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## LEGAL TRENDS

### Summary Report on Judicial Developments in Georgia for 2001

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During year 2001 numerous significant measures were taken in Georgia to improve the judiciary. These included measures designed to ensure greater public awareness and transparency in operations of the judicial process.

However, before discussing those issues, it is appropriate to analyse the statistical data that has been collected on the activity of common courts. These figures reveal the dynamics of the cases heard. Following an examination of the statistics we shall assess court practice in 2001, as well as those issues related to international cooperation and transparency within the judiciary. The last part of this report will consider the administration and maintenance in the common courts.

#### 1. Statistical Data for 2001

In 2001, the common courts heard a total of 62.359 cases. This proved to be 1.450 cases less than in 2000. Of those cases heard 47.626 were civil cases, 10.361 criminal and 4.372 administrative cases. In comparison to 2000 the number of civil cases was 4.488 less. However, in both the criminal and administrative spheres, the number increased by 1.882 and 2.187 cases respectively.

The common Courts heard 43.714 civil, 8.876 criminal and 3.506 administrative cases: a total of 56.096 cases. It is noteworthy that the Tbilisi district courts witnessed a significant increase in the number of civil cases heard. In total they ruled on 15.881 civil cases, amounting to 36.3% of all civil cases heard at the first instance.

4.012 appeal cases were considered in the regional courts and the high courts of autonomous republics. This proved to be 1.962 more than appeal cases heard in year 2000. It is illustrative to break this figure into the three strands of law with the corresponding increase in number of cases over 2000 in brackets. Thus there were 2.737 (1.312) civil cases, 704 (258) criminal cases and 571 (392) administrative cases. Considering the regional distribution of appeal cases, Tbilisi Regional court heard 1.921 cases, representing 70.2% of the total number of cases heard under appellate proceedings. The Kutaisi Regional Court heard 540 cases or 19.7% of the total appeal cases heard. The High Court of Autonomous Republic of Adjara heard 269 cases or 9.8%, and the High Court of the Autonomous Republic of Abkhazia

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heard 7 cases or 0.3% of cases heard under appellate proceedings.

In 2001 the Supreme Court of Georgia heard 2,325 cases, some 51 cases more than in 2000. Within the Supreme Court, the Chamber of Civil, Entrepreneurial and Bankruptcy Cases heard 1,175 cases (a reduction of 9% compared to the previous year), the Chamber of Administrative and other Cases heard 295 cases (an increase of 34% compared to the previous year), the Chamber of Criminal Cases 781 cases (an increase of 9% compared to the previous year), and the Panel of Criminal Cases – 74 cases (increased by 60.9% compared to the previous year). It should be noted that the number of criminal cases subject to a hearing at the first instance by the Supreme Court has significantly increased.

It is important to note that since October 2001 the Grand Chamber of the Supreme Court began to hear cases of particular complexity. To date the Grand Chamber has heard three civil, two administrative and five criminal cases.

It is apparent from the above, that the new system of court statistics introduced in 2000 has been quite effective. Equally the submission of information under established procedures by the common courts has improved. A comprehensive study of court practice with respect to corruption and drug related crimes has benefited by the new system of statistical collection. Quite apart from its methodological significance, the statistical system has been employed more than once against the critics of the judiciary. Over the next year particular attention will be paid to the improvement of the statistical outflow from court proceedings and practice. Statistical data for 2001 has already been published in the annual publication "The Judiciary 2001". This publication is accessible to all and serves as an example of the transparency and the provision of public information concerning the activity of the Supreme Court.

## **2. Analysis and Generalisation of Court Practice**

In 2001 particular attention was given to the generalisation of the court practice as well as to the analysis of existing conditions within the judiciary. By means of the new computerised statistical system and through an examination of cases of certain categories, the Supreme Court initiated standardisation procedures for court practice. In so doing this process revealed a number of shortcomings in the activities of the judiciary as well as within law enforcement bodies. This study revealed significant delays in hearing civil cases in common courts, particularly in civil litigation concerning illegal construction, bankruptcy and uncontested trials. Similarly shortcomings were found in cases concerned with corruption and the application of preventive measures thereunto and in court decisions that rested upon the ascertainment of facts of legal importance. Additionally the organisation of the work of courts were examined.

### **2.1 Results of the Scientific Group on Civil Proceedings**

The scientific group created by the initiative of the Supreme Court in 2001 accomplished the study of civil proceedings in common courts. The main reasons for delays in hearing cases at the common courts were revealed. One of those reasons is that judges seem to

ignore the case preparation phase. The preliminary preparation of a case is brought wholly to the preparatory session.

The study also pointed to the fact that procedures for scheduling the main hearing has serious shortcomings. Courts are tending to move to trial without a ruling that case is prepared for hearing. As a consequence at the trial stage it often becomes obvious that it was necessary to carry out procedural actions that must have been performed at the case preparation stage. Consequently, this causes the reschedule of a hearing.

The working group also concluded that the methods for training judges require substantial modification. Training should be carried out on the basis of an analysis of court practice, by fully envisaging the requirements of the practice. According to the group's recommendations, it is necessary to conduct systematic seminars at a regional level and to establish a higher school of justice.

Infringements of procedural norms in civil proceedings are exhaustively described in the report. The report itself has been published in the form of a practical manual and contains a scientific-methodological analysis and recommendations for the improvement of court's practice.

## **2.2 Results of the Inspection of Organisational Issues**

The results of the inspection of the organisation of the work of common courts was significant. The Supreme Court, the Council of Justice and the Department of Common Courts all participated in the inspection. Eleven district and city courts were randomly chosen, including the Tbilisi district courts. A number of shortcomings were revealed, quite apart from violations of procedural norms. Such practices have come about due to the wrong distribution of cases, disproportionate workloads among judges and a number of other factors, all of which have an impact upon the quality of court hearings. As a result of the inspection a number of proposals and recommendations were prepared to further improve court administration.

One of the proposals is to create a single city court in Tbilisi. The main principle behind the creation of a single court is that it will assist judges to specialise. This is very important considering the workload of courts in Tbilisi. The court would consist of civil, criminal and administrative panels. Additionally, there would be room for a significant reduction in expenses connected with staffing, as a result of which the number of judges would increase without any additional overall expenditure. Moreover, the city court would not require a new building. The panels can be separately placed in the best three existing courthouses in Tbilisi. Money raised from the sale of other court houses can be used to provide up to date equipment for the new court. In moving ahead with such a scheme a number of issues would be resolved concerning delays in hearing cases, convoy, and the movement of cases according to jurisdiction and courtrooms.

In addition to other violations inspection also found that the lower courts rarely use their vested powers in them by legislation to control and correct the mistakes made by the law enforcement bodies. Practice shows that the judges of inferior instances refrain from delivering private rulings on flagrant violations made in the process of inquest or investigation. These cases are often overturned later at the stage of cassation. In addition, control is not carried out over the execution of private rulings, as a result of which most private rulings are left beyond judicial treatment. Similar violations occur repeatedly.

### **2.3 Issues of Court Proceedings Related to the Finding of Legally Important Facts**

The inspections and research carried out on court practice threw up interesting results in the study of cases. Many of which almost never become the subject of review by courts of superior instances by their legal nature. In this respect the results of generalisation of court ruling practice regarding findings of facts with legal importance are noteworthy. In 2001 the Supreme Court reviewed 1259 cases that had been heard in Tbilisi district courts of such a nature. A major part of these cases lacked a legal or factual argumentation.

According to researched practices the case facilitation during the process of finding legally important facts is imperfect. Frequently proceedings are initiated without payment of a fee.

There are cases when the courts discern the facts of legal importance regarding the existence of factual marriage between individuals. This constitutes a gross violation of the law because the existence of factual marriage as a fact between two persons is not the grounds for the origination of the rights and obligations of spouses (Article 1151 of the Civil Code). Factual spouse does not enjoy the right of lawful successor. Thus a court should not initiate proceedings to discern the facts of factuality of marriage. Section 2(c) of Article 312 of the Civil Procedure Code of Georgia does not provide for the determination of the legal facts of marriage and divorce.

There are instances when the court hears the cases by uncontested trial, that fall within the competence of other bodies. For instance, it hears by uncontested trial the question of appointment of a guardian and custody, whereas under the Civil Code of Georgia (Article 1278) the question of the appointment of a guardian or custody to a minor should be resolved by a local educational body. The courts also hear by uncontested trial the applications of private law from legal entities with regard to the legal succession of enterprises. This also constitutes a violation of law.

By studying such cases it is apparent that sometimes courts discern the fact of the right of ownership on an object but do so by a gross violation of the law. In this regard it should be mentioned that the court determines the fact of the possession of an object with the right of ownership, if the applicant had the document proving the right of possession of an object, but has lost the document and this fact cannot be determined by extra-judicial

means. Thus, the court determines the fact of the relevant document and not the right of ownership.

Apart from these sorts of cases, issues such as the restoration of a term for accepting an inheritance, acknowledgment of an heir and owner, the nullification of the clause of a municipality's decision, the changing and granting of a family name, the acknowledgement of a legal successor are heard by the courts with the purpose of finding legally important facts, which constitutes the gross violation of the law.

When hearing cases by uncontested trial courts must take into account the following:

- In cases heard by uncontested trial the facts and not the legal consequences of these facts are to be determined;
- The application to determine the facts of legal importance can be heard by a court through uncontested trial, if the consideration of the fact is not linked with a further settlement of the dispute and the right falls within the jurisdiction of the court;
- By uncontested trial the court shall hear the cases (on determining the facts of legal importance) unless the legislation stipulates other procedure for their discernment.

While the violations revealed during the inspection of civil proceedings and organisation of the work of common courts were mainly due to objective factors, such as the adoption of different and new legislation that has never been applied in the court practice before, most of the violations revealed during the study of cases on determining the facts of legal importance are characterised by purely subjective factors. It has become apparent that some judges have personal interests, This has become the reason for instigating disciplinary prosecution against dozens of judges. Some of them are already charged with disciplinary liability.

#### **2.4 Publication of Decisions**

The decisions of the Supreme Court have been published for several years. They are now also available on the internet. This practice provides with another means of increasing the transparency and accessibility of the judiciary.

Nevertheless, it seems that the judges of inferior instances are not acquainting themselves with these decisions. The court of cassation finds that ignorance of norms of both procedural and substantive laws are regularly the same. However, today one of the tasks of the judiciary is the establishment of uniform court practice.

To ensure the establishment of a uniform court practice the panels of cassation of the Supreme Court have begun to generalise the court practice of cassation instance and elaborate relevant proposals and recommendations, together with an annual report, which also will be published and distributed to all judges. These document basically concern the proper application of the norms of substantive law.

## 2.5 Disciplinary Liability of Judges

Administration of justice is closely linked with the disciplinary liability of judges. In 2001 68 disciplinary cases (against 57 judges) were brought before the Disciplinary Council of the common courts out of which 52 cases were heard. Thirty-eight judges received various types of disciplinary penalties. Specifically twenty judges were given recommendation cards, twenty-two were warned, eight of them received a reprimand and three of them a severe reprimand. Two judges were dismissed. Charges were lifted from one judge and two judges were justified by the disciplinary board.

## 3. International Co-operation

Co-operation with international organisations has continued to be successful and fruitful. Of particular mention are those relations with the Deutsche Gesellschaft für Technische Zusammenarbeit, the World Bank, the Legal Education Association, the American Bar Association and the United States Agency for International Development. Many interesting and useful projects are being run with their support and have been continuing now for several years.

Among the events, that took place at the Supreme Court in 2001 I would like to point out in particular the distinguished visit of the President of European Court of Human Rights, Lucius Wildhaber to Georgia.

During 2001 special attention has been paid to the improvement of the quality of judiciary. The work on projects to assist judges has been going on for several years. In this regard, with the help of the Deutsche Gesellschaft für Technische Zusammenarbeit the judges of the Supreme Court of Georgia are being trained in Germany in order to properly use new legislation. A scientific-advisory council was established where legal issues are permanently analysed. Simultaneously, a similar activity is carried out in the common courts. The permanent training of the judges is planned in the future in the regions and cities.

## 4. Transparency of the Judicial System

During last year co-operation with the media intensified. Dozens of interviews with the judges of common courts concerning the activity of judicial authority and its priorities were published in every key newspaper and magazine. Information on the cases to be heard at the Supreme Court is distributed on a regular basis. This is used by journalists, as well as nongovernmental and international organisations. The Supreme Court has accredited 35 journalists engaged in legal issues.

A particularly noteworthy event is the establishment of a "Media Group of Legal Reforms" at the Supreme Court. This has paved the way for a new era in the relationship between the judiciary and the media. This Media Group consists of about 45 members, basically the journalists engaged in legal issues and judges from all over the country.

In order to strengthen the relationship between judiciary and society very fruitful seminar with the participation of journalists and judges was held in Gudauri in December 2001 touching upon the subject of the Judiciary and the Media.

##### **5. Administration of Courts and Questions Concerning Maintenance of Logistics**

2001 proved especially fruitful for the Administrative Committee of the Conference of Judges. Drafts of various rules were elaborated with regard to the administration of courts. Decisions were made on printing the documents of proceedings, on organisational measures with regard to publishing the data from the business register in the official gazette ("Sakartvelos Sakanonmdeblo Matsne") and on providing stricter the control over the recording and collection of state fees imposed in favour of the state budget.

The issue of implementing the position of a manager judge was raised. The purpose of this is to effectively carry out common administrative policy and related measures. The manager judge coordinates the measures to be taken in certain directions of administration of courts in the relevant region, although he would not exercise powers without the collegial support of the chairman of the court and the judges. The latter should be the ones from whom the manager judge is informed about the problems that courts have, after which he is obliged to bring the common problematic issue before the relevant authority. As for the problems of one court only, that should be solved only by the chairman of the court.

The fabric of the courts is continuing to improve. Construction and refurbishment works were conducted in Kutaisi city court, Vake-Saburtalo, Didube-Chugureti, Tskaltubo, Vani, Zestaponi, Kharagauli, Khoni, Tsalka, Lentekhi, Akhlagori, Tianeti, Sagarejo, Khashuri, Adigeni, Khobi, Borjomi, Gardabani, Lanchkhuti, Ozurgeti, Dedoplistskaro, Tetrtskaro and Kobuleti courts.

Particular mention should be made of some specific measures taken during 2001.

- Rustavi City Model Court was opened with the support and financing of the World Bank;
- Local computer networks were installed at the Supreme Court, Tbilisi Regional Court and Department;
- The Courts mail service was established;
- Maintenance of common courts with normative materials is continuing: judges are provided with all new legislation.

Despite some difficulties the year of 2001 could be considered as fruitful for the development of the judiciary. This gives us confidence in the success of judicial reform.