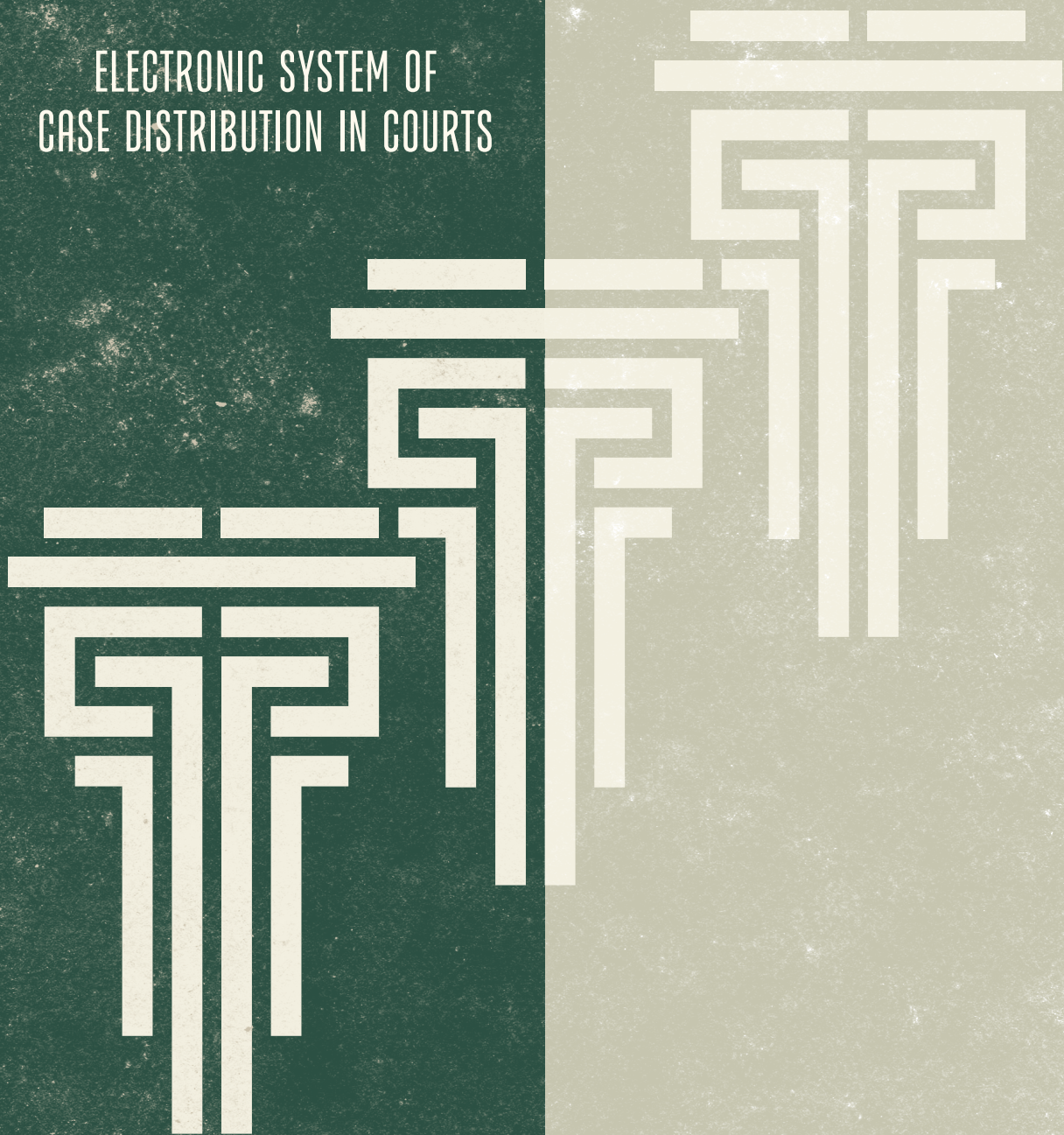


ELECTRONIC SYSTEM OF
CASE DISTRIBUTION IN COURTS



Electronic System of Case Distribution in Courts

Human Rights Education and Monitoring Center (EMC)

2020



The European Union
for Georgia
EU4Justice

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

EMC
Human Rights Education and Monitoring Center

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Introduction

New rule of electronic distribution of cases in the Common Courts was adopted by the Parliament of Georgia as part of the “third wave” of judicial reform and it was one of the most significant positive changes in the Georgian judiciary system. The rule entails the random distribution of cases to the Supreme Court as well as city/district, appellate courts throughout Georgia through an electronic program. The change was welcomed by international and local organizations.¹ Initially the new case allocation rule was introduced, as a pilot, in the Rustavi City Court, and since December 31, 2017, the system has been enacted throughout Georgia.²

The following document is the second monitoring report to analyze and evaluate changes to the electronic distribution of cases, updated statistics and the remaining challenges in the judicial system in this regard, from 1 January 2019 to 31 December 2019. The report also examines gaps in the electronic distribution of cases that were identified during the first reporting period and regarding which no further steps were taken to have them eliminated. The present report also analyzes problematic aspects of the legal framework that were exposed during the case hearings of persons detained as a result of the June and November 2019 demonstrations in front of the Parliament (in light of the existing difficult political context in the country), such as wide discretion of the Chairperson to determine the narrow specialization and scheduling of the cases. Moreover, the second monitoring report highlights the tendency of sharp deterioration of the standard of access to public information related to the electronic distribution of cases compared to the first reporting period.

This publication was prepared in frames of the project “Facilitating Implementation of Reforms in the Judiciary (FAIR)” which Human Rights Education and Monitoring Center (EMC) is implementing with support from the European Union and in cooperation with Institute for Development of Freedom of Information (IDFI) and the Caucasus Research Resource Center (CRRC Georgia).

1 European commission for democracy through law (Venice commission), joint opinion on the draft law on amendments to the organic law on general courts, ¶78; [Available: <https://bit.ly/37iVmo7> , accessed on: 22.01.2020]
Coalition views on the “third wave” of judicial reform [Available: <https://bit.ly/2RgnR0f> . accessed on: 22.01.2020]

2 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56. [Available: <https://bit.ly/3aBAuLc> . accessed on: 22.01.2020].

Methodology

The monitoring report covers the period of 1 January 2019 to 31 December 2019. While working on the document, the project team employed a number of research methods and sources to obtain information and data:

Analysis of the legislation and the decisions of the High Council of Justice – important tools for the monitoring was observing the implemented changes as a result of the “third wave” of the judicial reform, as well as assessing the decisions of the High Council of Justice regarding the issues delegated to it, in accordance with the existing legislation;

Monitoring of High Council of Justice sessions - Regular attendance at Council meetings during the second monitoring period was one of the important means for understanding the general context, goals, and positions of members of the High Council of Justice on planned or implemented changes in relation to the electronic distribution of cases;

Processing statistical data - The project team has requested public information in several stages from the High Council of Justice, the Management Department of Courts and the Common Courts of Georgia;

Analysis of Secondary Data- Additional sources of information included reports, surveys and evaluations of local and international organizations.

Main findings

The main tendency explored through the monitoring is that further improvement of the case distribution system is not a priority for the judiciary and, in fact, the issue has lost its relevance. The key findings identified through the monitoring of the electronic distribution of cases in the second reporting period are largely identical to the challenges identified in the first reporting period, as no effective steps had been taken by the Parliament or the High Council of Justice of Georgia to eliminate the existing gaps. In light of these circumstances, the report identified the following key challenges:

- There is no clearly defined regulation concerning exemptions in the rule for the random electronic distribution of cases;
- The lack of judges in some courts precludes the opportunity for the random distribution of cases in every court throughout Georgia;
- The Chairperson of the Court, the Deputy Chairperson or the Chairperson of the Panel/ Chamber still retains the capacity to see the already assigned cases;
- The Chairperson of the Court may also increase/decrease the workload rates of judges;
- The Chairperson of the Court is still empowered to define the composition of the court's narrow specialization, which allows them to determine the circle of judges among whom the cases will be distributed;
- The authority of the Chairperson to modify the duty schedule of the judges, without justification and without applying the principle of random distribution, in practice, allows arbitrariness; Practical ramification of this issue was clearly identified during the court hearings of the cases of persons detained during the demonstration in front of the Parliament of Georgia;
- The electronic case allocation program selects only one speaker judge from the panel of Appeals and Supreme Courts, and the procedure/rule for selecting the remaining judges is still unclear;
- Procedure and timeframes for re-distribution of cases in case of self-recusal/recusal of a judge are not properly regulated; The Chairperson's involvement, in the process of re-allocation, in case of recusal of a judge, in accordance with the procedural law, remains to be a challenge;
- The program of case distribution system still does not take into account the complexity and the volume of the case, which is essential for the provision of a just and equal distribution of the workload to the judges;
- Judges who simultaneously occupy the position of the court/panel/chamber chairperson/deputy chairperson, as well as the members of the High Council of Justice, are in a significantly advantageous position compared to other judges, as the Rule for the electronic distribution of cases provides for a favorable workload rates for them. The work-

load rate of a judge is particularly reduced if they are also a member of the Council and hold other administrative position;

- The Management Department of Courts (hereinafter – Management Department) remains understaffed, there are vacant positions for a number of specialists, as determined by the staff list;
- The standard of access to public information on the operation of the case distribution system has deteriorated; Despite numerous requests, information regarding the workload rates of specific judges was not provided to the project team; Also, unlike the first reporting period, in the second monitoring year, the duty schedules of the judges were not accessible for the project team.

I. Legal regulation of the Electronic Distribution System of Cases

As a result of the “third wave” of judicial system reform, the High Council of Justice exercised its delegated authority and determined the rules for random distribution of cases in the Common Courts of Georgia through an electronic program. Since the introduction of the electronic system of case distribution many challenges were identified that required timely and effective response.

Changes to the “fourth wave” of judicial system reform, despite the recommendations by the Coalition for an Independent and Transparent Judiciary, did not take into account the much-needed changes to improve the existing electronic system of case distribution in the Common Courts. Apart from the obligations arising from the fourth wave of the judicial system reform, the High Council of Justice of Georgia, in its 2017-2021 judicial system strategy and 2017-2018 action plan,³ undertook the commitment to improve the electronic system of case distribution. However, in the reporting period, there was no adequate response from the Council in terms of fulfilling these obligations and overcoming the deficiencies in the case allocation system.

The issues raised in the first monitoring report, that were the result of inactions of the High Council of Justice of Georgia and other bodies responsible for the changes,⁴ are still relevant in the second reporting period. This chapter identifies the key issues that need to be addressed in a timely manner to improve the system of the electronic distribution of cases to ensure the independence of the judiciary and individual judges and the transparency of their work.

According to the decision on the “adoption of the rule for the automatic electronic distribution of cases in the Common Courts of Georgia”,⁵ except for particular circumstances, cases are allocated to judges in the Common Courts based on the principle of random distribution.⁶ Exceptions from this general rule includes cases that are assigned based on the duty

3 The 2017-2018 Action Plan specified improvement of the e-distribution and management system and its implementation in all instances of the courts, which has been implemented, however, the draft 2019-2020 Action Plan, which has not yet been approved, still includes those activities related to the electronic distribution system. One such activity is monitoring of the e-distribution program by the Management Department and refining/improving the program accordingly.

4 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, “Assessing the Results of Judicial Reform”, 2019. [Available at: <https://bit.ly/2WzmHzW>, accessed on: 22.01.2020]

5 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

6 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 2. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

schedule, cases that are allocated without the rule, and other occasions provided by the legislation. Cases that are discussed by magistrate officials, are also allocated without applying the principle of random distribution.

1. Random Distribution of Cases

According to the May 1, 2017 decision of the High Council of Justice of Georgia, the principle of random distribution is applied when distributing the case to an automatically selected panel/chamber/narrow specialization judge, following the established procedure.⁷ The project team addressed the major courts throughout Georgia⁸ and the High Council of Justice of Georgia to request statistical information on the number of cases distributed between January 1, 2019 and December 31, 2019, in the framework of monitoring the electronic distribution of cases in the Common Courts of Georgia.

Only during the second reporting period, 293 684 cases were distributed through the Electronic Case,⁹ including, the total number of cases distributed under the principle of random distribution - 181 757.¹⁰ In both reporting periods, from December 31, 2017 to December 31, 2019, according to statistical data provided to the project team by the High Council of Justice of Georgia, 552 731 cases were distributed to the Common Courts of Georgia. Out of the total number of cases distributed, 345 165 cases were assigned in accordance with the random distribution rule.¹¹

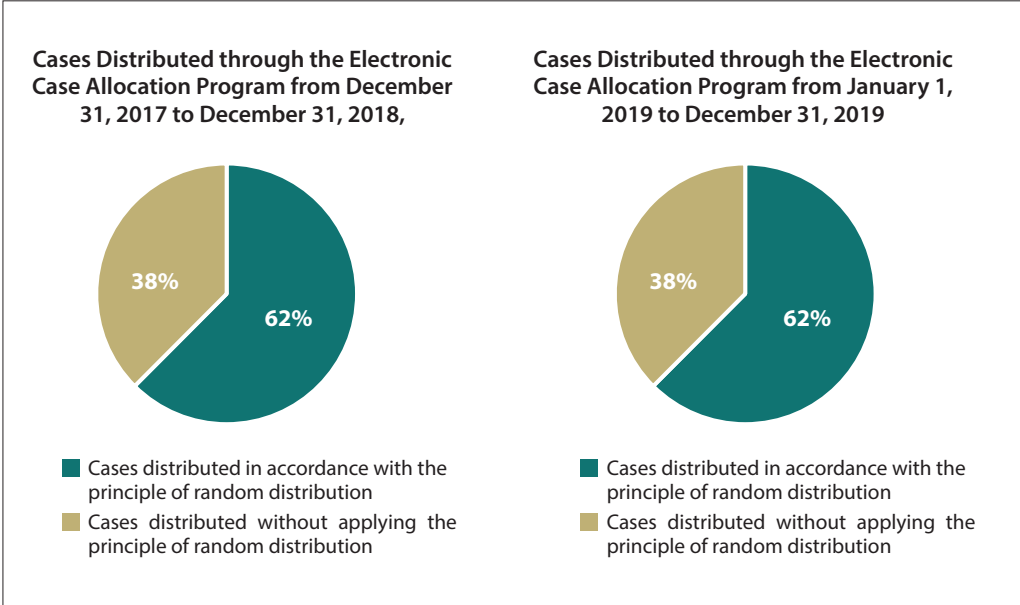
7 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 2. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

8 Akhalkalaki District Court; Ambrolauri District Court; Batumi City Court; Bolnisi District Court; Akhaltsikhe District Court; Gali-Gulripshi and Ochamchire-Tkvareli District Court; Gori District Court; Gurjaani District Court; Zestafoni District Court; Tbilisi City Court; Tbilisi Court of Appeals; Tetritskaro District Court; Telavi District Court; Mtskheta District Court; Ozurgeti District Court; Samtredia District Court; Sachkhere District Court; Signaghi District Court; Sokhumi and Gagra-Gudauta District Court; Poti City Court; Kutaisi City Court; Tsageri District Court; Zugdidi District Court; Rustavi City Court; Senaki District Court; Khashuri District Court; Kutaisi Court of Appeals; Khelvachauri District Court; Supreme Court of Georgia.

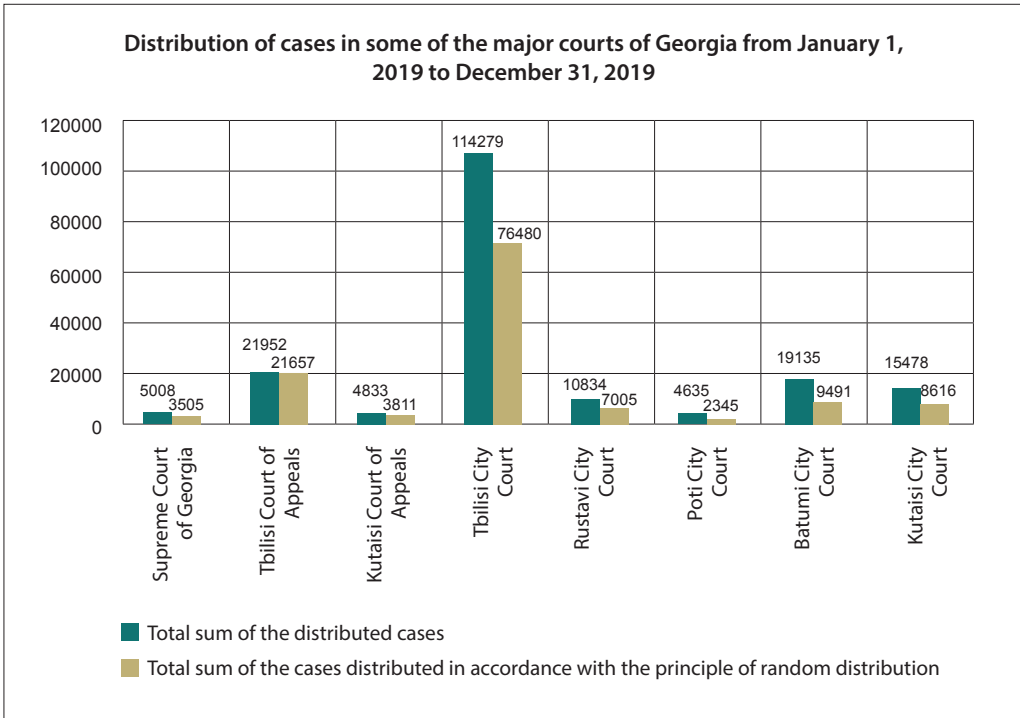
9 Letter No. 28/33-03-o of the High Council of Justice of Georgia of 20 January 2020.

10 Ibid.

11 Ibid.



As for the cases allocated randomly in particular courts, official data shows the following:



2. The exception to the rule of distribution

The decision of May 1, 2017 approved by the High Council of Justice provides for exceptions in relations to the electronic distribution of cases when the cases in the common courts are distributed without applying the principle of random distribution.

According to the May 1, 2017 decision of the High Council of Justice of Georgia, cases are distributed without applying the principle of random distribution, when:¹²

- there is only one judge with the magistrate judiciary authority in the respective municipality;
- there is only one judge in the district/city court with the relevant specialization;
- there is only one on-duty specialized judge in the district/city court;

Also, the rule sets out a fairly extensive list of exemptions for specific cases, when they are not distributed randomly. Civil, administrative and criminal cases are assigned to the judge who issued the decision/judgement:¹³

- When the claim is re-submitted due to the refusal to admit the case or failure to review the claim or due to termination of legal proceedings;
- When the same parties file the complaint again on the same grounds about the subject matter after the claim has already been admitted;
- When submitting a claim regarding the use of interim measures;
- When re-submitting a claim on interim measures and etc.

In addition, the Rule specifies certain articles of the Civil and Criminal Procedure Codes of Georgia, according to which the cases are assigned to a particular judge.¹⁴ For example, according to the Civil Procedure Code of Georgia, cases concerning the breach of order during the court session are heard by the court Chairperson.¹⁵

According to information provided by the High Council of Justice of Georgia to the project team, cases in the Gali-Gulripshi and Ochamchire-Tkvareli District Courts are not distributed in accordance with the principle of random distribution, as there is only one judge

¹² Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 3. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

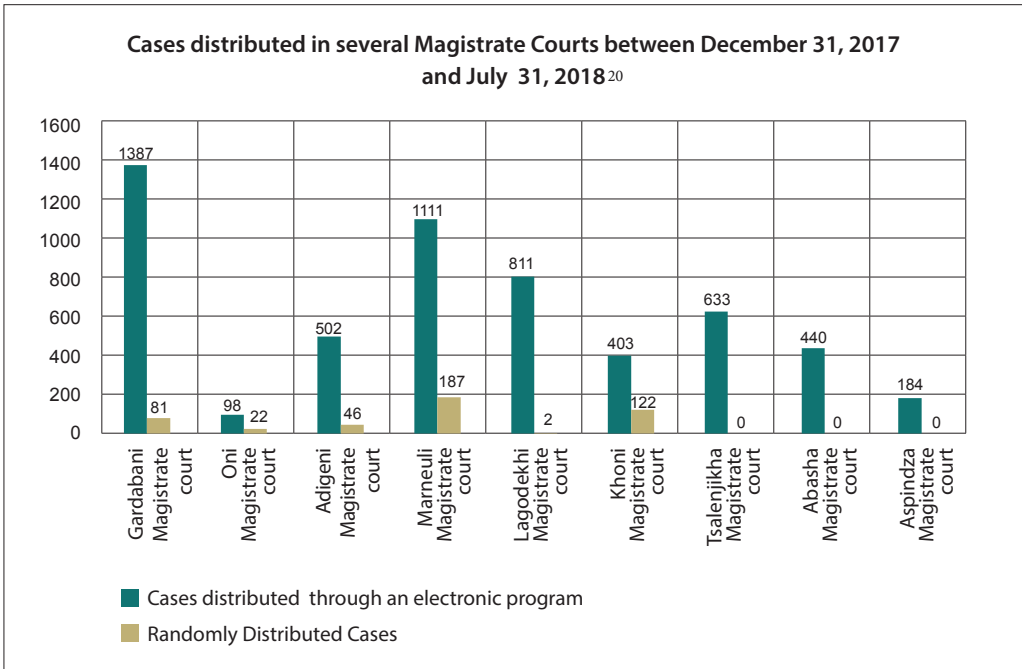
¹³ Ibid.

¹⁴ Ibid.

¹⁵ Civil Procedure Code of Georgia, Article 212, Criminal Procedure Code of Georgia, Article 85.

of the relevant specialization in the court.¹⁶ In this regard, identical data were also identified during the first monitoring period.¹⁷

According to statistical data obtained during the second reporting period, in 34 municipalities cases are not distributed in accordance with the principle of random distribution,¹⁸ since only one judge exercises the magistrate judiciary authority in the respective municipalities.¹⁹



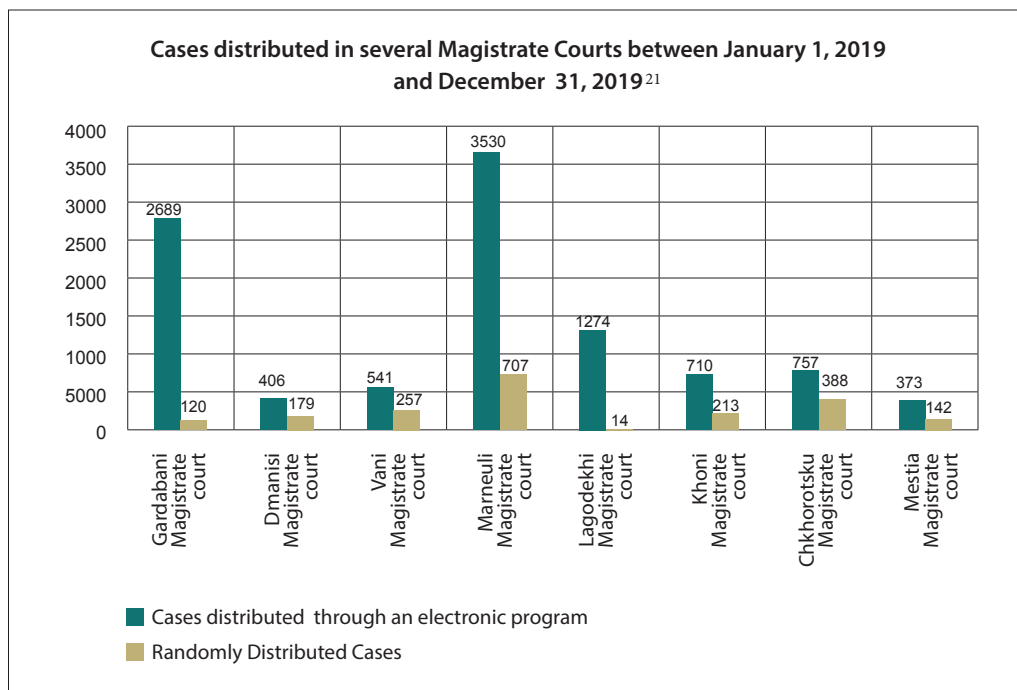
16 Letter No. 28/33-03-o of the High Council of Justice of Georgia, dated January 20, 2020.

17 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, “Assessing the Results of Judicial Reform”, 2019, p. 15. [Available at: <https://bit.ly/2WzmHzW>, accessed on: 22.01.2020]

18 Abasha, Adigeni, Aspindza, Akhmeta, Baghdati, Borjomi, Gardabani, Dedoplistskaro, Dusheti, Terjola, Tianeti, Kaspi, Lagodekhi, Lanchkhuti, Lentekhi, Martvili, Ninotsminda, Oni, Sagarejo, Tkibuli, Kareli, Keda, Kobuleti, Kazbegi, Kvareli, Shuakhevi, Chokhatauri, Tsalka, Tskaltubo, Chiatura, Kharagauli, Khobi, Khoni and Khulo.

19 Letter No. 28/33-03-o of the High Council of Justice of Georgia, dated January 20, 2020.

20 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, “Assessing the Results of Judicial Reform”, 2019, p. 18. [Available at: <https://bit.ly/2WzmHzW>, accessed on: 22.01.2020]



3. Distribution of cases without the rule, based on the duty schedule, and to magistrate official

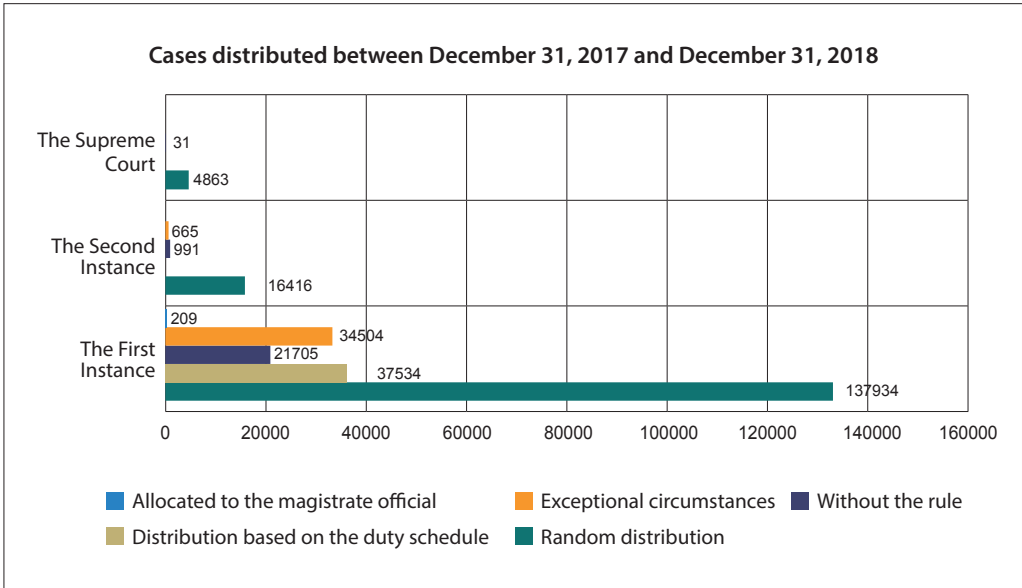
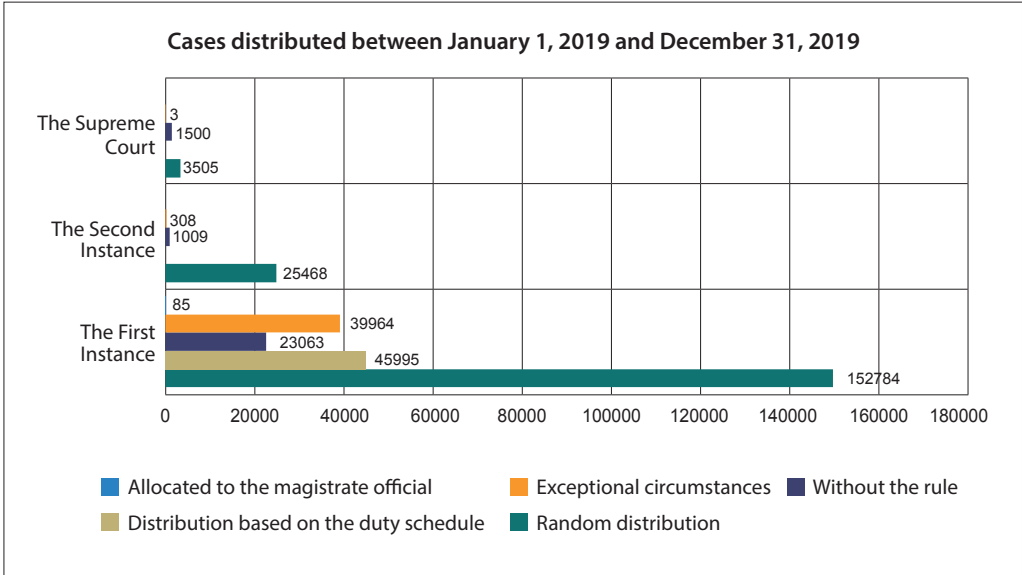
Exceptions from the random distribution rule also include cases distributed to the magistrate official, those cases based on the duty schedule and without the rule. In Common Courts, cases are distributed without the rule when there is only one judge in the panel or in the narrow specialization.²² According to the regulation adopted by the High Council of Justice, as needed for certain administrative and criminal cases with the adjudication timeframe of no more than 72 hours, the court Chairperson establishes the duty schedules of the judges and the cases are distributed between the judges during working and non-working hours according to this schedule. In such cases, the number of distributed cases on particular judge is not taken into consideration.²³ As for the magistrate officials, they are discussing those cases to be heard by the magistrate judge.

²¹ Letter No. 28/33-03-o of the High Council of Justice of Georgia, dated January 20, 2020.

²² Letter No. 889/2370-03-o of the High Council of Justice of Georgia, dated 22 July 2019.

²³ Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 4. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

The project team requested public information from the High Council of Justice of Georgia about the number of cases distributed through the Electronic Cases Program in the Common Courts of Georgia. Specifically, how many cases were allocated: randomly; based on the duty schedule; to the magistrate official; without the rule; and based on the exceptional circumstances.²⁴



24 Letter № 27/32-03-o of the High Council of Justice of Georgia of 20 January 2020.

4. Instances of terminating the case allocation to a judge/ transferring the case to another judge

The rule for electronic distribution of cases defines the possibility of terminating the case allocation to a particular judge on various grounds, including vacation, pregnancy, business travel and maternity leave.²⁵ In such cases, the distribution of cases through an electronic program to a particular judge shall be temporarily suspended. According to the rule, cases are not to be allocated to a judge during the temporary suspension of their judicial duties, except for cases when the duration of leave, business travel and temporary inaptitude does not exceed 5 days and the deadline for hearing the distributed cases exceeds 72 hours.²⁶ Distributing a case to a judge shall be suspended in the period of the two remaining months before the expiry of their term of office, not including the cases which need to be heard in 72 hours. Also, if a judge is assigned to another court or to the other narrow specialization/ panel/chamber in the same court, the distribution of cases to them will be suspended from the moment the decision is taken by the Council to the time the decision takes effect.

Furthermore, legislation provides grounds for cases being transferred to another judge temporarily, in order to avoid missing the deadline for hearing the specific cases, as prescribed by law. In particular, these grounds include periods of leave, business travel and temporary inaptitude when the time-limit set by procedural law for the execution of judicial proceeding may be missed. Also, case might be transferred to another judge to review the motion, if delay can result in violation of the legitimate interests and rights of the party at stake. In addition, the rule provides for the possibility of referring the case to another judge in the event of special objective circumstances.

The project team requested the major courts in Georgia to provide information on the cases that were transferred to another judge temporarily, noting appropriate grounds. In answering the request, the courts only referred to a specific article of the decision of the High Council of Justice to approve the electronic distribution of cases²⁷ and noted that the chancellery examines the circumstances provided for in the said article and makes a decision on the temporary transfer of the case to another judge.²⁸ According to them, the courts do not process additional statistical information on this topic.²⁹ The Supreme Court of Georgia³⁰ and

25 Decision №1/56, Article 4 of the High Council of Justice of Georgia of May 1, 2017. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

26 Ibid.

27 Ibid.

28 Letter No. 10 of 13 January, 2020 from Telavi District Court; Letter No. /83 of 17 January 2020, from the Tbilisi Court of Appeals; Letter No. 740 of 9 October, 2019 from Tsageri District Court.

29 Letter No. 44 of the Senaki District Court dated January 20, 2020; Letter No. 78 of the Samtredia District Court dated 21 January 2020; Letter No. 1/1of Khelvachauri District Court dated 17 January 2020; Letter of the Zugdidi District Court dated 20 January 2020; Letter No. 25 of the Ambrolauri District Court of 20 January 2020; Letter No. 474-2 of the Kutaisi City Court dated January 20, 2020; Letter No. 46 of Poti City Court dated January 17, 2020; Letter No. 9-7 of the Zestafoni District Court dated January 20, 2020.

30 Letter Ns/03-20 of the Supreme Court of Georgia dated 17 January 2020.

the Sokhumi and Gagra-Gudauta District Courts³¹ informed the project team that, in the respective courts, no case had been referred to another judge during the reporting period. In the first reporting period, there were some ambiguities in the Rule that required the Council to specify particular provisions in order to improve the transparency of the process, but the Council has not made any changes in this regard. For example, the precise meaning of the *specific objective circumstances* is still unclear, while based on this ground case might be transferred to another judge.³²

As a result of the project team requesting public information from the Common Courts of Georgia, the Rustavi City Court provided an explanation guiding it in assessing “special objective circumstances”.³³ According to the court, vacation, business trip and temporary disability are fixed by the relevant act and do not give rise to ambiguity. As to the particular objective circumstances, according to the Rustavi City Court, the standards envisaged by Criminal Procedure Code of Georgia and Civil Procedure Code of Georgia are to be considered to determine the meaning of the term, and this issue to be assessed by the judge who is hearing the case.³⁴ It should be noted that the rule for the distribution of the case approved by the Council does not provide for the possibility of verifying/changing the assessment of a judge in terms of their consideration of a specific circumstance as an objective one.³⁵

Article 215(3) of the Civil Procedure Code of Georgia, as specified by the Rustavi City Court, explains what may be regarded as a legitimate reason for the purposes of the law in the event of failure to submit a party’s application or motion. Article 3 (18) of the Criminal Procedure Code of Georgia provides a general definition of the term “valid reason” in the event of the non-appearance of a party to a criminal proceeding. These are grounds due to his/her illness, the death of a close relative, other specific objective circumstances which, for the reasons beyond his/her control make it impossible to appear at the trial.³⁶

The explanation presented by the Rustavi City Court responds to some degree to the ambiguity of the term. However, the referred articles address the possible non-appearance of the party to the process and the justification for the cause. It is noteworthy that there is no direct link between the possible failure to appear at court of the party and the electronic distribution of cases to judges. Additionally, the letter from the Rustavi City Court represents an individual approach of the court and it is still unknown what is the general approach in the

31 Letter No. 2 of January 10, 2020 from Sokhumi and Gagra-Gudauta District Court.

32 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 4. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

33 Letter No. 74/g of the City Court of Rustavi dated 17 January 2020.

34 Ibid.

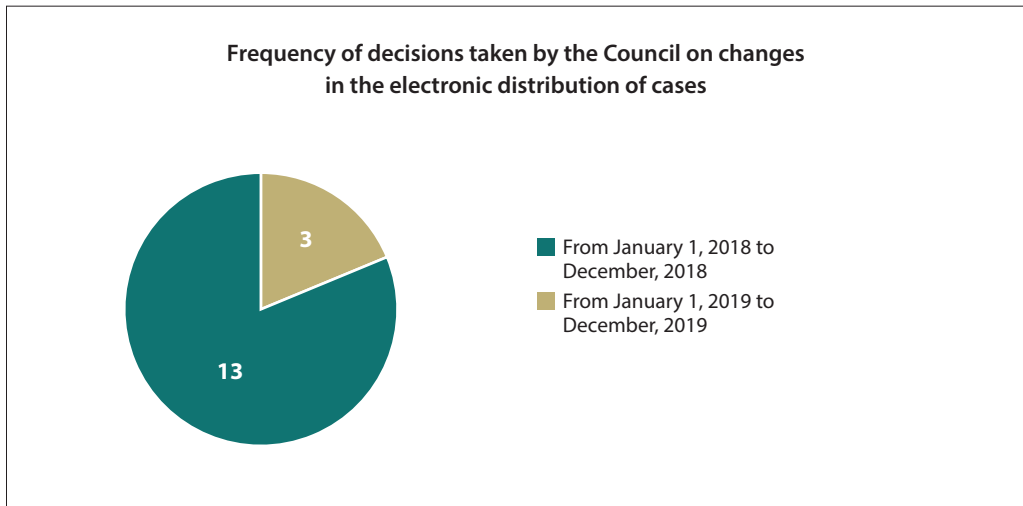
35 Ibid.

36 Criminal Procedure Code of Georgia, Article 3; Code of Civil Procedure of Georgia, Article 215.

Common Courts of Georgia. The decision of the Council of 1 May 2017 does not indicate that the particular objective circumstance named in the Rules is of the same significance as those set out in the Procedure Code of Georgia. It is also problematic that, following the introduction of the new case distribution system, the necessary changes were not systematically thought out and the existing procedural rules did not comply with the aims of the novel approach.

5. Changes to the rule of electronic distribution of cases

In the first reporting period, the initial decision to approve the rule for electronic distribution of cases, introduced in the High Council of Justice of Georgia, was amended with particular frequency. During the second reporting period, many of the issues needed to improve regarding the electronic distribution of cases by the Council, did not find their way in the agenda. In 2019, the first change to the rule on electronic distribution of cases was made only in September. This section discusses the major changes made by the High Council of Justice of Georgia in the second reporting period.



The first amendment made during the second reporting period included the inclusion of the cases covered in the new Chapter of the Administrative Procedure Code of Georgia to the electronic case distribution system.³⁷ According to the rule, the difference between the number of particular types of cases distributed to the judges in relevant specialization through

³⁷ Law of Georgia on Amendments to the Administrative Procedure Code of Georgia [Available at: <https://bit.ly/2TSvD1U>, accessed on: 22.01.2020]

the electronic system shall not exceed three.³⁸ The list of those types of cases is set by the same rule.³⁹ These include cases/complaints provided for in specific chapters of the Administrative Procedure Code. Therefore, in order to bring it into line with the legislative amendment,⁴⁰ the rule for electronic distribution of cases approved by the Council was amended and a new Chapter VII¹⁶ of the Procedure Code was added to the list.⁴¹

In the second reporting period the rules governing the distribution of cases when appointing a judge to another court were also changed.⁴² It was clarified by the council that the problem was particularly evident when judges were transferred to another court without going through a general competition procedure. This possibility is defined by the Organic Law of Georgia on Common Courts, which provides for the appointment of a judge to another court without standard competition procedure and/or allowing a judge to move to a different instance court on the basis of the same procedure.⁴³

When transferring judges from one court to another without competition procedure, the Council decides to grant a judge a reasonable time to complete cases. According to established practice, in such cases, judges are given a 5/7/10 day term depending on the number of their cases. Accordingly, under the new approach, the process of distributing new cases to the judge shall be suspended from the moment the decision of her/his transfer to another court is taken, until the decision takes effect.⁴⁴

The High Council of Justice has subsequently amended the Rules for the Electronic Distribution of Cases, which has added the judges transfer to another court/chamber/panel to the list of grounds for the distribution of cases to other judges.⁴⁵ Another change was made to the electronic distribution of cases regarding the same issue.⁴⁶ In particular, if a judge returns to the same court/panel/chamber within three months from the termination of his or her term of office or from the starting date of service in another court/panel, the cases before his/her

38 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 5. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

39 Decision of the High Council of Justice of Georgia of May 1, 2017, №1/56, Articles 4 and 4¹. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

40 Decision of the High Council of Justice of Georgia dated September 23, № 1/215. [Available at: <https://bit.ly/3dqsePe>, accessed on: 22.01.2020]

41 Ibid.

42 Decision of the High Council of Justice of Georgia of 29 November 2019, No. 1/301, Article 4. [Available: <https://bit.ly/30G5ZPB>, accessed on: 22.01.2020]

43 Organic Law of Georgia on Common Courts Article 37.

44 Decision No. 1/301 of the High Council of Justice of Georgia dated 29, November 2019, Article 4. [Available: <https://bit.ly/30G5ZPB>, accessed on: 22.01.2020]

45 Ibid.

46 Decision No. 1/301 of the High Council of Justice of Georgia dated 29, November 2019, Article 5. [Available: <https://bit.ly/30G5ZPB>, accessed on: 22.01.2020]

transfer, which were distributed to other judges on such basis, shall be returned to the said judge.⁴⁷

During the second reporting period, the High Council of Justice made changes in relation to the issue of the reduced workload rates of judges.⁴⁸ According to the Rule for Electronic Case Distribution, the chairperson/deputy chairperson of the City, Appeal and Supreme Court of Georgia, except for cases directly provided for by law, as well as the Chairman and Secretary of the High Council of Justice, shall be allocated a maximum of 5% rate of workload, in exceptional cases. According to the amendment, the Chairpersons of the panel/chamber were added to the list of persons enjoying preferential treatment in terms of workload.

According to the decision of the High Council of Justice, the most recent change in the second reporting period relates to cases of Cassation and Appellate courts that were returned to the first instance as well as cases filed for renewal due to newly discovered circumstances.⁴⁹ According to the amendment, based on the decision of the Court of Cassation or Court of Appeals, the case will not be assigned to the first instance judge if they no longer work in the same specialization. The same rule shall apply to the application for resuming the case proceedings due to the newly discovered circumstances. In such a case, in accordance with the principle of random distribution, the case will be re-assigned to the judge of the appropriate specialization.⁵⁰

Part of the changes made in the second reporting period is positive, as it calls for a clearer definition of the specific issues approved by the Council, although no substantial improvements are seen in this regard. These changes fail to address the particularly significant challenges identified in the monitoring report, which would have helped to refine the electronic case distribution system. At the same time, in the current reporting period, the number of those who enjoy preferential treatment in terms of reduced workload rate, has increased, which has to be negatively assessed.

47 Decision No. 1/301 of the High Council of Justice of Georgia dated 29, November 2019, Article 5. [Available: <https://bit.ly/30G5ZPB>, accessed on: 22.01.2020]

48 Ibid.

49 Decision of the High Council of Justice of Georgia dated December 6, 2019 № 1/319. [Available at: <https://bit.ly/2ReNgaI>, accessed on: 22.01.2020]

50 Ibid.

II. The role of the chairperson in the process of the electronic distribution of cases

The first monitoring report of the electronic case distribution system⁵¹ clearly identified the problematic authority of the Chairpersons in the case allocation process. One of the main aims of introducing a new rule of electronic distribution of cases as a result of the “third wave” of judicial system reform was to minimize the risks of arbitrary influence of the Chairpersons on the independence of the judiciary and the individual judges. The Venice Commission, while evaluating the planned changes to the Organic Law of Georgia on Common Courts, also expressed its opinion on the introduction of an electronic case-distribution program, indicating the risks related to the involvement of Chairpersons in the distribution of cases.⁵² The first report outlines the functions of the chairperson and the excessive influence on the distribution of cases in their hands.⁵³ Specifically, the challenges mentioned in the report are:

- The authority of the Chairpersons to view and increase or reduce the workload rates of judges;
- The authority to determine and modify the duty schedule of judges;
- The power to determine and change the composition of judges in narrow specializations without a clearly established procedure;
- Involvement of the Chairpersons in the self-recusal/recusal of judges;
- Involvement of the Chairpersons in the process of determining the composition of judges in the panel/chamber.

This section outlines the main challenges identified during the first reporting period. It is worth noting that no further changes have been made to address the said challenges during the second monitoring year.

51 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, “Assessing the Results of Judicial Reform,” 2019, p.28. [Available at: <https://bit.ly/2WzmHzW>, accessed on: 22.01.2020]

52 European commission for democracy through law (Venice commission), joint opinion on the draft law on amendments to the organic law on general courts, ¶78. [Available at: <https://bit.ly/37iVmo7>, accessed on: 22.01.2020]

53 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, “Assessing the Results of Judicial Reform,” 2019, p. 28. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

1. Workload of judges

For years, number of challenges in the judicial system have been attributed to the misconception of the role of the Chairperson.⁵⁴ In this context,⁵⁵ it is particularly problematic for the Chairperson, their deputies, or the Chairperson of the Panel/Chamber to have the right to view cases assigned to other judges. At the same time, the Chairperson of the Court has the power to increase the workload rates of judges by 25% in order to avoid obstruction of justice.⁵⁶ Additionally, the chairperson can, on the grounds of family situation, the health status of the judge or other objective grounds, reduce the workload rate of the judge by 50%, to avoid the delay in justice. Grounds to make changes to the workload rates of judges allow wide range of possibility for the subjective assessment. Granting such authority to the Chairperson of the Court creates the risk of improper influence over judges.

Overwork of judges and backlog of cases has always been one of the main challenges in Georgia's Common Courts.⁵⁷ Given the current circumstances, and despite the risks of improper influence on the independence of the individual judge by the Chairpersons,⁵⁸ they are still authorized to change the workload rates of judges.

2. Determining the composition of the narrow specialization of judges

The authority of the Chairpersons to determine the composition of judges in narrow specializations is one of the main challenges. It is noteworthy that narrow specializations in a particular court is established by the High Council of Justice of Georgia, while Chairperson of the court determines the composition of particular specializations. As of December 2019, the narrow specialization of judges is determined by the High Council of Justice in the Tbilisi City⁵⁹ and Appeals Courts.⁶⁰

54 Human Rights Education and Monitoring Center, "The Role and Influences of Chairpersons in the Court." [Available at: <https://bit.ly/2RfbBgo>, accessed on: 22.01.2020]

55 Ibid.

56 Decision of the High Council of Justice of Georgia, №1/56, Article 5. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

57 "Assessment of the Need for Judges in Georgia." [Available at: <https://bit.ly/2NPu80J>, accessed on: 22.01.2020]

58 Human Rights Education and Monitoring Center, "The Role and Influences of Chairpersons in the Court." [Available at: <https://bit.ly/2sLUZ6C>, accessed on: 22.01.2020]

59 Decision of the High Council of Justice of Georgia of 24 July 2017 № 1/233. [Available at: <https://bit.ly/37dyTs>, accessed on: 22.01.2020]

60 Decision of the High Council of Justice of Georgia of 30 April 2018 №1/175. [Available at: <https://bit.ly/36eAVaz>, accessed on: 22.01.2020]

The current regulation is problematic as it gives wide discretion to the court Chairpersons and does not oblige them to give reasonable justification on a decision when defining the composition of narrow specializations. This makes it possible for the court Chairpersons to arbitrarily influence the distribution of cases by changing their composition of specializations. This problem becomes especially acute when a member of the High Council of Justice can simultaneously occupy the position of the Chairperson of the court and have the opportunity to influence both the definition of the narrow specialization and the process of determining its composition.

In response to the existing criticism, the High Council of Justice made a change in the procedure for determining narrow specializations in the Tbilisi Court of Appeals during the first reporting period.⁶¹ However, even after the change, it is unclear by whom and under what circumstances should the “necessity” and “avoidance of delay in justice” be assessed, on the basis of which another judge of narrow specialization is authorized to consider a particular case.⁶²

The court informed the project team that 9 cases were reported in the Tbilisi Court of Appeal between January 1 and December 31, 2019, when the judge took part in the hearing of the case of a different narrow specialization.⁶³ In two cases, the challenge was the lack of judges in the narrow specialization which would hear the case, which was the result of the judges’ self-recusal, as defined by the Procedural Code or the insufficient number of judges to hear the case by the judicial panel.⁶⁴ As for the remaining 7 cases, because of the number of judges on leave, in the specialization concerning cases of arbitration, not enough members of the panel were performing their judicial responsibilities, and the time limit for case hearing was one day.⁶⁵

The project team also addressed the Tbilisi City and Court of Appeals and requested copies of the order of the Chairpersons on determining the composition of the narrow specialization of judges from the date of introduction of the narrow specializations to the end of the 2019.⁶⁶ The information provided by the Tbilisi Court of Appeals indicates that following the original order of the Chairperson of the court, 15 orders were issued from 3 May 2018 to 31 December 2019 amending the decision on the definition of narrow specialization.⁶⁷ The Tbilisi City Court provided only a copy of the most recent order in response to the letter.⁶⁸ Despite additional written communica-

61 Decision of the High Council of Justice of Georgia of 21 May 2018 № 1/191. [Available at: <https://bit.ly/2veBfjN>, accessed on: 22.01.2020]

62 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information “Assessing the Results of Judicial Reform” 2019, p. 30. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

63 Letters of the Court of Appeals of Tbilisi dated 17 January 2020, No. 3/83, No. 3/84.

64 Ibid.

65 Ibid.

66 Letter of the Human Rights Education and Monitoring Center dated 2 May 2019 No. g 01/325/2019.

67 Letter of the Court of Appeals of Tbilisi dated 17 January 2020, No. 3/83, No. 3/84.

68 Letter of the Tbilisi City Court of May 10, 2019 No. 3-0650/12509.

tion, copies of the order for determining/changing the composition of the panel of judges by the Chairperson of the Tbilisi City Court are still not fully available to the project team.

In this regard, EMC filed an administrative complaint to the Tbilisi City Court manager requesting the abovementioned information,⁶⁹ but the plea was still rejected.⁷⁰ The person in charge of disclosing public information at the Tbilisi City Court, at the hearing of the administrative complaint, cited the extensive time and resources needed to process the information to substantiate their decision of refusal to disclose the said information. An administrative lawsuit has been filed at the Tbilisi City Court and, for the time being,⁷¹ the case is still pending.

The problematic nature of the authority of the court Chairperson to define and amend the composition of the narrow specialization of judges was highlighted in the deliberations of cases concerning persons detained during the demonstrations in front of the Parliament of Georgia on June 20-21. The project team addressed the Tbilisi City Court and the Court of Appeals for information on these cases. According to the Tbilisi City Court, the cases concerning persons detained during the demonstrations on June 20-21 were distributed through the electronic program, according to the narrow specializations defined by the order of the Chairman of the Tbilisi City Court. The City Court provided the project team with copies of the Chairman's order specifying the composition of the narrow specialization for the period of June 19-25, 2019. According to the information provided, the Chairperson issued three orders on the designation of narrow specialties at the Tbilisi City Court on June 19, 21 and 24.⁷²

In the abovementioned dates, changes concerned, inter alia, the composition of the narrow specialization that was hearing administrative offenses. According to the June 21 order, the number of judges assigned to the category has nearly quadrupled. And by the order of June 24, the composition of the said narrow specialization was again determined in the same manner, prior to the amendment of June 21, which was a logical change.⁷³

The Tbilisi Appeals Court also provided the project team information regarding the judges reviewing the complaints related to the June 20-21 manifestation. According to the Court of Appeals, the Court Chairman had not approved the duty schedule of judges for June 2019,⁷⁴ The accordingly, the appeals before the court had been distributed to judges with narrow specialization following the

69 Administrative complaint of the "Human Rights Education and Monitoring Center", No. g 01/378/2019.

70 Tbilisi City Court decision No. 3033927 of 25 June 2019.

71 Administrative lawsuit of the "Human Rights Education and Monitoring Center", Administrative Case No. 3/6622-19.

72 Letter of the Tbilisi City Court dated July 5, 2019, No. 3-0482/3068506.

73 Ibid.

74 Letter of the Tbilisi Court of Appeals, dated July 5, 2019, No. 3/5028.

principle of random distribution.⁷⁵ However, the Chairman made the change to a narrow specialization in administrative law cases and added another judge to the three-judge panel. The change would also be logical if not a single circumstance - 76 appeals were made to the Court of Appeals in total, that distributed to only three judges of narrow specialization and the fourth judge Mikheil Chinchaladze (who is the chairperson of the Tbilisi Court of Appeals) did not hear even a single case.⁷⁶ It should also be taken into account that despite the numerous requests from the project team, the workload rate of the Chairman of the Tbilisi Court of Appeals is also unknown.⁷⁷

In other words, in light of the events of June 2019 and the capacity of the Tbilisi Court of Appeals, the Court Chairperson increased the composition of a narrow specialization of judges to allow simultaneous court hearings. At the same time, the chairperson avoided himself from hearing these cases, even though the chairperson himself is the member of the narrow specialization dealing with administrative offenses. Accordingly, the powers vested in the Chairpersons of the courts seem at first glance to effectively handle extreme situations, but the practice has shown that this leverage gives the Chairperson unbalanced powers and poses risks for the selective and arbitrary determination of the composition of judges.

3. Determining the duty schedule of judges

The authority of the Chairperson to determine/modify the duty schedule is in fact problematic. The duty schedule in Common Courts is set in advance, however, the Chairperson may change it at their discretion. The Chairperson is not bound by the deadlines for modifying the duty schedule and has no obligation to provide justification for the change. The current rule on duty schedules allows for the transfer of a case to a particular judge.⁷⁸

The project team addressed the major courts in Georgia and requested public information on the schedules of judges. According to the information received, no scheduling has been set in the Appellate and Supreme Courts.⁷⁹ As for the First Instance Courts, the project team was provided information regarding the schedules of judges in the district/city courts. The court letters state that the judges' schedules do not constitute public information.⁸⁰ In addition, that the judges' duty

75 Letter of the Tbilisi Court of Appeals, dated July 5, 2019, No. 3/5028.

76 Ibid.

77 Letter № 27/32-03-o of the High Council of Justice of Georgia of 20 January 2020.

78 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, "Assessing the Results of Judicial Reform," 2019, p. 29. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

79 Letter of the Kutaisi Court of Appeal dated 17 January 2020 No. 68-2/10; Letter of the Tbilisi Court of Appeal dated 17 January 2020, No. 3/83, No. 3/84; Letter of the Supreme Court of Georgia dated 17 January 2020 Ns/03-20.

80 Letter No. 3-0603/3400357 of the Tbilisi City Court dated January 15, 2020; Letter No. 74 /g of the Rustavi City Court dated 17 January 2020; Letter No. 34 of the Zugdidi District Court dated 20 January 2020; Letter No. 10 of January 13, 2020 from Telavi District Court; Letter No. g/f-167 of the Gori District Court dated 17 January 2020.

schedules are not archived.⁸¹ It is noteworthy that the duty schedule of judges requested during the first reporting period was fully provided by the majority of the courts to the project team.⁸²

After the first request, the Rustavi City Court provided the project team with complete information on the duty schedules and any changes made to it. The project team was provided with a copy of the Order of the Chairperson of the Rustavi City Court, approving and amending the judges' duty schedules, in the period of January 2018 to October 2019.⁸³ However, regrettably, after the second request to the Rustavi City Court, the court no longer provided with the judges' schedules and indicated that the information was not available to any interested party and the data was not administered in their database.⁸⁴ The sharp deterioration of the standard of access to public information after the first reporting period, in the absence of a clear regulation of the duties of the Chairperson in terms of managing the schedules of judges, makes it difficult to fully monitor the process of electronic distribution of cases.

The problematic nature of the authority of the Chairpersons to determine/amend the scheduling under ambiguous arrangements has been particularly acute in the cases of persons detained during the November 2019 demonstrations in front of the Parliament of Georgia. On November 18, 2019, some of the protesters were arrested by the police during the demonstrations near the Parliament of Georgia. According to the information provided by the Tbilisi City Court, only one judge was assigned at the time, according to the duty schedule.⁸⁵ Hearings of 37 cases of administrative offenses by one judge turned out to be problematic, in terms of time limitations and allowing for comprehensive presentation of arguments by the defense. The project team requested from the Tbilisi City Court (given the current situation at that time) information on whether the Chairperson had changed the duty schedule and if not, what was the reason. This question was only partially answered by the Court, indicating that in view of the amount of administrative offenses linked to the events of November 18, 2019, the Chairperson of the Court had not made any changes to the November duty schedule of the judges.⁸⁶

This case shows that the authority of the Chairperson of the Court to change the schedule of the judges in the absence of appropriate justification and deadlines has not been used for

81 Letter No. 3-0603/3400357 of the Tbilisi City Court dated January 15, 2020; Letter No. 10 of January 13, 2020 from Telavi District Court; Letter No. kh1/1of Khelvachauri District Court dated 17 January 2020; Letter No. 78 of 21 January 2020 of the Samtredia District Court; Letter No. g/f 167 of the Gori District Court dated 17 January 2020.

82 Letter No. 166 of Mtskheta District Court dated 14 September 2018; Letter No. 5441 of Khashuri District Court dated July 26, 2018; Letter No. 204 Ambrolauri District Court Letter; Letter No. 495 of Telavi District Court dated July 26, 2018.

83 Letter No. 1055/g of the Rustavi City Court dated 9 October 2019.

84 Letter No. 74/g of the Rustavi City Court dated 17 January 2020.

85 Letter of the Tbilisi City Court dated 25 November 2019, No. 3-04126/3294851.

86 Letter of the High Council of Justice of Georgia dated January 22, 2020 No. 33/104-03-o.

the proper and effective management of the crisis situation. Given the lack of clearly defined regulations, discussed examples revealed in the second reporting period confirm that the above-mentioned authority of the Chairperson is manipulative at large; it is based on the subjective, arbitrary decision and allows the possibility for its utilization for arbitrary interests. It is noteworthy that there are also risks of improper influence, when although the duty schedules are not established in courts, the Chairpersons are mandated to determine the composition of narrow specialization of judges.

4. Judges recusal and self-recusal

One of the challenges identified in the first monitoring report was the lack of clear regulations in the cases of recusal/self-recusal of a judge, which allows the Chairperson to be involved in the process of case distribution.⁸⁷ In particular, the High Council of Justice does not specify what actions are to be taken in the process of the distribution of the case and by whom in case of the recusal/self-recusal of the judge. In such situation, there is a possibility for the judge to self-recuse from the case without appropriate justification, which may result in the execution of improper influence on the work of the court.

According to the rule, as provided for by the procedural law of Georgia, the case is considered without the participation of the judge, in case of their recusal/self-recusal. The same procedure takes place in case of objective reasons, which leads to the impossibility of the hearing of the case by the specific judge. However, as explained in the first monitoring report,⁸⁸ it is also problematic that in the rule approved by the High Council of Justice, after observing such instances, there is no clear and well-defined procedure. In the information requested by the project team, the courts indicate that, in the event of self-recusal/recusal, the case is re-distributed in accordance with the rules and procedures established by the Council, in the timeframe established by law.⁸⁹ According to the Kutaisi Court of Appeals, in case of recusal/self-recusal of a judge, the case is reallocated according to the procedure established by the decision of the Council.⁹⁰ According to this procedure, the person authorized by the Chancellery of the Court, immediately reallocates the case based on the principle of random distribution.⁹¹

87 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, "Assessing the Results of Judicial Reform," 2019, p. 26-27. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

88 Ibid.

89 Letter No. 10 of January 13, 2020 from Telavi District Court; Letter of Khelvachauri District Court dated 17 January 2020 No. 1/1; Letter of the Rustavi City Court dated 17 January 2020 No. 74/g.

90 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 4. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

91 Letter of the Kutaisi Court of Appeal dated 17 January 2020 No. 68-2/10.

The recusal/self-recusal process is regulated by the Criminal and Civil Procedure Code of Georgia in such a way that it provides for the involvement of the Chairperson in the distribution process.⁹² According to the procedural law, the chairperson should be informed if the grounds for recusal are identified. The chairperson, on the basis of a vague procedure, refers the case to the Chancellery of the Court, which shall re-distribute the case through the Electronic Case Distribution Program to another judge.⁹³ Rules on electronic distribution of cases, approved by the Council, still does not specify who denotes the case to the Chancellery of the Court in such cases. It is also unclear, who is the decision maker on the re-distribution of the case, and within what time frame the procedure is being carried out.⁹⁴

The Georgian Democratic Initiative (GDI), in 2018, presented two legislative proposals for amendments to the Civil and Criminal Procedure Codes of Georgia related to minimizing the role of Chairpersons in the electronic distribution of cases to the Parliament of Georgia.⁹⁵ Proposals envisaged changes that would minimize the participation of the Chairperson in the process of the recusal/self-recusal of the judge. In addition, the amendments determined that the new judge would be selected through the electronic case distribution system. However, the discussions regarding this legislative initiative did not take place under the “fourth wave” of judicial reform.⁹⁶ The Parliament of Georgia has not taken any decision regarding the submitted legislative proposal at this stage.

5. Determination of collegial panel of judges

Determining the composition of panel and delaying the random distribution of cases in this process remains one of the major challenges.⁹⁷ According to the original edition of the Council’s decision, collegial panels in the Courts of First Instance should be completed through the electronic system by selecting sufficient number of judges.⁹⁸ As a result of the amend-

92 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, “Assessing the Results of Judicial Reform,” 2019, p. 26-27. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

93 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, “Assessing the Results of Judicial Reform,” 2019, p. 27. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

94 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 4. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020].

95 Draft Legislative Proposal on Amendments to the Criminal Procedure Code of Georgia, [Available at: <https://bit.ly/2RFJnKP>, accessed on: 22.01.2020]; Draft Legislative Proposal on Amendments to the Civil Procedure Code of Georgia, [Available at: <https://bit.ly/37ifDdG>, accessed on: 22.01.2020]

96 Agenda of the Committee on Legal Affairs of the Parliament of Georgia. [Available at: <https://bit.ly/30OSAVI>, accessed on: 22.01.2020].

97 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, “Assessing the Results of Judicial Reform,” 2019, p. 20. [Available at: <https://bit.ly/2WzmHzW>, accessed on: 22.01.2020]

98 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 4. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020].

ment of July 24, 2017, this power was delegated to the Chairperson of the Court.⁹⁹ According to the High Council of Justice, the reason for the amendment is the provision of the Code of Civil Procedure of Georgia. The Code stipulates that a “reasoned ruling on hearing a case by a panel of judges, shall be forwarded to the Chairperson, who determines the composition of the panel. The panel shall include the judge who participated in the original hearing of the case.”¹⁰⁰ However, since the adoption of the rule on electronic distribution of cases was a positive change in the common courts of Georgia, the Procedure Code should not lead to interpretation that is against the rule. For the purposes of the electronic distribution system, it is important that the Procedure Code is in line with the existing change and not vice versa.

As to Appeals and Cassation Courts, the case is randomly assigned to Chairperson/Presiding Judge of the Court through the electronic system of collegial deliberation. However, the procedure of assigning other judges is problematic. In this regard, it is still unclear whether the Chairperson/Presiding Judge of the Court selected by the electronic case distribution system will consider the case with a pre-established panel, or, in this case, a new panel will be established, with the participation of Chairperson/Presiding Judge of the Court selected by the program.¹⁰¹

According to the Tbilisi and Kutaisi Courts of Appeals, the Georgian legislation does not envisage direct regulation of the establishment of “permanent panel”.¹⁰² According to them, in order to ensure the procedural requirements of the legislation, judges of the narrow specialization of criminal, civil and administrative chambers, on the basis of mutual agreement, considering their workload and the scheduling of the cases, create panels which are typically characterized by a sort of stability.¹⁰³

According to the public information received from the Supreme Court of Georgia, in compliance with the decision of High Council of Justice enacted in 1 May, 2017, the case is allocated to one presiding judge.¹⁰⁴ Additionally, they clarified that the composition of the chambers/panels and how other judges are allocated to the case is not regulated by any legislative act/order.¹⁰⁵ As for the Grand Chamber of the Supreme Court of Georgia, the electronic case distribution system shall randomly select the required number of judges from the Grand

99 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 4. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020].

100 Civil Procedure Code of Georgia, Article 26.

101 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 4. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

102 Letter of the Court of Appeal of Tbilisi, dated 17 January 2020, №3/83, №3/84; Letter of the Kutaisi Court of Appeal dated 17 January 2020 No. 68-2/10.

103 Letter of the Court of Appeal of Tbilisi, dated 17 January 2020, №3/83, №3/84.

104 Letter Ns/10-20 of the Supreme Court of Georgia dated 13 February 2020.

105 Ibid.

Chamber of the Supreme Court of Georgia, taking into account the original case judges and the Chairperson of the Panel/Chamber.¹⁰⁶

Consequently, it is unclear in the panel of three judges, aside from the one judge in the panel who is selected through the electronic program, based on what rules and procedures the other two judges are selected. This problem was also mentioned in the first monitoring report, however this was not complied with by the authorities responsible for the changes.¹⁰⁷

106 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 4. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

107 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, "Assessing the Results of Judicial Reform," 2019, p. 20 [Available at: <https://bit.ly/2WzmHzW>, accessed on: 22.01.2020]

III. Cases of temporary interruption of the electronic distribution system

According to the rule of electronic distribution of cases, if there is a temporary interruption of the electronic system that lasts for more than 2 days, the authorized person of the Chancellery of the Court shall distribute the cases according to the alphabetical order of the judges.¹⁰⁸ Additionally, in the event of an interruption which lasts more than three hours, the cases related to the administrative offences, or which must be heard immediately or within 24, 48, or 72 hours, is distributed in alphabetical order as well. In the event of an interruption, the LEPL Department of Common Courts/the person in charge of the proper functioning of the electronic system shall submit information to the Management Department and the Chairperson/Deputy Chairperson of the Court or the Chairperson of the Panel/Chamber.¹⁰⁹

Through the dealing with the identified interruptions, the responsible employee of the Chancellery of the Court shall address the Management Department with a report indicating the cases that were received during the interruption that were not registered electronically,¹¹⁰ including the name and surname of the respective reviewing judge.

During the first monitoring period (December 31, 2017 to December 31, 2018), 6 such interruptions were identified, with 46 cases distributed in accordance with sequential rules without electronic registration.¹¹¹ In the second reporting period, (1 January 2019 to 31 December 2019), there were two occasions of temporary interruptions. Specifically, the report submitted by the Gori District Court to the High Council of Justice of Georgia provides information on cases distributed during the temporary interruption in the court on March 13, 2019, noting the names of the judges hearing the cases.¹¹² In Gori District Court, 8 cases were distributed from 14:15 till 19:20, including:

108 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 6. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020].

109 Ibid.

110 Ibid.

111 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, "Assessing the Results of Judicial Reform," 2019, p.33. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

112 Letter No. 28/33-03-o of the High Council of Justice of Georgia, dated January 20, 2020.

- Two motions by prosecutors to conduct covert investigative measures;
- Motion by prosecutor to apply a preventive measure and a motion for approval of a plea agreement in the same case;
- Motion by prosecutor to extend the period for pre-trial hearing;
- One lawyer's motion for seizure of immovable property;
- Two prosecutor's motion for permission to conduct investigative action;
- Motion by prosecutor to recognize investigative action as lawful, in case of urgency.

Among the cases distributed in the first reporting period, there were several ones which were allocated sequentially due to the temporary interruption, despite the fact that, according to the rule, some of these cases were not included in the list for the cases that must be considered immediately or in a limited timeframe. Including two criminal cases on the approval of a plea agreement.¹¹³ During the second monitoring period, one such case was identified during the temporary interruption in the Gori District Court. In particular, the prosecutor's motion to approve the plea agreement was distributed sequentially to the judge.¹¹⁴ For further information on the immediate distribution of the case, the project team reached out to the High Council of Justice and the Gori District Court. According to the Council, due to that temporary interruption, the case was sequentially distributed automatically "in accordance with the rule for the electronic distribution of cases to Common Courts of Georgia."¹¹⁵ The Gori District Court, in response to the request, explained in the letter that the decision of the Chairperson of the Court was made in accordance with the order of entry of cases and the alphabetical order of the judges. Consequently, cases which were needed to be considered in 24, 48- or 72-hour time frame, were distributed among judges. The distribution was executed "without electronic registration",¹¹⁶ according to the Organic Law on Common Courts.¹¹⁷

During the reporting period, the second case of temporary interruption was reported on September 2, 2019 at the Baghdati Magistrate Court of Kutaisi City Court, and it took one day to resolve the problem. During the temporary interruption, two civil lawsuits were filed in court over the imposition of the fine. They explained that since the interruption was no more than two days, there was no ground for manually distributing the case.¹¹⁸

113 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, "Assessing the Results of Judicial Reform," 2019, p. 33. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

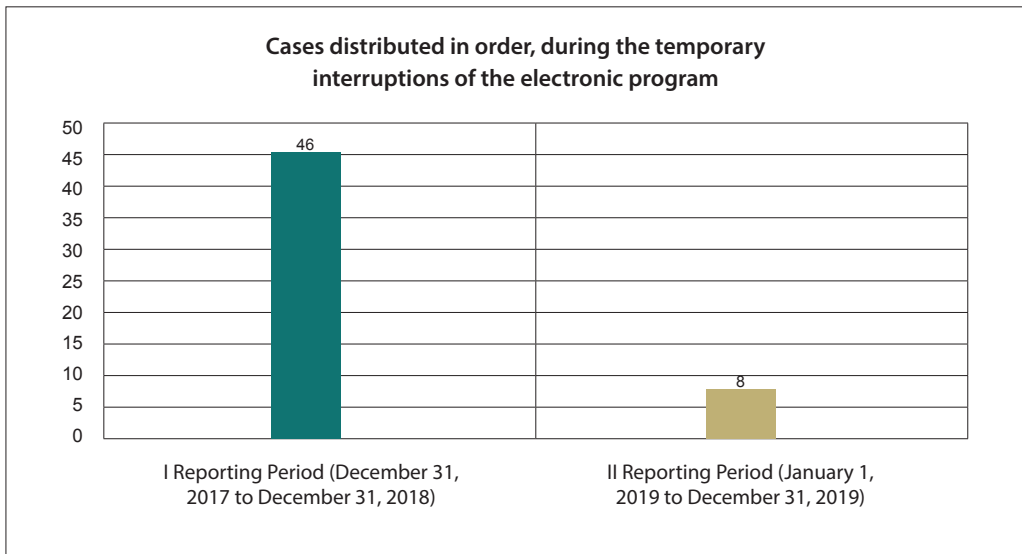
114 Letter No. 28/33-03-o of the High Council of Justice of Georgia, dated January 20, 2020.

115 Ibid.

116 Organic Law of Georgia on Common Courts of Georgia, Article 58¹.

117 Letter of the Gori District Court dated 17 January 2020 No. g/f-167.

118 Letter No. 28/33-03-o of the High Council of Justice of Georgia, dated January 20, 2020.



IV. Equal Distribution of Cases among Judges

Unequal distribution of cases among the judges through the electronic distribution program remains a challenge, as the distribution rule does not take into account the complexity and the volume of the cases.¹¹⁹ Additionally, unlikely to the other judges, the rule sets a different, reduced rate of distribution for the Deputy Chairperson/Chairperson of the court/chamber/panel and for the secretary/member of the High Council of Justice.¹²⁰ It poses a challenge in terms of equal distribution of a workload for the individual judge. Additionally, cases are allocated to newly appointed judges with an increased percentage, which is legitimate approach.

This table reflects the different workload rates of some members of the High Council of Justice of Georgia and the Deputy Chairperson/Chairperson of courts/chambers/panels in both the first and second reporting periods.¹²¹ It is noteworthy that, similar to the first monitoring period,¹²² in this case, the High Council of Justice of Georgia did not indicate the workload rate of the Chairman of the Tbilisi Court of Appeals, despite the fact that the project team requested the abovementioned information.¹²³ The information provided to the project team also did not show the workload rate of the Secretary of the High Council of Justice of Georgia and the current Chairman of the Tbilisi City Court Vasil Mshvenieradze.¹²⁴ The information was not made available even after the repeated requests.¹²⁵ However, information about the 20% workload rate of the former Chairperson of the Tbilisi City Court and now that of the Tbilisi Court of Appeals was sent to the project team with the letter dated January 20, 2020.¹²⁶

119 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information “Assessing the Results of Judicial Reform” 2019, p. 20-21. [Available at: <https://bit.ly/2WzmHzW>, accessed on: 22.01.2020]

120 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 6. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

121 Letter No. 27/32-03-o of the High Council of Justice of Georgia, dated January 20, 2020.

122 Letters of the High Council of Justice of Georgia: №1905/2562-03-o, 2165/2980-03-o, 2166/2979-03-o.

123 According to the letter No. 227/619-03-o, provided by the High Council of Justice of Georgia, dated March 5, 2020, the chairman of the Tbilisi Court of Appeals had discussed 20 cases during the period of December 31, 2018 – December 31, 2019. All cases were allocated directly to the chairman, based on the procedural legislation.

124 Letter No. 1111/3396-03-o of the High Council of Justice of Georgia, dated October 18, 2019.

125 Letter No. 27/32-03-o of the High Council of Justice of Georgia, dated January 20, 2020.

126 Ibid.

Name Surname	Administrative Position	The percentage of workload in the 1st reporting period	The percentage of workload in the 2nd reporting period
Mzia Todua	Acting Chairwoman of the Supreme Court	50%	50%
Mikheil Chinchaladze	Chairman of Tbilisi Court of Appeals	0%	Did not provide information
Levan Tevzadze	Chairman of the Chamber for Criminal Cases of Tbilisi Court of Appeals	20%	20%
Tamar Oniani	Member of the High Council of Justice	20%	20%
Revaz Nadaraia	Member of the High Council of Justice	20%	20%
Irakli Bondarenko	Member of the High Council of Justice	20%	20%
Irakli Shengelia	Deputy Chairman of Tbilisi Court of Appeals, Chairman of the Chamber of Civil Cases of Tbilisi Court of Appeals, Member of the High Council of Justice	100%	10%
Dimitri Gvritishvili	Chairman of the Kutaisi Court of Appeals, Member of the High Council of Justice	5%	5%
Vasil Mshvenieradze	Former Chairman of the Tbilisi City Court, Member of the High Council of Justice	0%	20%
Giorgi Mikautadze	Secretary of the High Council of Justice	0%	Did not provide information
Sergo Metopishvili	Judge of the Civil Cases Panel of the Tbilisi City Court, Member of the High Council of Justice	10%	Did not provide information
Davit Mamiseishvili	Chairman of Batumi City Court	20%	20%
Levan Meshveliani	Chairman of Samtredia District Court	50%	50%
Shota Nikuradze	Chairman of the Zestaponi District Court	100%	100%
Davit Narimanishvili	Acting Chairman of the Gurjaani District Court	100%	100%
Ararat Esoiani	Chairman of Akhalkalaki District Court	75%	100%

Given the current conditions, the difference between the percentage of workload of judges and courts/chambers/panels Chairpersons/Deputy Chairpersons is problematic. Statistical data obtained during the second reporting period shows that this issue is still a challenge and that the Chairpersons/Deputy Chairpersons of the courts/chambers/panels are in a favorable position in terms of workload rates than other judges. It is also clear that some Chairpersons have a high rate of workload, while others consider very few cases. Accordingly, such acute difference in the workload rates among judges, given their administrative position, creates an unequal environment and may result in the perception of court/panel/chamber Chairs as privileged persons. While backlog of cases remains one of the main challenges in the judicial system, such an approach fails to respond to the difficult situation in the system, considering the large number of cases and insufficient number of judges.

V. The role of the Management Department in the process of electronic distribution of cases

The decision of the High Council of Justice of Georgia of May 1, 2017, on the approval of the electronic distribution of cases, identified important functions of the Management Department for the effective functioning of the electronic distribution of cases, including:

- The Management Department is responsible for updating the information in the electronic system regarding judge's leave of absence, business travel and temporary incapacity.
- In the event of special objective circumstances, the judge shall immediately notify the Management Department, which shall reflect this information in the electronic system.¹²⁷
- The Department receives information from the Chairman of the Court, the Deputy Chairman, the Chairman of the Panel/Chamber or the person authorized by the Chancellery of the Court about the temporary interruption/elimination of the temporary interruption in the functioning of the electronic system, and regarding the cases distributed while there was an interruption.¹²⁸
- One of the functions of the department is to register judges in the specialized composition/panel/chamber/narrow specialization through the electronic system, as well as the authority to make changes, amendments, additions, annulments of the registration data.¹²⁹

Considering the importance of their functions, one of the recommendations from the first monitoring cycle was to fully staff the Management Department. During the first reporting period, at the October 8, 2018 meeting of the High Council of Justice of Georgia, the High Council of Justice made a decision to announce the competition for the position of Head of Management Department. Regrettably, as of December 31, 2018, the results of the competition were still not available to the public.¹³⁰ In the second reporting period, by the January 21, 2019 decision of the High Council of Justice of Georgia, Head of the Management Department was appointed.¹³¹

127 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Article 6. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

128 Ibid.

129 Decision of the High Council of Justice of Georgia of May 1, 2017 №1/56, Articles 7. [Available at: <https://bit.ly/3aBAuLc>, accessed on: 22.01.2020]

130 Human Rights Education and Monitoring Center, The Institute for Development of Freedom of Information, "Assessing the Results of Judicial Reform," 2019, p. 36. [Available at: <https://bit.ly/2WzmHzW>, accessed: 22.01.2020]

131 Decision of the High Council of Justice of Georgia of 21 January 2019 №1/4. [Available at: <https://bit.ly/3axMexY>, accessed on: 22.01.2020]

The Council's decision to select the Head of the Management Department should be welcomed in the light of the existing workload. However, public information requested by the project team during the second reporting period shows that as of January 20, 2020, only four of the seven positions at the Management Department have been filled.¹³² Up until now, three vacancies remain open, including that of one senior consultant and two consultants.¹³³

¹³² Letter No. 26/31-03-o of the High Council of Justice of Georgia, dated January 20, 2020.

¹³³ Ibid.

VI. Recommendations

It is noteworthy that almost all of the challenges identified in the first monitoring report remain unresolved. The analysis of the acts adopted until now by the Parliament, the High Council of Justice and the Chairperson of the Court on the random and equitable distribution of cases shows that it is important to take the following effective and systematic steps to improve the system of electronic allocation of cases:

- In the event of recusal/self-recusal of a judge, it is important to determine the procedure for re-distribution of cases and exclude the role of the Chairperson in the process;
- Introduce the electronic system of case distribution in all courts by ensuring that there are sufficient number of judges;
- Delegate the authority to determine the composition of judges of narrow specializations to the High Council of Justice instead of the Chairperson, on the basis of a clearly defined procedure;
- Improve the procedure for a fair and equal distribution of cases among judges in the electronic distribution system, taking into account the complexity and the volume of the case;
- Deprive the Courts' Chairpersons of the authority to increase and decrease the judge's workload rate;
- When reviewing the case by panel/chamber, ensure that all the three judges are selected through the electronic program of the case distribution;
- Arrange the duty scheduling rules of procedure for judges in such a way to preclude the possibility of a case being assigned directly to one particular judge without the protection of the principle of random distribution;
- Clearly outline the grounds and procedure for the temporary transfer of cases to another judge if the relevant circumstances are in place, in accordance with the rule;
- Given the functional importance of the Management Department in the process of electronic distribution, it is advisable to have a fully staffed department;
- Develop a uniform high standard for the proceeding/publicizing of statistical information on the electronic distribution of cases and on the provision of the related public information; Format/launch the electronic platform for processing statistical information related to the case distribution.