

**IMPACT OF JUDGES' CONDUCT  
ON PERCEPTION OF IMPARTIALITY  
BY THE PARTICIPANTS OF LITIGATION**

TBILISI  
2023



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USAID სამართლის უზენაესობის პროგრამა  
USAID RULE OF LAW PROGRAM

The document was prepared by Ilia State University academic team and students with the support of the USAID Rule of Law Program funded by the United States Agency for International Development (USAID) through the East-West Management Institute (EWMI).

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## ACKNOWLEDGEMENTS

The students and academic staff of Ilia State University wish to thank the USAID Rule of Law Program for making possible the project “Impact of Judges’ Conduct on Perception of Impartiality by the Participants of Litigation” and the East West Management Institute Inc. (EWMI) for continuous support and contribution provided throughout the project implementation.

The students and academic staff of Ilia State University also would like to express their gratitude to all the judges and litigation parties who participated in the assessment for agreeing to be interviewed and sharing their experience and views.

## EXECUTIVE SUMMARY

This report presents the findings of the research conducted within the framework of the project “Impact of Judges’ Conduct on Perception of Impartiality by the Participants of Litigation”. The project was carried out by the students and academic staff of Ilia State University between November 1<sup>st</sup>, 2022 and May 1<sup>st</sup>, 2023 in response to a call for proposals from the USAID Rule of Law Program.

The main goal of the project was to find the ways of improving the appearance of judges’ impartiality by (1) assessing the performance of individual judges in terms of impartiality by neutral observers on the one hand, and parties to court proceedings on the other; (2) assessing the performance of judges from sample in terms of impartiality by neutral observers on the one hand, and parties to court proceedings on the other; and (3) identifying the key differences between impartiality perceptions of neutral observers and parties using a comparative analysis.

The size of the research sample was 32 parties (litigation participants), whose opinions and perceptions of the judge were studied versus opinions and perceptions of 32 observers (litigation attendants).

The conclusions and key findings of the study cannot be generalized for the entire population of the litigation participants because of the following reasons: (1) the non-random sampling and small sample size was used in the research; (2) the differences between the perceptions of parties and observers were studied through one hearing in each case only; and (3) the fieldwork monitoring system was absent. However, the conclusions and findings of the study still can provide a useful set of empirical results about the differences in perceptions of parties and observers of the impartiality performance of judges.

The conclusions and key findings made based on the results of the research conducted within the framework of the given project are described below.

In a vast majority of the studied cases, the judges were considered to be impartial by both the observers and the parties in terms of treating equally both parties, not differentiating between parties and their representatives/attorneys, making fair and proportional decisions on motion(s) made by both parties, as well as exhibiting the certain similar types of conduct towards both parties.

The parties were not familiar or were insufficiently familiar with the formal attributes of judicial impartiality (e.g. “open-mindedness”, “absence of bias/prejudice”, etc.) that the judge is supposed to have/hold.

The judge’s reputation plays significant role in forming the opinion of the judge. In case, the source of the formed opinion of the judge is reputation, the opinion of parties on the judge is positive or negative (trusting or mistrusting), while in cases when the opinion is formed from the previous experience, such opinions are mostly positive (trusting).

The parties are generally not familiar with or do not remember the procedural duties and responsibilities of the judge. Out of those procedural duties and responsibilities of the judge, the respondents know or remember, the most frequently named ones are “reviewing the case thoroughly/well” and “asking the parties whether they want to recuse the judge or not.”

It is very important for the parties to have a judge who knows their court case details well.

For describing judge’s impartiality in general, observers use more specific, observable, and measurable indicators than parties - this could be attributed to absence of the standard the parties could use/refer to for more objective perception of the judge’s impartiality conduct.

The following factors played a significant role in the perception of judge’s impartiality by the parties: (1) “reputation”, (2) “letting parties speak and finish their speeches”/ “not interrupting speakers”, (3) “not favouring strong party (especially the state)”, (4) “listening equally carefully to both parties”, (5) “speaking/ explaining clearly”, (6) “giving equal time to both parties to speak”. It should be noted that “reputation” of the judge was not only determinant of the perception of its impartiality, but also of the trust towards the judge.

A judge is considered as impartial if s/he treated a party represented by the state more strictly (e.g. asks for additional evidence) and was considered, or more precisely, “seemed” to be partial if such strict treatment was not present.

A judge such conduct as talking to parties with irritation and raised voice is still tolerated by the parties if/when such treatment was considered to be fair i.e. deserved and/or adequate and/or relevant.

The following conduct of the judge were perceived very subjectively by the parties and had a significant impact on their perception of impartiality: “expressing emotions/feelings”, “making reprimands/ instructions”, “being

consistent/predictable”, “being positive/willing to help”, “using simple language” and “expressing own opinions”. Such conducts of the judge as “consistency/predictability” and “positivity/willingness to help” are more noticeable and therefore more important to the parties.

In instances, when/where one party is the „weaker party“ (s/he has less knowledge of the procedural regulations), the skewed conduct of the judge towards such a party is not perceived by the observers in negative context, because they most likely interpret this behaviour as being fair/impartial; i.e. it is perceived by the observers as a way of restoring the balance between the parties, whereas such behaviour is perceived more critically by the parties themselves, most likely because they are involved in the litigation i.e. this process is more personal to them.

In administrative cases, if/when one party is the “weaker party” (the opposing party is a state) and the judge treats the “stronger party” differently (e.g. by asking for additional evidence, etc.), the “weaker party” evaluates the impartiality of the judge in a positive way. However, in civil cases if/when a party represents a “stronger party” (the opposing side does not understand the procedure, benefits of settlement, etc.) and the judge treats the opposing “weaker party” differently (e.g. explains rights, procedures, settlement benefits, etc.), then the “stronger party” evaluates the impartiality of the judge more negatively.

The parties that consider a judge impartial prior to the judgement are more satisfied with the outcome of the dispute, than the parties that consider a judge biased.

Overall, these findings demonstrate the paramount importance of ‘Procedural Justice’ for maintaining the perception of judicial impartiality and independence in the eyes of both parties to proceedings and neutral observers.

The recommendations developed based on the conclusions and findings of the research conducted within the framework of the given project are described below.

It is recommended to introduce educational programs targeting the general population that provides appropriate information/knowledge to the public on the impartiality standard(s) that judges should meet, including the typical attributes/characteristics that judges should have/hold and the procedural duties and responsibilities that they should apply.

Another recommendation would be to introduce Procedural Justice training programs for judges with content that includes active listening skills, emotional intelligence (EQ), and improves their awareness of how their procedural conduct can be perceived by the parties and have a direct impact on their impartiality perceptions. Such programs should include, but not be limited to, the following aspects of Procedural Justice that were highlighted in the study:

- ensuring that parties are given the opportunity to express fully their positions/ opinions and finish their speeches, and when/if such provision is not possible (e.g. time restrictions, keeping order, etc.), the remedy to be used (e.g. explaining to the party reasons s/he is not given time to speak or finish the speech).
- providing as much feedback to the parties as possible upon such types of conduct of the judge as “expressing emotions/feelings”, “making reprimands/instructions”, “being consistent/predictable”, “being positive/willing to help”, and “using simple language”. For example, explaining the reasons of “expressing emotions/feelings” „making reprimands/instructions“; clarifying rationale for conducts that could be considered as positive/helpful, for one of the parties, etc.
- promoting judges’ awareness of the subjective nature of the following types of conduct and using them with caution (if need be): “expressing emotions/feelings”, “making reprimands/instructions”, “being consistent/predictable”, “being positive/willing to help” and “using simple language”.
- ensuring that during the hearing judges “speak clearly/make sure both parties understood all explanations”. For example, upon completing his/her speech and/or explanations the judge should check with both parties whether all that was said was clearly understood.
- ensuring that once a judge is finished talking to a “weaker party”, i.e. a party with limited knowledge of its rights (explains rights and procedural rules, clarifies benefits of settlement, etc.), the judge also turns to the “stronger” party” i.e. party with better knowledge of its rights and asks that “stronger” party” if s/he also needs any explanations/clarifications (more relevant for the civil cases).
- even in cases where there are no clear “weak” or “strong” parties, the judge should always ask the other party if they require the same/similar/equal provision of help, explanation, settlement offer, etc. that was just given to the opposite party.

The further research should be done to identify the wording of judges and develop the vocabulary of the judge that is clear/simple and understandable for the general public.

It would be interesting to design a study to find out how the reputation of the judges are formed, is the reputation of the judges build on reality, perception or both, etc. for the parties that form opinion on the judge using experience of other people i.e. word of mouth as a source (second-hand experience) versus for the parties that form opinion on the judge using experience of their own from previous cases/hearing (first-hand experience).

It is also recommended to make sure, that along with actually knowing the case well, the judge does her/his best to demonstrate this knowledge at the hearing.

In addition, it is recommended that the judges continue applying high standards (including but not limited to the provision of evidence) for the party representing the state.

It is suggested to study further the reasons/factors determining the satisfaction with the litigation process even in the presence of a negative/unfavourable outcome of the litigation.

Finally, it is recommended to improve/re-design the survey instrument to study the differences between the perceptions of parties and observers in terms of the impartiality performance of judges as per the lessons learned during the project implementation.

This report outlining the results of the project “Impact of Judges’ Conduct on Perception of Impartiality by the Participants of Litigation” has five main sections. Following the first introduction part that includes Background, Objectives and Methodology (A), the second part – Perceptions by Individual Judges – examines ways of improving performance of judges from civil and administrative justice using comparative analysis of individual evaluations provided by the observers and parties (B), the third part – Perceptions by Sample Judges – examines ways of improving performance of judges from civil and administrative justice using comparative analysis of aggregated evaluations provided by the observers and parties (C), the fourth part offers Conclusions, Findings and Recommendations (D), while the fifth and final part includes all relevant Annexes of the project (E).

## A. INTRODUCTION

This chapter describes the background of the studied subject – principle of judge’s impartiality, the goals and objectives of the project and also, the methodology of the research.

### Background

The importance of rule of law for the effective functioning of modern democratic state is so evident, that it does not require further explanation. However, this universal legal value of modern democracies should not remain just a declarative slogan but should be affirmed at the level of the national legal order. The judicial branch, which is intended to ensure effective protection of human rights and freedoms, should significantly contribute to this [2].

The United Nations General Assembly has repeatedly stated that “the rule of law and the proper administration of justice [...] play a central role in the promotion and protection of human rights” and has emphasized that “[i]ncreasingly the importance of the rule of law in ensuring respect for human rights, and of the role of judges and lawyers in defending human rights, is being recognized” [3]. Thus, rule of law and justice system are two main mechanisms of implementing human rights.

The justice system is based on the principles recognized by the state and the international community. These principles ensure the efficiency of judges and include but are not limited to the judges’ independence, impartiality, competency, etc. However, one of the most important principles, provided for judges’ effective work, is the principle of impartiality, which is often referred to as “the main component of judgeship”.

The importance of the principle of impartiality in judicial activities are supported by number of international documents and acts. Namely,

§ The Universal Declaration of Human Rights (UDHR) (legally declarative document), that was proclaimed by the United Nations General Assembly on 10 December 1948, provides that:

*“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial court, in the determination of his rights and obligations and any criminal charge against him”.*  
(UDHR, Article 10) [4]

§ The European Convention for the Protection of Human Rights and Fundamental Freedoms (generally referred to as European Convention on Human Rights or ECHR) (legally binding document), that was adopted by Council of Europe on 4 November 1950, provides that:

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”* (ECHR, Article 6, paragraph 1). [5]

§ The International Covenant on Civil and Political Rights (ICCPR) (legally binding document), that was adopted by United Nations General Assembly resolution 2200A (XXI) on 16 December 1966, states that:

*“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”*  
(ICCPR, Article 14, paragraph 1) [6]

§ The Basic Principles on the Independence of the Judiciary (BPIJ) (legally declarative document), that were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, states that:

*“The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”* (BPIJ, Article 2) [7]

§ The Bangalore Principles of Judicial Conduct (BPJC) (legally declarative document), that were adopted by United Nations Economic and Social Council (ECOSOC) on 27 July 2006, recognizes impartiality as one of the core values (Value 2) and states that:

*“Impartiality is essential to the proper discharge of the judicial office.”* (BPJC, Principle of Impartiality followed by Articles 2.1-2.5). [8]

Little or nothing is said in legal literature to provide an explicit definition of judicial impartiality and/or to specify its meaning. However, “to ensure impartiality, one should have theoretical comprehension of its concept, determinate its content and relationship with other legal categories that provide for the right to a fair trial” [2].

The Merriam-Webster Dictionary defines “impartial” as “not partial or biased: treating or affecting all equally”. Conversely, “partial” is defined as “inclined to favor one party more than the other: BIASED” [9].

As one may see in the legal provisions of the universal instruments above, the notions of “independence” and “impartiality” are closely linked and in many cases the international control organs deal with them jointly. Impartiality is not considered as an independent legal category and “traditionally, its definition is interpreted within the principle of independence of judges and the common right to a fair trial” [2]. According to various scholars and



legal professionals, judicial independence is not enough “to meet the requirements for “the right to a fair and just trial” and the impartiality of the judiciary is also necessary [10].

The existence of Impartiality, or lack thereof, can be tested in various ways. For example, the European Court of Human Rights takes account of both the objective and the subjective impartiality of a judge or tribunal to determine if they comply with the requirements of Article 6 of The European Convention for the Protection of Human Rights and Fundamental Freedoms.

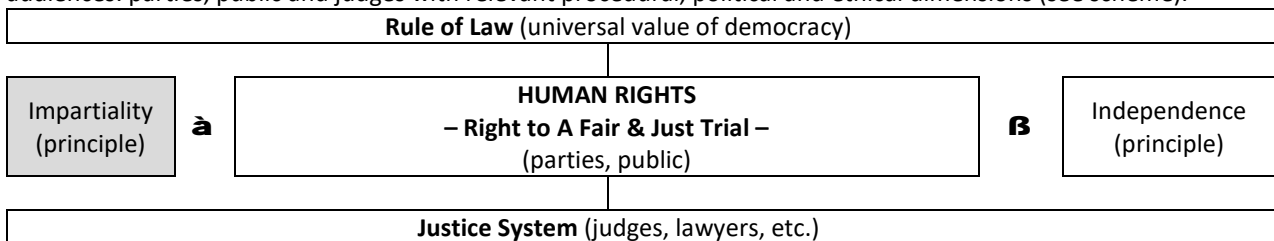
The subjective test for impartiality requires an assessment of whether a judge holds any personal prejudice or bias in a given case, while objective test for impartiality involves a determination whether, apart from a judge’s personal conduct, there are ascertainable facts which give rise to legitimate doubts or fears that a particular judge lacks impartiality [11].

Examples of objective impartiality are situations of functional nature, where judge has personal or hierarchical links with other parties to proceedings and/or situations and judge plays dual/multiple roles in the same proceedings (e.g. the same issues in a different forum or context, hearing appeals against their own decisions). Examples of subjective impartiality are situations that are related to the personal character and conduct of a judge, where judge makes certain remarks and uses specific language during proceedings (e.g. expression of opinions about an applicant’s guilt at early stages of trial, acknowledgement of personal feelings following the actions of any of the parties, usage of empathetic language), judge makes public statements about the case (e.g. in press or social media), judge has arranged to have a case assigned to himself for personal reasons [11] (see scheme).

Objective conception/test of impartiality	Subjective conception/test of impartiality [12]
<p>(1) Judge exercises judicial and extra-judicial functions relating to the same case:            § is also a member of the legislature and/or executive branch            § exercises both, advisory and judicial, functions            § acts as a legal representative, complainant, witness and/or prosecutor</p> <p>(2) Judge exercises different judicial functions within the same or related proceedings:            § Separate but related proceedings            § Different judicial roles within the same proceedings</p>	<p>(1) Personal interest in the case outcome            (2) Relational interest in the case outcome (connections/ affiliations/personal links to the parties)            § Connections between judge and the parties            § Connections between judges            § Connections between an applicant and members of specialist tribunal            (3) Political interest in the case outcome            (4) Personal bias/stereotyping for or against case participants</p>

According to some legal scholars, perfect impartiality—the complete absence of bias or prejudice—is an elusive ideal, because of which “impartial enough” has, of necessity, become the realistic goal. “Understanding when imperfectly impartial is nonetheless impartial enough is aided by conceptualizing judicial impartiality in three distinct dimensions: (1) a procedural dimension, in which impartiality affords parties a fair hearing; (2) a political dimension, in which impartiality promotes public confidence in the courts; and (3) an ethical dimension, in which impartiality is a standard of good conduct core to a judge’s self-definition” [12].

Thus, impartiality could be defined as a concept that aims to promote and protect human rights, namely “right to a fair and just trial” by application of the Rule of Law and Justice System; is tightly linked to such legal category as Independence of judges; can be assessed by subjective and objective tests and serves three distinct audiences: parties, public and judges with relevant procedural, political and ethical dimensions (see scheme).



The broken trust of Georgian population towards the court/judges [13] could indicate to a malfunctioning of an actual impartiality and/or wrong appearance of impartiality. Court monitoring has proven to be a powerful tool for supporting judicial system in general and for getting insights on improvement of judicial principals’ application in particular.

### Goals and Objectives

The main goal of the project “Impact of Judges’ Conduct on Perception of Impartiality by the Participants of Litigation” was to find the ways of improving appearance of the judge’s impartiality by (1) assessing the performance of individual judges in terms of impartiality by neutral observers on the one hand, and parties to court proceedings on the other; (2) assessing the performance of judges from sample in terms of impartiality by neutral observers on the one hand, and parties to court proceedings on the other; and (3) identifying the key differences between impartiality perceptions of neutral observers and parties using a comparative analysis.

For the purposes of the given research, an actual impartiality was defined as “an objective impartiality determined by the ‘reasonable observer’ - the role played by the project interviewers/observers”, while an appeared impartiality was defined as “a subjective impartiality determined by the ‘general public’ - the role played by parties/litigation participants”.

It should be noted, that term of “objective impartiality” used for the research purposes is not equal to the term of “objective impartiality” used by the European Court of Human Rights to determine if such impartiality complies with the requirements of Article 6 of The European Convention for the Protection of Human Rights and Fundamental Freedoms, while the term of “subjective impartiality” used for the research purposes overlaps with the term of “subjective impartiality” used by the European Court of Human Rights for the same purpose [11]. The overlapping areas are related to the situations, where judge makes certain remarks and uses specific language during proceedings, e.g. acknowledgement of personal feelings following the actions of any of the parties, usage of empathetic language. The assessment performance of judges focused mainly on the conducts typical for the subjective concept of impartiality, since the need to challenge subjective improprieties of judges or jurors was stressed by the UN Human Rights committee [1].

The abovementioned goals of the project were planned to be accomplished by achieving the following objectives:

- i. assessing the judge’s impartiality related performance in general
- ii. assessing the judge’s conduct from the viewpoint/perception of “reasonable observer” (actual impartiality)
- iii. assessing the judge’s conduct from the viewpoint/perception of “public” (appeared impartiality)
- iv. comparing the judge’s conduct from the viewpoint/perception of “reasonable observer” with the judge’s conduct from the viewpoint/perception of “public” (actual impartiality vs appeared impartiality)
- v. identifying/finding relations between the satisfaction of the parties with the judgement and perceived impartiality of the judges

## **Methodology**

This chapter describes various components of the project methodology such as (1) research approach, (2) research instrument, (3) description of target group, (4) sampling and its limitations, (5) data analysis, and (6) challenges/lessons learned.

### **1. Approach**

The project methodology was designed/developed to align with the goals of the project. As it was mentioned above, the main goals of the given project were performance assessment of judges in terms of impartiality and identifying/finding ways of improving appearance of this impartiality.

Thus, in order to analyse the impartiality performance of judges, they have been studied individually by using the approach of case studies (qualitative analysis) and as a group (quantitative analysis). It should be noted that quantitative research was not used in a typical way within the project, because when processing and presenting data, not only statistics related to various behaviours were considered, but also individual assessments provided by respondents (the kind of approach used in qualitative research design).

The goals of identifying/finding the ways of improving appearance of the judges’ impartiality was achieved by using reflective approach that is asking participants of litigation to comment on their experience over one specific hearing (the quantitative and qualitative comparative analysis of judge’s actual impartiality vs judge’s appeared impartiality).

For the purposes of the research, it was assumed that objective impartiality of judge can be assessed by the “reasonable observer”, the role played by the project interviewers/observers (actual impartiality), while appeared impartiality of judge can be assessed by the “public”, the role played by the parties/litigation participants (appeared/perceived impartiality).

### **2. Instruments**

In order to ensure, that the research main instrument of the project - a trial questionnaire for observers and parties - was also aligned with the project goals and objectives, the desk research and in-depth interviews were used for designing/developing the questionnaire for observers and parties.

Various resources such as law school professors, EWMI staff, internet, etc. turned out to be very useful in providing the relevant materials (e.g. articles, surveys, etc.) on the theoretical research of the studied subject including but not limited to the components/indicators/elements of “the impartiality principle” (see Annex #1, Annex #2 and Annex #3). The data collected via desk research was complemented by in-depth interviews of judges, that was carried out using in-depth questionnaire (see Annex #4 and Annex #5). The judges were recruited for in-depth interviews using solicited references of project members’ acquaintances, friends, relatives, co-workers, etc. In total four judges, three female and one male, out of which 2 represented civil justice system and 2 - the criminal one, were

interviewed via zoom meetings and their responses were used for designing/developing questionnaire for observers and parties.

The improvement process of the research main instrument included one more step that was a pilot study as a result of which, the final version of the questionnaire was designed/developed (see Annex #6).

The final version of research instrument is a semi-structural questionnaire i.e. the questionnaire that includes number of close-ended and open-ended questions and consists of four main sections: (1) a general information on the case, (2) general attitudes/opinions of the parties, (3) section for observers (to study actual impartiality) and (4) section for parties (to study appeared/perceived impartiality). Even though, both two sections – section for observers and section for parties – were filled in by the observers/interviewers, the first section was used to note down their own observations (during the hearing), while another section was used to record responses of the parties received as a result of face-to-face interviews with them (upon completion of the hearing).

In order to find the relation between the satisfaction of the parties with the judgement and perceived impartiality, the brief post-trial questionnaire was designed/developed that became a last section of the research main instrument. The information about the progress of the case and the satisfaction with the judgement was collected from both parties either using such means as face-to-face interviews (in cases, where the dispute was finalized at the hearing observed) and phone interviews (in cases, where the dispute was not finalized at the hearing observed).

In addition to the main goals listed above, the project had another complimentary goal such as supporting the law students to improve their knowledge and research & analytical skills. In order to achieve this goal, the self-assessment questionnaire was designed/developed to study the level of knowledge and skills of the students. The questionnaire was sent out to the project participants at the beginning of the fieldwork to establish the baseline information and at the end of the fieldwork to obtain the final data on the level of their knowledge and skills. The results of the baseline and final surveys were put together in a form of a brief descriptive report.

### 3. Target Group

The research approach applied in the given project was atypical, that is the legal cases/the judges were studied through the opinions and perceptions of the parties with the help of the observers. Therefore, the main and primary target group of the study were parties. Thus, the selection of judges for the study was a process not intentional, but the one that took place as a result of the main target group selection.

The initial composition of the target group was 30 litigation participants (15 plaintiffs and 15 defendants) and 30 observers (students and/or newly grads of Ilia State University). Their opinions and perceptions were planned to be studied for the 15 cases/15 judges (5 civil cases, 5 administrative cases and 5 criminal cases). However, due to the challenges associated with the nature of criminal justice (e.g. emotional involvement of parties, specific procedural rules, etc.) the criminal cases were not studied. Therefore, during the fieldwork stage of the project, the planned 5 criminal cases were substituted by 6 civil and administrative cases (3 administrative cases and 3 civil cases) and 32 litigation participants (16 plaintiffs and 16 defendants) instead of planned 30 litigation participants have provided opinions and perceptions on the 16 cases/14 judges<sup>1</sup> (8 civil cases, 8 administrative cases) (see Annex #7).

### 4. Sampling and Limitations

The non-probability (non-random) sampling was applied in the quantitative part of the project. This purpose of such sampling was to meet the following inclusion criteria for the target group: (1) the parties involved in administrative and civil disputes<sup>2</sup>, (2) the parties that have litigation in the first instance court and (3) the parties, that attend hearings, where another/opposing party is present too.

The size of the sample was 32 parties, whose opinions and perceptions of the judge were studied versus opinions and perceptions of 32 observers.

The limitation of the quantitative part of the project were the non-probability sampling and small sample size. The non-probability sampling includes the potential for survey bias, while small sample size usually undermines the internal and external validity of a study, which may lead to bias.

It should be noted, that because of these limitations, the generalization of the results for the entire population of the parties might be done only with the caution, while the conclusions & key findings could be used only as a rough/general estimate of the perceptions of parties.

### 5. Data Analysis

The data collected was analysed separately by individual judges as well as for the entire sample of the parties in the aggregated way. The qualitative analysis was used to study the impartiality perceptions of individual judges using comparative analysis of evaluations provided by the observers and parties, while quantitative analysis was used

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<sup>1</sup> During the fieldwork, it turned out that in three studied cases, the judge was the same. So, eventually in total impartiality performance of 14 judges was evaluated.

<sup>2</sup> The criminal law disputes were replaced by administrative and civil cases at the later stage of the study. See “3. Target Group” and “6. Challenges/ Lessons Learned”.

to study impartiality perceptions of all judges from the sample using comparative analysis of evaluations provided by the observers and parties. The perceptions of parties (“appeared/perceived conduct of judges”) were compared to the perceptions of the observers (“actual conduct of judges”).

For the purposes of quantitate data analysis, the responses from open-ended questions were recorded, coded, and together with the responses from close-ended questions entered into the datafile of the special statistical program - SPSS (version 27.0). Upon completion of the data entry, the datafile was cleaned, processed, and analysed using various descriptive statistics such as frequency, crosstabulations, chi-square test, mean, standard deviation, etc.

## 6. Challenges/Lessons Learned

The project turned out to be more challenging than it was anticipated due to the following difficulties faced by the project team: (1) finding and obtaining consent of judges to participate in the in-depth interviews; (2) identifying the hearings with both parties present, (3) obtaining their consents of the parties to participate in the interviews; (4) confusion of the interviewers/observers with the party roles in administrative cases.

One of the main problems encountered during the fieldwork stage of the project was challenges related to criminal cases. It was next to impossible to conduct interviews with the litigation participants due to the following reasons:

- (1) either none of parties attend the court hearing or only one of the parties is present in the courtroom in majority of cases due to the extreme emotional nature of the criminal cases (murder, rape, violence, etc.), where parties have no desire to see/meet each other;
- (2) if/when both parties attend the hearing, it is difficult to approach defendant since s/he is detained in majority of cases (or if the defendant is not detained, another party is not present in the court);
- (3) if/when defendant can be approached, the observers/interviewers need permission of a prosecutor to interview him;
- (4) if/when prosecutor allows the observers/interviewers to interview defendant, they still need a permission of judge to conduct the interview;
- (5) if/when prosecutor as well as judge allow the observers/interviewers to interview defendant, they still may get refusal to be interviewed by the defendant himself/herself.

Another major challenge of the project was related to the last stage of the research – post-trial study, where only a small number of interviews i.e. less than half of the planned interviews was conducted. In particular, out of 32 interviews (16 cases) planned, only 15 interviews (7.5 cases) or 46.9% of the planned interviews were conducted at the post-hearing research stage, which was caused by the following reasons:

- (1) In some instances, the cases to be studied were not completed by the period the post-trial stage of the research took place (6 interviews/3 cases/18.8%).
- (2) A few times, respondents refused to provide the observers/interviewers with the contact information (10 interviews/5 cases/31.3%)
- (3) In some cases, the interviewed parties/respondents simply did not answer the phone calls made by the observers/interviewers (1 interview/0.5 cases/3.1%).

Most of the challenges faced by the project team described above have been successfully overcome by the project team. As a result, the important lessons were learned during the project, that are described below:

- § finding and obtaining consent of the judges to participate in the interviews: The solicited contacts with judges turned out to be effective way for finding them as well as for obtaining their consent to participate in the interviews.
- § identifying the hearings with both parties present: Identifying/finding the court hearings, where both parties were present remained the main challenge throughout the fieldwork. The letters requesting assistance from Georgian Bar Association and Legal Aid Office did not yield any results.
- § obtaining consents of the parties to participate in the interviews: In order to overcome the problem of obtaining consents of the parties to participate in the interviews, that remained the challenge throughout entire fieldwork, the interviewer/observers mainly relied on their communication/social skills, persuasion skills, etc. – approach that turned out to be more effective in comparison to other means.
- § confusion of the interviewers/observers with party roles in administrative cases: There were number of instances, when two interviewers/observers for the same administrative case identified litigation role of the state differently (one identified the state as plaintiff, while another identified the state as defendant). Most likely, according to the expectations/knowledge of the interviewers/observers, the state entity can only or mainly have a role of a defendant.
- § challenges related to the criminal cases: Based on the project experience, obtaining consent of the parties from criminal cases to participate in the interview was next to impossible as the nature of the criminal cases is very specific and differs significantly from the civil or administrative cases. Thus, the criminal cases cannot be treated the same way as the civil or administrative cases.
- § problems related to the post-trial study: If/when the project aims to study the relation between two indicators/factors (e.g. relation between perception of impartiality and satisfaction with the judgement) out of which, one

indicator/factor is studied at the initial stage of the project (e.g. perception of impartiality) and the second – at the last stage of the project (e.g. satisfaction with the judgement), such term of the project/research as 7 months, that was used for the given project, is not enough.

- § the study main instrument's size and the questions: Because of the size of the main questionnaire (big number of the questions) conducting interviews turned out to be time and energy consuming and as a result it affected the rate of participation and quality of the answers provided by some respondents (intention to finish the interview as soon as possible). Other issues related to the study main instrument were (1) open-ended questions, that yielded short and superficial answers; (2) questions from the section of the motion(s), that produced little or no insights on the studied subject; and (3) some statements describing the judge's impartiality conducts, that turned out to be ambiguous i.e. were understood in multiple ways (e.g. the judge's conduct, where s/he explains the rights to a party with less procedural knowledge, could be perceived in either ways – as impartial or as biased).
- § paired interviewers/observers as a tool of fieldwork monitoring: The paired interviewers/observers turned out to be useful for fieldwork monitoring purposes, since the inconsistencies/discrepancies in the answers of the interviewers/observers could be checked by comparing completed questionnaires of both interviewers/observers or by checking their answers with each other. This approach reduces risks of data falsification as well as provides effective tool to the person responsible for fieldwork monitoring to identify/detect inconsistencies/discrepancies between answers of the paired interviewers/observers. However, even such approach includes a risk that two paired interviewers/observers falsify the data together.
- § quality of conducted interviews/ received responses: In number of cases the answers of the respondents were obviously influenced by the views of the interviewers/observers. Another issue related to the quality of interviews was confusion of the observers/interviewers in regard to the parties of administrative cases that was described above.
- § qualitative vs quantitative research design: It seems that the main design of the study (quantitative research) alone as well as the main instrument of the study alone (the semi-structured questionnaire) can ensure neither obtaining the high-quality qualitative data (e.g. inability to receive relevant answers to the open-ended questions due to the time limitations) nor quantitative data (e.g. inability to generalize data due to the small sample).

## B. PERCEPTIONS BY CASES/JUDGES

This chapter describes the results of impartiality related perceptions of parties and observers from 16 cases and 14 judges from administrative and civil justice system by cases/judges. The study of impartiality perceptions was carried out for individual judges based on a single proceeding/case per judge, not the general performance of the judge and consisted of (1) general information on the case and (2) the individual description of judge's impartiality by the observers and parties.

The general information on the case included the following information (questions Q1- Q17):

- § name of the judge;
- § date of observation/interview;
- § dispute subject matter;
- § names of observers/interviewers, who interviewed parties;
- § presence of parties' representative/attorney;
- § gender and age of parties;
- § litigation experience of parties (number of disputes a party participated in, number of sessions attended by a party);
- § duration of current dispute and order of current session;
- § motion(s) made and granted

The individual description of judge's impartiality included description of judges' impartiality by the following criteria (BB1-BB12 and B1-B12):

- § judge's impartiality in general (questions BB1-BB6, B1-B6),
- § judge's impartiality by specific conduct(s) exhibited towards each party as well as towards the party and its representative/attorney (questions BB13-BB14, B13-B14),
- § judge's impartiality by the decision(s) made on the motion(s) of parties (questions BB7-BB12, B7-B12).

### Case 01 \_ Judge #1

A general information on the case that took place on 06-Feb-2023 and was led by the judge #1 from civil justice is given in the table below.

#	Subject: Contractual Law	PLAINTIFF	DEFENDANT
1	Party's Representative/Attorney:	yes	yes
2	Party's Gender:	male	male
3	Party's Age:	47	44
4	No. of Disputes Participated:	2	1
5	No. of Sessions Attended:	2	2
6	Duration of Current Dispute:	1year+	15 months
7	Order of Current Session:	second	second
8	Motion(s) Made:	1) to delay the hearing	no
9	Motion(s) Granted:	yes	

According to both observers as well as both participants of the litigations, the judge #1 is an impartial judge in general, who treats equally both parties also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #1 is perceived/evaluated as an impartial by the observers and parties are given below.

- § Observer/interviewer of plaintiff: "Parties were given equal time for presenting their positions. Also, the judge explained to the parties in detail terms related to the settlement upon offering them to settle.
- § Observer/interviewer of defendant: "The judge was motivated to finalize the case with the settlement to ensure that demands of both parties are equally met".
- § Party- plaintiff: "The judge took no sides of any party, illegally".
- § Party – defendant: "The judge tries to achieve settlement and also, has a good reputation. I had a feeling the judge's reputation was justified".

The conduct of judge #1 towards the parties was described by all participants and attendants of the litigation as equal by almost by all criteria. The judge's conduct was perceived by one of the observers (interviewer of defendant) as leaning towards one party over another in two instances: (1) towards plaintiff, because the judge was "agreeing to the plaintiff's terms of settlement" ("expressed own opinions") and (2) towards defendant, because the judge was "explaining to defendant the importance of settlement" ("made reprimands/gave instructions").

The decision(s) of the judge #1 on granting/denying motions of the parties were evaluated as fair and proportional by all observers and parties, since "neither party objected the motion".

### Case 02 \_ Judge #2

A general information on the case that took place on 08-Feb-2023 and was led by the judge #2 from civil justice is given in the table below.

#	Subject: Labour Law	PLAINTIFF	DEFENDANT
1	Party's Representative/Attorney:	yes	yes
2	Party's Gender:	female	female
3	Party's Age:	31	71
4	No. of Disputes Participated:	1	2
5	No. of Sessions Attended:	1	5
6	Duration of Current Dispute:	Since 5-Oct-2022	Since 11-Nov-2022
7	Order of Current Session:	third	third
8	Motion(s) Made:	no	(1) submission of a new evidence (2) submission of the same evidence in colour
9	Motion(s) Granted:		(1) yes, (2) yes

According to both observers as well as both participants of the litigations, the judge #2 is an impartial judge in general, who treats equally both parties also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #2 is perceived/evaluated as an impartial by the observers and parties are given below.

§ Observe/interviewer of plaintiff: "The judge treated the parties equally. She put equal effort in regard to both parties to make notes, clarify the issues, ask and answer questions".

§ Observer/interviewer of defendant: "Both sides were given equal time to fully present their positions".

§ Party – plaintiff: "She gave enough time to the party to express his/her opinion/finish the speech".

§ Party – defendant: "Both of us were given equal opportunities to finish presenting our positions".

The conduct of judge #2 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of the judge #2 on granting/denying motions of the parties were evaluated as fair and proportional by all observers, since "evidence is an important element of justice" and "evidence was submitted late due to the objective reasons" and by parties, since "it was done in a legitimate way e.g. parties were asked questions" and "evidence was submitted late due to the objective reasons".

### Case 03 \_ Judge #3

A general information on the case that took place on 16-Feb-2023 and was led by the judge #3 from administrative justice is given in the table below.

#	Subject: Violating traffic rules	PLAINTIFF	DEFENDANT
1	Party's Representative/Attorney:	no	yes
2	Party's Gender:	male	male
3	Party's Age:	46	50
4	No. of Disputes Participated:	Many/do not remember	3
5	No. of Sessions Attended:	Many/do not remember	2
6	Duration of Current Dispute:	1 day	2 months
7	Order of Current Session:	First	Second
8	Motion(s) Made:	submitting certificate of disability	no
9	Motion(s) Granted:	yes	-

According to both observers as well as both participants of the litigations, the judge #3 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #3 is perceived/evaluated as an impartial by the observers and parties are given below:

§ Observer/Interviewer of Plaintiff: "The judge acted impartially, but it seemed to me that he was too emotional towards the defendant".

§ Observer/Interviewer of Defendant: "The judge was impartial, but showed more emotions towards the defendant, that is worth mentioning"

§ Party – Plaintiff: "In spite of us being from the Ministry of Internal Affairs, the judge is not on our side and has requested additional documents. If the case has to be dismissed, he would dismiss it".

§ Party – Defendant: "The judge treated both parties equally"

The conduct of the judge #3 towards the parties was described by both parties as skewed towards the defendant, who was ready to accept jail sanction instead of fine that he could not pay for, because of the following reasons: (1) "[the judge provided explanations IM] to the defendant, who did not understand law by which judge could not jail him unless the lesser sanction was used first" ("expressed own opinions") and (2) "one could say from



the judge's speech, that he wanted to help [the defendant IM], but was restricted by law" ("was positive/willing to help"), while one of the observers (interviewer of defendant) described the conduct of the judge as skewed towards the defendant, because the judge "talked to the defendant in an empathic and understanding manner" ("expressed emotions/feelings"), "ignored fact that the defendant addressed him without Mr. and contradicted him" ("expressed empathy/concern/sympathy") and "explained to the defendant his rights and the law requirements" ("was positive/willing to help").

The decision(s) of the judge #3 on granting/denying motions of the parties were evaluated as fair and proportional by all observers and parties. According to the observers, "the judge evaluated objectively the health state of the defendant and the importance of the motion", while in the opinion of the parties, "the judge understood situation of the party and acted fairly".

#### Case 04 \_ Judge #4

A general information on the case that took place on 20-Feb-2023 and was led by the judge #4 from administrative justice is given in the table below.

#	Subject: Violating traffic rules	PLAINTIFF	DEFENDANT
1	Party's Representative/Attorney:	no	no
2	Party's Gender:	male	female
3	Party's Age:	30	51
4	No. of Disputes Participated:	2	1
5	No. of Sessions Attended:	3	1
6	Duration of Current Dispute:	Since 2019	One moth
7	Order of Current Session:	3	1
8	Motion(s) Made:	no	access to CCTV records
9	Motion(s) Granted:	-	yes

According to both observers as well as both participants of the litigations, the judge #4 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #4 is perceived/evaluated as an impartial by the observers and parties are given below.

- ☞ Observer/interviewer of plaintiff: "He has not showed anything (verbally or physically) to make us think he was not impartial".
- ☞ Observer/interviewer of defendant: "The procedural rules were followed".
- ☞ Party – plaintiff: "The decision was impartial even though I filed a lawsuit against the Ministry of Internal Affairs".
- ☞ Party – defendant: "He based his decisions on evidence presented".

The conduct of judge #4 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of judge #4 granting/denying motions of the parties were evaluated as fair and proportional by observers, since "the judge followed procedural rules" and „decision of granting the motion related to access CCTV records was beneficial for both parties" and parties, since "the judge followed material and procedural rules" and "was fair".

#### Case 05 \_ Judge #5

A general information on the case that took place on 21-Feb-2023 and was led by the judge #5 from administrative justice is given in the table below.

#	Subject: Tax liability	PLAINTIFF	DEFENDANT
1	Party's Representative/Attorney:	yes	no
2	Party's Gender:	male	male
3	Party's Age:	38	41
4	No. of Disputes Participated:	Many/do not remember	Many/do not remember
5	No. of Sessions Attended:	1	1
6	Duration of Current Dispute:	14 days	14 days
7	Order of Current Session:	second	First
8	Motion(s) Made:	no	postponing debt payment
9	Motion(s) Granted:	-	yes

According to some participants and attendants of the litigation, the judge #5 is an impartial judge in general, while according to other – she is not impartial judge in general. The main reasons, the judge #5 is perceived/evaluated as an impartial or partial by observers and parties are given below.



- ☹ Observer/interviewer of plaintiff: NOT impartial, because “treated the defendant with more arrogance - talked to him/her in a high-pitched voice”.
- ☹ Observer/interviewer of defendant: impartial, because “decision made by the judge was compliant with evidence and law requirements”.
- ☹ Party- plaintiff: impartial, because “judge evaluated case legitimately based on evidence”.
- ☹ Party – defendant: NOT impartial, because “immediately took a side of the state entity”.

The conduct of the judge #5 towards the parties was described by all parties as equal, while one of the observers (interviewer of plaintiff) described the conduct of the judge as skewed towards the defendant, because the judge “almost shouted at plaintiff” (“was polite/respectful”), “interrupted plaintiff rudely in number of occasions” (“expressed emotions/feelings”), “seemed unhappy with motion made by plaintiff even though granted it” (“was consistent/predictable”) and “talked to plaintiff in a high-pitched voice” (“spoke calmly/seriously”).

The decision(s) of the judge #5 on granting/denying motions of the parties were evaluated as fair and proportional by observers, since the judge “took into consideration financial problems of the defendant” and by parties, since the judge “understood situation of the defendant party”.

#### Case 06 \_ Judge #6

A general information on the case that took place on 22-Mar-2023 and was led by the judge #6 from administrative justice is given in the table below.

#	Subject: Petty Hooliganism	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	yes	yes
2	Party’s Gender:	female	male
3	Party’s Age:	51	19
4	No. of Disputes Participated:	1	3
5	No. of Sessions Attended:	2	3
6	Duration of Current Dispute:	1 month	1 month
7	Order of Current Session:	Second	Second
8	Motion(s) Made:	inviting a witness	(1) inviting a witness, (2) postponing the hearing
9	Motion(s) Granted:	yes	(1) yes, (2) yes

According to both observers as well as both participants of the litigations, the judge #6 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #6 is perceived/ evaluated as an impartial by the observers and parties are given below.

- ☹ Observer/interviewer of plaintiff: “the judge followed procedural rules”.
- ☹ Observer/interviewer of defendant: “the hearing was delayed soon, but no sign of partiality towards any party was present”.
- ☹ Party- plaintiff: “there was no sign/evidence of impartiality”.
- ☹ Party – defendant: “the hearing was delayed soon, but nothing indicated to impartiality”.

The conduct of the judge #6 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of the judge #6 granting/denying motions of the parties were evaluated as fair and proportional by observers and parties, since “the judge followed material and procedural rules” and „parties were given equal opportunities to make motions and present arguments”.

#### Case 07 \_ Judge #7

A general information on the case that took place on 22-Mar-2023 and was led by the judge #7 from civil justice is given in the table below.

#	Subject: Family Law	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	yes	yes
2	Party’s Gender:	female	male
3	Party’s Age:	47	25
4	No. of Disputes Participated:	1	Many/do not remember
5	No. of Sessions Attended:	2	Many/do not remember
6	Duration of Current Dispute:	3 years	Since 2021
7	Order of Current Session:	First	First
8	Motion(s) Made:	no	(1) identifying hair, (2) cancelling default judgement
9	Motion(s) Granted:	-	(1) yes, (2) yes

According to both observers as well as both participants of the litigations, the judge #7 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #7 is perceived/evaluated as an impartial by the observers and parties are given below.

- ☞ Observer/interviewer of plaintiff: “The judge was ready to finish the hearing with settlement, was ready to resolve the dispute based on the best interest of both parties”.
- ☞ Observer/interviewer of defendant: “The facts of unequal treatment of the parties by the judge were not present”.
- ☞ Party- plaintiff: “He knew the case and his reasoning was objective”.
- ☞ Party – defendant: “One could not see/feel it towards any party”.

The conduct of the judge #7 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of the judge #7 on granting/denying motions of the parties were evaluated as fair and proportional by observers and parties, since “neither party objected the motion” and “judge followed the law requirements”.

### Case 08 \_ Judge #8

A general information on the case that took place on 23-Mar-2023 and was led by the judge the judge #8 from civil justice is given in the table below.

#	Subject: Compensations	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	yes	yes
2	Party’s Gender:	female	female
3	Party’s Age:	33	34
4	No. of Disputes Participated:	Many/do not remember	Many/do not remember
5	No. of Sessions Attended:	Many/do not remember	Many/do not remember
6	Duration of Current Dispute:	Since 2021	Since 2021
7	Order of Current Session:	First	First
8	Motion(s) Made:	no	no
9	Motion(s) Granted:	-	-

According to both observers as well as both participants of the litigations, the judge #8 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #8 is perceived/evaluated as an impartial by the observers and parties are given below:

- ☞ Observer/interviewer of plaintiff: “He led the process objectively”.
- ☞ Observer/interviewer of defendant: “The judge treated both parties equally, any type of impartiality took no place”.
- ☞ Party- plaintiff: “The judge’s reasoning was objective”.
- ☞ Party – defendant: “I had no feeling that the judge was partial when speaking or was under someone’s pressure”.

The conduct of the judge #8 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of the judge #8 on granting/denying motions of the parties were not evaluated by observers and parties, since neither party made a motion during the hearing.

### Case 09 \_ Judge #9

A general information on the case that took place on 24-Mar-2023 and was led by the judge #9 from civil justice is given in the table below.

#	Subject: Debt/Loan repayment	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	yes	yes
2	Party’s Gender:	37	35
3	Party’s Age:	male	female
4	No. of Disputes Participated:	Many/Do not remember	Do not remember
5	No. of Sessions Attended:	some	Do not remember
6	Duration of Current Dispute:	Since 2022	Since 2022
7	Order of Current Session:	First	First
8	Motion(s) Made:	no	no
9	Motion(s) Granted:	-	-

According to both observers as well as both participants of the litigations, the judge #9 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #9 is perceived/evaluated as an impartial by the observers and parties are given below:

- ☞ Observer/interviewer of plaintiff: “The judge’s reasoning was based on the objective facts”.
- ☞ Observer/interviewer of defendant: “The judge managed process in accordance with professional ethics and procedural rules, explained to parties their rights and understood situation of a party (that could not pay fine to bank due to COVID)”.
- ☞ Party- plaintiff: “The judge led the case objectively”.
- ☞ Party – defendant: “The judge has chosen such profession and should be like this [impartial I.M.]”.

The conduct of the judge #9 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of the judge #9 on granting/denying motions of the parties were not evaluated by observers and parties, since neither party made a motion during the hearing.

#### Case 10 \_ Judge #10

A general information on the case that took place on 24-Mar-2023 and was led by the judge #10 from civil justice is given in the table below.

#	Subject: Damages	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	yes	yes
2	Party’s Gender:	female	female
3	Party’s Age:	45	30
4	No. of Disputes Participated:	1	Many
5	No. of Sessions Attended:	3	Do not remember
6	Duration of Current Dispute:	5 years	6 years
7	Order of Current Session:	4+	4+
8	Motion(s) Made:	no	no
9	Motion(s) Granted:	-	-

According to both observers as well as both participants of the litigations, the judge #10 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #10 is perceived/evaluated as an impartial by the observers and parties are given below:

- ☞ Observer/interviewer of plaintiff: “Because the judge recused himself”.
- ☞ Observer/interviewer of defendant: “The judge’s reasoning was based on objective facts”.
- ☞ Party- plaintiff: “The judge recused himself”.
- ☞ Party – defendant: “Based on my experience he was objective”.

The conduct of the judge #10 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of the judge #10 on granting/denying motions of the parties were not evaluated by observers and parties, since neither party made a motion during the hearing.

#### Case 11 \_ Judge #11

A general information on the case that took place on 31-Mar-2023 and was led by the judge #11 from administrative justice is given in the table below.

#	Subject: Student visa	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	yes	yes
2	Party’s Gender:	female	female
3	Party’s Age:	20	30
4	No. of Disputes Participated:	1	Do not remember
5	No. of Sessions Attended:	1	Do not remember
6	Duration of Current Dispute:	1 month	1 month
7	Order of Current Session:	First	First
8	Motion(s) Made:	no	no
9	Motion(s) Granted:	-	-

According to both observers as well as both participants of the litigations, the judge #11 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its

representative/attorney. The main reasons, the judge #11 is perceived/evaluated as an impartial by the observers and parties are given below:

- ☞ Observer/interviewer of plaintiff: "He led the process objectively".
- ☞ Observer/interviewer of defendant: "The judge followed procedural rules".
- ☞ Party- plaintiff: "No sign of impartiality was present".
- ☞ Party – defendant: "No conduct taken indicated to impartiality".

The conduct of the judge #11 towards the parties was described by all participants and attendants of the litigation as equal towards both parties by all criteria except of "being polite/respectful". One of the observers (interviewer of defendant) stated, that the judge #11 was leaned towards one party over another (defendant over plaintiff) because the judge "indicated to the defendant, that he dropped [something I.M.] and would make clothes dirty".

The decision(s) of the judge #11 on granting/denying motions of the parties were not evaluated by observers and parties, since neither party made a motion during the hearing.

### Case 12 \_ Judge #12

A general information on the case that took place on 13-Apr-2023 and was led by the judge #12 from civil justice is given in the table below.

#	Subject: Debt/Loan repayment	PLAINTIFF	DEFENDANT
1	Party's Representative/Attorney:	yes	no
2	Party's Gender:	female	female
3	Party's Age:	37	31
4	No. of Disputes Participated:	1	1
5	No. of Sessions Attended:	1	1
6	Duration of Current Dispute:	1 month	1 month
7	Order of Current Session:	First	First
8	Motion(s) Made:	no	no
9	Motion(s) Granted:	-	-

According to both observers as well as both participants of the litigations, the judge #12 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #12 is perceived/evaluated as an impartial by the observers and parties are given below:

- ☞ Observer/interviewer of plaintiff: "The judge was objective during the hearing".
- ☞ Observer/interviewer of defendant: "The judge actions complied with professional ethics and procedural rules".
- ☞ Party- plaintiff: "Because of objectivity".
- ☞ Party – defendant: "The judge was honest/fair".

The conduct of the judge #12 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of the judge #12 on granting/denying motions of the parties were not evaluated by observers and parties, since neither party made a motion during the hearing.

### Case 13 \_ Judge #13

A general information on the case that took place on 19-Apr-2023 and was led by the judge #13 from civil justice is given in the table below.

#	Subject: Recognition of a Support Recipient	PLAINTIFF	DEFENDANT
1	Party's Representative/Attorney:	no	yes
2	Party's Gender:	female	male
3	Party's Age:	60	53
4	No. of Disputes Participated:	Many/do not remember	1
5	No. of Sessions Attended:	Many/do not remember	2
6	Duration of Current Dispute:	1 year	1 year
7	Order of Current Session:	Second	Second
8	Motion(s) Made:	no	no
9	Motion(s) Granted:	-	-

According to both observers as well as both participants of the litigations, the judge #13 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #13 is perceived/evaluated as an impartial by the observers and parties are given below:

- ☞ Observer/interviewer of plaintiff: “The process was managed in a consistent way and complied with rules”.
- ☞ Observer/interviewer of defendant: “No such facts/circumstances of impartiality have been identified”.
- ☞ Party – plaintiff: “The judge did not interfere with additional questions”.
- ☞ Party – defendant: “The judge took into consideration the interest of a party and recommendations made by the experts”.

The conduct of the judge #13 towards the parties was described by all parties as equal by all criteria, while both observers described the conduct of the judge as leaned towards one party over another (defendant over plaintiff) in one instance, because the judge “stated that, there was no need to bother a disabled person with calls when everything could clearly be seen in the CCTV recoding” (“expressed empathy/concern/sympathy”).

The decision(s) of the judge #13 on granting/denying motions of the parties were not evaluated by observers and parties, since neither party made a motion during the hearing.

#### Case 14 \_ Judge #6

A general information on the case took place on 19-Apr-2023 and was led by the judge #6 from administrative justice is given in the table below.

#	Subject: Subject: Refugee status	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	yes	yes
2	Party’s Gender:	female	male
3	Party’s Age:	29	48
4	No. of Disputes Participated:	1	Many/do not remember
5	No. of Sessions Attended:	1	Many/do not remember
6	Duration of Current Dispute:	2 months	2 months
7	Order of Current Session:	First	First
8	Motion(s) Made:	(1) submitting statement (2) submitting report on the state of health (3) postponing the hearing	no
9	Motion(s) Granted:	(1) yes, (2) no, (3) yes	-

According to both observers as well as both participants of the litigations, the judge #6 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #6 is perceived/evaluated as an impartial by the observers and parties are given below:

- ☞ Observer/interviewer of plaintiff: “The judge seemed impartial, thoroughly studied the case and no opinion or conduct gave reason to doubt his impartiality”.
- ☞ Observer/interviewer of defendant: “The judge led the hearing with no emotions and in a neutral way”.
- ☞ Party- plaintiff: “It was a first hearing that went well and to my satisfaction. Let’s see how it goes in the future”.
- ☞ Party – defendant: “We both [parties I.M.] were given equal opportunities”.

The conduct of the judge #6 towards the parties was described by all parties as equal by all criteria, while both observers described the conduct of the judge as leaned towards one party over another (defendant over plaintiff) in one instance, because the judge “explained to the party that there is a difference between a refugee and humanitarian statuses” (“made reprimands/gave instructions”) and “instructed the party to formulate the demand more clearly” (“made reprimands/gave instructions”).

The decision(s) of the judge #6 on granting/denying motions of the parties were evaluated as fair and proportional by observers and parties as “the judge provided clear arguments and detailed explained rationale behind the decision”.

#### Case 15 \_ Judge #6

A general information on the case that took place on 19-Apr-2023 and was led by the judge #6 from administrative justice is given in the table below.

#	Subject: Approval of supervision protocol	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	no	no
2	Party’s Gender:	male	female
3	Party’s Age:	30	48
4	No. of Disputes Participated:	2	Many/do not remember
5	No. of Sessions Attended:	2	Many/do not remember
6	Duration of Current Dispute:	1 week	1 week
7	Order of Current Session:	First	First
8	Motion(s) Made:	no	no

9	Motion(s) Granted:	-	-
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According to some participants and attendants of the litigation, the judge #6 is an impartial judge in general, while according to other – she is not impartial judge in general. The main reasons, the judge #6 is perceived/evaluated as an impartial or partial by observers and parties are given in the table below:

- § Observer/interviewer of plaintiff: The judge was impartial “because the judge listened carefully to both parties, gave equal opportunities to both of them to present their arguments”.
- § Observer/interviewer of defendant: The judge was impartial “The judge listened carefully to both parties, showed equal interest to both parties”.
- § Party- plaintiff: The judge was NOT impartial because “I do not trust him, he was more on the side of my opponent”.
- § Party – defendant: The judge was impartial because “the judge calmly listened to the arguments of both parties and has not leaned to any side”.

The conduct of the judge #6 towards the parties was described by the parties as unequal i.e. leaned towards one party over another (defendant over plaintiff) in two instances, because the judge’s explanations/speech “was not clear [for plaintiff IM]” (“used simple language”) and “plaintiff was given number of reprimands” (“made reprimands/gave instructions”). Both observers described the conduct of the judge as leaned towards one party over another (defendant over plaintiff) in one instance, because the judge “made more reprimands and gave more instructions to the defendant to stop him/her from interrupting the plaintiff” (“made reprimands/gave instructions”).

The decision(s) of the judge #6 granting/denying motions of the parties were not evaluated by observers and parties, since neither party made a motion during the hearing.

#### Case 16 \_ Judge #14

A general information on the case that took place on 21-Apr-2023 and was led by the judge #14 from administrative justice is given in the table below.

#	Subject: Refugee status	PLAINTIFF	DEFENDANT
1	Party’s Representative/Attorney:	no	yes
2	Party’s Gender:	male	male
3	Party’s Age:	58	48
4	No. of Disputes Participated:	1	Many/do not remember
5	No. of Sessions Attended:	1	Many/do not remember
6	Duration of Current Dispute:	3 months	2 months
7	Order of Current Session:	First	First
8	Motion(s) Made:	postponing hearing	submitting a document
9	Motion(s) Granted:	yes	no

According to both observers as well as both participants of the litigations, the judge #14 is an impartial judge in general, who treats equally both parties and also, does not differentiate between a party and its representative/attorney. The main reasons, the judge #14 is perceived/evaluated as an impartial by the observers and parties are given below:

- § Observer/interviewer of plaintiff: The judge followed rules and it was obvious she had a desire to help both parties”.
- § Observer/interviewer of defendant: “The judge decided to postpone hearing based on legal principles”.
- § Party- plaintiff: “I believe the judge is impartial, since she showed no sign of impartiality”.
- § Party – defendant: The hearing was postponed soon, and it was fair decision”.

The conduct the judge #14 towards the parties was described by all participants and attendants of the litigation as equal by all criteria.

The decision(s) of the judge #14 on granting/denying motions of the parties were evaluated as fair and proportional by observers since “the judge provided clear arguments and detailed explained rationale behind the decision” and by parties since “by making decision to postpone hearing, the judge gave a chance to the party to find an attorney”.

#### Conclusion

Based on the analysis of the impartiality performance assessment by parties and observers, it could be concluded, that conduct of the judge that is perceived as leaned/skewed towards one party over another can have either positive or negative connotation depending on the situation/context. Therefore, it is very important to formulate the statements, to describe the judge’s conducts to be studied, to develop the indicators to be measured, etc. the way that not only describes the conducts in certain situation/context, but also specifies/determines the evaluation of conduct in the situation/context as positive, neutral, or negative.

The studied certain conducts of the judge could be perceived as leaned towards one party over another in the following cases:

- (1) Conduct "expressed own opinions":
  - § the judge agrees [or seems to agree IM] to the plaintiff's terms of settlement
  - § the judge explains the procedural regulations to a party, who does not understand law
- (2) Conduct "made reprimands/gave instructions":
  - § the judge explains to one party the importance of settlement
  - § the judge explains to a party that there is a difference between a refugee and humanitarian status
  - § the judge instructs the party to formulate the demand more clearly
  - § the judge makes more reprimands and gives more instructions to one party to stop him/her from interrupting another party
- (3) Conduct "was positive/willing to help"
  - § the judge looks/speaks like s/he wants to help, but cannot due to the legal restrictions
  - § the judge explains to the party his/her rights and the law requirements
- (4) Conduct "expressed emotions/feelings"
  - § the judge talks to one party in an empathic and understanding manner
  - § the judge interrupts a party rudely in number of occasions
- (5) Conduct "expressed empathy/concern/sympathy"
  - § the judge ignores the fact that a party addresses him without using Mr./Mrs.
  - § the judge ignores the fact that a party contradicts him/her
  - § the judge states that, there is no need to bother a disabled person with calls when everything could clearly be seen in the CCTV recoding
- (6) Conduct "was polite/respectful"
  - § the judge talks to a party with a high-pitched voice/ almost shouts at a party
- (7) Conduct "was consistent/predictable"
  - § the judge seems unhappy with motion made by a party even though grants it
- (8) Conduct "spoke calmly/seriously"
  - § the judge talks to a party in a high-pitched voice
- (9) Conduct "used simple language"
  - § the judge's explanations/speech is not clear for a party



### C. PERCEPTIONS BY SAMPLE

This chapter describes the results of impartiality related perceptions of parties and observers from 16 cases and 14 judges from administrative and civil justice system by sample. The study of impartiality perceptions carried out for a sample judges was based on an aggregated/added data and consisted of the following indicators:

- (1) general information on the cases that included such topics as dispute subject matter; number of parties with representative/attorney; gender and age of parties; litigation experience of parties (number of disputes a party participated in, number of sessions attended by a party); duration of current dispute and order of current session (questions q1- q17) (see Annex #7).
- (2) general knowledge and attitudes of the parties that included understanding of impartiality, fairness and independence of the judges; trust level towards the case judge and reasons of their trust/mistrust; awareness of/familiarity with judge’s procedural duties and responsibilities (questions a1-a7).
- (3) the judge’s general impartiality assessments that included comparative analysis of responses of the observers and parties regarding judge’s impartiality in general; judge’s impartiality in terms of equal treatment of parties and their representatives/attorneys and judge’s impartiality in terms of equal treatment of both parties as well as rationale for the responses provided (questions bb1-bb6, b1-b6)
- (4) the judge’s impartiality assessments by specific conducts that included comparative analysis of responses of the observers and parties regarding certain conducts/ behaviours of the judge exhibited towards each party and rationale of such evaluations (questions bb13-bb14, b13-b14).
- (5) the judge’s impartiality assessments by decision(s) made on the parties’ motion(s) that included comparative analysis of responses of the observers and parties regarding content and number of motion(s) made by parties, judge’s decision on these motion(s), evaluations of the judge’s decision on the motion(s) in terms of impartiality i.e. fairness and proportionality and rationale of such evaluations (questions bb7-bb12, b7-b12).
- (6) relations between the satisfaction of the parties with the judgement and impartiality that included identification of the litigation outcome, satisfaction with the litigation outcome as well as its rationale and setting the relationship between the satisfaction of the parties with the judgement and impartiality (questions c1-c3).

#### 1. Knowledge and Attitudes

General knowledge and attitudes of the parties includes such topics as understanding of impartiality, fairness and independence of judges (a1, a2, a3); trust level of the parties towards the case judge and reasons their trust/mistrust (a4, a5); awareness of judge’s procedural duties and responsibilities (a6, a7).

The frequencies of the impartiality definition (a1), the fairness definition (a2) and the independence definition (a3) provided by the parties are given in the table below.

<u>(a1) Impartiality is...</u>	<u>N</u>	<u>(%)</u>
compliance with law and procedural rules	5	15.6
equal treatment of both parties/not taking sides	4	12.5
studying evidence in detail/known case	1	3.1
giving equal opportunity to parties for arguments & evidence to be used in decision	2	6.3
is fairness (e.g. listening to both parties, consideration of citizen’s demands)	2	6.3
not having personal interest/links to case	3	9.4
making decision based only on the evidence	4	12.5
making decision based on own inner conviction/opinion free from influence (e.g. state)	2	6.3
Objectivity	6	18.8
independence/freedom from influence of parties’ emotions	2	6.3
making parties feel free	1	3.1
Total	32	100.0
<u>(a2) Fairness is...</u>	<u>N</u>	<u>(%)</u>
evaluating evidence objectively and making decision only based on evidence	4	12.5
judge's inner conviction that complies to fair, ethical and moral norms	2	6.3
considering and analyzing positions of both parties’ objectively	1	3.1
following the law, regulations and ethical norms	8	25.0
not taking any sides other than a side of an average citizen	1	3.1
making correct/legitimate judgement	9	28.1
making balanced/informed decisions	2	6.3
independence/ability to form own opinion	2	6.3
considering human factor - circumstances/situation of a party	2	6.3
not punishing the innocent	1	3.1
Total	32	100.0



(a3) Independence is...	N	(%)
being free from any influence/making unilateral decision	22	68.8
being free from any bias/prejudice	1	3.1
determinant of impartiality	1	3.1
making decision only upon listening to both parties, evaluating evidence & applying law	4	12.5
being objective/neutral/fair	4	12.5
Total	32	100.0

The definitions of judge's impartiality, fairness and independence provided by the parties can be grouped in the following clusters:

- § definitions using general descriptions that are synonymous with the term to be defined (e.g. fairness, objectivity, independence, freedom from...<sup>3</sup>, determinant of impartiality, neutrality, etc.)
- § definitions focusing on a compliance with procedural, ethical and even moral norms, rules and regulations (e.g. "compliance with law and procedural rules", "judge's inner conviction that complies to fair, ethical and moral norms", "following the law, regulations and ethical norms")
- § definitions that include judge's decision/judgement coupled with other components such as evidence, inner conviction, opinion free from influence, listening to both parties and law (e.g. "making decision based only on the evidence", "making decision based on own inner conviction/opinion free from influence (e.g. state)", "evaluating evidence objectively and making decision only based on evidence", "making correct/legitimate judgement", "making balanced/informed decisions", "making decision only upon listening to both parties, evaluating evidence & applying law", "being free from any influence/making unilateral decision")
- § definitions emphasizing importance of equal treatment of parties (e.g. "equal treatment of both parties/ not taking sides", "giving equal opportunity to parties for arguments & evidence to be used in decision", "not taking any sides other than a side of an average citizen")
- § other definitions (e.g. "studying evidence in detail/ knowing case", "not having personal interest/links to case", "considering human factor - circumstances/situation of a party" and "not punishing the innocent").

In general, the parties define "impartiality", "fairness" and "independence" correctly. "Impartiality" is mainly defined as following legal rules and equal treatment of parties, "fairness" definitions tend to have a component of decision/judgement and following legal rules, while "independence" is defined as freedom from any influence.

The descriptive statistics of trust level of the parties towards the case judge and reasons their trust/mistrust (a4, a5) are given in the table below.

(a4) Trust Level towards the Case Judge	N	(%)
Trusting the Case Judge	30	93.8
Mistrusting of the Case Judge	2	6.3
Total	32	100.0

(a5) Reasons of Trusting the Case Judge	N	(%)
Because of judge's reputation/my experience	2	6.7
There is no reason for mistrust	5	16.7
Judge's behavior gave reason for trust	1	3.3
Judge treated equally both parties	1	3.3
Judge is a professional/familiar with law, follows procedural rules	2	6.7
Judge has no personal interest/ties to a case/parties	1	3.3
Judge is objective/fair	7	23.3
Trust does not matter when the case is very strong	1	3.3
Judge knows the case	1	3.3
I think s/he is a good judge	5	16.7
Judge showed empathy/desire to help	2	6.7
Judge was calm/ allowed parties to speak	1	3.3
I trust justice system in general	1	3.3
Total	30	100.0

(a5) Reasons of Mistrusting the Case Judge	N	(%)
Because of a judge's bad reputation	1	50.0
judge's unfavorable decision for a party (Judge made decision to keep my jail bracelets)	1	50.0
Total	2	100.0

The majority of the interviewed litigation participants (93.8%) trust the judge assigned to their case.

The main reasons why the majority of the respondents trust the judge assigned to their case are very general (judge is objective/fair, good judge, etc.). However, if in addition to the high-frequency but very general answers, the

<sup>3</sup> When respondents talk about the judge's freedom, they mean freedom from influences of state, emotions of the parties, any bias/ prejudice.

contents of the other answers of the respondents are analyzed, it can be said that the main reasons for trusting the case judge are "absence of reason for distrusting the judge", "reputation of the judge/experience of the parties with the judge", "professionalism of the judge" and "the judge's expression of sympathy/willingness to help".

In cases of distrusting the case judge, the reasons of distrusting the case judge named by the parties are "judge's reputation" and "judge's unfavorable decision for a party". It should be noted that the "judge's reputation" was named among the reasons for trusting the judge as well as distrusting him/her.

Since, "judge's reputation" is named as one of the main reasons the majority of the parties trust the case judge ("absence of a reason for mistrusting the judge", "judge's reputation/experience of the parties with the judge", "professionalism of the judge", "expression of sympathy/willingness to help by the judge") as well as one of the main reasons not trusting the judge ("judge's reputation" and "judge's unfavorable decision"), it could be concluded, that the judge's reputation plays significant role in forming opinion about the judge.

The descriptive statistics of the parties' awareness of/familiarity with judge's procedural duties and responsibilities (a6, a7) are given in the table below.

<u>(a6) awareness of judge's procedural duties and responsibilities</u>	N	(%)
yes	25	78.1
no	7	21.9
Total	32	100.0
<u>(a7) Procedural Duties and Responsibilities of Judge</u>	N	(%)
reviews the case thoroughly/well	11	17.2%
gives the parties time for arguments/to present their position/to speak	7	10.9%
makes explanations and answer questions	8	12.5%
it is difficult to predict outcome of dispute or judgement content	3	4.7%
warns the parties on possible adverse consequences of dispute and proposes to settle	3	4.7%
offers parties to submit additional evidence	6	9.4%
asks if parties want to recuse a judge	11	17.2%
examines evidence submitted by the parties	4	6.3%
all duties and responsibilities	11	17.2%
Total	64	100.0%

According to majority of the parties, they know/are familiar with main duties and responsibilities of the judge. However, once the parties are asked to name duties and responsibilities of the judge, it seems they cannot do it independently and effortlessly. So, in most of the cases, they keep saying "I know all duties and responsibilities", which could be considered as an effort to answering the question without answering it. If this answer is considered together with the fact, that against the instructions given to the observers/interviewers in charge<sup>4</sup>, they read out loud to the respondents the procedural duties and responsibilities of the judge because the respondents found it difficult to answer this question without an aid, it may be concluded that the parties are generally not familiar with or do not remember well the procedural duties and responsibilities of the judge.

From the duties and responsibilities of the judge read to the respondents by the observers/interviewers, the parties the best of all know or remember such duties and responsibilities of the judge as "reviewing the case thoroughly/well" and "asking the parties if they want to recuse a judge".

Based on the above results, it can be concluded that the parties are generally not familiar with or do not remember the procedural duties and responsibilities of the judge. Out of those procedural duties and responsibilities of the judge, the respondents know or remember, the most frequently named ones were "reviewing the case thoroughly/well" and "asking the parties whether they want to recuse the judge or not."

## 2. Impartiality in general

Study of impartiality in general included the following evaluations by observers/litigation attendants and parties/litigation participants:

- § evaluation of the case judge's impartiality in general (bb1-b1) and rationale for evaluating the case judge as impartial or partial (bb2-b2);
- § evaluation of the case judge's impartiality in terms of equal treatment of parties and their representatives/attorneys (bb3-b3) and rationale for evaluating the case judge's treatment of parties and their representatives/attorneys as impartial or partial (bb4-b4);
- § evaluation of the case judge's impartiality in terms of equal treatment of both parties (bb5-b5) and rationale for evaluating the case judge's treatment of both parties as impartial or partial (bb6-b6).

<sup>4</sup> NOTE: The observers/interviewers were instructed not to read out loud the list of judges' duties and responsibilities to the respondents and also, they had such instruction written in the questionnaires.

The frequencies of the evaluation of the case judge's impartiality in general and its rationale (bb1-bb2, b1-b2) are given in the table below.

	Observers		Parties	
	N	(%)	N	(%)
<b>(bb1, b1) Judge is impartial/partial in general</b>				
impartial	31	96.9	30	93.8
not impartial/partial	1	3.1	2	6.3
Total (p=0.793 > 0.05)	32	100.0	32	100.0
<b>(bb2, b2) reasons the judge was perceived as IMPARTIAL</b>				
treated parties equally (questions asked, answers provided, clarifications made, equal time for arguments)	6	19.4	5	16.7
provided explanations to parties (rights, settlement, etc.)	1	3.2	-	-
was motivated for parties to settle/acted from the best interest of the parties (e.g. offered them to settle)	3	9.7	1	3.3
was more considerate of a weaker party (showed more emotions, explained rights, etc.)	2	6.5	-	-
followed law requirements, procedural rules & ethical norms	8	25.8	1	3.3
showed no sign of partiality	4	12.9	10	33.3
was objective (discussed facts, evaluated evidence)/ was neutral/showed no emotions	6	19.3	7	23.3
recused himself/herself	1	3.2	1	3.3
let parties speak and finish their speeches	-	-	1	3.3
has a good reputation	-	-	1	3.3
did not favor state entity (e.g. asked for additional evidence)	-	-	2	6.7
chosen profession where s/he should be impartial	-	-	1	3.3
Total (p=0.004 < 0.05)	31	100.0	30	100.0
<b>(bb2, b2) reasons the judge was perceived as PARTIAL</b>				
treated one party with more arrogance/talked in a high-pitched voice	1	100.0	-	-
took side of another party/of the state entity	-	-	2	100.0
Total	1	100.0	2	100.0

In majority of the studied cases, the case judges generally are considered as impartial by the observers as well as the parties (96.9% and 93.8%, respectively).

When naming the reasons for perceiving a judge to be impartial, observers and parties name with almost the same frequency such indicators as "treated the parties equally" (19.4% and 16.7%, respectively) and "was objective/neutral" (19.3% and 23.3%, respectively).

As for the difference between the responses of observers and parties, while for the observers the main indicator of judge's general impartiality is "compliance with the requirements of the law, procedural rules and ethical norms", for parties such an indicator is "absence of impartiality signs" (25.8% and 33.3% respectively). The perceptions of observers and parties also differ by several other indicators of general impartiality that are indicators named by parties and not by observers (for example, "letting parties speak and finish their speeches", "the reputation of judge" and "not favouring state entity" (3.3%, 3.3% and 6.7%, respectively)) and/or the indicators named by observers and not (or very rarely) named by the parties (for example, "provided explanations to the parties", "was motivated for the parties to settle/acted in the best interests of the parties" and "was more attentive to the weaker party" ( 3.2%, 9.7% and 6.5%)).

As for the partiality, the judge is perceived as partial by the observers if s/he raises his voice and as the one by the parties if s/he seems taking side of the party represented by the state/government (100.0% and 100.0%, respectively).

From the results presented above, it can be concluded that (1) compared to observers, parties are more likely to use general terms to describe the judge's impartiality; (2) while evaluating impartiality of the judges, (a) such indicators as "provided clarifications to the parties", "was motivated to settle the parties/acted in the best interests of the parties" and "was more attentive to the weaker party" are less important to the parties than observers; (b) while such indicators as "giving the parties a means to speak and finish their speech", "reputation of the judge" and "absence of favouritism towards the state entity" are more important to the parties than observers<sup>5</sup> and (3) in some cases, the parties tolerate irritated and high-pitched voice of the judge when speaking to the parties.

<sup>5</sup> Out of these three factors, two last factors are especially important to the parties, since (2) the "judge's reputation" is cited by the parties not only as a reason for perceiving the judge as impartial, but also as a reason for perceiving the judge as reliable and (3) the "absence of benevolence towards the state entity", because the parties perceive the judge as impartial if/when s/he treats the state institution strictly and partial if/when s/he treats the party that represents the state loyally.

The descriptive statistics of the evaluation of the judge impartiality in terms of equal treatment of parties and their attorneys (bb3, b3) and reasons of the judge was perceived partial in terms of treatment of the parties and their attorneys (bb4, b4) as well as the evaluation of the judge's impartiality in terms of treatment of both parties (bb5, b5) and reasons of the judge was perceived partial in terms of treatment of both parties (bb6, b6) are given in the table below.

	Observers		Parties	
	N	(%)	N	(%)
<b>(bb3, b3) treatment of parties and their attorneys by judge</b>				
The judge treated better plaintiff than his/her attorney	0	0.0	1	3.1
The judge treated better attorney of plaintiff than plaintiff	0	0.0	0	0.0
The judge treated better defendant than his/her attorney	0	0.0	0	0.0
The judge treated better attorney of defendant than defendant	0	0.0	0	0.0
The judge treated equally plaintiff and his/her attorney	15	46.9	11	34.4
The judge treated equally defendant and his/her attorney	5	15.6	3	9.4
The party/parties have no attorneys	3	9.4	5	15.6
The judge treated equally both parties and both attorneys	9	28.1	12	37.5
Total (p=0.001 < 0.05)	32	100.0	32	100.0
<b>(bb4, b4) reasons the judge was perceived as PARTIAL</b>				
Judge did not give him (plaintiff I.M.) an additional time to settle	-	-	1	100.0
Total	-	-	1	100.0
<b>(bb5, b5) treatment of parties by judge</b>				
The judge treated plaintiff better than defendant	1	3.1	1	3.1
The judge treated defendant better than plaintiff	0	0.0	0	0.0
The judge treated both parties equally	31	96.9	31	96.9
Total	32	100.0	32	100.0
<b>(bb6, b6) reasons the judge was perceived as PARTIAL</b>				
was irritated when talking to a party/raised the voice	1	100.0	-	-
listened to plaintiff more carefully/considered more	-	-	1	100.0
Total	1	100.0	1	100.0

The observers and parties agree that the judge treats the parties and their attorneys equally/similarly (100.0% and 96.9%, respectively). In one case, when judge's treatment towards the party and his/her representative/lawyer was evaluated as partial by a party, the reason of such evaluation was "judge not giving him (plaintiff I.M.) an additional time to settle". The observers and parties also agree that treatment of both parties - plaintiff and defendant - by the judge was equal/similar (96.9% and 96.9%, respectively). When talking about the reasons the case judge's is perceived as partial in terms of unequal treatment of the parties, the observers describe such reasons as "irritation and high voice pitch", while descriptions of partiality by the parties include "listening to another party more carefully" (100.0% and 100.0%, respectively).

Based on the above results, it can be concluded that by perception of observers and parties, the judge treats equally/similarly the parties and their attorneys as well as both parties.

### 3. Impartial conduct

Study of impartial conduct included evaluations of certain specific impartial conducts/ behaviours of the judge towards both parties by observers and parties (bb13, b13) and rationale of such evaluations (bb14, b14).

The certain specific behaviours/conducts of the judge that took place during the hearing in the opinion of observers and parties (bb13 and b13, answers = 1, 2, 3) are given in the table below.

	Observers		Parties		difference	significance
"took place" in general	N	(%)	N	(%)	(%)	p-value
was polite/respectful	32	100.0	32	100.0	0.0	-
was focused/listened carefully	31	96.9	31	96.9	0.0	0.966
used simple language	30	93.8	31	96.9	-3.1	0.001*
expressed own opinions	11	34.4	9	28.1	6.3	0.001*
expressed emotions/feelings	7	21.9	1	3.1	18.8	0.865
expressed empathy/concern/sympathy	9	28.2	7	21.9	6.3	0.001*
was consistent/predictable	11	34.4	18	56.3	-21.9	0.336
was positive/willing to help	15	46.9	20	62.5	-15.6	0.001*
spoke calmly/seriously	32	100.0	29	90.6	9.4	0.639
made reprimands/gave instructions	7	21.9	2	6.2	15.7	0.001*

The occurrence of the judge's conducts such as "was polite/respectful" and "was focused/listened carefully" had been perceived identically by the observers and the parties (100.0% and 96.9%, respectively).

The perceptions of the observers and the parties mostly differed<sup>6</sup> in regard of such specific conducts as "expressed emotions/feelings" (21.9% and 3.1%, respectively), "was consistent/predictable" (34.4% and 56.3%, respectively), "was positive/willing to help" (46.9% and 62.5%, respectively) and "made reprimands/gave instructions" (21.9% and 6.2%, respectively).

It seems that when/where observers note emotions/feelings and reprimands/ instructions made by judge, parties less notice these conducts, while when/where parties notice judge's consistency/predictability and positivity/willingness to help, less observers notice these behaviours.

Based on the above results, and considering that people are more likely notice/see what is important for them, it can be concluded that out of the various specific conducts related to a judge's impartiality, the most important conducts for the parties are "judge consistency/predictability" and "positivity/willingness to help".

The certain specific conducts of the judge that occurred during the hearing of the case and that were biased towards one side or the other according to observers and parties<sup>7</sup> (bb13 and b13, responses = 1, 2, 3) are shown in the table below.

<u>"took place" towards one of the parties</u>	Observers		Parties		difference	significance
	<u>N</u>	<u>(%)</u>	<u>N</u>	<u>(%)</u>	<u>(%)</u>	<u>p-value</u>
was polite/respectful	2	6.3	0	0.0	6.3	-
was focused/listened carefully	0	0.0	1	3.2	-3.2	-
used simple language	0	0.0	1	3.2	-3.2	-
expressed own opinions	1	9.1	1	11.1	-2.0	-
expressed emotions/feelings	2	28.6	0	0.0	28.6	-
expressed empathy/concern/sympathy	3	33.3	0	0.0	33.3	-
was consistent/predictable	1	9.1	0	0.0	9.1	-
was positive/willing to help	1	6.7	2	10.0	-3.3	0.001*
spoke calmly/seriously	2	6.3	0	0.0	6.3	-
made reprimands/gave instructions	5	71.5	1	50.0	21.5	0.157

The perceptions of observers and parties of specific conducts of the judge perceived as skewed towards one party over another mostly differ regarding such specific conducts of the judge as "expressed emotions/feelings" (28.6% and 0.0%, respectively), "expressed empathy/concern/sympathy" (33.3% and 0.0%, respectively), and "made reprimands/gave instructions" (71.5% and 50.0%, respectively). It seems, that these conducts are perceived as less neutral by the observers and more neutral by the parties.

The perceptions of observers and parties also differ by several other indicators of general impartiality that are indicators named by parties and not by observers (for example, "was focused/listened carefully" and "used simple language" (3.2% and 3.2%, respectively)) and/or the indicators named by observers and not (or very rarely) named by the parties (for example, "was consistent/predictable" and "spoke calmly/seriously" (9.1% and 6.3%)).

From the results presented above, and considering that people are more likely notice/see what is important for them, it may be concluded, that out of the judge's conducts that parties perceive as more skewed towards one of the parties – was focused/listened carefully, used simple language, expressed own opinions, was positive/willing to help, made reprimands/gave instructions – the most important conducts for parties are "was focused/listened carefully" and "used simple language", since they are perceived differently by the observers (observers do not notice them at all).

<sup>6</sup> "the most difference" is specified as difference between occurrences of observes' and parties' responses with frequencies of over 10%.

<sup>7</sup> The certain specific behaviours/conducts of the judge that took place during the hearing in the opinion of observers and parties were described in terms of "treating both parties equally" (answer = 2), "the certain conduct skewed more towards plaintiff" (answer = 1) and "the certain conduct skewed more towards defendant" (answer = 3).

The reasons certain specific behaviours/conducts of the judge that took place during the hearing were “skewed towards one party over another” in the opinions of/ according to the perceptions of the observers and the parties (bb14 and b14) are given in the table below.

	Observers		Parties	
	N	(%)	N	(%)
showed content with settlement terms suggested by a party	1	5.9	-	-
explained to a party importance of settlement	1	5.9	-	-
took efforts to explain rights/law requirements to a party without losing patience	3	17.6	1	16.7
focused on positive (ignored addressing without Mr. and talking back)	2	11.8	-	-
spoke in a high-pitched voice/almost shouted to a party	2	11.8	-	-
interrupted a party’s speech	1	5.9	1	16.7
seemed unhappy when granting motion of a party	1	5.9	-	-
told a party about dropping something that could get messy	1	5.9	-	-
denied additional evidence to save old & disabled man from hassle	2	11.8	-	-
requested a party to formulate demand more clearly	1	5.9	-	-
stopped one party from interrupting another	2	11.8	1	16.7
seemed willing to help, but could not due to legal requirements	-	-	1	16.7
spoke/explained not clearly for one party (me)	-	-	1	16.7
gave less time to one party than to other	-	-	1	16.7
<b>Total</b>	<b>17</b>	<b>100.0</b>	<b>6</b>	<b>100.0</b>

In a few cases, when explaining the rationale for evaluating the judge’s conduct as “skewed towards one party”, the observers use negative language such as “spoke in a high-pitched voice/almost shouted to a party”, “interrupted a party’s speech” and “seemed unhappy when granting motion of a party”. However, in the most cases, the observers use positive or neutral descriptions/explanations. For example:

- § showed content with settlement terms suggested by a party (positive/ neutral)
- § explained to a party importance of settlement (positive)
- § took efforts to explain rights/law requirements to a party without losing patience (positive)
- § focused on positive (ignored addressing without Mr. and talking back) (positive)
- § told a party about dropping something that could get messy (neutral)
- § denied additional evidence to save old & disabled man from hassle (positive)
- § requested a party to formulate demand more clearly (neutral)
- § stopped one party from interrupting another (positive)

In difference with observers, when parties explain the rationale for evaluating the judge’s conduct as “skewed towards one party”, they use more negative language such as “spoke/explained not clearly for one party (me)”, “gave less time to one party than to other” and “interrupted a party’s speech”.

Based on the results presented above, it can be concluded that in comparison to the observers, the parties perceive sensitively any behaviour of the judge, which can be interpreted in various ways and such behaviours are "spoke/explained vaguely to one side (me)", "allocated less time to one side compared to the other" and "interrupted the speech of the side".

#### 4. Impartial decision

Study of impartial decision made by the judge included the parties that made motion(s) (bb7-b7); number of motion(s) made by each party (bb8-b8); content of motion(s) made by each party (bb9 -b9); judge’s decision on the motion(s) made by the parties (bb10-b10); evaluations of the judge’s decision on the motion(s) made by the parties in terms of impartiality i.e. fairness and proportionality (bb11-b11) and providing the rationale of evaluating the judge’s decision on the motion(s) made by the parties in terms of impartiality i.e. fairness and proportionality (bb12-b12).

It should be noted, that upon analysis of the data for the part of the impartial decision, it turned out that responses of the observers and the parties differed, which could be attributed either to the observers not paying enough attention to the happenings at the hearing or to the parties not recalling properly the events of the hearing due to the emotions, stress or some other reasons. Because of this, the results of study for those parts of the impartial decision that reflected objective reality (specifically, the parties that made motion(s) (bb7-b7); number of motion(s) made by each party (bb8-b8); content of motion(s) made by each party (bb9 -b9)) were corrected and presented together for the observers and the parties in this chapter.

The descriptive statistics of the parties that made the motion(s) during the case hearing (bb7, b7) and number of the motion(s) made by plaintiff and defendant (bb8-b8) are given in the table below.

<u>(bb7, b7) The parties that made motion(s)</u>	N	(%)	<u>(bb8, b8) Number of motion(s)</u>	Plaintiff	Defendant
Plaintiff made motion(s), defendant did not	10	31.3	Valid	14	8
Defendant made motion(s), plaintiff did not	4	12.5	Mean	1.29	1.63
Both parties made motion(s)	4	12.5	Median	1.00	1.00
None of the parties' made motion(s)	14	43.8	Std. deviation	.469	.916
Total	32	100.0	Min	1	1
			Max	2	3

The motions were made in over a half of the studied cases (56.3%) by the parties and each party – plaintiff and defendant – made on average 1-2 motions per hearing (1.29 and 1.63, respectively).

The content and frequencies of the motion(s) made by both parties during the case hearing (bb9, b9) are given in the table below.

	Plaintiff		Defendant	
<u>(bb9, b9) motion(s) made by parties</u>	<u>N</u>	<u>(%)</u>	<u>N</u>	<u>(%)</u>
postponing the hearing/debt payment	5	29.4	2	14.3
submitting additional/new evidence	4	23.5	4	28.6
submitting same evidence in new form (e.g. in color)	2	11.8	0	0.0
finalizing court docs/requesting help to obtain evidence	2	11.8	0	0.0
accessing CCTV recordings	0	0.0	2	14.3
interviewing witness	2	11.8	2	14.3
naming the heir	0	0.0	2	14.3
cancelling default judgement	2	11.8	2	14.3
Total	17	100.0	14	100.0
<u>(bb10, b10) motion(s) made by parties</u>	<u>N</u>	<u>(%)</u>	<u>N</u>	<u>(%)</u>
Motion(s) was granted	17	100.0	14	100.0
Motion(s) was not granted	0	0.0	0	0.0
Total	17	100.0	14	100.0

Motions for “Submitting additional/new evidence” and “postponing the hearing/debt payment” were made by the parties. All motions made by the parties were granted by the case judge.

The frequencies of the evaluations of judge’s decision on granting/denying the motion(s) made by parties in terms of proportionality/fairness (bb11, b11) and reasons judge’s decision is perceived as proportional/ fair (bb12, b12) are given in the table below.

	Observers		Parties	
<u>(bb11, b11) Evaluations of judge’s decision</u>	<u>N</u>	<u>(%)</u>	<u>N</u>	<u>(%)</u>
decision was proportional/fair	18	100.0	18	100.0
decision was not proportional/fair	0	0.0	0	0.0
Total				
<u>(bb12, b12) Reasons judge’s decision is evaluated as proportional/fair</u>	<u>N</u>	<u>(%)</u>	<u>N</u>	<u>(%)</u>
Neither party objected the motion	3	16.7	2	11.1
Judge followed law requirements (e.g. asked questions to parties)	1	5.6	3	16.7
Judge took a matter seriously	1	5.6	0	0.0
Additional evidence was submitted late due to objective reasons	1	5.6	0	0.0
Evidence in new form (color) was more graphic	0	0.0	1	5.6
Judge understood situation of a party/was objective	4	22.2	3	16.7
Judge followed material and procedural law	2	11.1	2	11.1
Judge’s decision was beneficial for both parties (e.g. CCTV records)	1	5.6	0	0.0
Judge showed no sign of unfairness/impartiality	0	0.0	1	5.6
Judge treated both parties equally	1	5.6	2	11.1
Judge justified his/her decision	4	22.2	4	22.2
Total	18	100.0	18	100.0

In all studied cases, the judge’s decision on the motion(s) made by the parties was considered as fair/proportional (100.0%). The main reasons why observers and parties evaluate the judge's decision as fair/proportionate are "Judge understood situation of a party /was objective" (22.2% and 16.7%, respectively) and „Judge justified his/her decision” (22,2% and 22,2%, respectively). No significant differences were found between reasons of judge’s decision evaluated as fair/proportional provided by the observers and the parties.



Based on the results presented above, it can be concluded that the judges are perceived as impartial in regard to all aspects of the motion(s) made by parties.

### 5. Satisfaction and Impartiality

The post-trial study included on one hand, identifying the outcome of the legal dispute (c1); measuring satisfaction level of a party with the outcome of the legal dispute (c2) as well as rationale for satisfaction level of a party with the outcome of the legal dispute (c3) and on another hand, identifying the relation between the satisfaction of the parties with the judgement and impartiality of the judge (c2  $\diamond$  b1).

The frequencies describing the outcome of the studied legal dispute (c1) and the satisfaction of the parties with the judgement (c2) are given in the table below.

<u>the outcome of the case (c1)</u>	<u>N</u>	<u>(%)</u>	<u>the satisfaction of the parties with the judgement (c2)</u>	<u>N</u>	<u>(%)</u>
The plaintiff's claim has been granted fully	10	66.7	absolutely dissatisfied	1	6.7
The plaintiff's claim has been granted partially	1	6.7	dissatisfied	1	6.7
The plaintiff's claim has been denied	0	0.0	neither dissatisfied nor satisfied	0	0.0
The parties agreed to settle	4	26.7	satisfied	5	33.3
Total	15	100.0	absolutely satisfied	8	53.3
			Total	15	100.0

In majority of the studied legal disputes, the outcome of the legal dispute was that the plaintiff's claim was granted either "fully" or "partially" (66.7% and 6.7%, respectively) . Majority of the litigants are either "very satisfied" or "satisfied" with the court judgement (86.6%).

The frequencies of reasons for the parties' satisfaction with the judgement (c3) are given in the table below.

<u>(c3) Reasons of satisfaction with judgement</u>	<u>N</u>	<u>(%)</u>
I am happy with terms of the settlement	3	23.1
Judge studied/knew the case well	2	15.4
Judgement was fair (disabled person got a fine instead of being jailed)	1	7.7
Judge made judgement based on evidence	2	15.4
Because judgement was made in my favor	1	7.7
Judgments was objective and legitimate	3	23.1
Judge considered my position & took my situation into account	1	7.7
Total	13	100.0
<u>(c3) Reasons of dissatisfaction with judgement</u>	<u>N</u>	<u>(%)</u>
Because the judgement was made in favor of the other party	1	50.0
Because the judgement was not made in my favor (the judge left the handcuffs for the maximum possible term)	1	50.0
Total	2	100.0

The main reasons why the majority of the parties are satisfied with the judgement are "the settlement terms" and "objectivity and legitimacy of the judgement" followed by "the judge's knowledge of the case" and "the judgement being made based on the evidence" (23.1%, 23.1%, 15.4 and 15.4%, respectively).

The crosstabulations of the relation found between the satisfaction of the parties with the judgement and impartiality of the judge (c2  $\diamond$  b1) are given in the table below.

<u>(c2) level of satisfaction with the judgement</u>	<u>(b1) Impartiality of the judge</u>				<u>Total</u>	
	<u>The judge was impartial</u>	<u>The judge was not impartial</u>	<u>N</u>	<u>(%)</u>	<u>N</u>	<u>(%)</u>
absolutely dissatisfied with the judgement	0	100.0	1	100.0	1	100.0
dissatisfied with the judgement	1	7.1	0	0.0	1	7.1
satisfied with the judgement	5	35.7	0	0.0	5	35.7
absolutely satisfied with the judgement	8	57.1	0	0.0	8	57.1
Total (p-value = 0.002)	14	100.0	1	100.0	15	100.0

Those respondents who consider judge as impartial are "absolutely satisfied" or "satisfied" with the court decision (57.1% and 35.7%, respectively), while those respondents, according to which the judge is not impartial, are "absolutely dissatisfied" with the court decision (100.0%).

Based on the results presented above, it can be concluded that the level of satisfaction with the judicial decision is related to the perception of the judge as impartial or biased i.e. the parties that consider a judge impartial prior to the judgement are more satisfied with the outcome of the dispute, than the parties that consider a judge biased.



#### D. FINDINGS & RECOMMENDATIONS

This chapter describes conclusions and findings as well as recommendations made/developed on basis of the study results analysis.

§ For the purpose of replicating the present project/research or implementing similar projects/research, it is recommended:

to use solicited contacts for finding and obtaining consent of the judges to participate in the interviews, but continue looking for other/additional effective approaches too.

to find an effective approach for identifying the hearings with both parties present prior to launching the project/research (e.g. prepared strategy of actions for the interviewers/observers, identified partner organization providing information on hearings that meet selection criteria, etc.).

to assist students in improving their skills useful for obtaining consents of the parties to participate in the interviews (e.g. inviting professional(s) from relevant fields – psychologists/ coaches – to train the students on various skills) as well as to identify other effective approaches for reaching the goal of obtaining consents of the parties to participate in the interviews (e.g. incentives for parties, etc.).

to ensure that interviewers/observers have enough knowledge/understanding of civil and administrative procedural law as well as differences between procedural law of civil and administrative justice (e.g. inviting practitioner(s) from the relevant field – civil and administrative process lawyers – to train the youngsters on what to expect from different types of cases).

to exclude criminal cases from the target group of projects/studies that are similar to the given project/study and to consider that, if such criminal cases are still happen to be included in the target group, different approach to be developed/used for such cases.

to make sure that duration of the projects/studies that are similar to the given project/study is planned for over 7 months time period.

to improve the study main instrument by taking the following actions: (1) the questionnaire should be kept as short as possible (with a very few questions); (2) the questionnaire should consist of only close-ended questions and the following two sections: (i) section for the interviewers/observers and (ii) section for the parties; (3) the questions from the section of the motion(s) should be omitted; (4) the statements describing the judge's impartiality conducts should be formulated in a way that ensures their unequivocal perception i.e. the statements should clearly indicate if the judge's skewed conduct is carried out in a way to violate the balance between parties (negative) or restore it (positive).

to use paired interviewers/observers as a tool of fieldwork monitoring combined with other additional system of fieldwork monitoring that would ensure the quality and reliability of work done by the pair of interviewers/observers. For example, making random phone calls to the respondents to ensure if all interviews were indeed conducted and asking them random questions from the questionnaire to ensure if all questions were indeed asked.

to introduce such interventions that would ensure the thorough preparation of the interviewers/observers for the interviews (e.g. (1) inviting professional(s) from relevant fields – psychologists/sociologists – to train the students in the research methods and techniques, the ways of avoiding the unconscious influence of the interviewers' opinions on the respondents' answers, importance of objective reflection of the responses received from the respondents, etc.; (2) adding the research methodology as a selective subject in the curriculum of the law school; and so on).

to apply a qualitative as well as quantitative research designs in the projects/studies that are similar to the given project/study in either of the following two ways: (1) together as separate stages of a single project/study or (2) separately as two independent, but related projects/studies. The quantitative research (particularly the one with probability sampling and bigger sample size) will ensure internal and external validity of a study and will allow to generalize the results obtained, while the qualitative research (particularly, in-depth interviews and focus groups) will ensure better understanding of the behaviors of the judge(s) from the point of view of the litigant(s).

§ In a vast majority of the studied cases, both the observers and the parties evaluate the judges as impartial in terms of treating equally both parties, not differentiating between parties and their representatives/ attorneys, making fair and proportional decisions on motion(s) made by both parties as well as exhibiting the same certain conducts towards both parties.

§ Even though, the parties define impartiality, fairness, and independence correctly in most cases (saying that "impartiality" is equal treatment of parties, "fairness" is related to a decision/judgement, while "independence" is a freedom from any influence), the parties rarely use such terms as "open-mindedness" and "absence of bias/prejudice" when defining impartiality, fairness, and independence of the judge. Since, these terms were frequently and actively used by interviewed judges to describe the attributes of the judge and the parties are not

familiar or less familiar with the concepts of “open-mindedness” and “absence of bias/prejudice”, it could be concluded, that the parties are not familiar or less familiar with the attributes (e.g. “open-mindedness”, “absence of bias/prejudice”, etc.) that the judge is supposed to have/hold.

- **Recommendation #1:** It could be useful to introduce educational programs targeting general population that provides information/knowledge on the attributes/characteristics the judge should have/hold.

§ Since, for the majority of the parties “judge’s reputation” is one of the main reasons they trust the case judge as well as one of the main reasons they do not trust the judge, it could be concluded, that the judge’s reputation plays significant role in forming the opinion of the judge (negative or positive opinion). At the same time, the parties who name their own “experience” as a reason of trusting judge, name this reason only when talking about the trust not distrust (positive opinion). Thus, it could be concluded, that in case, the source of the formed opinion of the judge is reputation, the opinion of parties on the judge is positive or negative (trusting or mistrusting), while in cases when the opinion is formed from the previous experience, such opinions are mostly positive (trusting).

- **Recommendation #2:** It would be interesting to design a study to find out how the reputation of the judges are formed, is the reputation of the judges build on reality, perception or both, etc. for the parties that form opinion on the judge based on the experience of other people i.e. word of mouth as a source (second-hand experience) versus for the parties that form opinion on the judge based on the previous cases/hearings i.e. their own experience as a source (first-hand experience).
- NOTE: Since, the “reputation of the judge” determines not only trust towards the judge, but also perception of his/her impartiality, it is indeed important to study this subject further (see recommendation #2).

§ Even though most of the respondents claim knowing well procedural duties and responsibilities of the judge, it does not seem to be the case. On one hand, when the parties asked to name the main duties and responsibilities of the judge, the answers provided most frequently are very general (“I am familiar with all duties and responsibilities”), while on another hand, the respondents find it difficult to name the judges’ duties and responsibilities without a help (reading the answers). Out of the judges’ duties and responsibilities that the parties know or remember, the most frequently mentioned are “reviewing the case thoroughly/well” and “asking the parties whether they want to recuse the judge or not”. Thus, the parties are generally not familiar with or do not remember the procedural duties and responsibilities of the judge. Out of those procedural duties and responsibilities of the judge, the respondents know or remember, the most frequently named ones are “reviewing the case thoroughly/well” and “asking the parties whether they want to recuse the judge or not.”

- **Recommendation #3:** It could be useful to introduce educational programs targeting general population that provides information/knowledge on the procedural duties and responsibilities of the judge.

§ As it was already mentioned, when the parties name duties and responsibilities of the judge, one of the most frequent answers is “reviewing the case thoroughly/well”. If it is taken into consideration, that (1) the definitions of impartiality, fairness and independence also includes “studying evidence in detail/knowing case” (see “other definitions”) and (2) one of the main reasons why the majority of the parties are satisfied with the judgement is “the judge’s knowledge of the case”, it could be concluded, that knowing the case details well by the judge is very important for the parties.

- **Recommendation #4:** It is recommended that along with actually knowing the case well, the judge does her/his best to demonstrate at the hearing this knowledge.

§ Since for the observers the main indicator of judge’s impartiality in general is “following law requirements, procedural rules & ethical norms”, while for the parties such indicator is “showing no sign of partiality”, it could be concluded, that for describing judge’s impartiality in general, observers use more specific, observable, and measurable indicators than parties - this could be attributed to absence of the standard the parties could use/refer to for more objective perception of the judge’s impartiality conduct.

- **Recommendation #5:** It could be useful to introduce educational programs targeting general population that provides information/knowledge on the standard of the judge.

§ The parties describe impartial judge as the judge, who has “good reputation”, “letting the parties speak and finish their speeches” and “does not favor strong party (e.g. state) (asks for additional evidence)” in difference with observers, who do not use such descriptions. Because of it, such factors as “good reputation”, “letting parties speak and finish their speeches” and “not favoring party representing state” must be very important for parties in defining impartiality of the judge.

- **Recommendation #6:** It is very important to ensure that parties are given opportunity to express fully their positions/opinions and finish their speeches, and when/if such provision is not possible (e.g. time

restrictions, keeping order, etc.), the remedy to be used (e.g. explaining to the party reasons s/he is not given time to speak or finish the speech).

- NOTE: Since, the “reputation of the judge” determines not only trust towards the judge, but also perception of his/her impartiality, it is indeed important to study this subject further (see recommendation #2). As for the issue of “not favoring strong party (e.g. state)” it is discussed below (see recommendation #7.2).

§ The parties describe partial judge as the judge, who seems “taking side of the party represented by the state/government” and “listens to another party more carefully”. It seems that for the parties the cases, where one party is representing the state are more sensitive due to the nature of a state and the way the judge treats a state party determines the evaluation of the judge’s impartiality by the parties. In such cases, the judge is considered as impartial if s/he treats a party represented by the state more strictly (e.g. asks for additional evidence) and is considered as, more precisely “seems”, partial if such strict treatment is not present. As for the description of the judge as partial due to him/her “listening to another party more carefully”, since observers do not use this description at all, it could be assumed that the factor of “listening equally carefully to both parties” must be very important for parties in defining impartiality of the judge.

- **Recommendation #7.1:** Since it is very important to ensure that parties are not only actually listened equally by the judge, but also are able to see it, it is recommended to introduce educational programs for judges for learning/improving an active listening skill.
- **Recommendation #7.2:** As for the issue of “not favoring strong party (e.g. state)” named in administrative cases, it is recommended that judges continue applying the high standards for the party representing the state (including but not limited to provision of evidence).

§ It is interesting that in one case, where one of the observers evaluated judge as partial because of talking to one of the parties with “irritation and high-pitch/raised voice”, neither the second observer nor the parties provided similar evaluations. There could be various logical explanations of tolerating i.e. not mentioning such conduct of the judge by anyone else, one of which could be that such unacceptable conduct of a judge as talking to one of the parties with irritation and raised voice is tolerated if/when such treatment is considered as fair i.e. deserved, adequate and/or relevant.

- **Recommendation #8:** Even though such unacceptable conduct as talking to one of the parties with irritation and raised voice could be tolerated by some of the parties, the best would be to avoid it. Thus, it is recommended to introduce educational programs for judges for learning/improving such skill as emotional intelligence (EQ).

§ It seems that in comparison to the observers, occurrence of such conducts of judge as “being consistent/predictable” and “being positive/willing to help” is more noticeable and therefore, more important for the parties than such conducts as “expressing emotions/feelings” and “making reprimands/instructions”. Thus, it could be concluded, that such conducts of the judge as “expressing emotions/feelings”, “making reprimands/instructions”, “being consistent/predictable” and “being positive/willing to help” are more subjective for the parties than other conducts. The parties might better see/notice such conducts of judge as “consistency/predictability” and “positivity/willingness to help”, since they expect or want to see/notice them and see/notice less such conducts of the judge as “expressing emotions/feelings” and “making reprimands/instructions”, since they do not expect or do not want to see/notice them.

- **Recommendation #9.1:** In order to overcome subjective nature of such conducts of the judge as “expressing emotions/feelings”, “making reprimands/instructions”, “being consistent/predictable” and “being positive/willing to help” it is recommended that a judge provides as much feedback to the parties as possible. For example, explaining the reasons of „expressing emotions/feelings“ and „making reprimands/instructions“; defining the conducts that could be considered as positive/helpful for one of the parties, etc.
- **Recommendation #9.2:** It is recommended to ensure awareness of subjective nature of the following conducts and to use them with caution (if need be): “expressing emotions/feelings”, “making reprimands/instructions”, “being consistent/predictable” and “being positive/willing to help”.

§ It seems that the parties evaluate impartiality of judge by such conducts as “was focused/listened carefully” and “using simple language” differently from the observers, namely, they see these conducts more skewed towards one party than observers. Thus, it could be concluded, that the evaluation of such conducts of the judge as “was focused/listened carefully” and “using simple language” are more subjective than evaluation of other conducts.

- **Recommendation #10:** In order to overcome subjective nature of such conduct of the judge as “was focused/listened carefully”, it is recommended that (1) a judge gets as much feedback from the parties as possible. For example, asking both parties if all is clear, any additional clarification is needed, etc. and (2) a judge ensures an awareness of subjective nature of this conduct.

- NOTE: The issue of “was focused/listened carefully” has already been discussed above (see recommendation #7.1).

§ While the parties consider the judge’s behaviour as skewed toward one party, because the judge “spoke/explained not clearly for one party (me)”, “gave less time to one party than to other” and “interrupted a party’s speech”, the observers did not note such behaviours. This means, that such conducts of the judge as „speaking/explaining clearly“, “giving equal time to both parties to speak” and “not interrupting them“ are perceived very subjectively by the parties and are important for them.

- **Recommendation #11:** It is recommended (1) to ensure that during the hearing the judge speaks clearly and makes sure both parties understood all explanations. For example, upon completing his/her speech and/or explanations the judge checks with both parties if all said was clear and understood; (2) to conduct further research to identify the wording used by a judge and to develop vocabulary that is clear, simple and understandable for the general public; etc.
- NOTE: The issue of “giving equal time to both parties to speak” and “not interrupting them” has already been discussed above (see recommendation #6).

§ It is interesting, that even though, the certain conducts of the judge were evaluated is skewed towards one party over another by the observers, they were not considered in negative context (e.g. impartial, unobjective, etc.) since these conducts were related to such situations as helping a weaker party to understand his/her rights, explaining procedure to a party that does not know much about it, explaining benefits of settlement to a party that does not understand it, etc. The same/similar situations are perceived by the parties less positively i.e. in more the negative context. Thus, it could be concluded, that in cases, when/where one party is weaker i.e. has less knowledge of the procedural law, the skewed conduct of the judge towards such party is not perceived by the observers in negative context, because they most likely interpret this behaviour as fair/impartial i.e. as a way of restoring balance between the parties, while such behaviour is perceived more critically by the parties, most likely because they are involved in the litigation i.e. this process is more personal to them.

- **Recommendation #12:** In order to overcome negative impact that the judge’s certain conducts (help in understanding rights, explanation, settlement offer, etc. to one party) have on the perception of another party, it is recommended to always ask another party if they require the same/similar/equal help, explanation, etc. that has just been given to the opposite party.

§ It is interesting that in administrative cases, if/when party represents “weaker party” (because the opposing party is a state) and the judge treats the opposing “stronger party” differently (e.g. asks for additional evidence, etc.), the “weaker party” evaluates the impartiality of the judge in a positive way. However, in civil cases if/when party represents “stronger party” (because the opposing does not understand the procedure, benefits of settlement, etc.) and the judge treats the opposing “weaker party” differently (e.g. explains rights, procedures, settlement benefits, etc.), the “stronger party” evaluates the impartiality of the judge in a more negative way.

- **Recommendation#13:** It is recommended that once the judge is finished with talking to a “weaker party” i.e. party with no or less knowledge of its rights (explains rights, procedural rules, benefits of settlement, etc.), the judge turns to another “stronger” party” i.e. party with better knowledge of its rights and asks if s/he also requires any explanations (more relevant for the civil cases).

§ There is a relation between the satisfaction of the parties with the judgement and general impartiality evaluation of the judge by the parties that makes the importance of the correct procedural behavior by a judge even more obvious. Namely, the parties that consider a judge impartial prior to the judgement are more satisfied with the outcome of the dispute, than the parties that consider a judge biased.

- **Recommendation#14:** It is recommended to study further the relation between the satisfaction of the parties with the judgement and general impartiality evaluation of the judge by the parties that should include reasons/factors determining the satisfaction with the litigation process even in the presence of the negative/unfavourable outcome of the litigation.

## E. ANNEXES

### Annex #1: References

- (1) Rädler, Peter. Independence and Impartiality of Judges. [http://hrlibrary.umn.edu/fairtrial/wrft-rae.htm#N\\_89\\_](http://hrlibrary.umn.edu/fairtrial/wrft-rae.htm#N_89_)
- (2) Blahuta, Roman I.. "Impartiality in Court Proceedings." *Informatologia*, vol. 55, br. 1-2, 2022, str. 65-75. <https://doi.org/10.32914/i.55.1-2.6>. Citirano 04.11.2022.
- (3) International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors. Practitioners Guide No. 1, International Commission of Jurists. p.3
- (4) Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- (5) Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005). <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=005>
- (6) International Covenant on Civil and Political Rights. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- (7) Basic Principles on the Independence of the Judiciary. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>
- (8) The Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime, Vienna, 2018. [https://www.unodc.org/res/ji/import/international\\_standards/bangalore\\_principles/bangaloreprinciples.pdf](https://www.unodc.org/res/ji/import/international_standards/bangalore_principles/bangaloreprinciples.pdf)
- (9) Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary>
- (10) M s = W @ K
- (11) AIRE Centre (Advise on Individual Rights Centre) and Civil Rights Defenders. (September 2021) "Independence and Impartiality of the Judiciary - An overview of relevant jurisprudence of the European Court of Human Rights". pp.50-67
- (12) Charles Gardner Geyh, The Dimensions of Judicial Impartiality, 65 Fla. L. Rev. 493 (2014). <https://scholarship.law.ufl.edu/flr/vol65/iss2/4>, pp.498-509
- (13) Survey "Majority of respondents say that judges with a history of succumbing to political pressure should leave the judiciary" commissioned by Transparency International Georgia and conducted by the Caucasus Research Resource Centers (CRRC), 2019. <https://transparency.ge/en/post/majority-respondents-say-judges-history-succumbing-political-pressure-should-leave-judiciary>

### Annex #2: Desk Research Sources

- § Assessment of Georgian Bar Association Ethics Commission – Telephone Survey of Appellants and Attorneys at Law. May, 2020
- § The Bangalore Principles of Judicial Conduct 2002 (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002)
- § United Nations Office on Drugs and Crime. Commentary on the Bangalore Principles of Judicial Conduct
- § Can Courts Be More User Friendly? How Satisfaction Surveys Can Promote Trust and Access to Justice. Center for Court Innovation. [courtinnovation.org/areas-of-focus/domestic-violence](http://courtinnovation.org/areas-of-focus/domestic-violence)
- § Trust and Confidence in the California Courts - A Survey of the Public and Attorneys. Commissioned by the Administrative Office of the Courts on behalf of the Judicial Council of California, September 2005.
- § Roman I. Blahuta. "Impartiality in Court Proceedings". *Lviv State University of Internal Affairs, Lviv, Ukraine Informatologia*, Vol. 55 No. 1-2, 2022.
- § Emily Gold LaGratta, Elise Jensen. Measuring Perceptions of Fairness: An Evaluation Toolkit. Center for Court Innovation (Grant No. BJA 2010-DB-BX-K050 awarded by the Bureau of Justice Assistance - a component of the U.S. Department of Justice's Office of Justice Programs), October 2015.
- § Professor S Roach Anleu and Emerita Professor K Mack. (2017) Impartiality and emotion in judicial work. 29(3) *JOB* 21. [https://www.judcom.nsw.gov.au/publications/benchbks/judicial\\_officers/impartiality\\_and\\_emotion\\_in\\_judicial\\_work.html#ftn.d5e1175](https://www.judcom.nsw.gov.au/publications/benchbks/judicial_officers/impartiality_and_emotion_in_judicial_work.html#ftn.d5e1175)
- § Tom R. Tyler, The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings, 46 *SMU L. Rev.* 433 (1993).
- § Norms of Judicial Ethics of Georgia, Article 5
- § Rädler, Peter. Independence and Impartiality of Judges. [http://hrlibrary.umn.edu/fairtrial/wrft-rae.htm#N\\_89\\_](http://hrlibrary.umn.edu/fairtrial/wrft-rae.htm#N_89_)
- § AIRE Centre (Advise on Individual Rights Centre) and Civil Rights Defenders. (September 2021) "Independence and Impartiality of the Judiciary - An overview of relevant jurisprudence of the European Court of Human Rights".

### Annex #3: Results of Desk Research

	Impartiality		Fairness
	Procedural Impartiality <sup>8</sup>		Procedural Fairness <sup>9</sup>
1	determination of the subject of proof	1	voice
2	apportionment of the burdens between the parties	2	respect
3	submission, disclosure, and provision of evidence	3	neutrality
4	choice of methods and means of proof	4	understanding
5	study and evaluation of evidence	5	helpfulness
	Impartiality Components (as per judges) <sup>10</sup>		Procedural Fairness <sup>11</sup>
1	excluding emotions	1	dignity
2	putting aside bias <sup>12</sup>	2	participation
3	keeping open mind <sup>13</sup>	3	trust
	Personal/subjective Impartiality <sup>14</sup>		Fairness as Judge's Demeanour
1	not acknowledging personal feelings following the actions of any of the parties appearing before him	1	respectful
		2	fair
2	not use of empathetic language during proceedings	3	attentive
3	not expressing of opinions about an applicant's guilt at early stages of trial	4	interested
		5	consistent/predictable
		6	helpful
		7	knowledgeable
		8	clear
		9	intimidating

<sup>8</sup> "Impartiality is most evident in procuring evidence, being expressed in the following actions of the court: determination of the subject of proof; apportionment of the burdens between the parties; submission, disclosure, and provision of evidence; choice of methods and means of proof; study and evaluation of evidence. When procuring evidence lacks impartiality, the requirements for correspondence, admissibility, reliability, and sufficiency of the evidence, principles of procedural equality, and adversarial nature of the parties are violated. This leads to unfounded court conclusions outlined in the court decision". Roman I. Blahuta. "Impartiality in Court Proceedings". Lviv State University of Internal Affairs, Lviv, Ukraine Informatologia, Vol. 55 No. 1-2, 2022.

<sup>9</sup> "Procedural justice research has shown that when defendants and litigants perceive the court process to be fair – exhibiting respect, voice, understanding, neutral decision-making, and helpfulness – they are more likely to comply with court orders and to follow the law in the future, regardless of whether they "win" or "lose" their case". Emily Gold LaGratta, Elise Jensen. Measuring Perceptions of Fairness: An Evaluation Toolkit. Center for Court Innovation (Grant No. BJA 2010-DB-BX-K050 awarded by the Bureau of Justice Assistance - a component of the U.S. Department of Justice's Office of Justice Programs), October 2015.

<sup>10</sup> Professor S Roach Anleu and Emerita Professor K Mack. (2017) Impartiality and emotion in judicial work. 29(3) JOB 21.

<sup>11</sup> "People's evaluations of the fairness of judicial hearings are affected by the opportunities which those procedures provide for people to participate, by the degree to which people judge that they are treated with dignity and respect, and by judgments about the trustworthiness of authorities. Each of these three factors has more influence on judgments of procedural justice than do either evaluation of neutrality or evaluations of the favorableness of the outcome of the hearing". Tom R. Tyler, The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings, 46 SMU L. Rev. 433 (1993).

<sup>12</sup> "A judge shall be free from any preliminary formed opinions and views while carrying out judicial duties. S/he should avoid any conduct that can be viewed by the parties to the proceedings or the public as a prejudgment." Norms of Judicial Ethics of Georgia, Article 5

<sup>13</sup> "While impartiality reflects an open-mindedness on the part of the judges, independence describes functional and structural safeguards against extraneous intrusion into the administration of justice". "While independence in its institutional sense is mainly directed to safeguard the appearance of independence against any doubts of extraneous influence, the concept of structural or objective impartiality is touched upon at the same time due to legitimate fears that the court's open-mindedness might be impaired". Rädler, Peter. Independence and Impartiality of Judges. [http://hrlibrary.umn.edu/fairtrial/wrft-rae.htm#N\\_89\\_p1\\_](http://hrlibrary.umn.edu/fairtrial/wrft-rae.htm#N_89_p1_), p.4.

<sup>14</sup> "Behaviour by judges can, however, be sufficient to conclude a breach of impartiality criterion under the subjective test. For example: acknowledgment of personal feelings following the actions of any of the parties appearing before them; the use of emphatic language during proceedings; and the expression of opinions about an applicant's guilt at early stages of a trial, might lead to the finding of breach of impartiality under the subjective test" AIRE Centre (Advise on Individual Rights Centre) and Civil Rights Defenders. (September 2021) "Independence and Impartiality of the Judiciary - An overview of relevant jurisprudence of the European Court of Human Rights". p.51

#### Annex #4: Questionnaire for Judges

The working group (lecturers and students) of the Faculty of Law at "Ilia State University" is currently working on the USAID-funded project "Impact of Judges' Conduct on Perception of Impartiality by the Participants of Litigation". The project is implemented within the framework of the "Rule of Law Program" and aims to improve the administration of justice by evaluating the judge's behaviour by one of the "Bangalore Principles of Judicial Conduct" - impartiality.

The goal of the first stage of the project is to determine the criteria/indicators of impartiality, which will be used to develop a tool for evaluating judges - a questionnaire. In order to achieve the mentioned goal, it is planned to study legal literature (dissertations, research, works, articles, etc.) (desk research) and also conduct in-depth interviews with judges (in-depth interviews).

In order to adequately reflect the answers of the judges, an audio-recordings of the interviews will be made and they will be deleted as soon as the transcripts of the interviews are prepared. The information obtained from the interviews will be used to develop a questionnaire to evaluate the judges, and the noteworthy answers will become one part of the final report. The responses used in the final report will not be linked to its authors and will be presented only in the coded form. For example, [Interview 33, female judge, emphasis belongs to the research analyst]<sup>15</sup>.

Thank you in advance for your help.

#### Questions:

- (1) What do you understand/mean by the concept of impartiality? Could you describe your understanding of impartiality in lay person's terms?
- (2) What do you understand/mean by the concept of neutrality? Could you describe your understanding of neutrality in lay person's terms?
- (3) What do you understand/mean by the concept of objectivity? Could you describe your understanding of objectivity in lay person's terms?
- (4) What do you understand/mean by the concept of judicial independence? Could you describe your understanding of judicial independence in lay person's terms?
- (5) In your opinion, what components constitute the impartiality? Why do you think so?
- (6) Can you give me three examples of judge's conduct demonstrating his/her impartiality?
- (7) Can you give me three examples of judge's conduct demonstrating his/her bias?
- (8) Is there a difference between impartiality during the trial and the one during making decision? If so, why?
- (9) How do you manage/what methods do you use to carry out your judicial duties impartially during the trial?
- (10) How do you manage/what methods do you use to carry out your judicial duties impartially when making decisions?

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<sup>15</sup> See sample Roach Anleu and Kathy Mack (2017) 'Impartiality and emotion in judicial work' 29(3) Judicial Officers' Bulletin 21-24., [www.judcom.nsw.gov.au/publications/benchbks/judicial\\_officers/impartiality\\_and\\_emotion\\_in\\_judicial\\_work.html#ftn.fcd82rl](http://www.judcom.nsw.gov.au/publications/benchbks/judicial_officers/impartiality_and_emotion_in_judicial_work.html#ftn.fcd82rl)



## Annex #5: Results of In-depth Interviews

### 1) Definition of impartiality

- § "Impartiality is one of the most important aspects of the fair trial.. the principle that is a basis of the judge's recusal... when to consider recusal and when to discuss this issue... This principle of impartiality... also implies that impartially not only has to be administered, but also has to be seen in the society" **[male judge, first instance court, criminal justice]**
- § "Impartiality is basically the judge's attitude towards a specific case, party, etc. It is, his/her feeling, emotion, relationship to the party, the case under consideration, the subject matter of the case... There is no judge who is not biased, because the judge is a human being, has personal emotions, own views of a specific party, a particular matter of a judgement.... The entire charm and strength of the so-called judicial power of the judge is to find a way to free himself/ herself from that bias." **[female judge, appellate court, civil justice]**
- § "Impartiality.... can be defined... [as a situation I.M.], when the judge must make a decision without any external or internal factors, coercion or influence, etc." **[female judge, first instance court, civil justice]**

### 2) Definition of neutrality and objectivity

- § "Neutrality is very close to impartiality, actually for me, impartiality should lead you to a neutral attitude towards the case." **[female judge, appellate court, civil justice]**
- § "It [objectivity I.M.] means that s/he [the judge I.M.] must make a decision based solely on the evidence, based on an objective comparison of what s/he has in the case... Obviously, when we are speaking about objectivity, it is natural that there should be a clear feeling that the judge follows only the constitution and the law and makes justice based on them." **[female judge, first instance court, civil justice]**
- § "Neutrality and objectivity are the result of impartiality, that is, when you are impartial, you make your best to reach a neutral solution of the case and appear as a neutral arbiter in the eyes of the parties. Impartiality and neutrality very often are synonymous according to number of sources. Simply, impartiality is more of a subjective category, my subjective attitude to the issue, while neutrality is how I appear in the eyes of the parties". **[female judge, appellate court, civil justice]**
- § "[Neutrality and objectivity I.M.] mean that regardless of who is represented on one side and on the other side, who is accused... and who is the victim, regardless of names and surnames, the judge must make judgement of each case neutrally and impartially, s/he must make decisions only in accordance with the law and only on the basis of the law, without any preference". **[male judge, first instance court, criminal justice]**

### 3) Definition of independence

- § "Independence is when the justice is carried out and the decision is made without any influence. This means that the judge follows only the law and the constitution, no one else in the entire universe." **[female judge, appellate court, civil justice]**

### 4) Components of impartiality

- § "I think these two components [neutrality and objectivity I.M.] are constituent parts of impartiality" **[male judge, first instance court, criminal justice]**

### 5) Methods that ensure that judge appears as impartial/ unbiased

- § Having a thorough knowledge of the case
- § Making detailed/in-depth review of the motion(s) of the parties instead of reviewing motion(s) formally
- § Providing rationale/explanation/ argument for granting/denying motion(s) of the parties
- § Listening to parties carefully
- § Giving parties the equal time to present their arguments, to interview witnesses, present evidence
- § Acting equally loyally or strictly towards both parties
- § Clarifying unclear issues to the parties in a simple language (understandable for a non-lawyer)
- § Providing explanations to both parties equally and in a similar manner (as/when needed)
- § Asking questions to both parties
- § Avoiding showing emotions/acting the way that it is difficult to capture the judge's opinion and content of the judgement to be made
- § Following procedural rules (competitiveness and parity, ensuring there is no link to the case, using recusal if/ when needed)
- § Treating all attendants of the hearing the same way as treating parties
- § Probing with parties on the intention/desire to submit additional evidence/argument
- § Probing with parties on the need of additional time to submit additional evidence/argument
- § Offering a party to use services of the attorney



- § Explaining to the parties their rights and procedural regulations (e.g. liability cannot be proved by a witness, rights of detained, etc.)
- § Aiding each party in obtaining evidence if/when needed/possible
- § Making an offer to parties to settle due to the possible outcome that could be unfavourable for both of them
- § Exhibiting emotions/sympathy in moderation
- § Being open with parties on the relationship/link to the participants of litigation (e.g. providing parties with information if/when there is a link with a lawyer).

6) Methods that ensure that judge is impartial/ unbiased during trial and decision making

- § gaining as much experience as possible
- § having an awareness/knowledge by continued studying/attending trainings
- § (1) identifying emotions/attitudes/bias, (2) evaluating problem and its possible outcomes (e.g. making mistake) from the dissociated state, (3) holding on making appointment for hearing unless it is made sure, that rational/ critical thinking is in place
- § forming a neutral attitude towards any issue of any category in general
- § reviewing evidence over and over/coming back to evidence review after a pause
- § taking a break when feeling biased or emotional during the trial
- § making sure no final attitudes/opinion/view/position is formed until the end of the trial
- § making sure to be independent from and resilient towards influence of external factors (public opinion and judgement, government, legislative branch, etc.)
- § making sure to be free of bias towards the parties
- § making sure not be sensitive towards the subject matter
- § providing explanation/rationale of judgement (e.g. in written decision, in media by court speaker when the case is of a high public interest, etc.)
- § raising awareness of public on judge's limitations
- § balancing role of mass media in information dissemination

7) Miscellaneous

- § "By the way, we [judges I.M.] have never had a training on the impartiality and it would be extremely interesting and helpful to have one" [**female judge, first instance court, criminal justice**]

**Annex #6: Questionnaire for Observers and Parties (trial)**

**Q: General Information**

Q1. Name of Observer: \_\_\_\_\_

Q2. Date: \_\_\_\_\_

Q3. Type: \_\_\_\_\_  
1. Civil dispute, 2. Administrative dispute, 3. Criminal dispute

Q4. Subject matter of a dispute: \_\_\_\_\_

Q5. Name of a judge: \_\_\_\_\_

Q6. Plaintiff's attorney/representative: \_\_\_\_\_  
1. has an attorney, 2. does not have an attorney.

Q7. Defendant's attorney/representative: \_\_\_\_\_  
1. has an attorney, 2. does not have an attorney.

**BB: The Judge's Attitudes & Conduct towards the Parties (OBSERVER'S VERSION)**

BB1. Has the judge been impartial during the current hearing?

BB2. Why do you think that the judge has or has not impartial during the current hearing? **[read out the answer to the previous question]**

	BB1.	BB2.
The judge was impartial	1	
The judge was not impartial	2	
(do not know/ do not remember)	99	
(refuse to answer)	98	

BB3. During the current session has the attitude/conduct of the judge towards the parties and the representatives of parties been identical/same/equal?

BB4. Why do you think that the judge's attitude/conduct towards parties and attorneys of parties has not been identical/same/equal?

	BB4.	BB4.
The judge's attitude/behaviour towards the <u>plaintiff</u> has been better than one towards his/her attorney.	1	[continue]
The judge's attitude/behaviour towards the <u>attorney of plaintiff</u> has been better than one towards plaintiff.	2	[continue]
The judge's attitude/behaviour towards the <u>defendant</u> has been better than one towards his/her attorney.	3	[continue]
The judge's attitude/behaviour towards the <u>attorney of defendant</u> has been better than one towards defendant.	4	[continue]
The judge's attitude/behaviour towards the <u>plaintiff</u> and his/her attorney has been <b>identical</b> .	5	[go to question BB5]
The judge's attitude/behaviour towards the <u>defendant</u> and his/her attorney has been <b>identical</b>	6	
The party/parties have no attorneys	7	
(do not know/do not remember)	99	
(refuse to answer)	98	

BB5. During the current session, has the judge's attitude/conduct towards both parties been identical/same/equal?

BB6. Why do you think that judge's attitude/ conduct towards both parties has not identical/same/equal?

	BB5.	BB6.
The judge's attitude/conduct towards the plaintiff has been better than one towards the defendant	1	[continue]
The judge's attitude/conduct towards the defendant has been better than one towards the plaintiff	2	[continue]
The judge's attitude/conduct has been the same towards both parties	3	[continue]
(do not know/do not remember)	99	[go to question BB7]
(refuse to answer)	98	

BB7. During the current session, did any of the parties present any motion(s) to the judge?

Plaintiff made motion(s), defendant did not	1	[continue ]
Defendant made motion(s), plaintiff did not	2	[continue ]
Both parties made motion(s)	3	[continue ]
None of the parties' made motion(s)	4	[go to question BB11]
(do not know/do not remember)	99	[go to question BB11]
(refuse to answer)	98	[go to question BB11]

BB8. How many motion(s) have the parties presented?

BB9. What motion(s) have the parties presented?

BB10. Has the judge granted a motion(s)?

BB8.	BB9.	BB10.
defendant		
plaintiff		
(do not know/do not remember)	99	
(refuse to answer)	98	

BB11. Has the judge's decision on the motion(s) been proportionate/fair for both parties?

BB12. Why do you think what the judge's decision has or has not been proportional /fair to both parties?

BB11.			BB12.
The judge's decision has been proportional	1	[continue ]	
The judge's decision has not been proportional	2	[continue ]	
(do not know/do not remember)	99	[Go to the	
(refuse to answer)	98	question BB13]	

BB13. Please rate the statements given below using the following codes: 0 – „This behavior of judge had no taken place“; 1 – “The judge behaved this way more towards the plaintiff than the defendant”; 2 – „The judge treated both parties equally“; 3 – „The judge behaved this way more towards the defendant than the plaintiff “;

BB14. [ask only if answers to the previous question are 1 and/or 3] Can you tell me/give me an example of what made you think that the judge \_\_\_\_\_ (e.g. was not polite/respectful) [read out the answers from the previous questions, where the given answers were 1 and/or 3].

	BB13.	did not take place	towards plaintiff	Equally	towards defendant	BB14.
1	was polite/respectful <sup>16</sup>	0	1	2	3	
2	was focused/listened carefully <sup>17</sup>	0	1	2	3	
3	used simple language <sup>18</sup>	0	1	2	3	
4	expressed own opinions <sup>19</sup>	0	1	2	3	
5	expressed emotions/feelings <sup>20</sup>	0	1	2	3	
6	expressed empathy/concern/sympathy <sup>21</sup>	0	1	2	3	
7	was consistent/predictable <sup>22</sup>	0	1	2	3	
8	was positive/willing to help <sup>23</sup>	0	1	2	3	
9	spoke calmly/seriously <sup>24</sup>	0	1	2	3	
10	made reprimands/gave instructions <sup>25</sup>	0	1	2	3	

<sup>16</sup> Judge addressed the parties as using “Mr./Mrs.”; used such words as “you” (polite form in Georgian), “if possible, if you could/ would be able to”, etc.; His/her tone of voice was not sarcastic, mocking, etc.

<sup>17</sup> Judge did not interrupt the conversation, nodded to the speaker, asked clarifying questions, made notes.

<sup>18</sup> Judge spoke to the parties in a way that is understandable to a non-legal professional/ without using legal terms.

<sup>19</sup> Judge made a general assessment of the case; expressed his attitude(s) towards the position of particular party; expressed opinions regarding the party's status (female, sexual minority, nationality, religion, etc.)

<sup>20</sup> Judge expressed emotions verbally (e.g. “I feel as if...”, “I am worried/upset that...”) and non-verbally (an angry look, harsh tone, raised voice...)

<sup>21</sup> Judge expressed sympathy verbally (e.g. “I understand you well...” I can only imagine how you feel”) and non-verbally (nodding...)

<sup>22</sup> Judge was consistent with reprimands for the similar violations (e.g. interfering with the other party's conversation; noise...)

<sup>23</sup> Judge answered the questions of parties, explained the terms/rules/ processes and other details to the parties.

<sup>24</sup> Judge spoke in a low voice, did not have an aggressive/irritated tone of voice.

<sup>25</sup> Judge called on the parties to maintain order, to respect each other, to follow the rules...

[read out or explain briefly the following: "Currently, the law school of Ilia State University is working on a project "Impact of Judges' Procedural Conduct on Perception of Impartiality by the Participants of Litigation" funded by USAID. The project aims to assess the judge's impartiality. Names and surnames of research participants will be kept confidential. Thank you in advance for your help!]

**Q: general information about the respondent**

Q8. Name: \_\_\_\_\_

Q9. Phone number: \_\_\_\_\_

Q10. E-mail: \_\_\_\_\_

Q11. Litigation Type: \_\_\_\_\_ 1. plaintiff/ victim, 2. defendant/ accused

Q12. Gender: \_\_\_\_\_ 1. male, 2. Female

Q13. Age: \_\_\_\_\_

Q14. No. of disputes participated: \_\_\_\_\_  
 quantity: \_\_\_\_  
 this is the first dispute

Q15. No. of sessions attended: \_\_\_\_\_  
 quantity: \_\_\_\_  
 this is first dispute

Q16. Duration of the current dispute: \_\_\_\_\_ month(s)

Q17. Current session number: \_\_\_\_\_ 1. first, 2. second, 3. third, 4. Fourth +

[explain to the respondent that the questions below are asked in regard to the attitudes/thoughts on this particular hearing/process and not in regard to ones on the previous hearings/processes].

**A: General Attitudes (RESPONDENT'S VERSION)**

A1. What does impartiality of a judge mean to you? In your opinion, how should an impartial judge behave?  
 A2. What does the fairness of a judge mean to you? In your opinion, how should a fair judge behave?  
 A3. What does the independence of a judge mean to you? In your opinion, how should an independent judge behave?

A1.	
A2.	
A3.	

A4. Do you trust the judge assigned to your case?  
 A5. Why do you trust or don't trust the judge assigned to your case? [read out answer from the previous A4 question]

	A4.	A5.
I trust	1	
I do not trust	2	
(do not know/do not remember)	99	
(refusal to answer)	98	

A6. Are you familiar with the procedural duties of a judge?

yes	1	[continue ]
no	2	[go to the section B]

A7. Please tell me which procedural duties of judge are you aware of? [do not read out]

Judge reviews the case thoroughly/well	1
Judge gives the parties time for arguments/to present their position/to speak	2
Judge makes explanations and answer questions	3
Judge's behaviour makes it difficult to predict the outcome of the case/dispute or the content of the judgement (emotions/opinions are not visible)	4
Judge warns the parties on possible adverse consequences of lack of evidence and proposes to settle	5
Judge invites parties to submit additional evidence	6
Judge asks if parties want recusal of a judge	7
Judge examines evidence submitted by the parties (on the basis of the motions of the parties)	8
other [write down] _____	

**B: The Judge's Attitude & Conduct towards the Parties (RESPONDENT'S VERSION)**

B1. Has the judge been impartial during the current hearing?

B2. Why do you think that the judge has or has not impartial during the current hearing? **[read out the answer to the previous question]**

	B1.	B2.
The judge was impartial	1	
The judge was not impartial	2	
(do not know/do not remember)	99	
(refuse to answer)	98	

B3. During the current session has the attitude/conduct of the judge towards the parties and the attorneys of parties been identical/same/equal?

B4. Why do you think that the judge's attitude/conduct towards parties and attorneys of parties has not been identical/same/equal?

	B4.		B4.
The judge's attitude/behaviour towards the <u>plaintiff</u> has been better than one towards his/her attorney.	1	[continue]	
The judge's attitude/behaviour towards the <u>attorney of plaintiff</u> has been better than one towards plaintiff.	2	[continue]	
The judge's attitude/behaviour towards the <u>defendant</u> has been better than one towards his/her attorney.	3	[continue]	
The judge's attitude/behaviour towards the <u>attorney of defendant</u> has been better than one towards defendant.	4	[continue]	
The judge's attitude/behaviour towards the <u>plaintiff</u> and his/her attorney has been <b>identical</b> .	5	[go to question B5]	
The judge's attitude/behaviour towards the <u>defendant</u> and his/her attorney has been <b>identical</b>	6		
The party/parties have no attorneys	7		
(do not know/do not remember)	99		
(refuse to answer)	98		

B5. During the current session, has the judge's attitude/conduct towards both parties been identical/same/equal?

B6. Why do you think that judge's attitude/conduct towards both parties has not identical/same/equal?

	B5.		B6.
The judge's attitude/conduct towards the plaintiff has been better than one towards the defendant	1	[continue]	
The judge's attitude/conduct towards the defendant has been better than one towards the plaintiff	2	[continue]	
The judge's attitude/conduct has been the same towards both parties	3	[continue]	
(do not know/do not remember)	99	[go to	
(refuse to answer)	98	question B7]	

B7. During the current session, did any of the parties present any motion(s) to the judge?

Plaintiff made motion(s), defendant did not	1	[continue ]
Defendant made motion(s), plaintiff did not	2	[continue ]
Both parties made motion(s)	3	[continue ]
None of the parties' made motion(s)	4	[go to question B13]
(do not know/do not remember)	99	[go to question B13]
(refuse to answer)	98	[go to question B13]

B8. How many motion(s) have the parties presented?

B9. What motion(s) have the parties presented?

B10. Has the judge granted a motion(s)?

B8.		B9.	B10.
defendant			
plaintiff			
(do not know/do not remember)	99		
(refuse to answer)	98		

B11. Has the judge's decision on the motion(s) been proportionate/fair for both parties?

B12. Why do you think what the judge's decision has or has not been proportional/fair to both parties?

B11.			B12.		
The judge's decision has been proportional	1	[continue ]			
The judge's decision has not been proportional	2	[continue ]			
(do not know/do not remember)	99	[Go to the			
(refuse to answer)	98	question B13]			

B13. Please rate the statements given below using the following codes: 0 – „This behaviour of judge had no taken place“; 1 – “The judge behaved this way more towards the plaintiff than the defendant”; 2 – „The judge treated both parties equally“; 3 – „The judge behaved this way more towards the defendant than the plaintiff“;

B14. [ask only if answers to the previous question are 1 and/or 3] Can you tell me/give me an example of what made you think that the judge \_\_\_\_\_ (e.g. was not polite/respectful) [read out the answers from the previous questions, where the given answers were 1 and/or 3].

	B13.	did not take place	towards plaintiff	Equally	towards defendant	B14.
1	Judge... was polite/respectful <sup>26</sup>	0	1	2	3	
2	was focused/listened carefully <sup>27</sup>	0	1	2	3	
3	used simple language <sup>28</sup>	0	1	2	3	
4	expressed own opinions <sup>29</sup>	0	1	2	3	
5	expressed emotions/feelings <sup>30</sup>	0	1	2	3	
6	expressed empathy/concern/sympathy <sup>31</sup>	0	1	2	3	
7	was consistent/predictable <sup>32</sup>	0	1	2	3	
8	was positive/willing to help <sup>33</sup>	0	1	2	3	
9	spoke calmly/seriously <sup>34</sup>	0	1	2	3	
10	made reprimands/gave instructions <sup>35</sup>	0	1	2	3	

### C: Post-Trial Section (RESPONDENT'S VERSION)

Name of Respondent: \_\_\_\_\_

Name of Interviewer: \_\_\_\_\_

Name of Interviewer's Partner: \_\_\_\_\_

Date of Interview: \_\_\_\_\_

C1. What was the outcome of the litigation?

The plaintiff's claim has been granted fully	1
The plaintiff's claim has been granted partially	2
The plaintiff's claim has been denied	3
The parties agreed to settle	4

C2. Please rate your satisfaction with the court decision using 5-point scale.

I am absolutely dissatisfied with the court's decision	1
I am dissatisfied with the court's decision	2
I am neither dissatisfied nor satisfied with the court's decision	3
I am satisfied with the court's decision	4
I am absolutely satisfied with the court's decision	5

C3. Please explain, why are you satisfied or dissatisfied with the rate your satisfaction court decision? Anything else?

--

<sup>26</sup> Judge addressed the parties as using “Mr./Mrs.”; used such words as “you” (polite form in Georgian), “if possible, if you could/ would be able to”, etc.; His/her tone of voice was not sarcastic, mocking, etc.

<sup>27</sup> Judge did not interrupt the conversation, nodded to the speaker, asked clarifying questions, made notes.

<sup>28</sup> Judge spoke to the parties in a way that is understandable to a non-legal professional/without using legal terms.

<sup>29</sup> Judge made a general assessment of the case; expressed his attitude(s) towards the position of particular party; expressed opinions regarding the party's status (female, sexual minority, nationality, religion, etc.)

<sup>30</sup> Judge expressed emotions verbally (e.g. “I feel as if..”, “I am worried/upset that..”) and non-verbally (an angry look, harsh tone, raised voice..)

<sup>31</sup> Judge expressed sympathy verbally (e.g. “I understand you well...” I can only imagine how you feel”) and non-verbally (nodding...)

<sup>32</sup> Judge was consistent with reprimands for the similar violations (e.g. interfering with the other party's conversation; noise...)

<sup>33</sup> Judge answered the questions of parties, explained the terms/rules/processes and other details to the parties.

<sup>34</sup> Judge spoke in a low voice, did not have an aggressive/irritated tone of voice.

<sup>35</sup> Judge called on the parties to maintain order, to respect each other, to follow the rules...

## Annex #7: General Description of the Studied Cases

The table below shows the composition of the primary and secondary target groups as well as the dates the observations and interviews were carried out presented in order of conducting observations and interviews.

Case #	Date	Type of Case	Judge #	Case #	Date	Type of Case	Judge #
1	06-Feb-2023	Civil	#1	9	24-Mar-2023	Civil	#9
2	08-Feb-2023	Civil	#2	10	24-Mar-2023	Civil	#10
3	16-Feb-2023	Administrative	#3	11	31-Mar-2023	Administrative	#11
4	20-Feb-2023	Administrative	#4	12	13-Apr-2023	Civil	#12
5	21-Feb-2023	Administrative	#5	13	19-Apr-2023	Civil	#13
6	22-Mar-2023	Administrative	#6	14	19-Apr-2023	Administrative	#6
7	22-Mar-2023	Civil	#7	15	19-Apr-2023	Administrative	#6
8	23-Mar-2023	Civil	#8	16	21-Apr-2023	Administrative	#14

The table below shows the frequencies of the dispute subject matters of the studied civil and administrative cases, number of parties with representative/attorney; gender and age of parties.

<u>(q4) Dispute Subject Matter Civil</u>	(%)	<u>(q4) Dispute Subject Matter Administrative</u>	(%)
Contractual law	12.5	Violating traffic rules	25.0
Labour law	12.5	Tax Liability	12.5
Family Law (inheritance)	12.5	Petty Hooliganism	12.5
Compensations/Damages	25.0	Student visa	12.5
Debt/Loan repayment	25.0	Refugee Status	25.0
Recognition of a Support Recipient	12.5	Approval of a supervision protocol	12.5
Total	100.0	Total	100.0
<u>(q6, q7) Parties with Attorney</u>		<u>(q13) Party Age</u>	
plaintiffs	75.0%	mean	39.34
defendants	68.8%	std. deviation	12.188
<u>(q12) Party Gender</u>		Min	19
male	46.9%	Max	71
female	53.1%		
total	100%		

The table below shows the descriptive statistics of litigation experience of parties such as number of disputes participated in and number of sessions attended as well as duration of the current dispute (months) and order of current session.

<u>(q14) Disputes Party Participated in</u>	N	%	<u>(q15) Sessions Party Attended</u>	N	%
many/do not remember	13	40.6	many/do not remember	12	37.5
remember	19	59.4	remember	20	62.5
mean	4.00	-	mean	5.20	-
median	1.44	-	median	2.00	-
std. deviation	11.160	-	std. deviation	15.285	-
min	1	-	min	1	-
max	50	-	max	70	-
<u>(q16) Duration of Current Dispute (month)</u>	N	%	<u>(q17) Order of Current Session</u>	N	%
mean	11.56	-	First	18	56.3
standard deviation	2.00	-	Second	8	25.0
median	18.237	-	Third	3	9.4
min	0	-	Forth+	3	9.4
max	72	-	Total	32	100.0