



LALI PAPIASHVILI

Professor of Tbilisi State University

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

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In 1996–2004 Ms. Lali Papiashvili occupied different positions in Parliament of Georgia: the first assistant to the Speaker of Parliament, a Member of the Parliament in 2004–2007. In 2007–2017 Ms. Lali Papiashvili was a judge of the Constitutional Court of Georgia, and in 2016–2017 she was a Deputy Chairman of the Constitutional Court. From 1998 to present, the candidate has been teaching at the Law Faculty of Tbilisi State University.

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

1. DECISIONS, DISSENTING OPINIONS, COURT SUBMISSIONS

1.1. LEGALLY INTERESTING OR PRECEDENTIAL DECISIONS

Legal Issue: Freedom of expression. Freedom of assembly and manifestation.¹

Facts: In the present case, the plaintiffs contested the compatibility of the various provisions of the Georgian Law on Assembly and Manifestation with the Constitution. The Constitutional Court found most of the disputed norms unconstitutional with respect to the rights guaranteed by the Constitution to expression, assembly and manifestation.

The Plenum of the Constitutional Court, with the participation of the candidate Lali Papiashvili, explained and focused on a number of important legal issues, some of which we will focus on in this document:

Legal issue: The unconstitutionality of the grounds for termination of assembly and manifestation.

- "The impugned norm stipulates termination of a demonstration (manifestation) in violation of the law without the possibility of warning and proceeding in accordance with the requirements of the law. The Constitutional Court considers that, in this case, the legislator has chosen a disproportionate means of achieving a legitimate aim."

The Court's reasoning became the basis for declaring this content of the norm unconstitutional.

Legal issue: The person responsible for organizing assemblies and manifestations could not have been a stateless person of Georgia.

The Court found such regulation to be unconstitutional, noting that:

- "The Constitution of Georgia provides for the restriction of the stateless persons of Georgia in the political activity, however, the legitimate aim of adopting the impugned norm cannot be based on Article 47 of the Constitution of Georgia when the conduct of a stateless person does not constitute an activity of a political nature. The impugned norm is a blanket ban that prohibits stateless persons from initiating and organizing assemblies without exception".

Legal issue: "Calling for the overthrow or replacement of constitutional order by force" is not permitted when organizing and holding demonstrations and manifestations".

¹ Judgment of the Constitutional Court of Georgia dated April 18, 2011 / 482,483,487,502 on the case "citizens' political union "Movement for United Georgia", citizens' political union "Conservative Party of Georgia", Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, Citizens Dachi Tsiguria and Jaba Jishkariani, Public Defender of Georgia against the Parliament of Georgia".

The Constitutional Court considered restricting such calls in accordance with the Constitution, but offered its view on a reasonable interpretation of the norm. The court also discussed the reality of the actual threat posed by such calls and clarified:

- “The overthrow of constitutional order is always associated with violent action. The overthrow is aimed at the destruction of the existing structures by means of constitutionally contradictory and unlawful methods and therefore contains an element of violence. [...]The democratically elected government, the constitutionally governed form and structure can only be changed by the actions considered by constitution and law. Any other form of change threatens the existence of a democratic society and is violent in nature “.
- “At the same time,“overthrowing ”the authorities should not be confused with changes that may result from peaceful assemblies or demonstrations. Citizens have a constitutionally guaranteed right to assemble and express their will, attitude towards the government, which in turn may affect current political or social processes, lead to the resignation of the government or its member, change of political structure or form of government. It is fundamentally wrong to equate and equalize such a process typical of a democratic society with overthrowing ”the authorities“.
- "In the case of a reasonable reading of the impugned provision, the restriction [the term "Call"] relates to the intention to commit an offense and / or to incite such action."
- “The protest, where the crowd is critically disposed to the government, is characterized by calls to change the authorities or resign. Such critical statements do not fall within the ambit of disputed regulation. Nor the statements formally containing the words "called to overthrow," but the context in which they were uttered, their true essence and purpose do not give rise to a breach of law [creating no real threat] belong to the ambit of the disputed regulation.".
- **Vazagashvili Case** ²

Legal Issue: Protection of the honor and dignity of the deceased person by close relatives. Freedom of expression.

Facts: The editorial at the time of the impugned provision prohibited litigation concerning the protection of the deceased person's non-property rights. The plaintiff, Yuri Vazagashvili, argued that he could not stand trial for the dissemination of offended honor and dignity of his deceased son, which he believed violated the right to a fair trial. The panel of the Constitutional Court, with the candidate's participation, disagreed with the plaintiff and considered the contested norms constitutional. The Court has highlighted several important legal issues:

- **Subject to personal non-property rights**

The court attached great importance to maintaining the good memory of the deceased person. The court explained that, despite its decision, this did not mean that it would be permissible, motivating or promoting that a person be imposed to an unreasonable charge after the death, disseminating false statements on the merits. However, the court emphasized the personified nature of human rights and stated:

- “Generally, independently of the different content of rights, they combine one feature; They are personal in nature, meaning they belong to a specific person and to no one else, regardless of the degree of kinship and closeness (even to a parent or child). The personified nature of rights means, first and foremost, that

² Judgment of the Constitutional Court of Georgia of September 30, 2016 1/6 / 561,568 in the Case of “Citizen of Georgia Yuri Vazagashvili v Parliament of Georgia”

it belongs to a particular individual, and therefore does not / cannot belong to anyone else, Consequently, one person's right cannot be exercised by another, just as the right of one individual cannot be violated to another. Allowing such an opportunity is contrary to the nature of personal rights, it exhausts their essence, the right cannot be personal if it is enjoyed by others. Rights are personal in nature and are directly related to the consciousness, perception of their owners.”

- “Only the right holder can have the most objective feeling, perception, experience of violation of his / her right (alleged violation), as a result of the specific harm. Even in the absence of such feelings, there is no need to protect rights. In addition, it is the right holder who has the most objective interest, the motivation to defend the right, and usually more information (evidence) that can potentially affect protection of his/her rights and make the right decision“.

1.2 EXPRESSED POSITION ON GROUPS / MINORITIES

In 2014, the Second Board of the Constitutional Court of Georgia adopted one of the most important decisions in the history of the court on the legal status of persons with psychosocial needs and their legal status. Constitutional Court's ruling has fundamentally changed the institution of incapacity and improved the legal status of a specific group of people.³ **The judge referring to the case was candidate Lali Papiashvili.**

Facts: According to the lawsuit, persons known to be incapable because of "feeble-mindedness" or "mental illness" were restricted to:

- Acquire civil rights and obligations by their will and action;
- Get married;
- Appeal to the Court to be acknowledged as capable.

The plaintiff argued that the impugned norms, without regard to individual signs, restricted the autonomy of persons declared incapable, which, in his view, contravened several constitutional provisions, including the right to **free development of personality**. The Constitutional Court ruled the disputed norms unconstitutional and fundamentally changed the essence of the institution of "capability". The Court has highlighted several important legal issues:

- **The disputable regulation substantially alters a person's legal status and causes severe legal and practical consequences. The person is formally indefinitely considered invalid to enter any civil legal transaction, in fact, is fully dependent on his/her guardian and is deprived of the right to freely participate in civic life in all areas, including in areas that are directly related to every aspect of his/her life, the existence and development“.**
- **“Absolute and blanket deprivation of capability is a high-intensity interference with the right, which implies the loss of one's autonomy in virtually all areas of life. A person completely loses the right to independent and free action. Moreover, the capability is deprived indefinitely. Accordingly, such interference with the right of the person concerned must be conditioned by the existence of a highly legitimate aim and must be the least restrictive means of achieving that objective.”**

Legal issue: Homosexuality as a basis for banning the donation of blood and its components.⁴

³ Judgment of the Constitutional Court of Georgia of October 8, 2014 N532,533 on the case “Irakli Kemoklidze and David Kharadze v. The Parliament of Georgia”.

⁴ Judgment 2/1/536 of the Constitutional Court of Georgia, dated 4 February 2014 on the case “Citizens of Georgia – Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buashvili and Gocha Gaboidze against the Parliament of Georgia”.

Facts: The plaintiffs contested a legislative regulation that said homosexuality belonged to an AIDS risk group that prohibited the donation of blood and its components. The Second Panel of the Constitutional Court, with the participation of Judge Lali Papiashvili, found the legislative regulation unconstitutional with regard to the constitutionally guaranteed right to equality and the free development of the personality. **The judge referring to the case was candidate Lali Papiashvili.**

The Court has focused on the following important legal issues:

Legal issue: Substantial equality of persons for blood donation purposes

- "The desire to be a blood donor is linked to the practical realization of one's personal values, whose interest and actual capacity are equally possessed by individuals regardless of their sexual behavior and orientation. Having regard to the foregoing, the Court considers that the differentiated persons are essentially equal subjects in the legal relationship at stake".⁵
- "In the present case, the restriction imposed by the disputed norms on substantially equal persons establishes unjustifiably severe unequal treatment and limits the right to greater intensity than is necessary to achieve a legitimate aim".

Legal issue: Self-identification of a person is protected by the right to free development of personality

The Court clarified that:

- "Whereas Article 16 of the Constitution provides for the right of individuals to freely self-identify, to independently determine their identities, lifestyles and styles, the ways and forms of individual development and relations with others, the means to meet their moral, social, intellectual or other needs and interests, It also includes the right to intimate life, the right to determine one's sex or sexual orientation and the freedom to choose one's sexual behavior".

The court held that

- "HIV can be identified after a "window period" by laboratory blood tests. Accordingly, removing gay men with risky sexual behavior indefinitely from the donation process also does not meet the requirements of proportionality."

1.3 HIGH-PROFILE CASES

- **Giorgi Ugulava Case and the "Case of Cables"**

The Plenum of the Constitutional Court of Georgia, in its record dated June 15, 2016, took over the proceedings of Rustavi 2, "TV Company Georgia" Ltd, Giorgi Ugulava and convicts of so-called "case of cables" constitutional lawsuits.⁶ One of the issues in the case of Giorgi Ugulava and so called "case of cables" is the examination of the constitutionality of Article 182 (misappropriation and embezzlement) of the Criminal Code of Georgia with respect to Article 42, paragraph 5, of the then existing Georgian Constitution. The plaintiffs argue that the impugned norm is vague, imprecise, and contrary to the requirements of the determinacy of legislation under the Constitution of Georgia. The Constitutional Court of Georgia has not yet ruled on these two cases, but the position of the candidate Lali Papiashvili regarding taking part in the hearings is important.

⁵ *ibid*, II-20.

⁶ Protocol No. 3 / 5-1 / 679, 720, 721, 740,764 of the Plenum of the Constitutional Court of Georgia, dated June 15, 2016, on the case "Rustavi 2 Broadcasting Company" Ltd and "TV Company Georgia" Ltd (Constitutional Claim N679), Ltd. "TV Company Georgia" vs "Parliament of Georgia" (Constitutional Claims N720 and N721) Citizens of Georgia: Giorgi Ugulava, Nugzar Kaishauri, David Tsipuria, Gizo Glonti, Giorgi Lobzhanidze and Archil Alavidze vs Parliament of Georgia (Constitutional Claims N740 and N764) "

On August 30, 2016, the candidate filed a motion for self-evasion from the Giorgi Ugulava the "cables" cases to the plenum of the Constitutional Court of Georgia.

The candidate stated in the motion the following:

- "In the course of the court trials of the aforementioned cases, the plaintiff had unreasonably, but repeatedly stated about partiality of the judges, including her [Lali Papiashvili]."
- According to Lali Papiashvili, "The plaintiffs' statements were campaign-oriented, with a clear expression being the story aired by Rustavi-2 on August 28, 2016. According to the judge, despite the fact that his family member was never prosecuted, and the investigation into the case was based on a family member's statement and ended in January 2016 (when some of these lawsuits were not even registered with the Constitutional Court), the story went on in a manner that viewers would perceive the named circumstances (concerning Judge Papiashvili) have been used as a means of pressure on her."

The candidate considered that it would be logical for the plaintiffs to challenge the judge in such circumstances, but the fact that they had not filed such a petition further indicated that they were attempting to manipulate the independence of the judiciary in pursuit of the political objective of individual representatives of the plaintiff.

Plenum of the Constitutional Court of Georgia rejects Lali Papiashvili's petition on self-evasion.⁷

The plenum clarified:

- "The Plenum of the Constitutional Court considers that the negative attitude toward a judge through one or more sources of information cannot in itself become a ground for questioning his or her impartiality. Dissemination of unsubstantiated allegations by the plaintiff or through the media generally cannot serve as a basis for the judge's avoidance and / or self-evasion. Accordingly, the motion should not be upheld."

1.4 DIFFERENT / CONCURRING OPINION

Legal issue: Right to live. Case of liver transplantation.

Facts: The plaintiff was suffering from Budd–Chiari syndrome. Due to deterioration of the health condition and progression of the disease, the liver transplantation was needed at short date to avoid life-threatening consequences. The plaintiff explained that the operation outside Georgia was associated with large amount of money that was not available, and in Georgia there were two ways of liver transplant: from a deceased donor and from a living donor. According to him, due to technical or logistical problems, no deceased donation operations were carried out in Georgia, so the only way to save his life was to transplant the organ from alive donor. The disputed norm (Article 18 of the Law of Georgia on Transplantation of Human Organs) specified the list of persons who could have been living donors. The plaintiff argued that from this exhaustive list of the law, no donor was found medically available from the circle of persons prescribed by the law. Therefore, the plaintiff considered that the impugned norm, precluded his, as well as others in a similar situation, possibility to seek a donor outside the legally established circle of persons, among other persons with a kin or emotional connection and therefore it contradicted to the constitutionally guaranteed right to life. The plaintiff also sought the suspension of the impugned norm.

⁷ Judgment of the Plenum of the Constitutional Court of Georgia of 22 September 2016 on Case N3 / 1/740/764 "Citizens of Georgia – Giorgi Ugulava, Nugzar Kaishauri, David Tsipuria, Gizo Glonti, Giorgi Lobzhanidze and Archil Alavidze v. The Parliament of Georgia".

The Constitutional Court of Georgia upheld the appeal and stayed the impugned norm until a final decision was made. Finally, after the lawsuit, the Law of Georgia on Transplantation of Human Organs was amended and the plaintiff's controversial problem was eliminated, which led to the termination of the case.⁸ However, for the purposes of this document, it is interesting to see candidate Lali Papiashvili's concurring opinion on the suspension of the disputed norms.

Record of plenum of the Constitutional Court on suspension of the impugned norm.⁹

The Plenum of the Constitutional Court of Georgia stated:

In discussing the suspension of the disputed norm, the plenum focused on the position of the Parliament of Georgia on the dangers of human organ trafficking following the suspension of the norm. However, he came to the conclusion that

- “Human life is a fundamental constitutional value, without which all fundamental constitutional rights are virtually without foundation. Until the Constitutional Court reaches a final decision on the case, the operation of the impugned provision may lead to an irreversible deterioration of the plaintiff's health, including death. The Constitutional Court explains that suspending the operation of the impugned norm within the scope of the existing legislation does not pose a threat that could make an objective observer think that the public interest in enforcing the impugned provision prevails the interest of the plaintiff's life and health.”

Finally, the Plenum of the Constitutional Court suspended not the whole provision but the application of some of its contents. In particular, the substance of the norm was suspended, which "excludes a person from an emotional relationship with a recipient of a liver from a living donor who is permitted to donate the liver."

Candidate Lali Papiashvili and another colleague judge of hers (Otar Sichinava) agreed with other members of the Constitutional Court's plenum on the need to suspend the norm in general, but considered that the restriction should have been narrower and more specific nature. Specifically, the candidate believed that emotional connection with the recipient was a subjective criterion and that in establishing it there was a possibility that the decision-making relevant authority would be misled. Based on this circumstance, the candidate considered that

- "There was a possibility to increase the potential threat of financial gain and trafficking in human organs by the unauthorized individuals."

Therefore, the candidate stated in the concurring opinion that:

- “In order to ensure the practical and effective exercise of the right to life of persons in a similar situation to the plaintiff, we consider it advisable to suspend the disputed norm only before the Constitutional Court reaches its decision with respect to those recipients, for whom the only way to save lives is to have a liver transplant and who do not have a donor in the circle of persons defined by the disputed norm [due to health condition, medical history, lack of desire from a potential donor].“

The candidate considered that the person in emotional connection could be a donor only in case if the only

⁸ Judgment N3 / 4/682 of the Plenum of the Constitutional Court of Georgia of 29 September 2016 on the case “Citizen of Georgia Levan Gvatua vs. Parliament of Georgia”.

⁹ Protocol Note N3 / 9/682 of the Plenum of the Constitutional Court of Georgia of 25 November 2015 on the Case “Citizen of Georgia Levan Gvatua vs. Parliament of Georgia”.

way to save the life of the person in need of liver transplantation was to have a liver transplant and s/he did not have a donor from an exhausted list of persons with a disputed norm (persons with a certain kinship).

● **Case of Tariel Potskhveria¹¹**

Facts: The plaintiff, Tariel Potskhveria, impugned the grounds for his release from prison. In his view, discriminatory and degrading treatment was the rule established by the Minister of Labor, Health and Social Affairs of Georgia in 2013, which mandated the grounds for the release from imprisonment the case of any localized malignant tumor, category of IV clinical group, if proven by histomorphological examinations. Tariel Potskhveria asserted that he had been diagnosed with a fourth stage of malignancy, though proven not by histomorphological but cytological examination, which led to refusal to release him from imprisonment.

Potskhveria claims that the histomorphological examination, in its weak state, was life-threatening. Therefore, the plaintiff sought to abolish the norm and to suspend the validity of the impugned norm before making a decision. The Board of the Constitutional Court refused to register Potskhveria's claim and, consequently, the suspension of the impugned norm. According to the court, the impugned norm did not restrict his rights, besides, Potskhveria had been previously diagnosed by a histomorphological examination the type of tumor that met the grounds for the impugned sentence. The court held that the plaintiff was not an appropriate subject to dispute in the Constitutional Court about the abolition of these norms. In the present case, the alternative opinion of the candidate Lali Papiashvili and her colleague judge is interesting.

Candidate Lali Papiashvili believed that the view of the Constitutional Court's panel on the interpretation of the impugned norm was logical, however, the norm also provided a source of interpretation that indicated a possible violation of the plaintiff's rights. The candidate considered that the court had to accept a lawsuit, and that the impugned norm had to be suspended in substance before reaching a decision.

The candidate indicated that the impugned norm did not meet the requirements of foresight and was ambiguous because:

- **“The impugned norm does not specify whether a histomorphological examination is mandatory for primary or secondary foci of cancerous disease; Is it necessary to carry out this study even when the malignancy of the primary site is histomorphologically confirmed and the patient has undergone surgical treatment, however, after a certain period of time the so called Metastases had been revealed“.**

The candidate also believed that

- **“Confirmation of the disease envisaged by the controversial norm [the fourth clinical group of cancer] was not an unconditional basis for a person's release, since the commission besides person's health condition also considered the threats while discussing the release of a convict. Notwithstanding the foregoing, in the opinion of the candidate, the impugned norm would autonomously lead to irreparable consequences for the plaintiff. In particular, **“the impugned norm deprives the plaintiff of the opportunity to raise the issue of his release, when it is impossible to verify the disease in a histomorphological manner as defined by the impugned norm, depending on the health condition and / or disease specificity of the offender. Accordingly, the impugned provision does not leave the plaintiff in a position to examine the feasibility of its dismissal in the manner prescribed by law.“****

Based on the above circumstances, the candidate concluded that suspending the impugned norm would not endanger the public interest, and it would not be an unreasonable ground to address the decision making commission of early release with unsubstantiated submissions and / or relatively low-quality tests of convicts with malignant tumors. In the opinion of the candidate:

¹¹ **Judgment of the Constitutional Court of Georgia of December 23, 2015 №2 / 15/691 on the case of “Citizen of Georgia Tariel Potskhveria vs. Minister of Labor, Health and Social Affairs of Georgia”**

- Suspension of the impugned rule "would only allow persons in a similar situation to the plaintiff to have equal access to the institution of early release from prison by the law of Georgia for all persons deprived of their liberty, and consideration of their cases by merits by the Commission without mechanically refusing early release due to formal criteria for failure to confirm the histomorphological findings of the malignancy".

Therefore, the candidate disagreed with the decision of the Second Panel of the Constitutional Court and considered that

- "The Constitutional Court should had suspended the statutory content of the impugned norm that foresees the histomorphological study as an only means of defining metastatic malignancy when such study is not possible due to the patient's state of health and disease locality / specificity."

2.

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

1. DISCIPLINARY PROCEEDINGS - EXISTING COMPLAINTS

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

2. ALLEGED VIOLATION OF PROFESSIONAL ETHICS

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

3.

PROMOTIONS AND AWARDS/ SCHOLARSHIPS GRANTED FOR PROFESSIONAL PERFORMANCE

1. PROFESSIONAL DEVELOPMENT

- During 1996–2000 Ms. Lali Papiashvili worked in the Committee on Constitutional, Legal and Legality Affairs of the Parliament of Georgia initially as a senior specialist and later as a leading specialist. In 2000–2001 Head of the Staff of the Foreign Relations Committee of the Parliament of Georgia; and in 2001–2003 she was the first assistant to the Chairman of the Parliament. In 2003–2004 she occupied the position of the Head of Protocol Division of the Department of International Affairs of the Parliament of Georgia.

- During 2004–2007 the candidate Lali Papiashvili was a Member of Parliament of Georgia, Deputy Chairman of the Committee on Human Rights and Civil Integration, Member of the Committee on Legal Affairs.
- During 2007–2017 Ms. Lali Papiashvili was a judge of the Constitutional Court of Georgia, and in 2016–2017 she was Deputy Chairman of the same Court.
- Since 1998, the candidate has been teaching at Tbilisi State University. From 2011 to present, she is a professor of the Faculty of Law at Ivane Javakishvili Tbilisi State University.
- In 2004–2014 Ms. Lali Papiashvili was a member of various commissions / councils, namely: Member of the OSCE Parliamentary Assembly Committee on Human Rights and Humanitarian Affairs (2004–2007), Member of the Board of Parliamentarians for Global Action (USA) and Deputy Head of the Peace and Democracy Program (2005–2007), Member of Wilton Park International Association (2005–2007), Member of the GlobalPOWER (USA) Network of Women Parliamentarians (2006–2007), Member of the Temporary Investigative Commission on Investigation of Actions of the Russian Government toward Georgian Citizens (2006–2007), Member of the Legal Reform Coordination Commission (2006–2007), Chairman of the Interagency Commission on combating domestic violence (2006–2014), Member of the Interagency Coordination Council for Implementation of Action against Trafficking in Human Beings (2006–2011), Member of the Standing Working Group on the Status of Victims of Human Trafficking (2008–2011), Member of the Delegation of Georgia to the EC Ad Hoc Committee on Combating Violence against Women and Domestic Violence (CAHVIO) (2009–2011).
- In 2017, Lali Papiashvili participated in the European Court of Human Rights nomination contest for judges.¹
- The Georgian Government has submitted her candidacy to the Council of Europe, however, the Strasbourg Court has made choice in favor of the other candidate.

2. AWARDS/SCHOLARSHIPS

- The candidate is an honorary citizen of New Orleans;
- Candidate Lali Papiashvili received the Max Planck Society Scholarship in 2018 (August 1 – September 1).
- She received a DAAD Scientific Research Scholarship in 2013 (July 1 – September 30).
- In 2005, Ms. Lali Papiashvili was awarded the joint annual award of the Swiss Government and the Swiss Institute of International Relations "Swiss Prize for Leadership in International Relations".

¹ Papiashvili, Alania, Sichinava, Bachiashvili – Strasbourg Judicial Candidates, Available at: <http://bit.ly/2GUo3wJ>

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CONFLICT WITH LAW, CONFLICT OF INTEREST

1. CRIMINAL LIABILITY, ADMINISTRATIVE OFFENSES / PENALTIES, LITIGATIONS

- Ms. Lali Papiashvili has no record of conviction.
- Administrative violations are identified due to traffic violations

- Candidate Lali Papiashvili 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

- In 2004–2007, Ms. Lali Papiashvili was a member of the National Movement–Democrats party in the Parliament of Georgia.¹
- Candidate’s relationship with politicians / influencers is not established.

¹ Website of the Parliament of Georgia, available at: <http://bit.ly/2lWFpBi>

5. CANDIDATE'S PUBLIC ACTIVITIES/ POSITION AND BEHAVIOR

1. OPINIONS EXPRESSED IN SOCIAL MEDIA

Candidate Lali Papiashvili's personal account is registered on the social network Facebook, though she does not post public comments on her page

2. PUBLIC STATEMENTS BY LALI PAPIASHVILI

2.1. JULY 29, 2016, THE PUBLIC APPEAL OF LALI PAPIASHVILI AND FOUR OTHER JUDGES OF THE CONSTITUTIONAL COURT TO THE THEN PRESIDENT OF THE CONSTITUTIONAL COURT, GIORGI PAPUASHVILI.

In the context of the Rustavi 2 TV and other high-profile cases, five judges of the Constitutional Court, including Lali Papiashvili, in a "Primetime News Agency", appealed to the then chairman of the Constitutional Court, Giorgi Papuashvili.

According to the letter, the judges were protesting the "accelerated pace" of some cases when earlier cases, they say, had not yet been decided. The statement also stated: **“Following the statement of the President of the Constitutional Court of Georgia of 21 July 2016 (in which he spoke about the facts of pressure on judges), we think it is necessary that the Constitutional Court awaits a thorough examination of the matter by the relevant authorities in all cases of political character and these cases will only be resolved after the facts of pressure expressed in the statement of the Presiding Judge have been verified and concluded by the appropriate authorities, so as to exclude any doubts as to the impartiality and objectivity of the judges.”**¹

¹ „Appeal of 5 Judges to Giorgi Papuashvili and Rustavi 2 Case “Available at: <https://netgazeti.ge/news/131911/>

2.2. THE STATEMENT ON THE POSTPONEMENT OF HEARING ON THE SO-CALLED CASE OF "CABLES" AND GIGI UGULAVA.

On August 2, 2016, Judge Lali Papiashvili of the Constitutional Court filed the motion to postpone the so called case of cables and case of Gigi Ugulava. Judges Otar Sichinava, Zaza Tavadze and Merab Turava agreed with her. They considered that the case of "high public interest" should be suspended until the prosecution's conclusion on the possible pressure on the judges of the Constitutional Court was released. Otherwise, they say, there would always be doubts about biased decisions.

In this regard, Lali Papiashvili also told the media: **“There could not be a sabotage from our side for the simple reason that on Saturday, the court chairman (Giorgi Papuashvili) already knew that we would not come. Yesterday we spent the whole day trying to get the court to postpone this hearing on its own initiative. I am very sorry that the court leadership failed to meet its obligations. The protest has nothing to do with it. We said we had other circumstances planned and we wanted the hearing to be scheduled on any day acceptable not for us but for the plenum, we just could not attend the trial today.”**²

It is noteworthy that, because of the postponement of cases several times, the trial judges were critically evaluated by the plaintiffs' lawyers. According to Gigi Ugulava's lawyer, Beka Basilaia: **“Judges Tavadze, Turava, Sichinava, Tsabutashvili and Papiashvili are Bidzina Ivanishvili's Pocket Judges, executing his direct orders... Accordingly, it is not in the oligarchic, corrupt interests of Bidzina Ivanishvili to suspend hearings of the case of Giorgi Ugulava and the so-called Case of cables, because after hearing this case Giorgi Ugulava should be released unconditionally”**.

Soso Baratashvili, the lawyer for the so-called "cables case" also pointed out that **“this is a shameful fact – Some judges refuse to perform direct duties of justice. This is the second time when we are summoned to court... We are arriving in Batumi from Tbilisi and they do not even explain the reason for the postponement. Five judges did not appear in court today, as we found out. It damages not only this case and these people whose lawsuits are brought, but also the judiciary in general and has a very serious effect on the country's reputation. The Constitutional Court has already become the epicenter of political struggle, which is unacceptable.”**³

2.3 MOTION FOR EVASION ON REVIEW OF RUSTAVI 2 AND OTHER HIGH-PROFILE CASES IN CONSTITUTIONAL COURT

On August 30, 2016, Judge Lali Papiashvili of the Constitutional Court filed a motion on evasion from the case on TV Company Rustavi 2. The judge also spoke about this at a special briefing.

According to Lali Papiashvili, **“In order not to have a clearly negative effect from the repeatedly expressed negative attitude by the party on the legitimacy and credibility of the court's decision, I consider myself obliged to address the plenum of the Constitutional Court soliciting self-evasion from participating in so called high profile cases.”**⁴

At the same briefing Lali Papiashvili also commented on the report in P.S. TV story about the possible pressure on her:

“I consider myself obliged to respond to the story on August 27 in the TV show “PostScript” about the possible pressure on me. The Constitutional Court has always been and will be one of the main defenders of freedom

² **“Papiashvili: We Are Not Going to Block the Constitutional Court”** August 2, 2016 Available at: <https://bit.ly/2kpQQJn>

³ **“Second Interruption of the Constitutional Court Session and Charges”** September 01, 2016 Available at: <https://bit.ly/2kAaZoc>

⁴ **“Lali Papiashvili’s motion of evasion from High-profile Cases ”** August 2, 2016 Available at:<https://bit.ly/2kAczGG>

of expression, However, at the same time, we must say that the use of civil society in a democratic society to justify discrediting judges or the judiciary is, I think, inadmissible and unacceptable.”⁵

It is noteworthy that, subsequently, the Constitutional Court's decision of December 27, 2017, did not satisfy the motion for evasion of Judge Lali Papiashvili.⁶

3. INTERVIEW OF THE CANDIDATE LALI PAPIASHVILI AT THE HIGH COUNCIL OF JUSTICE



Question posed by a member of the Council of Justice IRMA GELASHVILI to the candidate: “Do you think the restriction of property rights is in line with the constitution when, without any public purpose, the state decides to accumulate my property for my own good? To what extent is this in line with the Constitution?”

Lali Papiashvili's Answer:



I would refrain from answer because I am not well-versed in the matter myself, but it could be said, that the issue here was not only the constitutionally regulated property, but also the regulation regulating the extent to which such taxes could be introduced in the current form. However, I can tell you a counterargument too, that this was, let's say, envisaged for an indefinable circle of persons, but there was a possibility to withdraw from the scheme voluntarily.”⁷



Question posed by a member of the Council of Justice IRMA GELASHVILI to the candidate: “I am interested in your opinion on euthanasia. The Criminal Code states that murder is punishable at the insistence of the victim. However, Article 24 of the Law on Patient Rights contradicts this record. Specifically, the article states that a citizen of Georgia has the right to give written consent in advance or to refuse, for the moment when found unconscious, or loses ability for conscious decision-making about life-sustaining treatment, if it is caused by terminal conditions or severe disability. Where the limitations stand here?”

Lali Papiashvili's Answer:



With regard to euthanasia, I agree that there may be a problem. We have two types of euthanasia, passive and active. This is not just our problem and the Strasbourg court has many decisions. Of course, this needs to be regulated, as it may be stipulated more specifically to eliminate problems. However, even Strasbourg's approach to euthanasia is quite cautious; Even in countries where the euthanasia right is more or less protected, there are some restrictive tools, the precondition stages.. For example, in countries where euthanasia is permitted, medicines sold at the pharmacy can only be purchased with a prescription from a doctor. Because of this, applications were lodged in Strasbourg. However, according to the Strasbourg Court, psychiatrists should be consulted before such a decision can be made. There were occasions when, for example, the couple moved to Switzerland to use the service. This, too, is problematic, as forcing individuals to incur additional costs to achieve the desired result creates additional discomfort. However, at this stage we can say that the standard is not clear.”



Question posed by member of the High Council of Justice IRAKLI BONDARENKO: “Judges of the Constitutional Court will not be appointed indefinitely. Is there a need to introduce same rule here that applies to judges of the Supreme Court? There is a political sign as well, given the rules of appointment to both positions, and what is the difference? Why in the Supreme Court indefinitely and why not in the Constitutional Court? ”

Lali Papiashvili's Answer:



It is a very interesting question and it was also discussed why 10 years and why one term and why not two terms. However, my subjective attitude has always been that the choice of exactly two terms should be clearly excluded because there may be fewer guarantees of independence. As to why it should or should not be indefinite, based on

⁵ *ibid.*

⁶ Broadcasting Company Rustavi 2 and TV Company Georgia Ltd. vs. Parliament of Georgia N3 / 4/679, December 27, 2017 <https://bit.ly/2m6B5j7>

⁷ It is noteworthy that according to Article 22 of the Law of Georgia on Accumulated Pensions, an employee who has turned 40 years of age can refuse to participate in the accumulated pension scheme.

my personal experience, I think we might just be discussing a 10-year term or a 15-year term, but I don't think it is right to make an indefinite appointment. The absence of a permanent appointment to the Constitutional Court is balanced by many other circumstances, such as disciplinary proceedings, cases of termination of authorization. The guarantees, if we compare these two institutions, in the case of the Constitutional Court, from my subjective perspective, are much higher than in the case of the common courts. Despite the changes that have been made and the fact that the constitution provides for impeachment today. There were high guarantees of limitation on the powers of judges of the Supreme Court, but they were balanced and lowered by the foundations of the existing disciplinary proceedings. Another circumstance is the political issue itself, the involvement of political actors in the composition. In the case of the common courts, the selection criteria and procedure are very clear and detailed, and the political entity enters at the final stage in the appointment process. Prior to this selection is made and must be carried out by an independent structure."



Question posed to the candidate by NAZI JANEZASHVILI, a member of the High Council of Justice: „From 2004 to 2007 you were a Member of Parliament and subsequently a judge of the Constitutional Court. How did this happen? Is the independence of a judge jeopardized by the fact that a member of parliament is becoming a judge? Our legislation also prohibits a judge from being a member of any political party. If a judge were a member of a political party, in your opinion, would there be any harm? "

Lali Papiashvili's answer:



I have never been a member of a political party. When I was a member of parliament, I was a faction member. I became Member of Parliament without affiliation with the political party. I was a majority member. However, the problem should be not where you are coming from, but what you do, how independent you are, at what extent you can make acceptable decisions. I can tell you that long ago we made decisions that might not have been acceptable."



Question posed to the candidate by IRAKLI SHENGELIA, a member of the High Council of Justice: "If the judge's wife or son is a criminal authority, what happens to the judge in this case? What should happen or what should be happening? "

Lali Papiashvili's Answer:



It is a difficult issue and I will divide it into two parts. First, when a family member is an ex-convict and already released for the moment when the person was appointed judge and second: he is currently working as a judge and his family member is still involved in criminal activity. A question is whether it is fair for this judge to be oppressed, But from my subjective point of view, I know that this may not be in line with constitutional values, but I believe that in this case, public confidence in the judiciary should be kept higher and I would subjectively prioritize that a person, whose family member is still involved in criminal activity, should not work in the judicial system."



Question posed to the candidate by IRAKLI SHENGELIA: "Should a judge who does not pay alimony to his children be in the system?"

Lali Papiashvili's Answer:



The problem will probably appear, because when you ask someone else to act in accordance with the law and commit yourself to judging others, you must be distinguished by your good faith".



Question posed to the candidate by NAZI JANEZASHVILI: "We often hear that an indefinite judge is more independent than a judge elected for ten years. In addition, what other safeguards do you think the judge has to be independent in the common court system? "

Lali Papiashvili's Answer:



It is also important here that, along with independence, it does not lose its effectiveness, in the proper exercise of its functions. Therefore, in this section, the role of the High Council of Justice may be important. When a judge is appointed indefinitely, he or she should not have a feeling nothing threatens him/her. Consequently, there should be the possibility of self-control."



Question posed to the candidate by NAZI JANEZASHVILI: ""In your opinion, when the same people work

in the judicial system, who worked in times when there was zero tolerance in the country and did nothing against it, what guarantees could we, the citizens have, if the political leader tomorrow makes the same statement - 'Everyone to prison!' Will the judges consider it? ”

Lali Papiashvili's Answer:

“It is difficult to compare what was before and what is now. I don't think what you're pointing to is real. Judges who are independent, they make decisions independently, and the constitution guarantees that, I don't think political decisions are of such importance. ”



Question posed to the candidate by REVAZ NADARAIA, a member of the High Council of Justice: “Is it because of this or any other blame on the law, strict legislation, the principle of sentence aggregation? Was it because of the politician's statements or the legislation at the time? Please, provide your assessment to this too. ”

Lali Papiashvili's Answer:

“There are several factors here, the society as well as the legislation. The greater it is, the lower the efficiency. [...] The solution is to appeal to the Constitutional Court, but there are issues that one cannot address to the Constitutional Court in accordance with established practice. Consequently, unless the law allows it, one cannot do anything. Unless the Constitutional Court gives you the opportunity to do so, you cannot put the law aside”.



Question posed to the candidate by NAZI JANEZASHVILI: "If it is confirmed that a member of the High Council of Justice has a godparent relationship with the contestant, can this be the basis for objection of the candidate?"

Lali Papiashvili's Answer:

“The Constitutional Court has taken a decision on this matter, where the court has said that godparent relationship is not sufficient grounds for objection. As to kinship, friendship, etc., in this case we can apply the case-law of the Strasbourg Court, according to which the fact that persons are relatives and friends of one another is not sufficient grounds for objection. In itself, just appealing to a kinship, without examining other additional circumstances, I think would be wrong.”

6. FINANCIAL OBLIGATIONS AND INCOME OF THE CANDIDATE

1. PROPERTY



2008
AN APARTMENT IN TBILISI
108,429 GEL
(106 sq.m)



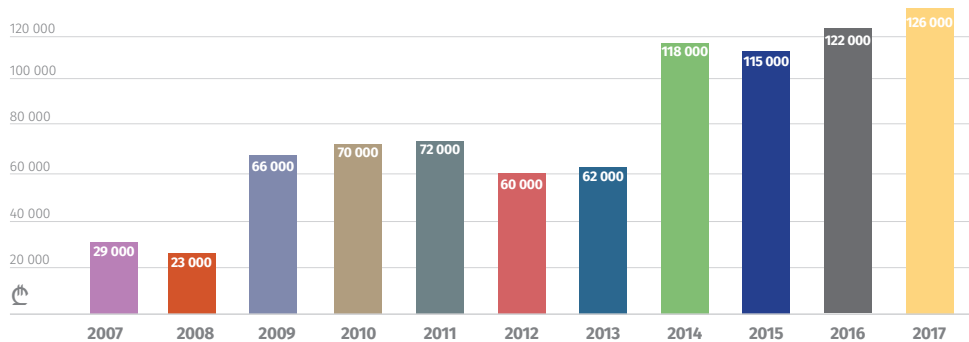
2008
AN APARTMENT IN BATUMI
1000 GEL
(62 sq.m)



2005
A VILLAGE HOME AND A
LAND PLOT IN MTSKHETA
5000 GEL (810 sq.m)



1993
AN APARTMENT IN TBILISI
38,641 GEL
(70 sq.m)



2. INCOME

Candidate Lali Papiashvili received GEL 1,638,413 as a result of professional and academic activities in 2007-2017. Most of the income she received was

from her work in the Constitutional Court, where she received a salary of GEL 605,706 for 10 years.



Judge Lali Papiashvili's financial declaration highlights several important shortcomings. The first is related to the reflection of the price of real estate. Various amounts are stated in different years' declarations in the form of real estate values. For example, the price of an apartment in Tbilisi is indicated as follows: 2003 - 19 500 USD, 2004 - 22 000 USD, 2005 - 23 000 USD, 2007 - 28 000 USD. The same is true in the case of a villa in Mtskheta. 2005 - \$ 14,000, 2006 - \$ 17,000, 2007 - \$ 22,000. According to the 2018 data, the mentioned property is indicated as 5000 GEL. The numbers given by Judge Lali Papiashvili are constantly changing, resulting in an undisclosed amount of money actually being paid to buy real estate.

Another flaw in the declaration is the non-disclosure of data. For example, according to the 2008 Declaration, Judge Lali Papiashvili did not own any real estate, as the property graph is not filled in. However, since 2005 the candidate has owned a villa and land in Mtskheta, and in 2008 she purchased two new real estate apartments in Tbilisi and Batumi.

Also, there is often a case when Lali Papiashvili gets a loan, and there are no facts of repayment of the loan, and her expenses are also invisible.



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