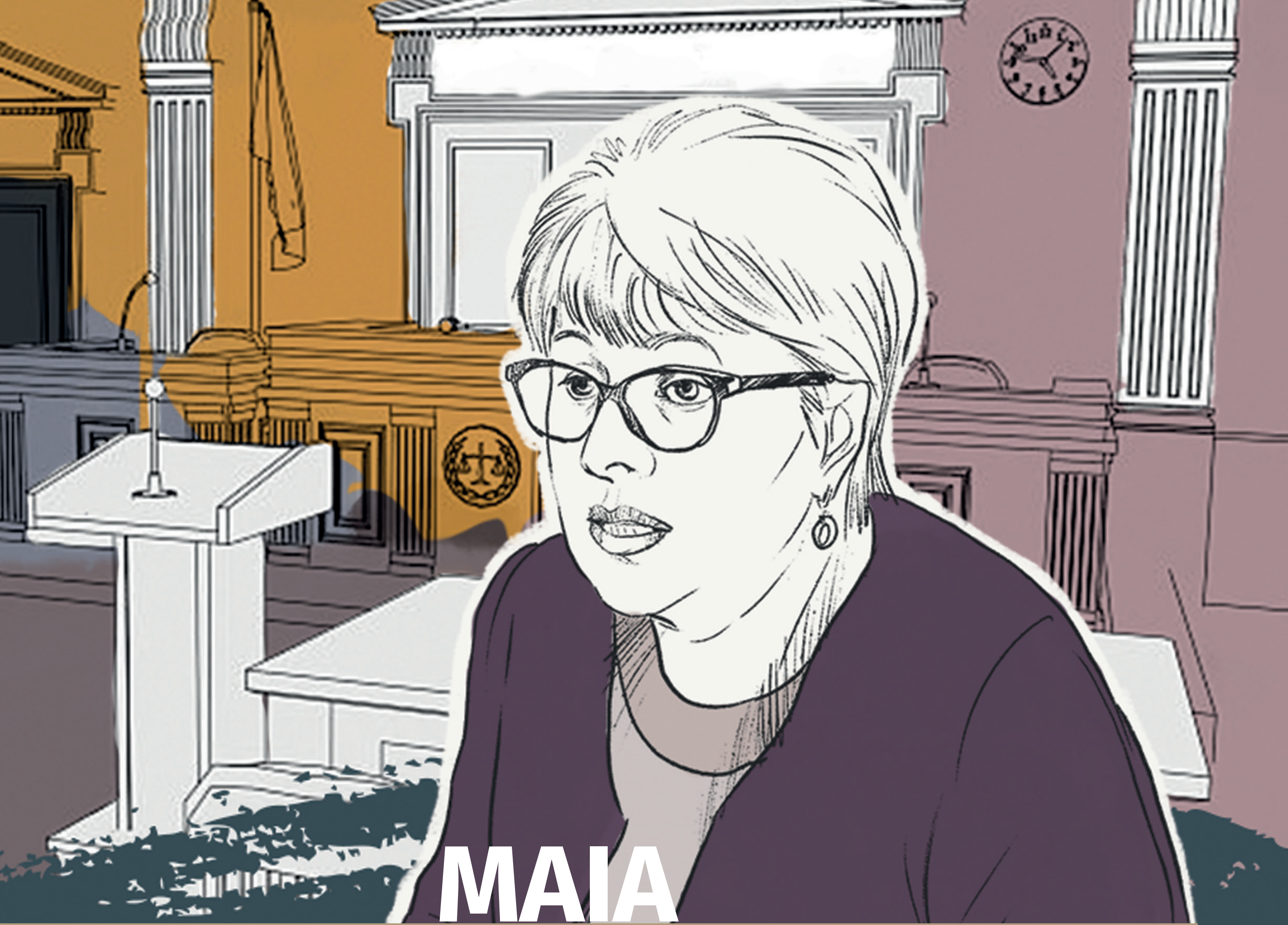

MAIA VACHADZE

Judge of the Supreme Court of Georgia

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In 1985-1995 Maia Vachadze held various positions at the Ministry of Justice of Georgia. In 1995 she was appointed Judge of the Administrative Cases and Corporate Law of Gldani District Court. In 1998-1999 Maia Vachadze was Judge of Tbilisi District Court and since 1999 she has been Judge of the Supreme Court of Georgia.

OPEN SOCIETY GEORGIA FOUNDATION

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

1. DECISIONS, DISSENTING OPINIONS, COURT SUBMISSIONS

1.1. LEGALLY INTERESTING OR PRECEDENTIAL DECISIONS

Legal issue: Classification of information and an instruction to release public information.1

Facts: On March 7, 2011, the Administrative Chamber of the Supreme Court of Georgia, with the participation of Judge Maia Vachadze (composition: Levan Murusidze; Paata Silagadze), dismissed the cassation appeal of non-entrepreneurial (non-commercial) Legal Entity "Green Alternative". The Association requested a copy of the contract that was concluded between the Government of Georgia, the Ministry of Economic Development, the Government of Tbilisi and Multiplex Energy Limited LLC and concerned the acquisition of 100% of shares of "Rustavtskalkanali", "Mtskhetatskalkanali", "Saktskalkanali" and "Tbilisi water" to be submitted as public information.

The Courts of the first and second instance dismissed the appeal, and the Chamber of Administrative Cases of the Supreme Court of Georgia found the cassation appeal inadmissible on the basis of lack of grounds provided for by the law.

Significance of the case: In the present case, the court considered how legitimate restriction of the constitutionally guaranteed right, access to information on the basis of state property privatization agreement was, so that the administrative-legal procedure provided for by the law for considering information as commercial secret was not observed.

Decision:

- A party to the State Property Privatization Agreement, a physical person, argued that the information contained in the contract was his/her commercial secret. On this basis, the administrative authority refused to provide the plaintiff with copies of the agreement.
- The courts of the first and second instances did not assess to what extent the relevant administrative authorities followed the procedure prescribed by the law for recognizing information as a commercial secret and whether there was a legal basis for recognizing such information as a commercial secret.

[1] The Court of Appeal, in the same composition (presided by: Levan Murusidze; Judges: Maia Vachadze, Paata Silagadze) and by the judgment of December 6, 2010, dismissed the cassation appeal concerning the decision of the Ministry of Economy and Sustainable Development of Georgia on classification of the agreement of privatization of 100% shares of LLC "Vartsikhe 2005" by the state and refusal to release public information. The aforementioned dispute identified the same legal problems that were considered in the assessment of the decision of March 7, 2011.

Note: the law of Georgia restricts public access to information if it contains personal data, state, professional or commercial secrets. An indication by an interested person that the information is a commercial secret does not automatically make it such; nor does it give rise to any obligation of the administrative authority to recognize this information as a commercial secret. According to the law, such a prerogative is assigned to an administrative body only after it has been properly examined on the basis of the relevant procedure to verify that there is an obligation under the law on its publicity and openness.

- **The court did not assess: whether** the content of the contract was environmental information, based on the Aarhus Convention, which broadly explains this notion; accordingly, should public access to it have been guaranteed.
- **The court did not assess:** whether the content of the contract contained information about the administrative authority, which according to the law is always public; also, how the balance between commercial interest and public interest is preserved, etc.

Note: The Supreme Court's search engine does not search any decisions for these issues. Nor does the ruling on inadmissibility set forth a court-established practice that would prove that the dispute was not relevant to the development of judicial practice. Accordingly, it failed to meet the admissibility criteria of the Supreme Court.

Legal issue: Requesting public information from an administrative body; basis for restricting access to information.

Facts: On September 14, 2017, the Chamber of Administrative Cases of the Supreme Court of Georgia, chaired by Judge Maia Vachadze, heard the cassation appeal of non-entrepreneurial (non-commercial) Legal Entity "Institute for Development of Freedom of Information" against the Ministry of Justice of Georgia.

This Institute requested information from the Ministry of Justice on the activities of the Ministry, including copies of email correspondence of the agency staff in relation to state procurement. **The Ministry refused to release information stating that communication through email was not an official document.** Accordingly, it had no obligation to release it.

The courts of the first and second instances rejected the request of the "Institute for Development of Freedom of Information". The Court of Cassation annulled the decision of Tbilisi Court of Appeal and assigned the Ministry to make the requested information public.

Significance of the case: in this case, the court for the first time discussed whether the electronic correspondence of public officials is an official document and to what extent it is subject to the rule of openness of public information stipulated by the legislation.

Decision:

- The court considered e-mail to be "an official document"[2], which is public information under the law of Georgia.

[2] Article 2.1 of the General Administrative Code of Georgia: "Public information" means an official document (including a drawing, drawing, chart, photograph, electronic information, video and audio recordings), i.e. information obtained, processed, created or sent by a public agency or an employee in connection with their official duties, as well as information, published by an agency proactively.

The court explained: **„official e-mail implies the need to use this e-resource for a particular, specific purpose and is intended to fulfill official obligations. [...] notifications sent by official e-mail constitute public information in electronic form and meet the requirements of public information provided for by the law".**

- The Court of Cassation emphasized the significance of the content and publicity of the information requested by the plaintiff in the reasoning of the decision. It shared the motivation of the appellant (the Institute for Development of Freedom of Information) by referring to the fundamental principle of the Law "On Public Procurement" (Public Procurement Publicity)[3].

  The judge stated: **"official e-mails are usually used by the relevant officials to conduct price surveys while carrying out state procurement. The availability of such information is important when making simplified purchases, i.e. when the law allows for the disposal of state budget funds under less public monitoring."**
- The Court of Cassation considered "emails" sent and received from work within the framework of personal privacy protection right[4] and, with reference to the practice[5] of the European Court of Human Rights, explained that the disputed content could not be on the same level with personal information.
- The Court also emphasized the importance of openness of information in a democratic state: **"openness of information in the administrative bodies is one of the important elements for proper functioning of democratic and law-bound state, as it is the guarantor of accountability of the state before its population and the transparency of its activities, which enables the society to control the actions of the government and bind them, if its discretion powers are abused."**
- The Court also emphasized the importance of access to public information for non-governmental organizations, and if limited, it is interference with their functions as "public watchdogs". In expressing this opinion, the Court referred to the decision of the European Court of Human Rights in **TAZC v. Hungar**y (without full reference to the case title).

Note: Case **TAZC v. Hungary** cannot be found in the search system of the judgments of the European Court of Human Rights. There are two judgments made by the same court against Hungary in which the Court speaks of the role of the public watchdog in relation to access to public information: **Magyar Helsinki Bizottság v. Hungary** (no. 18030/11), 2016, also **Társaság a Szabadságjogokért v. Hungary** (No. 37374/05), 2009.

Legal issue: Jurisdiction of a dispute on discrimination.

Facts: On September 22, 2016, the Administrative Chamber of the Supreme Court of Georgia, with the participation of Maia Vachadze, delivered a judgment on the jurisdiction of the appeal submitted to Tbilisi City Court.

The claim concerned establishment of the fact of discrimination, an order to terminate the discriminatory action and a claim for material damage from the defendant, the Public Defender of Georgia. **The plaintiff considered that he/she had been discriminated against for expressing a dissenting opinion and belonging to trade unions.**

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3 Law of Georgia "On State Procurement", Article 2, subparagraph "d".

4 The Constitution of Georgia, Article 20 (as of 2017).

5 NIEMIETZ v. GERMANY; no. 13710/88; December 16, 1992; Strasbourg. HALFORD v. THE UNITED KINGDOM; no. 20605/92; June 25, 1997, Strasbourg.

By the judgment of Tbilisi City Court, the claim in the part of recognizing an administrative act as null and void and claiming material damage has been distinguished as separate proceedings and in the part of establishment of the fact of discrimination and termination of the discriminatory actions was sent by jurisdiction to the Chamber for Civil Cases of Tbilisi City Court.

This chamber sent the case for resolving the dispute related to the aspect of jurisdiction to the Supreme Court of Georgia. The Supreme Court, however, assigned the review of the dispute to the Chamber for Administrative Cases of Tbilisi City Court.

Significance of the case: In this case, the court deliberates on jurisdiction of the dispute on discrimination by the authorized chamber.

Decision:

- The judge explained: **"discriminatory action can take place both in the private law and in the public sphere. Accordingly, discrimination-related cases may be subject of a judgment in both civil and administrative case courts."**
- However, in this case, the judge emphasized the link between the appealed act and the issue of discrimination and concluded that the framework of legitimacy of the disputed act could not be examined separately from deliberation on the fact of discrimination.
- "The plaintiff alleges that, as a result of discriminatory treatment due to belonging to the trade union and due to the dissenting opinion, a disciplinary measure was unlawfully imposed – no bonus was given to the plaintiff. Within the scope of examining the relevancy of the plaintiff's claims, the lawfulness of the disputed act, the fact of discrimination should be discussed, since a discriminatory action by an administrative body may be committed through issuing an individual administrative act or refusing to issue an act."
- The court has made an important explanation: according to the court, disputes related to the discrimination should not fall only under the jurisdiction of the Chamber for Civil Cases. This will cause withdrawal of the most pressing issues of the legality of public administration from the sphere of the administrative cases court.

  "Such resolution of the dispute would, by its very nature, result in the transfer of significant disputes of administrative cases to the jurisdiction of the civil cases courts. Unlawful acts committed by an administrative body are, in many cases, far more threatening compared to similar action committed by private entities."

Legal issue: Making a change in the recording on gender in the ID documents of transsexuals (change of "female" to "male"), i.e. legal recognition of gender of a person as a human right.

Facts: **a transgender person filed a lawsuit with the court against** LEPL "Public Service Development Agency". In particular, the Agency refused to change the recording on gender in the birth certificate (replacing "female" with "male"). On the basis of the birth certificate, both in ID card and other identity documents, "female" gender was indicated. This fact posed many difficulties to the plaintiff as it encouraged discrimination on the basis of identity.

The courts of the first and second instances did not satisfy the claim against LEPL Public Service Development Agency and the Supreme Court declared the claim inadmissible.

Significance of the case: In this case, the court first raised the issue of legal recognition of gender and explained how correct it is when the law on "gender change" is interpreted imperatively as a surgical operation.

Judgment (about inadmissibility):

- The Supreme Court declared the appeal inadmissible.

Note: The Supreme Court is the highest judicial authority within the country (within the common court system). One of its key functions is resolution of complex legal issues and development of justice. In this process, the court naturally takes into account processes and visions at international level and in other countries, though it is not bound to develop justice itself. When delivering judgments, the European Court often analyses visions in the national legal systems, indicating that justice does not develop from the common European level down to the national level, and often vice versa.

It should be noted that Strasbourg Court of Human Rights is not the court of the fourth instance. At the same time, it has repeatedly emphasized that the Convention establishes a minimum standard of human rights for states, below which national law and practice should not fall. States have complete freedom to impose high standards set by the European Convention and nothing in the Convention should be construed as an obstacle[6].

Legal issues: Reorganization, the scope of powers of the High Council of Justice, the hierarchy of normative acts.

Facts: The case concerned the dismissal of a person on the basis of reorganization. The plaintiff appealed the High Council of Justice Act No. 1/109 of March 21, 2016, on the basis of which Tbilisi City Court was reorganized and the position of the Head of Secretariat was introduced. The plaintiff argued that by creating such a position, the Council's order was in breach of Government Decision N576 of September 29, 2014 "On Approval of the Public Service Position Registry". This resolution defines in detail the leading public positions and their ranking in the judicial system. In the plaintiff's view, the act adopted by the High Council of Justice should be declared void by the court; the plaintiff also demanded reinstatement and reimbursement of enforced idleness.

Significance of the case: In this case, the plaintiff sought judicial control over the lawfulness of the actions of the highest constitutional body - the High Council of Justice that has administration function in this system.

Decision:

- **The Supreme Court declared the complaint inadmissible.**
- The Court notes: "The courts of lower instances have made a right decision on this dispute." To prove this, the Court refers to the authorities envisaged by Article 49 of the Organic Law of Georgia "On Common Courts" to approve the structure and schedule of the staff of Common Courts of Georgia (except the Supreme Court).

[6] European Convention on Human Rights, Article 53; see also the article: **https://human-rights-law.eu/echr/echr-introduction/**

- **The ruling does not mention the resolution of the government on which the plaintiff made an appeal to. Accordingly, without having read the case file, it is impossible for the reader to understand what the plaintiff's main argument was,** on the basis of which the plaintiff requested annulment of the act. The ruling also does not specify how the courts of lower instances interpreted and substantiated the Council's authority to introduce a new position not provided for by the relevant Government decree.

Note: Resolution N 576 of September 29, 2014 of the Government of Georgia "On Approval of the Public Service Position Registry" comprehensively defines the leading public positions in the judicial system. The list does not include a public official - head of the Secretariat.

In the judgment, the Court cites the practice of the European Court of Human Rights in respect of the right to a fair trial[7]. In particular, the document states that **the obligation of the court to substantiate the decision should not be construed as an obligation to give detailed answers to all questions.**

Note: It should be noted that such a reference is a very common practice in the Common Courts system. The majority of decisions examined refer to these cases, when a judge considers issues related to the right guaranteed under Article 6 of the European Convention ("fair trial"). Judges refer to this case to prove that the obligation to make a reasoned decision does not envisage "a requirement to give a detailed answer to each argument." However, the same paragraph states that national courts are required to "determine motives with sufficient precision", upon which they rely in their decisions. This important issue has not been cited by the court in any other case in which the decision is quoted.

Legal issue: Elimination of discriminatory action; compensation for moral harm.

Facts: By the decision of March 15, 2018, the Chamber for Administrative Cases of the Supreme Court of Georgia, chaired by Judge Maia Vachadze, made a decision **to impose elimination of discriminatory action on the Ministry of Internal Affairs of Georgia and compensation of moral harm.**

The appellant intended to open a boarding school for Muslim students in Kobuleti, for which renovation works in a rented building were commenced, however, there was considerable resistance from the local population: for example, once locals slaughtered a pig at the entrance of the building to hinder the operation of the boarding school and nailed its head on the door of the building and erected a large iron cross in front of it. The locals permanently conducted rallies near the boarding school.

On September 15, 2014, when the boarding school was to be officially opened, the protesters cut down the entrance to the yard with wooden structures and car tires and set up permanent duty on the premises. After unsuccessful attempts to resolve the conflict peacefully, the staff of the Ministry of Internal Affairs was deployed at the boarding school to avoid physical or verbal confrontation among the population. During this time no one turned to the police for help, though it is noteworthy that even during the dispute the appellant and students could not enter the boarding school.

The appellant stated in the complaint that the police had not responded promptly to the facts of offences; monitoring was also ineffective.

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[7] Judgment of the European Court of Human Rights in the case of "Jgarkava v. Georgia" , N7932/03, 2009

The appellant had the following claims to the court: 1. Removal of the barrier erected in front of the boarding school; secure and free entry/activities of plaintiffs and persons related to the boarding school. 2. Prevention of verbal harassment, intimidation and coercion of the plaintiffs, as well as representatives of Muslim community at the territory of the boarding school and near it; prevention of impeding the operation of the boarding school and imposing jointly the obligation of compensating moral harm on the Ministry of Internal Affairs and impediment of physical persons. The appellants also sought to establish that **the Ministry of Internal Affairs of Georgia had discriminated against them, which was manifested in failure to fulfill the obligations provided for by the law.** They considered that due to the indifference and superficial attitude of the Ministry of Internal Affairs to the rights of the Muslim community, they were discriminated against on religious grounds.

Significance of the case: In this case, the court considered the responsibility of the Ministry of Internal Affairs of Georgia (the obligation to compensate for moral harm) for the inaction of police officers on the grounds of religious discrimination.

Decision:

- The court considered that **the burden of proving discriminatory actions** on the part of police officers **rested with the appellants.**

Note: According to Article 3633 of the Code of Civil Procedure of Georgia, "In bringing an action, a person must submit to the court the facts and relevant evidence that constitute grounds for assumption of a discriminatory act, after which the defendant shall bear the burden of proving that there was no discrimination."

- In support of this reasoning, the motivating part of the decision refers to the judgment of the European Court of Human Rights in the case of **Nachova and Others v. Bulgaria.** According to the Court of Cassation, "the European Court demands that the applicants confirm the fact of discrimination. In assessing the evidence, the court sets the highest standard - the "standard beyond reasonable doubt."

Note: The decision of the European Court of Human Rights in the case of **Nachova and Others v. Bulgaria** refers to a special rule for the distribution of the burden of proof in establishing the fact of discrimination. It is noteworthy that the facts and legal context of the case differ significantly from the case under consideration. **In the present case the use of force by the police was essential, i.e. active action that resulted in fatalities.** According to the court, the use of force in those circumstances had legal basis, although there were some shortcomings in the legislative framework that govern the use of force. In this case, on the contrary, the issue concerned inaction of the police when under the law it was obliged to act. The plaintiff stated that it was the discriminatory motive that led to the inaction of the police.

- The Court notes: **"The Court of Cassation draws attention to the fact that the Ministry of the Internal Affairs was protecting the rights of the plaintiffs while safeguarding the freedom of expression." The reasoning is problematic, as it seems that the Court considers active interference with the exercise of the right to be part of the freedom of expression.**
- The Court held that the determination of the fact of discrimination in part of imposing compensation of moral harm was crucial:

“As to the allegations by the appellants that the means used by the police officers did not justify their purpose and despite the 24-hour duty of the police, they were unable to use the boarding school, it points to the inadequacy of the preventive measures used by the police under its discretion and does not confirm the discriminatory approach of the police in relation to the appellants.”

1.2. HIGH-PROFILE CASES

Case of TV Company Rustavi-2

The Grand Chamber of the Supreme Court, with Maia Vachadze among them, has discussed one of the most recent **cases of public interest involving the ownership of Rustavi 2 TV shares.** The decision of the Grand Chamber on this case has been criticized by legal circles. **According to the assessment of the Georgian Young Lawyers' Association, the court wrongly distributed the burden of proof between the parties, which had a significant effect on the final outcome of the case,** the coercion was wrongly considered to be a well-known fact and so on.

Also, according to the assessment of the organization, such vague reference to the substantive basis for sustaining a case, in terms of justification of the decision and legality of the decision, gives rise to question marks and creates uncertainty as to which norm the courts should use in resolving such a dispute in the future.

1.3. APPLYING THE PRACTICE OF THE SUPREME/CONSTITUTIONAL AND INTERNATIONAL/REGIONAL COURTS

In cases considered on merits by the Court of Cassation, the judge actively applies the practice of the European Court of Human Rights.

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

1. DISCIPLINARY PROCEEDINGS-EXISTING COMPLAINTS

- The Disciplinary Board did not take any disciplinary sanction or disciplinary measure against the candidate. However, there is **one case:** in 2015 the founder of LLC “Metalinvest”, Murtaz Ugulava, **filed a disciplinary complaint against the judges of the Supreme Court, Maia Vachadze, Nugzar Skhirtladze and Levan Murusidze.** The applicant indicated that this composition of the Supreme Court had wrongly, in violation of

the law, declared the cassation complaint[1] inadmissible. On this complaint (# 253/15) the High Council of Justice terminated the proceedings.[2]

2. ALLEGED VIOLATION OF PROFESSIONAL ETHICAL NORMS

- No violation of ethical norms recorded

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[1] High-profile case of "Metalinvest"-how are Irakli Ezugbaia's wife and Nika Gilauri's brother related to the dispute?! see http://bit.ly/2MWXSJJ

[2] "Young lawyers" published a research and recommendation on bankruptcy case of "Metalinvest" see http://bit.ly/2YTmzZw

3. PROMOTIONS AND REWARDS/ SCHOLARSHIPS AWARDED FOR PROFESSIONAL ACTIVITIES

1. CAREER DEVELOPMENT

- In 1984-1985 Maia Vachadze was an intern judge of the People's Court of Tbilisi Factory District Court, since 1985 - editor and senior editor of the Law Book Department of the Ministry of Justice of Georgia, and since 1987 - consultant and senior consultant of the Judicial Bodies Division. In 1989-1991 Maia Vachadze worked as a senior consultant at the Ministry of Justice Propaganda Division. Since 1991, she has been Head of Information Division of the Public Organizations Registration Division of the same Ministry, and in 1992-1995, she was Head of the Division of International Law and International Legal Relations, a member of the Panel of the Ministry of Justice.
- In 1995 Maia Vachadze was appointed judge for Administrative Cases and Corporate Law of Tbilisi Gldani District Court. In 1998-1999 she was a judge of Tbilisi District Court.
- Since July 20, 1999 Maia Vachadze has been a judge of the Supreme Court of Georgia. She was re-elected to this position on July 20, 2009.
- In 2013-2019, Maia Vachadze was the Chairman of the Disciplinary Chamber of the Supreme Court of Georgia.
- **Maia Vachadze's judicial term expired on July 20, 2019, but the decision of July 9 of the High Council of Justice extended that term** until a final decision on the cases initiated with her participation (but no later than electing a judge of the Supreme Court for the relevant vacant position)[1].

2. AWARDS/SCHOLARSHIPS RECEIVED

- Maia Vachadze has not been awarded rewards/scholarships.

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[1] The decision of the High Council of Justice on the extension of the judiciary power of Maia Vachadze, see http://bit.ly/2KphGU7

4. CONFLICT WITH THE LAW, CONFLICT OF INTERESTS

1. CRIMINAL LIABILITY, ADMINISTRATIVE OFFENSES/PENALTIES, LITIGATION

- Candidate Maia Vachadze has no criminal record.
- No administrative penalties have been applied against Maia Vachadze.
- Maia Vachadze has not been a party to the litigation.

2. PARTY AFFILIATION, CONFLICT OF INTEREST WITH A MEMBER OF THE HIGH COUNCIL OF JUSTICE, CONNECTIONS WITH POLITICIANS/INFLUENTIAL PEOPLE

- Judge Maia Vachadze has never been a member of any political party.
- Her connection with politicians or influential people is not clear.
- Maia Vachadze's son, Niko Dateshidze, is a referent for the Human Rights Centre of the Analytical Department of the Supreme Court of Georgia.
- Her husband's sister, Manana Dateshidze, is a specialist of Sachkhere District Court.

5. CANDIDATE'S PUBLIC ACTIVITIES/POSITIONS AND BEHAVIOUR

1. OPINIONS POSTED BY MAIA VACHADZE ON SOCIAL NETWORK

The candidate has a personal account on social network Facebook, but she does not display public opinions on her page.

2. PUBLIC STATEMENTS BY MAIA VACHADZE

2.1. STATEMENT ON THE DECISION OF THE SUPREME COURT OF GEORGIA ON RUSTAVI 2 TV CASE

On April 5, 2017, Maia Vachadze, as one of the judges on Rustavi 2 TV case, stated that the decision of the Supreme Court of Georgia had no problems in legal terms, in particular, of **"substantive and procedural-legal nature."** [1] The

[1] „In legal terms, the decision has no problems" – explanations of judge Maia Vachadze on Rustavi 2 case", April 5, 2017, are available: https://netgazeti.ge/news/184807/

decision is justified and lawful." With regard to this case, she also said: "I can honestly tell you that no one has contacted me."[2]

Maia Vachadze further stated:

"All the evidence in the case is highlighted and all evidence is well-known piece of evidence that does not require further proof by the party. The most important is that it has pointed it out. The first is that it has indicated that in 2008 the State Department had information about it. This information is posted on the website of the State Department and these are well-known facts that need no additional proof by the party. Further, it is an act of Parliament. The assessment of coercion is made by the Parliament. Coercion is a legal assessment, not a fact. The judge and the Parliament make legal assessment of this fact. There is also a political asylum received from the Federal Republic of Germany; There are also documents submitted to the Prosecutor's Office in relation to filing a complaint against it".[3]

Maia Vachadze commented on "Rustavi-2" TV case in relation to the date of staffing of the Grand Chamber of the Supreme Court, noting that the lawyers should have known, without an official notification, who would be in the Grand Chamber, as this issue is determined by the law. Based on her instruction, lawyers of "Rustavi 2" "knew the composition perfectly" and not knowing the law is not justified.[4]

2.2. POSITION WITH REGARD TO TRANSFORMING DEFINITE TERM OF JUDICIAL POWERS OF THE JUDGES OF THE SUPREME COURT INTO INDEFINITE ONE.

Maia Vachadze, along with other judges of the Supreme Court of Georgia, addressed the Parliament of Georgia on May 15, 2019, to consider the question of converting the term of office of the Supreme Court from definite into indefinite one (until attainment of the retirement age). In particular, the statement reads:

The new Constitution of Georgia laid the foundation for a lifetime election of judges of the Supreme Court by the Parliament upon the recommendation of the High Council of Justice. The lifetime mandate of judges of the Supreme Court is one of the important guarantees of their independence and impartiality, which is the key attainment of the constitutional reform that has been implemented in Georgia. The Organic Law of Georgia "On Common Courts" defines the terms and conditions for the term of office of judges of the Supreme Court. Furthermore, the issue of lifetime re-appointment of judges of the Supreme Court was beyond the scope of this law. Based on the opinion prepared by the Venice Commission of the Council of Europe on April 16, 2019 "On selection and appointment of judges of the Supreme Court", a recommendation was given to the Parliament of Georgia, according to which: "the Parliament should consider the issue of transforming the judicial powers of judges of the Supreme Court from definite term into indefinite one. This is necessary to ensure that at least 11 experienced judges continue to serve in the Supreme Court, whereby (a) the result will be mitigated which accompanies creation of completely new Supreme Court by the Parliament and (b) a certain number of experienced judges and not only newly-elected judges will review cases, which will contribute to the institutional stability and consistency of the Supreme Court." [5]

Judge Maia Vachadze said during the interview in the High Council of Justice that the Parliament had no communication with her on the matter. Accordingly, she decided to participate in the appointment of judges of the Supreme Court.

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[2] ibid.

[3] ibid.

[4] ibid.

[5] The judges of the Supreme Court apply to the Parliament to review the issue of transforming definite term of judicial powers into indefinite one, May 15, 2019, available at: http://www.info9.ge/samarthali/209

3. INTERVIEW OF CANDIDATE MAIA VACHADZE AT THE HIGH COUNCIL OF JUSTICE

Question posed by a member of the Council REVAZ NADARAIA to the candidate: "Where does the line between freedom of expression and protection of the honor and dignity of a particular judge go?

Maia Vachadze's response:

The restriction related to the standing and the impartiality of the judge, specifically its subject matter is the judiciary and the judge. As for honor, one of restrictions, unlike other articles, is specifically in this article, which reads: "for the rights and dignity of other people." That is, the subject of this dignity is not specifically a judge, but any citizen. For example, in the case "Mariam Jishkariani v. Georgia", this woman was a human rights defender and her honor and dignity were higher than the freedom of expression of an official.

Question posed by a member of the Council IRAKLI SHENGELIA to the candidate: "We have often heard that the judiciary system is run by an influential group. What is it, in your opinion?"

Maia Vachadze cited as an example, a journalist's phrase that "the court is ruled by medieval masons", for which the European Court of Human Rights found no violation. She added:

of course, these terms are not justified. Every state has its own attitude towards the form of expression, but in the evaluative sense, the European Court of Human Rights provides a journalist with great means of expression."

Question posed by a member of the Council ANA DOLIDZE to the candidate: "What was the opinion of the Venice Commission about the number of judges of the Supreme Court, in particular, appointing 20 judges and what do you think?"

Maia Vachadze's response:

If there is a decent candidate, we are in a position when the more is the better. I proceed from these interests as an acting judge who is there and sees the status quo. It is very painful that often you cannot work on the case because of the number of cases. Our phones never stop, all citizens demand making decisions on their cases. The opinion that it is better if 20 judges are not appointed, is probably more politically motivated, to appoint a certain number of judges during this period and when the new government comes, a certain number of appointments to be made then. I believe that if the candidate is worthy, he/she can be appointed today."

Question posed by a member of the Council ANA DOLIDZE to the candidate: „On January 14, 2017 your colleagues, Besarion Alavidze and Paata Katamadze made a statement. They were discussing the case of "Rustavi 2" at the time, and then an investigation was launched regarding possible pressure. You're part of the circumstance, have you heard about it then? What is the attitude in this regard in the Supreme Court and have you dealt with such forms as pressure on a judge in the process of making a decision?"

Maia Vachadze's response:

This refers to a specific incident that took place in relation to them and they made a statement. I really don't know the details because they haven't displayed them in relation to other judges. This was mentioned during the hearing of the case."

Question posed by a member of the Council NAZI JANEZASHVILI to the candidate: “You have been working in the system for so many years and I am interested in assessing the period before 2012 in the judicial system and the subsequent period. Has anything changed in terms of judicial independence, what has changed and why?”

Maia Vachadze's response:

The independence of the court is determined institutionally. Its independence is determined by the law. The judiciary is independent of the government, but we have not had judges appointed for lifetime and this lifetime appointment of judges gave us certain guarantees of independence, as lifetime appointment is one of guarantees of independence, already for the judges of the Supreme Court, moreover, that their dismissal is only possible through impeachment. I have known the judicial system since 1984, have gone through many changes and reforms, and I cannot say that the judicial system is not developing and it is no better than it was yesterday.“

Question posed by a member of the Council NAZI JANEZASHVILI to the candidate: „Have you had a case, when you were under the influence in relation to any decision and how you handled it?“

Maia Vachadze's response:

One of my recommenders wrote that my drawback is that I am a strong polemist. On the issue on which I have an opinion and I believe that my opinion is more substantive, I either make a decision in this regard or write a different opinion. [...] I've been in two compositions and this is always a question, how a decision on the case should be made. I can honestly say that in order to justify my point of view, to make a decision, I have always fought and won with my colleagues. Although we have been through difficult times since 1995 and have experienced difficulties in every period, we have strived to be independent and impartial. To be honest, no decision has ever been extremely problematic, or biased, or similar, it has never been the case. However, there are certainly decisions which are appealed in the European Court of Human Rights.“

Question posed by a member of the Council TAMAR ONIANI to the candidate: "To what extent is the dissenting opinion of the judge of the Supreme Court important, who is the addressee of this dissenting opinion?”

Maia Vachadze's response:

I have written a number of different points of view during my judicial career, including in the Grand Chamber on criminal case. We say that a judge is independent and impartial and relies on knowledge and inner belief. Inner belief is very important in making a decision and being right in your decision ... dissenting opinion has its own significance. First of all, you see this norm differently. To me, a good, experienced judge is the one who sees many sides, so he/she may see the side which is unacceptable to his/her colleagues today, but I said that justice is evolving and that maybe ten years later everyone else can make that decision. In my opinion, dissenting opinion has its own important significance for the development of justice, but it certainly does not work for the party.”

Question posed by a member of the Council NAZI JANEZASHVILI to the candidate: “Have you ever heard about so-called “meetings”? Do you know that meetings were held with some judges, etc.?“

Maia Vachadze's response:

I really can't say if it applied to any judge. However, there have been discussions in Chambers. I have not heard of this in other individual cases. Nobody talks about it. I can only speak for myself."

Question posed by a member of the Council NAZI JANEZASHVILI to the candidate: "You worked in the Supreme Court even when Mikheil Chinchaladze was a judge. Did you have any professional relationship with him and how would you characterize him as a person? As you know, he is a very influential person in the judiciary today."

Maia Vachadze's response:

Mikheil Chinchaladze was the Chairman of the Administrative Chamber and I was a member of this Chamber. A judge has no supervisor, a judge is a supervisor for himself/herself. If he has high sense of responsibility, independence, impartiality, own internal belief and, besides, standing, he/she has no supervisor. He was the chairman of the Chamber, but was not my supervisor. Out of Mr. Misha's qualities, I would distinguish two: organizational talent and willingness to help."

Question posed by NAZI JANEZASHVILI to the candidate: "Have you ever heard during your career about your colleagues who were dismissed as a result of disciplinary proceedings, which you think was unfair? Have you paid attention to such cases?"

Maia Vachadze's response:

Of course there were such cases around us, such as the dismissal of judges on the basis of gross violations of the law. In the context of broader interpretation of this basis, I think it was a high form of [punishment], and in these circumstances it could be confined to reprimand, because it is not always necessary to dismiss, it can be severe reprimand or reprimand."

Question posed by NAZI JANEZASHVILI to the candidate: "Levan Murusidze declared during the interview that he is the leader of the court. You have worked with him and it's probably easier for you to assess. How did you perceive this as a judge: Should the court have one leader? What does this mean and how did you perceive this statement?"

Maia Vachadze's response:

The term 'leader' more corresponds to the political activity. As for Mr. Levan, in my opinion (I might be mistaken), he wanted to say that he has standing and is therefore a representative of judges. In my opinion, Mr. Levan is a representative of judges, he has been a representative of judges for years, he was secretary of the Council."

Question posed by NAZI JANEZASHVILI to the candidate: "The members of the High Council of Justice, as you know, are elected by the conference. At one of conferences, when a judge member was elected as a member of the High Council of Justice, he/she was elected so that he did not give a speech and received the support of 260 persons. How would you explain this approach as a judge? You have been part of the system for over 20 years and probably this phenomenon has some explanation, which is a bit difficult to understand for me. How would you explain, how 260 people at the conference could elect a member of the Council who didn't even say hello? What are the selection criteria, what are the reasons behind them?"

Maia Vachadze's response:

Probably every judge had a notion about this candidate. We are judges. [...] I can honestly say, I know all judges, especially judges who review administrative cases, and we are anyhow one collective. This word may not be appropriate, I don't know, but it is one, so-called, authority of judges. Of course, the judge has to speak out and deliver his/her report, but since he/she has not spoken out, so he/she has no standing, I cannot agree with it. So he/she gained votes through his/her standing. One can also come out and speak for 3 hours and get 60 votes, or say nothing at all and get 260 votes. The determinant in this case is not whether he/she spoke out or not, the determinant is his/her standing."

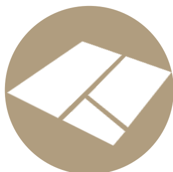
Question posed by NAZI JANEZASHVILI to the candidate: **"**I would like to know your attitude towards the processes in the judiciary in general. Do you think there is an influential group of judges in the system, so-called "clan". Have you heard about it, or have you heard anything that would convince or disapprove of it?**"**

Maia Vachadze's response:

"The clan is probably an expression that does not fit today's situation in the court. However, I believe that some judges may have a higher degree of standing than others, and therefore they are representative of judges. For example, I think that a judge might make it in the Council of Justice if he/she has standing. The Secretary of the Council of Justice is probably a representative of judges who have standing. If he/she had no standing, the judges would probably not give him/her his mandate to become secretary of the Council of Justice. However, I would like to tell you that there is an issue when a judge wants to hold a position and be a judge. I can honestly say that my biggest position is being a judge and review a case, but I think that you will agree that the same as in the medical profession, there is a doctor who is at the operating table for 24 hours, and a doctor who is the head of the department, who is not at the operating table, and we cannot disrespect him/her because he/she is not at the operating table. I want to tell you that similarly in the court we, as of today, al review cases. If someone reviews less cases and someone more, in this sense we cannot say that it is a clan."

6. CANDIDATE'S FINANCIAL LIABILITIES AND INCOME

1. REAL ESTATE:



2017
POT OF LAND IN MTSKHETA
25, 800 GEL, 1800 SQ.M.

2015
GARAGE IN TBILISI
14,280 GEL
18 SQ.M.

2015
BASEMENT IN TBILISI
9,520 GEL
12 SQ.M.

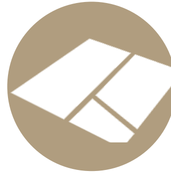
2010
HOUSE IN CHIATURA
(85 SQ.M.)

2009
GARAGE IN TBILISI
2,505 GEL
18 SQ.M.

2009
APARTMENT IN TBILISI
71,476 GEL
(107 SQ.M.)

2008
APARTMENT IN TBILISI
62,580 GEL
(134 SQ.M.)

2008
GARAGE IN TBILISI
2,235 GEL
24 SQ.M.



2008
PLOT OF LAND IN CHORVILA
5,000 GEL **(1500 SQ.M.)**

1993
APARTMENT IN TBILISI
$ 7,000
(95 SQ.M.)

1993
GARAGE IN TBILISI
$ 500
21 SQ.M.

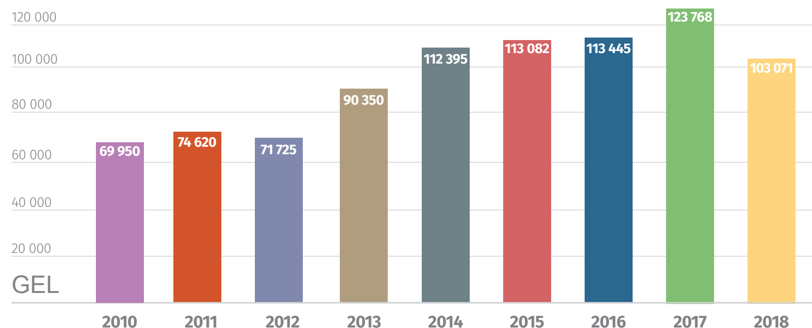
2010
VEHICLE MERCEDES
8,900 GEL

2016
VEHICLE MERCEDES
23,381 GEL

2. INCOME

Maia Vachadze is one of the highest-income judges. In 2010-2016, she received from the court system 872,406 GEL as remuneration. She received the highest income 123,768 GEL in 2017. The candidate's wife, Paata Dateshidze, has been employed in various companies for years. He currently owns 60% share in LLC "Build Art".

According to the declaration of judge Maia Vachadze and her husband, they have no current bank liabilities.



Judge Maia Vachadze did charity work and paid Giorgi Odisharia's tuition fee for 5 years, on which she spent in total GEL11,445. Apparently, Giorgi Odisharia is a friend of her children and, at the same time, she started to work in the Court of Appeal.

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