

# Merab

## GABINASHVILI

A judge of Tbilisi Court of Appeals appointed for indefinite term

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

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In 1995–2005, candidate Merab Gabinashvili worked at various positions in the Ministry of Internal Affairs. In 2005–2006 he was an investigator at the Financial Police Investigative Department of the Ministry of Finance.

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

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In 2006–2012 the candidate Merab Gabinashvili exercised judicial authority in various courts, including Gori and Zestaponi District Courts and Kutaisi City Court. In 2012–2017, he was a judge of the Investigative Panel of Tbilisi Court of Appeals and the Chairman of the Panel.

PROMOTIONS AND AWARDS /  
SCHOLARSHIPS GRANTED FOR  
PROFESSIONAL PERFORMANCE

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In 2017 Judge Gabinashvili was appointed as a judge of Civil Cases Chamber of Tbilisi Court of Appeals and as Chairman of the same Chamber.

CONFLICT WITH LAW,  
CONFLICT OF INTEREST

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Since 2019, he is the Chairman of the Investigative Panel of Tbilisi Court of Appeals. In 2013–2017 Merab Gabinashvili was also a member of the High Council of Justice.

CANDIDATE'S PUBLIC ACTIVITIES /  
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FINANCIAL OBLIGATIONS AND  
INCOME OF THE CANDIDATE

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# 1

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

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

Not found.

#### 1.1. LEGALLY INTERESTING OR PRECEDENTIAL DECISIONS

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**Legal Issue:** On July 2 of 2019, Judge Merab Gabinashvili considered on appeal a dispute, related to imposition of preventive measure on Georgian MP Nikanor Melia.

**Facts:** On June 27, 2019 Tbilisi City Court imposed on the MP as preventive measure bail and additional measures. The decision was appealed by defense, and it indicated in its appeal, that imposed additional measures (prohibition of leaving of the house without informing the authorities and prohibition of any kind of communication with potential witnesses) was in direct contradiction with the rights of an MP, guaranteed by the Constitution.

**Significance of the case:** In the present case, the Georgian judicial authorities for the first time considered the issue of imposing a preventive measure on a Member of Parliament. It is particularly noteworthy that the additional measures applied by the Court of First Instance were directly evoking the duty of the Court of Appeal to consider in detail the justification of each measure and their compliance with Constitutional standards.

#### **Decision:**

- The ruling does not indicate specifically what constituted the alleged unlawful action (the ruling only referred to the indictment). Moreover, it is not clear on the basis of which evidence did the court conclude, that there was a reasonable ground to allege, that Nikanor Melia committed an offence.

**Note:** When imposing a preventive measure, the court should assure itself that: a) the materials in the case indicate that the prosecution is substantiated; b) in adherence with the standard of probable cause, there is a real likelihood/danger that the defendant shall abscond from justice, destroy evidence and/or committing a new offence, and therefore, the use of a preventive measure is necessary.<sup>1</sup>

- The court justifies the decision to refuse detention by referring to such facts as “the personality of the alleged offender, his past, the circumstance, that the person has permanent place of residence.” However, the decision does not contain any reasoning regarding the risks indicated by the prosecution in regard to each of the above referred factors.

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<sup>1</sup> Alexander Makarov v. Russia, European Court of Human Rights, 2009 (No. 15217/07), par. 120; the Judgment of the Constitutional Court of Georgia on the Case Citizen of Georgia Giorgi Ugulava v. the Parliament of Georgia, 2015, (no. 3/2/646), para. 65.

- The Court explains that the circumstances presented by the prosecution, which justify the expediency of detention, should not be assessed separately but cumulatively.
- The main argument of the defense was incompatibility of the imposed measures with the Constitution. However, the court refrained from discussing the matter and based on erroneous interpretation of the law, stated that **“the additional measures imposed on Nikanor Melia do not constitute preventive measures and that the Code does not stipulate appealing of additional measures separately from preventive measures [...]”**

**Note:** The Criminal Procedure Code of Georgia envisages two types of preventive measures: the main (e.g. bail) and additional (e.g. prohibition of leaving home without informing the investigating authorities)<sup>2</sup>. The Code does not provide for a different procedure for appealing of additional measures, and it is the same as for appealing the main measure. As a result of such interpretation of the procedural law by the Court of Appeals, a person was deprived of his Constitutional right to apply to the court to appeal the issue of lawfulness of restriction of his rights.

### DIFFERENT PRACTICE

In the 2015 case, considered by the judge, his position is significantly different from the position, he express in regard to Nikanor Melia’s case when imposing a preventive measure, where the judge explained that the circumstances of the case should be assessed cumulatively: “The risks associated with the impending dangers are not high, and there is reasonable ground to suppose so due to the personality of the accused. It is based on the personality of the accused, his past, the fact, that he has a permanent place of residence ... As to the prosecution’s reference to the nature of the action or other circumstances mentioned in the complaint, the Investigative Panel explains, that these circumstances are decisive factors separately... and they do not represent sufficient grounds to impose necessarily the strictest measure”.

**Legal Issue:** On May 14 of 2018 the Civil Cases Chamber of Tbilisi Court of Appeals, presided by Judge Gabinashvili, ruled on the case, concerning an administrative body revoking an order of employee’s dismissal, his reinstatement, and repayment of compensation for the missed days at work.

**Facts:** The plaintiff (Appellant) was dismissed on the ground, that he had grossly violated his contractual obligations. Specifically, he fell asleep at the security post while on duty. The employer indicated that there was the risk that the property of the facility would be damaged.

The plaintiff filed a lawsuit with Administrative Cases Panel of Tbilisi City Court as the employer was an administrative body. The plaintiff sought annulment of the dismissal order, reinstatement and compensation of missed day sat job. The Panel, indicating to the aspect of jurisdiction, referred the case to the Panel of Civil Cases for consideration. By decision of February 2 of 2018, the plaintiff’s claims were dismissed, and the decision was appealed in Tbilisi Court of Appeals. The Chamber reversed the appealed decision and fully upheld the appeal.

**Significance of the case:** The case is important as it concerns proper determination of jurisdiction, as well as the legality of the grounds for termination of labor relations and distribution of the burden of proof in case of labor disputes<sup>3</sup>.

<sup>2</sup> Commentary on the Criminal Procedure Code of Georgia, American Bar Association, Tbilisi, 2015.

<sup>3</sup> The ruling was provided to the High Council of Justice by the candidate himself.

## Decision:

- The plaintiff disputed the fact that the case belonged to the category of administrative-legal disputes. The Chamber classified the dispute as a civil case and explained: **“when considering the issue of court jurisdiction, of importance is the substance of the employment relationship between the plaintiff (appellant) and the body, and not the function of the employer”**.
- The Court of Appeal deliberates on the content of the right to work based on the Georgian Constitution and reasoning of the Constitutional Court of Georgia. In addition, with regard to termination of labor relations, the Chamber refers to the so-called principle of reasonable basis, established by the ILO Convention.<sup>4</sup>
- The court provided a significant explanation of importance of grounds for dismissal when dismissing an employee. Referring to the principle of *Ultima Ratio*, the Court held: Dismissal of an employee would be considered as adequate, necessary and proportionate measure if there was a grave breach, due to which application of other lighter sanctions would be inappropriate. After examining the facts, the Chamber found that the appellant did not commit gross violations.
- In distributing the burden of proof, the court relied on the practice of the Supreme Court of Georgia<sup>5</sup> and referred to a specific Standard, under which it is the duty of the employer to provide the proof of existence of lawful and sufficient basis for dismissal of an employee. **In doing so, the court obligated the employer to prove whether he had provided his employee with complete information on working hours. According to the court, he failed to do so.**

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

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The judge has heard numerous cases involving the use of a preventive measure. The judgments are somewhat based on standards set by the Constitutional and international/regional courts and international organizations, although the judge rarely cites specific cases.

In reviewing the preventive measures, the judge does not cite the relevant case-law of the Supreme and Constitutional Courts, although we do find the citation from the case-law of the European Court of Human Rights<sup>6</sup>. In one of the cases, the judge also quotes the Council of Europe recommendation<sup>7</sup>. In one of the labor disputes, the judge correctly applies the decisions of both the Constitutional Court and the Supreme Court.<sup>8</sup>

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<sup>4</sup> International Labor Organization Convention No.158, adopted in 1982, on Termination of Labor Relations: According to Article 4, termination of employment with an employee shall not be admissible unless there is a lawful reason for such termination in relation to the ability or conduct of the employee, or on the grounds of operational needs of an institution or service.

<sup>5</sup> Judgment of October 7 of 2015 on the case Nas-483-457-2015.

<sup>6</sup> See e.g. Judgment of the Investigative Panel of the Court of Appeal of Tbilisi, 2019 (no. 1 g / 1044-19), in which the judge referred to the case as follows: Case “Aleksandr Makarov v. Russia ”.

<sup>7</sup> In the judgment of the Investigative Panel of Tbilisi Court of Appeal of 2019 (No. 1 g / 1044-19) is cited Recommendation of the Council of Europe 1980 R (80) 11.

<sup>8</sup> In the judgment of May 14, 2018 on the case N2 b / 2208-18 the judge when interpreting the right to employment refers to the decisions of the Constitutional Court of Georgia N2 / 2-389, 26.10.2007 and N2 / 4-24, 28.02.1997, while when referring to the specific standard of distribution of burden of proof between the parties the judge cites the Judgment of the Supreme Court of Georgia on the case N as-483-457-2015, 07.10.2015.

Formulaic reasoning of the judge, reference to standards, albeit only illusory – since this did not affect the content of the judgment;

**Legal issue:** In 2015, Judge Gabinashvili, considered on appeal the prosecution’s appeal on application of a more severe restraint measure (detention).

**Facts:** There were two defendants in the case. The Court of First Instance imposed bail on both defendants in different amounts. The prosecution appealed the decision in the Court of Appeal and requested detention of one of the defendants (in regard to whom the court of first instance ruled bail in the amount of 15,000 GEL). The latter accepted the prosecution’s appeal and substituted bail with detention.

**Significance of the case:** The judge of the Court of Appeal amended the judgment of the court of first instance and applied the most severe measure of restraint. In such cases, it is particularly important that the decision be substantiated at a high standard.<sup>9</sup>

**Decision:**

- The judgment does not clearly indicate what the alleged unlawful action was, it contains only indication to the charges and the relevant article of the Code.
- The judge points out in a formulaic manner that the evidence examined by the first-instance court is sufficient to justify detention. The judge did not indicate specifically what evidence existed to corroborate the relevant evidence.
- The judge indicates that **“after examining the procedural and factual basis for the application of a preventive measure, the judge should consider the appropriateness of imposing a specific preventive measure and decide which preventive measure would better serve the defendant’s appropriate conduct.”** The phrase is used quite frequently, and we come across similar formulations in Judge Gabinashvili’s and other judges’ rulings on the measure of restraint.
- The question of the use of detention as the most severe measure as exclusion in theory is formulated correctly, but the judge does not apply this standard to the individual circumstances of the case. Accordingly, reference to standards is only of illusory character and cannot have a real impact on the outcome of the case. The judgment states that **“the accused may attempt to temper with the evidence, indicating to commit of offence, or destroy the evidence obtained in the future.”** The judge refers not to a specific circumstance or fact, but merely to the abstract possibility that a person will attempt to interfere with the investigation, which he considers sufficient grounds for application of detention on remand.

**Note:** According to explanation of the Constitutional Court, it is contrary to Article 18 of the Constitution, which protects the right to freedom (the Constitution in force till December 16 of 2018) if the court, when imposing detention, does so taking into consideration the facts or information of criminal investigation, which indicate to hypothetical risk of absconding of the accused, committing of new offence, or destruction of evidence (exerting influence over witnesses), where there is only theoretical risk of committing unlawful acts by the accused, and not a real threat<sup>10</sup>. Interpretation of the European Court of Human Rights on given issue is analogous.<sup>11</sup>

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<sup>9</sup> The ruling was provided to the High Council of Justice by the candidate himself.

<sup>10</sup> See Decision of the Constitutional Court of Georgia on the case Citizen of Georgia Giorgi Ugulava v. the Parliament of Georgia, 2015, (no. 3/2/646), par. 71.

<sup>11</sup> The right to liberty and security of the person: A guide to the implementation of Article 5 of the European Convention on Human Rights (2002), pp. 22-34

# 2.

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

### 1. DISCIPLINARY PROCEEDINGS – EXISTING COMPLAINTS

- No disciplinary measures or penalties have been applied against the candidate.

### 2. ALLEGED VIOLATION OF PROFESSIONAL ETHICS

- There was no case of alleged violation of professional ethics by judge Gabinashvili.

### 3. ACTIVITIES IN THE HIGH COUNCIL OF JUSTICE

- In 2013–2017, Judge Merab Gabinashvili was a member of the High Council of Justice. In the same period the chairman of the Tbilisi City Court Mamuka Akhvlediani was dismissed from his position by the Council.<sup>1</sup>
- During candidate Merab Gabinashvili’s membership in the High Council of Justice occurred the incident, where judges’ exam tests were allegedly disclosed by the Council member.<sup>2</sup>
- In 2016 it became known that Judge Natia Gujabidze was renting an apartment from her mother and that the rent expenses were covered by the state budget for years. The High Council of Justice at that time stated that the information about the embezzlement of state funds by Judge Natia Gujabidze was not true,<sup>3</sup> **however, NGOs considered, that the High Council of Justice had to launch disciplinary proceedings and the Prosecutor’s Office should have initiated investigation into the matter.**<sup>4</sup> It is not known to the public whether there was any follow-up in regard to this fact.
- During candidate Merab Gabinashvili’s membership in the High Council of Justice was actively used the mechanism of promotion and assignment of judges without conducting of competition. During this period, **7 judges were promoted to Tbilisi Court of Appeals without conducting of competition.**<sup>5</sup>
- During the membership of Judge Gabinashvili in the High Council of Justice, the Council supported appointment of **Levan Murusidze (for a three year term) and Mikheil Chinchaladze (for indefinite term)** as Tbilisi Court of Appeals judges, as well as the appointment of Mikheil Chinchaladze as the Chairman of Tbilisi Court of Appeals.

<sup>1</sup> According to Mamuka Akhvlediani, the Council applied to such measures due to his publicly speaking regarding the problems in the judicial system; chronology of events from the first statement, made by him, until his dismissal is available at: <http://bit.ly/2ST69iw>.

<sup>2</sup> The Council was conducting an inquiry in this regard; Report of Transparency International Georgia “State of the Judiciary 2012–2016”, p. 16, Available at: <https://bit.ly/2JYEcd7>.

<sup>3</sup> Statement of the High Council of Justice, available at: <http://bit.ly/2ZjPib7>.

<sup>4</sup> GYLA commenting on information related to judge Natia Gujabidze, available at: <http://bit.ly/2YjwfRN>.

<sup>5</sup> The identity of promoted judges is known, available at: <https://bit.ly/314i6oo>.

# 3.

## PROMOTIONS AND AWARDS / SCHOLARSHIPS GRANTED FOR PROFESSIONAL PERFORMANCE

### 1. PROFESSIONAL DEVELOPMENT

- Judge Gabinashvili has been appointed as a judge of Gori District Court after working for 11 years (1995-2006) at the Investigative Department of the Ministry of Internal Affairs and the Financial Investigation Department of the Ministry of Finance.
- In 2006-2012, Judge Merab Gabinashvili has served in the Gori District court, Kutaisi City Court, and Zestaponi District Court, and in 2012 he was appointed as a Judge of the Investigative Panel of Tbilisi Court of Appeals and the Chairman of the same Panel.
- A few days before expiration of his tenure as a member of the Council, candidate Gabinashvili was appointed as a judge of the Chamber of Civil Cases of Tbilisi Court of Appeals and as the chairman of the same Chamber. Judge Gabinashvili has passed the qualification exam in 2005 in criminal law and throughout his career he has been working in this area. However, the Council unanimously supported Merab Gabinashvili's decision to change his specialty and become Chairman of the Chamber of Civil Cases<sup>1</sup>. Since May 2019, Judge Gabinashvili has been re-appointed as the Chairman of the Investigative Panel.

### 2. AWARDS/SCHOLARSHIPS

- Candidate Merab Gabinashvili has not received any awards / scholarships.

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<sup>1</sup> Monitoring Report of the High Council of Justice #6, page 57, available at: <http://bit.ly/2T3Y36Q>.

# 4.

## CONFLICT WITH LAW, CONFLICT OF INTEREST

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

- Judge Merab Gabinashvili has no record of conviction.
- Administrative violations are identified due to traffic violations.
- Candidate Merab Gabinashvili 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 Merab Gabinashvili not a member of any political party.

- Judge Gabinashvili is considered as one of the members of a group (clan) of influential judges by the Coalition for an Independent and Transparent Judiciary.<sup>1</sup>
- In December 2018, the Supreme Council of Justice, bypassing all formal procedures, submitted to the Parliament of Georgia the list of 10 candidates for the position of judges to the Supreme Court of Georgia, including Merab Gabinashvili's candidature.<sup>2</sup>

<sup>1</sup> Address of the Coalition to the Parliament of Georgia, available at: <https://bit.ly/2Jc8ow5>.

<sup>2</sup> 10 mafiosis of the justice sphere, available at: <https://bit.ly/2OC5a7M>.

# 5. CANDIDATE'S PUBLIC ACTIVITIES / POSITION AND BEHAVIOR

## 1. OPINIONS OF JUDGE MERAB GABINASHVILI, EXPRESSED IN SOCIAL MEDIA

- Judge Gabinashvili does not use social media. He does not have a personal profile or an official page, related to his activities as a judge.

## 2. PUBLIC STATEMENTS OF JUDGE MERAB GABINASHVILI ON THE SITUATION IN THE JUDICIAL SYSTEM

### 2.1. JUDGE MERAB GABINASHVILI'S OPINION ON LEVAN MURUSIDZE AND THE PUBLIC CRITICISM OF THE JUDICIARY.

On December 27 of 2015, Judge Merab Gabinashvili made the following statement:

**“ I can't tell you why so many people are against Levan Murusidze, but I can tell you that so many people rallying against the judge and expressing negative attitudes using indecent language towards the judiciary, is excessive and has no boundaries, because using bad language towards any judge is tantamount to undermining reputation of the whole judiciary”<sup>1</sup>**

In the same statement, the judge further states the following:

**“ The public needs a constitutionally guaranteed body, that is enjoying a very high degree of independence, and which arrives to decisions in an independent manner.”**

According to Merab Gabinashvili, the Conference of Judges elected Levan Murusidze as the Secretary of the High Council of Justice, with this very legitimacy. In addition,

<sup>1</sup> “Merab Gabinashvili: Murusidze still has a legitimate mandate of trust,” December 27, 2015, available at: <https://ipress.ge/new/merab-gabinashvili-levan/>.





**Levan Murusidze still has that confidence mandate from the judges, and the judges' requirement, that this person continues implementing his duties as the secretary of the High Council of Justice is absolutely legitimate.”<sup>2</sup>**

Merab Gabinashvili expressed his position on Levan Murusidze at length at the XV Conference of Judges, in detail. Namely, he stated the following:



**Let's take Levan Murusidze's case – I'm not anybody's advocate, but this person has to prove that he adopted a legitimate decision. He was acting on the statutory basis and the same laws apply today too. We are put in the defensive position, and have to justify our actions, but we are obliged to do so, because unfortunately, even such organizations which should not only criticize us, but also give us recommendations, are voicing only criticism and concerns. It is not their duty to establish double standards. When we do something incorrectly, they have to indicate this to us. I still don't understand the statement made by the GYLA's Chairman, who said that Mr. Murusidze is a person, who has complied with requirements of the law [...] Yes, he did, and shall too. If he doesn't, the issue shall be considered by the Disciplinary Panel. Isn't disregard of the law punishable? So what shall we do, write our own laws?! We have no law-making authority. The law must be adhered to. The Chairman of the Bar Association comes out and directly calls on the President and political officials to get involved in the process, why they should be involved, to exert influence on us? That's not right. It is not right in any regard. The criteria were discussed here. He is well aware that the High Council of Justice has revised the criteria for appointment of judges. Name the criteria that Levan Murusidze does not meet. I know what they will say. They will say that they have considered some cases, there is a perception in the public that he does not deserve to be a judge, and that Strasbourg found violations on these cases. Where have you seen, that in the event of a Strasbourg ruling, which differs from the one adopted by a judge, you should dismiss such judge altogether. I know some cases of promotions too. This is an unprecedented pressure on us, as members of the High Council of Justice and all judges. It will happen so, that when the high-profile case is brought to the court, no judge will ever touch it, because when their term shall expire, or there is an appraisal process, somebody may distort information and affect public opinion. This is wrong, and I shall not do it. I urge all my colleagues, to adopt decision pragmatically, in compliance with the law, adopt legally and morally sound decisions, let's not to be influenced by the public. This will be the precedent, which shall keep all judges in fear. On the contrary, judges should have the motivation to consider high-profile cases and prove, that they are independent and that they rely solely on the law “.**

## 2.2. POSITION IN REGARD TO SUBMISSION OF THE SO-CALLED 10-PERSON LIST OF JUDGE CANDIDATES TO BE APPOINTED TO THE SUPREME COURT OF GEORGIA

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Merab Gabinashvili was one of the candidates, nominated in the 10-member list of judges, to be appointed to the Supreme Court, which was released on December 26 of 2018 by the Secretary of the High Council of Justice. He subsequently withdrew his candidature, together with some other candidates, due to events, that ensued.

Judge Gabinashvili assessed the events as follows:



**This process was immediately subjected to a very unhealthy scrutiny. There have been attempts to artificially discredit this process by political groups or NGOs, whose interests, as I assume, may not be promotion of establishment of robust court system, strengthening of courts, and promotion of adopting of important decisions in a speedy and effective manner. Criticism and stringent recommendation, of course, are acceptable only when they are substantiated, with rational grain in them. What has hap-**

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<sup>2</sup> “Merab Gabinashvili: Murusidze still has a legitimate mandate of trust,” December 27, 2015, available at: <https://ipress.ge/new/merab-gabinashvili-levan/>.



pened since the beginning of this process, which later turned into personal insults and discrediting of the nominated candidates, is very difficult to disguise and represent as public interest and freedom of expression”.<sup>3</sup>

### 3. JUDGE GABINASHVILI’S POSITION ON THE POSSIBLE INFLUENCE OF THE CHURCH ON HIM

In one of the interviews, given during 2015, to the question of a journalist, whether he was backed by the parliamentary majority and the Patriarchate as a candidate for Presidency of the Supreme Court, and whether he had consulted with them, Merab Gabinashvili said he had no consultations with them.<sup>4</sup>

As for the journalist’s question as to whether he will be free from the influence of the Patriarchate, if appointed as a judge of the Supreme Court, Judge Gabinashvili noted:



**I said that public opinion should not be decisive for a judge. As for the influence of the church, how do you imagine the influence of the church on any particular case? I am a Christian, so I will give the exact same answer to my personal pastor and other clergymen, as I would give to a passerby in the street if he asks or requests me something in regard to a specific case. It doesn’t matter if you have to adopt decision in case of influence exerted by a clergyman or a high-ranking political official.”<sup>5</sup>**

### 4. INTERVIEW OF CANDIDATE MERAB GABINASHVILI AT THE HIGH COUNCIL OF JUSTICE



Question posed to the candidate by NAZI JANEZASHVILI, a member of the High Council of Justice: “If I were to search now whether you had different opinion from the overall policy of the Council, shall I find any such information? I mean, regarding what was happening in the Council or what is happening now? For example, about judges in the reserve, the appointment of judges, did you make any little comment, wrote an article, news, blog, where you talk of your position about this?”

Candidate’s response:



**Judges were appointed in accordance with the law. I always state what I like and what I don’t like in the legislation, within the limits of my right of expressing my opinion. I have my inner belief, and I consider some aspects illegal or legal. I was assessing the discretion of the collegial body, and I, as one of the persons, authorized to a secret vote, for or against, I am not obliged to justify my position in front of anybody.”**

- When asked about the admissible limits of criticism of the court, the candidate stated the following:



**According to the case law of the European Court of Human Rights, there is a “the standard of permissible commentary”, which implies that exceeding its scope may be detrimental to other value. Under such value is implied precisely the reputation and authority of the court. According to Merab Gabinashvili, for example, the judgments of the European Court of Human Rights refer to the term “pseudo trials” or “parallel proceedings.” According to him, although the media has a particular function to inform the public, they should not go so far as to allow parallel proceedings to take place, as this may be a threat to the perception of judicial decisions.”**



Question posed to the candidate by NAZI JANEZASHVILI, a member of the High Council of Justice: “Did you get acquainted with the decision of the European Court of Human Rights on the case of Rustavi 2, which was adopted yesterday? Did you read the part regarding the judge?”

<sup>3</sup> “Attempts to artificially discredit the process” – Judge Merab Gabinashvili makes first statement after self-recusal”, June 22, 2019, available at: <https://news.ge/2019/01/22/>.

<sup>4</sup> “Is Merab Gabinashvili a candidate for Patriarchate and the “Dream” for the Presidency of the Supreme Court?”, February 11, 2015, available at: <https://netgazeti.ge/opinion/38593/>.

<sup>5</sup> “Is Merab Gabinashvili a candidate for Patriarchate and the “Dream” for the Presidency of the Supreme Court?”, February 11, 2015, available at: <https://netgazeti.ge/opinion/38593/>.

Candidate's response:

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**I want to remove any title from the case, I mean, whether it is the decision on Rustavi 2 case or any other TV station, or a specific person and etc, I just want to point out to one fact, that all the decisions, where the European Court of Human Rights finds, that the trial was fair, shall be absolutely acceptable to me due to the fact, that it is prestigious for the judiciary to pass such an important test.”**



NAZI JANEZASHVILI addressed the candidate: “Levan Murusidze said during the interview that he is the leader of the court. You have more experience of working with him, and I am interested what your perception on this issue is.”

Candidate Response:

”

**In 2013 the court faced great challenges, and the court had to undergo the process of self-determination to respond adequately to the challenges posed by the change of government (which occurs in almost every country). As Levan Murusidze was one of the most active members in the fight against these challenges, his actions were in the public eye, he gained trust and was highly respected judge within the judiciary. And that is when he became the leader of this process.”**



NAZI JANEZASHVILI also asked the candidate: “Some time ago there was a TV program about your ex-chairman Valeri Tsertsvadze. It becomes clear, that he had a correspondence regarding his business on his service e-mail. Do you think it is right for a judge to use his service email for his business, or for solving private issues, that may be related to the business? Did you see this program and how did you feel then?”

Candidate's response:

”

**As far as I remember, this issue was subject of discussion within disciplinary proceedings. This is a closed format, and I cannot speak of this publicly, especially that I was the member of the Council at that time. According to the Bangalore Principles, I have no right to assess actions of either the acting or the former judges”.**

- When asked about the provision on marriage in the Constitution of Georgia, the candidate answered the following:

”

**Marriage is cohabitation of a man and a woman, which is enshrined in the Constitution. Here the authorities or the legislative bodies have not come up with any other opinion or political position. Of course, both men and women enjoy equal rights. ”**

- To the question: “If the rallies are organized on the theme of “No to occupation”, what do you think, can a judge participate in such rally?”

The candidate responded the following:

”

**There are very high causes, that a judge should not be afraid to support, and when we have to deal with such fact, that raises deep concerns, and when 20% of your country is occupied, and it is a recognized fact, I shall not shy away from talking about this. This does not in any manner affect my work-related attitude.”**

- When asked whether he has heard of such notion as “legal positivism”, the candidate stated the following:

”

**Yes, I perceive it as a positive obligation of the state to be a positive legislator. This is a basic principle, and I think that the positivism of the law implies its legality and fairness.”<sup>6</sup>**

<sup>6</sup> “Positivism implies a theory, according to which the laws and their actions are valid because they are adopted by the relevant authorities and not because of their content and compliance with moral norms” Oxford Dictionary definition, available at: <https://bit.ly/2Zzp5FB>.

# 6.

## FINANCIAL OBLIGATIONS AND INCOME OF THE CANDIDATE

### 1. PROPERTY



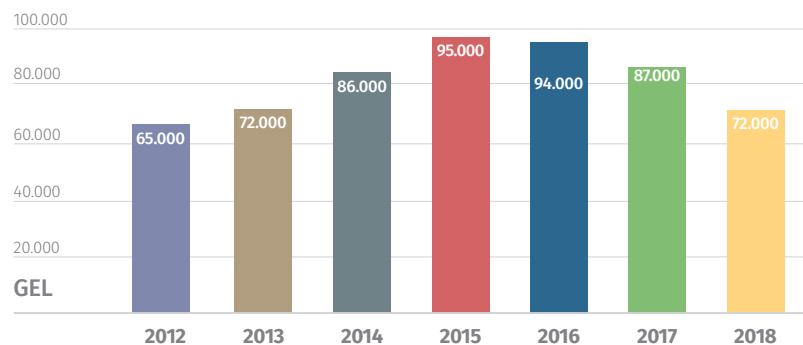
**2017**  
**HOUSE IN DUSHETI**  
**\$ 90 000**



**2011**  
**HOUSE IN TBILISI**  
**\$ 75 000**

### 2. INCOME

- Income: In 2012–2018 Merab Gabinashvili earned 570 379 GEL in Tbilisi Court of Appeals. His average annual income was 81,000 GEL, but in 2015 he had the highest income from salary, which amounted to 95,000 GEL. In 2017 Merab Gabinashvili took loan in the amount of 60,000 USD which he used for buying a house in Dusheti.



His spouse is employed in Ltd Silknet and as of 2018 her annual salary was GEL 12,000. Eka Melkadze owns a vehicle Nissan, purchased in 2018 for 7,000 USD.



As of 2009–2015, Merab Gabinashvili owned a land-plot in Kaspi with a total area of 2100 sq.m. However, the information in the subsequent declarations is lost without any substantiation or specific information on this land-plot.



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