

The background features a light beige field with a fine, repeating dot pattern. This field is divided into several large triangular sections by diagonal lines. The colors of these sections include a dark red, a dark charcoal grey, a light mint green, and a dark forest green. The text is centered in the beige area.

THE NEW SYSTEM OF CASE
DISTRIBUTION IN COMMON COURTS

EMC

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IN COMMON COURTS**

Human Rights Education and Monitoring Center (EMC)

2018



ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

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Human Rights Education and Monitoring Center

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Introduction

Developing a new system of case distribution in Common Courts is one of the most important reforms of recent years. This reform has to respond to the number of challenges with respect to impartiality and independence of the court. The new rule of case distribution between judges should, first of all, ensure impartial review of cases, protection of the trial process from external interference, timely and effective execution of justice and fair distribution of labor among judges. The new system of electronic distribution of cases is based on random and equal distribution of cases, filed to the court. This rule was developed within the frames of ‘Third Wave’ judicial reform with the purpose of redressing deficiencies in existing legislation.

At the stage of discussion of the draft law, the Venice Commission positively assessed the initiative of case distribution via the electronic system, however, it should be noted that at the initial stage of the reform, as well as subsequently, influential groups of judges did not explicitly support the initiative¹. Due to the diversity of opinions on this and other matters, implementing a number of positive changes under the ‘Third Wave’ reform was significantly delayed. As a result, the new system of case distribution was initially implemented at Rustavi City Court and only became effective throughout Georgia starting from 13 December, 2017.

Additionally, despite the fact that the new rule of case distribution is an important step forward, there are a number of issues that remain open at the legislative level, settling of which was entrusted by the Parliament to the High Council of Justice.

The presented document discusses legal framework for changes under ‘Third wave’ Reform, set by the Parliament, as well as regulations that have been adopted by the High Council of Justice. This is the first official assessment of implementation, functionality and challenges of the new system by the ‘Human Rights Education and Monitoring Center’ (EMC). EMC continues to monitor the process of case distribution.

¹ EMC, delayed judicial reform and related political processes [available at: <https://emc.org.ge/2016/05/27/emc-64/>, Access Date: 03.10.2017

What regulations are considered under the rule of case distribution approved by the High Council of Justice

By the decision of May 1, 2017², The High Council of Justice of Georgia approved the procedure for automatic electronic distribution of cases in Common Courts of Georgia. A number of amendments were made to the initial edition and, especially, after the electronic system became effective throughout Georgia³.

As per the general rule, cases between judges are distributed according to the principle of random distribution, on the bases of the algorithm for generating numbers. Cases in common courts are distributed according to the field of expertise of judges. However, by amendments of December 18th 2017, the specialization requirement does not apply when cases need to be distributed during the rotation period of judges⁴ (judges being on duty). It is noteworthy that the existing rule of rotation excludes random distribution of cases, especially, under the conditions when there is only one judge of the relevant field of expertise present in the court⁵.

Exceptional cases: With the initial edition and subsequent amendments to it, the Council has identified a wide list of exceptional cases to which the principal of random distribution does not apply. E.g. cases are not distributed according to the random distribution principle, when:

- There is only one judge of the relevant field of expertise in a district (city) court;
- The complaint has been filed on the verdict on claim provision;
- The relevant application has been filed regarding the impropriety or apparent arithmetical error in the decision etc.
- A number of motions on investigation, conducting procedural action or using preventive measures against several defendants, under the single criminal case, are filed to the same judge;
- Cases of cancelling, altering or affirming the custodial sentence, used as a preventive measure for absconding, are examined by the judge who passed a judgement on the use of a preventive measure etc⁶.

2 Decree No. 1/56 of the May 14, 2017 of the High Council of Justice of Georgia.

3 Amendments to the regulation was made at every January and February meeting of the Council

4 Refer to the decision of the Council at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/326..pdf>

5 Article 3 of the Decree No. 1/56 of the May 14, 2017 of the High Council of Justice of Georgia

6 Article 3 of the above

Collegial review of cases: In the district (city) courts, where the court collegiums are established or where the High Council of Justice of Georgia has determined narrow fields of expertise for the judges, cases are distributed among judges of relevant collegiums/narrow field of expertise⁷. In district (city) courts where there are no such collegiums, cases are distributed among judges of the relevant field of expertise⁸.

It is problematic, that according to the regulation, chairman of the court determines the composition of the collegium for the collegial discussion of a case in the district (city) courts. In such a case necessary participation in the collegium of the original judge reviewing the case is ensured by the rule adopted by the Council⁹. This record is one of the results of July 24, 2017, amendment. According to the initial edition, the electronic system should have ensured the selection of the necessary quantity of judges for the collegial discussion of cases in district (city) courts¹⁰.

Procedure of case distribution for appellate and cassation courts has been amended several times. According to the initial edition, for collegial discussion of the case in appellate and cassation courts, the case had to be distributed to the chairman/rapporteur judge, while the electronic system should have additionally determined the selection of the necessary number of judges from the relevant collegium/chamber¹¹. According to the amendment of July 24th, 2017, the case was distributed to the chairman/rapporteur judge and the relevant collegium of this judge¹². The rule was amended once again on December 18th, 2017 and, as of today, the case is distributed to the chairman/rapporteur judge¹³. Taking into consideration the fact that no additional reference is made on the rule of selecting other members of the Collegium, it remains unclear whether the chairman/rapporteur judge can examine the case by his collegial composition or a new collegial composition, with the participation of the chairman/rapporteur judge, can be formed. If the latter possibility exists, then it is still vague whose authority is to form such a collegial composition. With regards to the examination of cases by the Grand Chamber of the Supreme Court, the electronic system, taking into account the initial judges examining the case and the chairman/rapporteur judge, additionally ensures the selection of the needed a number of judges from the Grand Chamber¹⁴.

Equal Distribution: The amendments of so-called ‘Third Wave’ did not define the principle of equal distribution of cases on a legislative level. However, according to the rule adopted by the High Council of Justice, the electronic system of case distribution should ensure feasibly equal distribution of cases

7 Same as previous note

8 Same as previous note

9 Article 4 of the Decree No. 1/243 of the High Council of Justice of Georgia

10 Article 4 of the Decree No. 1/56 of the High Council of Justice of Georgia

11 Article 4 of the Decree No. 1/56 of the High Council of Justice of Georgia

12 Refer to the decision of the Council at <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/243-2017.pdf>

13 Refer to the decision of the Council at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/326..pdf>

14 Article 4 of the Decree No. 1/56 of the May 14, 2017 of the High Council of Justice of Georgia

between judges. Still, only the quantitative index of cases is considered. The electronic system tracks the average number of distributed cases, number of cases distributed to each judge, the number generated as a result of random selection, and then logs all these parameters. The difference between numbers of cases electronically allocated to the judges of the relevant field of expertise should not exceed three¹⁵. It is problematic that this rule does not consider fair and objective principle for determining the case load¹⁶ and bases the equality of distribution on a quantitative data only.

Part of 18 December, 2017, amendments that reduced percentage index of case distribution for the member judges of the High Council of Justice, Chairman of the Court, his Deputy, Chairman of the collegium/chamber (where the number of judges exceeds 7), Chairmans of Supreme, Appellate and Tbilisi City Courts, Secretary of the High Council of Justice are also noteworthy¹⁷. However, on February 12, 2018, during the sitting of the Council, the Chairman of the Supreme Court clarified that, despite the preferential percentage index, defined by the rule, Supreme Court judges (including the Chairman himself) are examining cases at a 50% and 100% load.

On February 26, 2018, the mentioned order was amended once again and, as per the decision of the Council, preferential percentage index applicable for the Deputy Chairman of the Court of Appeals was taken out of the list. According to the current edition, no more than 5% can be distributed to the Chairman of the Supreme Court, Chairman of the Court of Appeals, Chairman of Tbilisi City Court (except for the debatable cases directly specified by the legislation) and to the Secretary of the High Council of Justice, in special instances¹⁸.

According to the existing rule, when the judge is appointed (deployment to another court, completion of mentioned deployment, returning from pregnancy, childbirth and childcare leaves), the average number of proceedings are determined in a relevant collegium/chamber/narrow field of expertise, taking the number of judges into consideration¹⁹; The case distribution index is increased by 100% to fill up the number of cases assigned to the newly appointed judge to this average number.

This provision makes it clear that for the purposes of equalizing the number of cases, the newly appointed judge, in comparison to other judges, has twice as many cases to consider. The High Council of Justice has repeatedly discussed the issue of amending the mentioned provision. Judge members of the Council initially proposed for existing proceedings to be assigned to newly appointed judges before actually enabling the electronic system. On 19 February, 2018, during the

15 Article 5 of the Decree No. 1/56 of the May 14, 2017 of the High Council of Justice of Georgia

16 US National Center of Courts calculates average number of judge's time considering type of the case in order to get the fair number of cases per judge. Due to the fact that cases differ in their complexity, average time needed for reviewing them, also referred to as case load, is also different.

17 Refer to the decision of Council at <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/326.pdf>

18 Article 5 of the Decree No. 1/56 of the May 14, 2017 of the High Council of Justice of Georgia

19 This implies average number of proceeding out of cases that were electronically distributed to the judges.

sitting of the Council, the proposal of Tbilisi City Court – to grant the authority of increasing workload for newly appointed judges by 50% to the Chairman of the Court (or relevant authorized person) – was discussed. Despite the lengthy discussion, the Council has postponed the consideration, as per the initiative of non-judge members.

Suspending the case distribution to a particular judge: amendments were made to the provision that determines cases of suspending case distribution to a judge. In the original edition, cases were not distributed to the judge if and when working relations were suspended (such as during vacation leave, business trip, temporary disability, pregnancy, childbirth and childcare leaves), with an exception of cases when the period of business trip and/or temporary disability did not exceed 3 days and the review period for the cases was more than 72 hours. A fairly vague provision was added to this rule, according to which cases are not distributed to the judges, in case a special objective circumstance exists and the review period does not exceed 72 hours²⁰. The rule does not define what specifically is meant under the special objective circumstance.

One more amendment was made to the mentioned provision on 26 February 2018, on the bases of which 3 days was changed to 5. Reference to special objective circumstance was added to one more provision, according to which in case such a circumstance exists for a specific case under proceedings, the case is temporarily assigned to a different judge²¹ for implementing procedural action (in case the deadline determined by the procedural legislation is about to be missed) or for reviewing the motion (if legitimate rights and interests of the party are violated in case the motion is not reviewed). However, the rule does not define who is supposed to determine the existence of special objective circumstance or other pre-conditions considered in this provision.

What authorities are retained by the Chairman of the Court

According to the rule approved by the High Council of Justice, the Chairman of the Court, Deputy Chairman of the Court, Chairman of collegium/chamber is able to track the number of cases distributed to each judge²². Additionally, before the amendments of 8 January 2018, approved by the council, when electronic system was delayed, the chairman of the court or the Chairman of collegiums/chamber was also entitled to allocate cases according to the sequential rule²³.

20 Refer to the decision of the Council at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/1-2018.pdf>

21 Refer to the decision of the Council at <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/64-2018.pdf>

22 Article 6 of the Decree No. 1/56 of the May 14, 2017 of the High Council of Justice of Georgia

23 Refer to the decision of the Council at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/1-2018.pdf>

On January 8, 2018, during the sitting of the High Council of Justice, one of the members of the Council, as a response to criticism towards the civil sector, announced an initiative to transfer the authority of sequential case distribution during the delays of the electronic system to the employee of Chancellery. Sequential distribution of cases is deficient as it cannot ensure effective protection of the process from manipulation and artificial interference. Automatic replacement of the Chairman of the Court by the employee of Chancellery in this deficient process cannot ensure and will even increase risks of manipulating and internal as well as external interference in the process of sequential distribution of cases.

Despite the changes implemented on 8 January 2018, a number of problematic and vague authorities remain with the chairman of the Court.

It is noteworthy, that in order to avoid impeding the administration of justice, the Chairman of the relevant court is authorized to impose 25% increase on percentage index defined by the law for the member of the High Council of Justice, Deputy Chairman of the Court, Chairman of the collegiums/chamber etc. In order to avoid impeding the administration of Justice, the Chairman is also entitled to decrease the percentage index for case distribution for a specific judge by 50%, considering health and family conditions or other objective reasons²⁴.

It should also be noted that according to the rule established by the High Council of Justice, in case of necessity and by the order of the Chairman of the Court, rotation schedule is determined for the judges and several administrative and criminal proceedings, for which the review period does not exceed 72 hours, are distributed according to this schedule during working as well as non-working hours²⁵.

The most problematic and noteworthy issue in the new model of case distribution is the authority of the chairman to determine the composition of judges in the narrow fields of expertise (groups created according to thematic/procedural stages). Even though the creation of the narrow thematic/procedural fields of expertise is determined by the Council itself, the Chairman personally decides²⁶ on the composition of judges in the narrow fields of expertise and this generates real risks to influence the case distribution process. The program does allocate cases among the judges of the narrow field of expertise, but only the Chairman decides who specifically will be representing this field of expertise. This problem is aggravated by the fact that there are no formal procedure and stages set out by the law for the distribution of judges among narrow groups. Thus, this very authority of the Chairman remains as one of the main challenges of the new rule of case distribution.

²⁴ Article 5, of the previous decree

²⁵ Article 4 of the Decree No. 1/56 of the May 14, 2017 of the High Council of Justice of Georgia

²⁶ As an example, the Decree of the Chairman of Tbilisi City Court, April 8, 2016 [available at: <https://goo.gl/1gnTJy>, access date: 06.10. 2017]

What happens when the electronic system is disrupted

According to the general rule, the relevant staff member of the court chancellery allocates cases in sequential order if the duration of electronic system disruption exceeds 2 days. Case allocation rule determines further exceptional circumstances when the relevant authorized person can allocate cases in sequential order. In particular, administrative offense cases which should be considered immediately and cases which should be considered within 24, 48 and 72 hours are allocated in sequential order²⁷ by the authorized person of the chancellery if the duration of program disruption exceeds 3 hours.²⁸

The transitional provision, which allows the relevant authorized employee of the chancellery to allocate cases in sequential order in case of any shortcoming which is not determined by the rule adopted by the Council, is problematic and vague.²⁹

According to the rule adopted by the High Council of Justice, Chairperson of the Court, Deputy Chairperson of the Court, Chairperson of the Collegium/Chamber or a relevant authorized employee of the chancellery notifies management department of the High Council of Justice, department of the common courts, and the person responsible for proper functioning of the electronic system about temporary disruption of the system, upon which a relevant act is drawn up.³⁰

When the temporary disruption is eradicated, a relevant authorized employee of the chancellery submits a memorandum to the High Council of Justice, which includes information about cases allocated in sequential order during this period.³¹

The rule adopted by the Council does not determine a concrete timeframe for drawing up an act and a memorandum and their content.

After informing the High Council of Justice, a relevant authorized employee of the chancellery reflects cases allocated in sequential order in the electronic system with the following indication: “Without electronic registration”.

27 Case allocation based on the case receipt order and alphabetical order of judges.

28 Decision of the High Council of Justice №1/56, Article 6.

29 Ibid, Article 8.

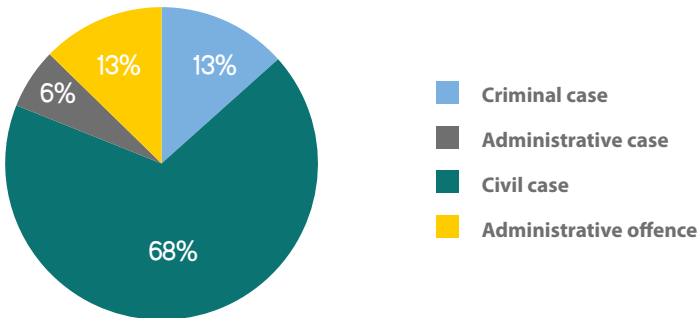
30 Ibid, Article 6.

31 Ibid.

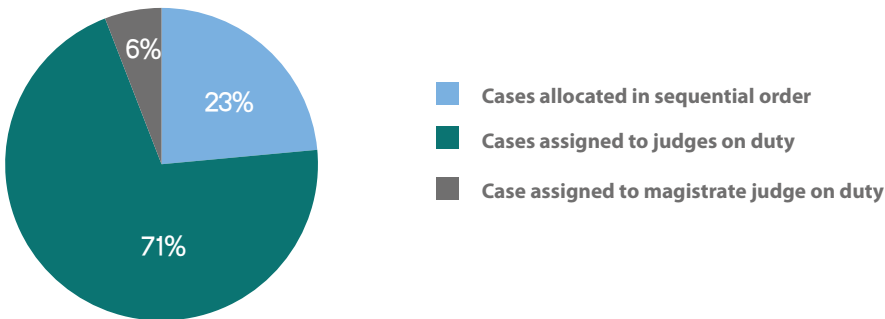
How were cases distributed in a pilot regime

According to the law, the rule on automatic and electronic allocation of cases took effect across entire Georgia on 31 December 2017. However, from 1 July 2017, before entering into force across the entire country, new case allocation rule was established in a pilot regime in Rustavi City Court.³²

From 1 July 2017 to 31 December 2017, 2608 cases were allocated by means of electronic system in Rustavi City Court



From 1 July 2017 to 31 December 2017, 17 cases were allocated without electronic system in Rustavi City Court



According to Rustavi City Court, in all cases the disruption of the system was the reason for allocating cases without the electronic program:

³² In order to assess the new rule on case allocation “Human Rights Education and Monitoring Center (EMC)” requested public information from Rustavi City Court and the High Council of Justice.

a) On 5 August 2017 (Saturday) the duration of electronic program disruption exceeded 3 hours, therefore, the following motions were assigned to one judge of a particular specialization who was on duty:

- one motion regarding the request for information;
- one motion regarding using a measure of restraint;
- two motions regarding examining the lawfulness of seizure;
- one motion regarding confirming a measure of restraint.

b) Due to the disruption emerged on 8 September 2017, which exceeded two days, on 11 September 2017 two criminal cases to be heard on merits were allocated in sequential order;

c) On 23 September 2017 (Saturday) the duration of the electronic disruption exceeded three hours, therefore, the following motions were assigned to the judge on duty in the collegium of criminal cases without the electronic program:

- five motions regarding examining the lawfulness of search;
- two motions regarding examining the lawfulness of seizure.

On the same day, based on the same reason, one motion regarding using a measure of restraint was assigned to the magistrate judge on duty in Magistrate Court in Gardabani Municipality.

d) On 10 October 2017 the duration of the electronic system disruption exceeded three hours, therefore, the following motions were assigned in sequential order:

- one motion regarding using a measure of restraint;
- one motion regarding the request for information.

On 23-24 November, due to the absence of one judge, four motions regarding using a measure of restraint was assigned to another judge by means of the program. On 26 November, due to the fact that the magistrate judge in Gardabani Municipality was on sick leave, two motions regarding examining the lawfulness of seizure were assigned to another judge by means of a program.

During EMC's initial assessment³³ of the electronic case allocation in a pilot regime, copies of memorandums prepared by Court Chairperson after eradication of disruption were not accessible to interested persons. After revealing this problem at the first stage, EMC was provided with the copies of memorandums in encrypted form upon another request, which should be considered positively.

33 Initial assessment of EMC is available at: <https://emc.org.ge/2017/10/09/emc-363/>.

How are cases distributed in Common Courts of Georgia

According to the High Council of Justice, from 31 December 2017 new electronic allocation system took effect in all courts, without any exception. However, cases are not allocated based on the random principle in Gali-Gulripshi and Ochamchire-Tkvarcheli district court. According to the High Council of Justice³⁴, there is only one judge of particular specialization in this court. Moreover, cases are not allocated based on the random principle in 13³⁵ municipalities. According to the Council, the authority of the magistrate judge is exercised by only one judge in relevant municipalities.³⁶

From 31 December 2017 to 18 January 2018 in total 25215 cases were allocated by means of the electronic system in common courts (including the Supreme Court). However, according to the Council, from 31 December to the end of January, only 15451 were allocated based on random principle.³⁷

As for the disruptions during this period, according to the High Council of Justice, two disruptions took place, as a result, 24 cases were allocated in sequential order:

a) As a result of the disruption in Telavi District Court, 16 cases were allocated in sequential order:

- two motions regarding using a measure of restraint;
- two criminal cases (on approving plea bargain);
- two administrative offense cases;
- a civil case;
- nine motions regarding investigative activities.

According to the memorandum prepared by Telavi District Court, disruption took place from 10:15 to 17:25 on 12 January. According to the rule adopted by the Council, during disruption which does not exceed two days but exceeds three hours, cases which should be considered immediately and cases which should be considered within 24, 48 and 72 hours are allocated in sequential order. It is problematic that the list of the cases allocated in sequential order includes

34 Letter of the High Council of Justice №382/308-03-o.

35 Kobuleti, Baghdati, Tkibuli, Tskaltubo, Dusheti, Tianeti, Kazbegi, Akhgori, Kareli, Lagodekhi, Kvareli, Ninotsminda and Keda.

36 Letter of the High Council of Justice №382/308-03-o.

37 Ibid.

some cases for which there is no obligation to be considered within 24, 48 and 72 hours. For example, two criminal cases regarding approving plea bargain. Also, it is obscure what type of case is implied in a “civil case” and whether it was necessary to consider it within the limited timeframe.

b) According to the memorandum of the chancellery of Kutaisi City Court and the leading specialist of a reception unit, due to the disruption of the electronic system, the following cases were allocated without the electronic program:

- 3 complaints with provisional measures;
- minutes of the offenses;
- motion related to the measure of restraint regarding using detention;
- motion related to the measure of restraint regarding using bail;
- motion regarding examining the lawfulness of searching a house and auxiliary premises;
- motions regarding examining the lawfulness of seizure;
- criminal case.

The memorandum provided to EMC does not reveal the exact number of cases allocated without the program. However, as a result of communication with a relevant employee of Kutaisi City Court, it was clarified that 17 cases were allocated without program during the disruption. It is problematic that the High Council of Justice has inaccurately calculated the cases allocated without electronic program from 31 December 2017 to the end of January 2018. According to the clarified data, the number of cases is 33 and not 24.

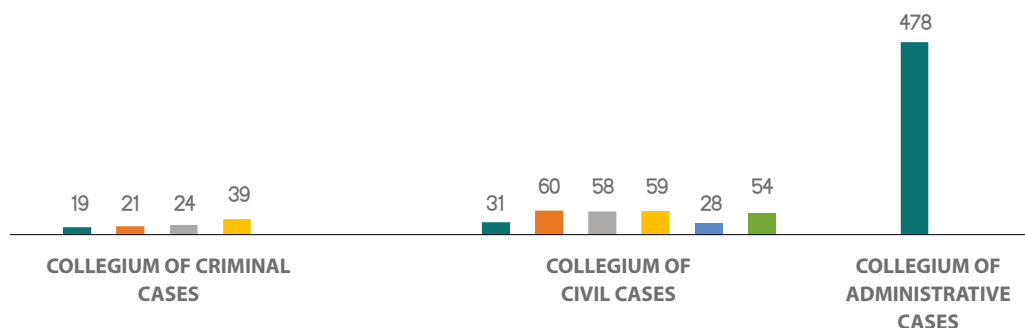
Allocation of a criminal case without electronic program by Kutaisi City Court is also noteworthy. In particular, according to the memorandum, after the end of a pre-trial sitting, by 23 January the case had not been returned to the chancellery, neither by means of the program nor in a material form in order to assign to the judge for hearing on merits. As for the sitting for hearing the case on merits, it was scheduled on 24 January. A relevant authorized employee of the chancellery allocated the criminal case for hearing on merits in sequential order in order to avoid obstruction of justice. As the duration of the disruption was less than 3 days, there was no legal ground for allocating this criminal case in sequential order.³⁸

According to the information provided by the Council and the copies of memorandums prepared after eradication of disruption, it is clear that unlike Rustavi City Court, while calculating cases allocated without electronic program during disruption in Tbilisi City Court and Kutaisi City Court, cases distributed in sequential order and cases assigned to judges on duty are not quantitatively separated.

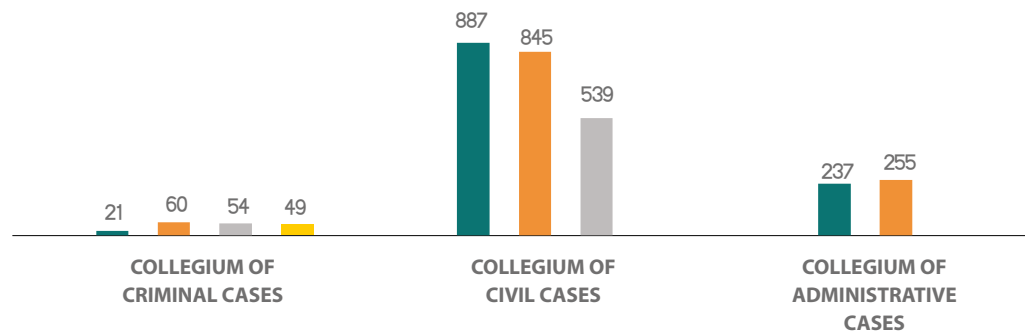
³⁸ Letter of the High Council of Justice №382/308-03-o.

As for the number of cases assigned to each judge from the date the electronic program took effect, EMC requested statistical data from large courts in this regard. At this stage, information provided by Rustavi City Court and Kutaisi City Court are available.

CASES ALLOCATED BY MEANS OF ELECTRONIC SYSTEM IN KUTAISI CITY COURT FROM 31 DECEMBER 2017 TO 31 JANUARY 2018³⁹



CASES ALLOCATED BY MEANS OF ELECTRONIC SYSTEM IN RUSTAVI CITY COURT FROM 1 JULY 2017 TO 31 JANUARY 2018⁴⁰



39 Collegium of criminal cases: Leri Tedoradze, Teimuraz Dgvareli, Tatia Gogolauri, Murtaz Kapanadze. Collegium of civil cases: Darina Abuladze, Gocha Didava, Tsitsino Kikvadze, Manana Nikachadze, Tsitsino Mosidze, Malkhaz Chubinidze. Lela Mildenberger is a judge in the collegium of administrative cases. Apart from the cases assigned to her by means of the electronic program, 462 cases assigned to Genadi Makaridze were allocated to her. On 18 January 2018 tenure of Genadi Makaridze in Kutaisi City Court expired.

40 Judges in the collegium of criminal cases: Mamia Pkhakadze, Ketino Luashvili, Ekaterine Partenashvili, Madona Maisuradze. Judges in the collegium of civil cases: Diana Gogatishvili, Ekaterine Kancheli, Maia Gigauri. Judges in the collegium of administrative cases: Nino Oniani, Nata Tedeshvili.

Summary

According to the recommendation of the Venice Commission, Organic Law on “Common Courts” should have determined detailed rules on the functioning of the electronic system as well as principles to be used during temporary disruption of the system.⁴¹ Further concretization of the issue at the legislative level was also the recommendation of local and international organizations. The primary motivation of this recommendation was the following: the legislature should have established the real content and scope of the significant reform and the power to regulate only those issues which are necessary for implementing the reform in everyday practice should have been granted to the Council and individual Chairpersons of the Courts. Unfortunately, the legislature avoided to regulate issues clearly and precisely in detail and determined only general principles at the legislative level. The power to regulate many issues has been granted to the High Council of Justice.

From the date the case allocation program took effect in every court, the High Council of Justice has amended the rule in a fragmented manner on every meeting of the Council, which demonstrates that after two months from entering into force, the Council does not have a complete vision what challenges are faced by the new program and what kind of systemic steps should be taken for its improvement.

Taking into consideration the acts adopted by the Parliament, the Council and Chairpersons of the Court regarding the random and equal case allocation as well as the observation on functioning of the program in a pilot regime and its taking effect across the entire country, it is clear that it is necessary to continue systemic work towards refining the existing rule. At this stage, the analysis has revealed that significant challenges for the principle of random allocation to take full effect are the following:

- Shortage of judges, especially in regions, which prevents case allocation based on a random principle in all courts;
- The rules on judges being on duty, which permits the assignment of a case to a particular judge without giving due account to their specialization and the random allocation of a case;
- The deficient rule of case allocation in sequential order by the staff members of the chancellery;

⁴¹ Joint opinion of the Venice Commission, the Directorate General of Human Rights and Rule of Law of the Council of Europe (DGI) and the Directorate of Human Rights (DHR) on the draft law on amendments to the organic law on “Common Courts”, §71.

- Non-systemic and fragmented amendments to the rule on the functioning of the electronic program and increase of exceptional circumstances;
- Regulation of important rules in case of program disruption at secondary legislation level;
- The function retained by the Chairperson to allocate judges in narrow specializations based on his/her opinion is especially problematic;
- Although the excessive workload of the judges is one of the major challenges in the judicial system, the new rule on case allocation currently in force does not include the fair and objective principle of the weight of the case in order to ensure equal distribution of cases.