

Tamar

ALANIA

a judge of Tbilisi Court of Appeals for indefinite tenure

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

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In 1999–2006 Tamar Alania worked as a prosecutor at the General Prosecutor's Office of Georgia. In 2006–2016 she was a judge of the Chamber of Criminal Cases of Tbilisi Court of Appeals. In 2016, she was

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appointed as a judge of the Chamber of Civil Cases of Tbilisi Court of Appeals for a three-year term, and from 2017 she was appointed to the same position for indefinite tenure. In 2013–2017 Judge Tamar Alania was a member of the High Council of Justice.

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

1. DECISIONS, DISSENTING OPINIONS, COURT SUBMISSIONS

1.1. LEGALLY INTERESTING OR PRECEDENTIAL DECISIONS

Legal Issue: Compensation for pecuniary and non-pecuniary damage

Facts: On February 28 of 2019, the Chamber of Civil Cases, chaired by Tamar Alania, reviewed on appeal complaint of a medical institution. The lawsuit was filed to the court of first instance by an individual on the grounds, that the doctor of the medical facility operated him on the eye unsuccessfully. He sought for compensation for pecuniary and non-pecuniary damage. Tbilisi City Court partially upheld the plaintiff's claim and obligated the medical facility to compensate for moral damages. The Court of Appeal upheld the judgment of the court of first-instance.

Significance of the case: The decision deals with an important issue and is relevant for development of judicial practice.

Decision:

- The party complained that the treatment he had received was unsuccessful, claiming pecuniary damage. According to the decision of the Court of Appeal, **“ineffective treatment or adverse outcome of treatment does not in itself (without alternative) entail the responsibility of medical personnel.”** The Court of Appeal substantiated this position with reference to the Supreme Court's judgment.¹
- However, the incomplete and incomprehensible information provided to the patient by the medical institution was considered by the judges as grounds for imposing compensation of moral damages on the medical institution. **“The court cannot consider a plaintiff's will as an indicator of the legitimacy of “informed consent”, especially if it does not meet legally obligatory criteria for the “informed consent” established by the case law of the European Court of Human Rights, such as: explicitly expressed, conscious, voluntary and informed.”**²
- The Court relied on the decisions of the Supreme Court of Georgia in the course of justifying of the decision, discussing the liability of the medical personnel³, and evaluation of the evidence⁴ and reasoning on the issues related to non-pecuniary damages.⁵

¹ Judgment of the Supreme Court of Georgia of 27 June of 2011 reached on the Case N As-260-244-11; In this case, the Supreme Court explained: In respect of pecuniary damage, *“the injury must be caused by errors in treatment, that is, if the treatment is properly performed, even if its results are adverse, this does not give rise to liability of a physician”*.

² The Court referred in this part to the European Court's judgment on the case V.C. v. Slovakia (Application no. 18968/07) 2011.

³ Judgment of the Supreme Court of Georgia of 27 June of 2011 on the case Nas-260-244-11.

⁴ Judgment of the Supreme Court of Georgia of February 28 of 2018 on the case Nas-28-25-2017.

⁵ Judgment of the Supreme Court of Georgia of March 19 of 2005 on the case Nas-912-874-2014 and judgment of June 4 of 2011 on the case Nas-762-818-2011.

- In assessing the violation of the patient’s rights, the Court did not discuss the rights guaranteed by the Constitution of Georgia, but referred to the Council of Europe Convention on Human Rights and Biomedicine⁶; In discussing patient’s informed consent, the Court also referred to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which concerns the right to respect for private and family life. In discussing the role of the national court in regard to consideration of evidence and the issue whether the patient was duly informed, the court also referred to the case law and practice of the European Court of Human Rights.⁷

Legal issue: Annulment of the order for dismissal of the employee, reinstatement at the job and reimbursement for the days of compulsory dismissal.

Facts: On May 14, 2018 Tbilisi Court of Appeal, with Judge Tamar Alania in composition, ruled on the case concerning annulment of an administrative order on dismissing of an employee, his reinstatement and reimbursement for the days of dismissal. The plaintiff was dismissed on the ground, that he grossly violated his obligations, stipulated by the employment contract, in particular, he fell asleep at a security guard post. The employer indicated that there was a risk of property damage to the facility.

The plaintiff filed a lawsuit with Tbilisi City Court Administrative Cases Panel as he worked for 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 Board 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 Appeal. 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.

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 Georgia⁸. 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.⁹

⁶ Council of Europe Convention on Human Rights and Biomedicine (1997).

⁷ Garcia Ruiz v. Spain [GC]; Application no. 30544/96; January 1999; STRASBOURG; P. 28. AFFAIRE FARANGE S.A. c. FRANCE; Application no. 77575/01; July 2006; STRASBOURG; CASE OF V.C. v. SLOVAKIA; Application no. 18968/07; November 2011; STRASBOURG.

⁸ Judgment of the Constitutional Court of Georgia of 28 February of 1997 (N2 / 4-24): “A person has the right to dispose of his/her own capacity in labor related sphere and to choose his/her field of business”; Judgment N2 / 2-389 of the Constitutional Court of Georgia of 26 October of 2007; – “Freedom of labor implies the obligation of the state (including, inter alia, one of the branches of state power – the judiciary) to protect the labor rights of its citizens.”

⁹ 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.

- 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 Georgia¹⁰ 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.**

Legal issue: The validity of the will in the course of conclusion of the contract, the obligation to reimburse the remainder of the contractual obligations.

Facts: On January 31 of 2019, the Civil Court of Appeal, presided over by Tamar Alania, decided on a case concerning the obligation to repay the amount.

The subject of civil dispute was the payment of the remaining liability under the loan agreement. After some time, the defendants ceased to fulfill their obligations under the loan agreement. One of the defendants stated during the dispute that the plaintiff forced them to enter into the contract, while the other defendant indicated that he had been deceived when concluding the contract.

In Tbilisi City Court, the plaintiff sought to impose pecuniary liability on the defendants. The Court of First Instance dismissed the appeal, which was appealed to the Court of Appeal. The Court of Appeal ordered the party to pay the outstanding amount of the debt.

Significance of the case: The case is significant as the court has discussed the standard of assessing the validity of a will.

Decision:

- The court correctly determined the issue of burden of proof. It indicated, that the party had failed to produce evidence of threat. The justification was further supported by the fact that after signing of the contract the parties agreed to the content of the transaction, namely that they had been consistently fulfilling their obligations for some time.
- The court assessed the position of one of the opposing parties, which claimed that Georgian was not his native language and therefore, he could not understand the substance of the agreement. Thus, he was deceitfully made to sign the agreement. The issue referred to in the judgment is substantiated by reference to the presumption of will, expressed in the course of signing of the agreement in presence of a notary. In particular, it is assumed prior to proving of the contrary, that the person's will, ability and authority will be verified before concluding agreement. However, the court notes that "the certified contract is a one-page document. It is printed in fairly large letters and most of it consists of numbers." The Court explains: **"In these circumstances, signing a transaction without knowledge of the language is the defendant's civil negligence, which cannot serve as a ground for dismissal of his legal liability."**

¹⁰ Judgment of October 7 of 2015 on the case Nas-483-457-2015.

- The court made important observation: **“The proper functioning of civil law and the principle of autonomy of will in interactions between individuals would be jeopardized and [...] all dishonest debtors would be allowed to avoid their obligations through referring to their lack of knowledge of the language and/or similar circumstances, which of course goes beyond legal safeguards and can’t be upheld”.**

1.2. HIGH-PROFILE CASES

Legal issue: Attempt of premeditated murder of a minor by another minor in aggravating circumstances.

Facts: On December 7 of 2007, the Criminal Chamber of the Court of Appeal, presided by Judge Tamar Alania, examined the criminal case of juvenile Gvantsa Kuparadze for the attempted premeditated murder, which the perpetrator committed in regard to a minor or a vulnerable person, knowingly, with a criminal intent, and with especial cruelty.

Gvantsa Kuparadze was arrested in November 2006 for attempted murder of a classmate. In June 2007, the court of first instance sentenced her to 10 years of imprisonment, half of which was considered conditional. The decision was upheld by the Court of Appeal, and the Supreme Court ruled the appeal inadmissible.

Significance of the case: The case was high-profile as it concerned an offence allegedly committed by a minor against another minor.

Decision:

- The judgment is dry, without sufficient presentation of the case materials. It is impossible to fully understand the reasoning of the judgment, as well as the factual circumstances of the case only from the text of the judgment. The reasoning part of the judgment is only 2 pages long (in total, the judgment is 6 pages long).

Note: According to the best practice, the judgment must be comprehensive and structured in a logical way, the reasoning part should be extensive enough to allow the objective person to understand the substance of the case. The reasoning should be sufficient for the losing party to see that the essential aspects of his position are fully taken into account.¹¹

- The judgment does not contain reasoning on what evidence the prosecution presented, what information each piece of the evidence conveys, whether it is admissible, conclusive and relevant.
- The impression is formed, that the judgment is directed at refuting the evidence of the defense, and not verifying the credibility/veracity of the prosecution’s evidence.
- The judgment does not contain reasoning on the most important issues, such as the nature of the intent (direct or indirect), the motive and purpose of the offense, and etc.
- The judgment of the Court of Appeal does not indicate that the judgment of the Court of the First Instance is based on **incontrovertible evidence; neither does it state, that the fact, that the accused has committed a crime was proved in compliance with the standard of beyond the reasonable doubt.** Instead, in the judgment is stated that the **“legal findings set forth in the judgment of the City Court are consistent with the evidence in the case, and that the City Court has established all factual circumstances necessary for adoption of a well-substantiated judgment.”**

¹¹ Guidelines on the form of the judgment on the criminal case, its justification and the stylistic aspects of the text (2015).

- There were substantial contradictions between the evidence in the case, as well as many unanswered questions – these shortcomings were not remedied by a court hearing. The court found some evidence inadmissible, while deemed other evidence admissible without substantiating the reason for its decision (e.g., witnesses’ testimonies and expert’s conclusions, confirming Kuparadze’s innocence, were not accepted by the court, while testimonies of those persons, who were not eyewitnesses, but testified against Kuparadze, were taken into account).
- The court did not indicate in the judgment and reflect on the issues raised by the parties to the proceedings, which could have impacted the final outcome of the case. The judgment does not contain information on what significant motions the parties put forward and what was the position of the court in given regard. For example, the case file shows that the defense requested the Court of Appeal to **examine the crime scene and conduct an investigative experiment. This would have helped the court to establish veracity of the victim’s testimony. As becomes clear from the case file, the motion of defense was rejected.**

Note: According to the Constitution of Georgia, no one is obliged to prove his innocence. The prosecution bears the burden of proof. Any doubt shall be in favor of the accused.

According to the law, the descriptive-reasoning part of the inculpatory judgment should include a description of the criminal act, that the court found as established fact, as well as the place, time and manner of committing of the offense, the form of culpability, the motive, purpose and result of the offense.

- The court dismissed the prosecutor’s request for imposition of a more stringent sentence. However, it is also noteworthy, that the court did not discuss the possibility of mitigating the sentence, taking into consideration, that the case concerned a minor. Also, there was no female juvenile detention/custodial facility in Georgia at that time. The court did not reason as to how such punishment would affect the juvenile’s rights, including her re-socialization interests.

Note: The United Nations Convention on the Rights of the Child (1989) was binding on Georgia at the time of the hearing. The Convention stipulates the following obligations of the State:

- In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- Also, the state parties shall ensure, that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Note: According to the Georgian legislation, the international treaty of Georgia, if it does not contradict the Constitution of Georgia and the constitutional agreement, shall have superseding legal force over domestic normative acts. This means that the UN Convention on the Rights of the Child is an act superseding Georgia’s criminal law.

Note/Additional Information: The European Court of Human Rights indicated on the case of Kuparadze v. Georgia (no. 30743/09 (2017)) that “the Court of Appeal’s justification, on the basis of which two alternative findings of forensic examination in favor of the applicant were not allowed, may be subject to criticism. Especially the part, where according to the judge the disputed conclusion did not contain relevant information, despite the fact, that the evidence indicated to the contrary. However, the European Court held, that the fact,

that the above referred evidence was not considered, is not an action, which undermines fairness of the trial, in its entirety.¹²

The European Court also emphasized in regard to the case, that it was not a fourth-instance court. This means that it does not examine the facts of the case, but considers the facts established by the national courts and the legal assessments based on those facts to be reliable, unless they violate the fundamental rights guaranteed by the Convention and the judge's position is not manifestly unreasonable or arbitrary. It is not the function of the European Court to review the correctness of the decisions of the national courts with regard to national law, nor to correct the errors made by the national courts. It does not examine fairness of a person's conviction, or whether the sentence was applied correctly, and etc. Its function is to assess whether the trial was fair in its entirety.¹³

THE SO CALLED MUKHROVANI MUTINY CASE

Presided by the Judge Tamar Alania, Tbilisi Court of Appeals also heard the case related to the events of May 5 of 2009 in Mukhrovani armored tank battalion (the so-called "Mukhrovani mutiny"). The court of first instance sentenced Levan Amiridze, the former commander of the Ranger Battalion, to 28 years of imprisonment, instead of the 29 years required by the prosecution; Koba Otanadze was sentenced to 29 years of imprisonment, and Shota (Mamuka) Gorgiashvili, former commander of the armored tank battalion stationed in Mukhrovani – was sentenced to 19 years of imprisonment, as requested by the prosecution.¹⁴

The Appellate Panel rejected the appeals of the persons who appealed the judgment. The Court of Appeal also dismissed the prosecution's appeal seeking to change qualification of offence in regard to seven civilians. The Panel upheld the decision of first-instance court in its entirety.¹⁵

The case was causing high public interest from the very beginning. There were suspicions of improper investigation of the facts. The report of the Human Rights Center contains two different versions of the events: official information disseminated by the authorities and public opinion. According to one of the versions, the government itself staged the mutiny to maintain control over the military divisions in Mukhrovani, as it was already facing serious internal problems within the armed forces, especially after the August war. According to the second version, there was no mutiny at Mukhrovani military base; it was disobedience to the government, which demanded the military to disperse the protesters.¹⁶

In 2012, the Georgian Parliament recognized 20 persons convicted for Mukhrovani mutiny as political prisoners.¹⁷

¹² CASE OF KUPARADZE v. GEORGIA; Application no. 30743/09; 21 September 2017.

¹³ See, *Schenk v Switzerland*, 10862/84, 12 July 1988; Ben Emmerson, Andrew Ashworth and Alison Macdonald (eds), *Human Rights and Criminal Justice* (3rd edn; Sweet & Maxwell 2012) 129, 134, 645; Andreas Føllesdal, Birgit Peters and Geir Ulfstein, 'Introduction', in Andreas Føllesdal, Birgit Peters and Geir Ulfstein (eds), *Constituting Europe, The European Court of Human Rights in a National, European and Global Context* (Cambridge University Press 2013), 15-7.

¹⁴ <https://old.civil.ge/geo/article.php?id=22210>

¹⁵ <https://old.civil.ge/geo/article.php?id=23264>

¹⁶ The Report of The Human Rights Center (2009); <http://www.humanrights.ge/index.php?a=main&pid=7728&lang=geo>

¹⁷ Decree of the Parliament of Georgia of December 5 of 2012 on Political Prisoners and persons persecuted on Political Grounds.

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

The assessed judgments show that the candidate Tamar Alania actively uses the court practice of both the Supreme and Constitutional Courts of Georgia, and the European Court of Human Rights in civil and administrative law disputes.

2. ACADEMIC ACTIVITIES / PUBLICATIONS

Candidate Tamar Alania co-authored two publications: Comments on the Juvenile Justice Code and “Judicial Leadership and Management”. The candidate indicated these publications herself in the application submitted to the High Council of Justice, but they could not be found through open sources.

2.

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

1. DISCIPLINARY PROCEEDINGS – EXISTING COMPLAINTS

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

2. ALLEGED VIOLATION OF PROFESSIONAL ETHICS

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

3. ACTIVITIES IN THE HIGH COUNCIL OF JUSTICE

- During the membership of Judge Tamar Alania in the High Council of Justice, Mamuka Akhvlediani, Chairman of Tbilisi City Court, was dismissed from his position by the High Council of Justice after publicly speaking about systemic problems in the judicial system.¹
- During candidate Tamar Alania’s membership in the High Council of Justice occurred the incident, where judges’ exam tests were allegedly disclosed by the Council member². The High Council of Justice was conducting an internal inquiry into the matter, but the results are unknown.
- During the membership of Judge Tamar Alania in the High Council of Justice, 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 true³, however, the Georgian Young Lawyers’

¹ Chronology of events from Mamuka Akhvlediani’s first statement until his dismissal is available at: <http://bit.ly/2ST69iw>

² Transparency International Georgia Report: “State of affairs within the court system”, p. 16, available at: <https://bit.ly/2JYEcd7>

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

Association considered, that the High Council of Justice had to launch disciplinary proceedings and the Prosecutor's Office should have initiated investigation into the matter⁴. It is not known to the public whether there was any follow-up in regard to this fact.

- During Judge Tamar Alania'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.⁵
- During her membership in the High Council of Justice, Tamar Alania participated in the decision-making process regarding judicial candidates and voting without attending any interviews with them. A non-judge member raised the issue at the session of the Council, but the Council did not take appropriate action.⁶

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

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

⁶ Monitoring report of the High Council of Justice #3, p 24, available at: <http://bit.ly/2Z9ZHsU>

3. PROMOTIONS AND AWARDS / SCHOLARSHIPS GRANTED FOR PROFESSIONAL PERFORMANCE

1. PROFESSIONAL DEVELOPMENT

- After 7 years of working in the Prosecutor's Office (1999–2006), candidate Tamar Alania was appointed as a Judge of the Criminal Cases Chamber of Tbilisi Court of Appeals (2006–2016).
- After expiration of a 10-year term in the **Criminal Chamber of Tbilisi Court of Appeals**, on July 25 of 2016, Tamar Alania was appointed as a judge to **Tbilisi Court of Appeals** for 3 year probation period (Tamar Alania was a member of the High Council of Justice at the time of her appointment), and from October 20 of 2017 she was appointed to the same position for indefinite term.
- In 2017, Judge Tamar Alania twice participated in the competition for nomination of candidates for membership in the European Court of Human Rights, but by the points collected during internal competition, she was not included among the best-placed candidates nominated by Georgia to the Council of Europe.¹
- In 2013–2017 Tamar Alania was the member of the High Council of Justice.

2. AWARDS/SCHOLARSHIPS

- Tamar Alania has not received any awards/scholarships.

¹ Top five judge candidates for membership in Strasbourg Court – Ministry publishes scores, see at: <https://bit.ly/2LOXiOe>

4.

CONFLICT WITH LAW, CONFLICT OF INTEREST

1. CRIMINAL LIABILITY, ADMINISTRATIVE OFFENSES / PENALTIES, LITIGATIONS

- Judge Tamar Alania has no record of conviction.
- Administrative violations are identified due to traffic violations.
- Candidate Tamar Alania 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 Tamar Alania was not a member of any political party.
- Various studies or reports often indicate to existence of clan ruling within the judiciary. According to a Transparency International Georgia survey conducted in 2019, 43% of the population thinks that there is a clan in the judiciary¹. In the program, produced by Studio Monitor’s journalistic investigation, deals with clan members, its leaders, and clan rule². The program aired on Kavkasia TV also points to a clan rule within the court system³. The Coalition for Independent and Transparent Judiciary views Tamar Alania as an influential member of the clan.⁴
- Levan Murusidze was elected as Secretary of the High Council of Justice at June 2013 Conference of Judges. Before the voting began, four candidates for the secretary’s position – Judges Tamar Alania, Ilona Todua, Paata Silagadze and Giorgi Shavliashvili – withdrew their candidatures in favor of Levan Murusidze.⁵
- In December 2018, the Supreme Council of Justice, bypassing all formal procedures, nominated 10 candidates for the Supreme Court, including Judge Tamar Alania.⁶
- During Tamar Alania’s membership in the High Council of Justice, the Council supported appointment of **Levan Murusidze** (for a three-year term) and **Mikheil Chinchaladze** (for indefinite term) to Tbilisi Court of Appeals Chamber of Administrative Cases, as well as appointment of Mikheil Chinchaladze as the Chairman of Tbilisi Court of Appeals.
- Following appointment of Levan Murusidze to Tbilisi Court of Appeals in December 2015, then Council Member Tamar Alania announced that she was supporting Levan Murusidze’s candidature, as he would promote development of independent judiciary.⁷
- Candidate Tamar Alania was a member of the High Council of Justice at a time when members of the Council were Levan Murusidze (Secretary of the Council), Merab Gabinashvili, Shota Getsadze, Ilona Todua, Paata Silagadze, Levan Tevzadze – persons considered to be members of the court clan.

¹ Report of Transparency International Georgia, available at: <http://bit.ly/31oJw8A>

² Chinchaladze clan – failure if the reform of the justice system, available at: <http://bit.ly/2YWYa9D>

³ Clan within the justice system – the scheme elaborated by the non-governmental organizations, available at: <http://bit.ly/2Ttes5b>

⁴ Address of the Coalition to the Parliament of Georgia, available at: <https://bit.ly/2Jc8ow5>

⁵ Monitoring report of the High Council of Justice #2, p. 28, available at: <http://bit.ly/2KBincY>

⁶ The High Council of Justice nominated judge candidates for the Supreme Court, available at: <http://bit.ly/2M2HF5S>

⁷ Tamar Alania: My choice is Murusidze, the person who can promote establishment of independent judiciary. Available at: <https://bit.ly/2Zj27Cp>

5.

CANDIDATE'S PUBLIC ACTIVITIES / POSITION AND BEHAVIOR

1. OPINIONS OF TAMAR ALANIA, EXPRESSED IN SOCIAL MEDIA

Tamar Alania is registered on the social networking site LinkedIn, however, there is no public activity on her page. In an interview with the High Council of Justice, Tamar Alania noted that she had recently removed her personal page on the social network Facebook.

2. PUBLIC STATEMENTS ON THE SITUATION IN THE JUDICIAL SYSTEM

2.1. POSITION IN REGARD TO PRESSURE ON JUDGES

On February 3 of 2016, Tamar Alania commented on possible pressure on the judges in the context of litigation related to the case of TV broadcaster Rustavi 2:

“ Exerting pressure is possible at all times. It was possible in the past, and is possible currently, as well as in the future. It is about how judges handle these kind of pressures. Today personally I don't feel pressure from the government.”¹

Tamar Alania further stated in given regard:

“ I have no information whether other judges are under pressure and I cannot speak about it. I also rule out pressure on members of the High Council of Justice.”²

2.2. STATEMENT MADE IN REGARD TO THE HIGH COUNCIL OF JUSTICE

On June 24 of 2017, Tamar Alania made a statement regarding the work of the High Council of Justice, saying:

“ To talk about exertion of influence in conditions of current Council is exaggerated and does not correspond to the true state of affairs, because the council has not adopted any decision, which would please representatives of any state authority, either past, or present”.³

According to Tamar Alania's statement, made on August 26 of 2017,

“ If a person does not work, there is no criticism. Naturally, there are always some drawbacks, which are characteristic not only to the Supreme Council of Justice of Georgia, but also to European and American courts themselves, and the relevant structures”.⁴

¹ „Disorder within the judiciary system”, February 3 of 2016, available at: <http://rustavi2.ge/ka/video/12612>

² *ibid.*

³ “Tamar Alania: Speaking of Influences in conditions of current Supreme Council of Justice is Exaggerated,” June 24, 2017, available at: <https://expressnews.com.ge/?id>

⁴ “Judge Tamar Alania takes part for the second time in the competition for selection of judge candidates to the Strasbourg Court”, August 26 of 2017, available at: <https://imedinews.ge/ge/>

2.3.PUBLIC STATEMENT MADE IN REGARD TO LEVAN MURUSIDZE

On February 25 of 2015, Tamar Alania during interview with Magazine “Liberal” stated the following:

“ The public should realize, that all decisions taken by the judiciary and the High Council of Justice are reached independently.”⁵

Her statement also concern Levan Murusidze. In particular, Tamar Alania noted:

“ My choice is Murusidze, a person who has a vision of independent court system. The court system that was before 2012 differs greatly from the one we have today. Today the justice system is very independent, and therefore, since Levan became the Secretary, the level of trust and independence has increased”.⁶

2.4.POSITION IN REGARD TO SUBMISSION OF THE SO-CALLED 10-PERSON LIST OF JUDGE CANDIDATES IN THE SUPREME COURT OF GEORGIA

On January 21 of 2019, Tamar Alania stated about the nomination of the Supreme Court candidates:

“ There was no such attitude from the public when the President was nominating candidates to the Supreme Court. There has now been a stir over this move of the High Council of Justice, which was actually driven by the relevant Constitutional provision. The High Council of Justice acted absolutely legitimately when it was implementing this. It is noteworthy that the process that followed all this is detrimental to the court system. We are incumbent judges and are basically appointed for life. For us, first and foremost, the court’s performance and the flow of work processes are important and valuable, which should not be hindered. The public should have access to justice in a calm atmosphere, which in the light of this agitation could not really be carried out and would damage the justice system.”⁷

In addition, Tamar Alania responded to the statements of the non-governmental sector and non-judicial members of the Council in regard to the allegation, that the court is ruled by the Clan:

“ More specifics is necessary, because it is interesting what the mean under the so-called” “clan”?!⁸

The candidate also noted:

“ I would say straight away that this is an accusation. Although we look at it with patience, patience really does have a boundary, and such accusations must be substantiated. Otherwise this is not a serious statement.”⁹

⁵ “Tamar Alania: My Choice is Murusidze, a man who has the vision of an independent court,” December 25 of 2015, available at: <http://liberali.ge/news/view/20126/tamar>

⁶ *ibid.*

⁷ “Tamar Alania: The reason for our statements today was the unhealthy situation and the stir created around the list of judges”, January 21 of 2019, available at: <http://www.info9.ge/samarthali/>

⁸ *ibid.*

⁹ *ibid.*

2.5. POSITION ON THE DISMISSAL OF MAMUKA AKHVLEDIANI FROM TBILISI CITY COURT PRESIDENCY

5

Concerning the dismissal of Mamuka Akhvlediani from the Presidency of Tbilisi City Court, Judge Tamar Alania noted that

” Mamuka Akhvlediani was talking about different matters, different relationships that he wanted to introduce, which were an attempt to exert some influence.”¹⁰

She also stated the following:

” It has been confirmed once again, that his dismissal from office was reasonable and proper decision dictated by availability of such information to the Council. It is important for the judiciary and each judge to be independent and not to discredit the court.”¹¹

3. PUBLIC STATEMENT OF TAMAR ALANIA IN REGARD TO OTHER ISSUES

3.1. PUBLIC STATEMENTS BY TAMAR ALANIA REGARDING THE CASE OF RUSTAVI 2 TV COMPANY

3.1.1. Position on application of the Judges considering the case of TV Company Rustavi 2 to the Prosecutor’s Office

Judge Tamar Alania commented in regard to the application of the judges of the Supreme Court, considering the case of TV Company Rustavi 2 to the Prosecutor’s Office¹². In particular, she stated:

” This seems to deal with such pressure on judges, which corresponds to a criminal offense.”¹³

Alania further noted, that

” no member of the Council of Justice, including members of the judiciary, were informed of this fact. The Secretary of the Council of Justice has also repeatedly stated, that he has become aware of it today. According to media reports, in this case it is not just communication with judges, but such pressure exerted on judges, which is a criminal offense. These individuals are judges and they decided to apply to the Prosecutor’s Office. I do not know why they decided to apply directly to the Prosecutor’s Office and why they did not inform any member of the Supreme Council of Justice. This has never happened before, and it would have been expedient, if all members of the Council were informed regarding this, and of course we would have taken action”¹⁴

¹⁰ “Tamar Alania: As an ordinary judge, I am insulted”, October 5 of 2016, available at: <https://ipress.ge/new/thamar>.

¹¹ *ibid.*

¹² Judges Besarion Alavidze and Paata Katamadze, who were considering the case of TV company Rustavi 2 applied to the Prosecutor’s Office with request of investigation of alleged gross interference into their activities, available at: <https://www.interpressnews.ge/ka/>

¹³ Tamar Alania: “Apparently there was such pressure exerted on the judges, which is a criminal offense”, February 3 of 2017, available at: <http://kvira.ge/308953>

¹⁴ *ibid.*

3.1.2. Position in regard to the statement made by President Giorgi Margvelashvili concerning the case of Rustavi 2

In regard to the position of judges concerning the statement¹⁵ of the President of Georgia on Rustavi 2 case, the candidate noted:

“ No one has confronted the President. Judges are opposed to any statement that would undermine judicial independence. Lately, he has made many statements on this issue, and it should be no surprise, that the judiciary have raised their voice. This justice system is really different from the system, that was in the past, which is confirmed by statistical data as well”¹⁶

3. INTERVIEW OF CANDIDATE TAMAR ALANIA AT THE HIGH COUNCIL OF JUSTICE



Question posed by a member of the Council of Justice IRMA GELASHVILI to the candidate: “If a judge writes today “No to occupation!” or, let’s say “Russia is an occupant”, would this be a violation of ethics?”

Judge Tamar Alania’s response:

“ I think this is a problem. We, as citizens of this country have our patriotic feelings regarding occupation, which is obvious. However, if there is a case to consider, and it is not possible that such case may occur in future, for example, case related to espionage, or a criminal case concerning the violation of the country’s territorial integrity, and you have stated your position on this matter, I do not know how correct it will be. I think it is better for a judge to refrain from such open emotional positions.”



Question posed by member of the High Council of Justice IRAKLI BONDARENKO: “What do you think about the LGBT issue?”

Judge Tamar Alania’s response:

“ Same-sex people exist, or rather, relationships between same sex persons have existed, and shall always exist. We only need to acknowledge existence of such people. There is no consensus on same-sex marriage.”



Question posed to the candidate by NAZI JANEZASHVILI, a member of the High Council of Justice: “How would you assess impact December events on the justice system [submission to the Parliament of the so-called 10-member list of candidates to the Supreme Court]?”

Judge Tamar Alania’s response:

“ Neither the public, nor I had any different expectations. The format may have been accelerated, but initiation of such hysteria was out of place”.

¹⁵ President Giorgi Margvelashvili has called on Tamaz Urtmelidze, a judge of Tbilisi City Court, considering the case of Rustavi 2, not to adopt a hasty and harsh decision, available at: <https://www.myvideo.ge/v/2666353>, October 22 of 2015.

¹⁶ „Disorder within the judiciary system”, February 3 of 2016, available at: <http://rustavi2.ge/ka/video/12612>, 1:21:25.



Question posed to the candidate by NAZI JANEZASHVILI, a member of the High Council of Justice: “In December 2016, the Council appointed Levan Murusidze for a three-year term. You were a member of the Council and made following statement in the media: “my choice is Levan Murusidze, a person who has a vision of independent judiciary, and now the court is much different, after Levan became the Secretary, as the level of trust towards judiciary and its independence has increased”. Why did you think so? “

Judge Tamar Alania’s response:



I still think so. The stir around Levan Murusidze started after the court became a very serious and different actor in the state. Until 2012, nobody knew anything about the Council. [...] When Mr. Murusidze was a member of the Council, the activities of the Council became very open. This person was in the Council at the time, when dissenting positions were stated openly [...]

Regarding the role of Levan Murusidze in Sandro Girgvliani’s case, the candidate stated:



There is no lawyer who will say, that according to the law in force at the material time, when Levan Murusidze adopted a specific decision, it was possible to return the case to investigation. If the prosecution did not demand it, it would not have happened.“



NAZI JANEZASHVILI asked the candidate whether she perceived Levan Murusidze as a leader.

Judge Tamar Alania’s response:



Yes, he is a leader. I am a leader too. Mr. Levan has a sharp mind, and features, that include many components. When you’re an activist in your system, then you’re a leader.



Question posed to the candidate by NAZI JANEZASHVILI, a member of the High Council of Justice: “How would you assess the current state of affairs in the High Council of Justice?”

To this question Judge Tamar Alania responded, that the situation is tense. She added:



The format of the Council is a bit different. The situation is more tense, there is the problem of mediation and communication. You have your position. You and Mrs. Dolidze are engaged in some kind of situation, you communicate with the public. You are also actively using internet networks. I think it’s a little offensive and I don’t like it. What is the reason for that, is not my job to establish. The only thing I can say, is that it does not look good, from any standpoint, and I think some steps need to be undertaken, so that you and the members of the judiciary express your opinions. The most important outcome should be to help the judiciary to become sounder. You may have your vision, while members of the judiciary may have a different vision. Somehow it has to be reconciled”.



Question posed to the candidate by NAZI JANEZASHVILI: “You noted, that it is insulting. What did you mean?”

Judge Tamar Alania’s response:



I do not like attitude towards you, as women, and I do not like your attitude either, that you sometimes are victims of bullying, and sometimes are not. [...] I understand sentiments of the Members of the Council, as well as yours, as two women, but I don’t like the format.”



Question posed to the candidate by NAZI JANEZASHVILI: “How would you characterize the chairman of the court, where you work?”

Reply of Judge Tamar Alania:



Mikheil Chinchaladze has managerial skills. The only communication I have with him, is regarding the leave, or the need for assistants. I have not seen him for a long time. I haven't seen him since New Year. There was no problematic issue to discuss with him. If there was such, of course I would have discussed it with him”.



A question posed to the candidate by a member of the Council of Justice ANNA DOLIDZE: “You mentioned in your application, that the judiciary system, that existed prior to 2012, was much different, than the system that exists currently, which is much more independent. Could you assess the court where you worked before, particularly from 2006 to 2012? How would you assess the criminal justice policy in the period from 2006 to 2012?”

Judge Tamar Alania's response:



The criminal justice policy was stringent, but to be honest, there has been little legislative change in this regard. The change applies to the principle of cumulation of sentences, but the same sentence may still be adopted today. Legislation has changed only in one part. The use of probation, as I remember, is similar. Judicial system has become much more open. The Council became transparent and more active. The judges were given opportunity to express their views openly. The judges did not have this opportunity before, there was no such format.“



A question posed to the candidate by a member of the Council of Justice ANNA DOLIDZE: “You said, that the judicial system was closed and now it became open. When you were a judge of the Court of Appeal, is there any public source, which would confirm, that you have criticized the closed system in which you worked?”

Judge Tamar Alania's response:



I did not attend conferences either. I don't know what you mean, but I haven't fixed it.“

6.

FINANCIAL OBLIGATIONS AND INCOME OF THE CANDIDATE

1. PROPERTY



2019
LAND PLOT IN MTSKHETA,
VILLAGE TKHINVALA
110 500 GEL
(1674 SQ.M.)

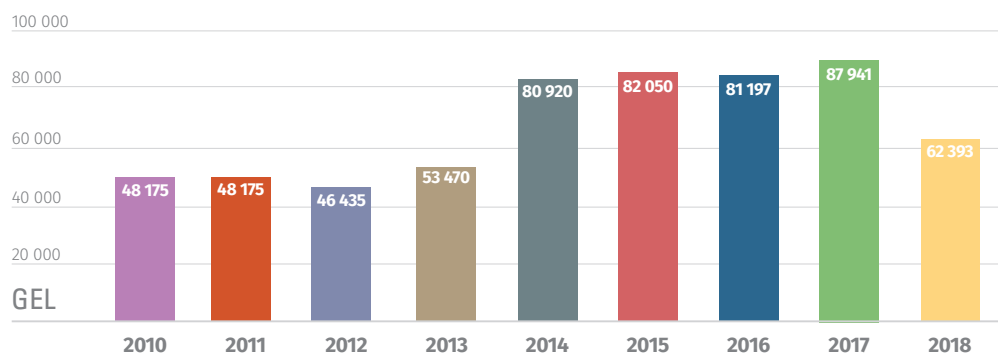


2014
A VEHICLE
LEXUS, 2006
27 680 GEL

2. INCOME

Judge Tamar Alania's income from judicial activities in 2010-2018 amounted to GEL 590,756. In 2016, Tamar Alania received a monetary gift from her mother – \$ 14,500.

Judge Tamar Alania has various debt related obligations in TBC Bank. In 2016, she took the loan in the amount of \$ 50,000 from Bank Republic, the debt service charges amount to \$ 9 144 per year. She also has a consumer loan in the amount of 5000 GEL, with the debt service charges amounting to 2 052 GEL per year.



- Tamar Alania's husband has been working in Ltd for a long time. However, according to the judge's declaration, in 2014 Tamar Alania herself was employed as a manager in Ltd. Cartu, and earned GEL 24,000 during that period. If Tamar Alania, in addition to performing the functions of a judge, performed in parallel remunerated activity in the said company, then such activities should be considered as a violation of Article 39 of the Organic Law on Common Courts, according to which such activity is incompatible with performing function of a judge.
- Deficiencies are found in reflecting in the declaration of the debt related obligations. Judge Tamar Alania often declares the same loan, with no service charges specified.



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