

ELECTRONIC SYSTEM OF CASE DISTRIBUTION IN COURTS

(2020-2021 Assessment Report)



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Electronic System of Case Distribution in Courts

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Introduction

Adopting a new electronic system for automatic distribution of cases in the Common Courts was one of the essential positive innovations introduced as part of the “third wave” of judicial reform, which had to overcome significant challenges concerning the independence and impartiality of individual judges and the judiciary in general. The rule, that provides for the random distribution of cases in all three instances of the Common Courts through the electronic program, was first introduced as a pilot in the Rustavi City Court. Since December 31, 2017, it has been implemented throughout Georgia.¹ The reform initially received positive feedback from international and local organizations² as it was supposed to improve the impartiality of the judicial review, protect the litigation from external interference, and ensure timely and effective administration of justice. Moreover, as the flawed case distribution system can be one of the abusive mechanisms for interference with the independence of individual judges, introducing the rule of random case distribution should have been one of the crucial institutional guarantees to protect judges from internal and external influence, reduce the risks of manipulation and artificial interference with the case distribution process.³

Despite the positive assessments, many shortcomings and ambiguities remain unsolved in the electronic case distribution system from the day of its introduction. The analysis of legal amendments and practices implemented since the system’s adoption indicates that the identified drawbacks are still relevant, as the system has not been further reformed and improved.

The present document is the third⁴ monitoring report which aims to analyze and evaluate legislative changes introduced in the electronic system of case distribution, updated statistics, and the remaining challenges concerning the system from January 1, 2020, to December 31, 2021. The report also reviews the shortcomings of the electronic case distribution that were identified during previous reporting periods but no further steps were taken to eliminate them. It should be noted that the standards of access to public information in this regard significantly deteriorated in 2020–2021 which, in turn, substantially complicates the effective monitoring of the functioning of the system.

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¹ Decision N1/56 of May 1, 2017, of the High Council of Justice “On the adoption of the rule for the automatic electronic distribution of cases in the Common Courts of Georgia” (Available at: <https://bit.ly/3MFh21z>; Last accessed: 09.06.2022).

² European commission for democracy through law (Venice Commission), joint opinion on the draft law on amendments to the organic law on general courts CDL-AD(2014)031 (Available at: <https://bit.ly/3tNj8Gr>; Last accessed: 09.06.2022) Coalition’s Opinion About The Third Wave Of Judicial Reform (Available at: <https://bit.ly/3xewD2J>; Last accessed: 09.06.2022).

³ The Coalition for an Independent and Transparent Judiciary, “The Judicial System: Past Reforms and Future Perspectives”, Tbilisi, 2017, pp. 70-71 (Available at: <https://bit.ly/3HziCBa>; Last accessed: 09.06.2022)

⁴ First Monitoring Report - Human Rights Education and Monitoring Center (EMC) and Institute for Development of Freedom of Information (IDFI) “Assessment of the Judicial Reform - Electronic System of Case Distribution System for Disciplinary Liability of Judges”, 2019 (Available at: <https://bit.ly/3MCkfPs>; Last accessed: 09.06.2022), The report covers the period starting from the date when the “third wave” amendments were enacted through to December 31, 2018; Second Monitoring Report - Human Rights Education and Monitoring Center (EMC), “Electronic System of Case Distribution in Courts”, 2020 (Available at: <https://bit.ly/3HIYgvv>; Last accessed: 09.06.2022), The report covers the period from 1 January 2019 to 31 December 2019.

Methodology

The monitoring report covers the period from January 1, 2020, to December 31, 2021. While working on the document, the project team used several research and information gathering methods and resources:

Analysis of the legislation and the decisions of the High Council of Justice – One of the essential tools in the monitoring process was to observe the changes and developments made after the previous monitoring reports, as well as to evaluate the decisions of the High Council of Justice regarding the issues delegated to it by the legislation.

Monitoring the sessions of the High Council of Justice - The third monitoring period coincided with the Covid-19 Pandemic. Due to security regulations, monitoring was carried out by reviewing the session records and requesting other related public information instead of regularly attending the High Council of Justice sessions. Records of the meetings were one of the crucial sources for understanding the general context, goals, and positions of the Council members, regarding the planned or already implemented changes in the rules of the electronic case distribution system.

Processing statistical data – The project team asked for information from the High Council of Justice, the Department of Court Management, district (city) courts, appellate courts, and the Supreme Court of Georgia;

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

Main Findings

The monitoring of the electronic case distribution system over the last three years has indicated that the improvement of the system is no longer a priority and amendments to the existing rule are less and less frequent. Accordingly, the key findings of the third report are largely identical to the challenges identified in previous reports. The Parliament of Georgia and, especially, the High Council of Justice, have not taken adequate steps to eliminate the hindrances to a properly functioning system. In light of these circumstances, the third monitoring report identified the following key challenges:

- Despite many vague and problematic provisions in the electronic case distribution rule, no steps have been taken in recent years to address shortcomings of the process; The amendments to the legal framework are primarily technical and do not address the problems and challenges that exist within the judiciary in this regard;
- The fact that introducing the new system for the case distribution did not lead to a systemic understanding of the necessary changes remains problematic. Systemic understanding, among other things, implies the harmonization of the procedural legislation with the new rule;
- The existing regulation of the electronic case distribution system fails to minimize the risks of undue influence on the independence of individual judges. The role of court presidents, court chancelleries, and the Department of Management in the system are in some instances vague and nontransparent.
- The standard of access to public information regarding the operation of the electronic case distribution system has deteriorated, substantially complicating the effective monitoring of the system's functioning.
- In 2020-2021, overall, 537,929 cases were distributed, of which 333,485 were by adhering to the principle of random distribution. Consequently, more than a third of the cases are still distributed without the protection of the principle of randomness. No improvement has been observed in this regard compared to previous years;
- The court presidents are still appointed by the High Council of Justice. Therefore, considering Clan rule and corporatism within the judiciary, there are great risks of presidents using some of their powers dishonestly and arbitrarily. Presidents' broad powers pose a significant problem since they allow for subjective assessments and exert illegitimate influence on individual judges. These powers of Presidents are:
 - The power to see/increase/decrease workload rates of judges;
 - The authority to determine and modify the duty schedule of the judges;
 - The ability to decide and alter the composition of judges in narrower specializations without a clearly determined procedure;
 - Involvement in the process of self-recusal/recusal of a judge;
 - Participation in the process of design of the collegial judicial panels.
- The regulation, which provides for different, much lower workload rates for persons holding certain administrative positions in general courts, remains problematic;

- In the given reporting period, in addition to the President of the Tbilisi Court of Appeals – Mikheil Chinchaladze, the tradition of keeping the workload rate of certain judges secret, was extended to the President of the Supreme Court - Nino Kadagidze, President of the Kutaisi Court of Appeals - Irakli Bondarenko, and Secretary of the High Council of Justice - Nikoloz Marsagishvili. The High Council of Justice simply does not indicate them in the list of judges, nor does it justify the reasons for the concealment of their workload rates;
- The electronic case distribution system still does not take into account the complexity and weight of the case as these variables are crucial for an equal and fair distribution of workload between judges;
- Cases are not assigned by adhering to the principle of random distribution in five district courts since only one judge of the relevant specialization serves in these courts;
- In the appellate and cassation courts, no duty schedules are established for judges for non-working hours/holidays; Courts of the first instance do not disclose duty schedules stating that such schedules do not constitute public information. Therefore, schedules are not accessible to any interested party, nor are they archived; In the absence of a clear mandate of court presidents to set duty schedules, the “secrecy” of such schedules makes it impossible to monitor the functioning of the electronic case distribution system;
- The rule of staffing the collegial panel of judges in appellate and cassation courts is problematic. During the collegial consideration, the case is randomly assigned to the court’s president/reporting judge through the electronic system. However, the legislation is silent about the method and procedure for selecting the other members of the panel;
- Procedure and timeframes are not adequately regulated for re-distribution of cases in the event of self-recusal/recusal of a judge;
- It is still unclear who and based on what circumstances should assess the existence of a “necessary case”, “avoidance of delay in the administration of justice,” and/or an “objective circumstance” based on which: a) a judge of another narrow specialization is allowed to hear a specific case, b) the case distribution is stopped, and a case is transferred to another judge for consideration;
- There is a positive trend - no cases of temporary failures in the electronic case distribution system have been reported in the last two years. Although the problem seems to have been solved in practice and the system’s technical performance has been improved, the legal framework is still flawed. In particular, the legislation does not clearly define the powers of court chancelleries and the procedural grounds for their activities. At the same time, the lack of accountability of the chancellery as a body authorized to participate in the electronic distribution system is problematic;
- The Department of the Court Management, which has the critical functions in the administration of case distribution, is not fully staffed, which hinders the effective operation of the Department.

I. Regulation of the Electronic System of Case Distribution & Statistical Data

Through legislative amendments implemented during the “third wave” of judicial reform, the Organic Law of Georgia on Common Courts established the electronic system for automatic distribution of cases between judges in common courts, per the principle of randomness. At the same time, the legislator entrusted the system’s almost complete and detailed legal regulation to the High Council of Justice (hereinafter - the Council). Organic law only stipulates the obligation to distribute cases in the event of temporary failure of the electronic system.⁵

In 2017, the Council approved the rule on Automatic Distribution of Cases in the Common Courts Through the Electronic System⁶ to exercise the authority delegated by the legislation. According to this rule, except for particular circumstances, cases are allocated to common courts judges based on the random distribution - numeric generational algorithm.⁷ Within the frameworks of the same Decision, the Council defined the principles governing the case distribution, the rule of randomness, and exceptions to that rule. The Council also established the norms regulating the equal workload of judges and the roles of certain persons in administrative positions, the court chancelleries, and the Department of Management.

At the initial stage of the system’s implementation, the Council’s Decision underwent numerous changes or additions. However, many vague and problematic provisions endured in case distribution rules.⁸ 2017-2021 Judicial System Strategy and the 2017-2018 Action Plan also set the obligations for Council to improve the electronic distribution system.⁹ Despite the repeated identification of the challenges highlighted above by the civil society, no adequate steps have been taken in recent years to fulfill the obligations set out in various documents and eliminate the shortcomings related to the case distribution process.

During the reporting period, several legal acts adopted by the High Council of Justice were regulated at the normative level - including the rule of automatic distribution of cases through the electronic system, as well as the decisions of the Council on the definition of narrower specializations of judges

⁵ Article 58¹ of the Organic Law of Georgia on Common Courts

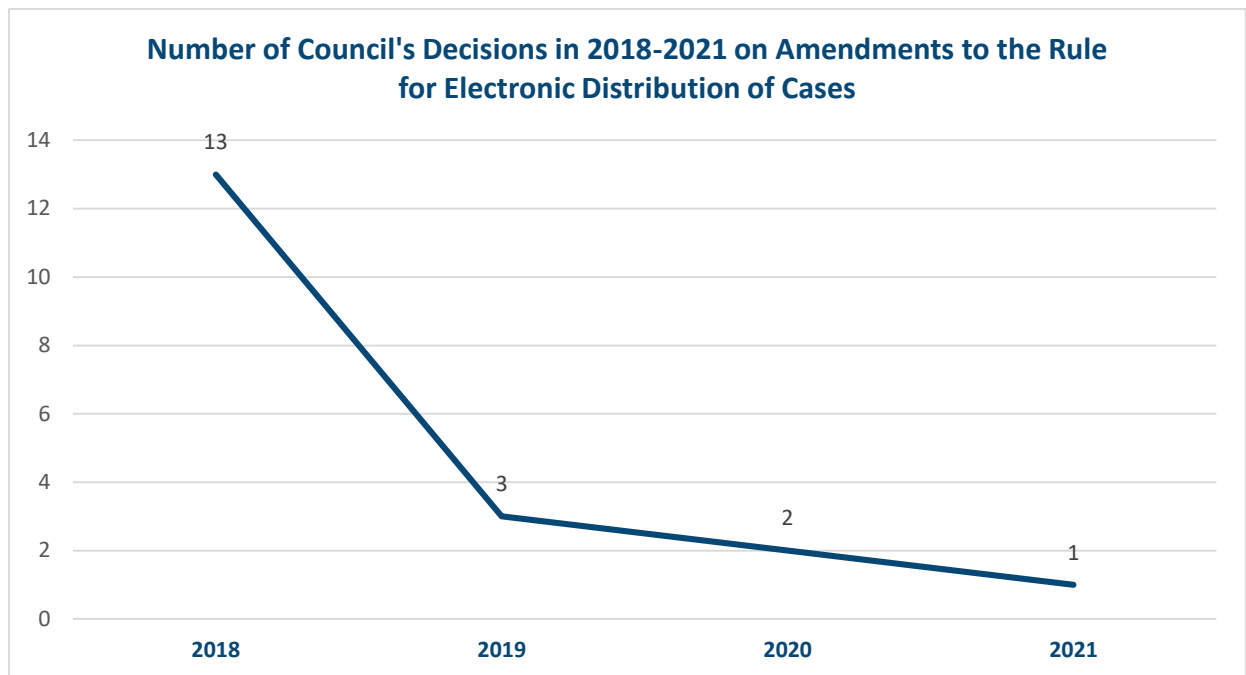
⁶ Decision N1/56 of May 1, 2017 of the High Council of Justice

⁷ Ibid, Article 2

⁸ “Assessment of the Judicial Reform - Electronic System of Case Distribution System for Disciplinary Liability of Judges”, 2019, pp.15-16

⁹ The Judiciary Action Plan for 2017-2018 includes the improvement of the e-distribution and management system and the introduction of it to common courts in all instances, which has been implemented, although the draft Action Plan for 2019-2020, which has not yet been approved, still includes activities related to the electronic case distribution system. Among them, one of the activities is the monitoring of the e-distribution program by the Management Department and the improvement of the program according to the results.

in the Tbilisi City¹⁰ and Appellate Courts.¹¹ As for the substantive amendments, the Council modified N1/56 Decision three times throughout 2020-2021: twice in 2020 and once in 2021.



The amendment of October 2020 is technical. In particular, it expanded the list of civil and administrative cases to be distributed without adhering to the principle of randomness, when the case is distributed to the ruling Judge. The following category of cases are added to the list: a) the court admitted the application for declaring a person as a beneficiary of support, and regarding the same person, another individual also applies to the court with a similar statement; b) The court ruled on declaring a person as a beneficiary of support and the same person applies to a change in the scope of support.¹²

The amendment of November 2020 is also technical. It clarifies the list of cases where the amount of dissimilarity between electronically distributed cases between judges of the relevant specialization must be observed (must not exceed three).¹³

¹⁰ Decision of the High Council of Justice of Georgia of 24 July 2017 № 1/233 “On Determining the Narrow Specialization of Judges in the Criminal Investigation, Pre-Trial Session and Substantive Review Panels of the Tbilisi City Court” (Available at: <https://bit.ly/3znBdhL> ; Last accessed: 09.06.2022)

¹¹ Decision of the High Council of Justice of Georgia of 30 April 2018 №1/175 “On Determining the Narrow Specialization of Judges in the Chambers of Civil, Administrative Cases and Criminal Cases of the Tbilisi Court of Appeal” (Available at: <https://bit.ly/3mwqiKV> , Last accessed: 09.06.2022)

¹² Resolution of the High Council of Justice of Georgia of October 7, 2020 №13 (Available at: <https://bit.ly/3tseaOZ> ; Last accessed: 09.06.2022)

¹³ Resolution of the High Council of Justice of Georgia of November 2, 2020 №15 (Available at: <https://bit.ly/3MAcRnO> ; Last accessed: 09.06.2022); Sub-paragraph “b.b” was added to the list envisaged by the Article 4 Paragraph 5 of the Decision №1/56 of the High Council of Justice of Georgia of May 1, 2017 - On Administrative Cases in the District (City) Court “Case provided for in Chapters VII¹, VII³-VII²¹ of the Administrative Procedure Code of Georgia”. Sub-paragraph “b.b” was added to the list envisaged by the Paragraph 4¹ of the same article- In the Chamber of Administrative Cases of the Court of Appeals “Private Complaint / Complaint / Complaint in Cases provided for in Chapters VII¹, VII³-VII²¹ of the Administrative Procedure Code of Georgia”.

The amendment of March 2021 regulates the additional rule for case distribution by a court president in cases when: a) the president instructs another unit of the same court (specialized panel/panel/chamber/investigative panel) to hear the case; b) the president instructs a district (City) court judge to exercise the powers of a magistrate judge or vice versa. In particular, if the duration of the assignment exceeds ten days and it is objectively impossible for a judge to exercise authority in both places simultaneously, at the request of a judge, for the duration of the assignment, the president may suspend the distribution of cases on that particular judge in the unit where the judge worked before the assignment.¹⁴

Analyzing the amendments mentioned above, it is clear that the changes are primarily technical and insignificant. They do not seek to address the problems and challenges that exist within the judiciary in this regard.

1.1. Random Distribution of Cases

The Council's Decision of May 1, 2017, defines the principle of random distribution as the distribution of cases to the automatically selected relevant panel/chamber/narrow specialization judge per established procedure.¹⁵

The project team requested statistical data from large courts throughout Georgia¹⁶ and the High Council of Justice of Georgia on the number of cases distributed from January 1, 2020, to December 31, 2021.

In the reporting period of 2020, 232 861 cases were distributed through the electronic case distribution program in the common courts of Georgia¹⁷, including the total number of cases distributed adhering to the principle of random distribution - 142 765.¹⁸ As of 2021, 305 068 cases were distributed in the common courts, and out of them, 190 720 cases were distributed randomly.¹⁹ In 2020-2021, a total of 537 929 cases were distributed, of which 333 485 were distributed per the principle of random distribution, which compromises for 62% of the total cases. The given percentage coincides with the results of 2018 and 2019. In the reporting periods of 2018-2019, the rate of cases distributed randomly was 62-62% of the total.²⁰

¹⁴ Resolution of the High Council of Justice of Georgia of March 24, 2021 №19 (Available at: <https://bit.ly/3zspNcE> ; Last accessed: 09.06.2022)

¹⁵ Decision N1/56 of May 1, 2017, of the High Council of Justice, Article 2

¹⁶ Ambrolauri District Court; Akhalkalaki District Court; Akhaltsikhe District Court; Bolnisi District Court; Gali-Gulrifshi and Ochamchire-Tkhvarcheli District Court; Gori District Court; Gurjaani District Court; Zestaponi District Court; Zugdidi District Court; Tetrtskaro District Court; Telavi District Court; Mtskheta District Court; Ozurgeti District Court; Samtredia District Court; Sachkhere District Court; Senaki District Court; Signaghi District Court; Sokhumi and Gagra-Gudauta District Courts; Tsageri District Court; Khashuri District Court; Khelvachauri District Court; Batumi City Court; Poti City Court; Rustavi City Court; Kutaisi City Court; Kutaisi Court of Appeal, Tbilisi City Court; Tbilisi Court of Appeal; Supreme Court of Georgia.

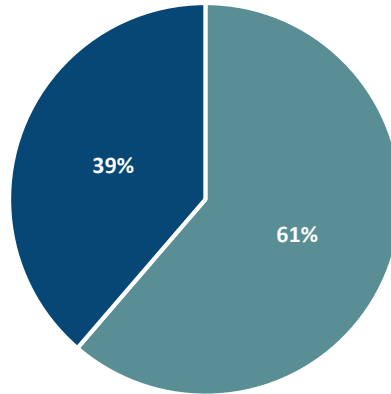
¹⁷ Letter №887/2840-03-o of the High Council of Justice of Georgia, December 7, 2021.

¹⁸ *idem*.

¹⁹ Letter №431/1158-03-o of the High Council of Justice of Georgia, May 25, 2022.

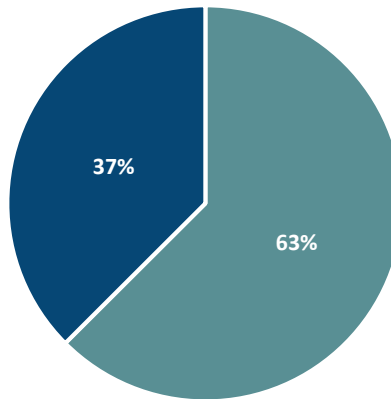
²⁰ "Electronic case distribution system in Georgia", 2020, p. 12

Cases Distributed in 2020 through the Electronic Case Distribution Program



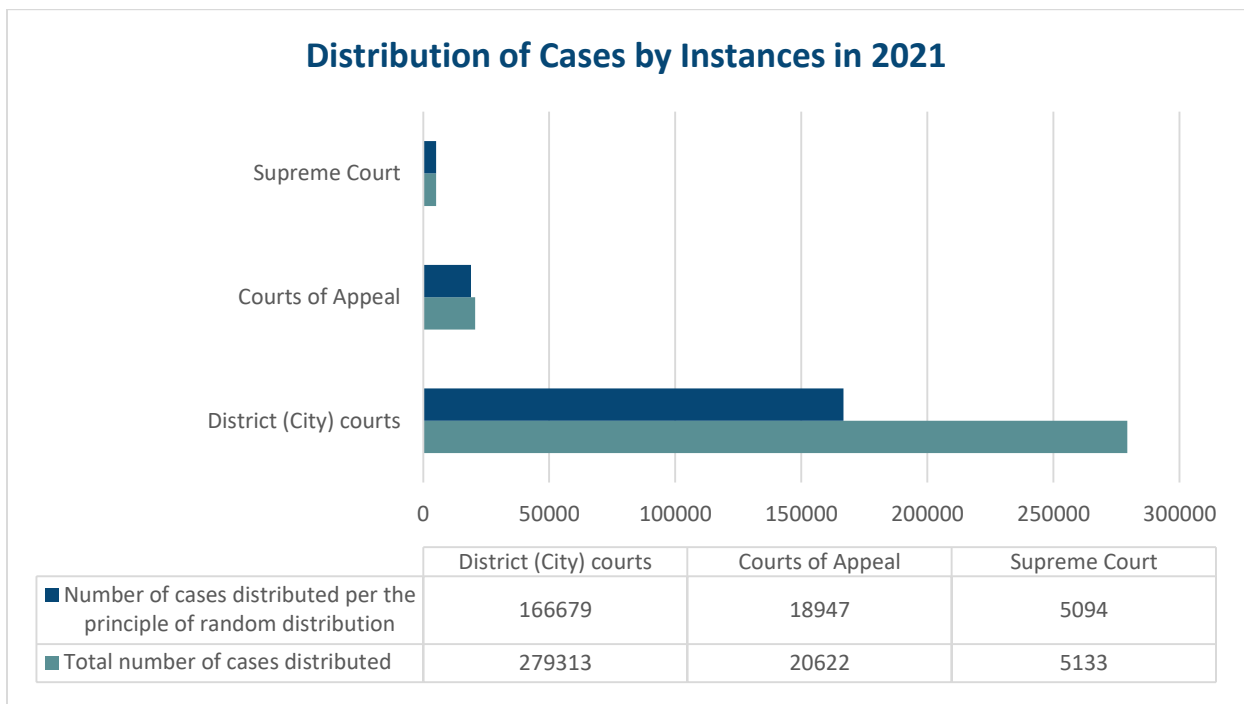
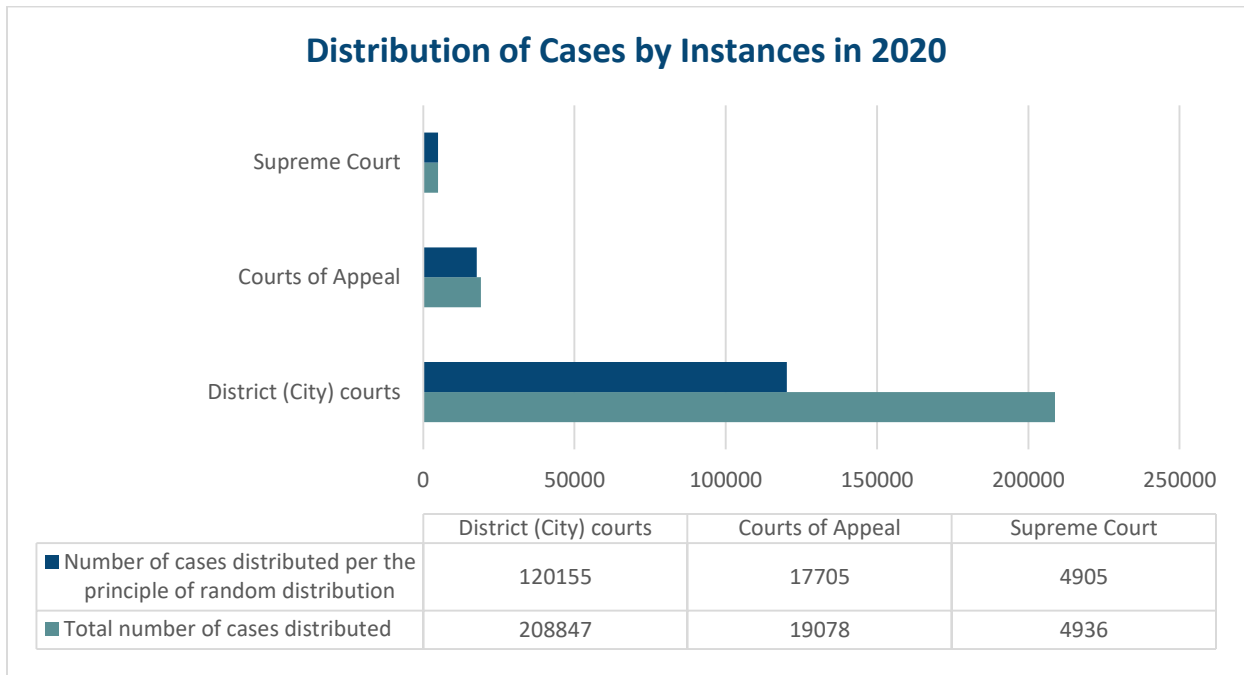
- Cases distributed per the principle of random distribution
- Cases distributed without adhering to the principle of random distribution

Cases Distributed in 2021 through the Electronic Case Distribution Program



- Cases distributed per the principle of random distribution
- Cases distributed without adhering to the principle of random distribution

As for the index of cases distributed by instances of common courts, the statistics are as follows:



According to the data, the share of cases distributed by adhering to the principle of randomness in 2020-2021 is identical to the index of previous reporting periods. Besides, the ratio of cases according to these criteria by the court instances is similar too, and data indicates no significant changes and improvements.

1.2. Cases Distributed Without Adhering to the Principle of Random Distribution

The Decision of May 1, 2017, provides a long list of exceptions to the general rule of random case distribution. Cases that are not automatically assigned via the electronic system to the relevant panel/chamber/narrow specialization judge, fall into several categories. These categories are the distribution of cases *by exception, on duty, and without the rule*. Additionally, the category of cases adjudicated by a magistrate judge is distributed to the *magistrate judge*.

By exception, cases are distributed without adhering to the principle of random distribution when: a) *there is only one magistrate judge in the municipality; b) there is only one Judge of the relevant specialization in the district/city court; c) there is only one on-duty specialized Judge in the district/city court*,²¹

Except in the above cases, there is an extensive list of exceptional cases for specific specializations. In particular, in up to 21 incidents, civil, administrative, and criminal cases are assigned to the ruling judge.²²

Finally, Decision N1/56 sets out a list of cases where the Civil and Criminal Procedure Codes of Georgia directly define reviewing judges.²³ For example, a) *an issue related to disorderly conduct in Court is considered by the Chairperson of the session/President of the Court, b) The President of the higher court resolves the dispute over jurisdiction, etc.*²⁴

According to the Council's data provided to the project team, cases are not distributed adhering to the principle of randomness in some district courts. In particular, in Gali-Gulrifshi and Ochamchire-Tkvarcheli, Ambrolauri, Sachkhere, Sokhumi and Gagra-Gudauta, and Tsageri District Courts since there is only one judge of relevant specialization in each Court.²⁵

Likewise, cases are not distributed randomly in 31 municipalities,²⁶ as only one magistrate judge is executing judicial powers in the corresponding municipality.²⁷ The only exception is the Magistrate Court of Gardabani Municipality, where two magistrate judges exercise their powers.²⁸

In 2020, cases were distributed per general rule, ordinarily in the Ninotsminda Magistrate Court, including adhering to the principle of randomness. The statistics for 2021 do not contain data on this particular magistrate court.

²¹ Decision N1/56 of May 1, 2017 of the High Council of Justice, Article 3.

²² Idem.

²³ Idem, Paragraph 4.

²⁴ Civil Procedure Code of Georgia, Article 212, Criminal Procedure Code of Georgia, Article 85.

²⁵ Letter №431/1158-03-o of the High Council of Justice of Georgia, May 25, 2022.

²⁶ Abasha, Adigeni, Aspindza, Akhmeta, Baghdati, Borjomi, Dedoplistskaro, Dusheti, Terjola, Tianeti, Kaspi, Lagodekhi, Lanchkhuti, Lentekhi, Martvili, Oni, Sagarejo, Tkibuli, Kareli, Keda, Kobuleti, Kazbegi, Kvareli, Shuakhevi, Chokhatauri, Tsalka, Tskaltubo, Chiatura, Kharagauli, Khobi and Khulo.

²⁷ Letter №431/1158-03-o of the High Council of Justice of Georgia, May 25, 2022.

²⁸ Idem.

As for other categories of cases distributed without adhering to the principle of random distribution, in the instance where the panel and/or specialization are comprised of one judge, cases are distributed **without the rule**.²⁹ Distribution of cases **on duty** involves, if necessary, determining shifts in administrative and criminal cases (the consideration period of that cases does not exceed 72 hours) by order of the court president, according to which these cases are divided into non-working and working hours. In such instances, the number of cases distributed will not be considered when determining the judge's workload.³⁰

Determining the duty schedule is one of the problematic aspects of the case distribution system, both in terms of substance and the court presidents being involved in the process. Specifically, the duty schedule in the common courts is predetermined. However, the president can modify the schedule anytime without being obliged to substantiate the decision. Accordingly, the rule on distributing the cases according to duty schedule allows the case to be transferred to a specific judge.³¹ The examples discussed in the previous monitoring report confirm³² that the authority to modify the schedule was not used effectively/adequately by the court presidents to manage the crises. Therefore, as no amendments to this abusive power were depicted during the reporting period, the rule still leaves room for the possibility and risks of fixing schedules arbitrarily and using the power for unhealthy interests.

The project team asked the large courts of Georgia to provide public information on the duty schedules of judges. Analysis of the received data reveals the similarity between the current and the previous reporting periods. In particular, no shifts are established in the Appellate and Cassation Courts.³³ As for the courts of the first instance, the duty schedule does not constitute public information and is not available to any interested party. Besides, the courts do not archive this kind of information.³⁴

In courts where only one judge exercises judicial powers, cases are distributed only to them (belongs to the distribution category without the rule).³⁵ No duty schedules are available in the courts where a single judge exercises authority for each specialization, such as the Gali-Gulrifshi and Ochamchire-Tkvarcheli District Courts.³⁶ In the Gurjaani District Court, cases are distributed on duty to judges on non-working days/holidays, while on weekdays, cases are distributed randomly through an electronic system.³⁷ In addition, the Zestaponi District Court has established a one-week shift for cases that must

²⁹ Decision N1/56 of May 1, 2017 of the High Council of Justice, Article 4

³⁰ Idem.

³¹ "Assessment of the Judicial Reform - Electronic System of Case Distribution System for Disciplinary Liability of Judges", 2019, p. 34

³² "Electronic case distribution system in Georgia", 2020, №3. 30-31

³³ Letter N554-2/10 of October 19, 2021 to the Kutaisi Court of Appeal, and Letter N257-2/10 of May 4, 2022; Letter N3 / 8994 of October 21, 2021 of the Tbilisi Court of Appeals, and Letter N3/3730 of May 6, 2022; Letter N P-727-2021 of October 18, 2021 of the Supreme Court of Georgia, and Letter No.4-201-22 of May 4, 2022.

³⁴ For example, Letter N191 of October 15, 2021 of the Gali-Gulrifshi and Ochamchire-Tkvarcheli District Court and Letter N170 of May 4, 2022; Letter N99 of the Gurjaani District Court of October 15, 2021, and Letter N51 of May 5, 2022; Letter N9-191 of October 15, 2021 of the Zestaponi District Court; and Letter N9-60 of 6 May 2022; Letter N818 of Zugdidi District Court of October 15, 2021

³⁵ Letter N32 of Sokhumi and Gagra-Gudauta district of October 13, 2021; and Letter of May 6, 2022

³⁶ Letter N191 of October 15, 2021 of the District Court of Gali-Gulrifshi and Ochamchire-Tkvarcheli and Letter N170 of May 4, 2022

³⁷ Letter N99 of the Gurjaani District Court of October 15, 2021, and Letter N51 of May 5, 2022

be considered within 72 hours, according to the numerical order of judges.³⁸ According to the Zugdidi District Court, cases are distributed on duty on non-working days/holidays. In contrast, on working days, shifts are fixed for considering the incoming motions for investigative, procedural, operative-investigative actions related to the restriction of constitutional rights and freedoms of citizens and regarding the imposition of a measure on the initial appearance of the accused in court.³⁹

It is noteworthy that in the first reporting period, most courts fully provided the duty schedules requested as public information to the project team.⁴⁰ Marking this kind of data confidential is the fruit of the second reporting period,⁴¹ displaying a sharp deterioration of the standard of access to public information. Moreover, in the absence of clear regulation of the presidents' authority to fix the schedules, their secrecy makes it impossible to monitor the functioning of the electronic case distribution system.

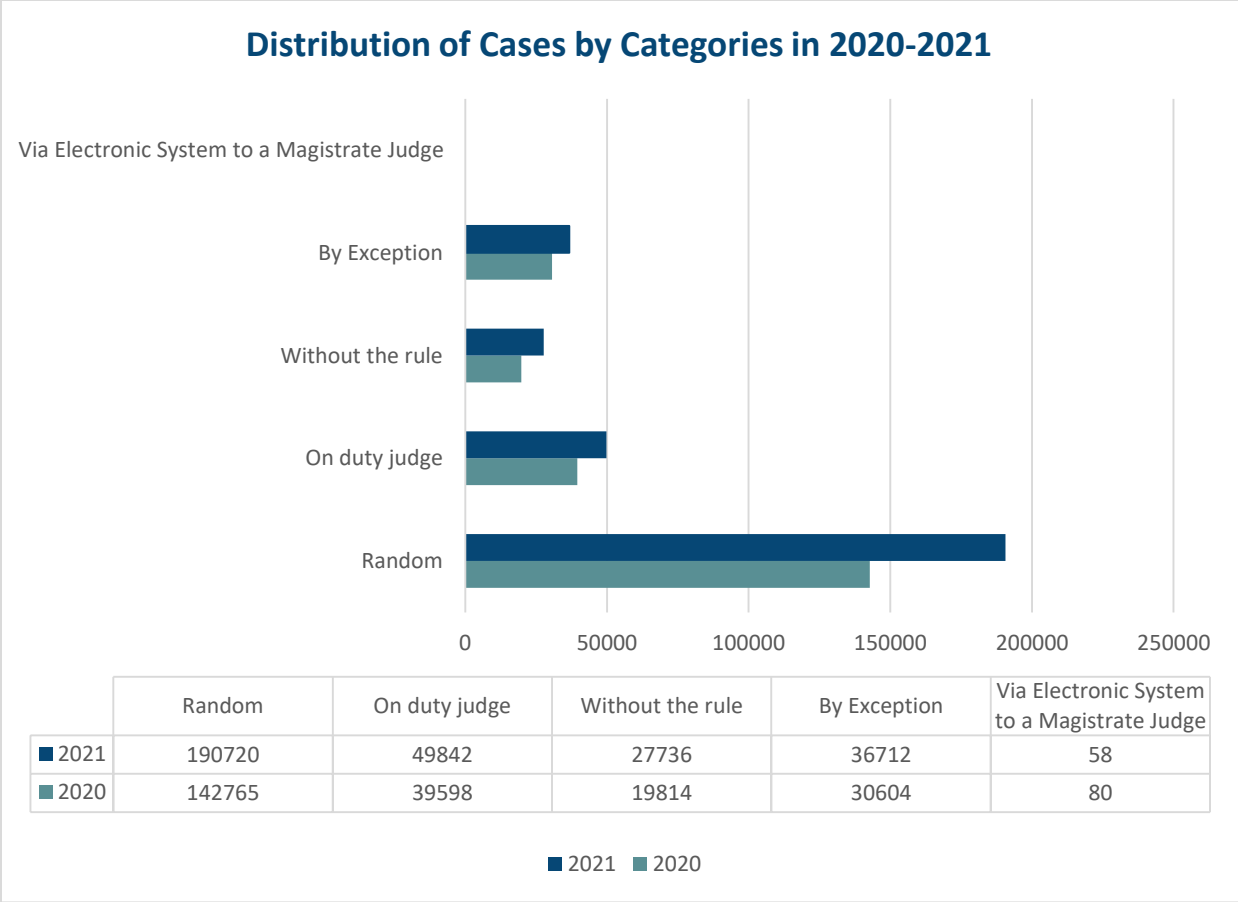
Correspondingly, the statistical data provided by the High Council of Justice and processed by the project team on the cases distributed without adhering to the principle of random distribution, according to the categories mentioned above, looks as follows:

³⁸Letter N9-191 of October 15, 2021 of the Zestaponi District Court; and Letter N9-60 of May 6, 2022

³⁹ Letter N818 of Zugdidi District Court of October 15, 2021

⁴⁰ "Electronic case distribution system in Georgia", 2020, p. 30

⁴¹ Idem.



Available data indicates that according to their categories, the ratio of cases distributed in 2020 and 2021 is approximately equal to the ratio depicted during the reporting period, and no significant changes occurred.

II. Existing Shortcomings of the Electronic Case Distribution System

2.1. Workload and Equal Distribution of Cases among Judges

Effective case management is of paramount importance against the courts’ extreme backlogging and case delays.⁴² The electronic case distribution system aims not only to protect judges from improper influences but to balance the workload and ensure equal distribution of cases among judges. Consequently, ignoring the case’s complexity in the distribution process is troublesome.⁴³

Unequal distribution of cases among the judges through the electronic system remains a challenge in the reporting period – only a small portion of distributed cases are for judges holding certain

⁴² Jesper Wittrup, Tea Machaidze et al. “Assessment of the need for judges in Georgia” (Available at: <https://bit.ly/2G8tHvw> ; Last accessed: 09.06.2022)

⁴³Assessment of the Judicial Reform - Electronic System of Case Distribution System for Disciplinary Liability of Judges”, 2019, pp. 23-24.

administrative positions in common courts. In particular, for judges listed below, the percentage of case distribution is usually determined by the following allocation:

- Member of the High Council of Justice- 20%, if the member is simultaneously the President of the Court, Deputy President, or the Chairperson of the Panel/Chamber - 10%;
- The President of the Court, the Deputy President, the Chairperson of the Panel/Chamber where the number of judges does not exceed 7 – 50%, while the President of the Court, Deputy President, the Chairperson of the Panel/Chamber where the number of judges exceeds 7 – 20%.⁴⁴
- The President and Deputy President of the Supreme Court; President, Deputy President, and Chairperson of the Panel/Chamber of the Court of Appeal; The President and Chairperson of the Panel of Tbilisi City Court (Except in cases explicitly provided for by law); the Chairman and Secretary of the High Council of Justice - In exceptional circumstances, it is possible to distribute cases, usually not more than 5%.⁴⁵

Besides, newly appointed judges or judges who return from leave due to pregnancy, childbirth, and child care get to assign workload with an increased percentage – usually within 150-200%.

It is still problematic that a president can check the workload of judges and increase it by 25% to avoid delays in the administration of justice.⁴⁶ To prevent the delays, the president can also reduce the workload based on marital status and the judge's health or for other objective reasons by no more than 50% at a time.⁴⁷

Evidently, the discussed setting and the system of determining judges' workload cannot ensure equality. The powers of the court presidents in this arrangement create ample opportunities for subjective assessment and carry risks of undue influence on individual judges.

This table below reflects the different workload rates from October 1, 2021, to December 31, 2021, for some judge members of the Council and the presidents of the courts/chairpersons of chambers/panels.⁴⁸ At first, the Council provided the project team with information on the percentage of judges' workload from January 1, 2020, to October 1, 2021.⁴⁹ However, the requested data, as in the previous reporting period, did not indicate the quantitative or percentage rate for the workload of the President of the Tbilisi Court of Appeals - Mikheil Chinchaladze.⁵⁰ As for the data respective to the timeframe from October 1, 2021, to December 31 of the same year, the provided information does include the percentages of the workload of the President of the Supreme Court - Nino Kadagidze, the President of

⁴⁴ Decision N1/56 of May 1, 2017 of the High Council of Justice, Article 5, Paragraph 6.

⁴⁵ Ibid., Article 5, Paragraph 7

⁴⁶ Ibid., Article 5, Paragraph 8

⁴⁷ Ibid., Article 5, Paragraph 8¹

⁴⁸ Letter №431/1158-03-o of the High Council of Justice of Georgia, May 25, 2022.

⁴⁹ Letter №887/2840-03-o of the High Council of Justice of Georgia, December 7, 2021;

⁵⁰ "Electronic case distribution system in Georgia", 2020, pp. 39-40

the Kutaisi Court of Appeal - Irakli Bondarenko, as well as the Secretary of the High Council of Justice - Nikoloz Marsagishvili.⁵¹

Per information provided by the Council, the electronic program does not keep a record of changes in the percentage of judges' workload.⁵²

Name, Surname	Administrative Position	Percentage of Workload
Nino Kadagidze	President of the Supreme Court, Chairperson of the Chamber of Administrative Cases, Chairperson of the High Council of Justice	The Council did not provide the data
Mikheil Chinchaladze	President of the Tbilisi Court of Appeal	The Council did not provide the data
Irakli Bondarenko	President of the Kutaisi Court of Appeal	The Council did not provide the data
Giorgi Mikautadze	Chairperson of the Civil Cases Chamber of the Supreme Court	5%
Shalva Tadumadze	Chairperson of the Criminal Chamber of the Supreme Court	5%
Irakli Shengelia	Chairperson of the Chamber of Civil Cases of the Tbilisi Court of Appeal	20%
Dimitri Gvritishvili	Chairperson of the Administrative Cases Chamber of the Tbilisi Court of Appeal	10%
Paata Silagadze	Chairperson of the Criminal Chamber of the Tbilisi Court of Appeal, Member of the High Council of Justice	20%
Giorgi Goginashvili	Judge of the Investigative Panel of the Tbilisi Court of Appeal, Member of the High Council of Justice	50%
Sergo Metopishvili	Chairperson of the panels of Investigative and Pre-Trial Session of the Tbilisi City Court	20%

⁵¹ Letter №431/1158-03-o of the High Council of Justice of Georgia, May 25, 2022.

⁵² Idem.

Temur Gogokhia	Chairperson of the Criminal Cases Panel of the Tbilisi City Court, Member of the High Council of Justice	5%
Badri Shonia	Chairperson of the Civil Cases Panel of the Tbilisi City Court, Member of the High Council of Justice	20%
Nikoloz Margvelashvili	President of Kutaisi City Court	20%
Mamia Pkhakadze	President of Rustavi City Court	20%
Davit Gelashvili	President of Poti City Court	100%
Shalva Kakauridze	President of Gori District Court	20%
Natruli Akobia	President of Zugdidi District Court	50%
Ketevan Tsintsadze	Judge of the Supreme Court, Member of the High Council of Justice	20%
Nikoloz Marsagishvili	Judge of Tbilisi City Court, Secretary of the High Council of Justice	The Council did not provide the data
Levan Mikaberidze	Judge of the Supreme Court, Member of the High Council of Justice	100%
Gocha Abuseridze	Judge of the Supreme Court, Member of the High Council of Justice	100%

Statistical data demonstrates persisting challenge - drastic workload differences for ordinary judges and judges who hold titles of court presidents or some managerial positions. The latter category of judges is in a favorable position regarding workload, thus, creating an unequal environment. Additionally, while the backlog of courts remains one of the main challenges, workload inequality is an example of inefficient management of the judiciary.

2.2.Determining the Composition of Narrow Specialization of Judges

For effective management of the judiciary, determining the composition of a narrow specialization of judges is fundamental. The High Council of Justice sets up a narrow specialization of judges in a

particular court. As for the composition of panels of narrow specializations, the power to determine is of the presidents. As of December 2021, the Council set up the narrow specialization of judges only in the Tbilisi City⁵³ and Appeals Courts.⁵⁴

The power to determine the composition of narrow specializations equips court presidents with unbalanced instruments - current regulation does not obligate them to substantiate the decision. Such troubled competence allows a president to affect the case distribution system by altering the composition of a particular specialization. The issue gains much more relevance when court presidents are appointed by the Council. Further, the Council member can simultaneously hold the position of the president of the court. In that instance, she/he has the opportunity to influence both the process of setting up a narrow specialization and determining its composition.⁵⁵

It is unclear who and under what circumstances should assess the existence of a “necessary case” or “avoidance of delay in the administration of justice” based on which a judge of other narrow specialization is allowed to consider a specific case.⁵⁶

The project team addressed the Tbilisi City Court and Tbilisi Court of Appeals and requested copies of the orders of the presidents on determining the composition of the narrow specialization from January 1, 2020, to December 31, 2021.⁵⁷

Tbilisi Court of Appeals informed the project team that in 2020 the President issued 11 such Orders and another 11 in 2021. The Court attached copies of all orders to the data provided to the project team.⁵⁸

In contrast, the Tbilisi City Court provided a copy of only the latest order.⁵⁹ After additional written communication, the Court clarified that it had issued numerous orders to determine the composition of judges according to the narrow specializations established in the panels. Every development (expiration of the term of office, the appointment of a judge, etc.) leads to the adoption of a new order, which revokes the previous one, and many such acts are adopted during the year. Accordingly, given the volume of information available and the difficulties of processing it, the Court only provided copies of the most recent orders.⁶⁰ Hence, copies of the orders for determining/changing the composition of the panel of judges by the President of the Tbilisi City Court are still not fully available to the project team.

⁵³ Decision of the High Council of Justice of Georgia of 24 July 2017 № 1/233 “On Determining the Narrow Specialization of Judges in the Criminal Investigation, Pre-Trial Session and Substantive Review Panels of the Tbilisi City Court”

⁵⁴ Decision of the High Council of Justice of Georgia of 30 April 2018 №1/175 “On Determining the Narrow Specialization of Judges in the Chambers of Civil, Administrative Cases and Criminal Cases of the Tbilisi Court of Appeal”

⁵⁵ “Electronic case distribution system in Georgia”, 2020, p. 26

⁵⁶ “Assessment of the Judicial Reform - Electronic System of Case Distribution System for Disciplinary Liability of Judges”, 2019, p. 35

⁵⁷ № C01/325/2019 Letter of the Human Rights Education and Monitoring Center (EMC), May 2, 2019.

⁵⁸ Letter N3/8994 of the Tbilisi Court of Appeal of October 21, 2021; and Letter N3/3730 of May 6, 2022.

⁵⁹ Letter № 3-06104/5101724 of the Tbilisi City Court of October 18, 2021

⁶⁰ Letter № 3-04122/5182821 of Tbilisi City Court of December 2, 2021, and Letter N3-0642/5722095 of May 2, 2022.

Social Justice Center filed an administrative complaint back in 2019 to the Tbilisi City Court manager requesting the abovementioned information,⁶¹ but that plea was rejected. ⁶²An administrative lawsuit has been filed at the Tbilisi City Court⁶³, and, for the time being, only one hearing has been scheduled so far, in early 2020. Since then, the case has been pending, and the court staff has not provided information to the organization about the reasons for the delay.

2.3. Suspension of the Case Distribution to a Judge/ Transferring the case to Another Judge

The rule for the electronic distribution of cases envisages the possibility of suspending the distribution of cases to a specific judge on various grounds, including leave, pregnancy, business trips, and maternity leave.⁶⁴ In such cases, the electronic case distribution is temporarily suspended. Cases are not to be allocated to a judge during the temporary suspension of their judicial duties, except for circumstances where the duration of leave, business trip, and temporary inaptitude does not exceed five days and the deadline for hearing the distributed cases exceeds 72 hours.⁶⁵ Distributing a case to a judge shall be suspended two months before their term of office expires, not including the cases that need to be considered in 72 hours.⁶⁶

Also, suppose a judge is appointed to another court or transferred to the other narrow specialization/panel/chamber in the same court, the distribution of cases will be suspended from the period of decision-making by the Council until the decision takes effect.⁶⁷

When there are grounds provided for in the rule, and there is a danger of violating the deadlines for the consideration of specific cases defined by law, the case can be transferred to another judge temporarily. In particular, the grounds for temporarily transferring cases to another judge include periods of leave, business trips, and temporary inaptitude when the time limit set by procedural law for executing judicial proceedings may be missed. Also, the transfer can be justified if the delay in reviewing the motion can violate the legitimate interests and rights of the parties at stake. In addition, the rule allows the possibility of referring the case to another judge in the event of exceptional objective circumstances.⁶⁸

The project team asked the major courts in Georgia to provide information on the cases that were transferred to another judge temporarily, indicating grounds for the decision. In response, a specific article of the rule on the electronic distribution of cases was pointed out. Courts clarified that the

⁶¹ Administrative Complaint № 01/378/2019 of the Human Rights Education and Monitoring Center.

⁶² Decision of Tbilisi City Court of June 25, 2019 №30339277.

⁶³Administrative Lawsuit of the Human Rights Education and Monitoring Center, Administrative Case № 3/6622-19.

⁶⁴Decision N1/56 of May 1, 2017 of the High Council of Justice, Article 4.

⁶⁵ Idem.

⁶⁶Idem.

⁶⁷ Idem.

⁶⁸ Idem.

chancellery examines the existence of the circumstances established by this article and decides on the temporary transfer of the case to another judge. More specifically, the chancellery shall provide a temporary transfer of the case to a judge selected electronically based on a written request from a specific judge (if possible) and/or upon the written request of the judge's assistant, in agreement with the judge. According to them, the courts do not process additional statistical information on this topic.⁶⁹

The Supreme Court of Georgia⁷⁰ and the Sokhumi and Gagra-Gudauta District Courts⁷¹ informed the project team that, in the respective courts, no case had been transferred to another judge during the reporting period.

It should also be noted that the High Council of Justice did not take further steps to eliminate some of the ambiguities in this rule identified in the first and second reporting periods. A clear example is the lack of definition of specific objective circumstances.

As in previous reporting periods, this issue was clarified only by the Rustavi City Court.⁷² In particular, according to the Court, the assessment of 'specific objective circumstances' takes into account the standards envisaged by the Criminal and Civil Procedure Codes of Georgia,⁷³ which is assessed by the judge hearing the case. According to Rustavi City Court, the current rule does not provide for the authority of any court official to verify the existence of grounds considered by the judge as objective circumstances and to refuse to satisfy the request for the case to be temporarily transferred to another judge. If, after the execution of a specific procedural action, the case proceeding continues and the reason for the temporary transfer is eliminated, the case is returned to the primary reviewing judge. To temporarily transfer a precisely criminal case to another judge, the electronic system itself will randomly select a substitute judge. The substitute judge must be confirmed and appointed by the court president. Afterward, the case is temporarily transferred to a substitute judge. After a specific procedural action, the case is returned to the primary judge for consideration.⁷⁴

As noted in the second monitoring report,⁷⁵ such a definition of 'specific objective circumstances' partly addresses the ambiguity caused by the fact that the term is not defined. However, the referred articles address the possible non-appearance of the party to the process and the justification for its reason. It is noteworthy that there is no direct link between the potential failure to appear at the Court of the party and the electronic distribution of cases to judges. Additionally, the Rustavi City Court letter represents the sole court's approach. The general practice in the common courts of Georgia concerning this matter is still unknown.

⁶⁹ For example, the Letter N201 of the Poti City Court of May 5, 2022; Letter N3025 of Akhalkalaki District Court of May 6, 2022; Letter N51 of the Gurjaani District Court of May 5, 2022; Letter N2266 of the Sachkhere District Court of May 10, 2022.

⁷⁰ Letter N P-727-2021 of October 18, 2021 of the Supreme Court of Georgia, and Letter No. P4-201-22 of May 4, 2022.

⁷¹ Official letter of the Sokhumi and Gagra-Gudauta District Court of May 6, 2022

⁷² Letter N608/c of the Rustavi City Court of May 6, 2022

⁷³ Paragraph 18 of Article 3 of the Criminal Procedure Code; Paragraph 3 of Article 215 of the Civil Procedure Code of Georgia.

⁷⁴ Letter N608/c of the Rustavi City Court of May 6, 2022

⁷⁵ "Electronic case distribution system in Georgia", 2020, p. 19

2.4. Recusal and Self-recusal of a Judge

The re-distribution of the cases in instances of judge's recusal/self-recusal remains problematic. According to the rule, in cases provided by the procedural legislation, when recusal/self-recusal or inability to review the case by a judge for objective reasons materialize, the case is distributed without the participation of that judge. However, as indicated in the first and second monitoring reports,⁷⁶ the Decision of the High Council of Justice does not envisage procedural regulation concerning this issue. It is unclear what actions are to be taken in the case re-distribution process and by whom.

Criminal and Civil Procedure Laws that regulate the rules for judge's recusal/self-recusal envisage the involvement of court presidents in the case distribution process which is also problematic. In particular, when mentioned grounds for re-distribution occur, the case is sent to the president, who, guided by the vague procedure, hands it over to another judge/panel for consideration.⁷⁷

Consequently, such legislative arrangement creates the possibility for an unreasonable recusal/self-recusal of a judge from the consideration of a case and contains the risks of undue influence on his/her authority.

In response to a request for public information on a judge's recusal/self-recusal during the reporting period, the courts indicate that in such instances, the case is distributed without the initial judge's participation, following procedural law and Council's Decision N1/56. In particular, the person authorized by the court chancellery immediately reallocates the case adhering to the principle of random distribution.⁷⁸

As Ambrolauri and Sachkhere District Courts notify, since in each court only one judge exercises powers, in case of his/her recusal/self-recusal, the case will be immediately sent to the Kutaisi Court of Appeals, the latter to transfer the case to another city/district court.⁷⁹ According to the Sokhumi and Gagra-Gudauta District Court,⁸⁰ where only one judge exercises authority, no instances of recusal/self-recusal occurred during the reporting period.

2.5. Determination of Collegial Composition of Judges

Another problem that continues through another reporting period is the rule of staffing the collegial composition of judges. In particular, in district (city) Courts, such composition shall be determined by

⁷⁶ "Assessment of the Judicial Reform", 2019, pp. 30-31; "Electronic case distribution system in Georgia", 2020, p 31

⁷⁷ Criminal Procedure Code of Georgia, Articles 62, 65; Civil Procedure Code of Georgia, Article 34.

⁷⁸ Letter N3270 of the Akhalkalaki District Court of October 15, 2021, and Letter N3025 of May 6, 2022; Letter NG/P-1855 of the Gori District Court of October 15, 2021; and Letter NG/P-501 of May 6, 2022; Letter N9-191 of Zestaponi District Court of October 15, 2021, and letter N9-60 of May 6, 2022; Letter N99 of Bolnisi District Court of October 14, 2021, and Letter N47 of May 6, 2022.

⁷⁹ Letter N373 of the Ambrolauri District Court of October 15, 2021, and Letter N130 of May 5, 2022; Letter N4038 of Sachkhere District Court of October 15, 2021; And Letter N2266 of May 10, 2022.

⁸⁰ Official letter of the Sokhumi District Court of May 6, 2022

the court president, with the necessary participation of the judge initially hearing the case.⁸¹ As for the Appellate and Cassation instances, in the case of collegial consideration, the case is randomly distributed to the president/reporting judge through the electronic system.⁸² The law, however, is silent about the rules and procedure for electing the other judges of the panel. These problems were also identified in the first and second monitoring reports, but appropriate amendments were not made by the responsible authorities.⁸³

Again, the exception is the Grand Chamber of the Supreme Court of Georgia, where the electronic case distribution system randomly selects the required number of judges from among the Grand Chamber, taking into account judges initially hearing the case and the president/reporting judge.⁸⁴

The clarifications from the common courts received in the form of public information, essentially depicts the same content. In particular, according to some major courts, the law does not make it mandatory to form solid collegial compositions of judges when hearing a case collegially, and therefore, it is not defined in practice.⁸⁵ However, according to them, “to meet the requirements of the procedural legislation of Georgia, judges of specific narrow specialization of criminal, civil and administrative chambers, by mutual agreement, taking into account their workload (number of cases) and long-term schedule of hearings (to avoid overlapping of court hearings), form panels, which are usually characterized by a kind of stability”.⁸⁶

2.6. Temporary Failure of Electronic System of Case Distribution

In case of temporary failure of the electronic case distribution system, the Organic Law of Georgia on Common Courts envisages the possibility of allocating cases based on consecutive order (the numerical order of cases received and the alphabetical order of judges). Its specific arrangement is determined by the decision of the High Council of Justice No. 1/56.

In particular, the authorized person of the court's chancellery distributes the cases based on the numerical order if the duration of the system failure exceeds two days. Additionally, the rule for electronic case distribution provides for additional exceptional circumstances: a) when there is a case of administrative offense to be considered immediately; Or b) the time limit for consideration of a case is 24, 48, or 72 hours, and in addition, system failure lasts more than three hours.⁸⁷

⁸¹ Decision N1/56 of May 1, 2017, of the High Council of Justice, Article 4, Paragraph 7

⁸² Ibid, Article 4, Paragraph 9

⁸³ “Assessment of the Judicial Reform”, 2019, pp. 21-22; “Electronic case distribution system in Georgia”, 2020, pp. 33-35

⁸⁴ Decision N1/56 of May 1, 2017 of the High Council of Justice, Article 4, Paragraph 10

⁸⁵ Letter N554-2/10 of the Kutaisi Court of Appeal of October 19, 2021 and Letter N257-2/10 of May 4, 2022; Letter N3/8994 of the Tbilisi Court of Appeal of October 21, 2021 and Letter N3/3730 of May 6, 2022; Letter NP-727-2021 of the Supreme Court of Georgia of October 18, 2021 and Letter No.4-201-22 of May 4, 2022.

⁸⁶ Letter N3/8994 of the Tbilisi Court of Appeal of October 21, 2021, and Letter N3/3730 of 6 May 2022; Letter NP-727-2021 of the Supreme Court of Georgia of October 18, 2021, and Letter No.4-201-22 of May 4, 2022.

⁸⁷ Decision N1/56 of May 1, 2017 of the High Council of Justice, Article 6, Paragraph 3

The elimination of temporary failure in the electronic system is ensured by LEPL - the Department of Common Courts/the person in charge of the proper functioning of the system. Information on the failure and its elimination are additionally communicated to the relevant court's administrative officials.⁸⁸

In 2018, six such failures were identified, with 46 cases distributed following the consecutive order without electronic registration,⁸⁹ and in 2019, only two occasions of failure were registered.⁹⁰ This positive trend of rare system failure continues, and according to the High Council of Justice, no delays in the electronic program were observed during the reporting period.⁹¹

Although the problem seems to have been solved in practice and the system's technical performance has been improved, the accuracy of the legal framework does not become insignificant. In particular, according to the Organic Law of Georgia on Common Courts, the consecutive order of case distribution implies, on the one hand, determining the order of cases received, and on the other hand, determining the alphabetical order of judges. However, insofar as this distribution does not take place through the electronic system and the need for the existence of the rule itself is mainly related to cases to be dealt with promptly, a clear and precise legal framework is of particular importance. The lack of accountability of a court chancellery as a unit involved in the case distribution system is also noteworthy. Therefore, a sound and consistent legal framework is needed to deal with the ambiguities so that in case of system failure, the case distribution procedure and the issues of authority and accountability of the persons responsible for the system's functioning are clearly defined.

2.7. Organizational Support of the Electronic System of Case Distribution

The office responsible for operating the electronic case distribution system is the Department of Court Management of the High Council of Justice. According to the Organic Law of Georgia on Common Courts, the Chairperson of the Department shall be elected by the Council on a competitive basis by the majority of its full composition.⁹² The Department's functions include overseeing the operation of the case distribution program, analyzing available information, and making relevant recommendations for the Council.⁹³

The Department of Court Management participates in the functioning of the case distribution system by ensuring: *a) to register judges in the specialized composition/ panel/chamber/narrow specialization through the electronic system, as well as to make changes, amendments, additions, annulments of the*

⁸⁸Ibid, Article 6, Paragraph 5

⁸⁹ "Assessment of the Judicial Reform", 2019, p. 38;

⁹⁰ "Electronic case distribution system in Georgia", 2020, p. 20

⁹¹ Letter №887/2840-03-o of the High Council of Justice of Georgia, December 7, 2021, and Letter №431/1158-03-o of the High Council of Justice of Georgia, May 25, 2022.

⁹² Organic Law of Georgia on Common Courts, Article 56²

⁹³ Ibid, Article 56¹

*registration data; b) to update the information in the electronic system regarding judge's leave of absence, business trips, and temporary incapacity.*⁹⁴

Therefore, due to the functional importance of this office, one of the recommendations of the first and second monitoring reports was to staff the Department of Court Management fully.⁹⁵ It will not only facilitate the distribution of functions among its employees and their efficient performance but also serve as a kind of prevention of abuse of these powers, as responsibilities are redistributed among employees. It is particularly important since the High Council of Justice plays a leading role in staffing the Department.

The Department of Court Management is designed to consist of the chairperson, three senior consultants, and three consultants.⁹⁶ However, the public information requested by the project team in the third reporting period indicates that as of December 31, 2021, besides the chairperson, only three positions have been filled. To date, three staff units remain vacant: 1 senior consultant and two consultant positions.⁹⁷

It is also important to note that, according to the information provided by the High Council of Justice, the information technology group is under the Department's management, in which, as of December 31, 2021, 27 people were employed.⁹⁸

2.8.Risks of Influencing the Electronic Distribution of Cases

In previous monitoring reports⁹⁹ the problematic nature of the powers of specific units or officials in the electronic case distribution process was clearly identified. One of the primary goals of the electronic case distribution system is to minimize the risk of adverse effects on the independence of individual judges, however, the existing legal framework does not ensure its achievement. As already mentioned, the role, powers, and procedural regulations of the activities of court presidents,¹⁰⁰ as well as court chancelleries and the Department of Management, are often unclear.

One of the problematic issues concerning the court presidents is that they are not elected by judges, but are appointed by the High Council of Justice. Given the practices of the Clan rule and corporatism within the Council, such regulation significantly increases the risk of undue influence on individual

⁹⁴ Decision N1/56 of May 1, 2017 of the High Council of Justice, Article 7

⁹⁵ "Assessment of the Judicial Reform", 2019, pp. 47-48 "Electronic case distribution system in Georgia", 2020, p. 44

⁹⁶ Decision of the High Council of Justice of Georgia N1/206-2007 of September 25, 2007 "on the Approval of the Statute of the Office of the High Council of Justice of Georgia, the list of staff and of the salaries of the staff of the Office".

⁹⁷ Letter №431/1158-03-o of the High Council of Justice of Georgia, May 25, 2022.

⁹⁸ Idem.

⁹⁹ "Assessment of the Judicial Reform", 2019, 33, 33; "Electronic case distribution system in Georgia", 2020, pp. 24-33

¹⁰⁰ The Georgian Democratic Initiative (GDI), in 2018, presented two legislative proposals related to minimizing the role of Presidents of the Courts in the electronic distribution of cases to the Parliament of Georgia. Proposals envisaged changes to the Civil and Criminal Procedure Codes of Georgia that would minimize the participation of the President in the process of the recusal/self-recusal of the judge. The amendments determined that the new judge would be selected through the electronic case distribution system. Unfortunately, the discussions regarding this legislative initiative did not take place under the "fourth wave" of judicial reform. The Parliament of Georgia has not taken any decision regarding the submitted legislative proposal at this stage.

judges through the presidents. The close ties between the Council and the court presidents have been the subject of intense criticism from the civil sector.

Above mentioned legal framework and practice are particularly problematic due to the fact that the legislation either vaguely defines the procedural framework for decisions made by court residents in the electronic case distribution process or does not establish it at all and that the decisions do not need to be substantiated. It is precisely the dangers stemming from such vague and wide discretionary powers of the court presidents that the Venice Commission spoke of, back in 2014, when assessing the then-existing case distribution system and the "third wave" of judicial reform. The Commission pointed out that such uncertain and unbalanced powers in hands of those in administrative positions could be misused, particularly to put pressure on judges.¹⁰¹ Nevertheless, this critical problem of the electronic case distribution system remains unsolved.

As discussed in present and previous monitoring reports, given the current context, problematic powers of court presidents still include:

- The ability to see and to increase/decrease workload rates of judges;
- The authority to determine and modify the duty schedules of the judges without justification through a faulty procedure;
- The power to decide and alter the composition of judges in narrow specializations without a clearly established procedure;
- Involvement in judges' recusal/self-recusal;
- Participation in determining the collegial composition of the panel;

As for the role of the court chancelleries and the Department of Management in the electronic case distribution process, consideration of the problems and particular context in the judiciary is also relevant for this matter. The vague regulation of the chancelleries' authorities and the lack of its accountability on the one hand, and the functions of the Management Department and the role of the High Council of Justice in the process of its staffing, on the other hand, still leave risks of undue influence on the case distribution system and thereby interfere with the independence of individual judges.

Conclusion and Recommendations

The analysis of the acts adopted by the Parliament of Georgia, the High Council of Justice, and the court presidents concerning the random and equal distribution of cases depict that the improvement of rules on the electronic case distribution system is no longer a priority. Therefore, there is no substantive and systematic vision in this regard. At the same time, access to public information

¹⁰¹ European commission for democracy through law (Venice commission), joint opinion on the draft law on amendments to the organic law on general courts CDL-AD(2014)031, para. 78-79

standards has significantly deteriorated in recent years, closing the system even more and reducing monitoring capabilities. Finally, in some cases, the powers of the bodies involved in the electronic case distribution system and those in administrative positions in the courts are still vague and problematic. This hinders the full achievement of the goals set by the introduction of the case distribution system, jeopardizes the independent work of individual judges, and impedes access to impartial and well-functioning justice.

Therefore, to increase the efficiency of the system, it is necessary to take the following steps:

- It is essential for the Parliament of Georgia and the High Council of Justice of Georgia to prioritize the issue and jointly take further practical steps to improve the legal framework governing the electronic case distribution system;
- It is crucial to enhance the standards of access to public information and processing of statistical data related to the functioning of the electronic case distribution system. That ensures the transparency of the system and the accountability of the competent bodies/officials involved in the case distribution process;
- For the full implementation of the electronic case distribution system, it is essential to ensure that courts are staffed with an adequate number of judges;
- It is vital to take effective steps to ensure an equal workload of judges in the electronic distribution of cases and to additionally take into account the criteria of complexity and weight of a case in this process;
- In the context of vicious practices of the Clan rule in the judiciary as well as the appointment of court presidents by the High Council of Justice, it is necessary to minimize the role of presidents in the electronic case distribution system. In addition, the obligation to substantiate presidents' decisions and the procedural grounds for the exercise of their powers concerning the following issues shall be clearly defined:
 - Changing in the workload of judges;
 - Establishing and altering duty schedules;
 - Determining the composition of judges in narrow specializations;
 - Determining the collegial compositions;
 - Judges' recusal/self-recusal;
- It is necessary to clearly define the legal grounds and procedure for the temporary transfer of cases to another judge in the relevant circumstances provided by law;
- Considering the powers of the court chancelleries in the electronic case distribution, it is principal to provide transparent regulation of these powers and the procedural grounds for their exercise;
- It is important to fully staff the Department of Management given the functional importance of the Department in the process of the electronic distribution of cases.