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სასამართლო გუშაგი  
GEORGIAN COURT WATCH

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## REPORT ON KUTAISI CITY AND APPEAL COURTS



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## Table of Contents

Introduction.....	4
1. Independence Guarantees for Individual Judges.....	4
1.1 Assignment, Promotion and Secondment of Judges.....	4
1.1.1 Number of Judges and assignment of Judges in Kutaisi City and Appeal Courts .....	4
1.1.2 Secondment of a Judge .....	7
1.1.3 Appointment/promotion without Competition.....	9
1.2 Specialization of Judges.....	10
1.3 Disciplinary Proceedings .....	13
2. Court Efficiency Standard.....	14
2.1 The Rate of Considered Cases Within a Year in Kutaisi City Court and Delayed Cases.....	14
2.2 16 Decisions Made in One Day .....	17
2.3 Optimal Number of Court Staff and Implementation of Administrative Functions of Court Chairpersons .....	18
2.4 Functions and Salary of the Office Staff.....	20
2.4.1 Salary .....	20
2.4.2 Job Description .....	22
2.4.2.1 Court Manager .....	22
2.4.2.2 Assistant to the Judge and Secretary of Court Session .....	26
3. Transparency standards on the example of Kutaisi City Court.....	28
3.1 Information Posted on the Court Website.....	28
3.2 Availability of Court Decisions on the Website .....	31
3.3 Provision of Public Information.....	31
Recommendations.....	32

## Introduction

Georgian Court Watch within the framework of the project Active Citizens Engagement for Better Judicial System with the support of the Europe Foundation created a Network of the Court Watchers in Kutaisi and Rustavi uniting lawyers, civil society representatives, journalists, students, and citizens interested in judiciary. The network aims to identify problems faced by Court users when interacting with the judicial system.

At the same time, the network members, elaborated a plan for advocating the issues together with the Georgian Court Watch and started joint activities to address the shortcomings in the Courts. For the beginning, public information was requested from the Courts. It is worth mentioning that the Court Watch faced problems receiving information from Kutaisi City Court. Finally, after 2 months the Court responded to the request and provided organization with part of information requested.

In addition, the network members collected materials together and based on the provided information, prepared a report on Kutaisi City and Appeal Courts. Accordingly, network members were involved in developing the report; discussions on the development of the recommendation were also held jointly. Additionally, information provided by the Courts as well as documents published on the website of the High Council of Justice had been processed in the report. The presented report aims to show deficiencies in Court administration revealed through involvement of the network members on the example of the Kutaisi City and Appeal Courts, addressing most of which is the responsibility of the High Council of Justice. However, in terms of accountability towards society, it was clear that the Courts themselves are passive in accountability and sharing public information. Seems transparency of judicial activities is not a priority in Kutaisi City and Appeal Courts.

The report consists of 3 parts and echoes the main objectives of the 2017-2021 Judicial strategy. Recommendations are presented at the end of the report.

## 1. Independence Guarantees for Individual Judges

### 1.1 Assignment, Promotion and Secondment of Judges

#### 1.1.1 Number of Judges and assignment of Judges in Kutaisi City and Appeal Courts

According to the Organic Law of Georgia on Common Courts (Article 28 and Article 23), the High Council of Justice of Georgia shall define the number of the judges and jurisdictional area of a City/District and Appeal Courts.

In the event of a relevant vacancy, the High Council of Justice determine the date of the announcement of the competition themselves, and the law does not restrict them from announcing the competition in advance

in case of expected position opening. The article prepared by the Court Watch<sup>1</sup> clearly shows unfilled vacant positions in common Courts system in 2017-2021 and Courts where the High Council of Justice does not appoint judges.<sup>2</sup>

Kutaisi City and Appeal Courts are no exceptions in this regard either. There are 15 judges and 7 vacant positions in Kutaisi Court of Appeals. Kutaisi City Court has 9 judges exercising their authority, among them 3 are magistrate judges in Tkibuli, Tskaltubo and Baghdati municipalities, and there are 4 vacancies<sup>3</sup> (The High Council of Justice transferred Malkhaz Chubinidze, the magistrate judge of Tskaltubo in Kutaisi Appeal Court on 14<sup>th</sup> October this year). Accordingly, Kutaisi City Court nowadays has 9 judges on duty and Kutaisi Court of Appeals – 15 judges.



**It was revealed that in Kutaisi City and Appeal Courts, judges were appointed to the administrative or criminal chamber first and within 1 month they were assigned to the chamber, where they exercise their powers for a longer period of time.**

Since 3<sup>rd</sup> June, 2019, secondment of Leri Tedoradze, former head of Kutaisi City Court and judge to Kutaisi Court of Appeals, 1 vacant position appeared in the Chamber of criminal cases.<sup>4</sup> Nikoloz Margvelashvili was transferred to Kutaisi City Court at the same period.

Nikoloz Margvelashvili, currently the head of Kutaisi City Court has been assigned to Kutaisi City Court based on the High Council of Justice decision of 24<sup>th</sup> May, 2019 and to the Chamber of administrative cases as a judge from June 3<sup>rd</sup>.<sup>5</sup>

In a couple of weeks, on 20<sup>th</sup> June, 2019, the High Council of Justice transferred Nikoloz Margvelashvili to the Chamber of criminal cases.<sup>6</sup>

### **A question arises:**

What purpose did the assignment of Nikoloz Margvelashvili to the Chamber of administrative cases serve when he exercised the authority of a judge in this chamber for less than 1 month, as he soon moved to the Chamber of criminal cases. It is also noteworthy that at the time of his initial assignment the Chamber of criminal cases in Kutaisi City Court did have 1 vacant position.

<sup>1</sup> For information, please see the article: Why dozens of vacant positions of judges are not filled? at <https://bit.ly/3hJWQlX>

<sup>2</sup> Ibid.

<sup>3</sup> High Council of Justice letter #443/1472-03-o of 3<sup>rd</sup> June, 2022. See at: <https://bit.ly/3OitqXV>

<sup>4</sup> 24<sup>th</sup> May, 2019 <https://bit.ly/3USRFyq>

<sup>5</sup> 24<sup>th</sup> May, 2019 <https://bit.ly/3hYGtSn>

<sup>6</sup> 20<sup>th</sup> June, 2019 <https://bit.ly/3Oo96V9>

In this case, it is also interesting, that Nikoloz Margvelashvili has work experience in criminal justice and has also passed the judicial exam in criminal law specialization.<sup>7</sup>

Assignment of the judge, Nana Kalandadze was similar to Nikoloz Margvelashvili's case. She was transferred to the Chamber of criminal cases in Kutaisi Court of Appeal on 11<sup>th</sup> January,<sup>8</sup> 2018 and in a couple of weeks, from 30<sup>th</sup> January was transferred to the Chamber of civil cases where she still exercises her power.<sup>9</sup> Obviously, such short-term assignments to one chamber and later transfers to another, raises some questions.



**There were cases during the appointment of judges in Kutaisi City Court when some of the candidates were initially rejected, but later still assigned to the position in the same Court. Decisions of the High Council of Justice do not contain relevant justifications why the candidate was rejected several times.**

The judge, Gocha Didava was appointed to the Chamber of civil cases in Kutaisi City Court on 14<sup>th</sup> July, 2016 with the 3-year probation period.<sup>10</sup> Prior to this decision, Didava got rejected by the High Council of Justice in 2014<sup>11</sup> and 2015<sup>12</sup> and was appointment to the position only after several tries.

The case of Marine Imerlishvili, a judge in Kutaisi Appeal Court was the same. Marine Imerlishvili was appointed as a judge in Kutaisi Appeal Court from 20<sup>th</sup> November 2012.<sup>13</sup> Within the competition announced on 26<sup>th</sup> June, 2020, the judge was refused to be appointed to the Chamber of criminal cases in Kutaisi Court of Appeal or Investigation Chamber with lifetime term.<sup>14</sup> One year later, on 18<sup>th</sup> June, 2021 she was deployed to the Chamber of criminal cases with lifelong term anyway.<sup>15</sup>

**3-year probation term turned out to be unsuccessful for the judge, as she was not appointed to a position. Later, the High Council of Justice appointed her nonetheless to the position of a judge. Motivation of the Council on the rejection or appointment is unclear.**

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<sup>7</sup> Link: <https://bit.ly/3zhwrRT>

<sup>8</sup> 11<sup>th</sup> January, 2018 <https://bit.ly/3hVD9r1>

<sup>9</sup> 29<sup>th</sup> January, 2018 <https://bit.ly/3OIAGGi>

<sup>10</sup> 14<sup>th</sup> July, 2016 <https://bit.ly/3gm7izm>

<sup>11</sup> 12<sup>th</sup> November, 2014 <https://bit.ly/3EKpKuO>

<sup>12</sup> 2<sup>nd</sup> November, 2015 <https://bit.ly/3OnLnob>

<sup>13</sup> 19<sup>th</sup> November, 2012 <https://bit.ly/3Vfput4>

<sup>14</sup> 18<sup>th</sup> November, 2020 <https://bit.ly/3AsLOry>

<sup>15</sup> 17<sup>th</sup> June, 2021 <https://bit.ly/3tLJnMU>

Mikheil Bebiashvili, a judge at the Chamber of administrative cases in Kutaisi City Court was dismissed from the position due to the expiration of service term on 12<sup>th</sup> November, 2014.<sup>16</sup> In about a year, on 4<sup>th</sup> January, 2016 he was again appointed to the position of a judge in Zestafoni District Court with 3-year probation period.<sup>17</sup> After expiration of 3-year term, from 4<sup>th</sup> January, he was again dismissed from the position. The reason of dismissal indicated by the High Council of Justice is the expiration of the service term.<sup>18</sup> Later, in 2020 the judge was returned to the Court and appointed in the Chamber of civil cases in Kutaisi City Court through the competition.<sup>19</sup> Hence, it is unclear, why the High Council of Justice members changed their minds on once rejected candidate who was refused to carry on his duties as a judge and appointed him later?

### 1.1.2 Secondment of a Judge

Article 37<sup>1</sup> of the 2019 edition of the Organic Law On Common Courts defined that *“in case a judge is absent in a District (City) Court or the Court of Appeals, or the number of cases to be considered dramatically increases, the High Council of Justice of Georgia shall make a proposal to judges of the same instance Courts located nearby, and if the High Council of Justice of Georgia receives a written refusal from them, it shall make this proposal to judges of other Courts of the same instance. A judge may be sent on secondment to another Court by the substantiated decision of the High Council of Justice of Georgia, with the consent of the judge, for a period of up to one year. The period of secondment may be extended by a maximum of one year, for which purpose consent of the judge is necessary.”*

**According to this legal norm, reason to make decision about judge’s secondment from one Court to another shall be the prevention of Court overloading. When considering the example of the Kutaisi City Court, it is clear that judges were not transferred to the busiest chamber of the same Court where adding new judges was most needed. This means that in such cases, the aim of secondment could not be the reduction of Court overload.**

According to the statistics published on the Supreme Court of Georgia website, incomplete cases in the Chamber of criminal cases of Kutaisi City Court was:

- 17% in 2017
- 16% in 2019

And in 2017 and 2019 there was 46% of uncompleted civil cases in Kutaisi City Court.<sup>20</sup>

On 20<sup>th</sup> June, 2019 Nana Jokhadze was transferred from Ozurgeti District Court to the Chamber of civil cases in Kutaisi City Court. In a year, in 2020, her secondment term was extended by 1 year and finally, in 2021 she was appointed to Chamber of criminal cases in Kutaisi City Court on the base of the competition.<sup>21</sup>

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<sup>16</sup> 12<sup>th</sup> November, 2014 <https://bit.ly/3VdtbzD>

<sup>17</sup> 25<sup>th</sup> December, 2015 <https://bit.ly/3OlBnLU>

<sup>18</sup> 31<sup>st</sup> December, 2018 <https://bit.ly/3tLslhO>

<sup>19</sup> 18<sup>th</sup> November, 2020 <https://bit.ly/3EMOIPE>

<sup>20</sup> Supreme Court of Georgia: <https://bit.ly/3GtYan1>

<sup>21</sup> 17<sup>th</sup> June, 2021 <https://bit.ly/3EpXH2A>



Initial decision on the secondment of Nana Jokhadze mentions<sup>22</sup> that the secondment of a judge to Kutaisi City Court served prevention of the Court overloading. The reason of secondment indicated by the High Council of Justice in the decision on Nana Jokhadze in Kutaisi City Court in 2019 was the overload of Chamber of criminal cases in Kutaisi City Court.

The High Council of Justice mentions in the decision that judges from nearby locations – *Zestafoni and Samtredia District Courts* refused the proposal. Only one judge from *Ozurgeti District Court* - Nana Jokhadze agreed to the secondment.

Case of one more judge, Murtaz Kapanadze is also interesting to review. He was assigned to Samtredia District Court through the competition on 25<sup>th</sup> May, 2017.<sup>23</sup> After two weeks, on 12<sup>th</sup> June, 2017 the High Council of Justice made decision to transfer him to the Chamber of criminal cases in Kutaisi City Court, without the judge even starting exercising his duty in Samtredia District Court and having substantive consideration of no single cases.<sup>24</sup>

***Such decision makes impression that Murtaz Kapanadze's secondment to Kutaisi was agreed from the beginning. The fact that that the judge did not consider cases in Samtredia District Court confirms the above: in about 2 weeks after appointment, he was deployed to the Chamber of criminal cases in Kutaisi City Court. According to the High Council of Justice, secondment of the judge was again justified as preventing the case overload.***

Since 2019, after Murtaz Kapanadze's lifetime appointment as a judge to Samtredia District Court,<sup>25</sup> according to search engine of Court decisions, he reviews both administrative and civil cases. Considering all these, the approach of the High Council of Justice toward the specialization of the judge is strange – Murtaz Kapanadze can be considered as a judge for criminal cases, not only because he has passed judge qualification exam in criminal justice, but also because he has a professional experience in criminal justice.



It seems the actual reason of secondment of judges is not reduction or elimination of the case overloading. During 2017-2019, the Chamber of civil cases was more overloaded in Kutaisi City Court than the Chamber of criminal cases, however, judges were deployed in the criminal Chamber in Kutaisi, not in civil one.

<sup>22</sup> 20<sup>th</sup> June, 2019 <https://bit.ly/3OkzYp7>

<sup>23</sup> 11<sup>th</sup> May, 2017 <https://bit.ly/3go7dv4>

<sup>24</sup> 12<sup>th</sup> June, 2017 <https://bit.ly/3TUxVsV>

<sup>25</sup> 11<sup>th</sup> October, 2019 <https://bit.ly/3V5ySQ4>

### 1.1.3 Appointment/promotion without Competition

Article 37 of the Organic Law of Georgia on Common Courts determines the procedure for appointing of a judge to another Court without competition. A judge appointed to the position may be appointed with his/her consent as a judge of a District (City) or Appeal Court without competition. If a judge is not appointed for lifetime, he/she shall be appointed through this procedure within his/her tenure. According to paragraph 2 of the same article, a judge of a District (City) shall be appointed without competition as a judge of an Appeal Court if he/she meets the requirements under Article 41 of this Law.

*What does Article 41 provide for?* A judge of a District (City) Court may be appointed in the Court of Appeals if he/she has exercised judicial powers in a District (City) Court during at least five years. The High Council of Justice of Georgia shall establish criteria and according to them assess a judge for promotion.

As a result, The High Council of Justice shall promote a judge without (Article 37) or through a competition (Article 41) and is also responsible for establishing criteria. A judge to be appointed to a position without competition, based on Article 37, shall be also subjected to the assessment.

Based on the High Council of Justice decision No. 1/226 (December 27, 2011) the rule for evaluating the efficiency of the judge of the Common Court<sup>26</sup> was approved determining criteria for evaluating judges. **The document is a guideline for the High Council of Justice on how to evaluate judges when promoting or appointing them to higher instance Court without the competition.**



**Unfortunately, the Council has not used it ( when transferring judges without competition, confirmed by the information provided by the High Council of Justice.**

Gocha Didava, a judge at Kutaisi City Court, Chamber of civil cases was appointed to Tbilisi City Court, Chamber of civil cases on 15<sup>th</sup> July, 2019, without competition.<sup>27</sup>

Earlier to this decision Gocha Didava was participating in the competition announced to fill the vacant position of a judge, where he was rejected to the appointment by the High Council of Justice decision of 24<sup>th</sup> May, 2019.<sup>28</sup>

<sup>26</sup> The High Council of Justice Decision №1/226 of 27<sup>th</sup> December, 2011 <https://bit.ly/3gm8J0I>

<sup>27</sup> 9<sup>th</sup> July, 2019 <https://bit.ly/3hYsRGI>

<sup>28</sup> High Council of Justice Decision #1/187. <https://bit.ly/3EMyVec>

Along with a judge Gocha Didava, Shota Siradze<sup>29</sup> and Indira Mashaneishvili are the judges appointed without competition in Kutaisi Court of Appeal.<sup>30</sup> The High Council of Justice decisions are taken without any criteria and evaluation analysis, thus violating Article 37 of the Organic Law.

It is also interesting that the judges of Tbilisi City Court, Vasil Mshvenieradze, Temur Gogokhia and a judge of the Supreme Court, Amiran Dzabunidze were exercising judicial powers in Kutaisi City and Appeal Courts for a certain period of time.

A judge of Tbilisi Court of Appeal and head of investigation Chamber, Vasil Mshvenieradze was transferred to Kutaisi City Court on 5<sup>th</sup> August, 2020 without a competition.<sup>31</sup> From end of December 2020, the judge was appointed to Tbilisi with the same rule – without a competition.<sup>32</sup> Like him, Temur Gogokhia, judge at Batumi City Court was appointed in Kutaisi City Court from 2013, also exercising the duties of a chairperson.<sup>33</sup> Later, in 2017 he was appointed to Tbilisi without a competition.<sup>34</sup>

Since end of 2020, Amiran Dzabunidze, judge of Tbilisi Court of Appeals was appointed to the investigation Chamber and exercised duties of a chairperson as well.<sup>35</sup> The judge was elected to the position in the Supreme Court and on 29<sup>th</sup> December, 2021 he was dismissed from the position at Kutaisi Court of Appeals.<sup>36</sup> In this case, the short-term appointment of Vasil Mshvenieradze and Amiran Dzabunidze to the Kutaisi Court of Appeal as not only judges, but as the chairmen of the Court raises questions.



The High Council of Justice dishonestly uses Article 37 of the Organic Law on Common Courts, does not carry out mandatory evaluation of judges envisaged by the legal norm, appoints judges from one Court to another without any justification and competition. Therefore, the mentioned practice not only contradicts the Venice Commission's call for judges to be appointed solely on merit and legal grounds, but also puts judges in an unequal position, who, despite having Appealed to the High Council of Justice, had not been appointed/promoted without competition.

## 1.2 Specialization of Judges

Opinion #15 on the specialization of judges of Consultative Council of European Judges (CCJE) determines the need of specialization of judges, contributing to the high-quality decisions made by the judges: Specialist judges can acquire greater expertise in their specific fields, which can thereby enhance their

<sup>29</sup> 24<sup>th</sup> January, 2020 <https://bit.ly/3Xkf1yE>

<sup>30</sup> 9<sup>th</sup> July, 2019 <https://bit.ly/3gi43sT>

<sup>31</sup> 31<sup>st</sup> December, 2020 <https://bit.ly/3Awatve>

<sup>32</sup> 23<sup>rd</sup> December, 2020 <https://bit.ly/3AuVim7>

<sup>33</sup> 20<sup>th</sup> December, 2012 <https://bit.ly/3EP00ha>

<sup>34</sup> 24<sup>th</sup> July, 2017 <https://bit.ly/3EnPqfw>

<sup>35</sup> 23<sup>rd</sup> December, 2020 <https://bit.ly/3TVH4RU>

<sup>36</sup> 7<sup>th</sup> March, 2022 <https://bit.ly/3Xc9WIF>

Courts' authority. Concentrating case-files in the hands of a select group of specialist judges can be conducive to consistency in judicial decisions and consequently can promote legal certainty.

Specialization can help judges, by repeatedly dealing with similar cases, to gain a better understanding of the realities concerning the cases submitted to them, whether at the technical, social or economic levels, and therefore to identify solutions better suited to those realities.

Specialization through greater expertise in a certain legal field may help improve the Court's efficiency and case management, taking into account the growing number of cases.<sup>37</sup>



**Judges assigned to Kutaisi City Court have to hear the cases in another specialization, the law giving this possibility to the chairperson - to assign cases to the judge, with his own consent, from other specializations.**

According to the Article 30, paragraph 5 of the Organic Law on Common Courts:

*“If necessary, in order to avoid delay in the administration of justice, the chairperson of the Court may assign a judge selected under the procedure established by Article 58<sup>l</sup> of this Law, with his/her consent, to hear a case as a member of another specialized staff (judicial panel) of the same Court, and to act as a magistrate judge as well, and may assign a magistrate judge to hear a case outside his/her jurisdiction, in a District (City) Court.”*

With the letter #2.51 of 17<sup>th</sup> August, 2022<sup>38</sup> we addressed Kutaisi City Court requesting information on changes of specialization of judges and asked to provide copies of relevant decrees of the Court chairperson. Kutaisi City Court responded with the letter of 26<sup>th</sup> August 2022<sup>39</sup> that they do not process such information, being it very strange. It leaves impression that Kutaisi City Court does not archive decrees of the Chairman on the assignment of cases to judges in other specializations. Unlike Kutaisi City Court, Rustavi City Court provided decrees of the Chairman on the assignment of cases to judges in other specializations enclosed to the letter #1432/g of 27<sup>th</sup> August, 2022.<sup>40</sup>

Additionally, with the letter #2.40 of 17<sup>th</sup> August, 2022<sup>41</sup>, we addressed Kutaisi City Court requesting information on the number of reviewed, completed and pending cases for each judge separately. Kutaisi City Court provided mentioned information with the letter of 29<sup>th</sup> August, 2022<sup>42</sup>, giving us opportunity to determine whether the judges have considered cases in other specializations.

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<sup>37</sup> <https://bit.ly/3OnWtcG>

<sup>38</sup> <https://bit.ly/3EJKMd9>

<sup>39</sup> Letter #9198-2 <https://bit.ly/3ENwfgD>

<sup>40</sup> <https://bit.ly/3hXqCDz>

<sup>41</sup> <https://bit.ly/3XaPK9U>

<sup>42</sup> Letter #9193-2 <https://bit.ly/3hNnwSm>

Tsitsino Mosidze is a judge appointed with the lifetime tenure in the Chamber of civil cases in Kutaisi City Court since 22<sup>nd</sup> February, 2018.<sup>43</sup>

According to information provided by Kutaisi City Court, in 2020 and 2021, Tsitsino Mosidze was considering criminal and administrative cases as well, along with the civil ones. Decisions on the criminal cases considered by Tsitsino Mosidze in 2019-2021 can be also found in a joint database of the Court decisions.<sup>44</sup> According to information provided by Kutaisi City Court, Darina Abuladze, one more judge of the Chamber of civil cases, was considering criminal and administrative cases in 2020-2021.



**It is important that a specialist (judge) working in the field of civil law considers cases relevant to his qualifications and does not have to consider cases in other, e.g. criminal justice, which plays an important role in the deterioration of the quality of Court decisions, in terms of protection of the right to a fair trial.**

Cases of the magistrate judges - Manana Nikachadze, Malkhaz Chubinidze and Tsitsino Kikvadze – considering cases of other specialization are similar. Based on the High Council of Justice decision they shall be considering cases relevant to be considered by the magistrate judges.

Manana Nikachadze is a magistrate judge in Baghdati Municipality appointed with lifetime tenure from 20<sup>th</sup> October 2017 by the decision of the High Council of Justice.<sup>45</sup> According to information provided by Kutaisi City Court, in 2020 and 2021, apart from cases to have been considered by the magistrate judge, Manana Nikachadze had those of civil and administrative Chambers of Kutaisi City Court. Her decisions on 2019-2020 civil cases in Kutaisi City Court can be found in the joint database of Court decisions.

Malkhaz Chubinidze (currently a judge of Kutaisi Court of Appeals) is also a magistrate judge with lifelong tenure deployed in Tskaltubo Municipality.<sup>46</sup> According to information provided by Kutaisi City Court, in 2020 and 2021, apart from cases to have been considered by the magistrate judge, Malkhaz Chubinidze had those of civil, administrative and criminal Chambers of Kutaisi City Court. His decisions on 2019-2020 civil and administrative cases in Kutaisi City Court can be found in the joint database of Court decisions.

Tsitsino Kikvadze is a magistrate judge with lifetime tenure deployed in Tkibuli Municipality.<sup>47</sup> According to information provided by Kutaisi City Court, in 2020, apart from cases to have been considered by the magistrate judge, Tsitsino Kikvadze had those of civil, administrative and criminal Chambers of Kutaisi

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<sup>43</sup> Link: <https://bit.ly/3EJL8Av>

<sup>44</sup> Decision on the case №1/930-18 22.01.2020; decision on the case №1/994-18 26.11.2019; decision on the case №1/424-15 08.01.2020.

<sup>45</sup> 20<sup>th</sup> October, 2017 <https://bit.ly/3TRdVHy>

<sup>46</sup> 11<sup>th</sup> May, 2017 <https://bit.ly/3hVFZwb>

<sup>47</sup> 28<sup>th</sup> October, 2016 <https://bit.ly/3UQIKNL>

City Court. Her decisions on criminal<sup>48</sup> and civil cases in Kutaisi City Court can be found in the joint database of Court decisions.



Network lawyer members point out that magistrate judges performing the duties in Kutaisi City Court hinders the timely consideration of their main cases. Magistrate judge considers cases under their jurisdiction and at the same time, civil, administrative, and criminal cases of Kutaisi City Court are assigned in high amounts to them. As stated by the network lawyer members, per their experience, it is hard for a professional to simultaneously have equal qualification in criminal, civil and administrative law. The mentioned results in delayed consideration of cases and violation of terms, as well as citizens' dissatisfaction.

One more case of changing specialization is of Leri Tedoradze, judge of Kutaisi Court of Appeals. He was a judge of the criminal Chamber and the chairman of a Court at the same time in Kutaisi City Court. The judge was assigned at Kutaisi Court of Appeals through the competition. Since 26<sup>th</sup> July, 2021 he considers administrative cases in Kutaisi Court of Appeals.<sup>49</sup> High Council of Justice decision suggests no justification on whether the judge, who has experience working on criminal cases for many years, attended relevant programs in the High School of Justice to upskill his qualifications when being appointed in different specialization. ***One more time showing the need that the High School of Justice shall conducts upskill trainings for judges in the relevant field in advance.***

### 1.3 Disciplinary Proceedings

Within the framework of the judicial reform, legislative amendments were developed on issues of improvement of the bases of disciplinary responsibility of judges and procedural norms.

According to the legislation existing prior to that and now the High Council of Justice secretary calls the meetings of the High Council of Justice to discuss disciplinary issues. The problem is that the secretary of the Council did not regularly called meetings regarding disciplinary proceedings and the number of complaints considered at the High Council of Justice meetings was critically low.

The Office of the Independent Inspector was established in accordance with the amendments to the Organic Law on Common Courts. Unfortunately, legislative changes had no significant impact on the process of disciplinary proceedings, also proved by the complaints submitted towards the judges of Kutaisi City Court

<sup>48</sup> Judgement on the case №1/125-19, 15<sup>th</sup> October, 2019; decision on the case №1/1103-18; 9<sup>th</sup> October, 2019; judgement on the case №1/1079-18, 16<sup>th</sup> July, 2019.

<sup>49</sup> 23<sup>rd</sup> July, 2021 <https://bit.ly/3TTLdGb>

not being reviewed, as, despite the legislative changes, the disciplinary proceedings were not proceeding properly, and the Council was not conducting its meetings with the required intensity.

According to the letter by the Office of the Independent Inspector under **the High Council of Justice #416/220-03 of 14<sup>th</sup> July, 2022 to Kutaisi City Court judges:**

- In 2019, 3 complaints were filed, out of which the disciplinary proceedings were terminated for 1 complaint due to statute of limitations, and for 2 complaints, a conclusion was prepared and sent to the High Council of Justice, which has not yet made a decision.
- In 2020, 5 complaints were filed, out of which the disciplinary proceedings were terminated for 1 complaint, and for 4 - a conclusion was prepared. The Council terminated proceedings for all four cases.
- In 2021, 6 complaints were filed, out of which the disciplinary proceedings were terminated for 1, and for 5 complaints 4 conclusions were prepared. The High Council of Justice has not yet made a decision.

**To Kutaisi Court of Appeals judges:**

- In 2019, 7 complaints were filed, out of which the disciplinary proceedings were terminated for 2, for 5 cases 4 conclusions were prepared. The High Council of Justice decided to terminate proceedings on 2 cases, it has not yet made decision on 2 cases.
- In 2020, 5 complaints were filed, out of which the disciplinary proceedings were terminated for 3, for 2 cases conclusions were prepared but the Council terminated disciplinary proceedings on both of them.

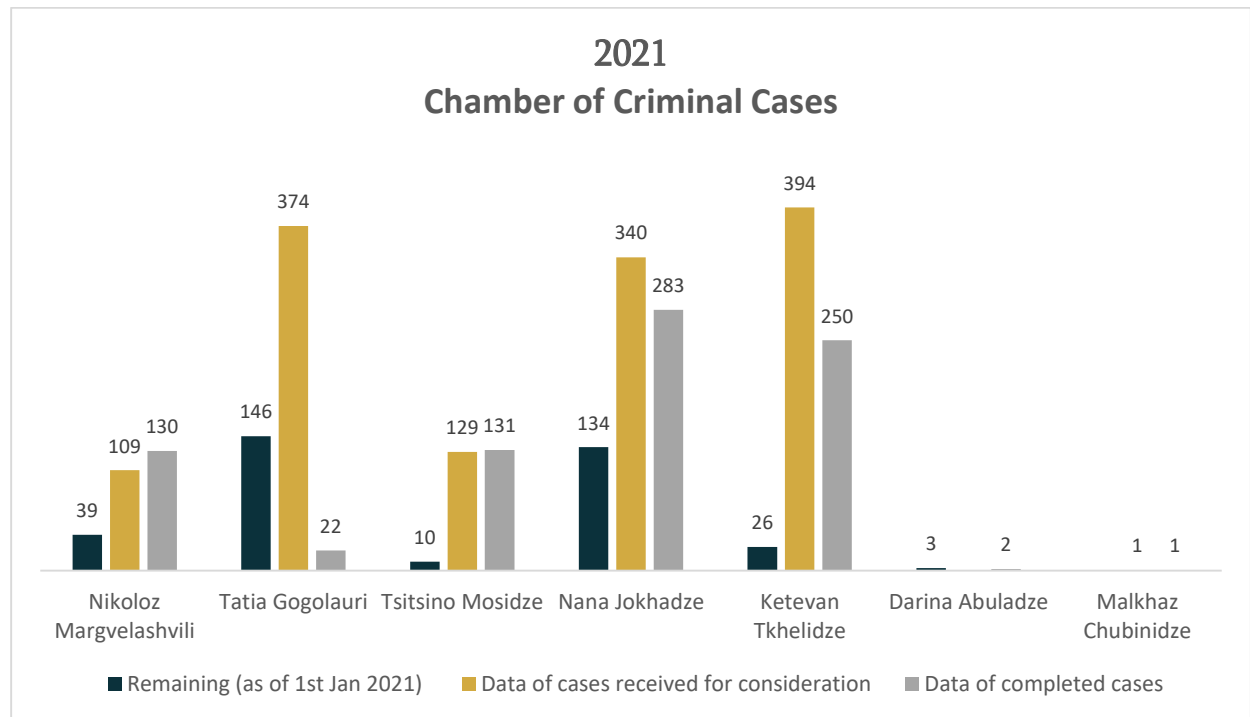
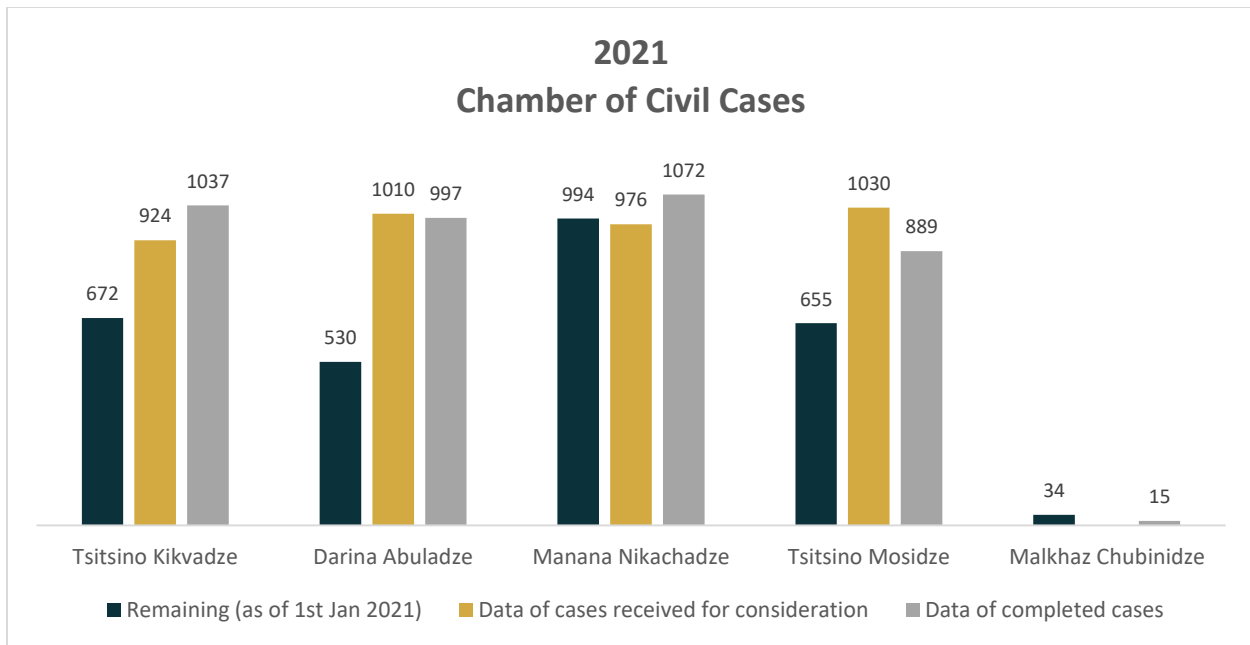
On the example Kutaisi City and Appeal Courts, it can be said that the institute of disciplinary proceedings is not functioning at all, again reflected in the practice of not holding disciplinary proceedings sessions by the Council. The situation before and after the reform of Independent Inspector does not differ substantially in content. Despite the fact that organizational side has significantly refined and improved, nothing has changed in terms of result. The official letter confirms that situation has improved in terms of case preparation and case preparation by the Independent Inspector, however, the High Council of Justice still does not conduct meetings intensively and therefore, does not consider Inspector's conclusions on time.

This opinion is shared by the Kutaisi network members too. According to them, they have submitted an application to the High Council of Justice regarding the protracted cases against the judges several times, but in vain. The Council did not consider the complaint, or terminated the process, negatively affecting their motivation to file a complaint about existing violations next time.

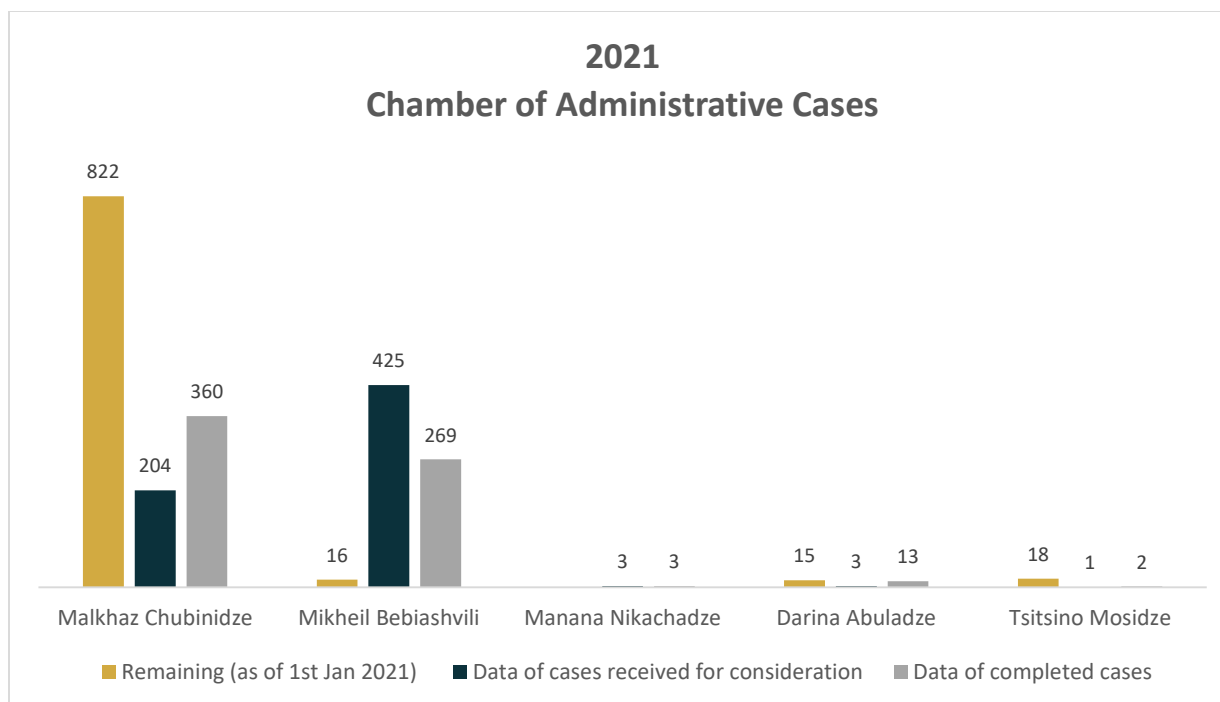
## **2. Court Efficiency Standard**

### **2.1. The Rate of Considered Cases Within a Year in Kutaisi City Court and Delayed Cases**

Cases considered by judges in Kutaisi City Court by Chambers:







According to the analysis of the workload of judges, civil and administrative Chambers are the most loaded. Based on the date of 2021, by the end of year the percentage of unconsidered cases in Kutaisi City Court was 55.7% for the Chamber of administrative cases and 42.1% for the Chamber of civil cases.<sup>50</sup>



**There are number of delayed cases and the ones considered with the violation of civil procedural terms, significantly harming protection of the right to a fair trial and rendering the administration of justice meaningless. It was highlighted several times on the meeting of the network meetings that the judges are overloaded, and the cases delayed due to them, which is not surprising as the Court has unfilled vacancies and overloaded judges are not able to comply with the timelines.**

According to Article 59, para 3 of the Civil Procedure Code of Georgia, “Unless otherwise determined by this Code, a Court shall hear a civil case not later than two months after receiving the application. By decision of a trial Court of a particularly complex case, this time limit may be extended by not more than five months, except for cases on claims for maintenance payments, compensation of damages incurred as a result of injury or other bodily harm, or the death of a breadwinner, also claims with respect to labor relations, matters related to the Law of Georgia on Relations Arising during the Use of a Dwelling Place,

<sup>50</sup> Letter 08.07.2022 # p-875 and # p-899-22 of the Supreme Court of Georgia.

and cases on recovery of the property from illegal ownership, which must be heard not later than one month.”

Despite this legal norm, Kutaisi City Court is not an exception in terms of violation of the terms stipulated by the procedural legislation. For example, on the case #080210019003290720 (№2/3069-19) As per information provided by the network, the judge accepted the lawsuit in November 2019, and finished the review in February 2022; case #2/2058-19 (080210119003142973) lawsuit was accepted in August 2019, review completed on June 30<sup>th</sup>, 2021; case #080210021005043303 lawsuit was accepted in September 2021 and complete in June 2022; case #080210021004403052 lawsuit was accepted by the judge in February 2021 and completed on 22<sup>nd</sup> June 2022.

In addition to the delayed civil cases, there are similar problems with criminal cases. In particular, the case concerns the use of a non-custodial pre-trial preventive measure, where the judge is not limited with the custodial term and can continue the case, thereby harming the interests of the parties.<sup>51</sup>

## 2.2. 16 Decisions Made in One Day

44 decisions were studied considered by the same judge on the recognition of a person as a support recipient and the definition of the support scope and rights and duties of the support person in Kutaisi City Court.<sup>52</sup> At the stage of decision processing, it was revealed that the number of decisions made by the judge in a day is as follows:

- 20.12.2019 - 16 Decisions
- 11.11.2019 - 14 Decisions
- 28.03.2019 - 13 Decisions

There is no submission date indicated for the claim in the court decisions, therefore it is impossible to assume in what time frame the decisions were made by the judge. These decisions are based on the psycho-social conclusions. Although the dates of the Court decisions are common for all cases, the expert opinion dates presented in the cases differ. Therefore, in addition to the fact that the timely consideration of the case by the judge is problematic, at the same time, questions may arise about the validity of the expert opinion, if a long time has passed since it was conducted. In addition, it shall be taken into account that cases of this category are sensitive, and it is important for the Court to consider them within a reasonable timeframe.

- *Various decisions taken by the Court on 20th December, 2019 is based on the expert conclusions conducted between 13.03.2019-09.12.2019;*
- *On one of the cases, the Court made decision in December 2019, based on the examination conducted the same year in March, but on another case, after just a few weeks from the expert conclusion;*
- *Situation is the same with the decisions taken by the Court on 11th December 2019 – in one case, decision was made in 11 months after the examination and in another – in 2 months.*

**Accordingly, the question arises - could the judge, complete the consideration of any the decisions on 16 cases made on 20<sup>th</sup> December 20, 2019 earlier?** For example, in one case, the decision was made

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<sup>51</sup> Criminal Case #088141221801.

<sup>52</sup> Link: <https://bit.ly/3EmRRPm>

within two weeks from the expert conclusion date. It seems, the judge does not always consider such cases within tight deadlines but determines a specific decision-making (announcing) date for several cases.

### 2.3. Optimal Number of Court Staff and Implementation of Administrative Functions of Court Chairpersons

According to Article 49, para 1(d) of the Organic Law on Common Courts, the High Council of Justice of Georgia approves the number of personnel of the Office, staff list and structure of the personnel of the Office of Kutaisi City and Appeals Courts. As a result, judicial administration system is centralized, and the Courts cannot independently determine Court structure or number of Office personnel.

According to the High Council of Justice Decree of 18<sup>th</sup> January, 2022,<sup>53</sup> the number of Office staff for Kutaisi City Court is set to 53, and for Kutaisi Court of Appeals - 79.

According to the structure determined by the Council, 12 assistants to a judge and 12 meeting secretaries are foreseen per 10 judges, however, nowadays 7 judges are exercising their judicial power and there are three vacant positions.

In case of 3 magistrate judge, the staff is limited to 3 meeting secretaries. **According to the staffing list, magistrate judges do not have the assistants.**

Kutaisi City Court is one of the exceptional Courts having a specialist in generalization of international practices, which is not a case in Rustavi City hall staff list, for example.

Kutaisi Court of Appeals has different structure. According to the staff list, 15 judges of Kutaisi Court of Appeals have 22 assistants but at the same time, 7 judicial positions are currently vacant. Additionally, the staff list also envisages 10 writer assistants and 11 Court session secretaries.

Unlike Kutaisi City Court, Kutaisi Court of Appeals has staffing and organizational department; civil, administrative, criminal and investigation Chambers' sectors are separated in the chancellery and citizens' reception department, where the staff of relevant specialists is provided. The Court also has archive specialist, which is not a case in Kutaisi City Court. However, unlike Tbilisi Court of Appeals, there is no analytical department in Kutaisi Court of Appeals, whose main function shall be conducting researches and introducing them to the judges.

Years ago the institute of Court Managers was introduced in the judicial system of Georgia. Court managers should have taken over the administrative functions of a Court chairpersons which would give them more time for case considerations throughout the year.

According to Article 56 of the Organic Law on Common Courts:

*A Court manager shall manage the administrative office of a Court according to the legislation of Georgia, and if necessary, within the scope of powers defined by the chairperson of the Court. The Court manager shall, under the procedure determined by the legislation of Georgia, appoint and discharge employees of the office of Court (except for the head of the Bailiffs Office, a Court bailiff, assistant to the judge and a secretary of the Court session).*

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<sup>53</sup> The High Council of Justice Decision #1/3 <https://bit.ly/3Vh9sPL>

According to the legal norm and staffing list<sup>54</sup> analysis, manager of Kutaisi City Court has right to appoint to and dismiss from the position:

- *A lead specialist (in generalization of international practice) – 1 staff member*
- *Chancellery and head of citizens' reception department, lead specialist, specialist, specialist in jury trial organizational issues - 8 staff*
- *Magistrate judge Office specialist - 3 staff*



Out of 53 staff members of Kutaisi City Court, the manager has right to appoint or dismiss 12 of them. Similarly, a manager of Kutaisi Court of Appeals has right to appoint or dismiss 14 staff members out of total 79.

*Accordingly, the majority of managerial decisions are still carried out by the chairperson of the Court, who, in line with para 1 of Article 25 and para 2 of Article 32 of the Organic Law on Common Courts, supervises and organizes the operation of the Court office. **The manager largely depends on the execution of the Court chairman orders and does not independently make decisions on the Court administration issues.** The intention of the law that the manager would “remove” handling of organizational issues and daily routines from the Court chairperson may be less fulfilled.*

According to Articles 25 and 32 of the Organic Law on Common Courts, the chairpersons of the City Court and Court of Appeals:

“Organize the operation of the Court, examine and generalize information on the case-flow management **(including the indicators of filing and closing of cases, time limits of the proceedings, reasons for adjourning of the Court sessions and impeding of the proceedings)**, and submit, at least annually, this information to judges and the High Council of Justice of Georgia; within the scope of its competence, take measures for eliminating the systemic reasons that impede the proceedings, under the procedure determined by the legislation of Georgia, ensure generalization of applications, complaints and proposals of the citizens, and submit materials of the generalization to the High Council of Justice of Georgia.”

**Based on information provided by Kutaisi City Court on 29<sup>th</sup> August, 2022, we can say, the above-mentioned obligations of the Court chairperson defined by the law are not fulfilled.**

We addressed Kutaisi City Court and requested information on cases considered by judges in 2020-2021 with compliance with or violation of the deadline, also, whether they were investigating reasons of case delays and whether the recommendations were submitted to the High Council of Justice, however, Kutaisi City Court responded that they do not process such statistical information.<sup>55</sup> Accordingly, turns out that information is not archived in the Court, and the Court chairperson does not fulfill his obligation to make recommendations to the High Council of Justice.

<sup>54</sup> The High Council of Justice Decree 1/3 Of 18<sup>th</sup> January, 2022.

<sup>55</sup> Kutaisi City Court letter #9194-2; 9196-2 of 22<sup>nd</sup> August, 2022 <https://bit.ly/3Vh9xmx>

Additionally, according to the High Council of Justice letter #653/1838-03 of 19<sup>th</sup> August, 2022,<sup>56</sup> the High Council of Justice does not process percentage indicators of the workload of judges and Court office staff of Kutaisi City Court and Court of Appeals. The letter of the Council also confirms that information on the service quality and corresponding recommendations has not been submitted to the High Council of Justice in 2020-2021. Therefore, the legal obligation of the Court chairpersons to process information of the citizen complaints, prepare generalization about citizen services and provide proposals to the High Council of Justice - is not fulfilled.

## 2.4. Functions and Salary of the Office Staff

### 2.4.1. Salary

**Tbilisi City Court office staff (incomplete) and their remuneration:**

<b>Tbilisi City Court</b>	<b>Salary (GEL)</b>
<b>Court manager</b>	<b>4180</b>
<b>Human resources management and internal audit department</b>	
<b>Department head</b>	<b>2420</b>
<b>Senior consultant</b>	<b>2310</b>
<b>Lead specialist</b>	<b>1320</b>
<b>Secretariat</b>	
<b>Head of secretariat</b>	<b>2750</b>
<b>Senior consultant – assistant to the judge</b>	<b>2420</b>
<b>Assistant to the judge</b>	<b>2090</b>
<b>Secretary of Court session</b>	<b>1430</b>
<b>Specialist</b>	<b>1265</b>
<b>Chancellery</b>	
<b>Head of chancellery</b>	<b>2750</b>
<b>Chief consultant</b>	<b>2420</b>
<b>Senior consultant</b>	<b>2310</b>
<b>Lead specialist</b>	<b>1320</b>
<b>Specialist</b>	<b>1265</b>
<b>Archivist (consultant)</b>	<b>1760</b>
<b>Archivist (specialist)</b>	<b>1265</b>
<b>Citizen service center</b>	
<b>Chief consultant</b>	<b>2420</b>
<b>Senior consultant</b>	<b>2310</b>
<b>Consultant</b>	<b>1760</b>

<sup>56</sup> Link: <https://bit.ly/3TNIDSZ>

Consultant in matters of judicial mediation	1760
Lead specialist	1320
Specialist	1265
<b>Secret case proceeding department</b>	
Department head	2420
Assistant to the judge – secretary of Court session	2090
Consultant	1760
<b>Generalization of national and international judicial practices and statistics department</b>	
Department head	2420
Senior consultant in providing public information	2310
Consultant in generalization of judicial practice	1870
Senior consultant in statistics	2200
Consultant in statistics	1760
Lead specialist in statistics	1320
Specialist in statistics	1265
<b>Bailiff Service</b>	
Head of service	2420
Deputy head of service	2090
Bailiff	1430

**The list of Kutaisi City Court office staff and their remuneration:**

<b>Kutaisi City Court</b>	<b>Salary</b>
Court manager	2420
<b>Staffing and organizational department</b>	
Assistant to the judge	1650
Secretary of Court session	1100
Lead specialist (in generalization of international practice)	1100
<b>Chancellery and reception of citizens</b>	
Department head	1760
Lead specialist	990
Specialist	935
Specialist in organizing the jury	990
Secretary of Court session	1650
Specialist	935
Bailiff	1100
Bailiff service	1760
Senior bailiff of service	1100

There are significant differences between the salaries of office staff of the same level (instances) Courts.<sup>57</sup> Difference between the salary amounts of the assistants, secretaries, Court managers employed in Kutaisi and Tbilisi City Courts is especially significant. The salaries of staff of the Kutaisi City Court are much lower than in Tbilisi City Court.

## 2.4.2. Job Description

### 2.4.2.1. Court Manager

#### *Qualification requirements*

According to the established practice, the Court managers are lawyers. The competition announced for the vacant position of Kutaisi City Court manager required from the manager to have 5-year experience of working as a lawyer and only 2-year experience on managerial duties.<sup>58</sup> *It can be said that 2 years of managerial experience is not enough to perform the organizational functions determined by the manager's job description.*

#### *Job description*

Compared to other staff members of the Court office, Kutaisi City Court manager has the most functions - total 41.<sup>59</sup> According to information provided by Kutaisi City Court, the Court manager:

1. Manages the Court office and ensures the efficient operation of the Court office;
2. Together with the chairperson of the Court determines the Court strategy, supervises the implementation of strategic plans;
3. Submits conclusions and recommendations to the Court chairperson on important issues of Court administration;
4. Ensures and controls fulfillment of the obligations imposed on the structural units and employees of the Court office in the prescribed manner, compliance with the law and internal regulations;
5. Initiates and presents projects for the Court development. manages ongoing projects in the Court, develops action plans and ensures the implementation of projects;
6. Analyzes information related to the management of the case-flow in the Court, indicators of workload and consideration of cases, information related to the quality of proceedings and services to citizens, and submits recommendations;
7. Supervises the operation of the electronic program of Court proceedings and submits recommendations for its improvement;
8. Supervises the efficient use of human, financial and material resources of the Court and submits recommendations about reorganization and other processes;
9. Evaluates the Court users' satisfaction with the quality of service, reveals shortcomings and deficiencies and responds accordingly;
10. Takes care of and ensures the establishment of the best managerial practices, development of managerial skills, gets acquainted with the international experience of Court management;
11. Supervises the processes related to human resources management and the correct management of the employee evaluation system, submits the relevant documentation within the specified time frame in accordance with the existing procedure and the law; If a functional ring exists, works in

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<sup>57</sup> Link: <http://hcoj.gov.ge/Uploads/2022/4/3-2022.pdf>

<sup>58</sup> Link: [www.hr.gov.ge](http://www.hr.gov.ge) Vacancy N 59192.

<sup>59</sup> Kutaisi City Court letter #6539-1 of 15<sup>th</sup> August, 2022 <https://bit.ly/3UUjIgP>

coordination with the functional ring to provide functional assessment. performs evaluation of the subordinate employees and manages probation period and performs related personnel administration;

12. Participates in the selection process of office employees;
13. Ensures proceedings related to personnel administration, data entry into the electronic system in accordance with the existing rule and the law on personal data protection;
14. Supports the chairperson of the Court to establish correct judicial culture;
15. Cooperates with public institutions, governmental and non-governmental organizations, donor organizations;
16. Communicates with press, media and citizens;
17. Complies and ensures compliance with the communication standards by the Court employees;
18. Develops and submits proposals on encouragement and promotion of the office employees; initiates ideas and recommendations in order to improve working conditions and presents developed projects;
19. Issues administrative legal acts within the granted authority;
20. Manages and participates in the process of disciplinary proceedings of a Court office employee;
21. ensures the adaptation and orientation process of a new employee of the Court office;
22. Ensures professional development of employees of the office, informs subordinate employees of news and conducts meetings;
23. Ensures relevant accountability towards direct manager;
24. Ensures compliance with labor safety in the Court;
25. Submits relevant reports within the established timeline;
26. Ensures efficient work of a structural unit and manages direct subordinates;
27. Supervises activities of the employees, periodically monitors correctness and quality of the work conducted;
28. Ensures appropriate document turnover - manages vacations of subordinate employees, additional days off, attendance, etc.;
29. Manages business trips and attendance to their trainings of the subordinate employees;
30. Ensures the development of internal regulations and other human resources management documents, their periodic review, if required and their storage. Submits the developed documents to the manager, makes appropriate changes as needed;
31. Ensures introduction of the human resources policy, internal regulations to the employees;
32. Ensures staff administration: preparation of draft decrees and agreements; manages personal files of the employees in compliance with the personal data protection law;
33. Conducts selection competition, among them: ensures vacancy announcement in accordance with the standards established by the Civil Service Bureau, prepares selection list, ensures composition of the selection committee, prepares relevant acts. Conducts tests, interviews and other activities as per the rule. Works in coordination with the Civil Service Bureau and the manager while discussing the candidate's complains;
34. Coordinates the performance evaluation process, ensures timely receipt of work performance forms and records, gives advice and consults on filling out the form and managing the process, Ensures compliance with the rules for work performance process and form filling. Ensures right communicates between the manager and the employee, together with the manager, plans relevant steps in case of non-satisfactory evaluation;
35. Ensures the preparation of relevant reports for employees;
36. Ensures professional development of subordinate employees, informs subordinate employees of news and conducts meetings;
37. Ensures proper courier services;
38. Receives applications for vacations, prepares draft orders, maintains a relevant database;
39. Prepares various types of statistics;
40. Performs separate tasks by managers, within the scope of competence;



41. Exercises other work-related rights and duties.



If we compare functions of Kutaisi Court of Appeals manager to the ones of Kutaisi City Court manager, the job description of the Kutaisi Court of Appeals manager is less loaded and does not cover functions such as human resources management, statistics management, communication with media and press, etc. **Kutaisi Court of Appeals manager has almost twice the less functions and almost twice the salary compared to the of Kutaisi City Court manager.**

#### Functions of the manager of Kutaisi Court of Appeals:<sup>60</sup>

1. Leading the Court office in the manner established by the law, also, if necessary, within the scope of authority determined by the Court chairperson;
2. Together with the chairperson of Kutaisi Court of Appeals, determination and management of implementation of the Court strategic and ongoing action plan;
3. Submission of conclusions and recommendations to the chairperson of Kutaisi Court of Appeals on important Court administration issues;
4. Ensuring coordination between the structural units of the Court and judges;
5. Controlling the correct distribution of functions among civil servants in the Kutaisi Court of Appeals;
6. Projects management, initiation and implementation;
7. Analysis, change and implementation of Court products and procedures;
8. Establishing the best managerial practices and developing managerial skills. Getting acquainted with the international experience of Court management;
9. Qualitative and quantitative survey of internal and external public opinion and analysis of the survey results;
10. Analysis of information related to the management of the case-flow in the Court, indicators of workload and consideration of cases, information related to the quality of proceedings and services to citizens, and presentation of recommendations;
11. Supervision of the operation of the electronic program of Court proceedings and presenting recommendations for its improvement;
12. Initiation of the ideas and recommendations to improve working conditions and presenting developed projects;
13. Ensuring compliance with the labor safety in the Court and controlling the compliance with the internal regulations;
14. Ensuring appropriate work conditions in Kutaisi Court of Appeals;
15. Issuing administrative legal acts within the scope of authority given;
16. Supervision over the effective use of Court human and material resources;
17. Supervision over the right implementation of processes related to human resources management and employee evaluation system; ensuring annual evaluation of subordinates, management of probation periods;

<sup>60</sup> Kutaisi Court of Appeals letter #543-2110 of 19<sup>th</sup> August, 2022 <https://bit.ly/3UUObva>

- |   |
|---|
| <ul style="list-style-type: none"> <li>18. Development and presentation of proposals for encouragement and promotion of Court office employees;</li> <li>19. Ensuring professional development of subordinate employees;</li> <li>20. Allowing passes for the purpose of receiving citizens in Kutaisi Court of Appeals;</li> <li>21. Allowing passes for the vehicles of Kutaisi Court of Appeals employees;</li> <li>22. Cooperation with different agencies, if needed;</li> <li>23. Presenting relevant reports to the chairperson of Kutaisi Court of Appeals in line with the set rule;</li> <li>24. Fulfilling tasks by the chairperson of Kutaisi Court of Appeals within the scope of competence.</li> </ul> |
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The Georgian Court Watch requested various public information from Kutaisi City Court and Kutaisi Court of Appeals.<sup>61</sup> Based on the responses received from the Courts, we tried to find out whether the managers properly perform the functions defined by their job descriptions.

In both cases, according to the job descriptions of the managers of Kutaisi City Court and Kutaisi Court of Appeals, a manager *“Analyzes information related to the management of the case-flow in the Court, indicators of workload and consideration of cases, information related to the quality of proceedings and services to citizens and presents recommendations; as well as supervises operation of the electronic program of Court proceedings and presents recommendations for its improvement.”*<sup>62</sup>

Processing information related to the management of the case-flow in the Court, indicators of workload and consideration of cases, information related to the quality of proceedings and services to citizens and presenting recommendations in the Court by a manager repeats the functions of the Court chairperson.<sup>63</sup>

With the letter #6539-1 of 15<sup>th</sup> August, 2022, Kutaisi City Court provided information on the number of incoming and considered cases during 2021. As for the remaining cases, or the share of considered cases compared to unconsidered cases, Kutaisi City Court responded that they do not process such information.

Additionally, the Court Watch addressed Kutaisi City Court one more time on 17<sup>th</sup> August, 2022, this time requesting information regarding the cases considered by each judge. Kutaisi City Court provided information to the organization, where the remaining cases are also indicated.<sup>64</sup>

Accordingly, it becomes obvious that information related to the management of the case flow about received, considered and pending cases is processed in the Court to some extent.

Another function of Kutaisi City Court manager is to supervise the electronic processing of cases and submit recommendations, although it is unclear whether this obligation is fulfilled.

The organization addressed Kutaisi City Court with a question on this issue and the letter #6539-1 of 15<sup>th</sup> August, highlights the following: *the Court does not have statistical information on cases assigned to each judge electronically, randomly or directly.*

**A question arises: If there is no information stored in the Courts on how the cases were electronically assigned to each judge, based on what the software gaps should be studied and recommendations submitted to the High Council of Justice?**

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<sup>61</sup> 1) <https://bit.ly/3UThxKA> 2) <https://bit.ly/3XhpyvE> 3) <https://bit.ly/3VgHq6V> 4) <https://bit.ly/3UUyDrx> 5) <https://bit.ly/3TROd5Q>

<sup>62</sup> Kutaisi City Court letter #6539-1 of 15<sup>th</sup> August, 2022, footnote 70.

<sup>63</sup> Articles 23 and 32 of the Organic Law on Common Courts.

<sup>64</sup> Kutaisi City Court letter # 9193-2 of 29<sup>th</sup> August, 2022, footnote 46.

*At the same time, the organization knows that the mentioned information is processed by the High Council of Justice (letter #652/1889-03-o of 19<sup>th</sup> August, 2022).*

According to the job description of the Court managers, it is their duty to ensure professional development of the employees. Court finances are managed by the Common Courts department<sup>65</sup>, and the above-mentioned Courts are not informed on the amount allocated annually for the professional training programs. According to the 2021 performance report of the budget of the Common Courts, 59.4% of the program was fulfilled in terms of preparation and trainings for the judges and Court employees and 40.1% of the budget is unutilized.<sup>66</sup> Instead of spending on the training of officials, the Common Courts do not fully utilize the allocated funds.

#### **2.4.2.2. Assistant to the Judge and Secretary of Court Session**

Court staff, whose functions are directly related to the administration of proceedings in Court, is determined by Article 57 of the Law on Common Courts. According to this article it is preferable if the person:

- **holds a certificate of public servant defined under the Law of Georgia on Public Service;**
- **has completed about a year-long paid internship at a general Court and a special training course at the High School of Justice, may be appointed, under the procedure established by the High Council of Justice of Georgia/Plenum of the Supreme Court.**

When a person is appointed as a Court officer, he/she shall not be required to take a paid internship and/or a special training course referred to in the first paragraph, if he/she meets one of the following requirements:

- a) has at least one-year work experience as a judge, prosecutor, investigator or advocate;
- b) has passed a judicial qualification exam;
- c) has at least two-year work experience in the legal profession;
- d) has at least one-year work experience in his/her specialty in Court.

A person shall not be required to take the special training course if he/she has completed a special training course of an assistant judge in the High School of Justice.

Kutaisi Court of Appeals has envisaged a position of a writing assistant in accordance with the staffing schedule, whose main function is preparation of judicial acts, as well as, by order of a judge, **“finding materials related to human rights and international judicial practice on the case under consideration.”** According to qualification requirements, assistant is not required to know English. It is interesting, how an assistant will process international acts most of which, and the practice, are only available in English? In addition to this, writing assistant, similar to a “technical” staff, is required to have 2-year work experience.<sup>67</sup>

**It is advisable to recommend knowledge of English or another foreign language in the qualification requirements of a writing assistant and has more work experience in judiciary, in order to be able to prepare complex and comprehensive drafts of Court decisions.**

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<sup>65</sup> Articles 54 and 55 of the Law on Common Courts.

<sup>66</sup> Performance report of a state budget, 2021; <https://www.mof.ge/5521>

<sup>67</sup> [www.hr.gov.ge](http://www.hr.gov.ge) Vacancy N 65077.

**Secretary of Court session of the magistrate judge, unlike the session secretary of Kutaisi City Court, prepares Court project drafts, organizes case proceedings and ensures preparation of Court proceedings. He/she has twice many – total 21 functions, however, his/her salary is twice less compared to the salary of the City Court secretary of the session.**

**Functions of the secretary of session at Kutaisi City Court are following:<sup>68</sup>**

1. Prepares the Courtroom for the trial;
2. Attends the process, ensures audio and video recording of the session, prepares the act within the set timelines, signs and submits to the judge, ensures complete reflection and correctness of the process in the minutes of the session;
3. Provides notification of the time and place of the Court session to the parties, sends Court notices, controls returning back of the notices to the Court and provides information to the judge about the reasons for their non-delivery to the addressee, in case of non-deliveries, informs the addressees about the session with alternative ways. Also, provides information to the judge on the reasons of non-attendance of the process participants to the session; prepares procedural documents received during the Court session;
4. Provides chronological description and bundling of case materials;
5. Prepares schedules of Court sessions;
6. Registers the documents presented at the Court session in the electronic system; records data related to the course of the session; provides the relevant structural unit with the documents to be transferred to the parties;
7. Ensures the transfer of timely Appealed, completed cases to the chancellery, their perfection and accuracy;
8. Upon request and within the scope of competence, informs the new employee and/or intern of work processes;
9. Within the scope of competence, performs separate tasks of managers;
10. Performs other work-related rights and duties.

**Functions of the secretary of session of magistrate judge at Kutaisi City Court are:<sup>69</sup>**

1. Communicates with citizens, is informed of their statements and complaints and responds accordingly;
2. At the request of the judge, drafts the Court acts and various procedural documents, ensures their completeness and accuracy and submits them to the judge.
3. Conducts proceedings, including: storing the incoming correspondence, sending it to the parties, Ensures the transfer of Court documents, preparation of the case for the Court session;
4. Provides notification of the time and place of the Court session to the parties, sends Court notices, controls returning back of the notices to the Court and provides information to the judge about the reasons for their non-delivery to the addressee, in case of non-deliveries, informs the addressees about the session with alternative ways. Also, provides information to the judge on the reasons of non-attendance of the process participants to the session; prepares procedural documents received during the Court session;
5. Prepares schedules of Court sessions;
6. Ensures publication of public notices;
7. Ensures storage of material evidence;
8. Ensures case protection/storage;
9. Provides the relevant structural unit with the documents to be transferred to the parties;

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<sup>68</sup> Footnote 68.

<sup>69</sup> Ibid.

10. Provides chronological description and bundling of case materials;
11. Enforces judicial acts entered into legal force;
12. Ensures the transfer of timely Appealed, completed cases to the chancellery, their perfection and accuracy;
13. Ensures preparation and transfer of accurate and timely statistical data to the relevant service;
14. Inputs the procedural documents in a unified electronic program and encodes them in an appropriate manner;
15. Prepares the Courtroom for the trial;
16. Attends the process, ensures audio and video recording of the session, prepares the act within the set timelines, signs and submits to the judge;
17. Registers the documents presented at the Court session in the electronic system; records data related to the course of the session; provides the relevant structural unit with the documents to be transferred to the parties;
18. If necessary, performs the functions and duties of the secretary of the session for the smooth implementation of justice;
19. Upon request and within the scope of competence, informs the new employee and/or intern of work processes;
20. Within the scope of competence, performs separate tasks of managers;
21. Performs other work-related rights and duties.

### 3. Transparency standards on the example of Kutaisi City Court

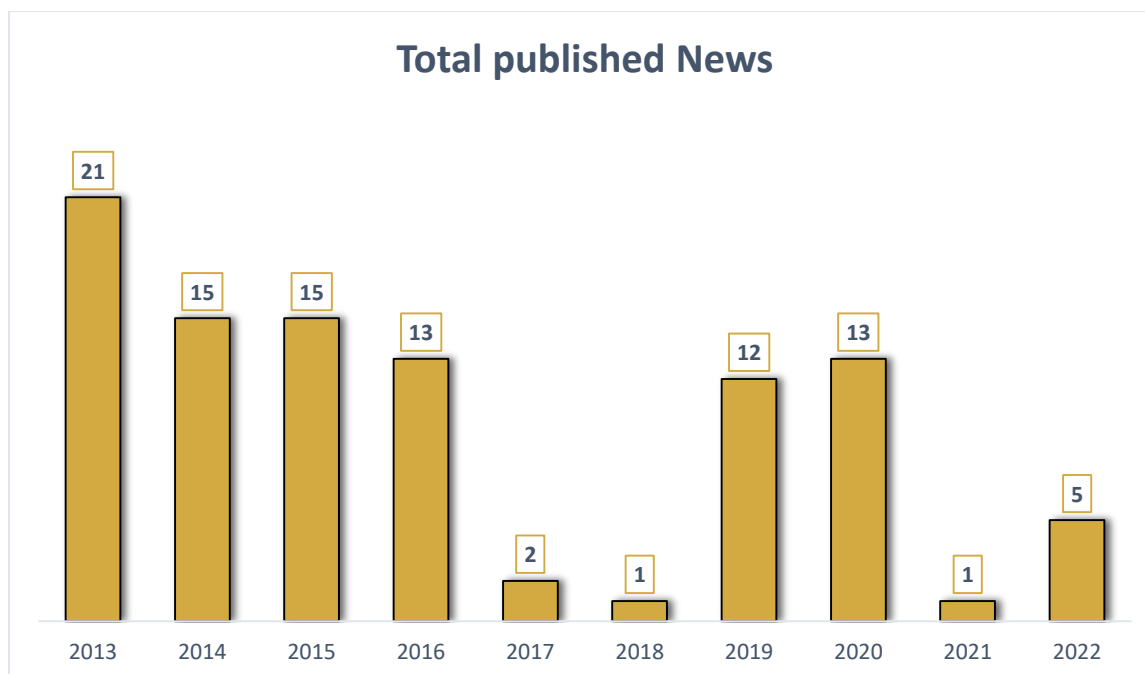
#### 3.1. Information Posted on the Court Website

Georgian Court Watch studied information published on the website of Kutaisi City Court during 2013-2022. The Court published 87 updates total. **It is interesting that parallel to the judicial reforms, since 2013, statistics of published news were more and more decreasing.**

**In this regard, the most critical years are 2018 and 2021. Only 1 update was published per these years on the Kutaisi City Court website.**

In 2018 the Court posted information about admission to the preparatory course for the qualification exam for the judges by the High School of Justice, and in 2021 – information about the admission of interns.

*It is also interesting that according to the date of [www.hr.gov.ge](http://www.hr.gov.ge), Kutaisi City Court announced vacancies for various positions 5 times in 2018, and 7 times in 2021. In the news published in these years, we only found information about internship announcements, showing the problem that the approach of the Kutaisi City Court is selective.*



**Total 87 updates published through almost 10 years does not quantitatively speak of the openness and transparency of the judiciary, especially when other sections of the Court website are not distinguished by the abundance of information.**

It is also unclear what principle or criteria the Court is following when selecting information about cases/decisions to be published on the website. **In this direction, the Court has published updates only on criminal cases; the Court does not deem necessary to publish information on civil and administrative cases/decisions.**

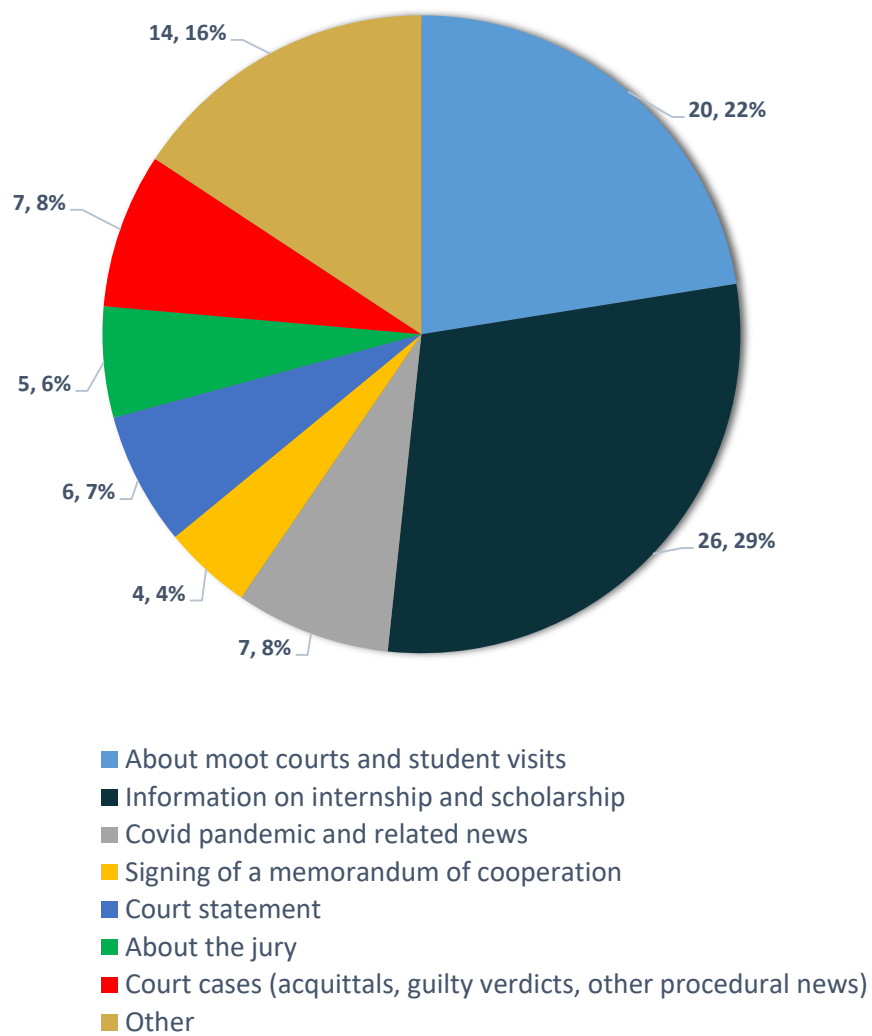
It should be noted that 20 updates posted on the website about moot court conducted in the Court, or visits by students, indicate that the Court is actively involved in the process of informing youth, which should be evaluated positively.

In addition, the claim and counterclaim forms are not available on the Court website for the stakeholders. Total absence of contact information for the officials of the judicial office on the website with only their e-mails indicated is a problem.



**Court Watch network members highlighted that contacting officials of the Kutaisi City Court and proper access to information about the ongoing case is problematic. It seems that information on the number of the center from which they are redirected to a specific official or the chancellery was not available to them.**

## Quantitative Distribution of News by Topics



### 3.2. Availability of Court Decisions on the Website

According to Article 13 (31) of the Organic Law on Common Courts, **“a Court decision made at an open session as a result of hearing a case on the merits shall be fully published on the website of the Court, and if a Court decision is made at a closed session as a result of hearing a case on the merits, only the resolution part of the decision shall be published on the website of the Court. The issue of disclosing personal data of a person that are included in the Court decisions shall be resolved in accordance with law.”** However, this record of the law is ignored and not complied.

Two years ago, the Constitutional Court of Georgia considered the lawsuit on the availability of judicial acts on the issue of publication of citizens’ personal data without hiding. The author of the constitutional lawsuit Appealed against the constitutionality of the first part of Article 44 of the General Administrative Code of Georgia and Article 6, clause 3 of the Law of Georgia on Personal Data Protection in relation to Article 41, clause 1 of the Constitution of Georgia. Finally, the Constitutional Court recognized the mentioned articles as unconstitutional from May 1, 2020,<sup>70</sup> meaning that the Parliament of Georgia had to developed new legislative amendments, which have not been implemented so far.

Accordingly, the above-mentioned article of the Organic Law on Common Courts is valid and the Court is obliged to comply with it.

However, we face several issues with publishing decisions:

- In the unified database of Courts (<https://ecd.Court.ge/Decision>) the decisions of the Kutaisi City Court have not been published at all since April, 2022. It should be noted that Kutaisi City Court is not an exception in this respect and the same problem exists in relation to other Courts.
- Kutaisi City Court website does not have a link to the unified database of Courts, through which a person interested would be able to receive information of the Court schedule or decision, even up to April 2020.

### 3.3. Provision of Public Information

Georgian Court Watch applied to Kutaisi City and Appeals Courts, the High Council of Justice, the Department of Common Courts, the Higher School of Justice, the Independent Inspector, the Supreme Court on the provision of public information in June, July and August 2022 and requested the following information:

- Functions, salary and number of office officers;
- Funds spent for qualification from the budget;
- Information on vacancy, business trip and promotion;
- Number of incoming, considered and pending cases throughout the year;
- Random and direct distribution of cases through the electronic program;
- Reassignment of cases under consideration of one judge to another due to leaving the office for retirement or to appointment/secondment to another Court;

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<sup>70</sup> Decision of 7<sup>th</sup> June, 2019: <https://bit.ly/3V25avV>



- Cases considered with compliance and violation of the deadline, and the reasons;
- Other information related to the Court administration.

The organization did not receive a response to the letters regarding the provision of public information within 10 days from most of the agencies – the Independent Inspector and Supreme Court of Georgia were exceptions. The High Council of Justice, Kutaisi City and Appeals Courts, though incompletely, only responded with information requested by the Court Watch after the administrative claim was filed. Part of the agencies, such as High Council of Justice and Department of the Common Courts left the letters from the organization unattended.

## Recommendations

### To the High Council of Justice of Georgia and Kutaisi City Court:

- **Appointment of a judge:** It is advisable that the decisions on the appointment of judges contain information on how many times the candidate participated in previous competitions and on the results of the voting. Additionally, in favor of the reputation of a particular judge and, accordingly, to increase confidence in the Court, it is important that the High Council of Justice substantiates why was a candidate selected for the position, unlike previous cases.
- **Secondment of a judge:** Firstly, the recommendations of the Venice Commission the secondment of judges against their will should be possible only in exceptional cases and for a justified legitimate purpose, should be implemented. Moreover, clear and narrow criteria should be considered, as well as shorter periods of business trips. Additionally, the Venice Commission recommends e-introduce geographical restrictions on business trips. As a result of studying the current situation in Kutaisi City Court, the Court Watch deems it necessary in practice, secondment of the judges should be carried out in accordance with the legal requirements and in the interests of justice in those collegiums and chamber which are overloaded due to the number of pending cases and the shortage of judges.
- **Appointment of a sitting judge without competition:** It is advisable that in case of transfer of a judge from one Court to another without the competition, the High Council of Justice makes decision based on their performance evaluation. It is also important to take into account the situation of the Court from which the judge is transferred to another Court, considering the number of pending cases and judges.
- **Overloading:** The judges to be assigned to the vacant positions in Kutaisi City and Appeals Courts, in order to reduce the overloading and prevent current judges having to hear cases in all three specializations.
- **Remuneration:** The remuneration of Kutaisi City Court employees should be equal to the remuneration of the Tbilisi City Court employees.
- **Court chairperson:** The chairperson of Kutaisi City Court should study and generalize information on the management of the case flow in accordance with the law (among them, indicators of case incoming and completion, timelines of the case proceeding, reasons for postponement of sessions and delay in proceedings) and provide this information to the judges and the High Council of Justice at least once a year.

- **Position of an assistant judge:** Position of the assistant judge should be added to magistrate Court office, like in Kutaisi City Court and District Courts.
- **Qualification requirements for the court employees:** Qualification requirements of the Court employees should be revised and specified. For example, in case of the writing assistant, knowledge of the foreign language should be added so that he/she could have the ability to study international practice.
- **Kutaisi City Court webpage:** Kutaisi City Court should analyze information published on the website and conduct a systemic update of the data in all sections, as well as regularly provide information on the activities of the Court, Court decisions, vacancies and other important topics to the public.
- **Court decisions/judgements:** First of all, the requirement of the Organic Law on Common Court shall be met, and Court decisions/judgements should be published regularly. Kutaisi City Court should indicate the link to the unified court database (<http://ecd.Court.ge/>) on its website, so that the users could easily find the decisions they are searching for.

#### **To the Parliament of Georgia:**

- **Appointment of a sitting judge without competition:** It is advisable to remove Article 37 from the Organic Law on the appointment of sitting judges without competition and judges shall be promoted or appointed competitively based on merit-based criteria only.
- **Chairperson and Manager:** Remove administrative functions from the Court chairperson and expand functions of the Court manager to subordinate the officials of the Court office, to submit reports, etc. In particular, changes should be made to the Articles 23 and 32 of the Law on Common Courts and supervisory functions of the Court chairperson over the office should be reduced.

#### **To the High School of Justice:**

- **Specialization-based training:** When assigned by the Court chairperson to consider cases outside the judge's specialization, the High School of Justice should train them in other specializations as well.