

# Levan

## MIKABERIDZE

A judge of Tbilisi Court of Appeals for indefinite tenure

CANDIDATE'S PROFESSIONAL /  
ACADEMIC PERFORMANCE AND  
IDENTIFIED TRAITS / BEHAVIOR

2

In 2006–2012 Levan Mikaberidze worked on different positions in Tbilisi City Court. In 2013, he was a consultant of the Directorate of Chamber of Civil Cases of the Supreme Court of Georgia. From 2013, candidate Levan Mikaberidze is magistrate judge of Batumi City Court. On July 25, 2016 he was appointed as a judge of the Chamber of Civil Cases of Tbilisi City Court for a three-year term, and from November, 30 he was appointed to the same position for indefinite tenure. From July 15, 2019 Levan Mikaberidze carries out judicial authority in the Chamber of Civil Cases of Tbilisi Court of Appeals

MISCONDUCT REVEALED IN  
PROFESSIONAL ACTIVITIES  
(DISCIPLINARY PROCEEDINGS,  
PROFESSIONAL ETHICS)

4

PROMOTIONS AND AWARDS /  
SCHOLARSHIPS GRANTED FOR  
PROFESSIONAL PERFORMANCE

4

CONFLICT WITH LAW,  
CONFLICT OF INTEREST

5

CANDIDATE'S PUBLIC ACTIVITIES /  
POSITION AND BEHAVIOR

5

FINANCIAL OBLIGATIONS AND  
INCOME OF THE CANDIDATE

8

# 1

## CANDIDATE'S PROFESSIONAL / ACADEMIC PERFORMANCE AND IDENTIFIED TRAITS / BEHAVIOR

### 1. DECISIONS, DISSENTING OPINIONS, COURT SUBMISSIONS

#### 1.1. LEGALLY INTERESTING OR PRECEDENTIAL DECISIONS

---

#### 1.2. POSITION EXPRESSED ON GROUPS/ MINORITIES

---

#### 1.3. HIGH- PROFILE CASES

---

**Legal issue:** compulsion, as a basis for recognizing legal act as null and void.

Facts On July 26, 2017 the Chamber of Civil Cases of Tbilisi City Court, chaired by Levan Mikaberidze made a decision on the case of gifting shares of JSC "Tbilaviamsheni" to the state.

On June 27, 2010 was held founding partners meeting of JSC "Tbilaviamsheni", which was attended by all three shareholders of the company. Upon their decision, 100% of the company was gratuitously given to the state. At the same time, in the same period, shareholders of joint stock company conceded shares owned by them also in the favor of the state.

Before several days of granting shares to the state, on the basis of ruling, investigative unit of the Ministry of Finances started investigating documents of JSC "Tbilaviamsheni". Investigative unit seized accounting documentation, correspondence, agreements and other documentation existing from 2003 till June 10, 2010 year.

Shareholders of JSC "Tbilaviamsheni" indicated on pressure from the side of the state in collective claim represented in the court, which became the basis of conceding shares. It can be seen from the testimonies of witnesses, that Pantiko Tordia (one of the shareholders of company) met with minister of Defense of Georgia Bachana Akhalaia during those events and they went to the Ministry of Economics.

According to the positions of respondents, the Ministry of Economics and Sustainable Development and LEPL "National Agency of State Property", as a basis of conceding the share was deemed unsuccessful functioning of enterprise.

By the decision of Tbilisi City Court, claim was dismissed. Decision is appealed in Court of Appeal.

**Significance of the case:** The plaintiffs were predicating, that they did not have real motive for granting property to state and basis of conceding the shares was compulsion from the side of state.

**Decision:**

- One of the plaintiffs claims was to find the resolution made by the board of founders of the company (Minute of Partners Meeting) on gratuitously handing over the 100% of shares to the State invalid. Regardless, in the reasoning, the Court does not assess the grounds for invalidity of the minutes and therefore – the claim.
- The Court vaguely discusses the argumentation formulated in the action concerning the lawfulness of the Deed of Gift, namely: **“Absence of lawful motive for gifting may be given a legal importance only in the event of rescission of the deed concluded based on an unlawful motive. However, only the plaintiff’s abstract indication of the absence of the motive of gifting is not sufficient to find the deed unlawful.”**
- The Judge ignored and did not assess the undisputable factual circumstance in the case that posed a number of questions with respect to genuineness of the deed. For instance, all and every owner and shareholders of JSC Tbilaviamsheni gratuitously handed over their own property to the State at the same time and within tight timeframes; handing over of the property to the State was preceded by financial audit of the enterprises and then-Minister of Defense of Georgia is involved in the case.
- The Judge did not take into consideration the above circumstances as a whole, which might have an impact on the decision.
- When deciding on the matter of the burden of proof, the Judge referred to the Decision of the European Court of Human Rights in the case of *FEDOTOV v. Russia*<sup>1</sup>, according to which, there are cases, where only the State may obtain information. Despite of referring to the said case, the Court did not assign the burden of proof to the State (did not require it to prove the opposite); however, the plaintiff stated about the instances of pressure.
- According to the Court’s interpretation, **“the essence of the action focuses only on the coercion against Pantiko Tordia and shows the series of developments related only to this plaintiff.”** By referring to this circumstance, the Court practically did not address the claims of other plaintiffs and did not study the reasonableness of their claims despite the fact that the factual circumstances of the Decision clearly showed fact of pressure against other plaintiffs, which the Court did not consider on the merits.
- The Court found that the plaintiff missed the one-year term for rescission provided by the law for the forcibly concluded deeds. In particular, the Judge pointed out that the term of rescission started running from the date of signing the Deed of Gift, because the pressure of the partners ended on that day.
- In their appeal, the plaintiffs emphasize individual circumstances of the case and regarding the term for rescission, submit the following: **“There is a difference between the coercion for the purpose of signing the deed and the situation followed by its conclusion because the person exerting the pressure with the aim to coerce the other into signing the deed may not continue active measures, however, there still might be the risk of pressure. Thus, the term of rescission should start running from the moment of personal liberation of the party, when he/she thinks that there is no real threat that could influence his/her actions. In some of the cases, this moment is connected to rendering of a judgment in criminal case, release of the person from prison and possibly, regime change or systemic reforms in the State.”**
- In the dispute, the parties pointed to the pressure exerted by the government, which the Court was supposed to assess in terms of limitation periods. Namely, the Court was to clarify the issue of running of the term of rescission after the regime change.

**Note:** By the decision of March 2, 2017 year Great Chamber of the Supreme Court of Georgia concluded on the case №as-664-635-2016, that compulsion against plaintiff was going on at least till the elections of 2012 year. Likewise to the decision of the Supreme Court of Georgia, in the given case were also outlined political signs, which were not taken into account by the court in assessed decision.

<sup>1</sup> *FEDOTOV v. Russia*, ECHR (App. No. 5140/02) 2005

# 2.

## MISCONDUCT REVEALED IN PROFESSIONAL ACTIVITIES (DISCIPLINARY PROCEEDINGS, PROFESSIONAL ETHICS)

### 1. DISCIPLINARY PROCEEDINGS – EXISTING COMPLAINTS

- The disciplinary panel has not applied any disciplinary measures or penalties against the candidate.

### 2. ALLEGED VIOLATION OF PROFESSIONAL ETHICS

- There was no case of alleged violation of professional ethics

# 3.

## PROMOTIONS AND AWARDS/SCHOLARSHIPS GRANTED FOR PROFESSIONAL PERFORMANCE PROFESSIONAL DEVELOPMENT

### 1. კარიერული განვითარება

- In March–June of 2006 year, candidate Levan Mikaberidze was a courier of chancellery and citizens reception of Tbilisi Court of Appeals. After, he worked on the different position in Tbilisi City court: specialist of Administrative Cases Panel Bureau (2006–2007), clerk of Civil Cases Panel hearings (2007–2009), Civil Cases Panel judge’s assistant (2009–2012), head of sector of Administrative Cases Panel of chancellery (March–November 2012), in 2012–2013 years Levan Mikaberidze was attendee of High School of Justice. In November of 2013 year (during 1 month), Levan Mikaberidze was on the position of consultant of Civil Cases Chamber Directorate of the Supreme Court of Georgia.
- From 2013 year, Levan Mikaberidze is magistrate judge of Batumi City Court. On July 25, 2016 he was appointed as a judge of the Chamber of Civil Cases of Tbilisi City Court for a three-year term, and from November, 30 he was appointed to the same position for indefinite tenure. In 2017 year, Levan Mikaberidze was appointed as a subspecialty judge of newly established commercial disputes in Tbilisi City Court.<sup>1</sup>
- From July 15, 2019 Levan Mikaberidze carries out judicial authority in the Chamber of Civil Cases of Tbilisi Court of Appeals.<sup>2</sup>

<sup>1</sup> Regarding the afore-mentioned, representatives of civil sector state, that council made a decision on establishing subspecialty of commercial disputes in Tbilisi City Court indiscreetly, without proper processing of matter and involvement of business-sector. Also, 4 judges were selected by unidentified criteria, including Levan Mikaberidze, , available at: <http://bit.ly/2IN0oX5>

<sup>2</sup> According to decision #1/143 of the High Council of Justice of July 9, 2019 Judge of Administrative Cases Chamber of Tbilisi Court of Appeals Levan Mikaberidze from July 15, 2019 year, available at: <http://bit.ly/2m4VO6J> was appointed as a Judge of Civil Cases Chamber from July 15, 2019 by the decision #1/167 of the same Council of July 12, 2019 available at: <http://bit.ly/2kf3Jou>

## 2. AWARDS/SCHOLARSHIPS

- Judge Levan Mikaberidze has not received any awards/scholarships.

# 4.

## CONFLICT WITH LAW, CONFLICT OF INTEREST

### 1. CRIMINAL LIABILITY, ADMINISTRATIVE OFFENSES / PENALTIES, LITIGATIONS

- Judge Levan Mikaberidze has no record of conviction.
- Administrative penalties were not used against Levan Mikaberidze.
- Candidate Levan Mikaberidze was not a party to the litigation.

### 2. PARTY AFFILIATION, CONFLICTS OF INTEREST WITH A MEMBER OF THE HIGH COUNCIL OF JUSTICE, LINKS WITH POLITICIANS / INFLUENTIAL PERSONS

- Judge Levan Mikaberidze was not a member of any political party.
- Connection of candidate Levan Mikaberidze with politicians or influential persons is not revealed.
- Sister of Levan Mikaberidze – Shorena Mikaberidze is a specialist of Tbilisi City Court.

# 5.

## CANDIDATE'S PUBLIC ACTIVITIES / POSITION AND BEHAVIOR

### 1. OPINIONS OF LEVAN MIKABERIDZE, EXPRESSED IN SOCIAL MEDIA

Candidate does not use social networks. He does not have personal profile, as well as, official one, related to his position.

### 2. PUBLIC STATEMENTS MADE BY LEVAN MIKABERIDZE

#### 2.1. STATEMENT REGARDING THE 2018 COMMERCIAL LAW FORUM

In 2018, Georgian Lawyers for Independent Profession, Legal Profession Development Center and Grigol Robakidze University, with the support of the High Council of Justice, organized an annual forum on commercial law. Judge

Levan Mikaberidze commented on the forum: “In my opinion, planning the events involving the community of lawyers facilitates overcoming legal problems. Exchanging opinions regarding the views that are priorities for the court, as well as for the community of lawyers, is important for overcoming pressing issues, and this should promote civil stability in future. On its part, this will have a positive impact on business or economic development”<sup>1</sup>

## 2.2.STATEMENT REGARDING PARTICIPATION IN THE FIRST STUDY VISIT ORGANIZED BY THE EXTENDED JUDGE EXCHANGE PROGRAM IN APRIL 2018

---

In April 2018, 8 Georgian Judges of first instance were in the United States, within the scope of the first study visit organized by USAID/PROLoG Extended Judge exchange program. Regarding the said visit, Judge Levan Mikaberidze stated that based on the experience he had gained in the United States, he would more often point out about the probable outcome of the case for the parties in future, offer them to resolve the case through a settlement and offer them settlement conditions. He also noted that such a practice would save time and effort since it would remove unrealistic expectations of the parties.<sup>2</sup>

### 3. INTERVIEW OF CANDIDATE LEVAN MIKABERIDZE AT THE HIGH COUNCIL OF JUSTICE



Question posed to the candidate by SHOTA KADAGIDZE, a member of the Council: “I know cases where several lawyers write positive or negative posts about certain Judges on Facebook after proceedings are over. They announce it beforehand, through court employees. They say that they might write such a post if the judge does not render the decision desired by them. Is this some kind of pressure of the judge?”

Judge Levan Mikaberidze’s response:



**There can be cases where a participant in a certain case strongly criticizes a judge; purposefully attempt to discredit him, intending to influence the judge’s will in some way, in order for the judge to deviate from the law and principles and come under certain influence. However, I am convinced that such a primitive method that cannot not affect the judge’s decision and it should not have any impact. This is not the pressure of the kind, which cannot be handled by the judge, even from the psychological standpoint. We need to be resistant, persistent, principled, independent and objective. Our goal is to resolve cases objectively and truly.”**



Question posed to the candidate by ANA DOLIDZE, a member of the Council: “In your opinion, should judges be allowed to elect the chairperson?”

Judge Levan Mikaberidze’s response:



**To my mind, it should not be a problem in this context. I do not understand the difference and priority election of the chairperson by us could have, since the presiding judge has to exercise administrative duties. From today’s perspective, my – as an individual judge’s – attitude toward the role of the chairperson in terms of status is that I am slowly losing the interest of becoming the chairperson, due to my overly busy schedule, I have no desire to assume additional administrative duties. Moreover, the main attraction for me is being engaged in the process in order to ensure justice; the process is delightful for me because I prefer practicing judicial activities through this manner, without having any excess duties, since administrative duties require certain resources, time.”**

---

<sup>1</sup> “Patients file a lawsuit regarding their breached rights – what were the key issues at the commercial law forum?”, November 17, 2018, available at <https://commerciant.ge/ge/po>

<sup>2</sup> “Judges from Tbilisi participating in an exchange program share the experience they gained in the US to their peers”, May 25, 2018, available at <http://ewmi-prolog.org/ka/news>



Question posed to the candidate by SERGO METOPISHVILI, a member of the Council: “What does it mean to you: “Decision must be lawful and just?”

Judge Levan Mikaberidze’s response:



**The law in itself a priori implies that it must be just, i.e. it must resolve the problem in question. Therefore, in my humble opinion, we have an opportunity to duly resolve the issue, without damaging the interest of justice and for the decision being perceived as lawful and just. In addition of being able to apply to the Constitutional Court, we may also use legal analogies under the law; if we are unable to resolve the issue within this scope and I find that the Court’s engagement is essential to resolve the matter, meaning that I have to apply to the Constitutional Court. I can apply to it seeking to resolve the issue and halt the proceedings. Hence, make a decision within the scope of that decision. The law stops being the law if it loses its functional purpose and cannot resolve a matter correctly.”**



Question posed to the candidate by IRAKLI SHENGELIA, a member of the Council: “Are there any influential groups in the judiciary and are you governed by anyone?”

Judge Levan Mikaberidze’s response:



**I have noted during the initial stage that I am a judge who is absolutely free in serving justice, i.e. based on the law, I am an independent individual judge. I have never felt any kind of influence, direct or indirect, neither in the judicial system nor from the outside factors. I cannot understand what an influential group mean and what kind of influence could it have on me. It is my duty and obligation to duly enforce justice, that is, to be a guarantee of the rule of law. Therefore, if I am not firm with respect to myself and I have no free space, naturally, I will not be able to ensure this interest. I would like to note once again that I can feel no difference over the course of my career as a judge, starting from Batumi City Court up until this point. I do not have any superior. In the judicial system, there is no senior or subordinate judge. All judges are equal in the rights granted to them by the law. Judges are provided with every capability to independently ensure justice being served. I state and confirm once again that such a fact has never come to my attention. I have heard about it because there are talks about it, however, it has never been the case with me. I have never heard from my colleague that he was pressured and certain judge “with powers” did it. I state once more that I do not understand what is implied by “with powers”. I neither have a superior in court nor am I a subordinate of any other judge and so on. Naturally, differences exist. These are legitimate rights granted to chairpersons by the law. However, not in the slightest degree do I recognize that they are more influential judges as opposed to others. There are no ordinary judges as well. All the judges have the same status. The status is being equal. It will be very challenging for me to provide another answer to this question. I confirm that such facts have never been uncovered in relation to me and I have never heard about such fact in relation to any of my colleagues.**



Question posed to the candidate by DIMITRI GVRITISHVILI, a member of the Council: “Is any of your relatives employed in the judiciary? This Ms. Nazibrola’s question; however, since she is not here, I ask it to you.”

Judge Levan Mikaberidze’s response:



**I confirm that my sister is employed at Tbilisi City Court; she has been working there since 2015, when Mamuka Akhvlediani was the chairperson. I was a judge in 2013. During all this time, the idea of using my status to help my sister in being hired has never even crossed my mind. I had to live in Batumi for three years. I was not even aware of her intention to apply for the position. As far as I am concerned, my sister worked at Media Monitoring Center, she was monitoring the media. A position opening was announced at the Press Office of the Court. My sister applied for the job, overcame the competitors and for the time being, she has been employed as a registrar at the Court Registry Office after the re-organization. She is not holding a distinguished position and she does not enjoy any privileges. My sister is an independent person. She may hold any position in any public office, where she finds necessary.”**

Regarding this matter, Levan Mikaberidze made an additional note:

**”** When my sister started working at Tbilisi City Court, I was assigned to Batumi City Court and I had no connection to Tbilisi City Court.**”**

# 6. FINANCIAL OBLIGATIONS AND INCOME OF THE CANDIDATE

## 1. PROPERTY



**2018**  
**FLAT IN TBILISI**  
**GEL 16 171**  
**40.5 SQ.M**



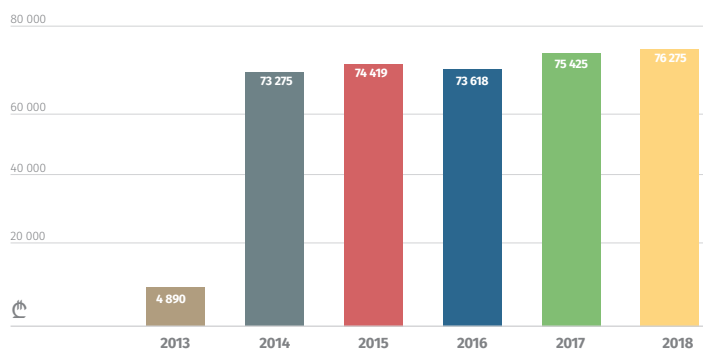
**2018**  
**FLAT IN TBILISI**  
**GEL 36 005**  
**44.9 SQ.M**



**2017**  
**LAND PLOT IN**  
**MTSKHETA**  
**GEL 29 052**  
**807 SQ.M**

## 2. FINANCE

Judge Levan Mikaberidze's income from judicial activities in 2013–2018 amounted to GEL 377,902. He was working in Batumi City Court in 2013–2016 years and received income amounted to GEL 192,946. Candidate moved to Tbilisi City Court in July of 2016 and including 2018 year he earned GEL 184,956 in total. Judge received highest income in 2018 year, in amount of GEL 76,275.



According to the latest data, judge has 4 bank debt related obligations in TBC Bank, amounting to GEL 51,650 total. Candidate covers debt service charges annually.



Authors: EDUARD MARIKASHVILI, ANA NATSVLISHVILI, GIORGI BERAIA, IRAKLI GVARAMADZE, ZAZA ABASHIDZE  
Editors: DAVIT PAICHADZE, GIORGI CHITIDZE, SOPHIO ASATIANI, INA GRIGALISHVILI Designer: BESIK DANELIA

Open Society foundation would like to than following individuals for their contribution:  
SALOME KVIRIKASHVILI, MARIAM ORZHONIA, LASHA JUGHELI, TINATIN CHACHUKASHVILI, GVANTSA KAKHIDZE,  
TEONA BABUTSIDZE, KHATIA NIKOLAISHVILI, SHOTA KOBALIA

PREPARED BY THE OPEN SOCIETY GEORGIA FOUNDATION