

# Shota GETSADZE

Life tenure judge of Tbilisi Court of Appeals

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

2

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

9

PROMOTIONS AND AWARDS /  
SCHOLARSHIPS GRANTED FOR  
PROFESSIONAL PERFORMANCE

10

CONFLICT WITH LAW,  
CONFLICT OF INTEREST

10

CANDIDATE'S PUBLIC ACTIVITIES /  
POSITION AND BEHAVIOR

11

FINANCIAL OBLIGATIONS AND  
INCOME OF THE CANDIDATE

17

In 203–2006, Shota Getsadze worked as a secretary of a court session of Tbilisi Court of Appeals, and later as an assistant. In 2006–2007, he held the position of a chief of office of the Mtskheta District Court and in 2007–2009 he worked as a chief of secretariat of the Administrative Cases Chamber of the Supreme Court of Georgia. In 2011–2015 he was a judge and a chairperson of the Administrative Cases Panel of the Tbilisi City Court. Since 2015, he has been appointed for life in Administrative Cases Chamber of Tbilisi Court of Appeals. In 2011–2017, the judge Shota Getsadze was the member of High Council of Justice.

# 1

## CANDIDATE'S PROFESSIONAL / ACADEMIC ACTIVITIES AND DEMONSTRATED TRAITS / BEHAVIOR

### 1. JUDGMENTS, DISSENTING OPINION, COURT CLAIMS

#### 1.1. CASES OF LEGAL SIGNIFICANCE OR LANDMARK CASES

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**Legal issue:** Dismissal of a public servant from Public Service on the basis of discrimination on political grounds and coercion to resign on his own application.<sup>1</sup>

**Facts:** In 2014, I.K. released an audio-video recording made on his/her own where the head of Supervision Department of Tbilisi City Hall and his deputy were requesting to leave job voluntarily as he/she was the member of another political team. At the same time, he was told that there were a number of ways to be applied to dismiss a person from his/her job. He also said in the television interview: **“All this is happening in very organized way. Vice Mayor of the city, Mr. A.M. is leading the process, and there is plenty of evidence to confirm this, e.g. fact that the staff of State Security Service (SSS) are attending to the process of so called ‘try to play boss’.”**

Internal Audit and Monitoring Department of Tbilisi City Hall conducted internal investigation on the alleged disciplinary misconduct and concluded:

“Since I.K. made statements on television regarding the facts of pressure made by the Vice Mayor of Tbilisi A.M. on the staff and the statement did not contain evidence, the Office believe that his/her action was undermining of reputation of and inflicting damage to the Vice Mayor A.M. it was the deliberate misrepresentation of false facts thereby damaging reputation of A.M. and Tbilisi City Hall. **Along with improper fulfillment of the requirements of general rules of conduct, I.K. Also displayed disruptive behavior aiming at discrediting a public servant and the institution.”**

The above mentioned judgment served as the basis of I.K.’s<sup>2</sup> dismissal from the public service. Tbilisi City Court could not establish the discriminatory motive of the claimant’s dismissal. Although the Chamber of the Court of Appeals, with the participation of the judge Shota Getsadze, held that the claimant was dismissed on the basis of discrimination on political grounds. Accordingly, the defendant, i.e. Tbilisi City Hall was instructed to reinstate the public servant. The judge focused on several important legal issues:

- **Disclosure of discrimination on political grounds in public service as unlawful basis for dismissal** By the officials of Tbilisi City Hall.

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<sup>1</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15).

<sup>2</sup> At the moment of dismissal he was holding the position of Krtsanisi District Unit of Supervision Department of Inspections Division of Tbilisi Municipality.

The judge indicated that **“the statements made by the public servant against him regarding the discrimination and pressure on political grounds, may not be considered as disruptive behavior and accordingly, cannot be deemed as a gross violation”**.

- **Discrimination on political grounds and coercion to resign in public service.**

When discussing on the discrimination on political grounds, the judge was focused on statements and surveys of local NGOs (concerning the practice of high rate alleged dismissals of employees on political grounds from Tbilisi City Hall and resigning employees on their own application from the City Hall), as well as on statements of political officials and high ranking officials of Tbilisi City Hall. In particular, the judge aimed attention at David Narmania’s public statement, Tbilisi Mayor that **”it (i.e.Tbilisi City Hall) is cleaned from the members of Unified National Movement (UNM)”**. According to the joint analysis of covert recording and this information, the judge indicates in the judgment that: **“The Chamber of Appeals firmly believes that I.K. was indeed subjected to different treatment, pressure intended to dismiss him on the basis of his own application.”**

At the same time, the judge explains that the claimant should definitely enjoy the right to have political views and affinity for a certain political team. Restrictions on the existence / exercise of such rights affect the claimant’s right to political view and choice protected by the Convention and national law.

Also, the judge affirms that in **People in Tbilisi City Hall who did not have affinity for former governing political force did not face similar problems.**

According to the explanation of the judge, **“Offering resignation in the form of a persistent, harsh and threatening tone due to the membership or support of a certain political party contradicts the aim of protecting other people’s rights and freedom in democratic society and does not serve the interests of the interests of the country’s welfare”**.

Based on gravity of the violation, the judge, **unlike the court of the first instance, rendered the judgment to declare the Order on dismissal invalid and instructed Tbilisi City Hall to reinstate I.K. instead of issuing a new Order.**

In the same case, judgment of the judge regarding the acute and alarming situation in public service at the moment of rendering judgment is significant and interesting:

**“It is observed that there are insoluble problems in functioning of the public service in the State of Georgia caused by less understanding of the essence and objectives of public service, disregarding the standard of the rule of law, considering the public service as means of personal and party gain, recruit party workers or activists, complete disrespect for human rights and freedoms, lack of awareness of personal responsibility by public servants, low level of professionalism, which ultimately hinder the formation of the country as the constitutional state. All the above mentioned cause despondency among employees (and not only), reduce their work motivation, evoke the feeling that any political change in the country threatens their jobs, as a result, their activities are directed not to the effective exercise of their official duties and responsibilities, but mainly to the fact they would not be not dismissed, and in such circumstances adherence to work-related and human principles regarding qualified implementation of managerial activities in most cases are out of the question.”**

In the same case the judge made several interesting legal interpretations:

- **Function of administrative justice**

“Even in such circumstances, crucial importance shall be attached to the key function of administrative justice – to exercise control over managerial activities, establish proper legal standards for those carrying out such activities, within the limits of this control, bring the administrative body within the framework of the legislation and force it to carry out their activities in this regard. This judgment of the Chamber of Appeals serves this very purpose”.

- **The role of the State to prevent discrimination**

According to the judges' explanations: “States shall comply with a negative obligation to treat all persons being in equal situation and equal conditions and therefore their role, obligation and responsibility in implementing prevention measures of effective discrimination are immense.”

- **Concept of democratic and constitutional state**

The judge explains that: “different treatment of a person with dissenting political views does not and cannot have any legitimate purpose in a democratic, constitutional state being built by Georgia. Since there is no legitimate aim, there is no proportion between the different treatment and the non-existent purpose. And in the light of the above mentioned circumstances, it is impossible to limit the different treatment within the limits of state considerations/discretion.”

## 1.2. HIGH-PROFILE CASES

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- **Case of termination of the Georgian citizenship Bidzina Ivanishvili and Ekaterina Khvedelidze**

Under Edict of the President of Georgia of 11 October 2011, Georgian citizenship of Bidzina Ivanishvili and his spouse Ekaterina Khvedelidze was terminated. That judgment was appealed in Tbilisi City Court in December 2011. The lawyers of Bidzina Ivanishvili and Ekaterina Khvedelidze demanded the abolition of the Edict of the President of Georgia of 11 October 2011 and the restoration of citizenship for the claimants. The judge Shota Getsadze partially granted the claim. He held that part of the Edict terminating Ekaterina Khvedelidze's Georgian citizenship was unlawful and her citizenship shall be restored. As to the termination of Bidzina Ivanishvili's citizenship, the judge confirmed this part of the Edict.

Subsequent to rendering the judgment in this case, Public Defender's Office of Georgia issued a recommendation to the President of Georgia stating that the Edict was violating Khvedelidze's constitutional rights since there were no grounds for termination of Ekaterina Khvedelidze's citizenship.<sup>3</sup>

In the course of the case, lawyers of Bidzina Ivanishvili and Ekaterina Khvedelidze (Shalva Tadumadze, Eka Betselia, Aleksandre Baramidze, Zakaria Kutsnashvili, Archil Kbilashvili) complained about the behavior of Judge Shota Getsadze. In particular, they believed that the judge had made a biased decision. According to the lawyers, Shota Getsadze had the favorable attitude towards the President's representative and acted only with this prejudice in deciding on granting the claimants' motions. **The claimants' lawyers also pointed out that the judge was switching off the recording devices in the courtroom while reading his ruling on the motions.**<sup>4</sup>

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<sup>3</sup> <http://www.tabula.ge/ge/story/57430-saxalxo-damcveli-xvedelidzistvis-moqalaeobis-chamortmeva-ukano-oko>

<sup>4</sup> <https://netgazeti.ge/law/11897/>

- **Refusal to grant a refugee status to Mikhael Kadiev**

Tbilisi Court of Appeals, with the participation of the Judge Shota Getsadze, refused to grant a refugee status to Michael Kadiev, a Lezgian civil activist. The Court reversed the judgement of Tbilisi City Court and ordered the Ministry of Refugees and Accommodation of Georgia to re-examine the case.

According to the statement of Malkhaz Pataraia, the lawyer of Michael Kadiev, the Court of Appeals (judgement of which is final) doomed to transfer to Russia, as the Russian authorities demanded his extradition, which was suspended by the procedure of granting the refugee status. The lawyer believed that Kadiev's life was in danger in Russia.<sup>5</sup>

### 1.3. APPLYING PRACTICES OF SUPREME / CONSTITUTIONAL AND INTERNATIONAL / REGIONAL COURTS

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- **Improper application and citation of the judgment of the Constitutional Court of Georgia**

**Legal issue:** When discussing the **freedom of labor**, Judge Shota Getsadze refers to the Judgment #2/2/389 of the Constitutional Court of Georgia of 26 October 2007 adopted in the case of the Georgian citizen Maia Natadze and others v. Parliament of Georgia and President of Georgia.

In particular, the judge states that **“freedom of labor should not be identified as the notion of labor rights. It is one of the elements of labor rights and implies that forced labor is inadmissible. Article 30(1) of Constitution of Georgia recognizes not the labor right but right to freedom of labor that implies the following: free choice in the field of labor; involvement in the selected field of labor without coercion; disposal of own resources in the process of labor. Securing the principle of freedom of labor, the State undertakes the commitment not to force an employee to work against their will (negative commitment) and ensure that private individual shall not force an employed person to work against their will (positive commitment)”**<sup>6</sup>

*It is important to note that the reference to the Constitutional decision cited by the Judge Shota Getsadze may be found in the descriptive section. This is the opinion stated by the defendant of the constitutional claim and not the interpretation of the court regarding the right protected under the Constitution.*

**Legal issue:** Compensation for damage inflicted by the State through unlawful prosecution and imprisonment. Standard of recovering the lawyers' fees for victims in similar disputes.

- **As to the recovering the lawyers' fees**, the judge is focused on the practice established by the European Court of Human Rights, which establishes higher standard of protection. In particular, the offender is liable to recover lawyers' fees even in the case if the party to the proceedings had not paid lawyers' fee or he/she had been represented by a NGO as a charity. In the case of Fadeyeva v. Russia the Court notes that “the applicant did not present any written agreement between her and her lawyer. However, this does not mean that such an agreement does not exist. A contract on consulting services may be concluded in an oral form and nothing indicates that this was not the case in respect of the applicant and her representatives. Therefore, the lawyers' fees are

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<sup>5</sup> <https://www.radioway.ge/news/human-rights/item/581-saapelazio-sasamartlom-mikail-kadievs-Itolvilis-statusis-minichebaze-uari-utxra>

<sup>6</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15). P.32.

recoverable under domestic law and real. The fact that the applicant was not required to cover these fees in advance does not affect this conclusion.”<sup>7</sup>

Apart from above mentioned, Judge Shota Getsadze mainly applies the case law of Constitutional Court of Georgia,<sup>8</sup> Supreme Court of Georgia<sup>9</sup> and European Court of Human rights in an appropriate manner.<sup>10</sup> The Judge also actively applies the international documents when reasoning his judgments (e.g. United Nations International Covenant on Economic, Social and Cultural Rights; European Convention on Human Rights and Fundamental Freedoms; United Nations Universal Declaration of Human Rights of 10 December 1948; European Social Charter;<sup>11</sup> Convention N158 of International Labor Organization,<sup>12</sup> etc.)

#### 1.4. GENERAL STATISTICS

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##### ● Shota Getsadze’s controversial / contradictory judgments in cases with identical circumstances.

###### Facts:

1. Judgment of 30 April 2018 concerns the order of the Minister of Internal Affairs of Georgia of 26 November 2016 on Dismissal of an Officer of Border Police of Georgia. The claimant argued that the Minister of Internal Affairs of Georgia was not able to adopt decision on dismissal of the officer employed in the Border Police of Georgia, since only the head of Border Police of Georgia held the authority to do so.
2. Judgment of 16 November 2018 (N3b/2679-18) is brought in similar dispute. The subject of dispute in this case was also a Decision of the Minister of Internal Affairs of Georgia on Dismissal of an Officer of the Border Police of Georgia.

###### Inconsistent resolution of cases by the Judge

1. The Judge indicated in his judgment that he could not accept the explanation of the claimant. Under Article 34.4 of the Rule approved by the Order N1014 of the Minister of Internal Affairs of Georgia of 3 December 2013, the head Border Police of Georgia or other authorized person shall make decision on dismissal of an officer of Border Police of Georgia. The judge explains that the entry – “other authorized person” – implies the Minister of Internal Affairs of Georgia.<sup>13</sup> There is also indicated in the judgment that “under the conditions that Border Police of Georgia is functioning as the integral part of the unified system within police offices and within the

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<sup>7</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 19 July 2018 (N3b/2396-17) p. 20

<sup>8</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15). P. 33. Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15). P. 35. Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15). p. 35.

<sup>9</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15). p. 43. Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 13 October (N3b/1944-15). p. 30. Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 19 July 2018 (N3b/2396-17). p. 20.

<sup>10</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15). P.37. Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15). p. 39.

<sup>11</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 24 March 2016 (N3b/1907-15). p. 31.

<sup>12</sup> *ibid.*

<sup>13</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 30 April 2018 (N3b/548-18). p. 9

system of the Ministry of Internal Affairs of Georgia in general, the Minister of Internal Affairs of Georgia shall be authorized to make judgment on dismissal of persons under his subordination.<sup>14</sup>



**Based on this reasoning, the Judge considered that the Minister of Internal Affairs had been authorized to dismiss the Officer of Border Police of Georgia.**

2. However, the Judge develops the opposite argument in the second case. In particular, he indicates that “the Minister of Internal Affairs of Georgia shall be authorized to appoint or dismiss personnel although it cannot be construed as applying this authority to all employees of structural units of the Ministry of Internal Affairs”<sup>15</sup> The Judge notes that although the Border Police of Georgia is a structural unit of the Ministry of Internal Affairs of Georgia, appointment and dismissal of employees in a state subordinated agency – the Border Police of Georgia, – is prescribed in details in law and such authority is granted to the head of the Border Police of Georgia.<sup>16</sup>

**Based on the above mentioned, the Judge considered that the Minister of Internal Affairs had not been authorized to dismiss the Officer of Border Police of Georgia. Accordingly, the judge declared the disputed act void.**

- **Shota Getsadze’s inconsistent judgments on limits of judicial control in the case of the judgment made regarding the dismissal of an employee.**

The Judge is inconsistent in his judgments in assessing dismissal of an employee.

- In the judgment of 24 March 2016 (N3b/1907-15) the Judge indicates that order on dismissal of an employee shall meet the high standard of justification. Administrative body shall be obliged to prove why decision on dismissal of the employee has been made and another type of disciplinary penalty was not applied.
- While in the judgment of 15 February 2018 (N3b/1655-15) the Judge indicates that only lawfulness of the order of the administrative body shall be assessed in dismissal an employee. The judge cannot assess the appropriateness of the order [e.g. Why administrative body made decision on dismissal of a person and did not apply another type of disciplinary penalty against them], since it will be considered as interference in the discretion of the administrative body.

- **Formulaic judgments and formulaic argumentation of the Judge**

Judge Shota Getsadze systematically, uniformly, and routinely applies the judgments of the European Court of Human Rights of cases of Hirvisaari v. Finland, §32 and Gorou v. Greece (N.3) §§ 38–42 to support the argument that the right to a reasoned decision does not require a detailed response to all arguments put forward by the parties. Similar reasoning may be found in a number of his judgments.<sup>17</sup>

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<sup>14</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 30 April 2018 (N3b/548-18). P.10.

<sup>15</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 16 November 2018 (N3b/2679-18). P.10.

<sup>16</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 16 November 2018 (N3b/2679-18). P.11

<sup>17</sup> Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 22 January 2019 (N3b/3308-18). P. 10; Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 25 January 2019 (N3b/1688-18). P. 14; Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 22 March 2019 (N3b/318-19). P. 18; Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 22 March 2019 (N3b/1407-18). P. 9; Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 22 March 2019 (N3b/438-19). P. 12; Judgement of the Administrative Cases Chamber of Tbilisi Court of Appeals of 22 March 2019 (N3b/2122-18). P. 10.

- The Judge in the judgment of 24 March 2016 (N3b/1944-15) routinely indicates that he accepts the established practice of Supreme Court of Georgia (case bs-463-451(k-13) 18 February 2014) although he does not specifically state which reasoning he accepts.
- In the same judgment the Judge routinely indicates that accepts the practice of European Court of Human Rights to resolve discrimination matters, although he did not specify reasoning of which judgement(s) he relies on.

## 2. ACADEMIC ACTIVITIES – PUBLICATIONS

### 1.1. VISION CONCERNING ISSUES OF EQUALITY AND HUMAN RIGHTS

In his article “Right to life of Embryo /Foetus and Discriminatory Abortion”, the candidate Shota Getsadze expresses several interesting views concerning the human rights:

- **Candidate’s negative attitude towards selective abortion**

The case study reveals the practice of violating the practice of the most important legal principle of prohibition of discrimination (gender-based) which is caused by the so called selective abortions. There are different types of selective abortions. For example, selective abortion is the practice of reducing the number of foetuses in a multiple pregnancy, although sex-selective abortion is the most common type of gender-based abortion, i.e. worldwide and unfortunately in Georgia too, the foetus may be deprived its life because of its being female.”<sup>18</sup>

- **Epistle from the Georgian patriarch and the problem of abortion**

Abortion has always been a topic of interest in Georgia, although discussing the issue became particularly active after the Easter Epistle of Catholicos-Patriarch Ilia II of 2013 where the topic of abortion was widely discussed. The Patriarch called the Government of Georgia for the first time to ban abortions (with exceptions).

Abortion, either selective or general, is primarily mental and ethical problem and therefore, the best way to combat it is to educate the public and to develop a proper attitude. Although it is a quite long-term perspective, it still remains the most effective mean to resolve the issue.”<sup>19</sup>

- **The candidate’s concern with the growing dynamics of abortion in Georgia and his view regarding the justification of a few exceptions**

“It is unfortunate that in such a small country like Georgia, the number of abortions is alarmingly high. Although there are certain circumstances when the abortion may be justified, for example, **if the pregnancy poses a serious threat to mother or the foetus appears to have significant defects**, however, in the presence of a number of methods of contraception, an adult can judge their actions and, if necessary, avoid pregnancy if they do not wish to have a child.”<sup>20</sup>

- **The candidate supports the initiative of banning abortion (with exceptions)**

Almost everywhere in the world, and thus in Georgia as well, abortion existed, exists now and probably will exist in the future as well. To claim that abortion should be completely banned is naivety. In addition, abortion should be banned in Georgia within reasonable limits, with appropriate exceptions. The practice of many countries demonstrates that the complete ban has been counterproductive; Abortion has gone beyond state regulation and has moved underground.”<sup>21</sup>

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<sup>18</sup> Shota Getsadze, Right to life of Embryo /Foetus and Discriminatory Abortion”, Influence of Human Rights Standards on the Georgian Legislation and Practice, collection of papers, Tbilisi, 2015, p. 48.

<sup>19</sup> Ibid. p. 60

<sup>20</sup> Ibid. p. 61

<sup>21</sup> Ibid. p. 60



# 2.

## PROFESSIONAL MISCONDUCT (DISCIPLINARY PROCEEDINGS, PROFESSIONAL ETHICS)

### 1. DISCIPLINARY PROCEEDINGS – EXISTING COMPLAINTS

- The disciplinary board has not applied any disciplinary penalty or sanction against him.

### 2. ALLEGED VIOLATION OF PROFESSIONAL ETHICAL NORMS

- Violation of ethical norms is not observed. However, the following is indicated in the Monitoring Report N6 of High Council of Justice of Georgia drafted by Georgian Young Lawyers Association and Transparency International Georgia: **“Unfortunately, members of the Council exhibited unethical behavior towards invited session attendees as well. At the session of April 11, judge member Shota Getsadze unethically addressed a representative of a donor organization and demanded her to be silent.”**<sup>1</sup>

### 3. ACTIVITY AT HIGH COUNCIL OF JUSTICE OF GEORGIA

During the Judge Shota Getsadze’s membership of High Council of Justice:

- Mamuka Akhvlediani, the President of Tbilisi City Court was dismissed from his position. The cause of his dismissal was Mamuka Akhvlediani’s statements regarding systemic problems of judicial system.<sup>2</sup>
- The examination tests were allegedly leaked for judges from the Council.<sup>3</sup> The High Council of Justice conducted an internal inquiry regarding the above mentioned matter, but the results of the investigation are unknown.
- It was revealed that Judge Natia Gujabidze was renting a flat from her own mother and the expenses were covered from the State Budget for years. In this regard, the High Council of Justice stated that the information concerning the embezzlement of state funds by Judge Natia Gujabidze was not true.<sup>4</sup> However, Georgian Young Lawyers Association considered that High Council of Justice should initiate disciplinary proceedings and the Prosecutor’s Office should commence the investigation on this matter.<sup>5</sup> The public is not aware whether the fact has led to any legal response.
- Mechanism of reappointment and promotion of judges without competition was actively applied. Within this period, 7 judges were promoted without competition in Tbilisi Court of Appeals **including the Judge Shota Getsadze.**<sup>6</sup>
- The work of the High Council of Justice has become relatively transparent. In particular: The Council began live broadcast its sessions through special internal network (Intranet) operating within the system of Common Courts; agendas for the Council sessions were published in advance unlike the old practice when the agendas were published later or were not posted on the web site at all. There was also a positive tendency with respect of timely publication of decisions; a public information section has been added to the Council’s website, where public information is published proactively.

<sup>1</sup> Monitoring Report N6 of High Council of Justice of Georgia, 28 June 2018. P. 16. <https://bit.ly/2IDhLCV>

<sup>2</sup> Follow the link to see the article “Chronology of events from the first statement of Mamuka Akhvlediani to his dismissal” <http://bit.ly/2ST69iw>

<sup>3</sup> Report of Transparency International Georgia “Assessment of the Georgian Judicial System 2012–2016”, p. 16, see <https://bit.ly/2JYEcD7>

<sup>4</sup> Statement of High Council of Justice of Georgia, see <http://bit.ly/2ZjPib7>

<sup>5</sup> GYLA responds to the information disseminated about Judge Natia Gujabidze, see <http://bit.ly/2YjwFRN>

<sup>6</sup> Identity of promoted judges are known: <https://bit.ly/314i6oo>

# 3.

## CAREER PROMOTIONS AND AWARDS / SCHOLARSHIPS GRANTED FOR PROFESSIONAL ACTIVITIES

### 1. CAREER PROMOTION

- Candidate Shota Getsadze has been working in the judicial system since 2003. In particular, in 2003–2006, he was a secretary of a court sessions of Tbilisi Court of Appeals and an assistant, in 2006–2007, he held the position of a chief of office of the Mtskheta District Court and in 2007–2009 he was a chief of secretariat of the Administrative Cases Chamber of the Supreme Court of Georgia (**the president of Administrative Chamber was Mikheil Chinchaladze**).
- In 2009–2010, he completed judicial course of High School of Justice of Georgia. On 21 February 2011 he was appointed as the judge of the Panel of Administrative Cases of Tbilisi City Court and as the president of the same panel. 5 months later after appointing Shota Getsadze as a judge, on 30 July 2011, Judicial Conference elected him as the member of High Council of Justice where he exercised his powers until 2017.
- In 2015, under the Decision of High Council of Justice of Georgia, 7 judges **were promoted without competition** in Tbilisi Court of Appeals. Judge Shota Getsadze was among the promoted judges, who, at the same time, was the member of the Council as well.
- Now, Shota Getsadze is the life tenure judge of the Administrative Cases Chamber of Tbilisi Court of Appeals.
- In 2017, Shota Getsadze participated in the competition to be nominated for European Court of Human Rights judgeship. With the scores obtained in the internal competition, he was among top three nominees<sup>1</sup> although the Council of Europe rejected him.<sup>2</sup>

### 2. AWARDS / SCHOLARSHIPS

- Candidate has not received any award / scholarship.

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<sup>1</sup> Top Five Nominees for Strasbourg Judgeship – Ministry Publishes the Scores, see <https://bit.ly/2LOXi0e>

<sup>2</sup> Two out of the three candidates nominated by Georgia to the European Court were rejected again, see <http://bit.ly/3305v7s>

# 4.

## CONFLICT WITH LAW, CONFLICT OF INTERESTS

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

- The candidate has no criminal record.
- Administrative offences are observed for violation of traffic rules. In 2008–2011 he was imposed a fine three times under the administrative procedure.
- Shota Getsadze had not been involved in litigations as a party.

## 2. PARTY AFFILIATION, CONFLICT OF INTERESTS WITH THE MEMBER OF HIGH COUNCIL OF JUSTICE, CONNECTION WITH POLITICIANS/ INFLUENTIAL PEOPLE

- Shota Getsadze has not been a member of any political party.
- Shota Getsadze worked as the Chief of secretariat of the Administrative Cases Chamber of the Supreme Court of Georgia for two years when the President of Administrative Cases Chamber was **Mikheil Chinchaladze**.
- Within the period of Shota Getsadze’s membership in High Council of Justice, the Council supported the appointment of Levan Murusidze (for the term of 3 years) and Mikheil Chinchaladze (for life) as judges at the Administrative Cases Chamber of Tbilisi Court of Appeals. The Council also supported the appointment of Mikheil Chinchaladze as the President of Tbilisi Court of Appeals, who was nominated by Shota Getsadze at Council’s session.<sup>1</sup>
- The candidate was the member of High Council of Justice at the time when the members of the Council (at different times) were Konstantin Kublashvili, Valeri Tsertsvadze, Mikheil Chinchaladze, Zaza Meishvili, Levan Murusidze, Merab Gabinashvili, Tamar Alania, Ilona Todua, Paata Silagadze, Levan Tevzadze, – persons who, according to the assessment of different organizations, are considered as members of influential group (clan) of judiciary.

<sup>1</sup> Chinchaladze Was Nominated as the Candidate for President of the Court of Appeals, see <http://bit.ly/2yG0PWG>

# 5. PUBLIC ACTIVITIES / POSITIONS AND CONDUCT OF THE CANDIDATE

## 1. OPINIONS EXPRESSED IN SOCIAL MEDIA

Shota Getsadze’s personal account has been registered on Facebook since 2010. His personal page does not include posts contradicting equality/ human rights and/or activities supporting a specific political party. Although it should be noted that on 14 August 2018 the candidate liked the critical comment<sup>1</sup> of Sergo Metopishvili, a judge member of the High Council of Justice made to the video shared by a Facebook page “**Alcoholics**” (the candidate shared it on his page); the comment was addressed to Giorgi Margvelashvili, the former President of Georgia.

The candidate’s activity log in social media also is shown that he often likes views of some of his colleagues against NGOs. For example, on 18 January 2018, the candidate liked the post<sup>2</sup> of Sergo Metopishvili, the judge member of High Council of Justice concerning the NGOs. In particular, Sergo Metopishvili in his post noted the following: “**To the attention of some politicized NGOs, who blame me without any substantiation as if I, as the**

<sup>1</sup> The post and comment are available at – <https://drive.google.com/file/d/1>

<sup>2</sup> Full version of the post is available at – <https://drive.google.com/file/d/1>

judge, am openly involved in political processes and make political statements (which is a lie!!!), I reiterate that, as the member of High Council of Justice, I am obliged to respond promptly and effectively to the facts of insult and assaults of judiciary (judges) that I do. By the way, this is what I am doing right now.” He further noted that “What politicized Eka Gigauri proposes us together with Sulkhan Saladze, as well as with several politicised NGOs and such politicians as Beselia, can be described as insolent and undisciplined arbitrariness.. The public early saw Ms. Gigauri’s “fake news’, ‘fake accounts’, ‘fake farces’ against the judiciary and now Ms. Gigauri is spreading her “fake fantasies’...”

Along with liking the post, Shota Getsadze left the following comment: “From a legal point of view, it is very simple: Depending on the constitutional functions, a member of the High Council of Justice has more freedom of expression than a judge. Moreover, because of these functions, it also has the obligation of expression. In these cases, Mr. Sergo acts as a member of the Council! At least, it’s incompetent when you criticize the court (it is more insult than critic) and then you don’t want to hear the answer, and if anyone answers, you want to limit it to freedom of expression.”<sup>3</sup>

One more judge member of High Council of Justice, –Dimitri Gvritishvili also commented this post of Sergo Metopishvili. Judge Shota Getsadze liked his comment<sup>4</sup> as well. In particular, Dimitri Gvritishvili noted in his comment: “Captain Gigauri has been the Executive Director of Transparency International Georgia since 2010. Apparently, she is really talented, doesn’t it require a lot of effort to get the rank in public service and at the same time create an entire ‘era’ in the NGO? It seems it was impossible to find someone as talented as her, that is why she cannot be replaced for so long! However, she and megaphones – a tandem of Janezashvili and Dolidze also insisted: It is too long to appoint court presidents for the term of 5 years, let’s appoint them for 2-3 years! This is one more example of double standards! The same can be said about Giorgi Mshvenieradze: As far as I can remember, this man is in top management, he may also be talented! Only GYLA creates the illusion of changes, but the principle is the same there: Top Management people are former members of Republican Party or their friends! Are these people speaking about our clan governance?!”

The candidate also liked Dimitri Gvritishvilis post<sup>5</sup> where he was speaking about problems of judiciary concerning the introducing the principle of random electronic allocation of cases.” According to Gvritishvili, “It has become a well-known fact that there is a problem of large pool of pending cases in the courts of Georgia, which is particularly acute in the Supreme Court of Georgia.” He also noted that “there is actually a collapse in Criminal Cases Chamber: Here the cases are allocated to one judge due to which the principle of random allocation is neglected”.

The following also is stated in the post: “situation in Administrative cases Chamber is extremely difficult: 3 judges exercise their powers instead of 9 and each of them have 300-500 cases to handle!” Gvritishvili was speaking about the same problem with regard of Civil Cases Chamber. According to him, since 16 December 2018, responsibility to improve the situation has been placed on High Council of Justice. As Gvritishvili noted, they considered as an urgent necessity to act promptly and on 26 December 2018, in response to this situation they submitted a so called 10-person list of candidates for judges of the Supreme Court to the Parliament of Georgia.

The issue of selected candidates is also discussed in the post. In particular, according to Judge Dimitri Gvritishvili, it is the practice of all world modern states that appointment of judges in Supreme court shall be carried out on

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<sup>3</sup> Comment is available at – <https://drive.google.com/file/d/>

<sup>4</sup> Comment is available at – <https://drive.google.com/file/d/1K>

<sup>5</sup> Full version of the post is available at – <https://drive.google.com/file/d/1THFY>

the principle of career promotion: The candidate shall have the several years of work experience in lower instance courts! According to him, they followed this very principle”. The post further states: “We were not required by law to hold a preliminary consultation with anyone! It is interesting why the NGO sector had no questions regarding the candidates of Supreme Court selected by the former president, when briefings were held unexpectedly and candidates were submitted to the Parliament and presented to public, who maybe had no experience in judicial work!”

In the post there is also expressed the opinion regarding nominating Ana Dolidze as a candidate for the Supreme Court: **If one non-lawyer person was able to select “dignified” candidates, why cannot we do the same, the members of Council, – a collegiate body composed of acting judges and lawyers practising in various fields?”**

At the end of the post Judge Dimitri Gvritshvili says: **This is a fact that Venice Commission endorsed the constitutional reform! Why non-governmental sector and their “megaphone” members of the Council try to established obscure advisory board also with obscure ‘experts’ whose conclusions should become authoritative and discretionary for the Council?!”**

Shota Getsadze also liked the post<sup>6</sup> of Sergo Metopishvili where he speaks about Eka Beselia. In particular, the post states: **„Miracle!!! Eka Beselia stated that: Confrontation concerning the judiciary is not related only to the list of judges – the process began a year and half ago, when the format of fourth wave of judiciary reform was established”. So where Beselia was before?“**

Sergo Metopishvili further notes that **“Beselia had never expressed the opinion she expresses today!!! On the contrary, she was very constructive and cooperated with the judge members of the Council with particular attention, including me!!! So what does it mean? Was Beselia really a “partisan” in all that time, and did she play the role of just a constructive member? Why did she need such an act? Friends, the answer is on you!!! I can only remind you of this, who is a Pharisee? Pharisee – such people in the Gospel are called hypocrites, that is, false and deceitful people!!! “.**

## 2. PUBLIC STATEMENTS REGARDING THE SITUATION IN JUDICIAL SYSTEM

### 1.1 PUBLIC STATEMENTS CONCERNING LEVAN MURUSIDZE’S APPOINTMENT AS A JUDGE IN 2015

In 2011-2017, Judge Shota Getsadze was the member of High Council of Justice. On 25 December 2015, he voted for the appointment of Levan Murusidze as judge in the Court of Appeals for the tree-year probation period.

In one of his television speeches, the candidate said:



**I would say that Mr. Levan Murusidze was one of the dignified person among the candidates who participated in the competition and where 38 judges were selected. I voted for Levan Murusidze since he, as a professional deserved my single vote”.**<sup>7</sup>

In the case of murder of Sandro Gvirgvliani, the candidate noted:



**I have known Levan Murusidze for a long time. He was the judge of Supreme Court for 10 years. He has considerable experience. As to the case of Gvirgvliani, there was an anxiety but Mr. Levan confirmed a number of times that he had no other remedy from a legal point of view and that his decision was the only lawful decision.”**<sup>8</sup>

<sup>6</sup> Full version of the post is available at – <https://drive.google.com/file/d/1Gmjdlr>

<sup>7</sup> Debates between Shota Getsadze and Zaza Khatiashvili on “Maestro”. “Maestro” TV Company. 27 December 2015. <https://www.youtube.com/watch>

<sup>8</sup> The victim of what was Levan Murusidze” “Iberia” TV company, 25 April 2016. <https://www.youtube.com/watch>

According to him, during the decision-making process in appointing Levan Murusidze as a judge, certain groups of society were trying to influence the performance of the High Council of Justice. In this regard, he emphasized the role of the President of Georgia:

**” This was Zaza Khatiashvili, the Chairman of the Bar Association, several NGOs, and surprisingly and unfortunately, the President of Georgia directly or indirectly was involved in these processes. I cannot otherwise explain the fact that last Monday when we made decision that voting to be conducted on Friday and on Tuesday the President awarded the late Ms. Irina Enukidze. On Tuesday, Guram Gvirgvliani (father of Sandro Gvirgvliani) stated at that event that if Levan Murusidze would be elected as a judge, he would return the award. Any objective observer would be under the impression that the President of Georgia is also involved in this movement and he was trying to instruct the Council of Justice in certain form what decision to make in relation with Levan Murusidze. When the President of Georgia speaks public and delivers specific message by his speech and action, obviously, it may be perceived as the pressure. Subsequent to Levan’s election, the President of Georgia delivered the speech on television and made statement that he would fight for fair court. I.e. What does it mean? Is the court unfair, was unfair decision made in connection with Mr. Levan and will he try to remedy it in any legal way? This is done by the President of Georgia. He makes these statements against the independent authorities. What should we call this, if not the pressure on the court?”<sup>9</sup>**

In 2015, at the XV Conference of Judges, Judge Shota Getsadze presented a statement that, if supported by the judges, would be approved as their single statement. In particular, the following was indicated in the statement: „...Judges of Georgia are concerned regarding the recent spreading of insulting and defamatory statements against both, judicial system and individual judges, which take the form of deliberate discrediting and jeopardize the normal functioning of an independent and impartial judicial system. The facts that various high-ranking politicians and groups attempt to put direct or indirect pressure on the members of High Council of Justice are particularly outrageous and unacceptable... It is also disappointing when unsubstantiated allegations made without adherence to any ethical norms are directed at the judge of the Supreme Court and Secretary of High Council of Justice, Levan Murusidze, – the participant of the competition of judges, – who has the confidence of a large majority of judges. It appears that the authors of such allegations, who are often representatives of legal sector, need a reminder that any criticism must be substantiated, reasoned, should not offend and defame the addressee, which goes beyond the universally recognized limits of freedom of expression.”

## 2.2 PUBLIC STATEMENT REGARDING MIKHEIL CHINCHALADZE, THE PRESIDENT OF TBILISI COURT OF APPEALS

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On 29 May 2017, at the session of High Council of Justice, Shota Getsadze nominated Mikheil Chinchaladze for the post of the president of Tbilisi Court of Appeals, who subsequently was elected to that position. At the Council’s session, Judge Shota Getsadze noted:

**” I reflected on that issue and had a dialogue with this person in this regard. This person is Mikheil Chinchaladze, whom I offered a vacancy. He is the judge of Administrative Cases Chamber. Recently we appointed him as a life tenure judge. He is one of the ordinary judges of Administrative Cases Chamber and I nominate him in order to support his candidacy for the vacant position of the president of the Court of Appeals.”**

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<sup>9</sup> Shota Getsadze: “President Attempted to Put Pressure on High Council of Justice”, Information agency ipress.ge. 26 December, 2015; <https://ipress.ge/new/shotha-getsadze-prezidenti-ts/>

On 22 February 2016, Judge Shota Getsadze made the following explanation in response to the statement<sup>10</sup> of Mamuka Akhvlediani, the former President of Tbilisi City Court:



**I have been friends with Mikhail Chinchaladze for a long time, since 2003, I am his friend and not a slave.”<sup>11</sup>**

### 2.3 STATEMENTS REGARDING DISMISSAL OF MAMUKA AKHVLEDIANI, FORMER PRESIDENT OF TBILISI CITY COURT

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On 22 February 2016, High Council of Justice dismissed Mamuka Akhvlediani, the President of Tbilisi City Court. Shota Getsadze raised the issue for discussion at the session.

As the explained, that decision was caused by Mamuka Akhvlediani’s managerial mistakes and was not related to his critical public statements.<sup>12</sup>

In one of his television speeches, candidate Shota Getsadze explained the decision made as follows:



**I can honestly say that Mamuka Akhvlediani has been acting very weird lately, but the decision to dismiss him has nothing to do with his persecution. The Council exercised the powers granted by law. This cannot be perceived as persecution. Mamuka Akhvlediani regularly avoided arriving at the Council and communication. His choice was communication through television, which is inappropriate attitude towards his colleagues.”<sup>13</sup>**

### 2.4 PUBLIC STATEMENTS IN DEFENCE OF JUDGES’ REPUTATION, REGARDING THE NEED OF NEW REGULATIONS RESTRICTING THE FREEDOM OF SPEECH

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On 4 April 2017, High Council of Justice disseminated the statement discussing the need for new regulations restricting freedom of expression and improving media self-regulation mechanisms, which they believe serves as protection of the court’s prestige and judges’ reputation.<sup>14</sup> The initiative was widely discussed in the public.

In one of his interviews, the candidate stated the following regarding this issue:



**It is my personal opinion that one of the alternatives is fine, it is my and the council members’ position that there should be regulations on the insult of judge and what these regulations will be, we should consider it together.”**

The candidate also indicated that

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<sup>10</sup> On 3 October 2016, covert recording of alleged talk between Nika Gvaramia, Director General of Rustavi 2 and Mamuka Akhvlediani, former President of City Court was disseminated, where Mamuka Akhvlediani describes Shota Getsadze as “Mikheil Chinchaladze’s slave”.

<sup>11</sup> The judge Shota Getsadze: I have prevented Mamuka Akhvlediani from doing illegal activities and he is angry. 4 October 2016. Information Agency kvira.ge <http://kvira.ge/285099>

<sup>12</sup> “Shota Getsadze – Mamuka Akhvlediani’s Dismissal is not linked to His Public Statements” - interpresnews.ge, 22 February 2016. <https://bit.ly/2N6sdqU>

<sup>13</sup> Shota Getsadze on the air of “Priority” (პრიორიტეტი). “Iberia” TV company. 22 February 2016. <https://www.youtube.com/watch?v>

<sup>14</sup> “The High Council of Justice proposes introduction of legislative regulation on insulting the judges”. Interpresnews.ge 4 April 2017. <https://bit.ly/2IAAw9P>

**” a judge may file a lawsuit due to an insult but it is difficult and usually ineffective way.” Ineffective means that it is a lengthy process – requires lodging the claim, reviewing this claim for several months, various instances, etc. The key issue here is a burden of proof – if the judge is accused, for example, that he/she is an animal, he/she appears to prove that he/she is not an animal. The burden of proof in this case should be distributed in different manner.<sup>15</sup>**

### 3. INTERVIEW WITH SHOTA GETSADZE IN THE HIGH COUNCIL OF JUSTICE

- Question: How would you characterize Mikheil Chinchaladze, the President of Tbilisi Court of Appeals?

The response of the judge Shota Getsadze:

**” I have known Mr. Micheil for a long time. We used to work together at the time when neither me, nor him were judges and we were secretaries of court sessions. We are people grown up in the judicial system and passed through very many stages in the judicial system. I have wonderful relationship with him. As a President, I would only describe him as a positive person. He has many good qualities and one of his good qualities is that he is a smart-minder person what I like a lot. He is a talented man.”**



The question of DIMITRI GVRITSHVILI, the member of High Council of Justice: “Bar Association adopted a resolution assessing that judges were parts of repressive mechanism within the period of previous government and that there was selective justice towards hundreds of lawyers, hundreds of lawyers were repressed. Also, there is an established malpractice of adopting illegal and unreasoned judgments in High Council of Justice. Do you perceive such statement as admissible criticism of judiciary?”

The response of the candidate:

**” These facts shall be substantiated by the assessor as they are not fully within the scope of the assessment. This is the information containing actual data, which tends to be more fact-based than assessment-based. The fact as it is established by the European legislation and its case law, should be proved by the person who proposed it. I believe they neither could provide any specific example and facts nor prove them. Accordingly, it is very difficult to limit it within the scope of freedom of speech”.**

- In response to questions raised by the members of High Council of Justice regarding abortion and rights of embryo, the candidate said the following:

**” ...It is a human being since the moment of fertilization, embryo having all characteristics and perspective to be born. That is why I do not agree with the opinion that abortion is admissible up to 12 weeks without permission.”**



The question of NAZI JANEZASHVILI, member of high Council of Justice regarding the situation before and after 2012: “To what extent was the court exercising its function to control other branches of government and protect human rights?”

The response of the candidate:

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<sup>15</sup> Shota Getsadze: There should be regulations for insulting the judges”. kvira.ge 29 April 2017 <http://kvira.ge/326250>



**”** I started working in the judiciary in 2003... However... during that time I was involved in litigation as a secretary of a court sessions, therefore I had less opportunity to evaluate how the court was exercising its function. I became a judge in 2011. Of course, I still have my opinion regarding that period, but my view is not as thorough as that I have after becoming a judge ... my answer is that it was performing its function at certain extent, but of course there were problems and this problems are known for everyone... In 2003, 2005 there were problems of independence, institutionalization, and corruption. Later on, the situation has been improved... Today the judiciary is independent and well-functioning, that has never been before, although it is not sufficient for me but we had not had such judiciary before.”

- Question: In which case would you file a claim with the Constitutional Court of Georgia and is the constitutional claim an obligation for a judge of Common Courts if he/she considers that the applicable law contradicts the Constitution?

The answer of the judge Shota Getsadze:

**”** I do not regard it as the obligation, the legislation does not give me such possibility. Although it is desirable if the judge of Common Courts files a claim with the Constitutional Court if he/she considers that the applicable provision contradicts the Constitution. Although there is another more simple way to resolve the dispute directly based on the Constitution, the judge of Common Courts have the authority to do so. Both, Constitution and the European Convention of Human Rights are the proximate applicable law... Although, based on the difficulty of the issue, if we understand that our competence is not sufficient it would be better to apply to the Constitutional Court as the judges of the Constitutional Court have the special competence in constitutional issues. Although, the issue to be resolved is not very complicated, we use Constitution and I did it a number of times”.

## 6. FINANCIAL LIABILITIES AND INCOMES

### 1. PROPERTY



**2017**  
A CAR  
\$ 10 000



**2013**  
A FLAT IN TBILISI  
\$ 55 000

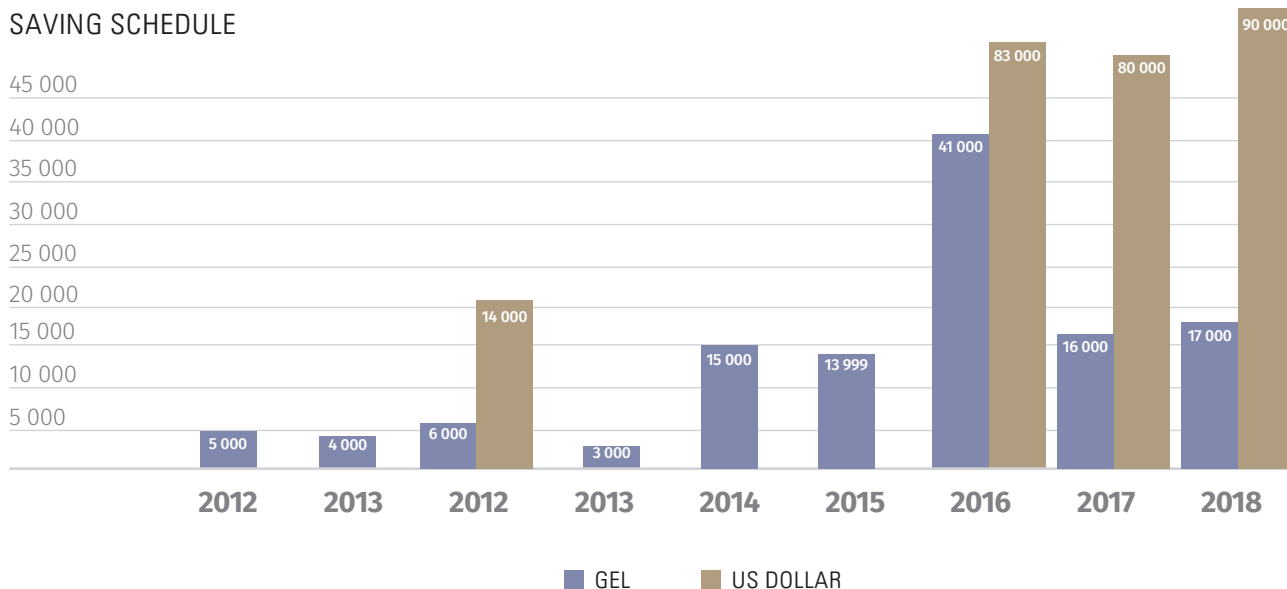
### 2. FINANCE

In 2011-2018, Shota Getsadze received GEL 589,541 in the form of remuneration from the judicial system. His average annual salary in Tbilisi City Hall amounted to GEL 68,308, and the salary in Tbilisi Court of Appeals amounted

to GEL 82,513. After his appointment in the Court of Appeals, his as judge’s remuneration was increased, as well as his savings. The biggest saving of the judge Shota Getsadze is observed in 2017, in the amount of GEL 41,607 and \$83,000.

Similar to other judges, Shota Getsadze’s spouse is also employed in the public service. In particular, since 2014, Teona Khmaladze has worked in the United Water Supply Company of Georgia where her annual remuneration is approximately GEL 20,000.

### SAVING SCHEDULE



- In 2016, apart from the salary, the sum in the amount of \$83,000 and GEL41,607 suddenly appears on the bank account of Shota Getsadze, the judge, a part of which cannot be substantiated. In the same year, the total income of the judge was GEL 105,000 in addition to the bank credit in the amount of \$50,000. Its total expenditure during the year was GEL 37,270.

GEL 67,730 – the relative amount obtained as a result of comparing income and expenditure, – regardless the positive balance, is inconsistent with data reflected on saving. In particular, the candidate would not be able to raise \$83,000 and GEL41,607 even in the case if we consider that he used his remaining salary of 2016, bank credit, annual salary of his spouse (GEL 24,447) and the saving of 2015 year (GEL 14,000) for collecting the above mentioned amounts. As a result of processing open sources it cannot be established how candidate could manage to raise approximately \$27,000.



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