

ASSESSMENT OF CANDIDATES FOR SUPREME COURT JUDGES





Coalition

for an Independent and
Transparent Judiciary

Conducted by the Coalition for an Independent and Transparent Judiciary based on the candidates' hearings at the Legal Issues Committee of the Georgian Parliament

This document does not express Georgian Young Lawyers Association's, Human Rights Education and Monitoring Center's and Article 42 of the Constitution's positions

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INTRODUCTION

For the first time in Georgian history, the Supreme Court judges are to be appointed for lifetime. By establishing the minimum number of the Supreme Court judges (no fewer than 28), the new constitutional amendments enacted in late 2018 have created an unusual situation and made it possible for one convocation of Parliament to renew at least 2/3 of the Supreme Court composition. When, after the amended constitution came into effect, the High Council of Justice, acting within its newly-vested authority, made a decision to nominate candidates for Supreme Court judges for parliamentary approval without due process, it prompted a considerable public outcry.

Later, the Georgian Parliament amended and revised the law, making provisions for rules of selection and nomination of candidates by the High Council of Justice which, however, more than one actor with vested interest in the proceeding have opined to be inadequate to address the challenges facing the judiciary. By a 4 September 2019 decision of the Georgian High Council of Justice, 20 candidates for Supreme Court judges were nominated for the Georgian Parliament's approval for the 20 available vacancies.¹ Despite a number of flaws in the process of selection and nomination of candidates at the High Council of Justice, it remained Parliament's duty to make a decision on each candidate.

According to the Georgian Parliament's rules of procedure, the Georgian Parliament was under an obligation to hold a public hearing for each nominated candidate at a sitting of the Georgian Parliamentary Legal Issues Committee. It merits welcome that the format designed by the Legal Issues Committee ensured representative public involvement and was in line with high standards of transparency in the process of hearing the candidates for Georgian Supreme Court judges. Not only members of

Parliament, but also the public defender, legal professionals and civil society representatives had the opportunity to attend the hearing sittings and ask questions of the candidates.

The Coalition for an Independent and Transparent Judiciary took part in the committee hearings of the candidates on behalf of civil society.

The present document outlines the coalition members' opinions and assessments of the candidates' integrity and competence, which they formed during the aforementioned committee hearings. In accordance with Clause 6, Article 63 of the Georgian Constitution, the judge is selected precisely by the criteria of integrity and competence. Of course, the members of Parliament are entitled to devise their own interpretation of the terms used in the constitution, but the authors of this document, when appraising the candidates' integrity, mainly used as guideline the integrity and competence criteria laid down in the Georgian Organic Law on Common Courts. In appraising the candidates' **integrity**, the focal points were:

- *The candidate's personal integrity and professional conscientiousness;*
- *Independence, impartiality and fairness;*
- *Personal and professional conduct;*
- *Personal and professional reputation.*

As for appraising the candidates' **competence**:

- *Familiarity with legal norms*
- *Skills and competences of legal argumentation*
- *Written and verbal communication skills*
- *Professional skills*
- *Academic achievement and professional training*
- *Professional activity.*

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¹ Despite the High Council of Justice's nomination of 20 candidates for Parliament, Judge Z. Tavadze's self-withdrawal has reduced the number of nominated candidates to 19. Accordingly, Judge Tavadze's assessment does not appear in the present document

INTRODUCTION

Besides integrity and competence, the authors of this assessment laid a special emphasis on the candidates' value orders. We deem that independent and impartial justice is contingent on a judge's individual independence and impartiality. Hence, the judge's occupation demands a substantial value order from an individual judge. These values were clearly discernible in the opinions the candidates for judges stated on different topics.

The present document lays no claim to a comprehensive and exhaustive assessment of the candidates' integrity and competence, but we do maintain that it might provide substantial assistance to the members of the Georgian Parliament in the process of decision making.

At the same time, we express hope that decisions by both the Legal Issues Committee and Parliament will constitute a natural continuation of the open and transparent process at the committee hearings, and will be limited to supporting only those candidates whose integrity and competence unequivocally qualify them for the lofty status of the Supreme Court Judge. We believe that only these types of decision can help the judiciary regain public trust.



TAMAR ALANIA

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Tamar Alania was nominated¹ by 11 votes against 1 for the Georgian Parliament's² approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Tamar Alania on 23 September 2019.

The hearing of Judge Alania continued for 7 hours and 20 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

Candidate Tamar Alania's opinions expressed at the sitting of the Georgian Parliament's Legal Issues Committee and her answers to the questions asked have made it possible for us to form certain opinions regarding her value order. However, there were several issues which we think merit closer consideration, in particular:

Judge Alania argues that, if factual circumstances of the cases she has heard in the 13 years she has been a judge had been the same, she would have handed down the same rulings on all of those cases. In general, dispensing justice is a dynamic process. The dynamism, for its part, implies a continual process of rethinking one's past experience and caring about one's personal development on the part of individual judges. However, the answer which the candidate provided to questions asked might point at a lack of rethinking of this sort.

The candidate's answer to the question about the shortcomings and problems the judiciary system is facing creates an impression that Judge Alania either fails to realize the judiciary's past or present challenges, or she realizes them fully, but shuns discussing them openly.

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1 Nomination of Tamar Alania's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

2 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

During the hearing at the Legal Issues Committee, the candidate did not rule out the possibility that in hindsight, she would have consulted not only the judge members, but also non-judge members of the High Council of Justice on her nomination as a candidate for Parliament's approval in 2018. When discussing this issue, the candidate attempted to avoid making assessments about the transparency and compliance with the principles of a democratic state of the decisions which the High Council of Justice made regarding her or with her consent, and mainly sought to justify the council's decision from the viewpoint of pro-forma legality.

□ *Independence, impartiality, fairness:*

Judge Alania's answers could have raised questions for a neutral observer about her independence and impartiality. In particular:

The candidate believes that the High Council of Justice decision in December 2018 to nominate her together with other 9 candidates for the Supreme Court judges' vacancies was legal and expedient (morally justified). The candidate stated that Parliament had to consider her candidature, although she confirmed forthwith that she had changed her own decision and withdrew her candidature from the nomination. The judge cited as the reasons for that decision the situation that had taken shape and Parliament's public refusal to put the candidatures to the vote. At the same time, she believes that her changing her mind does not testify to her **inability to resist** the opinion of the ruling political coalition or in general, the opinion of a majority.

The position which the candidate stated on the abovementioned issue is significant in several respects. The candidate is either unable to realize the negative outcome of the High Council of Justice's steps taken in December 2018, or she does realize it, yet still seeks to justify the legality and fairness of an influential judiciary group's single-handed decision by resorting to only formal arguments.



TAMAR ALANIA

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On the other hand, the refusal to consider her own candidature by her own decision raises substantial questions about Tamar Alania's independence and her ability to **resist** first and foremost the ruling political coalition's influence and a majority's opinion in general. Yet this ability is vitally important not only for the holder of a lofty status of a Supreme Court judge, but for a judge of a court of any instance.

Loyalty to the judges who are considered an influential group within the judiciary system could be inferred from Judge Alania's answers. When asked why she withdrew her candidature for the position of a High Council of Justice secretary in favor of Judge Levan Murusidze, Tamar Alania's laconic and dry answer was limited to the statement that *"it had to be done that way."* The candidate cited Bangalore principles of judiciary conduct to avoid making comments on other issues, notably on the issue of incompatibility with judiciary ethics of actions by the judges who are considered members of an influential group.

□ *Personal and professional conduct:*

As the candidate herself said, she has never publicly criticized the incumbent authorities, even when she was not a judge, because she thinks that criticism of the government is only politicians' business and she has never been a politician. This attitude could make an impartial observer feel that Judge Tamar Alania generally demonstrates loyalty towards the government authority and does not properly realize the citizen's role in a democratic society and deems voicing criticism of the authorities only politicians' function or duty.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

Judge Alania is unable to clearly differentiate between the nature of the concepts of pardon and conditional early release on parole. She believes that the exclusive presidential prerogative to pardon a penitentiary inmate is predicated on an international standard that a mechanism for the revision of life sentences must be in place.

Judge Alania deems it appropriate to ignore a legal norm which is in effect based on the Georgian Constitution and use an internationally recognized standard as a directly applicable prevailing law if that norm comes into conflict with the standard.

□ *Skills and competences of legal argumentation*

The candidate believes that it is a legally correct opinion that the High Council of Justice applies the criteria of integrity and competence when selecting the candidates for judges as a non-political body, whereas the president applied those criteria as a political office holder. However, when confronted with the criticism of the High Council of Justice decision dated December 2018 to nominate the candidates for Supreme Court judges (why the council made such a single-handed and vague decision), the candidate reminisced the procedure of selection of the candidates for the Supreme Court judges, which was in effect before, and, despite the substantial differences between these two procedures, she still drew parallels between them and attempted to justify the council's decision in this manner.

When asked **what she would change in the Supreme Court practice**, Tamar Alania replied: *"My colleagues work there, and I am obliged to implement their decisions. That is why I can tell you directly that it is unethical for me to speak about what I like, or do not like, about those decisions and what I would change."*

□ *Written and verbal communication skills:*

The candidate formulated her position consistently and calmly, but on occasion was unable to rise above her emotional state when answering rhetorical or sharply critical questions, or to listen to a different opinion and remain balanced.

□ *Academic achievement and professional training*

Judge Alania is unable to remember a single work on legal philosophy and on legal theory in general that had left a mark on her professional development. The only things she remembered in this respect were comments to a code and judgments and decisions of the European Court of Human Rights.



MERAB GABINASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Merab Gabinashvili was nominated³ by 11 votes against 1 for the Georgian Parliament's approval⁴ for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Merab Gabinashvili on 24 September 2019.

The hearing of Judge Gabinashvili continued for 7 hours and 47 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

When asked which book holds a primacy for him as a judge, *The Constitution* or *The Bible*, Judge Gabinashvili replied that for a judge, the constitution is the backbone that supports the state. At the same time, the Bible plays a major role in shaping his values as a Christian. In the candidate's opinion, these two "notions" cannot be compared to each other and the role and the influence of the Bible are not reflected in his decisions.

The candidate believes that a person does not belong to him- or herself and that he or she also have commitments to society as social beings. When asked if a **person should be punished for inflicting harm to him- or herself**, the candidate did not supply a direct question. However, he did engage in an additional deliberation that he would never support *"the idea that people should walk in the street and cause harm to themselves for everyone to see because the country needs a healthy society, both morally healthy and psychiatrically healthy, as that increases the likelihood that they will make right decisions and remain sane, and physically healthy society. We are a social [welfare] state, and it is written in the constitution that state has an obligation to care about a human being's health, so based on that principle."*

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3 Nomination of Merab Gabinashvili's candidature.
Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

4 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

The candidate stated that he subscribes to and supports the importance of the judiciary system based on the supremacy of law for a democratic society.

At the same time, when asked about liberal democracy, the candidate said that it is *"a very lofty value, and if we are headed towards that value, then the obligations must also be honored which constitute a necessary basis for liberal democracy."* The candidate did not explain, however, what values he meant in this case.

The candidate argued that **under the judiciary system that existed before 2012, none of his colleague judges had handed down politically motivated or unjust sentences.**

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness*

In Judge Gabinashvili's assessment, the Tbilisi City Court's official statement on an opinion voiced by Fady Asly and the dismissal of Fady Asly's statements as false by a court do not create an impression bias and lack of objectivity among the public. Judge Gabinashvili views this statement by the Tbilisi City Court as the court's effort to inform the public and urge it to **"go to court and clarify the issues of your rights and freedoms, legal issues, so to speak, there."**

Judge Gabinashvili also cannot see why hearing of a case of a judge by the same court where the judge is employed is problematic. He explained that it does not matter who files a case with a court, a judge who works in the same court which should hear his case, or some other person.

Judge Gabinashvili maintained that drastic changes in the statistics of applying remand in custody as a restraint measure (disusing pre trial detention) after the change of government in 2012 was caused by the fact that courts started to apply a higher standard of substantiation.

This position of the candidate gives rise to a sentiment that he is cautious or biased in his assessments of legal matters whenever the judiciary



MERAB GABINASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

system or the actions of representatives of that system are concerned.

□ *Independence, impartiality, fairness:*

When asked about the decreasing public trust in the judiciary system, the candidate parried with an opposing view and explained that the increasing judicial recourse figures directly point to increased public trust in the court system. Despite the fact that the statistical data testify to the opposite, the candidate claimed with full conviction that public trust in the court system had not decreased. His spirited statements implied that he held a preexisting bias and rejected opinions voiced in a critical tone. This attitude of the candidate inflames a sentiment he is unable or unwilling to appraise the circumstances objectively or is biased or subjective whenever problems facing the court system are concerned.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms*

Judge Gabinashvili has no answer to the question of why the property rights are not dealt with in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

□ *Skills and competences of legal argumentation*

Judge Gabinashvili was unable to provide a proper definition of liberal democracy. He also did not have a position on the characteristics of liberal democracy.

The judge had a difficulty answering the question about the nature of the political regime in the German Democratic Republic. At some point he noted that the German Democratic Republic had a democratic regime because the country's name suggested so. However, later he refrained from additional discussion of this matter.

In connection with the origins of constitutionality review in the United States, Judge Gabinashvili interpreted Chief Justice John Marshall's decision as a legally principled position that withstood all types of political pressure. In fact, however, it is a widely known fact that John Marshall's decision stemmed from the political crisis that had taken shape in the United States. The constitutional review was introduced not for the purpose of legal analysis, but in order to avert unpleasant political consequences.

The aforementioned finding creates an impression that Judge Gabinashvili finds it difficult to properly apprehend the gist of the question, or he lacks the factual knowledge of fundamental legal matters. The judge's answers also betrayed an attempt to speculate on general concepts.

□ *Written and verbal communication skills*

The candidate came across as direct and confident in verbal communication, although he often strongly argued for a premise on which he did not possess sufficient factual knowledge, which he attempted to compensate by generalizing the issue. He became aggressive whenever the person asking the question expressed his dissatisfaction with the answer. If the person who posed the question critically persisted in eliciting the answer, the candidate refused to answer additional questions.

□ *Professional skills*

Despite the fact that the candidate at times voiced irrelevant opinions on a number of issues, he appeared perfectly convincing at first sight, and could leave a person with a limited knowledge of legal matters under the impression that the judge has an impressive grasp of the issue.



SHOTA GETSADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Shota Getsadze was nominated⁵ by 11 votes against 1 for the Georgian Parliament's approval⁶ for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Shota Getsadze on 25 September 2019.

The hearing of Judge Getsadze continued for 6 hours and 37 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

Although the candidate did subscribe to the opinion that generally, individuals must not be punished for inflicting harm to themselves, he also immediately rushed to note that a need to limit such individual's actions might arise. To support this view, the candidate cited an example of an individual encroaching on other person's rights by causing harm to him- or herself. It has to be noted that the example that the candidate cited is not relevant to the question because limiting individual freedom on the grounds of protecting the rights of others is not related to the issue of punishment for self-inflicted harm.

The candidate did not support the current regulations regarding abortion, arguing that abortions before 12 weeks must be based not solely on the mother's wish, but on the necessity and estimable interest.

The candidate is against selective abortions and the unconditional primacy of mother's rights compared to the child's right to life under all circumstances.

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5 Nomination of Shota Getsadze's candidature.
Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

6 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?>, last accessed 3 December 2019

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

Discussing the increased number of submitted communications from common courts to the Constitutional Court after 2012, the candidate observed that he himself had not yet resorted to that institution, and as for the general trend, in the candidate's assessment this could be explained by the fact that "some judges have felt greater freedom."

The candidate claimed ignorance of whether or not case distribution system in the court was manipulated.

Judge Shota Getsadze noted that he sensed some problems and pressure in the court system, including in high-profile cases, but he did not specify how exactly these were manifested.

□ *Independence, impartiality and fairness:*

When giving an assessment to the previous administration, the candidate talked about the existence of signs characteristic of totalitarian regimes, and when asked about which particular sign he meant, the candidate noted: "*The very sign which, so to speak, is the most conspicuous for that type of governance. It is possible that some people in the position of authority or government officials might not really be performing their functions, and someone else might be taking decisions in their stead. An invisible – well, quote-unquote invisible – person.*"

In addition, the candidate also said that, if more information and evidence is available, he could not rule out the existence of these types of persons among the incumbent government officials, either. Overall, the hearings of the candidates at the Legal Issues Committee have made a trend unambiguously evident that the candidates are not giving assessments of any sorts to the incumbent authorities or are extremely cautious when doing so.

Judge Getsadze argued that his decision to uphold the Georgian president's edict stripping Bidzina Ivanishvili of Georgian citizenship was a legitimate one.



SHOTA GETSADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

□ *Personal and professional conduct:*

Judge Shota Getsadze sought to explain during the interview the meaning and motives behind statements he made in the past, for example, about limiting the freedom of expression when courts are concerned, but he did not directly answer the question about how legally correct and in line with the standards that are in effect in Georgia his statements were. The same applies to his discussion of the sentences he handed down in the past. Whenever a candidate tried to explain the rationale behind his court decisions, a neutral observer was left with the impression that he had difficulty arguing the rightness of his decisions convincingly.

In the candidate's assessment, the reaction of some of the High Council of Justice members, which they expressed as the Rustavi-2 case unfolded and which implied revising (tightening) the regulations that limit the freedom of expression, was normal. Moreover, the candidate believes that the High Council of Justice *"is under an obligation to defend any judge from these types of attacks."*

When discussing the public trust in the judiciary, the candidate cited an IPSOS research, which found that **51% of the residents trusted the judiciary in Georgia, whereas the figures in Italy and Spain were much lower**. It has to be noted that this argument is directly in tune with and repeats the narrative promulgated by the individuals within the judiciary system who are considered an influential group. Furthermore, the candidate commented that it was the judiciary's **"fault"** that the public is not aware of **"a lot of good information"** about the courts.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms*

The candidate's deliberation when he replied to the question about the essence of the restriction of human rights by the judge and by the court system in general was more of a generalized nature and focused to a greater extent on the significance of regulation of relations between state and a private

individual, rather than on the question asked. The candidate said that the fundamental human rights are pre-statehood rights, and the government is limited by the fundamental human rights, which are not bestowed by state, but on the contrary, constitute rights that protect from state. Based on this deliberation, the candidate finally formulated his answer to the question in the following manner: If the court can see that some legal act or legal framework violates human rights, then it should make a decision based on the need to protect human rights.

In the candidate's assessment, the accused who committed perjury in a court trial where he is a defendant, should not be held responsible. Although he has not cited any legal theory or additional reasoning in support of this view, this opinion can be viewed as a premise in support of promoting human rights. There is a different opinion, too, among the legal circles, which deems it possible to hold the accused additionally criminally liable for committing a perjury in the court of law.

When discussing the Georgian Constitutional Court's powers, external and internal restrictions of constitutional rights, individual clauses of the Constitutional Agreement and characteristics of liberal democracy, the candidate stated directly that he possessed no information about some of the issues on the one hand, and on the other hand, the reasoning which he tried to develop logically were not convincing, and on a number of occasions, the answers he supplied were inconsistent with the gist of the question and left the listener under the impression that the candidate did not possess a thorough knowledge on the issue at hand.

□ *Skills and competences of legal argumentation:*

When discussing the issue of offending religious feelings, the candidate through logical reasoning arrived at a conclusion: *"Can we differentiate between a religious feeling and religion so peremptorily? I think it is hard to imagine. Religious feeling without the freedom of religion – to tell you the truth, I find it difficult to draw a line between them."*



SHOTA GETSADZE

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Judge Shota Getsadze's answers to other questions about the restriction of the freedom of expression, including the questions about a discrepancy between the tests of a convention and the Georgian Constitution and about artistic freedom were also in favor of a better protection of human rights.

□ *Written and verbal communication skills:*

During the interview, the candidate maintained composure when answering pointed questions, including the ones about his past verdicts, and managed to supply appropriate answers. The candidate's interview gave a neutral observer a feeling that he had an ability to accept a difference of opinions and at the same time, properly formulate arguments in support of his position, including on the issues which he may hitherto not have thoroughly pondered over.

□ *Professional skills:*

In most instances, the candidate did not interrupt the interviewer and strove to support his statements not only by directly citing a legal norm, but also by resorting to logical reasoning.

□ *Academic achievement and professional training:*

When discussing the development of a professional and judiciary acumen, the candidate commented that in the recent period, he had been choosing legal literature to read in accordance with the cases he had to hear. The candidate specifically noted a "book by one of the best-known administrative law experts, Guy Braibant [and Bernard Stirn], *Le droit administratif français*."



MIRANDA EREMAZDE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Miranda Eremadze was nominated⁷ by 10 votes against 1 for the Georgian Parliament's⁸ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Miranda Eremadze on 26 September 2019.

The hearing of Judge Eremadze continued for 6 hours and 16 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

The candidate had a difficulty formulating her opinion on whether or not a person should be punished for inflicting harm to him- or herself. In the end she noted that she subscribed to the principle, though she pointed out forthwith that in cases of abuse of so-called heavy narcotic substances, she did not agree with applying this principle. In her opinion, substance abuse is harmful not only for the particular individual, but for the society at large and for the younger generation. After these controversial answers, Judge Miranda Eremadze admitted that her answers were mutually contradictory.

Judge Eremadze said that critical statements made against the court system are for the most part groundless.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

- *Personal integrity and professional conscientiousness:*

The candidate shunned on several occasions from criticizing the High Council of Justice's publicly stated position. The candidate was unable to remember a single statement made by the council

7 Nomination of Miranda Eremadze's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

8 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

of which she would have a critical opinion.

The candidate's contradictory positions on effectively identical legal issues are worth noting. For examples, the candidate fully endorses the opinion that people can make any statements about the judges, including those which the judges do not like. She also subscribes to the view that in this case, the judges should communicate with the public not by staging a public debate, but with the decisions they make.

However, she was unable in this context to critically appraise the High Council of Justice members' statement which support restricting the freedom of expression of the disrespect for the court. In this case, the candidate limited herself to voicing a general position from which it was difficult to infer her opinion, so she effectively immediately came into conflict with her own reasoning on the same topic.

- *Independence, impartiality and fairness:*

When assessing the candidate's independence and impartiality, her answers to the questions about the process of nomination of the candidates for the Georgian Supreme Court judges were of interest. The candidate's reasoning raised questions in the neutral observer about her lack of bias towards the individuals who are considered an influential group within the court system. In particular, the candidate tried to avoid criticizing the process of nomination in December 2018 of the candidates for the Supreme Court judges by the High Council of Justice, and pointed out that at that time, it was an optimal decision that had no alternatives. However, the candidate at the same time voiced her opinion that the new rules and procedures for the selection of the Supreme Court judges were better and more advanced.

The candidate maintained that the current version of the Administrative Offences Code, which she used as a guideline to issue rulings on court cases for quite a long time as a judge, was not properly suited for the purpose of defending human rights at all, especially in the parts dealing with the possibility of using an arrest warrant against an individual. Despite this deeply held conviction



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and attitude, the candidate had never applied to the Constitutional Court with the request to review the constitutionality of the Administrative Offences Code's problematic articles. The candidate explained her inaction by commenting that, if she had presented the problematic provisions to the Constitutional Court, the process would have got dragged out and the side would have enjoyed the benefit of a fast justice.

With this opinion the candidate has effectively confirmed that she had experienced internal conflicts over the justice of her decisions, but in order to avoid delays in the process and to uphold the interests of fast justice, she had made decisions that damaged the statutory rights of the very person who was held accountable for an administrative offence.

□ *Personal and professional conduct*

The candidate argued that, when counterposing a particular provision against the constitution, she may have exceeded the limits of her authority as a common court judge, but in terms of human rights defense, she made right decisions.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms*

When asked the question of why the Georgian Constitution bans holding referenda on whether or not fundamental human rights must be restricted, the candidate supplied a generalized and unconvincing answer.

The candidate's answer to the question about the difference in legal rights between people in a common-law marriage and in de facto marriage left the impression that she was unable to convey the main difference and confined herself to discussing only the concept of joint property. The candidate was only able to recall other difference after the interviewer reminded her of them.

During the interview, a neutral observer would be left under the impression that the candidate avoided, or due to lack of competence was unable, to handle

the question of whether there is a discriminatory attitude toward the persons who are of the same sex, live together, but cannot manage to enjoy the abovementioned rights legally. The candidate started by listing the steps of a test used to establish the presence of discrimination and finished in the end by stating that, without writing down and formulating arguments, it would be difficult for her to answer.

A neutral observer would also feel that the candidate had no knowledge of the instrumental rights guaranteed by the Georgian Constitution. The candidate correctly identified the tests to be used by the Constitutional Court to establish the presence of discrimination and the differences between the tests. However, a neutral observer would get the impression that the candidate has not thoughtfully internalized this topic, but rather memorized it, which made her vulnerable to public attitude – instead, the judges must be knowledgeable of sensitive issues like discrimination.

□ *Skills and competences of legal argumentation:*

The candidate said when commenting on the possibility of restriction of the freedom of expression that it could be restricted “when other person's right is violated and the expression reaches a certain limit. Say, hate speech, calls for violence, etc.” A neutral observer would get the impression that the candidate reached a correct conclusion about the need to use a present danger test to decide on the restriction of the freedom of expression intuitively.

□ *Written and verbal communication skills:*

During the interview with the candidate, an issue related to her verbal communication became apparent, in particular, although the candidate allowed the person who asked to question to fully formulate what he or she wanted to say, some of her answers sounded unconvincing and vague, which could be explained by her lack of proper knowledge about the issue at hand, or she misinterpreted the question, or avoided to supply straightforward answers to questions on sensitive issues.



MIRANDA EREMADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

□ *Academic achievement and professional training:*

The candidate is not familiar with a highly important work in legal philosophy, John Stuart Mill's *on Liberty*, but has a general idea of Ilia Chavchavadze's publications and values.

□ *Professional activity*

From the standpoint of professional activity, the candidate placed an emphasis on the creation of the association of female judges and its activities. She said that the association's stated goals include moving the gender-sensitive issues to the foreground, increasing involvement in the discussion of all pressing issues, communicating with the public and openly discussing problems, and ensuring a better coverage of positive developments in the court system.



MAMUKA VASADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Mamuka Vasadze was nominated⁹ by 10 votes against 2 for the Georgian Parliament's¹⁰ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Mamuka Vasadze on 27 September 2019.

The hearing of Judge Vasadze continued for 6 hours and 50 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

Deputy General Prosecutor Mamuka Vasadze subscribes to the opinion that no person should be punished only for inflicting harm to him- or herself until his or her actions cause harm to another person. It follows from this principle that he did not endorse punishment of abusers of narcotic substances.

Mamuka Vasadze is a candidate who considers himself a person who is cautious, foresighted, and is likely to make most predictable decisions. Accordingly, he could not remember a single important (major) mistake of non-personal nature in his life.

Mamuka Vasadze could not recollect a single work in the fields of legal theory and legal philosophy that would have an influence on his formation as a legal professional. Nor could he remember a single work of fiction which influenced him. He cited his busy schedule as an explanation. Significantly, however, he expressed an opinion that a candidate for the Supreme Court judge, as a representative of the supreme judiciary body, must be required to possess general knowledge of this sort (which he does not have).

Mamuka Vasadze maintained that the Georgian state recognizes the existence of God, and among other things, recognizes the role of the Orthodox Church in the country's life and history. He at the same time

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9 Nomination of Mamuka Vasadze's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

10 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

believes that, together with the existence of God, the Georgian state recognizes freedom of religion.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

The candidate's above mention opinion that the candidate for the Supreme Court judge must be required to possess a more thorough knowledge of the legal philosophy and theory than he has is important on several accounts. On the one hand, this indicates the candidate's honesty and might point to his personal integrity and professional conscientiousness. In particular, the candidate was taking part in a process in which the candidate – in his own opinion – must satisfy higher requirements criteria than he possessed.

□ *Independence, impartiality and fairness:*

The candidate evaded the questions about the ruling political coalition. For example, when asked if he as a neutral observer would get the impression that the ruling political party is trying to expand its influence on common courts if he would see the incumbent ruling party chairperson's former defense lawyer in the capacity of the Supreme Court chairperson, he tried not to answer the question directly.

The candidate also did not see any problem (it did not raise any suspicion in him) in close relations between the incumbent general prosecutor and the ruling party chairman, including in non-public visits of the general prosecutor to the latter's place of residence.

The candidate's answers to questions on these sorts of issues raise suspicion of his partiality (or at least condoning attitude) in favor of the ruling political party. Instead, both as a candidate for the Supreme Court judge and a deputy head of the constitutional body, the General Prosecutor's Office, he should follow the lofty standards of political neutrality.

□ *Personal and professional conduct:*

The candidate cited his specialization to avoid answering questions containing references to elements of the civil or administrative law and said that his knowledge of



MAMUKA VASADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

other legal subjects prevents him from supplying an exhaustive answer to the question asked.

□ *Personal and professional reputation:*

The candidate's answers to questions about high-profile cases, cases involving violence against police or, on the contrary, cases of abuse of power by public officials, or questions requiring a different opinion about cases of essentially similar nature and the Prosecutor's Office's political bias were generalized and focused on less important or secondary-interest issues, reiterating the narratives of the Prosecutor's Office official statements.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

The candidate believes that an opinion, unless it damages other person's honor and dignity, should be protected as an absolute privilege, and restricting it in any manner is inadmissible. At the same time, he maintained that there exists no idea that cannot be criticized or on which an opinion cannot be voiced. Contrary to these premises, the candidate opined that insulting the national flag (or burning it) is impermissible because the flag is a national symbol. In addition, according to the candidate the burning of a flag is not an instance of voicing an opinion, but rather an action involving the flag. He linked the action with restricting the freedom of expression for the purpose of protecting the rights of others, and argued that flag burning should be punishable. In this case, a neutral observer would get a feeling that the candidate does not possess proper knowledge about the freedom of expression, and that he also finds it difficult to apprehend that an opinion can be expressed not only verbally, but also by using other means, and flag burning can be one of the ways of expressing an opinion.

He leaves an impression of not knowing the difference between the person's honor and dignity. He also cannot differentiate between the constitutional law and civil law interpretations of dignity.

□ *Skills and competences of legal argumentation:*

When asked if blasphemy or sacrilege should be punishable, the candidate answered that "[...] **freedom of religion does not mean expressing insult toward some other religion or denying some other religion's right to exist or damaging its reputation, honor, or dignity. The freedom of expression ends where other's – even if that other is a religion – rights begin.**"¹¹

During the interview the candidate said that he could not remember the tests evaluating the presence of discrimination. His answer to the question about the retroactive effect of the law was also incomplete and vague/imprecise, although the latter issue is one of the important parts of the criminal procedure.

□ *Written and verbal communication skills:*

The answers the candidate supplied were often vague and incomplete and contained imprecisions about significant and fundamental legal matters. Many answers supplied by the candidate left the impression that he either did not know the answer to the question or misinterpreted the meaning of the question.

□ *Professional skills:*

When discussing the candidate's professional skills, a negative assessment should be given to the fact that during the interview, the candidate frequently commented, including on the issues pertaining to human rights, that he had no information, has never thought about the issue at hand, or would be unable to supply an exhaustive answer because the question did not concern the criminal law.

□ *Academic achievement, professional training and professional activity:*

Besides performing direct investigative and prosecutorial duties, the candidate has not mentioned any other types of professional activity. The candidate has also not authored any professional work and not voiced any opinion that would differ from that of the Prosecutor's Office as a unified system.

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¹¹ After asking several clarifying questions on the same topic, the candidate stated that a religious organization cannot have honor and dignity, which is why they cannot be damaged.



MAIA VACHADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Maia Vachadze was nominated¹² by 11 votes against 1 for the Georgian Parliament's approval¹³ for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Maia Vachadze on 7 October 2019.

The hearing of Judge Vachadze continued for 7 hours and 21 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

The answers supplied during the hearing of candidate Maia Vachadze at the Georgian Parliament's Legal Issues Committee makes it possible to conduct an assessment of her value order.

The candidate categorically rejected the concept of collective responsibility and said that a person must be individually responsible only for the actions which he or she performed.

Judge Vachadze did not subscribe to John Stuart Mill's harm principle, according to which a person cannot be punished for inflicting harm to him- or herself. In support of her position, the candidate mainly resorted to the limits to the right of life and pointed out that, because the right of life does not include the right to die, one of the main functions of state is to protect both society and a particular individual. Although the candidate attempted to additionally explain on what theory or arguments her view was predicated, it left an impression that in this particular case, her argumentation was not very cogent. In addition to the lack of clarity and convincing power, an observer of the process could feel compelled to ask how fully did the candidate grasp the gist of the question about the harm principle.

12 Nomination of Maia Vachadze's candidature.

Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

13 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

The candidate endorsed the opinion that, without reaffirming the principle of secularism and institutional separation of the religion and state, it is impossible for a democratic state to exist. However, the reasoning which the candidate developed on this issue created an impression that, by citing arguments which were not directly related to the issue at hand (equality, religious freedom), she sought to substantiate her claim.

The candidate believes that the use of the phrase "the Georgian Catholicos-Patriarch is immune" in the Constitutional agreement does not mean the patriarch's immunity and that he, like every other person, is equal before the supremacy of law.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

When asked if in hindsight, in the light of her 24 years of judiciary practice and gained experience, she would now have handed down a different ruling on a particular case or cases, the candidate answered that there were many such cases because justice is not static, it develops, just as the judge becomes more knowledgeable and experienced, so accordingly, it is natural that she would have ruled some of the cases differently.

This attitude shows the candidate's personal integrity and professional conscientiousness. Her answer was honest and left the listener with the impression that she exercised health criticism toward her own work in the past. This attitude set her apart from those candidates for judges who argued that they would have handed down exactly the same rulings today on all the cases they have ever heard.

Judge Vachadze said that the disciplining the Georgian Supreme Court justices Tamar Laliashvili, Nino Gvenetadze, Murman Isaev, and Merab Turava and their dismissal from their posts as a punishment in 2006 was not a right decision. The candidate linked the low number of court cases heard by Judge Mikheil Chinchladze during his tenure of the post of the Administrative Cases Chamber of the Supreme Court with the generally heavy



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administrative workload chamber chairpersons are allotted.

When asked if she saw any injustice around her in court and expressed her protest about it, Judge Vachadze said that she did see it, although she voiced her concerns only within the system.

□ *Independence, impartiality and fairness:*

The candidate discussed problems which the Georgian judiciary system encountered from 1999 onwards openly and in chronological order. She said influences which the judiciary experienced during every administration had both positive and negative aspects. It is noteworthy that Judge Vachadze did not refrain from criticizing the incumbent administration. Her reasoning included harsh criticism, too, in particular, she argued that the current governance system faces acute problems, which clearly manifest themselves, among other things, in administrative legal disputes. The candidate believes that the governance activities are inefficient.

All this might indicate the candidate's independence and impartiality. In combination, the assessments she made on political issues left the listener under the impression that she is mostly independent of political influences and resistant to the opinions and interests of the majority.

This position may point at the candidate's independence and impartiality.

Overall, opinions expressed on issues pertaining to the political and court system could leave a neutral observer with a feeling that, in contrast to other candidates, Judge Vachadze is bolder in criticizing the incumbent authorities. Her approach to this issue could be viewed as a factor when assessing the candidate's independence and impartiality, although the candidate was particularly cautious in her assessments of the problems facing the court system, individual officials in the judiciary, and their activities, which might be a sign of her accommodating attitude, especially toward those judges who are considered to be members of the influential group within the judiciary.

□ *Personal and professional conduct:*

Answering a question about the distribution of court cases among the judges and collegiums and about the obvious qualitative imbalance between the cases heard by different judges before the electronic case distribution system was put into operation, the candidate said:

"I know, but I do not want to discuss this issue because it mostly concerns internal relations among the judges."

The candidate honestly said that she was aware of the fact that the information about the procedures and patterns employed in the process of dispensation of justice must be publicly known and available. However, she disagreed that the public had a legitimate interest in having such information accessible. This attitude of the candidate may give rise to questions about her personal impartiality on the one hand. On the other hand, these types of answers might leave an observer with the feeling that the candidate did not fully analyze the role which her behavior and herself as an individual judge can play in tackling the problems facing the judiciary system.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

The candidate's past experience of working as a Supreme Court judge for 20 years set high expectations for her level of competence. Her reasoning and knowledge of legal matters mostly lived up to these expectations. However, some of the statements she made about individual fundamental legal issues were more formalistic and incompatible with a free society.

One of these important issues was addressing the issue of restricting human rights when the constitution and international treaties come into conflict. For example, the candidate believes that the conventional grounds for restricting the freedom of expression – protection of public morality – could constitute legitimate grounds for restricting the freedom of expression in Georgia, too, even though



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the Georgian Constitution does not provide for that. The attitude which the candidate demonstrated creates the impression that she views as her judiciary duty lowering the current high standards in the field of human rights, rather than handing down decisions that would benefit human rights, even when it comes to such abstract concepts as public morality and ethics.

Judge Vachadze said with strong conviction:

“Natural law was always connected with God and religion.”

Formulating this view so unambiguously and assertively is not justified. The field of moral and legal philosophy knows of both classical and modern theories of natural law, including theories which develop the concept of natural law from essentially secular ideals.

□ *Skills and competences of legal argumentation:*

The candidate analyzed the legal problems she was confronted with from a systemic normative standpoint, while managing in the process of reinforcing her opinion to maintain logical consistency. Judge Vachadze cited precedents from the Georgian Supreme and Constitutional Courts and the European Court of Human Rights when answering many questions.

□ *Written and verbal communication skills:*

The candidate correctly perceived legal problems identified in the questions asked, made efforts not to limit herself to purely general logical analysis in her answers and to cite arguments from authoritative sources to support her opinion. However, there were occasions when the candidate’s behavior left an impression that she was unable to control her emotions and maintain composure, and showed signs of irritation with critical questions and question which she found it unpleasant to answer, as well as with people who asked those questions.

□ *Professional skills:*

The candidate mostly demonstrated acceptance of a difference of opinions, and she made no attempts to generalize the issue and disguise her lack of sufficient factual knowledge of a legal issue by manipulating legal concepts.

□ *Academic achievements, professional training and professional activity:*

The answers supplied by Judge Vachadze left the impression that she is engaged in active cooperation with professionals and organizations in her field, systematically familiarizes herself with new laws and rules, and strives to adapt properly to the professional challenges she is facing.



TAMAR ZAMBAKHIDZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Tamar Zambakhidze was nominated¹⁴ by 11 votes against 1 for the Georgian Parliament's¹⁵ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Tamar Zambakhidze on 8 October 2019.

The hearing of Judge Zambakhidze continued for 6 hours and 33 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

As far as an assessment of Judge Zambakhidze value order is concerned, her opinion on punishability of a person for inflicting harm to her- or himself was of interest. The candidate noted that on the one hand she did not support the policy of criminal prosecution of narcotic substance abusers (although she refrained from commenting on legalization of narcotic substances), but on the other hand, when discussing the euthanasia issue, she focused on the importance of the right to life and on state's positive obligations.

When asked about the recognition of the existence of God and God's truth by the state, the candidate said that the principle of secular state is important, but **"denying the other part would probably not be right either."**

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

Judge Zambakhidze refrained from supplying an answer to one of the questions and said that she had heard an answer to that question during hearings of other candidates. This attitude reflects favorably on the judge's personal integrity.

14 Nomination of Tamar Zambakhidze's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

15 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

Such actions generally point at the candidate's honesty and personal conscience. Accordingly, they leave an impression that the behavior that comes into conflict with the candidate's internal disposition causes her discomfort, even when the public is not aware that the behavior takes place and it could prove to be a factor that would foster her career advancement.

The candidate said that there had not been a court ruling on a case in her career which she later regretted, although there were occasions when she had recognized the need for more supporting arguments in her decisions. This attitude underscores that candidate is self-critical and strives to constantly develop professionally.

Judge Zambakhidze considers it normal that at a judge's conference, members of the Council of Justice were sometimes elected without rivals and without presenting an electoral program in advance. The candidate tried to explain her position by saying that everyone knows everyone anyway in the court system.

The candidate did not think it a violation of a judicial duty that Mikheil Chinchaladze heard few or no cases at all over years. The candidate believes that this is a standard widely used in Western Europe, too, where chairpersons perform administrative functions and do not hear cases.

□ *Independence, impartiality and fairness:*

When asked a question about different outcomes of several similar high-profile cases, Judge Zambakhidze said that she did was not familiar with the mentioned cases and that her specialization prevented her from giving a proper judgement on the cases in question.

She said she saw no danger to independence and impartiality in court chairpersons' participation in the process of assignment of narrow specializations and their potential effect on the electronic case distribution system.

When discussing one of the most important issues, namely, that of the procedure of the selection of judges for an appellate court collegium by the



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court chairman, the candidate said that she did not find this kind of regulation problematic. According to Judge Zambakhidze, the composition of the collegium is not determined for individual cases, instead, judges are selected to collegiums for the long term and then for many years adjudicate cases of a particular category.

However, when asked a question related to the same issue – what, besides good will, hinders the court chairperson from changing the composition of collegiums, the candidate said that there is neither a need for, nor practice of such changes, and that she was certain that no court chairperson had the desire to do it, too.

Overall, when discussing the expediency of a judge's involvement in political debates or making political statements, the candidate said that, because of ethical duties, she could only discuss the standards which regulate these behaviors, but could not express her opinion on the behavior of individual judges.

Judge Zambakhidze's answers to questions related to these issues might indicate a raised level of caution in stating her opinions about the problems facing the court system. The cautious attitude of this kind might on the one hand point at the candidate's lack of courage to publicly express her view on real problems facing the judiciary, while on the other hand this could be explained by the concern to prevent even further decline of the public trust in the judiciary system. However, of these conflicting two conflict explanations advantage should probably be given to the public discussion of problems because, as the open format of the hearing itself has demonstrated, the openness to public is a very effective mechanism of eradication of problems, including in the judiciary system.

□ *Personal and professional conduct:*

Citing professional ethics as the reason, the candidate refrained from giving legal assessments to the court case in which her colleague was involved and on which a common court of the first instance had already handed down a decision. However,

when a hypothetical example was given that was similar to the above case in factual content, Judge Zambakhidze discussed it confidently. This again could leave an impression that on the one hand, it is in order to discuss a court case which is presented as a hypothetical example, while on the other hand, in some cases the candidate tried to avoid undesirable questions by citing ethical standards.

□ *Personal and professional reputation:*

The candidate considers gaining and boosting the public trust in the judiciary system a daily challenge which not only the court system as an integrated system, but every individual judge should strive to take on within the limits of their authority. At the same time, the candidate believes that the public trust in the judiciary system has increased, although she went on to remark that her answer was based on her personal impressions and is not necessarily based on opinion polls conducted by any international organization.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

After the hearing held at the Legal Issues Committee of the Georgian Parliament, it could be said that the candidate has close familiarity with both national and international justice and law.

When discussing the right affirmed in Article 1 of Protocol No. 4 to the European Convention on Human Rights, the candidate, having underscored the historical background and significance of the document and its unconformity with current standards, commented that *“at present, it should be an absolute right. From this standpoint, it is impermissible to deprive a person of liberty on the grounds of his or her inability to fulfil a civil obligation.”*

When talking about a provision of the Civil Code which bans divorce in case of the wife's pregnancy or within one year from the birth of a child, the candidate drew attention to the purpose of the law – to defend the child's interests from the



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psychological and emotional setting of the divorce – but questioned the effectiveness of the law in achieving its stated purpose.

Judge Zambakhidze's answers left the impression that her knowledge of the legal matters was profound, rather than superficial, and well thought out. She also did not shun admitting her ignorance when she was asked questions to which she had no answers, but there were only a few such instances during the hearing.

□ *Skills and competences of legal argumentation:*

When asked the question of why the Georgian Constitution bans holding a referendum on the issue of restriction of a fundamental constitutional human right, the candidate's initial answer was generalized and for the most part centered around the importance of human rights in a rule-of-law state. However, after the clarifying questions were asked, the candidate explained that such impositions by the majority are connected with the principles of liberal democracy.

Judge Zambakhidze said during the hearing that she subscribed to the principle that the freedom of expression can only be restricted when insults are hurled in a face-to-face altercation. At the same time the candidate commented that, if one side insults another in a court building, so that the insulted side has not heard the insult, the provision of the law which makes this action punishable is debatable, which is why she would find it hard to supply a straightforward answer. It has to be noted, compared with other candidates, Judge Zambakhidze's answers on such issues are forthright and progressive.

□ *Written and verbal communication skills:*

For the duration of the hearing, the candidate answers to the questions asked were composed and pertinent. The candidate has an established view on a whole range of issues, which she is able to consistently argue for. She is tolerant to a difference of opinions and shows no difficulty accepting a critical opinion.

□ *Professional skills:*

The candidate tried her best not to disclose and keep unidentifiable the court case of a person which she adjudicated and in which she established discrimination against the plaintiff on political grounds. The candidate resorted to professional ethical standards on more than one occasion to explain why she refrained from voicing her assessment of individual events, governance forms, or high-profile cases.

□ *Academic achievements and professional training:*

In the candidate's reckoning, the first female associate justice of the US Supreme Court, Sandra Day O'Connor, was the special influence for her professionally as a judge.

□ *Professional activity:*

In terms of professional activities, the candidate highlighted the establishment of friendly relations with GIZ assistance between the Tbilisi Court of Appeals and the Highest Regional Court of Dresden as an event that had a positive effect on the personal and professional development of the judges of the Chamber for Civil Cases.

The candidate said that she maintained professional relations with the former chairperson of the abovementioned German court in the process of handling especially important landmark cases.



SHALVA TADUMADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Shalva Tadumadze was nominated¹⁶ by 10 votes against 2 for the Georgian Parliament's¹⁷ approval for the selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Shalva Tadumadze on 9 October 2019.

The hearing of General Prosecutor Tadumadze continued for 8 hours and 57 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

General Prosecutor Shalva Tadumadze believes the law vs justice dilemma should be resolved in favor of justice. He also believes that democratic procedures help minimize the imbalance between law and justice.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

During the hearing at the Legal Issues Committee, the candidate said that he has never given a thought to the expediency of making a public statement about the initiation of criminal proceedings under the "Mamuka Khazaradze and Badri Japaridze case" and how damaging that statement could prove to the company owned by the accused persons.

The candidate does not feel moral responsibility for the fact that the alleged leaking of answers to the judges' qualification exams in 2015 remains uninvestigated to this day

□ *Independence, impartiality and fairness:*

In connection with granting the status of injured party to a journalist who took part in a protest action on 20 June 2019 and was injured by rubber baton

rounds, General Prosecutor Tadumadze explained that investigation was under way to identify the individual who inflicted injury and that the status would be granted to the journalist after that person is found.

It has to be said that, when asked if a person should not be recognized as an injured party when his or her house is burgled until the burglar is found, the candidate supplied a fundamentally different answer, saying that such person should be considered an injured party. However, to justify his differing opinion in the case of the journalists, General Prosecutor Tadumadze went on to say that the law does not set the time table for granting the status of injured party, which could be the reason why the journalist was not recognized as injured from the time of the injury and until the time of the hearing at the Legal Issues Committee.

There are several reasons why the difference in the incumbent general prosecutor's reasoning on similar cases merits attention. The candidate's mutually contradictory answers might give a neutral observer a feeling that the candidate either is not fully familiar with the standards of recognition of a person as an injured party as described in the criminal procedure law, or he cannot manage taking independent decisions against the interests of the ruling political party and makes an intentional attempt to delude the general public. Both options are problematic for a candidate for the Supreme Court judge. The latter option is probably especially harmful for the judiciary system because a possibility of affiliation with the ruling political party will create a sentiment among all parties that in the future, he will not be able to repress this attitude and maintain political neutrality even when he starts exercising his judiciary authority.

□ *Personal and professional conduct:*

The candidate admitted that the European Court of Human Rights case, Conrad vs Italy, mentioned in one of his petitions for an arrest warrant, in particular the petition to Parliament to allow Nikanor Melia's arrest, did not exist, and its appearance in the document was caused by a technical glitch.

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16 Nomination of Shalva Tadumadze's candidature.

Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

17 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019



SHALVA TADUMADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

However, he did assume full responsibility for the glitch as a signatory to and the author of the document. This attitude of the candidate should be appreciated because, although on the one hand it might be an indicator of his honesty and ability to accept responsibility of a mistake, on the other hand it might underscore his negligence in dealing with cases at hand and lack of skill to review the documents composed on his behalf with due attention.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

In the candidate's opinion, the reason why the right to life is not an absolute right is because state can wage a defensive war and in general, has legitimate grounds to use weapons.

In fact, state has the right to take human life not only when waging a defensive war, but also to protect the rights of other persons. An individual also has the right to, say, use deadly force in self-defense if it is immediately necessary. Therefore, the candidates answer, especially given that he occupies the post of general prosecutor, leaves the impression that his familiarity with fundamental issues of criminal law, among other things, is incomplete.

□ *Skills and competences of legal argumentation:*

During the hearing held at the Legal Issues Committee, the candidate refused to answer questions from a representative of the Coalition for an Independent and Transparent Judiciary. The coalition representative was present at the committee hearing on behalf of 40 non-governmental organizations operating in Georgia. However, the candidate proved unable to conceal his personal negative sentiment toward the author of the questions, and it was evident that the decision to refuse to answer questions also stemmed from his personal resentment. This kind of behavior by the candidate leaves an impression that General Prosecutor Shalva Tadumadze finds it difficult to rise above personal emotions and personal biases.

He could not manage to be patient and tolerant towards a differing, even though critical, opinion, which is ought to be so important characteristic quality of a judge.

□ *Written and verbal communication skills:*

The candidate answered questions about issues on which he possessed sufficient factual knowledge with logical consistency and exhaustively. However, as far as those questions are concerned on which the candidate does not have adequate knowledge, it became obvious that he manifested insincerity and attempted to manipulation by resorting to generalizations, which might constitute an attempt to create an image of competence. On a number of occasions, if the person who asked a question made critical remarks or posed a rhetorical question, undisguised aggression towards the interviewer could be sensed in General Prosecutor Tadumadze's tone.

□ *Professional skills:*

The abovementioned incident in the case of petition filed against Nikanor Melia might make an observer think that the candidate treats his official duties superficially and with indifference. That incident is rendered particularly important by the fact that it dealt with the request to strip a Parliament member of his immunity, and by filing the abovementioned document, the prosecution official had effectively presented false, non-existent legal arguments in support of the petition. The incident cannot be interpreted in favor of the candidate's attitude towards the Georgian Parliament as an institution.

□ *Academic achievements and professional training:*

A considerable share of the questions asked of the candidate concerned the document proving his legal education, his diploma. It has to be said that the answers which the candidate supplied to legitimate questions about the alleged forgery of the document were unconvincing and would give rise to even more questions in a neutral observer.



VLADIMIR KAKABADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Vladimir Kakabadze was nominated¹⁸ by 10 votes against 2 for the Georgian Parliament's¹⁹ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Vladimir Kakabadze on 11 October 2019.

The hearing of Judge Kakabadze continued for 5 hours and 6 minutes.

OPINIONS ABOUT THE CANDIDATES VALUES

Judge Vladimir Kakabadze does not subscribe to the principle that that the person should not be punished for inflicting harm to him- or herself. He explained that a human is part of society, and it is possible that causing harm to him- or herself could inflict moral damage to other persons. Therefore, the candidate deems it justified to impose "certain restraining mechanisms" on the individual's freedom (to inflict harm to him- or herself). As for abuse of narcotic substances, the candidate considers "some kind of influence" permissible in this case.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

Judge Kakabadze believes that it is "generally good if a judge is at the same time involved in scholarly activities," but in his words, due to taxing judiciary duties, judges have little time left for that. The candidate went on to say that scholarly research should not be a decisive or only criterion in the assessment of a candidate. By and large, the answer left the impression that, although the candidate realized the importance of publicly available academic works authored by judges, he at

the same time sought to cite a busy schedule and lack of time as an explanation for why he had not engaged in academic research and downplay the importance of scholarly endeavors as a criterion for his selection as a Supreme Court judge.

When asked if the court system was independent before 2012, the candidate said that, in order to supply an answer, he would have to make political assessments and that would violate the ethics code.

□ *Independence, impartiality and fairness:*

During the hearing, the candidate could not recall the meaning of conditioned liability, although one of the high-profile court cases, the so-called Philip Morris case, was associated with his name and in the process of adjudication he predicated some of his decisions precisely on the concept of conditioned liability.

Judge Kakabadze filed a defamation suit against Fady Asly, chairman of the International Chamber of Commerce in Georgia.

Judge Kakabadze sued Fady Asly in court for slander and damage to honor and dignity. It is interesting that his lawsuit was heard by the same court of law where the candidate (the plaintiff) was employed. When asked about this matter, the candidate explained that some of the statements which decided him to sue belonged not to Fady Asly, as Judge Kakabadze had wrongly presumed, but to a journalist, as the court of appeals had established. The candidate claimed throughout the committee hearing that Fady Asly accused him of committing a crime.

□ *Personal and professional conduct:*

By the end of the hearing the candidate often referred to fatigue and the duration of the hearing, although his hearing was not particularly different from other candidates' in terms of duration. Accordingly, questions arise about the candidate's ability to adjudicate the cases satisfactorily and administer justice effectively when working under stressful circumstances.

In his answers, the candidate used the phrase "absolute short-sightedness," which is unbecoming not only of the lofty status of a candidate for

18 Nomination of Vladimir Kakabadze's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

19 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019



VLADIMIR KAKABADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

the Supreme Court judge, but in general of a representative of the judiciary branch of power and the process and place in which the candidate was taking part or seated.

□ *Personal and professional reputation:*

The candidate's answers to questions about restrictions on contempt/criticism of court or the judiciary and expulsion of persons from courtroom left an impression that the candidate considers punishment and the use of strict and repressive measures as the optimum way of safeguarding the judges' and the judiciary's reputation.

The candidate intends to go to the European Court of Human Rights with the court case in which he was a plaintiff and in which the Georgian Supreme Court ruled a statement that was made about him as an opinion, rather than a fact, and denied him a compensation for moral damages. The candidate also argued that the circumstances that unfolded following that court process showed him in a positive light to the public.

"I appeared in the public eye as a judge to whom the issue of dignity is highly sensitive."

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms, skills and competences of legal argumentation:*

The candidate supplied an answer to the question about a fundamental principle of criminal law – that of the difference between individual responsibility and sentencing disparity – but he was unable to explain the meaning of criminal capacity, citing his lack of competence in the field of criminal law as the reason. When asked about the differences between the ways in which the Georgian Constitution and the protocol to the European Convention of Human Rights deal with the issue of protection of property rights, the candidate said that those documents were in tune and he could not see any major difference. He also indicated that he did not know about the document of historic significance, *Magna Carta Libertatum*, although he did make a general remark

that the main achievement of the Great Charter was *"universal human values which are described in it."*

When asked to differentiate between the uniform judicial practice and case law, Judge Kakabadze's reply was exceedingly general and left a neutral observer with an impression that he may not have a thorough factual knowledge on the subject.

□ *Written and verbal communication skills:*

When asked about works of fiction with offensive content, contempt of court or insult to the judge, need to restrict the freedom of expression in these instances, and in general about the need for legal liability for such offenses, the candidate supplied a general answer that was centered around narrow, formalistic interpretation of legal provisions. The candidate often focused on less important or ancillary details, which took his answers even further away from the gist of the questions.

The participants often had to ask their questions again, or to re-word their questions more clearly for the candidate, which created an impression that the candidate did not listen attentively enough to the questions or was trying to shift the direction the discussion was taking, or perhaps he really struggled to apprehend the meaning of the questions.

The candidate's answers left the impression that he rejected different opinions to some extent. When he was asked questions about the court cases he adjudicated or about the lawsuit he filed, the candidate's displeasure was obvious, and on a number of occasions his tone clearly changed to aggressive. Because of the candidate's behavior, the chairperson of the Legal Issues Committee sitting had to get intervene in the hearing to remind the candidate of the rules of conduct in the process of hearing and of the need to observe those rules.

□ *Academic achievement and professional training:*

The scholarly work which the candidate wrote is not available to the public. According to the candidate, he authored only works which he needed to obtain the PhD degree, and that his works are not publicly accessible.



LEVAN MIKABERIDZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Levan Mikaberidze was nominated²⁰ by 10 votes against 2 for the Georgian Parliament's²¹ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Levan Mikaberidze on 21 October 2019.

The hearing of Judge Mikaberidze continued for 5 hours and 27 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

Judge Levan Mikaberidze deems impermissible restricting criticism of judges for the sole reason that a judge might not like it. He maintained that judges are not "flowers" to wither from criticism.

The judge endorsed the principle that an individual must not be punished for inflicting harm to him- or herself and he subscribed to the Georgian Constitutional Court's decision on punishment of individuals for abuse of narcotic substances. In particular, Mikaberidze approved of the Constitutional Court's position that the paternalistic approach on the part of state is not compatible with a free society. It is interesting that the candidate was consistent in his conviction and considers the recent amendment to the Georgian Constitution which permits restricting the freedom of religion for healthcare-related reasons as coming into conflict with his view.

Judge Mikaberidze supports the idea of secular state. However, stating as the reason the fact that he has not thought over the issue thoroughly enough, he evaded giving an assessment to the legal provision which gives the Georgian Catholicos-Patriarch unfettered discretion to confer a theology degree without any preliminary procedures or requirements.

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20 Nomination of Levan Mikaberidze's candidature.

Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

21 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

Judge Mikaberidze often commented when answering different questions that he had not properly thought out the issue raised in the question and therefore it was difficult for him to supply an answer. The candidate's personal integrity and desire to be honest in admitting what he does not know and has not thought about is commendable.

His view that only persons older than 40 should be appointed as the Supreme Court judges comes into conflict with the candidate's integrity and professional conscientiousness because he himself has not yet reached that age limit yet. He explained that his decision to get nominated was based on the current realities and regulations.

□ *Independence, impartiality and fairness:*

The candidate's answers to questions about the electronic case distribution system and about the selection of compositions of collegiums in the Court of Appeals were too general, mainly centered around positive aspects, and left an impression that the candidate was trying his best to refrain from drawing attention to the negative aspects of the court chairperson's participation in these processes.

Judge Levan Mikaberidze's answers to the questions mentioned above, which focused on narrow legal regulations and said nothing about the negative sides of the existing practice, raised concerns about lack of independence and impartiality.

The candidate used the same arguments to avoid giving an assessment to the situation in the judiciary branch in 2004-2012 as other judges cited more than once during the committee hearings period, in particular, the candidate claimed that, although he did hear about reports written by international organizations which appraised the level of judiciary independence in during that period, he himself has never personally witnessed any concrete facts.



LEVAN MIKABERIDZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

□ *Personal and professional conduct:*

Judge Levan Mikaberidze could not recollect the details or significance of one of the decisions by the European Court of Human Rights which he had mentioned in one of his decisions.

□ *Personal and professional reputation:*

When discussing the problems facing the court system, the candidate singled out protracted times of court proceedings (although he added right away that there are objective causes for that problem, too).

Similarly to other candidate's answers, Judge Levan Mikaberidze also found it awkward to discuss the problems existing within the system and informal relations which probably exist within the court system.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

When discussing the difference in legal rights between people in a common-law marriage and in de facto marriage, the candidate listed several main characteristics, and drew attention to a decision of the European Court of Human Rights and the possibility of adjudicating a case based on that decision. However, when changing to the topic of whether or not this line of action can be considered discriminatory when discussing the same issue, the candidate said that at first sight, it might create an awkward situation.

The candidate is not familiar with the changes which are currently taking place in his area of competence as a judge and which are known as the fourth wave of the judiciary reform

□ *Skills and competences of legal argumentation:*

Judge Levan Mikaberidze regularly commented when answering many questions that he had not thoroughly thought out the issue and therefore would be unable or find it difficult to supply an answer. This behavior was appraised as positive in the personal integrity section above, although it has a flip side as well, in particular, it raises questions

whether the candidate's level of competence at this stage meets the qualification requirements for the post he is seeking to occupy.

As for the questions which the candidate answered, he said that he has not "globally pondered" over the possibility of instituting judiciary control over the presidential act of pardon and limited himself to only generalized and superficial answer. The answer which the candidate supplied to the question about the main achievements of Magna Carta was also general and superficial.

In connection with the differentiation between the civil law and constitutional law definitions of dignity, the candidate turned out to be familiar with the main principle that the constitutional-law interpretation of dignity is broader and encompasses a civil-law interpretation, too, among other things.

Judge Levan Mikaberidze opined when asked about the president's refusal to exercise her constitutional power to pardon that "we can as good as reckon that it could be unconstitutional"

□ *Written and verbal communication skills:*

Despite the fact that throughout the duration of the constitutional hearing the candidate remained calm and strove to supply answers to questions in a composed manner, his deliberations were unconvincing and often generalized and vague. On a number of occasions, the candidate's reasoning failed to supply answers to the questions asked.

□ *Professional skills:*

The observations provided above regarding the candidate's competence makes it difficult to assess his professional skills. The candidate was effectively supplying a full and exhaustive answer to any of the questions asked.

□ *Academic achievements and professional training:*

It is difficult to discuss the candidate's academic achievements and professional training conclusively based solely on the committee hearing results because he reiterated more than once that he had not thought out particular issues thoroughly,



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which at one point the candidate attributed to his unwillingness to supply a wrong answer to the question, whereas when adjudicating the case, he would have more time to formulate a well-argued justification for this decision.

□ *Professional activity:*

The candidate has not written any academic works but argued that academic activities must not be given decisive importance when assessing the candidate's suitability. However, the candidate may have been insincere, too, and this opinion could be an attempt to justify his situation.



GIORGI MIKAUTADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Giorgi Mikautadze was nominated²² by 11 votes against 1 for the Georgian Parliament's²³ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Giorgi Mikautadze on 22 October 2019.

The hearing of Judge Mikautadze continued for 9 hours and 25 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

It can be said based on the hearing of Judge Mikautadze at a sitting of the Georgian Parliament's Legal Issues Committee that he supports the idea of individual freedom.

The candidate endorsed the opinion that no person should be punished for inflicting harm to him- or herself. It is noteworthy that the candidate did not mention any exceptions from this principle.

In a dilemma between equality and liberty, Judge Mikautadze chooses liberty. When asked in whose favor he would adjudicate a dispute between a confectionist who out of his religious belief refused to bake a wedding cake for a gay couple and the gay couple who demand their right to be treated equitably, the candidate said that in this case the dispute should be resolved in favor of the freedom of religion.

The candidate argued that the competence and integrity of a person occupying a post cannot be judged based on posts which he occupied in the past.

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22 Nomination of Giorgi Mikautadze's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

23 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

In accordance with the rules established by the High Council of Justice, the candidate for the Supreme Court judge must submit before the sitting three letters of recommendation. Despite this requirement, Judge Mikautadze submitted two recommendation letters and explained when asked for the reason that submitting three references was not an obligation established by the constitution or an organic law.

The constitution and organic law establish the procedure of selection of the Supreme Court judges, but that does not mean that the qualification requirements or formalities introduced by the High Council of Justice, including the requirement to submit mandatory documents are not obligatory for the candidates seeking the position of a Supreme Court judge. Naturally, there is an expectation that Judge Mikautadze had a clear understanding of a legal regulation currently in effect. Despite that, he still tried to justify his action, which left a negative impression of his personal and professional integrity.

The attitude which the candidate demonstrated might leave a neutral observer under the impression that he lacks respect for the supremacy of law and the mandatory rules established by a body of which he himself is the head. In addition, in the case of any other candidate a failure of this sort would very likely result in a rejection during the very first phase of the selection process on the grounds of inability to satisfy a formal criterion, but the council's conniving attitude towards Giorgi Mikautadze gives rise to even more questions about his affiliation with an influential group of judges with in the judiciary system.

When asked what type of bill he would propose in Parliament if he had a legislative authority, the candidate said that he would propose a bill amending the Administrative Offences Code.

That the Administrative Offences Code is problematic and is viewed as mechanism of violations of human rights is a subject of broad consensus among the



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CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

public and most of the incumbent judges. But it is a fact that the candidate adjudicated administrative offence cases for a certain period of time, but never filed a communication with the Georgian Constitutional Court in connection with violations of human rights. Moreover, he resolved the cases based on the provisions of the code. This situation evokes a feeling that the candidate could make decisions even on those cases in which he experiences an internal conflict between law and justice.

□ *Independence, impartiality, fairness:*

Judge Mikautadze does not consider it an institutional flaw that during the process of selection of candidates for the positions of the Supreme Court judges, only the judiciary members of the High Council of Justice had access to the candidate's biographical information and information about their consent to participate in the selection process, but the non-judiciary members of the council had no such access.

A neutral observer could give a negative assessment to this answer and get an impression that the candidate does not have the ability to analyze the facts objectively, or that he realizes the negative nature of the fact but cannot maintain neutrality towards the process.

□ *Personal and professional conduct:*

Judge Mikautadze confirmed during the sitting of the Legal Issues Committee that he covered a large portion of the cost of the apartment he bought in 2014 with a sum he had received from his family, although he has not included that amount in his tax return. The candidate also did not deny during the hearing that he was under an obligation to account for the amount in his tax return, but could not remember why he did not fulfil that obligation. Despite that, he publicly vouched that he would submit appropriate documents about his income sources to Parliament. The admission of the misdeed/offense could on the one hand be interpreted as a positive finding about the candidate, but given Judge Mikautadze's professional responsibilities, unlawful actions of this sort could be perceived as an inappropriate attitude towards the supremacy of law.

□ *Personal and professional reputation:*

When asked about his opinion on the so-called "zero tolerance" and oppressive criminal policy, the candidate said that the Georgian law provided for a release of a criminal from criminal accountability if the damage was insignificant.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

When asked about his actions if he, as a judge of the Administrative Chamber, is under an obligation to sentence an individual to administrative detention, but also knows that the situation in the penitentiary establishment is not appropriate, the candidate said that if there is a threat of inhumane treatment in the cell, he would try to use an alternative form of penalty.

□ *Skills and competences of legal argumentation:*

When asked what the supremacy of the constitution or law means and what is the origin of the concept of "supremacy" in this context, the candidate commented that the only thing related to supremacy that comes to his mind is God.

When asked about the presidential power to pardon a convict and at the same time reverse an individual's conviction, Judge Mikautadze said that the president had the power to reverse a conviction, but could not remember if the power to reverse a conviction was her prerogative.

Similarly, the candidate knew that criminal law cannot be applied by analogy with substantive provisions, but had difficulty supplying an answer about the procedural provisions. In combination, these answers gave an impression that, although the candidate possesses general knowledge about the criminal law, it is not profound enough to provide exhaustive and convincing answers to questions asked about the subject.

□ *Written and verbal communication skills:*

It can be said based on the hearing held at the Legal Issues Committee that Judge Mikautadze



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answered questions with confidence and properly apprehended the gist of the questions asked. The candidate wanted to be sincere, but whenever he was confronted with a rhetorical or pointedly critical question, the candidate did not answer straightforwardly. Also, critical questions and assessments by some of the Parliament members irritated the candidate, and signs of aggression were noticeable in his behavior, which might indicate lack of respect for both the deputies and Parliament as an institution. The candidate replied to critically-minded members of Parliament with the following words: “*I have not come here to listen to your political toasts.*”

- *Academic achievements and professional training:*

Judge Mikautadze has not published an academic work or a paper.

The candidate said that he periodically familiarizes himself with the decisions of the Constitutional Court.



PAATA SILAGADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Paata Silagadze was nominated²⁴ by 10 votes against 2 for the Georgian Parliament's²⁵ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Paata Silagadze on 23 October 2019.

The hearing of Judge Silagadze continued for 6 hours and 23 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

Judge Silagadze believes that Georgia is a Christian state, he recognizes the **primacy** of the Orthodox Church, but also adds that on account of tolerance, other religions have the right to exist, too. At the same time, the candidate subscribes to the opinion that transferring supremacy from God to the people after the transition to the republican model was a step forward.

When discussing the punishability of a person for inflicting harm to him- or herself, the candidate focused only on the issue of narcotic substance abuse and placed an emphasis on the need for *"effective measures"* on the part of the state.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

Judge Silagadze was unable to recollect a single mistake he has made in his capacity of a public servant.

When discussing the events which unfolded prior to the submission by the High Council of Justice of the list of candidates for the Georgian Supreme Court judges in December 2018, the candidate said that he submitted a written consent to the council,

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24 Nomination of Paata Silagadze's candidature.
Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

25 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923> last accessed 3 December 2019

although at the hearing held on the previous day, Council Secretary Giorgi Mikautadze stated that no such consent letters were submitted by the candidates.

□ *Independence, impartiality and fairness:*

The candidate's answers to questions concerning the activities of the High Council of Justice echoed almost exactly the opinions which the judiciary members who constituted a majority in the council expressed in response criticism directed against them. Accordingly, the candidate's answers leave an impression that he may not be unbiased towards that group in the council.

When discussing the degree of independence of the judiciary before and after 2012, the candidate, like many other candidates, noted that the **"legislative pressure was relieved"** and that no one has ever put him personally under pressure.

When asked why he never handed down an acquitting verdict before 2012, but passed 22 acquittals after 2012, the candidate explained that the cases at hand did not yield themselves to acquittals. *"You have to run into a case in which an individual is to be acquitted..."* At the same, he remarked that he did hand down partially acquitting sentences before 2012.

When asked if Levan Murusidze could come a different decision in Girgvliani case, the candidate said that due to ethical rules, he would refrain from evaluating the decision.

□ *Personal and professional conduct:*

In addition to the fact that most of the answers which the candidate supplied raised questions about his competence, there were frequent occasions during the committee hearing when the candidate engaged in a debate with persons who asked him questions. His statements about and answers to questions by Ms. Eka Beselia and Mr. Levan Gogichashvili indicate that the candidate is unable to accept a different opinion and is not open to criticism, however harsh.



PAATA SILAGADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

□ *Personal and professional reputation:*

In the candidate's opinion, the December 2018 events did not have a negative effect on the reputation of the judiciary system, furthermore, he deems the nomination of the candidates for the Supreme Court judges by the council in 2018 an effective method of addressing the ongoing problem.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

The candidate's answers to questions about the limits to the authority to pardon and about the autonomous interpretation of the constitutional provisions made it clear that the candidate first, provides narrow textual explanations of the provisions of criminal law; second, does not know what the principle of autonomous interpretation of the constitutional provisions means, and third, he is accordingly unable to formulate a coherent logical reasoning on both issues.

In Judge Silagadze's assessment, if the Tbilisi City Hall's invitation to bid for tenders to renovate the pavements did not include as one of the clauses a condition to provide wheelchair ramps and ensure that the pavements are properly adapted for wheelchair users, it would constitute an example of direct discrimination because *"it would directly hinder their movement."*

The candidate could not differential between the ex post facto and retroactivity in mitius principles, and accordingly could not answer the question about which of them should be prohibited.

Judge Silagadze was unable to answer a question about the importance of the suspension effect in administrative law, citing his lack of competence in that particular field as the reason.

□ *Skills and competences of legal argumentation:*

Judge Silagadze believes that the problem of the disabled persons lies in their physical condition rather than in the environment in which they live. The candidate deems as a disabled person an individual

"who cannot see, cannot hear, cannot walk," rather than the one who cannot manage to exercise his rights because of the environment which is not adapted to his or her needs.

Judge Silagadze does not know the criteria and rules for restricting the freedom expression and is not familiar with the so-called three-prong test, moreover, attempting to formulate his answer on this question the candidate cited a test which is to be used to establish the presence of discriminating treatment, but did it incorrectly.

□ *Written and verbal communication skills:*

The candidate answered questions unconvincingly and vaguely, which, in addition to lack of competence, might also be caused by problems in general verbal communication and the ability to develop logical legal reasoning. In addition, the candidate's choice of wording and attitudes he demonstrated towards some of the Parliament member is unbecoming not only of the lofty ethical standards which a candidate for the Supreme Court judge has to comply with, but in general of the rules of conduct of a representative of the judiciary branch.

□ *Professional skills:*

It is difficult to give a positive assessment to Judge Silagadze's professional skills. For the duration of the committee hearing, the candidate was either unable to supply answers to the questions asked, or engaged a generalized superficial reasoning which lacked consistency and systematization.

Besides the competence part, Judge Silagadze's integrity and impartiality also come into question, especially in connection with the issues which fall into the sphere of interests of an influential group operating within the judiciary system.

□ *Academic achievements, professional training and professional activity:*

Judge Silagadze not only has not written any academic paper or work, but also stated that he had not read a single academic work in the last three years that would promote his professional growth.



NUGZAR SKHIRTLDZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Nugzar Skhirtladze was nominated²⁶ by 11 votes against 1 for the Georgian Parliament's²⁷ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Nugzar Skhirtladze on 24 October 2019.

The hearing of Judge Skhirtladze continued for 5 hours and 23 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

During the hearing at a session of the Georgian Parliament's Legal Issues Committee, the candidate said that he supported the principle that a person cannot be punished for inflicting harm to him- or herself. The candidate also believes that state has no right to interfere in the individual's freedom, including when the individual acts irrationally and to his or her own detriment.

Judge Skhirtladze also shares political philosopher John Stuart Mill's premise that the views of a majority in society must not be imposed on individuals, but contrary to that premise, allows for the possibility that the freedom of expression can sometimes be restricted on the grounds of protecting public morality if whatever is expressed hurts religious feelings. The answer which the candidate supplied affords an inference that, in his view, he can fit the public morality into the grounds which the Georgian Constitution provides for restricting the freedom – other persons' rights – by interpreting it broadly.

In Judge Skhirtladze's assessment, the civil society organizations play the role of the so-called "night watch" in a democratic state and promote the development of society by holding public debates.

Although the candidate thinks that members of the

LGBT community should have the same property rights guarantees towards each other as wedded straight people do, he also remarked that **not all of the society is ready for this**. This opinion leaves an impression that the candidate subscribes to the fundamental constitutional principle of equality, while at the same time harboring a tolerant attitude toward conservative views.

In addition, the candidate's effort to avoid as much as possible supplying answers based on his own views and opinions was highly conspicuous at the committee hearing. This prevented the possibility of providing a better assessment of the candidate's value order. Instead, Judge Skhirtladze sought to cite precedents in both domestic and international courts and points of view provided in the professional literature, making it unclear if he personally subscribed to those opinions and principles.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

When asked if in his 21 years as a practicing judge he encountered the cases on which in hindsight he would have handed down a different decision, the candidate for judge honestly said that there were such cases and provided the following justification:

"There are issues which stand out for their exceeding complexity, although at the same time, the judge is limited by strict deadlines, so at such times a possibility cannot be ruled out that the decision which back then you thought was correct eventually might appear as unjustifiable to you."

This answer shows that Judge Skhirtladze has a strong understanding of the specifics of the judiciary profession and of jurisprudence in general, and is critical of his own abilities, which points at his personal and professional integrity.

As it transpired during the committee hearing, the candidate considers the principle of separation of powers and instatement of the supremacy of human rights the main achievements of the Georgian Constitution, which ultimately fostered the development of democratic processes in the country.

26 Nomination of Nugzar Skhirtladze's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

27 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019



NUGZAR SKHIRTLDZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

The candidate left the impression of a humble person. Despite his 21 years of judiciary experience, he is critical of both himself and his decisions.

□ *Independence, impartiality and fairness:*

The candidate endorsed the opinion that the political regime in Georgia before 2012 was oppressive, although he denied that it was a factor that could influence him as a judge in any manner.

When asked why the candidate stood by the Supreme Court's 2010 decision on forcing Lali Lazarashvili from the Administrative Cases Chamber to Criminal Cases Chamber, the candidate commented that it was a decision made by the plenum, and in view of the situation at that time, he felt that she had to move to the Criminal Cases Chamber.

When he asked if there are judges in the court system who played a special role in undermining the independence of the judiciary (for example, by introducing political requests into the court system and making the judges aware of them, by manipulating the case distribution system, or by punishing the politically disobedient judges), the candidate said that there were considerable flaws in disciplinary law. As for the manipulation of the case distribution system, the candidate said that he would need solid evidence before making any claims. He explained that he himself was interested in this question, but every time he saw a case number, it always coincided with its distribution assignment number.

Judge Skhirtladze explained that no preliminary agreement on a decision to be handed down on a case had ever taken place with anyone, including Mikheil Chinchaladze.

□ *Personal and professional reputation:*

Judge Skhirtladze has 21 years of experience as a practicing judge, which reflects well on his professional air and bearing. He is critical of his own decisions. During the hearing conducted at the session of the Georgian Parliament's Legal Affairs Committee, the candidate sought to competently argue his view and remained accepting of differing

opinions throughout the hearing. In the final analysis, all of the above factors speak in favor of his personal and professional reputation.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

Judge Skhirtladze explained during the hearing that, under the Georgian Constitution, the public morality is not a legitimate ground for restricting the freedom of expression, although under the convention, the freedom of expression can be restricted to safeguard the public morality. Explanations of this type leave an impression that the candidate has the precise knowledge of the provisions of the Georgian Constitution and the European Convention on Human Rights and of the differences between them, which counts in favor of his competence. However, the decision to lower the high standards of protection of a right established by the Georgian Constitution by applying a less demanding standard from the convention is debatable to say the least.

□ *Skills and competences of legal argumentation:*

When asked – “if you encounter the following difficulty when adjudicating a case in the Grand Chamber of the Supreme Court – you agree to the substantive part of the Grand Chamber's decision, but disagree with its motivating reasoning, what decision would you make?” – the candidate said that because the Supreme Court is an instance which regulates the principles of application of concepts, writing a quality motivating reasoning section should be given a priority over the substantive part of the decision.

This demonstrates that Judge Skhirtladze is has a good understanding of the main function of the Supreme Court within the judiciary system and within the legal framework in general, and also fully realizes the dilemma which he may face if he is appointed a Supreme Court judge.

□ *Written and verbal communication skills:*

The candidate successfully controlled his emotions throughout the hearing and maintained composure



NUGZAR SKHIRTLDZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

when confronted with critical and pointed questions. When answering some of the questions, his behavior made his personal opinion about the issue clear.

□ *Professional skills:*

Throughout the hearing, the candidate adequately apprehended the meaning of the questions, strove to be honest and had no difficulty admitting that he lacked the factual knowledge about the specific issue at hand. Despite this, there were several occurrences when Judge Skhirtladze struggled to convey precisely, unequivocally and concisely the ideas on which he did possess sufficient competence.

□ *Academic achievements, professional training and professional activity:*

The committee hearing, and the process of the candidate's supplying answers to questions specifically, left the impression that he has undergone quite an intense professional training. When answering questions, he effortlessly cited decisions by both the European Court of Human Rights and the Georgian Constitutional Court, and when conducting historical analysis, he mentioned a landmark case resolved by the US Supreme Court, Marbury vs Madison. The skills and abilities which he demonstrated and answers which he supplied during the hearing lead to the conclusion that his perception of the issues of fundamental importance for jurisdiction is broad and comprehensive.



LALI PAPIASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Lali Papiashvili was nominated²⁸ by 11 votes against 1 for the Georgian Parliament's²⁹ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Lali Papiashvili on 25 October 2019.

The hearing of Judge³⁰ Papiashvili continued for 6 hours and 19 minutes.

CONSIDERATIONS ABOUT THE CANDIDATE'S VALUES

Throughout the hearing which was conducted at the session of the Georgian Parliament's Legal Issues Committee, the candidate underscored on numerous occasions the special importance of human freedom. Judge Papiashvili's answers made it clear that this view was not merely a repetition of what she had read in the literature, but a result of deep thinking and reasoning.

The candidate subscribes to the principle that no person should be punished for inflicting harm to him- or herself. At the same time, Judge Papiashvili does not support American jurist Ronald Dworkin's postulate that in the conflict between liberty and equality, liberty must suffer defeat.

The discussion about John Stuart Mill's work provided information which was important for forming an opinion about the candidate's system of values. It transpired during the discussion on the topic that the candidate finds the tyranny of the majority unacceptable, is familiar with the foundations and achievements of liberal democracy, and in general, in comparison with other candidates possesses a profound knowledge of the issues mentioned above.

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28 Nomination of Lali Papiashvili's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

29 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

30 Judge of the Georgian Constitutional Court in 2007-2017.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

Lali Papiashvili provided for the most part a positive assessment to the 2016 legal changes concerning the Constitutional Court. However, the Constitutional Court, with the candidate's personal participation, declared most of the changes unconstitutional. The candidate provided as the reason for formulating her answer in this way the fact that the regulations were voided by the Constitutional Court decision anyway, and therefore at present they are absolutely inconsequential legally. Given that both the way the question was formulated and posed made the motivation clear – to invite the candidate as a former Constitutional Court judge to discuss the legal changes which hindered the work of the institution – the answer which the candidate supplied could raise questions in a neutral observer regarding her integrity. In particular, it created impression that the candidate did her best to avoid criticizing the decision (amending the laws that regulated the Constitutional Court's activities) passed by the ruling political party.

□ *Independence, impartiality and fairness:*

When asked about the transit of active incumbent politicians to the judiciary branch, Judge Papiashvili said that it is important in these circumstances to focus on how well the person in question *“manages to shoulder the judge's burden properly,”* and whether or not the interests of his or her former political team tug along the person. The candidate said that, *“if the person is free from that, if he or she is able to reach an absolute objective, upright decision, in that case I think that it should not be a big problem. In other words, I would be more inclined to gauge the product than those risks, although I do also understand that some questions may arise in connection with independence or, say, public perception.”*

The candidate's appraisal of the 2016 legal changes concerning the Constitutional Court might hinder a neutral observer from forming a clearer opinion about how independent, impartial or fair the candidate is.



LALI PAPIASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

As was already mentioned, Judge Papiashvili was a member of the plenum which declared a substantial part of those amendments inconsistent with the constitution precisely for the reason that they imposed restrictions on the Constitutional Court in violation of the constitution.

□ *Personal and professional conduct:*

During the committee hearing the candidate freely discussed her past decisions and opinions, and managed to explain the rationale and motives that guided her when she was addressing a particular issue. Unlike her evaluation of her own past activities, the candidate's references to the activities and behavior of a number of the High Council of Justice members was too general, and she refrained from identifying certain individuals.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

The hearing at the Georgian Parliament's Legal Issues Committee has demonstrated that the candidate has a close familiarity with the established practice of the Constitutional Court on different legal issues, including the practice on the principles of competition and equality (as well as on the differences between these principles) and with the Constitutional Court's practice in general.

In the candidate's judgement, the constitutional definition "*pardons convicts*" cannot be interpreted so broadly as to encompass the presidential power to pardon, among others, persons in administrative custody, too. According to Judge Papiashvili's explanation, the term of detention as an administrative sanction cannot be equated to the degree of restriction of freedom in an imprisonment for a crime.

□ *Skills and competences of legal argumentation:*

In the candidate's opinion, the recognition and protection of the universal human rights and freedoms by state imposes on the judiciary an obligation to be guided by the rights guaranteed at the level of the international law when the domestic

state law makes no direct and immediate provisions for those rights.

Judge Papiashvili said during the hearing that the Supreme Court has powers to refuse to apply a law when adjudicating a particular dispute and solve the court case in accordance with the constitution. However, she observed, this should be a one-off solution and cannot mitigate the risk that in other cases, other judges could reach a different decision on a dispute of the same nature, which is why she deems it more justifiable if under such circumstances, courts submit communications with the Constitutional Court.

In the candidate's opinion, the person should possess the right to apply to the Constitutional Court regarding a legal provision which caused him or her harm in the past but is no longer in effect. The candidate propped this opinion with the Constitutional Court's argument that entitling a person to go to the Constitutional Court directly could endanger legal order. However, she went on to say that from purely legal standpoint, the existence of such a mechanism would be more appropriate, but again, defining the cutoff time would be problematic. Judge Papiashvili's answers left a good impression about her legal competence and ability to argue.

In contrast to the reasonings above, the candidate sounded less convincing when supplying answers to questions about issues related to the freedom of expression, such as punishment for the desecration of the national flag or permissibility of non-observance of the presumption of innocence by a private individual against a public official. However, the candidate properly formulated the difference between preconditions for the establishment of liability for libel or slandering in cases of a public official and a private individual.

Judge Papiashvili explained persuasively, consistently and with recourse to legally correct arguments the effect and role of the landmark cases of the European Court of Human Rights for the Georgian Constitutional Court.



LALI PAPIASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

□ *Written and verbal communication skills:*

During the committee hearing, the candidate for the most part formulated her statements coherently and clearly, managed to cite legal arguments in support of her view, and her answers were relevant to the questions asked. There were only a few occurrences when the candidate had no answer to a legal question, which she admitted before attempting to offer an answer based on legal logic.

The candidate appeared to be accepting of differing opinions while at the same time managing to formulate her own position lucidly and consistently. She did not engage in heated debates with persons who asked her questions and managed to keep her emotions under control.

□ *Academic achievements, professional training and professional activity:*

Her biographical note said that the candidate has undergone training in human rights protection, criminal justice, humanitarian law, and legislative techniques at European and US institutions. She published some 30 academic works.



NINO KADAGIDZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Nino Kadagidze was nominated³¹ by 11 votes against 1 for the Georgian Parliament's³² approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Nino Kadagidze on 4 November 2019.

The hearing of Judge Kadagidze continued for 5 hours and 47 minutes.

CONSIDERATIONS ON THE CANDIDATE'S VALUES

Judge Kadagidze embraces the principle that the individual must not be punished for inflicting harm to him- or herself, but she does not rule out the possibility of involvement of a third person.

The analysis of this opinion leaves an impression that the candidate realizes the importance of individual's freedom in a free society, but her answer to the US Supreme Court decision in *Masterpiece Cakeshop vs Colorado Civil Rights Commission* case is noteworthy. The candidate said that the baker's refusal to bake a wedding cake for a member of the LGBTQ+ community was an example of discriminatory treatment and that it was difficult to talk about freedoms of any kind. The latter statement calls into question whether or not the candidate has a profound knowledge of the individual freedom, that is to say, a concept of negative liberty, and the extent of her apprehension of the idea. Her arguments were controversial and inconsistent.

Judge Kadagidze said that the "*elect ed democracy and liberal democracy are absolutely different categories,*" in particular, that liberal democracy was the maximum limitation of state with human rights.

31 Nomination of Nino Kadagidze's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

32 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

Georgia, the candidate commented, is more of liberal democracy as a state given its constitutional provisions, but how that is implemented in practice is another matter.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

Judge Kadagidze said that the nomination of the Supreme Court candidates in December 2018 could not be evaluated as a positive phenomenon given the developments that followed. The candidate thinks that the procedures were unquestionably legal, but considers the events which unfolded later as painful for her, so she could not rule out the possibility that she would have refused to be nominated the way she received an offer now.

□ *Independence, impartiality and fairness:*

When commenting on a judge's participation in political debates, the candidate referred to exceptional circumstances specified in Bangalore principles, including when the judge's integrity is concerned. However, she refrained for ethical reasons from expressing her opinion about her colleague's action, who criticized nongovernmental organizations (and not only them) in a public post. This behavior leaves an impression that the candidate's opinions about hypothetical issues differ from those about real ones, but because she had herself liked the abovementioned post, she decided to make no comments. This attitude of the candidate raises questions about her impartiality and fairness.

When asked if before 2012, the court system was politicized and under strong political pressure, the candidate explained that she had never come under any pressure. However, she could not rule out that there was political pressure on the judicial branch in 2004-2012.

Judge Kadagidze confirmed that, during the period of her work at the Supreme Court and the Court of Appeals, she had not written a dissenting opinion.



NINO KADAGIDZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

When talking about the constitutional standards of liberty, the candidate explained that “we have some inconformity with respect to European standards.”

Judge Kadagidze's did not remember precisely the difference between the texts of the Georgian Constitution and the European Convention on Human Rights – “*from the constitution those two principles which are stated in the European Convention, health and dignity, those principles are missing.*”

Discussing restriction of the freedom of expression, the candidate also remarked that both the Georgian Constitution and the European Convention provide two-tiered systems of restriction – “*one tier gives a permission to do what is allowed, and the second which sets restrictions.*”

The candidate believes that there should be no civil accountability for referring to a person in an insulting or obscene manner if there are no signs of libel or defamation.

In the candidate's judgement, enforcement of the conscription military service would be more of an infringement on the Jehovah's Witnesses religious freedom than a violation of the right to equal treatment.

In the candidate's assessment, the difference between the male and female retirement ages is a “legally wrong approach.”

□ *Skills and competences of legal argumentation:*

Judge Kadagidze supports the idea of bringing back to some extent the inquisitorial principle in the law of criminal procedure, propping this view with her own judiciary experience and legal education she received in the past on the one hand and the public legal nature of the proceedings. The candidate explained that “*administrative law cannot have higher standards than criminal law.*” Having no right to ask the judge a question in a criminal proceeding makes it more difficult to achieve the outcome that would be acceptable to society, the candidate argued.

The candidate's initial answer to the question about the role of the secularism principle in

constitutionalism was of a general nature, but when the question was reformulated, the candidate said that the main point was that **religion must not interfere in rights**. Her answer left the impression that the candidate had difficulty comprehending the meaning of the question or perceiving the term “secularism,” which also manifested in the fact that her answers were unclear, inconsistent, and to some extent irrelevant to the questions asked.

Judge Kadagidze supports the US model of freedom of expression and believes that hate speech must not be punishable by law. She has a general familiarity with the US Supreme Court practice on this issue. However, the candidate justifies criminal liability for the desecration of a flag as a symbol of national sovereignty, although in the United States the Supreme Court handed down a different decision on this subject. This statement clearly demonstrates a conflict between the candidates internal conviction and publicly expressed opinion, and raises a feeling that when discussing the issues that are of great importance to the public at present, the candidate supplies answers which are intended to meet with public favor, although when a question is asked about essentially the same issue, but it is posed indirectly or in a different way, the candidate fails to identify the fundamental issue and her answer becomes inconsistent.

In the candidate's opinion, absolute rights mean those natural rights which a “*person is granted only because he or she was born a human,*” including rights to “**life**, prohibition of torture, the principle of retroactivity of law, these fundamental rights.” Judge Nino Kadagidze could not recollect the list of Miranda rights or the origin of those rights.

□ *Written and verbal communication skills:*

The candidate is balanced and calm, does not demonstrate aggression or non-acceptance of differing opinions. However, on a number of occasions, her answers were vague and betrayed lack of confidence. Sometimes she left an impression that whenever the candidate did not appear to have factual legal knowledge, she tried to manipulate general concepts.



LASHA KOCHIASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Lasha Kochiashvili was nominated³³ by 10 votes against 2 for the Georgian Parliament's³⁴ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Lasha Kochiashvili on 5 November 2019.

The hearing of Judge Kochiashvili continued for 4 hours and 52 minutes.

CONSIDERATION ON THE CANDIDATE'S VALUES

It is possible to get an impression about Judge Kochiashvili's values from the following answers he supplied during the hearing:

The candidate fully subscribes to the principle that a person should not be punished for inflict harm to him- or herself.

In Judge Kochiashvili's view, protection of minority rights can be considered the main challenge to democracy in Georgia at present.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

When asked a question about liberal democracy and its characteristics, the candidate remarked that he had heard answers to the question during hearings of other candidates and therefore looked up the answer in advance. This reply testifies to his personal integrity and professional conscientiousness.

When asked which judge was more dangerous for justice, the incompetent one with integrity, or a competent one without integrity, Judge Kochiashvili replied that a judge has to possess both competence and integrity, but if he still had to choose between

the above two options, in his view integrity would gain an upper hand, while competence, in contrast to integrity, could be acquired with time.

□ *Independence, impartiality and fairness:*

When confronted with a hypothetical special case – whether or not the president can by law be granted a power or assigned a duty on an issue which is not defined in the constitution as a presidential power or duty, the candidate straightforwardly and decisively said that it was impermissible.

However, when discussing specific issues – whether or not the president has the power to dismiss High Council of Justice Member Ana Dolidze from her post despite the fact that this power is not explicitly stated in the constitution, Judge Kochiashvili changed his opinion and said that he would find it difficult to supply a straightforward answer.

The candidate's independence, impartiality and fairness could be brought into question in a neutral observer's eye when the candidate switched his stance. When providing his opinion about the developments in the country, the candidate is very cautious and limits himself to vague answers.

Judge Kochiashvili explained that during his judicial tenure, he has never come under pressure of any sort and has never been told by someone else about being under any kind of pressure.

□ *Personal and professional conduct:*

During the hearing, the candidate often could not manage to control his emotions, which showed both in the tone of his voice and in his general attitude toward the person who asked him an unpleasant question. He also shunned discussions on the issues which concerned behavior of his colleagues, referring to collegiality as the reason. As for the questions about cases that resembled disputes being heard by Georgian common courts, he refrained to supply an answer on the grounds that, if he voiced his opinion during the hearing, it could result in his recusal in the future. This attitude towards issues might appear as excessive caution and can be seen by a neutral observer as more of a

33 Nomination of Lasha Kochiashvili's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

34 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019



LASHA KOCHIASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

ploy to evade questions than a legitimate desire to comply with ethical standards.

□ *Personal and professional reputation:*

Judge Kochiashvili's attempts to avoid – or supply contradictory answers to – questions which directly concerned judiciary members of the High Council of Justice could make a neutral observer feel that the candidate may place the interests of a particular group above his personal and professional reputation.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

The committee hearing could create an impression that the candidate had a solid knowledge of the national law and practice in the legal field in which he specializes – civil law. But the candidate's answers to questions about fundamental legal issues were not convincing.

Judge Kochiashvili supplied a correct but unconvincing answer to the question concerning a public institutions lawsuit against a private individual to protect its honor, dignity and business reputation.

The candidate could not recollect the Constitutional court test of the presence of restriction of property rights.

□ *Skills and competences of legal argumentation:*

The candidate's explanation of the principle and nature of welfare state was vague and did not answer the question asked. Similarly, his answer to the question about the forms of direct democracy was equally unconvincing.

In the candidate's assessment, no idea is immune from criticism or insult, further, he believes that performing this type of action against the national flag constitutes an instance of freedom of expression. When supplying the answer, the candidate also mentioned a US Supreme Court decision on a similar case.

□ *Written and verbal communication skills:*

The candidate discussed issues with which he was familiar clearly and formulated his answers well. But whenever the question was asked about legal issues unknown to him, or he wanted for some reason or other to avoid supplying an answer, his replies were less convincing and vague.

□ *Professional skills:*

Judge Kochiashvili does not possess the acceptance of different or critical opinions which directly concern his work that would befit a candidate for the Supreme Court judge. At times when the candidate encountered several questions in succession about his judiciary decisions, his tone became aggressive.



KETEVAN TSINTSADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Ketevan Tsintsadze was nominated³⁵ by 10 votes against 2 to the Georgian Parliament's³⁶ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Ketevan Tsintsadze on 6 November 2019.

The hearing of candidate Ketevan Tsintsadze continued for 4 hours and 43 minutes.

CONSIDERATIONS ON THE CANDIDATE'S VALUES

Ketevan Tsintsadze endorses the principle according to which an individual cannot be punished for inflict harm to him- or herself.

In Ketevan Tsintsadze's opinion, significant challenges of the Georgian democracy are lack of political pluralism and protection enforcement of minority and more broadly, equality rights.

When asked whether the judiciary manages to tackle these challenges to democracy, the candidate replied that the judiciary is developing gradually and the tackling of challenges should also therefore be considered as a dynamic process. To prove that there are some problems in this respect within the judiciary branch, too, the candidate went on to refer to decisions of the European Court for Human Rights, in which violations by state were identified. On the one hand, this attitude can be considered a demonstration of sincerity by the candidate, although on the other hand the candidate's behavior left an impression that she wanted to portray the situation of the judiciary as better than it really is in terms of tackling the challenges to democracy.

The candidate also said that ideas enjoy an absolute privilege and therefore expression cannot be considered obscene even if it is unethical, but

conveys a value. In her opinion, the public availability of information is one of the most important principles for a democratic society.

The candidate's replies to the values-related questions suggest that she shares liberal democratic values. In particular, she endorses the great importance of individual freedom and ideas of freedom of speech and expression, pluralism and equality.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

During a hearing held at a sitting of the Georgian Parliament's Legal Issues Committee, the candidate was asked if there could be a conflict of interest between an investigator who applied for a vacancy at the Prosecutor's Office and a prosecutor who is a member of the interviewing panel for the same vacancy if the investigator is conducting an inquiry into a complaint filed against the prosecutor and both sides are aware of the fact. The candidate said that this situation could well constitute a conflict of interests and warrant a recusal of the panel member.

"If I was the investigator, I would probably start thinking about raising the recusal issue," the candidate said.

The above question is particularly noteworthy in light of the fact that Independent Inspector Tsintsadze is conducting an inquiry into complaints filed against two judiciary members of the High Council of Justice, Dimitri Gvritishvili and Sergo Metopishvili. In connection with the same issue, the candidate was asked a question during the committee hearing of why she did not demand recusal of those two members of the High Council of Justice. The candidate replied that this was a different situation from what the person who asked the question recounted in the hypothetical case. However, the candidate's answer to the question of why her real situation was different was vague and left an impression of insincerity.

This attitude of the candidate and her radical shift of opinion, especially when it came to her

35 Nomination of Ketevan Tsintsadze's candidature. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

36 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019



KETEVAN TSINTSADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

personal experience, could raise questions in a neutral observer about her personal integrity and professional conscientiousness.

Ketevan Tsintsadze argued that the dismissal of four justices of Georgian Supreme Court from their posts in 2006 for a disciplinary transgression – gross violation of a law – was legal, but unjust.

□ *Independence, impartiality and fairness:*

Independent Inspector Ketevan Tsintsadze could not recall Mikheil Chinchaladze's negative qualities, although she deemed it positive that he had the ability to listen and share his opinions.

During the committee hearing, there was one more occasion when the candidate voiced two different opinions about similar real and hypothetical situations. In particular, when asked about a hypothetical situation if a judge's publicly stated legal opinion could later result in a demand that he should recuse himself, the candidate replied that yes, it could if the opinion was not stated within the framework of an academic discourse. When asked the next question if an entire judiciary body's advance statement on behalf of the court of its opinion about a court case which it was scheduled to hear later could serve as the grounds for the recusal of that judiciary body, given that the plaintiff in the case is a judge of the same court, the candidate's opinion was not so categorical and straightforward as the one she voiced for the hypothetical case. She simply remarked that in the real case, all factors should be closely scrutinized. In addition, because the case (Vladimer Kakabadze vs Fady Asly) in the candidate's opinion involved Fady Asly's attack on the court, while the court's statement could be intended for the purpose of parrying that attack, the candidate decided that it was not an expression of the opinion about the case in advance. The candidate's deliberation in support of her opinion could strike a neutral observer as lacking clarity and sincerity.

The answers the candidate provided raised the feeling that the candidate found it difficult to make robust critical remarks about the judiciary branch.

□ *Personal and professional conduct:*

The committee hearing could leave a neutral observer with a feeling that the candidate tends not to have strong opinions. For example, when asked whether an insult, if it not wrong factually, could qualify as the grounds for a dispute over the protection of honor and dignity under civil law, the candidate supplied an affirmative answer, but when the person who asked the question reworded it, the candidate changed her opinion and said that the dispute would not have prospects under the Georgian law on freedom and speech and expression. This occurrence creates an impression that the candidate lacks self-confidence, which could stem from lack of experience.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

The candidate's answer to the question about the definition of obscenity was general and did not convey the content of the law. Her answer to the question about restricting obscenity was also vague. On the one hand, the candidate argued that in general, obscenity towards a politician must not be restricted, but when a more detailed question was asked, she explained that obscenity could not be restricted if it bore any content/value.

The candidate's attitude toward the public agencies' blocking social network users from accessing their pages was of interest. In the candidate's words, this could be viewed as an instance of restriction of the freedom of expression.

The candidate exhaustively listed the legitimate grounds for restricting the freedom of expression as provided in the Georgian constitution.

□ *Skills and competences of legal argumentation:*

When asked if the Georgian Parliament had the right to legally confer to the president a competence which is not prescribed in the constitution, the candidate said that she could recollect that "*with respect to the presidential powers, there is a provision which says 'and other powers as provided by law'.*"



KETEVAN TSINTSADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

The fact of not knowing the text of the constitution or remembering it incorrectly cannot be considered a problem on its own. But when reminded the wording of the appropriate passage in the constitution and asked if the legislature had the right to assign an power or an obligation to the president based on the law, the independent inspector said that *“if this serves the purpose of exercising a constitutional power more effectively, that is, if it stems from the main purpose and serves more as a regulation, naturally, I think that this is absolutely acceptable.”*

When the above answer was formulated, the candidate remarked about the issue of legal regulation of the power to pardon convicts that it could be viewed as an unconstitutional act and as interference of one branch of power into the work of the other branch of power.

After hearing answers to the above question, a neutral observer could get the impression that the candidate lacked factual knowledge of law and competence to state her opinion. She tends to vacillate and often changes opinions in accordance to the direction in which the person asking the question changes its wording.

The candidate’s argumentation on the presidential power to dismiss a High Council of Justice member was also inconsistent and legally insufficiently robust. Although the president does appoint a member of the High Council of Justice, there is no constitutional provision which directly grants the president the power to dismiss the member. The candidate opined that this is a legislative flaw because the general rule of thumb is that the same person makes decisions on both appointment and dismissal. However, when asked why this was a flaw if the same rule applies to the judges of the Constitutional Court whom Parliament appoints but cannot dismiss, the candidate did not answer.

The candidate has a wrong opinion that it is within the Georgian Constitutional Court’s purview to decide on the issue of constitutionality of an individual act by the president.

□ *Written and verbal communication skills:*

It can be said after the committee hearing that the candidate properly comprehends the meaning of the question asked, is trying to be sincere, direct and supply exhaustive answers to all questions. However, to the flaws and imprecisions marring a number of her answers leave an impression that her level of knowledge, competence and experience with respect to some fundamental issues prevents her from supplying better-argued and substantiated answers. As was already noted, there were occasions during the hearing when the candidate changed her answer as soon as the person who asked the question changed an emphasis.

□ *Professional skills:*

When asked if *“there are judges with whose views and ideas you feel particularly close,”* the candidate said that there are many such judges, but she would like to mention specifically US Supreme Court Justice Ginsburg for her liberal values.

□ *Academic achievements, professional training and professional activity:*

The candidate often mentioned important issues in the fields of human rights and constitutional law, such as the proportionality of public and private interest, principle of separation of powers, categories of protection of the freedom of expression, etc., which is a credit to her professional training. It has to be said on the same note that the candidate is an author of several English-language academic papers.



ALEKSANDRE TSULADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Aleksandre Tsuladze was nominated³⁷ by 10 votes against 2 for the Georgian Parliament's³⁸ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Aleksandre Tsuladze on 7 November 2019.

The hearing of candidate Tsuladze continued for 4 hours and 43 minutes.

CONSIDERATIONS ON THE CANDIDATE'S VALUES

It can be said based on the hearing of candidate Aleksandre Tsuladze at the sitting of the Georgian Parliament's Legal Issues Committee that he fully endorses the principle according to which an individual must not be punished for inflicting harm to him- or herself. The candidate also fully subscribes to Vazha Pshavela's opinion about human freedom and negative aspects of public interference with that freedom.

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

Despite the heavy caseload of the Georgian judiciary system, Aleksandre Tsuladze reasoned it theoretically possible to establish the admissibility of the complaint, hold a trial on merits, hand down a judgement and submit the rationale of the judgement to the side all within 10 days from the acceptance of the lawsuit. Mr Tsuladze cited the possibility that the judge is an exceptionally fast reader in support of the feasibility of the task.

□ *Independence, impartiality and fairness:*

When discussing the development of the judiciary system, the candidate drew attention to the

importance of the proper development of public services, implying programmatic and IT support.

Against the backdrop of the challenges facing the judiciary system, focusing solely on the proper programmatic development of public service leaves an impression that the candidate either does not realize the problems within the court system, or he realizes them and attempts to hide them behind less important factors.

The candidate tended to refrain from giving assessments to incumbent judges or their actions. This attitude was noteworthy in that Aleksandre Tsuladze is not an incumbent judge and therefore no ethical standards of any type could impose an obligation on him to refrain from expressing his opinion about public actions of judges. Accordingly, his calculated comments and reserved behavior raised some questions.

□ *Personal and professional conduct:*

In the candidate's view, raising an issue of a judge's recusal because of the statement the judge may have made in advance about a legal issue in some manner is wrong. Mr Tsuladze said that in countries with the developing legal systems like Georgia judges often change their opinions. Despite this, the candidate still believes that "from the standpoint of trust in the justice system and its impartiality, it would be better if the judge in question recused himself in those circumstances." The candidate's self-contradictory answer of this type might decide a neutral observer against giving a positive assessment to his professional conduct.

□ *Personal and professional reputation:*

When commenting on a public discussion of a court case by a judge with a defense lawyer who represented one of the sides in the case, the candidate explained that if the judiciary branch proves unable to defend the judge in question or come up with an explanation why the court reached a decision which sparked a debate, he would feel himself accountable to make a public statement.

In this case too it could be sensed that the candidate's reserve in reasoning about the legal

37 Nomination of Aleksandre Tsuladze's candidature.

Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

38 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019



ALEKSANDRE TSULADZE

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

aspect of a hypothetical case was predicated on caution and possible regard for some specific individuals.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

□ *Familiarity with legal norms:*

The candidate maintained that a public agency can be authorized to take a private individual to court to protect its business reputation. However, the candidate went on to observe that finding legal grounds to satisfy this type of request would be problematic.

The candidate considers the standing of the court as the legitimate goal of Article 366 of the Criminal Code (contempt of court). In the candidate's opinion, an expression which may be insulting to the court but has not taken place in the presence of its target should not be considered a violation of law.

□ *Skills and competences of legal argumentation:*

In the candidate's assessment, independently of whether individual rights and freedoms are prescribed by law, universally recognized rights and freedoms still have direct effect, like other formal sources of justice. The candidate considers as internationally recognized those rights which are mentioned in international treaties ratified by state.

Candidate Tsuladze identified the quality of justice as a possible legitimate goal of introducing the upper age limit for the judges of common courts, but he went on to add that he personally did not accept that legitimate goal and that it would be better if some other, more objective criteria were instated than just an age limit.

□ *Written and verbal communication skills:*

Throughout the committee hearing, candidate Tsuladze remained calm, managed to supply balanced answers to the questions asked, although on some occasions he seemed to resort to subterfuges to evade questions. The candidate made attempts to use logic to answer questions to which he had no answers, although he informed the person who asked the question from the outset about his intention to do so.

□ *Professional skills:*

In contrast to his competence, a neutral observer might find the candidate's integrity somewhat more questionable. Overall, the self-censorship which the candidate demonstrated when asked to assess the judiciary or individual judges might leave a negative impression about his level of independence on a neutral observer, although this may have also been caused by the candidate's perception of his role.

□ *Academic achievements, professional training and professional activity:*

Among the participants in the process of selection of judges for the Georgian Supreme Court, the candidate is one of the people who stand out for the number of published academic papers.

The candidate is a practicing lawyer and takes an active part in solving disputes using alternative procedures and in popularizing the alternative justice.



GOCHA JEIRANASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

On 4 September 2019, by the High Council of Justice decision No 1/187, Gocha Jeiranashvili was nominated³⁹ by 11 votes against 1 for the Georgian Parliament's⁴⁰ approval for selection as a judge of the Georgian Supreme Court.

The Georgian Parliament's Legal Issues Committee sitting heard Gocha Jeiranashvili on 8 November 2019.

The hearing of Judge Jeiranashvili continued for 5 hours and 13 minutes.

CONSIDERATIONS ON THE CANDIDATE'S VALUES

Forming an impression about candidate Gocha Jeiranashvili's values became possible after listening to his answers to the following questions asked at the committee hearing.

Judge Jeiranashvili fully embraces the principle according to which an individual cannot be punished for inflicting harm to him- or herself.

In his view, justice is an internal perception which is based on human rights and freedoms, honor and dignity.

In the candidate's opinion, the main factor which explains the private and public sector's criticism of the judiciary branch is its insufficient openness and transparency to the public.

Judge Jeiranashvili believes that the **“freedom of expression is one of the most important and fundamental rights for an individual and democratic society, without which no prospect of democratic development could exist. Its restriction should mostly take place on very rare occasions.”**

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39 Nomination of Gocha Jeiranashvili's candidature.
Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/233926?> Last accessed 3 December 2019

40 The High Council of Justice letter to Chairman of the Georgian Parliament, Mr. Archil Talakvadze. Electronically accessible at <https://info.parliament.ge/file/1/BillReviewContent/229923?> last accessed 3 December 2019

ASSESSMENT OF THE CANDIDATE'S INTEGRITY

□ *Personal integrity and professional conscientiousness:*

According to the candidate, the purpose of the non-governmental organizations' criticism of the judiciary branch is improving the court system. At the same time, Judge Jeiranashvili confirmed that he has never openly confronted his colleagues who voiced negative opinions about non-governmental organizations.

To a neutral observer this answer could be a sign of lack of sincerity as the candidate seems not to possess enough courage to take a principled stand on the above issue and, out of consideration for some factors, refrains from doing what he believes in. In summary, all this may not characterize well the candidate's personal integrity and professional conscientiousness.

Judge Jeiranashvili said that he had never voiced a dissenting opinion on any issue publicly at a judge's conference.

□ *Independence, impartiality and fairness:*

During the hearing held at the Legal Issues Committee of the Georgian Parliament, the candidate said that before 2012 he was absolutely independent and refrained from developing an evaluative reasoning on the issue.

The candidate explained that the law of criminal procedure which was in effect back then prevented the Supreme Court from sending the Girgvliani case back to the court of appeals.

ASSESSMENT OF THE CANDIDATE'S COMPETENCE

FAMILIARTY WITH LEGAL NORMS:

During the hearing, the candidate proved unable to differentiate between the absolute rights and unrevisable rights. In his words, he has never considered the issue from this angle before. It is worth noting that this issue is one of the important aspects of human rights law.



GOCHA JEIRANASHVILI

CANDIDATE FOR THE GEORGIAN SUPREME COURT JUDGE

□ *Skills and competences of legal argumentation:*

In Judge Jeiranashvili's words, if any provision of Georgia's Constitutional Agreement comes into conflict with the European Convention on Human Rights, he will solve the conflict in favor of the European Convention.

During the hearing the candidate remarked that if a person was found to possess an amount of a narcotic substance which is insufficient for personal use but is larger than the dose for which the Georgian Constitutional Court canceled liability, he would appeal with the Constitutional Court.

Although the above answer does not contain a substantive legal flaw, a neutral observer could get an impression that the candidate uses a formalistic approach to this issue when he maintains that he should be guided only by the substantive part of the Supreme Court's decision and not by the rationale for its judgement.

□ *Written and verbal communication skills:*

During the hearing, the candidate apprehended the meaning of the question asked more or less accurately, although on a number of occasions an observer might get a feeling that Judge Jeiranashvili had difficulty developing a consistently logical reasoning. This could be caused by the candidate's lack of sufficient knowledge or by his lack of confidence in what he knows. This feeling was further intensified by the candidate's statements when answering several questions that he has not thought about the issue before.

□ *Professional skills:*

When asked whether it is a defamation or non-observance of the presumption of innocence when one private person accuses another of committing a crime, the candidate said that *"it is probably defamation"*.

The candidate's answer turned out to be right, but the way he supplied it left an impression that he was not sure about it, which leaves a negative impression of his professional skills as a criminal law specialist. Taking into account the fact that the candidate's judiciary practice is closely connected with classification of crime, he leaves the impression of not being self-confident enough in non-standard situations.

□ *Academic achievements, professional training and professional activity:*

Despite many years of experience of working in the field of criminal law, the candidate proved unable to explain the link between the general theory of guilt and the concept of suspended sentence. This can be interpreted as the candidate's lack of interest exercising a doctrinal approach to different legal fields and limiting himself to working on purely practical issues.

