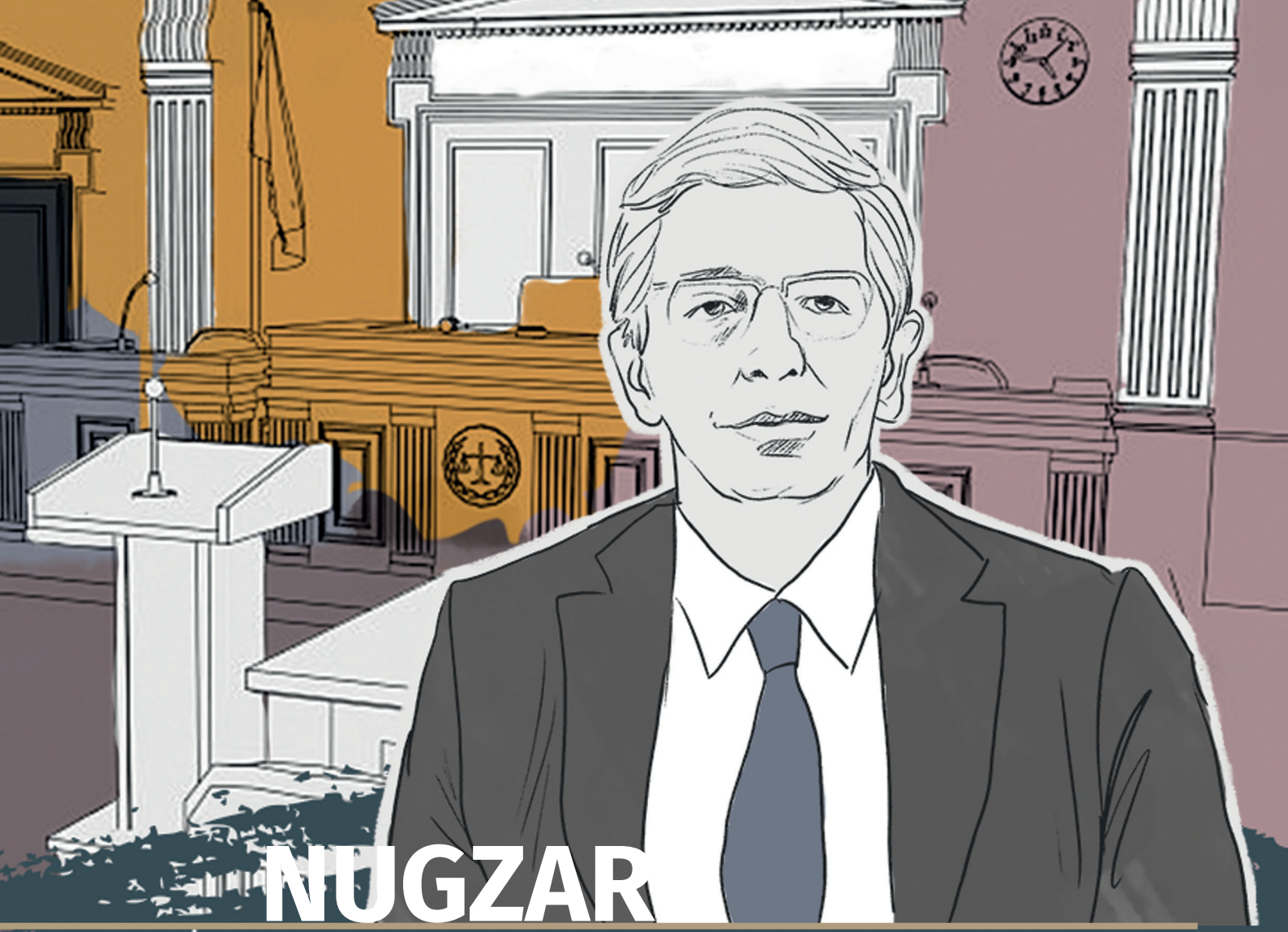


NUGZAR SKHIRTLADZE

Judge of the Supreme Court of Georgia

In 1986-1996 Nugzar Skhirtladze worked at the Ministry of Justice of Georgia at various positions. In 1996-1998 he worked in the State Chancellery at the position of the state advisor in the Office of Relations of the President of Georgia with the Parliament of Georgia and the Legislative Activity. In 1998-1999 Nugzar Skhirtladze was first a judge of Tbilisi Court of Appeals and later a judge of Tbilisi District Court. He is implementing judicial authority in the Supreme Court of Georgia since 1999.

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: Legal recognition of gender. The issue of change of sex in identification documents (identity documents, etc.) of transgender persons. Mandatory requirement of sex change surgery.[1]

Facts: A transgender person was requesting in the court to invalidate individual administrative legal acts of an agency subordinated to the Ministry of Justice, denying the appellant to have a sex change in the act on the grounds that the appellant had not undergone a sex change operation. The person was also demanding issuance of a new act by the administrative authorities reflecting a change in sex.

Tbilisi City Court and the Court of Appeals dismissed the lawsuit. The Administrative Cases Panel of the Supreme Court of Georgia, composed of three judges, presided over by Judge Nugzar Skhirtladze, declared the transgender person's cassation appeal inadmissible and **rejected it without considering of the merits of the case.**

The candidate focused on the following legal issues:

- Admissibility of the appeal

The judge explained that the cassation appeal was not admissible because:

- There was no suggestion that, as a result of the cassation complaint, the decision on this issue, that would be different from the practice of the Supreme Court of Georgia would be adopted.
- The Court of Appeal's disputed ruling did not violate the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights.
- There was no need to consider the case, as well as the need of adoption of a new decision by the Court of Cassation in order to develop the law and to establish uniform judicial practice.

The Chamber did the abovementioned explanation in the following circumstances:

- The Supreme Court has not considered such a legal issue on point of law before. In particular, the

[1] **Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of April 18 of 2019, Case No. BS-579-579 (K-18)**

Supreme Court has twice considered such a legal issue before, and in both cases has rejected to consider the merits of the appeal[2]. This circumstance indicates that the Supreme Court has not considered the substance of the cases and has not adopted relevant ruling.

- As to the Supreme Court's argument that the Court of Appeal's ruling did not contravene the European Convention and the case law of the European Court of Human Rights, the European Court of Human Rights in 2017 ruled on the case.
- A.P. Garçon and Nicot v. France. French legislation was linking change of sex record in civil acts with the relevant surgical operation, or such treatment that would eventually lead to the sterilization of a person. The Court found, that imposition of such surgery or treatment as a precondition of recognition of gender violates the aspect of personal privacy protected by Article 8 of the Convention which implies physical inviolability. Although the European Court considers the legitimacy and stability of civil acts as a legitimate purpose, it ruled that in this case the State failed to maintain a balance between private and public interests.[3]

Despite the fact, that the Supreme Court did not accept the cassation appeal of a transgender person taking into consideration formal criteria, the court still considered several substantive legal issues in the ruling that found the complaint inadmissible:
According to the judge, there this does not concern **refusal to change the record for "postoperative transsexuals".** Such a case is considered by the judge to be a violation of the right to privacy because, according to the Court:

- „States are obliged, in accordance with the obligations under Article 8 of the Convention, to recognize post-operation transgender sex and provide possibility of altering data related to civil status".

According to the judge, this is not concerning **the refusal to the plaintiff to undergo surgery on the grounds that he has reproductive capacity.** In this case too, the judge finds the right to privacy to be infringed, and refers to the decision of the European Court of Human Rights on the case of Y.Y. v. Turkey[4].
The judge focuses **on only self-identification as the problematic basis for legal recognition of gender.** According to the judge:

- „Notwithstanding the importance of the subjective principle in the exercise of the right to private life, it should be borne in mind, that the right to private life would be in conflict with the notion of the right itself, if it did not meet any criterion of universality and objectivity. The exercise of an action, having legal effect cannot be based solely on a person's subjective beliefs."

The judge focuses on the accuracy and stability of **Civil Registry records as a goal of limiting the right to privacy:**

- "The accuracy, reliability and consistency of records in the Civil Registry is in the public interests. This ensures legal stability and inviolability of a person's civil status. It is important that changes undergone by a person for sex change are irreversible, which cannot be achieved by hormonal treatment alone. The Cassation Chamber notes that secondary genital feature's adjustment does not confirm sex change as

---

2 Decisions of the Chamber of Administrative Cases of the Supreme Court of Georgia on the inadmissibility of the Cassation Appeal on the cases: Nbs-653-646(k-16), 2016/11/24 and Nbs-16-15(k-17) 2017/03/09.

3 A.P. Garçon and Nicot v. France., European Court of Human Rights, № 79885/12, 52471/13 and 52596/13, 2017.

4 „Y.Y. v. Turkey". European Court of Human Rights, № 14793/08, 2015.

such. There is no basis for the complainant's reference to the European Court's recent practice, as the plaintiff did not submit an endocrinologist's report on hormonal sex change, no document on hormone therapy and, as a result, the irreversible nature of the changes."

The judge makes strange and interesting interpretation of the fact, that changing the sex in the records without a sex change operation contradicts the provision of the Georgian Constitution regarding the family:

- Current definition of normative order and the use of regulations should be interpreted and applied in the spirit of the Constitution of Georgia. Article 30.1 of the Constitution of Georgia excludes same-sex marriage. Although the subject-matter of the dispute under consideration is not granting of the said right, but if the claim is allowed, there is a real possibility of a legal and factual consequence contrary to the Constitution. In particular, a person whose sex is indicated in the documents is not in fact coinciding with the biological sex, will be able to marry a person who is biologically of the same sex, as they will have different sexes indicated in the documents. The Constitution of Georgia explicitly stipulates the possibility of marriage only between men and women."

In the same decision, the judge also explained other important issues in an interesting manner:

Legal Issue: Separation of Gender and Gender Identity.

Candidate's interpretation:

- Gender identity is a combination of a person's inner, personal feelings, that lead to psycho-emotional attitudes about his own gender belonging, while gender is an objective characteristic, a starting position that one is born with, and which is driven by biological-physiological factors. Gender is determined not only by the appearance of a person, but primarily by biological-anatomical factors."

Legal Issue: Gender identity as a right to privacy.

Candidate's interpretation:

- It is the inalienable right of person to lead his own life according to his will. This implies the right of the individual to determine his/her identity, lifestyle and forms, appearance, and intensity of relationship with those around him/her. The right to private life includes the right to self-determination, which means the right to self-determination of his/her own identity. The latter includes a system of perceptions about himself/herself and his/her qualities, skills, appearance, social values. On the basis of these representations, a person builds relationships with himself and with third parties. Gender identity is a feeling, associated with the perception of belonging to any gender. Accordingly, if a person is prevented from expressing his/her feelings, it shall mean interference in the field protected by the right to gender self-identification."

Legal issue: The confidentiality of a prisoner's private correspondence. The scope of inviolability of an inmate's communication. The confidentiality of communication between the prisoner and the European Court of Human Rights[5].

[5] Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of October 15 of 2015 on the Case No. BS-661-646 (2k-14).

Facts:

- The plaintiff alleged that the administration of the penitentiary had violated the right to privacy and respect for personal correspondence (Article 8 of the Convention) when:
  - Opening and reading of correspondence sent to him from the European Court of Human Rights against his will (undisputed factual circumstance);
  - The plaintiff was not allowed to have printer and use this equipment to prepare documents to be sent to the European Court of Human Rights. Therefore, the convict had to forward these documents to the administration of the penitentiary institution for making copies. This allowed the administration of the penitentiary to read the contents of the correspondence.
- The claimant alleged, that in his regard occurred a violation of the right to a fair trial, guaranteed by of the Convention as well, when the prison authorities, did not allow him equipment (computer) to preparation and implement his defense in the court, due to which he was not able to file a complaint with the European Court in established format; Accordingly, the offender indicated that his right to a fair trial has been violated too ("b. Have sufficient time and capacity to prepare his defense; c. To defend himself personally" (Article 6));
- The plaintiff also noted that the defendant before the European Court was the state. Accordingly, the administration's prior knowledge of the complaint and position of the complainant in fact meant that the defendant had been informed of the applicant's position in advance, which further aggravating infringement of his rights;
- The plaintiff alleged that her rights of defense had also been violated in his regard, when the prison administration did not allow the defense counsel to meet with him due to the lack of the document, confirming that he was a lawyer (lawyer's certificate).

The City Court and the Court of Appeals upheld the plaintiff's position on such issues, as interference with correspondence with the European Court of Human Rights by the Department of Corrections, thereby violating the right to privacy and respect for his private correspondence. Accordingly, the plaintiff was awarded 300 GEL as compensation. The court did not satisfy other claims of the plaintiff.

The Administrative Cases Chamber of the Supreme Court of Georgia, headed by Nugzar Skhirtladze, generally upheld the lower court's assessment, but disagreed with the amount of non-pecuniary damages and increased the amount of compensation to 1,000 GEL.

The judge focused on a number of interesting legal issues:

- "The state should ensure protection of the rights of a person [freedom of private life and respect of private correspondence] even in the event of his/her detention. A custodial sentence shall not deprive a person of his/her rights guaranteed by the Constitution and international acts; however, with respect to prisoners, such rights may be restricted on legitimate grounds established by the law. [...] Censorship of prisoners' correspondence is permissible only in cases provided by law. At the same time, in order to prevent disorder and crime, broader interference with the prisoner's rights may be considered more justified, than in the case of a person on freedom."
- The confidentiality of correspondence of a prisoner with the ECHR is of particular importance, as it may include information, compromising state authorities or penitentiary officials. Accordingly, the inmate may have an interest in protecting the information contained in the correspondence primarily from the state authorities."

As a result, the judge ruled that substantive control of such correspondence was not allowed by Georgian law. Even if allowed, in his view, there was no legal benefit that would justify such control. Accordingly, he considered that the prisoner's right to privacy was violated.

- According to the judge, the law only provides for "the administration's obligation to provide to the accused/convict with written means and paper upon request. Legislation does not require the administration to provide to the accused/convicted person with a personal computer. Accordingly, the denial of computer equipment to an individual inmate may not be regarded as an unlawful act."
- "Granting a power of attorney by a prisoner in itself does not mean that the trustee is authorized to exercise the prisoner's defense. The trustee must be a lawyer and practice law, and according to Article 2 (2) of the Law on Lawyers, a person who is a member of the Georgian Bar Association shall be considered as a lawyer."

Legal Issue: Obligation to disclose information about the amount of bonuses of public officials; The importance of freedom of information and transparency of activities of public institutions in democratic society; High interest of the public to have information about public persons, officials and persons to be nominated.[6]

The judge ordered the public institution to provide information on the bonuses received by public officials. He focused on several important legal issues:

- "It is a legitimate right of a citizen to know in general how much money has been distributed in the form of bonuses, and in what proportion these funds have been distributed among officials."
- The democratic order is characterized by maximum transparency of activities of the public institutions [...] The transparency of the activities of administrative bodies is proportional to the legality and legitimacy of public administration. Transparency of activities of the public service is a basic principle of its activities, a feature of a democratic public order. The source of formation of the Employees' remuneration (wages) is the state budget."
- Legal status of data is affected by the status of a person: In particular, the regime of protection of data related to public persons differs from that of other persons. Freedom of information is of a higher priority when it comes to protecting public information about private person, as a person who claims to be engaged in public activities to a certain extent declares readiness, that there may be certain interference into his/her private life. A public official's reference that the information pertains to his/her personal life does not prove, that it is not admissible to obtain information without his or her consent. A public person actively involved in public life must be prepared, that details of his /her private life may become the subject of interest of public and the media. This provides for accessibility of information on private life not only of politicians and other public servants, but also of the candidates, as well as access to their personal data."

Legal Issue: Correspondence related to emergency procurement of the head of a public agency and relevant authorized person via e-mail as public and open information; Publicity of information on simplified procurement of public institutions and its importance.[7]

---

6 Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of July 23 of 2015 in Case No. BS-403-398 (k-14).

7 Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of September 14 of 2017 in Case No. BS-286-284 (k-17).

Facts: The plaintiff is an NGO, that requested from the Ministry of Justice to issue an e-mail correspondence regarding public procurement as a matter of urgency, as public information. Tbilisi City court and Court of Appeal rejected the plaintiff's claim, which was not upheld by the Supreme Court, which made an important and precedential explanation:

- "Official e-mail is usually used by relevant authorities to conduct price surveys in the course of public procurement. Access to such information is important when implementing simplified procurement, i.e. when the law allows for the disbursement funds from the state budget under less public monitoring."

Therefore, Judge Nugzar Skhirtladze considered that **"the information sent and received by official e-mail in relation to official work, in so far as it related to urgent public procurement, is public information, which should be made available to any person."**

Legal issue: State's obligation to compensate for damages caused by unlawful administrative detention.[8]

Facts: The Courts of First and Second Instance stated, that Section 1005(3) of the Civil Code, in case of unlawful conduct listed in the article, imposes on the state obligation to pay for damages, regardless of the official's fault. While it is true that this provision does not explicitly provide for a specific case of "unlawful administrative arrest", it does include compensation for damage caused by "unlawful administrative detention". Therefore, the courts of lower instance, having regard to the importance of the legal mechanisms for restoration and protection of the victim's right, have broadly stated:

- The difference between administrative detention and administrative arrest is in its intensity and degree. Also, administrative detention is a preventive measure, and administrative arrest is a form of administrative penalty. However, by their very nature, the restriction of rights of a person, provided by the Constitution, namely, the right to free movement, and the resulting negative effects of being placed in a particular institution for some time, which impacts a person 's reputation and causes negative feelings – are similar. For this reason, the court cannot accept the defendant's reference to the fact, that administrative detention is not within the meaning of Article 1005(3) of the Civil Code of Georgia."

The Supreme Court, in composition of Nugzar Skhirtladze, did not uphold this reasoning and concluded the following: merely because the norm does not explicitly state compensation for damage caused by "unlawful administrative detention," the plaintiffs were not entitled to claim damages under this norm.

Legal Issue: The Role of openness and publicity in public agencies in the functioning of a democratic state and the rule of law[9]:

- In the decision the judge discusses the importance and role of openness and publicity in state agencies. In particular, the judge states, that the "openness of information in the administrative bodies is one of the important elements of a proper functioning of democratic and legal state, because it is the guarantee of the state's accountability in front of its population and of transparency, which gives the public opportunity to ensure control over the actions of the state, and restricts its actions, if exceeding of discretionary authority takes place."

---

[8] Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of October 2 of 2018 on the Case No. BS-1143-1137 (2k-17).

[9] Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of September 14 of 2017 on the Case No. BS-286-284 (k-17).

Legal issue: Judge's view on public trust towards public agencies and police:[10]

- The judge states, that "building and protecting public confidence in a democratic society, in general, towards the public service, and especially towards the police force, is of the utmost legitimate public interest, as the effectiveness of public service and especially police is highly dependent on public trust and the integrity of the civil service, which can be achieved through appropriate conduct and activities of public servants and police officers. Particular importance of police officers' behavior and confidence in them is that the police officer is perceived to be adhering to the law and the guarantor of their enforcement".

1.2. POSITION TOWARDS GROUPS/MINORITIES

Legal issue: The judge's position on the role of the state in perceiving and respecting LGBT persons.

According to explanation of the candidate:

- "The complainant [transgender person] indicates that he/she feels comfortable with conducted hormonal treatment and external changes, and does not require surgery. This position deserves the respect and protection of the State, but the Chamber of Cassation notes that subjective beliefs and perceptions cannot change the factual circumstance – a person's sex. "[11]

- The judge in his decision refers to the marriage between persons of the same sex as "same sex marriage".[12]

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

Legal issue: The nature of law practice and its importance. State's obligation to provide qualified and effective protection.[13]

In discussing this issue, the judge relies on the case law of the Constitutional Court of Georgia and the European Court of Human Rights:

- "Law practice is considered to be one of the most important manifestations of public activity (Judgment N1/5/323 of the Constitutional Court of Georgia of 30.11.05); Article 42 of the Constitution of the Republic of Georgia provides not only for human rights of a lawyer, but their qualified and effective protection as well. Law practice involves the exercise of lawyer's activities by a lawyer with the relevant knowledge and qualifications." The judge also suggests the possibility of State interference in the following way: to determine the rules of qualification and professional conduct required of lawyers to attend court and to be admitted to court. (Ensslin and Others v. Germany, The Law, B, §20).

---

10 Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of January 17 of 2019 on Case No. BS-809-805 (3k-17).

11 Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of April 18 of 2019 on Case No. BS-579-579 (k-18).

12 Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of April 18 of 2019 on Case No. BS-579-579 (k-18).

13 Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of October 15 of 2015 on Case No. BS-661-646 (2k-14).

Legal Issue: Whether or not official email correspondence is protected by the right to privacy.[14]

In discussing the matter, the judge correctly applies the practice of the European Court of Human Rights. Namely:

- The Court of Cassation refers to the case-law of the European Court of Human Rights, which states that emails sent and received from office may fall under the right of respect of privacy. In cases Niemietz v. Germany and Halford v. the United Kingdom, the Court notes that professional or business activities are not in themselves excluded from the scope of Article 8 of the Convention (private life). This is the case when the activity is carried out from the person's place of residence or when it is carried out from the workplace, although it is of a personal nature."

Legal issue: The nature of the state's illicit conduct and the harm caused by it.[15]

In relation to the damage caused by the State, the Supreme Court explains:

- "A prejudicial act committed by an administrative agency is not substantially different from that of a private individual. Accordingly, Article 207 of the [Georgian General Administrative Code] provides for application of forms and principles of liability established in private law to cases when the state liability arises, which means establishing of liability by the types of liability specified in the Civil Code, with the exception of those types of liability, which are provided in this Code itself."

However, the Constitutional Court of Georgia has reasoned on the same issue in the contrary manner:

- Given the scale, extent, and nature of the state's resources, illegal acts by the state are often more dangerous than similar actions by private entities. Therefore, the obligation to pay for caused damages helps to prevent the arbitrary and illegal use of power by the government of the state, autonomous republics and self-governing bodies and officials".[16]

Legal Issue: Considering of information as commercial secret.[17]

In discussing the issue of considering of information as a commercial secret, the judge rightly cites the European Court of Human Rights judgment of November 26 of 1991 on the case Observer and Guardian v. the United Kingdom: "In the event of disclosure of confidential information and consequently loss of confidentiality, its further protection will not be considered 'necessary in a democratic society"..

Legal issue: European standards on inviolability of inmate's personal correspondence and interference with this right.[18]

The judge broadly analyzes and correctly applies the standards and approach established by the European Court of Human Rights in discussing the inviolability inmate's personal correspondence and interference with it. [19]

---

[14] Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of September 14 of 2017 on the Case No. BS-286-284 (k-17).

[15] Judgment of the Supreme Court of Georgia of October 2 of 2018 on the Case No.bs-1143-1137 (2k-17).

[16] Judgment of the Constitutional Court of Georgia of July 31 of 2015 on the Case N23/630.

[17] Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of February 28 of 2017 on the case Nbs-33-32(k-16), page. 15.

[18] Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of October 15 of 2015 on the Case No.bs-661-646 (2k-14).

[19] Golder v. United Kingdom, the European Court of Human Rights, No. 4451/70, 1975; Silver and Others v. The United Kingdom, European Court of Human Rights, No. 7136/75, 1983; "Valasinas v. Lietua", European Court of Human Rights, No. 44558/98, 2001; Labita v. Italy, European Court of Human Rights, No. 266772/95, 2000; Amman v. Switzerland, European Court of Human Rights, no. 27798/95, 2000.

Legal issue: Definition of the right to labor guaranteed by the Constitution of Georgia.[20]

The judge in his judgment explains the freedom of labor protected by the Constitution of Georgia, referring to the decision of the Constitutional Court (Case N2 / 2-389, 26/10/2007). According to him, "freedom of labor, according to the Constitutional Court, means not only the right of the individual to dispose of his or her capacities in labor related activities, to choose one or another field of labor, but also the obligation of the state to take care of citizens' employment and to protect their labor rights."

It should be noted that in the decision of the Constitutional Court of Georgia (N2/2-389), the obligation of the state within the framework of the freedom of labor to take care of the employment of citizens is not explained. This reasoning is presented not in the motivational but in the descriptive part of the decision (as the plaintiff's position). Accordingly, we will not consider reasoning in this section as a position of the Constitutional Court.

20 Judgment of the Chamber of Administrative Cases of the Supreme Court of Georgia of January 17 of 2019 on the Case No.bs-809-805 (3k-17).

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

1. DISCIPLINARY PROCEEDINGS - EXISTING COMPLAINTS

- The Disciplinary Board has not initiated any disciplinary action or measure against the candidate, however, one case has been reported: in 2015 Murtaz Ugulava, the founder of Metallinvest LLC, filed a disciplinary complaint against the judges of the Supreme Court, Nugzar Skhirtladze and Maia Vachadze and Levan Murusidze. The applicant was alleging, that this composition of the Supreme Court had wrongly declared his cassation appeal inadmissible[1]. The High Council of Justice terminated the proceedings on this disciplinary complaint (№ 253/15). [2]

2. ALLEGED VIOLATION OF PROFESSIONAL ETHICS

- There was no case of alleged violation of professional ethics.

1 Metallinvest's high profile case - What Is the Relationship between Irakli Ezugbaia's Wife and Nika Gilauri's Brother?! See http://bit.ly/2MWXSJJ

2 "Young Lawyers" publish research and recommendations on bankruptcy case of Metallinvest, see http://bit.ly/2YTmzZw

3. PROMOTIONS AND AWARDS/ SCHOLARSHIPS GRANTED FOR PROFESSIONAL PERFORMANCE

1. PROFESSIONAL DEVELOPMENT

- 1In 1986-1996 Nugzar Skhirtladze held various positions at the Ministry of Justice of Georgia. In 1996-1998 he worked at the State Chancellery of Georgia, as the state advisor in the Office of Relations of the President with the Parliament of Georgia and Legislative Activities.
- In 1998 he was appointed as a judge of the Tbilisi Court of Appeals, and since May 1999 he was the Chairman of Tbilisi District Court's Administrative and Tax Affairs Panel. Since July 20 of 1999 Nugzar Skhirtladze was a judge of the Supreme Court of Georgia. From July 20 of 2009 he was re-appointed to the same position for the second term.
- Judge Nugzar Skhirtladze's ten-year term was expiring on July 20 of 2019, but by July 9 decision by the High Council of Justice, his term was extended until adoption of the final decision on the cases started with his participation (but for the period not exceeding the date, when a judge was elected to occupy vacant position in the Supreme Court).
- In 2013-2019 Nugzar Skhirtladze was a member of the Disciplinary Chamber of the Supreme Court and in 2015-2017 he was a member of the Qualification Chamber.

2. AWARDS/SCHOLARSHIPS

- In 1993, Judge Nugzar Skhirtladze was awarded the rank of Justice Advisor by the Special Certification Commission of the Ministry of Justice.

4. CONFLICT WITH LAW, CONFLICT OF INTEREST

1. CRIMINAL LIABILITY, ADMINISTRATIVE OFFENSES / PENALTIES, LITIGATIONS

- Judge Nugzar Skhirtladze has no record of conviction.
- Administrative penalties have not imposed.
- Candidate Nugzar Skhirtladze 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 Nugzar Skhirtladze was not a member of any political party
- Nugzar Skhirtladze’s link with politicians/influential persons have not been identified.

5. CANDIDATE'S PUBLIC ACTIVITIES/ POSITION AND BEHAVIOR

1. OPINIONS EXPRESSED IN SOCIAL MEDIA

Judge Nugzar Skhirtladze does not use social media. He has neither a personal profile nor an official page.

2. PUBLIC STATEMENTS OF JUDGE NUGZAR SKHIRTLADZE

- **Statement by a candidate concerning introduction of indefinite term of office for the Judges of the Supreme Court.**

Judge Nugzar Skhirtladze, along with other judges of the Supreme Court of Georgia, applied to the Parliament of Georgia on May 15, 2019, with request to consider the issue of amending the term of office of judges of the Supreme Court and introduce indefinite term (extend till reaching retirement age). Specifically, the statement reads: "The new Constitution of Georgia provided basis for lifelong election of judges to the Supreme Court by the recommendation of the High Council of Justice. The life-long mandate of a Supreme Court judge is one of the important guarantees of his independence and impartiality, which is the achievement of the Constitutional reform that has been implemented in Georgia. The Organic Law of Georgia on Common Courts defines the terms and conditions of the term of office of judges of the Supreme Court. However, the issue of the permanent tenure of acting judges to the Supreme Court remained beyond the scope of this law. In the conclusion of April 16 of 2019 of the Venice Commission of the Council of Europe on Selection and Appointment of Judges of the Supreme Court, the Parliament of Georgia was recommended that: "Parliament should consider the issue of amending the term of office of acting judges of the Supreme Court indefinitely. This is necessary to ensure that at least 11 experienced judges continue to serve in the Supreme Court, thereby (a) somewhat mitigating the result of creation of an entirely new Supreme Court by the Parliament and (b) a limited number of experienced judges, not just newly elected judges will review the cases, which will contribute to the institutional stability and consistency of the Supreme Court. "[1]

3. INTERVIEW OF CANDIDATE NUGZAR SKHIRTLADZE AT THE HIGH COUNCIL OF JUSTICE

Question by IRMA GELASHVILI, a non-judge member of the High Council of Justice to Nugzar Skhirtladze: **"A judge gives oath in front of the God and the nation, just as the president. If a judge refuses to give oath before the God, do you think it will fall within the scope of the freedom of religion? What do you think, what does the oath mean, it has traditional, symbolic meaning, or does it have legal significance? If the president did not give oath, would the Constitution be violated? "**

[1] Supreme Court Judges apply to Parliament to consider amending tenure of judges and their appointment for an indefinite term, May 15, 2019 Available at: http://www.info9.ge/samarthali/209.

Nugzar Skhirtladze's answer:

The oath has not only a legal, but also a symbolic bearing. I recall one analogy, "Dimitras v. Greece," in which a person was complaining, that he was asked by the Greek court whether he was Orthodox, and if he was not, then had to say to which confession he belonged. In this case it was found, that this was a violation. I have never heard of such a thing in Georgia, however, if such an issue arises, it really needs to be considered indepthly. I personally regard the oath as extremely important, but in some cases it has lost its value. I think appropriate environment is necessary."

Question of a member of the High Council of Justice judge IRAKLI BONDARENKO to the candidate: "Should a judge of the Supreme Court be appointed for life? Why a judge of the Constitutional Court is not appointed for indefinite term and why a judge of the Supreme Court be appointed for indefinite term?

Nugzar Skhirtladze's response:

As far as I know, this position towards the Constitutional Court that a judge is appointed for a definite term, and then not re-appointed for the next term, is largely due to the fact that the Constitutional Court, unlike common courts, is more involved in politics, and solving the issues of expediency. Maybe because of that. In principle, the Supreme Court, the Court of Cassation, limits its scope of activities to legal aspects of a dispute and, therefore, it is more likely that here the status will can be more stable and unchanged."

Question of a member of the High Council of Justice judge REVAZ NADARAIA to the candidate: What is the difference between defamation of a private person and a public official? What should the applicant prove in one case and in the other case?

Nugzar Skhirtladze's answer:

Legislation provides for an absolute privilege and a qualified privilege. Absolute privilege refers to sources, that is to say, if a person does not disclose the source, this circumstance cannot serve as grounds for deciding against him. As to qualified privilege, if an official is the subject of a lawsuit, he must prove not only that the information reported is incorrect, but that the journalist either deliberately disseminated incorrect information, or disseminated it in a manner that revealed gross negligence and he failed to verify these facts. ... In addition, as you know, in case of personal non-property rights the period of statute of limitation with regard to defamation is 100 days."

Question of a member of the High Council of Justice judge VASIL MSHVENIERADZE to the candidate: "When a non-judge member of the Council makes a political statement that is not related to the court, and does so when on the background is the logo of the High Council of Justice, what do you think, how correct is that?"

Nugzar Skhirtladze's response:

I think the Council of Justice is a very original body from the standpoint, that it represents the intersection of the three authorities. Here are the judiciary, elected members of Parliament and representatives of the executive power. Therefore, some controversy may be caused by this factor as well. It would be good if the Council of Justice maintained internal mechanisms of regulation: for example, rules of conduct

would be developed, and there would be some body, which would discuss these issues. I, for example, am not in favor of sanctions, although such sanctions would determine the standard of inappropriate behavior, it occurs".

Question of NAZI JANEZASHVILI, a non-judge member of the High Council of Justice to the candidate: What do you think about assigning a particular role to certain religious group, and how does this approach fit in with the secular state?

Nugzar Skhirtladze's Answer:

We live in a secular state. An agreement was signed with the Orthodox Church in 2002, but our state is secular, and this is clearly obvious from the decisions. For example, the Constitutional Court's ruling, when representatives of other confession filed a claim challenging a statutory act, that exempted the Orthodox Church from value-added tax. The decision argues that it is inadmissible to grant such privileges. We are a secular state and decisions must be made not on the basis of faith but on the basis of facts".

REVAZ NADARAIA'S question to the candidate: "Freedom of expression and the right to honor and dignity. What does the Strasbourg Court say, does the assessment/opinion need have any objective basis, a certain standard of proof, not to be regarded as excessive?

Nugzar Skhirtladze's Response:

Regarding the assessment, let's say, regarding Rustavi 2 it was stated, that the statements had crossed the line and that it was an attack on a judge. There are o clear criteria in this regard, maybe rather regarding the facts. Thus, for example, case Martinev v. the Russian Federation, where a lawyer wrote two articles concerning a judge, that he had improved his housing conditions in unjustified manner. The Strasbourg court considered this issue, and stated, that there were no factual circumstances for such a reasoning."

REVAZ NADARAIA'S question to the candidate: "Does it matter who enjoys the right to freedom of expression – an ordinary person or a public official? i.e. who is making a statement? "

Nugzar Skhirtladze's answer:

Yes it matters. The European Court of Human Rights stated in its judgment in regard to the Minister of Justice, that although he had conducted an inquiry, it was not sufficient. When a person is of such a high status, more substantive factual circumstances should have been gathered in this regard. There is little prospect in our law for a lawsuit to be upheld, but as for Strasbourg, it pays huge attention to this aspects, and, as you know, it is not limited by national law. There have been many decisions in this regard, when there was found a violation due to lack of facts."

Question of a judge member of the High Judicial Council of Justice SERGO METOPISHVILI to the candidate: "What does it mean to you, that 'the court decision should be lawful and fair?' and in case of such dilemma, what would you choose?"

Nugzar Skhirtladze's response:

First of all, I do not view the morality and legal norms as antipodes. Otherwise, we will reach full legal nihilism (...). My task in this regard is easier, as I work in the sphere of administrative law and have an inquisitorial process. Unlike judges working in the other field of law, I have the opportunity to be actively engaged, and advise the party to formulate a claim differently, if I see, that he is losing the case despite the fact, that this man is right. I can request evidence etc. but when there is a law, and there is a negative attitude towards the law, in this case judges have had different positions over the years. For example, there was a period when the judges were of the position, that the Constitution had the direct effect and there was no need to apply to the Constitutional court. I once had a dissenting opinion, as although the panel adopted a fair decision, (...) I thought it would be better to make a submission to the Constitutional Court."

Question of ZAZA KHAREBAVA, a non-judge member of the High Council of Justice to the candidate: **"Do you think we are progressing in terms of independence of the judiciary if we compare current situation to the previously existing situation? What did we have and what do we have? "**

Nugzar Skhirtladze's answer:

> **Of course, we see development is in this direction and this is evident from the statistics as well. Strengthening of status, permanent appointment, adding guarantees, improving disciplinary legislation ... all of which has a positive effect on independence."**

Question of NAZI JANEZASHVILI, a non-judge member of the High Council of Justice to the candidate: **Who is exemplary judge for you, and why?"**

Nugzar Skhirtladze's answer:

> **I would like to tell you from the beginning, that I have some exemplary colleagues: Mzia Todua, Paata Katamadze and more. Lado Chanturia impressed me the most. I know him from the period when I was a student, and he was always exemplary."**

NAZI JANEZASHVILI'S question to the candidate: **"Levan Murusidze told the Council during the interview, that he is the leader of the court. You have over 20 years of experience of work as a judge. Can you recall such cases in the past, when any judge came out and said that he was the leader of the court? "**

Nugzar Skhirtladze's Response:

> **A leader means that he comes up with ideas, goals, and influences people to achieve those goals. I think, that terms like leaders, factions, groups ... that belongs more to the sphere of politics than the judiciary. It is possible that Mr. Levan made this statement because he is the chairman of the Association of Judges, but I would reiterate my point, that this terminology belongs to a different field."**

6. FINANCIAL OBLIGATIONS AND INCOME OF THE CANDIDATE

1. PROPERTY

2017
FLAT IN TBILISI
88,800 GEL
(75,78 sq.m)

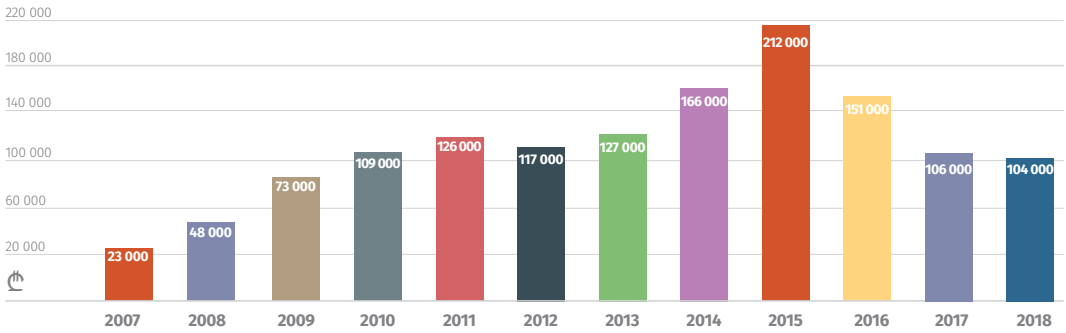
1991
APARTMENT IN TBILISI
PRIVATIZATION
(64,1 sq.m)

SPOUSE:

2017
APARTMENT IN TBILISI
30,000 GEL
(36,6 sq.m)

2008
HOUSE AND A LAND PLOT IN SENAKI
INHERITANCE
(818 + 626 sq.m)

DEPOSIT ACCOUNT (PROVIDED AS EQUIVALENT IN GEL):

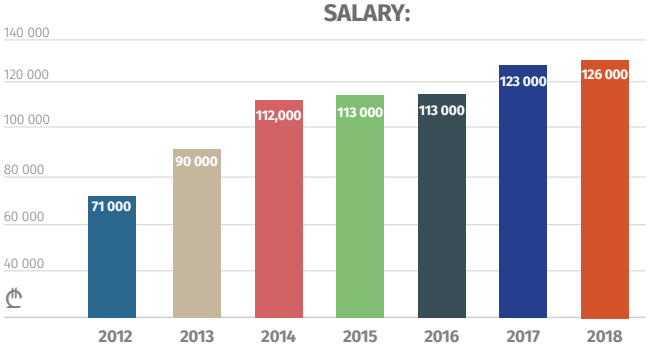


2. INCOME:

Judge Nugzar Skhirtladze received remuneration from his judiciary activities in the amount of 1,183,314 GEL in 2000–2018. The spouse of the judge, Giuli Kalandarishvili, has been working as a leading specialist at the City Court since 2009, earning a total of 126,418 GEL as remuneration.

For many years Judge Nugzar Skhirtladze has large sums of money deposited on his accounts: in 2009 this amount was GEL 73,000 and in 2018 it was GEL 104,000.

SALARY:



Judge Nugzar Skhirtladze has no bank loans currently. During 2012–2018 he went to Vienna several times for treatment, where his expenses totaled 47,100 Euros.

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