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THE INDEPENDENCE AND ACCOUNTABILITY OF COURTS – THE VIEWPOINTS OF THE SUPREME COURT JUDICIAL CANDIDATES

INTRODUCTION

An independent court is not only a prerequisite for the protection of the rule of law and human rights, but also for the economic and social development of the country. Since the declaration of independence of Georgia until today, the establishment of an independent justice system in the country remains a problem, which is caused by several reasons. Probably, the main factor is the continuing nonexistence of proper political will and the lack of appropriate public awareness. Allegedly, we already got used to the fact that a politically biased court is normal and THEMIS must pay a contribution to the government: for some more, for others less.

In 2012, the main electoral promise of the "Georgian Dream" was the restoration of fairness and the creation of an independent court system. As a result of adopted amendments, the High Council of Justice was restructured, judges were given the right to name candidates for the High Council of Justice and the freedom to vote, as well as real possibilities to establish autonomy, closed court hearings became open to media, etc. Despite the mentioned, the trust of society towards the court system did not increase significantly. The reason for that may be, from one hand, the heavy legacy of the past, and on the other hand, the fact that the power within the court system was placed in the hands of the same people, who ruled the Court before 2012. This group of judges connected two interests– the interest of judges to protect themselves from prosecution and secondly, the interest of the government to control the judicial system.

The autonomy of judges, instead of normalization of the Court, became a source of self-preservation of judges and seizing of power by a small group of judges, and the new government could not overcome the temptation to control the court system and the vicious practice was restored, which existed between the political government and the Court. Between 2016 and 2019, several legisla-

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tive amendments were adopted, behind which there was an interest of an authoritative group of judges to strengthen their power.[1]

Building an independent court system probably entails two stages – first is the selection of judges – stage of appointment, and second – all of the rest. The approved standards and mechanisms of independence of the court fulfill their purpose only when the first stage, i.e. the appointment of judges is completed successfully, and the corpus of judges is composed of honest and qualified people. Society entrusts the execution of justice and administration of courts to such judges. In a democratic society, the judicial authority represents a separate branch where judges are appointed for a lifetime period andthey are protected by immunity Compared to other public servants, they are not responsible for professional mistakes andit is inadmissible to interfere into the work of a judge. The corpus of judges make self-renewal, self-regulation, self-normalization, obtains and preserves the trust of the public, creates and implements judicial policy, administers and disposes of budget resources.

On the other hand, if it appears that the lever of administration of the Court is put in the hand of dishonest people, all approved mechanisms may be used as damaging for democracy and in the interest of justice. In other words, we may receive a legally protected fortress, which may become a nest for corruption, nepotism, trading with justice, the abuse of authority and irresponsibility.

In 2017, an important constitutional amendment was adopted, by which the title to present judges of the Supreme Court was transferred to the High Council of Justice from the President of Georgia. In December 2018, the list consisting of 10 people was presented to the High Council of Justice by the Parliament of Georgia, which caused public outrage due to the content of this list and this grew into a political crisis. In 2019, in response to the mentioned crisis, the governing elaborated and adopted new regulations for selecting judges for the Supreme Court, based on which, the process of selecting the Supreme Court judges took place in June-December 2019. The abovementioned process resulted in sharp public and international criticism, that will be discussed further below, however, it must be appreciated that for the first time in Georgia's history, candidates for judges were standing before the public and had to respond (or not respond) to those questions which had accumulated towards judicial authority during several years. Therefore, interviews with candidates for judges of the Supreme Court presented a completely new form of accountability of the judicial system. However, another issue is how successful was the completion of this test by the judicial authority.

In this article, major problems in regard to the concepts of court independence and accountability will be discussed, as well as the visions of the 20 candidates for judges of the Supreme Court, related to court independence and accountability, who appeared before the Parliament of Georgia.

1 See Tsikarishvili K. Clan-based administration of the Court from 2007 until today, available: https://article42.ge/media/1001447/2019/04/22/2853cf2c9d2199d8311b47b2e4b27cce.pdf

WHAT IS THE INDEPENDENCE OF THE COURT?

According to one of the most recognized definitions, the independence of the court is defined as an ability of courts and judges to exercise their functions freely without interference or control from state and private subjects.[2]

Some researchers agree that judicial independence has at least three aspects: first – impartial decision making by the court, second – binding character of the decision and third – protection of the judge from external interference.[3]

Judicial independence is based on several factors, including[4]:

- The recognition of judicial independence by internal national legislation;
- The appointment and promotion of judges based on objective and transparent criteria, and the exclusion of political interference during the appointment of judges;
- Determining a guaranteed term of authority for judges;
- Protecting judges from direct and indirect illegal interference, influence or threat;
- Disciplining judges based on predictable standards and fair procedure;
- Adequate financing of the judicial system and its material maintenance, for uninterrupted execution of its function.
- An objective system for the distribution of cases to judges, etc.

Independence of the court system is part of the right guaranteed by Article 6 of the European Convention on Human Rights. While evaluating whether the court system is independent, the European Court on Human Rights takes into consideration diverse factors, including "the method for appointing judges and the duration of their mandate, the existence of mechanisms protecting them from external pressure and the question, whether such court gives the impression of independence."[5] According to the definition of the European Court, independence of the court system implies protecting a judge from not only external but also internal pressure". The internal independence of the court entails freedom of the judge from directives and influence of colleague judg-

2 See https://www.britannica.com/topic/judicial-independence

3 Stephenson, M. *Judicial Independence: What It Is, How It Can Be Measured, Why It Occurs* http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JudicialIndependence.pdf

4 Coundhry, S. *International Standards for the Independence of the Judiciary;* https://www.researchgate.net/publication/319403225_International_Standards_for_the_Independence_of_the_Judiciary/citation/download Judicial Matteo Mastracci, Independence: European Standards, ECtHR Criteria and the Reshuffling Plan of the Judiciary Bodies in Poland, https://www.athensjournals.gr/law/2019-5-3-6-Mastracci.pdf

5 ECtHR 22 December 2009, Case No. 24810/06, Parlov-Tkalčić v Croatia, para. 86

es or judges having administrative functions, for instance, chairpersons of the court or chamber."[6] By the practice of the European Court on Human Rights "internal independence" is infringed upon if a colleague of a judge has a level of influence on the judge and tries to sway him/her during the case hearing.[7]

Institutional independence of the court and the individual independence of judges differ from one another.

Individual independence of the judge implies the execution of functions by judges without external interferences, and institutional independence of the court entails the independence of the court system, as a branch of the of the government, free from interference.

WHAT DOES ACCOUNTABILITY OF THE COURT MEAN?

The term "accountability" is defined as the relationship between two subjects when one "acting person" has the obligation to explain and justify his/her actions, and the other subject, "forum", has the right to pose questions and conduct evaluative argumentation. Further, certain outcomes may evolve towards the actor.[8]

Individual accountability of a judge (for example, disciplinary responsibility of the judge or justification of the decision by the judge) and accountability of the court (for example, providing an annual report by the court or openness of the court hearings) are differentiated from one another, in accountability in terms of content (e.g. publishing grounds for a court decision) and process (e.g. the method for the distribution of cases, methods for selecting judges, etc.).[9]

Independence of the court system responds to the question: "Independence from whom or what?" and accountability responds to the question: "Accountable to whom or regarding what?".[10]

In response to the question of to whom is the court accountable, researchers allot three subjects: the supervising court, the executive branch of government and the people. Each of them has their own expectation towards the court and they have different criteria for assessment. Supervising courts use the law as an assessment criterion for the lower court, the executive government

6 *Ibid.*

7 Joost S. *The concept of 'internal judicial independence' in the case law of the European Court of Human Rights, (pp. 104)*. European Constitutional Law Review, volume 15

8 Tsikarishvili K. *Quantity and quality in the work of court system, (pp.11).* Tbilisi, 2011

9 *Ibid.*

10 *Ibid.* p. 12.

puts an accent on productivity and similar management values, and public accountability puts an accent on the quality of justice and service.[11]

PROBLEMS EXISTING IN GEORGIA WITH REGARD TO THE INDEPENDENCE AND ACCOUNTABILITY OF THE COURT

Considering Georgian, as well as international experience, it is possible to compare two models of court: 1. the independent court model and 2. the obedient court model.

a. In the independent court model:

- Qualified and honest judges are appointed. The appointed person is not accountable to anyone.
- The court system attracts independent, honest and qualified staff.
- The judge leads the proceeding impartially. He/she does not determine the decision on the case in advance; The judge decides on the case only based on evidence, law and inner belief.
- Supervising courts correct legal mistakes, ensure consistent practice and quality of justice.
- The judges do not request or accept prior approval with regard to his/her decision.
- Judges, having administrative functions (chairpersons of courts, chambers, collegiums), are selected by professional and managerial characteristics; Their function is to properly manage the court and support quality of justice.
- The distribution of cases among judges is carried out based on objective criteria. Interference into the process of distribution from on behalf of a may be necessary for regulating equal loads for the judges.
- Integrity and creativity on part of the judge are encouraged.
- The High School of Justice is designated to educate independent and qualified staff.

11 Richard M. and Francesco C. (2007) *Judicial Evaluation in Context, Principles, Practices and Promise in 9 european Countries.* European Journal of Legal Studies.

- The appointment of candidates for a probationary period has the aim to observe and select independent, honest staff.
- The promotion of judges is done based on his/her qualifications and merits, based on objective criteria; This serves as an example for other judges.
- Disciplinary proceedings towards judges are initiated for actions infringing the authority of the court, based on fair procedures. Disciplinary responsibility is the form of legal accountability of judges and a mechanism for normalizing the court.
- Elections of self-governing bodies of the court are carried out based on healthy competition among judges; Judges select the individual who can protect the interests of justice in the best way and care about increasing the quality of independence and reliability of the court.
- The court has open and transparent relations with the other branches of government within the scope of the law.
- The court considers itself accountable to the society and tries to have a healthy dialogue with the society on all important issues of court administration.
- An independent court sets its own game rules. Everyone (including the political government) is used to these rules and acts in accordance therewith. These rules are stipulated in the law and code of ethics, as well as other normative acts.

b. In the obedient court model:

- Obedient staff are appointed as judges, who owe (or are accountable) to the one who appoints him/her.
- The court attracts obedient staff, who have no firmness or integrity.
- The judge hears cases in a biased way; He/she knows in advance the outcome of the case and adapts court proceedings and decisions to that outcome.
- The judge gets prior approval for the decision from a third person, usually from the chairperson of the court.
- Control of the court by instances implies ensuring outcomes that are determined in advance. Courts of different instances have one assignment concerning the outcome of the case. This indication may change from one instance to another, in which case the final decision changes respectively.
- Judges having administrative functions (chairpersons) are selected by the political fidelity, and

their function is to ensure the fulfillment of political assignments.[12]

- Cases are distributed among judges subjectively; Cases, where the decision is determined beforehand, are allocated to those judges who can fulfill such assignments; Judges who cannot fulfill such assignments are given those cases, which are not under particular interest.
- Integrity and creativeness of the judge hinder his/her career, and it may become a reason for refusing the reappointment after the end of the term of his/her power.
- The High School of Justice is used as a workplace of obedient staff.
- The probational period entails observation and selection of obedient staff.
- Judges are promoted according to their obedience and good fulfillment of assignments and this gives example to other judges.
- Disciplinary liability is used as a punishment mechanism for disobedient judges.
- Elections of self-governing bodies of the court are carried out with the purpose of reaching the outcome determined in advance. There is no healthy competition between candidates.
- The court has secret communication channels with the other branches of government; The court receives and fulfills political and non-political assignments from these branches.
- The court has no healthy dialogue with society.
- An obedient court sets its own game rules. External subjects know that it is possible to have influence on the court and therefore, try to use such influence channels.

THE MODEL EXISTING IN GEORGIA

Diverse studies confirm that with regard to the Georgian justice system, traditionally, there are signs of it following the "obedient court" model. For instance, in 2017, "Article 42 of the Constitution" carried out opinion research among practicing lawyers concerning the factors restricting court

12 In scientific literature, such function of the chairperson of the court is referred as a "transmission belt". Such tradition is derived from the soviet past and still exists in some post-soviet countries. ("The main role of the court presidents was thus to 'transmit' orders from the Communist Party to individual judges in sensitive cases." See David Kosar, Politics of Judicial Independence and Judicial Accountability in Czechia: Bargaining in the Shadow of the Law between Court Presidents and the Ministry of Justice, European Constitutional Law Review, Vol. 13, issue 1, p. 96.)

independence. As a result of the study, the following factors hindering the independence of the court were outlined:[13]

- Informal agreements during the selection-appointment process of judges;
- Interference on part of the executive government into the selection-appointment process;
- Nepotism during the appointment of judges;
- Insufficient research into the independence of a candidate during the appointment as judge;
- Selecting chairpersons of courts based on political motive;
- The control of court proceedings by chairpersons of the court (interference into the distribution of cases, prior approval of case outcomes with the chairperson);[14]
- Forced business trips for undesirable judges;[15]
- Transferring undesirable judges to reserve status;[16]
- Using disciplinary mechanisms for improper or invalid reasons in order to influence judges;[17]
- The passive role of associations of judges in the protection of the independence of the court;[18]
- Pressure from the Prosecutor's Office on the court;[19]
- Forcing judges to write letters of resignation;
- Expulsion of principled judges from the court system;
- Pressure on judges and their family members;
- Clan-based administration in the court.

13 Article 42 of the Constitution, Research on opinion of practicing lawyers with regard to the factors hindering independence of the court. Tbilisi, 2017.
https://article42.ge/media/1001447/2019/01/09/df8851f838d9e9c59df59bc5630f41a9.pdf

14 See so called hearings in the court system, see also, Georgia's Young Lawyer's Association, Justice in Georgia, 2010, p.16. www.shorturl.at/dvFU2

15 Vakhtang M. (2017). *Problem of Accessibility to Justice, Reasons and Ways of Resolution, (pp.16).* www.shorturl.at/koRY4

16 *Ibid.* p.16.

17 See using disciplinary mechanisms for political reasons, on the so called case of Rebellious Judges, Transparency International, Refreshing Georgia's Courts Trial by jury: More democracy or a face-lift for the judiciary? p. 2 https://www.transparency.ge/sites/default/files/Trial%20by%20Jury.pdf

18 American Bar Association, Judicial Reform Index, Georgia, 2008, p.116; See also, Transparency International Georgia, Assessment of Georgia's anti-corruption system, 2011, p. 77.
https://www.transparency.ge/sites/default/files/tigeorgia_nisreport_ka.pdf

19 See also, Transparency International Georgia, Assessment of Georgia's anti-corruption system, 2011, p. 75.
https://www.transparency.ge/sites/default/files/tigeorgia_nisreport_ka.pdf

SELECTING THE SUPREME COURT JUDGES IN GEORGIA

By the constitutional amendment adopted in 2017, the ability to name judges for the Supreme Court was transferred from the President of Georgia to the High Council of Justice. In 2019, the parliamentary majority elaborated and adopted a package of legislative amendments, which include the detailed procedure of selecting the Supreme Court judges. However, this legislation itself became the subject of criticism from international organizations, the non-governmental sector and political parties. The main argument of critics was that the suggested regulation did not allow the High Council of Justice do decide on the selection of candidates on its own view and without justification. According to this legislation, from May until December 2019, the procedure for selecting the Supreme Court judges was held in the Parliament of Georgia and the High Council of Justice. In the competition for Supreme Court judges, 143 candidates participated, the amount of which was decreased to 50 after the screening procedure done by the High Council of Justice. Interviews with 50 candidates were held at the High Council of Justice, and based on the voting after interviews, 20 candidates were presented to the Parliament of Georgia.

In September-November of 2019, the Committee on Legal Issues of the Parliament heard all 20 candidates, and on 23 September 2019, 14 candidates were selected as Judges of the Supreme Court of Georgia. Hearings of the candidates held at the High Council of Justice, as well as at the Parliament were directly broadcasted.

The process of selecting judges was subject to harsh criticism from international, as well as national organizations.[20]

The following particular shortcomings must be outlined:

- The list of candidates was formed with the prior approval of 10 members of the Council, which had decisive importance in terms of selecting the list of 50, as well as the 20 candidates.[21]
- Some candidates, who received high points could not move to the next stage of the selection process and others having lower points managed to move to the next stage.[22]
- During the selection stage at the High Council of Justice, clear cases of conflict of interest were evident.[23]

20 The Public Defender, Report on Monitoring of selection of Candidates for Judges in the Supreme Court of Georgia by the High Council of Justice (2019). http://ombudsman.ge/res/docs/2019100811095425887.pdf

21 p. 9-13.

22 The Public Defender, Report on Monitoring of selection of Candidates for Judges in the Supreme Court of Georgia by the High Council of Justice (2019). http://ombudsman.ge/res/docs/2019100811095425887.pdf

23 The Public Defender, Report on Monitoring of selection of Candidates for Judges in the Supreme Court of Georgia by the High Council of Justice (2019), p. 11. http://ombudsman.ge/res/docs/2019100811095425887.pdf

- The Court refused to make public the past decisions of several candidates.[24]
- The Parliament approved each candidate presented by the Legal Issues Committee in a way that their selection decision was not justified and there was no discussion on the positive or negative features of the candidates.[25]

Criticism was related not only to the selection procedure, but also to the results of the competition, in particular to the fact that in the final selected list, there were only those candidates who represented the acting influential group of the Court, so called clan-related judges and their supporting candidates, or persons closely related to the government.[26]

VISIONS OF THE CANDIDATES FOR JUDGES OF THE SUPREME COURT WITH REGARD TO THE INDEPENDENCE AND ACCOUNTABILITY OF THE COURT

In January-February 2020, the organization of Article 42 of the Constitution and group of independent lawyers studied the interviews of the 20 candidates presented before the Parliament of Georgia which were held at the Parliament, as well as at the High Council of Justice. During the study, an accent was put on the visions of each candidate in terms of independence, reliability and accountability of the Court.[27] The following conclusions were made in the report:[28]

In response to the question on how independent the Court was before 2012, some of the candidates (Giorgi Mikautadze, Merab Gabinashvili, Tamar Alania, Miranda Eremadze) responded that the Court was independent, some of them (Zaza Tavadze, Maia Vachadze) declared that the Court

24 A group of independent lawyers and civil activists calls on the Parliament not to approve the list of candidates for judges at the Supreme Court.
https://democracyindex.ge/ge/news/read/33/damoukidebeli-iuristebis-da-samoqalaqo-aqtivistebis-jgufi-parlaments-mouwodebs-uzenaesi-sasamartlos-kandidatebis-sias-mxari-ar-dauchiros-

25 OSCE Office for Democratic Institutions and Human Rights, Second Report on the Nomination and Appointment of Supreme Court Judge, 2019, p. 8. https://www.osce.org/ka/odihr/443497?download=true

26 A group of independent lawyers and civil activists calls on the Parliament to not approve the list of Supeme Court judicial candidates
https://democracyindex.ge/ge/news/read/33/damoukidebeli-iuristebis-da-samoqalaqo-aqtivistebis-jgufi-parlaments-mouwodebs-uzenaesi-sasamartlos-kandidatebis-sias-mxari-ar-dauchiros-
Coalition for Independent and Transparent Judiciary, Assessment of the Hearings of Supreme Court Judicial Candidates at the Parliament Legal Committee, December 11, 2019.
http://coalition.ge/index.php?article_id=234&clang=0

27 Responses of candidates in terms of competence are assessed in details in the report of Coalition for Independent and Transparent Judiciary. http://coalition.ge/index.php?article_id=235&clang=0

28 Article 42 of the Constitution, Group of independent lawyers. Analysis of interviews with candidates for the Supreme Court Judges, 2020.

was partially independent, and some candidates escaped answering the question altogether.. Only one candidate – Shalva Tadumadze – declared that the Court was under systemic pressure.[29]

It is interesting that this position of candidates directly contradicts the position of the governing party, which always gave a low assessment to the quality of independence of the Court before 2012.[30]

In response to the question – what factors were restricting the independence of the Court, a majority of the candidates stressed legislative and institutional factors, such as the rule of summing up sentences, hindering judges from the possibility of using less than a minimum number of sentences, imposing liability on the judge for rough infringement of the law, including politicians in the High Council of Justice, etc.[31] On the other hand, candidates avoided assessing the malpractice, which was used by the group governing the Court for the appointment of judges and having an influence on cases, including selective disciplinary liability, forced transfer of judges, manipulating the case distribution system, prior hearings of cases, etc. Some candidates refused their existence at all, part of them saying that they have not heard about these methods.

The question arises, if the Court was independent and only restricted by the law, why didn't the Conference of Judges or Association of Judgesdeliver public statements or not show initiatives to amend the restricting legislation? The High Council of Justice could also declare an official position, as since 2007, more than half of the members of the High Council of Justice were judges. This question was addressed to one of the candidates – Paata Silagadze, however, he stated that the format of the Conference of Judges did not provide the possibility to make such statements.[32] This answer is obviously unjustified, as the law never hindered the Conference of Judges, the Association of Judges, nor the High Council of Justice to make public or even critical statements.

The abovementioned fact implies that, on one hand, candidates try to evade responsibility from influential groups existing in the court system, "the clan", for systemic problems that existed before 2012, and, on the other hand, candidates have problems in terms of values, thus cannot dissociate themselves from systemic infringement of the independence of judges, which was taking place for years from outside the Court, as well as – inside.

In response to the question of whether there was pressure on judges, all candidates stated that there was no pressure on them and they had not heard of anyone being pressured.

29 *Ibid.*

30 SeeBidzina Ivanishvili, "The court did not exist during the time of previous government", http://www.tabula.ge/ge/verbatim/108485-ivanishvili-sasamartlos-mivecit-tvitgadarchenisa-da-tvitaghdgenis-sashualeba; Irakli Kobakhidze "The court system before 2012 was ineligible andeverything was done as it was said by Adeishvili. There were Millions of cases, bad cases". http://www.tabula.ge/ge/verbatim/143898-kobaxidze-mosamartleebi-romlebic-cud-raghacebs-aketebdnen-axla-karg-raghacebs

31 Article 42 of the Constitution, Group of Independent Lawyers. Analysis of interviews with candidates for the Supreme Court Judges, 2020.

32 *Ibid.*

To the question – what has been done to facilitate the independence of the court system in previous years, candidates particularly stressed the legislative and practical measures that took place after 2012, such as the lifelong appointment of judges, delegating the nomination of candidates for the Supreme Court judges to the High Council of Justice, reform of disciplinary proceedings, introducing an electronic system for the distribution of cases, etc.

The majority of candidates, who have spoken regarding this issue, assessed the quality of the independence of the Court with high ranking. Maia Vachadze expressed her opinion that the government may subordinate the Court if it weakens the institutional grounds for the independence of the Court.

With regard to the question – why there is no distinct opinion heard at the Conference of Judges, the majority of candidates consider that unity of the Corpus of Judges concerning important issues of the Court activity is quite natural.

Some of the candidates, for instance, Giorgi Mikautadze, do not agree with the view that there is no distinct opinion expressed at the Conference of Judges.[33]

In response to the question, how correct and reasonable was presenting lists of candidates for the Supreme Court judges in this form in December 2018, all candidates (who were asked) stated that the High Council of Justice has not infringed any law. Only one candidate (Maia Vachadze) noted that she would not act like that in the place of the High Council of Justice. From the responses of candidates, it is evident that they did not see any fault in terms of accountability and transparency in the selection of the Supreme Court judges by this form.

In relation to the question, how it happens that the Conference of Judges selects candidates for the members of the High Council of Justice in a way that there is no presentation of their visions taking place and no introduction, the candidates stated that judges know each other quite well and there is no need to listen to visions of candidates for members of the High Council of Justice (Zambakhidze, Vachadze).[34] Deriving from this position, it is clear that the candidates do not realize that by presenting visions at the Conference of Judges they are not only introducing judges, but it implies the openness of the process -- the transparency and accountability of the Court.

While responding to the question "If the decision of the Council on the selection of judges must be justified, whether the voting of the Council shall be open, and if it must be possible to appeal the decision?" – some of the candidates were in favor of justification (Kochiashvili, Mikautadze) and openness of voting (Vachadze), which must be considered as a positive fact.

In response to the question, whether Levan Murusidze is the leader of the court system, opinions between candidates were divided, part of them think that theleadership of Levan Murusidze simply implied him being the chairperson of the Conference of Judges and being secretary of the

33 *Ibid.*

34 *Ibid.*

High Council of Justice, while two candidates (Shota Getsadze, Mamuka Vasadze) stated that Levan Murusidze is not their leader.

To the question – what are the challenges existing today in the court system in terms of internal independence, some of the candidates responded that there are no challenges in this regard (Jeiranashvili, Tsintsadze, Mikaberidze, Kochiashvili), and some mentioned several challenges, such as the probationary period (Mikautadze). As for the governance of the clan, as a challenge, the majority of candidates (Jeiranashvili, Alania, Kadagidze, Miakutadze, Mikaberidze, Eremadze) directly refused the existence of the clan-based administration of the Court, and part of them noted that there is no evidence for this or they have no information (Tsintsadze, Vasadze); One candidate stated that there is no clan, but there are judges who have authority over their colleagues and they are presented in governing bodies (Vachadze).[35]

A major part of candidates admits the lack of public trust in the court system. Diverse measures were introduced by candidates in order to increase trust, such as increasing the level of justification of court decisions (Skhirtladze), developing consistent practice (Alania), open communication with the public (Tsintsadze) and informing the public on the positive processes within the Court (Getsadze).

Aleksandre Tsuladze expressed an interesting suggestion, that he is in favor of making public the interviews with judges of the first and second instance courts, as they are in the case of the Supreme Court judges;

CONCLUSION

The judiciary is based on ideas and principles, for which it is vitally important to have public trust. From 2012, judges were given the possibility to "restart", creating a new, independent court system; to implement proper system of values and recover the humiliated authority of the Court. Probably, the most clever step would have been for the Court to have evaluated the systemic problems existing before 2012 and try to correct these problems by means of dialogue with the public, and suggest to the political government new game rules. The judiciary has chosen a different path: it hid and did not admit the problems of internal independence and the systemic shortcomings; it transferred power into the hands of the governing group – the "Clan", entered into secret agreements with the political government, and carried out lifelong appointment of judges by virtue of an agreement with the clan.

35 *Ibid.*

The process continued in relation to the appointment of the Supreme Court judges, however, with the difference that in this case, the process moved to the Parliament.

Interviews with the candidates for the Supreme Court judges showed that almost all candidates have similar opinions, which are as follow:

- Before 2012, the court system was independent or partially independent. The main factor of the independence of the Court was restricting law.
- There was no pressure on judges. /In any case, the candidates have no information in this regard. Only one candidate, Shalva Tadumadze, admitted the existence of pressure, however, noted that there was pressure on the system but it was not expressed in particular cases.
- There are no challenges in relation to the internal independence of the court system.
- There is no "clan" in the Court. There is only a group, which has authority and members of this group are in governing bodies.
- During the selection and appointment of judges, the High Council of Justice acts in line with the law.
- Today the Court is more independent than it has ever been.

The message which is disseminated by the official Court (its representatives) to the public differs from the one that was expressed by the "Georgian Dream" government during the process of justice reform. In particular, according to the official position of the "Georgian Dream", before 2012, independence of the court system was critically low, and judges were under total political control. After 2012, the situation changed drastically and judges were freed from political pressure.

This all means that the Georgian court system is on the wrong path of development. It moves against major judicial values, as well as accountability and independence. In my view, in this way, it is impossible to create an independent, fair and reliable court system in Georgia and it will be necessary to implement fundamental reformation of the system, the first stage of which should be the admission and naming of the problems existing in the judiciary.. The creation of a healthy court system will be possible only after these measures.