ACCESS TO JUSTICE IN GEORGIA

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I. Summary

Access to justice concerns the ability of people to achieve just resolution of legal problems and exercise their rights in accordance with human rights standards.[1] To ensure access to justice, it is important that the legislative framework adopted is based on the principles of equality and the rule of law, which will give equal opportunity to all to enjoy the justice system, regardless of their social, economic, gender, ethnic, religious, or other status. In other words, the laws must be accessible and inclusive for all, there must be legislative provisions that make justice services accessible for all, and state bodies must treat each individual equally and with sensitivity.

To improve access to justice, it is necessary that social needs of the population and specific groups and the structural issues that may be at the root of the problem (level of urbanization; economic structure; poverty; average income; inequality; housing problems, effectiveness of healthcare system; ethnic, nationality and religion-based homogeneity/heterogeneity of the society etc.) are identified. Although many studies have been conducted internationally on barriers to access to justice, sufficient information has not been collected and a unified picture of the national context has not been presented in Georgia so far. In order to fill this gap and lay the groundwork for the study of the issue of access to justice in Georgia, a special methodological framework was developed,[2] on the basis of which all relevant structural or substantive factors were analyzed. Although there are no strict boundaries between different barriers to access to justice because of their intersectional nature, the study analyzed five main types of barriers: (1) Institutional and Legislative Barriers; (2) Barriers Related to the Level of Legal Awareness; (3) Physical, Infrastructural and Geographical Barriers; (4) Financial Barriers; and (5) Social and Cultural Barriers.

The study found that there is no unified vision regarding access to justice in the country. Due to the fact that access to justice is a multilayered concept and has a multifaceted nature, it is necessary for various state institutions to work together to provide a comprehensive picture of access to justice barriers and to devise future strategies, which has not happened in Georgia yet. Consequently, neither the individual nor collective legal-political empowerment of people is promoted. Not only has the majority of the population, especially vulnerable and marginalized groups, limited access to legal remedies, but often they do not have the knowledge and understanding of their legal problems.

1 Legal Needs Surveys and Access to Justice, Open Society Foundations, OECD Publishing, 2019, p. 24.

2 Social Justice Center, Access to Justice Research Methodology, 2021.

In addition to lack of legal awareness, many other institutional or substantive barriers prevent individuals from seeking legal redress for dispute resolution in Georgia. Each of them is discussed in the study, however, they are not listed according to priorities; this is because the fragmented solutions of particular issues will not be effective, problems in the justice system must be examined in a comprehensive manner. Nevertheless, the study has identified some critical aspects of barriers that need to be addressed first, as otherwise any discussion on these issues would be pointless. Lack of trust in the judiciary is one such significant obstacle that can substantially deter individuals from taking a case to court. According to the recent polls, the majority of the population does not trust the Georgian judicial system or its authorities.[3] This can be attributed to the institutional problems that exist in the judiciary today in terms of the independence, impartiality, competence, and integrity of judges. In addition, that the length of court proceedings often exceeds reasonable time frames is also one of the main challenges hindering access to justice in Georgia.

When discussing problems regarding access to justice, it is especially important that individuals have the opportunity to benefit genuinely and equally from legal solutions of their problems in courts. This is especially true with regard to vulnerable groups in society, including the socio-economically disadvantaged, ethnic minorities, people with disabilities, etc., who experience even more difficulties and inequalities while accessing justice institutions. The research showed that the needs of vulnerable groups are practically ignored by the state. Structural factors, economic inequality and poverty in Georgia directly affect access to justice and deepen disparities between the parties caused by economic marginalization, which hinders the development of a more accessible, inclusive, and equitable justice system. An additional area of concern is the vision of the judiciary itself, namely its lack of openness and willingness to take into account the challenges that an individual may be facing while appealing before the court. Apart from these important barriers, the study identified many other aspects that will be presented below in detail in the form of findings related to every group of obstacles.

3 Human Rights Education and Monitoring Center (EMC), Institute for Development of Freedom of Information (IDFI) and Caucasus Research Resource Center (CRRC-Georgia), Results of Public Opinion Survey, 2018, (Available at: https://bit.ly/39oxEtE; Accessed on: 29.03.2021).

Main Findings on Institutional and Legislative Barriers

Access to Legislation:

- The Legislative Herald of Georgia is only functioning in an online format; therefore, the problem of internet access is a significant obstacle to accessing the legislative acts;
- A service fee is imposed for access to the consolidated versions of by-laws on the Legislative Herald website, which deprives people, in particular the economically disadvantaged, of the possibility to access legislation;
- Legislative acts are not translated systematically and the interests of national minorities are neglected in this process;
- Language used in the Georgian legislation is very complex and formal, often leading to differing interpretations even among lawyers. Thus it is not accessible to the larger groups of society, especially to the most vulnerable ones;
- The legislative/law-making process is not conducted in accordance with the pre-existing effective procedures. The policy-making process is fragmented and lacks systematic approach, and the active involvement of the general public/consultation with the stakeholders as part of the policymaking process is not supported.

Difficulty of Preparation of Legal Documents:

- The existing court forms for presenting legal claims, appeals, cassation and counterclaims are problematic, both in terms of their content and technical feasibility;
- The problem of language barrier is of relevance with regard to preparation of documents to be submitted to the court, since the unavailability of court forms or the inability to submit documents in minority languages makes it especially difficult for members of ethnic minority groups to prepare the necessary documentation independently;
- Court forms adopted for minors in accordance with the Code on the Rights of the Child fail to meet the objective challenges this group faces and need to be further refined. The current judicial practice on admission of lawsuits filed by children is also problematic, since it does not uphold the guarantees provided by the Code, does not protect their best interests, and neglects the special needs of children in the process;
- The current judicial practice on finding a defect in documentation prepared and submitted by an individual without an attorney and the possibility of correcting it is vague and inconsistent. This complicates the possibility of addressing identified defects in the paperwork for citizens without legal education;

- The process of obtaining access to official documents needed for preparing files to be submitted to the court is problematic. Individuals are required to address different state institutions to obtain a single document, which leads to delays in the proceedings and additional financial costs.

State Legal Aid System - Consultation and Representation:

- The lack of human and financial resources of the LEPL Legal Aid Service, which hinders effective enjoyment of the right to defense, is problematic;
- An additional condition for accessing free legal services in civil and administrative cases is the "complexity" and "importance" of the case, which is an additional barrier for the socially disadvantaged groups.

Access to Interpreters:

- Shortage of interpreters is problematic, and for persons with language barriers it hinders access to justice and delays timely completion of court proceedings;
- Unavailability of interpreters for specific languages is also problematic, and it is necessary that the government has an appropriate strategy on how to ensure access to justice for people in need of interpreters in these languages;
- The qualification of existing interpreters and their knowledge of legal terms and procedures is problematic. The legislation does not consider either the need to certify interpreters in this area or the possibility and criteria to check/control the quality of their services;
- The practice is that often interpreters are engaged in the proceedings only nominally, which deprives individuals with language barriers of the possibility to enjoy the essence of the right to the assistance of an interpreter;
- Lack of allocated resources for strengthening the institution of interpreters is problematic. This has a direct impact on the availability of translation services, both quantitatively and in terms of quality (particularly qualifications), which calls into question the possibility of effective access to justice for individuals with language barriers.

Duration of Court Hearings, Caseload in Courts and Number of Judges:

- It is necessary to analyze the problem of delayed court hearings and workload in courts on a continuous basis and to implement policies regarding time management, prevention of delays and effective reduction of backlogs;
- Important measures aimed at developing/refining statistical and analytical reports and monitoring mechanisms for evaluating the effectiveness of the judiciary, which are outlined in the Judicial Strategy and Action Plan, have not been implemented;
- Majority of the vacant positions of judges are not filled; The High Council of Justice has not shown willingness to fill the vacancies with judicial appointments;
- A smart case weighting system for effective determination of the best mechanisms for the optimal distribution of the existing number of judges between courts, is not implemented;
- The regulations regarding the composition of narrow specializations of judges reviewing cases in the common courts and the system of electronic case distribution is flawed, which prevents ensuring an equal workload of judges using the case weighting system;
- Along with the problem of high workload, ineffective management of the judicial system is problematic;
- Effective legal remedies to redress breaches of the right to a fair trial caused by delays is not introduced; Among other, regulations on disciplinary measures due to delayed court hearing requires further refinement;
- Parliament has no unified vision on addressing specific problematic issues in the judicial system related to delays and excess caseload of judges in accordance to the existing environment in the country.

Challenges Present During Trial in Terms of Access to Justice:

- It is a frequent practice that detainee, defendant, and witnesses are not informed about their rights and duties and/or that is done with a delay. Furthermore, often law enforcement officers interrogate persons with the status of a witness, despite the fact that there are sufficient grounds for pressing charges;
- The Code of Criminal Procedure does not set a procedure for establishing the intentional evading of justice or the opposite (the justifiability of the reason presented for absence). The Code does not require the Court to verify whether the defendant was summoned in a proper manner and if the person had explicitly refused to appear before courts prior to conducting in absentia proceedings;
- Explicit duty of the parties to notify about the sequence of evidence to be presented

and time and sequence of summoning witnesses is absent in the Code. Due to this, the right to a sufficient time for effective enjoyment of defense rights remains problematic;

- The Code does not specify what kind of information can be used for cross-examination of witness statements and the manner in which such information can be used. Additionally, there is no clear procedure for the verification of witness credibility or admissibility of evidence in this regard;
- The concept of evidence is particularly broad and vague. Evidence and procedural documents are not differentiated, which leads to various shortcomings in practice. Apart from this, restrictions established for motions on evidence inadmissibility in the course of pre-trial and substantive proceedings are also problematic;
- Investigative activities for obtaining information from a defendant's computer or computer system are carried out in accordance with rules on covert investigative actions, which, contrary to defense interests, violates the principle of adversariality and equality of arms;
- Norms regulating hearsay evidence and other related issues present significant challenges. The Code does not set criteria and procedures that would make the admissibility and use of hearsay evidence foreseeable in the course of carrying out various procedural actions. In this regard, the existing legislative framework does not include appropriate guarantees for defense;
- As a rule, the legality of detentions is not examined during the court hearing; judges rely on the position of the prosecution in the detention protocol and only assess the appropriateness of detention in a formal, automatic manner;
- The issue of examining the legality of search and seizure measures and its substantiation is also problematic. Judges' decisions are usually limited to standardized language, and in most cases do not contain arguments about the factual information used as the basis for investigative actions;
- Norms regulating granting of victims status, as well as access to case files upon the request of a victim, are vague. In both cases, legislation creates the possibility for an arbitrary interpretation, which is source of various problems in practice;
- In relation to some vulnerable groups (in particular, the LGBTQ community), there is a problem regarding protection of personal information, which is directly related to re-victimization and its serious consequences;
- The role of the judge in the criminal process is minimized, which threatens equality of the parties and genuine adversariality of proceedings, as the judge does not have enough leverage to properly assist the weak side in seeking the truth;
- In some cases, the quality of substantiation of common court decisions is not satisfactory. In particular, there is not sufficient evaluation of the evidence; there is also a lack of legal analysis and evaluation of factors used for sentencing;

- Another problematic area is judicial substantiation of legality and fairness of plea bargaining. Judges usually unconditionally accept the agreement reached between the accused and the prosecutor and do not try to assess the fairness of the sentence imposed (only assess the formal side of the matter);
- In crimes motivated/caused by socio-economic difficulties, there are often cases when the prosecution and the judges pay little attention to the social status of the person, negligible harm caused by the crime, the motive for the crime and its determining factors (in initiating criminal proceedings, imposing preventive measures and sentencing);
- There are cases when judges are lenient with those accused of domestic violence and unjustifiably impose a relatively light measure of restraint and punishment on them;
- In cases of crimes against women and LGBTQ people, the issue of identifying discriminatory motives in the cases by prosecutors and judges is sometimes also problematic;
- The Code of Administrative Offenses in force and the practice of administrative detentions is a particular systemic problem, which contributes to the violation of procedural rights of detainees (in relation to proper exercise of defense rights, being advised about rights, access to medical services, etc.) and unjustified administrative penalties (especially imprisonment);
- There are still practices of insensitive and often discriminatory treatment towards various vulnerable groups in the judiciary and law enforcement agencies.

Independence, Impartiality, Competence and Integrity of Judges:

- The judiciary is not institutionally independent from either external or internal undue influences. The influential group in the judicial system makes all important decisions related to the exercise of judicial authority and, as a result, threatens the independence of individual judges. Consequently, there are grounds to assume that, given a financial or political interest, this group has the possibility to influence decision-making by an individual judge in a particular case. Moreover, reasonable assumption exists about close ties of this group with the ruling political party;
- The current system and practice of selection and appointment of judges is flawed and does not ensure the selection of the best candidates;
- According to the Constitution of Georgia, the mechanism of probationary appointment for judges remains in place until 2024. The probationary period may be used as leverage by particular groups, both inside and outside of the judiciary, to influence decision-making by individual judges;

- There is no effective system for the periodic evaluation of individual judges that would enable introduction of a system of continuous training of judges as well as fair promotion;
- The existing case distribution system is flawed. More specifically, wide-ranging exceptions to the rules regarding random assignment of cases and unlimited discretion of court chairpersons permits arbitrary use of the electronic case distribution system in specific cases;
- Judicial disciplinary proceedings need further refinement. In particular, guarantees of institutional independence of the Independent Inspector and a number of the procedural rules governing disciplinary proceedings need to be strengthened;
- In the context of the superficial legislative changes adopted after selection and appointment of Supreme Court judges in 2018-2019, if the selection of candidates for the remaining 10 vacancies takes place with substantively the same legislative framework, a way out of the crisis for the judiciary will disappear in the foreseeable future.

Main Findings on Barriers Related to the Legal Awareness and Empowerment:

- The government policy of legal empowerment and awareness raising of the society is fragmented and lacks systematic vision, which ultimately affects the quality of access to justice of the society;
- There is no official cooperation between the government and the Public Broadcaster to strengthen legal awareness of citizens, beyond the substantive obligations set out at the legislative level. Efforts by the Public Broadcaster in this direction are mainly focused on covering specific human rights violations and legislative reforms, which serve to inform the society about current events rather than raise legal awareness;
- In terms of receiving information, television is still an established and dominant source for the society. Consequently, with regard to legal awareness, internet resources should not be the only or even the main resource used by the state to keep the public informed. However, it should be noted that almost a quarter of the population uses internet/social network for information, and the data on the daily use of this resource is quite significant;
- There are significant challenges in state education policy regarding teaching civic education subjects. These problems are especially acute for ethnic minorities. The availability of textbooks for civic education in minority languages is also problematic, as is the issue of teacher qualifications and continued training, which is significantly hampered by the existence of a language barrier.

Main Findings on Geographical, physical and infrastructural barriers

- The need for improving the existing model of territorial redistribution of courts and legal aid services has not been studied;
- The buildings of the Court and the Legal Aid Service are not constructed in such a way that they can be used equally by all persons;
- Not all standards of universal and reasonable accommodation are met during the adaptation process for people with mobility impairments;
- The issue of an accommodating environment for people with sensory impairments has disappeared from the policy agenda;
- The court's electronic system of administration of justice is not suitable for effective remote conduct of various proceedings in the course of case consideration.

Main Findings on Financial barriers

- Existing legislation (insolvency criteria as a general precondition for accessing legal aid) overly restricts the circle of people potentially entitled to free legal aid;
- Opportunities for free legal aid are substantially limited for economically disadvantaged people beyond the category of insolvent people, and no clear legal guarantees are set. In this respect, the discretionary power of the Director of the Legal Aid Service is not an effective tool;
- Payment of court fees by a losing party, regardless of its social status, is a significant challenge affecting recourse to courts;
- Court fees are a heavy financial burden for low-income families who are not social allowance recipients.

Main Finding on Social and Cultural Barriers

- One of the factors hindering access to justice in Georgia is cultural barriers. The attitude that cooperation with the police/court is shameful or unacceptable to a certain extent is common in society. These attitudes are most common in regions;
- Informal dispute resolution is common in Georgia, such as resolving disputes by involving a head/elder of the village, experienced person, relative or religious figure. These practices are more common in regions. Such practices are not unequivocally negative, unlike the particular informal way of resolving disputes, namely involvement of organized crime ("thieves in law") in dispute resolutions ("settling of accounts").

- People do not often report crimes or disputes to the police/court due to the problems related to lack of awareness of legal rights. The problem is more acute in rural settlements, especially in the regions populated by ethnic minorities;
- Distrust towards the justice system among the general population is one of the main reasons for refraining from reporting/appealing to the police/court;
- Part of the society has the impression that if they apply to the police their anonymity will not be protected, which further reduces the trust in the justice system;
- In case of domestic violence, women's access to justice is hampered by a variety of factors, including cultural barriers (fear of stigma and pressure from the society), social barriers (social vulnerability, domestic labor, financial dependence on the abuser), and lack of trust in the justice system, which sometimes results from indifferent or degrading treatment by law enforcement officials;
- The main factors hindering access to justice for LGBTQ people are the fear of "coming out" and the prospects of re-victimization by law enforcement officials.

II. Introduction

For adequate protection and realization of human rights, it is crucial to create an environment suitable for exercising the right to a fair trial to which access to justice is inherently linked. The latter implies the possibility for each member of the public to request and receive a fair and public trial conducted by an independent and impartial judge within a reasonable timeframe.[4] This right also includes elements such as the rights to legal advice, legal aid and representation.[5] In the context of access to justice, the possibility of fully exercising the rights guaranteed by the Constitution is crucial,[6] as there is a high risk that a person's interests will be left unprotected due to systemic problems.

Barriers that prevent people with limited opportunities from seeking justice can be divided into "functional" and "structural" factors.[7] The first addresses the problems in the justice system's internal efficiency, such as the scarcity or absence of legal aid services or the high court fees.[8] Structural factors are closely related to the organization of the state and society itself, such as the elitism of the justice system, deep social inequality, the failure of social programs, and so on.[9] Social inequality usually determines the main trajectories that administration of justice portrays. This implies that often the justice system operates by integrating the vicious features of an unequal social, economic and political environment, rather than reversing them. Influences in the justice system, various types of discriminatory practices or other problems, reflect the more general injustices that exist in public and political life. Social inequality in these conditions only feeds the elitism of the judiciary and deprives ordinary people of the possibility to have access and use it fairly.

Traditionally, access to justice has been viewed from the paradigm of rights and has only meant access to the courts. Continuing this tradition, the idea of improving access to justice typically focuses on institutional change and, in this manner, on enabling people to exercise their rights within the existing justice system. While this approach seeks to adequately protect the poor and disadvantaged, it usually fails to fully address the central

4 Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 2010, p. 15, [Available at: https://bit.ly/3fdwCEg; Accessed on: 24.02.2021].

5 Ibid.

6 Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All, OECD, 2016, p. 5, [Available at: https://bit.ly/3fLcxEB; accessed on: 24.02.2021].

7 Abregú, M., Barricades or Obstacles: The Challenges of Access to Justice, in Puymbroeck, R. V. (ed.) Comprehensive Legal and Judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century, 2001, pp. 53-69, [Available at: https://bit.ly/349DRGT; Accessed on: 24.02.2021].

8 Ibid.

9 Ibid.

challenges faced by the system.[10] The modern approach does not view institutional reforms within the judiciary as the only alternative to the existing problems and challenges, but more broadly, it also includes various organizational and operational strategies of the justice system and different state entities.[11]

Modern concepts of access to justice are linked to the emergence of welfare states. The principle of the rule of law requires that participants in the proceedings be provided with all the necessary mechanisms for protection of their rights.[12] Precisely, this is supposed to ensure the highest goal of justice – a fair and just outcome of the case. According to this understanding and general definition, access to justice includes the following elements:

- The right to effective access to the dispute resolution mechanism;
- The right to a fair trial;
- The right to a timely resolution of disputes;
- Possibility to restore rights to an adequate level;
- Principle of effectiveness.[13]

Clearly, no matter how refined institutional mechanisms are or how well the justice system works, the various practices of oppression and systemic injustice may not be completely eradicated. However, it is important to understand that it is the responsibility of the state, to ensure that people are able to channel their concerns within its institutional framework and to actually have and use all the mechanisms needed to achieve justice. In the context of justice, this implies the obligation of the state to provide the necessary means and resources for the protection of rights regardless of the actual social and economic disparities so that it is feasible to seek justice through institutions. Otherwise, inequalities, already firmly established in social structures, preclude the administration of fair and accessible justice.

One of Georgia's most important state policy documents in the field of human rights is the National Human Rights Strategy for 2014-2020. In the wake of the 2012 elections in Georgia, the legal framework for human rights was considered insufficient and this document was developed to establish and refine the institutional mechanisms and means for the practical

10 Albert Currie, Riding the Third Wave: Rethinking Criminal Legal Aid within an Access to Justice Framework, A Note on the Concept of Access to Justice, 2004, [Available at: https://bit.ly/3fcNxa7; Accessed on: 24.02.2021].

11 Albert Currie, Riding the Third Wave: Rethinking Criminal Legal Aid within an Access to Justice Framework, The Evolution of Access to Justice, 2004, [Available at: https://bit.ly/3vhhdZj; Accessed on: 24.02.2021].

12 Beth Cole, Emily Hsu and others, Necessary Condition: Access to Justice, in Guiding Principles for Stabilization and Reconstruction, 2009, [Available at: https://bit.ly/34cMlgw; Accessed on: 24.02.2021].

13 Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 2010, p. 14.

realization of rights. The government action plans[14] adopted to implement the strategy focus on the institutional aspect of judicial reform. Although the strategy mentioned the inadequate level of awareness of the rights-holders themselves about the means of exercising their rights as one of the main obstacles to the practical realization of human rights and one of the main goals indicated was to inform people about the means of exercising their rights, it is less focused on the aspect of the right to a fair trial that serves to improve access to justice for individuals and to strengthen the legal awareness of the public in this regard.[15]

As for other challenges to the right to a fair trial and access to justice in Georgia, they are unsystematically and only partially addressed in these documents. Their analysis reveals that these documents were only formally based on the idea of practical realization of human rights and they could not ensure that the government's long-term priorities with regard to access to justice were formulated, nor could they produce an inter-agency, multi-sectoral, unified and consistent policies in this area.[16]

The 5-year Strategy of the Judicial System developed within the framework of the Association Agenda between Georgia and the European Union (2017-2021) also could have become an important tool to increase access to justice.[17] The document explicitly refers to access to justice as one of the priority aspects of the judicial reforms. In contrast to the National Human Rights Strategy and Government Action Plans, this document provides a fairly detailed overview of the relevant challenges and possible ways to address them, although the activities outlined in the Action Plan issued for the implementation of the Strategy are highly technical and formal in nature.

The Criminal Justice Reform Strategy and Action Plan is also noteworthy in relation to state measures for providing access to justice and strengthening the legal awareness of the public.[18] The document defines criminal policy and is updated annually. The Strategy, has a multifaceted approach and focuses on various challenges in the criminal justice field, including improving access to justice and raising public awareness in various areas. However, this document does not provide a systematic vision of the challenges to access to justice and the ways to address them.

14 From 2014 up to date, 3 government plans for the protection of human rights in Georgia have been developed within the framework of the National Strategy (for 2014-2015, for 2016-2017, for 2018-2020). Government plans in full is available at: https://bit.ly/3oIhCS5; Accessed on: 24.02.2021.

15 Resolution of the Parliament of Georgia on the Approval of the National Strategy for the Protection of Human Rights of Georgia (2014-2020) of April 30, 2014, [available at: https://bit.ly/3fE94aN; Accessed on: 24.02.2021].

16 Ibid.

17 Strategy of Judicial System (for 2017-2021); [Available at: https://bit.ly/3gEDDPD; Accessed on: 24.02.2021].

18 Adopted by the Interagency Coordination Council on 27 July 2009, [Available at: https://bit.ly/3hLluAl; Accessed on: 24.02.2021].

In addition, apart from the fact that these documents have a substantive problem and do not address the challenges of access to justice, even the fragmentary commitments set out in them are not being fulfilled in practice. A good example of this is the Annual Monitoring Report on the Government Action Plan for the Protection of Human Rights submitted by the Government of Georgia in 2020,[19] according to which only 41% of the tasks envisaged in the plan had been fully implemented by the end of 2019.[20] As for the strategy of the judiciary, the state of its implementation is even more alarming. No effective steps have been taken by the High Council of Justice for actual improvement of the judiciary. The judiciary does not pay due attention to the full implementation of the Strategy and Action Plan, and in many cases, specific activities are only formally completed. In this light, the substantive result, the qualitative improvement of the judiciary, remains beyond the interest of the agencies responsible for the implementation of the Action Plan, thus it puts the existence and effectiveness of this format under question. For the High Council of Justice, working on the topics outlined in the Strategy document is not a priority, which is evidenced not only by the fact that implementation of the activities is delayed, but also by the failure of the High Council of Justice to approve a new action plan from 2019 until today. Moreover, most of the activities envisaged in the 2017-2018 Action Plan still remain unfulfilled.

Therefore, as the analysis of policies and strategic documents of different branches of government shows, the government of Georgia does not have a unified policy on access to justice that would provide an in-depth analysis of the challenges in this area, identify existing problems and outline appropriate ways to deal with them. Despite four waves of judicial reform and a number of positive changes, there are still significant systemic shortcomings and challenges in the Georgian court system, the timely and effective solution of which requires radical and fundamental reforms. Substantive issues, which are indispensable to access to justice are still absent from the agenda, and this again places a disproportionately heavy burden on the most vulnerable groups of society.

19 Annual Report on Monitoring the Government Action Plan for Human Rights, 2019, [Available at: https://bit.ly/3h-PfR3W; Accessed on: 24.02.2021].

20 Ibid., p. 4.

III. Methodology

To assess the challenges facing access to justice in Georgia, the project team reviewed the existing legislative framework and the activities of responsible agencies through December 2020. Barriers to access to justice, as noted, are cross-sectional and, similar to lack of a unified universal concept of access to justice, there is no exhaustive list of barriers. However, barriers are generally grouped into the following categories: (1) institutional and legislative barriers; (2) barriers related to legal awareness; (3) physical, infrastructural and geographical barriers; (4) financial barriers; and (5) social and cultural barriers. These 5 essential directions in terms of increasing access to justice are discussed in this paper.

The project team relied on the following methodological tools in the research process:

Analysis of Legislation and Policy Papers – One of the most important tools in the research process was the analysis of the existing legislative framework, the reforms implemented, and the practices developed based on it. For this purpose, within the framework of the research, relevant legal acts were analyzed with the participation of an expert. Such an analysis made it possible to review the normative framework in relation to each barrier.

Requesting public information from the responsible agencies – An important source in the research process was the information provided by various governmental agencies. That is why the project team requested public information from the Parliament and Government of Georgia, the Ministries of Justice and Education, the High Council of Justice, the Supreme Court of Georgia, the Legal Aid Service and other institutions in several stages. In addition to statistical data and other public information, the project team requested information from relevant agencies on the status of implementation of policy documents for which action plans have been drawn up. In many cases, the deadline provided by the law for responding to public information was not observed, and mostly the responses received were general in nature and did not address the specific request. Moreover, several agencies (for example, the Government of Georgia) still have not sent their responses after months. It is an important challenge that state agencies, including the judiciary, do not conduct statistical data on many important issues, which would allow interested people to analyze the quality of access to justice in the country. Such issues are, for example, all the cases, how many times there was a necessity to use interpreter, in how many cases was the party presented by the lawyer, how many were disabled and/or having the status of socially vulnerable among the individuals participating in the case.

Analysis of Secondary Sources – Additional sources of information used in the preparation of the document were surveys, reports and assessments published by local and international organizations and the Public Defender; The analysis of such information made it possible to make a more comprehensive assessment of the scale of the activities and, accordingly, the progress in the achievement of the program goals.

Qualitative research – Online focus group and group interview[21] methods were selected as the qualitative research method. Qualitative research was conducted with both professional groups and citizens. Focus group discussions and group interviews with citizens were conducted by CRRC – Georgia in October 2020. The target group of the study were citizens who had experience in court cases during the last 5-6 years. For the purpose of homogeneity of focus groups, the target groups were divided into two groups according to the type of case – those with a criminal case and those with a civil/administrative case. In addition, the views of both Georgian-speaking citizens and ethnic minorities – Armenian and Azerbaijani-speaking citizens – were studied. A total of eight focus groups and one group interview were conducted in different regions of Georgia: Tbilisi, Imereti (Baghdati and Chiatura), Kvemo Kartli (Marneuli) and Samtskhe-Javakheti (Akhalkalaki).

It should be noted that due to the cultural factor in Marneuli, group discussions with women and men were held separately, and since it was not possible to gather a group of women with criminal cases, only two group interviews were held in Marneuli, one with the women who had been involved in civil/administrative court proceedings and the second, with men who had experience with criminal cases. However, the fieldwork encountered other difficulties as well. It was decided it would be interesting for the study to analyze the views of people who did not have a city/district court in their settlement and had to move to another city to attend the court hearings. For that reason, Chiatura was selected, but it was very difficult to find individuals with criminal case experience or those who would agree to participate. Therefore, Baghdadi, a town with the same characteristics, was added to the list of locations. As a result, a focus group was conducted in Chiatura with respondents who had been involved in civil/administrative cases, and in Baghdadi with respondents who had experience with criminal cases.

21 There were two women – victims of violence among the respondents, which made it advisable to conduct a group interview with them.

A detailed distribution of focus groups is presented in the table:

City	Focus Groups According to the type of the case	Number of Focus Groups	Language of Focus Groups
Tbilisi	▪ Groups composed of respondents who had experience with criminal cases ▪ Groups composed of respondents who had experience with civil/administrative cases	2 (Focus Groups) 1 (Group Interview)	Georgian
Chiatura	▪ Groups composed of respondents who had experience with civil/administrative cases	1	Georgian
Bagdati	▪ Groups composed of respondents who had experience with criminal cases	1	Georgian
Marneuli	▪ Groups composed of male respondents who had experience with criminal cases ▪ Groups composed of female respondents who had experience with civil/administrative cases	2	Azerbaijani
Akhalkalaki	▪ Groups composed of respondents who had experience with criminal cases ▪ Groups composed of respondents who had experience with civil/administrative cases	2	Armenian

As for the professional focus group discussions, these were conducted by the project team in October-November 2020. Namely, a total of 3 discussions were held with lawyers from the Legal Aid Service, the Georgian Bar Association and non-governmental organizations.

Due to the present research methods, the results are not fully representative, and it is impossible to generalize from them. Accordingly, the present document, although it may not fully cover all possible arguments or observations on the issues raised in the research, still manages to identify similar patterns in the responses and argumentation according to the target groups. Moreover, the use of other methods in conjunction with qualitative research gives grounds to conclude that, as a whole, the document reflects the main challenges and key approaches in this area.

IV. Institutional and Legislative Barriers

4.1. Access to legislation

A democratic state entails not only the existence of legislation but also the requirements for a high-quality, "good" legislative system that is widely accessible for every societal group. Indeterminate and vague norms which are complex and difficult to understand, overlap with each other, and/or leave loopholes for the rights' protection, and, consequently, lack accessibility, are not enforceable and can bring more damage than the absence of regulation.[22]

Accordingly, three elements of access to legislation can be identified that require assessment: (1) the existence of a consolidated legislative system and/or a regulatory legal framework for a specific area/relationship; (2) accessibility of the legislation; (3) the quality of the legislative framework.

The Law of Georgia on Normative Acts defines the typology, hierarchy, and interrelation between normative acts, as well as general rules for preparing, adopting (issuing), promulgating, applying, registering, and systematizing them. Legal acts of Georgia include legislative (normative) and subordinate (normative or individual) acts.[23] Subordinate normative acts clarify legal relationships regulated under legislative acts and lay down more detailed rules of conduct. Therefore, access to subordinate normative acts is often as essential as access to legislative acts. Based on the above analysis, it can be concluded that there is a consolidated legislative system in Georgia. However, analyzing the scope of regulated areas/relationships exceeds the scope and aims of this report. Therefore, this subsection provides the analysis of the remaining two elements.

First, this subsection discusses access to legislation which entails that the state's legislative framework should be promulgated in publicly accessible sources, in a manner that ensures the state population is informed.

Second, this report analyses the quality of Georgia's legislative framework. This element is difficult to assess as attributes of "good" legislation depend on state's legal tradition, constitutional system, socio-political context, visions of various interested parties, etc.[24]

22 Maria Mousmouti and Gianluca Crispi, "Good" Legislation as a Means of Ensuring Voice, Accountability, and the Delivery of Results in Urban development, The World Bank Legal Review, p. 178.

23 The Law of Georgia on Normative Acts, Article 7.

24 Maria Mousmouti and Gianluca Crispi, "Good" Legislation as a Means of Ensuring Voice, Accountability, and the Delivery of Results in Urban development, The World Bank Legal Review, p. 178

Regardless of the absence of such a definitive list of attributes, legal scholarship has identified the following components: orientation on results, efficiency and simplicity.[25] A norm/legislation will be considered to have met these requirements if it: (1) establishes coherent and unambiguous rules which address the issue at hand; (2) takes into account opinions and interests of individuals/groups affected by the issue and, hence, has the support of all parties of the legislative process and can achieve the objective it was designed for; and (3) ensures accountability and, as a result, provide for an opportunity for a systematic monitoring and assessment of the objectives in practice.[26] Accordingly, this subsection aims to review the quality of Georgia's legislative framework not by assessing individual normative acts but through a general assessment of how understandable legislative language is for the country's population, if there exist language standards that are employed during legislative/legal drafting process and how effective and well-organized the legislative procedure is.[27]

4.1.1. Promulgation, Registering and Systematization of Normative Acts

Normative and subordinate acts are considered as officially (having legal force) promulgated when their full text is first published on the website of the Legislative Herald of Georgia[28] (hereinafter, Legislative Herald).[29] The Legislative Herald is the body that ensures state registration and systematization of normative acts. For this purpose, the Legislative Herald operates the State Register of Normative Acts which represents a systematic database of the information about normative acts and is maintained in an electronic form on the website of the Legislative Herald.[30]

According to the Law of Georgia on Normative Acts, it is inadmissible not to publish normative acts or their parts which restrict human rights and freedoms, or which determine legal liability.[31] This provision is a materialization of the principle of accessibility of legis-

25 Helen Xanthaki, On the Transferability of Legislative Solutions: The Functionality Test, in Drafting Legislation: A Modern Approach, pp. 1–18, (Constantin Stefanou & Helen Xanthaki eds., Ashgate 2008).

26 Helen Xanthaki, "Quality of Legislation: An Achievable Universal Concept or An Utopia Pursuit?" In Quality of Legislation: Principles and Instruments, 2011, pp. 75–85.

27 House of Lords, Select committee on the Constitution, The legislative process: Preparing Legislation for Parliament, 4th Report of Session 2017-19, HL Paper 27, 2017, p. 5.

28 A legal entity of public law (LEPL) under the Ministry of Justice of Georgia.

29 The Law of Georgia on Normative Acts, Article 26(1).

30 The Law of Georgia on Normative Acts, Article 29.

31 Article 26(3). Notably, not to publish a subordinate normative act or its provisions is admissible under the cases determined by the Law of Georgia on State Secrets. Normative acts or parts of normative acts classified as secret shall be entered into the 'Secret' section of the State Register. The procedure and conditions for accessing information entered in the 'Secret' section of the State Register shall be determined by the Law of Georgia on State Secrets. See, the Law of Georgia on Normative Acts, Article 29(5).

lation in the Georgian context, specifically in cases where the legislation restricts human rights, or determines legal liability. However, it is disputable whether the publication of normative acts on the website of the Legislative Herald is an effective avenue to ensure public accessibility.

Although the majority of the public focus group participants stated that they have information on how to access a normative act of their interest, only a small number of them have done it in practice. One participant in Kvemo Kartli stated that they have had the necessity to find a law but could not do it. The meeting with professional focus groups revealed that one of the underlying reasons for the inability to access normative acts online are issues regarding the access to the internet as the services of the Legislative Herald are in an electronic form – located on the website and the internet is necessary to access it. According to 2020 data, only 71% of the population have a weekly access to the internet in Georgia, the rest access it several times a year or not at all.[32] Furthermore, from the households that use the internet only 62.86% use it via a personal computer.[33] Two factors should be underlined in this regard. First, households may own a single personal computer while there may be a high number of cohabitants. Second, the quality of access to the Legislative Herald's website may be in question for those who access the internet via a mobile phone.

"Majority, 90% of the visitors, are the elderly who do not have the access to the internet. They come from villages, and do not know amendments, or anything related to the legislation."[34]

„It's self-evident… when the publication happens in an official body, the state seemingly responds to the challenge saying that "look, I have published the law." However, everyone should know … on the one hand, the state adopts a law and, on the other, it does not make it accessible for the whole range of the population. They don't understand, and have no opportunity to register via the internet."[35]

32 Once a day – 63%, once a week – 8%, once a month – 2%, more seldom – 7%, never – 20%, I do not know what the internet is – 1%, [Available: https://caucasusbarometer.org/ge/na2020ge/FRQINTR/; Accessed on 24.02.2021].

33 Caucasus Research Resource Center (CRRC), Media Survey in Georgia.

34 Woman, a representative of state legal aid service, focus group with a professional group, 13 October, 2020.

35 Woman, a representative of state legal aid service, focus group with a professional group, 13 October, 2020

Along with the challenges of the access to the internet, another significant factor that restricts access to legislation is that access to certain aspects of the Legislative Herald requires a paid account. According to the Order of the Minister of Justice of Georgia, systematized legislative acts and other normative and informative documentation on the website are free to access. However, charges apply with respect to access to systematised subordinate normative acts and electronic provision of thematically classified subordinate normative acts.[36] Viewing (downloading) a normative act costs 2 Laris and fees vary for multiple usage based on the number of users and period of usage (see Annex N1).

Annex N1

Number of users	1-10	11-50	51-100	101-300	301-500
Period/Price per unit	1 month – 30 Gel	1 month – 20 Gel	1 month – 15 Gel	1 month – 10 Gel	1 month – 7.5. Gel
	6 months – 162 Gel	6 months – 108 Gel	6 months – 81 Gel	6 months – 54 Gel	6 months – 40.5 Gel
	12 months – 288 Gel	12 months – 192 Gel	12 months – 144 Gel	12 months – 96 Gel	12 months – 72 Gel

„It is unfortunate that, can only access laws. Subordinate acts that are no less important, for instance, the rule of issuing construction permissions regulated through a subordinate act, amendments to it and the consolidated version of the document are not accessible by a common citizen if they have not purchased the paid package in the Herald."[37]

„There should be more accessibility, for example, it should be uploaded on the Parliament website and should be easy to find and access not only for lawyers but common citizens as well, and it should not be charged additionally."[38]

36 The Order N225 of 6 December 2010 of the Minister of Justice on the Amount of Fees and Methods of Payment for Service and Promulgation of Normative Acts in the Legislative Herald of Georgia, Article and Annex №1.

37 Woman, a representative of the Bar Association, focus group with a professional group, 18 November 2020.

38 Woman, a representative of the Bar Association, focus group with a professional group, 18 November 2020.

In light of the multi-ethnic representation of Georgian citizens and a high number of permanent or temporary residents of other nationality, the accessibility of legislation also entails the existence of different language versions of the legislative framework. According to the 2014 General Population Census of the National Statistics Office of Georgia, the highest number of ethnic minorities in Georgia represent the communities who speak Azerbaijani,[39] Armenian[40] and Russian languages.[41] Legislative acts of Georgia are often translated into English which stems from the obligation under the Association Agreement of Georgia with the European Union[42] and ensures a universal minimal access to the legislation for persons of various nationalities residing in Georgia. As per the information provided by the Legislative Herald, the Parliament of Georgia also arranges the translation of normative acts into Russian and provides the translation to the Herald.[43] This corresponds to the high number of Russian-speaking population in Georgia. However, only the Constitution and 2 legislative acts (Laws of Georgia on the Elimination of All Forms of Discrimination and on Violence Against Women and/or Elimination of Domestic Violence, Protection and Support of Victims of Violence) are translated into Azerbaijani and Armenian languages,[44] which indicates that the state does not take effective policy measures to ensure access to legislation for ethnic minorities. The assumption that Azerbaijani and Armenian communities have a good command of the Russian language does often not correspond to the reality. Moreover, professional focus groups indicated that, due to a complex nature of legislative texts that are difficult to comprehend even in a native language, the translation to a non-native language cannot ensure accessibility even for the individuals who have a good command of Russian language. It should also be noted that only a minority of acts are translated into English and Russian and the translations are often outdated and do not represent an updated, consolidated version of the act.

39 Azerbaijani is the primary language for 231.436 persons residing in Georgia out of 3.713.804 total population. The response of the National Statistics Office of Georgia on our request of public information, letter N9/-1565, 13.07.2020.

40 Armenian is the primary language for 144.812 persons residing in Georgia out of 3.713.804 total population. The response of the National Statistics Office of Georgia on our request of public information, letter N9/-1565, 13.07.2020.

41 Russian is the primary language for 45.920 persons residing in Georgia out of 3.713.804 total population. The response of the National Statistics Office of Georgia on our request of public information, letter N9/-1565, 13.07.2020.

42 The response of the Legislative Herald of Georgia on our request of public information, letter N15/ბ-297, 06.10.2020.

43 The response of the Legislative Herald of Georgia on our request of public information, letter N15/ბ-297, 06.10.2020.

44 The response of the Legislative Herald of Georgia on our request of public information, letter N15/ბ-297, 06.10.2020.

„Let's imagine that [a person] has everything – the internet and a paid subscription, the language still remains a significant obstruction. Ethnic minorities cannot access every act even in Russian. It is unfair to require such individuals to comply with the law if the state does not guarantee and provide [access]."[45]

„The fact that the Legislative Herald translates [acts] into the English and Russian languages, and not into the Azerbaijani and Armenian languages, in my opinion is a significant issue."[46]

„Some laws are published in the English and Russian languages, but not all and often they lack updates."[47]

Another crucial issue with respect to accessibility is the adaptability of the Legislative Herald website for persons with specific disabilities. Although the UN Convention on the Rights of Persons with Disabilities (CRPD) does not refer to access to legislation, it establishes the broad standard of access to information. In particular, the CRPD requires states parties to take all appropriate measures to ensure that persons with disabilities can access the information intended for the general public in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.[48] For this purpose, states are bound to develop other appropriate forms of assistance and support to persons with disabilities to ensure their access to information and promote access for persons with disabilities to new information and communications technologies and systems, including the internet.[49] The website of the Legislative Herald has an audio version for persons with full visual impairment and a different format for persons with low vision or other types of vision impairment. However, assessing how effective and simple to use these formats are in practice exceeds the scope of this report.

45 Woman, a representative of the Bar Association, focus group with a professional group, 18 November 2020.

46 Woman, a representative of the Bar Association, focus group with a professional group, 18 November 2020.

47 Man, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

48 the UN Convention on the Rights of Persons with Disabilities (CRPD), Article 21.

49 Ibid, Article 9.

4.1.2. The Ambiguity of Legal Acts and Complexity of Legal Language

The existence and access to a legislative framework is rendered meaningless if the norms within are complex and/or ambiguous. Legislation reflects legal relationships and it serves the function to, not only document state policies, but deliver it to common individuals.[50] Consequently, legislation is a form of communication – it conveys what we are allowed or prohibited to do.[51] Legislation that individuals cannot comprehend may create additional impediments to access to justice. Therefore, to uphold the rule of law principle, drafters are required to ensure clarity, precision and unambiguity in the law-making process and, this way, ensure certainty and predictability of legislative norms. The rule of law principle,[52] among other elements, entails that subjects of legal norms know the content of law, what rights and obligations it establishes and what sorts of behavior they should expect from state officials.[53] Legislators and drafters should pay extra attention to the selection of proper words, their arrangement and the construction of sentences.[54] They should draft according to the commonly accepted understanding of the words so that the reader gives the words the meaning the drafter intended.[55] Accordingly, drafters have a difficult task, which requires not only legal knowledge but also linguistic awareness.[56]

A part of non-professional focus group participants, who have accessed and read laws, deemed as problematic not the variety of available language versions but the complexity of legal terminology. As they indicated, due to this issue the content of laws/legislation is often opaque to them and referring to a lawyer is preferable. Only two respondents in Tbilisi opined that it is possible to understand laws/legislation independently, without a lawyer.

50 G.C. Thorton, Legislative Drafting, 3rd edition, p. VII.

51 Constantin Stefanou, Is Legislative Drafting a Form of Communication, Commonwealth Law Bulletin 37, no. 3, September 2011, p. 408.

52 The rule of law principle first of all entails the right of the government body with respective authority (a legislative body) to adopt legislative acts in compliance with formal procedures and adhere to it with other branches of the government.

53 ML Turnbull, Legislative Drafting in Plain Language and Statements of General Principle, Statute L Rev 21, 1997.

54 Augustin Mico, Drafting and Plain Language, Commonwealth Law Bulletin 39, no. 3, September 2013, pp. 435-436.

55 Esther Majambere, Clarity, precision and unambiguity: aspects for effective legislative drafting, Commonwealth Law Bulletin, 37:3, 2011, p. 420

56 Maurizio Gotti, "Linguistic Insights into Legislative Drafting," Theory and Practice of Legislation, vol. 2, no. 2, November 2014, 142-143; See also: Esther Majambere (2011) Clarity, precision and unambiguity: aspects for effective legislative drafting, Commonwealth Law Bulletin, 37:3, p. 420.

„Terminology was not understandable for me, then I asked somebody and they helped."[57]

„Now, I can read them but I prefer to get a consultation with someone who is a specialist and understands everything [related to law] better."[58]

Similar opinions were voiced by the professional group as well. The majority of the focus group participant lawyers believe that legislative language is opaque and unclear not only for the general population but also for future or practicing lawyers. Many practical issues stem from varying interpretations of a single norm that different state bodies often develop. Moreover, one of the participants stated that the legislative language is not adapted to special needs of vulnerable individuals such as children or persons with mental disabilities.

„Generally, the legislative language is extremely complex in Georgia not only for common citizens but also for students of the law faculty in some cases. … We should take into consideration every group, including children. We conducted a simple experiment the other day and gave excerpts from the Code on the Rights of the Child to children to check if they could understand. It appeared that many of them could not understand … the content … another challenge is accessibility for persons with disabilities … we cannot take an average person as a benchmark as this would dismiss necessities and needs."[59]

„90% of our legislation is extremely difficult to understand as it is ambiguous and allows for a myriad of interpretations … consequently, we face many hurdles and obstacles. For instance, administrative bodies often understand a norm in one way, judicial bodies in another, and, us, lawyers have yet separate understanding and it creates chaos."[60]

Plain language is one of the key tools that can be effective for overcoming linguistic obstacles of access to legislation. The expansion of the Plain Language Movement in many countries resulted in making laws less ambiguous and more user-friendly, hence, more

57 Woman, focus group with individuals who have participated in a civil/administrative law litigation, Imereti, 15 September 2020.

58 Man, focus group with individuals who have participated in a civil/administrative law litigation, Samtkshe-Javakheti, 10 October 2020.

59 Woman, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

60 Man, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

accessible for individuals.[61] That is why employing plain language has become a prevalent legislative approach in common law, as well as in civil law systems.[62] This approach entails the following elements: small number of words in a sentence, plain sentence structure, a clear and precise communication of content, use of common and familiar vocabulary/terminology. Plain language does not entail "dumbing down" and does not affect the quality of text. Conversely, in the hands of an experienced legislator plain language represents a technique that enables to communicate directly and effectively with its intended audience.[63] Plain language is a practice of writing in a simple and clear manner and represents a combination of the content and format that is understandable for everybody. Common people should also be able to read and understand legislative work[64] and, hence, plain language represents a bridge between a law and its audience.[65]

Considering the above, the Plain Language Movement necessitates the adoption of consolidated standards/regulations on the linguistic aspects of legislative drafting.[66] The professional focus groups also mentioned this issue and the lack of regulations in this respect in Georgia.

„I do not have information if there exists any linguistic standard. As far as I am informed, there is no such thing in Georgia."[67]

„Generally, I believe that laws are drafted with a complex language and, additionally, different state bodies have different drafting teams and they all have dissimilar standards. Different bodies draft laws employing dissimilar style and approach and, hence, they might be difficult to understand in conjunction."[68]

61 Maurizio Gotti, "Linguistic Insights into Legislative Drafting," Theory and Practice of Legislation, vol. 2, no. 2, November 2014, pp. 142-143.

62 In the US the movement for improving legislative language started in the 1970s. In 1978, President Carter signed Executive Order, which said that federal officials must see that each regulation is in plain and understandable language. The movement further expanded in the UK, Australia, New Zealand and Canada. See further in: I.M.L. Turnbull, Clear Legislative Drafting: New Approaches in Australia, Statute Law Review, 11(3), 1990, p. 163; See also: Peter Butt, "Plain Language: Drafting and Property Law," European Journal of Law Reform 7, no. 1/2 (2005), p. 20.

63 Peter Butt, "Plain Language: Drafting and Property Law," European Journal of Law Reform 7, no. 1/2, 2005, p. 20; See also: R Sullivan, 'Implications of Plain Language Drafting', 22 Statute L Rev 175, 2001.

64 Naturally, the form and content of technical acts may require the use of technical terminology but the legislator must ensure that such an act targets only persons with relevant expertise and qualifications and, hence, must avoid drafting such legislative texts for the general public and limit the regulatory scope of such acts to strictly technical and professional issues only. See further: AKC Russell, Legislative Drafting and Forms, Butterworth, London 1938, p. 12.

65 Augustin Mico, Drafting and Plain Language, Commonwealth Law Bulletin 39, no. 3, September 2013, pp. 435-438.

66 Maurizio Gotti, "Linguistic Insights into Legislative Drafting," Theory and Practice of Legislation, vol. 2, no. 2, November 2014, pp. 142-143; See also: Augustin Mico, Drafting and Plain Language, Commonwealth Law Bulletin 39, no. 3, September 2013, p. 441.

67 Woman, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

68 Man, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020

The latter excerpt from the meeting with focus groups demonstrates the significance of the procedural matters of legislative/regulatory drafting with respect to access to justice and legislation. The following analysis of the report focuses on these issues.

4.1.3. The legislative/law-making process in Georgia

There are 3 main forms of legislative initiative in Georgia depending on its author. A legislative draft can be submitted by: (1) the Government of Georgia; (2) the Parliament of Georgia (including a Member of Parliament, a parliamentary faction, a parliamentary committee, the supreme representative bodies of the Autonomous Republics of Abkhazia and Adjara); or (3) not less than 25 000 voters.[69]

The professional focus groups expressed that the law-making process should be studied to assess access to legislation.

> *„It's one thing what legislative acts stipulate, what procedures are employed in law-making and how well-construed they are. On the other hand, it's interesting how the Parliament of Georgia implements them … Firstly, probably it would be necessary to assess the legislative framework in this direction and what the Parliament does in practice and how it adopts sensitive and crucial laws. One example I can remember is from 2016 when the new law on land registration entered into force. We submitted opinions but the Parliament adopted the law without knowing what it would cost for the budget and they do not know to this day how much it has cost. Therefore, both criteria are crucial – what is written and how we adopt laws, and how it's done in practice."*[70]

Notwithstanding the category of a normative act (legislative or subordinate) and initiating authority, it is crucial that the drafting/preparation stages include following steps:

- Planning and coordination;
- Policy making or strategy development;
- Consultations with stakeholders and interested parties;
- Regulatory impact assessment (RIA).[71]

69 The Constitution of Georgia Article 45(1).

70 Woman, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

71 OSCE, ODIHR, ASSESSMENT OF THE LEGISLATIVE PROCESS IN GEORGIA, Legis Paper-Nr.: 256/2014 [YA], Warsaw, January 2015, [Available at: https://www.osce.org/files/f/documents/d/a/138761.pdf; Accessed on: 24.02.2021].

4.1.3.1. Planning, Coordination and Policy making

OSCE/ODIHR's 2015 report emphasized the need for refining the planning and policy making stages of law-making in Georgia. The report identified key challenges as the lack of necessary allocated time for these processes and the influences of political developments and international obligations on law-making which rendered this process reactionary and precluded the effective analysis of needs and challenges.[72] Conducting the law-making process in this manner jeopardizes the quality and efficiency of legislative framework as a whole and results in the challenges for access to legislation.

Planning and coordination of law-making are conducted on a governmental level in Georgia. Action plans for Government's law-making activities are developed based on the Government programme and international obligations, considering respective proposals drawn up by the Ministries and State Ministers' apparatuses. This takes place two times a year for Parliament's session periods. Submission to the Parliamentary Secretary of the Government of legislative drafts which are not envisaged by the action plan is only permissible as an exceptional case. Such exception may include the fulfilment of international obligations or/and objectives under legal acts or Government's assignments.[73] Such legislative initiatives of the Government, which are not envisaged by short-term plans of legislative activity, must be accompanied by an explanation of why it was not envisaged in said plans in the first place.[74] However, the regulation does not provide for a detailed definition of exceptional cases and its scope, hence, leaving space for the Government to arbitrarily ignore its legislative action plans and render this process chaotic and jeopardize the efficiency of its legislative work.

This issue is linked with the policy making component. It is crucial that the planning and policy making stages are strictly separated from the process of legislative drafting. The latter should ideally be the last stage during which state policy will be translated into legislation and communicated to public in a written form.[75]

The professional focus groups indicated that documenting this process is also important for future scientific or practical analyses of what was the legislator's intent in regulating the issue. This would provide more legislative certainty and efficiency.

72 Ibid., p. 14.

73 The Ordinance of the Government of Georgia on the Adoption of the Rules of Procedure of the Government of Georgia, Article 23.

74 The Rules of Procedure of the Parliament of Georgia, Article 100.

75 OSCE, ODIHR, ASSESSMENT OF THE LEGISLATIVE PROCESS IN GEORGIA, Legis Paper-Nr.: 256/2014 [YA], Warsaw, January 2015, p. 14, [Available at: https://www.osce.org/files/f/documents/d/a/138761.pdf; Accessed on 24.02.2021].

„I could not find the documents that detail … what preparatory works were conducted to bring the specific law to the current formulation … Preparatory stages are extremely important for the subsequent implementation of the law. There are certain issues which become more ambiguous, and they can look into the preparatory [draft] law and find the reasons and content that the legislator wanted to convey." [76]

4.1.3.2. Consultations

A quality legislative process entails that the consequent regulation serves the public interest and provides sufficient information to stakeholders.[77] Rules laid down by laws and other legal acts can only be effective if they are founded on wide public support. Therefore, after the preparation of policy papers and a consolidated approach, it is necessary to conduct a transparent and inclusive legislative process and arrange consultations with a wide array of societal groups.

Consultations are a crucial tool of participatory democracy which increases the efficiency of legislation and makes it more accessible (in terms of informativeness and comprehension).[78] The idea of consultations represents an effort to extend beyond majoritarian rule, prioritize other democratic values and find common ground for groups with different positions and opinions.[79] In addition, a consultative process helps legislative drafters to expand their understanding of the policy or legal problem(s) they are regulating, identify all available policy options and assess the costs, benefits and impacts of the regulation.[80] Public consultations represent useful platform for the legislator to clarify the necessity of regulations to the public, in particular, in case of potentially contentious legislative amendments.[81] Consultations also increase the openness and transparency of legislative processes, hence, building public trust towards these processes and increasing the sense of ownership for stakeholders on new regulations. This, in turn, has a positive impact on the efficiency of new regulations.[82]

76 Man, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

77 OECD, Recommendation of the Council on Regulatory Policy and Governance, 2012, p.10.

78 Delia Rodrigo, Pedro Andrés Amo, Background Document on Public Consultation (OECD), p. 1.

79 This approach is similar to the theories of empowerment and social justice which also emphasize the significance of public engagement and the inclusivity of legislative processes. Accordingly, this approach improves the trust towards government institutions. See further: Sarah Moulds, A deliberative approach to post legislative scrutiny? Lessons from Australia's ad hoc approach, The Journal of Legislative Studies, (2020), p. 7.

80 OSCE/ODIHR, PUBLIC CONSULTATIONS ON DRAFT LEGISLATION, Practical guidelines for public officials, who are responsible for organizing public consultations in Ukraine, p. 4.

81 For instance, laws that restrict specific rights or reduce social welfare benefits.

82 OSCE/ODIHR, PUBLIC CONSULTATIONS ON DRAFT LEGISLATION, Practical guidelines for public officials, who are responsible for organizing public consultations in Ukraine, p. 5.

Consultations are most productive if employed from the initial stage of deliberating policy documents when a legislative act has not been yet drafted. This allows societal groups to be fully engaged from the very beginning in the process of legislative drafting of the act that will impact them in the future. However, this does not exclude public consultations that take place in later stages when the initiative has already been drafted. As the initial version of a draft may change drastically during legislative hearings, it is crucial that consultations continue even with respect to the final legislative draft.[83]

The importance of consultations was mentioned by the professional focus groups. The participants indicated that common individuals, as well as lawyers and other stakeholders should be involved in consultations in a substantive manner rather than a mere formality.

„Before the adoption of a law, the engaged parties mainly include lawyers, because we are interested, and journalists who cover the news. The general public does receive any news or information on what outcomes this law might have. The population faces the situation where the law is already adopted, they do not agree and like it, but as it has already entered into force, they have to comply and, often, they do not even know the content."[84]

„Inclusivity is vital and if the legislator decides to draft laws, for instance, concerning children or persons with disabilities, they have to be consulted. If these groups are not consulted and their necessities are not identified, the law cannot address their needs. Consequently, when the drafting process lacks inclusivity, it results in laws that cannot be enforced or does not address the needs of different groups of stakeholders."[85]

„I can recall the recent illustrative case related to the Forest Code where the Patriarchate [the Orthodox Church] was granted the right to take over forest plots. This initiative lacked transparency and openness and it happened when there was a martial law in Georgia, and nobody had time for this. However, the state decided to grant this privilege to the Patriarchate without involving any stakeholders or other religious minorities."[86]

83 OSCE, ODIHR, ASSESSMENT OF THE LEGISLATIVE PROCESS IN GEORGIA, Legis Paper-Nr.: 256/2014 [YA], Warsaw, January 2015, p. 17, [available at: https://www.osce.org/files/f/documents/d/a/138761.pdf; accessed on: 24.02.2021].

84 Woman, a representative of the Bar Association, focus group with a professional group, 18 November 2020.

85 Woman, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

86 Man, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

„As an organization, we often engage … But we do not … see it as a transformative cooperation because the system entails that we are only informed in the process and this does not have a form of cooperation. In other words, the state provides a legislative draft that is being developed and tells you that this is what has been produced by state officials only and we can present our opinions and comments but there is no guarantee that they will be taken into consideration."[87]

As was indicated in the OSCE/ODIHR report, consultations in Georgia do not represent a mandatory requirement and the decision on whether to conduct them or not is taken on a case-by-case basis. There is no regulatory framework to establish any standard on consultations in the legislative process, including determining a rule on deciding whether or not to conduct them.[88] The Rules of Procedure of the Government of Georgia determine only a list of legislative acts in relation to which it is mandatory to publish amendment drafts on the webpage of the Legislative Herald of Georgia.[89] However, the manner of receiving public comments and factoring them into hearings and decision-making is not regulated.

Interested parties and stakeholders are allowed to attend plenary and committee hearings of the Parliament. The chairperson of the hearing may also grant them the right to deliver a speech.[90] These prerogatives could not be effectively realized during the pandemic as the Parliament was forced to conduct closed hearings. This situation required the Parliament to ensure public engagement and participation through alternative forms/mechanisms which, unfortunately, has not happened.

Another key challenge in Georgia is the inadequate amount of time (if it exists in the first place) allotted to various stages of the legislative process, including public consultations and commentaries.[91]

87 Woman, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

88 OSCE, ODIHR, ASSESSMENT OF THE LEGISLATIVE PROCESS IN GEORGIA, Legis Paper-Nr.: 256/2014 [YA], Warsaw, January 2015, p. 16, [available at: https://www.osce.org/files/f/documents/d/a/138761.pdf; Accessed on: 24.02.2021].

89 The Ordinance №77 of 14 February 2018 of the Government of Georgia on the Adoption of the Rules of Procedure of the Government of Georgia, Article 25.

90 The Rules of Procedure of the Parliament of Georgia, Article 34.

91 OSCE, ODIHR, ASSESSMENT OF THE LEGISLATIVE PROCESS IN GEORGIA, Legis Paper-Nr.: 256/2014 [YA], Warsaw, January 2015, p. 17, [Available at: https://www.osce.org/files/f/documents/d/a/138761.pdf; Accessed on: 24.02.2021].

4.1.3.3. Regulatory Impact Assessment

Along with consultations, a regulatory impact assessment (RIA) is another crucial element for increasing the quality and efficiency of legislation. RIA is an instrument or the analysis process to critically assess the outcomes of a regulation, and it commence along with the policy development stage. The RIA's core objective is to assess links between the aims of the regulation and proposed amendments i.e. how effectively can the regulation achieve these aims. RIAs can help to avoid excessive regulations that are not suitable to achieve their aims in the future.[92] A RIA entails the analysis of all the regulatory alternatives and making a substantiated decision that employs the least restrictive measure and maximizes the efficiency of the regulation.[93] Therefore, if conducted in an open, timely and clear manner, RIA can play a crucial role for improving the quality of the legislation.[94] Furthermore, a RIA report should be available for all stakeholders (including through publishing on the website).[95]

The 2019 amendments to the Law of Georgia on Normative Acts introduced an RIA system which was planned to enter into force from 1 January 2020.[96] Under these rules, conducting RIA is mandatory for the legislative drafts concerning amendments to legislative acts envisaged by the special list in the Government Ordinance. However, this rule applies if the Government of Georgia introduces the legislative initiative in question.[97] Therefore, legislative drafts initiated by the Parliament of Georgia are not subject to a mandatory RIA process. However, the legislation does not prohibit it either, and there have been cases where the Parliament employed a RIA.[98] Nevertheless, currently there is no consistent policy, consolidated approach or laid down set of rules in this regard.

The Law on Normative Acts additionally enumerates on the exceptions from the above rule which exempt the Government's/executive branch's legislative drafts from RIA (for instance, budgetary, state security, defense and penitentiary matters, issues related to non-custodial sentences and probation, etc.).[99] Furthermore, the law allows the Government to decide on exempting itself from RIA requirements in cases where delaying the

92 Delia Rodrigo, Regulatory Impact Analysis in OECD Countries Challenges for developing countries, Organization for Economic Co-Operation and Development (OECD) 2005, p. 5.

93 OECD, Recommendation of the Council on Regulatory Policy and Governance, 2012, p. 12.

94 OECD, OECD Guiding Principles for Regulatory Quality and Performance, 2005, p. 6.

95 OECD, Recommendation of the Council on Regulatory Policy and Governance, 2012, p. 12.

96 The Organic Law of Georgia on Amendments to the Law of Georgia on Normative Acts 4607-II, 29/05/2019.

97 The Law of Georgia on Normative Acts, Article 17^1(1)(a).

98 Responses of the Parliamentary Committees on the request of public information.

99 The Law of Georgia on Normative Acts, Article 17^1 (2).

preparation and submission of a legislative draft is unjustified.[100] This allows the Government to avoid conducting RIA in multiple circumstances which can have a negative impact on the quality and efficiency of the legislation.

Moreover, the Government may decide to make an RIA mandatory in other distinct cases where the legislative draft is prepared by an agency of the executive branch of the government.[101] It should be positively acknowledged that RIA may be conducted for any normative act draft (including subordinate acts).[102] However, the power to decide on this issue is still vested in the Government or a respective agency of the executive branch.

The above discussion clearly demonstrates that Georgian legislative process does not meet the standard in Georgia which would ensure factoring in opinions and insights from stakeholders and taking into consideration their interests or allow for a preliminary assessment of regulatory impacts and, hence, facilitate monitoring of the regulatory outcomes.[103]

4.2. Difficulty in preparing documents to be submitted to the court

One of the most important issues that arose during the process of identifying the problems of access to justice and finding solutions is the difficulty of preparing documentation to be submitted to the court. In criminal and civil, as well as in administrative law, litigation is characterized by a certain degree of formality and is not limited to appealing a specific legal issue before a court. As a rule, the litigation process consists of the formulation of the existing problem under the legal framework, reviewing relevant factual circumstances, identification of respective legal grounds for appealing to the court, finding and presenting evidence, and later, effective defense of one's position at each stage of the proceedings. This chapter aims to identify those challenges that are associated with the preparation of legal documents when appealing to the court.

The difficulty in preparing court documentation, as one of the impediments to access to justice was revealed in the results of a population quantitative survey. In particular, 47% of the population think that this issue partially obstructs, while 11% think that it

100 The Law of Georgia on Normative Acts, Article 17^1 (3).

101 The Law of Georgia on Normative Acts, Article 17^1 (1)(b).

102 The Law of Georgia on Normative Acts, Article 17^1 (4).

103 House of Lords, Select committee on the Constitution, The legislative process: Preparing Legislation for Parliament, 4th Report of Session 2017-19, HL Paper 27, 2017, p. 5.

is very obstructing to address the court.[104] However, among the respondents who have personal experience of appealing to the court, fewer (32%) consider that the preparation of court documentation hinders the appeal to the court, while 6% believe that this factor is very hindering.[105]

The difficulty of preparing documents to be submitted to the court, as one of the important barriers to access to justice, was also discussed in the focus groups of citizens with professional and litigation experience.[106] The list of challenges identified by the focus group of professional participants in this area is much longer than the obstacles named by the citizens and includes both substantive and technical difficulties, as well as indicates the existing problems in the litigation practice. This chapter is devoted to the detailed overview of the difficulties identified by both citizens and professional focus groups.

4.2.1. Substantive difficulties in filling out court forms

According to the Georgian legislation, an application (complaint) in civil and administrative proceedings must be completed in writing, usually in hard copy. Furthermore, the application (complaint) must follow a sample form approved by the High Council of Justice and must be drawn up under the rules set out in that sample.[107]

The forms for the first instance, appeals and cassation applications, counterclaims in civil and administrative cases were originally approved by the High Council of Justice in 2009,[108] however, certain amendments were made to this decision in 2016.[109] Existing court forms can be filled in both in electronic format as well as with a pen. The electronic

104 Human Rights Education and Monitoring Center (EMC), The Caucasus Research Resource Center (CRRC) and Institute for development of Freedom of Information (IDFI), Access to courts, public opinion survey results, 2020, p. 13, (Available at: https://bit.ly/3wyEoi7; Accessed on 04.03.2021).

105 Ibid., p. 20

106 Human Rights Education and Monitoring Center (EMC), The Caucasus Research Resource Center (CRRC), Access to Justice, qualitative survey results, 2020, p. 20

107 Civil Procedure Code of Georgia, Article 177, paragraphs 2 and 3 establish duty to fill the approved samples for the litigation in the first instance court. Article 367 and paragraph 11 of Article 391 of the same Code establish this requirement when filling an application to the Appellate and Supreme Courts. As for administrative proceedings, according to the paragraph 1 of Article 1 of the Administrative Procedure Code of Georgia, unless otherwise provided under this Code, the provisions of the Civil Procedure Code of Georgia shall be applied in the administrative proceedings.

108 High Council of Justice, Decision N 1/456 of 8 December, 2009 (Available at: https://bit.ly/3wkr6W7; Accessed on: 05.03.2021).

109 Instructions for filling out court forms are given in full on the website of the High Council of Justice, (Available at: https://bit.ly/3c2oC6q; Accessed on: 05.03.2021).

version of the forms is accompanied by notes that provide brief instructions for filling each field. As for the pen-filled forms, similar instructions are not integrated into it, although the e-document is separately accessible.[110] In addition, in 2017, the Bureau of the Chairman of the Tbilisi Court of Appeals implemented a project related to court forms, within the framework of which all non-claim forms provided under the Civil Procedure Code were created. The project aimed to increase access to court, improve the quality of case management and create equal starting conditions for persons representing themselves. However, it should be noted, that according to the Civil Procedure Code, the use of these forms is voluntary.[111]

It should be remarked that the special forms of child-friendly lawsuits and court notice forms are already created, which were approved in 2020 within the Code on the Rights of the Child[112] and were approved by a resolution of the High Council of Justice of Georgia in 2020.[113]

The substantive difficulties of filling court forms and the need for legal education while preparing court documentation were discussed by the Georgian language focus groups. The majority of the participants indicated that they would not be able to prepare court documentation independently, without a lawyer's assistance. In their opinion, if a person does not have a legal education, it will be difficult to compile such documents in terms of understanding/using legal terminology.[114]

As for the professional focus groups on the substantive difficulty of filling court forms by persons without legal education, the views expressed here were not uniform. If one part of the participants think that the existing court forms are more or less tailored to individuals and it is possible to fill them in independently, without consulting a lawyer, the other part of the participants talk about the substantive difficulties in the process of preparing documentation. Furthermore, some participants believe, that the simplification of the existing court forms may have a negative impact on the quality of litigation. Consequently, in their view, it is even good that the existing standard creates incentives for the individuals to seek qualified assistance.

110 The court form samples filled with pen, with attached notes, see the website of the Supreme Court of Georgia, (Available at: https://bit.ly/3bkJxCg; Accessed on: 05.03.2021).

111 Non-claim forms for civil cases can be found on the website of the Tbilisi Court of Appeals, (Available at: https://bit.ly/3sVfXt0; Accessed on: 05.03.2021).

112 Law of Georgia Code of the Rights of the Child, Article 95, Part 2, Subparagraph "d", (Available at: https://bit.ly/3ejE94e; Accessed on: 05.03.2021).

113 High Council of Justice of Georgia, Resolution N7, August 11, 2020 "On Approval of Child-Adjusted Lawsuits and Court Forms", (Available at: https://bit.ly/3qiJcVb; Accessed on: 05.03.2021).

114 Human Rights Education and Monitoring (EMC), Caucasus Research Resource Center (CRRC), Access to Justice, Qualitative Survey Results, 2020, p. 20.

The participants of the professional group of the Georgian Bar Association mainly positively assessed the forms of civil and administrative proceedings, which are currently in force, and pointed out that the questions and relevant remarks/explanations in the forms allow an individual to fill in the required/relevant fields without significant complications. In practice, however, individuals still have a problem of filling out existing court forms and they choose legal consultation.

> *"I think it is simple because the court forms explain where and what should be indicated by the party. Before that it was difficult and even more difficult for the court to determine what the party was asking for, ... However, I still think that the majority needs legal assistance to complete the court forms and submit them."*[115]

Unlike civil and administrative proceedings, the difficulty of case litigation, independently, by a person with no legal education, was evident in the criminal proceedings. According to one of the representatives of the Georgian Bar Association, if a person is not subject to mandatory legal protection and has no legal education, it is almost impossible for him to independently prepare the necessary documents for the process and properly carry out all necessary procedural actions.

> *"I think the problem is actually in the criminal proceedings when the accused does not have a lawyer, or the convict does not have a lawyer and we do not have a case of mandatory protection. He will be left without protection and if he does not have a legal education, he will not be able to inquire witnesses, conduct investigative measures and then to appeal his verdict. So, I think there are more problems in criminal cases than in litigation of civil cases."*[116]

Unlike the professional focus group of the members of the Georgian Bar Association, the substantive difficulties in drafting the court documentation were critically assessed by all members of the NGO focus group. In their common opinion, filling out the existing court forms is a great difficulty for those who do not have legal education and the explanations attached to the forms are not sufficient.

115 Woman, Representative of the Georgian Bar Association, Focus Group with Professional Group, 18, 2020.

116 Woman, Representative of the Georgian Bar Association, Focus Group with Professional Group, 18, 2020.

"It is difficult for a citizen to fill in both the administrative form and the civil one because he does not understand where to write what. It may be slightly simplified, or there may be more remarks on what kind of record should be made in these forms. Where to write, for example, the factual description, they do not understand at all what the factual circumstances mean, how it differs from other claims, and or where, what should be written. It can be simplified."[117]

Also, according to one of the participants, the problem is the complexity of the requirements for the individual in terms of formulation and substantiation of the claim in the court forms:

"Filing a lawsuit is not such a big problem at this stage, as we often face serious problems with the form of the lawsuit. So, access to justice does not necessarily mean that a person can legally formulate the problem he or she is facing. He should be able to talk only about the problem and their qualification; application to the specific legal norms, etc. should be totally the court's prerogative. Here we talk about specific rights, for example, alimony rights, etc. The mother should be able to fill the lawsuit form easily and to present respective evidence to the court so that she would not need legal assistance. This is the easiest example. We need to start improving in this direction."[118]

Opinions on the difficulty of properly filing the required documentation for an individual with no legal education were not uniform in the focus group of representatives of the State Legal Aid Service., The representatives of the group also focused on a few additional interesting issues. In particular, one of the focus group participants considered that completing court forms is a purely professional matter and a form that will be accessible and understandable to the majority of the public without legal education cannot be developed. Otherwise, the proceedings in the court itself will lose quality.

"… This is a purely professional issue, I think that if the population cannot fill them, this is not a tragedy, as this process requires legal education… Such a form that will be accessible for everyone cannot be developed. Such forms cannot be elaborated even for 50% of the population so that they are acceptable for them."[119]

117 Woman, NGO Representative, Focus Group with Professional Group, October 6, 2020.

118 Woman, NGO Representative, Focus Group with Professional Group, October 6, 2020.

119 Woman, State Legal Aid Service Representative, Focus Group with Professional Group, October 13, 2020.

Furthermore, the initiation of a court dispute without consulting a lawyer, can be problematic for the individual from a procedural point of view (application to provisional measures, limitation periods), which can negatively affect the outcome of the dispute. Consequently, some focus group participants believe that existing court forms are a good way to handle a dispute in a qualified manner, as it pushes the individual to seek legal advice from a lawyer and to defend his or her rights more comprehensively and effectively in court than he or she could do it alone.

4.2.2. Language barrier problems in preparing documents to be submitted to the court

The language barrier is another problem that certain categories of vulnerable groups – members of ethnic minorities – may have in the process of preparing documents to be submitted to the court. This issue was discussed by the ethnic minorities in the focus groups of citizens. In particular, most of them state that they have to hire a lawyer due to lack of Georgian language knowledge and that their lawyer solves the issues related to court documentation, which are associated with additional financial costs.

> *"I have done nothing myself; I had a lawyer and he did everything. I don't know either language or anything. We don't know Georgian. If we do not hire someone else, we cannot do that".*[120]

The problem of language barriers in preparation of court documentation was also identified by the focus group of Georgian Bar Association members. As they emphasized, the absence of state language knowledge, which creates problems in the initial phase of litigation preparation can ultimately have a negative impact on the result obtained by the individual with such barriers and, therefore, on the effective protection of their rights and freedoms.

> *"When any ethnic group member needs to prepare a lawsuit, it cannot understand the complaint form, therefore cannot fill it in and submit to the court. This is a problem as well. Language barrier leads us to another problem, as they cannot effectively protect themselves and their interests."*[121]

120 Man, Focus group conducted with persons with criminal involvement experience, Samtskhe-Javakheti, October 10, 2020.

121 Woman, Representative of the Georgian Bar Association, Focus Group with the Professional Group, November 18, 2020.

4.2.3. The difference between electronic and pen-filled versions of court forms

The professional focus group highlighted the technical problems that exist when filling court forms electronically or with a pen. According to the participants, in addition to the fact that filling the court forms mostly requires legal knowledge, there are technical challenges (font selection, difficulty of making corrections) that require experience working with the document. However, it is welcome that the legislation[122] makes it possible to submit court forms both electronically and with a pen.

> *"In general, such forms are selected that need adaptation with the computer, special fonts need to be downloaded; how the ordinary citizen can handle this, is a different issue."*[123]

In terms of the preparation of documents to be submitted to the court, the explanations given in the electronic version of the court forms were also named as problematic, which, according to the participants, are vague and do not provide necessary information to the individual accurately.

> *"The lawsuit structure is not simple at all; its filling, regardless of having small remarks in the electronic version, that are vague, cannot give you full information. As I remember, I read them several times and it is not the information that will be easily understandable for an ordinary, citizen."*[124]

Furthermore, filling court forms with a pen indeed makes it possible to avoid the difficulties associated with an electronic format, although pen-filled forms also have some problems in terms of having access to explanations. In particular, as indicated by the professional focus groups, the printed version of the complaint form is not accompanied by relevant notes and explanations (which are available in electronic format), which would help the person to formulate his/her legal problem properly.

122 According to Part 2 of Article 177 of the Civil Procedure Code of Georgia, a lawsuit must be filed in writing, usually in hard copy, which allows the individual to use a court form that can be filled in with a pen, (Available at: https://bit.ly/3eck3sU: Accessed on: 05.03.2021).

123 Man, NGO Representative, Focus Group with Professional Group, October 6, 2020.

124 Man, NGO Representative, Focus Group with Professional Group, October 6, 2020.

4.2.4. Problems with child-friendly court forms

In the process of preparing documents to be submitted to the court, particular attention should be paid to the challenges that vulnerable groups may face in the process of appealing to the court and conducting disputes independently. In this regard, the process of independent litigation by a child appeared to be particularly problematic, even though Georgian legislation, in particular the Code on the Rights of the Child, which is a new phenomenon in the Georgian legal space, provides as one of its fundamental issues the child's right to justice. According to the Code, "a child has a right to apply to a court and/or relevant administrative organ to protect his or her rights and to enjoy such system of justice that is accessible to the child, appropriate for his age, easily perceptible to the child, prompt, fair, consistent, adapted to his rights and needs, expressing respect for the dignity and privacy of the child."[125] The right of the child to justice is further discussed in Chapter 10 of the Code, which focuses on the state's obligations to provide child-friendly procedures and mechanisms in civil and administrative proceedings, child-adapted forms of appeal to the court,[126] to provide a child access to the court and his/her direct engagement in the litigation process and existence of child-accessible and perceptible procedures at each stage of the administration of justice.[127] Furthermore, the child's right to be heard may not be restricted by reference to his or her age or other circumstances.[128]

Representatives of focus groups with professionals named the flaws/malfunction/lack of perception of child-adapted court forms and the existing case law in this regard as problematic for the child in the process of independent litigation.

Participants consider that the existing forms are not properly adapted so that the child, especially at a young age, can fill them independently and comprehensively.

> *"In the case of children, simplified forms have been introduced recently, but we have tested them and they are still difficult for a child to fill, – could not use it in practice, and so I think it is quite difficult. These forms will need to be simplified."*[129]

125 Law of Georgia on the Rights of the Child, Article 13, Part 1.

126 Law of Georgia on the Rights of the Child, Article 69

127 Law of Georgia on the Rights of the Child, Article 75, Part 2

128 Law of Georgia on the Rights of the Child, Article 78, Part 2

129 Woman, NGO Representative, Focus Group with Professional Group, October 6, 2020.

As for the problem of court approaches in the process of child-tailored litigation, a certain case was identified in the case law recently, where the lawsuit submitted by the children was considered defective due to incorrect wording and ambiguity of the claim, as well as the lack of parental signature on the claim.[130]

This case and court's strictly formalistic approaches, not only directly violates the legal guarantees established under the above-mentioned provisions of the Code on the Rights of the Child on the process of exercising the right to justice independently (without parental assistance and consent), but also indicates a lack of understanding and consideration of children's special needs. The unified spirit of the Code on the Rights of the Child is aimed at protecting the best interests of the child and taking active, effective steps by the state in this process. All of this is particularly relevant to the judiciary, which should ensure that the best interests of the child are protected from the moment the child independently initiates a legal dispute, including by explaining and offering him/her effective legal aid mechanisms. Otherwise, the practice of children appealing to the courts independently may be called into question and children may refuse to exercise their full procedural rights.

4.2.5. Inconsistency of the court's practice in determining defective submissions

In parallel with the process of preparing documents to be submitted to court, the court's approaches themselves are interesting related to the court forms filled out by persons without a legal education. It is important to analyze whether the court takes into account the challenges that an individual may face in the process of conducting a dispute independently and whether the court facilitates the latter to proceed with a dispute effectively under existing procedural law.

Regarding the receipt of documents submitted by individuals in the court and the identification of deficiencies, professional focus groups referred to the different approaches in administrative and civil proceedings. In particular, in the administrative process, given its inquisitorial nature, the court assists individuals more, including in properly formulating the claim, unlike civil proceedings, where the court is often inclined not to accept their lawsuit due to a technical defect.

130 The Tbilisi City Court did not accept the lawsuit filed by the 7, 11 and 17-year-olds using a child-friendly form and indicated that the claim was incorrectly worded and vague. Besides, the court ruled in the decision that children were entitled to free legal aid. After repeated appeals to the court by the juveniles, the court indicated the absence of the parent's signature on the lawsuit. The statement is fully available at: https://bit.ly/3rogt2G; Accessed on: 05.03.2021.

"Administrative court is more considerate, assists the beneficiary to formulate the claim, to fill in, etc., which cannot be said about civil procedure and civil cases, including even labor disputes… particularly Tbilisi court is ready not to receive a lawsuit with technical flaws, due to commas and period."[131]

Professional focus group participants also talked about the court's practice of finding defects in civil and administrative proceedings and noted that civil law no longer recognizes the institution of defect. Therefore, in case of inappropriate filling of the lawsuit form, the court declares the inadmissibility of the claim, which often creates problems in case of repeated submission in terms of procedural timelines. Failure to comply with the lawsuit form constitutes a ground for finding a defect in the administrative proceedings, although it does not constitute a ground for violation of the timeframes. It is rare, but there are still cases when the court does not clearly indicate the content of the defect.

In addition, one of the participants considered that in some cases the reasons for finding the defect by the court itself are unclear.

"I can say from my personal experience, that it was a few years ago. The same lawsuit was dismissed by the same judge because he did not like my factual circumstances for some reason, and I only changed the place of the words. I remember exactly. After the third or fourth time, he accepted it. Only word places were changed. I still do not know what was the reason for this. For an ordinary person who has no experience, this will be a reason to turn to a lawyer, it is just an obstacle for him that he may not be able to overcome."[132]

131 Woman, NGO Representative, Focus Group with Professional Group, October 6, 2020.

132 Man, NGO Representative, Focus Group with Professional Group, October 6, 2020.

4.2.6. Difficulty of obtaining the documents to be submitted to the court

One of the problems named by the participants of the citizens' focus group in the process of preparing the documentation to be submitted to the court was the difficulty of obtaining the required documentation. Some of the participants pointed out that they often have to go to different authorities to obtain a single document, which is associated with delays in the proceedings and additional financial costs.

> *"Of course, this requires [the lawyer's assistance] on the same document, that they explain for you and that he cannot explain, he speaks to you in legal terminology, and ... you still do not understand what they are asking for. You will provide one, which is not correct, this means that the court has been postponed.."*[133]

Lawyers also point out that it may be easy for an individual to fill out a court form, but it will be difficult to find the necessary documentation without consulting a lawyer.

> *"The forms are sufficiently comprehensible for the ordinary citizen, but consultation with a lawyer is still necessary as the case preparation is not only writing a lawsuit and registration in the court. Before they fill the lawsuit form, a lot of work needs to be done. The documents need to be collected from various organs, you cannot simply write a short review of the dispute, you have to secure your claim with respective evidence. Thus, if I give direction to my client on which document needs to be asked from which agency... this is easier then. But if he does not know what documents need to be submitted with the lawsuit, in which direction he should go and what evidence has to be collected, then he cannot do that for sure."*[134]

The reality and perceptions in the society prove that there are significant challenges in the Georgian legal system in terms of finding and preparing court documentation, and they are related to the process of obtaining necessary documents as well as the possibility of preparing such documents independently for people without a legal education. This is especially relevant to the vulnerable groups in society, including ethnic minorities

133 Woman, Focus Group with Persons with Experience in Civil / Administrative Law, Tbilisi, October 6, 2020.

134 Woman, Representative of the Georgian Bar Association, Focus Group with the Professional Group, November 18, 2020.

and juveniles, for whom access to justice is often critical., An additional problem is in the judiciary's perspectives itself, in its openness and willingness to take into account the challenges that may exist for an individual in the process of appealing before the court.

4.3. State Legal Aid System: Consultation and Representation

4.3.1. Organizational arrangement of the Legal Aid Service of Georgia

The history of the State Legal Aid Service in Georgia dates back to 2005-2007 when a new model of free legal aid was piloted.[135] In the framework of the pilot project, the "Public Lawyer's Service" was established, and the first bureaus were opened in Tbilisi and Zestaponi.[136]

In 2007, the Law of Georgia on Legal Aid entered into force,[137] which defined the institutional arrangement of the legal aid system, the circle of beneficiaries, and the conditions for using the service.[138] Since then, the Legal Aid Service has gradually expanded in terms of institutional leverage and resources, as well as territorial coverage.

Before 2013, the Service was a Legal Entity of Public Law under the Ministry of Corrections, Probation, and Legal Assistance of Georgia.[139]

Since the end of 2013, after the amendments to the law, the Legal Aid Service is a Legal Entity of Public Law, which is not under the jurisdiction of any state body and is accountable only to the Parliament of Georgia.[140] Based on the principle of accountability, the Law of Georgia on Legal Aid stipulates that the Director of the Service submits an annual report on the activities carried out in the previous year to the Parliament.[141]

The organizational arrangement of the Legal Aid Service includes the Legal Aid Board, bureaus and counseling centers, the director, and the staff of the service.[142]

135 Strategy, the website of the Legal Aid Service [Available at: https://bit.ly/3qXKJRr; Accessed on: 26.02.2021].

136 History of the service, the website of the Legal Aid Service, [Available at: https://bit.ly/3kuXgZh; Accessed on: 26.02.2021].

137 Law of Georgia on Legal Aid, [Available at: https://bit.ly/3aYaZWg; Accessed: 26.02.2021].

138 History of the service, the website of the Legal Aid Service,[Available at: https://bit.ly/3kuXgZh; Accessed on: 26.02.2021].

139 Law of Georgia on Legal Aid, 2012 June 5 addition, Article 8(1).

140 Law of Georgia on Legal Aid, Article 8(3)

141 Ibid., Article 8, paragraph 4.

142 Ibid., Article 9.

The Legal Aid Board is established "to ensure the management of the Service, the effective performance of its functions, the independence and transparency of the Service".[143] It thus oversees the activities of the Service. The Council is a collegial body and consists of nine members.[144]

The Board elects the Director of the Service through an open competition for a term of 5 years.[145] The Director manages the Legal Aid Service, executes the decisions of the Board, represents the Service in relation to third parties, and performs other functions.[146]

The Legal Aid Service is funded from the state budget.[147] In addition, according to the law, the source of funding for the Service may be donations, grants, and other income permitted by Georgian law.[148] As of 2019, the budget of the Service, in total, amounted to about GEL 6,500,000.[149] According to the 2020 budget law, budget allocations of the Legal Aid Service amounted to 6 800 000 GEL,[150] and according to the 2021 budget Law – 7 300 000 GEL.[151] In this regard, it should be noted that the volume of budget funds allocated for the Legal Aid Service is growing.

4.3.2. Legal aid models and international legal standards

The term legal aid covers the provision of free legal representation, as well as exemption from or assistance with all or part of the court fees.[152] Issues related to representation and court fees are considered one of the main obstacles to access to justice. Therefore, legal aid programs are central to the realization of this right.[153] These programs should aim to make justice accessible to all social, economic, cultural, linguistic, gender, or other groups. If these circumstances are ignored, a large segment of society will be deprived of the opportunity to protect their rights.[154]

143 Ibid., Article 10, paragraph 1.

144 Ibid., Article 10, paragraph 2.

145 Ibid., Article 13, paragraph 1.

146 Ibid., Article 13, paragraphs 1 and 2.

147 Ibid., Article 22(1)

148 Ibid.

149 LEPL Legal Aid Service, Activity Report, 2019, p. 119, [Available at: https://bit.ly/3bLwR6N; Accessed on: 26.02.2021].

150 Law of Georgia on the State Budget of Georgia for 2020, Article 16, Program Code: 36 00, [Available at: https://bit.ly/3bzLZUo; Accessed on: 26.02.2021].

151 Law of Georgia on the State Budget of Georgia for 2021, Article 16, Program Code: 36 00, [Available at: https://bit.ly/37Nuuza; Accessed on: 26.02.2021].

152 European Union Agency for Fundamental Rights, Access to justice in Europe: an overview of challenges and opportunities, 2010, p. 49, [Available at: https://bit.ly/3dHKYfL; Accessed on: 26.02.2021].

153 Access to Justice, [Available at: https://bit.ly/2O7e4KE; Accessed on: 26.02.2021].

154 Access to Justice: Access to Justice & Peacebuilding Processes, [Available at: https://bit.ly/2ZSvVrB; Accessed on: 26.02.2021].

According to international standards and norms, legal aid should be guaranteed in both civil[155] and criminal cases, especially when it concerns poor and marginalized groups. The UN Commission on Crime Prevention and Criminal Justice has developed a handbook on this issue.[156] The Commission recognizes that "legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. It is the foundation for the enjoyment of other rights, including the right to a fair trial."[157] The guidelines establish that States should put in place a comprehensive legal aid system that has a nationwide reach and is available to all without discrimination.[158] The International Covenant on Civil and Political Rights also states that "everyone shall be entitled to legal assistance in any [criminal] case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."[159]

In addition to the above, the UN has adopted the "Basic Principles on the Role of Lawyers",[160] which calls on States to provide legal counsel to every person based on the principle of equality before the law.[161] At the same time, "free legal aid should not be poor legal aid."[162] As defined by the Constitutional Court of Georgia, the constitutional interest concerns not only the provision of access to legal counsel but also the quality of the legal services provided.[163]

Providing legal aid that resonates with the right to a fair trial is an important part of the European Convention on Human Rights and the EU Charter of Fundamental Rights.[164] The relevant provisions stipulate that legal aid should be provided to those who lack financial means to cover the court fees and legal representation costs.[165] The Council of Europe and EU law do not provide for a specific form of legal aid, but inevitably oblige the

155 European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to access to justice, 2016, p. 58, [Available at: https://bit.ly/3pUtCyJ; Accessed on: 26.02.2021].

156 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

157 United Nations to help extend legal aid in the criminal justice system, [Available at: https://bit.ly/3dOhQn7; Accessed on: 26.02.2021].

158 Ibid.

159 General Assembly of the United Nations, International Covenant on Civil and Political Rights, 1966, art. 14 (3), [Available at: https://bit.ly/2Mwndwa; Accessed on: 26.02.2021].

160 UN Basic Principles on the Role of Lawyers.

161 United Nations Office on Drugs and Crime, Access to Justice: Legal Defence and Legal Aid, Criminal Justice Assessment Toolkit, 2006, p. 1, [Available at: https://bit.ly/2NFd9Bm; Accessed on: 26.02.2021].

162 IBJ India Conducts Panel Discussion on "Access to Justice: Common Hurdles & Challenges," [Available at: https://bit.ly/3qXfTZp; Accessed on: 26.02.2021].

163 Teimuraz Tugushi, Giorgi Burjanadze et al., Human Rights and the Practice of Legal Proceedings of the Constitutional Court of Georgia, 1996-2012 Judicial Practice, 2013, p. 142.

164 European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to access to justice, 2016, p. 58.

165 Ibid.

states to ensure appropriate legal aid mechanisms for universal access to justice.[166] These obligations apply to civil and administrative cases as well.[167] According to the general rule of the Charter of Fundamental Rights (which in turn responds to Article 6 of the European Convention on Human Rights), in the absence of financial capacity, legal aid should be guaranteed for all proceedings relating to all rights and freedoms, especially "where the absence of such aid would make it impossible to ensure an effective remedy."[168]

The legal aid service can have many arrangements, but for its effectiveness and accessibility it is important to take into account international legal principles and approaches. Ways of providing and administering legal aid by the state can be divided into three major categories:

- Public Defender System[169] – in this model, free legal aid is provided by government-salaried lawyers, legal aid services are organized through the State or an independent authority;
- Assigned counsel/panel lawyers or ex officio systems – legal aid cases are assigned to private lawyers on either a systemic or ad hoc basis. Lawyers are compensated for their services by the State. In this system, the appointment of counsel is generally made by a court or a legal aid body. In many cases, there are special databases of lawyers providing this type of service;
- Contract service system – this model involves a contract with a lawyer, a group of lawyers, a bar association, a non-governmental organization that provides State-funded legal aid services in particular jurisdictions.[170]

More often, countries establish legal aid systems that are a combination of the above-mentioned models. In this case, the systems are called "mixed" or "hybrid" systems.[171] In addition, in many countries, civil society actors provide legal aid services directly to beneficiaries, funded independently from the State.[172]

166 Ibid., p. 59.

167 Ibid., p. 58.

168 Ibid., p. 61.

169 The English name of this model coincides with the term "Public Defender." However, despite the terminological coincidence, this discussion is not related to the ombudsman institute, which in some countries, including Georgia, is referred to as the Public Defender (author's note).

170 United Nations Office on Drugs and Crime (UNODC), Model Law on Legal Aid in Criminal Justice Systems with Commentaries, 2017, pp. 81-82, [Available at: https://bit.ly/3uzfY7E; Accessed on: 26.02.2021].

171 Ibid., p. 82.

172 Ibid.

4.3.3. Forms of legal aid and conditions for its use in Georgia

Free legal aid in Georgia provides services such as:

- Free legal counseling for everyone on any legal issue;
- Compiling legal documents (filing applications, mediations, etc);
- Services of attorney free of charge during criminal proceedings for the accused, convicted and acquitted, in defense of interests of minors, witnesses;
- Services of attorney in specific civil and administrative cases;
- Representation in administrative bodies in certain cases.[173]

The Legal Aid Service provides legal assistance through its legal aid bureaus and consultation centers and a pool of invited pro bono lawyers.[174] The first two provide legal aid (drafting of legal documents, free legal counsel), and the third provides legal consultations (legal advice on any problematic issue).[175] In addition, a lawyer or a legal entity under private law may be selected based on a tender that will provide legal aid within the jurisdiction.[176] Thus, the state legal aid system in Georgia operates according to a mixed model (involving all three approaches to providing legal aid). It should be noted that according to the information provided by the Legal Aid Service, in 2019-2020, no legal entity or a lawyer selected on a tender basis were involved in any of the cases.[177]

Georgian law regulates the right to free legal aid differently for criminal and civil/administrative cases. The Code of Criminal Procedure stipulates that the State shall bear the costs of the defense in criminal cases if:

- the insolvent accused requests the assignment of a defense counsel;
- there is a case of mandatory defense specified by the Code and the defense counsel hired by the accused is not participating in the criminal case (defense by agreement).[178]

The Code of Criminal Procedure also determines cases subject to mandatory defense. The accused enjoys this right in the following cases:

173 About Us, Legal Aid Service Website, [Available at: https://bit.ly/3aWoohV; Accessed on: 26.02.2021].

174 Ibid.

175 General Terms and Conditions, Legal Aid Service Website, [Available at: https://bit.ly/3bDYDC8; Accessed on: 26.02.2021].

176 Law of Georgia on Legal Aid, Article 18.

177 Public information provided by LEPL Legal Aid Service N01/410/2020.

178 Criminal Procedure Code of Georgia, Article 46, Paragraph 1, [Available at: https://bit.ly/2NL9IJr; Accessed on: 26.02.2021].

- if the accused is a minor;
- If the accused has no command of the language of the criminal proceedings;
- if the accused has physical or mental disabilities that prevent him/her from defending himself/herself;
- if a ruling (decree) has been issued on the assignment of a forensic psychiatric examination;
- if the Criminal Code of Georgia prescribes life imprisonment as punishment;
- if negotiations on the conclusion of a plea bargain with the accused are in progress;
- if the criminal case is heard by a jury;
- if the accused evades appearing before law-enforcement bodies;
- if the accused has been expelled from a courtroom;
- if the accused is an unidentified person;
- if extradition to a foreign country is considered using simplified procedure;
- in cases directly provided for by the Code of Criminal Procedure.[179]

In civil and administrative proceedings, legal representation is provided if a person is insolvent and it is appropriate to render legal aid to him/her (represent them in court, represent them in the administrative body) based on the importance and complexity of a case.[180]

For civil and administrative cases, the legislation distinguishes several cases when it is mandatory to involve a lawyer (irrespective of their ability to pay), namely:

- When the court is to decide the question of recognizing the person as a beneficiary of support and/or when a party in civil and/or administrative proceedings is a beneficiary of support;
- When the court is to hear a case concerning an asylum seeker or a victim/potential victim of domestic violence.[181]

To sum up, in civil and administrative cases, according to the general provisions, for a person to enjoy state-funded legal representation, they must be insolvent and the case itself must be "complex" and "important". Thus, the legislation requires the cumulative fulfillment of these two conditions.

As an exception to these general rules, in the case of criminal as well as civil and administrative cases, the "Director of the Legal Aid Unit may, based on the criteria predefined by

179 Ibid., Article 45.

180 Law of Georgia on Legal Aid, Article 5, Paragraph 2.

181 Ibid., Article 5, paragraphs 2^2 and 2^5.

the Legal Aid Council, decide that legal aid be rendered to a person who is not a member of a family registered in the unified database of socially vulnerable families."[182]

As for the issue of drafting legal documents, this is one of the components of legal services. Thus, in criminal cases, if a person is insolvent or there is a case of mandatory defense, the obligation to provide services includes drafting the necessary legal documents. In this regard, the mandate of the legal service is extended to civil and administrative cases as well. In accordance with the law, "the Legal Aid Unit ensures that legal documents on any issue with respect to civil and administrative cases are drafted for an insolvent person regardless of the importance and complexity of a case".[183]

Because of the structure of the study, evaluation of the insolvency criterion, including the analysis of the authority of the Director of the Legal Aid Unit to ensure free legal aid on exceptional grounds will be presented in the chapter on financial barriers. In this section, we will look at the types of disputes and the "complexity and importance" component in the assessment of cases.

4.3.4. Legislative barriers to free legal aid in civil and administrative cases

In case of civil and administrative disputes, the Law of Georgia on Legal Aid defines and further narrows the list of cases where the right to free legal representation could potentially be ensured (if the person is insolvent and the case is complex and significant).

The relevant provision of the Law on Legal Aid establishes a temporary rule and a list. This list has expanded over the years and specific types of disputes were added to the list. The law stipulates that "legal aid (representation in court), considering the importance and complexity of a case, shall be provided 1 March 2018 to 1 January 2021, if the case refers to issues related to real estate, as well as issues related to Book Five and Book Six of the Civil Code of Georgia; the law of Georgia on Social Aid; the law of Georgia on State Pension; the law of Georgia on State Compensation and State Academic Scholarship; the law of Georgia on Health Care; the law of Georgia on Patient Rights; the law of Georgia on War and Military Veterans; the law of Georgia on Internally Displaced Persons – Refugees from the Occupied Territories of Georgia; the law of Georgia on Social Protection of the Families of Persons Fallen, Missing in Action, or Dead from Injuries Received in the Fight for Territorial Integrity, Freedom and Independence of Georgia; the law of Georgia

182 Ibid., Article 5, paragraph 3.

183 Ibid., Article 5, Paragraph 2^1.

on Recognition of the Citizens of Georgia as Victims of Political Repressions and Social Protection of the Repressed Persons; the law of Georgia on Social Protection of Persons with Disabilities; the Law of Georgia on Civil Service; and based on the above laws and the issues related to the subordinate normative acts issued to implement them."[184]

To analyze this issue, it is interesting to study the 2019 population poll conducted by the World Justice Project[185], which identifies the legal problems and challenges facing the population of different countries during the last 2 years. According to the study, in Georgia a significant part of legal problems (except for those criminal in nature), are not covered by free legal services at all, namely: contractual (excluding labor relations); Money & Debt; Consumer; Accidental Illness and Injury, and others.[186] These types of disputes are particularly important with regard to discrimination, health issues, as well as environmental and consumer rights.[187] It is noteworthy that the latest research conducted in relation to the State Legal Aid Service on the issue of mandate extension covers similar cases. In addition to the above mentioned, there are discussions on the relevance of including additional categories of cases under the mandate of the Service, such as: disputes arising from life annuity contracts; Neighborhood disputes; Disputes related to the protection of intellectual property.[188]

The mandate of the State Legal Aid Service was also highlighted in the focus group discussions. Representatives of both NGOs and the Bar Association, as well as those participating in the State Legal Aid Service focus group discussions, agree that the mandate of the Service should be expanded. Participants of the Legal Aid Service focus group paid special attention to the function of the Service, as well as its specific role to serve socially and economically marginalized groups. In addition, they also talked about the challenges, in particular, that some categories of disputes are not covered by the mandate of the Service and, consequently, the lawyers of the Service cannot be involved in these cases (disputes related to debt, disputes concerning the recognition of a person's status as a victim of discrimination, etc.).

184 Ibid., paragraph 23[1], paragraph 1.

185 World Justice Project.

186 World Justice Project, Global Insights on Access to Justice, Findings from the World Justice Project General Population Poll in 101 Countries, 2019, p. 44, [Available at: https://bit.ly/2NDwO4P; Accessed on: 24.02.2021].

187 Ibid.

188 CRRC, Prospects for expanding the mandate of the Legal Aid Service in civil and administrative cases, Basic Survey Report, 2017.

"There are so many cases, I will single out one, for example, cases concerning loans, credits. I am a consultant now, I am not a lawyer and, in general, in such cases I have to prepare a legal document. And the citizen has to defend himself in court, on his own, there are some very difficult cases, and it would be good if they take this into account and appoint a lawyer."[189]

"There are administrative disputes concerning the State, rights related disputes, dignity related disputes, these are not property rights, these are intellectual rights related ... The law can be expanded in this regard, a bit."[190]

"We also assist the IDPs, but if an IDP comes with a personal issue, we cannot assist if the issue concerns property. If an IDP contacts us on the issue concerning their IDP status, then we can provide some assistance. I do not think this is logical, if we are defending them, we should defend them, as an IDP, in all legal disputes."[191]

The work of the Legal Aid Service, as well as its role and function as a whole, was positively assessed by the non-governmental organizations participating in the focus group discussions. In addition, a general recommendation was made to extend its mandate.

"This is a very good Service and a good initiative that the State has launched. They have been around for a long time, and their mandate is slowly expanding and that is to be commended. Of course, the UN also mentions this and calls on the State to increase the mandate of this structure and expand the scope of legal aid."[192]

Based on the above, it can be said that some of the legal problems that affect people's daily life did not fall within the scope of Legal Aid under the mandate established for 2018-2021. This circumstance raises the question of how fair it is that the legal representation service does not cover these types of civil and administrative disputes. Logically, free lawyer service, the main purpose of which is to ensure access to justice for the largest possible segment of the population, will not be able to achieve this goal without responding to some of the most pressing legal issues.

189 Woman, State Legal Aid Service representative, focus group with professionals, October 13, 2020.

190 Man, State Legal Aid Service representative, focus group with professionals, October 13, 2020.

191 Man, State Legal Aid Service representative, focus group with professionals, October 13, 2020.

192 Man, NGO Representative, focus group with professionals, October 6, 2020.

It is interesting to note that there has been no change in the normative regulation of the Legal Aid Service mandate for 2018-2021, nor has its validity been extended. Consequently, after January 1, 2021, the Service mandate is no longer limited to specific dispute categories and can be extended to any civil/administrative case as long as the person meets other criteria (insolvency as well as the complexity and importance of the case). Thus, the current status quo around the Service mandate solves the problem in this regard. In this case, there are two alternatives how the state can continue the expansion of the Service's mandate: 1) Annul the temporary provisions defining the Service mandate and to maintain the possibility of providing legal services in any civil/administrative case; and 2) Change the temporary provisions and continue the trend of gradual expansion of the Service mandate. In this regard, it is important not to prolong the validity of the temporary regulation without making substantive changes, so as not to exclude the provision of legal aid (legal representation) in the types of disputes where the support is critical for a large segment of society. It must be said that giving a full mandate to the Service (the first alternative) would be a better way to eliminate institutional barriers.

An insolvent person can be appointed a Legal Aid Service lawyer in civil and administrative cases by the decision of either the Legal Aid Service or the court. As already mentioned, in both cases the decision is based on an assessment of how complex and important the case is.[193]

The inclusion of the criteria of "complexity" and "importance" is an additional barrier in terms of access to free legal services. Handling the issue in this manner does not reflect the interest of an individual, who has to fully rely on the opinion of the Legal Aid Service or the court on the complexity and importance of their case. It is unclear in which cases the relevant body may consider that the above cumulative conditions are satisfied and in which cases they are not. It should be noted that according to the information provided by the Legal Aid Service, "in the framework of the ongoing reform in the Service, one of the directions of which is to review and update internal documents, the Service is working on an internal charter, which shall set a standard for determining whether a specific civil/administrative law case is "complex and important". According to the Law of Georgia on Legal Aid, the involvement of a lawyer in the case is ensured by the Legal Aid Bureau, and the complexity and importance of the civil and administrative law case are assessed on a case-by-case basis.[194]

193 CRRC, Prospects for Expanding the Mandate of the Legal Aid Service in Civil and Administrative Cases, 2017, p. 9, [Available at: https://bit.ly/3bImDnn; Accessed on: 24.02.2021].

194 Public information provided by LEPL Legal Aid Service N01/410/2020.

However, the main problem with this regulation is not the issue of uniformity of the regulation. Under the current legal framework, the state does not provide adequate access to free legal services (in civil and administrative matters) even for the most vulnerable segments of the population. The idea of a social and legal state precludes the existence of an order in which people are restricted from defending their rights through litigation due to their own economic and social problems.

It should be noted that the legislation of the Council of Europe and the European Union allows for States to introduce the criteria of complexity and importance (although, unlike Georgian law, there is a clear reference that it is not the importance of the case in general, but the importance of the case to the individual concerned).[195] However, there are a few factors to consider here: the European Court of Human Rights has made it clear that whether legal representation is required depends on the specific circumstances of the case, and, in particular, upon "whether the individual will be able to present his case properly and satisfactorily without the assistance of a lawyer".[196] For example, when the ECtHR decided that the refusal to provide legal representation was justified, the case concerned a fairly "wealthy and educated applicant."[197] When a person is insolvent, it is difficult to talk about the person's ability to present their case properly. In addition, examples of international law and case law should be considered as a minimum standard, and if national law sets an even higher standard of human rights protection, this is only to be welcomed.

Under the current regulation, the existing restrictive criteria in civil and administrative matters do not reflect the real interests of the socially disadvantaged. These requirements create additional barriers for people whose social status should already be a prerequisite for the provision of free legal services. Thus, the existence of additional criteria of "complexity" and "importance", in civil and administrative disputes, should not be considered acceptable.

195 Handbook of European Law on Access to Justice, translated by Lasha Lursmanashvili, Tbilisi, 2018, p. 93, [Available at: https://bit.ly/3uA4LUr; Accessed on: 26.02.2021].

196 Ibid.

197 Ibid., p. 94.

4.3.5. Problems with the effective operation of the Service in the context of human and financial challenges

As mentioned, in criminal cases, if the accused is insolvent their defense costs will be borne by the state. In addition, even if the person is not insolvent, the Criminal Procedure Code provides for a fairly wide range of cases subject to mandatory defense.[198] In this respect, the legal guarantees are much more extensive than those in civil and administrative cases. However, relying on this fact alone would create an incomplete idea of the proper functioning of the Service in this regard.

In criminal law cases, Legal Aid Service acquires special significance in the context of the adversarial model, when the judge is entirely guided by the evidence presented by the parties and bases the final judgment on the provided evidence. Because of this, it is crucial to ensure that opponents have equal leverage and capabilities.

Inadequate protection of the accused and unequal distribution of resources can lead to the unfair outcome of the case. In the face of inequalities based on social, economic, or institutional capacity, the adversarial process can only be legitimized if, despite factual differences, the State can ensure equal opportunities for the parties throughout the trial proceedings. Otherwise, the court system built on the adversarial model is doomed to make wrong decisions and produce systemic injustice.[199]

The logic that the State should be able to more or less compensate for the existing power imbalance between the parties during the process also applies in the case of civil and administrative disputes. Naturally, it will be impossible to achieve this goal through the Legal Aid Service if the resources of the Service are not properly allocated to additional types of disputes as well. Consequently, the information presented in this part of the study is not limited to criminal cases only.

The number of lawyers employed by the Legal Aid Service and their experience in handling various types of cases may provide some insight into its effective and smooth functioning.

As of October 2020, the Legal Aid Service employs 140 lawyers (including 13 heads of bureaus). Of the 140 lawyers employed, 104 are specialized in the field of criminal law.[200]

198 Criminal Procedure Code, Articles 45 and 46.

199 Robert P. Mosteller, Failures of the American Adversarial System to Protect the Innocent and Conceptual Advantages in the Inquisitorial Design for Investigative Fairness, North Carolina Journal of International Law and Commercial Regulation, Vol. 36, No. 2, 2011, p. 326, [Available at: https://bit.ly/3bKCPET; Accessed on: 24.02.2021].

200 Public information provided by LEPL Legal Aid Service N01/304/2020.

Name of the Bureau	Total number of lawyers	Number of lawyers specialized in criminal law
Tbilisi	50	37
Mtskheta	5	3
Akhaltsikhe	6	4
Gori	5	3
Zestaponi	6	4
Telavi	6	4
Sighnaghi	3	2
Poti	5	3
Batumi	9	7
Zugdidi	6	5
Rustavi	14	11
Kutaisi	10	8
Ozurgeti	2	1

The table shows that the number of employed lawyers is not optimal, considering the high demand for their services. This is evident from the monthly workload of lawyers, which is very high.

Name of the Bureau	The average number of cases allocated to each lawyer specialized in criminal law, every month	The average number of cases allocated to each lawyer specialized in the civil/ administrative law, every month
Tbilisi	10	8
Mtskheta	5	5
Akhaltsikhe	9	4
Gori	10	5
Zestaponi	6	5
Telavi	10	4
Sighnaghi	6	3
Poti	11	6
Batumi	10	8
Zugdidi	6	5
Rustavi	8	8
Kutaisi	10	13
Ozurgeti	–[201]	5

201 Legal representation in Criminal Cases is provided by lawyers registered in the public registry. Public information provided by LEPL Legal Aid Service №01/304/2020.

As we can see, the workload of lawyers is very high every month. Under such circumstances, it is logical that they face hindrances in relation to the in-depth study of the cases, they take on, and the provision of effective legal aid.

Problems related to human and financial resources and, consequently, the overload of lawyers were highlighted in the focus group of NGO representatives, where there was a unanimous agreement that the Service needs to be strengthened. In addition, participants noted that legal aid lawyers should have the opportunity to learn more about the specifics, needs, and structural underpinnings of the vulnerabilities of those groups they work with.

> *"First of all, their biggest problem I have heard is that they have a lot of work to do, they really have a huge workload, and how they physically cope with all this work is a mystery to me."*[202]
>
> *"They need to have even more narrow specializations and proper training; I mean skills-based training that will help them with large groups. When I came here there was a lot of experience working with a group and they shared that experience with me and I can work with this group. And they are not familiar with the specifics of the groups they work with and they are disarmed, so to speak, and this affects their competence as well as people's trust in them, right? Therefore, on the one hand, we will probably get a completely different service if we take care of the overwork issue and provide narrow specializations."*[203]

As for the attitudes and assessments of the citizen focus group participants regarding the effectiveness of the Service, those respondents who have used those services are satisfied with the professionalism and empathy of the lawyers. Only one respondent from Kvemo Kartli stated that he was dissatisfied with the service and decided to hire a private lawyer. The reason for his dissatisfaction was the advice the lawyer gave him to plead guilty. Several respondents in Kvemo Kartli generally disapprove of the work of state-funded lawyers, even though they have not used the service. In their view, these lawyers are not professional and they do not take the clients' cases seriously. Also, one respondent in Samtskhe-Javakheti mentioned that his friend used the services of a free lawyer and was dissatisfied with the service.

202 Woman, NGO Representative, focus group with professionals, October 6, 2020.

203 Woman, NGO Representative, focus group with professionals, October 6, 2020.

Some of the citizen focus group participants also highlighted the financial motivation of lawyers and, in this regard, differentiated private lawyers and those working for the Legal Aid Service. Several respondents from Samtskhe-Javakheti said that they would prefer to hire a private lawyer if they could afford it, as they believe that private lawyers do the job properly for a fee and that state-funded lawyers are not motivated (however, according to one Tbilisi focus group participant, the fact that some private lawyers care only about the fees they receive is the problem in itself). As for the respondents who did not use the services of a lawyer, in one case the reason was lack of finances. In particular, according to the respondent, they did not have the money to hire a lawyer and chose to defend their rights on their own in the civil/administrative case. In addition, according to one of the respondents who was involved in the criminal case, they did not have a lawyer assigned, although it remained unclear to them as to why the lawyer was not appointed.

The statistical information and the focus group participants' assessments show that the Legal Aid Service needs to be strengthened, which should be reflected primarily in the increase in human and financial resources. In addition, it is important to note that several important reforms are underway to optimize the available resources and increase the efficiency of the Legal Aid Service. In particular, the provided public information shows that 1) a special Bureau that will deal with particularly important cases has been set up at the Legal Aid Service; a part of the reform, criteria shall be developed to determine which categories of cases shall be subject to review by the Bureau;[204] 2) it is planned to determine narrow specializations at the territorial bureaus;[205] and 3) the case management information system shall be reformed, to overcome the problem of unequal and unfair distribution of cases among lawyers, which should ensure automatic distribution of cases and coordination among lawyers in the Legal Aid Service.[206] It should also be noted that the current system of distribution of cases among the invited public attorneys is not in place. Registry attorneys do not have the obligation to complete the unified electronic case management information system, which deprives the Service of the opportunity to have complete information on the cases in their portfolio and, consequently, to calculate the workload of the attorneys.[207] In the view of the authors of this study, the planned internal reforms can significantly contribute to achieving the goal of more efficient functioning of the Legal Aid Service.

204 Public information provided by the LEPL Legal Aid Service N 05/20.

205 Ibid.

206 Ibid.

207 Ibid.

4.4. Access to an interpreter

One of the institutional and legislative barriers to access to justice is access to public services for groups with language barriers. This social group needs to have access to a qualified and accessible interpreter during the trial. Government agencies and translation bureaus should have a high level of awareness and systemic vision on the role and importance of interpreters in litigation. In addition, an adequate number of qualified interpreters should be available in the judiciary system itself, ensuring equal access to justice for different language groups.[208]

According to international and European human rights standards, the right to free assistance of an interpreter is recognized as part of a right to a fair trial and as an essential prerequisite for the proper administration of justice, and the subject of this right is a person who cannot understand or speak the language used in court.[209] The right to use an interpreter is not limited to oral statements made in court but also applies to any documentation and pre-trial proceedings.[210] Furthermore, the use of interpreter services by a person does not depend on his / her financial capabilities and should be provided by the state,[211] and the possibility of exercising this right, as well "as the control of the adequacy and accuracy of the translation, is imposed on the court as the ultimate guarantor of the fairness of the process".[212]

208 Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, UNDP, 2005, pp. 157-158.

209 International Covenant on Civil and Political Rights, Article 14 3(f), [Available at: https://bit.ly/3bpx4xn; Accessed on: 07.03.2021]; European Convention on Human Rights, Article 6, 3(e), [Available at: https://bit.ly/3cfkKiC; Accessed on: 07.03.2021].

210 „Article 6 § 3 (e) applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings" (Kamasinski v. Austria, §74; Hermi v. Italy[GC], §70; Baytar v. Turkey, §49), European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb), updated on 31 December, 2020, p. 99, para. 537, [Available at: https://bit.ly/3c7EX9Y; Accessed on: 07.03.2021].

211 „The obligation to provide "free" assistance is not dependent upon the accused's means; the services of an interpreter for the accused are instead a part of the facilities required of a State in organising its system of criminal justice. However, an accused may be charged for an interpreter provided for him at a hearing that he fails to attend" (Fedele v. Germany (dec.)), ibid. p. 99, para. 542

212 "While it is true that the conduct of the defence is essentially a matter between the defendant and his counsel (Kamasinski v. Austria, § 65; Stanford v. the United Kingdom, § 28), the ultimate guardians of the fairness of the proceedings – encompassing, among other aspects, the possible absence of translation or interpretation for a non-national defendant – are the domestic courts (Cuscani v. the United Kingdom, § 39; Hermi v. Italy [GC], § 72; Katritsch v. France, § 44)." Ibid. p. 100, para. 545.

4.4.1. Constitutional-legal aspects of the right to interpreter's assistance in Georgia

Legal proceedings in Georgia are conducted in the state language. To ensure equal access to the right to a fair trial in the proceedings, the Constitution of Georgia obliges the state to provide interpretation services for those who do not know the state language.[213] Accordingly, this constitutional guarantee is reflected in the legislation governing criminal, administrative and civil proceedings.

According to the Criminal Procedure Code, the process will be conducted in Georgian, while the Autonomous Republic of Abkhazia also allows the use of the Abkhazian language. Consequently, a participant in the process who does not speak or is not fluent in the language of proceedings must be provided with the assistance of an interpreter.[214] This guarantee applies primarily to the accused person, to use the services of an interpreter at the state's expense at the time of arrest, upon being indicted, as well as during interrogation or other investigative actions.[215] Witnesses can also use interpretation services at the expense of the state.[216] Moreover, an interpreter is called when: a) the party of the proceedings does not know or is not fluent in the language of the criminal proceedings; b) it is necessary to translate the text into the language of the criminal proceedings; and c) the party of the proceedings has such restriction of abilities that it is impossible to communicate with him/her without sign language.[217] The expenses related to the translation (either written or oral) are considered procedural expenses[218] and are remunerated from the state budget. Payment of the service fee shall be borne by the convict if the interpreter has been summoned by him or his lawyer (unless he has been acquitted from payment of procedural expenses by the court on the grounds of insolvency – see Chapter 7.3 for details).[219] It is also important to note that the Criminal Procedure Code stipulates an interpreter's obligation to translate a testimony or a document accurately and completely.[220]

The use of interpreter services in administrative proceedings on an administrative offense case is regulated under the Administrative Offenses Code of Georgia, according to which an interpreter is appointed by the body or an official in charge of the case. The interpreter is obliged to duly fulfill the assigned duty.[221]

213 Constitution of Georgia, Article 62, para 4. [Available at: https://bit.ly/3qnq6x5; Accessed on: 07.03.2021].

214 Criminal Procedure Code, Article 11 [Available at: https://bit.ly/3qvmmtG; Accessed on: 07.03.2021].

215 Criminal Procedure Code, Article 38, para 8.

216 Criminal Procedure Code, Article 49, para 1(b).

217 Criminal Procedure Code, Article 53.

218 Criminal Procedure Code, Article 90, para 1.

219 Criminal Procedure Code, Article 91, para 2

220 Criminal Procedure Code, Article 54, para 2(b).

221 Administrative Offenses Code of Georgia, Article 258 [Available at: https://bit.ly/3qowy7c; Accessed on: 07.03.2021].

As for civil and administrative proceedings (except for administrative offense proceedings), the Civil Procedure Code regulates the interpreter's participation in civil proceedings. These rules also apply to administrative proceedings. According to the Civil Procedure Code, the proceedings are conducted in the Georgian language and the state is obliged to provide an interpreter to a person who does not know the Georgian language.[222] Reimbursement of the interpreter services is considered as procedural costs. However, the Code distinguishes private and state special expert institutions and the procedure for determining their remuneration. In particular, interpreters from the special institutions receive remuneration for the work assigned by the court based on an agreement. Services for the state institutions are reimbursed per the norms and tariffs established by the Government of Georgia.[223]

It is important to note that Georgian legislation does not determine a mechanism for checking the qualifications of translators or the quality of translation. Given the specificity and complexity of legal language and terminology, the translator must have appropriate qualifications to ensure that the right to use such assistance for the party to the litigation is not formalistic, but that it actually allows for effective application of the legal norms in practice. It is a qualified and comprehensive translation that ensures that the party to the proceedings properly perceives the course of the process, is informed, and thoroughly defines his / her strategy in the process.[224] Concerning examination of qualification of interpreters and the quality of translation, EU legislation should be taken into account, which requires specific measures to be taken by states to ensure the proper quality of translation, which facilitates fair trial and increase access to justice.[225]

4.4.2. Practice of exercising the right to an interpreter's assistance

In parallel with the review of international and national legal standards on the right to interpreter services, it is important to review the Georgian practice of exercising this right. Of particular interest in this regard is the share of litigation in common courts involving an interpreter. According to the information provided by the Department of Common Courts, it was revealed that in the capital, as well as in the regions, in the processes with the participation of an interpreter in the city (district) and appellate instances, important share comes on the processes that are translated into ethnic minority languages (Azer-

222 Civil Procedure Code of Georgia, Article 9, para 4.

223 Civil Procedure Code of Georgia, Article 44-45.

224 Center for Research and Analysis of the Supreme Court of Georgia, International Standards on the Right to Use Interpreter Assistance, p. 14, [Available at: https://bit.ly/3kRwN9s; Accessed on: 07.03.2021].

225 Directive 2010/64/EU, European Parliament and the Council, 20 October 2010 on the right to interpreter services and interpretation in criminal proceedings, Article 3 (1), [Available at: https://bit.ly/3l0FZZq; Accessed on: 07.03.2021].

baijani, Armenian, Russian). For example, according to the 2020 data, 23.4% of the trials in the Tbilisi City Court using interpreter services were conducted with the participation of an Azerbaijanian interpreter, 4.4% with the participation of an Armenian interpreter, and 4.9% with the participation of a Russian interpreter. In the Tbilisi Court of Appeals, these figures are 9.09%, 20.75%, and 0.40%, respectively. Significant figures are also observed in other district and city court trials involving ethnic minority language interpreters, with the Azerbaijani language being particularly prominent (for example, Rustavi City Court – 57%, Gori City Court – 70%, Tetritskaro District Court – 67%, Khashuri District Court – 100%).

Also, the significant participation of Turkish, English, Persian, and Indian interpreters in court proceedings, both in the city (district) and appellate courts, should be taken into account. For example, out of the trials conducted with the participation of an interpreter in the Tbilisi City Court: 11.7% – were conducted with the services of an Arabic interpreter, 17.7% – with English, 5.1% – Turkish, 23.9% – Persian, and 4.7% – with an Indian translator. These figures are mostly the same in the trials held at the Tbilisi Court of Appeals (Arabic – 17.19%, English – 0%, Turkish – 7.31%, Persian – 23.12%, Indian – 14.03%).

Given the number of cases involving translation, it is important to identify the gaps and challenges associated with the realization of the right to an interpreter for groups with language barriers in trials.

According to the quantitative survey results, 33% of the Georgian-speaking adults named improper knowledge of Georgian language as an obstacle to access to the court while discussing the barriers to access judiciary (25% names it as partially obstructing and 8% as very obstructing).[226] These figures are lower in the surveys of the part of the population that has had the experience of appealing to the court in the last 6 years. In particular, 19% of those with experience of litigation consider that lack of Georgian language knowledge hinders access to the court, while 3% find it very obstructive.[227]

The language barrier and the need for an interpreter's assistance were also named as one of the barriers to access to justice in the focus groups of citizens. According to one of the respondents, because he did not know Georgian well enough a few years ago he needed an interpreter, but he noted that the interpreter only translated what he said at the trial, so the main content of the process remained unclear to the respondent.

226 Human Rights Education and Monitoring Center (EMC), Caucasus Research Resource Center (CRRC) and Institute for Development of Freedom of Information (IDFI), Access to the Court, The results of the population survey, 2020, p. 13 {Available at: https://bit.ly/3b UpqtO; Accessed on: 07.03.2021}

227 Ibid. p. 20

According to some of the respondents from ethnic minorities, the quality of the interpreter's services is unsatisfactory, as they translate only a small part of the conversation during the trial and sometimes with mistakes. One of the participants, who knew Georgian to a certain extent, stated that the interpreter sometimes did not translate important details from the respondent's speech. In addition, one respondent recalls an example where an interpreter incorrectly indicated a person's gender in a document and it took additional time and expenses to correct the error. Other representatives of ethnic minorities also agree that words are often incorrectly written in the documents, which complicates the litigation process.[228]

"As for the interpreter, let's say the judge speaks for 15 minutes. The interpreter translates its short content only with one or two sentences, which he/she considers to be important. I understand Georgian quite well and I can say that the interpreter is formal and does not spend a lot of energy."[229]

Problems with the right to an interpreter during the trial were discussed in professional focus groups, and it was unanimously remarked that this obstacle to access to justice is critical for members of the groups with language barriers in Georgia. First of all, the lack of interpreters is noteworthy. On the one hand this makes it virtually impossible to translate into certain languages, including in ethnic minority languages and, on the other hand, the difficulty of finding interpreters delays the whole process. As for the ethnic minority languages, the lack of Azerbaijani language translators was particularly highlighted, and it was noted that often, for unknown reasons, the judiciary/law enforcement agencies refer to the Turkish-speaking specialist instead.

"There is a serious problem of interpreters in the court…. I noted about one of my beneficiaries, that for unknown reasons, they use Turkish-speaking translators instead of the Azerbaijani language. These two languages are related, but there are certain differences, particularly in terms of legal terminology and daily words…. Thus, there is a serious problem with translators and it would be better to be improved."[230]

228 Research, pp. 17-18; Human Rights Education and Monitoring Center (EMC), Caucasus Research Resource Center (CRRC), Access to Justice, Qualitative survey results, 2020, pp: 17-18

229 Woman, Focus Group with people having experience in Civil/Administrative cases, Samtskhe-Javakheti, October 10, 2020.

230 Man, NGO Representative, Focus Group with Professional Group, October 6, 2020.

"Apart from having interpretation problems in the court, it is a significant problem in police units as well, for example, if a foreigner is detained, it is very time-consuming until the interpreter is found for the case, and later his/her qualification is examined, if he/she does not understand, another interpreter should be found. This is very obstructive and frustrating."[231]

It is noteworthy that representatives of professional focus groups pointed to inappropriate, formalistic attitudes from state institutions regarding the use of interpreter services, especially in criminal proceedings.

"Unfortunately, the representatives of the penitentiary service are very careless about the issue of rights definition. They ask the translator to sign in advance and let him/her go, doing the rest of the procedures themselves without any explanation. Such facts have been told by my clients."[232]

"The court may not even consider it, as it was in my case when the three defendants said that they did not understand the interpreter and the court left this interpreter at the hearing ... The interpreter said that he knew Azerbaijani and stayed. That is, the explanation of one interpreter against the three accused ... Yes, sir, this is one of the grounds for appeal, but if we want the process to go well from the beginning, we need a qualified and good interpreter."

According to the majority of professional focus groups, in addition to the insufficient number of interpreters, one of the most acute problems is their inadequate qualifications and the lack of knowledge of legal terminology, which ultimately affects the adequate understanding of the process and effective rights protection by the person in need.

"I had experienced several facts when the judge dismissed an interpreter due to unqualified interpretation. Qualified simultaneous translation is always a problem. The parties try to speak slowly but it is evident that they do not have adequate knowledge, particularly in terms of legal terminology."[233]

231 Woman, Representative of the Georgian Bar Association, Focus Group with the Professional Group, November 18, 2020.

232 Man, State Legal Aid Service Representative, Focus Group with Professional Group, October 13, 2020.

233 Man, State Legal Aid Service Representative, Focus Group with Professional Group, October 13, 2020.

Accordingly, professional focus groups expressed the view that the state should pay more attention to this issue and ensure the certification of translators in the legal field and further verification of their qualifications, which is not currently regulated at the legislative level.

> *"What should the state do? It should impose more requirements to translation bureaus, hold more qualified competitions to get qualified translators, and thus, first of all, protect the rights of our citizens, as well as foreign citizens, with adequate access to justice."*[234]

> *"I do not know, I think there is a system of certified translators, but it seems to be more or less on paper, I do not know how often this standard is implemented and the quality of translations in Russian, English, and Turkish may more or less meet some requirements. But in those languages that are less experienced and demanded, more work needs to be done and we have a problem there."*[235]

Finally, professional focus groups emphasized the allocation of inadequate resources by the state to strengthen the institution of translators, as low salaries are directly related to the insufficient number of translators and the problem of qualifications.

> *"We have a serious problem with translators ... As I understand it, the poor quality of services in this area is due to the financial situation, the state does not pay such a fee as it costs a qualified translator to start working in this system. The translation bureau that serves the court is not good enough, it does not have qualified staff."*[236]

In conclusion, the right to the interpreter's assistance is an integral part of the right to a fair trial. This legal component is not only part of the right to the lawyer. It is an essential precondition for access to justice and due process for those who are unable to participate fully in the proceedings conducted in the state language due to cultural and linguistic differences. At the same time, the access to interpreter services and the interpreter's qualifications should be of interest to each participant in the legal process, including, of

234 Man, State Legal Aid Service Representative, Focus Group with Professional Group, October 13, 2020.

235 Man, Representative of the Georgian Bar Association, Focus Group with the Professional Group, November 18, 2020.

236 Woman, Representative of the Georgian Bar Association, Focus Group with the Professional Group, November 18, 2020.

course, the court, which is the main guarantee of the proper administration of justice, regardless of the field of litigation. Therefore, it is important for the state to have a systematic and consistent perspective/policy and to create a legal system, where the right to an interpreter will be fully realized.

4.5. The Duration of Judicial Proceedings, Judicial Case-load and Number of judges

„Justice delayed is justice denied".[237] Therefore, access to justice cannot be secured in the state that does not provide for the opportunity of timely judicial proceedings with reasonable length. According to the European Convention of Human Rights (ECHR), the right to a fair trial includes the right to a trial within a reasonable time[238] and, hence, emphasizes the significance of timely and unhindered administration of justice. Slow judicial proceedings can undermine the public trust to peaceful resolution of disputes as well as the effectiveness and credibility of judicial institutions as a whole.[239] On the other hand, establishing a reasonable time criterion for assessing the realization of the right to a fair trial serves to avoid the deterioration of the quality of justice through unreasonably fast and speedy trials.

To determine what can be considered as a reasonable time for judicial proceedings, this section analyses the standards related to the duration of judicial proceedings, distinguishes issues in the Georgian context in this regard, explores underlying reasons for the current situation in Georgia and offers potential solutions.

4.5.1. The Duration of Judicial Proceedings – International Standards

The case-law of the European Court of Human Rights (ECtHR) distinguishes between the standards established for civil law and criminal law cases. The start and finish of the judicial hearing period must be clear to determine whether it was reasonable.

In civil law cases, calculating time normally begins to run from the moment the action was initiated before the court, unless an application to an administrative authority is a

237 „Justice delayed is justice denied" – a legal maxim used within the discussion on the right to a fair trial in the judgements of the ECtHR as well as scholarly sources. For example, see: Vazagashvili and Shanava v. Georgia, no. 50375/07, § 89, 18 July 2019; Also, Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 777.

238 European Convention of Human Rights, Article 6(1).

239 Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 777.

prerequisite for bringing court proceedings, in which case the period may include the mandatory preliminary administrative procedure.[240] This standard differs for criminal law cases where the period to be taken into consideration begins on the day on which a person is charged[241]/arrested by the competent body. This includes cases where individuals in question became aware of the charge or when they were substantially affected by the measures taken in the context of criminal investigation or proceedings. The expansion of this standard in criminal cases stems from the intensive nature of being under charge and the harm that can be caused by a lengthy period of being charged.[242] Consequently, in certain cases the ECtHR has considered the institution of the preliminary investigation a starting point, or the questioning of an applicant as a witness suspected of the commission of an offence.[243]

In the assessment of the reasonable time requirement, it is equally important to determine the end of the relevant period. According to the ECtHR standard, whether a hearing complied with the reasonable time requirement should be assessed in its entirety, including appeal proceedings up to the decision which disposes of the dispute. Accordingly, the reasonable time requirement applies to all stages of the legal proceedings aimed at settling the dispute/deciding the criminal case.[244] In civil law cases this also includes the period required for the execution of a judgement. The execution of a judgment is an integral part of the proceedings which ensures the effectiveness of the result of the proceedings and the realization of the right in question.[245]

240 Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (civil limb), p. 82, [Available at: https://bit.ly/3tzlshU; Accessed on: 24.02.2021]. Further see: (Poiss v. Austria, § 50; Bock v. Germany, § 35) König v. Germany, § 98; X v. France, § 31; Schouten and Meldrum v. the Netherlands, § 62; Kress v. France [GC], § 90) Golder v. the United Kingdom, § 32 in fine; Erkner and Hofauer v. Austria, § 64; Vilho Eskelinen and Others v. Finland [GC], § 65; Blake v. the United Kingdom, § 40). For the case of a civil-party claim, see Nicolae Virgiliu Tănase v. Romania [GC], §§ 207-208, and Koziy v. Ukraine, § 25)

241 The concept of a "criminal charge" has an "autonomous" meaning for the ECtHR, independent of the categorisations employed by the national legal systems of the member States (Article 6 § 1. See, McFarlane v. Ireland [GC], § 143) – Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb), p. 57, [Available at: https://bit.ly/32Bmvlu; Accessed on: 24.02.2021].

242 Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb), p. 56, [Available at: https://bit.ly/32Bmvlu; Accessed on: 24.02.2021]. Also, see: Mamič v. Slovenia (no. 2), §§ 23-24); Liblik and Others v. Estonia, § 94; Neumeister v. Austria, § 18; Deweer v. Belgium, § 42; Kart v. Turkey [GC], § 68; Wemhoff v. Germany, § 19.

243 Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb), p. 56, [Available at: https://bit.ly/32Bmvlu; Accessed on: 24.02.2021]. Also, see: Ringeisen v. Austria, § 110; Šubinski v. Slovenia, §§ 65-68; Kalēja v. Latvia, § 40.

244 Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (civil limb), p. 82, [Available at: https://bit.ly/3tzlshU; Accessed on: 24.02.2021]. Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb), p. 57, Also, see: König v. Germany, § 98 in fine) (Poiss v. Austria, § 50) (Delcourt v. Belgium, §§ 25-26; König v. Germany, § 98; V. v. the United Kingdom [GC], § 109). (Robins v. the United Kingdom, §§ 28-29) (Neumeister v. Austria, § 19).

245 Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (civil limb), p. 82, [Available at: https://bit.ly/3tzlshU; Accessed on: 24.02.2021]. Also, see: Martins Moreira v. Portugal, § 44; Silva Pontes v. Portugal, § 33; Di Pede v. Italy, § 24; Estima Jorge v. Portugal, §§ 36-38.

The case-law of the ECtHR does not determine fixed reasonable time limits for judicial proceedings but, rather, it emphasizes the role of the particular circumstances in judicial cases. Criminal law cases tend to warrant stricter scrutiny in this regard than civil law cases. The ECtHR case-law elaborates four main criteria for assessing the reasonable time:

(1) What was at stake for the applicant – criminal proceedings have higher individual significance when the individual is arrested, proceedings in family law, property cases in certain cases and labour law disputes concerning subsistence conditions. A case where the applicant had been infected by the HIV virus through blood transfusions was deemed as having high stakes for the individual.[246]

(2) Complexity of the case – this element can be connected to factual as well as legal circumstances. According to the ECtHR case-law, the examples of factors that determines the complexity of the case are:

- the nature of the facts that are to be established;
- the number of accused persons and witnesses;
- international elements (for instance, investigative measures taken under the international cooperation in criminal matters inside or outside the country);
- the joinder of the case to other cases;
- the intervention of other persons in the procedure.247

(3) Conduct of the applicant – the ECtHR assesses to what extent the applicant himself is responsible for certain periods of delay, but the applicant should not be held accountable for making full use of the available remedies.[248] Examples of conduct that contributes to delay are systematically challenging judges, filing submissions to reschedule proceedings, or frequent/repeated changes of counsel. Overall, the applicants' conduct in this regard should be natural and reasonable. They should demonstrate due diligence with respect to all procedural stages. In criminal law, this does not require applicants to co-

246 European Court of Human Rights 1998 October 30 Judgement on the case of F. E. v. FRA, Application N38212/97, paras. 53 and 57. Merab Turava, Authors' Collective, Commentary to the Constitution of Georgia, Chapter II, Citizenship of Georgia, Fundamental human rights and freedoms, Tbilisi, 2013, p. 538; Also, see: Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 781-782.

247 Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 781. Ferantelli and Santangelo v Italy 1996-III; 23 EHRR 288; Boddaert v Belgium A 235-D (1992); 2 EHRR 242, European Court of Human Rights, judgement of 26 February 1998 on the case of Pafitis and others v. GRE, Application N20323/92, para. 96; European Court of Human Rights 21 February 1997 on the case of Guillemin v. FRA, Application N19632/92, para. 42; Commentary of the Constitution, p. 539.

248 Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 782.

operate actively with the judicial authorities, but fleeing from a state and other similar actions negatively affect the calculation of time in this regard.[249]

(4) The conduct of the relevant authorities – national courts have special responsibility to ensure that all the participants in the proceedings act proactively, without any unnecessary delay.[250] Judicial proceedings should not involve unreasonably long intervals.[251] The ECtHR has rejected state arguments based on the overload of national judiciaries due to insufficient number of judges or understaffing. States bear an obligation to organize their judicial system in a manner that meets the requirements of ECtHR.[252] Furthermore, according to the ECtHR case-law, if the reasonable-time requirement is systematically breached by national courts, rather than in individual cases, it can be considered as an "aggravating circumstance".[253] Namely, if this is an administrative practice in a state, the ECtHR works on the assumption that the Convention's reasonable-time requirement had been breached unless the State in a given case challenged that presumption.[254]

4.5.2. Length of Judicial Proceedings – the Georgian Context

A noteworthy material for the discussion on the Georgian context is a 2016 report published jointly by the UN Development Programme (UNDP)[255] and the UN Office on Drugs and Crime (UNODC).[256] According to the report, the length of judicial proceedings is one of the top 4 challenges for the access to justice.[257]

249 Authors' Collective, Commentary to the Constitution of Georgia, Chapter II, Citizenship of Georgia, Fundamental human rights and freedoms, Tbilisi, 2013, p. 539.

250 Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 782. Salesi v Italy A 257-E (1993) at para 24. Cf. Cuscani v United Kingdom 36 EHRR 11 stated: 'the trial judge is the ultimate guardian of fairness'.

251 Authors' Collective, Commentary to the Constitution of Georgia, Chapter II, Citizenship of Georgia, Fundamental human rights and freedoms, Tbilisi, 2013, p. 539.

252 Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 782. Salesi v Italy A 257-E (1993) at para 24. Cf. Cuscani v United Kingdom 36 EHRR 11 stated: 'the trial judge is the ultimate guardian of fairness'.

253 Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (civil limb), p. 82, [available at: https://bit.ly/3tzlshU; Accessed on: 24.02.2021]. Further see: H. v. France, § 58; Katte Klitsche de la Grange v. Italy, § 61; Scordino v. Italy (no. 1) [GC], § 22; Bottazzi v. Italy [GC], § 22; Scordino v. Italy (no. 1) [GC], § 225.

254 Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 778.

255 United Nations Development Programme.

256 United Nations Office on Drugs and Crime.

257 Global Study on Legal Aid Country Profiles, (UNDP, UNODC), 2016, p. 310, [Available at: https://bit.ly/3dENseF; Accessed on: 24.02.2021].

The participants of citizen focus groups indicated differing experiences with the length of judicial proceedings. Although finalization of cases required only several days for a minority of cases, but for the majority proceedings lasted for several months, or, in some cases, for more than a year. It is noteworthy that the case that continued for more than a year was a criminal case. The majority of participants think that their case could have been finalized earlier but the court did not/could not do it. The participants indicated the following reasons behind the prolongation of proceedings:

- Defendant was an influential person, for example, a financial institution (according to the respondents, the strong party easily wins cases and, hence, proceedings end sooner, which is not true in other cases);
- Court's attempt to rule in favor of the influential party;
- Applying pressure on a suspect to admit guilt through protracted proceedings;
- The absence of parties to the case;
- Defendant could/did not fulfill liabilities, for instance, did not compensate the victim;
- The case was substantively new or different for the judge. (According to the respondent, a judge requires more time to study/analyze such cases);
- Incompetent personnel in the judicial system;
- Judicial case overload;
- Time allotted to technical and procedural parties such as experts, fact-finding, etc.

Notably, a focus group of those with experience with civil/administrative cases in Samtskhe-Javakheti voiced views that involvement of well-connected acquaintances is necessary to ensure a timely finalization of judicial proceedings. One of the participants indicate that she has used this method for a well-timed scheduling of a case.

> *„When our case remained without any attention for 3 months and we did not even have a trial scheduled, we were forced to find well-connected acquaintances and employ their help to get a trial date at least. If not the person was involved, god knows how long our case would remain without progress."* [258]

During the discussion with professional groups, lawyers agreed that delayed and lengthy judicial proceedings are one of the main challenges for access to justice. During focus groups, lawyers indicated that delayed judicial proceedings create various issues such as the loss of a party's interest in the dispute if they were primarily looking for a timely

258 Woman, focus group with individuals who have participated in a civil/administrative law litigation, Samtkshe-Javakheti, 10 October 2020.

remedy. There have also been extreme cases where a party to the case passed away. The professional groups deemed such cases to contribute to the loss of trust towards the judicial system which may encourage informal justice.

> *„A socially vulnerable person who lost social assistance already belongs to an extremely vulnerable category and, on top of this, has to wait for three instances and the dispute may continue for three years. They have to first go through an internal appellation, then refer to a court, go through three instances and, god bless everybody, but I have had a case which delayed so much that the person passed away. … I have an impression, and citizens have also said it, that the state is waiting for them to die."*[259]
>
> *„Sometimes we just lose the plaintiff, lose the interest and just because we have a complaint in the appellation we are forced to go through with the case. …. This results in citizens avoiding this avenue of justice and trying to settle the dispute by their own virtue or bringing an action and then realizing they made a mistake, it is not effective and, hence, they lose trust."*[260]

The excessive length of judicial proceedings is deemed one of the key challenges for the judicial system even by the judicial branch. The judiciary explained the issue with the low number of judges and case overload at courts.[261] The Judiciary Strategy[262] and the 2017-2020 Report[263] indicate that the last decade has seen the systematic increase of judicial complaints, particularly in terms of civil law cases which significantly affects the increase of case finalization and remainder rates.[264] Even in 2017, while adopting the Judicial Strategy, the judicial system warned that due to insufficient numbers of judges and clerks, the aims of quality and efficient justice would not be achieved which would result in a large number of remainder cases, the breach of procedural limits and judgement preparation timeframes, inadequate substantiation of judgments, etc.[265] To address this, the Strategy of the Judicial System and a respective action plan envisaged the periodic analysis of the workload of judges and clerks of the common courts and, if necessary, reinforcement

259 Woman, a representative of state legal aid service, focus group with a professional group, 13 October 2020.

260 Woman, a representative of state legal aid service, focus group with a professional group, 13 October 2020.

261 2017-2021 Strategy of the Judicial System, p. 6, [Available at: https://bit.ly/3gp8nUI; Accessed on: 24.02.2021].

262 Ibid., p. 19.

263 Activity Report of the Judicial System, 2017-2019, p. 26, [Available at: http://hcoj.gov.ge/; Accessed on: 24.02.2021].

264 Namely: first instance courts received three times more cases in 2016 than in 2005, and two times more than in 2010. In 2018 they received 225 449 which is exceeds 2017 (206 533) data by 18 916.

265 2017-2021 Strategy of the Judicial System p. 20, [available at: https://bit.ly/3gp8nUI; Accessed on: 24.02.2021].

of their numbers. Additionally, it also provided for the development of the system to assess the volume of cases and identification of challenges and opportunities related to time-limits for judicial proceedings that may be hindering the system's effectiveness and optimization.[266] However, this process did not go beyond the research stage and the implementation of the research findings into practice has not yet started. Therefore, actual results have not been achieved in this regard to this day.

Apart from the low number of judges and increased caseload, research conducted in the course of the Strategy implementation revealed additional problematic areas such as insufficient budgetary funds allocated to the judiciary, a low number of judicial clerks, and insufficient development of court facilities, equipment, information technologies and other material or technical tools.[267] Therefore, the project team analyzed these core topics in the following sections and identified the key challenging areas that need to be addressed and improved to ensure a swift justice system in Georgia.

4.5.2.1. Judicial Overload and a Limited Number of Judges

Optimization of the number of judges and judicial clerks is crucial to ensure they are able to fulfil their tasks and responsibilities within a reasonable time without jeopardizing the quality of their work.

Research conducted within the scope of the Strategy implementation[268] assessed the optimal number of judges and judicial clerks in Georgia[269] based on 3 different models of quantitative and qualitative analysis. It concluded that the optimal number of judges in Georgia should be between 380 and 450 to address the delay of justice in Georgia (a reasonable target would be somewhere on this spectrum, possibly a median of 415 judges; even in this case, considering the current caseload levels,[270] Georgian courts' workload

266 Ibid, strategic objective 4.2.

267 2017-2021 Strategy of the Judicial System, p. 20, [available at: https://bit.ly/3gp8nUI; Accessed on: 24.02.2021].

268 Report on the Progress of the 2017-2018 Action Plan of the 2017-2021 Strategy of the Judicial System, reporting period: June 2017 – June 2018, p. 10, [available at: https://bit.ly/3epnxFU; Accessed on: 24.02.2021]. The High Council of Justice, A draft of the Second Annual Report on the Progress of the 2017-2018 Action Plan of the 2017-2021 Strategy of the Judicial System, reporting period: June 2018 – June 2019. Provided to us by the Letter №242/668-03- of 10 March 2020 of the High Council of Justice.

269 Jesper Wittrup, Assessment of the need for judges in Georgia, USAID/PROLoG, August 2018.

270 This report accepts the existing judicial workload as a given, and does not analyse what substantive steps can be taken to reduce the case numbers. For instance, terminating criminal law cases due to their less serious nature or employing diversion practices can be considered as an avenue of reducing judicial workload. However, these issues have not been covered by any research of the Georgian context.

would be higher compared to countries where judicial systems function well).[271] Instead of the conventional approach that assesses the proper number of judges per 100.000 inhabitants, the research offered a comparative analysis method. This allowed the research to factor in quantitative data on the number of judges in various European countries in combination with certain socio-economic and demographic variables such as, for instance, dissimilarities between judicial systems and essential factors influencing judicial demand (workload) in a specific country.

As of 31 December 2017, appellate and district/city courts held 338 judicial offices which has been increased up to 387 judicial offices by now.[272] As for the Supreme Court of Georgia, the Constitution of Georgia determines the number of judges there as 28. Accordingly, there are in total 415 judicial officers in the common court system of Georgia which equals the median indicator established by the research. However, vacant judicial offices remain unfilled regardless of the recognition of this matter as problematic by the High Council of Justice. As of today, there are 330 judges in the common courts of Georgia (21 in the Supreme Court; First/Second instance – 309) and the difference between the actual number of judges and the number of available judicial offices amounts to 85 vacant positions.[273]

Regardless of the high case number and overload of judges, the High Council of Justice announced the selection/appointment process for the first and second instance judicial vacancies only 4 times during the past 4 years. In 2017-2019 there were only two such processes. It is also noteworthy that the majority of judges appointed through these processes were already acting judges (judges appointed on a probationary basis and/or judges appointed before the adoption of lifetime appointment of judges, whose term of office expired and were reappointed). Therefore, the increase of judicial offices did not yield actual results.[274] In this light, it is questionable why the High Council argues that the existing number of judicial offices does not meet the minimal optimal standards and the increase of these offices by 100 is necessary,[275] particularly as, the Council has the authority to determine the number of judicial offices in the first and second instance courts and conduct the process of judicial selections for vacant offices. Considering these factors, it

271 Jesper Wittrup, Assessment of the need for judges in Georgia, USAID/PROLoG, August 2018.

272 The High Council of Justice, a letter of public information.

273 The High Council of Justice, a letter of public information.

274 As a result of the first selection process, 34 judges were appointed out of which 15 had graduated from the Justice School, 1 a former judge, and another 18 acting judges. In the other case, 32 judges were appointed out of which 3 had graduated from the Justice School, 2 former judges, and 27 acting judges. Activity Report of the Judicial System, 2017-2019, p. 25, [Available at: http://hcoj.gov.ge/; Accessed on: 24.02.2021].

275 Activity Report of the Judicial System, 2017-2019, p. 49, [Available at: http://hcoj.gov.ge/; Accessed on: 24.02.2021].

is ambiguous why the Council does not even make minimal effort to meet the optimal standards for the number of judges.

4.5.2.2. Need for the Case Weighting System

Determination of case weighting is a complex process, but its implementation helps to swiftly and effectively assess the reasons for delays in judicial proceedings as well as to measure the caseload of courts and assign judges to different courts effectively. Best practices show that the countries that already have a case weighting system slowly move to a novel, smart approach to case weighting. However, Georgia has never had a case weighting system and, hence, discussing the smart model is more complicated in this context.

Regardless, research has identified a potentially effective case weighting model for Georgia.[276] The smart case weighting system employs computer algorithms to reduce the work needed for case weighting. In traditional case weighting weights are defined by exact (fixed) numbers.[277] In contrast, in the smart case weighting system weights are defined not as fixed, but either as ranges or relatives.[278] Even with the best time studies or expert panel estimates it is difficult to have an exact estimate of the ratio specific case weights have with each other. By allowing the element of uncertainty about weights, smart case weighting model adopts a more realistic approach to assigning judicial offices to courts.[279] To assess the optimal (most balanced) allocation of judges, smart case weighting involves going through a number of iterative steps,[280] for the algorithm to find the specific combination of weights which puts the court in the best possible situation.[281] Accordingly, the smart case weighting system identifies all the needs for judicial transfers to balance the workload in courts.[282]

The case weighting system proposed in the research uses the 2016-2018 three-year data on cases processed in the courts. This model predicts what the fair/balanced allocation of judges should be if the number and composition of cases continue to be as in this period and the total number of judges will be 415 (the centre of the interval identified previ-

276 Jesper Wittrup, Allocation of Judges and Staff in Georgian Courts, Phase II, February, 2020.

277 Ibid, p. 6.

278 Ibid, p. 6.

279 Ibid, p. 15.

280 Ibid, p. 18.

281 Ibid, p. 7.

282 Ibid, p. 8. and Annex A.

ously).[283] In Georgia, where there has never existed a case weighting system, it is even complicated to determine averages of the optimal case weights. Therefore, to identify the robustness uncertainty of the main model, the research also discussed various supplementary models.[284] Moreover, considering the uncertainty of statistics, the research also considered alternative models that were not tied to the number of cases.[285]

Applying various models of the smart case weighting system, the research found a critical necessity to increase the number of judges in the first instance courts. It recommends to prioritize filling vacancies in the first instance courts, and to focus first on the courts with the most striking imbalances between workload and the current number of judges.[286] The research indicated that there may be some degree of uncertainty associated with the assessment of the number of judges needed in higher courts due to the difficulties in comparing the workload of first instance court cases and higher court cases (because of the use of court panels). Regardless, it concluded that the number of judges in the Supreme Court could be increased, while the two courts of appeal may in fact currently have too many judges given the amount of workload they have.[287] Accordingly, to determine the optimal allocation the judicial system should be supplemented by at least 85 judges and then, to determine whether the workload differences among courts justify altering allocation arrangements, the smart case weighting system should be applied.[288]

4.5.2.3. Effective Management of Case Delays

Delays in judicial proceedings and a consequent backlog can be a result of ineffective work organization and not of a heavy workload caused by a high number of cases and low number of judges.[289] Based on the Strategy and the Action Plan, the judicial system has committed to work on increasing judicial effectiveness. However, it has not yet completed the tasks related to developing an instrument for assessing and monitoring judicial effectiveness, including the analysis of CEPEJ standards and reports, the improvement of judicial work assessment criteria, uniform administration of statistical-analytical reports of assessment and a follow-up response mechanism.

283 Ibid, p. 8.

284 Ibid, p. 9 and Annex C.

285 Ibid, p. 9 and Annex D.

286 Ibid, p. 9.

287 Ibid, p. 9.

288 Ibid, p. 8.

289 Jesper Wittrup, Assessment of the need for judges in Georgia, USAID/PROLoG, August 2018, p. 46; Jesper Wittrup, Allocation of Judges and Staff in Georgian Courts, Phase II, February 2020, p. 42.

4.5.2.3.1. Electronic Case Management by Case Assignment based on Specializations and Randomization

To manage the increasing number of court cases and reduce the backlog, the High Council of Justice has established determined judges' narrow specializations in the Tbilisi City Court and Appellate Courts.[290] The Council pays special attention to the results of implementing narrow specialization in specific types of civil law cases[291] which, according to analyses,[292] appeared to be the most challenging in terms of delayed proceedings. This report does not aim to assess the caseload in specific specializations and time of proceedings after the implementation of specializations. However, the data published by the Council in this regard only covered Tbilisi courts, which makes it impossible to assess the effectiveness of narrow specializations in reducing the caseload. On the other hand, even if this approach was effective, solving this issue in 2 courts is not sufficient for dealing with the issue of the delayed justice in the whole country.[293] It is also important that the smart case weighting system is used not only for distributing cases among different courts, but also for determining the number of judges in judicial panels and boards (and in narrow specializations if they exist), which has not been implemented so far.

Determination of case weights and distribution of cases in narrow specializations, boards, chambers and courts will be pointless if the case distribution system is not effective. In the course of the "third wave" of the judicial reform, the Organic Law of Georgia was amended to provide an automatic distribution of cases through an electronic system based on the principle of random distribution. By the end of 2017, the electronic case management system was implemented and operational in every common court of Georgia.[294] Along with judicial independence, random case distribution through an electronic

290 Decision N1/175 of 30 April 2018 of the High Council of Justice on the Determination of Narrow Specializations of Judges in the Civil, Administrative and Criminal Chambers at Tbilisi Appellate Court; Decision N1/№1/233 of 24 July 2017 of the High Council of Justice on the Determination of Narrow Specializations of Judges in the Panels of Investigation, Pre-Trial Hearing and Hearing on Merits at Tbilisi City Court; Decision №1/92-2006 of 3 October 2006 of the High Council of Justice on the Determination of Narrow Specializations of Judges in the Civil Law and Administrative Law panels.

291 Disputes stemming from loan contracts signed by qualified credit institutions – non-bank depository institution if the price of the loan does not exceed 5 000 Laris, and commercial disputes – any civil law property dispute if the disputed amount does not exceed 500 000 Laris, except the ones covered by family law, or the demands of compensation based on tort or moral damages.

292 Brian LeDuc, Assessment of the Causes of Delay and Backlogs in the Courts of Georgia, USAID/PROLoG, November 2018.

293 A draft of the Second Annual Report on the Progress of the 2017-2018 Action Plan of the 2017-2021 Strategy of the Judicial System, reporting period: June 2018 – June 2019. Provided to us by the Letter №242/668-03- of 10 March 2020 of the High Council of Justice; Nowadays, the cases of similar category are reviewed by a 5-judge panel at the Tbilisi City Court, [Available at: https://bit.ly/3sM0Ced, https://bit.ly/3edrXQU, https://bit.ly/3vbCvqz; Accessed on: 24.02.2021].

294 On the basis of the amendments to the Organic Law of Georgia, the High Council of Justice issued the Decision №1/56 of1 May 2017 on Approving the Rule of Automatic, Electronic Distribution of Cases in the Common Courts of Georgia.

system should promote equal distribution of cases among judges and, consequently, swift administration of justice.[295] However, it is difficult to assert that the electronic case management system has had any effect on the effectiveness and speed of judicial proceedings. It is true that automatic case management through an electronic system is based on the principle of random selection of judges but the system has deficiencies.

The monitoring of the electronic case management system identified the following key challenges:

- The 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;
- The Chairperson of the Court may also increase/decrease the workload rates of judges;[296]
- 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 workload rate of a judge is particularly reduced if they are also a member of the Council and hold other administrative position;
- Even though the High Council of Justice decides on narrow specialization in a court, 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.[297]

Apart from the risks to judicial independence, these challenges of the case management and distribution system also affect the effectiveness of justice administration and hinder the productivity of individual judges as well as of the system as a whole. Therefore, it is crucial to determine a reasonable number of cases to be distributed to a single judge based on the category, complexity and other criteria. Furthermore, the authority to alter the workload of judges should be strictly regulated and assigning judges to narrow specializations should be based on the smart case weighting system.

295 The Strategy, Activity Report of the Judicial System, 2017-2019, p. 27, [Available at: http://hcoj.gov.ge/; Accessed on: 24.02.2021]. United Nations Office on Drugs and Crime (UNODC) Resource Guide on Strengthening Judicial Integrity and Capacity, UN Office, New York,

296 the High Council of Justice, Decision №1/56, Article 5. [Available at: https://bit.ly/3aBAuLc; Accessed on: 17.02.2021]

297 Electronic System of Case Distribution in Courts, EMC, 2020, p. 9, [Available at: https://bit.ly/2P7O4Qm; Accessed on: 24.02.2021].

4.5.2.3.2. The Lack of Staff, Infrastructural Challenges and Other Administrative Issues

The delegation of work to non-judge staff may be effective to prevent delays and increase judicial efficiency.[298] In this regard, it is crucial to assess the allocation of non-judge staff in courts. In addition to the determination of smart weighting for judges, this also requires the High Council of Justice to develop a special methodology of case weighting for non-judge staff.[299] Even though the High Council of Justice frequently indicates the need to increase the number of non-judge staff in those district/city courts which have a heavy caseload,[300] there have been no developments in this regard so far.

As argued by the High Council of Justice, the underdeveloped material-technical and technological infrastructure of the judicial system contributes to the delays in judicial proceedings. Namely, material-technical base requires a continual updating in compliance with the priorities of a court. Courts have a sparse number of courtrooms and waiting spaces. Considering the increasing caseload, another key challenge is the frequent rescheduling of court hearings which complicates following the timetable of hearings determined with the participation of the parties. Consequently, this further exacerbates delays in judicial proceedings. The Council suggests construction works on the territory of Tbilisi City Court as a solution to this issue.[301]

The participants of the professional focus group suggested that the pandemic exacerbated delays in judicial proceedings as online hearings made the inadequacy of material-technical means and absence of an effective management system more apparent.

> *„They are more overloaded now because of the pandemic as there appeared remote hearings and especially criminal cases entailing custodial cases and parties joining from prisons. There are technical issues that cause the parties to queue for the hearings, and they cannot make it on time. I would also like to emphasize that there are practical problems with civil law cases, but especially in criminal cases which does not entail custodial sentences hearings are more delayed because all the attention is directed to custodial cases. I believe this is caused by the lack of judges and their overload."*[302]

298 Jesper Wittrup, Assessment of the need for judges in Georgia, USAID/PROLoG, August 2018 p. 47.

299 Jesper Wittrup, Allocation of Judges and Staff in Georgian Courts, Phase II, February, 2020 p. 9 and Annex E.

300 Report on the Progress of the 2017-2018 Action Plan of the 2017-2021 Strategy of the Judicial System, reporting period: June 2017 – June 2018, p. 10, [Available at: https://bit.ly/3epnxFU; Accessed on: 24.02.2021].

301 Ibid.

302 Woman, a representative of the state legal aid service, focus group with a professional group, 13 October, 2020.

4.5.2.4. Remedy for Breaches of the Reasonable Time Requirement for Judicial Hearings

The existence of effective remedies for excessively lengthy judicial proceedings is one of the important aspects in assessing whether a state has a systemic approach to this element of the right to a fair trial. The analysis of international standards reveals two types of remedies: (1) measures that are designed to remedy the damage or address the outcome, and (2) preventive measures. The decisions of the ECtHR and the UN Human Rights Committee reveal that an effective remedy should represent a combination of these two types of remedies.

For instance, remedies that belong to the first category may include compensation for the damages, or, if the excessive length of the proceedings were due a judge's conduct, holding the judge accountable through disciplinary actions. Judges have a professional duty to proactively ensure that the length of judicial proceedings meet the reasonable time requirements. The ECtHR case-law suggests that they are even responsible to monitor parties' attempts to delay proceedings and take all available measures to prevent such conduct. Disciplinary measures should be invoked with a special caution as such measures can jeopardize judicial independence. However, judicial independence does not entail the absence of accountability. Crucially, a judicial accountability system should be thorough and function properly so that it prevents abuse and arbitrary application. Disciplinary measures should not be used when the delay is due to judge's heavy workload or other systemic problems in the judiciary which are not related to the conduct of an individual judge.[303]

The development of preventive measures should be based on a detailed analysis of existing issues and reasons for the excessive length of judicial proceedings. The main challenge in this direction is that in many states, including Georgia, there is no uniform methodology and sufficient statistical data to analyze at what stage and why the delays take place. Core preventive measures which are common in many states are (1) establishing fixed time limits for reviewing a case, and (2) mechanisms that enable parties to petition to a higher instance court to impose the obligation on a lower instance court handling the case to take specific procedural actions or review the case in a determined timeframe. [304] Georgia applies the former approach and specific time-limits are determined for reviewing specific types of cases (but not in all cases). However, this provision does not fulfil its preventive function in practice and delayed justice still represents a key challenge. Additionally, setting strict time frames for reviewing a case

303 Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 794.

304 Ibid, p. 793.

and formal or informal sanction for exceeding them engenders the risk of poor and hastened decision-making.[305]

As the legislation of Georgia has adopted the preventive approach of setting fixed timeframes and disciplinary accountability for breaching them, it is important to determine the effectiveness of these aspects. The legislation considers as disciplinary misconduct a substantial breach of procedurally established timeframes without good reason. Such breach will be considered justified if the judge could not meet the time limits due to factual circumstances (an excessive amount of cases, complexity of the case, etc.). [306]

First of all, the regulatory framing, which links delays in judicial proceedings to a breach of legislative timeframes, is faulty as such delays can take place within the established timeframes. [307]

On the other hand, there are assertions that if the judge breaches the provisions of the Civil Procedure Code, including the timeframes for the consideration of the cases, the mechanism for imposing a disciplinary responsibility is not effective. As the judges are aware that they will not be held accountable, they handle the cases with serious breaches of the Civil Procedure Code.[308]

> *„My colleague filed a complaint concerning the timeframes to the Council, as we are able to, but so what? As I know there was no outcome, as the court and the Council approach this issue with understanding due to the overload of the judiciary. In fact it burdens the citizens."*[309]

Judges have also developed a practice of extending these timeframes by a ruling which is baselessly considered lawful by the High Council of Justice. The Council has also approved/considered lawful other similar practices such as restarting the calculation of the regulatory timeframe when a case was transferred from a judge to another, rescheduling a hearing multiple times to facilitate a settlement between the parties when they had clearly indicated that there was no desire for a settlement, etc. Additionally, even though

305 Jesper Wittrup, Assessment of the need for judges in Georgia, USAID/PROLoG, August 2018 p. 46; Jesper Wittrup, Allocation of Judges and Staff in Georgian Courts, Phase II, February, 2020, p. 42.

306 The Law of Georgia on Common Courts Article 751(8).

307 Rights Georgia, Monitoring of the Activities of the Independent Inspector and the High Council of Georgia in the Process of Disciplinary Proceedings, 2021, [Available at: https://bit.ly/3gs7xGB; Accessed on: 24.02.2021].

308 Jesper Wittrup, Assessment of the need for judges in Georgia, USAID/PROLoG, August 2018, p. 48.

309 Woman, a representative of state legal aid service, focus group with a professional group, 13 October 2020.

the Council often analyses what kind of actions the judge took in the case, how burdened he/she is, but in some cases just a heavy workload is considered enough to deem the breach of timeframes justified.[310]

The participants of the professional focus groups indicated that legislative timeframes only apply to the parties of the case in practice and not to the court, which repeatedly breaches these timeframes. They also named an additional challenge of effective management, which is connected to frequent changes of judges who are assigned to a case. This substantially contributes to delays in judicial proceedings.

> *„The only procedural limit that matters is to be on time with filing a lawsuit and not be late. The rest of the limits, like the timeframe for reviewing a case, can be considered nonexistent, and when clients tell us that we have this limit, we have to respond that we do not know and cannot tell them anything."*[311]
>
> *„For example, I had a case in one of the district courts concerning the repossession of property which was initiated in 2014. We have been in this dispute for 6 years already and we are still at the preparatory stage because it was assigned to one judge then reassigned to another and then to yet another. Then the opposing party changed their representative a couple of times intentionally and this reason was deemed sufficient to postpone the hearing."* [312]

This analysis confirms that the Georgian legislation does not provide for an effective protective measure in the case of excessively lengthy judicial proceedings and disciplinary bodies neither ensure acceleration of such proceedings nor provide compensation.[313] Consequently, regardless of the existence of regulatory timeframes and an opportunity to initiate disciplinary proceedings if these timeframes are exceeded, in the meaning of the ECHR, this alone cannot suffice to constitute an effective remedy.

310 Rights Georgia, Monitoring of the Activities of the Independent Inspector and the High Council of Georgia in the Process of Disciplinary Proceedings, 2021, [Available at: https://bit.ly/3gs7xGB; Accessed on: 24.02.2021].

311 Woman, a representative of a Non-Governmental Organization, focus group with a professional group, 6 October 2020.

312 Man, a representative of the Bar Association, focus group with a professional group, 18 November 2020.

313 Rights Georgia, Monitoring of the Activities of the Independent Inspector and the High Council of Georgia in the Process of Disciplinary Proceedings, 2021, [Available at: https://bit.ly/3gs7xGB; Accessed on: 24.02.2021].

Notably, the solutions that require increased budgetary expenditure (e.g., increasing the number of judges) are not the only avenue to prevent delays in judicial proceedings. Along with the discussed effective management measures of the current number of judges, the legislative branch also needs to enhance the regulatory base to manage the delays that are caused by procedural regulatory faults.[314] An example of this is the amendments to Civil and Administrative Procedure Codes, and the Organic Law of Georgia on Common Courts with the purpose of reducing the case flow. The amendments increased the number of cases to be reviewed by magistrate judges in the first instance. The amendments also introduced the rules of hearing property law disputes before the Appellate Court and the possibility for the disputes in civil/administrative chambers to be heard by a single judge.

The amendments also increased the number of administrative cases that can be heard on a single-judge basis in the appellate courts. Consequently, in 2017 the rate of the cases heard in Tbilisi Appellate Court by a single judge was 49.2%, in 2018 the same rate amounted to 68.7%.[315]

The participants of the professional focus group also argued that often „law is also responsible for the delayed cases, especially in non-custodial cases in criminal law which, of course, does not seem fair."[316] As mentioned, a judge should strive to prevent parties from delaying proceedings. The professional groups suggested that this requires legislative amendments that empowers judges with increased authority in case management.[317]

While summarizing the issues identified in the course of the discussion with the professional focus groups, the participants indicated that in a broad perspective, delays in judicial proceedings are closely connected to the general situation in the judicial system. Namely, to the manner of management of the judicial system at large, selection/appointment of judges, and application of disciplinary measures to them. Considering this, the participants emphasized the critical need for a complex approach to these issues.

314 Martin Kuijer, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Human Rights Law Review 13:4, Oxford University Press, 2013, p. 793.

315 In 2017, the Administrative Chamber of the Tbilisi Appellate Court heard 50.8% of the cases in judge panels.

316 A woman, a representative of state legal aid service, focus group with a professional group, 13 October 2020.

317 Jesper Wittrup, Assessment of the need for judges in Georgia, USAID/PROLoG, August 2018, p. 47.

4.6. Challenges in the court litigation process in terms of access to justice

4.6.1. Adversarial process and the issue of justice

The issue of fairness of the court litigation process is directly related to the proper functioning of a model on which a dispute resolution system is based. The Constitution of Georgia states that "legal proceedings shall be conducted on the basis of equality of arms and competition of parties."[318]

It should be noted at the outset that despite a clear emphasis on the principle of adversarial proceedings, it would not be correct to say that the Constitution precludes the introduction of the inquisitorial element into civil, criminal, or administrative proceedings. In Georgia, this is confirmed by the peculiarities of administrative proceedings. The Code of Administrative Procedure, while based on the provisions of the Code of Civil Procedure, which stipulates compliance with adversarial proceedings,[319] also indicates that " a court may take actions on its own initiative."[320]

The Constitutional Court has also clarified the principle of "adversarial proceedings". According to the Court, "the adversarial principle is based on the equal opportunity of the parties to equip themselves with necessary procedural tools and to use them appropriately to present arguments favorable for their positions. At the same time, the main purpose of this principle is to ensure that the right decision is made, and to this end, this principle is based on the ability of both parties to submit their arguments freely."[321] In this sense, the purpose of the Constitutional record on adversarial proceedings is to ensure equal procedural guarantees for the parties to the proceedings.

Closely related to the adversarial proceedings is the notion of "equality", which, according to the Constitutional Court, means "the granting of equal reasonable opportunities to the parties to proceedings to obtain and present evidence. Equality between the parties is relative and aims to ensure a fair balance between the parties."[322]

318 Constitution of Georgia, Article 62, Paragraph 5.

319 Civil Procedure Code of Georgia, Article 4.

320 Administrative Procedure Code of Georgia, Article 4.

321 Decision of the Constitutional Court in the case (№1 / 8/594) "Citizen of Georgia Khatuna Shubitidze v. Parliament of Georgia," II – Declaration, Paragraph 28, 2016, [Available at: https://bit.ly/3lKqncE; Accessed on: 24.03.2021].

322 Decision of the Constitutional Court in the case (№1 / 1 / 650,699) "Citizens of Georgia – Nadia Khurtsidze and Dimitri Lomidze v. Parliament of Georgia", II – Declaration, paragraph 9, 2017, [Available at: https://bit.ly/3rhLRPp; Accessed on: 24.03.2021].

Accordingly, the purpose of the adversarial process is to obtain a fair outcome of the case by achieving procedural equality of the parties. Moreover, it is recognized that the foundation of a fair adversarial process is the provision of a legal representation to the parties. On the example of criminal justice, this principle is well expressed in the following phrase: "the very premise of the adversarial system is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free."[323]

Achieving equal representation for the parties is no less important in the civil and administrative process. This issue was discussed at the focus group meeting of citizens. For example, in the Tbilisi civil/administrative case group, some participants focused on the legal knowledge of a person, involved in the court case, and the qualification of their lawyer. According to them, the powerful people hire highly qualified lawyers who turn the cases to their advantage, equipped with their knowledge and experience. These participants believe that the professionalism of the lawyer and the client's understanding of the case is more important than any other influence.

The principles of adversarial proceedings and equality between the parties are crucial to the concept of access to justice. At the same time, the concept of accessibility and a holistic approach to the issue offer broader perspectives that, in addition to equal representation and safeguards, involve a comprehensive understanding of the role, rights, and opportunities of other actors – judges, victims, and witnesses. The goal of a holistic approach is to establish a "social defense model of justice" in which the judges, prosecutors, and defense counsel work collaboratively to achieve the social purpose of justice, not to administer punishment.[324] In this context, a primary goal is not to prosecute and punish. Rather, it is to "interrupt the revolving door of arrest, detention, release, and re-arrest."[325]

The broad content of access to justice is well expressed by the Constitutional Court, which states in its reasoning: "The right of access to justice is the most important constitutional guarantee for the protection of the rights and freedoms of an individual, the rule of law and the separation of powers. It is an instrumental right that, on the one hand, is the means of protecting other rights and interests, and, on the other hand, is an essential part of the architecture of balance between the branches of government. Access to jus-

323 Robert P. Mosteller, Failures of the American Adversarial System to Protect the Innocent and Conceptual Advantages in the Inquisitorial Design for Investigative Fairness, North Carolina Journal of International Law and Commercial Regulation, Vol. 36, No. 2, 2011, p. 326, [Available at: https://bit.ly/3vS45ui; Accessed on: 24.01.2021].

324 Albert Currie, Riding the Third Wave: Rethinking Criminal Legal Aid within an Access to Justice Framework, The Evolution of Access to Justice, [Available at: https://bit.ly/3faVZHh; Accessed on: 24.03.2021].

325 ibid.

tice for individuals is the means of initiating the exercise of judicial power and, therefore, in this respect, its constitutional weight is closely linked to an effective exercise of judicial powers in general. [...] The exercise of this right is linked to the principle of the rule of law and significantly determines its essence."[326]

Consequently, reducing the access to justice to the issue of provision of legal aid is unjustified. Providing procedural representation alone, without taking into account other socio-economic and institutional challenges, cannot be the guarantee of a fair trial. When discussing the idea of access to justice, the agenda should include, on the one hand, the reform of the judiciary, the prosecutor's office, the police, the penitentiary system, and other entities,[327] and, on the other hand, social variables that have historically influenced the access to justice of individuals or groups. Such social variables could be class, race, disability, gender, sexual orientation, etc.[328]

Thus, the issue of fairness and equality, at a fundamental level, must be assessed precisely in terms of what kind of systems, safeguards, and procedural regulations the process and an established practice offer. In this case, the focus will be on several important issues that are essentially related to the problem of access to justice in the context of equality of arms and adversarial proceedings. Naturally, due to the specific focus and objectives of this research, the present document cannot claim to identify and analyze all the procedural problems.

4.6.1.1. Defense and Witnesses

The protection of the rights of the accused is a central issue in criminal justice proceedings. The justice system should ensure that the defense side has access to the mechanisms and measures necessary to make a significant contribution to the pursuit of justice and to fully protect the rights of the accused. The issue is especially relevant in the context of the adversarial process, where the right to defense and equality between the parties is a foundation of a well-functioning system. The importance of the right to defense is also explained by the Constitutional Court of Georgia, in the following statement: "The essence of the right to defense is that a person against whom certain procedural measures are taken, should have the opportunity to influence the relevant procedure and its

326 Decision of the Constitutional Court in the case (N1 / 3 / 421,422) "Citizens of Georgia Giorgi Kipiani and Avtandil Ungiadze v. Parliament of Georgia", II, paragraph 1, 2009, [Available at: https://bit.ly/2Qph8TF; Accessed on: 24.03.2021].

327 Access to Justice, Practice Note, UNDP, 2004, p. 15, [Available at: https://bit.ly/2PpQr0Q; Accessed: 24.03.2021].

328 What is Access to Justice? Five Different Ways of Considering Access to Justice, [Available at: https://bit.ly/3fc5170; Accessed on: 24.03.2021].

outcome."[329] Moreover, this logic is not limited to criminal justice and applies to civil and administrative proceedings as well.[330] The Constitutional Court emphasizes the importance of the actual, practical application of the right to defense. In particular, aligned with the position of the European Court of Human Rights, the Constitutional Court notes that "the Convention is intended to ensure not theoretical or illusory rights, but their practical and effective implementation. This is especially true in relation to the right to defense, which holds a special place in a democratic society, as well as the right to a fair trial from which it derives."[331]

In terms of proper protection of the interests of the accused, several problematic aspects can be identified in Georgia. One of the important problems is related to explaining their rights to the accused. To achieve equality between the parties, the accused must have full information about their rights. It is important that "a person is aware of his/her right to representation [...] when he/she is unable to bear the cost; And that the person testifying understands that he/she has the right not to testify against himself/herself."[332] There are often cases when a failure to provide relevant information about their rights to the accused puts the defense in an unequal position during the proceedings.[333] Full understanding of their rights by the accused is especially important when it comes to providing information about the right to remain silent and the right not to testify against oneself.[334] The provision of information about the rights and obligations relevant to their status is no less important for the victims and witnesses.

It should also be noted that often the police draw up the protocol of arrest at the police station even though they had the opportunity to fill in the protocol on the spot.[335] Consequently, the process of informing the detainee of their rights is delayed.[336] In addition, there are cases where the investigator misleads the detainee and questions them as a witness not only when there is sufficient evidence to charge them, but also when the per-

329 Decision of the Constitutional Court of Georgia (N1 / 2 / 503,513) in the case "Citizens of Georgia – Levan Izoria and Davit-Mikheili Shubladze v. Parliament of Georgia", II, paragraph 55, 2013, [Available at: https://bit.ly/3d0Ezuc; Accessed on: 24.03.2021].

330 Ibid., paragraph 56.

331 Decision of the Constitutional Court of Georgia (N1 / 8/594) in the case "Citizen of Georgia Khatuna Shubitidze v. Parliament of Georgia," II, Paragraph 39, 2016, [Available: https://bit.ly/3vWHuN1; Accessed: 24.03.2021].

332 OSCE, Office of Democratic Institutions and Human Rights, Trial Monitoring Report Georgia, 2014, p. 91-92, [Available at: https://bit.ly/3tPnryj; Accessed: 24.03.2021].

333 Ibid., p. 10.

334 Ibid., p. 92.

335 Besarion Bokhashvili, Giorgi Mshvenieradze and others, The Procedural Rights of Suspects in Georgia, 2016, p. 54, [Available at: https://bit.ly/31dPPhl; Accessed: 24.03.2021].

336 Ibid.

son admits guilt and the evidence corroborates their statement.[337] Investigators often try to get as much information as possible from the detainee, even if it means, either directly or indirectly, potentially blaming them.[338] The detainee, out of nervousness and the lack of knowledge of their rights, often refrains from exercising their right to a lawyer, even though they have been explained about their rights in writing.[339]

Explaining the rights and the adequate use of other procedural guarantees for the detainee is also a challenge in the case of administrative offenses. This issue became evident during the events of June 20-21, 2019. Detainees were often not informed of the grounds of their detention, their rights and, in some cases, were denied access to medical care and the right to make a call.[340] In addition, the detainees were restricted from having proper communication with their lawyers. In particular, "the detainees were housed in special courtrooms before the hearing (in some cases they were under the police surveillance in the courtyard) and the lawyers were able to communicate with them for a first time only a few minutes before the hearing."[341] Such practices caused significant damage to the detainee's right to defense. Moreover, these and other problems are common to cases of administrative offenses in general.[342] Therefore, such approaches by law enforcement officials cannot be considered as isolated incidents. The vicious processes of administrative detention, which put the defense in a clearly unequal position and carry the high risk of procedural rights violations, point to the flawed nature of the administrative legislation and the established practice, as a whole.[343]

The opportunity for the accused to attend the trial is their right and the interest is worthy of protection. This right is recognized by the Code of Criminal Procedure.[344] It should be noted, however, that the Code of Criminal Procedure does not specify the procedure or criteria needed to determine the defendant's intentional evasion of the court or the justification for their absence.[345] Before the trial takes place *in absentia* the Code of Criminal Procedure does not require the court's determination that the defendant's summoning

337 Ibid., p. 59.

338 Ibid.

339 Ibid., p. 55.

340 Georgian Young Lawyers Association (GYLA), Behind the Lost Eye – Legal Assessment of June 20-21 events, 2019, pp. 76-78, [Available at: https://bit.ly/3fb0dOY; Accessed on: 24.03.2021].

341 Ibid., p. 83.

342 Administrative law violates fundamental rights; [Available at: https://bit.ly/3skETdE; Accessed on: 24.03.2021].

343 Ibid., p. 79.

344 Article 38(14) of the Criminal Procedure Code of Georgia: "The accused has the right to: participate in the investigation of his/her case, as well as in the court hearing, directly or remotely, using technical means."

345 OSCE, Office of Democratic Institutions and Human Rights, Trial Monitoring Report Georgia, 2014, p. 98.

was correct and that the latter explicitly refused to appear in court.[346] Thus, the issue of principle importance that "no one can be tried before the summons procedure is conducted ... unless it is established that the person intentionally evaded justice ..." may be violated.[347]

In Georgia, the challenge is to provide sufficient time to defend the accused. There are cases where the court does not give the accused or the defense attorney enough time to prepare for the case. Under the Council of Europe and EU law, the accused or the person suspected of a crime should have access to adequate time and resources to prepare for their defense.[348] The issue is particularly problematic when the defense does not have adequate time to prepare for the cross-examination of a prosecution witness,[349] as the latter mechanism plays a central role in establishing the truth in the adversarial process. The main purpose of cross-examination is to discover and disprove unfounded, fabricated testimonies so that the decision on evidence can be made as a result of an in-depth examination of its accuracy and credibility.[350]

The court has the function of administering the case, therefore, it bears the burden of solving the above-mentioned problem. It is the prerogative of the parties to determine the order in which evidence is disclosed, as well as the timing and sequence of the appearance of witnesses, but this should not prevent judges from obliging the prosecution to disclose this information before the trial.[351] This will give the defense enough time and conditions to prepare the case. The Code of Criminal Procedure indicates that the parties are obliged to exchange evidence at any stage of the proceedings, upon request.[352] The exchange of evidence is also mandatory 5 days prior to a pre-trial hearing. [353] Nevertheless, there is no clear obligation to preliminarily disclose evidence and information about the timing and sequence of witness summoning. Logically, the court should already have the capacity to exercise this function based on a systematic interpretation of the Code, although clearer legislative safeguards are needed to be introduced.

346 Ibid.

347 Ibid.

348 European Union Agency for Fundamental Rights and Council of Europe, Handbook of European Law on Access to Justice, translated by Lasha Lursmanashvili, Tbilisi, 2018, p. 123.

349 OSCE, Office of Democratic Institutions and Human Rights, Trial Monitoring Report Georgia, 2014, p. 96.

350 Tornike Gerliani, For the Critique of Adversarial Criminal Procedure: Barriers to the Truth-seeking, EMC, 2019, p.6, [Available at: https://bit.ly/3w3CEOr; Accessed on: 24.03.2021].

351 OSCE, Office of Democratic Institutions and Human Rights, Trial Monitoring Report Georgia, 2014, p. 96.

352 Criminal Procedure Code of Georgia, Article 83(1).

353 Ibid., Article 83(6).

Another important issue that hinders the smooth functioning of the process and the achievement of a fair outcome is inadequate safeguards in relation to establishing the credibility of the evidence. The Code of Criminal Procedure does not specify sufficiently clear rules concerning the evidence, in particular, what types of information can be used in the cross-examination of a witness and in what manner that information should be used.[354] At the same time, there is no procedure to determine how to assess the credibility of the witness or to clarify what is considered admissible evidence in this regard.[355]

There are several other important problems concerning the issue of evidence. Firstly, the notion of evidence itself is ambiguous, which makes it possible to consider some procedural documents as pieces of evidence (e.g., court order on a search, an arrest warrant, or an indictment).[356] Due to the ambiguity of the norm, the case law on the inadmissibility of these procedural documents is also contradictory.[357]

The rule from requesting information from a computer or computer system is also problematic. Before 2017, the Code of Criminal Procedure only empowered the prosecution side to submit a motion to the court to obtain this type of information. By the decision of the Constitutional Court, a normative content of the relevant article was declared invalid, which exclude the possibility for a defense party to apply to the court with a request for information or a document stored in a computer system or computer data carrier.[358] Despite the importance of the decision of the Constitutional Court, it should be noted that these types of investigative actions are carried out in accordance with an established procedure for conducting covert investigative actions, which violates the adversarial approach and the principle of equality of arms in favor of the prosecution.[359]

In addition to the above, the inability to file a motion for inadmissibility of manifestly irrelevant evidence is also problematic;[360] There are restrictions on filing a motion for inadmissibility of the evidence at a substantive hearing;[361] as well as the inability of a party to appeal the ruling on the inadmissibility of evidence at the pre-trial hearing.[362]

354 OSCE, Office of Democratic Institutions and Human Rights, Trial Monitoring Report Georgia, 2014, p. 11.

355 Ibid, 11.

356 Davit Kvachantiradze, Ketevan Chomakhashvili et al., Strengthening the Principles of Equality and Competitiveness in the Process of Obtaining, Presenting and Examining Evidence, 2018, p. 6, [Available at: https://bit.ly/31boGvB; Accessed on: 24.03.2021].

357 Ibid.

358 Criminal Procedure Code of Georgia, Article 136.

359 Davit Kvachantiradze, Ketevan Chomakhashvili et al., Strengthening the Principles of Equality and Competitiveness in the Process of Obtaining, Presenting and Examining Evidence, 2018, p. 10

360 Ibid., p. 22.

361 Ibid., p. 24.

362 Ibid., p. 25.

Proper regulation of the admissibility of circumstantial evidence is of great importance for ensuring the equality of arms and adversarial principle, as well as for establishing the truth in the case. A central role in this regard was taken by the Constitutional Court decision of 22 January 2015, which declared a normative content of the relevant article of the Criminal Procedure Code, which allowed a person to be convicted based on an indirect (circumstantial) testimony, unconstitutional.[363] According to the Constitutional Court, "Indirect testimony is generally a less credible evidence, its use carries the risk of creating a misconception about a person's guilt and, therefore, may be allowed only in exceptional cases, provided that clear rules and proper constitutional guarantees are in place."[364]

The admission and the use of indirect testimony are possible at two stages under the Code of Criminal Procedure. At the pre-trial hearing, where the person must indicate the source of the information,[365] and secondly, at a substantive hearing, where it must be corroborated by other evidence that is not indirect testimony.[366] The Code of Criminal Procedure does not set out the criteria and procedure under which the rule of admissibility and the use of indirect testimony in the conduct of various proceedings would be foreseeable. For example, it is unclear whether all factual circumstances must be individually corroborated by other evidence or the affirmation of the general content of the testimony is sufficient to consider it admissible; the matter is decided independently by a judge, or the motion of a party is required; It is also unclear what happens when only part of the facts given in an indirect testimony are corroborated by other evidence, etc.[367]

Regarding the above-mentioned unclear regulations, no changes have been made in the legislation, although the decision of the Constitutional Court clearly determined the need for amendments. In particular, as noted, according to the Constitutional Court, the use of indirect testimony when a person is found guilty or convicted should be allowed only in exceptional cases. In the current situation, when no amendments have been made in the legislation, the use of indirect testimony is not allowed at all, either when the prosecution draws up an indictment or when the court issues a guilty verdict.[368] Also noteworthy in this regard is the 2020 decision of the Constitutional Court in the case of Giorgi Keburia v. Parliament of Georgia. The court declared unconstitutional the norms of

363 Irine Urushadze, Indirect Testimony as Evidence in Criminal Proceedings – Reasearch on Common Courts, 2015, p. 10, [Available at: https://bit.ly/3vUitlQ; Accessed on: 24.03.2021].

364 Decision №1/1/548 of Constitutional Court in the case "Citizen of Georgia Zurab Mikadze v. Parliament of Georgia," II, para 52, 2015, [Available at: https://bit.ly/3lK7cjn; Accessed on: 24.03.2021].

365 Criminal Procedure Code of Georgia, Article 76, Part 2.

366 Ibid., Part 3.

367 Guram Imnadze, Rule of Using Indirect Testimony (Comparative-Legal Analysis), 2015, p. 23, [Available at: https://bit.ly/36WIEho; Accessed on: 24.03.2021]

368 Ibid., p. 27.

the Criminal Code, which allowed the imposition of a guilty verdict only based on the evidence obtained through operative information.[369] According to the court, "the testimony of a police officer who substantially relies on and repeats operative information provided to them by the informant/confidant cannot be the basis for a guilty verdict. Such testimony of a law enforcer is, by its very nature, circumstantial evidence, characterized by lower credibility and a lower degree of accuracy."[370]

In addition to the above, an important problem in Georgia is the issue of assessing the legality of detention and the search-and-seizure methods. According to the judges, they review the lawfulness of the detention and assess its grounds before the court hearing.[371] However, this issue is not discussed openly, and the judges rely solely on the position of the prosecution as explained in the detention protocol.[372] It is noteworthy that in most cases the lawfulness of the detention is not checked at the court hearing.[373] The legality of detention is usually assessed by the court if it is requested so by the defense counsel,[374] however, even in such cases there are instances when the court assesses the issue only formally.[375]

Similarly, to assessing the lawfulness of detention, the established practices of assessing the lawfulness of search-and-seizures are problematic. The approaches in this case are also merely formalistic and in most cases do not contain any argumentation about factual information used as a basis for investigative actions.[376] In cases where the judges do not grant the prosecutor's motions to legalize an investigative action conducted without the court's permission, the reason is usually procedural irregularities (exceeding the deadline for submitting the motion to the court) and not substantive deficiencies of the measure.[377] It is important to note that substantially new standards were set for determining the lawfulness and admissibility of search operations in the case of Giorgi Keburia v. Parliament of Georgia. In particular, the Constitutional Court ruled that:

369 The Constitutional Court partially upheld EMC's constitutional claim [Available at: https://bit.ly/397g8Ks; Accessed on: 24.03.2021].

370 Ibid.

371 Tamar Bochorishvili and Fatima Chapichadze, Criminal Procedure Monitoring Report # 14 (in the courts of Tbilisi, Kutaisi, Batumi, Gori, Rustavi and Telavi), Georgian Young Lawyers Association, 2020, p. 41, [Available at: https://bit.ly/3de8aSB; Accessed on: 24.03.2021].

372 Ibid.

373 According to the monitoring results of the Georgian Young Lawyers' Association for 2019-2020, in 448 out of 518 cases (86%), the legality of the detention was not checked at the court hearing, Ibid.

374 Ibid.

375 Ibid.

376 Ibid., pp. 49-50.

377 Tamar Bochorishvili and Fatima Chapichadze, Criminal Procedure Monitoring Report #14, 2020, p. 50.

- "The process of conducting the search and the obtained evidence must be corroborated by neutral evidence, be it a video recording of the search, a testimony of a neutral person, present at the investigative proceedings, or other objective evidence. In other cases, the evidence obtained on the basis of operative information should not be admitted in a criminal case;"
- "Even if the law enforcement officers seize an illegal item, this fact alone should not be a ground for legalizing a search conducted without a court order. The Constitutional Court emphasized that the outcome of the search is not relevant in assessing the merits of the search conducted in case of urgency."[378]

4.6.1.2. Victim rights

Protecting the rights and interests of a victim, as well as seeing the role of the victim as an important component of the criminal process, is an essential part of a fair justice system. Moreover, as the victim has a natural interest in achieving justice, this interest is also a public good.

Access to justice for victims includes access to effective remedies, participation in court proceedings, being treated with respect and dignity, the right to defense, compensation, assistance, as well as legal and psychological support.[379] The role of the victim in the criminal process was well demonstrated by the Constitutional Court of Georgia: "The victim is naturally more in his/her interest than just a witness, which, in itself, requires his/her proper and sufficient involvement in the process. The victim must be informed of the progress of the case at all stages; have the opportunity to appeal against the decision of refusal concerning the recognition of victim status and or the initiation of the prosecution, as well as the prosecutor's decision to terminate the prosecution/ investigation in all categories of crimes; Be allowed to obtain the copies of criminal case files if this is not against the interests of the investigation; Be allowed to attend the court proceedings and submit statements, opinions, evidence. The victim of a crime usually has a desire and aspiration to have their story heard, considered, and taken into account in the criminal process. The victim should feel satisfied as they are the most direct, immediate object of the crime. "[380]

378 The Constitutional Court partially upheld EMC's constitutional claim [Available at: https://bit.ly/397g8Ks; Accessed on: 24.03.2021].

379 The OSCE Office for Democratic Institutions and Human Rights, Trial Monitoring Report Georgia, 2014, p. 143.

380 Decision of the Constitutional Court of Georgia (№1 / 8/594) in the case "Citizen of Georgia Khatuna Shubitidze v. Parliament of Georgia", II, Paragraph 52.

In general, there are certain procedural guarantees for the victims in Georgia. At the same time, concerning the rights of the victim, the most often-mentioned shortcomings are granting the victim status and limiting the opportunities to access the case materials. With regard to the former, the legislation allows for the provision of arbitrary explanations, which in practice, is used by the prosecutors to refuse the granting of a status of the victim, without a proper justification. Because of this, the reason for the denial of a victim's status remains unclear to the victim.[381] In the second case, the provision in the Code of Criminal Procedure is vague, which allows prosecutors to deny the victim access to case files on the grounds of the "investigation interests".[382] Such a general and abstract legal provision often becomes the basis for the disregard of the victim's natural interest and rights.[383]

Regarding the rights of the victim, the focus groups revealed that there is a problem with the protection of personal information, specifically in relation to the LGBTQ community, which leads to revictimization and its dire consequences.

> *The LGBT community has two major problems in terms of access to justice, these are 'coming out'/re-victimization, and illegal processing of personal data, which is more about the law enforcement agency and less about the court system because the court decisions are public. Once we requested that a case concerning "forced coming out" be heard at a closed court hearing because the plaintiff was threatened with forced coming out and they and their family members might have been harmed. We justified our request, we relied on the practice of the European Court, however, the court refused to conduct the process in a closed session. And we have had cases, at other times, that the hearing was closed for the same reason and on the same grounds. In other words, there is no uniform practice on this, and, in that regard, we also want the Law on Common Courts to be a little more clear."*[384]

The above reasoning suggests that there are certain problems in Georgia in terms of access to justice for the victims, both in terms of legislation and practice. There must be appropriate guarantees and a clearer legislative regulation of the rights of the victim in the above-mentioned areas.

381 EMC appeals arbitrary practice of granting victim status to the Constitutional Court, [Available at: https://bit.ly/3cXKDng; Accessed on: 24.03.2021].

382 Criminal Procedure Code of Georgia, Article 57, para 1, subparagraph "h".

383 EMC appeals arbitrary practice of granting victim status at the Constitutional Court [Available at: https://bit.ly/3cXKDng; Accessed on: 24.03.2021].

384 Woman, NGO representative, focus group with professionals, October 6, 2020.

4.6.1.3. The role of the judge and the substantiation of court decisions

The adversarial process, due to its very nature and fundamental principles, tends to reduce the role of the judge.[385] According to the Constitutional Court of Georgia, an adversarial criminal process "minimizes a substantive involvement of the court in determining the circumstances of the case."[386] For the adversarial process to achieve its goal (which, according to the Constitutional Court, is to ensure that the right decision is made),[387] the right to quality and affordable defense must be guaranteed in the first place. Nevertheless, it is necessary to see the important role of the judge in the adversarial process in terms of access to justice and a fair trial.

In the context of the adversarial process, the judge does not have a distinctly active role. In this system, judges are responsible for performing specific, arbiter functions.[388] Nevertheless, some judges and lawyers in Georgia believe that to achieve the goal of real competition, the judge needs to be given additional powers.[389] It is believed that the judges understand their function in the adversarial process too formalistically, which diminishes their role, and, in practice, leads to many shortcomings.[390]

Several focus group participants from civil society organizations also highlighted the importance of the role of judges in this regard. In their words, despite the peculiarities of the adversarial process, the importance of the judge in establishing an objective truth as well as in mitigating the power imbalance of the parties should be further emphasized.

> *"Traditionally, we do not adhere to adversarial principles even in civil law. On the contrary, when the court sees that there is a strong party and a weak party, there is a credit institution, a bank, it can justify giving advice to the other side, and there is a very bad trend in criminal law."*[391]

385 Bruno Deffains and Dominique Demougin, The inquisitorial and the adversarial procedure in a criminal court setting, Journal of Institutional and Theoretical Economics (JITE), 2008, p. 5, [Available at: https://bit.ly/3ciOGeK; Accessed on: 24.03.2021].

386 Decision of the Constitutional Court of Georgia (№1 / 4/809) on the case "Citizen of Georgia Titiko Chorgoliani v. Parliament of Georgia", II, Paragraph 6, 2018, [Available at: https://bit.ly/398gb92; Accessed on: 24.03.2021].

387 Ibid., para. 5.

388 EMC, CRRC and IDFI, The Role of the Judge in Criminal Justice, Qualitative Survey Results, 2019, p. 14, [Available at: https://bit.ly/3tQUIsS; Accessed on: 24.03.2021].

389 Ibid., p. 15.

390 Ibid., p. 14-16.

391 Man, NGO representative, focus group with professionals, October 6, 2020.

One of the possible solutions to the above problem is to allow the judge to conduct questioning in certain cases without the consent of the parties.[392] While assigning this type of function does carry risks, with proper legislative regulation in place, in the interest of compensating for institutional and financial disbalances between the parties and establishing the truth, relying on a judge may be a viable alternative. New regulations on the issue should recognize the existing challenges. In particular, there are cases when judges exercise the right to ask questions without the consent of the parties.[393] Under the current legal framework (when it is not clear in which cases a judge can exercise his / her right to ask questions), the practice of using this mechanism intensively may harm the principle of equality of arms and lead to judicial bias. Thus, it is important for the State to understand this issue and elaborate a better legislative regulation.

Another issue where the strengthening of judicial authority may be needed is related to plea bargaining. While a judge may refuse to grant a plea agreement, some lawyers believe that allowing a judge to amend a plea agreement will have a positive effect on both the interests of the accused and the purposes of fair sentencing in general.[394]

An important step forward in terms of fair sentencing would be the possibility for a judge, in some cases, to consider the imposition of sentences below the existing minimum limits (in addition to plea bargaining). According to the judges, they sometimes see some mitigating circumstances (e.g., health, marital status, personal characteristics) and even consider the minimum threshold provided by law to be an excessive punishment.[395] There is an opinion that this approach will also reduce the risk of offering a plea bargain in the pursuit of the prosecution's interests.[396] Also, it is important to note that the assignment of this function to the judge is particularly relevant in the context of the existing harsh sentences.[397]

Strengthening the role of judges by giving them additional powers is important, but it alone will not fully address the challenges of achieving an equal and fair trial unless the standards and established approaches of the courts themselves are substantially transformed. In this sense, the requirement of a reasoned court decision is a key component of access to justice and the right to a fair trial.[398] This issue is also closely related to the right

392 EMC, CRRC and IDFI, The Role of the Judge in Criminal Justice, Qualitative Survey Results, 2019, p. 15.

393 Merab Kartvelishvili, Criminal Trial Monitoring Report №13 (in the courts of Tbilisi, Kutaisi, Batumi, Gori and Telavi), 2019, p. 84, [Available at: https://bit.ly/3cjGbQO; Accessed on: 24.03.2021].

394 EMC, CRRC and IDFI, The Role of a Judge in Criminal Justice, Qualitative Research Results, 2019, p. 17.

395 Ibid., p. 19.

396 Ibid.

397 Ibid, p. 20.

398 European Union Agency for Fundamental Rights and Council of Europe, Handbook of European Law on Access to Justice, translated by Lasha Lursmanashvili, Tbilisi, 2018, p. 65.

to appeal. A reasoned decision is an indicator of the proper consideration of the case, which influences the decision of the parties to file an appropriate and effective appeal.[399] The starting point for the requirement of reasoned decisions is not only to create a sense of legal clarity in resolving the dispute but also to promote social order.[400] In addition to the legal issues, the court decision should focus on non-legalistic concepts and realities relevant to the context of the dispute, such as ethical or socio-economic determinants.[401]

Requiring a reasoned judgment does not entail that the courts are required to give a detailed explanation of each piece of evidence presented.[402] The European Court of Human Rights has made clear key aspects of the reasoned judgment in its decisions in Taxquet v. Belgium (2010), which states: "the national courts must indicate with sufficient clarity the grounds on which they base their decisions ... Reasoned decisions also serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part. Also, they oblige judges to base their reasoning on objective arguments and also preserve the rights of the defense. However, the extent of the duty to give reasons varies according to the nature of the decision and must be determined in the light of the circumstances of the case ... While courts are not obliged to give a detailed answer to every argument raised ..., it must be clear from the decision that the essential issues of the case have been addressed..."[403]

The Consultative Council of European Judges (CCJE) points out that the practice of rendering reasoned decisions is based on several different factors and it does not depend solely on an individual involved.[404] Such preconditions can be divided into internal and external factors. External factors are the quality and the clarity of the legislation;[405] sufficient human and financial resources allocated for the development of the justice system;[406] proper interaction of the various actors involved in the administration of justice (police, prosecution, defense, etc.) and proper understanding of their role;[407] and providing appropriate training and services for the professional or ethical growth for each of

399 Ibid, p. 65-66.

400 Consultative Council of European Judges (CCJE), Opinion no.11 (2008) on the quality of judicial decisions, 2008, §7, p. 3, [Available at: https://bit.ly/3rfAibh; Accessed on: 24.03.2021].

401 Ibid, §22, p. 5.

402 OSCE Office for Democratic Institutions and Human Rights, Trial Monitoring Report Georgia 2014, pp. 115-116.

403 Jeremy McBride, Human Rights and Criminal Procedure, the case law of the European Court of Human Rights, 2nd edition, Council of Europe, 2018, p. 383, [Available at: https://bit.ly/2NNS5Jb; Accessed on: 24.03.2021].

404 Consultative Council of European Judges (CCJE), Opinion no.11 (2008) on the quality of judicial decisions, 2008, §10, p. 3.

405 Ibid, §11, p. 3.

406 Ibid, §14, p. 4.

407 Ibid, §15, p. 4.

these actors.[408] Internal factors include the professionalism of judges; fairness, clarity, and transparency of case proceedings; as well as adherence to the principles of openness and equality when hearing the parties.[409]

It should be noted that this study did not analyze to what degree the court decisions were substantiated, however, this issue has been highlighted by international and local NGOs. The results of court monitoring conducted by the different organizations in different periods show that the practice of inadequate substantiation of decisions by courts at different stages of the process is not uncommon in Georgia.[410]

According to the results of the OSCE 2014 Trial Monitoring Report (which covered a total of 14 cases of former high-ranking officials), three main problems were identified in terms of proper substantiation of judgments: insufficient or inadequate assessment of evidence; lack of adequate legal analysis; and a lack of assessment of factors used to determine the sentence.[411]With regard to the assessment of evidence, judgments in several cases merely re-stated evidence presented at trial but neglected to explain why that evidence was or was not found credible.[412] In one judgment, the conviction was based exclusively on witnesses' statements given at the investigation stage.[413] Courts also often failed to adequately assess and equally consider the parties' arguments in their judgments.[414] In proceedings carried out before judges that result in a conviction the requirement for legal reasoning is stricter, since judgments must indicate with sufficient clarity the grounds on which the conviction is based.[415] As the Constitutional Court of Georgia notes, "It is vital that the legitimate right of the State to prosecute, to administer justice, is not weakened by a standard of evidence that would make an impartial person, the public, suspicious of the conviction of an innocent person. It is also essential that every person in a free society has the belief and legal guarantee that the state will not convict them unless the guilt of the person can be proven with the highest accuracy."[416]

408 Ibid, §16-19, pp. 4-5.

409 Ibid., pp. 5-6.

410 In this regard, the study relies on studies and monitoring reports published by the OSCE, the Human Rights Education and Monitoring Center (EMC) and the Georgian Young Lawyers Association (GYLA).

411 OSCE Office for Democratic Institutions and Human Rights, Trial Monitoring Report Georgia 2014, p. 86.

412 Ibid., p. 87.

413 Ibid., p. 88.

414 Ibid., p. 89.

415 Ibid., p. 85.

416 Judgment of the Constitutional Court of Georgia 221/1/548 of January 22, 2015 in the case "Citizen of Georgia Zurab Mikadze v. Parliament of Georgia" II-41-43.

As for the remaining two problems, according to the report, judgments frequently did not include an explanation of the elements of the crime, or how the facts established proved each element beyond a reasonable doubt. In addition, judges often neglected to sufficiently justify decisions, instead simply reciting the principles of sentencing.[417] Another research on drug crimes also points to this problem, stating that "one of the main challenges of the case law in 2017 was the essential difference in the quality of justice in high-profile criminal cases and other (ordinary) cases. This was reflected in the quality of the reasoned judgments, the conflicting approaches of the court in assessing the evidence, the standard used by the court in identifying problematic issues, in the critical evaluation process, and in resolving the case."[418]

Organizations also talk about the existence of similar problems when evaluating different types of criminal cases. A clear example of this is crimes motivated by social hardship,[419] in which case the basis for applying a specific measure of restraint and sentence is often not substantiated. This issue, in addition to being critically important in terms of fairness (because a necessary component of a reasoned decision is that the sentence be proportionate to the person and the gravity of the offense, and judges should properly justify the type and severity of the sentence),[420] also clearly demonstrates the social dimension of access to justice. Access to justice, inter alia, should entail the creation of a system and practice that recognizes the challenges faced by the vulnerable and disadvantaged sections of the population and will not further worsen their social well-being.

In this regard, several monitoring reports conducted in recent years in common courts confirm that judges pay too little attention to the person's social status, the gravity of the offense, motive, and determinants of the crime when deciding on a measure of restraint and punishment. According to a report by the Georgian Young Lawyers' Association (which included 25 defendants at the first hearing during the reporting period),[421] in cases where a motivating factor for action was a hardship, in all cases the court rendered bail or detention as a measure of restraint,[422] and the court satisfied all (9) petitions of the prosecutor regarding the use of detention.[423] In addition, according to the same monitoring report, out of 20 hearings on concluding a plea agreement, where it was clear that the act committed by the accused was due to social hardship, in 6 cases the court could

417 OSCE Office for Democratic Institutions and Human Rights, Trial Monitoring Report Georgia 2014, pp. 119-120.

418 Ana Nasrashvili, Drug Policy in Georgia (Suspended Reform and New Trends), Human Rights Education and Monitoring Center (EMC), Tbilisi, 2019, p. 64.

419 See: Merab Kartvelishvili, Criminal Trials Monitoring Report № 13, 2019, pp. 108-112.

420 OSCE Office for Democratic Institutions and Human Rights, Trial Monitoring Report Georgia 2014, p. 120.

421 March 2018 – February 2019.

422 Merab Kartvelishvili, Criminal Trials Monitoring Report № 13, 2019, p. 108.

423 Ibid.

potentially have refused to accept the plea agreement due to the minor nature of the act but failed to do so (on their part, the prosecutor also could have not initiated criminal proceedings for the same actions or offered to apply a diversion mechanism).[424]

Such strict approaches to acts committed because of hardship are, on the one hand, less humane given the minor importance of the crime, and, on the other hand, unjustified and inconsistent with the purpose of ensuring fair sentencing because they do not take into account the factors causing the action and further exacerbate the impact of these factors. Eventually, this may become the impetus for committing a new crime. It is important to note that this trend continued in 2019-2020.[425]

It should be noted that the approaches of judges in the application of plea bargaining in general, in relation to any type of criminal case, deserve criticism. To illustrate, out of 558 cases assessed during 2019-2020, in which plea bargaining was approved, the judge determined in only 48 (9%) cases that the sentence was lawful and fair (in other cases where the agreement was approved, the judge did not consider the lawfulness and fairness).[426] During 2018, this percentage was even lower (2%).[427] These statistics indicate that judges usually unconditionally approve the agreement reached between the accused and the prosecutor and do not try to assess the fairness of the sentence imposed.

The final decisions and preventive measures approved by the courts are also problematic in relation to cases of domestic violence. Whereas the severity of the type of preventive measures used by the courts for crimes committed on the grounds of social hardship is inconsistent with the minor significance of the conduct committed by the person, the opposite tendency is evident in cases of domestic violence. According to court monitoring reports in recent years, the prosecution's approach to requesting a restraining order is usually proportional to the alleged crime, courts sometimes unreasonably impose a lighter restraining order on the accused and do not prioritize the importance of the safety of the victim.[428] In such cases, this approach endangers women victims of domestic violence and leave them vulnerable to further abuse.[429]

424 Ibid., p. 111.

425 Tamar Bochorishvili and Fatima Chapichadze, Criminal Procedure Monitoring Report # 14, 2020, p. 55.

426 Ibid., p. 56.

427 Merab Kartvelishvili, Criminal Trials Monitoring Report № 13, 2019, p. 68

428 Goga Khatiashvili, Domestic Violence, Domestic Crime and Violence Against Women Cases (Monitoring Report of Tbilisi, Kutaisi, Batumi, Gori, and Telavi Courts), 2017, p. 11, [Available at: https://bit.ly/3vYnlpV; Accessed on: 24.03.2021].

429 Ibid.

In most cases of domestic violence and domestic crime, convictions are handed down, however, the practice of imposing lenient sentences in favor of the perpetrator is common.[430] It should be noted that compared to 2016-2017, in 2018-2019 the court approaches in this regard have been relatively stricter.[431] In addition, it is noteworthy that in the case of domestic crimes, the challenge is to identify a discriminatory motive. Judges are asked to consider whether the crime was motivated by gender inequality and views on female gender roles. However, in some cases, neither the prosecution nor the court focuses on such issues,[432] which is crucial for the correct qualification of the crime, the proportionality of the sentence, and the justification of the decision. In some cases, the issue of identifying and addressing discriminatory motives is also problematic in relation to crimes committed against LGBTQ individuals.[433]

It is also important to note that the problem of substantiation of court decisions is acute in the case of administrative sanctions, especially imprisonment. The most visible and large-scale manifestation of this was the trials that took place after the events of June 20-21, 2019, during which "a template protocol of administrative offense and the testimony of police officers were used as sufficient evidence for the administrative detention and conviction of detainees."[434] There were cases when the judge considered the person as an offender only because the person was at the rally during the night hours.[435] In addition, artificial and unsubstantiated joining of cases were problematic during these trials, intending to review the cases speedily rather than to investigate and assess the individual circumstances of the case[436] (it should be noted that cases of administrative liability were considered particularly quickly (within minutes)).[437] It is believed that these and other types of deficiencies are ultimately caused by systemic problems stemming from the Code of Administrative Offenses that underscore the need for its fundamental reform.[438]

430 Ibid, p. 22.

431 Merab Kartvelishvili, Criminal Trials Monitoring Report № 13, 2019, p. 93.

432 Goga Khatiashvili, Cases of Domestic Violence, Domestic Crime and Violence against Women, 2017, p. 32.

433 Ibid, p. 33.

434 The Human Rights Education and Monitoring Center (EMC), one year after the events of June 20-21, 2020, p. 2. [Available at: https://bit.ly/3tQPFJ3; Accessed on: 24.03.2021].

435 Ibid, p. 3.

436 Georgian Young Lawyers Association (GYLA), Beyond the Lost Eye – Legal Assessment of June 20-21, 2019, p. 95.

437 The Human Rights Education and Monitoring Center (EMC), one year after the events of June 20-21, 2020, p. 2.

438 Georgian Young Lawyers Association (GYLA), Beyond the Lost Eye – Legal Assessment of June 20-21, 2019, p. 95.

4.6.2. The problem of awareness in the justice system

Various types of discriminatory practices are often invisible and difficult to identify in the justice system. The reason for this is that such practices usually exist beyond the legal norms and it is difficult to identify them by ordinary legal research. In this regard, it can be said that the insensitive, unequal, and often clearly discriminatory attitudes of the organs involved in the administration of justice (court, police, prosecutor's office) can be identified most clearly through the methods of sociological research. Based on this assumption, the reasoning presented in the following section relies entirely on the personal experiences and observations of the focus group participants, that provide a clear idea of the above-mentioned hidden practices that pose one of the main obstacles to access to justice for different vulnerable groups.

The focus groups revealed that both ordinary citizens and representatives of the legal field speak about the lack of awareness of the representatives of the justice system towards specific groups and point out discriminatory and structural oppression practices.

During group discussions with citizens, questions also concerned the court treatment of the members of ethnic, religious, and sexual minorities. Participants mostly stated that they had never witnessed a fact when the court oppressed a person on the grounds of the above characteristics. Consequently, they find it difficult to assess this issue with confidence. However, some participants still talked about their perceptions. In this regard, they believe that the representatives of the minority and the majority are treated differently by the court or the prosecutor's office. It should be noted that most often contrasting opinions were expressed in a group of participants in Tbilisi with experience in civil/administrative cases. The group pointed out the issue of unequal treatment on religious grounds. Overall, according to the majority of citizen focus group participants, the court is largely tolerant of representatives of these groups and there is generally no discrimination by the court.

However, in the focus groups where ethnic minorities were represented, some issues were assessed more critically. The Samtskhe-Javakheti civil/administrative focus group, when asked about the attitudes of the court/prosecutor's office, expressed the view that a Georgian might be treated more leniently by the court than a representative of an ethnic minority. Moreover, it was noted that, compared to the court, the police are even more permissive towards Georgians and then towards Armenians. One of the respondents gave an example to prove this and said: "if a Georgian violates the traffic rules, the police may turn a blind eye to it, but if an Armenian violates the rules, the police will surely respond."

It should be noted that in the focus groups composed of ethnic minorities, the treatment of religious or sexual minorities was not discussed. In their words, they do not have sufficient information and therefore cannot talk about these issues. However, they expressed concern about another issue. According to some of the participants in the Kvemo Kartli criminal case group, prosecutors and police officers treat the proven offender and the person allegedly involved in the crime equally harshly, which in their opinion is wrong. Respondents say that such wrongdoings of the prosecutors are mitigated by the judges, who "do not allow anyone to be falsely charged."

> *"Let's say one person is arrested and you know he committed the crime. He has done similar things before. The police will treat him as he deserves. He has indeed committed a crime. And there is another decent, polite, calm person who is just suspected of a criminal offense and the police treat him like a criminal or they do not know how to deal with him. They want to humiliate and insult him. And the person cannot let this happen."*[439]

The intolerance of the prosecutor's office and the police were also discussed in the group of citizens with criminal law experience in Tbilisi, only in relation to sexual minorities. Respondents noted that unequal treatment by police officers is more prevalent when it comes to sexual minorities. According to the participants, the prosecutor's office also has a negative attitude towards them and this is noticeable.

The issue of discriminatory treatment of sexual minorities was also raised in the focus group discussion of NGO representatives. In particular, the conversation focused on the issue of revictimization by both the prosecutors and the judges. Participants expressed more or less different opinions, however they agreed that in general, there are still negative practices.

> *"What I can say, and there is no improvement, here is the revictimization of the victims themselves, victims of homophobic, transphobic crimes, by prosecutors, judges, defendants' lawyers, and that will never change."*[440]

439 Man, focus group of participants with experience in criminal law cases, Kvemo Kartli, September 29, 2020.

440 Woman, NGO Representative, focus group with professionals, October 6, 2020.

"From my experience, I have observed some positive changes, when dealing with a case of homophobic violence against a representative of the LGBT community. I mean, the judge's attitude was different as compared to the previous practices. Judges tried to determine the case more fairly and to treat LGBT persons differently than before. They were more sensitive to the issue, so we have a more positive attitude here, but we still have many problems."[441]

Participants in the Tbilisi civil/administrative group discussed how the police treat women. In particular, women victims of domestic violence highlighted the indifference of the police. In their words, the attitude of the police towards women victims of domestic violence is callous and superficial. In their opinion, sometimes police officers themselves sexually harass women who turn to them for help, which is reflected in their conversations and the way they look at women. In addition, one of the NGO focus group participants pointed out the sexist attitudes of the judges.

"The police have zero reaction and talk to you ironically and the worst is that as a woman, when you go to the police, and I am speaking from my personal experience, they look at what you are wearing, what you look like, whether you are ugly or you are beautiful. Instead of doing something, they were looking at my visual, what I was like and then I heard them saying "did you see what she looked like", because I was beaten up when I was taken to the police, they saw me and said, "Wow, what a beautiful girl you turned out to be and we could not see it before". Instead of doing something, they look at what you look like. They say, 'she re-married', and because she got married the second time, this means she has some problems and we will treat her with disrespect. Because I started a family for the second time, they have a right to be skeptical about me and to disrespect me."[442]

"I was at the police station, some time ago. Two policemen were sitting at the computer and I was waiting, I was sitting with my back facing them, I had to write a statement. One of them was watching me and told the other (I have to say I was not wearing anything provocative, I was just wearing a normal summer dress) – "she is good, you know". I turned around and looked at them. Then I could not stand it and continued waiting in the yard for the document I needed."[443]

441 Man, NGO Representative, focus group with professionals, October 6, 2020.

442 Woman, focus group of participants with experience in criminal law cases, Tbilisi, September 10, 2020.

443 Woman, focus group of participants with experience in criminal law cases, Tbilisi, September 10, 2020.

"On women, it is very important and problematic. I have even heard of sexist attitudes from judges in cases of violence from an intimate partner, even during the trainings they attend. For example, we have cases where a victim had a lover and the judge cannot understand that because he is also a part of our society. That is, he cannot get away from sexism, which is his daily life because he is part of our society. That is why when we are talking about a solution, we do not mean changing the system separately, without raising awareness."[444]

The majority of the Legal Aid Service focus group participants believe that State structures are more or less tolerant and sensitive to the needs of the different vulnerable groups. According to them, in practice, discriminatory approaches towards these groups are not common. However, one participant pointed out that LGBTQ persons, as a group, are at high risk of being discriminated against by State structures. According to other participants, discriminatory practices against vulnerable groups may be less visible due to the reluctance to talk about these problems. This reluctance may be explained by many structural factors.

"These people are reluctant to talk about their problems openly in the society, in the family, and they shy away from addressing the different structural units on these grounds. If someone says they are a representative of some ethnic group and that they are oppressed because of this, they are reluctant to raise their concerns. If they belong to another religion and are oppressed because of it [...] or on the basis of their gender, or sexuality, or any other characteristic. We avoid promoting and exposing this, otherwise, there would probably be more of such cases."[445]

Focus group representatives from the Bar Association spoke about the issue based on their own experience. Some said that they had not witnessed examples of discriminatory or insensitive treatment of any group in their legal practice. Several participants recalled examples of racial/ethnic discrimination and gender-based discrimination by the courts. No other opinions were expressed in this regard.

The above reasoning allows us to conclude that the attitudes of the bodies involved in the administration of justice towards different groups require complex analysis. As the

444 Woman, NGO Representative, focus group with professionals, October 6, 2020.

445 Man, State Legal Aid Service representative, focus group with professionals, October 13, 2020.

focus groups discussions have demonstrated, unequal treatment and discriminatory, often degrading, practices are not uncommon in this system. Naturally, it is difficult to determine the exact scale of the problem through qualitative research such as the present document, although it at least confirms the existence of the problem and makes it possible to identify the forms of its manifestation.

As the experiences and observations of many focus group participants have shown, legislative regulations are not enough. It is necessary to change the behavior and attitudes of government officials towards those persons who, due to structural reasons, are already largely excluded from the full use of a justice system. These observations once again highlight two major problems. On the one hand, the State must have a unified and long-term policy on access to justice that is inclusive enough to meet the specific needs and challenges of different vulnerable groups. On the other hand, the observations of focus group participants also indicate that insensitive and discriminatory practices of the State bodies should be considered as a fall-out of a general social policy, and not as a separate, detached issue, because many of these practices exist independently of legislative and institutional arrangements.

4.7. independence, impartiality, competence and integrity of Judges

The judiciary, in terms of the realization of the principle of separation of powers, is the cornerstone of the functioning of a modern democratic state, the main purpose of which is to ensure real and effective constitutional-legal mechanisms of restraint and balance between the branches.[446] In addition to ensuring a proper balance of power at the institutional level, the judiciary is also the main branch of government that should protect the right to a fair trial. It is the judiciary and the proper realization of its functions that ensure the implementation of an individual's material rights in practice.[447] Consequently, one of the central issues in access to justice is the proper functioning of the judiciary.

The independence, impartiality, competence, and integrityof the judiciary are essential to ensure proper protection of individual rights from excessive power and to safeguard the existence of a free society. Such a court is independent of the improper influence of

446 Eka Mamrikishvili, Appointment of Supreme Court Judges and the Judiciary Legitimacy Problems, Collection of Articles on Justice, EMC, 2020, p. 60, (Available at: https://bit.ly/3swxKGS; Accessed on: 01.03.2021).

447 Nika Arevadze, When competence is not a necessary qualification: Staffing of the Supreme Court and the Requirements for a Fair Court, Collection of Articles on Justice, EMC, 2020, p. 49, (Available at: https://bit.ly/3swxKGS ; Last Access: 01.03.2021).

external or internal actors, is impartial in every legal dispute, and obeys only the law.[448] This subchapter analyzes the basic characteristics of judges and, in general, the principles of the judiciary that ensure the proper functioning of the system and the protection of the right to a fair trial. At the same time, this sub-section focuses on the challenges in the Georgian reality in this direction, which are a significant barrier to access to justice. Therefore, the present study does not claim to analyze in detail and/or identify all possible institutional challenges facing the judiciary.

4.7.1. Basic principles of the judiciary

Numerous international legal documents[449] and recommendations[450] are dedicated to the standards on activities of court and individual judges. Most of these standards are at the same time recognized as part of the guarantees established for the fundamental right to a fair trial for the individual. Accordingly, the right to a fair trial comprises the basic qualitative criteria that a court must meet to exercise its functions properly and safeguard public legitimacy.

Of the above criteria for the right to a fair trial, the principles of judicial independence and impartiality, which are essential components of the right to a fair trial, are often considered as a single concept and to be the backbone of the public legitimacy of the judiciary.[451]

Judicial independence primarily means independence from other branches of government, which have a natural interest and temptation to influence the neutrality of the judiciary. The external aspect of independence also includes independence from various

448 Eka Mamrikishvili, Appointment of Supreme Court Judges and the Judiciary Legitimacy Problems, Collection of Articles on Justice, EMC, 2020, p. 60; European Commision For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD (2010)004, Strasbourg, 16 March 2010, para. 6.

449 Universal Declaration of Human Rights (UDHR), Article 8; International Covenant on Civil and Political Rights (ICCPR), Article 14; European Convention on Human Rights (ECHR), Article 6.

450 For example see: European Commission For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, Strasbourg, 16 March 2010, (Available at: https://bit.ly/3b5xjxj; Accessed on: 01.03.2021); United Nations Human Rights Committee, General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial, 23 August 2007, CCPR/C/GC/32, (Available at: https://bit.ly/2NJu8mm; Accessed on: 01.03.2021); Recommendation (94)12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges, (Available at: https://bit.ly/3sIBiWN; 01.03.2021); Opinion No. 1 of the Consultative Council of European Judges (CCJE) on standards concerning the independence of the judiciary and the irremovability of judges. Strasbourg, 23 November 2001, (Available at: https://bit.ly/3q39daN; Accessed on: 01.03.2021).

451 Ramos Nunes de Carvalho e Sá v. Portugal [GC], §§ 150-156; Nika Arevadze, When competence is not a necessary Qualification: Staffing of the Supreme Court and the Requirements of a Fair Court, Collection of Articles on Justice, EMC, 2020, p. 51.

external actors, such as the parties, media, various influential groups in society, etc. Judicial independence also has "internal" aspects, which means independence of the judges inside the system from administrative and other influential persons.[452] The independence of individual judges does not imply their ability to decide a particular case according to their personal views or preferences. They have the right and obligation to decide each case solely based on the law and under their own internal beliefs. In this process, they should be protected from undue influence, both outside the judiciary and within the institution itself.[453]

Impartiality of the judiciary is closely related to independence, which implies an absence of prejudice and bias. Judicial impartiality, has both subjective and objective aspects.[454] According to the subjective aspect, "judges should not allow their decision to be influenced by bias or a predetermined position… and should not act in a way that improperly favors the position of one side of the process to the detriment of the other." According to the objective aspect of impartiality, the court should also seem impartial from the point of view of an objective observer.[455] The public perception of the court as an independent and impartial entity is directly related to the issue of public legitimacy, because in this case "trust is at stake, which the court must demonstrate in a democratic society."[456]

In addition to upholding the principles of independence and impartiality, the competence and integrity of the judiciary are equally important, to which special attention is paid in the process of staffing the judiciary. The importance of a high level of professional knowledge of judges is recognized under several conclusions of the Consultative Council of European Judges.[457] These documents recognize the acquisition and

452 Eka Mamrikishvili, Appointment of Supreme Court Judges and the Judiciary Legitimacy Problem, Collection of Articles on Justice, EMC, 2020, p. 65; Joint Report of the Venice Commission and the Directorate-General for Human Rights (DHR) of the Council of Europe DH Directorate-General for Human Rights (DGI) №774/2014, Strasbourg, 2014, (Available at: https://bit.ly/3uGgXD7; Accessed on: 01.03.2021); European Commision For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, Strasbourg, 16 March 2010, para. 68-72.

453 OHCHR, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, New York and Geneva, 2003, p. 123, (Available at: https://bit.ly/301K7P5; Accessed on: 01.03.2021).

454 UN Human Rights Committee, General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial, CCPR/C/GC/32, 23 August 2007, para.21.

455 Nika Arevadze, When competence is not a necessary Qualification: Staffing of the Supreme Court and the Requirements of a Fair Court, Collection of Articles on Justice, EMC, 2020, p. 50.

456 Micallef v. Malta [GC], § 98. Nika Arevadze, When competence is not a necessary Qualification: Staffing of the Supreme Court and the Requirements of a Fair Court, Collection of Articles on Justice, EMC, 2020, p. 50

457 Conclusion of the Consultative Council of European Judges N1 (2001) on the Standards of Judicial Independence and the Inviolability of Judges, Strasbourg, 23 November 2001, para. 11; Conclusion N3 (2002) on the Principles and Rules Regulating the Professional Conduct of Judges, namely on the Ethical Standards, Inappropriate Behavior and Impartiality, Strasbourg, 19 November 2002, para. 25, 50; Conclusion N4 (2003) On Proper Primary Training and On-Site Training of Judges at National and European Levels, Strasbourg, 27 November 2003, para. 3; Official website of the Consultative Council of European Judges, (Available at: https://bit.ly/3bUjNvE; Accessed on: 01.03.2021).

development of a judge's professional skills as both a right and a duty of a judge.[458] It is logical that the proper functioning of the judiciary, even with adequate guarantees of independence, cannot be ensured unless the judiciary is staffed with judges having appropriate professional skills and knowledge. Building public trust in the judiciary is primarily based on the feeling of individuals that their case will be heard by a judge with relevant knowledge and skills, and that this aspect of access to justice is adequately provided for them.

4.7.2. Challenges facing the Georgian judiciary

The judiciary of Georgia faces significant challenges in terms of independence, impartiality, competence, and integrity. In particular, the experience of the judiciary in Georgia, unfortunately, tells the story of the successful domination by political power.[459] The main problem in the Georgian reality with all these criteria remains the existence of an influential group in the judiciary (the so-called "Clan"), which has been repeatedly recognized and critically evaluated by local NGOs and other representatives of the civil sector.[460]

Despite several legislative reforms in recent years, the lack of strong political will on the part of the authorities to make real and consistent changes to the judiciary has become clear. Following the disappearance of opinion differences between the ruling party and the influential group in the judiciary, the suppression of dissenting opinion within the judiciary has intensified and the practice of appointing judges who are loyal to this group has intensified. This has exposed the judiciary to significant external and internal challenges, and the independence of individual judges was left without a solid foundation.[461] Consequently, the judiciary in Georgia has not been able to establish itself as a branch of

458 Conclusion N4 (2003) On Proper Primary Training and On-Site Training of Judges at National and European Levels, Strasbourg, 27 November 2003, paras: 2-4; Official website of the Consultative Council of European Judges, (Available at: https://bit.ly/3bUjNvE; Accessed on: 01.03.2021); Ana Abashidze, Ana Arganashvili et al., The Judiciary: Reforms and Prospects, Coalition for Independent and Transparent Justice, Tbilisi, 2017, p. 38, (Available at: https://bit.ly/3bMwrwV; Accessed on: 01.03.2021).

459 Eka Mamrikishvili, Appointment of Supreme Court Judges and the Judiciary Legitimacy Problems, Collection of Articles on Justice, EMC, 2020, p. 60, (Available at: https://bit.ly/3swxKGS; Accessed on: 01.03.2021).

460 The existence of an influential group in the Georgian judiciary is also directly indicated by the United States in its recommendations to Georgia as part of the Human Rights Council's periodic review. Recommendation 6,137 issued by the United States: "Strengthen respect for rule of law by fostering judicial independence through reforms to empower individual judges and prevent informal governance by an influential group of judges known as the "clan," by depoliticizing the justice system, and by merit-based appointments (United States of America)", Report of the Working Group on the Universal Periodic Review, Georgia, A/HRC/WG.6/37/L.12, Human Rights Council, Working Group of the Universal Periodic Review, Thirty-Seventh session, Geneva, 18-19 January 2021; For a detailed analysis on the influential group in the judiciary, see: Tornike Gerliani, The Issue of Power in Judiciary, EMC, 2020, (Available at: https://bit.ly/3q0DK9n; Accessed on: 01.03.2021).

461 Ana Abashidze, Ana Arganashvili et al., The Judiciary: Reforms and Prospects, Coalition for Independent and Transparent Justice, Tbilisi, 2017, p. 10, (Available at: https://bit.ly/3bMwrwV; Accessed on: 01.03.2021).

government that restricts political power in a constitutional-legal manner and effectively ensures the practical realization of individual fundamental rights.

In addition to political neutrality, which in turn is an essential precondition for the independence and impartiality of the judiciary, a significant challenge to the Georgian judiciary is the lack of competence and integrity. Even though the Constitution of Georgia indicates the mandatory consideration of the criteria of competence and integrity in the process of appointing judges, [462] this does not provide a solution to this problem. This was revealed particularly acutely in 2019, during the Supreme Court selection process, when, despite legislative reform, it became clear that the best candidates could not be identified through competition. Questions came up in the society about the minimum professional competence of the candidates, as well as their integrity. This process, as well as its result, has been repeatedly criticized[463] by civil society,[464] the Public Defender[465] , and authoritative international organizations[466]. Nevertheless, in September 2020, two months before the commencement of the interviewing of new candidates for the Supreme Court, the Georgian Parliament hastily adopted the latest legislative amendment on the staffing of the Supreme Court, so as not waiting for the Venice Commission to evaluate the draft.

This hasty legislative step was negatively assessed by the Venice Commission , [467] as well as by the EU and the co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) on the monitoring of Georgia. Despite the years of the reform process, such sharp assessments by international organizations reinforce domestic criticism on the chosen path of judiciary reform. In particular, the reforms expressed in formal-legal amendments completely ignore the need for systemic changes, and the Georgian judiciary, which is in the hands of an influential group, leaves citizens

462 Constitution of Georgia, Article 63, Paragraph 6, {Available at: https://bit.ly/3kzEJvQ; Accessed on: 01.03.2021}

463 Joint NGO Submissions on the Challenges of the Judiciary and Law Enforcement System (Human Rights Education and Monitoring Center (EMC), Georgian Young Lawyers Association (GYLA)), Periodic Review of the Human Rights Council. (3rd Cycle, 37th Session, 2020), para. 1.7; (Available at : https://bit.ly/3sCJ5W 6; Last access: 01.03.2021); Coalition for Independent and Transparent Judiciary, Opinion on Maia Bakradze's Lawsuit, 28 January 2020, (Available at: https://bit.ly/2NGMZhV; Accessed on: 01.03.2021).

464 Coalition for Independent and Transparent Judiciary, Evaluation of the process of hearing Supreme Court candidates in the Legal Committee, December 11, 2019, (Available at: http://bit.ly/2Qu56po; Accessed on: 01.03.2021).

465 Public Defender of Georgia, Monitoring Report on the Selection of Candidates for Judges of the Supreme Court of Georgia by the High Council of Justice, 2019, (Available at: https://bit.ly/2Y6UHmz; Accessed on: 01.03.2021).

466 OSCE, ODIHR, Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia, June – December 2019, (Available at: http://bit.ly/33tmwYx; Accessed on: 01.03.2021); Europian Commision, Joint staff working document Implementation Report on Georgia, Brussels, 9.11.2017, par. 2.3 Justice, freedom and security, (Available at: http://bit.ly/2UeDzJC; Accessed on: 01.03.2021).

467 European Commision For Democracy Through Law (VENICE COMMISSION), Georgia – Opinion on the draft Organic Law amending the Organic Law on Common Courts, CDL-AD(2020)021, Strasbourg, 8 October 2020, (Available at: https://bit.ly/3ujKgdZ; Accessed on: 01.03.2021).

without effective mechanisms for protecting their rights and satisfying socio-political interests.[468]

Establishing the institutional legitimacy of the judiciary is significantly different from the process of legitimizing the political branches and relies on the trust of the society as a whole.[469] A court can gain high public trust only if its institutional arrangement and quality of activity meet the constitutional and universally recognized legal standards of human rights. Stemming from the above reasoning, it is logical that the Georgian reality of the judiciary has created a sense of injustice and distrust in society. The majority of the population (66%) say that they partially trust and partly do not trust the courts in Georgia, and more than half of the population thinks that the judiciary is not free from political influence in Georgia.[470] The importance and scale of these problems have been emphasized in both citizen and professional focus groups. Opinions among the participants of the citizen focus group are divided on the credibility of the judiciary, although they generally agree that the judiciary is not free from political influence. A large part of the citizens believes that the court is ruled by other branches of government and that it will not render a decision that contradicts the government's interests. Almost all of the participants with this view believe that the court is not free from the influences of businessmen and other people in power. However, according to the majority of participants, some reforms have been made in the judiciary system, but significant shortcomings still exist and fundamental changes have not been implemented – the court remains an institution that is dependent on the influence of people in power and often biased.

> *"If the case is not politically motivated, I trust it more or less. This means that political interest does not exist. Therefore, the structure itself, neither prosecution nor the court has the interest to treat me unfairly. If such private interest is excluded, I trust the court more or less. Yet, if the case relates to the politician or such case, that is connected to the political activities, the confidence coefficient decreases unequivocally."*[471]

468 EMC and GYLA: Established vision for judicial reform needs change, October 10, 2020, (Available at: https://bit.ly/3kzEZeD; Accessed on: 01.03.2021).

469 Eka Mamrikishvili, Appointment of Supreme Court Judges and the Judiciary Legitimacy Problems, Collection of Articles on Justice, EMC, 2020, p. 60, (Available at: https://bit.ly/3swxKGS; Accessed on: 01.03.2021).

470 Human Rights Education and Monitoring Center (EMC), Caucasus Research Resource Center (CRRC) and the Institute for Development of Freedom of Information (IDFI), Access to the Court, Population Survey Results, 2020, p. 10, (Available at: https://bit.ly/3bUpqtO; Accessed on: 01.03.2021).

471 Man, Focus group conducted with persons having experience in criminal proceedings, Tbilisi, October 10, 2020.

As for the professional focus groups, the emphasis was not only on the vulnerability to political influence in the judiciary but also on problems related to integrity and competence.

> *"We have problems of integrity, competence, and independence in the system ... The problem of independence is the biggest because most judges are so unstable to influences, be it political, from the boss, from a friend. It feels so much that it is quite eye-catching and is the biggest problem, I think, in the country. Non-resolution of this problem will lead to a catastrophe when I look at the problem of justice. All other problems derive from here."*[472]

Thus, there are significant gaps and challenges in the Georgian courts in terms of independence, impartiality, integrity, and competence, which negatively affect the degree of public confidence towards the judiciary and its public legitimacy, which creates significant barriers in terms of access to justice. For a more detailed identification and qualitative assessment of these shortcomings, it is important to examine the legal principles that are central in the assessment process and that aim to ensure real, factual, and not just formal independence, impartiality, integrity, good faith and competence. This primarily involves establishing clear, unambiguous procedures and objective criteria at the constitutional and legislative levels for the appointment/promotion of judges, terms of service, periodic evaluation system, social guarantees, case distribution, discipline, and liability measures.[473]

4.7.2.1. Selection/Appointment of judges

In the process of ensuring the independence, impartiality, integrity, and competence of the judiciary, special importance is paid to the process of selection/appointment of a judge and related standards. All decisions regarding a judge's career should be based on pre-defined and publicly available objective criteria.[474] Each judge should be appointed

472 Woman, Representative of the Georgian Bar Association, Focus Group with the Professional Group, November 18, 2020.

473 United Nations Human Rights Committee, General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial, 23 August 2007, par 19; European Commision For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, Strasbourg, 16 March 2010.

474 European Commision For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, Strasbourg, 16 March 2010, para. 23-27;

or promoted on a non-discriminatory basis[475] and based on individual merit, taking into account the criteria of competence, good faith, professional skills, and effectiveness.[476]

A judge's professional qualifications, along with legal knowledge, analytical skills, and academic achievement, also include the candidate's characteristics, common sense, communication, and decision-making skills.[477] No less important is to strictly pre-define the candidate's evaluation method concerning the above-mentioned criteria and in case of non-satisfactory results, the possibility to appeal such decision.[478]

The High Council of Justice selects and appoints judges in Georgia, and the current practice of appointing judges has a significant impact on the degree of public trust in the judiciary. Furthermore, the High School of Justice has a special role in the selection-appointment process, which largely determines the degree of efficiency and competitiveness of this process and which is also significantly influenced by the High Council of Justice. The four waves of judicial reform have introduced many positive changes in this direction, however, observation of the selection-appointment process of judges shows that the personnel policy of the system is still flawed, [479] namely:

- The current normative framework fails to ensure the institutional and functional independence of the High School of Justice from the High Council of Justice.[480] In addition, the rules for holding a competition for school admission are determined by the school charter and not at the legislative level, and there is no effective mechanism for substantiating and appealing a competition decision.[481]

475 OHCHR, Basic Principles of the Independence of the Judiciary, principle 10, (Available at: https://bit.ly/3r8W55g; Accessed on: 01.03.2021).

476 European Commision For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, Strasbourg, 16 March 2010, para. 24

477 Ibid.

478 Judgment of the Constitutional Court of Georgia №3 / 2/717 of April 7, 2017, on the case "Citizens of Georgia – Mtvarisa Kevlishvili, Nazi Dotiashvili, and Marina Gloveli v. Parliament of Georgia", II-30 (Available at https://bit.ly/3kywYq0; Accessed on: 01.03.2021).

479 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Judicial Strategy and Action Plan Implementation Status – Second Shadow Report, 2020, p. 28, (Available at: https://bit.ly/3bMRi37; Accessed on: 01.03.2021).

480 Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Judicial Strategy and Action Plan Implementation Status – Shadow Report, 2018, p. 26, {Available at: https://bit.ly/3bMRi37 ; Last Access: 01.03.2021}; the Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Judicial Strategy and Action Plan Implementation Status – Second Shadow Report, 2020, p. 15, (Available at: https://bit.ly/3bMRi37; Accessed on: 01.03.2021).

481 the Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Judicial Strategy and Action Plan Implementation Status – Second Shadow Report, 2020, p. 15-16, {Available at: https://bit.ly/3bMRi37; Accessed on: 01.03.2021}; Joint NGO Submissions on the Challenges of the Judiciary and Law Enforcement System (Human Rights Education and Monitoring Center (EMC), Georgian Young Lawyers Association (GYLA)), Periodic Review of the Human Rights Council. (3rd Cycle, 37th Session, 2020), para. 1.5;

- Given the current challenges related to the institutional setting of the High Council of Justice and its experience of making important personnel decisions, the practice of exercising these powers by the Council in the selection/appointment of judges for the first/second instance remains problematic. The existing legal framework cannot provide a selection of best candidates and cannot release the process from the Council's influences. Furthermore, the decision-making process of selection-appointment of judges in the Supreme Court of Georgia is flawed, both in the Council and in the Parliament of Georgia. The decision on the nomination and election of judges is based on a majority of votes and not on consensus.[482]
- The procedure for appointing the chairman (deputy chairman) of the district (city) and appellate courts is flawed. Under the legislation, the chairperson and deputy chairperson of the Court of Appeal, as well as the chairperson of a district (city) court, are appointed by the High Council of Justice; this power is another lever to control the system and is directed against the independence of the individual judge.[483]
- The law does not regulate the selection criteria and the appointment procedure for transferring a judge to another court without competition.[484]

4.7.2.2. The term of office of a judge

One of the important criteria for ensuring the independence and impartiality of the judiciary is the term of office of the judge. In this regard, the universally accepted approach for the independence of the judiciary is to appoint judges for life (until reaching retirement age).[485] However, if national law provides for a fixed-term appointment (especially for a probationary period), the independence of the appointing authority and impartiality and transparency of the appointment process is of particular importance. It should be noted that the appointment for a probationary period is considered problematic in terms of ensuring independence, as it is fundamentally incompatible with the independence and impartiality of a judge to assess the latter's performance beyond the court's decisions. However, as an exception, judges may be appointed for probation periods in

482 Joint NGO Submissions on the Challenges of the Judiciary and Law Enforcement System (Human Rights Education and Monitoring Center (EMC), Georgian Young Lawyers Association (GYLA)), Periodic Review of the Human Rights Council. (3rd Cycle, 37th Session, 2020), para. 1.7;

483 Ibid., para 1.3;

484 Organic Law of Georgia on Common Courts, Article 37, {Available at: https://bit.ly/3r7CSB7; Last Access: 01.03.2021}; Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Judicial Strategy and Action Plan Implementation Status – Shadow Report, 2018, p. 30, (Available at: https://bit.ly/3bMRi37; Accessed on: 01.03.2021).

485 Recommendation (94)12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges, para. 48; European Commision For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, Strasbourg, 16 March 2010, para. 33-37;

States in transition and the process should be subject to objective criteria and clear procedural guarantees. [486]

According to the Constitution of Georgia, judges in district (city), appellate and supreme courts are appointed for life until they reach the age established by an organic law. Therefore, the existing legal regulation in this regard is not problematic in Georgia. However, it should be taken into account that within the framework of this legislative regulation, a significant number of judges have been appointed for life by the existing composition of the High Council of Justice. Because questions exist as to the current composition of High Council of Justice, the appointment of lifetime judges by this Council raises questions about the competence of the appointed judges, as well as their possible connection with the Clan. In the long run, this presents a problem for judiciary independence and quality.

However, there are still legislative gaps regarding the appointment of judges for a probation period. In particular, as a result of the constitutional amendments made in 2017, [487] an exception was made to the general rule of the abolition of probation for judges. Specifically, until December 31, 2024, a person with non-judicial experience can be appointed as a first/second instance judge for 3 years.[488] This still poses a threat to the independence of judges on probation,[489] as these judges, whose lifetime appointment depends on the decisions made during the probation period and their evaluation, fully exercise their judicial powers. Consequently, in the presence of inadequate legal mechanisms to protect the independence of judges appointed like this, they may more easily be pressured and, as a result, their compliance with the criterion of independence will be questionable. It should also be noted that at present there is only one judge appointed for a probationary period in the system, and that although the practice of probationary appointments can be used through 2024, it was last used in 2018.

486 European Commision for Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD (2010)004, Strasbourg, 16 March 2010, para. 41-43;

487 The Constitutional legal act of Georgia on Amendments to the Constitution of Georgia, Article 2, point 3, 1324-rs, 13.10.2017, (Available: https://bit.ly/37ZJo5o; Accessed on: 01.03.2021).

488 Organic Law of Georgia on Common Courts, Article 36, Paragraph 41, (Available at: https://bit.ly/3r7CSB7; Accessed on: 01.03.2021).

489 Joint NGO Submissions on the Challenges of the Judiciary and Law Enforcement System (Human Rights Education and Monitoring Center (EMC), Georgian Young Lawyers Association (GYLA)), Periodic Review of the Human Rights Council. (3rd Cycle, 37th Session, 2020), para. 1.8;

4.7.2.3. Periodic evaluation system for judges

The evaluation of an individual judge's performance is related to fundamental issues, such as quality and effective justice, and the protection of the legal interests of individuals by ensuring quality and reasoned decisions. Consequently, a periodic evaluation system is an important component of the principle of judicial competence. At the same time, it is important not to jeopardize judicial independence in the process of evaluating judges.[490]

International Judicial Evaluation Standards focus on the goals of promoting decision-making on judges' self-development, public confidence, and career advancement.[491] At the same time, preference is given not to quantitative but to qualitative criteria of evaluation, as far as the latter concerns the knowledge and personal skills of the judge.[492] As for the bodies responsible for evaluation, there is no unified approach to this, although it is desirable to evaluate judges not by a council, but by a mixed group, which, in addition to lawyers outside the court, will be composed mainly of judges themselves.[493]

The system of periodic evaluation of judges operating in Georgia is significantly flawed. In the absence of legislative regulation, the issues of the evaluation system are regulated by the 2011 decision of the High Council of Justice, which increases the risks of arbitrariness in the Council's decisions.[494] In addition, the goals of the evaluation system are vague and the evaluation focuses entirely on the judicial system instead of individual judges. Also, the current model of evaluation is mostly based on quantitative rather than qualitative criteria and takes into account components that are often motivated by factors independent of the judge (for example, workload related to the number of incoming cases, their distribution, unforeseen events in the course of the case, and etc) or even threaten his or her independence (for example, stability of decisions). Finally, it is also

490 Abashidze, Ana Arganashvili et al., The Judiciary: Reforms and Prospects, Coalition for Independent and Transparent Justice, Tbilisi, 2017, p. 89.

491 OSCE,ODIHR, Assessment of Performance Evaluation of Judges in Moldova, 27 June 2014, (Available at: https://bit.ly/2NTbybp; Accessed on: 01.03.2021); Abashidze, Ana Arganashvili et al., The Judiciary: Reforms and Prospects, Coalition for Independent and Transparent Justice, Tbilisi, 2017, p. 90;

492 CDL-AD(2014)007-e, The European Commission for Democracy Through Law (VENICE COMMISSION) and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, Joint Opinion on the Draft Law amending and supplementing the judicial code (evaluation system for judges) of Armenia, Strasbourg, 24 March 2014, para. 37-40, 42-43, 49-50, 7-78; (Available: https://bit.ly/2MzgQbg; Accessed on: 01.03.2021); OSCE, ODIHR, MPI, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, Kyiv, 23-25 June, 2010, (Available: https://bit.ly/3sHlflu; Accessed on: 01.03.2021).

493 Consultative Council of European Judges (CCJE) Opinion # 17 (2014) on the evaluation of the performance of judges, the quality of justice and respect for the independence of the judiciary, Strasbourg, 24 October 2014, para. 36-37, {Available at: https://bit.ly/3045pvi; Date of access: 01.03.2021}; OSCE, ODIHR, MPI, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, Kyiv, 23-25 June, 2010, par. 30-31.

494 High Council of Justice, Decision 271/226, 27 December 2011 on the Approval of the Rule for Evaluating the Performance of a Judge of the General Court, (Available at: https://bit.ly/3b65hBP; Accessed on: 01.03.2021).

problematic to use the evaluation result as a recommendation to determine a judge's incentive and salary supplement. This threatens the independence of the judge, especially when the High Council of Justice decides on the matter.[495]

4.7.2.4. Social guarantees for the judge

The practical implementation of the principles of judicial independence (external aspect) and impartiality significantly depends on the social guarantees provided by law for the work of the judge. The issue of a judge's remuneration should be regulated by law, commensurate with his or her professional dignity and burden of responsibility. This principle also applies to the appointment of compensation for retired judges. No less important is the existence of a legislative regulation, which excludes the reduction of remuneration arranged during the entire period of the judge's activity and sets objective and transparent criteria for determining remuneration, which is not related to the results of the individual work of the judge.[496]

Based on the information analyzed during the present research there are no significant problems in Georgian legislation concerning the standards related to judges' social guarantees. The amount of judges' salaries, as well as the amount of state compensation to be paid at the end of their term of office or upon reaching retirement age is determined under the Organic Law of Georgia on Common Courts.[497] Also, the legislation provides for a ban on salary reductions throughout the term of office.[498]

4.7.2.5. Case Distribution

The issue of case distribution between judges is closely related to the internal aspect of the principle of judicial independence, which is related to the independence of individual judges from undue influence within the judiciary, both from different instances and court administration. Therefore, an important requirement of the principle of independence is that the distribution of cases in the court should be subject to objective criteria. In addition,

495 Abashidze, Ana Arganashvili et al., The Judiciary: Reforms and Prospects, Coalition for Independent and Transparent Justice, Tbilisi, 2017, p. 92-93. Institute for Development of Freedom of Information (IDFI), Human Rights Education and Monitoring Center (EMC), Judicial Strategy and Action Plan Implementation Status – Second Shadow Report, 2020, p. 48-50.

496 European Commision For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, Strasbourg, 16 March 2010, para. 44-51.

497 Law of Georgia on Common Courts, Articles 69 and 70; Organic Law of Georgia on Common Courts, Articles 69, 70, (Available at: https://bit.ly/3r7CSB7; Accessed on: 01.03.2021).

498 Ibid., Article 69 (4).

it is inadmissible to remove a judge from the case without the consent of the judge himself/herself and without objective reasons (conflict of interest, serious health condition), the preconditions and procedures of which must be pre-defined under the law. The body empowered to make this type of decision should, in turn, be free from undue influence by the political authorities and preferably enjoy adequate guarantees of independence.[499]

The rule of electronic distribution of cases in the courts throughout Georgia involves the random distribution of cases through the electronic program,[500] the detailed legal regulation of which is given in the decision of the High Council of Justice.[501] Accordingly, given the existing standard regarding the internal aspect of judges' independence, concerns of the independence of the Council from undesirable influences raises special questions. Also, there are other systemic shortcomings in this area that require further refinement.[502] In particular, exceptional cases from the principle of randomness is not clearly defined by legislation. Also, in some courts, the scarcity of judges precludes adherence to the principle of randomness in the electronic distribution of cases across the country. Also, the powers of the chairperson of the court are especially problematic for judge's independence, from the viewpoint of the distributed cases, the increase/decrease of the judges' workload, the determination of the judge's narrow specialization, the unjustified change of the shift schedule and participation in the redistribution case.[503]

4.7.2.6. Discipline and accountability of the judge

The independence of judges is not a privilege, rather it serves the interests of the rule of law and the interests of persons pursuing justice.[504] That is why democracies have developed a system of disciplinary responsibility of judges, which should ensure due respect for justice and be exercised before an independent body free from political influence.[505]

499 European Commision For Democracy Through Law (VENICE COMMISSION), Report on the Independence of the Judicial System Part I: The Independence of Judges, CDL-AD(2010)004, Strasbourg, 16 March 2010, para. 73-81

500 Human Rights Education and Monitoring Center (EMC), Electronic Case Management System in Georgia, 2020, p. 6, (Available at: https://bit.ly/3bL2htQ; Accessed on: 01.03.2021).

501 High Council of Justice of Georgia, Decision 1/56, 1 May 2017 on the Approval of the Rule of Automatic Distribution of Cases in the Common Courts of Georgia, (Available at: https://bit.ly/3aBAuLc; Accessed on: 01.03.2021).

502 Human Rights Education and Monitoring Center (EMC), Electronic Case Management System in Georgia, 2020, p. 8-9, (Available at: https://bit.ly/3bL2htQ; Accessed on: 01.03.2021).

503 Human Rights Education and Monitoring Center (EMC), Electronic Case Management System in Georgia, Infographic, 2020, p. 6, (Available at: https://bit.ly/3bL2htQ; Accessed on: 01.03.2021).

504 Consultative Council of European Judges, Conclusion N1 (2001), On the Standards of Judicial Independence and the Inviolability of Judges, Strasbourg, 23 November 2001, para. 10. (Available at: https://bit.ly/3uDj9vj; Accessed on: 01.03.2021).

505 Consultative Council of European Judges, N10 (2007), Judiciary Council in the Service of Independence, Strasbourg, 23 November 2007, para. 63, (Available at: https://bit.ly/3dUIFWZ; Accessed on: 01.03.2021).

In addition to maintaining the authority of the judiciary and the public's trust in it, an effective system of accountability and responsibility of the judge also ensures the prevention of misconduct and dishonesty by the judge and, in case of misconduct, the appropriate response. At the same time, a proper disciplinary system is a solid guarantee of a judge's independence. The above ideal balances the cornerstone of the independence of both the individual judge and the judiciary as a whole.[506]

As a result of the "third wave" of judicial reform, significant positive changes have been made in the legislation regarding the disciplinary responsibility of judges. The establishment of an Independent Inspector Service in the High Council of Justice is particularly noteworthy, which limited the exclusive authority of the Secretary of the Council at the initial stage of disciplinary proceedings. Nevertheless, the existing regulation needs further legislative refinement, [507] namely:

- The legislation does not stipulate the purposes of disciplinary liability of judges, which poses a threat of inappropriate use of the rules governing disciplinary liability and, as a result, violation of the independence of individual judges.
- The institutional independence of an Independent Inspector and the transparency of his/her activities are not properly guaranteed.
- There is no uniform and consistent practice in disciplinary proceedings, which increases the risks of influencing an individual judge. In addition, the proceedings are being conducted in violation of the deadlines and the judges do not enjoy the right of publicity of the process.[508]
- The existing reality reveals that there are significant gaps and challenges in Georgian justice in a variety of areas. Consequently, the discussion on improving access to justice may lose its meaning if the judiciary does not ensure that the fundamental legal principles are upheld and put into practice as discussed in this chapter. Acquiring the viability for these principles is a prerequisite for gaining public legitimacy and trust towards the judiciary and each judge.

506 Human Rights Education and Monitoring Center (EMC) and Institute for the Development of Freedom of Information (IDFI), Evaluation of Judicial Reform Results: Electronic Distribution of Cases, Disciplinary Responsibility System, 2019, p. 50, (Available at: https://bit.ly/2PeYZaA; Accessed on: 01.03.2021).

507 Human Rights Education and Monitoring Center (EMC) and Institute for the Development of Freedom of Information (IDFI), Evaluation of Judicial Reform Results: Electronic Distribution of Cases, Disciplinary Responsibility System, 2019, Infographic. [Available at: https://bit.ly/3b66h9m; Accessed on: 01.03.2021].

508 Human Rights Education and Monitoring Center (EMC) and Institute for the Development of Freedom of Information (IDFI), Evaluation of Judicial Reform Results: Electronic Distribution of Cases, Disciplinary Responsibility System, 2019.

V. Legal awareness and empowerment

The existence of legal awareness in society and its constant empowerment is one of the most important and effective means for the actual realization of basic human rights and freedoms. Often, the lack of information on how to address the problems they face within the legal framework and apply to the relevant state bodies, primarily the court, for their resolution is challenging for individual members of society. Consequently, improvement of access to justice, apart from consideration of economic, social, and cultural factors, also consists of legal awareness-raising in society and its constant empowerment, developing knowledge, attitudes, skills, and behaviors for people in a way that enhances society's role in the protection of human rights and the process of their realization.[509]

For the present study, the identification of problems in this particular aspect of access to justice – the public legal awareness and its empowerment, and the search for effective ways to solve them – first of all, requires an understanding of public opinion in this area. The conducted research and surveys give a clear picture of the existing problems and challenges. At the same time, in parallel with public opinion, it is important to analyze the state policy and strategy to build and strengthen the legal awareness of the population and whether it uses various resources (media, Internet, education policy) to effectively deal with existing challenges. However, it is important to note that this chapter critically analyzes only the activities carried out by the state within the framework of the above-mentioned policy and strategy and does not assess effectiveness and adequacy of the steps taken for implementation of these activities. It should be noted, that this chapter critically analyzes the adequacy and relevance of the goals, objectives, and activities planned by the state in the policy documents, however it does not assess in detail the steps taken by the state to carry out these activities.

5.1. Knowledge of ways and mechanisms for solving legal problems

An important challenge in Georgia is the level of public legal awareness, both about their basic rights and obligations, as well as their realization through direct application to the court. This is mentioned in the National Strategy for the Protection of Human Rights (2014-2021) approved by the Parliament of Georgia, which named as one of the main challenges to properly inform people about their rights and the means of exercising

509 Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, UNDP, 2005, p. 7; Legal Needs Surveys and Access to Justice, Open Society Foundations, OECD Publishing, 2019.

these rights.[510] Lack of public awareness is also evident from the surveys of the population and various trade unions or analysis of focus group discussions.

Representatives of the State Legal Aid Service, based on their practical experience, point out that both the non-Georgian-speaking population and also a significant part of the general society has a problem in terms of legal awareness and access to legislation. Therefore, it is necessary to actively involve the state in this direction and increase access to information through the use of various means of mass media, as well as the involvement of relevant local self-government bodies and supplement of relevant educational components in school programs.

> *"The state should elaborate such direction, either in schools or in high education institutions, by dissemination of brochures, creating TV channel."*[511]
>
> *„It would play a certain role in the improvement of accessibility if the state would do such thing; if representatives of the mayor in each village would distribute brochures… this would raise awareness of the society".*[512]

Lack of legal awareness is also evident in relation to the issues such as litigation time and average costs, alternative dispute resolution mechanisms, state or non-state legal aid centers, and ways to find necessary and relevant legislation and legal documentation. The language barrier is named as an additional problem in the process of searching relevant legislation or during the court proceedings and less effective communication by the court on legal issues within the party's interests.[513]

The problem of awareness as one of the barriers to access to justice was also discussed in the focus groups of citizens, as well as by the participants of civil/administrative and criminal cases. The citizens explained that they do not have information on to whom they can turn for help when a legal problem arises. Most of the people do not know how to address the court.[514]

510 Resolution of the Parliament of Georgia of April 30, 2014 on the Approval of the National Strategy for the Protection of Human Rights of Georgia (2014-2020) {Available at: https://bit.ly/3sPUUrQ; Accessed on: 04.03. 2021}.

511 Woman, State Legal Aid Service Representative, Focus Group with Professional Group, October 13, 2020.

512 Woman, State Legal Aid Service Representative, Focus Group with Professional Group, October 13, 2020.

513 Human Rights Education and Monitoring Center (EMC), Caucasus Research Resource Center (CRRC) and the Institute for Development of Freedom of Information (IDFI), Access to the Court, Population Survey Results, 2020, p. 11, 16 {available at: https://bit.ly/3bUpqtO; Accessed on: 04.03.2021}

514 Human Rights Education and Monitoring Center (EMC), Caucasus Research Resource Center (CRRC), Access to Justice, Qualitative Survey Results, 2020, p.18.

The problem of searching and understanding an interesting and relevant law/legislation was also mentioned as problematic by the focus groups. It is true that some people are aware of this and turn to internet resources to find legislation, although there are cases when some participants needed to find a law but were unable to do so and used the services of a professional lawyer. Furthermore, an additional difficulty is whether the legislation is available in a language understandable for them, even if they manage to find it (these issues are discussed in detail in Section 4.1.).[515]

One of the impediments to access to justice is also the problem of clear and consistent communication from the court.

> *"One problem was that there was no court in Tchiatura and I have to travel to Sachkhere for every hearing and to leave the job for this. The second problem was that when I appealed the decision and the case was transferred to Kutaisi, I had to pay a court fee, later the settlement was achieved and part of the fee had to be returned to me. I traveled three times in Kutaisi and four times in Sachkhere as I did not understand which one had to return it."*[516]

One of the necessary links for access to justice and litigation is the State Legal Aid Service. Therefore, public awareness about the free legal aid service, role, and functions is of special importance. A quantitative survey of the population revealed that 67% of the population of Georgia had heard of the State Legal Aid Service, and of those who have heard, more than half (53%) say they know in what types of cases this service can be used .[517] Accordingly, such a level of awareness regarding the State Legal Aid Service is welcome, although the lack of familiarity with this service remains problematic in almost one-third of the population. For example, the lack of awareness about the state/non-state legal aid service was named in the focus group of citizens in Kvemo Kartli, both in civil/administrative and criminal directions.[518]

515 Ibid., p. 23

516 Man, Focus group with persons having experience in civil and administrative proceedings, Imereti, September 25, 2020

517 Human Rights Education and Monitoring Center (EMC), Caucasus Research Resource Center (CRRC) and the Institute for Development of Freedom of Information (IDFI), Access to the Court, Population Survey Results, 2020, p. 17, (Available at: https://bit.ly/3bUpqtO; Accessed on: 04.03.2021).

518 Human Rights Education and Monitoring Center (EMC), Caucasus Research Resource Center (CRRC), Access to Justice, Qualitative Survey Results, 2020, p.18.

5.2. Raising public awareness of human rights mechanisms in state strategy and policy documents

As it is clear from the analysis of the policies and strategic documents of different branches of government, the state does not have a systemic policy for raising and strengthening public legal awareness. There is no will to identify problems in this direction and look for effective ways for their solution. The challenges to legal awareness in Georgia are discussed in a fragmented manner in the National Human Rights Strategy adopted by the Parliament of Georgia and the Human Rights governmental action plans, and the activities prescribed to address these challenges are mainly aimed at raising public awareness on a specific right or awareness of public officials themselves. As part of the right to a fair trial, the main focus is on institutional reforms. As for strengthening the public legal awareness of the public on access to justice, the exception in this regard is the Judiciary Strategy, which speaks about the lack of public awareness on the right to address to the court and the need to take necessary measures. The Criminal Justice Reform Strategy places particular emphasis on strengthening the State Legal Aid Service and the need to raise public awareness about it. However, the measures planned and implemented in this direction are mostly technical and do not include an in-depth understanding of the existing problems. Consequently, the state policy and strategy in this regard is fragmented and lacks a systemic vision, which ultimately affects the public's access to justice.

The National Human Rights Strategy of Georgia (2014-2020) does not mention the goal of improving public awareness on the protection of the right to a fair trial and focuses on judiciary institutional reform. However, concerning certain strategic directions (e.g. introduction of high standards of inviolability of privacy, ensuring the equality right and protection of minorities, ensuring gender equality and etc),[519] this document directly aims to raise public awareness of these issues.[520]

The Government Action Plan for Human Rights for 2018-2020[521] to achieve the objectives enshrined in the Human Rights Strategy, focuses on raising public awareness by increasing access to justice through the development of customer-oriented services. In particular, to train court officials on the communication strategy with the customer and to pro-

519 The National Human Rights Strategy of Georgia defines the following strategic directions: introduction of high standards of inviolability of privacy, ensuring the equality right and protection of minorities, ensuring gender equality, ensuring that persons with disabilities are able to exercise their rights in the same way as others, while adhering to the principle of reasonable accommodation; protection of women's rights and fight against domestic violence; ensuring human ecological rights.

520 Resolution of the Parliament of Georgia of April 30, 2014 on the Approval of the National Strategy for the Protection of Human Rights of Georgia (2014-2020)

521 Human Rights Action Plan of Government of Georgia for 2018-2020, "Available at: https://bit.ly/38cJl0y; Accessed on: 04.03.2021}

vide information on the trial simply and clearly, and to prepare brief and clear information materials on the general principles, rules, and other procedures for the functioning of the judiciary. As for some of the key rights and strategic priorities listed in the National Human Rights Strategy mentioned above, the Government Action Plan envisages various measures in this regard, namely, the implementation of relevant information campaigns and their dissemination in print or via media, development of communication and educational strategy and conduct of informational public meetings, lectures/training.

According to the annual report on the monitoring of the Government Action Plan for the Protection of Human Rights submitted by the Government of Georgia in 2020,[522] an accessibility needs assessment was conducted of the activities oriented to raise public awareness on the right to a fair trial and access to justice. Also, the High Council of Justice of Georgia, and the Supreme Court of Georgia, partially trained judicial staff to improve consumer communication and provide information on the trial simply and clearly. However, work has not yet begun on preparing brief, clear information on the general principles, rules, and other procedures for the functioning of the judiciary. As of the end of 2019, the issue of fulfilling the objectives to increase public confidence remains open. [523] As for the planned activities related to specific rights and program priorities, most of them are fully or partially implemented.[524]

The 5-year Judicial Strategy (for 2017-2021),[525] developed within the framework of the Association Agenda between Georgia and the European Union, names lack of public awareness on right to address to the court as one of the main challenges for access to justice, as well as the problem of equal access to justice, particularly for the vulnerable groups. Accordingly, under both the Judiciary Strategy and the Judicial Action Plan developed for it (2017-2018), key measures have been prescribed to address these challenges.

To ensure continuous public awareness of the work of the judiciary, the Judiciary Strategy/Action Plan focuses directly on increasing the public, including vulnerable groups, awareness, and accountability before them, as well as improving the transparency of the judiciary. Special attention is also paid to improving access to court decisions., The main measures outlined in the Action Plan in this regard are:

522 Annual Report on the Monitoring of the Government Action Plan for Human Rights, 2019, Available at: https://bit.ly/2O0Tpsc; Accessed on: 04.03.2021}

523 Ibid., p. 21

524 Ibid., p. 74, 99, 124, 125, 178, 188, 212

525 Decision of the High Council of Justice of Georgia, May 29, 2017 "On the Approval of the Judicial System Strategy for 2017-2021 and the Implementation Plan for 2017-2018", (Available: https://bit.ly/3sNEsbz; Accessed on: 04.03.2021).

- Raising public awareness about the judiciary activities and organizing visits to the courts; informing the public about precedent and important decisions; preparing brief information on the general principles, processes, rules, and other procedures of the court and actively disseminating them to the public through various channels; developing the practice of preparing an annual report on the activities of the judiciary and introduce it to the public;
- Permanent informing the public about the right to address to the court and court services; preparing of information guides on the court and court services for vulnerable groups; developing a unified standard of communication in the common court system;
- Providing access to court decisions, formation of a unified database and placement on websites; software development that provides access to Supreme Court and Court of Appeals decisions and information on the status and stages of litigation.

Most of these measures have been implemented, according to the **Judiciary Strategy Action Plan (2017-2018).** The High Council of Justice recommendation is welcomed, saying that periodic open days should be organized when interested parties can visit the courts**.**[526] The Council's work on further refinement of the existing uniform standard for communication with citizens is also important.[527] However, it should be noted that some of the implemented activities do not meet the stated goals. For example, the reference on ongoing institutional reforms, cooperation with donors, and statistics in brief brochures on general principles, processes, rules, and procedures of the court are more appropriate for public accountability and transparency goals[528] than providing information to the public in a clear manner on practical aspects of addressing the court, which would be directly linked to the objective of raising public legal awareness. In addition, the issue of preparing information guides on the court and judicial services for vulnerable groups remains open. Also, the new website of court decisions needs to be improved, as decisions only since 2018 are available at this time.[529]

As for the measures planned to provide equal access to court and services for vulnerable groups, the strategy/ action plan prescribes the following:

526 Draft Progress report of the Strategy Action Plan 2017-2018 of Judicial Strategy 2017-2021 (June 2018 – June 2019), p.101.

527 Decision N1/310 of the High Council of Justice, October 9, 2009 on the Approval of the Standards of Communication with Citizens in the High Council of Justice of Georgia and Common Courts of Georgia, (Available at: https://bit.ly/3kMx3Xb; Accessed on: 04.03.2021). For details on the work done to improve the existing standard, see: Draft Progress report of the Strategy Action Plan 2017-2018 of Judicial Strategy 2017-2021 (June 2018 – June 2019), p.33

528 Draft Progress report of the Strategy Action Plan 2017-2018 of Judicial Strategy 2017-2021 (June 2018 – June 2019), p.102.

529 New Website of Judicial decisions, (Available at: https://bit.ly/3bdKmNs; Accessed on: 04.03.2021).

- Develop guidelines for persons with intellectual and psychosocial disabilities on the right to a fair trial, appeal procedures, and due process rules;
- Allocation of a special position in large courts, to provide appropriate information to persons with disabilities;
- Training for judges and court officials on communication standards with persons with disabilities and to provide information easily and understandably during the trial.
- Improve litigation taking into account the best interests of the child and create an appropriate environment for all types of litigation, including the introduction of appropriate guidelines for relevant legal support.

Concerning the measures listed, it should be noted that the main emphasis is placed on the people with disabilities and children, which narrows the circle of individuals of vulnerable groups and does not consider socially vulnerable, women or ethnic minorities. Besides, with regard to persons with disabilities and children, access to court has been seen primarily in the area of mitigation of physical barriers, not considering equally important social, cultural and economic ones.

As for the implementation of the existing measures, according to the progress report of the Judiciary Strategy Action Plan for 2017-2018, most of the indicated measures have been implemented, however, the issue of preparing instructions on the right to appeal, appeal procedures and rules of procedure for persons with intellectual and psychosocial disabilities remains open.[530]

The analysis of the progress and annual reports of the 2017-2019 criminal justice strategy[531] reveals the priority areas and issues in which the state considers it particularly important to raise public legal awareness and takes various measures to this end. In particular,

- Strengthening public awareness about the mandate of the Public Defender and his / her powers;
- Implementing a public awareness campaign on domestic violence and violence against women;
- Raising public awareness of discriminatory and hate crimes;
- Raising public awareness for the prevention of violence against children and juvenile delinquency;
- Effective participation of the juvenile in litigation and informing about the rights and opportunities for their realization in an understandable manner.

530 Draft Progress report of the Strategy Action Plan 2017-2018 of Judicial Strategy 2017-2021 (June 2018 – June 2019).

531 The Criminal Justice Strategy and Action Plan was adopted by the Interagency Coordinating Council on 27 July 2009. The strategy and action plan is a living document and therefore it is updated annually. (Available at: https://bit.ly/3uTuoQ9; Accessed on: 04.03.2021).

Regarding the measures to be taken to strengthen legal awareness, the reform strategy envisages a rather diverse list, including active work and thematic meetings with various target groups, both at the city and regional level, in some cases with the active involvement of police and NGOs, thematic workshops and development of university teaching modules, TV programs, disseminating information materials in print, through the media or using Internet resources, etc.

Particular attention is paid to the goal of improvement of public awareness on the Legal Aid Service reform in the framework of the **Criminal Justice Reform Strategy**. The 2017 and 2018 versions of the Strategy provided for close cooperation with local self-government bodies and thematic information meetings in various regions on diverse legal issues and rights relevant to the local population, as well as active cooperation with non-governmental organizations and educational institutions. The list of additional measures to be taken includes the use of central and regional media outlets to distribute information.[532]

The 2019 Criminal Justice Reform Strategy actively speaks to the use of additional media outlets and Internet resources. In particular, the video project "Support" started in 2019 and is being actively implemented. In addition, covering the daily activities aimed at raising the awareness of the Legal Aid Service, social videos are intensively covered through the website of the Service and the official social network page, as well as distributed with the help of news agencies.[533]

As the focus group discussions prove, to raise the legal awareness of the public, the State Legal Aid Service itself takes certain measures: outreach events are held where individuals are consulted on specific legal issues, as well as the activities of the Service, its role and functions. According to the information provided itself by the Legal Aid Service, the list of measures taken to raise public awareness in 2018-2020 is quite extensive, and in addition to outreach activities also includes the preparation of information brochures on specific legal issues, dissemination of information about the service through mass media means, information campaigns, radio project "Legal Advice", Periodic Journal "Public Advocate", as well as ongoing projects "your rights until the age 18", "legal advice to startups", and "law for the children".[534] However, as the representatives of the service themselves point out, the taken measures are not enough, as, for example, during the field meetings it is not possible to physically inform the population about the legal regulation of all are-

532 Criminal Justice System Reform Strategy of 2017, p. 89.

533 Criminal Justice System Reform Strategy of 2019, p.40.

534 Public Information provided by the LEPL – Legal Aid Service (LA 2 21 00002097).

as.[535] Consequently, more active involvement of the state and large-scale measures to strengthen the legal awareness of the public is necessary.

5.3. Use of media and internet resources by the state to raise public legal awareness

The use of mass media and modern internet resources has a special role in the process of raising and improving the legal awareness of society. Of particular note in this regard is television, which is the main source of information for the majority of the population (69%).[536] Therefore, it is important to analyze how the State uses television resources in the process of strengthening public legal awareness.

For the present study, the focus is only on the Public Broadcaster and the forms of possible cooperation between the latter and state institutions in terms of public legal awareness. This is also because the Public Broadcaster, in its essence, is a media institution of special importance, the starting point for which should be the society and not any individual actor in public life. Its role is particularly important in transitional democracies such as Georgia, where the free media market is not yet fully established and public attitudes towards public goods are heterogeneous. The Public Broadcaster has a responsibility to be accessible for all citizens of the country, to create programs that are diverse and tailored to target audiences, to act as a forum for ideas free from the influence of commercial and party influences, and not to be dependent on market tendencies, not to run away from unpopular topics and decisions and aim to serve to the public.[537]

The establishment of the Public Broadcaster in Georgia and the principles of its activity have a constitutional and legislative basis. In particular, the Constitution emphasizes the independence of the Broadcaster,[538] while the legislation emphasizes its accountability to the public and its substantive obligations,[539] based on which the Broadcaster's program priorities are further established.[540]

535 Female/Male, Representative of the State Legal Aid Service, Focus Group with the Professional Group, October 13, 2020.

536 Caucasus Research Resource Center (CRRC), NDI: Public Attitudes in Georgia, August 2020, (Available at: https://bit.ly/38b1Nw0; Last Access: 04.03.2021).

537 Human Rights Education and Monitoring Center (EMC), "Ethnic Minority Needs, Public Broadcaster and the Pandemic", Tbilisi, 2020, p. 8-9, (Available at: https://bit.ly/2OkvKmu; Accessed on: 04.03.2021).

538 Constitution of Georgia, Article 17, Paragraph 6, (Available at: https://bit.ly/3bgsuBp; Accessed on: 04.03.2021).

539 Law of Georgia on Broadcasting, Articles 15, 16, (Available at: https://bit.ly/2Pr03Iw; Accessed on: 04.03.2021).

540 Ibid., Article 20.

The list of substantive obligations defined by law on Public Broadcaster does not contain a direct reference to raising public legal awareness, however, it mentions the following obligations: a) existence of educational programs; b) to raise public awareness, popularization of the potential of people with disabilities and their contribution to public life; c) ensuring periodic public information on the rights of persons with disabilities; and d) placement of programs with proper proportion on minority languages, on minorities and the programs prepared by the minorities. Accordingly, the legislative regulation, in terms of raising public awareness, refers only to persons with disabilities and minority groups.

In contrast to the legislation, the program priorities of the Public Broadcaster set by the Supervisory Board[541] pay special attention to the production and procurement of media products oriented on human rights, which should focus on human rights education, promotion, public awareness, and improving the rights system. At the same time, the involvement of vulnerable groups of the society, human rights defenders, as well as various social groups, communities, and their representatives should be ensured during the production and purchase of human rights media products.[542]

According to the 2019 report of the Public Broadcaster Supervisory Board on the implementation of program priorities by the broadcaster,[543] the topic of human rights was widely integrated with the various programs of the First Channel. According to the attached statistics, the topic of human rights is first in the number of topics covered in all the platforms of the broadcaster, [544] while in the programs covered in News and platforms of national minorities, human rights are in second place, after the topic of Euro-Atlantic integration.[545] However, it should also be noted that most of the information prepared on human rights relates to specific human rights violations.[546] This is evidenced in the official letter provided by the broadcaster in response to the request for public information, where the main source of raising public awareness about human rights is the news program "Moambe".[547] The indicated program, in its essence, serves to provide the latest and important information to the public and has less of an educational nature. Consequently, most of the information provided to the public by the Broadcaster about human rights

541 Decision N430 of the Supervisory Board of the Public Broadcaster, August 17, 2018 on determining the program priorities of the Public Broadcaster for 2018-2021, (Available at: https://bit.ly/30eVXFu; Accessed on: 04.03.2021).

542 Ibid., para 3.3.

543 Public Broadcaster Supervisory Board Assessment of Program Priorities implemented by the Public Broadcaster (2019) (Available: https://bit.ly/3bhxEx7; Accessed on: 04.03.2021).

544 Ibid., p. 41.

545 Ibid., p. 42

546 Ibid, pp. 25-26

547 Public information provided by LEPL Public Broadcaster

serves to inform them about specific facts of violations, specific legislative changes or reforms, and less about awareness-raising and strengthening activities.

It should also be noted that the media products of the Public Broadcaster are translated into ethnic minority languages (Armenian and Azerbaijani). In particular, the main news program "Moambe" is simultaneously translated into Armenian and Azerbaijani languages at 21:00, which can be accessed by users through a proper decoder (so-called set-top boxes); In addition, the Public Broadcaster operates Internet radio and Internet television in Armenian and Azerbaijani languages; News is made for Armenian and Azerbaijani Internet TV several times a day; and entertainment, cultural, educational and children's programs in Azerbaijani and Armenian languages are produced.[548] Also, all materials are available on the Broadcaster's web portal, which operates on the principle of a news agency and is available in seven languages (Georgian, Abkhazian, Azerbaijani, Armenian, Ossetian, Russian, and English).[549] Consequently, ethnic minorities also have access to human rights-related information.[550]

According to a survey conducted by the First Channel of Georgia in Kvemo Kartli and Samtskhe-Javakheti, as regions densely populated with ethnic minorities, to receive a TV signal, the so-called Set-top boxes are used only by a small part of the population (Kvemo Kartli – 8.2%, Samtskhe-Javakheti – 14.6%).[551] Therefore, the synchronous translation of the main news program "Moambe" into Armenian and Azerbaijani is not available to a large part of the population. However, watching TV shows on social media is a tried and tested platform in both regions and is considered an alternative to television.[552]

The institution of social advertising defined by law should also be considered here, one of the purposes of which is to raise public awareness on important public issues.[553] The placement of this type of advertisement is a direct obligation of the Public Broadcaster at the time and frequency defined by law.[554] In addition, the administrative body has the authority to purchase social advertising time beyond the minimum time prescribed by law to disseminate important information to the public.[555]

548 Human Rights Education and Monitoring Center (EMC), "Ethnic Minority Needs, Public Broadcaster and the Pandemic", Tbilisi, 2020, p. 20, (Available at: https://bit.ly/2OkvKmu; Accessed on: 04.03.2021).

549 Ibid.

550 Public Broadcaster Supervisory Board Assessment of Program Priorities implemented by the Public Broadcaster (2019), p. 27.

551 Company SONAR, Georgia's First Channel, Kvemo Kartli and Samtskhe-Javakheti – Survey of TV Viewers in Areas Densely Populated by Ethnic Minorities, Telephone Survey Results, December 2020, p. 4.

552 Ibid., p. 5.

553 Ibid., Article 2, para "z[7]".

554 Ibid., Article 65.

555 Ibid., Article 66[1], Para 2.

Beyond the definition of substantive obligations for the Public Broadcaster at the legislative level, there is currently no other long-term formal cooperation (e.g. in the form of a memorandum) between the state and the Broadcaster to strengthen public legal awareness.[556] Specific opportunities for cooperation are provided only in the Government Action Plan for Human Rights (2018-2020) on issues such as education and raising awareness about sexual and reproductive health, prevention of gender-based sex selection, early marriage, combating gender stereotypes, etc. The Action Plan addresses the need to raise public legal awareness of these issues and requests cooperation with the Public Broadcaster with this purpose.

The Public Broadcaster and the Ministry of Education, Science, Culture and Sports of Georgia cooperated in the development of "Teleschool", in which civic education (grades VII-X) was recorded and video lessons and videos were broadcasted aimed at teaching human rights and legal awareness to pupils.[557] At the same time, it is welcomed that one hour is allocated on Azerbaijani and Armenian lessons in the Teleschool, but it is not clear whether the subjects of civic education are considered in the lessons.[558] This puts under question the relevance of the Teleschool project to strengthen legal awareness for minorities.

The use of Internet resources in the world of modern technologies plays an important role for the purpose to strengthen access to information and public legal awareness. The majority of the population (69%) names television as the main source of information, but the Internet/social media also play an important role in this process. In particular, 24% of the population uses the Internet as the first source of information. At the same time, 71% of the population[559] consumes the Internet at least once a week, while the share of households provided with the Internet is 83.8% nationwide.[560]

Thus, it is clear that in terms of receiving information, television is still the established and dominant source in society. This is particularly true for various vulnerable groups, ethnic minorities[561], and the elderly.[562]

556 Public information provided by LEPL Public Broadcaster.

557 Public information provided by the Ministry of Education, Science, Culture and Sports of Georgia (MES 8 21 0000032096)

558 Public information provided by LEPL Public Broadcaster

559 Every day – 63%, Once a week – 8%, Once a month – 2%, More rarely – 7%, Never – 20%, I do not know what the Internet is – 1%, Caucasus Research Resource Center (CRRC), NDI: Public sentiment in Georgia, August 2020, (Available at: https://bit.ly/38dcUVc; Accessed on: 04.03.2021).

560 Public information provided by the National Statistics Office of Georgia (N 7-3001).

561 Company SONAR, Georgia's First Channel, Kvemo Kartli and Samtskhe-Javakheti – Survey of TV Viewers in Areas Densely Populated by Ethnic Minorities, Telephone Survey Results, December 2020, p. 5.

562 SONAR, Georgia's First Channel, Television Audience Survey – Television Trust, TV Frequency, TV Audience Demographic Structure Telephone Survey Results, October 2020, p. 10.

Therefore, the use of Internet resources to strengthen legal awareness should not be the only or the main resource of the state for public informativeness. However, given that almost a quarter of the population uses the Internet/social network for information, and the data on the daily use of this resource is quite high, the state should have a strategy to use it for public awareness on effective realization of their basic rights and freedoms.

A good example of the use of Internet resources by the state for public awareness is the information website stopcov.ge,[563] created by the Government of Georgia in the conditions of the Covid 19 pandemic, which contains all types of information about the pandemic, as well as, the measures taken for prevention and management, their legal basis, medical recommendations, and additional information on various required services related to the pandemic. However, it should be noted that the information posted on the website is simultaneously covered by television and social networks.

Access to justice is a rather broad and complex issue that encompasses several legal, social, economic, and cultural aspects. Thus, creating a unified, comprehensive, and systematic website to raise public legal awareness on this topic may be associated with objective difficulties. However, this does not preclude the adoption of a product, focused on certain major issues/public groups, which could become an important resource in raising public awareness, in case of a government awareness-raising campaign related to this platform.

5.4. Education policy related to human rights and legal empowerment

The National Human Rights Strategy directly refers to the possibility of receiving human rights education at any stage of education, including as a way of non-formal education, when talking about measures to raise public awareness. Given that, the legal basis for integrating human rights education into the general education system lays in Article 3 of the Law of Georgia on General Education, which defines the main policy objectives and indicates, among other things, the creation of conditions necessary for a student to become a free individual and develop his/her civic consciousness, and to promote public awareness on responsibilities before the state, and the environment.

The content of the compulsory and elective subjects are determined in the national curriculum approved under the order of the Minister of Education and Science of Georgia.[564]

563 Official website created by the Government of Georgia for the prevention of coronavirus in Georgia, Available at: https://stopcov.ge/; Accessed on: 04.03.2021).

564 National Curriculum Web Portal, (Available at: http://ncp.ge/; Accessed on: 04.03.2021).

Based on the above-mentioned goals of the education policy and to strengthen the legal awareness of students, several subjects in the field of social sciences have been added in the field of civic education at schools according to the National Curriculum, based on which pupils get knowledge on political, legal, social, cultural and economic issues.

According to an official letter from the Ministry of Education, Science, Culture, and Sports of Georgia, "The latest, third-generation national curriculum has strengthened the civic education component, compared to previous-generation curricula, which includes human rights and legal literacy issues. These issues are presented in the school subjects at elementary and secondary levels: "Me and Society", "Our Georgia" and "Citizenship". One of the achievable results in the citizenship level standard is that the student should be able to substantiate his/ her decisions/views based on the main legal documents (Constitution of Georgia, Universal Declaration of Human Rights, Convention on the Rights of the Child). Aspects of access to justice, in particular, are emphasized in Grade IX, where the thematic block is the citizen, state, and global processes. Out of the 4 major topics to be studied in Grade IX, one is devoted to the central government. Within this topic, the school/teacher/textbook offers students issues after the elaboration of which, "the student will be able to analyze the organization of the state, the separation of powers and political processes according to the principles of democracy", thus the student will understand concepts such as democracy and its subcategories: principles of democracy, human rights, rule of law, transparency, responsibility, tolerance, inclusiveness, non-violent methods of action."[565]

In terms of raising legal awareness in the general education system, the issue of textbooks should be mentioned, as "textbooks, along with the construction of knowledge, have a social and ideological function and have a great influence on the formation of student values and attitudes."[566] In addition, according to the UN Sustainable Development Goals, textbooks should promote equality, tolerance, and human rights and be adapted and accessible to national minority children, also children with vulnerable and special educational needs. [567] This is also indicated in the unified strategy of the education and science system.[568] Nevertheless, according to the survey, conducted by Georgian Young Lawyers Association, existing guidelines on human rights and equality issues are flawed, misrepresenting cultural and ethnic diversity, and the gender role of women and men.[569]

565 Public information provided by the Ministry of Education, Science, Culture and Sports of Georgia (MES 8 21 0000032096).

566 Giorgi Chanturia, Meri Kadagidze, Equality Policy in the General Education System, Georgian Young Lawyers Association (GYLA), Tbilisi, 2020, p. 5, (Available at: https://bit.ly/3ecQAim; Accessed on: 04.03.2021).

567 Ibid, p. 11

568 Ibid, p.25

569 Ibid, p.43

Lack of teacher competence is mentioned as an additional problem in terms of finding gaps in the content of civic education teaching and its textbooks.[570] According to the National Center for the Development of Professional Education of Teachers, various training was organized by the Ministry of Education of Georgia in 2017-2020, focusing mainly on the competencies of democratic culture and improving knowledge on children's rights.[571] In this regard, a human rights training course for teachers and principals developed in collaboration with the National Center for Teacher Professional Development and the Public Defender, will be available from 2021, which is welcomed.[572] However, as the project is newly developed, it is not possible to evaluate its content or quality at this stage. The context covered by the "democratic culture" within the framework of teacher training is also unclear.

Challenges related to textbooks and teacher competence in the field of civic education are particularly evident in the teaching and learning process of ethnic minorities. The national curriculum is indeed mandatory for both Georgian and non-Georgian language schools, therefore, non-Georgian language students should also pass civic education subjects.[573] However, a significant obstacle in this regard is the existence of books and texts mostly in Georgian or their incomplete translation, which prevents students from properly understanding their rights and responsibilities, making it difficult for them to use and protect these rights in practice.[574] The language barrier also poses a problem for non-Georgian language teachers, as it complicates not only the teaching process with mostly Georgian-language textbooks but also their professional training and the opportunity to participate in various pieces of training organized in this direction.[575] In this regard, the "Non-Georgian language school support program" organized by the National Center for Teacher Development is welcomed, which aims to promote the professional development and teaching-learning process of teachers at non-Georgian language schools by strengthening the state language in the areas where national minorities are densely populated.[576] It is important to note that the number of teachers involved in this project is constantly growing, but still insufficient.[577]

570 Ibid, p.42

571 Public information provided by the Ministry of Education, Science, Culture and Sports of Georgia (MES 8 21 0000032096)

572 Ibid.

573 Ibid.

574 Giorgi Chanturia, Meri Kadagidze, Equality Policy in the General Education System, Georgian Young Lawyers Association (GYLA), Tbilisi, 2020, p. 43, (Available at: https://bit.ly/3ecQAim; Last Access: 04.03.2021).

575 Mariam Dalakishvili, Nino Iremashvili, Systemic Challenges of Ethnic Minority Education Policy, Human Rights Education and Monitoring Center (EMC), Tbilisi, 2020, p. 24 and 32, (Available: https://bit.ly/3bcxJ57 ; Last Access: 04.03.2021).

576 Public information provided by the Ministry of Education, Science, Culture and Sports of Georgia (MES 8 21 0000032096)

577 Mariam Dalakishvili, Nino Iremashvili, Systemic Challenges of Ethnic Minority Education Policy, Human Rights Education and Monitoring Center (EMC), Tbilisi, 2020, p. 32, (Available: https://bit.ly/3bcxJ57; Last Access: 04.03.2021).

Finally, it is important and welcomed that since 2015, civic education has been a compulsory module in vocational education programs. Assessing and editing of these programs started in 2020, and it is planned to further strengthen this module and increase student awareness by developing the knowledge and skills relevant to citizenship in a democratic society.[578]

578 Public information provided by the Ministry of Education, Science, Culture and Sports of Georgia (MES 8 21 0000032096)

VI. Geographical, Infrastructural and Physical Barriers

When access to justice is discussed, the primary and most basic form of access is material, precisely, geographical, infrastructural and/or physical access to the justice system, including legal aid agencies. Accordingly, such inaccessibility is considered a significant and fundamental barrier to access to justice.[579] It is true that access to law enforcement agencies needs to be included under access to justice, however, due to the limitations of this study, we will only discuss courts and state legal aid services. As for the issue of law enforcement agencies, it may become the subject of more specific research in the future.

The concentration of courts and free legal aid services in regional centers and large cities puts rural areas and small towns in a disadvantaged position. It may take days for those living in these areas to access the justice system. Consequently, due to the distance and a faulty and problematic transportation system, sometimes these individuals find court and legal services inaccessible. Moreover, an additional challenge is the shortage of lawyers in villages and other settlements away from the center, as it is more difficult to attract good professionals in these areas.[580] Unequal distribution of courts or legal aid services can lead to or aggravate certain inequalities between users. Namely, the economically disadvantaged and persons with mobility problems disproportionately suffer under such circumstances.[581]

Apart from the territorial distribution of these agencies and physical adaptation of the buildings, their working hours are also important. According to studies, when courts and legal aid services also operate in the evening hours, user satisfaction increases. However, it should be noted that there is no empirical research that indicates that the actual use of/referral to these services increases with the extension of working hours.[582] In light of the Georgian context, this subchapter discusses the above-mentioned physical, geographical or infrastructural challenges, as well as possible solutions to them.

579 Roderick A. Macdonald, Access to Civil Justice, The Oxford Handbook of Empirical Legal Research (ed. Peter Cane and Herbert M. Kritzer), 2012, p. 510.

580 Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, p. 86.

581 European Commission for the Efficiency of Justice (CEPEJ), Access to Justice in Europe, 2007, p. 27, (Available at: https://bit.ly/3x8cb2F; Accessed on: 26.02.2021).

582 Roderick A. Macdonald, Access to Civil Justice, The Oxford Handbook of Empirical Legal Research (ed. Peter Cane and Herbert M. Kritzer), 2012, p. 510.

6.1. Territorial distribution of courts and legal aid centers/bureaus

With regard to physical access to justice, the territorial structure of the judicial system and the bureaus/centers of the Legal Aid Service, their geographic distribution is key.

The Common Courts System of Georgia is unified and consists of the Supreme Court of Georgia, appellate and district (city) courts.[583] The Supreme Court, as in many other countries, is the single apex court in Georgia and is located in the capital – Tbilisi. Appellate and district (city) courts are established and their area of operation is determined by the decision of the High Council of Justice of Georgia.[584] There are two courts of appellate jurisdiction in Georgia. The Tbilisi Court of Appeals serves the whole of eastern Georgia, and the Kutaisi Court of Appeals serves the western part of the country. As for district and city courts, district courts are established in a municipality/municipalities, while a city court is established in a self-governing city, however, the jurisdiction of a city court together with a self-governing city may extend to a municipality/municipalities.[585] Magistrate judges are also part of the district (city) court system.[586] They exercise their authority in the administrative-territorial unit within the jurisdiction of the district (city) court. There are 5 city and 21 district courts in Georgia, and as part of their composition 42 magistrate judges exercise their powers in 41 different municipalities.[587]

According to a quantitative survey, 26% of the respondents named the location/territorial access of the court as a partially hindering factor, while 7% said that this factor is very obstructive. It was also found that whether or not territorial access to the court is identified as a hindering factor is influenced by the following characteristics of the respondents: personal income, experience of applying to the court during the past six years and type of the settlement, and where one resides. Those with an average personal income are more likely to identify court location as a barrier than those with a high personal income. Also, those who have applied to the court in the past six years are more likely to consider the location of the court as a hindering factor than those who have not applied to the court within this period. Also, residents of Tbilisi and also villages are more likely to see the location of the court as a deterrent factor than residents of other cities.[588]

583 Organic Law of Georgia on Common Courts, Article 3.

584 Ibid, 27.

585 Ibid.

586 Ibid, 28.

587 Decision N1/150-2007 of the High Council of Justice of Georgia of August 9, 2007 on the Establishment of the District (City) courts, Tbilisi and Kutaisi Courts of Appeal, their Territorial Jurisdiction and the Number of Judges.

588 CRRC, EMC, IDFI, Access to Justice: Results of Public Opinion Survey, 2020, p. 14, [Available at: https://bit.ly/3dQmocS; Accessed on: 26.02.2021].

Some of the respondents who had to travel to another city to appear at the hearing also identify the territorial location of the court as a barrier, as they often have to appear in court several times implying additional costs and loss of time. This threshold is especially emphasized by those participants whose cases were transferred from regions to the Tbilisi or Kutaisi Court of Appeals. Respondents stated transportation costs were difficult to bear. Also, as the employed respondents indicate, holding of proceedings in a city other than their residence is an impeding factor for their work activities.

"One of the problems was that there was no court in Chiatura and for every session I had to go to Sachkhere and be absent from work." [589]

"First court was here and we had to spend money and time here, then there was the appeals court ... not to mention the costs for the trip. You spend so much money while commuting that a man can go insane. I will not even say anything about time, it is more and more protracted." [590]

A similar trend has been observed with professional focus groups, namely that the territorial factor is most problematic when it comes to appellate courts, as there are only two such courts and people have to come from afar to solve various issues or attend hearings. In addition, according to respondents in professional focus groups, cases falling under the jurisdiction of magistrate judges are very limited, consequently, requiring parties to often travel to district centers.

"There is a magistrate court in Oni and a city court in Ambrolauri. The list of cases heard by Magistrate judges is very narrow and there is no access for slightly more complex cases. Oni and Ambrolauri are not far from each other, but there are villages that are quite far from Ambrolauri ... It would be difficult for me discuss this like this, but some type of research related to population size and dispute categories, should be conducted. [591]

589 Man, Focus Group on Civil/Administrative Law Proceedings, Imereti, September 25, 2020.

590 Man, Focus Group on Civil/Administrative Law Proceedings, Samtskhe-Javakheti, October 10, 2020.

591 Woman, Representative of the Georgian Bar Association, Focus Group with the Professional Group, November 18, 2020.

The situation is similar with regard to distribution of legal aid services. There are 13 legal aid bureaus and 25 consultation centers in Georgia, which is even much less than the number of courts (district/city courts, as well as municipalities covered by magistrate judges). Therefore, it is reasonable to assume that accessibility problems will exist for persons living in different settlements or villages, particularly for socially vulnerable groups.

Advocates also point out that the problem of territorial access to the institutions of justice is closely linked to financial barriers and time factors, which combined turn into a barrier of access to justice.

> *"Some socially vulnerable people do not even have the five GEL to come and file a lawsuit in court, or for legal aid they have to come to Kutaisi. Yes, we say it is online now, but many of them, in addition to not having education also have problems with this technical and material side."*[592]

In terms of access to justice, territorial distribution of judicial services includes two interrelated aspects: first, physical proximity of the justice system for the users, and second, optimal management of resources.[593] While it is necessary to take into account livelihood and financial problems of the population, it is impossible for courts to exist in all communities or villages. According to lawyers, there will always be courts that are quite far from the place of residence of a particular person. Therefore, merely increasing the number of courts will not solve above-mentioned problems and a more complex approach is needed to pursue the interest of increasing access, so that the principle of sustainable budget spending is upheld simultaneously.[594]

It is true that the high concentration of courts in urban centers creates the risk of distancing court services from users, and as a result, territorial distance may itself be reason why individual refuses to solve a legal problem using a formal justice system. The need to rationalize public spending justifies a certain geographical concentration of justice institutions.[595] To this end, in 2013 the European Commission for the Efficiency of Justice (CEPEJ) developed recommendations on such territorial distribution of courts so that hindrances to equal access to justice are avoided. The document also emphasizes the

592 Man, State Legal Aid Service Representative, Focus Group with Professional Group, October 13, 2020.

593 European Commission for the Efficiency of Justice (CEPEJ), Access to Justice in Europe, 2007, p. 27, [Available at: https://bit.ly/3x8cb2F; Accessed on: 26.02.2021].

594 Focus group with legal professionals, October-November, 2020.

595 European Commission for the Efficiency of Justice (CEPEJ), Access to Justice in Europe, 2007, p. 27, [Available at: https://bit.ly/3x8cb2F; Accessed on: 26.02.2021].

need for a comprehensive approach, such as well-functioning transport network, appropriate quality of computer services provision, and other related issues that can reduce geographical barriers.[596] Accordingly, in any distribution of justice institutions, it is important that each step taken in the direction of increasing physical access to justice is based on a detailed needs assessment and that there is a unified policy/vision on the strategies through which equal access to all necessary services can be ensured.

6.2. Adaptation of Court and Legal Aid Center Buildings

When discussing material access other than, the territorial aspect, the ability to effectively use the justice system without the support of others is also vital. Without sufficient guaranties related to use of justice services for people with different types of disability, people seeking justice become passive participants of the processes in a complicated system that is intellectually or physically inaccessible to them.[597]

Physical accessibility of government, judicial buildings and those of other public agencies is a serious, general problem for people with disabilities in Georgia.[598] In particular, adaptation of judicial buildings and legal aid bureaus/consultation centers is crucial when discussing material access. In addition, persons who have visual or auditory impairments, special psychological or intellectual needs, require significant assistance to understand what is going on in a courtroom.

To address these barriers of access to justice, it is important to discuss the essence of " universal design". According to Article 2 of the UN Convention on the Rights of Persons with Disabilities[599], "universal design" means the design of a product, environment, program, or service to be fully and equally usable by all people, including persons with disabilities, in an unrestricted manner and to the greatest extent possible, without the need for adaptation or specialized design.[600]

596 European Commission for the Efficiency of Justice (CEPEJ), Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System, CEPEJ's 22th plenary meeting, 6 December 2013.

597 Ibid.

598 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2019, p. 356, [Available at: https://bit.ly/39etaU1; Accessed on: 24.02.2021].

599 Convention on the Rights of Persons with Disabilities, GA Res 61/106, UN Doc A/RES/61/106 (13 December 2006) [hereinafter CRPD].

600 Special Report of the Public Defender, Lack of Access to Physical Environment for Persons with Disabilities, 2018, [Available at: https://bit.ly/39etaU1; Accessed on: 24.02.2021].

One of the objectives of the Georgian National Human Rights Strategy (2014-2020) is to ensure that people with disabilities exercise their rights equally with others and fully participate in the public life. One of the tasks defined in the Strategy is to "ensure access to public facilities and vehicles for people with disabilities".[601] Nevertheless, the survey conducted in 2019, assessing the accessibility of courts for persons with physical and/or sensory impairments found that only a few court buildings provide services for persons with physical disabilities, while almost no premises are accessible for persons with sensory impairments. Almost the entire majority of ramps in court buildings, as well as indoor and outdoor stairs, do not meet the accessibility standard. The number of ramps is also limited. The monitoring revealed that out of 65 buildings examined in the accessibility audit process, only 7 (4%) met the minimum standard. Along with the physical environment, access to services and information also remains a challenge for people with disabilities at the national level.[602]

The same assessment is shared by professional focus group participants, who emphasized inaccessibility of regional/district court buildings. In addition, access to justice is more problematic for people with sensory impairments than for people with mobility impairments. Their needs for adaptation of the justice system have completely disappeared from the agenda.

"I think Tbilisi City Court is the most adapted in this regard. There was no problem because the elevator is also available ... However, for example, I was thinking, that the building of Kutaisi Court of Appeals is quite old and less adapted. The situation in district courts is more problematic."[603]

"Let's say if a person uses a wheelchair he will be able to move around in the court independently, but if he is blind, it is almost impossible, especially if he goes to court for the first time. So I think the solution for that might be audio recordings. In museums, for example, when you enter an area, it automatically tells you the directions, which room is where and you can choose one you want, or you are informed where it is located."[604]

601 Ibid.

602 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2019, p. 356, [Available at: https://bit.ly/39etaU1; Accessed on: 24.02.2021].

603 Man, NGO Representative, Focus Group with Professional Group, October 6, 2020.

604 Woman, Representative of the Georgian Bar Association, Focus Group with the Professional Group, November 18, 2020.

As for the legal aid bureaus and consultation centers, according to the information provided by them, 4 bureaus and 13 consultation centers have a ramp or an elevator, which is about half of the total number. However, no study was conducted to check whether the existing infrastructure (elevator/ramp) meets the established standards. As the study of court buildings has shown, existence of the elevator/ramp does not necessarily mean that they are usable for persons with reduced mobility. As in the case of court buildings, no steps have been taken to adapt legal aid bureaus/consultation centers for persons with sensory disabilities.

6.3. Ability to prepare and process the case electronically

There is an opinion that geographical or physical barriers are created precisely because the law requires and stipulates that the individual should go to the institutions of justice and not vice versa.[605] In modern times strengthening e-services is considered to be one of the ways to solve this problem.

It is welcomed that the registered users of the web portal www.ecourt.ge – electronic case registration service – have the opportunity to perform the following actions:

- Completing and forwarding the claim (complaint, protocol) to the courts of all three instances;
- Receive information about the progress of the sent case, both via ecourt.ge and short text message;
- Access to the case files about uploaded court decisions, scheduled hearings and other details.

However, it should also be noted there is a registration fee on the portal and also, at present, it is not possible to submit counterclaims and other documents via this portal. Also, it is not adapted for people with disabilities, even though such alternative services should primarily be provided by the state for the most vulnerable groups, because they have the most challenges in terms of physical access.

As for the adaptation of the websites of the courts in the common courts system, only the Tbilisi City Court has special functionality for people with disabilities.

605 Roderick A. Macdonald, Access to Civil Justice, The Oxford Handbook of Empirical Legal Research (ed. Peter Cane and Herbert M. Kritzer), 2012, p. 510.

According to the information provided by the Legal Aid Service, the website of this agency (www.legalaid.ge) is adapted for the visually impaired. In particular, the website has a special integrated program-reader, which allows people with visual impairments to get acquainted with any text on the website through special voiceover.[606]

In conclusion, because many other essential aspects of the justice system are still problematic, the issues discussed in this subsection do not appear on the agenda. This was confirmed through the opinions expressed in the professional focus groups, which stated that there are many problems related to access to justice that must be taken care of, before solving which the issue of territorial redistribution of courts or the introduction of electronic services cannot be relevant even among the circles interested in this topic.

> *"There are so many other problems that I think if person goes from Batumi to Kutaisi to appeal, such things are less relevant ... In order to raise the issue of territoriality, we have to solve other problems."*[607]

606 State Legal Aid Service, Public Information Letter.

607 Woman, NGO Representative, Focus Group with Professional Group, October 6, 2020.

VII. Financial Barriers

7.1. The Impact of Economic Inequality and Poverty on the Fair Use of Justice System

Due to of poverty, social inequality, and structural injustices, more than five billion people worldwide face exclusion from justice.[608] Many people face barriers that make it impossible to solve everyday problems through legal means.[609] In this case, despite the formal existence of the justice system and relevant institutions, people cannot achieve justice. In addition, the degree of access to justice is significantly determined by the lack of basic and essential necessities for a dignified life, such as housing and employment.[610]

Justice cannot be considered fair if it is not accessible to the poor and underprivileged. Access to justice is a basic human right, but many people around the world have been denied the right because economic marginalization often means depriving them of the opportunity to make choices, access basic resources, and engage in decision-making. Lack of access to justice, in addition to being the indicator of limited democratic governance, co-participation, and accountability, also reveals a rejection of social responsibility by the State and a lack of social policy, as a whole.[611]

Full access to the justice system can potentially be associated with so many costs that it is often considered a luxury. In addition to the financial burden, the agenda may also include issues related to the justice system being partial towards those who hold power and resources. Overall, the state of economic inequality and poverty pushes us to think about the justice system both in terms of financial accessibility and, more broadly, in relation to its role as a defender of the interests of socially and economically marginalized groups. In this regard, we mean the obligation of the State to provide the necessary means and resources for the realization of the right, despite the *de facto* social and economic differences, so that the institutional struggle for justice makes sense. Otherwise, inequalities already firmly established in social structures preclude the possibility of a fair and accessible justice system.

The issue of financial accessibility is most critical in the context of legal representation services and litigation costs. Regarding the former, the state should be able to adequate-

608 World Justice Project, Global Insights on Access to Justice, Findings from the World Justice Project General Population Poll in 101 Countries, 2019, p. 6.

609 World Justice Project, Measuring the Justice Gap, 2019, p. 5, [Available at: https://bit.ly/3r3jRQ0; Accessed on: 24.02.2021].

610 Ibid.

611 UNDP, Access to Justice, Practice Note, 2004, p. 3, [Available at: https://bit.ly/2ZMU7vC; Accessed on: 24.02.2021].

ly fund the state legal aid service to give those persons who do not have the opportunity to hire relevant specialists independently a chance for fair and equal protection.[612] On the other hand, there should be mechanisms in place to mitigate or alleviate the burden of the economically disadvantaged from bearing other litigation costs. The difficult situation in Georgia in this regard is clearly revealed in the 2019 study of the "World Justice Project", which shows that 11% of people with legal problems completely refused to try to resolve their problem due to financial costs.[613]

The use of the justice system is associated with financial costs of various types and volumes. When there are sharp economic inequality and high levels of poverty in a society, the issue of financial costs becomes one of the most tangible and difficult barriers to access to justice. Given that financial costs play a major role in the administration of justice, poverty and economic marginalization are causally linked to accessibility.

Not surprisingly, focus group participants place particular emphasis on socio-economic factors. In particular, almost all of the citizen focus group participants agree that the court treats members of different social classes unequally. Participants believe that a financially well-off person is treated with more respect by the court than the one who is financially less secure and a rich person has a better chance at a more favorable decision. It should be noted that the reason for this, according to the respondents, is that financially well-off persons can hire more qualified lawyers. In addition, one of the participants in the Kvemo Kartli criminal case group believes that a financially wealthy person has a better chance of having a court rule in their favor, not because they will bribe the judge, but because "if the rich want to influence the outcome, they will do so this before the judicial proceedings start so that the judge will have to decide the case in their favor. In other words, considering the circumstances, the judge will lawfully side with them."[614] Several respondents also pointed out the privileges of those who are financially well-off in the focus group of non-governmental organizations. It should also be noted that according to the Survey on Attitudes towards the Justice System in Georgia (2014), a significant part of the population thinks that it is less likely that the rich and the poor will be judged equally. In particular, 43% of respondents think there is a greater chance that the court will find the poor guilty, all other characteristics being identical (49% think that the rich and the poor have equal chances of being acquitted

612 Ibid., p. 12.

613 World Justice Project, Global Insights on Access to Justice, Findings from the World Justice Project General Population Poll in 101 Countries, 2019, p. 44.

614 Man, focus group of participants with experience in criminal law cases, Kvemo Kartli, September 29, 2020.

or found guilty).[615] These statistics confirm that "injustices based on socio-economic inequality remain a problem."[616]

> *"I know cases when someone would come in dressed well and wearing a good perfume, he would be applauded even though he is a very bad person and a poor person also would come, and nobody would even look at them, even if they were sick."*[617]
>
> *"This is not from my personal experience, but there were just some attitudes, not due to a person's race and skin color, but the strengths and weaknesses of the parties, i.e. the banking sector and .... the borrower, or the relationship between the insurer and the insured, I have observed a certain bias in a sense that the court accepts their evidence without any problem, and it takes a lot of effort for a weaker side to prove something trivial."*[618]

Given the above circumstances, it must be said that economic inequality and poverty, as structural factors, have a direct impact on access to justice. With this in mind, a fundamental shift in the path to access to justice may be related to broader social and economic policy issues. However, this issue goes beyond the scope of this study, and, consequently, it will not be possible to discuss it in depth. For the purposes of this study, it is necessary to analyze the specific financial barriers and institutional challenges, the solution of which will significantly reduce the level of inequality between the parties caused by economic marginalization and contribute to the development of a more accessible, inclusive, and fair justice system.

7.2. Financial Barriers and State Legal Aid Service

The obligation of the State to be able to uphold the rule of law, equality, and dignity cannot be fulfilled if people, because of their social or economic status, do not have the opportunity to participate in court proceedings and prove their truth.

615 CRRC, Attitudes to the Judiciary in Georgia: Assessment of General Public, Legal Professionals and Business Leaders, 2014, p. 16, [Available at: https://bit.ly/3uw6ytw; Accessed on: 24.02.2021].

616 Ibid.

617 Woman, focus group of participants with experience in civil/administrative cases, Samtskhe-Javakheti, October 10, 2020.

618 Man, NGO Representative, focus group with professionals, October 6, 2020.

The State Legal Aid Service is one of the central components of access to justice. Legal aid programs involve not so small expenditure on the part of the State, which is why states often try to avoid it.[619] However, from an institutional point of view access to and provision of legal aid is an integral part of the right to fair trial, so the State should not hinder its proper functioning and impede its adequate funding.

It is noteworthy that in the focus groups of citizens, in the context of the right to defense, special attention was paid to the issue of finances. Citizens recalled the challenging experience of using the services of private lawyers, which highlights the importance of affordable and quality free legal aid in the face of economic vulnerability.

> *"In my case, I changed two lawyers. The most surprising thing was that the conversations would start with a money talk. They would not even ask me what the matter concerned, they would just tell me what their service fee is. I think one should not start a conversation with their price."*[620]
>
> *"In my case, it turned out to be very difficult, that is, the financial side is a very big problem, but the other side is that many lawyers are indifferent to the case for some reason, many are not good at their job."*[621]

During the discussion, there were cases when the respondents could not hire a lawyer due to the lack of financial resources. In such cases, defendants in criminal cases were appointed a state-funded lawyer, while the plaintiffs in civil cases defended their interests on their own.

Thus, it is important to consider the extent to which the existing legislation addresses the needs of the economically disadvantaged for legal aid and in what direction the state can develop its existing services. The issue itself must be analyzed in light of the general social background of the society.

619 World Justice Project, Global Insights on Access to Justice, Findings from the World Justice Project General Population Poll in 101 Countries, 2019, p. 13.

620 Woman, focus group of participants with experience in civil / administrative cases, Kvemo Kartli, September 29, 2020.

621 Woman, focus group of participants with experience in criminal law cases, Imereti, October 1, 2020.

7.2.1. Insolvency criterion

As a general rule, a precondition for a person's eligibility for state legal aid (other than counseling) is their insolvency.[622] This applies to both civil and administrative cases as well as criminal cases (except in cases of compulsory defense in criminal law and certain civil/administrative cases directly defined by legislation).[623]

According to the Law of Georgia on Legal Aid, a member of a family registered in the unified database of socially vulnerable families, whose socio-economic rate is lower than the threshold set by the Government of Georgia, is considered insolvent.[624] More specifically, a person with a rating score of 70,000 or less in a socially vulnerable database is considered insolvent and eligible for free legal services.[625] In addition, a socially vulnerable person with a score of 100,000 or less, who falls into one of the following categories, is considered insolvent and will be able to receive free legal services:

- A member of a large family, with 3 or more children under the age of 18;
- A veteran of war and military forces;
- A person with a disability under the age of 18;
- An adult with severely or significantly pronounced disability;
- A person with severe, significant, or moderate disability status, if the disability has been present since childhood;
- Orphaned child under the age of 18;
- Internally displaced person as a result of military aggression against Georgia by the Russian Federation.[626]

The first question that arises concerning these criteria is the following: to what extent do they meet the needs of the population for free legal services? This study, naturally, cannot analyze the fairness and correctness of the criteria to enter the system of the socially vulnerable. The subject of this discussion is the extent to which the insolvency criterion fulfills its function – i.e. to what extent it includes all groups that are otherwise unable or unwilling to use the justice system due to their socio-economic status.

622 Law of Georgia on Legal Aid, Article 5, paras 1 and 2.

623 These cases are discussed in detail in the subsection 4.3. – "State Legal Aid System: Consultation and Representation."

624 Law of Georgia on Legal Aid, Article 2, subpara. "g".

625 Ordinance of the Government of Georgia on Determining the Rule of Proof of Insolvency of a Person №424, Article 2, paragraph 1; [Available at: https://bit.ly/3bGxrCG; Accessed on: 26.02.2021].

626 Ibid., Article 2, para. 2.

According to international standards, free legal services should be available not only to the poorest and most vulnerable sections of the population, but also to the middle class if bearing court costs is a heavy financial burden for them. In particular, the Council of Europe Resolution on Legal Aid and Advice states that "no one should be deprived of the opportunity to protect his or her rights due to economic constraints."[627] When considering whether legal aid is necessary, "account should be taken of a person's financial resources and obligations (1); and the anticipated costs of the proceedings (2)."[628] The 2004 report of the Consultative Council of European Judges (CCJE) states that "legal aid should not be reserved for the neediest persons but should also be available, at least in part, to those whose average income does not enable them to bear the cost of an action unaided." [629] In this sense, free legal aid should also be available to those who can cover part of the costs of the proceedings independently.[630]

In the context of Georgia, the 2016 legal and sociological research on legal aid provided by the United Nations Development Program (UNDP) [631] and the United Nations Office on Drugs and Crime (UNODC) is particularly important.[632] On the question of what factors play a decisive role in deciding whether or not to apply to a court in Georgia, four of the most important obstacles have been identified, two of which are directly related to legal aid, namely legal representation costs and the lack of legal aid.[633] Given the high costs of the court and the representation, free legal aid is the mechanism by which these costs must be mitigated so that persons' social and economic status does not affect their access to the court and the outcome of the process. The question is to what extent the State Legal Aid Service in Georgia can fulfill this function within the framework of the existing legislative regulation.

In this regard, it is problematic as to why the legislator separates an insolvent person from the general category of social assistance recipients in the provision of legal aid. According to the governmental decree on social assistance, social sustenance is a form of social assistance aimed at "improving the socio-economic situation of poor families, re-

627 Council of Europe, Resolution 78 (8) on Legal Aid and Advice, art. 1, [Available at: https://bit.ly/2P6xXSI; Accessed on: 26.02.2021].

628 ibid.

629 Opinion No. 6 (2004) of the Consultative Council of European Judges to the Attention of the Committee of Ministers of the Council of Europe on Fair Trial Within a Reasonable Time and Judge's Role in Trials Taking into Account Alternative Means of Dispute Settlement, 2004, p. 21

630 Council of Europe, Resolution 78 (8) on Legal Aid and Advice, art. 2.

631 United Nations Development Programme.

632 United Nations Office on Drugs and Crime.

633 UNDP, UNODC, Global Study on Legal Aid Country Profiles, 2016, p. 310, [Available at: https://bit.ly/3uKMoMO; Accessed on: 26.02.2021].

ducing and/or preventing poverty in the country."[634] For families who fall into the general category of the recipients of social sustenance (with a 100,000 or less rating score),[635] it is natural that this cash allowance is provided to meet their basic needs.

In these circumstances, it is difficult to say why it is that some persons receiving social assistance (those that are not insolvent, according to Georgian legislation) may still be required to bear the costs for legal proceedings. Such an approach is contrary to the goals of social assistance. Accordingly, it is advisable to eliminate additional preconditions for the provision of free legal aid to socially vulnerable family members with a score of 100,000 or less.

7.2.2. Discretionary power of the Director of the Service

Even if all persons receiving social assistance are granted the right to free legal aid to solve the problem raised in the previous subsection, a significant part of the population will still fail to enjoy this right.

The system of socially vulnerable is unlikely to cover all economically vulnerable persons. Although the coverage by the Targeted Social Assistance program is not insignificant, according to a 2019 study by the United Nations Children's Fund (UNICEF), the demand for social assistance in Georgia is much higher due to high levels of poverty.[636] The UNICEF Welfare Monitoring Survey shows that 15.2% of households applied for some form of social assistance in 2016 (of this 8.6% applied for Targeted Social Assistance (TSA), the rest applied for other types of social assistance).[637] It should be noted that a particularly low percentage of TSA requests were satisfied.[638] The low success rate partly explains why 33% of households below the general poverty line did not apply for TSA.[639]

634 Ordinance of the Government of Georgia on Social Assistance №145, Article 2, Paragraph 1, [Available at: https://bit.ly/3sxzS1k; Accessed on: 26.02.2021].

635 Ibid, Article 6, para 3.

636 Dimitri Gugushvili and Alexis Le Nestour, A Detailed Analysis of Targeted Social Assistance and Child Poverty and Simulations of the Poverty-Reducing Effects of Social Transferred, UNICEF, 2019, p. 5, [Available at: https://uni.cf/2ZTQjJ2; Accessed on: 26.02.2021].

637 Ibid.

638 "Out of every six applicants for targeted social assistance, only one was completely satisfied with the result, and in addition, one out of every twelve applicants considered that his request was partially satisfied. These figures are significantly different from those of other public and private organizations, which fully or partially meet three-fifths of the requests for assistance." Cited from: Dimitri Gugushvili and Alexis Le Nestour, A Detailed Analysis of Targeted Social Assistance and Child Poverty and Simulations of the Poverty-Reducing Effects of Social Transferred, UNICEF, 2019, p. 5, [Available at: https://uni.cf/2ZTQjJ2; Accessed: 26.02.2021].

639 Ibid.

The scale of the problem in this regard is also well illustrated by data from the National Statistics Office and the Revenue Service. According to Geostat, there are about 1.2 million people employed in Georgia (more than 1.5 million are out of the labor force, the inactive population, and the unemployment rate is over 20%).[640] Moreover, only 800,000 people have registered or confirmed their income (hired employees),[641] while the rest are self-employed and have no official income (most of them are self-employed in the field of agriculture).[642] At the same time, according to public information provided by the Revenue Service, the taxable income received in the form of salaries for more than 200,000 people in the tax period of 2020.12 did not exceed 600 GEL.[643]

Against this background, a total of 119,582 families in Georgia receive social assistance with rating score below 100,000 points, and 108,119 families with score below 70,000 points.[644] In this context, it should also be noted that according to the Survey on Access to Courts in Georgia, 35% of the population thinks that applying to the court/participating in court proceedings will be very expensive.[645] Also, 35% of the population believe it is more likely to be expensive than inexpensive, while 22% do not know whether the court costs are expensive or not.[646]

The state legal aid system, even if it offers counseling and representation services, does not cover other additional needs in the process, such as the cost of conducting an independent investigation, forensic examination, psychological/social assistance, etc.[647] These issues will be discussed in detail in subsection 7.3.

It should be noted that under the current legislation, free legal aid can be provided as an exception to some persons belonging to the socially vulnerable group but not registered in the database. This is based on the provision of the Law on Legal Aid, according to which "the Director of the Legal Aid Service may decide to provide legal aid to a person who is not a member of a family registered in the Unified Database of Socially Vulnerable

640 Public information provided by the National Statistics Office of Georgia N7-534.

641 Ibid.

642 Only 0.5% of the population of Georgia has a salary higher than 5000 GEL per month, [Available at: https://bit.ly/2Pxoww4; Accessed on: 25.03.2021].

643 Public information provided by the Revenue ServiceN21-11/10697.

644 Targeted Social Assistance Program Database 2019, [Available at: https://bit.ly/3w0Dviy; Accessed: 26.03.2021].

645 CRRC, EMC and IDFI, Access to Court, Public Opinion Survey Results, 2020, p. 12, [Available at: https://bit.ly/3d-QmocS; Accessed on: 26.02.2021].

646 Ibid.

647 UNDP, UNODC, Global Study on Legal Aid Country Profiles, 2016, p. 307.

Families, based on criteria determined by the Legal Aid Council."[648] The mentioned authority of the director extends to the following categories of persons:

- Persons who met insolvency criteria in the past and whose data are collected in the archives of the Database of the Socially Vulnerable;
- Persons whose difficult socio-economic situation is confirmed by the certificates issued by the local self-government;
- Persons with severe and incurable diseases;
- A single mother with children who are minor;
- A person recognized as a victim of political repression;
- A retired person (due to their age);
- A lawyer employed at the Legal Aid Service/lawyer family member / close relative;
- A family member who has lost a breadwinner;
- A beneficiary of the Rehabilitation and Resocialization Program for Former Prisoners of the Crime Prevention Center;
- A beneficiary of the International Humanitarian Union "Catharsis" (House of Virtues);
- A minor who may be a party to civil/administrative matters.[649]

The existence of this regulation is important. However, this approach has its problems and challenges. Firstly, it does not create clear guarantees for the exercise of the right to free legal aid for those who do not belong to the category of the socially vulnerable but still are economically disadvantaged. In this case, the resolution of the issue is entrusted entirely to the Director of the Legal Aid Service. It is necessary to guarantee the right to free legal aid to persons belonging to the above categories (even if they are not registered in the database of the socially vulnerable), as their status is usually closely intertwined with social and economic vulnerabilities. By the same token, the Law on Legal Aid should further address certain categories of cases in which a person would be able to apply for free legal aid, regardless of their social status (such as, for example, cases involving asylum seekers and persons with international protection, as well as persons affected by a natural disaster; disputes concerning relations arising from the occupancy of dwellings; disputes related to discrimination and labor relations).

In addition, a mechanism should be developed through which a person with less than a certain income level will be able to use free legal services. The need for this is due to the existing social and economic situation, which is confirmed by the above data of the National Statistics Office and the Revenue Service, in which a significant part of the

648 Law of Georgia on Legal Aid, Article 5, Paragraph 3.

649 Decision № 27 of the Legal Aid Council of 9 September 2015, [Available at: https://bit.ly/3uD2Zlm; Accessed: 26.02.2021].

population is not registered in the unified database of the socially vulnerable although their income is extremely low. Logically, free legal services should be ensured for such persons, per the above-mentioned exceptional categories and the authority granted to the Director of the Service. However, as already mentioned, the existing regulation is problematic considering the lack of legislative guarantees and limitation of categories. In addition, the existing practice based on one of the above mentioned categories poses an additional problem. In particular, the precondition that a person may be granted legal aid at the discretion of the Director of the Service if their "difficult socio-economic situation is confirmed by a certificate issued by the local self-government." According to the focus group of the Legal Aid Service staff, this provision does not work in practice. In the words of one of the participants, providing assistance to citizens in this regard is virtually impossible:

> *"We even have it in the Law on Legal Aid that if a citizen submits a certificate from the municipality that they belong to a vulnerable family, we will provide assistance. But I have been working here for four years and I have never seen such a certificate. As a rule, the municipalities do not issue such certificates, there are cases when they call us and verbally confirm that a person really has a need, but this phone call does not help us much."*[650]

In light of the above considerations, it is important to review existing approaches. Analysis of the legislative framework and focus group observations reveal that to increase access to justice for socially vulnerable groups, it is essential to seek a new and more inclusive regulatory framework.

7.3. Court Expenses

Litigation costs are an important component of access to justice and one of the vital aspects of financial barriers. Article 31 of the Constitution of Georgia, as well as Article 6 of the Convention, do not entail an obligation to provide free access to justice. However, extremely high court fees, which in fact precludes access to a court, cannot be considered to be compatible with the Constitution and the Convention.[651]

650 Woman, State Legal Aid Service representative, focus group with professionals, October 13, 2020.

651 Judgment of the European Court of Human Rights of 26 July 2005 in the case of Podbielski et al. v. POL, Application 39199/98, para 64. See details: Commentary on the Constitution, p. 533.

Initiating a case or being involved as a party in the court hearings gives rise to an obligation of the party to bear the relevant procedural costs. Managing this financial burden on the "consumer" of the justice system is particularly important in terms of access to justice. The share of financial expenditures by individuals significantly determines, on the one hand, the degree of accessibility of court services and on the other hand, the level of public involvement in the administration of justice in general.[652] It is important that litigation costs are transparent and predictable, which means easy access to information on litigation costs and attorneys' fees and the ability to predict these costs. [653]

According to a legal and sociological study published in 2016, when deciding whether or not to apply to a court in Georgia, one of the crucial factors is court expenses.[654] According to a quantitative survey conducted in 2020, when asked how expensive or cheap it was for someone in similar circumstances as them to appeal to court/participate in the trial, the majority of the population answered it was expensive for them to participate in court proceedings (35% answered it was 'expensive rather than cheap', 35% answered it was 'very expensive').[655] Therefore, it is natural that the vast majority of the population interviewed in the same survey believed that court-related costs prevent people living in Georgia from going to court (40% said 'partially hindered', 41% said 'seriously hindered').[656]

7.3.1. Court Fees, Rules for Payment and Exemptions

Georgian legislation points out two categories of litigation costs: (1) court costs and (2) extrajudicial costs. Court costs include state fees and costs related to the hearing of the case. Extrajudicial costs are costs incurred for hiring a lawyer, lost wages (lost earnings), expenses of obtaining evidence, as well as other necessary expenses covered by the parties.[657]

The fee imposed for initiating a case, the so-called "state fee", is established by law in Georgia and ranges from 50 GEL to 8000 GEL. This difference depends on the type of

652 European Commission for the Efficiency of Justice (CEPEJ), Access to Justice in Europe, 2007, p. 97, [Available at: https://bit.ly/3x8cb2F; Accessed on: 26.02.2021].

653 Ibid., p. 30-31.

654 Global Study on Legal Aid Country Profiles, (UNDP, UNODC), 2016, p. 310, [Available at: https://bit.ly/3dENseF; Accessed on: 26.02.2021].

655 CRRC, EMC and IDFI, Access to Courts: Population Survey Results, 2020, p. 31, [Available at: https://bit.ly/3d-QmocS; Accessed on: 26.02.2021].

656 Ibid, p. 12.

657 Civil Procedure Code of Georgia, Article 37.

case, the object of the dispute and the party of the lawsuit (individual or legal entity).[658] The state fees, unlike other court costs, does not apply to criminal cases.

As for the costs related to the hearing of the case, the list is established by the Code of Civil Procedure, while their amount and rule of calculation are determined by the decision of the High Council of Justice of Georgia. According to the Code of Civil Procedure, the costs related to the hearing of the case are:[659]

- Sums to be paid to witnesses, specialists and experts;
- Sums to be paid to persons invited as translators;
- Expenditures incurred for on-site inspections;
- Expenses incurred for establishing the facts ordered by the court;
- Costs of finding a respondent;
- Costs related to enforcement of court decisions;
- Sums paid to a lawyer from the state treasury;
- Costs of conducting a forensic examination at a specialized expert institution.

Although state fees do not apply to criminal cases, the issue of other court costs is still relevant. The convict reimburses the costs of the summoning a victim, witness, interpreter and expert, storing and sending the submitted material evidence by him/her or his/her lawyer, conducting an investigative action at his/her request and/or at the request of his/her lawyer, and copying information received by the prosecution.[660] In civil and administrative law cases, court fees (state fee and costs related to the hearing of the case), except in cases provided by law, are paid in advance by the party who requested the relevant procedural action. If such action is undertaken upon the initiative of the court, then this amount shall be paid equally by both parties.[661] In addition, the court, depending on the property status of the parties, may defer payment of court costs to the state budget for one or both parties or reduce the amount if the party presents incontrovertible evidence to the court.[662] In civil and administrative law cases, judge determines how the costs will be distributed between the parties at the end of the proceedings. The costs incurred by the party in whose favor the decision was made shall be borne by the other party.[663] The

658 Law of Georgia on State Fees, Article 4; Also, Article 38 of the Civil Procedure Code of Georgia.

659 Civil Procedure Code of Georgia, Article 44.

660 In the case of convictions of several persons, the procedural costs will be reimbursed in proportion to the degree of the charge and the severity of the sentence imposed on each of them. See: Criminal Procedure Code, Article 91.

661 Civil Procedure Code of Georgia, Article 52.

662 Civil Procedure Code of Georgia, Article 48.

663 If the claim is partially satisfied, then the amount will be reimbursed by the plaintiff in proportion to the claim that was satisfied by the court decision, and by the defendant – in proportion to the part of the claim by the plaintiff that was rejected. See: Civil Procedure Code of Georgia, Article 54.

court will order a losing party to reimburse, within a reasonable time, the costs that the party, in whose favor the decision was made, incurred for the assistance of the representative.[664]

In addition to state fees, other expenses both in civil/administrative and criminal cases (related to expert examination, state fee, indirect costs, etc.) pose significant barriers to access to justice. Generally, it can be a reason to refrain from appealing to the court, especially considering the rule that the losing party must reimburse the costs of the winner.[665] Representatives of the professional focus groups also emphasized the complexity and extent of financial expenditures. For example, according to one of the focus group participants:

"Other costs are the costs of experts and specialists. Let's suppose a socially vulnerable person who is arguing over real estate or the revocation of co-ownership right, or have such a dispute that sometimes requires conducting technical engineering examinations and accounting. Despite their social vulnerability, they are not exempt from the costs of obtaining evidence ... that means, exemption from the state fees does not mean exemption from other extrajudicial costs. You send him/her to the expert bureau and there they hear that they should incur the costs, then the citizens will stop pursuing this dispute." [666]

"In administrative disputes, if there is no property dispute, there are rights-related issues ... A citizen comes and says that a permit has been issued by the City Hall and that he/she wants to suspend this permit, if a multi-storey building is built, his/her little house will be shaded. Now that the damage can be stopped temporarily, but the lawsuit requires a rather expensive examination to determine whether the permit is legal and meets the standards, whether it will shade the houses of the neighbors or cause other damage. So, conducting this examination even in administrative disputes, even when 5-6 plaintiffs are jointly pursuing the claim, still is difficult financially and the court is powerless to instruct the forensic bureaus to serve such citizens for free."[667]

664 The legislature also set an upper limit to determine reasonable margins. In particular, the amount to be paid may not exceed 4 percent of the value of the subject matter of the dispute, and in the case of non-property dispute – no more than 2,000 GEL. – See: Civil Procedure Code of Georgia, Article 54.

665 European Union Agency for Fundamental Rights, Access to justice in Europe: an overview of challenges and opportunities, 2010, p. 44, [Available at: https://bit.ly/3x8cb2F; Accessed on: 26.02.2021].

666 Man, State Legal Aid Service Representative, Focus Group Discussions with Professionals, October 13, 2020.

667 Man, State Legal Aid Service Representative, Focus Group Discussions with Professionals, October 13, 2020.

Similarly, according to citizen focus groups, poverty and lack of financial resources creates barriers in both criminal and civil/administrative cases. In general, focus group participants explain, it is difficult to afford state fees or costs for preparation of documents. In Samtskhe-Javakheti, one of the participants explains that sometimes a dispute over the compensation for a specific loss is ultimately more expensive than the loss itself. The other members of the group also agree with the participant.

Establishing exceptions related to court costs is necessary to reduce financial barriers to access to justice.[668] It is especially important to distinguish between cases in which parties' power or economic resources are clearly unequal. Discharging "weak" parties from payments when starting legal proceedings encourages them to initiate litigation. It is also important that certain categories of users are exempt from paying the fee of initiating legal proceedings regardless of the case type. In most cases, this is aimed at assisting people whose status and needs justify prioritizing their access to court services. Such legislative measures should often be part of a broader general policy aimed at strengthening the legal capacity of vulnerable or economically disadvantaged individuals and increasing access to justice.[669]

Georgian law also recognizes certain exceptions to litigation costs. In particular, in a criminal case, the court has the right, in case of indigency, to release the convict in whole or in part from the payment of procedural costs.[670] Inadequacy of introducing the indigency criterion, instead of financially supporting the persons belonging to the socially vulnerable category, is assessed under section 7.2., which also discusses the present issue. In addition to this mechanism of exemption from expenses, the Georgian legislation also foresees the possibility of prepayments by the state. In particular, in criminal cases, at least part of the other additional expenses of the process are, in principle, subject to state funding. This follows from the norm of the Criminal Procedure Code, according to which, "If the defense is undertaken at the expense of the State, the State shall, in the manner prescribed by the legislation of Georgia, also bear other necessary defense costs if they are directly related to the performance of self-defense by the accused."[671] However, it should be noted that Georgian law does not directly define how the requirements in this provision are assessed.[672] Based on the information provided by the Legal Aid Service, it was found that the Legal Aid Service individually

668 European Commission for the Efficiency of Justice (CEPEJ), Access to Justice in Europe, 2007, p. 98, [Available at: https://bit.ly/3x8cb2F; Accessed on: 26.02.2021]

669 European Commission for the Efficiency of Justice (CEPEJ), Access to Justice in Europe, 2007, p. 99, [Available at: https://bit.ly/3x8cb2F; Accessed on: 26.02.2021].

670 Criminal Procedure Code, Article 91.

671 Criminal Procedure Code of Georgia, Article 46, Paragraph 4.

672 Public information provided by LEPL Legal Aid Service N 04/03/2021.

reviews each lawyer's application for providing necessary defense costs. Examples are the cost of expertise, the cost of translation services, expenses for business trips and more. During the period indicated in the letter, the cost of the expert examination was paid once in 2020, based on a reasoned request by a lawyer.[673] Thus, this provision does not provide sufficient and clear legislative guarantees. It is important to foresee a somewhat exhaustive list of costs required for the implementation of defense, and to extend the state obligation of payment beyond criminal cases, to civil and administrative cases, if the person is entitled to free state legal aid. The state legal aid system, even if it offers counseling and representation to a person, does not cover other additional needs of the process, such as the costs of conducting independent investigations, of experts, psychological/social assistance, and more.[674]

Georgian law also allows automatic exemptions from the payment of court costs in civil and administrative law cases for certain types of plaintiffs and/or specific types of cases and is much broader than those applicable to criminal cases. In particular, the following groups are exempt from paying court costs to the state budget:[675]

- Plaintiffs – on alimony payment claims;
- Plaintiffs – on claims for compensation of damages sustained as a result of injury or other bodily harm, the death of a breadwinner;
- Plaintiffs – on claims for compensation of pecuniary damages sustained as a result of a crime;
- Parties – on claims for reimbursement of damages incurred by citizens as a result of illegal conviction, illegal prosecution, illegal imposition of arrest as a measure of restraint or illegal imposition of corrective works as an administrative penalty;
- Plaintiffs – on lawsuits related to rights violation of minors;
- Parties that are duly registered in the unified database of socially vulnerable families and receive a subsistence allowance, which is confirmed by the relevant documentation;
- Parties – when appealing preliminary (interim) decisions by way of appealing before appellate or cassation courts;]
- Parties – in lawsuits related to the return of an illegally displaced or illegally detained child or the exercise of the right to parent-child relationship;
- Plaintiffs – in the amount of the state fees for the claim arising from the Law of Georgia on Relations Arising during the Use of a Dwelling Place.

673 Ibid. At the same time, it is clear from the requested information that statistics on translation services and business trip expenses are not produced.

674 UNDP, UNODC, Global Study on Legal Aid Country Profiles, 2016, p. 307.

675 Civil Procedure Code of Georgia, Article 46.

- Plaintiffs – victims defined by the Law of Georgia on Prevention of Violence against Women and/or Domestic Violence, Protection and Assistance to Victims of Violence, in lawsuits filed against perpetrators under the same law;
- Parties – in other cases directly stipulated by law.

Despite the length of this list, the dominant view expressed in the professional focus groups was that the issue of state fees is one of the most important obstacles when appealing to the court. Special emphasis has been made on the fact that although this list does cover the socially vulnerable, it does not extend to the entire group, but only recipients of a subsistence allowance. The interviewed believe all persons who are in a database of socially vulnerable families should be exempt from the state fees. Moreover, the view that not only socially vulnerable but also low-income families should be exempted from court costs was also expressed during the professional focus group meetings.

> *"In general, protection of human rights should not depend on payment of state fees. The socially vulnerable are exempt from paying the state fees, but here too the criterion is limited. This is a category that receives social allowance, and it is directly indicated in the Civil Procedure Code."*
>
> *"The issue of state fees greatly hinders access to court. I remember in 2007, if I am not mistaken, one of the provisions in the Code of Procedure, which was short-lived, provided that if the family budget did not exceed 500 GEL income, they would be discharged from the state fees, apart from reference to social vulnerability criteria."*[676]

Apart from the above cases, Georgian law provides for a full or partial exemption from court fees for a party based on a judge's reasoned decision if the individual substantiates the inability of paying court costs and submits incontrovertible evidence to the court.[677] Participants of professional focus groups were skeptical towards the effectiveness of this mechanism, expressing concerns about the fact that this mechanism is not often used by judges. To illustrate this, several participants cited the case of convicts whose social assistance was terminated due to their incarceration in a penitentiary institution, although neither the family and consequently, nor the convict himself has the financial means to cover the costs of the proceedings. According to the professional group, this authority given to a judge by law is precisely aimed at such cases, however, despite submission of all information, judges rarely use this exceptional provision.

676 Man, NGO Representative, Focus Group Discussions with Professionals, October 6, 2020.

677 Civil Procedure Code of Georgia, Article 47.

"We also point out that he was registered in the database before, we attach this certificate, we also attach official records about his property from the Public Registry, the Revenue Service, we submit that he has no income, is convicted, and thus, unemployed. Nevertheless, such lawsuits are not accepted and in this case he/she will be deprived of the right to appeal to court."[678]

"When they send this petition to be exempt from paying a fee or defer payment, in many cases it does not happen, I only remember one case when he had cancer and because of that the court considered his condition and exempted him from paying the fee."[679]

This reveals that the individual practice of judges is especially important in eliminating financial barriers. At each stage of decision-making by a judge, financial situation of the parties must be taken into account. In addition to exemption from costs, the law also provides for a reduction of the state fee if the plaintiff revokes the claim, the defendant acknowledges the claim, or the parties settle. The amount of the reduction depends on the stage of the hearing, in particular, whether it happens before the main hearing of the court or this factual circumstance arises during the hearing.[680]

Important and problematic is the provision according to which the court costs should be borne by the losing party regardless of whether he/she was exempted from paying court costs to the state budget or not. All this can be considered logical in some cases when the exemption from costs is related to the category of the case and serves to encourage litigation, although this is especially problematic for parties who have been exempted from payments for being in a unified database of socially vulnerable families. Due to this provision, a person already in a difficult socio-economic situation may refrain from appealing to a court, even though he or she is initially exempt from state fees or other costs, due to fear that the case may not be settled in his or her favor, meaning that subsequently all court costs will be imposed on him/her. The provision, according to which, state covers the costs incurred by the court in connection with the hearing of a case if both parties are exempted from paying court costs, should be considered as a positive measure. However, this provision itself once again confirms absence of reasonable rationale behind the said norm.

678 Woman, State Legal Aid Service Representative, Focus Group Discussions with Professionals, October 13, 2020.
679 Woman, State Legal Aid Service Representative, Focus Group Discussions with Professionals, October 13, 2020.
680 Civil Procedure Code of Georgia, Article 49.

Apart from inability of certain groups to make necessary payments for initiating civil and administrative case hearings, a technical problem with the payment of the fee for those who do not have a bank account in Georgia, especially foreigners, was also identified.

> *"In case of "foreigners", in many cases they may want to pay a state fee, they have the amount to pay it, but they cannot do it for one simple reason – they do not have a bank account and unfortunately banks pay this state fee only through one's own account. If you do not have an account, you cannot pay the state fee. This means either your representative should pay for you, or you have to find another person who has an account and will pay for you. One factor is how easy it is for a foreigner to manage, and the other is, that, for example, if this person wins the case, he should look for that person [who paid the state fee for him], for some reason it is so that the one who paid the state fee receives back this amount and so on. Or [they] have to look for someone, another person who has an account and is able to receive this amount from the state. This is a very difficult procedure for foreigners to manage."* [681]

681 Man, NGO Representative, Focus Group Discussion with Professionals, October 6, 2020.

VIII. Cultural and social barriers

When analyzing the issue of access to justice the study of social and cultural barriers is one of the central topics. As highlighted in the preceding chapters, the concept of access to justice requires reevaluation of state policies, roles, and methods of functioning, in several directions. This study, *inter alia,* addressed the legislative and institutional barriers, fundamental failures of legal empowerment, and the declared state policy, as well as physical, infrastructural, geographical, and financial barriers. Regarding financial barriers, the impact of economic inequality and poverty was emphasized as a social factor, in a broad sense.

Poverty and economic vulnerability are considered to be the types of social factors that are somewhat universal and affect a broad spectrum of society (although, naturally, different groups of society may be affected with varying severity). As discussed in Chapter VII, it can be argued that poverty and economic vulnerability constitute, on the one hand, a complex barrier for those pursuing justice to overcome, considering the high fees and other costs associated with the administration of justice, and, on the other hand, that economic inequality hinders fair access to justice, because in the process of administering justice it is often impossible to ensure against the reproduction and replication of inequality. Consequently, in this subsection, economic vulnerability is only analyzed as a cross-cutting issue.

The importance of the present chapter stems from the fact that the main question concerning the issue of access to justice – why citizens refrain from addressing the court and the law enforcement agencies – should not be considered from a strictly legalistic standpoint. Such overly legalistic approaches often not only fail to provide thorough and in-depth answers but also make it essentially impossible to identify the real problem. To this end, if the issues already discussed were mainly focused on the problems around the process of administration of justice, the present chapter aims to highlight the key social and cultural factors that often preclude even the initiation of this process.

Desk research and focus group discussions revealed that individuals may refrain from contacting the law enforcement and addressing the courts because of cultural (including informal dispute resolution practices) and social (employment, education, etc.) factors. In addition, lack of confidence in the justice system, as a social factor, proved to be of particular importance. It should be noted that lack of confidence in the system is a secondary factor, as it is mainly the result of the discussed legal, institutional, or other problems.

This part of the study shall highlight the specific challenges of vulnerable groups in terms of their access to justice, and shall rely on the information gathered during focus group discussions (both citizen and professional groups).

8.1. Cultural barriers

8.1.1. General cultural reasons for refraining from appealing to the police and the courts

Citizen focus group participants discussed issues concerning access to justice and engagement with law enforcement.

The discussions revealed that according to the participants, people nowadays turn to the police more often than before, although contacting the police is still considered mostly as a measure of last resort, in serious circumstances. In their opinion, the reasons for this vary. One of the important factors to consider is cultural attitudes.

According to the participants when an individual witnesses a crime and calls the police, people's attitude towards them changes negatively. Because a person cooperated with law enforcement others may refer to them as a "snitch". It should be emphasized that in the focus group discussions with citizens with experience in criminal cases, this mentality was mentioned the most, and the respondents noted that cooperation with the police in Georgia is often considered a shameful act which, in their opinion, is problematic. It is noteworthy that the focus group in Samtskhe-Javakheti, consisting of those respondents with experience in criminal cases, revealed that the locals hardly turn to the police because, according to the participants, this behavior is not acceptable in their culture. According to the respondents, a person should be able to resolve their case without police and court involvement, even when the case concerns theft, robbery, or physical conflict. In their words, if a person addresses the police, their name will be tarnished in the community. Cooperation with the police is not justified for the participants themselves. A similar position was taken by the majority of the Kvemo Kartli focus group participants with experience in criminal cases, but interestingly, according to them, in case of civil disputes, appealing to the court is justified in their community.

From ethnic minority groups, appeals to the police were considered most acceptable for citizens of Samtskhe-Javakheti with experience in civil/administrative affairs. Participants note that nowadays cooperating with the police in Akhalkalaki is no longer considered a shameful act. Moreover, some participants point out that people call the police for all

sorts of small disagreements. If it used to be unthinkable for a child to call the police because of a parent shouting at them, respondents say that such cases are now quite common. Participants Samtskhe-Javakheti believe that calling the police is not justified in some cases. It should be noted that according to the participants, the situation in the villages is different and the residents there rarely address the police and/or the court. However, in their words, the differences between the center and the regions in this regard are mainly explained not by the cultural factors, but by the unequal distribution of social goods.

> *"Nowadays people prefer to officially address the relevant institution instead of giving a bribe and solving a problem with money. Before they said it was a shame to do so, now – no, they say, go to court, wherever it is needed and solve the problem normally."*[682]

In the framework of the study we also learned about the consequences the participants of court proceedings faced, after their involvement in the proceedings, as this is directly related to cultural barriers. According to the majority of respondents, the attitude of family members and other persons towards them has not changed because of their involvement in court proceedings. However, it should also be noted that according to the statements of two respondents, virtually no one or only some of the family members knew about their participation in the court proceedings, therefore, other's attitudes could not have changed. According to one of the respondents, they did not disclose information about their case proceedings precisely to avoid possible psychological pressure on members of his family. A minority of respondents said that the attitudes of their family members and other people changed for the worse after the court proceedings. As one of the respondents with a civil/administrative case explains, there were frequent conflicts with family members because of their involvement in the court proceedings.

Cultural barriers were also discussed in the focus group meetings with members of the Bar Association and Legal Aid staff. In the Bar Association focus group, all participants noted that people may refrain from appealing to the police and the courts because this behavior is often not considered acceptable by the public. According to the respondents, this trend concerns both criminal and civil/administrative cases. Moreover, according to some participants, cultural factors today are relatively less defining, and socio-economic factors and trust issues are more acute.

682 Woman, focus group of participants with experience in civil / administrative cases, Samtskhe-Javakheti, October 10, 2020.

In the focus group with the staff of the State Legal Aid Service, several participants said that cultural barriers to appealing to the police or the court are rarely noticeable nowadays. According to them, a large part of society already believes that they should address the relevant agencies should the necessity arise. However, some participants cited cultural attitudes as one of the possible reasons, along with problems in the justice system and a lack of trust.

> *"This problem [the attitude that the court is not necessary to solve problems and they can solve their issues on their own] does exist, but also, the courts do not work, the law enforcement agencies do not work properly, in my opinion, and this is the additional motivation for citizens not to go to court."*[683]
>
> *"It could be, say, their personal attitude, that they did not want to make their problem public, or that they did not trust the police."*[684]

It should be noted that when discussing cultural barriers, both citizen and professional focus groups specifically addressed domestic violence issues (they also highlighted social issues, which will be discussed in the following sections). In particular, focus groups of citizens expressed the view that in case of domestic violence, individuals, especially those living in the villages, often refrain from contacting the police, and this is mainly due to the shame and resentment they tend to feel. For women in the Kvemo Kartli focus group, the reason for not contacting the police was advice they received from their parents, that they need to tolerate violence from men. They talked about cases when mothers advise their daughters to put up with violence. However, according to some of the respondents, this happens more often in the villages than in the cities. Some participants from the civil/administrative group in Imereti and Tbilisi believe that family issues should be resolved within the family and that the police should not interfere. In their opinion, family conflict is better to be resolved in the family. A more or less similar view was observed in the Kvemo Kartli criminal case group (it should be noted that this group was composed only of men). Some members of this group believe that addressing the police is only justified if domestic violence is systematic in nature.

683 Man, State Legal Aid Service representative, focus group with professionals, October 13, 2020.

684 Woman, State Legal Aid Service representative, focus group with professionals, October 13, 2020.

"People do not turn to the police when it is a one-time thing, you have hope for something, there is some human factor here. You think that something will be fixed, someone will intervene, or something, and you will endure all this as a person would... and when all the lines are crossed and then you are already forced to take action, you then address the law enforcement."[685]

8.1.2. Informal dispute resolution

Closely related to cultural factors are methods of informal dispute resolution. Thus, it was interesting for the study to determine whether there is any institution/place/person that deals with disputes/conflicts between individuals and resolves them without the intervention of the police and the court.

According to citizen focus groups, it is more common in villages to address a person of authority (such as a village chief) to resolve a conflict. In addition, relatives often intervene in the villages to resolve conflicts. During the discussions, the clergy were discussed in almost all groups and it was noted that sometimes people turn to the clergy to resolve a conflict/dispute because they trust them and believe that confidentiality will be maintained. It should be noted that one of the respondents in the Tbilisi civil/administrative case group emphasized that priests have a big influence on people and have the capacity to resolve existing conflicts.

"I know for a fact that priests intervene in family matters, in the courts, and they play a very big role and have access, that is, they can solve problems."[686]

Some respondents in the Tbilisi civil/administrative case group believe that informal dispute resolution is more common in rural areas because people living there have more respect for each other than those living in the cities. They take into account the advice of a relative and/or an older person, but in the city individuals are less interested in each other's opinion and contact the police/court. Participants from ethnic minority groups noted that in times of conflict residents often turn primarily to "village heads," relatives, or elderly, experienced individuals to seek dispute resolution. However, respondents emphasize that this trend is more noticeable in rural areas and less common in the cities.

685 Woman, focus group of participants with experience in civil / administrative cases, Imereti, September 25, 2020.
686 Woman, focus group of participants with experience in civil / administrative cases, Tbilisi, October 6, 2020.

Samtskhe-Javakheti civil/administrative case group had the least information on this issue. They suppose that in rural areas individual's relatives or village heads may have a say in such issues.

It should be noted that the participants in the Tbilisi criminal case group mentioned the so-called "thieves in law", and stressed that in the past, interpersonal conflicts were mainly solved with the involvement of criminal authorities. However, in their opinion, the situation is relatively better nowadays, and the practice is less common.

> *"Given our Soviet past, this Thief in Law mentality was mostly dominant among the youth. Their line of thinking and worldview was shaped through this prism, which of course resulted in the descendants of those people ... They pass on their views to their children, of course. Now I'm not saying this is bad or good. I'm just stating the fact. It is a result of this that quite a few young people still think it's ethically absolutely unacceptable to contact the police."*[687]

This issue was also discussed in the focus group of the Bar Association. However, as one participant points out, such informal practices are relevant not so much because of the prevalent cultural views, but because "*when real justice does not work, it is flawed, corrupt, and so on. ... It certainly pushes people to abandon the formal justice system and seek retribution with their own resources and capabilities, which, certainly, creates problems for us all.*"[688]

Based on the above-mentioned discussions, it can be said that the issue of cultural barriers was considered more or less acute in the focus groups of both citizens and representatives of professional circles. It is noteworthy that this attitude is confirmed by a survey conducted in 2019, according to which almost half of the Georgian population believes that cultural attitudes (including the guilt of the victim, due to the expected severe punishment of the perpetrator) are the relevant factors hindering access to justice.[689]

It should be noted that refraining from appealing to the police/court due to certain cultural codes and attitudes is, in some cases, not perceived as unequivocally negative. This is also logical because public memory can store examples of informal, albeit peaceful resolution of disputes. This is more evident in the different attitudes that are, on the one hand, con-

687 Man, focus group of participants with experience in criminal law cases, Tbilisi, September 10, 2020.

688 Man, Georgian Bar Association representative, focus group with professionals, November 18, 2020.

689 CRRC, EMC and IDFI, Access to justice: Population Survey Results, 2020, p. 13 [Available at: https://bit.ly/3dQmocS; Accessed on: 26.02.2021].

cerning the so-called "thieves in law", and on the other hand, the elderly and persons of experience in the villages/communities. If in the first case the practice of resolving the dispute is perceived as mainly negatively (due to the possible violent nature implied), in the second case sharply negative attitudes are less commonly observed.

Thus, cultural barriers are important in studying the problem of access to justice, although assessment of each factor individually would not be pertinent. It is necessary to analyze the nature of this or that attitude/practice (for example, whether it is violent or not), as well as its role and function in a particular community/society. Moreover, when discussing cultural practices, it is necessary to take into account such social variables as, for example, the level of education and well-being in this or that community. Cultural barriers can only then become the subject of more accurate assessments.

8.2. Social barriers

8.2.1. Lack of quality and accessible education and information

Lack of information is often a significant underlying reason for refraining from appealing to the police/court. This issue is directly related to state policies concerning legal awareness and empowerment, which was highlighted in Chapter V.

The lack of information as one of the social barriers to accessing justice was highlighted at the citizens' focus group meetings. In the Kvemo Kartli focus groups, some participants with experience in both civil/administrative and criminal cases considered the lack of awareness a significant barrier. According to the respondents, they do not have information on who they can turn to for help when a legal problem arises. In addition, one participant notes that most people do not know how to go to court.

> *"In my opinion, the main problem is the lack of information, as the lady described, there are organizations [that] provide legal counsel services, this is all very good, but unfortunately we do not have information about it."*[690]

The lack of information is usually related to an accessible and quality education system and social welfare. These social factors are exacerbated by the unequal economic development of the center and the regions, which was pointed out in professional focus group

690 Woman, focus group of participants with experience in civil / administrative cases, Kvemo Kartli, September 29, 2020.

discussions. In addition, it is noteworthy that people living in ethnic minority regions are often even more detached from these types of social goods.[691]

> *"There are several factors here. One concerns education, civic education, how to protect their rights, they may not know to whom to apply, in what manner and how to apply. Also, the financial-economic side ... to put it simply, someone from the village must go to Samtredia, to have the Samtredia court hear their case. Some socially vulnerable people do not even have that 5 GEL to come here and file a lawsuit."*[692]
>
> *I would also like to specify the issue of access to information, specifically on judicial proceedings and litigation, especially among ethnic minorities, so that people can have more information about how to defend themselves in a particular case, whom to turn to and, of course, to also consider the financial implications."*[693]

It should be noted that the issue of unequal social development of the center and the regions was clearly emphasized in the focus group meeting of the citizens. In this regard, the participants in the Tbilisi civil/administrative focus group spoke about the difference between urban and rural areas. Respondents noted that in the cities, especially in the capital, there is a tendency for people to address the police in case of crime. Respondents believe that the situation in the villages is problematic in this regard. In their opinion, people try to solve the problem on their own or they do not interfere in other people's affairs at all and do not inform the police about the commission of a crime. Participants believe that in rural areas the problem of access to education and information is much more acute than in the capital or other cities. In their view, this is the reason why people living in villages are even less likely to contact the police.

8.2.2. Specific social barriers for vulnerable groups

The information received from the focus group discussions revealed that other types of social barriers are more related to specific vulnerable groups. Thus, a significant part of the present subsection focuses on the specific challenges of different groups.

691 See: Mariam Shalvashvili, Precarious being of Azerbaijani female workers, 2019 [Available at: https://bit.ly/2MyyS-dW; Accessed on: 26.02.2021].

692 Man, representative of State Legal Aid Service, focus group with professionals, October 13, 2020.

693 Woman, Georgian Bar Association representative, focus group with professionals, November 18, 2020.

All focus groups revealed that the problem of access to justice is particularly acute for women victims of domestic violence. The severity of the problem was acknowledged by both the citizen and the professional focus groups, although differing views on the causes and approaches were also expressed. The fact that the reluctance of women victims of domestic violence to address law enforcement and the courts could, in some cases, have cultural roots has already been highlighted. However, as focus group participants noted, women are more likely to refrain from contacting the police/court for other reasons. These reasons are indifference on the part of law enforcement agencies, the lack of hope for rectification of the situation, and socioeconomic vulnerability.

These types of social variables were stressed at focus group meetings (especially in the Tbilisi criminal case group). Explanations of the respondents who were victims of domestic violence are noteworthy. According to one of them, the reason for not addressing the court and the police was the attitude of the law enforcer when the victim was taken to the hospital after the first incident and the law enforcer interrogated them in the presence of the abuser and told them that victim's family members would be informed, which was categorically unacceptable to the respondent. It is believed that criminal proceedings for women victims of violence are often perceived as an additional trauma, especially if a woman is forced to confront her aggressor directly, against her will.[694]

"I contacted the police eight months later. I was already beaten up, my nose was broken, my pregnancy was terminated, I was not allowed to do things, then I addressed the police, but before that when I called the police, do you know what the police officer did? That is why I did not say anything, after the first physical assault, when I got to the hospital... The police chief sat down and told me, you know what, right now, talk!... and my ex-husband is sitting there, next to me. Now, talk, he is telling me, and I will tell your family everything. I did not want to talk ... nor did I want anyone to know about this… Because I did not want other things to happen, on top of this, because my cousin would learn about this, my son would know, my father… and they would retaliate, and there would be bloodshed and I would do all this, I would go out on the street, a pregnant girl, I would stay on the streets because I did not want my family to know about the situation I was in, about the pressure I was under. Instead of standing by me, the police insulted me." [695]

694 Shazia Choudhry Women's Access to Justice: A Toolkit for Practicing Lawyers, 2018, p. 13, [Available at: https://bit.ly/3aWzHGT; Accessed on: 26.02.2021].

695 Woman, focus group of participants with experience in criminal law cases, Tbilisi, October 10, 2020.

Accounts such as this show, on the one hand, the hopelessness and social alienation that women victims of domestic violence have experienced when dealing with law enforcement, and, on the other hand, the difficult and unbearable social situation often resulting from/associated with addressing the police/courts. Despite the steps that have been taken in recent years by the Ministry of the Interior (including the establishment and strengthening of the Human Rights Protection and Quality Monitoring Department),[696] the problem of access to justice for victims of domestic violence remains, which is a further indication of the complexity of the problem. These issues were also highlighted at the focus group meeting of members of the Bar Association, where it became clear that the difficulty of accessing justice for women victims of domestic violence requires a much more comprehensive assessment.

"People often have this feeling that if I choose to defend myself, through official means, and this is the case in domestic disputes, this person will be isolated from me for a while and then, later on, the situation will be further exacerbated in light of this problem."[697]

"In terms of finances, it is not that they cannot afford to pay the court fees, but that they are usually financially dependent on the abuser and this is the main reason they refrain from addressing official institutions. Because, if they do, it is not only that they fear being subject to further abuse, but that they and their children will be left without income. I've had such cases myself."[698]

Consequently, women's socio-economic vulnerability and financial dependence on their partners/spouses substantially limit their access to justice. Analysis of the current situation in Georgia, in this regard, reveals the scale of the problem. In Georgia, for women in the working-age group (18-64) their participation in the labor force is 27% than men.[699] According to a 2018 survey, 49% of unemployed women cite family care and personal responsibilities as reasons why they do not engage in formal work.[700] Overall, housework, on which women spend most of their time (housewives 74% of their time, other unemployed women 37% of their time), is a major determi-

696 EMC, Human Rights Situation in Georgia 2019 Assessment, p. 1, 2019, [Available at: https://bit.ly/3aLzjte; Accessed on: 26.02.2021].

697 Woman, Georgian Bar Association representative, focus group with professionals, November 18, 2020.

698 Woman, Georgian Bar Association representative, focus group with professionals, November 18, 2020.

699 United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), Women's Economic Inactivity and Engagement in the Informal Sector in Georgia 2018, pp. 18-19, [Available at: https://bit.ly/3krZv0t; Accessed on: 26.02.2021].

700 Ibid, p. 20.

nant of women's low participation in the labor force [701] and, consequently, economic dependence on their spouses/families.

It must be said that all the social barriers that restrict access to justice (e.g. poverty, lack of education, lack of knowledge of the state language, lack of legal knowledge and awareness) are particularly acute for women in general, and not just for women victims of domestic violence.[702] It is believed that "the combination of social and institutional barriers exacerbates the difficulties women face in accessing justice – by the level of income, level of education and ethnicity – leading to high barriers to legal remedies and high rate of cases without a legal outcome. As a result, women are more vulnerable during legal proceedings."[703]

Participants in the NGO focus group identified another vulnerable group (LGBTQ persons) who also face specific social barriers in terms of access to justice. In this regard, two issues were stressed, the fear of so-called "coming out" and the problem of "re-victimization" by the representatives of law enforcement, leading LGBTQ people to often refrain from addressing the police/courts. In the first case, the issue is related to social stigma and marginalization, while in the second case, it concerns the fear of recurrence of the harm already caused by the crimes on homophobic grounds. In both cases, refraining from appealing to a law enforcement agency/court is related to the behavior of the judiciary/law enforcement as well as the social and personal consequences of that behavior.

„Speaking of contacting the police ... when it comes to coming out, they refrain from addressing the institutions ...Especially considering that the identity of those involved is already revealed, that is, let's say the victim and the accused already know each other when their status is recognized, and therefore they already have this fear that they will be subjected to forced coming out. They fear that their testimony can be obtained somehow by some person and their family might find out. They have this fear of coming out."[704]

"The community generally refrains from addressing the police. First and foremost, this is the fear of forced "coming out" and this fear is real. We have many cases where we have documented illegal transfer of personal data to family members by prosecutors and police officers."[705]

701 Ibid, p. 21.

702 UN Women, Framework for Measuring Access to Justice Including Specific Challenges Facing Women, 2016, p. 8, [Available at: https://bit.ly/3pRET2Q; Accessed on: 26.02.2021].

703 Ibid.

704 Man, NGO Representative, focus group with professionals, October 6, 2020.

705 Woman, NGO Representative, focus group with professionals, October 6, 2020.

> *"The problem is 're-victimization' ... stereotypical expressions made by the police, in their communications. This further leads to members of the community refraining from addressing investigative agencies."*[706]

The focus group of NGOs rightly noted that these types of practices are not just a manifestation of institutional problems. It is more a reflection of the social stigma that emanates from public attitudes. Thus, the root of the problem is also more complex. As one participant points out, *"Against misogyny and homophobia as a social problem, we need a state action plan, which will not just present any single agency or inter-agency commission, that is already included in the human rights action plans, and will be fully focused on the civil society and the state working together to bring about social change in some form and to take effective steps because changing the law alone will not help in this direction."*

From the above reasoning, it can be said that a number of social factors influence whether a particular individual ultimately addresses the police/court. Often this is related to the type of social barrier when a person is unable (severe social hardship), has no knowledge (access to quality education and relevant information, especially in ethnic minority areas), or faces difficult social risks in case of addressing the law enforcement (women financially dependent on abusive partners, women and LGBTQ people facing social stigma and exclusion), etc. This reaffirms that full implementation of the concept of access to justice in practice requires a complex approach, as "access to justice can be understood as an experiment in how far and to what extent the welfare state and the institutions of justice can be developed."[707]

It should also be noted that cultural and social barriers to access to justice are specifically manifested in the case of other vulnerable groups that were not addressed during the focus group meetings.[708] Such vulnerable groups may include persons with disabilities, children, internally displaced persons, prisoners, and others. Their specific needs and concerns are not addressed by the authors within the limits of this research, but are considered and implied as an important challenge that occupies a special place in assessing barriers to access to justice for them. It should be noted that the above list of vulnerable groups itself cannot be exhaustive. This fact also became one of the reasons why the analytical reasoning of this part of the study relied directly on the focus group data.

706 Woman, NGO Representative, focus group with professionals, October 6, 2020.

707 Bolivar René Njupouen, Access to justice for the poor, what role for bar associations? The case of Cameroon, 2005, p. 15.

708 See UNICEF report on child-friendly justice, 2017 [Available at: https://uni.cf/3kmiEAZ; Accessed on: 25.02.2021].

The social barriers discussed in this subsection are structural problems and preconditions for access to justice. Access to justice is in itself a social good, the substantial increase of which can only be achieved in conjunction with the attainment of other social goods. Therefore, the state needs to have a national strategy for ensuring access to justice that sees this problem in relation to other social challenges. Only in this case can a justice system that is truly accessible and adapted to human rights be established.

8.3. Trust as a social factor

According to focus group participants, one of the decisive factors in refraining from addressing the police/court is lack of trust. The fact that public confidence in the justice system is drastically low is evidenced by opinion polls conducted across Georgia. In particular, according to 2019 data, 20% of the population does not trust courts in Georgia at all, 66% partially trusts, partially does not.[709]

Lack of trust can be caused by many different factors. According to focus group participants, the most common reason for this is that people do not expect the police/court to respond fairly and objectively. In addition, vulnerable groups may lose confidence in the justice system due to discriminatory and often insensitive attitudes towards them, which ultimately leads to the rejection of the appeal. Thus, as stated earlier, the lack of trust in the justice system as a hindering circumstance is a social factor, although it is usually derived from institutional and other types of problems.

The majority of focus group participants in the regions and some participants in Tbilisi note that they are trying to resolve conflicts and legal issues in their communities without police assistance. Unless there is a very serious crime (for example, a child's life is in danger), people do not contact the police. According to the respondents, the main reason for this is the lack of trust. They believe that people do not trust the police and are sometimes afraid "of being accused of some crime" they did not commit. According to the participants, people do not see a point in calling the police because they do not have hope that the police will solve the case. According to respondents, all this is compounded by the bureaucratic processes in the law enforcement system, which is often a deterrent factor in turning to the police.

In this regard, different attitudes were observed in the focus groups of citizens. In particular, some respondents more or less trust, while others express complete distrust in the court system. It should be noted that participants from civil/administrative cases are

709 CRRC, EMC and IDFI, Access to Courts: Public Opinion Survey Results, 2020, p. 24.

more likely to trust the court system than respondents with experience in criminal cases. In the groups of respondents with civil/administrative cases, some of the participants mentioned that, in their opinion, civil cases are resolved more fairly and impartially than criminal cases. It should be noted that among the groups with civil/administrative cases, the Imereti group, which was the least critical in their assessment of the court system, expressed the most trust towards the court system. Their confidence is largely based on their personal experience.

As for the trust of groups of citizens with criminal cases in the court, opinions of the participants in the ethnic minority groups are divided, some trust and some declare distrust towards the court. The rest of the respondents with criminal cases mainly express distrust of the court, citing the cooperation of the prosecutor's office and the judges. Among the Tbilisi participants, the opinion was expressed that the goal of the prosecutor's office was simply to "close the case" instead of objectively investigating it. Respondents said prosecutors were so "weary" of unsolved cases that they can charge a person who committed a crime with yet another crime that he did not commit. Or even a completely innocent person may be deprived of their liberty, altogether. However, it should be noted that the Tbilisi respondents with criminal cases also held a view that confidence in the court often depends on who the party in the dispute is. Some respondents say that if a politician is involved in the case, they lose confidence in the court, but if the case concerns ordinary citizens, in this case they maintain some confidence.

The focus group of non-governmental organizations noted that if the issue concerns disputes with representatives of state structures, the expectation that the court will make a fair decision is lowered. According to several respondents, this attitude often leads to refraining from addressing the police/court.

> *"I have had clients who were accused of criminal charges and were treated very unfairly under the previous government, but even under the new government, when some mechanisms and practices of reparations and pressures have taken place, even under this government they are not going to sue those former police officers and former investigators. This has to do with their personal attitude or something, that you cannot do anything with the state and why complicate things. It is very difficult to convince such people to fight for their rights."*[710]

710 Man, NGO Representative, focus group with professionals, October 6, 2020.

During the citizen focus group discussion, participants were also asked if they trusted that their identities would remain anonymous from the perpetrators and other conflict participants if they report a crime. The research reveals that the majority of the focus group participants think that their identities will be revealed. However, some participants trust law enforcement officials and believe that the police will not reveal their identities as this is prohibited by law and they hope that the police will not violate this rule.

One of the participants of the Bar Association focus group also noted the loss of trust due to fears regarding anonymity and refraining from addressing the police on this basis.

> *"I understand when my beneficiaries tell me: whether I report to the police or not, my anonymity will not be guaranteed. More often, it is not protected and I am speaking from my personal experience. Now, as for addressing the police... I do not know what the statistics are like, though I do know that they mostly refrain because of two reasons. Firstly, as I told you because anonymity is not protected and secondly because they anyway cannot do anything, this is their attitude."*[711]

As noted, the lack of trust is related to even more specific experiences in the case of vulnerable groups. For example, police indifference was stressed in the case of women victims of domestic violence in both citizen and professional focus groups, and it has been noted that the attitude of the police towards them is callous and superficial. As discussed earlier, focus group participants explain that when women interact with law enforcement officials, they are often at high risk of social stigma, which can be further exacerbated by police behavior or attitudes. Moreover, it should be highlighted that according to the respondents, sometimes there are even cases of sexual harassment of women by the police, which is manifested in the way they are speaking to women or the way they look at them. It is noteworthy that in one of the recent studies on this issue, which deals with the police response to domestic violence and the effectiveness of the emergency hotline, respondents highlighted similar problems. In particular, according to the results of the study, half of the victims of domestic violence do not contact the police for help.[712] Victims of violence who do not call 112 explain their decision with reasons, such as distrust (35%), lack of information (30%), and long wait time (18%).[713] In addition, 39% of respondents said that police officers have a careless and indifferent attitude towards victims of violence.[714]

711 Woman, NGO Representative, focus group with professionals, October 6, 2020.

712 Only half of the victims of domestic violence turn to the police for help [Available at: https://bit.ly/3fu8n5a; Accessed on: 31.03.2021].

713 Ibid.

714 Ibid.

"The most astonishing thing is that victims of domestic violence themselves, do not contact law enforcement agencies. ...They are afraid of indifference on the part of the law enforcement system and their unresponsiveness. One bad situation in this regard is that, in terms of domestic violence, the police often do not react."[715]

"How can we ask the victim to trust the police? It is very difficult when they are faced with a real fact, they admitted that they were being psychologically abused, went to the police, and now see that no measures have been taken in this direction."[716]

More or less similar views were expressed by several respondents from the focus group of non-governmental organizations regarding LGBTQ persons. However, it has also been said that there has been a recent increase in members of the LGBTQ community who do address law enforcement. In this regard, the LGBTQ Community Social Exclusion Survey in Georgia (2020) is interesting to highlight, according to which the level of trust in the judiciary and law enforcement agencies among the members of the community is extremely low. In particular, 68% of respondents who are members of the LGBTQ community do not trust the court, 75% – the prosecutor's office, and 66% – the Ministry of Internal Affairs/police.[717] According to the same survey, 30% of respondents believe that police behavior and attitudes towards them have improved in the last 5 years; 14% report worsening of the situation; The highest rate is neutral – 47% believe that the behavior and attitude of police officers have not changed.[718]

"As for the barriers, they [LGBTQ community] hold an idea that it is pointless to address the court… but lately, this trend is somewhat reversed, and more and more have the willingness to take their cases to court. When the cases concern discrimination, they also have the desire and initiative to address either the court or the Public Defender."[719]

The information received from the focus groups of both citizens and representatives of professional circles revealed that the lack of trust in the justice system and its representatives, which in turn is a reason why some refrain from addressing these institutions, may

715 Man, focus group of participants with experience in criminal law cases, Tbilisi, September 10, 2020.

716 Woman, Georgian Bar Association representative, focus group with professionals, November 18, 2020

717 Social Exclusion of LGBTQ Group in Georgia, Human Rights Education and Monitoring Center (EMC), 2020, p. 65, [Available at: https://bit.ly/3wdIMnc; Accessed on: 31.03.2021].

718 Ibid, p. 70.

719 Man, NGO Representative, focus group with professionals, October 6, 2020.

be caused by several reasons. In general, the reason for the loss of trust is the expectation of an unfair and biased response. Moreover, in the case of specific vulnerable groups, such expectations may be exacerbated by a variety of discriminatory practices and fears of disclosure of personal information.

In the context of the lack of trust in the justice system in society, we must take into account the well-founded arguments about clan governance.[720] Chapter IV of the study discusses the issue of clan governance in the justice system. In this case, however, one can only add that clan governance, which creates essentially a locked-in, corporate power and serves the interests of elite groups, is one of the crucial factors in undermining public confidence in the judiciary. The public will not have confidence in the judiciary if people do not see the signs of democracy and fairness in the administration of justice. It is noteworthy that according to the recent public poll, 22% of the Georgian population thinks that distrust of the court greatly hinders ordinary people from addressing the court (45% think that lack of trust partially hinders the process).[721]

720 See Evolution of clan-based governance in Georgian judiciary since 2007, Kakha Tsikarishviili [Available at: https://bit.ly/2MHEliy; Accessed on: 26.02.2021].

721 CRRC, EMC and IDFI, Access to Courts: Public Opinion Survey Results, 2020, p. 13.

Conclusion

It is important that the state, through the development of legal services, various programs and strategies, ensures that the needs for access to justice are first translated into rights and then into public goods. For this, it is necessary for the government to have a unified vision, and be open and ready to take into account the challenges that an individual might be facing when approaching the court. A fundamental shift in the path to access to justice is linked to the broader social and economic policy issues, and the search for a new and more inclusive normative framework is essential on this path. To this end, in response to the findings of the study, recommendations are proposed, which are discussed below in relation to relevant barriers.

Recommendations on Institutional and Legislative Barriers

Access to Legislation:

- For those families/communities/settlements where the Internet is not widely available, an alternative strategy should be developed for ensuring access to legislative acts aside from the website of the Legislative Herald of Georgia, so that legislative acts are accessible to those groups;
- The service fee for accessing the consolidated by-laws in the Legislative Herald should be abolished and the use of the Herald for non-commercial/non-state purposes should become free;
- It is necessary to translate key legislative acts as well as by-laws into Russian and English, as well as into Armenian and Azerbaijani languages;
- It is essential that people with disabilities have equal access to all the features of the Legislative Herald's website that are provided in the standard version. The state should have a vision on how to improve access by this group to legislation;
- A common standard on the use of "plain language" should be introduced in the legislative/law-making process and applied by all agencies involved in this process;
- The legislative/law-making process should be conducted in accordance with pre-existing and effective procedures. The policy planning process should be strengthened, including the active involvement/consultation of stakeholders in the process, and gradually, the issues to be assessed for regulatory impact need to be established and expanded.

Difficulty of Preparing Documents:

- It is necessary to improve the existing court forms, both in terms of content and technical adequacy, so that to the extent possible individuals without legal education can use them properly;
- It is important for the state to pay appropriate attention to the language barriers for ethnic minorities in the process of preparing court documents and to expand the opportunities to use the services of a qualified translator to meet the needs of these groups;
- It is important to refine child-friendly court forms to meet the objective challenges faced by this group. In addition, it is necessary to improve the existing practice of the court on admission of legal claims filed in these forms; the court should take into account the guarantees established by the Code on the Rights of the Child, namely the best interests and special needs of the child;
- It is necessary that the existing case law of the court is refined and becomes coherent on finding a defect in cases when documents submitted to the court were prepared independently by an individual with no legal education. Such a person should be able to independently, properly understand and timely correct the defects in the submitted documentation;
- It is advisable to introduce a comprehensive referral system, which ensures cooperation between different state agencies in order to properly and timely redirect a person collecting documents to be submitted to the court to the appropriate agency. It is also important to refine the role of free legal aid to assist individuals in the process of gathering documents needed for court submissions.

State Legal Aid System - Consultation and Representation:

- In order to effectively exercise defense rights, it is necessary to financially strengthen the Legal Aid Service and mobilize more human resources;
- As demonstrated by studies conducted internationally and locally, it is necessary to expand the mandate of the Legal Aid Service in the field of civil and administrative matters;
- It is recommended that the legislative norm that establishes the "complexity" and "importance" of the case as a precondition for accessing legal aid (legal representation) in civil and administrative disputes is abolished.

Availability of Translators:

- The state should ensure an increase in the resources aimed at strengthening the available translation services, both in terms of quantity and quality;
- The state needs to have a strategy aimed at ensuring access to justice for persons who need translation services in languages for which translators cannot be found.
- Legislative reform addressing the need for certification of translators and integrating the mechanisms for checking/controlling the quality of their services needs to be implemented;
- It is necessary that persons with language barriers, not only formally but also substantively, realize the right to access the services of an interpreter. Accordingly, it is necessary to improve the practice of inviting an interpreter in the process by state institutions in a way that ensures real and full enjoyment of this right.

Duration of Case Hearings, Overcrowding of Courts and Number of Judges

- The problems of judicial delays, workload, time management, and the need for effective reduction of outstanding cases need to be analyzed on a continuous basis;
- It is important to implement the measures outlined in the Action Plan of the Judicial System Strategy aimed at developing/refining statistical and analytical reports and monitoring mechanisms in order to evaluate the effectiveness of the judiciary;
- Human and material resources need to be increased steadily and gradually in order to fill the required number of judges. First, the High Council of Justice must show the will for the timely appointment of judges to existing vacancies. Second, when determining the long-term need to increase the number of judges, consideration should be given to the workload related to the inflow of new cases, not the outstanding cases, so that the courts are not left overstaffed with judges once the outstanding cases are disposed of;
- In addition to increasing the number of judges, it is necessary to develop a principle of smart case weighting, which will effectively determine the best mechanisms for the optimal distribution of the existing number of judges among the courts;
- It is important to further refine the system of narrow specializations of judges in the common courts and the electronic distribution of cases in order to ensure an equal workload of judges using the case weighting system;
- Besides the problem of judicial workload, various other areas need to be addressed. Namely, measures have to be taken to improve management and oversight program, to more actively use technologies in the reporting process, to streamline the material and technical base of the judiciary, and to efficiently allocate available resources;

- It is necessary to introduce effective legal protection mechanisms to prevent violation of the right to trial within a reasonable time, both in terms of speeding up the trial and preventing further delays, as well as to provide reasonable compensation for already delayed proceedings. Among others, disciplinary matters need to be regulated in a manner that will help prevent delays by individual judges. Furthermore, it is important that the misdemeanor of delaying proceedings is reformulated so that it is not limited to the violation of the procedural term;
- To address identified challenges, it is also important that the legislation has a vision for integrating the judiciary within the operational environment in the country and that it adopts legislative changes that prevent the vulnerability of judges and adverse effect on their independence due to workload pressures.

Challenges in the Court Litigation Process in Terms of Access to Justice:

- In order to address the practice of failure and/or delay to provide information on the rights and obligations of detainees, defendants, and witnesses, there might be need for adoption of more legal safeguards and development of special guidelines for such cases. Furthermore, relevant bodies should display more diligence for appropriate fulfillment of their duties;
- Procedure should establish the justifiable grounds for a party's absence or, conversely, the fact of willful evasion of court proceedings, and the court should have the duty to substantiate that the defendant was summoned appropriately, and that the latter explicitly refused to appear before the court, before proceedings are held in absentia;
- The Criminal Procedures Code should provide for a clear obligation on the prior disclosure of information about the sequence of evidence and time and sequence of witness summonses;
- The Criminal Procedure Code should clearly define what types of information can be used during cross-examination of a witness, as well as the procedure for using it. Also, the law should set a procedure for establishing witness credibility and admissibility criteria for such evidence;
- The legislation needs to differentiate between evidence and procedural documents, and the restrictions on requests to exclude evidence at pre-trial and substantive hearings should be regulated;
- Investigative actions for obtaining information from a computer system should be conducted in accordance with general rules, not through a procedure established for conducting covert investigative actions (Article 112 of the CPC);
- The criminal process should regulate the rules, procedure and criteria for the use

and admissibility of indirect testimony in such a way as to respect the principles of equality of arms and adversarial proceedings, as well as the interest of a fair outcome in the case;

- Lawfulness of a person's detention should be established in a public hearing with the involvement of the defendant, and judges should be guided by a high standard of substantiation. Legislation should set relevant procedures and the obligation of judges to check and substantiate the lawfulness of detention during the first appearance hearing, both in the existence of an arrest warrant and in cases of urgent necessity. Furthermore, judges must assess the issue thoroughly and substantively, not in a superficial manner;
- It is necessary that the decision of the Constitutional Court ("Giorgi Keburia v. Parliament of Georgia"), establishing standards of verification and substantiation with regard to lawfulness of search and seizure measures is taken into account and that substantial changes are made to legislative and judicial practice (rulings are usually limited to standard phrases and in most cases, do not contain substantiation of the factual circumstances);
- In order to improve access to justice for victims, it is necessary to elaborate the legislation and to provide fora with clear regulations on the right to be granted victim status and to access the case materials upon request;
- It is important that changes are made to the legislation and more safeguards are created with regard to protection of personal information during the court proceedings (in terms of closing the process) so that re-victimization of LGBTQ community members is prevented;
- In order to increase the role of judges, the issue of granting them the following powers must be consider to be put on the agenda: granting the right to ask questions in certain cases regardless of the consent from the parties; increasing the role of the judge in the conclusion of the plea bargaining; enabling the judge in some cases to impose less than the minimum sentence prescribed by law;
- Judges should pay special attention to the substantiation of decisions and base their decision on a thorough and consistent analysis of the evidence;
- The established judicial practice of accepting the agreement between the Prosecutor and the defendant without due inquiry, in which judges do not attempt to assess the fairness of the sentence imposed (or only approach the issue in a technical manner), should be changed;
- Crimes that are motivated by social and economic pressures and are of minor importance should be handled with a more humane approach on the part of judges and prosecutors. Courts need to take into account the social factors provoking the action and revise the practice of applying specific types of preventive measures (bail and imprisonment), sentences and plea agreements to such offenses;

- Due to the importance of victims' protection from domestic violence, it is necessary to limit, to the extent possible, the cases when judges are lenient towards those accused of domestic violence and impose a relatively light preventive measure and punishment without appropriate justification;
- It is important for judges to fairly qualify acts in terms of discriminatory motives when it comes to crimes against women and LGBTQ people;
- The state should resume discussions on systemic reform of the Administrative Offenses Code;
- It is important to change the practice of insensitive and discriminatory treatment of various vulnerable groups by the representatives of the justice system (law enforcement agencies, prosecutors, courts);

Competence, Integrity, Independence and Impartiality of Judges:

- It is necessary to implement an institutional reform of the High Council of Justice of Georgia that will ensure the political neutrality, independence and transparency of the Council;
- It is necessary to develop a system for selection and appointment of judges that will ensure that the standards of independence and transparency are met and the best candidates are selected. To do this, it is important to increase the degree of independence of the High School of Justice in the process of selection and appointment of judges;
- It is necessary that the High Council of Justice of Georgia does not to use the practice of appointment of judges for a probationary period before the complete abolition of the mechanism as established by the Constitution of Georgia, and that this restriction is established in an appropriate legal act;
- It is necessary to introduce a system of periodic evaluation of judges that will be focused on the professional development of individual judges, will not endanger their independence and will promote the establishment of a fair promotion system;
- It is necessary to improve the legislative regulation of electronic distribution of cases in such a way that court chairpersons or other individuals do not have the opportunity to influence this process so that the principle of random allocation of cases is observed in practice;
- For strengthening institutional independence of the Independent Inspector, it is necessary that the relevant selection and appointment procedure is reformed and other guarantees of independence are established at the legislative level. It is also necessary to improve the system of disciplinary proceedings in such a way as to ensure the publicity/transparency and timely conclusion of this process;

- The situation in the Supreme Court, as well as in the entire judiciary, requires more radical and systemic changes. The joint implementation of all the above recommendations, as well as the search for transformative ways to improve the administration of justice, can be the only comprehensive way to solve the institutional problems facing the judiciary.

Recommendations on Barriers Related to Legal Awareness and Empowerment

- For raising and strengthening the legal awareness of society, it is necessary that the state has a unified, consistent and comprehensive policy that defines and analyzes the existing problems in this direction and outlines effective ways to deal with them;
- As a majority of the population relies on television as the means of receiving news and gaining knowledge of their rights, it is important for the state to work closely with the Public Broadcaster as an important media resource to raise public legal awareness. It is also important that the broadcaster itself, within its substantive obligations foreseen in the legislation, prioritizes media products that are more informative regarding human rights issues;
- As almost a quarter of the population uses the Internet/social network for receiving information and the rate of its daily use is considerable daily, it is important that the state has a strategy of using Internet resources to appropriately inform the population about the effective realization of their fundamental rights and freedoms;
- It is necessary for the state to make more efforts in the area of civic education in terms of improving textbooks, ensuring the quality of translation, as well as training and increasing the qualifications of teachers, especially in regions populated by ethnic minorities.

Recommendations on Geographical, Physical and Infrastructural Barriers

- It is important to assess the need of improving the existing territorial distribution of courts and legal aid services and to eliminate identified shortcomings in a timely manner so that both courts and legal aid can be accessed equally by persons residing within the territory of Georgia;
- It is necessary that the buildings of the court and the Legal Aid Service are constructed in such a way that they can be accessed equally by all persons. Access to these buildings must not involve safety risks and should require little physical effort;
- It is important that the process of adapting buildings for people with mobility impairments continues, and that the standards of universal and reasonable accommodation are adhered to;

- It is necessary that persons with sensory disabilities are accommodated, that this issue is defined as a priority area, and that appropriate measures are taken for solving the existing challenges;
- Strengthen the court's e-litigation system so that individuals who wish to apply to the court have the opportunity to conduct various procedures remotely in their case.

Recommendations on Financial Barriers

- The indigency criteria should be replaced by a more inclusive category of social benefits recipients. Accordingly, additional preconditions for the provision of free legal aid to socially vulnerable people with a rating score of 100,000 or less should be abolished;
- The list of categories on the basis of which free legal aid services are provided to persons not registered in the social assistance database needs to be extended. In addition, the list should be determined in such a way that a certain part of the exceptional categories is explicitly incorporated into the Law on Legal Aid and will qualify as automatic basis for requesting legal aid;
- The law should introduce a mechanism that would allow people with less than a set income to use free legal aid services.

Recommendations on Cultural and Social Barriers

- Overcoming cultural and social barriers to access to justice requires a multifaceted approach. It is necessary to develop a national strategy for access to justice where the problem of access, as well as the ways to solve it, will be seen in the context of broader social and economic challenges;
- It is important that the strategy for access to justice is inclusive enough to address the specific needs and challenges of different vulnerable groups;
- In order to address the problem of low reporting rates to the police/court, the state needs to promote the development of quality education and information services. Among other actions, this implies legal empowerment taking into account communities' specific social and cultural environments;
- Building trust in the justice system is an essential component of resolving the problem of low reporting rates to police/court. For this to occur, the legislative and institutional challenges (including in terms of sensitivity) presented in the study need to be addressed. In addition, the influence of the 'clan' in the justice system needs to be removed.