



კოალიცია
დამოუკიდებელი
და გამჭვირვალე
მართლმსაჯულებისთვის
Coalition for
an Independent and
Transparent Judiciary

Statement of Coalition for an Independent and Transparent Judiciary Regarding Specialization of Supreme Court Judges

The Coalition for an Independent and Transparent Judiciary, which unites more than 30 non-governmental organizations, has been actively working on the reformation of judiciary. The reform covers various aspects and along with the improvement of legislation, it is important to eradicate shortcomings existing in the practice. In this regard, the Coalition has showed interested towards issues related to specialization of judges of the Supreme Court.

Pursuant to Article 15 of the Organic Law of Georgia on Common Law Courts, the Supreme Court sets up the chambers of civil, administrative and criminal cases. According to the practice established in the Supreme Court, a judge specializing in one sphere of law is temporarily tasked, under a decree of the Plenum of the Supreme Court, to perform his/her duties in another chamber. By so doing, a judge is allowed to participate in the consideration of cases of that category in which he/she lacks relevant specialization. For example, under the decree of the Supreme Court's Plenum, dated 21 June 2010, a concrete judge was elected as a member of the Supreme Court's Chamber of Criminal Cases. The same decree, however, reads that this judge, "if need be, will be temporarily tasked with the duties of a member of the Chamber of Administrative Cases, also, of a member of the Chamber of Civil Cases, in order to participate in the consideration of cases falling under these chambers." By the same decree, another judge of the Supreme Court, elected as a member of the Chamber of Civil Cases, was, in parallel, tasked with the duty to consider cases falling under the Chamber of Administrative Cases. As a result, these judges became entitled to consider cases of all three chambers.

As the practice of considering cases at the Supreme Court shows, instances of judges from one chamber exercising their powers in another chamber are frequent.¹ We believe that such practice does not follow from the Georgian legislation; nor it complies with international standards. This opinion is based on the following arguments:

Article 1 of the Organic Law of Georgia on Common Law Courts says that the justice is done "through civil, administrative and criminal

Coalition Members:

Article 42 of the Constitution
Multinational Georgia
Solidarity to Illegal Prisoners
Georgia Small and Medium
Enterprise Association
Civil Integration Foundation
Georgian Lawyers for
Independent Profession
Business and Economic Center
Liberal
Center for Protection of
Constitutional Rights
International Society for Fair
Elections and Democracy
Association Green Wave
The Union "21 Century"
Georgian Young Lawyer's
Association Human Right
Center
Transparency International
Union of Meskhetian Democrats
Liberty Institute
Georgia Bar Association
Civil Development Agency
United Nations Association of
Georgia
The European Law Students'
Association
Civil Society Institute
Open Society Georgia
Foundation
Institute of Democracy
American Chamber of
Commerce
Association of Civic Initiatives
and Employees Defense
Eurasia Partnership Foundation
Institute of Development of
Freedom of Information
Human Rights Priority
Tbilisi Media Club

¹ See, search system of decisions by the Supreme Court.

proceedings.” Article 15 of the same law indicates that the chambers of civil, administrative and criminal cases are created in the Supreme Court. Clearly, a key aim of such division is to enhance, by determining the specialization of judges, the professional attitude and quality of justice in considering cases. No doubt that the narrower the specialization of a concrete judge, the higher the degree of his/her qualification in terms of both the depth of knowledge of relevant legislation and the practice.

The procedural legislation of Georgia and the Organic Law of Georgia on Common Law Courts explicitly define the role of the Supreme Court in generalizing the court practice. It is precisely the Supreme Court that is to develop a correct and uniform court practice. This attitude is supported by Article 391 of the Civil Procedures Code of Georgia which regulates the admissibility of cassation appeals and in which the main criterion of admissibility of a cassation appeal is the interest of establishing a uniform court practice. Clearly, the knowledge of existing court practice for a judge of the Supreme Court is crucial. Bearing in mind that the court practice is created by the entirety of decisions taken on a concrete case, it is almost impossible for a judge to be well-versed in legal problems and established practice of all the three directions of law - criminal, civil and administrative.

The above cited decree of the Plenum of Supreme Court does not indicate a reason or substantiate the need for assigning a judge to a chamber in which he/she lacked relevant practice or specialization; nor does it explain why it was impossible to staff a concrete chamber by judges of relevant experience and specialization.

As regards the international practice, pursuant to Article 14 of the UN Covenant on Civil and Political Rights, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial court.

According to the definition of the Organization for Security and Cooperation in Europe (OSCE), the competence, inter alia, implies that a judge is “suitably qualified and experienced to act as judicial officers.”²

An analogous attitude is applied in the Bangalore Principles. This document was drawn up by Supreme Court judges of various countries and the UN³ and is acknowledged and supported by many respected international organizations or experts. Pursuant to Article 6 of the Bangalore Principles, competence (knowledge of job) is a prerequisite to the due performance of judicial office.

² OSCE/ODIHR; Legal Digest of International Fair Trial Rights; 2012.

³ See, for example, ECOSOC Resolution 2006/23.

The Commentary on the Bangalore Principles explains the following: “Competence in the performance of judicial duties requires legal knowledge, skill, thoroughness and preparation [for the job]. A judge’s professional competence should be evident in the discharge of his or her duties. Judicial competence may be diminished and compromised... by inadequate [insufficient] experience of a person.”

The Coalition for an Independent and Transparent Judiciary believes that the above cited problem may adversely affect the interests of ensuring the rule of law and quality justice. To rectify the situation, corresponding steps must be taken immediately. In this endeavor, the Coalition expresses its readiness to cooperate with all three branches of power in order to put this issue as well as other issues necessary for the reformation of judiciary

