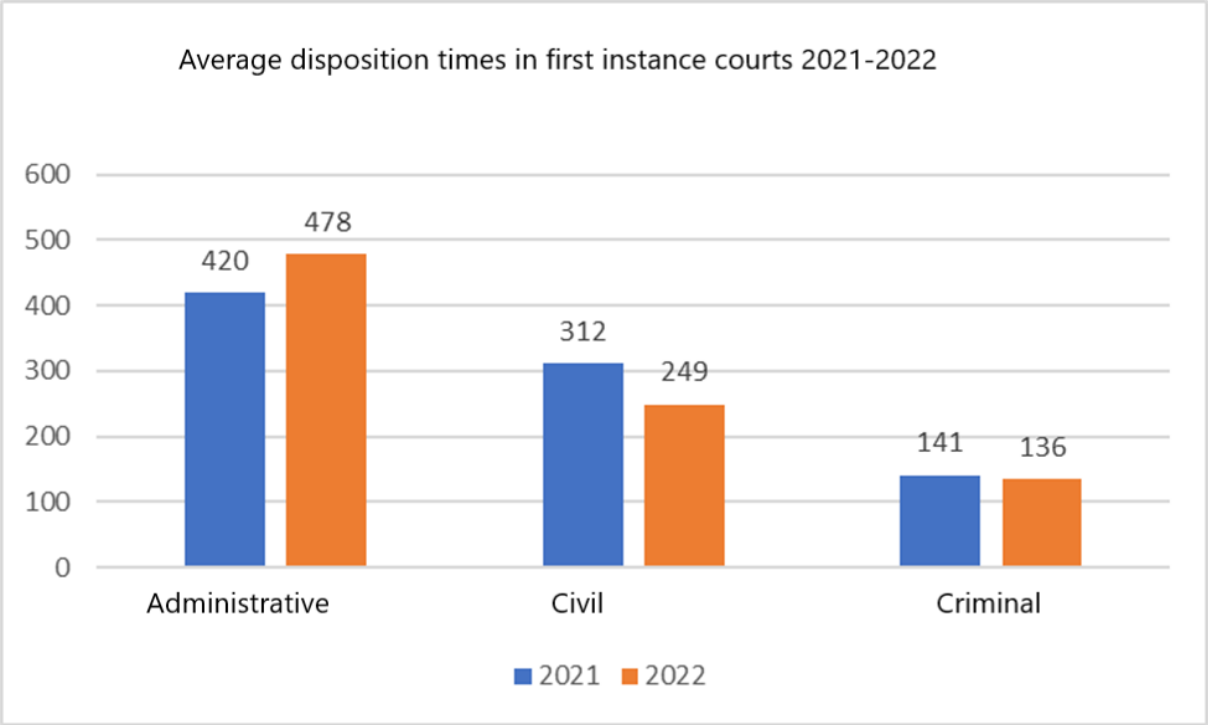
As can be seen from these charts, despite the differences in territory and workload, the majority of courts of first instance have not been able to observe even the 5-month exceptional timeframe established by law for civil and administrative cases in the last few years, unlike the courts of higher instances, where the estimated length of civil and administrative cases during the reporting period ranges from 3 to 10 months, and in the Kutaisi appellate courts it is limited to 2 months in the last two years.

Sharp differences are observed between the disposition times of civil and administrative cases in different courts. For example, the estimated duration of administrative cases in 2019-2022 in the Gori District Court ranges from 3 to 6 months, which is 10 times less than in Mtskheta District Court, where the DT ranges from 30 to 80 months. There is a sharp difference between the disposition time for civil and administrative disputes within the Mtskheta court itself. Such differences may be related to either a lack of resources to cope with the flow or an inefficient allocation of existing resources as well as the overcrowding in different category of cases in this geographic location. The decrease in the duration of proceedings in certain courts since 2020 enables us to assume that the covid[54] restrictions may have resulted in a backlog of cases, but did not have a significant impact on the length of the proceedings or the courts maintained the ability to cope with cases at the local level.

[54] see Resolution N. 322 of the Government of Georgia dated May 23, 2020 on Approval of Isolation and Quarantine Rules

In 2021-2022, the estimated duration of civil cases in the courts of first instance of Georgia have significantly decreased compared to 2020, while the terms of consideration of administrative cases have increased, while data on criminal cases remain stable.

Graph #14 [55]



2.3. Comparison between the average duration of cases in Georgia and European countries.

According to 2022 report of the European Commission on the Efficiency of justice (based on 2020 data)[56], disposition time (DT) of civil and administrative cases in Europe as well as in Georgia (in all three instance courts) exceeds the disposition time of criminal cases. In addition, administrative cases last longer than civil cases. According to the data of 2020, on European level, the criminal cases are considered in first instance is 149 days, and civil and administrative cases in 237 and 358 days, respectively.[57].

As of 2020, in courts of Georgia the length of proceedings in criminal cases is generally equal or below the average European level. However, this does not apply to proceedings in third instance, which may be due to the lack of judges in the Supreme Court of Georgia at that time.

[55] The data is calculated based on statistical information provided by the Supreme Court. Letters of the Supreme Court of Georgia of June 15, 2023, ȝ-499-23 and April 12, 2023 N ȝ. 428-23.

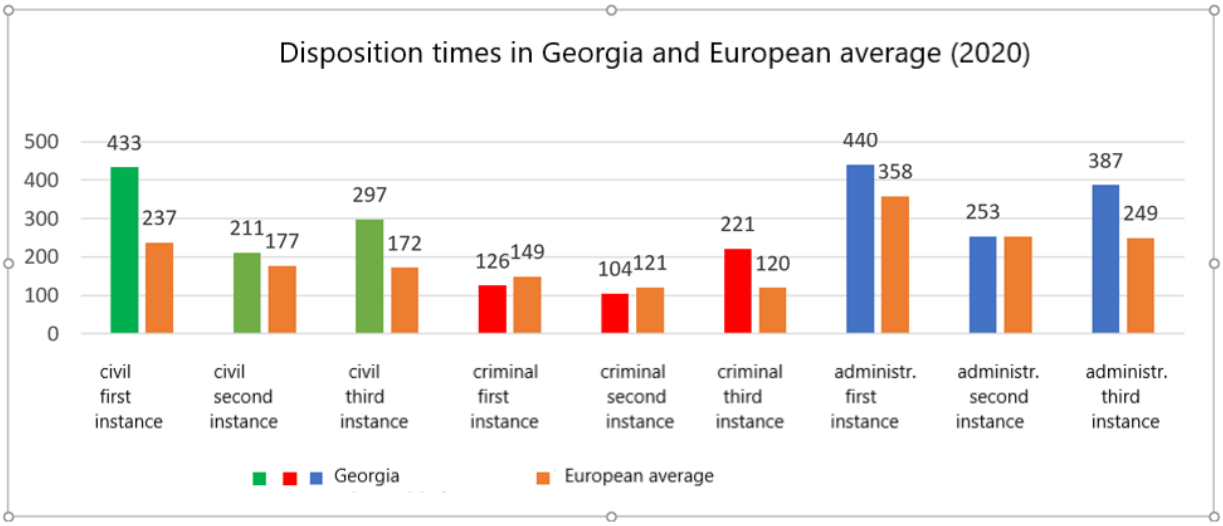
[56] This is the latest report covering 2020. European Judicial Systems, CEPEJ evaluation report 2022, part 1, (tables graphs and analysis), p. 134, https://www.coe.int/en/web/cepej/special-file-report-european-judicial-systems-cepej-evaluation-report-2022-evaluation-cycle-2020-data- [Last seen: 29.08.2023

[57] Ibid., p. 127

The estimated duration of civil and administrative law cases in Georgian courts of first instance and cassation is much higher than the European average.

The disposition times in appellate courts of Georgia are close to European average.

Graph N.15

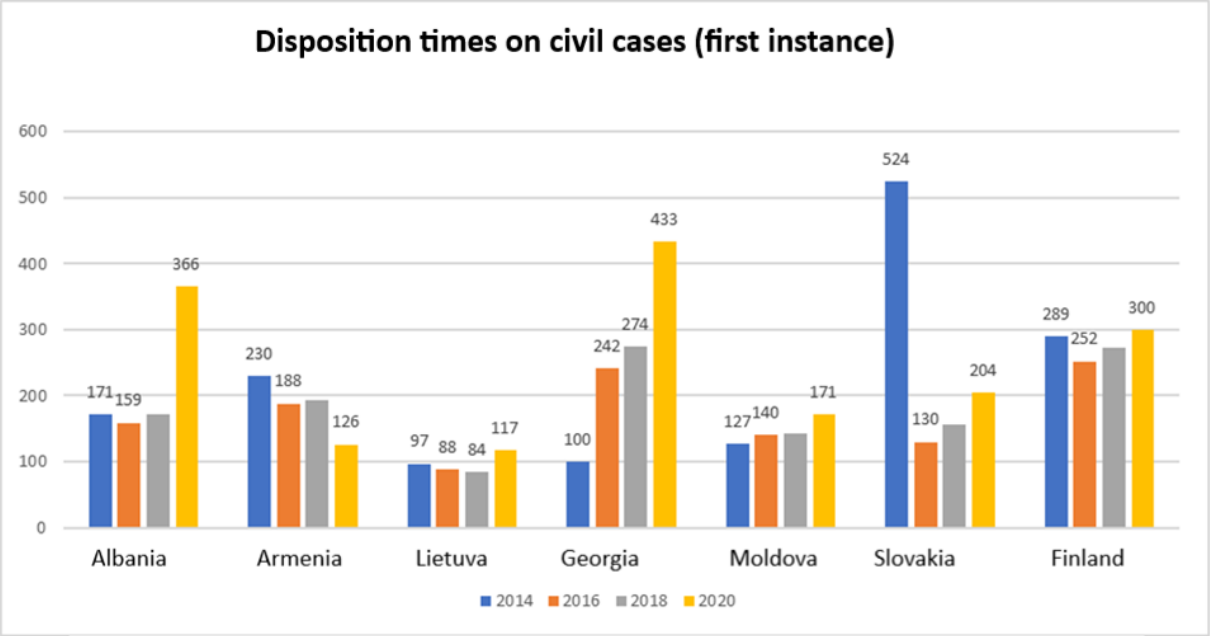


In order to compare the variation of the estimated disposition times in Georgia with other member States of the Council of Europe, the data of 7 countries of the Council of Europe for the years 2014-2020 were studied.[58] (See graph #16, graph #17, graph #18)

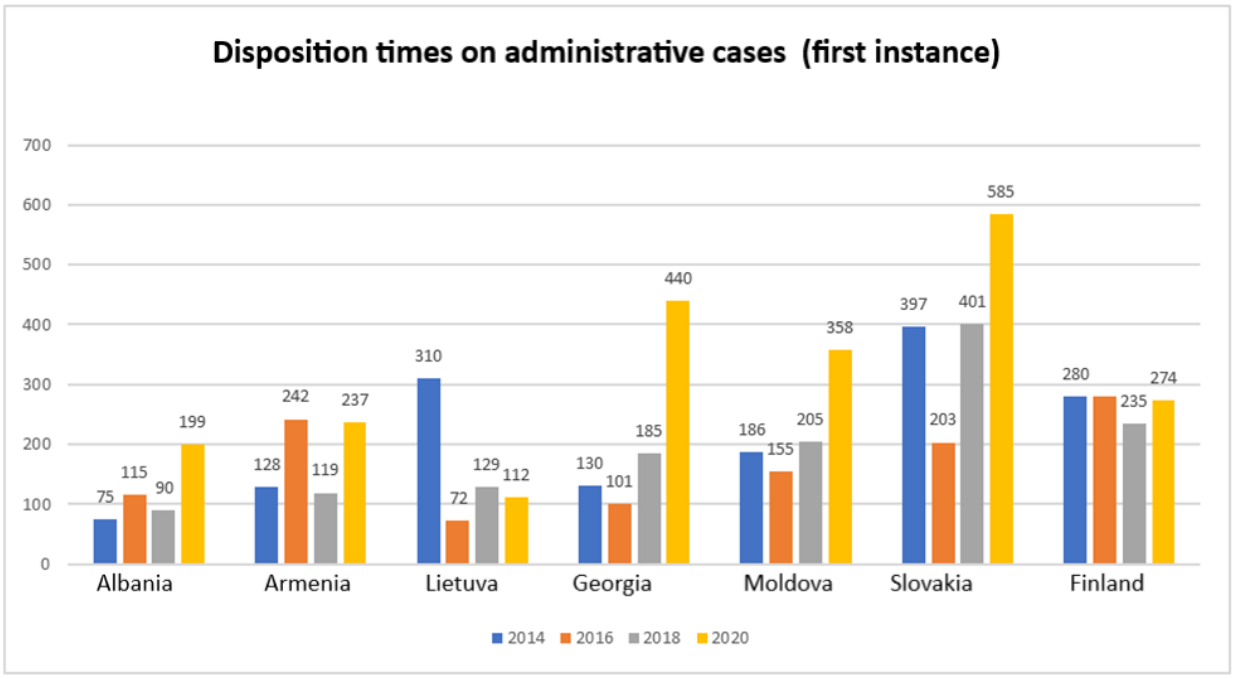
In the majority of the selected countries (Albania, Georgia, Moldova, Slovakia, Finland) there is an increasing trend of the average duration of the proceedings since 2016. Georgia is among the countries where the average length of proceedings experiences a sharp increase, in contrast to, for example, Finland or Lithuania, where these terms increase slightly and the dynamics are more stable.

[58] The countries were selected on a case-by-case basis. Countries close to Georgia in terms of population size, but with different levels of development and different regional features - Albania (**2,877,797)**, Armenia (2,963,300), Finland (**5,540,720),** Moldova (2,626,942)**,** Slovakia (5 459 781), Lithuania (2 795 680). Data taken from the European Commission on the Efficiency of Justice (CEPEJ) 2022 report . see Footnote 24.

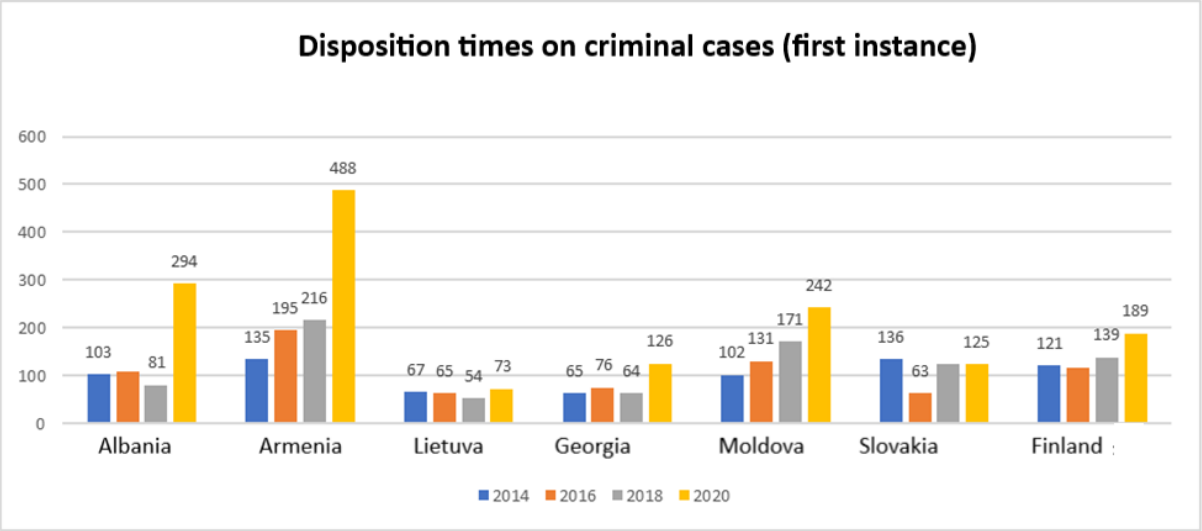
Graph #16



Graph #17



Graph #18



Separate research is needed to identify what factors determine the variation of disposition times in specific countries. The level of democratic and economic development of the country may be one such factor. For example, the countries of Central Europe coped better with the disruption caused by the pandemic than the countries of Southern Europe.[59] The effect of judicial reforms on the duration of cases is also reflected. For example, the increase in the length of proceedings in Albania coincides with the initiated vetting procedures of judges, which may have led to an increase in the backlog and length of hearings.[60]

3. OVERLOADING CAUSED BY THE ACCUMULATION OF CASES IN THE COURT

Main findings

- **According to the data of 2017-2022, the judicial system of Georgia was not able to cope with the increasing flow of incoming cases, which lead to the accumulation of cases and overcrowding of courts/judges.**
- **Excessive judicial workload has a negative impact on the speed of proceedings, however, this is not the only cause of delays. There are cases where courts with higher workloads handle cases more efficiently than relatively less busy courts. Judge of the first instance of Georgia is less overloaded than in several EU countries,[61] but despite**

[59] Ibid., p. 125

[60] European Judicial Systems, Cepej Evaluation Report, (2020 data), part. 2, (country profiles), p.10 https://rm.coe.int/cepej-fiche-pays-2020-22-e-web/1680a86276 see also
Balkan Insight, CoE Report: Pandemic Worsened Backlog in Balkan Courts, https://balkaninsight.com/2022/10/05/coe-report-pandemic-worsened-backlog-in-balkan-courts/ [last seen: 29.09.2023]

[61] Finland, Latvia, Romania, Slovenia, Slovakia, Croatia, Spain, Malta, Italy, Austria, Poland.

the high workload, judges in EU countries are more efficient in handling the flow of cases.

- **Georgia's court system does not have a caseload prevention or caseflow management policy. Dealing with the flow of cases largely depends on the determination and approach of each judge.**

A backlog of cases in the court that the system cannot handle leads to judge/court overload. A backlog can occur when the flow of incoming cases is increasing and it exceeds the number of completed cases. In such a situation, the number of pending cases increases and reaches a rate that cannot be managed with existing resources, as a result of which the court becomes "overloaded".

In order to effectively manage the flow of cases in the judicial system, States are trying to use the results-based management method. The essence of this method is the measurement of results and the evaluation of the effectiveness of the implemented measures, the goal of which is to properly plan further measures and achieve the final result.

Two figures are used to measure the effectiveness of caseflow management: disposition time and the clearance rate.[62]

The case clearance rate shows how well the court is handling the incoming flow of cases. It is calculated by the ratio of cases completed during the year to the number of cases received.

$$CR = \frac{R}{I} \times 100\%$$

If this ratio is less than 1 (100%), the number of completed cases falls short of the number of cases filed in the court during the year, and the backlog is created.

An increase in the backlog without an increase in the rate of completed cases increases the duration of cases (disposition time), which is calculated by the ratio of the number of pending cases at the end of the year (unresolved cases) to the number of cases completed during the year.

$$DT = \frac{Ur}{R} \times 365$$

This indicator describes how many days it takes to complete pending cases, taking into account the pace of work of the court. This data is used to predict the duration of proceedings[63]. For

[62] What can be said on clearance rate and disposition time (and some more relations)? by Adis HODZIC (Bosnia and Herzegovina) and Georg STAWA (Austria)
https://rm.coe.int/what-can-be-said-on-clearance-rate-and-disposition-time-and-some-more-/1680786fc9

[63] This indicator estimates how many days should be required to resolve the pending cases based on the court's current capacity to resolve cases. It is used as a forecast of the length of judicial proceedings. CEPEJ European Commission for the Efficiency of Justice, Guidelines for Reducing Backlogs p. 6. (Backlog Reduction Tool, 2023)https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 29.08.2023]

example, if the court completed 500 cases during the year and 1,000 remained pending, the estimated duration (DT) of cases would be 1,000:500*365=730 days (approximately two years). That is, if the court continues to handle cases at this pace, then each case will take an average of 2 years.

An important part of the international standards related to the acceleration of proceedings is aimed at preventing the accumulation of cases in the judicial system and dealing with the backlog.[64].

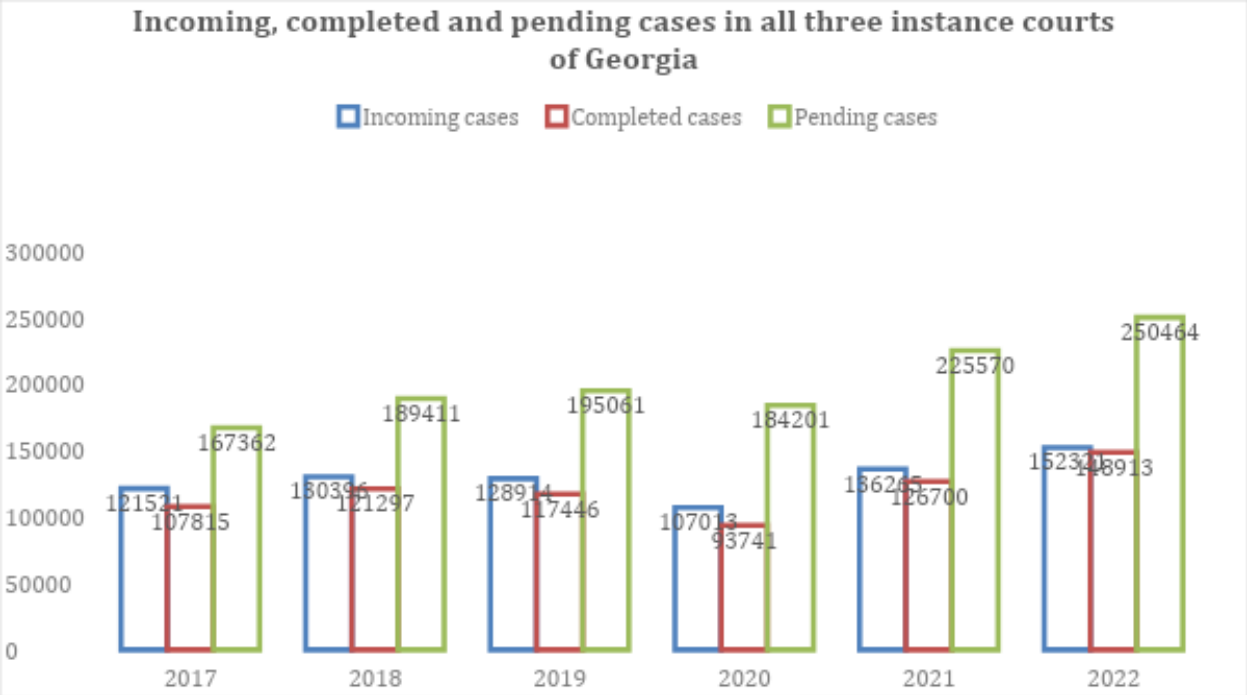
Let's take a closer look at the period 2017-2022 whether cases were accumulating and how the influx of cases affected the workload of courts and judges in Georgia.

Graph N. 19 shows that the total number of cases entered in the courts in the Georgian judicial system in 2017-22 was mainly increasing outnumbering the total number of completed cases, therefore, maintaining the trend of accumulation of pending cases every year[65].

[64] CEPEJ European Commission for the Efficiency of Justice, Backlog Reduction Tool, 2023https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 29.08.2023]
European Commission for the Efficiency of Justice (CEPEJ), Revised Saturn Guidelines for Judicial Time Management, (4 th revision), 2021, II.C.8 [last seen: 29.09.2023] https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81
Guide to Article 6 of the European Convention of Human Rights, Right to Fair Trial (civil limb), 2022, p. 109 https://www.echr.coe.int/documents/d/echr/guide_art_6_eng [last seen: 29.09.2023]

[65] Criminal, civil and administrative cases entered, completed and pending in the courts of all three instances of Georgia are summarized. The data are taken from the statistical collection of the Supreme Court of Georgia- ,https://old.supremecourt.ge/statistics/, as well as from the statistical information provided by the Supreme Court. (Letters N. P - 499-23 of July 15, 2023 and P-248-23 of April 12, 2023). From the websites of Tbilisi and Kutaisi courts (arbitration cases):http://www.tbappeal.court.ge/#; https://kutaisi-appeal.court.ge/

Graph N.19



How the accumulation of cases of this scale affects the workload of the judicial system can be assessed by the ratio of the total number of pending cases during the year to the total number of judges in the same year. Using this formula, it turns out that if in 2017, one judge received an average of 567 cases per year, while in 2022, this average figure was 737. **Accordingly, the amount of workload per judge increased every year during the research period**.

Table N. 1

year	Number of judges in all three courts of Georgia	Cases pending in the courts of all three instances	Average annual workload of a judge
2017	295	167362	567
2018	296	189411	640
2019	293	195061	665
2020	304	184201	606
2021	328	225570	688
2022	340	250464	737

High Council of Justice highlighted the problem of overloading of courts in Georgia many times. For example, according to the 2019 report of the Secretary of the High Council of Justice, excessive workload of the courts was named as the most important challenge of the system[66]. The workload has increased in 2021-2022.

Along with the average annual workload of a judge, it is important to understand how many cases on average a judge has to deal with at a particular point in time (how many cases can be in the judge's safe at a given time). To illustrate this, the average number of cases per judge at the end of each reporting year (last number of December) is calculated. On the other hand, this data shows how many pending cases (backlog) from the previous year fall on one judge.[67]

Table N. 2

year	Number of judges in all three courts of Georgia	Number of cases (balance) at the end of the year in the courts of all three instances	The number of cases pending before a judge at the end of the year (balance)
2017	295	59547	202
2018	296	68114	230
2019	293	77615	265
2020	304	90460	298
2021	328	98870	301
2022	340	101551	299

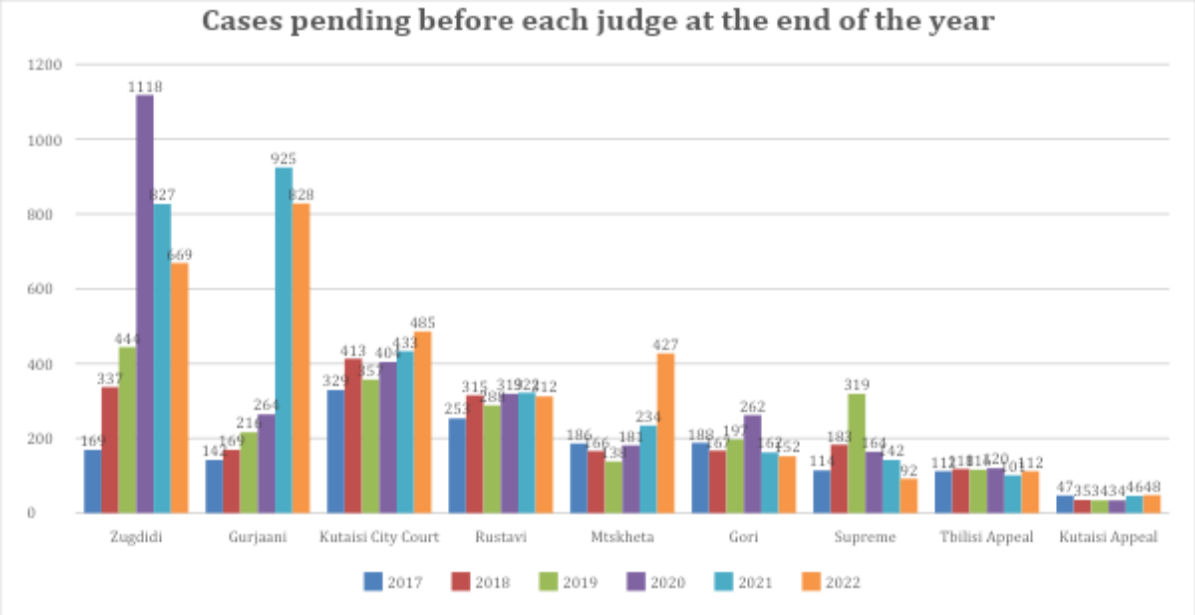
In 2017-19 more and more cases remain in the judge's safe in the form of pending cases (balance) at the end of the year. In 2020-2022, this figure is more stable and **amounts to 300 cases per judge on average. This means that at the beginning of the next year, the judge will have to deal approximately with this number of cases.**

[66] Annual Report of the Secretary of the High Council of Justice of Georgia, 2018-2019, p. 13 http://hcoj.gov.ge/files/news/angarishi.pdf [last seen: 29.09.2023]

[67] The number of pending cases at the end of the year, in the judicial system divided by the total number of judges. The number of cases is counted from the statistical collection of the Supreme Court - Justice in Georgia https://old.supremecourt.ge/statistics/, as well as from the statistical information provided by the Supreme Court. (Letters N. P - 499-23 of July 15, 2023 and P-248-23 of April 12, 2023). From the websites of Tbilisi and Kutaisi courts (arbitration cases):http://www.tbappeal.court.ge/#; https://kutaisi-appeal.court.ge. The number of judges in the courts of first instance and appeals (by years) is provided by the letter of the High Council of Justice dated July 14, 2023 N. 789/1534-03. The number of judges in Supreme Court (by years) is calculated using the biographal data of judges and former judges.

After illustrating the workload of the judge based on the total figures, we can assess[68] on average, how many cases fell on one judge (at a time) during the years 2017-2022 in pilot courts[69]:

Graph N20 [70]



As we can see, the situation in different courts is different. If the judge of the Rustavi court had 300 cases pending at the same time, in Gurjaani and Zugdidi this figure reaches 1000 cases. The number of cases processed simultaneously by a judge in the courts of first instance generally varies between **200-500 per judge and never falls below 138.** In contrast to this, the number of pending cases per judge in appeal courts has been stable over the years, while in the Supreme Court it is decreasing in 2020-22. The backlog for each judge in the courts of appeal varies between 40-120 cases.

In parallel with assessing the number of pending cases per judge, it is important to consider the volume and dynamics of the flow of cases in the court system to see what was the judge's workload in the light of the influx of cases. The flow of cases into the court system is usually determined by the cases received in the courts of first instance.

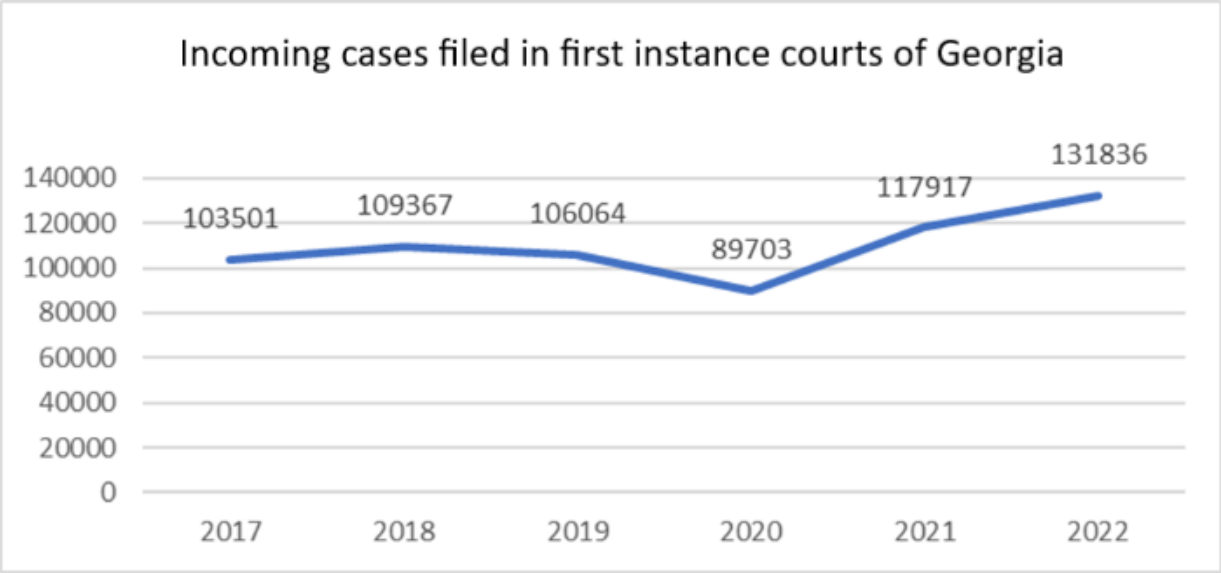
[68] Due to the lack of access to statistics on the distribution of judges and cases between fields of law, the example is discussed under the assumption that cases within a single court are distributed equally among all judges.

[69] In the reporting period, the number of judges in each court by year was not provided. Therefore, to calculate the number of judges in individual courts, the project relied on the search database of the High Council of Justice decisions http://hcoj.gov.ge/ka/, as well as biographies of judges posted on the websites of the High Council of Justice and courts.

[70] The number of pending cases at the end of the year divided by the actual number of judges in that court.

graph #21 shows that **compared to 2017, the number of incoming cases in 2022 increased by 27%[71]. Accordingly, the average backlog of 300 cases is joined annually by an increasing amount of caseflow - 475-591 cases per year.**

Graph N21 [72]



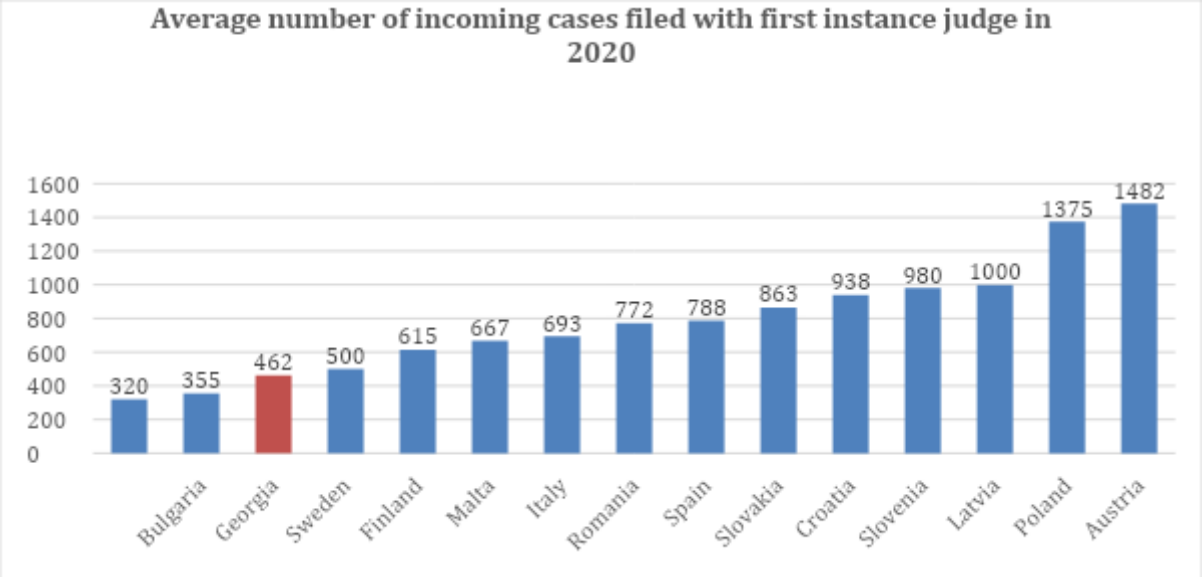
To illustrate the level of workload of Georgian judges compared to the judges of European countries, consider graphs N.22, N. 23, N. 24, N. 25, which highlight the distribution of the flow of cases among judges in different countries. It seems that in 2020, Georgian judge was less burdened by the number of incoming cases than the judges of several European countries, however, even with higher workload, judges in the majority of EU countries coped better with the flow of cases.[73]

[71] For information, the increase was recorded mainly due to the inflow of civil cases (for the dynamics of the inflow of civil cases, see graph N.27).

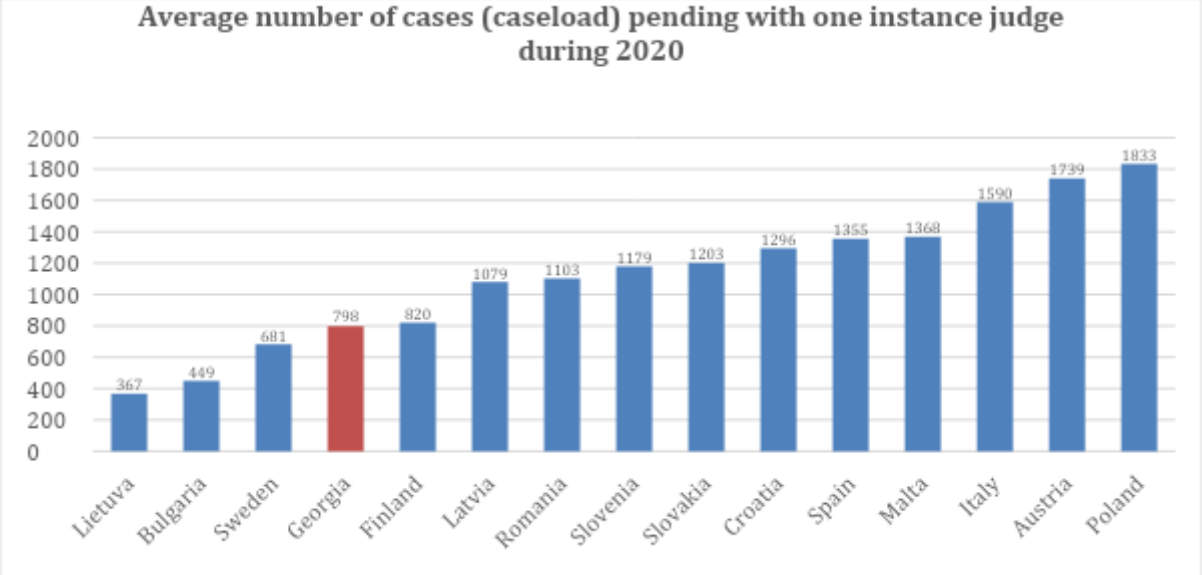
[72] The figures reflect the sum of criminal, civil and administrative cases received at the first instance. The number of cases is counted from the statistical collection of the Supreme Court - Justice in Georgia https://old.supremecourt.ge/statistics/, as well as from the statistical information provided by the Supreme Court. (Letter P-248-23 of April 12, 2023)

[73] The data concerning the number of cases and judges in the EU countries is taken from the study: Study of Functioning of Judicial Systems in EU member States, 2021.part_1_-_eu_scoreboard_-_indicators_-_deliverable_0.pdf (europa.eu) [Last viewed: 29.09.2023] Focus has been made on countries, about which full data is given in the study. The last data in the study are dated as of 2020 and a comparison was made with the data of 2020 in Georgia. The data on the number of cases in Georgian courts are taken from the website of the Supreme Court https://old.supremecourt.ge/statistics/, as well as from the statistical data provided by the Supreme Court. Letter of the Supreme Court of April 4, 2023, ȣ. 248-23, as well as the letter of the Supreme Court of June 15, 2023, ȣ. 499-23. Information on the number of judges in the first instance courts of Georgia has been received by the letter of the High Council of Justice of July 14, 2023 N. 789/1534-03.

Graph N22 [74]



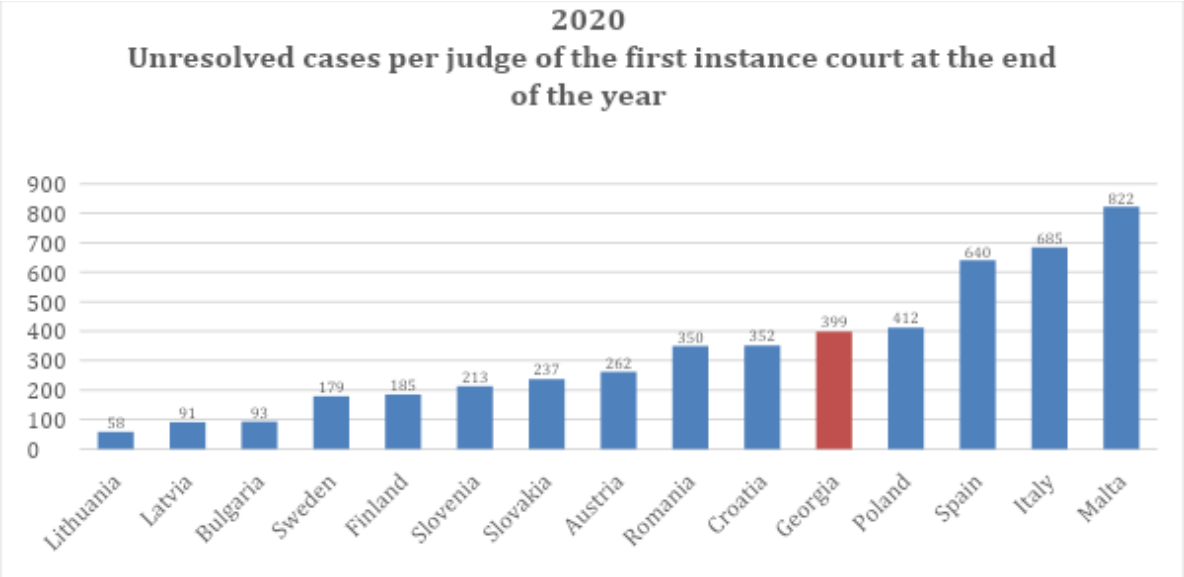
Graph N. 23 [75]



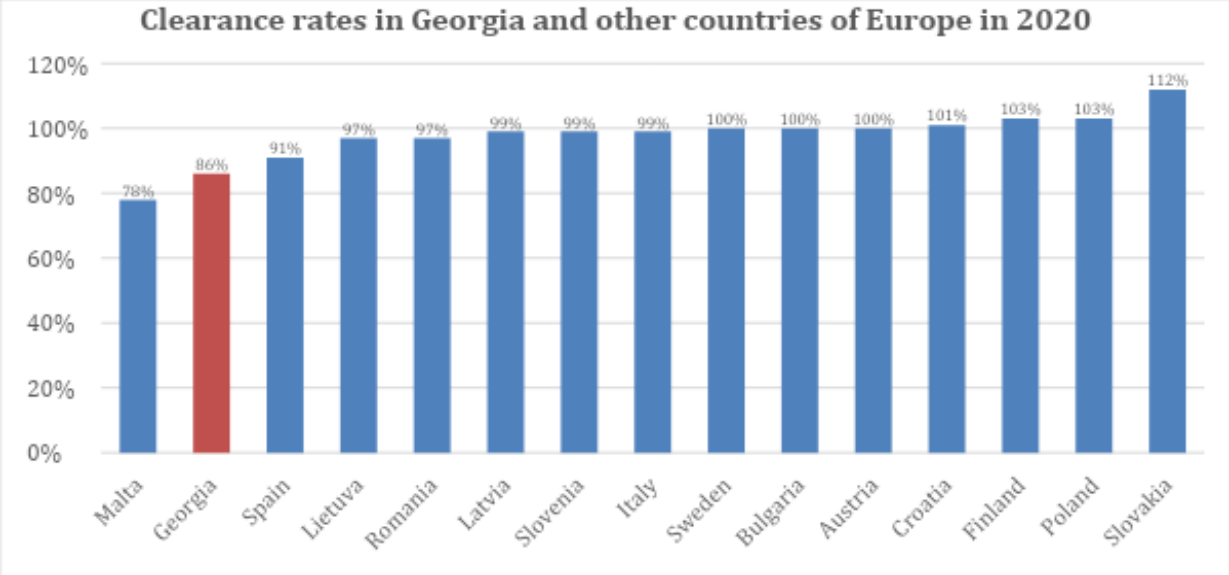
[74] The number of cases submitted to one judge is calculated by the formula: the number of cases submitted to the courts divided by the total number of judges.

[75] The average number of cases under consideration by one judge is calculated by the formula: the number of cases under consideration by the courts during the year divided by the number of judges in that court. The number of pending cases in Georgia is taken from information published by the Supreme Court and Courts of Appeal, as well as information provided by the Supreme Court (see note 64 above). In the case of European countries, the number of pending cases (caseload) is calculated using the formula: the number of pending cases at the beginning of the year (the balance of the previous year) plus the number of cases received during the year.

Graph N 24 [76]



Graph N25



[76] At the end of the reporting year, the balance of pending cases divided by the number of judges. The number of cases remaining in the European courts is readily available (see note 64 above) and the number of pending cases in the courts of Georgia is obtained by the formula: the cases pending during the year (caseload) minus the cases completed during the same year.

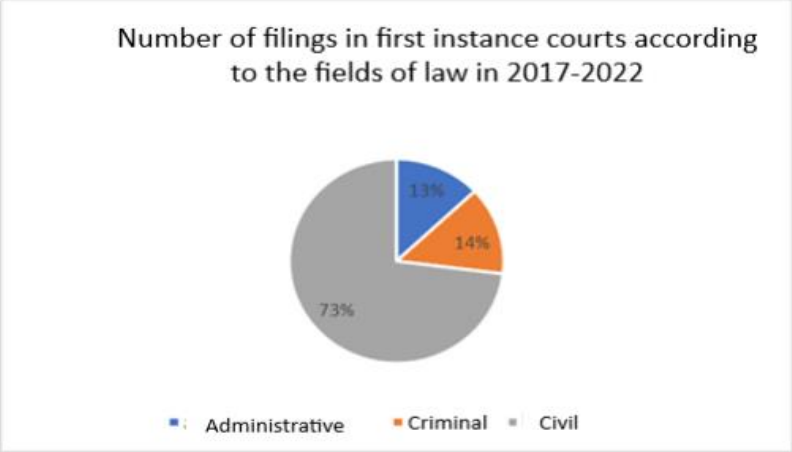
Despite the fact that in 2020, the flow of cases assigned to one judge of the first instance court in Georgia was smaller compared to other countries and the Georgian judge did not look overburdened compared to European colleagues even at the expense of adding the backlog of the previous year, the efficiency of the first instance courts of Georgia was low and Georgia was one of the last among these countries in terms of clearing cases. The example of Slovakia is interesting, where compared to Georgia, with almost double number of incoming cases, more cases were completed than received. (The clearance rate was equal to 112%, which means that this year Slovakian judges handled about 1000 cases). Exactly what specific measures countries apply to increase the clearance rates with existing judicial resources under conditions of high workload (reassignment of judges, support staff, technologies, changes in the law, etc.) and which of them brings the desired effect **is** subject of a separate study. H**owever, we can conclude that high workload does not necessarily lead to the delay of the processing of cases. Despite the overload, it is possible to reduce the backlog at the end of the year (Ur), which in dynamics, under conditions of maintaining a stable rate of completion (R), reduces the disposition times (DT)[77].**

The absence of a direct influence of judges' workload on the duration of the case is also clearly visible in the example of the courts of Georgia. Let's consider the examples pertaining to different fields of law, territorial jurisdiction, workload and court instance.

When it comes to case category, Georgian courts have been more busy with civil disputes for years than with administrative or criminal cases.

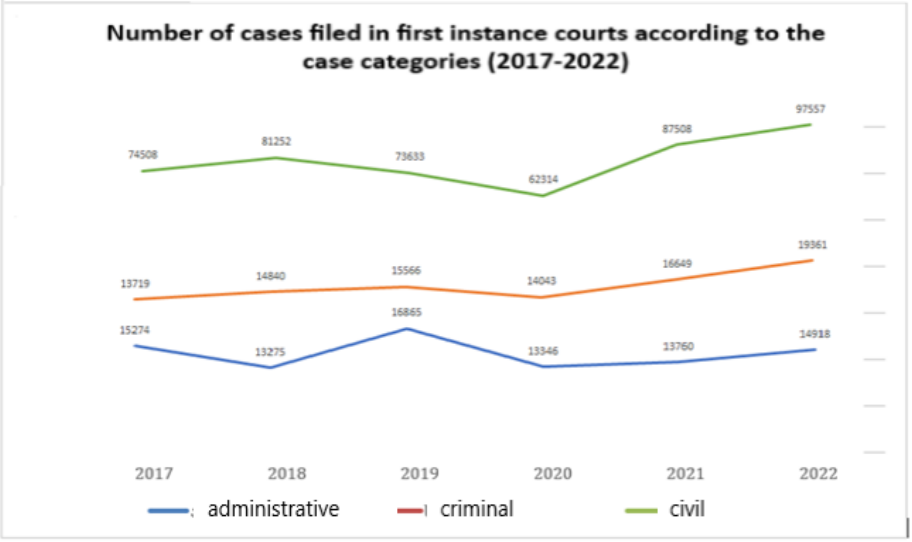
In 2017-2022, the total mass of cases filed in the court of first instance of Georgia is composed of 73% civil, 14% criminal and 13% administrative cases.

Graph N26



[77] **In other words, there is direct connection between the balance** (UR) **and between the average duration of cases** (DT), **as the balance decreases, the average duration also decreases.**

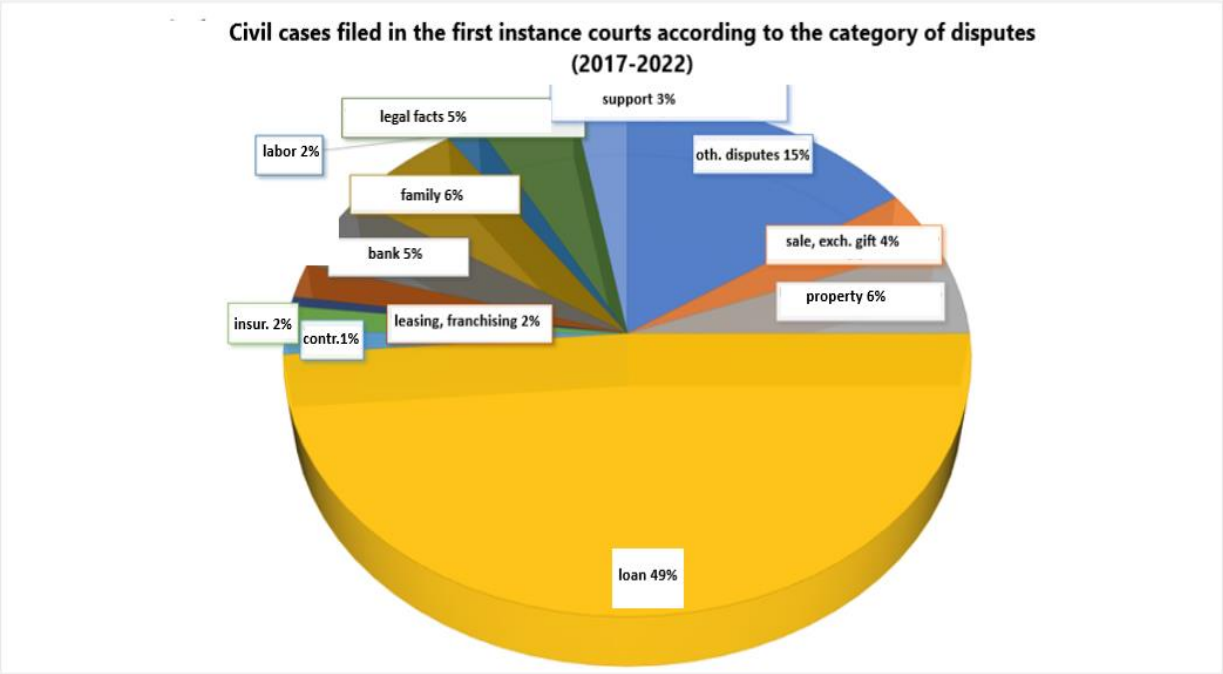
Graph #27



As can be seen from the graph N.27, the dynamics of the entry of administrative and criminal cases changes slightly compared to the flow of civil cases. From the beginning of the reporting period to the end the number of civil cases increased by 23,047 cases (30%), however, in the conditions of the increasing flow, the length of time for consideration of civil cases has been decreasing in recent years (see graph N. 14) Over the years, 6-9 times more civil than administrative and criminal cases entered the system. At the same time, the average length of consideration of civil cases exceeds the length of proceedings of criminal cases, although it lags behind the estimated length of administrative cases (see graph N. 14).

Half of the civil cases (49%) are related to loan disputes. The share of any other category of disputes does not exceed 6%. 5% of the workload of the courts comes from undisputed cases. The remaining 15% includes a variety of other disputes that do not belong to any of the listed categories.

Graph N28

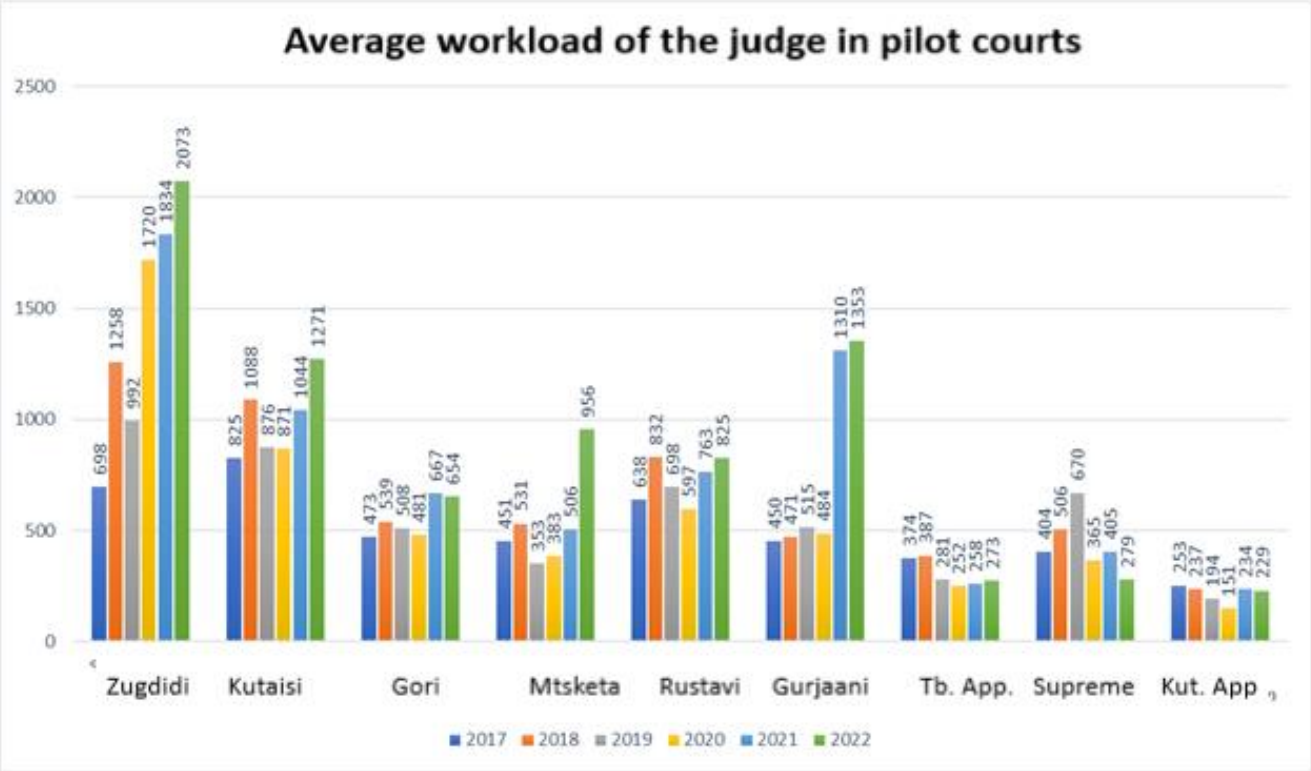


With the data available in 9 pilot courts[78] we had the opportunity to calculate the workload of judges, taking into account the real number of judges in the respective court.[79]

[78] Zugdidi, Kutaisi, Gori, Mtskheti, Rustavi, Gurjaani district (city) courts, Tbilisi and Kutaisi appeal courts and the Supreme Court.

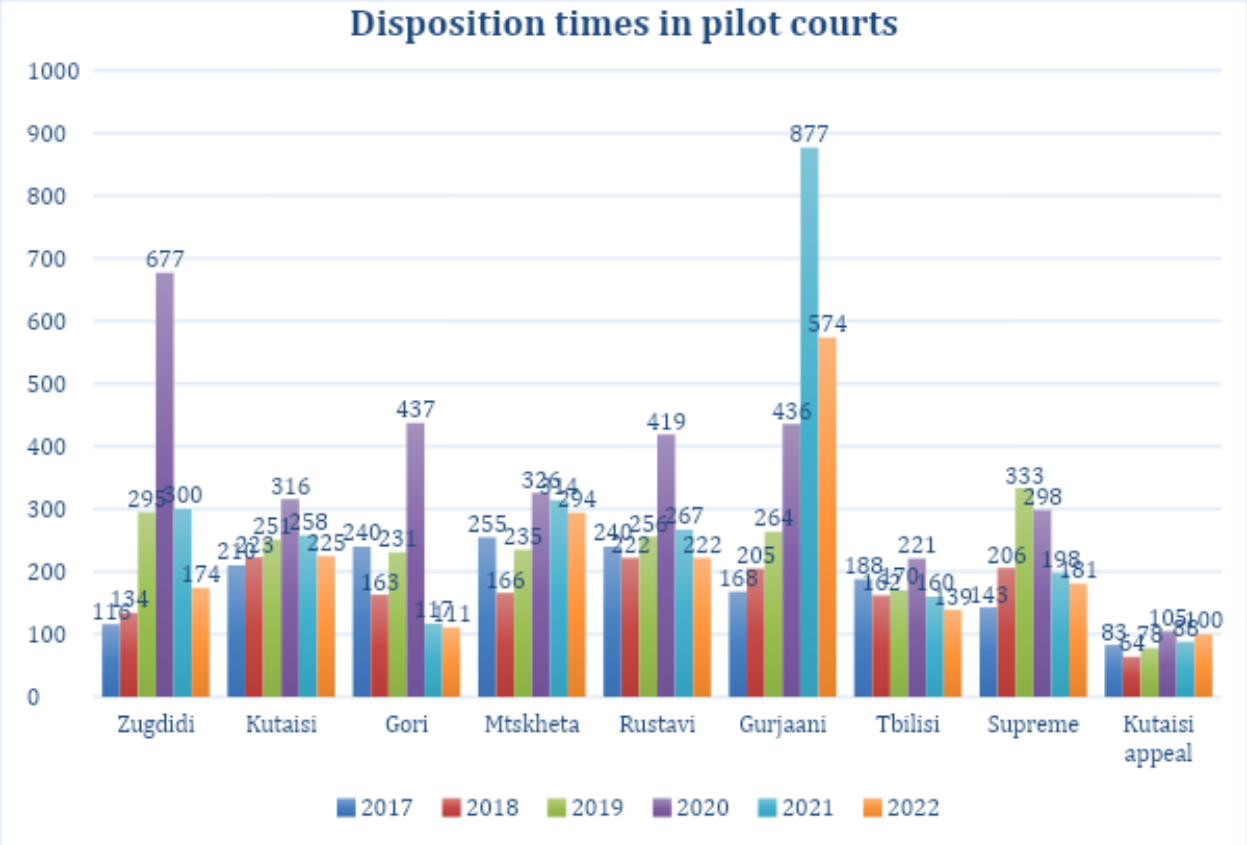
[79] The data is processed taking into account the actual number of judges and the total number of cases in a particular court, without sector division. Because the courts did not provide information on the number and specialization of judges according to specific years (Letters sent to the courts # 03-424-2022, 21.12.2022) in order to calculate the number of judges, the project was guided by the decision search system of the High Council of Justice http://hcoj.gov.ge/ka/, with biographies of judges posted on the websites of the High Council of Justice and courts.

Graph N.29 [80]



[80] The number of pending cases is divided by the number of judges

Graph N.30 [81]



As can be seen from the graphs, the variation of court workload in some cases is directly proportional to the estimated duration of case (DT): for example, in 2017-19, the estimated duration of case increased along with the increase in workload in the Gurjaani District Court and the Supreme Court of Georgia.

"The appellate court was suddenly filled with judges and the cases were less delayed at that stage. Instead, they overloaded the Supreme Court. A large flow went to the Supreme Court, reaching

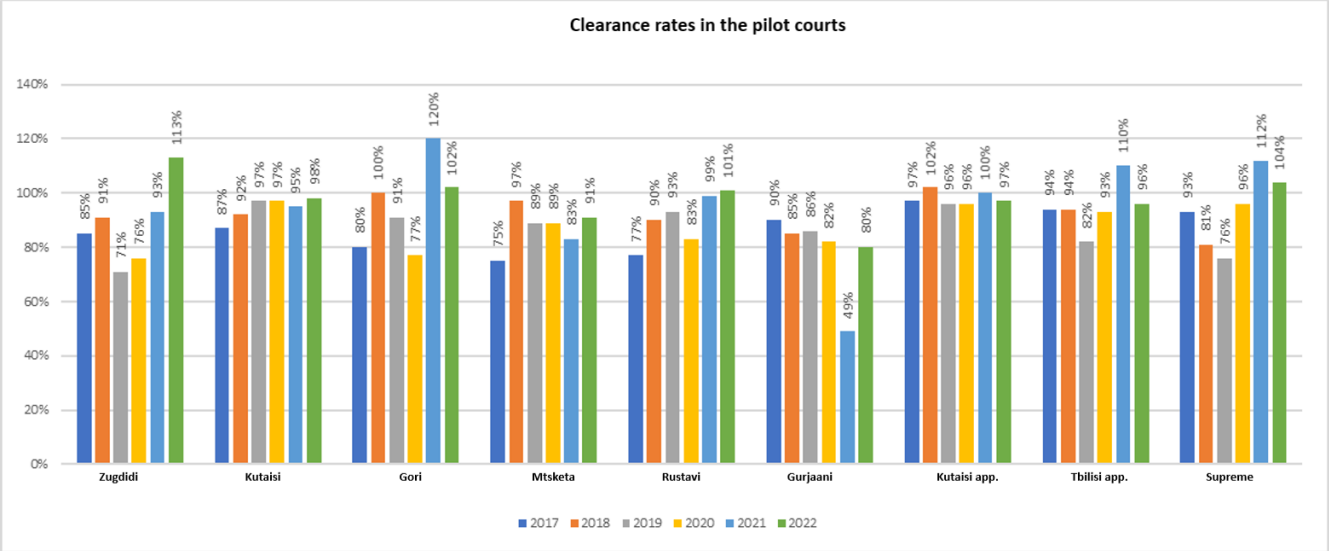
[81] The data given in the graph combines all three branches of law (civil, criminal, administrative). The numbers represent the number of days. It is calculated by the formula: the balance at the end of the accounting period is divided by the cases completed in the accounting period multiplied by 365. In calculating the duration of the cases, the cases related to the arbitration in the appeal courts of Tbilisi and Kutaisi was not taken into account. The estimated duration of these disputes is calculated separately. graphs N. 49, 50

even 400 pending cases before the judge which caused the delay in the Supreme Court. Some cases were not heard even for two years.[82]*".*

But, on the other hand, there are frequent cases when the workload is not directly proportional to the estimated duration of the cases. For example, despite the increase in workload in Kutaisi, Mtskheta, Rustavi district (city) courts in 2020-22, the estimated duration of cases was reduced.

What is the correlation between clearance rate (CR) and court/judge workload. As with the estimated case duration and caseload rates, there are different examples of correlation. Graph N. 29, and N. 31 show that when the workload in the courts increases, the clearance rate decreases. However, there are cases when the workload of the court increases together with clearance rates. For example, in Zugdidi and Rustavi courts in 2019-22, and in Gori court in 2021. Based on the clearing rate (CR) formula, this can only happen at the expense of increasing the number of cases completed. To find out what led to the completion of more cases, we turned to the Gori District Court, where such a sharp change was observed in 2021, asking what kind of administrative measures were taken during this period, which led to a sharp increase in the clearance rate, despite the increase in the workload of judges. We received the answer that the judges hear the cases independently and the court does not interfere in their activities[83].

Graph N. 31 [84]



[82] Face-to-face interview, judge, female, superior court.

[83] Letter N 854 of the District Court of Gori dated July 17, 2023.

[84] The number of cases completed during the year divided by the number of cases received, multiplied by 100. When calculating the clearance rate, cases related to arbitration in Tbilisi and Kutaisi appeal courts were not taken into account. These data will be calculated separately and compared to the general statistics - see down. graph N. 48

In order to get more detailed information on the issue, the reports due to be sent by the presidents of the courts to the High Council of Justice were requested[85] from the chairpersons of all district (municipal) and appellate courts[86].

The 2018-2020 report of the Rustavi City Court[87] lists as one of the measures aimed at increasing the court's efficiency the willingness of judges to deal with the flow of cases, including the conduct of remote hearings by covid-infected judges while being in isolation.

In face-to-face interviews, judges also note that they really have to manage cases with their own resources, even at the expense of their free time and health.

"I have up to 100 cases and maintaining this level requires constant involvement, I have to work at home, I don't have free time, the influx is so high. It is not impossible to maintain this amount, but it comes at the expense of your own free time. . "[88]

Judges name 70-80 cases as the optimal number of cases that can be managed at a time while maintaining the balance between work and recovery time.

"In the Supreme Court, taking into account that in many cases the hearing on the merits does not take place, 70-80 cases can be managed simultaneously, in the appeal - an average of 50 cases and in the first instance in 70-80 cases. The judge will feel himself professionally and personally capable and will combine rest and work time[89]*."*

[85] According to Articles 25.1.e and 32.2.g of the Law on Common Courts, the chairman of the district city or appellate court: "organizes the work of the court, studies and summarizes information on caseflow management (including the indicators of the entry and completion of cases, deadlines for proceedings, adjournments of sessions and the reasons for delays in proceedings) and provides this information to judges and the High Council of Justice of Georgia at least once a year; Within the scope of his competence, he takes measures to eliminate the systemic causes of delays in proceedings".

[86] On March 20, 2023, letters were sent to Tbilisi and Kutaisi appellate courts, Batumi, Rustavi, Khashuri, Telavi, Zestafon, Tsageri, Ozurgeti, Mtskheti, Bolnisi, Akhaltsikhe, Akhalkalaki, Gurjaani, Ambrolauri, Kutaisi, Gori, Sighnaghi, Poti, Khelvachauri , Zugdidi, Sachkheri , Tbilisi, Samtredia, Tetritskaro, Senaki district (city) courts.

[87] Rustavi City Court letter of January 17, 2023 N. 77.g."Report on consideration of civil, administrative and criminal cases in Rustavi city and Gardabani magistrate courts in 2018-22"

[88] Female Judge, Superior Court

[89] Male judge, Superior Court

Table N. 3 shows the number of completed cases per judge in 2017-2022

Table N. 3

Year	Number of judges	Number of completed cases	Number of completed cases per judge
2017	295	107815	365
2018	296	121297	410
2019	293	117446	401
2020	304	93741	308
2021	328	126700	386
2022	340	148913	438

As was mentioned above, as the result of the influx and accumulation of cases in Georgian courts in the last 6 years, the number of pending cases per judge has reached 300-500. Thus, a judge who has the working capacity to manage 100 cases at a time has to deal with 300 cases simultaneously and completes about 400 cases a year sacrificing the free time and health, which is still not enough to improve the clearance rate and reduce the accumulation.

If we try to solve this problem **by increasing the number of judges, it is necessary not only to fill the number of existing vacancies, but to triple the number of judges, which means staffing the system with approximately 1300 judges. This is much higher than the number calculated by any method used for determining the required number of judges.[90]. Thus, reducing the workload of judges (at the expense of increasing the number of judges or reducing the flow of cases) is only one insufficient component necessary for effective management of the flow of cases. In the meantime, it is important to have the right allocation of existing resources, technological and legal support, accountability mechanisms and good governance based on results analysis, under which existing judicial resources can better deal with the flow of cases.**

[90] Regarding the methods of calculating the required number of judges, see below, sub-paragraph 4.2.

4. CAUSES OF DELAYS RELATED TO THE MANAGEMENT OF THE COURTS.

Main findings

- **There is no policy and system to manage caseflow and deal with delays.**
- **Complete data necessary to manage caseflow and reduce delays is not collected or analyzed.**
- **There is no institutional communication between judges and court management on issues of caseflow management.**
- **The judge as the main figure in case proceedings does not participate in the discussion of issues of caseflow management.**
- **There is no rule or study to calculate the required number of judges in the courts. The Council of Justice determines the number of judges arbitrarily.**
- **The High School of Justice does not prepare the number of judicial candidates required by law.**
- **The High School of Justice almost always enrolls only those cadres who have experience working in the judicial system, which may reduce the motivation for the participation of cadres from outside the court in the competition.**
- **Some of the school's graduates are appointed to vacant judicial positions after several attempts, and sometimes they are not appointed at all.**
- **After the expiration of the term of office, only 5 out of 40 judges were used to complete the pending cases.**
- **The temporary emergency mechanism of judicial secondments is not being used for its proper purpose, that is to say, to deal with an unanticipated case flow.**
- **Transfer of a judge without competition to another court is never used to deal with caseload, even though the High Council of Justice always cites caseload as the basis for announcing a transfer.**
- **The chairpersons of the courts (chamber, collegium) do not actually share the burden of dealing with the flow of cases. Unjustified benefits have been established for them, which frees the chairmen from the obligation to consider the case. The special benefits awarded to the chairpersons are against the law.**
- **The High Council of Justice claims to specialize judges for the purpose of managing the flow of cases efficiently, but does not then examine whether the specialization has produced such results. On the other hand, the statistics of separate categories of cases**

confirm that the narrow specialization of judges in these cases does not result in speeding up the processing of cases.

- **The number of judicial assistants is insufficient. There is a practice of selectively unequal distribution of support staff among judges. The motivation and qualifications of staff need to be increased.**
- **Electronic case management software is imperfect. In appeal and cassation proceedings, the parties do not have remote access to case materials.**
- **The electronic case management program does not calculate statistics, which is why the information needed to manage the flow of cases cannot be fully collected, and obtaining the available statistical information requires additional time and resources.**
- **Since the end of the pandemic, courts rarely use remote hearings, which could have been an effective mechanism for speeding up cases.**
- **Currently, the arbitration ensures the relief of the courts within the limits of 4%. Delays in enforcement of arbitration rulings reduce the effectiveness and attractiveness of arbitration. The examination of the issue of the enforcement of the arbitration decision in the appellate courts lasts longer than hearing civil disputes on the merits. The creation of a specialized chamber to consider cases of enforcement of arbitration decisions has not accelerated but delayed the consideration of these cases.**
- **A positive step was taken by the High Council of Justice at the initial stage: a mediation program and an action plan was developed, however, it is not possible to evaluate the implementation of the plan. Due to the lack of interim monitoring reports, the reasons for non-implementation of the plan are unknown.**

4.1. Caseflow management and delay reduction policies, processing of data required for caseflow management.

According to the international standards, the court administration has an important role to play in managing the flow of cases and reducing delays[91]. According to the recommendation of the European Commission on the Efficiency of justice, at the central level there must be a body - the Council of Judiciary, the Supreme Court, the Ministry of Justice or an ad hoc body, or a working group or committee, which will identify problems, define goals, measures to be implemented

[91] see European Commission for the Efficiency of Justice Updated Guidelines for the Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. IV, A, B, Chttps://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 22.09.2023]

and monitoring mechanisms[92]. At the local court level, this institution may be assisted by committees consisting of judges, court managers and court staff.[93].

The 2017-21 strategy of the Georgian court system envisaged the identification of problems and opportunities concerning the duration of proceedings, as well as the development of policies to effectively reduce the delay of court cases and the backlog of cases.[94] The 2018 progress report of the implementation of the strategy does not contain the information whether the measures taken are based on the analysis of the problem of delay and overcrowding of cases in the court.[95] A progress report for the following years was requested from the High Council of Justice, which was not provided. [96]

According to 2018 progress report of the implementation of the strategy[97] following measures were taken for delay reduction:

- Creation of a narrow specialization panel in Tbilisi City Court to examine disputes concerning loans up to 5000 GEL with financial institutions
- Expanding the list of cases reviewed by the magistrate judge and expanding the possibility of examining the case by a single judge in the appellate courts;
- Creation of a specialized panel for disputes over 500,000 GEL in the Tbilisi city court;
- Increasing the number of assistants and session secretaries in Tbilisi appellate and city courts;
- Adding a wing to the Tbilisi City Court with 28 new courtroom.

Within the framework of the "third wave" of the judicial reform, in 2017, at the initiative of the judicial system, a special structural unit of the High Council of Justice entitled "Court Management Department" was created with the function of supervising the management of the court**[98]. It was assigned the duty to study annually the information related to the caseflow management and prepare appropriate response, if necessary, submit recommendations to the High Council of Justice and the courts**[99]. In justifying the need for Management Department, the

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[92] European Commission for the Efficiency of Justice, Backlog Reduction Tool 2023, p. 4. https://drive.google.com/file/d/1zP5ohlPt_zBu17ZGsEwCRSsnxUr8i27p/view?usp=sharing [last seen on 22.08.2023]

[93] Ibid., p. 4. Early documents adopted within the framework of the Council of Europe assigned the leading role to the president of the court at the local level: *"The presiding judge should encourage the sharing of good practices among judges in their courts, setting priorities and goals in terms of avoiding, reducing and eliminating backlogs"* - 2010 CM/Rec(2010)12 Recommendation and Explanatory Memorandum of the Committee of Ministers of the Council of Europe, par. 62https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d [last seen on 22.09.2023]

[94] Judicial system strategy for 2017-21, par. 2-2.3. https://old.supremecourt.ge/files/upload-file/pdf/sasamartlo-sistemis-strategia-2017-2021.pdf [last seen on 22.09.2023]

[95] 2017-2018 Progress Report on the 2017-2021 Judiciary Strategy and Action Plan, p. 80-84,https://shorturl.at/dsF57 [last seen on 10.25.2023]

[96] Letter of October 10, 2023 to the High Council of Justice.

[97] After 2018, the Council of Justice has not published the progress report of the implementation of the strategy.

[98] see "Justification of the need to introduce the Department of Court Management in the system of common courts"- https://old.supremecourt.ge/files/upload-file/pdf/sseer.pdf [Last viewed on 22.09.2023] Law of February 8, 2017 regarding making changes to the Organic Law of Georgia "On Common Courts".

[99] Article 56[1] of the Organic Law of Georgia "On Common Courts", subparagraph "a" of the second paragraph; Article 7 of the Statute of the Staff of the High Council of Justice of Georgia approved by Decision N. 1/206-2007 of the High Council of Justice of Georgia[4], paragraph 2, sub-paragraph "c".

judicial system pointed to the systemic nature of the problem of delays, which could only be corrected through close cooperation between the central and local management, and also considered it necessary to collect information on the age of pending cases and intermediate times for examination of cases, along with other data necessary for managing the flow of cases.[100]

With the same package of amendments made to the Law of Common Courts, the responsibility of analyzing the state of managing the flow of cases in the court and informing the judges was assigned to the presidents of the court. They must annually provide the judges and the Council of Justice with general information on the rates of entry and completion of cases, duration of proceedings, adjournments of hearings and other reasons for delaying proceedings, and take appropriate measures to eliminate the causes of delays in cases.[101].

The law and the decisions of the High Council of Justice do not directly provide for the personal involvement of judges in the process of analyzing information about the flow of cases and development of recommendations. Judges appear only as receivers of information. It seems that in practice judges do not even have this passive role and they are not informed. All the judges in the interviews[102] stated that they had never heard of the existence or discussion of any information, or policies related to caseflow management in general.

"I have not heard about the discussion of the chairman's individual reports, neither have i personally participated in its deliberation. I am not familiar with such reports. Nor do I know anything about the work of the management department. We provide statistics periodically and then it is published and we can see it"[103].

Resolution of the High Council of Justice of March 31, 2017 1/35 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/35-2017.pdf [last seen on 22.09.2022] also. see "Justification of the need to introduce the Department of Court Management in the system of common courts"- https://old.supremecourt.ge/files/upload-file/pdf/sseer.pdf [last seen on 22.09.2023]

[100] see "Justification of the need to introduce the Department of Court Management in the system of common courts"- https://old.supremecourt.ge/files/upload-file/pdf/sseer.pdf [Last viewed on 22.09.2023], p. 4. According to the recommendation of the European Commission for the Efficiency of Justice, the monitoring of the duration of proceedings should not be limited only to the assessment of the total duration of the proceedings, but also information should be collected on the individual stages of the proceedings. It is also important to determine the duration of pending cases, which gives the court the opportunity to manage the backlog and focus on potential violations of the reasonable time period provided for in Article 6 of the European Convention.
See European Commission for the Efficiency of Justice (CEPEJ), Revised Saturn Guidelines for Judicial Time Management, (4 th revision), 2021, p. 3, 6, 25, https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen: 29.09.2023]

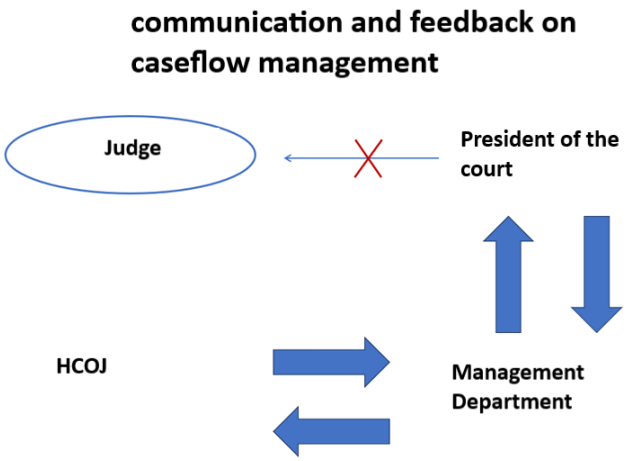
[101] Subparagraph "e" of the first paragraph of article 25 of the Organic Law on Courts, Subparagraph "c" of article 32, Paragraph 2. It should be noted that the Law on Common Courts uses the word "terms (ვადები)" in the meaning of duration. This use of the term is established in the relevant literature. see e.g. Court Watch: Terms of consideration of cases - https://courtwatch.ge/articles/disposition-time/ [last seen on 22.10.2023]see "Justification of the need to introduce the Department of Court Management in the system of common courts"-https://old.supremecourt.ge/files/upload-file/pdf/sseer.pdf [Last viewed on 22.09.2023], p. 4. see p. 7. As this document provides the word term may imply final as well as intermediate terms of adjudication of the case.

[102] 12 judges participating in the interview represented 9 courts

[103] Face-to-face interview, female judge, district court

"I don't know what this department is doing. I haven't heard about any of its activities either. I know it exists, but I haven't heard what it does. I don't know whether the chairman will present the reports or not. I have no information.[104]"

"I have not heard about the existence of such a common policy. We are busy with our own case. I personally try to consider old cases as a priority"[105].



In order to analyze the system's view on caseflow management and coordination between the judge, the court and the management department, project requested the court presidents' reports from all district and appellate courts, as well as information from the management department of the Council of Justice.[106] The only court that provided us with reports was the Rustavi City Court. According to the responses from several courts, the requested information is not being processed or sent[107], and one court referred us to the website."[108]

The reports of Rustavi City Court (2018-2022) contain information about the delay of cases,[109] but do not contain data on the reasons for the postponement of the hearings, or the average

[104] Face-to-face interview, male judge, superior court

[105] Face-to-face interview, female judge, court of first instance

[106] We received a denial from the High Council of Justice to deliver the report of the court chairpersons on the grounds that the said information, due to its volume, requires processing and systematization of a large amount of material and will lead to the distraction from the main functions of the staff. see Letter N 228/102-03 of June 6, 2023. In the letter N.562/1334 of May 22, 2023, it is indicated that the Department of Court Management "periodically exercises powers defined by art. 56^1 of the Organic Law on Common Courts "

[107] Letter N0161 of the Akhalkalaki Court of January 23, 2023 (where it is also indicated that the court only processes data on compliance with the procedural terms) and Ozurgeti District Court's letter N80 of January 18, 2023.

[108] Telavi City Court's letter N99 of February 2, 2023. The mentioned website contains only standard statistical information regarding the incoming and completed cases. https://www.court.ge/courts/telavis_raionuli_sasamartlo/?page=699&id=6138

[109] Rustavi City Court letter of January 13, 2023 No 77/g. In the 2018-22 reports sent by letter, following reasons for the delay of the cases are listed: the pandemic and the self-isolation of the judge due to the pandemic, the lack of prosecutors in the Rustavi district prosecutor's office, the delay in bringing prisoners from penitentiary institutions, the parties' unpreparedness

duration of the cases. It covers only the percentage of completed and ongoing administrative and civil cases exceeding 5 months deadline[110]. It seems that despite frequent violation of statutory timeframe of 2 months[111] for hearing cases, the management does not view the completion of the case within 5 months as violation law .[112]

The court reports also do not reflect whether any recommendation was received from the High Council of Justice regarding the previous year's reports and how it affected the effectiveness of case management during the year.[113].

Current legislative and practical approaches make the judge the only person responsible for the management of the caseflow, which reduces efficiency, leaves the judge completely alone with the overwhelming caseflow, and makes him/her vulnerable to disciplinary action and selective approach.

"As for the supporting staff, if you claim that you are too busy, they can add one assistant to you. There is no rule, this issue is decided individually case by case, either you will be granted supplementary staff or not. There was a case where some judges had four assistants."[114]

Courts do not seem to have a coordinated policy to manage the caseflow, nor do they fully process the information required by law. Data processing standards also vary by court. The impression remains that the reporting-feedback cycle between the court and the Council of Justice is of a purely formal nature, which undermines the correct analysis of the reasons for the delay/accumulation of cases and prevents effective planning of administrative, technical, legal or educational measures necessary for their elimination or prevention.

4.2. Court resources

According to the recommendation of the European Commission for the Efficiency of Justice, the judicial system must have adequate resources to be able to deal with the flow of cases in a timely manner. Resources should be distributed equally, according to needs and used efficiently[115]. If

for participation in remote hearings, the lack of judges and the absence of assistant clerks, delays in expert reports on criminal cases, jury trials.

[110] The report also mentions several criminal cases that have been pending for several years

[111] Civil Procedure Code Article 59

[112] Similar definition is provided in the disciplinary decisions of the Council of Justice (for details, see below - Chapter 4.4.).

[113] However, measures aimed at increasing the efficiency of the court are also indicated, some of which required the involvement of the High Council of Justice. (Full staffing the civil panel, establishing a master clerk in the court, adding 2 courtrooms, assigning authority to the magistrate judge in the criminal panel - (Letter of Rustavi City Court of January 13, 2023 N. 77/g)

[114] Male judge, superior instance

[115] European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. II.A.1.https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 22.09.2023]

necessary, it should be possible to allocate resources quickly and efficiently to avoid delays and backlogs[116].

Court resources can be divided into two groups: judge and non-judge resources.[117] The issue of judge related resources can be considered in three parts: a. Determining the required number of judges. b. Mobilization of judges. c. Effective use of existing resources of judges.

4.2.1. Determining the required number of judges

According to the recommendation of the European Commission for the Efficiency of Justice, the authorities should determine the number of judges necessary for the courts to deal with incoming and pending cases in a timely manner.[118]

International practice is familiar with two methods for calculating the required number of judges: relative conditional assessment - based on the number of population; and according to the number of cases. On the other hand, by the second method, the number of judges can be calculated by a. only the number of cases (unweighted case count) or b. weighted caseload (case weighting system).[119]. The European Commission for the Efficiency of Justice recommends calculating the number of judges according to the "volume and complexity" of cases.[120]".

Both the strategy of the judicial system for 2017-2021, as well as the document "Judicial Reform Strategy and Action Plan" developed by the Legal Committee of the Parliament in 2022, envisage the goal of ensuring the optimal number of judges and court staff in the system of general courts,

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[116]Ibid., par II.A.3

[117]See e.g.. "The Justice System Could Function Better" Speech by Thomas Hammarberg, Commissioner for Human Rights, Council of Europe Justice Ministers Conference: "Modernising Justice in the Third Millennium" Istanbul, 24-26 November 2010, p. 3 https://rm.coe.int/16806da8df

[118] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 36 https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 22.08.2023]

[119] Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries Final Report Lot 3: Analysis of Backlog Reduction Programmes and Case Weighting Systems, p. 37 https://www.rcc.int/download/docs/Court-Backlog-Study_FINAL_za%20web.pdf/f2bdb2ae4d27f8588034538cb54b6011.pdf "The case weighting system is based on the idea that cases differ in complexity, which means that different categories of cases require different amounts of time and attention from judges and prosecutors. Therefore, the composition of cases or the proportion of different categories of cases in the total number of cases can have a profound effect on the workload of the court." .

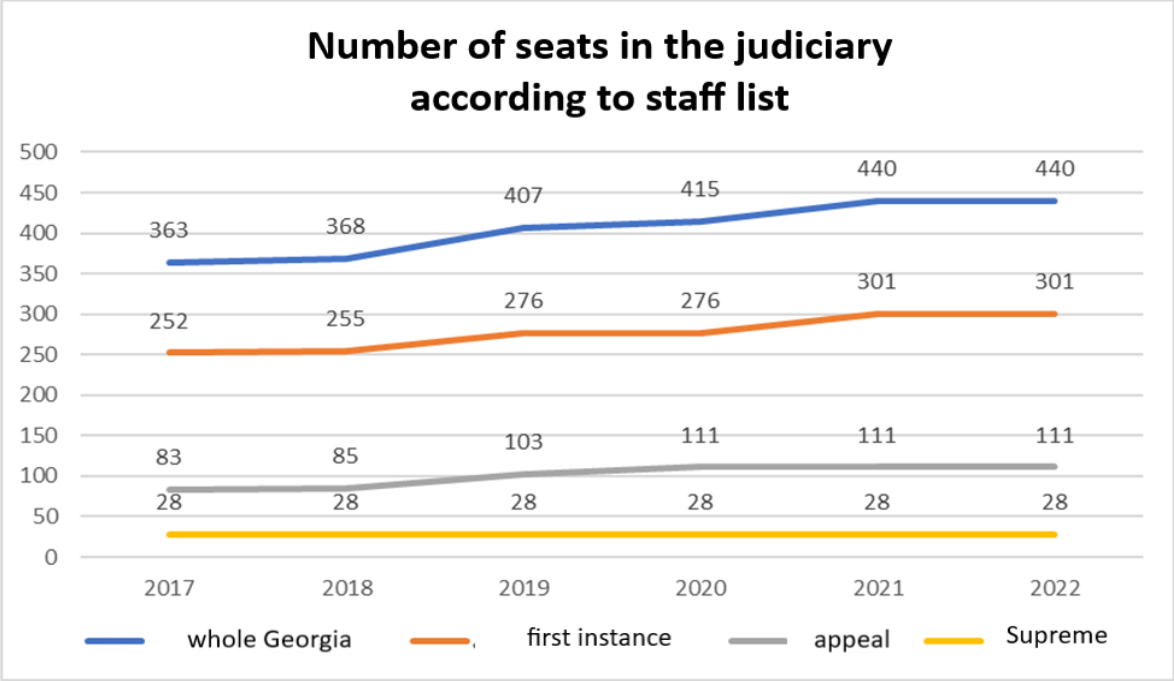
[120] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 36. The same document specifies that this can be a case weighting system or some other work measurement methodology. p. 38. https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [Last viewed: 22.08.2023] The European Commission for the Efficiency of Justice does not recommend that the number of judges be determined in proportion to the population, although the European average is determined by periodic reports. As of 2020, the European average is 22.2 judges per 100,000 inhabitants. In Georgia, this figure is 8.8, and it ranks 7th from the last among the countries of the Council of Europe. European Judicial Systems, CEPEJ Evaluation Report, 2022, part. 1, p. 48 https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279 [last seen on 22.09.2023].

so that they can carry out their assigned tasks in a reasonable time.[121] In addition, the 2017-21 strategy provided for the determination of the optimal number of judges and court personnel based on the assessment of the volume of cases[122].

In Georgia, the number of judges in the Supreme Court (28 judges) is determined by the Constitution of Georgia and the Organic Law[123], and in the courts of the first and appellate instance the number of judges is determined by the decree of the High Council of Justice.[124]

In 2017-2022, the number of judges in different tiers of judicial system was determined as follows[125].

Graph N.32



[121] Judicial system strategy for 2017-2021, p. 21 https://old.supremecourt.ge/files/upload-file/pdf/sasamartlo-sistemis-strategia-2017-2021.pdf[Last viewed on 22.09.2023] See Judicial reform strategy and action plan, p. 13 https://web-api.parliament.ge/storage/files/shares/Komitetebi/iuridiuli/samushao_jgufebi/shedegebi/sasamartlo_reformis_strategia_da_samoqmedo_gegma.pdf [last seen on 22.09.2023]

[122] Judicial system strategy for 2017-2021, p. 21 https://old.supremecourt.ge/files/upload-file/pdf/sasamartlo-sistemis-strategia-2017-2021.pdf [last seen on 22.09.2023]

[123] Article 61.2 of the Constitution of Georgia. The aforementioned amendment was reflected in the Law on Common Courts and a fixed number of judges was determined - 28 judges - see Paragraph 3 of article 14 of the Law on Common Courts.

[124] Paragraph 1 of article 23 and Paragraph 2 of article 28 of the Law on Common Courts. Decision N. 1/150-2007 of the High Council of Justice of Georgia dated August 9, 2007 and decision N. 3 of June 16, 2020 on the creation of district (city), Tbilisi and Kutaisi Courts of Appeal, determining their operational territory and the number of seats, with relevant amendments.

[125] Decision N. 1/150-2007 of the High Council of Justice of Georgia dated August 9, 2007 and decision N. 3 of June 16, 2020 on the creation of district (city), Tbilisi and Kutaisi Courts of Appeal, determining their operational territory and the number of judges, with relevant amendments.

Neither the amendment to the Constitution of Georgia[126] nor the decisions of the High Council of Justice[127] do not explain the method by which the number of judges in the courts of different instances was determined. The 2017-21 strategy of the judicial system indicates that the rules for determining the necessary number of judges and staff should be developed.[128] However, such a rule is not available[129].

In order to assess the required number of judges and staff in the courts of Georgia, in 2017-20, a study was conducted on the basis of the principle of "smart weighing". A group of judges holding administrative functions was also involved in the study. As a result of the research, taking into account the workload of the Georgian court system in 2016-2018, the optimal number of judges was determined between 380 and 450.[130] The research also assessed the needs of judges in various courts. As of 2018, the differences between the number of judges envisaged by official list of judicial positions and the required number of judges identified by the study are as follows.[131]

[126] Explanatory note on the Draft Constitutional Law of Georgia "On amending the Constitution of Georgia" 2017 https://www.matsne.gov.ge/ka/document/view/3656689?publication=0

[127] Decision N. 1/150-2007 of the High Council of Justice of Georgia dated August 9, 2007 and decision N. 3 of June 16, 2020 on the creation of district (city), Tbilisi and Kutaisi Courts of Appeal, determining their operational territory and the number of judges, with relevant amendments

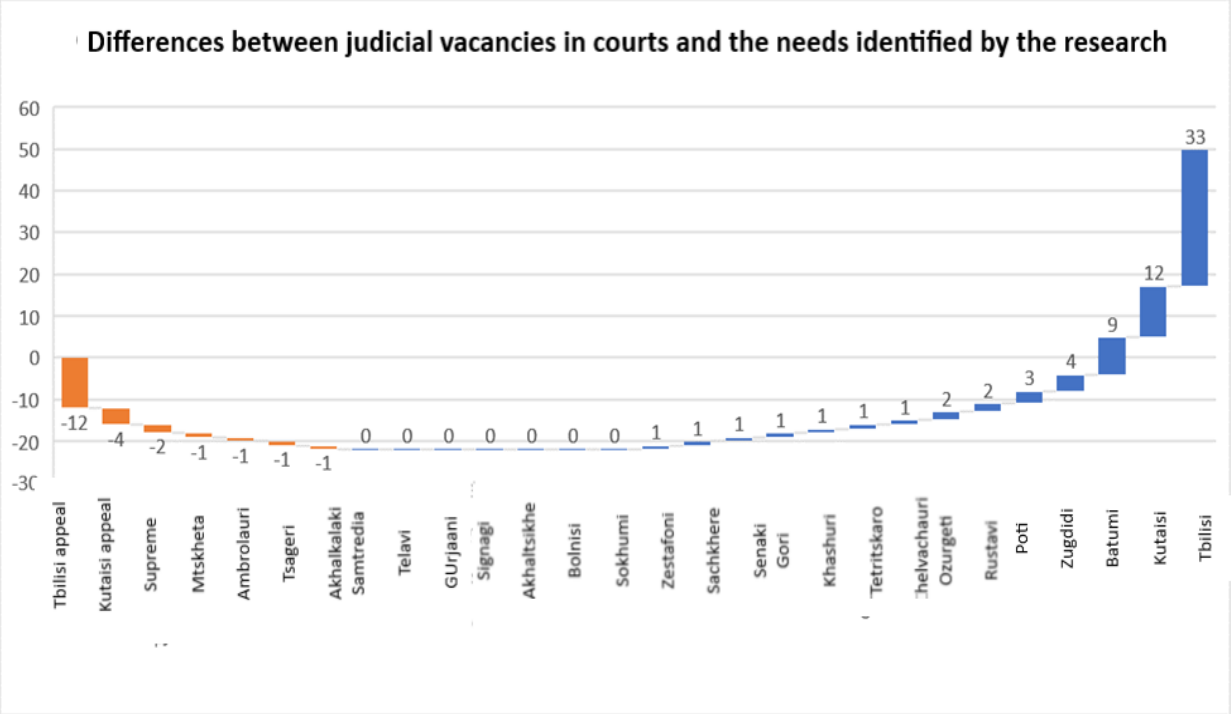
[128] Judicial System Strategy for 2017-21, p. 21 https://old.supremecourt.ge/files/upload-file/pdf/sasamartlo-sistemis-strategia-2017-2021.pdf [last seen on 22.09.2023]

[129] A question was sent to the High Council of Justice whether there is such a rule (letter of September 21, 2023), but no answer was received.

[130] The number of judges was calculated using the so-called the "smart weighing" method of cases based on the statistical data of 2016-18. See Distribution of Judges and Staff in Georgian Courts, Phase 2, Jesper Vitrup, 2020. Research commissioned by USAID PRoLOG. Only the general findings of the study concerning the total number of judges are publicly available: https://shorturl.at/hrJW5 [last accessed 28.11.2023]

[131] The numbers reflect the number of judges - the blue columns reflect the lack of judges, the yellow columns reflect the excess of judges.

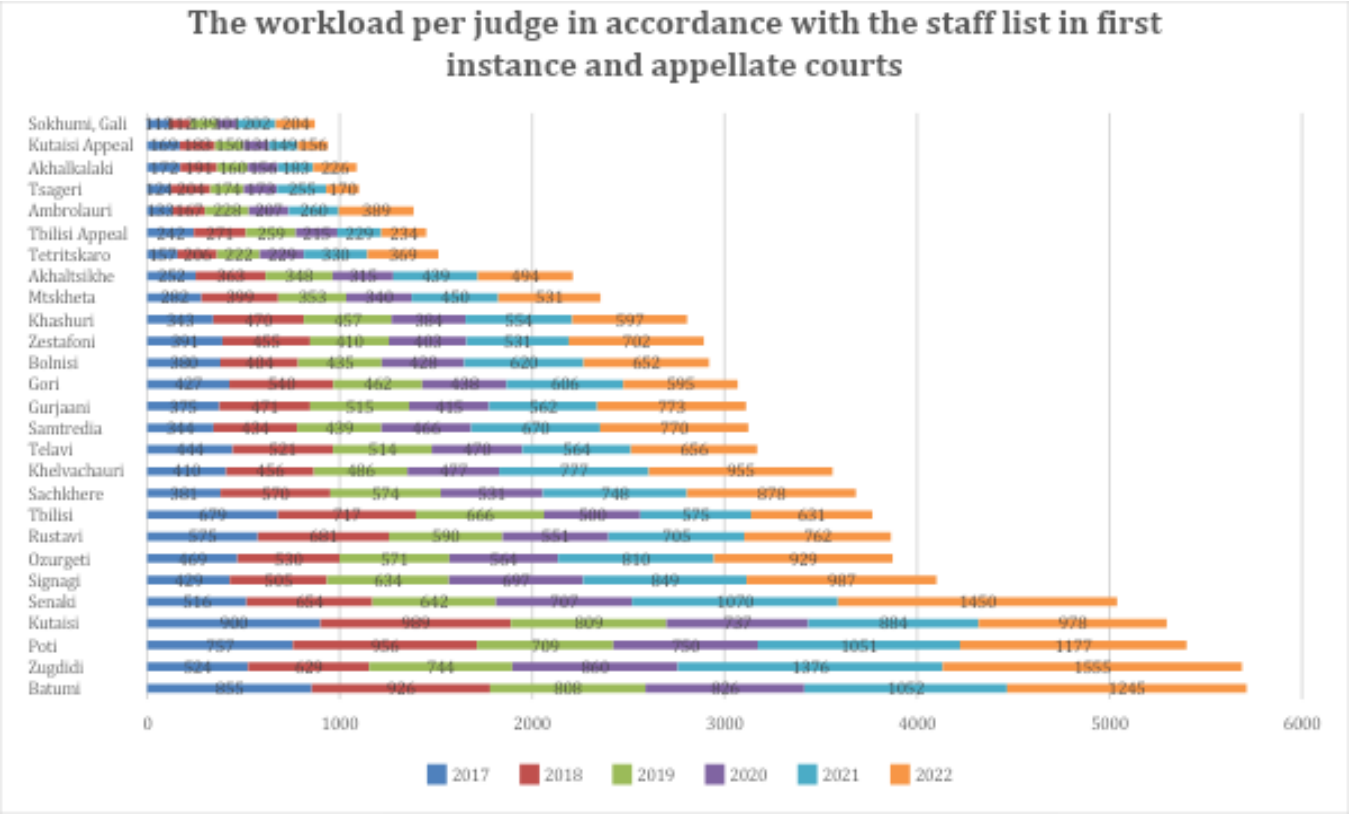
Graph N.33



It was revealed that (based on the statistical data of 2016-18) some of the courts (especially in Tbilisi, Kutaisi, Batumi, Zugdidi, Poti, Rustavi, Ozurgeti district (city) courts) needed to increase the number judges, while some (e.g. Tbilisi and Kutaisi appeal courts, Mtskheti, Ambrolauri, Tsageri, Akhalkalaki courts) required a decrease in the number of judges.

A similar picture is shown by the 2017-2022 court workload study, which shows the pending cases without their weights (see graph N. 34).

Graphs N. 34 [132]



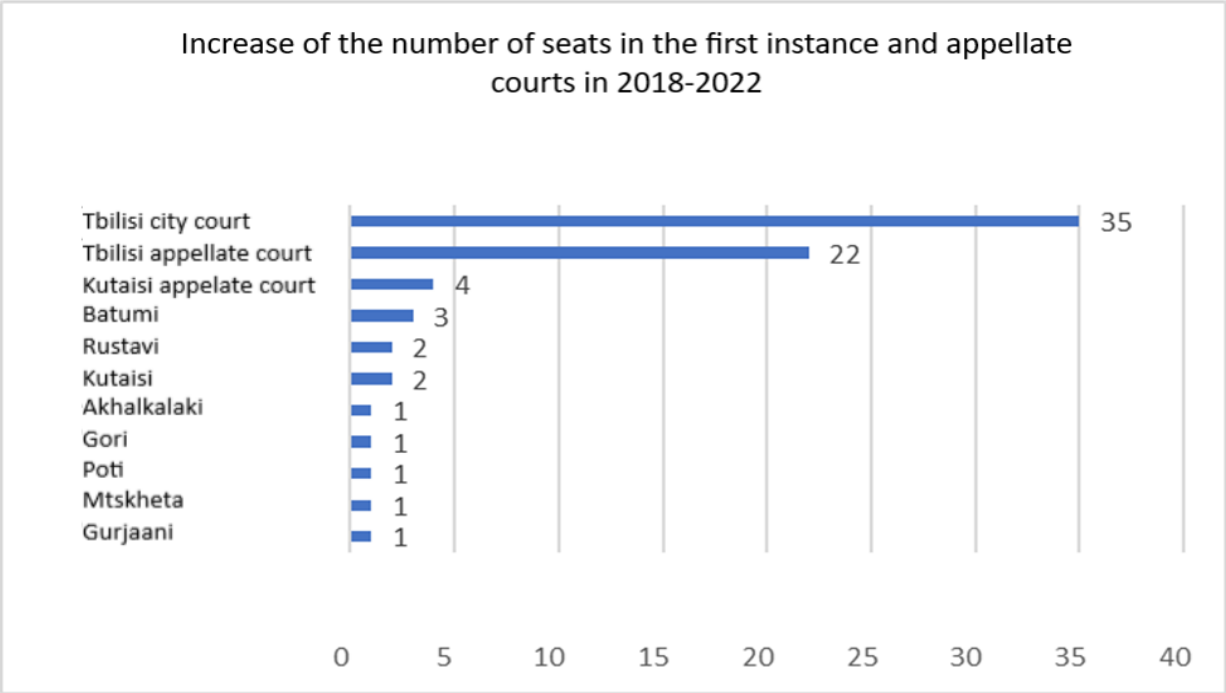
The same graph shows that the workload of the courts is uneven throughout Georgia. It is possible, conditionally, to divide the courts into overloaded (Batumi, Zugdidi, Poti, Kutaisi, Senaki), less overloaded (Sighnaghi, Ozurgeti, Rustavi, Tbilisi, Sachkhere, Khelvachauri) courts, moderately busy (Telavi, Samtredia, Gurjaani, Gori, Bolnisi, Zestafon , Khashuri, Mtskheta, Akhaltsikhe), courts with less than average workload - (Tetritskaro, Ambrolauri, Tsageri, Akhalkalaki, Tbilisi Appeal, Kutaisi Appeal, Sukhumi).

However, most of the courts, during the reporting years, constantly remain in the same category of workload.

[132] It reflects the workload of Georgian city (district) and appellate courts in relation to the number of judges determined by the staff list. The workload is calculated by dividing the number of pending cases in each court in the corresponding year by the full-time number of judges in the same court (which is equal to the average number of cases under consideration by one judge under conditions of filling all vacancies). About the staff list, see decisions of the High Council of Justice:"On creation of district (city), Tbilisi and Kutaisi appeal courts, determination of their operational territory and number of judges" . Available in the decision search system of the High Council of Justice www.hcoj.gov.ge By typing the words "determining the number of judges" in the search field. Due to the small number of judges and cases, the "Sukhumi, Gali" column combines the Sukhumi city and Gali Gulrifshi district courts.

In 2018-2022, according to the decisions of the High Council of Justice, number of judicial positions increased only in 10 courts[133]. The decisions of the High Council of Justice do not contain any justification[134] and in some cases, the change in the number of positions is inconsistent and illogical. For example, the number of judges increased in Tbilisi and Kutaisi Courts of Appeal, which belong to the least busy courts, and did not increase in Zugdidi and Ozurgeti District Courts, which belong to overloaded and busy (above average courts), and also according to USAID PRoLOG research they needed additional number of judges. Also, in Batumi and Kutaisi city courts, the number of judicial positions was increased only by 3 and 2 seats, when in reality they needed a much larger number of judges.

Graph N. 35



[133] Decision N. 1/150-2007 of the High Council of Justice of Georgia dated August 9, 2007 and Decision N. 3 of June 16, 2020 on the creation of district (city), Tbilisi and Kutaisi Courts of Appeal, determining their operational territory and the number of judges, with relevant amendments.

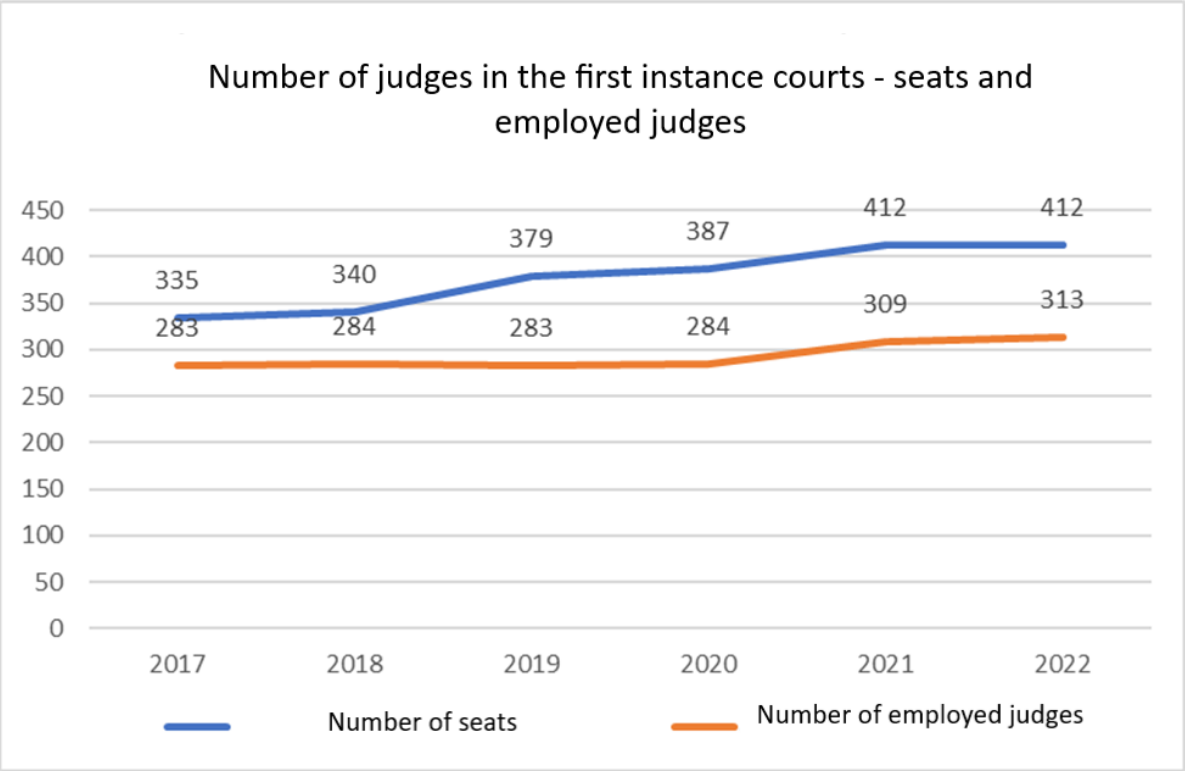
[134] Decision N. 1/150-2007 of the High Council of Justice of Georgia dated August 9, 2007 and decision N. 3 of June 16, 2020 on the creation of district (city), Tbilisi and Kutaisi Courts of Appeal, determining their operational territory and the number of judges, with relevant amendments.

4.2.2. Mobilization of judges' resources

Scarcity of judicial resources in Georgia is perceived as the main factor determining the accumulation of workload of the court and the delay of cases.[135]

Graph N.36 shows the number judicial vacancies and actual number of judges in courts of first instance and appeal in 2017-2022[136].

Graph N. 36



As we can see from this graph, during the study period, there were 50 to 100 unfilled vacancies in the courts every year.

[135] 2019-2020 report of the Secretary of the High Council of Justice, p. 4. Available at http://hcoj.gov.ge/files/news/angarishi.pdf [last seen on 22.09.2023]

[136] The number of seats is counted by the High Council of Justice decision N. 1/150-2007 of August 9, 2007 and decision N. 3 of June 16, 2020 (with appropriate changes). The number of judges was provided by the letter of the High Council of Justice dated July 14, 2023 N. 729/1534-03.

How did the High Council of Justice respond to this challenge? In 2017-2022, 8 competitions were announced and held for vacancies in the courts of first instance and appeals.[137].

The electronic search database of the High Council of Justice displays 486 decisions related to judicial appointments made in 2017-2022. [138]

Despite the adoption of this number of decisions, the number of judges in the first and appellate courts increased only by 30 (in 2019, on the contrary, a decrease was observed).

This can be explained by several factors:

- The system was deprived of judges whose term of office expired for various reasons.[139] -
- The number of the High School of Justice graduates who were subsequently appointed as judges is small.[140]
- Most of the appointed candidates were former or current judges as the result of which other judicial vacancies were liberated.[141]

As to why new judges have not been added to the system, the interviewed respondents cited various reasons, such as the unpopularity of the profession of a judge among lawyers outside the judicial system, the barrier of High School of Justice, and court management viewing new people as politically unreliable.[142]

"The reason why they don't get enough new judges is the problem of credibility, a person can be a good lawyer but has no political confidence[143].

"There aren't enough candidates who want to study at School, because of the low salary. The experienced lawyers i am familiar with don't apply to the school for this very reason. I'm surprised why they don't appoint people who have graduated from school."[144].

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[137] Decisions of High Council of Justice N. 1/24 of February 27, 2017, N. 1/259 of October 16, 2017, N. 1/238 of July 30, 2018, N. 1/89 of June 26, 2020, N. 1 of February 22, 2021, N. 1/148 of March 2, 2021, N. 1/248 of August 5, 2021, N. 1/130, of November 25, 2022

[138] Decisions are available in the decision search system of the High Council of Justice http://hcoj.gov.ge/ka/ . Decisions are searched by typing the word "appointment" (485 decisions) or "appointment (1 decision)" in the search field. Out of these, 281 decisions refer to the appointment of a judge for life (the words - "for life appointment"), 59 decisions refer to the appointment of a judge for a probationary period (the words "appointment to the position"), 145 decisions refer to the transfer of a judge from chamber to chamber or from collegium to collegium ("appointment as a judge" or "appointment as a judge")

[139] Regarding dismissal of judges due to expiration of term of office and reaching retirement age, see below

[140] About the number of persons enrolled in the High School of Justice, see Below is the graph N.37.

[141] Association of Young Lawyers of Georgia, Monitoring Report of the High Council of Justice, 2020, N. 8, p. 20 https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/HCoJ%20-%208.pdf [last seen on 22.09.2023]
Association of Young Lawyers of Georgia, International Transparency, Monitoring Report of the High Council of Justice, 2018, N. 6, p. 41,https://transparency.ge/sites/default/files/monitoring-report-of-the-high-council_of-justice-6-geo_1.pdf [last seen on 22.09.2023]

[142] Face-to-face interviews with judges and December 15, 2023 focus group with lawyers.

[143] December 15, 2023 focus group with lawyers.

[144] Face-to-face interview, male judge, court of first instance.

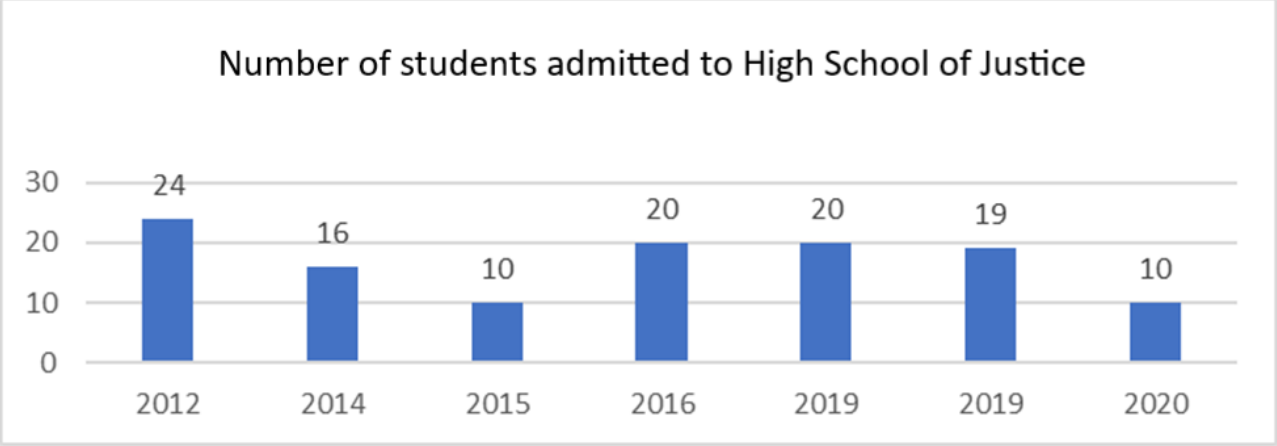
„The judicial vacancies are not filled from outside (but from the inside). The judge's exam is also taken by people who work inside the court and less by people from outside the system. And many of these court officials also fail to pass this exam, despite the fact that they have daily contact with the law and should not have difficulty, they do not have time to prepare, because they are busy."[145].

According to the law, graduation of High School of Justice is a mandatory prerequisite to be appointed as a judge. Until 2019, the High Council of Justice was obliged to hold a competition for admission to School of Justice at least twice a year.[146] Instead of solving the problem of shortage of personnel, from 2020 this requirement has been reduced to at least one competition per year.[147]

Moreover, the requirement of the law often was not fulfilled: in 2013, 2017-18, 2021-22, no admission competition was held at the High School of Justice, and in 2012, 2014, 2015, 2016, competitions were held only once a year.

Graph #37 shows both the frequency of competitions and the number of individuals enrolled in High School of Justice[148]

Graph N. 37



According to the amendment to the Law of common courts on December 13, 2019, the number of students admitted to the school should exceed the estimated number of vacancies in the court system by 20. However, The school has the right to reduce the number proposed by the High

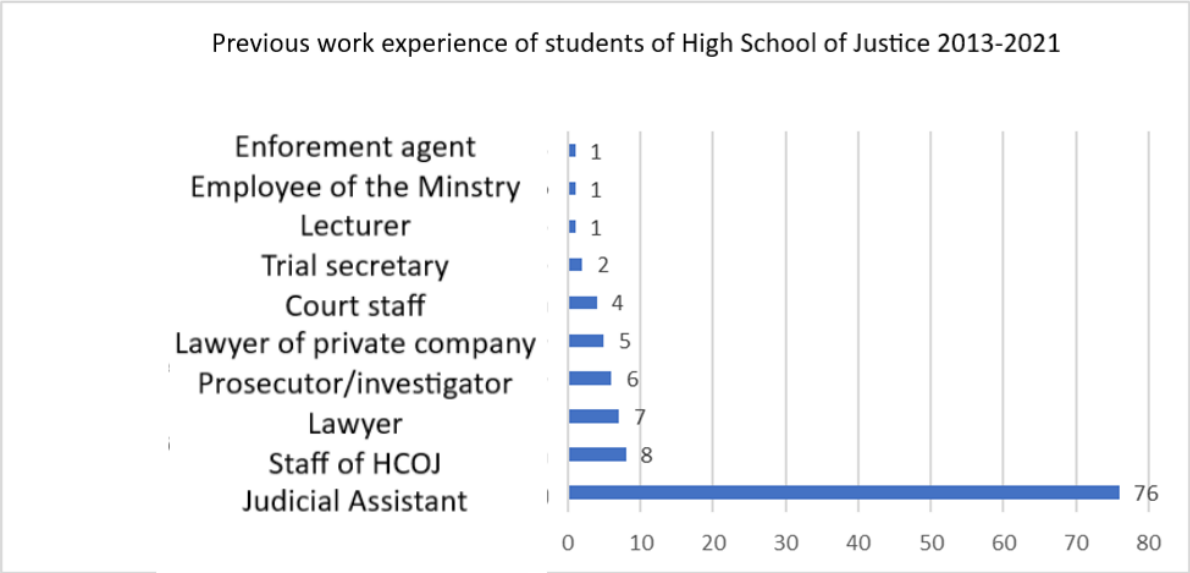
[145] Face-to-face interview, male judge, Court of first instance.
[146] Paragraph 2 of article 11 of the Law on the Higher School of Justice of 2006 (repealed from 13.12.2019)
[147] 66^{12} of the Organic Law on Common Courts, second paragraph.
[148] Letter of the High Council of Justice of June 7, 2023 N. 631/1488-03

Council of Justice only if the school's budget and/or material and technical base does not allow for more trainees.[149]

After the adoption of the said change, on December 26, 2019 and June 5, 2020, admission contests were announced at the High School of Justice, where the number of students to be enrolled was determined by 10 and 20 respectively.[150]p Despite the fact that, in the mentioned period, there were always up to 100 free vacancies in the judicial system, in 2021-22, no competition for admission to the Higher School of Justice was announced.

In 2012-2021, 119 trainees were enrolled in the High School of Justice[151], of which 111 are currently appointed as judges.[152] Graph N.38 shows that there is almost no inflow of personnel from outside the judicial system to the High School of Justice. Those who graduate from School and are appointed as judges are mostly people working within the judicial system. 90 of the 111 trainees appointed as judges were former court employees, and 21 persons from outside the system.[153].

Graph N. 38



[149] see Article 66 of the law of Common Courts[15] .

[150] Decision N 1/365 N. of the High Council of Justice of December 26, 2019., decision N. 1/69 of June 5, 2020 about the announcement of the admission competition for the trainees of Justice at the High School of Justice http://hcoj.gov.ge/ka/ ; In addition, decision N. 1/69 of the High Council of Justice of June 5, 2020. The decision on the announcement of the school admission competition was declared invalid on by May 24, 2023 N. 1/55 decision (http://hcoj.gov.ge/Uploads/2023/6/55-2023.pdf

[151] Letter of the High Council of Justice of June 7, 2023 N. 631/1488-03.

[152] Information on the appointment of each candidate was obtained from the decision search database of the High Council of Justice (www.hcoj.gov.ge)

[153] Biographies of trainees of the High Council of Justice who later became judges are available on the webpage of High Council of Justice (www.hcoj.gov.ge) and Tbilisi City Court (https://tcc.court.ge/ka/Justice).

It is worth noting the fact that some trainees who graduated from the High School of Justice repeatedly participated in the announced competitions, although they were not appointed as judges[154] while some were declined and responding vacancies remained unfilled, but they were appointed after a certain period of time.[155] There can be two possible explanations of this situation: either the selection, teaching and examination system in the School of Justice does not adequately prepare the candidates, or appointments are not made on a professional and merit-based basis.

The issue of extending the term of office of the judge is also related to the mobilization of judges' resources. Georgian legislation allows the extension of the judge's term of office until the completion of the cases pending before the judge in two cases: if the judge has reached retirement age; If the term of office has expired.[156] The High Council of Justice does not use the first type of extension at all, while the second type of extension is used selectively.

In 2017-2022, the term of office of 18 judges was terminated due to reaching the retirement age.[157] The High Council of Justice did not extend the term for any of them. European standards on case management recommend the use of retired judges as a temporary measure when courts are overloaded.[158] Failure to use this opportunity may result in the delay of a particular case. The criminal case against the former president of Georgia - Mikheil Saakashvili, trial of which started in November 2021, can be used as an illustration.[159] And after nearly two years of progress, the

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[154] e.g. Nino Khabalashvili was refused appointment as a judge (decisions N. 1/58 of the High Council of Justice of January 11, 2018, N. 1/202 of November 18, 2020, N. 1/29 of February 7, 2023), Nino Meladze (decision N. 1/ 45 of the High Council of Justice of January 11, 2018 and N. 1/29 decision of February 7, 2023).

[155] For example, on January 11, 2018, Nino Gogatishvili and Aleksandre Lomidze were refused appointment to the Mtskheta court despite the fact that the seats in this court remained vacant as a result of the competition. However, they later (Nino Gogatishvili after 2 years and 10 months, Aleksandre Lomidze after 1 year and 4 months) were appointed as judges in other courts. see Decisions of High Council of Justice N. 1/259 of October 16, 2017, N 1/38 of January 11, 2018 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/38-2018.pdf, decision N. 1/165 of November 18, 2020 http://hcoj.gov.ge/Uploads/2021/2/165-2020.pdf decision N. 1/44 of January 11, 2019 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/44-2018.pdf, decision N. 1/84 of May 24, 2019 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2019%20-%20gadawyvetilebebi/84.pdf, decision N. 1/165 of November 18, 2020 http://hcoj.gov.ge/Uploads/2021/2/165-2020.pdf . See the results of the January 11, 2018 competition on the website of the High Council of Justice: https://shorturl.at/xyEJ5

[156] Organic law of Common Courts, article 36.5

[157] Giorgi Londaridze, Murman Isaev, Elene Osadze, Leila Gurguchiani, Marine Kholoashvili, Teimuraz Svanidze, Marina Kiknadze, Guram Gotsiridze, Davit Kekenadze, Naira Gigitashvili, Nana Jankhoteli, Jemal Kopaliani, Zoya Kvaratskhelia, Angeli Khurodze, Labaza Duishvili, Teimuraz Fareishvili, Teimuraz Dgvareli, Shalva Mchedlishvili. Relevant decisions of the High Council of Justice in the decision search system www.hcoj.gov.ge

[158] "The use of "retired judges to limit the impact on the length of pending cases". European Commission for the Efficiency of Justice, Backlog Reduction Tool, 2023. p. 39 https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen on 29.08.2023]

[159] https://presa.ge/ka/74679/page/tbilisis-saqalaqo-sasamartloshi-mikheil-saakashvilis-saqmis-gankhilva-daitckho?fbclid=IwAR2_ZovRtx3mUSYsbUffe7bBpt0rdD0oHsBbCLU7rCthi4-WhhmpTVqMzdY[Last viewed on 22.09.2023] It should be noted that the European Court of Human Rights starts counting the "reasonable period" stipulated in article 6 of the European Convention on criminal cases from the presentation of the charge. (See, for example, Neumeister v. Austria, 27 June 1968, §18; Alimena v. Italy, 19 Feb. 1991, §15) Mikheil Saakashvili was charged in this case in July 2014.

taking of evidence was restarted[160], because the judge's term of office was terminated due to reaching the retirement age and was no longer extended.[161]

In 2017-22, the term of office of 40 judges of the first and appellate courts expired.[162] Among them, the term of office of 5 judges was extended until the completion of the pending cases.[163] The Council's decisions to extend their tenure are usually justified by the fact that these judges have pending cases and/or are participating in an ongoing competition. These judges were later appointed to the same or another court for life[164].

On the other hand, none of the judges who unsuccessfully participated in the competition or competitions after the expiration of their term of office had their terms of office extended.[165].

This approach of the Council leaves the impression that the issue of extending the term of office of judges is not decided in the interest of timely consideration of cases or solving the problem of backlog, but is used selectively. And the High Council of Justice is guided by a pre-formed attitude regarding the future appointment of the candidate.

In the competitions held during the research period, most of the vacant seats of judges remained unfilled.[166]

Lets consider specific cases of judicial resource mobilization on the example of pilot courts.

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[160] see On Sunday, November 7, "The Hearing of the case against Saakashvili and other high-ranking officials will begin again" http://kvira.ge/866975

[161] Decision 1/53 of the High Council of Justice of May 24, 2023 http://hcoj.gov.ge/Uploads/2023/6/53-2023.pdf

[162] Tsisana Sirbiladze, Roin Kakhidze, Davit Kekenadze, Mikheil Bebiashvili, Koba Gotsiridze, Ekaterine Parthenishvili, Vakhtang Mrelashvili, Maya Shoshiashvili, Vazha Fukhashvili, Davit Mgeliashvili, Badri Kochlamazashvili, Nino Elieshvili, Shorena Jankhoteli, Mevlud Khatashvili, Mamuka Tsiklauri, Ana Chogovadze, Thea Beraya, Bitsadze, Khatuna Arevadze, Natia Kutateladze, Asmat Kokhreidze, Giorgi Sulakadze, Irakli Shavadze, Valeri Tsertsvadze. The information is available through the search system of decisions of the High Council of Justice http://hcoj.gov.ge/ka/

[163] Tamar Chuniashvili, Tariel Tabatadze, Ia Labadze, Shalva Kakauridze, Giorgi Arevadze. Decisions of the High Council of Justice N. 1/135 of December 12, 2022, N. 1/136. N. 1/190 of October 12, 2022, N. 1/105 of July 23, 2020, N. 1/272 of November 12, 2018.

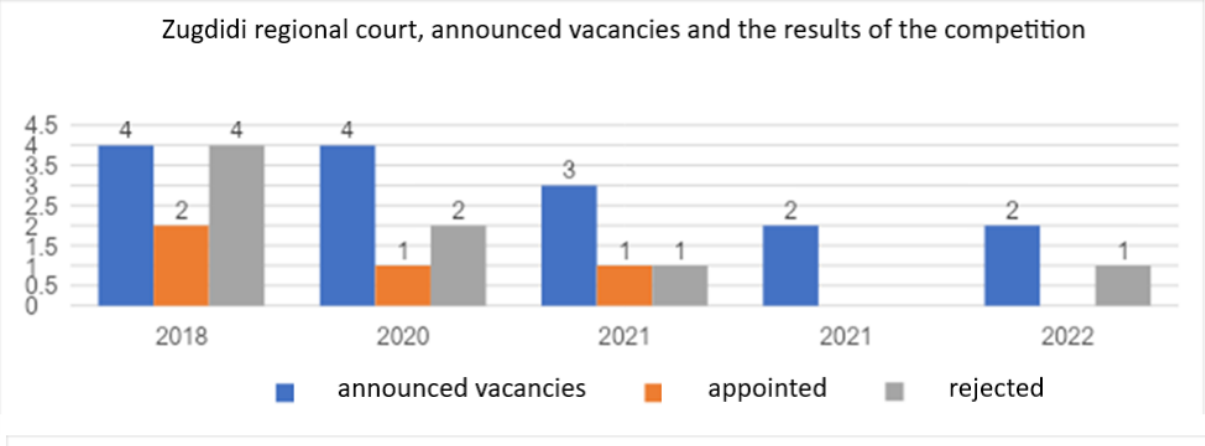
[164] Decisions of High Council of Justice N. 1/111 of February 7, 2023, N. 1/13, N. 1/19, N. 1/168 of November 18, 2020, N. 1/168 of May 24, 2019.

[165] Giorgi Zviadadze, Giorgi Darakhvelidze, Ketevan Dugladze, Natia Kutateladze, Leila Kokhreidze. decisions of February 7, 2023 N. 1/122, November 18, 2020 N. 1/182, June 17, 2021 N. 1/99, February 7, 2023 N. 1/23. available in the search system of decisions of the High Council of Justice http://hcoj.gov.ge/ka/. Also, Netgazeti, "Tomorrow the voting for the selection contest of the candidates for the judicial vacancies will be held". https://ipress.ge/news/sazogadoeba/khval-mosamarthletha-kandidatebis-shesarchevi-konkursis-kentchisqhra-gaimartheba-sia [last seen on 22.09.2023].

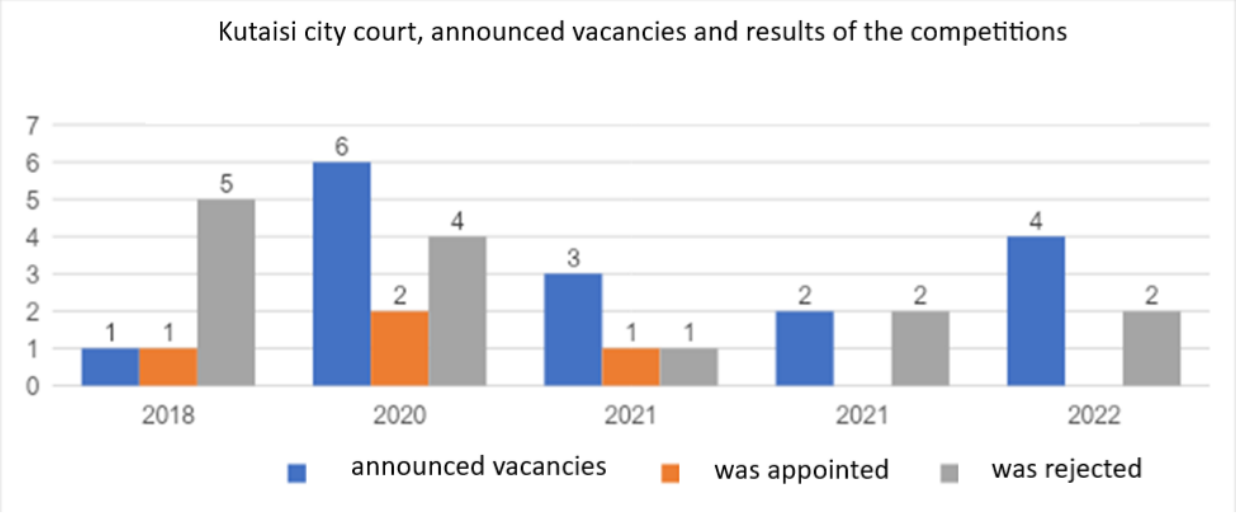
[166] For example, only 38 judges were appointed as a result of the 99 vacancies announced in June 2020, 47 judges were appointed for 85 vacancies in February 2021, only 7 judges were appointed for 42 vacancies in August 2021, only 8 judges appointed in November 2022. See decision 1/89 of the High Council of Justice of June 26, 2020 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2020/89.pdf; see the results of the competition https://shorturl.at/aDRTY ; decision 1/148 of August 5, 2021 http://hcoj.gov.ge/Uploads/2021/8/148.pdf; see the results of the competition https://shorturl.at/ekzDF; decision 1/130 of the High Council of Justice of November 25, 2022, http://hcoj.gov.ge/Uploads/2022/11/130-2022.pdf; see the results of the competition https://shorturl.at/ijprD ; decision 1/6 of February 22, 2021 of the High Council of Justice, http://hcoj.gov.ge/Uploads/2021/2/6-2021.pdf; results of the competition https://shorturl.at/begqA

The following graphs display the number of vacancies and appointed (rejected) candidates in the 3 busiest among the studied courts - Zugdidi, Kutaisi and Gurjaani courts.

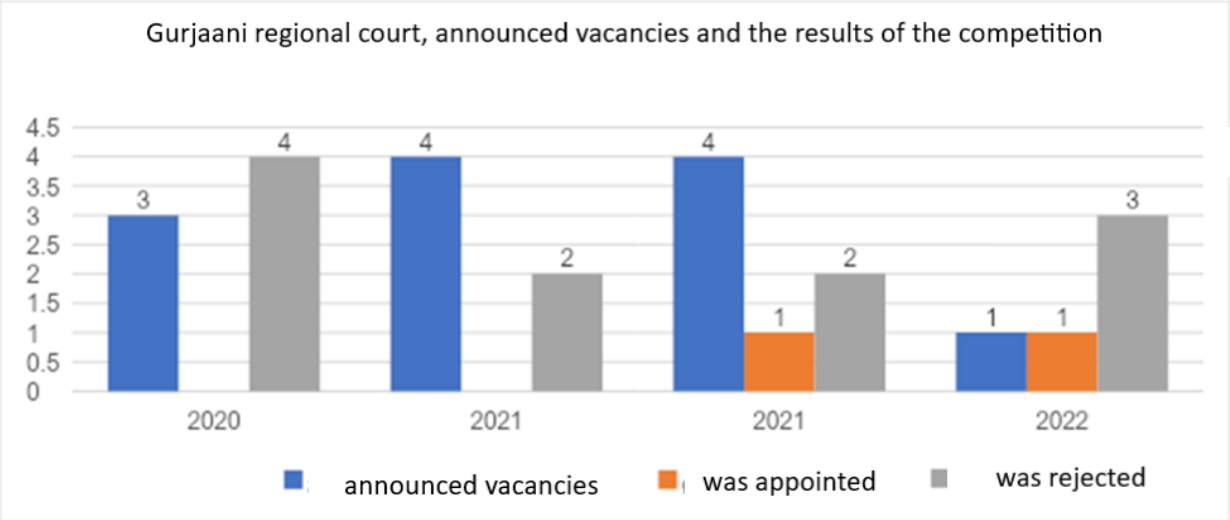
Graphs N. 39



Graphs N. 40



Graphs N. 41



As can be seen from these graphs, in the district court of Zugdidi in 2022[167], in Kutaisi City Court in 2021 and 2022[168], in Gurjaani District Court 2020 and 2021[169] all participating candidates were declined and the announced positions remained vacant.

Special attention should be paid to the case when the candidate was refused appointment and the vacancy remained unfilled, but later he/she was still appointed as a judge in another court. For example, Maya Javakhishvili was refused appointment to the city (district) courts of Mtskheta and Kutaisi in 2020.[170] and the corresponding seats remained vacant[171], however, in 2021, she was appointed to the position of magistrate judge in Akhaltsikhe district[172].

4.2.3. Effective use of judicial resources

We will consider the issue of effective use of judicial resources in several aspects, such as secondment of a judge and transfer to another court without competition, the issue of hearing cases by judges with administrative positions, and the issue of specialization of judges.

[167] Decision 1/130 of the High Council of Justice of November 25, 2022, http://hcoj.gov.ge/Uploads/2022/11/130-2022.pdf See the results of the competition https://shorturl.at/ijprD

[168] Decision 1/130 of the High Council of Justice of November 25, 2022 http://hcoj.gov.ge/Uploads/2022/11/130-2022.pdf. see the results of the competition: https://shorturl.at/ijprD; decision 1/148 of August 5, 2021 http://hcoj.gov.ge/Uploads/2021/8/148.pdf; see the results of the competition https://shorturl.at/ekzDF

[169] Decision 1/89 of the High Council of Justice of June 26, 2020 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2020/89.pdf; see the results of the competition https://shorturl.at/dnuvD; decision of the High Council of Justice of February 22, 2021 http://hcoj.gov.ge/Uploads/2021/2/6-2021.pdf; see the results of the competition:https://shorturl.at/begqA

[170] Decision 1/205 of the High Council of Justice of November 18, 2020 http://hcoj.gov.ge/Uploads/2021/2/205-2020.pdf

[171] See the results of the competition https://shorturl.at/dyEJL

[172] Decision of the High Council of Justice of June 17, 2022 http://hcoj.gov.ge/Uploads/2022/6/82-2021.pdf . The cases of Nino Gogatishvili and Aleksandre Lomidze are similar, see above.

4.2.3.1. Judges' secondment

The Consultative Council of European Judges considers the secondment of a judge as a temporary measure to deal with the excessive workload in the courts, which should not replace the mechanism of permanent staffing of the respective courts.[173]

According to the law of Common Courts, the basis for making secondments is the lack of judges and/or a sharp increase in the number of pending cases, or the interest in the proper administration of justice.[174]

According to the legislation of Georgia, a secondment can be carried out both with the consent of the judge and without. In case of the judge's consent, the term of the transfer is not limited by law and it is determined by the High Council of Justice.[175] Prior to the 2017 amendments to the Organic law of Common Courts, the legislation granted the High Council of Justice unlimited authority to use the institution of secondment of judges. The Council of Justice often used the secondment of a judge to another court unreasonably and illogically, which left the impression that the purpose of its use was not to deal with the flow of cases, but to punish/incentivize judges or "bring" them to a specific case. On one occasion noted in the monitoring report of the OSCE, three judges were transferred to one court and all three of them were assigned high-profile cases .[176] There have been cases when a judge was assigned to a court whose judge was assigned elsewhere[177]. The inconsistency and unreasonableness of the decisions of the Council of Justice have been repeatedly criticized by various reports.[178] From the judges themselves, the secondment was perceived as a mechanism restricting the judge's independence.[179] The legislative changes of the "third wave" of justice reform served to prevent these risks by limiting the discretion of the Council of Justice in sending judges to other courts without their consent and defining the procedure of judges' secondment by law.[180] This change, in turn, was supposed to ensure the use of this mechanism for effective caseflow management.

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[173] Opinion of the Consultative Council of Judges of Europe N. 6 (2004), concerning the right to a hearing within a reasonable time and the role of the judge in considering alternative dispute resolution methods, para. 60

[174] Article 37^1 of the Organic law of Common Courts.

[175] Article 37^1 of the Organic law of Common Courts, second paragraph.

[176] OSCE Trial Monitoring Report, 2014, p. 36
https://www.osce.org/files/f/documents/b/1/130686.pdf

[177] Association of Young Lawyers, International Transparency, 3-year summary report of the monitoring of the High Council of Justice (2012-14 years), p. 14 https://shorturl.at/hvJU9 [last seen on 22.09.2023]

[178] see e.g. GYLA, International Transparency, Council of Justice Monitoring Report #3, p. 26https://shorturl.at/euNV9 [last seen on 23.09.2023]; GYLA, Justice Reform in Georgia, 2013-21 years p. 49-50
https://shorturl.at/efFJP [Last accessed 23.09.2023] OSCE Trial Monitoring Report, 2014
page 36 https://www.osce.org/files/f/documents/b/1/130686.pdf [last seen on 23.09.2023]

[179] Eka Areshidze, Ketevan Meskishvili, Madonna Maisuradze, Mamuka Tsiklauri and Tamar Khazhomia against the Parliament of Georgia, constitutional lawsuit N. 1693, https://constcourt.ge/ka/judicial-acts?legal=13488 [last seen on 22.09.2023];

[180] *This is an old culture, which is more or less continued today by the rulers of justice - when a judge dares and makes an independent decision, he is sent from Tbilisi, Rustavi or a big city somewhere else, to a remote place. This institution will be abolished. The secondment will be only if there is a vacancy, if there is such a volume of cases that it is necessary to add a judge,*

According to the law of Common Courts, which was in force before December 30, 2021, the involuntary secondment of a judge would be allowed primarily from the nearest court and would not be allowed from the appeal court to the district (city) court. The visiting judge was chosen by drawing lots. The decision on the secondment of the judge had to be substantiated, the secondment could be for a period of 1 year, which could be extended by 1 year. The reason for the secondment could be only a lack of judges or a sharp increase in pending cases.

On December 30, 2021, the new amendment of the law[181], again expanded the discretion of the Council of Justice regarding involuntary secondment and abolished the regulations that prevented the abuse of this mechanism: The change was justified by the need for flexible use of the mechanism of secondments.[182] The general term of "interests of justice" was defined as a prerequisite for secondments. As a result:

- The obligation to select a judge from a nearby court as a priority was abolished.
- The limitation of the judge's secondment from the appellate court to the district (city) court was lifted.
- The rule of selecting a judge by lot was abolished and the High Council of Justice was given the discretion to select the candidate itself.
- The obligation to substantiate the decision by the High Council of Justice was canceled.
- Permissible term of the judge's secondment has been extended by 2 years, which can be extended for another 2 years[183].

In 2017-2022A total of 22 secondments were carried out.[184] All of them with the consent of the judges.

Out of 22 secondments made during the reporting period, 12 were made because there was no judge left in the receiving court, 1 secondment was made because the case would be heard by a jury and it was necessary to appoint a substitute judge, and the remaining 9 secondments were made to relieve the receiving court. Their duration varied from 4 months to 4 years.[185] Except for

and of course, the judge must agree to go on a secondment and work in the district or move from the district to the city." - Commentary of the Minister of Justice, Thea Tsulukiani, July 2014, see **https://reportiori.ge/old/?menuid=2&id=34200;**

[181] Organic Law of December 30, 2021 on bringing changes to the Organic Law of Georgia on Common Courts, paragraph 2 of the first article.

[182] An explanatory note is available at **https://info.parliament.ge/file/1/BillReviewContent/289974** [last seen on 22.09.2023]

[183] The explanatory note justified the change in the term of secondments as follows: "Practice has made it clear that the maximum terms of judge's secondment to another court are insufficient due to the overloading of the respective courts and the excess of cases pending there." see Explanatory Note **https://info.parliament.ge/file/1/BillReviewContent/289974** [last seen on 22.09.2023]

[184] The information was obtained from the decision search system of the High Council of Justice http://hcoj.gov.ge/ka/ Secondments were made to the following courts: Tbilisi City Court; Batumi City Court; Kutaisi City Court; Telavi District Court; Sachkhere District Court; Court of Gali Gulrifshi and Ochamchire Tkvarcheli; Ambrolauri District Court; Mtskheta District Court; Tsageri District Court; Zugdidi District Court; District Court of Sukhumi and Gagra-Gudauta

[185] Decisions are available in the decision search system of the High Council of Justice www.hcoj.gov.ge by writing the word "mission".

4 cases[186] the judge exercised his authority simultaneously in the primary court during all these secondments.

Below are the reasons for the secondments with the relevant courts and dates

Table N. 4

judge	from where	where	Start date	last date	specified basis
L. Tsanava	Sukhumi Gagra Gudauta	In the Civil Panel of the Tbilisi City Court	5/6/2017	10/8/2022	Excessive workload in the Civil Panel. The workload of judges in the Sokhumi court is low, 4.5 cases per month. The term of the secondment was extended several times consecutively[187].
D. Kekenadze	Poti	Batumi	6/10/2021	10/22/2021	There are 14 seats and only 10 judges in the Batumi City Court. The Poti court is less busy and the number of incoming cases in Batumi has increased. In addition, one judge was recruited in Poti as a result of the competition.
E. Kululash-vili	Tbilisi City	Mtskheta	8/12/2020	1/1/2021	In the Mtskheti district court there are 9 seats, but only 3 judges
I. Zarqua	Sukhum Gagra Gudauti	In the Civil Case Panel of the Tbilisi City Court	5/6/2017	5/6/2019	Overcrowding of the Civil Panel. The workload of judges in the Sokhumi court is low, 4.5 cases per month. The term of the secondment was extended several times.
Murtaz Kapana-dze	Samtredia	Kutaisi City Court	6/15/2017	6/14/2019	Two judges left the criminal panel in Kutaisi, and their 73 cases must be distributed to the remaining 2 judges (who have 58 and 49 cases pending). There are 2 criminal judges in Samtredia who have 19 and 7 cases pending. The secondment was extended one more time.
Shota Bichia	Zugdidi	Gali Gulrifshi and Ochamchire Tkvarcheli	03/13/2018	03/13/2019	Only one judge has already been assigned to the visiting court, and he is also busy. Thus Shota Bichia should hear criminal cases[188].
D.. Kekenadze	Gali Gulrifshi and Ochamchire Tkvarcheli	Zugdidi	6/24/2019	6/23/2020	There are three vacant positions in Zugdidi, which could not be filled as a result of the competition. At the same time, the workload of Gali Gulrifshi and Ochamchire Tkvarcheli courts is 13 cases per month

[186] Roin Kakhidze, Murtaz Kapanadze, Nino Chakhnashvili, Ekaterine Kululashvili.

[187] Seconded from June 2019 to October 2020. Then he was appointed for a new term, which was extended several times.

[188] It should be noted that according to statistical information published on the website of the Supreme Court in 2018, 133 civil and 5 criminal cases were pending in the Gali Gulrifshi court, in 2019 3 criminal and 200 civil cases, and in 2020, 5 criminal and 119 civil cases. See www.supremecourt.ge

N. Jokhadze	Ozurgeti	Kutaisi City Court	6/24/2019	6/26/2021	2 criminal judges left the Kutaisi court, whose 121 cases were divided between 1 criminal and 2 civil judges. This worsened the situation of judges with civil specialization. Ozurgeti judge N. Jokhadze has 60 cases pending and they will be distributed among her two colleagues. The secondment was extended once
N. Chakhnashvili	Tbilisi City Court	Mtskheta	8/12/2020	1/1/2021	There are 9 states and only 3 judges in Mtskheta.

As we can see, in most cases the workload of the receiving court is not substantiated by specific data. The cases of Murtaz Kapanadze and Nana Jokhadze are exceptions. Murtaz Kapanadze's secondment is explained by the fact that two judges left the criminal law Panel of the Kutaisi City Court (where the secondment was carried out) and their 73 cases should be distributed to the other 2 judges, who have 58 and 49 cases pending, and in the Samtredia District Court (where the secondment was carried out) there are two criminal judges who have 19 and 7 cases pending.[189]

The need for Nana Jokhadze's secondment is justified by the fact that 2 criminal judges left the Kutaisi court, whose 121 cases were divided between 1 criminal and 2 civil judges. This worsened the situation of judges with civil specialization[190].

Due to the fact that courts in Georgia have on average 200 to 300 cases under consideration (see Table N.4 above - pending cases at the end of the year), which reaches up to 1000 in some courts (see above graphs N. 20, cases pending per judge in the pilot courts) a secondment carried out on the grounds that the judges in the receiving court have 58 and 49 cases pending cannot be seen as purposeful use of the secondment. Therefore, the legislator's expansion of the discretion of the High Council of Justice for the secondment of a judge is not dictated by the goals of overcoming the flow of cases, contrary to the clarifications provided in the explanatory note of the draft law.

4.2.3.2. Transfer of judges from one position to another without competition

During the reporting period, district and appeals court judges in common courts were transferred without competition from one position to another in accordance with Article 37 of the Organic law of Common Courts, according to which: "In the event of a vacancy, a judge appointed to the position may, with his own consent, be appointed to another district (city) or appellate court

[189] Decision N. 1/196 of Kutaisi City Court of June 12, 2017.

[190] This situation was created due to the fact that in the Kutaisi appellate court, where there was actually a surplus of judges, a competition was announced and the judge of the Kutaisi City Court, Leri Tedoradze, was appointed for life. (Decision 1/62 of the High Council of Justice of May 24, 2019). The judge Murtaz Kapanadze expired his term of secondment and returned to Samtredia district court (see table N. 4).

without competition. A judge of the district (city) court will be appointed as a judge of the appeals court without competition, if he/she meets the requirements provided for in Article 41 of this law."

According to the article 13 par. 4 of the Regulation of the High Council of Justice[1] the grounds for initiating the issue may be: a) lack of sufficient number of judges in the court or a sharp increase in the number of pending cases; b) failure to announce a new competition for vacant positions in the manner stipulated by the organic law or impossibility of holding the competition within the established period; c) Judge's application for appointment to another court without competition.

This norm does not take into account the workload of the "original" court at the time of the transfer of a judge or the number of cases pending before this judge which shall be distributed to other judges, which may lead to their overburdening and delay in the consideration of cases.[191]

In 2017-22, no-contest transfers were initiated 29 times, both in appellate and district courts. Among them, the issue was initiated in the Tbilisi appellate court 16 times, and in the Kutaisi appellate court 14 times.[192].

In 27 of the mentioned 29 decisions, Article 13 of the Regulation of the High Council of Justice is indicated as the basis for initiating the issue,[1] namely, sub-paragraph "a" of par. 4. (a) - absence of a sufficient number of judges in the court or a sharp increase in the number of pending cases. In the decisions of the High Council of Justice, only the corresponding norm of the regulation is indicated, but no details are specified about the lack of a sufficient number of judges or a sharp increase in the number of pending cases

The decisions of the High Council of Justice of July 23, 2020[193] and in the decisions of March 2, 2021[194] refer to article 13 paragraph 4, subparagraph "c" (judge's application for appointment to another court without competition) of the Regulation of the High Council of Justice as the basis for initiating the issue[1]. By the decision of the High Council of Justice of July 23, 2020, the matter has been initiated for the appointment of a judge without competition in the Administrative Chamber of the Tbilisi appellate court (1 position) and the Civil Chamber of the Kutaisi appellate court (1 position). The decision of the High Council of Justice does not specify whose application initiated the issue, however, as a result of the non-competitive appointment, judges Dimitri

[191] see decision N. 1/56 of the High Council of Justice of May 1, 2017 N. 1/56 on "Approval the rule of automatic distribution of cases in the common courts of through an electronic system", paragraph 16 of article 4: "when a judge uses leave due to pregnancy, childbirth and child care, also, in the case of termination of a judge's authority, transfer to another court/college/chamber, or secondment to another court, the cases pending before him are distributed to other judges in accordance with this article" http://hcoj.gov.ge/Uploads/2021/4/1-56.pd

[192] Relevant decisions are available in the search system of the High Council of Justice www.hcoj.gov.ge inserting the words "no contest".

[193] Decision N. 1/106 of the High Council of Justice of July 23, 2020 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2020/106-2020.pdf

[194] Decision N. 1/12 of March 2, 2021 of the High Council of Justice **http://hcoj.gov.ge/Uploads/2021/3/12-2021.pdf**

Gvritishvili and Vasil Mshvenieradze changed their administrative positions[195]. By the decision of the High Council of Justice of March 2, 2021, the issue of the non-competitive appointment of a judge to the civil affairs panel of the Tbilisi City Court was initiated.[196]. As a result of the mentioned procedure, the judge from the Sighnaghi District Court was transferred to the Civil Panel of the Tbilisi City Court.[197].

The project studied the practice of transferring judges without competition[198] in 2021-22[199] as a result of which it was revealed that the mentioned norm is not used in order to increase the effectiveness of the judicial system and that the High Council of Justice continues to use this norm not to manage the flow of cases, but to bypass the regulation established by law for the promotion of judges[200], to encourage "favorite" judges, to rotate influential judges to administrative positions[201], in particular:

- In the search system of the High Council of Justice, a total of 17 decisions on the non-competitive transfer of a judge in 2021-22 are found, where in 13 cases the judge of the first instance was transferred to the appellate court[202].
- 11 judges from moderately busy courts (Bolnisi, Akhaltsikhe), courts with above average workload (Tbilisi), and overcrowded (Batumi) courts were transferred to a less busy court - Tbilisi appellate court[203].
- During the uncontested transfer of a judge from a busy court, the judge's pending cases are assigned to other judges, thus further worsening the situation of these courts.[204].

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[195] http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2020/112-2020.pdf http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2020/111-2020.pdf see See also, "Judge Promotion, Systemic and Practical Challenges," Transparency International, 2021, p. 36 https://transparency.ge/ge/post/mosamartleta-dacinaureba-sistemuri-da-praktikuli-gamocvevebi.

[196] Decision N. 1/12 of March 2, 2021 of the High Council of Justice **http://hcoj.gov.ge/Uploads/2021/3/12-2021.pd**

[197] Decision N. 1/18 of March 17, 2021 of the High Council of Justice http://hcoj.gov.ge/Uploads/2021/3/18-2021.pdf

[198] Decisions are available in the decision search engine of the High Council of Justice by entering the word "judge appointment" www.hcoj.gov.ge

[199] In 2015-20, the practice of uncontested transfer of judges was studied by Transparency International in the report entitled: "Promotion of Judges, Systemic and Practical Challenges," 2021 https://transparency.ge/ge/post/mosamartleta-dacinaureba-sistemuri-da-praktikuli-gamocvevebi [Last viewed on 22.09.2023] Accordingly, this practice was no longer studied separately by the project.

[200] Article 41 of the Organic law of Common Courts provides for the promotion of judges the criteria of which must be developed by the High Council of Justice. These criteria do not exist today, therefore article 37 of the law is used to bypass Article 41 to promote judges. See Transparency International Research: " Promotion of Judges, Systemic and Practical Challenges," 2021 p. 4.5. https://transparency.ge/ge/post/mosamartleta-dacinaureba-sistemuri-da-praktikuli-gamocvevebi [last seen on 10.25.2023]

[201] Similar conclusions are contained in the study of Transparency International: "Promotion of Judges, Systemic and Practical Challenges", 2021 p. 4, 5. https://transparency.ge/ge/post/mosamartleta-dacinaureba-sistemuri-da-praktikuli-gamocvevebi [last seen on 10.25.2023]

[202] 35 judges were promoted in the this manner in 2015-2020. Transparency International, "Promotion of Judges, Systemic and Practical Challenges, 2021 p. 29.
https://transparency.ge/ge/post/mosamartleta-dacinaureba-sistemuri-da-praktikuli-gamocvevebi [last seen on 10.25.2023]

[203] About the workload of the courts, see above, graph N.29

[204] see note 204

- Judge Irakli Bondarenko was transferred from the Tbilisi appellate court to the Kutaisi appellate court and on the day of his appointment (March 23) he was appointed as acting chairman of the Kutaisi appellate court.[205]. After 4 months he was appointed as the chairman of the same court[206].
- Thea Leonidze, a member of the High Council of Justice, was promoted from the Bolnisi District Court to the Tbilisi appellate court, after which she left the Council.[207] Judge Shalva Kakauridze of the Gori District Court was transferred from the Gori Court to the Tbilisi appellate court[208] and Koba Gotsiridze was transferred from Kobuleti Magistrate Court to Gori District Court. He was assigned the authority of acting chairman of the Gori district court[209].
- Judge Aleksandre Gzirishvili[210] was transferred from Mtskheta to Tbilisi City Court and by the same decision, judge Roman Kupatadze was transferred from Rustavi to Mtskheta Court[211].
- Despite the fact that in most cases many candidates participated in the procedures for the non-competitive appointment of a judge and the decision was made in favor of only one, it is not substantiated why this particular candidate was given preference over others. Decisions of the High Council of Justice are substantiated in a template, with the same wording: "The judge has many years of experience, which gives the ground to assume that he/he will successfully handle the assigned responsibilities", "has the ability to perform the assigned powers under conditions of any difficulty or workload", has "many years of experience and motivation", "Has the ability to continue working under high work pressure."

	judge	date	Original Court	Destination
1	Paata Nozadze	03.17.2021	Sighnaghi district Court	Tbilisi City Court
2	Tea Leonidze	06.18.2021	Bolnisi District Court	Tbilisi appellate court
3	Tamar Okropiridze	06.18.2021	Tbilisi City Court	Tbilisi appellate court
4	Davit Mamiseishvili	07.29.2021	Batumi City Court	Tbilisi appellate court
5	Gocha Jeiranashvili	07.29.2021	Akhaltsikhe District Court	Tbilisi appellate court
6	Ekaterine Kululashvili	07.29.2021	Tbilisi City Court	Tbilisi appellate court

[205] Decision N. 1/22 of March 16, 2022 of the High Council of Justice http://hcoj.gov.ge/Uploads/2022/10/22.pdf

[206] Decision N. 1/169 of the High Council of Justice of July 18, 2022 http://hcoj.gov.ge/Uploads/2022/9/69-2022.pdf

[207] Netgazeti, "Two members of the High Council of Justice left their post before the deadline" https://netgazeti.ge/law/572982/ [last seen on 10.25.2023]

[208] see Decision N. 1/121 of November 7, 2022 of the High Council of Justice http://hcoj.gov.ge/Uploads/2023/1/121-2022.pdf. [Last seen on 10.25.2023] The High Council of Justice itself admits that the Gori District Court is a "busy" court and at the same time it makes a decision to transfer a judge to a less busy court from Gori District Court.

[209] Decision N. 1/121 of the High Council of Justice of November 7, 2022 http://hcoj.gov.ge/Uploads/2023/1/121-2022.pdf [last seen on 10.25.2023]

[210] Aleksandre Gzirishvili is the son of Levan Gzirishvili, a former member of the High Council of Justice. At the time of his appointment as a judge, the non-governmental sector described the signs of alleged nepotism. Transparency International, "Promotion of Judges, Systemic and Practical Challenges" 2021, p. 33 https://transparency.ge/sites/default/files/mosamarleta_dacinaureba_2.pdf [last seen on 22.09.2023]

[211] This change led to a lack of judicial personnel in the Rustavi City Court. 2022 report of the Rustavi City Court (Rustavi City Court letter of January 17, 2023)

7	Lavrenti Maglagelidze	07.29.2021	Tbilisi City Court	Tbilisi appellate court
8	Irakli Bondarenko	03.16.2022	Tbilisi appellate court	appellate court of Kutaisi
9	Madi Chantladze	10.13.2022	Tbilisi City Court	Tbilisi appellate court
10	Nino Mamulashvili	10.13.2022	Tbilisi City Court	Tbilisi appellate court
11	Shalva Kakauridze	10.13.2022	Gori District Court	Tbilisi appellate court
12	Natia Merabishvili	10.13.2022	Tbilisi City Court	Tbilisi appellate court
13	Giorgi Keratishvili	10.13.2022	Tbilisi City Court	Tbilisi appellate court
14	Roman Kupatadze	10.13.2022	Rustavi City Court	Mtskheta District Court
15	Koba Gotsiridze	10.13.2022	Magistrate Court of Kobuleti	Gori District Court
16	Alexander Gzirishvili	10.13.2022	Mtskheta District Court	Tbilisi City Court
17	Malkhaz Chubinidze	10.13.2022	Magistrate Court of Tskaltubo	appellate court of Kutaisi

As mentioned above, the transfer of a judge can cause significant delays in the original court.

"During the change of the judge, the case may remain inactive for 2 years. A new judge may have so many cases that he/she won't be able to schedule a hearing for two years."[212]*.*

"Judges are transferred from the districts to Tbilisi, to the appellate court, so that they are not replaced. Their cases are distributed among the others, sometimes there was no judge of the relevant specialization and the case was assigned to judges of other specialization. Under such force majeure, how can a civil judge, for example, handle a case of robbery. I have seen cases, where I was the fifth judge in the case, and some have not had time to take any action at all.[213]*"*.

4.3.3.3. Handling of a small number of cases by the chairpersons of the court (chamber, panel)

With the change made in on December 31, 2017 in the Organic Law on Common Courts[214] , the law of Georgia "On the procedure for distribution of cases in common courts and delegation of authority to another judge" was declared invalid and the previously existing rule of distribution of cases in courts was changed. If before that the chairpersons of the courts distributed the cases according to a predetermined order, from 2017 cases are distributed among the judges in the district (city), appellate and Supreme courts automatically, through the electronic system, in

[212] May 10 focus group with representatives of administrative bodies. The European Court of Human Rights emphasizes the change of judges in the case as a contributing factor to the delay: *"There is no doubt that the multiple changes of judges caused the case to be delayed, since all new judges had to study the case from the beginning, but this cannot justify the State, which is responsible for the orderly organization of the administration of justice."* see Lechner and Hess v. Austria, Judgment of 13 April 1987, para. 58.

[213] Female judge, court of first instance.

[214] Organic law of February 8, 2017 on amendments to the organic law on Common Courts https://matsne.gov.ge/ka/document/view/3536739?publication=0#DOCUMENT:1;

accordance with the principle of random distribution. The rule of distribution is approved by the High Council of Justice of Georgia.[215]

The said decision, together with the principle of randomness provided by the law, provides for the principle of equal distribution of cases[216], without taking into account the cases pending before the judge[217]. In addition, the decision establishes exceptional cases in which there is a departure from the principle of random or equal distribution.[218].

The said decision of the High Council of Justice envisages preferential workload for judges with administrative positions, as shown in the table below.

Table N. 5

	Position	Case distribution percentage
1	Member of the High Council of Justice of Georgia	20%
2.	A member of the High Council of Justice, who at the same time is the chairman of the court, his deputy, chairman of the collegium/chamber	10%
3	Chairman of the court, his deputy, chairman of the collegium/chamber (where there are less than 7 judges)	50%
4	Chairman of the court, his deputy, chairman of the collegium/chamber (where there are more than 7 judges)	20%
5	The Chief Justice of the Supreme Court of Georgia and her deputy, the chairman of the appellate courts, the deputy chairman and the chairman of the collegium/chamber, the chairman of the Tbilisi City Court and the chairman of the collegium, (except for judicial cases directly stipulated by the legislation), the chairman and secretary of the High Council of Justice of Georgia, in special cases.	5%

[215] Decision N. 1/56 of the High Council of Justice of May 1, 2017 on approving the rule of automatic distribution of cases in the common courts of Georgia through an electronic system http://hcoj.gov.ge/Uploads/2021/4/1-56.pdf

[216] Decision N. 1/56 of May 1, 2017 of the High Council of Justice of Georgia
on the approval of the rule of distribution of cases in the common courts of Georgia automatically, through the electronic system, Article 5, paragraph one.

[217] Ibid., first paragraph of article 5: the electronic system ensures as far as possible equal distribution of cases to the judges, without taking into account the number of pending cases distributed through the electronic system

[218] For example, in the case of interrelated applications and cases, return of the case for retrial, disqualification of the judge, judge's shift, vacation, temporary incapacity for work and other cases. Ibid., art. 3, 4

The decision of the High Council of Justice on approving the rule of distribution of cases does not justify the grounds for granting the established benefits to these officials.

Attention is drawn to the wording "in special case" with officials given in the 5th row of the table, which means that judges in this position should hear cases only in special cases, and not more than 5 percent.

This wording is in contradiction with the first paragraph of article 25 of the Law on Common Courts, which stipulates that the Chairman of the appellate courts "personally" hears cases. The law does not establish any prerequisites for fulfilling this obligation. At the same time, the wording is vague and the decision of the High Council of Justice does not provide criteria for its interpretation.

In 2010, the position of court manager was created in the court system, which was entrusted with the organizational supervision of the staff.[219]. The chairman of the court has the right to delegate part of his administrative functions to the manager[220], which will give him more free time to discuss cases.

As for the chairmen of collegiums and chambers, according to the organic Law on Common Courts, they do not have any extraordinary administrative functions,[221]therefore, it is not understandable why they benefit from favorable case assignment in the amount of by 50, 20 and 5 percent.

The 2021-2022 reports of the Public Defender on the state of protection of human rights and freedoms emphasize the problematic nature of these rules in the light of of excessive workload of judges and cite the following numbers:

Name and surname	Position	Period	Number of cases distributed	The average number of cases allocated to the judges of the same collegium (chamber)
Shalva Tadumadze	Chairman of the Criminal Chamber of the Supreme Court	11 months of 2021	24	370
Giorgi Mikoutadze	Chairman of the Civil Chamber of the Supreme Court	11 months of 2021	15	143
Nino Kadagidze	President of the Supreme Court and Chair of Administrative Chamber of the Supreme Court.	11 months of 2021	2	161

[219] The first paragraph of article 56 of the Organic Law on Common Courts.

[220] Second paragraph of article 56 of the Organic Law on Common Courts.

[221] Unless the chairman of the collegium (chamber) temporarily fulfills the authority of the chairman of the court in his absence. Article of the Law on Common Courts. Paragraph 2 of article 33.

Irakli Bondarenko	Chairman of Kutaisi appellate court	11 months of 2022	3	222
Mikheil Chinchaladze	Chairman of the Tbilisi appellate court and Chairman of the Investigative Board	11 months of 2022	27	368

In fact, the lower workload of judges with administrative positions automatically implies a higher workload for their fellow judges.

In the end, this preferential rule of distribution of cases does not contribute to the efficient operation of the court, but is aimed at granting benefits to certain persons.

"I don't know what is the workload of judges in administrative positions outside of judicial work to determine how well these benefits are set, although the disparity affects the backlog of cases.[222]*"*

4.2.3.4. The question of specialization of judges

According to the recommendation of the European Commission for the Efficiency of Justice, "specialization of judges and the judicial staff can reduce the time required for the processing the cases and improve the quality of hearings"[223]. Specialization can be carried out in one or another field of law or in one or another area of social life[224]

Specialized chambers in cassation and appeal courts have been established by the Organic Law on Common Courts. The law also provides for the specialization of judges in district (city) courts[225].

At the initial stage of entry into the profession of a judge, the legislation of Georgia provides for the determination of his specialization and the awarding appropriate qualifications. After passing the qualifying exam, individuals are assigned a specialization in civil, administrative and criminal

[222] Face-to-face interview, female judge, superior court.

[223] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 38, https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [Last viewed: 22.08.2023]. See also: Opinion of the Consultative Council of Judges of Europe 2012 N. 15., par. 18. Regarding specialization of judges https://rm.coe.int/ccje-opinion-2012-no-15-on-the-specialisation-of-judges/16809f0078 "The law has become so complex or specific in certain matters that the proper consideration of cases in these fields requires a higher degree of specialization" par. 28. At the same time, the Consultative Council of European Judges also draws attention to certain dangers: "specialization may lead to the "compartmentalization" of procedural and substantive law and disconnect specialized judges from the legal realities and fundamental principles of law in other fields" (para. 16). CCJE recommends the exercise of justice by "generalist" judges and introduction of specialization when necessary due to the complexity of the law or facts or the need for a thorough administration of justice (para. 67)

[224] Opinion of the Consultative Council of Judges of Europe, regarding specialization of judges, 2012 N. 15., par. 18, par. 5 https://rm.coe.int/ccje-opinion-2012-no-15-on-the-specialisation-of-judges/16809f0078 . [last seen on 22.09.2023]

[225] Paragraph 2 of article 15 and Paragraph 2 of article 23 of the Law on Common Courts.

law or general specialization[226]. Despite this, the law does not oblige the High Council of Justice and the School to take into account the candidate's specialization at different stages of judicial training or judicial career. Taking into account the required number of judges, when selecting persons to enroll in the School of Justice, the Council of Justice does not divide vacancies according to a specific field.[227]In all four stages of teaching at the school (theoretical course, internship, seminar, final exam), candidates are taught and evaluated in all fields.[228]. At the stage of appointment as a judge, the candidate is not limited to apply for a seat different from his specialization, and in the event that the candidate is unable to be appointed in the desired specialization, it is possible to offer him an appointment in a different field as an alternative.[229]. Even in case of internal transfer or promotion of judges, it is possible to appoint him to another collegium or chamber without taking into account his examination specialization.[230].

Respondents interviewed during the research have named the examination of cases by judges specialized in other legal discipline as one of the factors a contributing to delay.

"I am a specialist in criminal law. I feel like a fish in water when I am in a criminal trial. When I schedule hearing in administrative case, I devote more time to preparation. I have civil and administrative cases which are delayed"[231]

"Individual cases would not be a problem, but there are many such judges and it has a negative impact on the effective consideration of the case. A criminal judge cannot handle a civil case as efficiently as a civil one. It will take more time, the probability of errors is also higher, therefore, an appeal to a higher instance is more expected.[232]*"*.

The Organic Law on Common Courts provides for the narrow specialization of judges in the appellate courts as well as district court with high caseload where there are more than two judges.[233]

According to the decision of the High Council of Justice, narrow specialization of judges is carried out only in Tbilisi city and appellate courts. Tbilisi City Court specializes in 16 (civil - 6,

[226] see decision of the High Council of Justice of March 19, 2018 on the procedure for conducting the qualification exam for judges and approving the qualification exam program https://shorturl.at/qBJQ5

[227] see e.g. decision of the High Council of Justice of May 24, 2023 concerning the announcement of the admission competition for students of the High School of Justice http://hcoj.gov.ge/Uploads/2023/6/55-2023.pdf

[228] Articles 66^{12} and 66^{13} of the Organic Law on Common Courts and ; Articles 7, 15, 20-23 of the Statute of the High School of Justice https://www.hsoj.ge/uploads/tsesdeba.pdf [last seen 27.09.2023];
see Decision of the High Council of Justice 1/69 of June 5, 2020 is available
http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2020/69.pdf [last seen on 27.09.2023]

[229] Paragraph 4 of article 35 of the Organic Law on Common Courts.

[230] Paragraph 4 of article 23 of the Law on Common Courts, as well as Articles 37 and 41.

[231] Face-to-face interview, male judge, court of first instance.

[232] Face-to-face interview, male judge, superior court.

[233] Article 23^{1} of the Law on Common Courts Clause and article 30 paragraph 2.

administrative - 4, criminal - 6) areas, and the appellate court in 11 (civil - 6, administrative - 2, criminal - 3) areas.

Determination of narrow specializations in Tbilisi city and appeal courts has not been carried out on the basis of any preliminary research.[234].

According to the decision of the High Council of Justice, narrow specialization of judges is carried out according to the categories of disputes (commercial, liability, tax), as well disputed value (above 500,000 GEL, as well as for loan disputes below 5,000 GEL), the stages of proceedings (investigative, pre-trial, main hearing), according to the form of hearing (jury, trial) and procedural subjects (juveniles).[235].

Narrow specialization is also carried out in unrelated legal issues: for example, sexual crimes and official crimes are grouped together in one specialization, and crimes against health and financial crimes are grouped together in another specialization.

According to the progress report of the 2017-2021 strategy for the reform of the judicial system, at the end of 2016, the creation of a narrowly specialized panel in the Tbilisi City Court for the examination of loan disputes up to 5000 GEL is considered as an effective mechanism for managing the flow of cases and reducing delays. The report states the following:

"In order to reduce the backlog of old cases, the High Council of Justice of Georgia, at the end of 2016, defined a narrow specialization of judges in the civil and administrative panel of the Tbilisi City Court, which examines loans made by Georgian banking institutions, microfinance organizations, non-bank depository institutions - qualified credit institutions disputes arising from the agreement, if the price of the claim does not exceed 5 000 GEL. The effective management of thousands of claims arising from the loan agreement by specialized judges has led to the acceleration of the justice[236]".

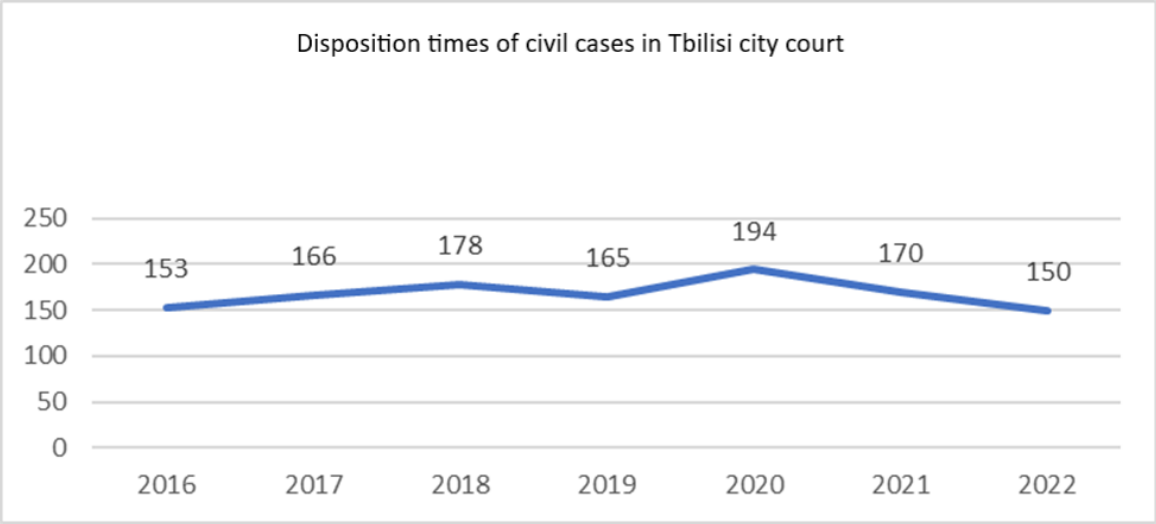
[234] Transparency International, Form of Narrow Specialization in the Common Court System, 2020, p. 51https://transparency.ge/ge/post/vicro-specializaciebis-porma-saerto-sasamartloebis-sistemashi [last seen 10.25.2023]"*The procedure for the creation of narrow specializations is very general. Some judge, usually the Secretary of the Council, sometimes introduces a draft and they simply tell us that this is what is needed. For example, I remember before the elections, they said that some type of changes in these specializations were needed for the election. I don't remember that this was justified or researched. Before that, there was no statistical information or any analysis that would convince us that yes, these specializations should be created. There was only a draft and then there was a discussion orally, which is very general. Needs assessment is not done*"

[235] Decision N. 9 of the High Council of Justice of August 11, 2020 on determining the narrow specialization of judges in investigative, pre-trial session and substantive review panels of civil, administrative and criminal cases of the Tbilisi City Court, Article 1 sub-paragraph A.V. http://hcoj.gov.ge/Uploads/2021/4/9_1.pdf [last seen on 10.25.2023]; Decision N. 10 of the High Council of Justice of August 11, 2020 on determining the narrow specialization of judges in the Civil, Administrative and Criminal Chambers of the Tbilisi appellate court, Article 1 sub-paragraph A, C. http://hcoj.gov.ge/Uploads/2021/4/10.pdf [last seen on 10.25.2023]

[236] 2017-2018 progress Report on the 2017-2021 Judiciary Strategy and Action Plan. p. 80-84,https://shorturl.at/dsF57 [last seen on 10.25.2023]

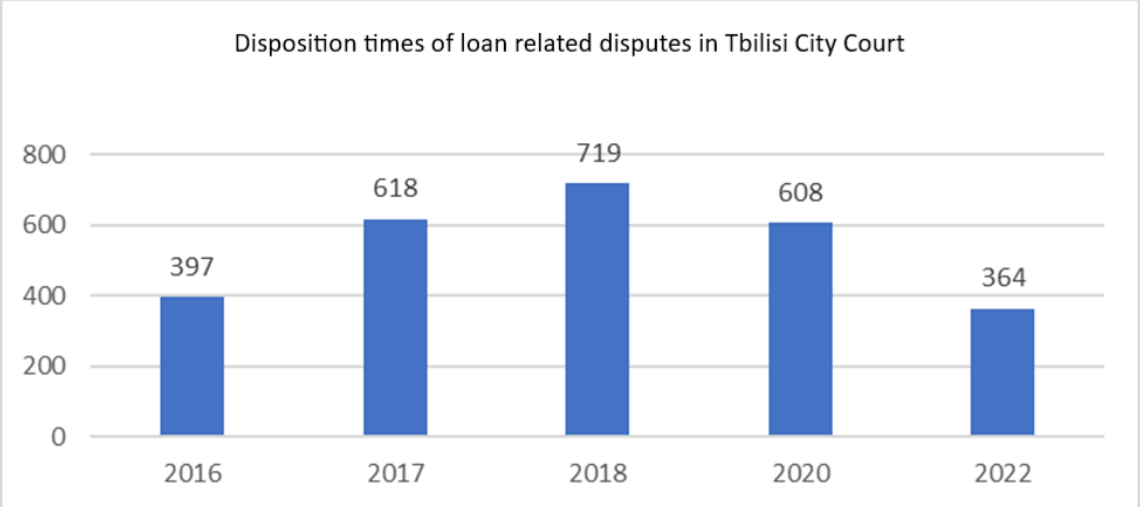
Based on CEPEJ's methodology, the estimated duration of civil cases in Tbilisi City Court in 2016-2022 is expressed in the following data[237].

Graph N. 42



On the other hand, the estimated duration of consideration of loan disputes in 2016-2022 is as follows[238]:

Graph N. 43



[237] The estimated duration is calculated by the formula: divide the balance at the end of the year by the number of cases received during the year and multiply by 365. The number of cases is obtained from the statistical information available on the website of the Supreme Court and the letter P-248-23 of April 12, 2023 received from the Supreme Court - .

[238] The data was obtained from the website of Tbilisi City Court https://tcc.court.ge/ Only 2016, 2017, 2018, 2020, 2022 data are fully available.

As we can see from this, the creation of a separate specialization for loan disputes did not have any special results in terms of speeding up the proceedings. On the contrary, the estimated terms of examination of civil cases increased in 2016-2020.

On the other hand, the duration of disputes arising from the loan itself is two to three times longer than the duration of civil cases in Tbilisi City Court.

The only case when narrow specialization is **only** determined according to the price of the claim in civil cases refers where the price of the claim exceeds 500,000 GEL (the so-called Chamber of Commercial Disputes (College)[239].

According to international standards, specialization refers to the "skill" of a judge in a specific direction. Therefore, the narrow specialization of the judge according to the disputed amount cannot be considered as "specialization" in the literal sense of the word.

There is no rule for determining the number of judges in a narrowly specialized chamber or collegium or any criteria or rules for their appointment. Judges are appointed to these chambers or panels based on their preferences or other non-transparent factors.[240].

In general, the respondents interviewed by the project welcome narrow specialization, as this approach to case management ensures the economy of the process, increases the quality of decisions and reduces the number of appeals.

Lawyer respondent: "*I take many cases to the appellate courts and we have to appeal to specialized judges. . . If the first instance court had interpreted the law in the same way as the appeal, the case would not have gone there*"[241].

As the judges note, the distribution of cases within a narrow specialization occurs equally, although the workload of specialized panels and chambers is not equal.

"It is equal within the same specialization, but it is not equal between different narrow specializations. This is reflected in numbers, in complexity[242]".

The 2017-18 progress report on the implementation of the Judiciary Strategy of 2017-21 highlights the expansion of narrow specialization and the creation of commercial panels (chambers) as measures to better deal with the flow of cases[243].

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[239] It was created by the decisions of the High Council of Justice N1/238 of July 24, 2017 and N. 1/175 of April 30, 2018.http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/250-2017.pdf?fbclid=IwAR1wEsgi9lkWNoSu0rR_e0cXZV0AQYHi9c6mh ; http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/175-2018.pdf

[240] Transparency International Research, p. 29, 46

[241] Face-to-face interview, female lawyer.

[242] Face-to-face interview, female judge, court of first instance

[243] Annual Report of the Secretary of the High Council of Justice 2018-19, p. 5 http://hcoj.gov.ge/files/news/angarishi.pdf [last seen on 22.09.2023]

In the form of public information request, data on the number of cases decided by the Chamber of Commerce (collegium) was requested from Tbilisi city and appellate courts. According to the answer received from the Tbilisi City Court "*Statistical processing of this information and placement in the public database is not carried out in the Tbilisi City Court, and due to the volume of information, searching/processing of information requires considerable time and judicial resources.*"[244]; A similar letter was received from the Tbilisi appellate court[245].

On the one hand, the judicial system does not measure the result achieved by the introduction of narrow specialization, on the other hand, in the progress report of the implementation of the strategy, it evaluates the creation of commercial panels (chambers) as a tool to better deal with the flow of cases.

Whether the so-called narrow specialization in commercial cases really speeds up proceedings there is a difference of opinion among the respondent lawyers:

"It objectively speeds up the examination of these cases, since few cases are filed, but the problem is the qualification of judges and the quality of their decisions[246]".

"With the creation of the so-called commercial boards and chambers, nothing has changed. There is no difference whether it is above or below 500,000. When there is interest, they will hear it quickly, when there is interest, they will delay it."[247].

Some respondent judges point to the problem of narrow specialization according to the disputed amount:

"When it is separated by the value of the subject matter of the dispute, it loses sense, because the judge will hear both inheritance, obligation, damage, i.e. a dispute of mixed categories, just because the requested amount is large, the effect that specialization allows for the judge to be focused on a specific category is lost.[248]".

There are opinions that the creation of this specialization serves not the efficiency of the court, but corruption purposes (the so-called chamber of big money).[249]

4.2.4. Judge Support Resources

The judge's support resources can be divided into two groups - human resources and material-logistic resources.

[244] Letter N. 04125/7889385-7895220 of Tbilisi City Court of September 25, 2023.
[245] Letter N2/15460 of October 2, 2023
[246] Lawyer, specializing in civil law
[247] Face-to-face interview, male lawyer.
[248] Face-to-face interview, female judge, superior court.
[249] see Freedom Monitor: Chamber of Big Money. https://www.radiotavisupleba.ge/a/31593728.html

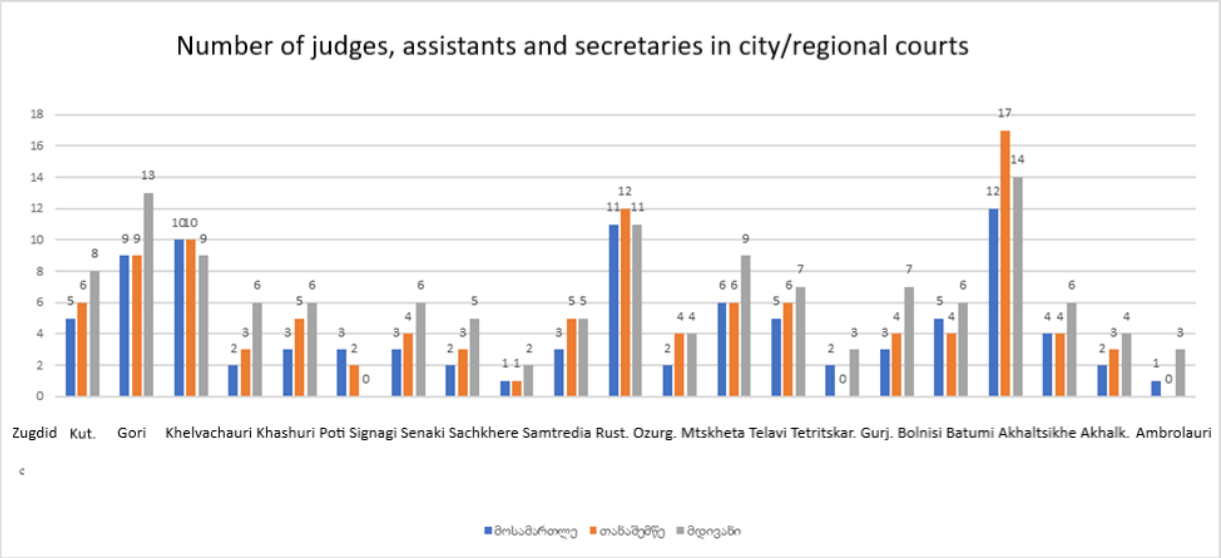
According to the recommendation of the European Commission for the Efficiency of Justice, judges should be provided with a sufficient number of support staff that will help them both in solving cases and in solving administrative and technical issues.[250]

In the proceedings, the judge is supported by the judge's assistant and the trial secretary.

44% of the lawyers interviewed by the project believe that the reason for the delay of cases is the lack of support staff for the judge.

According to the information obtained from the websites of the district (city) court, the number of judges and support staff in the district (city) courts is presented in the following proportion as of today[251]:

Graph N. 44



In 17 of the 21 courts presented in the graph, the number of assistants is equal to or exceeds the number of judges, Poti and Bolnisi courts lag behind, and Ambrolauri and Tetritskaro judges do not have assistants. In 19 courts the number of court secretaries is equal or greater than the number of judges. The secretary of the hearing is absent in the courts of Tetritskaro and Ambrolauri. Judges especially complain about the lack of so-called "writing assistants".

[250] Ibid., p. 21

[251] The information is extracted from the web pages of those courts where the data on the number of judges and trial secretaries is fully available. The project requested information from the High Council of Justice on the number of judge assistants and session secretaries in Georgian courts in 2017-22, but this information was not provided (letter N 03-551-2023 of July 26, 2023).

„In the Supreme Court, the situation is better, three people help the judge. There's one shared assistant in the appeal, and this is bad. In the first instance, there are judges who do not have assistants at all, and the secretary performs both duties.“[252].

“One writer is an assisting 2 judges, which is very insufficient. It should be one to one. We give him an average of 5 decisions/cases to write per week. He may finish all five or may not. One decision may be left unwritten and become backlog for following week[253]“.

Judges talk about both issues: the lack of assistants and their workload. Assistants are so busy with technical issues that they have no time for intellectual support of the judge and work on themselves. This increases the workload of the judges

"The assistants have no incentive, the salary is not attractive, they cannot develop professionally, even if they wish to pass the judge's exam, they cannot prepare for it simultaneously. There are not enough assistants and they don't help us with qualifications either"[254].

Some judges think certain functions that judges perform today should be delegated to the staff.

"Many issues can be resolved at the level of staff. For example, if the court fee payment receipt is not attached to the claim, the judge should not be busy with this issue, the staff should ensure that this gap is filled by communicating with the party, a formal court ruling should not be necessary. The assistant should be given the right to create procedural documents and bring the case to the judge[255]“

According to the amendment introduced in the Civil Procedure Code on November 11, 2011, the authority to determine the legal facts was given to the master clerk.

The status of master clerk is provided only in two - Tbilisi (5 states) and Rustavi (1) city courts.[256].

According to the information provided by the Tbilisi city court, in 2018-2022, 3 master clerks exercised their authority in the Tbilisi city court, the court does not keep statistics of the cases decided by them.[257]

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[252] Face-to-face interview, male judge, superior court

[253] Face-to-face interview, male judge, court of first instance

[254] Face-to-face interview, female judge, court of first instance

[255] male judge, superior court. European authors also give a similar recommendation:*"Judges may spend significant time dealing with simple procedural issues that can be handled by assistants and administrative staff (eg registration of cases, payment of fees, admissibility of claims, court hearings). By reversing roles in preparatory procedures, cost efficiencies and capacity can be achieved. For this, assistants and administrative staff should be allowed to handle all aspects of case preparation."*- Caseflow Management Handbook, Guide for Enhanced Court Administration in Civil Proceedings, 2016, გვ. 14, https://dspace.library.uu.nl/bitstream/handle/1874/343766/Caseflow_Management_Handbook_English_02122016.pdf?sequence=1

[256] see Decision of the High Council of Justice of January 16, 2023 N. 1/2 0n the approval of the structure of the Appellate Courts of Tbilisi and Kutaisi, district (city) courts, the staff list and salaries.
http://hcoj.gov.ge/Uploads/2023/1/2-2023.pdf

[257] Letter N. 2-0434/7082887-7082316 of Tbilisi City Court of April 4, 2023.

According to the letter received from the Rustavi city court, in 2018-2022, 1 clerk exercised authority in this court in 2018-2020, and in 2019, 2021, 2 master clerks. Statistical information was provided on the number of cases that they handle. According to this information master clerks handle between 30 and 146 cases each year.[258].

5 percent of the civil cases examined in Georgian courts are made up of legal facts (see Above graph N.28), which amounts to 2500 to 5000 cases annually. Accordingly, with an appropriate number of master clerks, they will be able to fully release judges from this category of cases.

According to the recommendation of the European Commission for the Efficiency of Justice, the court should have the necessary material infrastructure, which includes new courtrooms, buildings, and technical equipment. Provision of adequate resources helps to process cases quickly[259].

Lack of courtrooms was identified as a problem in the 2017 report of non-judicial members of the High Council of Justice[260]. However, only 30 percent of the prosecutors and 19 percent of the lawyers interviewed by the project mention the lack of courtrooms as a problem causing delays.[261].

In the 2019 report of the Secretary of the High Council of Justice, the addition of 24 new courtrooms to the Tbilisi city court is considered one of the measures taken to overcome the flow of cases, and it is also indicated that one new courtroom is intended for business disputes.[262].

Interviewed judges believe that more courtrooms would give the opportunity to add a trial day (a day when a hearing can be held).

"We have courtroom 2 days a week, which is not enough. Judges should have at least three days for hearing and 2 days for writing[263]".

The European Commission for the Efficiency of Justice recommends that "introducing digital justice and increasing its scope can have a positive effect in terms of timely consideration of cases, efficient proceedings and cost reduction[264]."

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[258] April 10, 2023 N. 586/g letter of Rustavi City Court.

[259] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 36 https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 22.08.2023]

[260] http://hcoj.gov.ge/files/news/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98%202013%20-%202017.pdf

[261] Online survey of lawyers and prosecutors.

[262] Annual Report of the Secretary of the High Council of Justice 2018-19, http://hcoj.gov.ge/files/news/angarishi.pdf [last seen 10.25.2023] The project requested information from the High Council of Justice on the number of chambers in the court system (letter dated September 21, 2023), but no information was provided.

[263] Face-to-face interview, female judge, court of first instance

[264] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 37 https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 22.08.2023]

The development of technological communication tools is also convenient for the purposes of receiving quick feedback from parties and accessing materials. Special importance is attached to the development of this direction, in the conditions when postal practices are flawed and delays caused by post office malfunctions over the years remain a problem. 33% of the surveyed lawyers complain about the malfunctioning of the post office as a reason for the delay of cases, judges make the same assessment. *"Often mail carriers do not bring qualified proof of delivery or non-delivery. Many times we doubted that they actually did not reach the place and just returned the mail with a quick note. At such a time, we have to postpone the hearing*[265]*". "The post office does not serve us well, and we almost employ the officers of the Ministry of Internal Affairs as couriers*[266]*".*

The implementation of technological resources in the system of common courts has started, but its refinement and development is in stagnation. The electronic case management program provides parties with the possibility of electronic access to case materials (in civil and administrative cases) only in the court of first instance.[267].

Representatives of all groups of research respondents are satisfied with the existence of the electronic system. The system's shortcomings are considered to be the impossibility of remote access to case materials at the stage of appeal and cassation, as well as the absence of a communication software with the prosecutor's office. Case materials from the prosecutor's office are still received in paper form. The court software and the prosecutors' software are not integrated with each other and data exchange is not taking place.[268].

"Only the first instance proceedings in civil cases are open and accessible to the parties. I do not understand why it is not implemented in the appeal and the Supreme Court. This would help us, practitioners and no more time would be wasted"[269]***.***

Only authorized users can submit a claim electronically and this service is not free. The minimum fee is 180 GEL per month (limit - 2 transactions per day, 60 transactions in total[270]). Courts usually receive other case materials in electronic form, although there are exceptions. Courts require physical presentation of the court fee receipt, which is confusing to respondent attorneys, since electronically submitted receipts can be subject to verification.[271]

[265] Face-to-face interview, male judge, superior court

[266] Face-to-face interview, female judge, Court of first instance

[267] http://ecd.court.ge/

[268] Until 2013 criminal judges worked in the prosecutor's office's case management program (accordingly, all documents were stored on the prosecutor's office's servers). In 2013, a decision was made to separate the court system from the prosecutor's office software https://dspace.nplg.gov.ge/bitstream/1234/212257/1/SasamartlosSaqmiscarmoebisEleqtronuliSistema.pdf [last seen on 10.25.2022]

[269] December 15 focus group with lawyers.

[270] https://www.ecourt.ge/# Part of the respondents indicate that this program is expensive and therefore they do not use it. see December 15 focus group.

[271] Respondent attorney, male.

The European Commission for the Efficiency of Justice recommends that courts conduct remote hearings, telephone and video conferences[272].

Remote sessions were widely used during the 2020 pandemic. Amendments made to the Code of Criminal Procedure defined the possibility of holding remote hearings with or without the consent of the accused (in the case of a person deprived of liberty) and it was also determined that in the case of holding a remote hearing, no participant has the right to refuse to hold the hearing remotely on the grounds of the desire to attend it directly[273]. This norm was included in the transitional provisions of the Code and its validity period on January 1, 2023.

Nevertheless, the criminal procedure code article 188, paragraph 3 provides for the remote participation of the parties in the session at the request of the party and the decision of the judge.

The Code of Civil Procedure generally does not provide for holding remote hearings, although it is possible to receive clarifications from the parties remotely by the judge's decision.[274] This norm allows for remote engagement of a party only from specific locations where it can be identified. It is also possible to question the witness remotely.[275]

The Code of Civil Procedure also provides for the preparation of the case by video conference or telephone communication[276], videoconferencing with the parties happened mostly only during the pandemic, and telephone conferences seem to be less common in judicial practice[277].

Despite the existence of normative framework and technological possibilities, the judges used the video conferencing mainly within the framework of the decision of the High Council of Justice of March 13, 2020, by which the Council recommended remote hearings in order to prevent the spread of the new coronavirus.

According to the Secretary of the High Council of Justice, as of July 15, 2020, more than 16,900 remote sessions have already been held[278].

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[272] see European Commission for the Efficiency of Justice Updated Guidelines for the Time Management in Court (Saturn Guidelines), 4th edition, 2021, par. III.D.10 https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [Last seen on 18.10.2023] Also, recommendation rec(2001)3 of the Committee of Ministers to member States on the delivery of court and other legal services to the citizens through the use of new technologies.

[273] SSSK. 332[5] The first part of the article

[274] paragraph 3 of article 127 of the Code of Civil Procedure

[275] paragraph 3 of article 243 of the Code of Criminal Procedure; paragraph 6 of article 148 of the Code of Civil Procedure.

[276] According to the first part of article 205 of the Code of Civil Procedure: "A telephone interview or video conference with a judge is carried out with the simultaneous involvement of the parties or their representatives on the telephone line and is recorded in the form of a protocol. If the parties are warned about the telephone interview or video conference in accordance with the law, and it is not possible to communicate with one of the parties or contacting his representative, the court is authorized to speak only to the other party or his representative".

[277] Face-to-face interviews with lawyers.

[278] Rights Georgia, E-Justice Effectiveness During Pandemic, Evaluation Report. https://rights.ge/uploads/project/gallery/300271610704197.pdf, [last seen p. 4

Lawyer respondents point out that after the end of the pandemic, the court systematically refuses to hold remote hearings, even if both parties agree.[279].

"During the pandemic, the preparatory session was conducted via video communication, and after that it is no longer conducted, I never had it in my practice any telephone conference.[280]"

"It is wrong that the courts completely refuse remote hearing. For the sake of a 15-minute pre-trial session, we travel 5-6 hours"[281].

Some of the judges are not satisfied with the quality and efficiency of the online hearings, there are also communication difficulties, especially with the participation of an interpreter. Moreover, they prefer to communicate with the parties in the courtroom.

"The online session does not save court time, on the contrary, it requires additional time. It is needed more by parties than the court, because they cant arrive on time, or they join from another area. These engagements have shortcomings from a technical point of view, not everyone has a good internet connection, communication with the interpreter and the witness is better in the courtroom. It does not save the court's time in any way"[282].

Because not all courtrooms are equipped with a monitor, it is problematic to conduct the so-called hybrid meetings (when only part of the participants attends remotely).

"Not every courtroom has a monitor for the cases where one party is physically present and the other joins remotely[283]".

Some judges believe that the rules of the remote hearing should be prescribed in detail, so that the session is not interrupted.[284].

According to the recommendation of the European Commission for the Efficiency of Justice, it is of great importance to use an automated system in the courts, which instantly provides information related to the management of the flow of cases and the duration of proceedings (which should also be available to the general public), as well as identifying individual cases where cases have been unreasonably delayed.[285].

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[279] Lawyer respondent: March 29 focus group meeting; Lawyer respondent: March 30 focus group meeting.

[280] Face-to-face interview, male lawyer

[281] May 4 focus group meeting, Legal Aid Service attorneys.

[282] Face-to-face interview, female judge, court of first instance.

[283] Face-to-face interview, male judge, court of first instance.

[284] Face-to-face interview, male judge, court of first instance.

[285] European Commission for the Efficiency of Justice Updated Guidelines for the Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. I. C. 11, par. I.A.4https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last accessed 18.10.2023] Also, European Commission for the Efficiency of Justice, Backlog Reduction Tool, 2023, p. 37https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 22.08.2023]

The electronic case management system operating in the court today cannot produce statistics[286]. Therefore, processing of statistics requires additional time and resources from the judicial staff.

4.3. Alternative dispute resolution mechanisms

The Consultative Council of Judges of Europe as well as the European Commission for the Efficiency of Justice, recommend the development of alternative dispute resolution tools, including arbitration and mediation.[287].

The development of alternative dispute resolution mechanisms in Georgia is considered as a primary mechanism in order to reduce the delay and relieve the court workload both in 2017-21 strategy of the judicial system and in the document developed by the legal committee of the Parliament of Georgia in 2022 (judicial reform strategy and action plan).[288]

The existence of arbitration in Georgia has a longer history, mediation is a relatively new institution. The 2009 Law "On Arbitration" provides for the submission of private property disputes based on the equality of persons to arbitration.[289]. Since 2018, the scope of arbitration has been expanded, and disputes related to the public-private cooperation agreement stipulated by the Law of Georgia "On Public and Private Cooperation" have been also subjected to arbitration.[290].

An important factor that makes arbitration attractive to the parties is the short and flexible procedure. According to the law, the term of arbitration of the dispute shall not exceed 180 days from the beginning of the arbitration. It can be extended by agreement of the parties for a maximum of 180 days[291].

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[286] European Commission, Commission Opinion on Georgia's application for membership of the European Union, p. 8. https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Georgia%20opinion%20and%20Annex.pdf [last seen on 10.25.2023]

[287] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 34 https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen on 08.22.2023]
Consultative Council of European Judges. opinion #6(2004) par. 140, http://www.euromed-justice-iii.eu/document/coe-2004-opinion-no-6-ccje-fair-trial-within-reasonable-time-and-judge%E2%80%99s-role-trials-taking [last seen on 18.10.2023]

[288] Judicial reform strategy and action plan, p. 13 https://web-api.parliament.ge/storage/files/shares/Komitetebi/iuridiuli/samushao_jgufebi/shedegebi/sasamartlo_reformis_strategia_da_samoqmedo_gegma.pdf [last seen on 10.25.2023]
Judicial system strategy for 2017-21, p. 22 https://old.supremecourt.ge/files/upload-file/pdf/sasamartlo-sistemis-strategia-2017-2021.pdf

[289] Clause 2 of article 1 of the Law on Arbitration.

[290] sub-paragraph "b" of paragraph 2 of article 1 of the Law on Arbitration. As the respondents indicate, the practice of this category of disputes is small. Only in certain infrastructure projects is provision for arbitration in case of disputes. Face-to-face interview, male arbitrator, face-to-face interview, female arbitrator.

[291] The first paragraph of article 39 of the Law of Georgia on Arbitration.

Common Courts have supporting and supervisory competence in arbitration proceedings.[292] The scope of court intervention is minimal, strictly limited by the independence of the arbitrator and defined by the Law on Arbitration and the Code of Civil Procedure. This competence mainly includes:

In the course of the arbitration dispute - assistance in obtaining evidence and ensuring the presence of witnesses, appointing an arbitrator, recusal and the issue of termination of authority, interim measure, or recognition and execution of interim measure, examination of the issue of arbitration competence. After the termination of the arbitration dispute - recognition and execution of the decision made by the arbitration and hearing of the appeal with the request to cancel the arbitration decision.

Significant changes were made to the law in March 2015.

- A new wording appeared in the law that the parties may agree on the rules of jurisdiction by contract.
- The legal requirement for the signature of attorneys or notarisation of the contract for the validity of the arbitration agreement was abolished, which extended the principle of free choice of the parties and simplified the selection procedure[293]
- The court fee for the recognition and execution of the arbitration decision or its cancellation was determined at a fixed amount of 150 GEL. With this rule, the previously existing rule was changed and the amount of the fee to be paid for the recognition and enforcement of the arbitration decision was reduced.
- The rule was changed, by which at the stage of admissibility of the claim, the court, without the position of the defendant, decided whether the dispute was triable by the court or arbitration. According to the existing regulation, the judge waits for the defendant's position before the expiration of the period of filing the response, after which he makes a decision on the termination of the proceedings due to the competence of the arbitration. The mentioned regulation avoids the possibility of raising the issue of competence (jurisdiction) during the substantive hearing in the higher instances.
- While examining the issue of recognition and enforcement of arbitration decision the appellate court shall not accept as a ground of refusal of recognition and enforcement the reference from the defendant to the circumstance which was already declined during the appeal of the arbitration decision. And on the contrary, if the issue of recognition and enforcement of the arbitration decision has already been granted, the party can no longer demand the annulment of this decision on the basis of which he applied to the court for a notice of refusal of enforcement. This change replaced the previously existing rule, according to which the appellate court was obliged to consider essentially the same issue twice. This record, in turn, allowed the debtor to apply to the court to delay the start of enforcement against him. [294]

[292] see art. 356 of the Code of Civil Procedure[13].

[293] *Law of Georgia of March 18, 2015 N. 3218 - website, 26.03.2015.*

[294] Articles 356^{21} and 356^{24} of the Code of Civil Procedure ,

The amendments to the Law "On Arbitration" were reflected in the civil procedure legislation as well.

The implemented legislative changes were asessed to be insufficient for proper effect. On the one hand, arbitration as an alternative means of dispute resolution is still not popular enough and a reliable place for resolving business disputes, and on the other hand, the non-uniform practice of arbitration decisions on the part of the court itself and the delay in the issue of enforcement make it lose its effect as a mechanism for quick dispute resolution.[295]

"In order to decide whether or not to entrust the case to arbitration, the business takes into account several factors, one of which is the time. If the arbitrator makes a decision within a period of 2 to 6 months, then it takes 6 months to qualify for enforcement, then the business prefers to go directly to court."[296]

Lawyers believe that the unpopularity of arbitration is caused by its formation over the years as an institution for deciding loan disputes, however, unlike the situation in 2018, the trend is slowly changing and businesses are now more interested in concluding arbitration agreements.

"Arbitration in Georgia took more consumer related nature (loans) instead of a commercial one. A large share of arbitration disputes involves credit institutions, although there are 2-3 leading arbitrations that handle commercial disputes, construction disputes, business disputes, and even one international dispute.[297]

Accurate information on the number of cases dealt with by arbitration is not available, since most arbitration institutions do not collect or publish statistical information.[298] However, an approximate representation of the number of arbitration disputes is provided by the statistics of appeal courts on the number of arbitration cases filed for the enforcement of arbitration decisions. - see graph N. 45. Considering this number, it can be assumed that arbitration as an alternative dispute resolution mechanism **detracts about 4-6% of disputes from the court.**[299]

[295] Review of Legal and Practical Aspects of Arbitration in Georgia, CRRC, 2018, p. 19 https://www.undp.org/sites/g/files/zskgke326/files/migration/ge/UNDP_GE_DG_Arbitration_Study_20180312_geo.pdf [last seen on 22.09.2023]

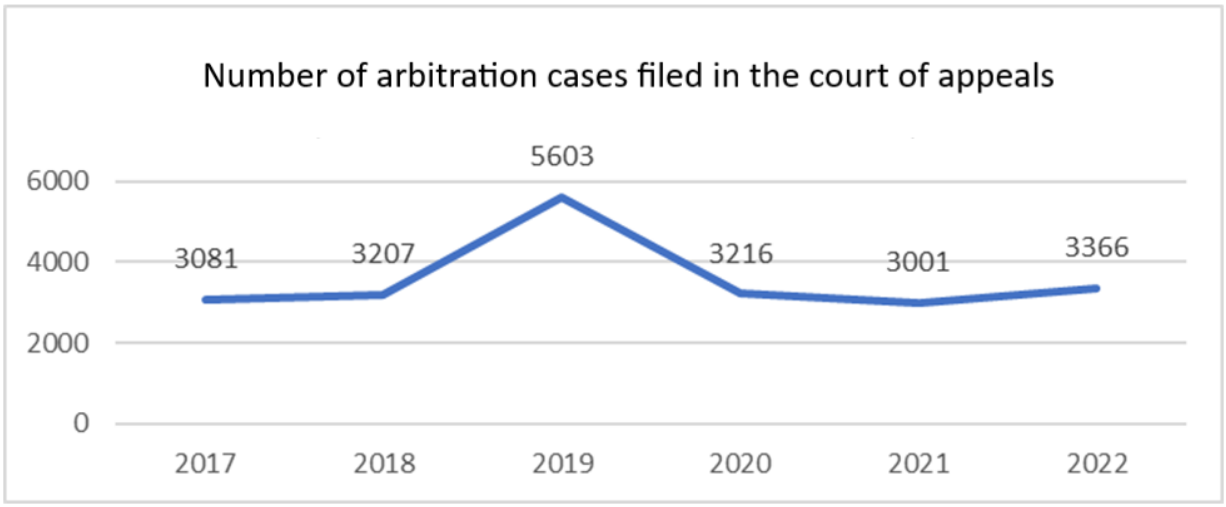
[296] " *face to face interview* member of the Association of Arbitrators, male.

[297] Respondent: member of the Association of Arbitrators, female.

[298] Review of Legal and Practical Aspects of Arbitration in Georgia, CRRC, 2018, p. 19 https://www.undp.org/sites/g/files/zskgke326/files/migration/ge/UNDP_GE_DG_Arbitration_Study_20180312_geo.pdf [last seen on 22.09.2023]

[299] see graph N. 45

Graph N. 45



Graphs N. 46, N. 47, N. 48 show the dynamics of arbitration cases in appeal courts (2017-2022)

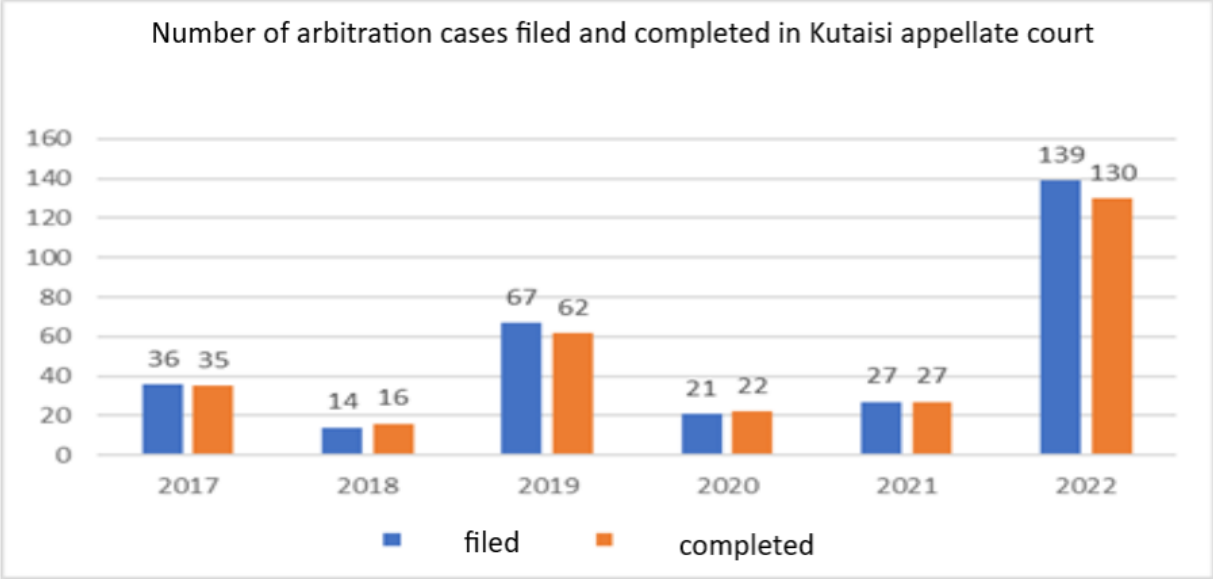
According to the law, the appellate court hears the issues of recognition-enforcement and annulment of the arbitration decision within one month after the 7-day deadline for receiving the application.[300]. When reviewing the notice-enforcement of an arbitration decision, the court does not review the legality or reasonableness of the arbitration decision. The matter is considered as a rule without an oral hearing, in a single instance.[301]

From the graphs, it can be seen that over the years, the Tbilisi appellate court rarely copes successfully with the incoming caseflow, which means that instead of one month, in some cases, the issue of enforcement of the arbitration decision is considered for more than one year, while the arbitration itself finishes the case in six months.

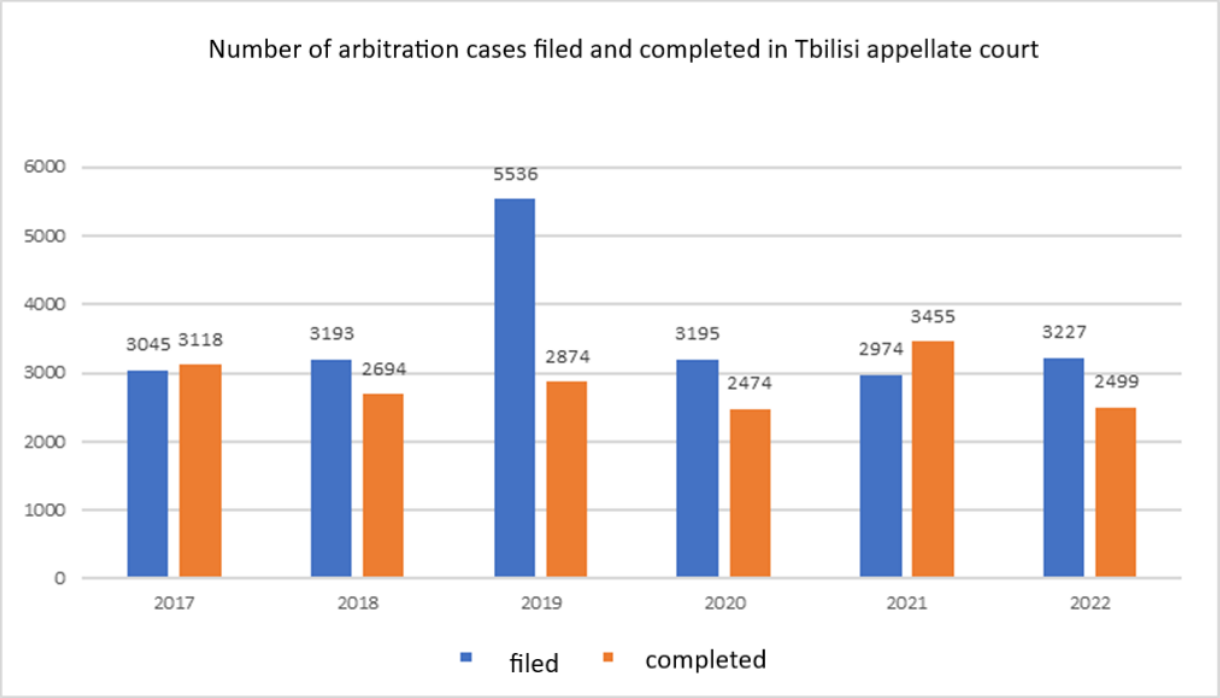
[300] See art. 356^{21} paragraph 3 of the Code of Civil Procedure.

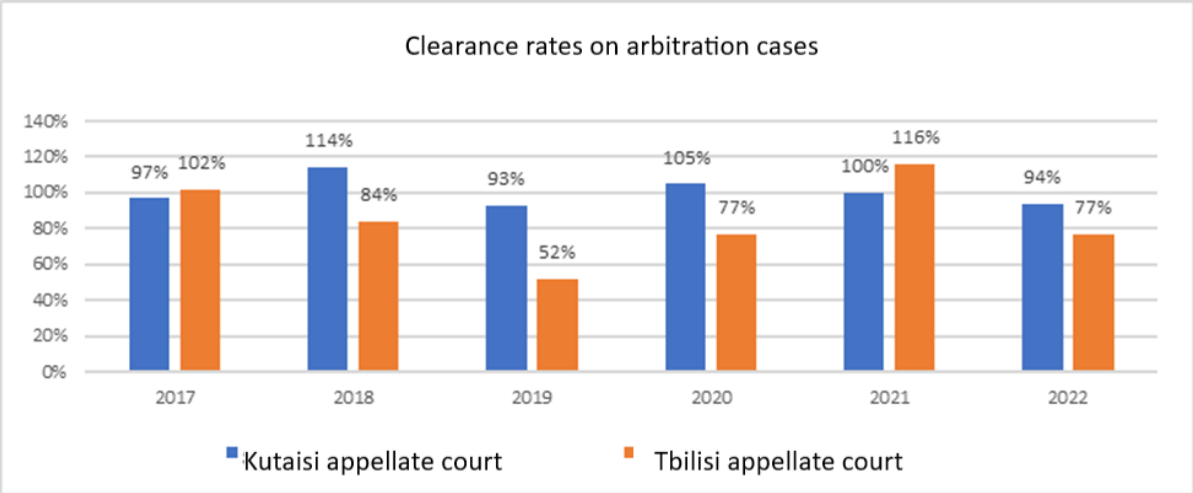
[301] An exception is an appellate court's award of an arbitration claim, which is appealed to the Supreme Court. Civil Procedure Code article 356^{18}

Graph #46 Graph #47



Graph #48





Kutaisi appellate court hears only 1% - 4% of the total number of arbitration cases filed in Tbilisi appellate court. In contrast to the regional courts, the law does not regulate the territorial distribution of cases among appeal courts (Tbilisi, Kutaisi).[302] Presumably, the cases are distributed between Tbilisi and Kutaisi Courts of Appeals according to the principle of regional adjudication, however, due to the peculiarities of the consideration of the arbitration petition, it is not essential to observe the territorial principle, and it is possible to clearly establish a special adjudication rule, which would lead to an equal distribution of cases and a more effective review.

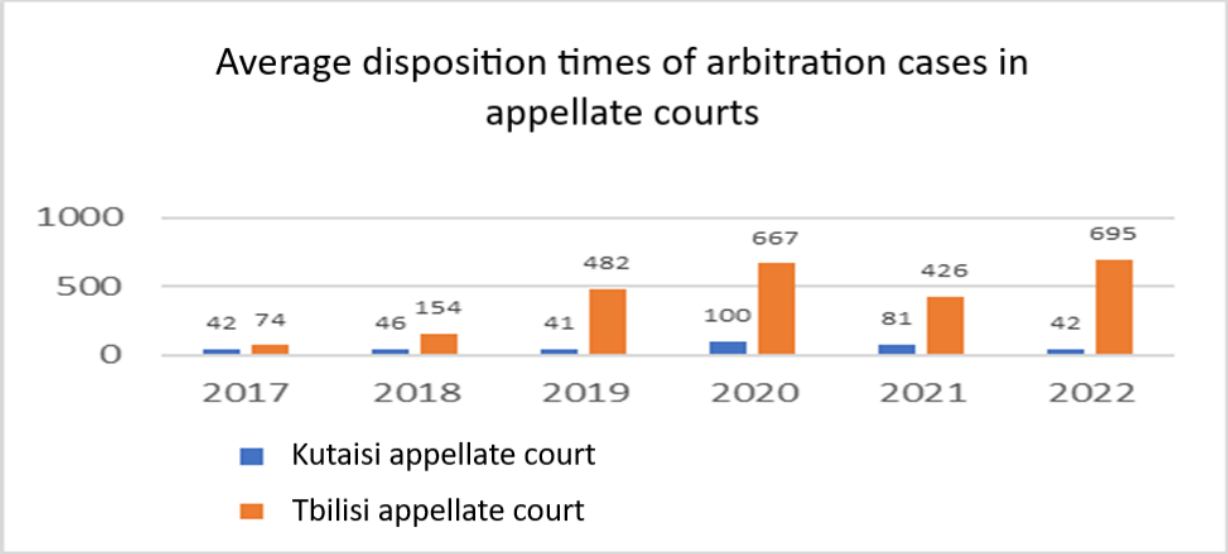
Among the reasons for the delay in consideration of arbitration cases in the court are also named the wide interpretation of the scope of control by the court and the resulting unnecessary procedural actions, the non-uniform approaches of judges and the lack of clarification of relevant law in conjunction with procedural legislation, the difficulty of delivering summonses and correspondence to the parties.[303]

The approximate duration of arbitration cases by appeal courts and the average duration of civil cases in the same courts (of other categories) are as follows:

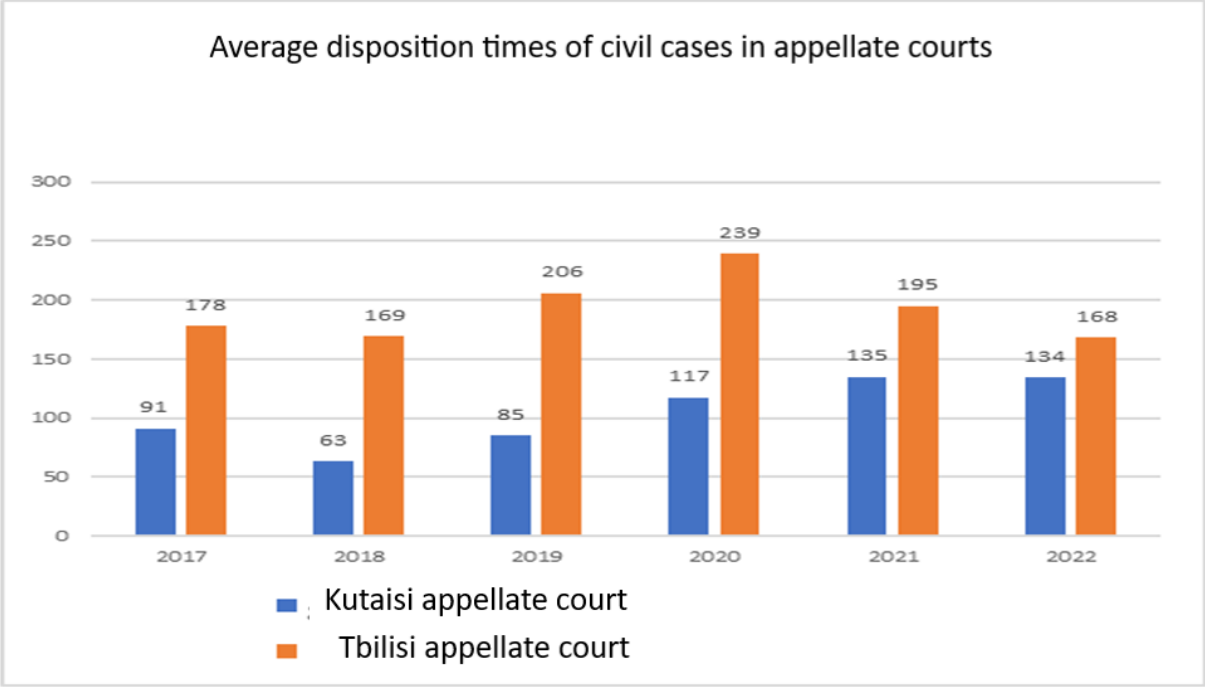
[302] Article 356 of the Civil Procedure Code[13]

[303] for more details see Review of Legal and Practical Aspects of Arbitration in Georgia 2018, Chapter 4, pp. 20-29, p. 48 https://www.undp.org/sites/g/files/zskgke326/files/migration/ge/UNDP_GE_DG_Arbitration_Study_20180312_geo.pdf [last seen on 18.10.2023]

Graph N. 49



Graph N. 50



The average duration of arbitration cases is 2-4 times longer than the average duration of cases in the Tbilisi appellate court. It is difficult to explain why oral hearing of disputes on the merits take less time than simplified procedure on arbitration issues. A marked increase in the length of proceedings in 2020 coincides with the pandemic period, suggesting that pandemic-induced regulations have in some cases affected the adjudication of cases without oral hearings.

Until April 2018, arbitration disputes were heard by all judges of the Civil Chamber. From April 30, 2018, a narrow specialization of arbitration disputes was introduced in the Chamber of Civil Cases. Accordingly, from this period cases are assigned to only a few judges[304].

Some judge respondents believe that panel review of arbitration disputes in the appellate court is not necessary. More emphasis should be placed on the mobilization of support staff.

"In order for arbitration cases to be considered quickly, the panels of judges need not be occupied and they can be reviewed by one judge alone. If there was a separate department staffed with employees, it would speed up the court cases and arbitration would be more popular. Now, the party prefers to go to first instance court rather than arbitration and settle the case, thus reaching the purpose of enforcement faster[305]".

According to the current legislation[306] , the writ on the enforcement of the arbitration decision is considered to have been rendered and the court is obliged to immediately issue the writ of execution to the interested party when the 30-day period established for the recognition and enforcement of the arbitration decision is violated. Although it is the duty of the court to issue a writ of execution in case of violation of the enforcement deadline, the court does not do so.

"The court does not follow this wording of the law, and when this condition is present, it does not issue an enforcement document. This may be due to the fact that this text of the law is tailored to only one side. This is the same as when appealing the decision of the first instance in the appeal court, this decision automatically became legal in the event that the appeal court violated the deadline for consideration of the appeal."[307].

As it can be seen from this, the delay in the execution time of recognition and enforcement of arbitration decisions is one of the important barriers that prevents the development of arbitration. The judicial system does not take adequate measures to solve the mentioned problem.

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[304] Decision N. 1/175 of the High Council of Justice of April 30, 2018 regarding the definition of narrow specialization of judges in the civil, administrative and criminal chambers of the Tbilisi appellate court http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/175-2018.pdf [last seen on 18.10.2023] The project requested information regarding the number of judges reviewing arbitration cases in the Tbilisi appellate court (letter dated October 27, 2023), but no response was received.

[305] Face-to-face interview, female judge, superior court. Another judge-respondent shares a similar opinion: face-to-face interview, female judge, superior court.

[306] Art. 356, par. 5 of the Code of Civil Procedure.[21]

[307] Face-to-face interview, practicing lawyer, male.

Mediation is an alternative dispute resolution mechanism, which is aimed at ending the dispute between the parties with the participation of a third party - a mediator.

At the initial stage of the introduction of mediation, the main challenges were:

- Lack of public awareness regarding mediation[308].
- Insufficient motivation of professionals participating in the justice system - lawyers and judges in resolving disputes through mediation.
- An increase in the total duration of proceedings in case of unsuccessful mediation.
- Insufficient remuneration of mediators.[309]

In the initial stages of the introduction of the mediator institution, judges were skeptical of mediation.

"We conducted trainings with judges, who were skeptical at first and said that they can also try to settle the parties, why do they need someone else's intervention (mediation was perceived as a competitor and we needed to conduct training that it is not a competitor but a supporting institution)"[310].

In 2019, the Law on Mediation was adopted, which defines the principles, procedures and organizational arrangement of mediation in Georgia. The law distinguishes between court mediation and private mediation. Court mediation is a process that is carried out after filing a lawsuit in court, in accordance with the procedure established by the Code of Civil Procedure, in which case the court transfers the case to a mediator, while private mediation is carried out at the initiative of the parties, based on mediation agreement, without the court transferring the case to a mediator.[311]

The Code of Civil Procedure provides for the categories of disputes that the judge can refer to mediation without the consent of the parties. Such are family (certain category), inheritance, labor, shared right, property (up to 20,000 GEL), loan (up to 10,000 GEL), non-property disputes. The judge, with the consent of the parties, can refer any civil dispute to mediation at any stage of the process, regardless of the category of the case or the value of the subject matter of the dispute.[312]

The decision of the Council of Justice determined the list of circumstances on the basis of which the judge decides on the expediency of transferring the dispute to mandatory mediation.[313] It

[308] Aleksandre Tsuladze, the Georgian Model of Court Mediation in the Euro-American Prism, 2016, p. 139-142 http://press.tsu.ge/data/image_db_innova/disertaciebi_samartali/aleqsandre_wuladze.pdf [last seen on 10.25.2023]

[309] According to the decision of the High Council of Justice of December 27, 2019, the activities of mediators are compensated by the hour - the first 10 hours of ex parte or joint communications with the parties are compensated in the amount of 20 GEL per hour, and the following hours in the amount of 10 GEL per hour https://mediators.ge/uploads/files/5f26dee9c3155.pdf [last seen on 10.25.2023]

[310] Face-to-face interview, female mediator.

[311] see Law on Mediation, art. 1. par. b. and c..

[312] 187^3 of the Code of Civil Procedure

[313] Decision of the High Council of Justice #1/366- 2019, article 5. http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2019%20-%20gadawyvetilebebi/366.pdf

seems that judges do not always apply this method.

"I don't use the transfer to mediation often, the parties don't care if they don't want it, and when they don't want it, it drags on for nothing"[314]

The term of court mediation is 45 days, which can be extended by the agreement of the parties for the same period[315]. As for non-judicial mediation, it is not limited in time. The mediation process can end with a settlement between the parties, for the enforcement of which the party can apply to the court.[316].

In order to encourage parties to apply for mediation, Article 49, par. 2 of the Code of Civil Procedure[1] envisages financial relief for the parties. In the event of an agreement between the parties in the court mediation process, 70% of the court fee duty paid by the plaintiff will be returned to the plaintiff. Also, a reduced fee (1%) will be paid for disputes subject to mediation, which will no longer increase if the dispute is terminated by agreement of the parties.

In 2019, with the amendments to the Courts Law, the High Council of Justice and the courts were entrusted with the development of the mediation program. According to the decision of the High Council of Justice of December 27, 2019[317] A 5-year (2020-2025) program was approved, which provides for the provision of resources necessary for mediation, including mediation spaces, raising awareness about mediation, generalizing statistics, and developing a monitoring and evaluation plan.[318] According to the mediation program, court mediation was to be implemented by December 31, 2021 in all district and city courts of Sukhumi and Gagra Gudauta, as well as Gali-Gulrifshi and Ochamchire-Tkvarcheli courts (whose mediation functions are replaced by other courts).[319]. The program set out to raise awareness of mediation, including holding quarterly information sessions for judges and mediators.

The High Council of Justice did not provide information regarding the implementation of the mediation action plan approved by the 2019 decision[320]. Publicly available[321] information on the establishment of mediation centers in only 11 courts. In most cases, there is no information about mediation or mediation centers on the websites of the courts.

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[314] Female Judge, court of first instance.

[315] Article 187[1] of the Code of Civil Procedure.

[316] Article 13 of the Law on Mediation.

[317] Decision 1/366 of the High Council of Justice of December 27, 2019 the approval of the court mediation program http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/2019%20-%20gadawyvetilebebi/366.pdf

[318] Ibid, art. 3

[319] Ibid., Art. 8

[320] Letter of October 27, 2023.

[321] Tbilisi and Kutaisi City and Appeal Courts, Rustavi Court, Mtskheta, Gori, Batumi, Khelvachauri, Dedoplistskaro, Akhaltsikhe courts https://www.interpressnews.ge/ka/article/692829-sakartvelos-mediatorta-asociaciis-iniciativit-axali-mediaciis-centrebi-amokmedda/ ; https://mediators.ge/ka/article/kidev-erti-axali-sasamartlo-mediaciis-centri-gaixsna-acharis-regionshi-xelvachauris-raionul-sasamartloshi/444/, ; https://mediators.ge/ka/article/kidev-erti-axali-sasamartlo-mediaciis-centri-gaixsna-dedofliswyaros--raionul-sasamartloshi/402/ ; https://www.court.ge/courts/axalcixis_raionuli_sasamartlo/?page=25&id=6899; https://www.interpressnews.ge/ka/article/709417-goris-raionul-sasamartloshi-kidev-erti-axali-sasamartlo-mediaciis-centri-gaixsna/

According to the websites of the Tbilisi and Rustavi courts, during 2022, 140 and 28 cases were submitted to mediation by the city courts of Tbilisi and Rustavi, respectively (which is 0.35 and 0.61 percent of the number of civil cases received in 2022), out of these, 42 cases (in Tbilisi) and 14 cases (in Rustavi) were concluded by agreement of the parties. 24 cases were submitted to mediation in Rustavi court in 2021 (which is 0.58 percent of the cases received in 2021), of which 8 (24%) ended with an agreement between the parties.[322]

Due to the lack of information, it was not possible to estimate the statistics of how many cases ended in mediated agreement and avoided trial of the case by court.[323]

Only the information posted on the website of the Association of Mediators is available, that in 2022, 30 disputes were settled by private mediation.[324]

Obviously, when evaluating mediation as a mechanism to relieve the court, only the cases concluded by agreement should be taken into account, otherwise, there is a probability that the parties remaining in a conflict situation will continue the dispute and potentially these cases will be considered by the court. This especially applies to cases conducted by court mediation, in case of failure of which the probability of resumption of court proceedings is high.

At this stage, no interim reports on the implementation of the mediation program are available, which would enable us to know what was the effect of mediation related activities implemented in the course of two years. There is no active information campaign ongoing from courts or HCOJ.

4.4. Disciplinary proceedings - accountability for breach of deadline?

According to the law on common courts, violation of the deadline established by the procedural legislation is the basis for disciplinary responsibility of the judge in the context of violation of the principle of diligence and competence. In order to initiate disciplinary proceedings against a judge for this violation, the following must be verified:

- whether the term established by law has been exceeded;
- how substantial is the breach of the procedural deadline;
- Is there an objective reason related to administration of justice (including the number of cases) that caused the deadline to be violated;
- objectively, whether the judge could have acted to prevent disciplinary misconduct, but did not do it;

[322] see https://shorturl.at/diMP9

[323] Information was requested from Tbilisi and Kutaisi city and appeal courts, Batumi, Bolnisi, Gori, Gurjaani, Dedoflistskaro, Telavi, Mtskheti, Rustavi, Akhaltsikh district (city) courts. However, the answer was received only from Tbilisi and Rustavi city courts. By the letter received from the Tbilisi City Court (N. 04106/7566431), we are informed that the processing of the mentioned data and placement in the public database is not carried out. Due to the volume of information, its search and processing requires resources. Information is posted on the court's web page by letter from the Rustavi City Court.

[324] Mediation in the context of gender, 2022 https://mediators.ge/ka/article/2022-wlis-mediaciis-statistika-genderul-chrilshi-/436/ [last seen on 22.09.2023]

- whether the judge was aware of the occurrence of damage caused by the delay or not, but he/she should have considered and could have considered the possibility of the occurrence of damage;
- how significant is the damage caused by exceeding the procedural deadline.[325]

Citizens most often turn to the Independent Inspector with a request to initiate prosecution against the judge on the basis of the delay in the consideration of cases.[326]

Within the framework of the study, the 2022 case-law of the Council of Justice for disciplinary prosecution related to the delay of cases was studied. During this period, 2 sessions were held. On the the Council of Justice considered the complaints of 2018-2020, thereby itself violating the deadline for disciplinary proceedings. During the sessions, the Council made 49 decisions. Disciplinary proceedings are terminated by all these decisions. Several important trends emerged from the study of disciplinary decisions:

1. The complaint of citizens due to the delay of the criminal case is minimal. Out of 49 reviewed cases, 4 complaints refer to violation of the deadline in criminal cases, 45 - civil and administrative.
2. The Council of Justice considers exceeding the 5-month deadline for consideration of especially complex category of cases to be a violation of the deadline for consideration of civil and administrative cases.
3. **There is no uniform standard for assessing the substantial delay of the deadline.** In different decisions excess of deadline with different time periods is assessed differently. Among them, we mainly find the use of the standard of "reasonable time" and "whether it is appropriate to initiate disciplinary prosecution".[327].
4. The motivation of these decisions **fails to clarify how many cases should the judge have in order for the delay to qualify as excusable.** For example, due to the judge's workload, the prosecution was not initiated based on excusable ground when the judgment was delivered to the party with 11 months delay. The workload of this judge was measured in terms of two consecutive years in which these 11 months were covered. In the first year, he completed 230 out of 455 cases under consideration, in the following year, 223 out of 378 cases under consideration (he completed about 20 cases per month).[328]
5. The decisions do not clarify **cause-and-effect relationship between the workload of a particular judge and the exceeding of the procedural term specified in the complaint.** The number of cases (indicators of adjudication of cases by the judge in the year of the alleged violation) is considered as a basis for refusing to initiate prosecution a priori.

[325] Article 75^1 of the Organic Law Common Courts.

[326] see For statistics on handling disciplinary complaints, see above chapter. 2.1.

[327] Decision of the Council of Justice #102-19, #141-19

[328] Case # 146-19http://hcoj.gov.ge/Uploads/2023/2/%E1%83%93%E1%83%98%E1%83%A1%E1%83%AA%E1%83%98%E1%83%9E%E1%83%9A%E1%83%98%E1%83%9C%E1%83%A3%E1%83%A0%E1%83%98%20%E1%83%A1%E1%83%90%E1%83%A5%E1%83%9B%E1%83%94%20146-19_1.pdf [viewed on 30.10.2023}

6. In the decisions **there is no discussion on the question of the judge's culpability - whether he could have avoided the delay.**
7. Decisions **do not contain a substantial discussion of the damage caused by the delay.**[329]
8. Although the law strictly provides for the violation of the term established by the procedural law as the basis of disciplinary responsibility, t**he issue of initiation of disciplinary proceedings is considered also due to the delay of such procedural actions, the deadline for which is not established by law.**[330].
9. Instead of evaluating the time limit violation of a separate procedural action (such as the time limit for the appointment of the session, the time limit for notifying the party, making a decision in absentia, sending the decision to the party, etc., any violation specified in the complaint is evaluated in relation to the time limit for the delivery of the decision and general timeframe established by law for the completion of the case (usually 5 months)[331]
10. In case of a change of judge in the case, only the issue of disciplinary prosecution against the judge named by the applicant will be considered. Such a practice disregards the claim of the applicant for the delay of his case.[332] Taking into account that within the framework of disciplinary proceedings, the control of the two terms established by the procedural legislation - the general time limit for the case review and the term of submission of decisions - is carried out. In the event of a change of judge, the disciplinary proceedings cannot effectively control the term established by law, because the disciplinary authority calculates the 5-month term for each judge from the moment when the case was handed over to that judge. Hypothetically, if the case was brought before three judges in sequence in one instance and it was delayed for 5 months with each one, the duration of overall proceedings reaching 15 months, there will be no judge responsible for exceeding the deadline.

Exclusion of the responsibility of the judge in the conditions of systematic violation of statutory deadlines is the aspiration of the existing version of the law. A kind of closed circle is formed:

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[329] Art. 75[1] par. 4 of the Law on Common Courts considers harm as a mandatory element of all disciplinary offenses.

[330] In Case #126-19, the Panel did not consider the time limit for consideration of the petition to be statutory, although it considered that it should be tested under a reasonable time standard.
http://hcoj.gov.ge/Uploads/2023/2/%E1%83%93%E1%83%98%E1%83%A1%E1%83%AA%E1%83%98%E1%83%9E%E1%83%9A%E1%83%98%E1%83%9C%E1%83%A3%E1%83%A0%E1%83%98%20%E1%83%A1%E1%83%90%E1%83%A5%E1%83%9B%E1%83%94%20126-19.pdf
Case #141-19 There is no special deadline set by law for the service of a decision in absentia. It was considered reasonable to issue an order after three months to serve to the defendant the copy of decision through police.

[331] Articles 205, 207, 373 of the Code of Civil Procedure.
Case # 102-19: a default judgment after 6 months due to failure to file a response was assessed by the 5-month statutory time limit (time limit for cases of special difficulty). Exceeding this period by one month was not considered a violation of a sufficient period for prosecution for disciplinary offence (principle of opportunity of prosecution)

[332] The Independent Inspector has the same approach, "It is important that the assessment of disciplinary offenses is done in relation to the individual judge, because disciplinary responsibility and sanctions are imposed on the judge only for the disciplinary offense committed by him. The judge's action should be evaluated not entirely based on the overall duration of the case, but directly by the period of the case's stay in his proceedings, and the actions performed by each judge during the evaluation should be taken into account." Independent Inspector's 2022 Report https://dis.court.ge/damoukidebeli-inseqtoris-samsakhuris-2022-tslis-saqmianobis-angarishi/ [viewed on 30.10.2023}

- All judges are busy
- Exceeding the deadline by a busy judge is excusabls
- A busy judge is exempted from the responsibility of delaying the case.

Such an attitude of the Council of Justice may seem fair at first glance, because it is quite clear that a judge cannot be required to answer for an action that does not depend solely on him.[333] However, on the other hand, the broad discretion of the Council of Justice under the conditions of corporate governance puts the judge in a completely unpredictable position, increases the risks of a selective approach and creates a threat to their personal independence.

As to the disciplinary Panel, in 2022 there has been no case adjudicated against the judge concerning delay as disciplinary offence. The only case considered by the Disciplinary Panel during the reporting period resulting in a disciplinary penalty for the judge indirectly concerned violation of the statutory deadline by the judge. Disciplinary charges were brought for the obstruction of the disciplinary body by the judge, which in a specific case was manifested in the violation of the deadline for handing over the case materials to the disciplinary inspector.[334]

The judge sent the case files to the independent inspector service after one month and 25 days, while the independent inspector had only 2 months in total to prepare the report.

Some factual circumstances that raise the suspicion that the prosecution of the judge did not correspond to the real purpose of disciplinary action:

- The prosecution against the judge was started on the basis of the report of the employee of the Office of the Independent Inspector;
- Deadline for transfer of case materials,[335] for the violation of which the judge was punished was not established either by law or by Independent Inspector
- The 2-month deadline for the preparation of the report by the Independent Inspector was violated by about 2 months by the Independent Inspector himself at the moment when the independent inspector asked the judge for the case materials.
- In addition, the decision of the disciplinary panel does not include a discussion on the two necessary elements of disciplinary responsibility - the judge's guilt and the damage caused by the judge's actions.

The decision shows that the case, for which the first disciplinary proceeding against this judge was ongoing and concerned the judge's delivery of the decision to the party after 7 months, was

[333] The Consultative Council of European Judges in its opinion on judges evaluation indicates that even a negative evaluation of a judge due to delays caused by high workload, shortage of judicial officials, or improper administrative system is unfair. Opinion N. 17, paragraph 26

[334] Decision of the Disciplinary Panel of December 28, 2022, case number 1/01-22 http://dcj.court.ge/uploads/gadackvetilebebi/18_12_2022_101.pdf

[335] According to the decision, the two-month period for the independent inspector to investigate the case was considered as designated period.

terminated by the Council of Justice in line with standard practice, including taking into account the judge's workload.[336]

According to the latest decision and the comparison of the studied practice of the Council of Justice, it is clear that the disciplinary bodies have a different standard of approach. In fact, the judge was penalized for the late transfer of materials to the independent inspector, but not for the late transfer of the decision to the party. As it can be seen from this, on the one hand, the judicial system is more sensitive to internal administrative accountability than to the judge's accountability to the public, on the other hand, it selectively uses the mechanism of disciplinary proceedings to maintain internal corporate "order".

The effectiveness of disciplinary proceedings as a measure aimed at delaying the case was assessed by the European Court of Human Rights in the decision of March 21, 2021 Schrade v. Georgia, complaint, N15016/07. This case lasted two and a half years in the first instance court and almost three years in the appeal court. In the mentioned case, the European Court of Human Rights established a violation of article 13 of the Convention along with the violation of article 6 (effective remedy).

In the mentioned case, the Government of Georgia did not claim that the Georgian legislation envisaged any kind of compensatory mechanism in case of delay of proceedings. The Government of Georgia argued that the applicant could file a disciplinary complaint against the protracted proceedings and that disciplinary action against the judge would speed up the proceedings. As noted by the European Court of Human Rights, the authorities have failed to cite a single case where disciplinary proceedings have expedited the hearing of a case. Disciplinary proceedings were within the discretion of the State and the applicant had no right of appeal. The authorities also did not state that the results of the disciplinary proceedings could become the basis for a claim for damages. Accordingly, the disciplinary complaint could not be considered as effective remedy in relation to the complaint related to the length of the proceedings and therefore there was a violation of article 13 of the Convention in conjunction with Article 6 § 1.

[336] Decision 208-18 of the Council of Justice
http://hcoj.gov.ge/Uploads/2021/2/%E1%83%93%E1%83%98%E1%83%A1%E1%83%AA%E1%83%98%E1%83%9E%E1%83%9A%E1%83%98%E1%83%9C%E1%83%A3%E1%83%A0%E1%83%98%20%E1%83%A1%E1%83%90%E1%83%A5%E1%83%9B%E1%83%94%20208-18.pdf

5. CONDUCT OF JUDGES

Main findings

- **Judges do not use the recommended mechanisms of effective case management, such as continuous control of the case from an early stage, planning the course of the case with the parties and drawing up a procedural calendar, managing the flow by differentiating case management.**
- **Mechanisms such as determining the deadline for the parties to perform tasks and presenting evidence, its effective control, as well as the imposition of procedural responsibility on the parties for failure to complete procedural actions within the established deadlines are not effectively used.**
- **Almost all issues are discussed orally at the preparatory session, which leads to a longer preparation stage and an increase in the number of preparatory sessions.**
- **Cases are often adjourned without reason and at long intervals.**
- **The so-called inactive periods when no action is taken and the next action is not scheduled are systematic.**
- **The settlement rate of civil cases has been steadily declining since 2017. As of 2022, it is 4 percent of completed cases.**
- **Continuous training of judges on case management skills was not implemented after 2018.**
- **Some judges are not motivated to hear cases in a timely and efficient manner. Judges are demotivated by various factors, including backlog, lack of incentive and support system.**

5.1. Timeframes for consideration of cases and their observance.

According to the recommendation of the European Committee for the Efficiency of Justice, the terms of proceedings should be predictable[337]. Statutory determination of deadlines for consideration of cases by legislative or other acts should be done carefully, so that differences between cases are taken into account. If time limits are established by law, the adequacy of these time limits and their observance should be constantly monitored[338].

Procedural legislation sets the time limits for consideration of criminal, civil and administrative cases in courts of different instances, the observance of which is mandatory for the judge.

[337] European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. I.A.2-3 https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 22.09.2023]

[338] Ibid., par. I. D. 17

According to part 2 of article 59 of the Code of Civil Procedure,[339] The judge must examine the civil case within 2 months after receiving the application, and in the case of a particularly difficult category, this period can be extended by a court decision for a period of no more than 5 months.[340]

In criminal cases of the first instance, the court must issue a verdict no later than 24 months after the decision of the judge of the pre-trial session to transfer the case for hearing on the merits [341],

The appellate court must examine the criminal case within 2 months and 10 days after filing the complaint.[342].

In the cassation proceedings, the 6-month period of examination of the case applies to both criminal and civil (and administrative) cases.[343].

Specific short-term deadlines are set for consideration of certain categories of cases, e.g. the court must hear the cases of payment of alimony, compensation for damages caused by mutilation or other damage to health or death of the breadwinner, claims arising from labor relations, disputes arising from the "law of Georgia about the use of a residential space" and applications reclaiming immovable property from illegal possession in no later than 1 month.[344].

In addition to the terms of consideration of cases, the procedural legislation also is also familiar with the intermediate terms of proceedings, for example, a reasoned decision in civil cases must be prepared within 14 days after the announcement of the dispositive part of the decision[345] and in criminal cases in 5 days, and in complex and multi-volume or multi-accused cases in 14 days.[346] The period for checking the admissibility of a civil/administrative complaint in the appellate court is 10 days, and in the Court of Cassation it is 3 months, etc.[347].

[339] The same rule applies to administrative cases

[340] By virtue of article 372 of the Code of Civil Procedure, the same terms of consideration of cases shall apply to the proceedings of appeal cases.

[341] Section 6 of article 185 of the Code of Criminal Procedure. During the examination of civil cases, the terms established for the court of first instance apply to the appellate court (Article 372 of the Code of Civil Procedure: "The review of the case in the appellate court shall be conducted in compliance with the rules established for the review of cases by the first instance, with the amendments and additions contained in this chapter")

[342] 10 days from the filing of the complaint to the admissibility notice, 2 months from the admissibility notice to the judgment. see Article 295 of the Criminal Procedure Code.

[343] Paragraph 6 of article 291 of the Code of Civil Procedure. Paragraph 8 of article 303 of the Code of Criminal Procedure. Paragraph 4 of article 34 of the Administrative Procedure Code.

[344] Paragraph 3 of article 59 of the Code of Criminal Procedure.

[345] Paragraph 2 of article 257 of the Code of Civil Procedure.

[346] Article 278 of the Code of Criminal Procedure.

[347] Articles 374 and 401 of the Code of Civil Procedure.

As a rule, examination of the case by the court in violation of the terms established by procedural law does not lead to legal consequences.

The deadlines established by the legislation are mostly violated. On the one hand, this can be explained by their unreasonableness. Despite the variety of disputes and the multiplication of issues triable by the court, as well as the change in the procedural terms intended for the parties, the general time limit established by the law has not experienced a change and is inadequate. For example, in the case of using the maximum of all time periods from the receipt of the claim to the receipt of the defendant's response, a total of 92 days is envisaged by the Civil Procedure Code, which already exceeds the common two-month period for consideration of the case.

Judges designate the excessive workload and unreasonableness of the deadlines as the reason for violating procedural time limits, they think it is appropriate to switch to the principle of reasonable deadlines:

"It is almost never possible to process the case within the time limit set by the law. The time limit set by the law does not correspond to the actual time limit for the case processing and at the same time misleads the parties.[348]".

"These deadlines are a fiction. In fact, they are forcing me to violate them. I am more in favor of the principle of a reasonable deadline. Well, I think in one instance it is possible to consider the case within 5 months under normal workload conditions[349]"

"*The timeline is unreasonable. If we convert the process cycle into hours, it will not fit into that time frame. The deadline for writing the decision is also not reasonable[350]".*

Not only the general, but also the interim deadlines for the consideration of the case are violated, although it seems that especially painful for the parties is the violation of the deadline for submitting a reasoned decision, compared to other procedural time limits.

"There have been cases when a decision was announced 2 years ago and reasoned decision was submitted 2 years later[351]".

"Judges are not able to write the decision within the time limit set by the law, so the parties have to file a formal complaint in order not to miss the appeal deadline. We are literally filling the court

[348] Online respondent, online survey of lawyers.
[349] Face-to-face interview, female judge, court of first instance
[350] Face-to-face interview, female judge, court of first instance.
[351] May 10 focus group with representatives of administrative bodies.

with waste paper. I fill out the appeal form, fill in mandatory fields inside and indicate that I do not have copy of decision, so I will submit a reasoned appeal later, this happens very often.[352]*"*

"We are used to judges breaking deadlines. A judge who is required to uphold the law loses public respect for breaking deadlines.[353]*".*

In a number of countries, there are no statutory deadlines for the consideration of cases. However, in such countries, as a rule, the courts themselves set the time standards for considering cases.

Regardless of whether the deadlines will be established by law or not, international practice recommends establishing time standards (managerial deadlines), which should be clearly defined and achievable. Benchmarks should be published and reviewed periodically. If the deadlines are not met, then specific actions and steps must be taken to remedy the situation[354].

For example, in the United States of America, as a rule, there are no strictly established deadlines for considering cases, but there are so-called time standards, i.e. time limits for consideration of different categories of cases, which are set by the court itself. These time limits do not apply to a specific case, but to the flow of cases as a whole.

According to the standards developed by the American Bar Association, 75% of civil cases should be completed in 180 days, 90% - in 65 days, and 100% - in 540 days.[355] At present, the majority of state courts have developed indicative terms for considering cases[356]. Part of the European countries (mostly Northern Europe - Denmark, the Netherlands, Finland, Sweden) also share the practice of setting reference time standards for completing the flow of cases.[357]

[352] Face-to-face interview, female lawyer.

[353] March 29 focus group with lawyers.

[354] Saturn Guidelines IV.C.6-8. According to the opinion of the Commission, the deadlines can be defined as follows*, "for example, it should be determined that 90 percent of the cases are considered within the specified time. "*As the commission points out, there is no time limit per se *"Fixing time goals is not main means of solving the problem of delay, but they have proven their usefulness in terms of evaluating court policy and performance, resulting in an improvement in the duration of proceedings" (e.g. in 9-10 months).* European Commission for Justice Efficiency, Backlog Reduction Tool (2023) p. 27. For more detailed guidelines on this issue, see*. CEPEJ, Towards European Timeframes for Judicial Proceedings Implementation Guide, 2016 https://rm.coe.int/16807481f2*

[355] https://www.ncsc.org/__data/assets/pdf_file/0032/18977/model-time-standards-for-state-trial-courts.pdf p. 17

[356] https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/high-performance-courts/cpts

[357] Regional Cooperation Council, Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries, 2016, p. 19

5.2. Planning the hearing

Litigation is a complex process in which many subjects are involved - judge, party, lawyer, witness, expert, interpreter, etc. They can affect the course and duration of the case. Nevertheless, the main responsibility for managing the case rests with the judge. In special literature this principle is called the principle of active judicial control[358].

According to the European Court of Human Rights, the State is responsible for considering the case within a reasonable time. Where the duration of the proceedings is apparently excessive or unusual, the respondent State must provide a "plausible explanation" or the reasonable time requirement will be deemed to have been breached.[359]In such cases, there is a presumption that the proceedings have been delayed and the State must show that it is not responsible for the delay.[360]Even in those legal systems where the process is based on the principle of determination (in Italian - principio dispositivo) and the parties control the course of proceedings, the court has the obligation to ensure a speedy consideration of the case in accordance with Article 6 of the European Convention on Human Rights.[361] Under the Bangalore Principles of Judicial Conduct, a judge is required to exercise control over cases to reduce and eliminate unnecessary costs, excessive delay and procrastination[362]. Judicial control of the case starts from the entry of the case and goes on continuously (early and continuous control).[363]"Accordingly, the judge controls the case at all stages including admissibility, preparation, substantive review, and drafting of the decision.

The European Commission for the Efficiency of Justice recommends that the judge plan the process in advance with the parties, where a calendar of procedural actions is made.[364] Deviations from this calendar should be minimal and should be allowed only with valid excuse[365].

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[358] " *To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation"* American Bar Association, Standards for Reducing Delay, Standard 2.50: quoted from: Fair, Timely and Economic Justice, National Judicial College, p. 5 https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/NJC_CaseflowManagement.pdf
see See also, Civil Caseflow Management System, Institute for the Advancement of the American Legal System, p. 8 https://www.uscourts.gov/sites/default/files/iaals_roadmap_for_reform_civil_caseflow_management_guidelines_0.pdf .

[359] See for example, Foti and others v. Italy, 10 Dec. 1982, §§65, 68, 69, 72 and 76, and Georgiano v. Italy (merits), 10 Dec. 1982, §47;

[360] The right to trial within reasonable time under Article 6 ECHR, A practical handbook prepared by Ivana Roagna 2018, p. 23 https://rm.coe.int/the-right-to-trial-within-reasonable-time-eng/16808e712c

[361] see Among them, Guincho v. Portugal, 1984, § 32; Buchholz v. Germany, 1981, §50; Baraona v. Portugal, 1987, § 48

[362] Bangalore Principles of Judicial Conduct and its Commentaries, p. 192https://old.supremecourt.ge/files/upload-file/pdf/mosamartleta.qcevis-wes2.pdf

[363] David Steelman, Improving Caseflow Management, a Brief Guide. National Center of States Courts, 2008. P. 7 https://ncsc.contentdm.oclc.org/digital/api/collection/ctadmin/id/1022/download

[364] European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. V.B.5https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 22.09.2023]

[365] Ibid., V.B.5

The legislation of Georgia does not recognize the obligation to draw up a procedural calendar in advance, although the judge has the possibility to plan the process in agreement with the parties even under the current legal regulations. Minimum elements of planning are used even under existing regulations

Although the law does not directly provide for it, but in the lawsuit, response (and other) forms approved by the High Council of Justice, several questions are addressed to the parties regarding both communication and scheduling of the process.

For example, does the party want to receive materials by email, by mail. What time of day will he be able to receive messages and which address he prefers. However, the final decision on the form of communication is chosen by the judge[366].

Three questions are included in the mentioned form to obtain feedback of the party regarding the planning of the process:

- Do you agree to have the case heard by the court without oral hearing?
- How much time will you need to present your arguments in the main session?
- In how many sessions do you consider it reasonable to complete the case?[367]

Actions to be taken by the judge in order to prepare the case are not exhaustive. The law defines a sample list and allows other actions to be taken.[368] According to some practicing lawyers, these records provide an opportunity to plan the process and schedule actions with the parties.[369]

In the civil and administrative process, judges do not effectively use the opportunity to plan the process together with the parties.

"No one has made a calendar of procedural actions in my practice. The only thing I was warned about once was that the preparatory session may transform to the main session and be ready[370]".

In order to reduce the trial adjournments, international experience suggests to set the date of the sessions in agreement with the parties. If the court sets the sessions routinely, without consulting the parties and lawyers and finding out their availability, there is a high probability that they will not appear. And when the sessions are planned to be interactive with consultation with the parties, penalizing the party for non-appearance is more legitimate.[371]

[366] Articles 201 and 178 of the Civil Procedure Code.
[367] see Claim form https://old.supremecourt.ge/form-of-court/
[368] Article 203 of the Code of Civil Procedure
[369] face to face interview, male lawyer.

[370] Face-to-face interview, male lawyer.
[371] Regional Cooperation Council, Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries, 2016, p. 15

As the respondents indicate, the practice of agreeing the dates of the sessions with the parties depends on whether the session is the first or the following.

"*No one consults with us on the schedule of the first session, which sometimes becomes the reason for postponing the session, since the lawyer may be summoned to another session. The parties in both criminal and civil cases agree on the next scheduled sessions.*[372]

"When I tell the assistant during the telephone call that I have another process at the appointed time and I am not available, he tells me to submit an application and request a postponement. I have the feeling that in this case, the most important thing for the judge is to schedule the process formally so that no one will demand an account for unscheduled process.[373]*"*

Only one of the respondent judges indicated that he uses the method of planning the case with the parties in order to speed up the proceedings, and even this is done from the preparatory session and not from the stage of filing of the case in the court.[374]

The criminal process provides for certain elements of planning the case with the parties at the stage of the first appearance of the accused and the pre-trial hearings, which we will discuss below when talking about the mentioned hearings.

5.3. Stage of admissibility of the case

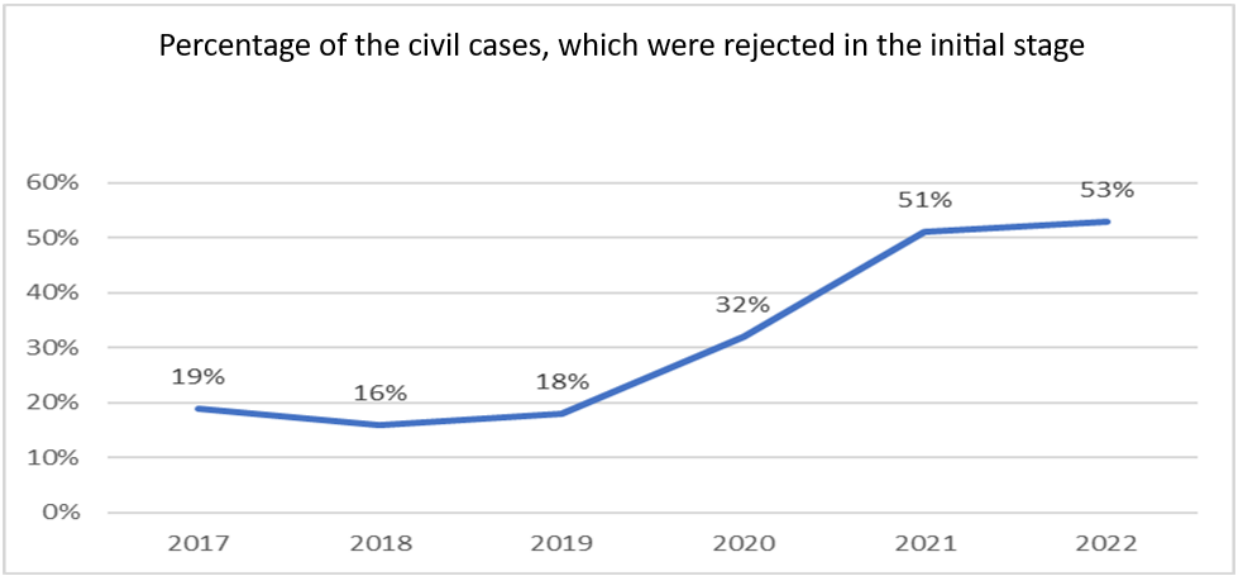
The admissibility stage of the case can be discussed separately in civil/administrative proceedings, where the dispute begins with the filing of a claim in court by the plaintiff. There is no separate stage of acceptance or admissibility of the case in the criminal proceedings. In case of defect of the claim in the administrative proceedings, the judge gives the claimant a deadline to correct the errors and only after the deadline expires the judge will decline to accept the claim. During the research period (according to the regulation valid until June 30, 2023), at the stage of admissibility of a claim in a civil case, the judge could not instruct the plaintiff to correct the defect, he/she had to accept the claim as presented, or decline it.[375] Obviously, the plaintiff was not limited in his right to re-apply to the court with the same content after the refusal to accept the claim. Such regulation of the law was explained by the interest of relieving the courts[376]. This regulation became subject of examination by the Constitutional Court. The Constitutional Court assessed the mentioned regulation as contradictory to Article 31 of the Constitution. It considered its application to rectifiable lawsuits to be illogical, an untargeted

[372] Face-to-face interview, male lawyer.
[373] Face-to-face interview, female lawyer.
[374] Judge interviewed online.
[375] Article 186 of the Civil Procedure Code.
[376] see the position of the representative of the Parliament of Georgia on the constitutional lawsuit, decision #2/1/1481 of the Constitutional Court of Georgia dated February 3, 2023. Para 10.

waste of human, material and time resources of the plaintiff and the court, which delays the decision of the admissibility of the lawsuit and reduces the effectiveness of the court.[377]

No statistical data is available on how many cases were refiled to the court after they were rejected, which is why it is impossible to assess how much this approach alleviated the burden of the court and how this norm "worked". Over the years, the number of civil cases that were not accepted for consideration has been increasing, and by the end of 2021-2022, every second civil claim was rejected in this way.[378]

Graph N. 51



The respondent lawyers believe that the frequency of cases of refusal to accept the claim into consideration may have been motivated judges desire to alleviate their workload, which is why this mechanism was not always used as intended.

[377] *Decision No. 2/1/1481 of the Constitutional Court of Georgia dated February 3, 2023 - website, 07.02.2023. Law of Georgia of June 30, 2023 No. 3447 - website, 30.06.2023.* paragraphs 21-25

[378] Statistical information was taken from the website of the Supreme Court www.supremecourt.ge, see also Supreme Court's June 15 N. p. 499-23 letter.

"A case not accepted by the judge in the proceedings still counts as one case in the statistics. Judges behaved very badly for the statistics. For example, I did not specify the email of the opposing party and the judge did not accept the case into examination[379]".

Judges sometimes rejected same claim multiple times and each time on different grounds[380]. The quality of the justification of these decisions was also a problem."[381].

According to the recommendation of the European Commission for the Efficiency of Justice, one of the issues that the court should decide at an early stage is the jurisdiction of the court over the case.[382]. According to Article 26 of the Code of Administrative Procedure, the claim must be submitted to the court authorized to consider and decide the administrative case. In case of filing a lawsuit in a court which lacks jurisdiction, the court will forward the lawsuit to the proper court and inform the plaintiff about it. It is possible that a jurisdictional dispute may emerge between the courts, which is decided by the Supreme Court.

Late submission of a case to the proper jurisdiction may significantly affect the duration of the proceedings. A lawsuit against the state university was filed in the administrative court on a case studied by the project. After the presentation of the claim and the response, as well as corrected claim and response only one preparatory session was held. All the materials were submitted by the parties one year and 2 months after the receipt of the lawsuit. However, after that, the case remained inactive with the judge for a year and 4 months, after which the judge sent the case to the civil court. If the judge had studied the case materials in time, he would have decided the issue of jurisdiction quickly and the case would have been continued by the civil judge.

According to the law, until May 2012, the court ensured service of the civil lawsuit and attached materials to the defendant, and with the changes adopted in 2012, the plaintiff was obliged to deliver the message himself.[383] The lawyers are not opposed in principle to the imposition of the obligation to deliver the file to the other party, although they believe that the two-month deadline for delivering the file to the defendant delays the process. On the one hand, this term can be misused, and there are frequent cases when the party fails to deliver and still it has to be taken to court. Therefore, it is better to identify the case of non-delivery on time so that the court can be involved immediately.[384]"

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[379] Face-to-face interview, female lawyer. see see also*"Unjustified refusal is often motivated by the fact that the judge tries to avoid the case, and if the same lawsuit is filed again, statistically one case is considered as two cases"* -Face-to-face interview, male lawyer.

[380] March 29 focus group, lawyers.

[381] Face-to-face interview, male lawyer: "*Decisions are sometimes unjustified. e.g. I submitted a document confirming the party's poor financial situation and requested the judge to exempt, reduce or postpone the court fee. The judge tells me that these documents are not enough and refuses to accept the claim. In the judgment, there is no sentence out of these three requests, which if them is not supported by enough evidence".*

[382] see Opinion of the Consultative Council of European Judges of November 24, 2004 on fair process and the role of the judge in the context of alternative dispute resolution N. 6, paragraph C 15. https://rm.coe.int/168074752d

[383] This requirement does not apply to persons exempted from court costs, as well as to persons in custody and persons who do not have a representative (Part 5 of article 84 of the Code of Civil Procedure).

[384] December 15 focus group, lawyers.

After accepting the lawsuit, the court will set the time for the defendant to submit a response, which should not exceed 14 days, and 21 days for complex cases. Respondents point out that despite this wording of the law, the court routinely defines 10 days for everyone, and there is no individualized approach.[385] (See below for the principle of differentiated case management).

5.4. Differentiated case management

The international experience of caseflow management is familiar with the method of differentiated case management, when at the stage of preparation, cases are sorted and managed taking into account their complexity.[386].

"Differentiated case management ignores the principle of so-called "first in first out". Instead it takes into account the complexity of the case and assigns it to a special procedural track. In this way, simple matters are dealt with relatively quickly."[387]

According to the recommendation of the European Commission for the Efficiency of Justice, the judge can

a. Sort cases at the earliest possible stage in order to determine the course of action the case should take (so-called early triage);

b. determine deadlines for the completion of different categories of cases (criminal, civil, administrative)[388].

Cases should be sorted according to two different principles:

- complexity of cases or other procedural features
- Priority nature of cases[389].

[385] Face-to-face interview, male lawyer. As a result of the study of the cases provided by the lawyers, it was revealed that the courts normally give the defendant 10 days to present a response.

[386] US Department of Justice, Bureau of Justice Assistance, Differenciated Case Managemnt https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/dcm.pdf

[387] Regional Cooperation Council, Backlog Reduction Programs and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries, 2016, p. 22. On the other hand, the "old" cases in the judge's proceedings should not be left out of attention:*"Each judge must analyze the last action taken on a backlog case and determine what further actions are necessary to effectively resolve the case. Based on this analysis, the judge may prioritize the scheduling of backlog cases, revise the procedural calendar, organize a case management conference with the parties, or take other organizational measures to complete the case"*. European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 40, https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 22.08.2023]

[388] European Commission for Justice Efficiency, Backlog Reduction Tool (2023), p. 38.https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4

[389] The practice of the European Court of Human Rights distinguishes cases that require special attention. The right to trial within a reasonable time under Article 6 ECHR - A practical handbook prepared by Ivana Roagna 2018, p. 26. The legislation also provides for the categories of cases where the timeframes are reduced. e.g. labor disputes, disputes related to payment of alimony, etc. see Section 3 of article 59 of the Code of Civil Procedure.

The differentiated management method is widely used in countries such as the United States, Australia, England and Wales[390].

Some judges in Georgia use the method of differentiated management.

"I try to classify and record. Scheduling and hearing should be done according to some principle and not spontaneously, for example, cases of uniform content or with the same parties should be grouped together. Exceptions to this may be urgent cases, cases of minors"[391].

"When I know that the result is very urgent, or there are very simple cases and they will be finished soon, so that I try not to delay and schedule new cases together with old ones. This is in order to prevent accumulation and stagnation of simple cases.[392]

Some judges follow the rule of sequence, but occasionally make exceptions:

"I believe that cases should be tried in sequence, as a rule, although there may be such case or a application that can be given priority, due to its importance[393]".

Examining cases sequentially without differentiated case management may be one of the reasons for the constant accumulation of cases and the increase in the age of practically all cases. Studying court decisions on protracted cases revealed that cases of all complexity are delayed in practice, and the complexity of the case is not directly related to its duration.

For example, in administrative case No. BS-723(2K-19), the main issue was whether the tax offense (transportation of goods intended for business activity without a bill) was committed for the first time or repeatedly. Proceedings in all three instances lasted 1724 days. Proceedings in the first instance lasted 821 days, in the second instance about 200 days.[394] and in the third instance about 600 days[395]. By the decision of the Supreme Court, the cassation appeal was declared inadmissible.

In the administrative case BS-1056(K-19), the main disputed issue was the conflict between two entries made in the public register concerning the same property, under which the court gave priority to the right that was registered chronologically earlier. The case was not characterized by factual or legal complexity. Nevertheless, proceedings in all three instances lasted for 1801 days: 626 days in the first instance, about 150 days in the second instance.[396], and about 1000

[390] Regional Cooperation Council, Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries, 2016, p. 21

[391] Face-to-face interview, male judge, superior court.

[392] Face-to-face interview, female judge, court of first instance.

[393] Face-to-face interview, female judge, superior court.

[394] The period from the decision of the court of first instance to the decision of the appellate court is 247 days.

[395] The period from the decision of the appellate court to the decision of the Court of Cassation is 656 days.

[396] The period from the decision of the court of first instance to the decision of the appellate court is 173 days.

days in the cassation instance[397]. By the decision of the Supreme Court, the cassation appeal was declared inadmissible.

In the civil case No. AS-106-106-2018, the only disputed issue was the legality of the default judgment rendered due to the failure to submit the response (the plaintiff claimed that he submitted the counterclaim, but the court lost it). The case did not contain any other disputed circumstances. Proceedings in the first instance (due to the annulment of the decision in absentia) lasted 100 days, in the appeal about 200 days[398] and about 400 days in cassation[399].

Criminal case No. 601AP-18 refers to the breach of the residential premises (a crime provided for in Article 160 of the criminal Code). The apartment was confiscated from the previous owner by auction, although he moved into the disputed apartment arbitrarily and claimed that part of this space still belonged to him. The court did not share this argument. The case did not involve factually or legally complex circumstances. Nevertheless, proceedings in the appellate court continued for approximately 250 days and in the Court of Cassation for approximately 1,000 days. The appeal was declared inadmissible by the Court of Cassation[400].

Cases are not treated differently even in cases directly provided for by the law. The Code of Civil Procedure provides for shortened deadlines for some categories of civil cases. For example, Article 59, paragraph 3 of the Code of Civil Procedure provides for a one-month trial period for alimony payment disputes and labor disputes.

Graph N.52 shows the estimated duration of this category of cases in 2017-2022 compared to the duration of civil cases of all categories[401]

[397] The period from the decision of the appellate court to the decision of the Court of Cassation is 1002 days.

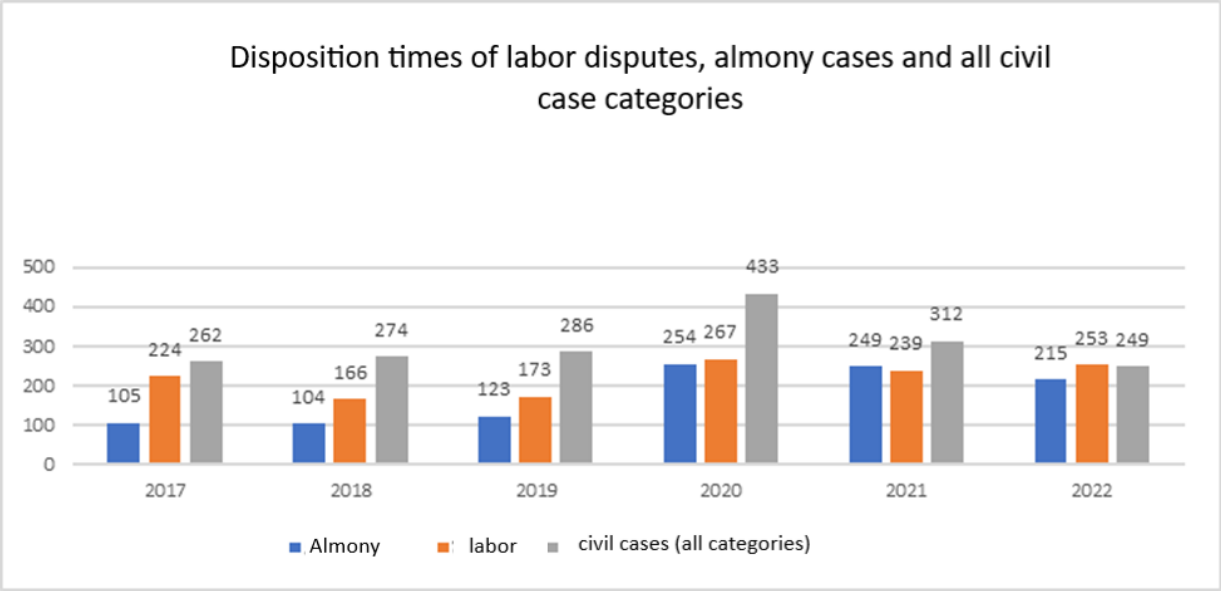
[398] The period from the decision of the court of first instance to the decision of the appellate court is 209 days.

[399] The period from the decision of the appellate court to the decision of the Court of Cassation is 448 days.

[400] The period elapsed from the verdict of the Court of first instance to the verdict of the appellate court is 255 days, from the verdict of the appellate court to the verdict of the Court of Cassation is 1027 days.

[401] European Judicial Systems, CEPEJ evaluation report 2022, part 1, (tables graphs and analysis), p. 134, 140, 151 https://www.coe.int/en/web/cepej/special-file-report-european-judicial-systems-cepej-evaluation-report-2022-evaluation-cycle-2020-data-
Estimated duration of civil cases in 2017, 2018, 2021 and 22 is calculated from the data on the website of the Supreme Court https://old.supremecourt.ge/statistics/, as well as from the statistical data provided by the Supreme Court (letter of the Supreme Court of April 4, 2023, p. 248-23)

Graph N. 52



As can be seen from the graph, the estimated terms of adjudication of labor disputes and alimony claims are much higher than the 1-month term established by law. In recent years, the duration of alimony cases has increased, and in 2021-2022, labor and alimony disputes lost the priority of speedy consideration in relation to other civil cases

The interviewed respondents also confirm that the cases which must be discussed in the tight deadlines are delayed like other cases.

"It is true that the law sets a 1-month deadline for finishing some categories of cases, but in my practice, these cases are not given priority and may take a year or two like other cases."[402].

As to criminal cases, priority is given to those cases where the accused is in custody, and the so-called non-custodial cases can remain unresolved for years[403].

5.5. Preparation for hearing of the case on the merits.

The research revealed that civil and administrative cases are most delayed at the stage of preparation,[404]one of the reasons of which may be the neglect of the format of written

[402] December 15 focus group, lawyers.

[403] May 4 focus group with lawyers: "If they don't have a problem with detention time, then they are in no hurry to finish"

[404] When asked at which stage the cases are delayed the most, 45 percent of the lawyers surveyed online (administrative cases) and 51 percent (civil cases) indicated the preparation stage (see above, graph No. 4).

communication without oral hearing at the preparatory stage and starting the preparation of the case only from the time of the appointment of the preparatory session.

According to the law, in the preparatory stage, the judge or his assistant starts preparing the case.[405] Among the actions to be carried out in order to prepare the case, there is an assignment given to the parties to complete the case materials, request of evidence by the court, the involvement of third parties in the process, the invitation of specialists and experts to the case, etc.[406]

It is not mandatory to hold a preparatory hearing and its prerequisites are defined by law. The judge shall appoint preparatory session if based on the case materials judge assumes that:

- The case can be settled;
- The parties waive the hearing on the merits;
- This is required by the interests of case preparation.

The law provides for holding a video conference or a telephone interview instead of a preparatory session, which requires much less human, time and material resources, but as a rule they are not used.

Written proceedings are not effectively used by judges and parties. The practice of considering preparatory issues in almost all cases at an oral session significantly extends the length of case preparation.

On the other hand, this approach makes the parties inactive after the exchange of the claim and the defense before the hearing. Before the preparatory session, they are no longer active and there is an expectation that additional materials and motions will be discussed mainly at the preparatory session, which leads to the postponement of the session, even several times.

"The parties have this habit of not bringing evidence in advance and bring it to the hearing, which does not allow us to transform preparatory hearing into main hearing and we have to postpone the case for several months for the substantive hearing. The parties do not use the possibility of preliminary filing of motions"[407].

"During the preparation, the parties fully use the procedures and preparatory hearings are held 2-3-4 times. This leads to a long delay of case in the first instance."[408].

Judges in both civil and administrative cases seem to be too lenient to the parties and abstain from using "chilling" procedural mechanisms at their disposal, such as setting a specific deadline

[405] Article 200 of the Civil Procedure Code.
[406] Article 203 of the Civil Procedure Code.
[407] Female judge, court of first instance.
[408] Female judge, court of first instance.

for the party and imposing a penalty for failure to meet the deadline.[409] The imposition of a deadline by the judge makes the party more mobilized.

In the administrative case studied within the framework of the project, the party fulfilled one obligation for which the judge set a deadline, but did not fulfill the second task, for which the deadline was not set, until the preparatory session.[410].

Based on the principle of inquisition in the administrative process, the court has an active role in obtaining evidence or in helping in the correct formulation of the claim.[411] Inefficient use of the preparatory stage has an even more negative impact on the duration of the case and also leads to the delay of the substantive hearing together with the preparatory stage.

"The judge literally helps the plaintiff to formulate his request, which takes 3-4 sessions and delays the consideration of the case".[412]

In practice, there are cases when the judge at the main session requests the evidence that he/she could have requested at the stage of preparing the case, which subsequently creates the need to postpone the sessions.*[413].*

Depending on the content of the claim, the defendant has the right to submit a counterclaim, the admissibility of which is determined in the same way as the admissibility of the main claim. Despite the fact that the filing of a counterclaim leads to the complication of the case with additional procedures, by its content, this institution serves the purpose of a rational, more effective resolution of the dispute (conflict) between the parties. A counterclaim can be filed the moment of serving the claim to the defendant until the end of the preparation of the case[414].

Practice shows that this wording of the law is used by the parties interested in delaying the case:

"Defendants often use last-minute applications to delay the case. For example, when I think to transform preparatory hearing into the main hearing they bring counterclaim which obliges me to adjourn the case[415]".

"Parties file defective counterclaim in the last moment resulting in rejection of counterclaim and subsequent appeal[416]"

[409] Articles 203, 206 of the Code of Civil Procedure

[410] The judge, by ruling on admission to the proceedings, set a deadline for the respondent administrative body to submit its response and also ordered it to submit the materials of the administrative proceedings. Despite the fact that failure to present the objection within the time limit does not provide for the decision to be taken in absentia in the administrative process, the administrative body observed the deadline, but presented the requested materials only at the preparatory session.

[411] Articles 4 and 28[1] of the Administrative Procedure Code.

[412] May 10 focus group, representatives of administrative bodies.

[413] Face-to-face interview, male lawyer.

[414] The first paragraph of article 188 of the Code of Civil Procedure.

[415] Female judge, court of first instance.

[416] Face-to-face interview with a female judge of the court of first instance

The preparation of the case in the criminal justice process is characterized by certain peculiarities. According to part. 6 of article 83 of the Code of Criminal Procedure, not later than 5 days before the pre-trial session, the parties must provide each other and the court with the complete information available to them at that moment, which they intend to present to the court as evidence.[417].

Unlike the civil process, in the criminal process the time limits for the sessions to be held in the preparatory stage are prescribed in detail. The first appearance of the defendant must be held within 24 hours from the request of preventive measure, and the pre-trial session within 60 days of the person's arrest or recognition as an accused. Trial on the merits should begin no later than 14 days after the end of the pre-trial session)[418].

The determination of specific deadlines by law may be one of the factors, why criminal cases are delayed less and the delay occurs mainly in non-custodial cases. This assumption is supported by the opinion of the respondents, who believe that civil cases are delayed mainly in the preparatory stage and criminal cases are delayed in the substantive stage. 14 percent of interviewed lawyers refer to the the delay of criminal (non-custodial) cases at the pre-trial stage and 77 percent at the main hearing stage (see above, **Graph** N. 4).

A specific feature of criminal proceedings is that the date of the pre-trial session is set by the judge of the first appearance (magistrate), and the date of the substantive hearing is set by the judge of the pre-trial session. That is, the date of the session is not determined by the judge who conducts the session.

In practice, this leads to the fact that the pre-trial hearings often overlap and the parties appearing at the hearing have to wait before the start of their hearing, while the first substantive hearing is formal in nature and, as a rule, evidence is not examined at this hearing. Solving such problems requires managerial or legislative intervention.

5.6. Preventing adjournment of the session, conducting the hearing in a concentrated manner and trial management.

International standards focus on the active role of the judge in the substantive consideration of the case regardless of the model of proceedings (adversarial, inquisitorial) and assign exclusive authority to the judge to manage the session.

"The judge is responsible to:

- *manage the session;*
- *be prepared;*
- *take measures so that the parties are also prepared;*

[417] Violation of this requirement will result in the inadmissibility of the evidence. Section 3 of article 83

[418] Articles 208, 205, 219, 225 of the Criminal Procedure Code. If a preventive measure is not requested (which is rare in practice), the Code of Criminal Procedure does not provide for any time limit for the first appearance hearing.

- *start at the appointed time;*
- *ensure that all parties have an equal opportunity to present evidence;*
- *hold and complete the hearing without unnecessary adjournments.*[419]
- *discourage deliberate attempts to delay the case*[420]*.*
- *apply procedural sanctions against such actions"*[421]

According to the recommendation of the European Commission on the Efficiency of Justice: *"The postponement of the hearing is allowed only when it is justified, and in such a case the date of the next hearing should be determined. If the court adjourns a large number of hearings, it prompts lawyers who have not prepared for the case to request a new adjournment. In this way, the court's time is wasted*[422]*"*.

The legislation of Georgia to some extent provides for the prevention of unjustified postponements of the session. E.g. provisions of the Code of Procedure such as the conclusion of the case in one session, with only necessary breaks or without breaks[423], adjournment of the session only on the basis provided by the law and for a reasonable period of time.[424]

Notwithstanding the said norms, **the case is rarely finished in one session. In practice, postponement of the session is one of the reasons for the delay of cases. There are frequent cases of postponement of the session for an indefinite period, several times, or with a long interval of time.**

The majority of the lawyers interviewed online believe that the civil and administrative case in the first instance ends in 3-4 sessions on average, while the completion of the criminal case takes more than 5 sessions.[425]. Civil and administrative cases require 1-2 hearings in the appellate court and criminal cases require 1-4 hearings.[426].

[419] American Bar Association, Standards of Hearing Management: Standard 1 cited from: **David** C. **Steelman**; John A. Goerdt; James E. McMillan: **Caseflow Management: The Heart** of Court Management in the New Millennium. p. 12..
Recommendation R(84)5 on principles of civil procedure aimed at improving the functioning of justice, principle 3

[420] European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, paragraph V.D.9. https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 22.09.2023]

[421] European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, paragraph V.D.10 https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 22.09.2023].

[422] European Commission for Justice Efficiency Compendium of Best Practices in Litigation Time Management, (2006) para. 3.4.https://rm.coe.int/16807473ab#_Toc153700518

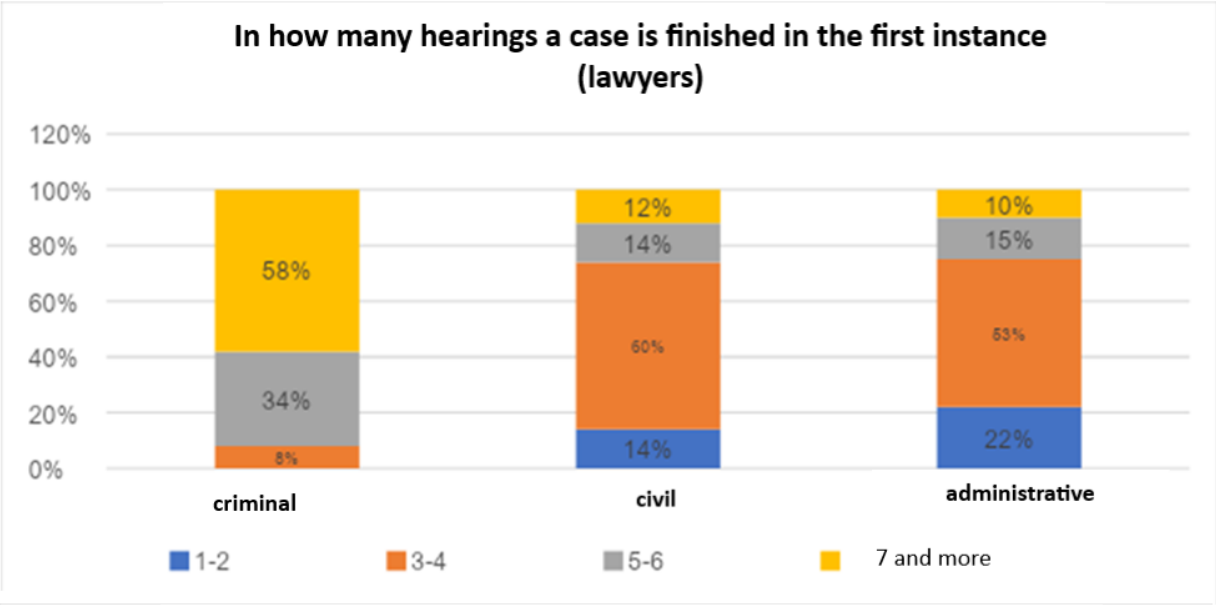
[423] Section 2 of article 223 of the Code of Civil Procedure.

[424] Article 216 of the Civil Procedure Code. See also Article 185, paragraph 2 of the Code of Criminal Procedure.

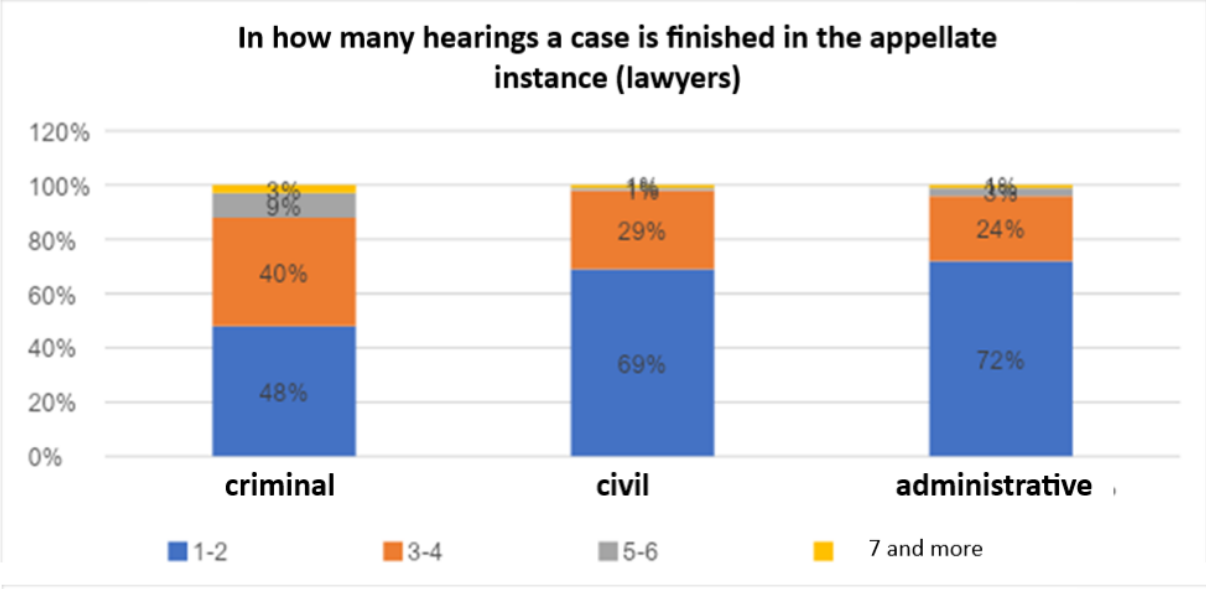
[425] Similar results were observed in an online survey of prosecutors.

[426] Similar results were observed in an online survey of prosecutors.

Graph N.53



Graph N.54



"Sessions in civil-administrative cases are on average 3-4 months or more apart. The judge says his calendar is busy and he won't be able to do it sooner[427]".

"On average, 50% of cases are delayed due to the wishes/strategic intentions of the parties. If the party knows that in case of postponement it will be postponed for a short period of time, for example for 1-2 weeks, he will automatically lose interest in delaying and therefore they will no longer start fabricating reasons.[428]".

In one of the studied criminal cases, which was related to the charges presented under articles 182, 194 and 220 of the Criminal Code on March 11, 2020 trial was postponed without specifying the date. The judge said that he would additionally inform the date of the substantive consideration of the case later. The next meeting was scheduled after a year and a month - on April 7, 2021.

In the civil case concerning reinstatement, imposition of severance pay, compensation for damages, for the disposition of which a particularly shortened period of time - 1 month is determined by the procedural legislation, the hearing was postponed on April 4, 2023 and the parties were informed that the date of the new hearing would be announced later. The session on this case has not been held yet.

5.7 Reasons for postponement of hearings

In addition to objective circumstances, the wishes and interests of the process participants may become the reason of trial adjournment. The procedural legislation provides for the legitimate grounds of postponing the sessions in order to protect the procedural rights of the parties. On the other hand, the judge has the leverage to prevent unjustified delays.

Obviously, the law will not be able to prevent all possible cases and there will be opportunities to postpone sessions due to subjective grounds. The counter-restraining mechanisms of the interests of the process participants are not always available and the issue of continuing the session should be decided in accordance with the principles of law.

The party is not always the initiator of the postponement of the session due to subjective factors. The judge can also be interested in postponement or the interests of the party and the judge may coincide. The judge may adjourn the session even without any clarification. For example, to take time for preparation, declare that hearing time is over, to give the parties time for settlement, be absent for a training.

[427] Face-to-face interview, male lawyer.
[428] Written interview, male lawyer.

The respondents believe that that due to considerable workload the judge may avoid to finish the case and use the means at his disposal.[429]"

"If the judge himself is interested in postponing the session, he can use various excuses, e.g. postpone the process in order to settle the parties or postpone the announcement of the decision regardless of whether the case is difficult or not"[430].

When the process is postponed due to the change of the judge, if a substitute judge is not appointed, the criminal trial starts from the beginning.[431] According to the decision of the Supreme Court of Georgia on April 28, 2021, the practice of later involvement of a substitute judge in the consideration of the case was declared illegal. The Supreme Court indicated that the substitute judge should be continuously present at the trial from the very first session.[432]Judicial resources do not allow this. When there is no substitute judge assigned to the case, the judge usually asks the parties whether they agree to continue the case from the stage at which they were involved in the case. If there is no consent of the parties, the consideration of the case starts from the beginning[433].

A change of judge in a civil proceeding does not always lead to the restart of the case, because the judge can continue the session from any stage. Despite this, the change of judge seems to delay the case, because the involvement of each new judge not only delays the process, but also delays the overall dynamics of the case.

In one of the studied civil cases, the trial began in 2014 and has not yet been completed. During this period, the case was transferred to the fourth judge. The case was sent for forensics twice with questions composed by different judges.

Judges' approach to postponement requested by the parties is individual. There are judges who easily grant the motion for adjournment. For example, on the basis of a telephone notification of

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[429] : *"Conditionally, an experienced judge can have 7 cases prepared in such a way that he can complete them in one day, but if he knows that 7 decisions will have to be handed down together and he cannot write them, if he does not have the resources, he has to maneuver, sometimes he postpones the session to distribute these deadlines.*" Face-to-face interview, female judge, court of first instance. .

[430] Face-to-face interview, male lawyer.

According to the first paragraph of article 257 of the Code of Civil Procedure: "If the case is essentially difficult to decide, in exceptional cases, the judge is authorized to postpone the announcement of the dispositive part of the decision for a reasonable period, but not more than one month." The judge issues a reasoned ruling regarding the above, which he informs the parties immediately after the session ends. The criminal process does not directly provide for the postponement of the session for the purpose of announcing the verdict, although it is used in practice. See e.g. Business media - The appellate court postponed the announcement of the verdict in the case of Khazaradze, Japaridze, Tsereteli https://bm.ge/news/saapelacio-sasamartlom-xazaradze-jafaridze-weretlis-saqmeze-ganachenis-gamocxadeba-gadado/121433

[431] Article 183 of the Code of Criminal Procedure.

[432] Decision N. 316AP-19 of April 28, 2021. The project requested information from district (city) courts on how many cases a substitute judge was appointed in 2018-2022. The answer was given only from two courts - Gori district court with the letter received on 16.08.2023, stipulating that this information requires quite a lot of time and resources and it is impossible to mobilize the resources of the court's administrative staff at this stage. According to the letter of Akhalkalaki District Court dated August 17, 2023, no substitute judge was appointed for criminal cases in 2018-2022.

[433] Face-to-face interview, male lawyer.

the party about the illness, the judge postponed the process without asking the party to provide the relevant proof.“[434] In other cases, the judge also checked the severity of the illness.

"When the motion is not well-founded, I will not postpone the session. For example, if the cause is an illness, there must be a diagnosis. There were times when I didn't agree with postponement, there were times when the diagnosis was serious enough and I had to postpone it (heart surgery).[435]“

According to the procedural law, the judge shall review the merits of the adjournment motion, but has no obligation to verify the validity of the health certificate[436] (eg the judge may interview the doctor but has to postpone the hearing anyway to summon the doctor) or no effective leverage to manage cases where there is suspicion that the party is deliberately protracting the case.

In the event that a valid reason for the non-appearance of a party in civil cases is revealed later, the procedural legislation provides for the annulment of the default judgment and the retrial of the case, which adds an additional stage to the process.[437] Thus, the current legislation makes it possible to cancel the default judgment in the absence of proof of the postponement of the session and to resume the case as a result of re-verification of the circumstances of the postponement.

"On average, in 40% of cases, the court is to blame. The reason for this is a very soft and loyal approach. Cases are often postponed for a simple/inexcusable reason and/or for no reason at all. Also, sessions are adjourned for at least 2-3 months, and this is in the conditions when you waited an average of 1 year for the hearing to be scheduled and suddenly, for nothing, it is postponed again."[438]

„Adjournment of sessions for the purpose of settlement is much easier and common. This petition does not need justification, and the judges also support the joint initiative of the parties. In some cases, the judge grants such a motion even though the other party does not agree".[439]

A common reason for postponement of hearings in criminal cases is the change of the prosecutor. The new prosecutor asks for time to review the case files. Procedural legislation does not recognize the adjournment of the session on this ground, although judges sometimes grant this request and give a new prosecutor a deadline.

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[434] Face-to-face interview, male lawyer. also "*When you ask for the postponement of the session due to illness, sometimes they ask for a doctors' certification, sometimes they don't.*"Face-to-face interview, male lawyer.

[435] Face-to-face interview, female judge.

[436] Face-to-face interview, female lawyer.

[437] Article 241 of the Civil Procedure Code.

[438] Written interview, male lawyer.

[439] November 17 focus group, lawyers. This is confirmed by the respondent judge: *"If the party wishes to postpone it, it calls the other party and says give me a deadline for the settlement. If the other party does not agree, the court can also give a deadline on its own initiative"*. Face-to-face interview, male judge.

"Instead of one prosecutor, another comes and says - "I just got involved in the case and please give me a deadline. Then, at the next session, the first prosecutor comes again. Now I have 5 prosecutors in the case, they came five times, got involved in the case, caused the adjournments and now, finally, the prosecutor wrote - I have seminars. In fact, he is the only real prosecutor, the others have not read the case[440]*.*

"Changing the prosecutor is one of the methods used by the prosecution to delay the case, although some judges postpone hearings on this basis, while others do not."

In one of the studied criminal cases, which was related to the charge provided by articles 194 (legalization of illegal income) and 210 (making a fake credit card) of criminal code, the prosecutor was changed four times and each time the change led to a postponement of the hearing for a period of three to six months. The criminal proceedings began in February 2020 and have not yet been concluded.

A similar situation was observed in the criminal case, which was related to the charge under article 180 (fraud) of the criminal code. In this case, the prosecutor was changed five times, and for each change the case was postponed for 1 month or up to 4 months. The examination of the case as a whole lasted from August 2015 to June 2017.

According to the research conducted by the Association of Young Lawyers, the reason for the postponement of hearings in criminal cases in 22 percent of cases is the negotiation of a plea agreement between the parties.[441]

As the reason for this, the respondents cite the inflexibility of the plea agreement, since the plea agreement requires consultation with the superior prosecutor, this delays the timely completion of the case.[442]

29 percent of the lawyers surveyed online by the project consider the non-appearance of witnesses at the hearing as the reason for the delay of criminal cases.

According to the research conducted by the Association of Young Lawyers of Georgia, in 32 percent of cases of postponement of hearings in criminal cases, the reason is the non-appearance of the prosecutor's witness.[443]

According to Article 228 of the criminal procedure: 1. The parties must ensure that their witnesses appear in court.

There is a difference of opinion among the respondents as to whether the judge can set the prosecution a reasonable deadline for the presentation of witnesses. Some respondents believe

[440] December 15 focus group with lawyers.

[441] Report of the Association of Young Lawyers of Georgia: "Results of 4-year monitoring of criminal trials https://shorturl.at/lDUZ2

[442] March 30 focus group with criminal lawyers.

[443] Association of Young Lawyers of Georgia, results of 4-year monitoring of criminal trials, 2021, p. 71 https://shorturl.at/lDUZ2

that they cannot,[444] and some believe that they can because judges already use this technique in relation to defense[445]. In case of non-appearance of the witness, the procedural legislation also provides for the compulsion of the witness to appear,[446] however, the court can use this mechanism only on the basis of a party's petition.

From the studied cases, it can be seen that the parties (especially the prosecution) do not actively use this mechanism. For example, in three criminal cases, the duration of which in the first instance was extended from 1 year and 7 months to 3 years and 7 to 15 sessions were held, the prosecutor's office brought 1-2 witnesses per session, and part of the sessions were postponed due to the non-appearance of witnesses. The prosecution did not use the mechanism of coercion of witnesses in order to speed up the trial.

In those cases where the further continuation of proceedings depends on the conclusions provided by the external bodies/institutions of the court, the delay of such conclusions leads to the postponement of the sessions.

For example, in family disputes where the opinion of the guardianship and care authority or the child psychologist is required, their production is very much delayed due to the lack of personnel in the relevant agencies.[447]

"We need an expert's report on the permit for the alienation of the child's property, on the issues of receiving support. We have only one psychologist in the region and we are often waiting for this conclusion."[448]

The psychiatric examination is also delayed. According to the respondents, the psychiatric examination of a person in custody may last 7 or 8 months.[449]

There is also a delay in submitting the juvenile's individual assessment report for sentencing or diversion.[450]

5.8. Effective conduct of the session by the judge

Procedural legislation equips the judge with tools to effectively use the time allotted for the hearing, including:

- to give word to the parties and to interrupt them if it is not related to the case and serves to delay the process,[451]

[444] Face-to-face interview, male lawyer.
[445] Face-to-face interview, male lawyer.
[446] Section 2 of article 149 of the Code of Criminal Procedure.
[447] May 4 Focus Group, Legal Aid Service lawyers.
[448] Ibid.
[449] Ibid.
[450] Ibid
[451] The first paragraph of article 223 of the Code of Civil Procedure.

- set a timeframe for the speech of the parties,[452]
- set a reasonable time limit for the party to file and justify the motion[453], and if a party files motions for the purpose of delay, the party's right to file motions shall be forfeited,[454]
- not to satisfy motions and statements to present or request new evidence, if the party was able to present them at the preparatory stage of the case,[455]
- not to send the case file to a higher instance for an interim ruling in the case of a private appeal, if the proceedings can be continued without consideration of the private appeal.

The use of these mechanisms depends on the individual skills and approaches of the judge, some judges use these mechanisms more strictly, others more liberally, explaining it by the interest of a full consideration of the case.

"The process itself is long with us, the parties talk a lot in relation to the case, but they should talk less, the case should be more prepared. I ask them to present evidence in advance if they have something to present, but they don't do it. For example, if they have to put a motion in advance, they put it on the hearing. If the judge does not accept such a motion because the party could have presented it before the hearing, it turns out that you are refusing to admit the evidence for a very formal reason and thereby violating the right."[456]

"According to the procedural code, I can set the time limit for the party. I sometimes determine how much time they need for the petition, report, and closing remarks. If you don't define the time, the lawyer will keep repeating the same thing to please the client, and at that time he may not say anything new"[457].

Some respondent lawyers believe that the judge's use of these mechanisms depends on the judge's interest in quickly concluding the case.

"If the detention time for defendant expires, the judge is in a hurry and sets short deadlines for everything, including the preparation of the closing speech, the length of the closing speech, etc."[458].

Some respondents believe that the effective conduct of the hearing by the judge also depends on how well he knows the case materials:

"*When the judge knows the circumstances of the case, the process becomes easier, e.g. when you file a motion, the judge easily understands the context and quickly decides the motion. When the*

[452] Ibid.
[453] Paragraphs 6 and 7 of article 93 of the Code of Criminal Procedure
[454] The first paragraph of article 215 of the Code of Civil Procedure,
[455] Paragraph 5 of article 239 of the Code of Criminal Procedure.
[456] Face-to-face interview, male judge, court of first instance.
[457] Face-to-face interview, male judge, court of first instance.
[458] Face-to-face interview, male lawyer.

judge does not know the circumstances of the case, he is trying to find out the essence of the motion, which takes more time, he can postpone the session to decide the issue of the motion.[459]"

5.9. Settlement of the case, plea agreement.

In order to relieve the courts and speed up the cases, friendly settlement is very important, and the main role and responsibility for achieving this lies with the judge.[460]

According to the Code of Civil Procedure, the court should facilitate and take all the measures stipulated by the law in order for the parties to settle the case. [461]

During the research, it was revealed that the judges show different commitment and efforts for the purpose of finalizing the settlement of the case.

"Some judges formally, in order to fulfill their duty, offer the parties a settlement, and some also indicate the possible outcomes of the case and explain the advantages of the settlement. It is rare for the judge to remove lawyers from the courtroom and stay alone with the parties[462]"

"All judges ask the parties a question about settlement, as they are required to do so by law, although probably 40 percent of judges ask this question indifferently, and 60 percent spend 10-15 minutes trying to settle."

Judge respondent: *"First of all, when a case comes in, I think about settlement. I have received many trainings on settlement and we try to settle as much as possible. So I settle 20 percent of cases, although it depends on the case category. I usually end family cases with settlement. I settle 60-70 percent of cases of this category."*[463]

Since 2018, the rate of settled cases has been steadily declining and reached 4 percent by 2022.

[459] Face-to-face interview, female lawyer.

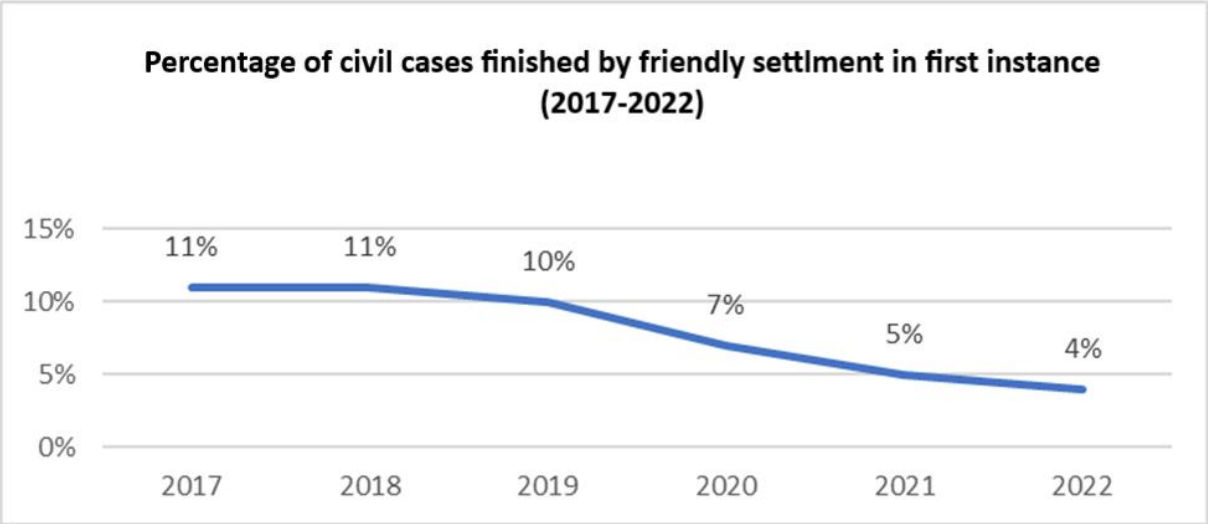
[460] Council of Europe Recommendation R (84)5 on principles of civil procedure aimed at improving the functioning of justice, principle 1, principle 8, also Caseflow Management Handbook GUIDE FOR ENHANCED COURT ADMINISTRATION IN CIVIL PROCEEDINGS, p. 9.https://dspace.library.uu.nl/handle/1874/343766

[461] Article 218 of the Civil Procedure Code

[462] Face-to-face interview, male lawyer.

[463] Face-to-face interview, male judge, court of first instance.

Graph N. 55



Settlement rates in district and city courts are different. In large courts, it usually ranges from 4-10 percent[464].

The declining trend in the settlement rate, as well as the low rate of cases concluded with mediation, can be explained by the individuality of the appropriate skills and efforts of the judge, as well as the tension existing in society and the lack of a culture of dialogue.

Par 4.4.4 of the strategy envisaged for the development and activation of court settlements. Within the framework of the 2017 program, with the support of GIZ, a special training course on "judicial settlement" was developed and conducted. As indicated in the 2017-18 progress report on the implementation of the strategy, the implementation of the sub-activities envisaged by the mentioned program has been postponed for 2018-2019.

The project requested 2019-21 progress reports on the implementation of the Judiciary Strategy from the High Council of Justice, but this information was not provided.[465]

In addition, along with the introduction of mediation, the continuous training of judges in the direction of settlement decreased. According to the data of the High School of Justice, after April 2018, no training in settlement skills was conducted, but intensively were conducted trainings on mediation.[466] This gives us the basis for the assumption that the judicial system is not sensitive to the settlement and mediation is perceived as a kind of alternative to the settlement.

[464] Statistical data is obtained from the website of the Supreme Court www.supremecourt.ge, also, the Supreme Court's June 15 N. p. 499-23 letter.
[465] Letter of October 10, 2023.
[466] https://www.hsoj.ge/

Unlike civil cases, the Code of Administrative Procedure contains a proviso that the administrative body is authorized to settle the case, refuse the claim or recognize the claim only if it does not conflict with the legislation of Georgia, which is checked by a judge. On the other hand, the representative of the administrative body cannot independently make a decision to agree to the settlement. Therefore the settlement with the administrative body is problematic.[467]

The settlement rate in administrative cases is much lower. Annually, only 0.2-0.5 percent of administrative disputes in first instance courts end in settlement.[468]

In criminal proceedings, the judge's ability to reach an agreement between the parties is limited. Unlike in civil proceedings, the judge cannot meet the parties individually or hint to the outcome of the case, or propose the terms of the agreement. Criminal proceedings do not oblige the judge to take all measures to end the case without trial on the merits. The said limitation is understandable given the nature of the plea agreement. According to lawyers, the obligation of the judge to find out the possibility of entering into a plea agreement between the parties is of a formal nature and does not change anything in practice, since the parties themselves know very well that they can negotiate a plea agreement.[469] Accordingly, the dynamics of concluding cases with a plea agreement depends on the approaches and policies of the prosecution. Statistically, plea bargaining plays a much greater role in discharging the courts than settlement of civil or administrative cases. 60-70 percent of criminal cases end with a plea agreement.[470]

5.9. Periods of inactivity in the case

The purpose of the active and continuous control of the case by the judge is to eliminate the so-called periods of inactivity. These are the periods when no procedural action is taken on the case, neither is any trial date scheduled.

As recommended by the European Commission for the Efficiency of Justice, such long intervals in the case should be given special attention and measures should be taken to speed up the case to compensate for the delay.[471]

As a result of interviews with the respondents, as well as study of case materials, it was revealed that long periods of stagnation during the preparation of the case, as well as at the stage of main hearing or decision-making, are the main cause of delay in these cases.

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[467] May 10 focus group representatives of the administrative body.

[468] Statistical data is obtained from the website of the Supreme Court www.supremecourt.ge, also, the Supreme Court's June 15 N. p. 499-23 letter.

[469] Face-to-face interview, male lawyer.

[470] Source: statistical information posted on the website of the Supreme Court www.supremecourt.ge

[471] Updated Guidelines for Judicial Time Management of the European Commission for the Efficiency of Justice (Saturn Guidelines), 4th Edition, 2021, Par., III, C, 9 https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 22.09.2023]

"A judge has not heard my case for 4 years, and when I reminded him, he said that he has pending cases from 5 years ago.[472]"

"Sometimes the first hearing is scheduled 1 year after the receipt of the claim and response, that is, nothing happens in the case in the meantime"[473].

"In 2018, we filed a lawsuit, and until now no session has been held, neither preparatory nor main."[474]

"There were cases when a reasoned decision was handed over to us 2 years after the announcement of the verdict.[475]"

According to the lawyer respondent, the immobility of the case for a long period of time leads to an increase in the work of both the judge and the lawyers, the participants in the process forget the details of the case and have to study it again.[476]

As a result of studying the cases, it was revealed that the periods of inactivity are equally problematic in criminal, civil and administrative cases. We find cases where the case is postponed for an indefinite period of time, or for a long period of time its consideration has not been started at all.

In the administrative case, which refers to the annulment of the individual administrative-legal act of the National Bank of Georgia and compensation for damages, the lawsuit was found admissible on November 19, 2021, and the defendant's response was presented on December 24, 2021. A preparatory session for the case was scheduled 6 months later, which was not held due to the illness of the judge, then the judge was changed and the preparatory session was scheduled for October 26, 2023. From June 29, 2021 to October 26, 2023 (2 years and 5 months), no procedural action was taken in the case.

The situation is similar in the administrative case, where one of the ministries is the respondent. The case concerns the annulment of an individual administrative-legal act and the compensation of damages. A preparatory session was scheduled for November 28, 2022, which could not be held due to the judge's illness. Since then, the case has not been heard.

In the studied civil case, a lawsuit was filed in October 2021 with a request to terminate the contract and impose payment to the Tbilisi City Hall, and in November it was accepted in consideration. For almost 2 years, not a single procedural action was conducted in the case.

In the case where the subject of the dispute was the cancellation of the registration record due to the registration of the plaintiff's real estate by the public registry in the name of wrong person,

[472] Face-to-face interview, male lawyer.
[473] November 17 focus group with lawyers
[474] May 10 focus group with representatives of administrative bodies
[475] Ibid.
[476] November 17 focus group with lawyers.

the lawsuit was filed in November 2021, the response was received from the public registry in January 2022. During 1 year and 9 months the case is inactive.

In the criminal law case studied by the project, which refers to the charge presented under articles 182, 194 and 220 of the Criminal Code, the interval between court sessions was a year and 7 months. During this time, no procedural action was taken in the case.

5.10. Lack of uniform judicial practice

According to the respondents, the non-existence of a uniform practice for certain categories of cases can become a source of delay in proceedings.

"Cases where there is no clear judicial practice are also delayed. I remember the discrimination dispute, who was the first of its kind, and initially it was assigned to one judge, then to another, and it traveled like that in the first instance.[477]*.*

"Rarely, but is there are cases on which there is no practice. As for the caselaw of the European Court, we sometimes contact the analytical department and get advice.[478]*"*

As a result of the study of court decisions, it was revealed that non-uniform practice affects the duration of the case, although this factor is less widespread. Out of 187 decisions studied by the project, only 5 such decisions were identified (4 administrative and 1 civil) where non-uniform judicial practice could be one of the possible reasons for the delay of the case.[479]. It took from 1200 to 2300 days to hear each of these cases in all three instances.

It should be noted that in these cases, apart from the legal complexity of the dispute, there are no other factors (the number of disputed facts, the number of witnesses, the number of parties, etc.) that can determine the special complexity of the case, accordingly, the delay of these cases can only be explained by contradictory caselaw or the overload of the judge.

5.11. Development of judicial skills in case management

The European Commission for the Efficiency of Justice recommends mandatory ongoing training for judges and other professionals in the justice system on caseflow management, trial within reasonable time and case management.[480] According to the information found on the website of

[477] December 15 focus group with lawyers.

[478] Face-to-face interview, male judge, court of first instance.

[479] The administrative case BS-560(K-19) was related to the definition of the severity of the disciplinary offense committed by the notary and the determination of the nature of the disciplinary penalty; Administrative case - BS-499 (K-19) related to the legality of the fine imposed by the official for failure to submit the property declaration and the existence of circumstances excluding guilt; The administrative case BS-806(2k-19) was related to the definition of norms of tax legislation, including VAT and bona fide payer status, as well as international services; Administrative case N. BS-1105(2K-19) was related to the interpretation of the norms of the Law on Enforcement Proceedings; Civil case N. AS-1582-2018 refers to the definition of norms related to recognition of debt.

[480] European Commission for Justice Efficiency, Backlog Reduction Tool (2023), p. 26 https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen on 20.08.2023]

the High School of Justice, in 2017-18, the training in caseflow management was held 4 times in the High School of Justice. Two of them were for judges, and two for court officials.[481]

Part of the respondent judges did not participate in the trainings on caseflow management. Some believe that there is no need for such training.

"Trainings are not like that. I plan my trainings. I think I don't even need them.[482]"

"There was one training sponsored by international organizations, but I don't remember exactly."[483]

"There was once, however I couldn't go to the caseflow management training because of lack of time. I give priority to professional training.[484]"

Some judges prioritize trainings on new legislation and believe that caseflow management training is not important.[485]

5.12. Judge's motivation

59% of lawyers surveyed online indicate that judges do not have adequate motivation to finish cases on time.

Lawyers explain the demotivation of judges by the following factors:

- There are no incentives: the number of cases handled by judge has no effect on remuneration.[486]
- Lack of accountability - disciplinary responsibility does not arise due to the delay of the case.[487]
- Skepticism of the judge - an overloaded judge can never cope with the flow of cases, so he/she is accustomed to the reality that all cases are delayed.[488]

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[481] https://www.hsoj.ge/geo/media_center/news/1027-2017-11-14-saqmeta-nakadis-martva; https://www.hsoj.ge/geo/media_center/news/1136-2018-03-05-saqmeta-nakadis-martva; https://www.hsoj.ge/geo/media_center/news/1032-2017-11-20-saqmeta-nakadis-martva; https://www.hsoj.ge/geo/media_center/news/1194-2018-06-11-saqmeta-nakadis-martva

[482] Face-to-face interview, male judge, court of first instance.

[483] Face-to-face interview, male judge, court of first instance.

[484] Face-to-face interview, female judge, court of first instance.

[485] Individual interview, male judge, court of first instance.

[486] *"It doesn't matter the number of cases they handle, they still get a solid, fixed amount of salary, and no one asks the judge to answer for violating the deadline for considering the case".* Online respondent, online survey of lawyers.

[487] May 10 focus group with representatives of administrative bodies:*"If the judge knows that he will consider the case in 5 years and will not be held responsible, he does not try to finish the case on time. That's why there should be at least mild measures taken"*

[488] May 4 focus group with lawyers from the Legal Aid Service.

An important factor contributing to the judge's demotivation may also be that the judge's effectiveness is not a prerequisite for his career advancement. The criteria for the promotion of a judge provided for in article 41 of the law of common courts do not exist today.[489] It is true that when transferring a judge to another court without competition (based on Article 37 of the Organic Law) article 13 of the Regulation of the High Council of Justice[1], provides for the assessment of the judge's performance, including the disposition times and coefficients of the completed cases, but it seems that this norm is not used in practice.[490] We asked to all the respondent judges about the motivation of the judge to finish cases on time. The respondent judges mainly name the loyalty to the profession. The respondent judges also do not think that the efficiency of the judge is taken into account during promotion.[491] Skepticism is indeed noticeable. Unfortunately, the judges do not have a feeling that they will be able reduce the existing workload.

"It is not expected that I will reduce the number to 30-40 cases and work comfortably, sometimes I get so many cases in a week. I don't want to accumulate the workload to the extent in which I won't be able to schedule the first session for a year or more[492]".

Some respondent judges indicate that they are motivated by the interests of justice and desire to increase the credibility of the court. In addition, the backlog makes the judge more vulnerable to disciplinary action.

"When there is nothing to complain about you, you are standing firm on your feet, which determines the degree of your independence.[493]".

A certain professional competition between judges can also motivate a judge.

"It's like a competition in statistics, as if who finished how much. The judges don't want to be left behind. This is mainly in the eyes of the administration[494]"

[489] There are no criteria for the promotion of judges provided for in Article 41 of the Law on Common Courts of Judges. Transfers of judges to the higher instance are carried out in accordance with Article 37 of this law, which practically does not contain any justification for the decisions of judges to be transferred to a higher instance (on non-competitive transfers of judges, see above). The 2018-2019 report of the Secretary of the High Council of Justice states the following: "Determining the rules of evaluation and promotion is inevitable for the full functioning of the court, however, the High Council of Justice considered it inappropriate to introduce a new system during the reporting period, because in the light of this level of caseload, it would put judges in a difficult and unfair situation." Annual Report of the Secretary of the High Council of Justice - 2018-19, p. 8. http://hcoj.gov.ge/files/news/angarishi.pdf

[490] Decisions to transfer judges are made by secret ballot and are not documented - see Transparency International, Promotion of Judges, Systemic and Practical Challenges, 2021, p. 4 https://transparency.ge/ge/post/mosamartleta-dacinaureba-sistemuri-da-praktikuli-gamocvevebi

[491] Face-to-face interview, female judge, court of first instance.

[492] Face-to-face interview, female judge, court of first instance.

[493] Face-to-face interview, female judge, Superior Court.

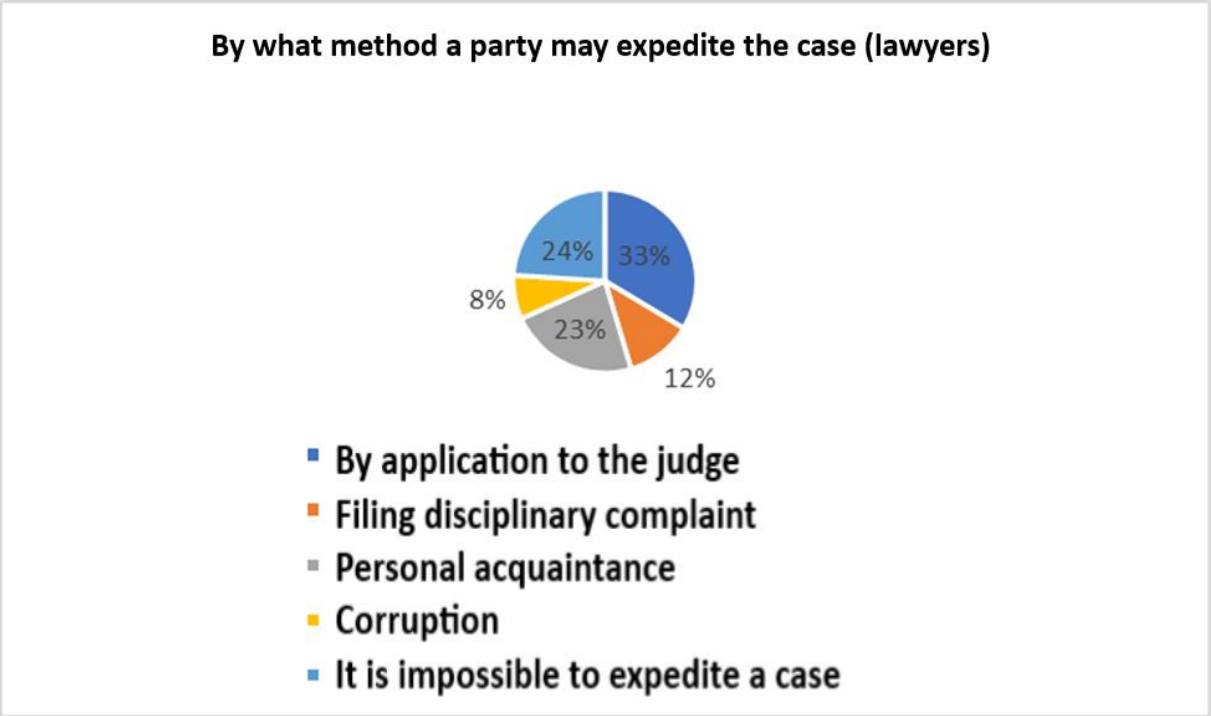
[494] Face-to-face interview, female judge, court of first instance.

Some lawyers believe that there is a difference in motivation between newly appointed and old judges. The status of the judge is also relevant. Probationary judges are more likely to maintain procedural discipline.

"There are judges who work with dedication and schedule cases. This is especially true of newly appointed judges who work diligently during the so-called probationary period."[495]

To the question of what method the party can use to motivate the judge in order to accelerate the proceedings, the answers of the lawyers participating in the online survey were distributed as follows:

Graph N. 56



The majority of answers - 76 percent believe that it is possible to speed up the case. In addition, 45% of the responses consider possible speeding up the case by legal means (filing a disciplinary complaint or applying to the judge is possible), while 31% consider it possible to speed up the case by corrupt methods (corruption, personal acquaintance).

One respondent named the appeal to the public defender as a method of speeding up the case, and one respondent named the application to the media.

The judges also confirm the practice of acceleration of the case by applying to the judge.

[495] Online respondent attorney

"I schedule the older one sooner. Or if someone asks me in writing to speed it up, I take it into account[496]"

According to one respondent, the lawyer's statement cannot speed up the case, but the client's application can:

"I tell clients that you write an honest statement by yourself, even if it's legally flawed, and ask the judge to schedule your hearing.[497]"

According to some interviewed lawyers, filing a complaint with the chairman of the court also speeds up the case".

Sometimes it is justified to write a complaint in the name of the president of the court panel or chamber. Judges know that they will not be punished for violation of deadlines, but still they do not want the chairman of the panel and chamber to be bothered and often get into the eyes of the "boss".[498]

In the absence of legislative mechanisms to accelerate the case[499] it appears that the parties are resorting to various methods, which has the effect of making the judge deviate from his planned method of handling cases. It is a subject of separate research how frequent such cases are and how much this affects the proceedings of other cases, the management of which is fully entrusted to the court system based on the expectations of the parties.

[496] Face-to-face interview, female judge, court of first instance.

[497] Face-to-face interview, female lawyer.

[498] Face-to-face interview, female lawyer.

[499] The European Court of Human Rights established a violation of article 13 of the Convention against Georgia due to the lack of deterrent and compensatory legislative mechanisms (Schrade v. Georgia, 2021. Complaint **N15016/07)**

6. REASONS FOR DELAY RELATED TO THE PARTIES

Main findings

- **Parties interested in delaying the case use various procedural leverages to delay the consideration of the case.**
- **Neither the code of ethics for lawyers nor the prosecutor's office directly establishes responsibility for the delay of the case.**
- **Administrative bodies are often not interested in timely completion of the case.**
- **Administrative bodies and prosecutor's offices almost automatically appeal all decisions taken against them (regardless of the prospect of the appeal), which leads to overloading of the courts of higher instances.**

6.1. Deliberate delay of the case by the parties

43 percent of the interviewed lawyers name the actions of the parties aimed at delaying the civil/administrative cases as the reason for the delay.

This may include measures aimed at postponing the session as well as delaying the process in other ways[500].

A party's motivation is primarily to avoid or postpone an expected negative outcome.

"When there is a chance for a person to be acquitted, the prosecutor's office specially delays and tries to keep the person in custody for a long time"[501]

"Criminal proceedings will also be initiated on tax disputes of 100,000 Gel, and therefore the defendant itself is interested in the delay."[502]

"There are some cases that are lost from the beginning and the only interest of the client is to delay. e.g. eviction, mortgage loan."[503]

"On confiscation of a driver's license, when the level of intoxication is clearly proven to be high, they appeal to delay the payment of the fine until the court considers it, because the appeal suspends the administrative act and the driver is not restricted from driving."[504]

According to the recommendation of the European Commission for the Efficiency of Justice, an ethical obligation of the lawyer may be introduced, according to which the lawyer, in protecting

[500] On the motions of the parties to postpone the sessions, see above.
[501] May 4 focus group with lawyers from the Legal Aid Service.
[502] May 10 focus group with representatives of administrative bodies.
[503] Face-to-face interview, male lawyer.
[504] Face-to-face interview, male judge, court of first instance.

the interests of the client should act in such a way as to avoid unnecessary delay of the court process.[505]

At present, the code of ethics of lawyers does not contain any such norm. However, one of the recommendations of the Ethics Commission states that "intentionally delaying justice is not an action appropriate to the role of the lawyer, because the lawyer is one of the guarantors of the effective implementation of justice."[506]

Neither the code of ethics of the prosecutor's office stipulates direct responsibility for the deliberate delay of justice.[507]

Some cases studied by the project (provided by lawyers) raise doubt that prosecutor was interested to delay the case.

The person was charged under Article 218, paragraph 2, sub-paragraph B of the Criminal Code of Georgia (deliberate tax evasion in an especially large amount). The trial of the case in the court of first instance continued for 3 years - from June 2020 to June 2023. In the case, 12 prosecution witnesses were questioned and 10 hearings were held (with intervals of 2 to 4 months). 1-2 witnesses were questioned per session. The case was postponed twice because of the prosecutor - once because the prosecutor did not appear, and once because the prosecutor was changed. It is obvious that the case was deliberately delayed by the prosecution, which could have presented 4-5 witnesses per session, or in case of its impossibility, demanded that the witness be forced to appear (which it did not do). Finally, in the first instance, defendant was acquitted.

According to the lawyers, one of the problematic issues is the failure of the prosecutors' office to provide information about the name of the witness, that will be called at the next session.

"The prosecutor's office does not tell us in advance which witness they will bring to the trial, which is bad because if there are many witnesses in the case, we are not properly prepared for a specific witness.[508]"

The Code of Criminal Procedure does not specifically regulate this issue. This problem was also observed in another study:

[505] Updated Guidelines for Judicial Time Management of the European Commission for the Efficiency of Justice (Saturn Guidelines), 4th edition, 2021, paragraph III, 2.

[506] https://gba.ge/pdf/5f02e4d238167.pdf/werilobiti%20rekomendacia%20%20012.19%20%20gacemis%20tarigi%2005.01.20.pdf

[507] Recommendation of the Ethics Commission on question 012/19
https://matsne.gov.ge/ka/document/view/3679145?publication=0

[508] March 30 Focus Group, criminal lawyers.

"There is no clear obligation in the Code to disclose in advance information about the order of evidence taking and the time and order of calling witnesses. Because of this, it is often a problem to provide sufficient time to properly defend[509]

6.2. Delay of cases due to administrative bodies.

According to interviewed judges, one of the reasons for the delay in administrative cases is the lack of sufficient number of lawyers representing administrative bodies, which leads to conflict between hearings. Internal bureaucracy and late preparation of administrative materials cause these cases to be delayed.

"When the case is not duly prepared by the administrative body, the administrative body only files the response and brings the necessary documents to the hearing, at which point I have to postpone the session. Mainly they cannot organize the collection of materials requested from different services"[510].

„Administrative bodies overloaded with litigation are understaffed, one representative is allocated for several ongoing disputes. When processes overlap, this causes delays[511] *„*

The lack of personnel in some public agencies was also confirmed by interviews with the representatives of these agencies.

"We are 4 representatives and we have 3000 disputes a year. However, we try to never postpone the hearing for our own reasons. We are asking the court to wait for us before we leave another session." [512]

Respondent lawyers often indicate that the administrative authorities have no interest in speeding up the case.

"From my personal observation, it is not of decisive importance for the administrative bodies whether the case will be completed on time or delayed, since for their representatives participation in the court process is part of their everyday work.[513]*"*

In some administrative bodies (especially in those agencies that are exempted from payment of court fee) there is an informal obligation that in case of losing the case, all court decisions must be appealed, regardless of the perspective of the appeal.

In some cases, this may depend on the relationship with regulatory authorities.

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[509] Center for Social Justice, Access to Justice in Georgia, 2021, p. 13,
[510] Face-to-face interview, male judge, court of first instance
[511] Face-to-face interview, female judge, court of first instance.
[512] May 10 focus group with representatives of administrative bodies.
[513] Written interview, male lawyer.

"When the audit and control service comes, they ask why there was no appeal. There is some informal obligation to appeal everything in all three instances.[514]"

"In 99% of cases, they appeal every decision against them, regardless of whether there is already a solid case-law on the mentioned issue or not, that is, the prospect of the case is not important. They also appeal a case that is doomed in advance[515].

"The administrative body that loses the case always appeals. It is rare for them not to complain, e.g. the Ministry of Education does not appeal the decisions on the recognition of the diploma, because the most important thing for it is to have the decision issued in the first instance.[516]"

The mentioned factor is indirectly confirmed by the fact that the amount of appeals in administrative cases is four times higher than the rate of appeals in civil cases. While 8-14 percent of civil cases are appealed in appellate court and 1-2 percent in cassation, this figure is much higher in administrative cases. 33-55 percent of administrative cases are appealed in appellate court and 7-13 percent in cassation.[517]

The practice of automatically appealing a lost case is also implemented in the prosecutor's office:

"If the defense lawyer wins the case in first instance, the prosecutor "runs" in the appeal, he is obliged to appeal. This takes a very long time. The prosecutor knows that he will lose the appeal, but he still appeals and delays the case. The appeal process takes a year and a half."[518]

It seems that a different practice is implemented in those public agencies that are not exempted from paying court fee.

"Earlier, there was this trend, we had to take a "dead case" to the Supreme Court and we had to argue until the end. Later this practice changed. Today we are consulting with the superiors on prospect of dispute and whether it is worth continuing.[519]"

[514] March 29 focus group with lawyers of civil and administrative specialization.
[515] Written interview, male lawyer.
[516] Face-to-face interview, male lawyer.
[517] Statistical data is obtained from the website of the Supreme Court www.supremecourt.ge, also the Supreme Court's June 15 N. p. 499-23 letter.
[518] December 15 focus group meeting with lawyers.
[519] May 10 focus group meeting with representatives of administrative bodies.

ANNEX 1: INTERNATIONAL STANDARDS FOR MANAGING CASEFLOW AND DEALING WITH PROCEDURAL DELAYS

Below are important standards of Council of Europe for managing the flow of cases and reducing delays with reference to relevant sources:

1.1. Terms of consideration of cases in court

- The length of proceedings should be as predictable as possible[520].
- Both the average duration of proceedings and the duration of specific case should be planned in advance.[521]
- Along with planning length of proceedings at the national level, timelines should also be planned at the level of individual courts.[522] If these objectives are not met, specific measures should be taken to correct the problems.[523]
- Normative setting of time limits for consideration of cases by law or other acts should be done carefully, so that differences between cases are taken into account. If time limits are established by law, the adequacy of these time limits and their observance should be constantly checked.[524]

1.2. Responding to delays

- In case of violation of time limits, appropriate measures should be taken to correct the causes of such violations[525].
- During monitoring, attention should be paid to particularly long periods of inactivity of the case, in the presence of which measures should be taken to accelerate the case to compensate for the delay.[526]

1.3. Proceedings

- (In the first instance) the proceedings should facilitate the expeditious conduct of the case, while at the same time guaranteeing the right of the party to a fair and public trial[527].

[520] see European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. I.A.3 https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 18.10.2023]

[521] Ibid., par. I.C.9
[522] Ibid., par. IV.C.6
[523] Ibid., par. IV.C.8
[524] Ibid., par. ID 17
[525] Ibid., par. III. B. 8
[526] Ibid., par. III. B. 9
[527] Ibid., par. II D. 13

- The obligation of time management should be shared within the scope of their competence to all bodies of the justice system and persons participating in the case (judges, courts, experts, lawyers, etc.).[528]
- The judge must have the right to actively manage the process, determine appropriate deadlines, manage time in accordance with generally established deadlines or the specific circumstances of the case.[529]
- The judge should have the right to exclude a witness whose testimony is unlikely to be relevant to the case; To limit the number of witnesses in relation to a specific fact of the case, if in his opinion so many witnesses are not necessary in relation to this fact.[530]
- It is of the utmost importance that all factors that may affect the course of the proceedings are known at the outset of proceedings.[531]
- Except for the cases stipulated by the law, requests, responses, evidence of the parties must be presented at the earliest possible stage of the process and in any case before the end of the preparatory stage.[532]
- In an appellate instance, the court should not, as a rule, admit facts that were not presented in the first instance, except in certain exceptions.[533]
- Where possible, the judge should establish a calendar of proceedings.[534] Time management and planning of the dates and duration of proceedings should be done in consultation with court users.[535]. Deviations from this plan should be minimal and limited to justified cases only. As a rule, the extension of terms should be done by agreement with the parties and based on the interest of justice[536]. Reasons for deviating from the calendar should be systematically recorded[537].
- Judicial time management should be tailored to the specific case and take into account the needs of the users.[538]
- It is recommended to carry out early triage of cases in order to find out the course of the case (track), to determine different schedules for different types of cases, to introduce a system of automatic reminders (so-called warnings) when these deadlines are reached.[539]

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[528] Ibid., Par, III. A.1

[529] Ibid., par. V.A.1.2.

[530] Recommendation R (84)5 on principles of civil procedure aimed at improving the functioning of justice, principle 3

[531] Ibid., principle 4

[532] Ibid., principle 5.

[533] Ibid., principle 5

[534] see European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. 5.B.5 https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 18.10.2023]

[535] Ibid., par. I.C.10

[536] Ibid., par. X. B. 6

[537] Ibid., par. VII A 11

[538] Ibid., par. ID 16

[539] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 38, https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 22.08.2023]

- Each judge must analyze the last action taken on the backlogged case and determine the next actions necessary for effective resolution of the case. Based on this analysis, the judge may prioritize backlogged cases, revise the procedural calendar, hold a case management conference with the parties, or take other organizational measures to complete the case.[540]
- As a rule (in civil cases) the process should be completed in two sessions, where the first one is preparatory, and the second one is devoted to the examination of evidence, hearing the arguments of the parties and, if possible, announcing the decision. The court must ensure that all the necessary steps for the second session are taken on time and, as a rule, the session should not be postponed except for the presentation of new facts or the existence of other exceptional and important circumstances.[541]
- Adjournment of the session is allowed only when it is justified and if the date of the next session is set. If the court adjourns a large number of hearings, it prompts lawyers who have not prepared for the case to request a new adjournment. In this way, the court's time will be wasted.[542]
- The use of expedited procedures should be encouraged where possible.[543]
- All participants must have an obligation to cooperate with the court in order to meet the deadlines.[544] Deliberate attempts to delay the case should not be encouraged.[545] Procedural sanctions should be applied against such actions.[546]

1.4. Appeal

- Appeals may be limited in appropriate cases. In some cases (e.g. minor disputes) appellate jurisdiction may be excluded or special permission may be required. Plainly unsubstantiated complaints may be declared inadmissible or not accepted in the proceedings in a simplified way.[547]
- Additional requests, evidence and facts should be allowed to be presented in the appeal only if they are newly discovered or there is a valid reason why they were not presented in the first instance.[548]

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[540] ibid p. 40.

[541] Recommendation R (84)5 on principles of civil procedure aimed at improving the functioning of justice, principle 1

[542] European Commission for Justice Efficiency Compendium of Best Practices in Litigation Time Management 3.4. https://rm.coe.int/16807473ab#_Toc153700518

[543] European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. II.D.14 https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 18.10.2023]

[544] Ibid., par. V.C.7.

[545] Ibid., par. V.D.9.

[546] Ibid., par. V.D.10.

[547] Ibid., par. II.D. 15; Also Recommendation R(95)5 regarding the introduction and improvement of appeal systems and procedures in civil and commercial cases, Art. 3

[548] Recommendation R(95) 5 regarding the introduction and improvement of appellate systems and procedures in civil and commercial cases, Art. 5.D.

- The scope of the appellate review shall be limited to the grounds raised by the party unless the court may act on its own initiative.[549]
- In certain cases, a single judge may consider the case in the appellate instance.[550]
- Access to higher courts may be limited to cases that merit attention and review.[551]

1.5. Collection, access and analysis of information.

- The duration of proceedings should be monitored through an integrated and clearly defined data collection system. Such a system should quickly provide detailed statistical information both at a general level and identify individual cases where cases have been unreasonably delayed.[552]
- General and other statistical information about the length of consideration of each category of cases should be available to the general public.[553]
- Court managers should collect information about the main stages of proceedings and the time intervals between them.[554]
- The analysis of the collected information should be done continuously in order to improve the work of the court. Information collected should also be available to researchers and research institutions in observance of the right to privacy.[555]

1.6. Resources, their use and distribution

- The judiciary must have adequate resources to deal with the flow of cases in a timely manner. Resources should be distributed equally according to needs and used efficiently[556].
- If necessary, it should be possible to allocate resources quickly and efficiently to avoid delays and backlogs[557].
- Authorities must determine the number of judicial and non-judicial staff needed to handle incoming and pending cases. Taking into account the volume and complexity of cases, the

[549] Ibid., art. 5. E.
[550] Ibid., art. 6.A.
[551] see European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. II.D. 16,https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 18.10.2023].

[552] Ibid., par. I. C. 11
[553] Ibid., par. I.A.4
[554] Ibid., par. IV.A.1
[555] Ibid., par. IV.B.4.
[556] Ibid., par. II.A.1.
[557] Ibid., par. II.A.3

necessary number of judges can be calculated using a case weighting system or another mechanism for determining the number of cases.

- The judge should be freed from non-judicial functions which should be delegated to other persons and bodies.[558].
- The court staff must provide the judge with all the necessary assistance, including the performance of such functions as: checking the correctness of documents and compliance with procedural requirements by the parties, calculating fees and case costs, drawing up a calendar of procedural actions and monitoring the observance, sending documents to the parties, drawing up minutes of the session, drafting of court decisions[559].
- All courts may have mechanisms, e.g. an elective body, such as the presidium of judges, which is empowered to decide whether to transfer a case from one overburdened judge within the same court to another judge[560].
- Specialization of courts, judges and judicial staff can reduce the time required for proceedings[561].
- In order to reduce the duration of pending cases, the resources of retired judges may be used[562].

1.7. Alternative means of dispute resolution

- The use of alternative dispute resolution methods, including arbitration and mediation, should be encouraged.[563]
- Diversion mechanism can be introduced in criminal cases where the case can be ended by the accused fulfilling various conditions e.g. by paying money to the State, returning property obtained through crime, compensating victims of crime, etc.[564]

[558] Recommendation R (86)12 of the Council of Europe, which is related to measures aimed at reducing and preventing overcrowding of courts.

[559] Ibid., par. VII A 7-14

[560] https://rm.coe.int/-ccje-6-2004-/168074739f Consultative Council of European Judges (CCJE) opinion #6 (2004) for the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and role of the judge considering alternative dispute resolution mechanisms.

[561] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 38, https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 22.08.2023]

[562] Ibid., p. 39

[563] Recommendation of the Committee of Ministers of the Council of Europe (2001) 9 concerning means of alternative dispute resolution between administrative bodies and private individuals.
European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 34,https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4 [last seen: 22.08.2023]

[564] Recommendation R (87) 18 relating to the simplification of criminal justice, para. 2.B.1

1.8. Use of technology

- In order to speed up proceedings, the use of modern technologies should be encouraged, especially regarding telephone and video conferences, electronic communication between the court and the parties, remote access to case materials, etc.[565]
- The introduction and expansion of digital justice can have a positive effect in terms of timely processing of cases, efficient proceedings and cost reduction.[566]

1.9. Organization of the judicial system

- There should be a body in the judicial system that will constantly analyze the duration of the cases in order to identify trends, predict changes and avoid problems.[567]
- The central bodies of judiciary should ensure proper facilities and conditions for time management and take adequate measures when necessary.[568]
- All organizational changes in the court system should be examined in terms of possible impact on the length of proceedings.[569]

1.10. legislation

- Before adopting new legislation, the government should always study its impact on new cases and avoid rules and regulations that may cause backlogs and delays.[570]

1.11. Responsibility

- Anyone who obstructs the proceedings by their actions or inactions must be held accountable in accordance with the principle of judicial independence.[571]

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[565] European Commission for the Efficiency of Justice Updated Guidelines for Judicial Time Management (Saturn Guidelines), 4th edition, 2021, par. III.D.10 https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last viewed 18.10.2023], as well as Recommendation R(2001)3 regarding the provision of judicial and other services to citizens using new technologies.

[566] European Commission for the Efficiency of Justice, Backlog Reduction Tool (2023), p. 37https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4

[567] Updated Guidelines for Judicial Time Management of the European Commission for the Efficiency of Justice (Saturn Guidelines), 4th edition, 2021, par. II B 5https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81 [last seen on 18.10.2023]

[568] Ibid., par. I.E. 21.

[569] Ibid., par. II. B 6.

[570] Ibid., par. II.C.8

[571] Ibid., par. III E 11

- If a member of the legal profession grossly abuses procedural rights or significantly obstructs the proceedings, he/she may be reported to the relevant professional body for appropriate sanction.[572]

1.12. lawyers

- It may be established that the lawyer's ethical obligation to protect his client's interest is to act in such a way as to avoid undue delay in the legal process.[573]
- A lawyer's ethical obligation should be to try to reach a settlement both before the initiation of a legal dispute and at any stage of the process.[574]

1.13. Expediting or compensatory mechanisms in case of violation of the reasonable term of proceedings.

Council of Europe Recommendation CM/REC (2010)3 on effective remedies against excessive length of proceedings[575] . States are encouraged to introduce both preventive and compensatory mechanisms in case of delay in proceedings.

In particular, according to the mentioned recommendation,

When the proceedings have been unduly protracted, there must be an acknowledgment of the breach directly or substantially and

A. Proceedings should be expedited, where possible; or

b. Victims should be compensated for any harm they have suffered; or, preferably,

c. To enable the joint use of these two measures. ;

- It should be ensured that requests for speeding up legal proceedings or providing compensation are quickly considered by the competent authority and they represent an effective, adequate and affordable remedy;

[572] Ibid., par. III E 11
[573] Ibid., par. III 2
[574] Recommendation R (86)12 related to measures aimed at reducing and preventing excessive workload of courts, para. 1. C.;
[575] Council of Europe Recommendation CM/REC (2010)3 on effective remedies against excessive length of proceedings https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf8e9

- It must be ensured that the amount of compensation that can be awarded is reasonable and compatible with the case law of the court and, in this context, allow the presumption that an excessively long process will cause moral damage;

- Consider providing specific forms of non-monetary compensation, such as a reduction of sanctions or a stay of proceedings, as appropriate, in criminal or administrative proceedings that have taken too long.

- where appropriate, provide for the retroactivity of new measures taken to address the problem of excessive length of proceedings, so that applications pending before the Court may be resolved at national level;

ANNEX 2: PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING CONSIDERATION OF CASES WITHIN A REASONABLE TIME

In the sense of article 6 of the Convention, the proceedings start from the entry of the case in the court.[576] There are some exceptions. In the cases where the appeal to the administrative body is a mandatory prerequisite for filing a lawsuit in court, the reasonable time period starts from the application to the administrative body[577]. The reasonable time limit for proceedings in a criminal case starts from the beginning of the investigation[578], from arrest[579], from the moment of charge[580], or from questioning the suspect as a witness.[581] As for the last moment of operation of article 6 of the Convention, this includes both the decisions of the higher instance court and the deadline for the execution of the court decision.[582]

Individual episodes of the case may not be considered protracted by themselves, but taken together they constitute a breach of the reasonable time limit.[583] In assessing the reasonableness of the process, the Strasbourg Court will also pay attention to the periods of time when the case was inactive and no procedural action was taken.[584]

[576] Guide to Article 6 of the European Convention of Human Rights, Right to Fair Trial (civil limb), 2022, p. 55
[577] Kress v. France [GC], 2001, § 90; König v. Germany, 1978, § 98; X v. France, 1992.
[578] Wemhoff v. Germany, 1968, § 19
[579] Ringeisen v. Austria, 1971, § 110; Šubinski v. Slovenia, 2007, §§ 65-68
[580] Neumeister v. Austria, 1968, § 18.
[581] Kalėja v. Latvia, 2017, § 40.
[582] Guide to Article 6 of the European Convention of Human Rights, Right to Fair Trial (civil limb), 2022, p. 55
[583] Deumeland v. Germany, 1986, § 90
[584] Beaumartin v. France, 1994, § 33

Restrictions caused by the pandemic may have a negative impact on the length of the process, but overall this does not absolve the state of its obligation to adhere to reasonable time requirement.[585.]

The European Court of Human Rights has always refused to set any fixed reasonable time limits for each stage of the proceedings. Instead it uses criteria to assess the reasonableness of the process on a case-by-case basis. These criteria are: a. Complexity of the case b. applicant's interest at stake. c. conduct of the applicant d. conduct of relevant state bodies.

A. Complexity of the case.

Complexity of a case refers to complexity of facts, complexity of law or complexity of procedures. The complexity of the facts can be expressed in different ways: the number of charged episodes and their nature, the delicate nature of the crime (for example, its connection with national security), the number of witnesses and defendants, the need for expert opinion, difficult issues related to evidence, etc. The legal complexity of the case can be caused by various factors, such as the application of a new and vague law, issues of jurisdiction, the question of the constitutionality of the law, the interpretation of an international agreement, etc. The complexity of the procedures can be caused by the following factors, including: the number of parties, interlocutory appeals submitted by the parties, the number of defendants and witnesses, the change of address or identity by witnesses, the large volume of case materials, the existence of several interrelated proceedings, etc.[586]

b. Applicant's interest that is at stake.

The claimant's interest can be either material or immaterial interest. In this regard, the practice of the Strasbourg Court distinguishes cases that require special attention. Such cases are: cases related to family disputes and legal capacity (especially in terms of inviolability of family life); Paternity, divorce and child custody disputes; compensation for victims of traffic accidents and police violence; disputes related to professional activity license; pension disputes; dismissal disputes; industrial injury compensation disputes; criminal cases where the accused is in custody; The right to compensation of a person with an incurable disease caused by the fault of a medical institution, etc.[587]

[585] Q and R v. Slovenia, 2022, § 80.
[586] The right to trial within reasonable time under Article 6 ECHR A practical handbook prepared by Ivana Roagna 2018, p. 24
[587] Ibid., p. 30

c. Actions of the parties

Article 6 of the Convention does not require the applicant to cooperate with the court or to exercise procedural rights granted by law. The delay caused by these actions cannot be blamed on the State.[588]
According to the practice of the European Court of Human Rights, there are many ways in which the parties can delay the proceedings, including: the filing of an application by the parties to the court without proper jurisdiction; requests for postponement of sessions and extension of deadlines; late filing of responses; frequent change of lawyer or a large number of lawyers in the process; representation of facts that require verification and will be found to be incorrect; failure to appear at the session; concealment of the accused; unsuccessful attempts to settle the case; numerous appeals, e.g. appeal to change the measure of restraint, judge's disqualification, request to transfer the case to another court, appeal of interim acts, etc.[589]

The European Court indicates that the delay caused by the actions of the parties cannot be attributed to the State, but this does not mean that the national courts should do nothing. Even in those legal systems where the principle of disposition applies to proceedings, this does not relieve the national court of its obligation to ensure a speedy disposition of the case, in accordance with Article 6. If necessary, the court must respond to the actions of the parties in accordance with the procedural rules, for example, not to grant unreasonable demands for postponing the session and extension of the time, use its powers to speed up the process or ensure that the expert fulfills his obligations within the appropriate time frame.[590]

d. Actions of State bodies

State bodies include not only the court, but also the prosecutor's office and other public bodies, e.g. legislative bodies that are involved in the litigation process as a party or other entity.[591]

The contribution of the state bodies to the delay of the process can be expressed in various ways, including: delay in the renewal of the case by the administrative body; delaying the preliminary investigation; delaying the interrogation of the accused by the investigating judge or the arrangement of the confrontation between the witnesses; refusal to combine related cases, delay in completing the investigation; delay in committing the accused to trial; wrongly calling a witness; prolongation of the case by the administrative bodies, including obstruction of the presentation of evidence important to the case; late delivery of case materials to the accused; delayed presentation of arguments by the Ministry; failure to notify the party of the hearing date;

[588] Erkner and Hofauer v. Austria, 1987, § 68
[589] The right to trial within reasonable time under Article 6 ECHR A practical handbook prepared by Ivana Roagna 2018, p. 33
[590] Ibid., p. 34
[591] Ibid., p. 36

late registration of the case; numerous adjournments of hearings or scheduling of hearings at long intervals; suspending the case for a long time until the completion of another case; failure of the court to exercise its authority to require important evidence; the long period from the announcement of the decision to its submission in writing; late submission of case materials to the superior court.[592]

An excessive number of cases in court does not exempt the State from the obligation to observe a reasonable time limit. Nevertheless, the temporary overload of the court may become the basis for the exemption of the state from responsibility if the state has taken extraordinary preventive measures to correct this kind of emergency. If delay is foreseeable, measures should be taken.[593]

The frequent change of judges in the case can significantly slow down the process, since each judge has to familiarize himself with the case materials. The mentioned factor does not exempt the State from the obligation to complete the case within a reasonable time, since the State's obligation is to ensure the orderly organization of the administration of justice.[594]

The right to a fair hearing due to the delay of the judicial process, which is provided for in Article 13 of the Convention, requires the existence of such a mechanism (judicial or non-judicial) that gives the possibility of speeding up the process or the possibility of receiving compensation in case of delay of proceedings.[595] Accordingly, when it comes to delaying the process, there are two types of effective protection: expediting, or preventive, and compensatory.

According to the definition of the European Court of Human Rights, member states are obliged to organize their legal system in such a way as to ensure the right of everyone to a fair hearing within a reasonable time.[596]. Despite the above, periodic overcrowding of courts and delays in cases are one of the most important problems of courts in the modern world.[597], which is a concern not only in transitional democracies, but also in advanced and centuries-old legal systems. Accordingly, even in the second half of the last century, advanced legal systems began to think about how to manage the flow of cases and speed up proceedings.[598]

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[592] Ibid., p. 39

[593] Guide to Article 6 of the European Convention of Human Rights, Right to Fair Trial (civil limb), 2022, p. 39-40, 69

[594] Lechner and Hess v. Austria, 1987, § 58

[595] Council of Europe, Guide on Article 13 of the European Convention on Human Rights, 2022, p. 42 https://www.echr.coe.int/documents/d/echr/guide_art_13_eng [last seen on 18.10.2023]

[596] Guide to Article 6 of the European Convention of Human Rights, Right to Fair Trial (civil limb), 2022, p. 109

[597] Backlog reduction guideline.

[598] David Steelman, The history of delay reduction and delay prevention efforts in American courts, 1997, p. 84-94 https://www.academia.edu/41365467/THE_HISTORY_OF_DELAY_REDUCTION_AND_DELAY_PREVENTION_EFFORTS_IN_AMERICAN_COURTS [last seen on 18.10.2023]

Since the seventies of the last century, the American courts, based on managerial approaches, have developed a whole range of measures known as principles of caseflow management. When managing the flow of cases according to the standards developed by the American Bar Association, it is important to consider the following elements:

- judicial supervision and control over the movement of cases (that the court should not give up the leading role);
- determining and monitoring deadlines for consideration of cases;
- compilation and control of the procedural calendar of the case;
- early identification of cases that may be delayed and giving them special attention;
- insuring firm and credible dates of court hearings and reducing adjournments of hearings[599].

In turn, American approaches to case management and delay reduction have spread widely throughout the world and are reflected in international justice-related advisory documents. At the end of the last century, a number of recommendations and guidelines were developed within the framework of the activities of the advisory bodies of the European Council in order to speed up cases and relieve the courts. Among them, it is worth noting:

- Recommendation R(84)5 on principles of civil procedure aimed at improving the functioning of justice;
- Recommendation R(86)12 related to measures aimed at reducing and preventing excessive workload of courts;
- Recommendation R(87)18 related to the simplification of criminal justice;
- Recommendation R(95)5 concerning the introduction and improvement of appellate systems and procedures in civil and commercial cases;
- Recommendation R(2001) 3 regarding the provision of judicial and other services to citizens using new technologies;
- Saturn Guidelines for court Time management adopted by the European Commission for the Efficiency of Justice (adopted on 11 December 2008 and subject to periodic updating);
- European Commission for Efficiency of Justice - Compendium of best practices in time management in judicial Proceedings (2006);
- Guideline adopted by the European Commission on the efficiency of justice on June 16, 2023 (Backlog Reduction Tool[600]).

[599] American Bar Association, Standards Relating to Court Delay Reduction, 1985 https://www.judges.org/wp-content/uploads/2020/03/Time-to-Redefine.pdf p. 5

[600] https://rm.coe.int/cepej-2023-9-backlog-reduction-tool-en/1680aba0a4

As revealed by the present research, the delay in proceedings in the courts of Georgia is a systemic, large-scale problem, which is caused by many different factors. Some of these reasons lie within the judicial system and some outside the system. As international experience shows, solving the problem of delay requires a systematic approach, the first stage of which requires a detailed study of the causes of the delay. We hope that the research presented by us will contribute to an in-depth professional discussion regarding the causes of delay, which will become the basis for the formulation of appropriate strategies and implementation of measures.