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# ATTORNEY — A PROFESSION IN THE SHADOW OF THE TOTALITARIAN SYSTEM

## ABSTRACT

The place in our Society of the profession of a lawyer – someone who is supposed to defend the rights and interests of the citizen and represents one of the unchangeable actors of the legal field of the modern state – is not thoroughly studied and analyzed in the social and political history of our Society. Other aspects, such as the transformation of the legal environment during the last two centuries, the form and practice of the judicial system of the Russian Empire in the Caucasus, the process of reforming the judicial system and establishing a democratic legal environment in the First Republic of Georgia – are just not investigated thoroughly. The question remains beyond the public and scientific discussion – what was the fundamental impact of the 70-year Soviet Russian occupation and totalitarian regime on the idea, theory and practice of law? Therefore, Today, it is difficult for a citizen or a representative of the legal field to look past historical guidelines, to observe the experience of system reform and modernization, to record, understand and overcome the legacy of totalitarianism in this one of the primary areas defining democratic statehood, while analyzing the modern challenges.

In this article, we will review the main elements of the Russian imperial judicial system and the place of attorneys in it. The experience of political and professional mobilization of the lawyers' community made a significant contribution to the implementation of the fundamental reform of the court after the establishment of the Democratic Republic of Georgia. All of this made it possible to establish a modern judicial system and put it into practice, which was utterly destroyed and replaced by Soviet Russia after military aggression and occupation. These cataclysms also reflected on the legal status and physical existence of the community of attorneys. The article mainly focuses on the description and analysis of the dismantling of the existing democratic legal system by the Soviet Russian occupation regime and its replacement with a totalitarian model, as well as the unsuccessful attempts at professional adaptation of lawyers in this system.

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## ATTORNEYS — “SWORN LAWYERS” AND THE JUDICIAL MODEL OF THE RUSSIAN EMPIRE; STRUGGLE AGAINST SYSTEMIC POLITICAL AND LEGAL OPPRESSION

In the wake of the annexation of the Georgian kingdoms and principalities by the Russian Empire and the establishment of colonial rule, one of the first confrontations of the population with the nature of the tsarist police regime was reflected in the elimination of the local, traditional courts and the introduction of Russian style justice. Representatives of all ranks, accustomed to Georgian feudal law – direct and oral justice, found themselves face to face with the highly complicated and bureaucratic Russian court introduced by Catherine the Second. The first ruler of the Caucasus – Pavle Tsitsianov, used to express his surprise as to why the locals did not apply to the judicial agencies he introduced and tried to “seek justice.”<sup>1</sup> Directly with him, even though it was clear that the new Russian court was incomprehensible to people who were used to oral justice in their native language and with the highest representatives of the kingdom.

From the 18th century to the 1860s, the Russian imperial judicial model, a *de facto* part of the tsarist administration, was multi-tiered, closed, hierarchical, and highly bureaucratic. According to the territorial principle, rural and community “raspravs” (clerks) worked in the “uezds” (counties). At the same time, the residents of the cities were tried by the courts created by the magistrates and town halls. There were uezd courts, the “Supreme Court” (Hofgericht) and the Commercial Court. Civil and criminal chambers and a commercial court operated at the gubernatorial level, whose superior instance was the “governing senate”. All these listed bodies were formally “elective”. However, depending on the territorial-administrative arrangement of the Empire and the feudal dimension, they were appointed according to the rank principle (peasants, nobles, merchants, citizens, etc.). There was virtually no essential independence of the courts at the regional and provincial levels, as the governor could suspend or overturn the decisions of all these courts.

On the one hand, the competence of the representatives of the ranks in the court and the motivation to be involved in the process could not withstand any criticism. At the same time, most of them perceived themselves as administrative officials and followed the governors’ will. At the same time, most of them could not risk making a clear and strict decision on their own. Therefore, in most cases, there was no conviction against the prominent criminals, and according to the pre-reform court statistics, concrete punishment was applied to only 12% of the accused. The rest were “suspected” and “under police supervision”. This punishment, according to the realities of that time, meant a civil death of a person because all paths to receive any official or other services would be blocked.<sup>2</sup> Several severe legal cases were beyond the competence of these judicial bodies and were decided by the police apparatus.

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1 A. Proneli, Tbilisi, February 27..., Iveria (newspaper) #43, 28.02.1893, p. 1-2.

2 G.R., Judicial Reform of 1864, Tsnobis Purtseli (newspaper) #2709, 25.12.1904, p. 2-3.

In this multi-level vertical itself, the procedure virtually precluded oral hearings. The process was primarily conducted in writing, and often, the judge issued the verdict without physically meeting the parties. Accordingly, the process was closed, and the principle of competition between the parties was excluded. Due to the process's closed, written nature and the court's hierarchy, public involvement was also unimaginable. Based on this situation, for decades, the Empire had a clear impression that, in practice, justice was not in the hands of "elected" judges but in the hands of clerks of the court's chancellery – secretaries who administered these endless streams of documentation. The above-mentioned bureaucratic hell was crowned by the fact that after the first steps, all higher court instances could cancel the decision and return the case for consideration, which resulted in an incredible delay of the process – even for decades. Often, the descendants of the parties inherited the ongoing court proceedings.

In the 1860s, in another phase of rare and short-lived reforms in the Russian Empire's history, the modernization of the judicial system took a special place among several Western-style reforms initiated by Emperor Alexander II. The Commission of the Imperial State Council has been actively working for years to replace the existing model with a modern, tested and reliable system, for which the Western European experience was considered the best option.

In the declarative spirit of the new judicial statute of 1864, the best experience of Western justice began to be adopted in the Russian Empire. The judicial system was simplified, multi-tiered instances were eliminated, and conciliation and general courts (civil and criminal) were established. District Courts, the Judicial Chamber and the Senate were established. Justice was based on the equality of the parties and the principle of competition, oral hearings of the process and its openness. Ranks were abolished, and the election of judges was introduced. It became mandatory for judges to have a professional education. To ensure their independence, they were removed from the list of state officials and elected permanently. Jury trials are established for criminal cases.

Precisely, in the wake of the reform of the judicial system in the "age of great reforms" in the Russian Empire, the profession of attorney – "sworn lawyer" appeared. With the practice of subsequent decades, sworn lawyers were united in corporations in judicial districts. They formed a council whose membership and work as assistant lawyers paved the way for new lawyers to accumulate professional practice and become sworn lawyers.

Before the adoption of the judicial reform, as well as other reforms of the 1860s, strong circles opposed all progressive and especially Western reforms, deeming them incompatible with the foundations of Russian statehood. They tried to eliminate them from the very beginning. During the 1860s and 1870s, with the maximum mobilization of these elites in favour of absolutism, the Western principles of justice introduced by the judicial system were gradually curtailed by amendments. In the wake of the assassination of Emperor Alexander II and the strict, reactionary course of his successor, Alexander III, this process acquired new dimensions. By the end of the 1890s, about

700 amendments had been made to the statute of 1864,<sup>3</sup> Leaving practically nothing of the original founding principles.

In the Caucasus, the establishment of the reformed judicial system began in 1867. District courts and the Tiflis Chamber of Justice were organized. Councils of sworn lawyers were established in Tbilisi and Kutaisi governorates. “Caucasian Legal Society” was founded.

Although the judicial reform was undoubtedly considered a progressive act for the legal development of the population of the Russian Empire, it, like other units of the reform package, was accompanied by the Russian colonial and chauvinistic syndrome from the beginning. Due to the internal resistance among the elites of the Empire – the fear of weakening absolutism, which was manifested in the establishment of truncated and limited versions of the reforms, this adoption process started in an unhealthy appearance. These limitations were particularly highlighted in the issue of the distribution of the benefits of the reforms to the “border areas” dominated by the non-Russian population, which was primarily manifested in the delay, additional truncation, or inadmissibility of the reforms in these areas.

Judicial reform in the Caucasus also became a victim of this colonial dimension. All the benefits included in the judicial statute of 1864, which dramatically increased the prestige of the court and trust in justice among the population of the Empire, turned out to be in vain in the Caucasus and Georgia. The court was exclusively Russian speaking, making the proceedings incomprehensible to the local non-Russian-speaking population and inaccessible without an intermediary translator.<sup>4</sup> Fearing “separatism”, the Empire categorically did not allow the use of a language other than Russian in the state structures, even at the local, elementary level. Therefore, the alienation of the Georgian population from the Russian-speaking courts continued steadily.

Additional political factors played a role in the linguistic colonial dimension: the Empire did not allow two fundamentally essential elements of the 1864 judicial statute in the Caucasus – the election of conciliation judges and the introduction of jury trials. In the Caucasus, judges were appointed by the Ministry of Justice, which violated the principle of judicial independence, as judges became dependent on the administration. The jury’s rejection deprived the public of the chance to be involved in justice. The fierce attacks of absolutist defenders against the jury institution were continuous even in the “Greater Russian” central zones and even more so in the “border areas”. The agents of the metropolis explained its inadmissibility with elaborate rhetoric against all other reforms, that – the local non-Russian population was at a low level of development, was illiterate, tribal-minded and ready. It was for something different than this reform.<sup>5</sup>

Illusions of the possibility of halting the tide of changes in the judicial system and restoring the original spirit continued until the early 1900s. Against the backdrop of the mobilization of mass

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3 Due to the revision of the court charter, *Moambe* (magazine) #8, 1895, p.168.

4 Our needs; Tbilisi, March 24, *Droeba* (newspaper) #63, 25.03.1882, p. 1-2.

5 Due to the revision of the court charter, *Moambe* (magazine) #8, 1895, p.176-183.

political movements against tsarism and the permanent increase in peaceful and armed protest episodes, the repressive policy of the Imperial regime had already acquired an incomparably large scale. Especially in the wake of the suppression of the first revolution attempt of 1905 and the initiation of the “black reaction” by Emperor Nicholas II, the practice of non-judicial punishment of citizens became more widespread by declaring a state of emergency/martial law and by maximally mobilizing military-field courts, quickly and selectively trying “political criminals”.

These processes and periods relate to the professional mobilization of some of the lawyers working in Georgia, who were also the leaders of various underground political parties, and the establishment of an informal corporation, which aimed to defend the defendants in political cases and provide free legal consultations to citizens harassed under political pretexts. The names of only a few lawyers included in this corporation are known.<sup>6</sup> – Niko Eliava, Konstantine Japaridze, and Grigol Giorgadze were famous and successful lawyers and members of the Social Democratic Workers’ Party and later founded the Democratic Republic of Georgia.

During the revolution of 1905, the Tiflis and Kutaisi Bar Councils, in support of all democratic public organizations, tried their best to use their authority and influence to strengthen the campaign for democratic reforms. On March 20, 1905 (old style) in Tiflis, at the meeting of sworn lawyers and assistants, a declaration was adopted, which demanded the convening of the Constituent Assembly of All Russia through universal democratic elections and, until its convening, demanded to guarantee freedom of speech and assembly, guarantees of inviolability of individual rights, and the release of political prisoners.<sup>7</sup>

Sworn lawyers also attacked the “Caucasus Legal Society”, which they accused of existing merely formally and impotency for decades. On November 20, 1905, the initiators elected a new board and chair at a general meeting. Mate Gruzenberg, a well-known democratic lawyer, became the chair of the Society, deputies – Verkhovsky and Chevalier, secretaries – Isaya Dolukhanov and Ivane Zurabishvili. The new composition expelled the former ruler of the Caucasus, Prince Golitsin, from the Society. The issues of the abolition of the death penalty and the request for amnesty of political prisoners were discussed. After a heated discussion, the Society decided to demand the investigation of the massacre organized by the tsarist regime and its punishment squads in Tiflis in the previous months, punishment of the perpetrators and ensure the involvement of the Society in the investigation process.<sup>8</sup>

The national aspect was also slowly becoming relevant in the official and informal dimensions of the professional mobilization of attorneys. In January 1917, weeks before the revolution, the election of Sergi Japaridze, a Georgian lawyer and one of the leaders of the Social-Democratic Party, as

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6 Archive of the Academy of the Ministry of Internal Affairs of Georgia. Section 2 (Archive of Former Party Organs), Fund No. 8, Inscription No. 2, Part 1, File No. 58, p. 61-114.

7 Sunday, March 20; Akhali Ambavi, Tsnobis Purtseli (newspaper) #2778, 22.03.1905, p. 3.

8 Legal Society, Tsnobis Purtseli (newspaper) #2956, 23.11.1905, p. 4.

the chair of the Council of Jurors of the Caucasus proved a landmark event, as it was the first case in the history of the Council. Osiko Baratashvili, Davit Kheltuplishvili, Niko Eliava and Grigol Rtskhiladze were part of the Council with him.

## JUDICIAL REFORM IN THE DEMOCRATIC REPUBLIC OF GEORGIA AND PROFESSIONAL ASSOCIATIONS LAWYERS

From the February Revolution of 1917 to the founding of the Democratic Republic of Georgia on May 26, 1918, in the democratic transitional period, the contours of fundamental reforms were outlined in all significant areas of the state and public life. However, in the wake of the effects of anarchy on the ruins of the Russian Empire and the victory of Russian totalitarianism, the development, refinement and implementation of these reforms were possible only in those spaces where, as a result of high civil culture and maximum mobilization of Society, solid democratic institutions were established. Modern national states were starting to be built. In this regard, we can consider the Republic of Georgia as one of the exemplary and successful projects that managed to preserve the legacy of the democratic revolution and implement the best Western institutional experience in practice, thus creating a solid foundation for the development of the nation-state.

In the months following the February Revolution, the universal euphoria was passing, and the challenge of dealing with the worst legacy of Russian tsarism and the World War had to be faced. The parallel rule of provisional government structures and revolutionary government bodies in the former Russian Empire, including the Caucasus and Georgia, the dissolution of the old state system, and the transformation of the bureaucracy were required for the preparation for fundamental reforms. The establishment of extraordinary, temporary, nominal bodies and structures, the disruption of the infrastructure and personnel of existing tsarist state institutions, anarchic excesses in Society and the deepening of the social and economic crisis accompanied this problematic situation. These dimensions affected the legal environment as well. As the new models in the legal field were not yet established, truncated tsarist regulations were used temporarily. At the same time, revolutionary bodies chaotically created extraordinary courts, tribunals, etc.

The political class of Georgia possessed great human and intellectual resources for the fundamental reform of the sphere of justice. The previous sub-chapter shows that Georgian lawyers and attorneys were politically active and appeared as reform leaders. For 1918-1919, the representation of lawyers among politicians was one of the highest among professional groups in the central legislative bodies of Georgia. In 1917-1918, 21 lawyers/attorneys participated in the National Council of Georgia (from October 1918 – Parliament of Georgia), which comprised 15.32% of the total number

of members and was only behind the group of journalists.<sup>9</sup> Since 1919, there were 33 lawyers/advocates (22.75%)<sup>10</sup> in the deputies of the founding assembly of Georgia; this time, they were numerically the most significant professional group.

In the first coalition government of Georgia, a well-known lawyer, one of the leaders of the Socialist-Federal Revolutionary Party of Georgia – Shalva Alexi-Meshkhishvili, held the position of Minister of Justice. Under his leadership, the fundamental reforms in the field of law began. In March 1919, after the election of the constituent assembly and the appointment of the social-democratic cabinet of the government, Razden Arsenidze, one of the active organizers and theoreticians of the social-democratic party and an experienced lawyer, became the Minister of Justice.

In the summer of 1918, the Ministry of Justice of Georgia started taking essential measures to prepare for the fundamental reform of the legal sphere. All special/emergency courts, revolutionary tribunals, and extraordinary investigative commissions were abolished, and judicial functions were taken away from the revolutionary executive committees.<sup>11</sup>

On July 2, 1918, the National Council of Georgia declared the Investigative Commission of Espionage Matters abolished.<sup>12</sup> On July 5, the “Orphan Court” was abolished, and its ongoing cases were transferred to the proceedings of conciliation judges.<sup>13</sup> The “Temporary Investigative Commission” was also declared cancelled on the same day.<sup>14</sup> On July 9, the position of the rank-and-file provincial councillor of rural affairs and conciliation mediator was abolished.<sup>15</sup>

By the law of September 10, 1918, the Institute of Forensic Investigators was established. The law determined their number. Public assemblies of district courts were tasked with determining the boundaries of investigative districts, which the Ministry of Justice would approve. The District Courts of Tbilisi, Kutaisi and Sukhumi maintained the staff for investigating exceptional cases (Tbilisi

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9 National Archive of Georgia, Fund #1836, Inscription #1, File #121, p. 2.

Composition of the Parliament of Georgia, *Sakhalkho Sakme* (newspaper) #398, 01.12.1918. p. 4.

10 <https://firstrepublic.ge/ka/theme/19?profession=%E1%83%98%E1%83%A3%E1%83%A0%E1%83%98%E1%83%A1%E1%83%A2%E1%83%98> ; Last retrieved 01.12.2023.

11 A brief report from the day of operation of the Ministry of Justice to the convening of the Constituent Assembly of the Declaration of Independence of Georgia (May 26, 1918 – March 12, 1919), *Sakhalkho saqme* (newspaper) #477, 11.03.1919, p. 1.

12 Art. 12, Law on the Abolition of the Commission on Espionage Affairs, Collection of Laws of the Republic of Georgia 1918, Codification Department of the Ministry of Justice, Tbilisi, 1919.

13 Art. 9, Statute of the Abolition of the Tiflis Orphans’ Court, Collection of Laws of the Republic of Georgia 1918, Codification Department of the Ministry of Justice, Tbilisi, 1919.

14 Art. 11 The Law on the Abolition of the Extraordinary Investigative Commission from July 7, 1918, Collection of Laws of the Republic of Georgia 1918, Codification Department of the Ministry of Justice, Tbilisi, 1919.

15 Art. 15 The Law on the Abolition of the Provincial Council of Rural Affairs and the Institute of Conciliation Mediators. Collection of Laws of the Republic of Georgia 1918, Codification Department of the Ministry of Justice, Tbilisi, 1919.

– 2, Kutaisi 1, Sukhumi – 1).<sup>16</sup> In the entire Republic, including them, the number of forensic investigators became 64.

On September 20 and 24, 1918, two important institutions were established for the first transitional phase of court reform. On September 20, a temporary emergency court was organized to try the grave crimes defined by the law of July 5, 1918 (for which the death penalty was temporarily introduced),<sup>17</sup> Subject to the law, this would function until the jury trial's introduction. On September 24, the law on the Institute of Conciliation Judges was approved,<sup>18</sup> Thus organizing the first level of courts in cities and uyezds. Military districts (with the cities included them) were determined according to the uyezds, and military districts were allocated between the districts, the number of which was determined at the initial stage of 120 in the Republic. The Congress of Conciliation Judges was established as the highest instance of the conciliation court. The number of members of the Congress was 11. The position of honorary conciliation judges was also found in districts and regions. Judges in the districts of the conciliation court were elected by the local self-government bodies – the city council and the community council. Any citizen of Georgia who met the criteria defined by the law could be nominated as a precinct and an honorary conciliator judge. They had to be over 25 years old, with secondary or higher education (exceptions were allowed only in exceptional cases), and with knowledge of the state language and the national minority language spoken by the people constituting at least 20% of their precinct. They should not have been under investigation or warrant by a court. In those districts where national minorities represented the majority, the law guaranteed the parallel use of the language of this minority in addition to the state language in the court.

Accordingly, the judicial system of the Republic of Georgia was formalized as follows for this stage:

- The first branch – the conciliation court, with its higher instance, the Congress of Conciliation Judges;
- The second branch – the district court, with the higher instance – the judicial chamber.
- Third branch – military court.

At the beginning of August 1918, an organizational meeting of lawyers was held in the Georgian Club of Tbilisi to establish the “Georgian Legal Society”.<sup>19</sup> The assembly appointed a commission to draft the Society’s charter, which it would present to the founding assembly. The commission in-

16 Art. 56, The Law on Replacing the Investigative Part of the Court, Collection of Laws of the Republic of Georgia 1918, Codification Department of the Ministry of Justice, Tbilisi, 1919.

17 Art. 64, Statute of the Temporary Extraordinary Court of the Republic, Collection of Laws of the Republic of Georgia 1918, Codification Department of the Ministry of Justice, Tbilisi, 1919.

18 Art. 66, Law of the Institute of Conciliation Judges, Collection of Laws of the Republic of Georgia 1918, Codification Department of the Ministry of Justice, Tbilisi, 1919.

19 Georgian Legal Society, Sakartvelos Respublika (newspaper) #12, 08.08.1918, p. 5.



cluded Ioseb (Iese) Baratashvili, Ivane Zurabishvili, Sarajishvili, Giorgi Shalibashvili, Giorgi (?) Lashkishvili and Artem Akhnazarov. During August-September, the commission met at the apartment of lawyer Giorgi Jordania.<sup>20</sup> On October 6, 1918, a founding congress was held in the hall of the Tiflis Court Chamber, which 30 delegates attended. Giorgi Jordania introduced the draft of the Society's charter to Congress, which was approved. The board was elected by secret ballot – Davit Kvirkvelia, Giorgi Chachibaya, Giorgi Jordania, I. Kipshidze, Artem Akhnazarov, Simon Chkheidze, A.G. Beburishvili. Davit Kvirkvelia became Presidium chairman, Giorgi Chachibaia – the deputy, Giorgi Jordania – the secretary, and Artem Akhnazarov – the treasurer of the Society.<sup>21</sup> The Legal Society of Georgia met frequently and closely cooperated with the Ministry of Justice to develop and implement ongoing reforms.

On January 7, 1919, the Parliament of Georgia approved the law introducing the jury trial and the jury trial statute.<sup>22</sup> The number of jury lists for criminal cases for districts; the criteria for selection as a judge was established, as well as the interdependence of the juries and trial chambers before the establishment of the Supreme Court – the Senate.

By the end of 1918, following the already implemented reforms and staff changes of court employees, the Ministry of Justice of the Republic made the “nationalization” of the court a reality. In October, the Minister of Justice issued an order to the judicial system, according to which by the end of the year, the language of proceedings could be the languages used until now, but from January 1919, the judicial system would be reorganized into the state language. Nevertheless, in January, about 300 lawsuits submitted by lawyers in the judicial system were not written in Georgian. Accordingly, the proceedings were stopped and returned to the plaintiffs, which caused a severe uproar among the attorneys.

Attorney Isaia Dolukhanov voiced his dissatisfaction at the session of the Parliament of Georgia on January 11, 1919, to which the Minister of Justice Shalva-Alexi Meskishvili responded by defending the chosen course of nationalization.<sup>23</sup>

To solve the problem, a meeting of attorneys was held in Tbilisi. Some of the attendees considered the nationalization of the court premature. The assembly elected a special commission tasked with interceding with the government to postpone the nationalization for half a year. The commission met with the Minister of Justice Shalva Alexi-Meskhisvili, who told them he perfectly understood non-Georgian-speaking lawyers' plight and the threat to their livelihood. However, he could not put his personal feelings above the law. After the minister, the commission appealed to

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20 Georgian Legal Society, *Sakartvelos Respublika* (newspaper) #28, 29.08.1918, p. 5.

21 On Sunday, October 8...; *Societies and congregations, Sakartvelos Respublika* (newspaper) #64, 12.10.1918, p. 6.

22 Art. 7. Introduction of Jury Court, Art 8. Statute Jury Court, Collection of Laws and Government Decrees, Publication of Codification Department at the Ministry of Justice of the Republic of Georgia (in 1920 at the Senate of Georgia), Tiflis, 1920.

23 Parliament of Georgia, January 11 session, *Ertoba* (newspaper) #8, 12.01.1919, p. 3.

the cabinet, which supported the establishment of a special commission to figure out the issue. At the same time, the representatives of the court officials sent a delegation to the Minister of Justice, expressing their general readiness to carry out the nationalization and demanding its immediate start despite the protests of some attorneys.<sup>24</sup>

On February 28, the order of the Minister of Justice of Georgia was published.<sup>25</sup> Based on the resolution of the Government of the Republic of February 8, 1919, it stated that from March 1 onwards, the proceedings of newly admitted civil and criminal cases would be conducted in the state language in the judicial districts of Tbilisi and Kutaisi. The use of national language was mandated in all cases in Kutaisi District; in Tbilisi District – all criminal cases and civil cases where the appellant and the defendant were not residents of Tbilisi or residents of Tbilisi but Georgian-speaking. If at least one party was non-Georgian-speaking, using the Russian language was permitted. Forensic investigators also had to proceed in the state language except for the Sukhumi District and individual districts of Tbilisi.

On July 18, 1919, the constituent assembly of Georgia began the article-by-article review of the statute of the highest instance of the court of the Republic of Georgia – the Senate. After heated discussions regarding the censure of senators, election for a term or life, etc., the statute with amendments was adopted on July 29, 1919.<sup>26</sup> According to the constitution, the Senate of the Republic consisted of two cassation departments – criminal and civil affairs. The civil cassation department included the administrative department. Subordinate bodies were represented by – the public meeting of cassation departments and the joint Council of cassation departments. All judicial institutions were subordinated to the Senate. The number of senators was determined by 13 (5 in the Criminal Law Department, 8 in the Civil Law Department), who, together with the Chairman and his comrade, were elected by the Constituent Assembly for a term of 2 years, and then the Parliament – for a term of 4 years. Both departments would have their prosecutors. The date of enactment of the statute of the Senate was set on October 1, 1919.

On October 7, 1919, the constituent assembly of Georgia voted and elected senators:<sup>27</sup>

Chairman of the Senate – Davit Kheltuplishvili.

Comrade of the Chairman – Ivane Nakashidze.

Civil Affairs Cassation Department:

Ivane Zurabishvili,

Vasil Omidov,

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24 – Ela., around the court, *Sakhalkho Sakme* (newspaper) #53, 09.02.1919, p. 2.

25 Order of the Minister of Justice; In the Ministry of Justice, *Ertoba* (newspaper) #47, 28.02.1919, p. 3.

26 Art. 118. Law on the introduction of the statute of the Senate of Georgia. Collection of laws and government decrees, publication of the codification department at the Ministry of Justice of the Republic of Georgia (at the Senate of Georgia in 1920), Tiflis, 1920.

27 Constituent Assembly of Georgia (stenographic report), fiftieth (50th) session, 1919, October 7. Tiflis, Palace.

Solomon Mikeladze,  
Levan Asatiani,  
Giorgi Mdinradze.

In the administrative department of the cassation department of civil affairs:

Dimitri Kalandarishvili,  
Grigol Gvelesiani,  
Vladimir Kutateladze.

Cassation Department of Criminal Law Affairs:

Nikoloz Kikodze,  
Mikheil Korkashvili,  
Nikoloz Machavariani,  
Ioseb Roinishvili,  
Giorgi Sidamon-Eristavi.

After this final act of formation of the judicial system of the Republic of Georgia, the issue of the rights and duties of lawyers/attorneys was again on the agenda of the judiciary reform. On November 7, 1919, the Constituent Assembly of Georgia discussed the draft decree “Defining the right to advocate and electing a new Council of Sworn Attorneys”. In the explanation of the draft, the deputy, as well as a well-known lawyer, social democrat Kirile Ninidze, pointed out that the Council of Sworn Attorneys would be considered a part of the judicial chamber according to the order of the Russian Empire and would no longer correspond to the judicial model of the Republic of Georgia. In addition, the existing Council was elected in 1917 for a term of 2 years, and its powers had already expired, while a significant number of the members were no longer physically present in Georgia. In addition, a substantial part of the members of the Council were not subjects of the Republic of Georgia. Therefore, the draft decree, which granted citizens of Georgia the right to be attorneys, doomed this group of lawyers to unemployment. After deliberations and amendments, the constituent assembly approved a compromise option, according to which lawyers from other states had the right to work in Georgia, and the Republic reserved the right to apply to the governments of these states with a similar admission.<sup>28</sup>

After the approval of the decree on November 11, 1919, the existing Council was abolished, and the Georgian Council of Sworn Attorneys was established.<sup>29</sup>

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28 Constituent Assembly of Georgia (stenographic report), fifty-ninth (59th) session, Friday, November 7, 1919. Tiflis, palace.

29 Art. 194. Decree on determining the right to be a lawyer in Georgia and electing a new council of sworn lawyers, a collection of laws and government decrees, published by the codification department at the Ministry of Justice of the Republic of Georgia (in 1920 at the Senate of Georgia), Tbilisi, 1920.

The final agreement for the formation of the justice system of the Democratic Republic of Georgia was the Constitution of Georgia approved by the constituent assembly on February 21, 1921, the 6th chapter (Articles 76-83) of which defined the main fundamental principles.

## SOVIET RUSSIAN OCCUPATION OF 1921 — A LEGAL ENVIRONMENT IN A TOTALITARIAN SYSTEM

After the strike and occupation of the Democratic Republic of Georgia by Soviet Russia in February-March of 1921, the occupying totalitarian regime with the slogan of “dictatorship of the proletariat” immediately started the fundamental breakdown of the Western democratic state institutions existing before the conquest and its replacement by the fictitious Soviet state, and, in fact, extremely centralized party structures.

According to order #1, received immediately after the appearance of the occupying authority – “Revolutionary Committee of the Georgian SSR” (RevCom), the Extraordinary Commission of the Georgian SSR (Cheka) was formed in the capital, Tbilisi. It was the terror apparatus of the totalitarian regime which gained jurisdiction over the proceedings against the citizens under “political” pretexts, thereby wholly denying them the opportunity to enjoy the fundamental rights of a fair trial and self-defence. Until the 1950s, the legal dimension of the state-citizen conflict in the Soviet judicial system was completely removed from the official judicial bodies. It was delegated to the security service of the totalitarian regime, which enjoyed special and virtually unlimited rights. It carried out operational measures, initiated the case, led the investigation, and delivered and executed the judgment. The Cheka-OGPU was only accountable to the Communist Party, and from the late 1920s, the Soviet Prosecutor’s Office exercised only extremely formal supervision over it. In occupied Georgia, approximately 80,000 citizens fell victim to the retribution of this punitive, non-judicial body of the Soviet Russian totalitarian system.

On March 1, 1921, the “revolutionary tribunal” of the 11th Red Army of the occupying RSFSR assumed the function of the highest judicial instance and started working in Tiflis.<sup>30</sup>

The occupation regime, on March 22, 1921, by Decree #6 of the Revolutionary Committee, declared that the entire judicial system of the Democratic Republic of Georgia – “due to being built on class principles, does not correspond to the needs of the broad working masses and cannot ensure the correct implementation of justice”. It also declared the abolition of the Senate of the Republic of Georgia, the Court Chamber with its departments, and martial and conciliatory courts.<sup>31</sup> On April

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30 Revon in the Tribunal; Chronicle, *Komunisti* (newspaper) #5, 06.03.1921, p. 3

31 Decree #6; Abolition of the Senate and other judicial institutions, *Shinsakhhomis Moambe* (Messenger of the

15, by decree #20, the Georgian Council of Sworn Attorneys and the concept of sworn attorneys were abolished.<sup>32</sup> Decree #78 (09.11.1921) determined the procedure for finalizing cases pending before 1921.

By September 1921, the occupation regime adopted the “people’s courts” model in Soviet Russia in Georgia. Thus, the Soviet judicial system in the Georgian SSR took the following form:

- The highest judicial body was the Supreme Revolutionary Tribunal.
- Revolutionary tribunals operated in Tiflis, Batumi and Kutaisi.

“People’s Courts” operated in uyezds and small towns. It consisted of a permanent people’s judge and six on-duty people’s justices for severe criminal offences. For other civil and civil law cases, it consisted of a permanent people’s judge and three on-duty people’s justices.<sup>33</sup>

People’s judges and people’s justices, according to the statute, were officially chosen from the ranks of citizens with the right to vote in Soviet elections. It was inherently discriminatory as it left specific categories of private capital owners and former officials of the Democratic Republic of Georgia without the right to vote. Moreover, in practice, the election of judges and judges was under the strict control of the Bolshevik (Communist) Party.

This order lasted two years. In 1923, the existing system was called “parallelism” in official rhetoric, and Soviet officials and the press spoke of the need for reform. The representatives of the sphere of Soviet justice presented the problem and the ways to solve it as follows:

“... Today, when the proletariat has taken over the country’s leadership, it is necessary to touch justice and put it on a sound basis.

In Soviet Russia, this issue has been radically resolved. Unreliable counter-revolutionary elements have been expelled from all judicial bodies, and workers have been invited to replace them.

It is our turn. The Justice Commissariat of Georgia has already started solving this case and is doing much work.

From the first days of the Soviet revolution, we had to build a new one on the ruins of the old justice system. In the local courts (in small units), the People’s Court Council tried civil and criminal law cases. The Revolutionary Tribunals also tried them as well. It is clear from this that the two

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People’s Commissariat of Internal Affairs) (Journal) #1, 23.04.1921, p. 3.

32 Decree #6; Abolition of the Senate and other judicial institutions, Shinsakhkomi Moambe (Messenger of the People’s Commissariat of Internal Affairs) #1, 23.04.1921, p. 11.

33 Giorgi Sidamon-Eristavi, the aim and purpose of the People’s Commissariat of Justice, long live the First Congress of Soviets of Georgia! Long live the fraternal union of Transcaucasian nations! Long live the brotherhood of the nations of the whole world! Dedicated to the 1st Congress of Workers, Peasants and Red Armymen of Georgia, Land Worker’s Editorial Publishing House, Tbilisi, 1922, p. 102-103.

organizations administered justice. Because of this, we got the unwanted parallelism. Therefore, a double state, a double expenditure of energy and resources, and a widespread confusion of functions is an approximate picture of the organizational scheme of justice in our country Today...

...It is evident that we have to deal with parallelism in justice and undesirable results. Liberation, ridding the court of harmful elements, introducing proletarian elements into it as much as possible, i.e. compiling a court from workers – this is the immediate goal of the reform.

The entire court, therefore, is formed in three instances: local people's courts, then the cassation instance for the people's courts, the courts of East and West Georgia and the highest instance – the Supreme Court of the Republic..."<sup>34</sup>

At its fourth session, the Central Executive Committee of the First Convocation of the Georgian SSR, on June 19, 1923, presided over and adopted the reform draft.<sup>35</sup>

## “COLLEGE OF DEFENDERS” OF THE GEORGIAN SSR

On February 28, 1924, the Central Committee of the Second Convocation of the Georgian SSR, at its second session, made amendments and additions to the “Regulations on Court Structure” approved the previous year.<sup>36</sup> Following these changes, the “College of Defenders” for civil and criminal cases of the Eastern and Western Georgian District Courts of the Georgian SSR was reorganized. Like the judges and justices of the Soviet court, only lawyers with the right to vote and a higher legal education could be members of the College. The members of the College elected the praesidium, which managed the organization's activities. The principles of determining the remuneration of defenders were signed. The “College of Defenders” statute was approved by the People's Commissariat of Justice of the Georgian USSR.

Despite the provision's reservation, most old, experienced lawyers living in Georgia joined the defence collegium. At the same time as allowing the collegium to exist, the architects of the sphere of justice of the occupation totalitarian regime simultaneously launched a hate campaign in the

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34 D. Nasaridze, *Our justice*, *Komunisti* (newspaper) #58, 23.03.1923, p. 1.

35 The fourth session of the Central Executive Committee of All Georgia, *Komunisti* (newspaper) #139, 20.06.1923, p. 1-2.

36 Art. 20. Resolution #88, *Georgian Soc. buckle On Certain Amendments and Additions to the Statute of the Judicial Establishment of the Republic*, *Collection of Laws and Decrees of the Workers' and Peasants' Government of the Socialist Soviet Republic of Georgia #1, Part One* (1924) Tiflis, 1925. pp. 51-53.

Soviet press against the professional association of lawyers. People's Commissar of Justice of the Georgian SSR, Iakob Vardzeli, dedicated a letter full of disgust and anger to "Ablakats":<sup>37</sup>

"...who are these "defenders" made of? Among them, we see the judges expelled by the Soviet government; "experienced" officials in the courts of the Tsarist and Mensheviks, old lawyers who were not allowed to work in the Soviet courts due to political, social and moral considerations; Besides them, of course, all kinds of swindlers, scammers and others are involved in this business.

This entire company is imbued with one common goal; conveniently, they quietly take advantage of the peasants' lack of understanding and ignorance, trick the judge by providing false information, delaying the case, etc.

For what – to "make a name for themselves" and more boldly continue ripping off "clients".

The "Ablakats" who have been released carry out their "good" work in the villages and the cities. Many workers and peasants are tied in their network Today, which gives them even the last money earned by their sweat.

We must remember that these persons do not pay state or local taxes.

Unfortunately, it must be said that many workers are still convinced that if they do not entrust the case to "Ablakat", they will not be able to defend their interests in court. Psychologically, he can only imagine starting a case in court with one.

The working masses' interests and the worker-peasant judiciary's authority demand this event be fought fiercely. The prominent workers and peasants must inform the people and district courts about silent "ablakats" activities. Local judges must remove such "friends" of the court from the people and the court through the executive committees. The court should know and inform the general public that no person other than a member of the defence panel, unless he is a legal representative of the interests of the parties, has access to our courts. The proliferation of legal consultations in needs and districts should be considered the best weapon against silent "Ablakats".<sup>38</sup>

This campaign of hatred against lawyers was especially ruthless during important "show" trials organized by the occupation regime. In March 1924, the prosecution of the Catholicos-Patriarch Ambrosi of the Georgian Orthodox Church and members of the Catholicate Council was held by the Supreme Court of the SSR of Georgia. The defendants' lawyers, members of the defence panel – Kirile Ninidze, Iese Baratashvili, Samson Dadiani, Petre Kavtaradze, Anton Gelazarov, Irakli Guntadze, Mikheil Mgvedlishvili and Aleksandre Kancheli became the object of insults and aggression of the information propaganda of the regime and the party activists mobilized in the courtroom. The Soviet press hysterically cursed them and portrayed them as political accomplices in the "crime" of the members of the Catholic Council. On March 14, 1924, the "Communist" newspaper dedicated

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37 A distorted version of the term – Advocate. It was used in popular language with negative connotations.

38 I. Vardzieli, a fierce fight is needed against "Ablakats", *Komunisti* (newspaper) #182(1037), 13.08.1924, p. 1.

an advanced article to the lawyers with the eloquent title – “Only the enemies and traitors of the people protect the enemies of the people and traitors”, which the regime openly threatened.

“...of course, the same enemies and traitors of our people – the “politicians”, the “Ablakats” who seized the political conscience from the Mensheviks and federalists, i.e. the groups that made counter-revolutionary, reactionary scheming, fighting against the Soviet Union their profession, it is these “heroes” of the “free profession” who are coming out Today in Nadzaladevi to save and rescue the heroes of the clerical counter-revolution.

The working people of Georgia and Tbilisi, in particular, should know this. He should know who is being tried and who is trying to help the criminals, and he knows that, too.

... The panel of defenders and private individuals, particularly Mr. Ninidze, are trying in vain to silence the press, not allowing it to say what needs to be said.

The Ninidzes made Ambrosi talk earlier; they showed him the address of Genoa. All in vain. Today, the day belongs to us; it belongs to the working people, and through its representatives, it will say its say.”<sup>39</sup>

By 1925, about 200 lawyers were united in the collegium of defenders throughout the Georgian SSR.

The totalitarian regime during the 1920s and 1930s did not have complete loyalty among the broad strata of Society and exercised effective control mainly through the use of terror instruments. It was not able to create a majority of “Soviet lawyers” on the board of Defenders and tried to control and neutralize it with permanent purges.

The first campaign to purge the Board of Defenders occurred in January 1925. Eight members were expelled from the collegium, and 14 were recognized as automatically dismissed.<sup>40</sup>

The next, more ruthless phase of the purge came in 1929. The announcement of another ostracism of lawyers was voiced in the Soviet press by the old Bolshevik – Giorgi Sturua, the necessity of which he explained with a highly exemplary argument based on the Russian Bolshevik worldview:

“...Yes, our judges and prosecutors are not so trained in our laws as the defenders, and perhaps they are not able to formulate their verdicts as clearly and firmly as they should, But does all this give the right to the defending party to make fun of the representatives of the proletarian court?

Instead of the defence side helping the old judges and prosecutors, the workers and the peasants were driven out of their circle; instead of the defence side helping to increase the authority of

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39 “Enemies of the people and traitors are protected only by enemies and traitors of the people”, *Komunisti* (newspaper) #60(915), 14.03.1924, p. 1.

40 Purification of the Board of Defenders, list of members excluded from the Board of Defenders, *Komunisti* (newspaper) #17(1172), 21.01.1925, p. 7.



our people's courts and prosecutor's office, some "defenders" went on a direct attack against them and did not hesitate in any way to throw them in the mud.

We will not allow the reckless "defenders" to do this.

...We are sure that the Supreme Court of Georgia will draw an appropriate conclusion from our instructions and, benefiting from the purge of the Soviet apparatus, will itself purge the ranks of the defence panel to establish a normal relationship between the court and the prosecutor's office, on the one hand, and the panel of defenders, on the other hand."<sup>41</sup>

Unsurprisingly, the People's Commissariat of Justice and the Supreme Court reacted immediately. As the protocol kept in the personal archive of the lawyer Irakli Razmadze informs,<sup>42</sup> 61 members were expelled from the panel of defenders during the second large-scale purge. As an example, we present the characterization and "accusations" prepared by the Commission of Disbarred Lawyers:

"...

**Arutinov Samson** – a well-known figure of the Armenian People's Party and former minister of the Dashnak government... opposed the Soviet government and had a negative attitude towards Soviet construction. Emphasis – a hired defender of class enemies. They were trying to confuse the court with fake documents.

...

**Bokeria Evgeny** – a former member of the Socialist-Federalists (right-wing) party, a clear opponent of the Soviet government. He praises bourgeois Georgia, defames the dictatorship of the proletariat, and does not miss an opportunity to preach against the measures of the Soviet government. He was arrested several times by OGPU. Former homeowner. Amoral member of the board of defenders.

...

**Kandelaki Melkisedek** – works with the help of brokers. He wrote and spread all kinds of rumours against the Soviet government. He makes fun of court workers.

...

**Lominadze Grigol** was a former legal adviser of the Ministry of Land Development and, during the Mensheviks, of the Ministry of Internal Affairs and the Special Squad, with disciplinary violations. He was expelled from the board of defenders. He consciously inhibits pursuing the correct

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41 G. Sturua, it is necessary to clean the College of Defenders, *Komunisti* (newspaper) #210 (2556), 12.09.1929, p. 2.

42 Protocol of the meeting of commissions for the cleaning of members of the College of Defenders, Ketevan Dadiani-Razmadze Collection, Soviet Past Research Laboratory, Public Archive.

class line due to his nausea and self-interest. He does not shy away from immoral actions—inaccurate members of the board of defenders.

...

**Ninidze Kirile** – enemy of the Soviet government; An incorrigible Menshevik. During the cleaning, he held himself defiantly and did not want to answer several questions of a political nature.

...”

According to the resolution of March 13, 1931, the State Council of the Georgian SSR and the Central Committee of the Georgian SSR declared the panel of defenders disbanded, approved a temporary regulation and instructed the Supreme Court of the Georgian SSR to reorganize it within two months.<sup>43</sup> In 1934, a new statute replaced the temporary statute.

The general cleansing and destruction of the pre-Soviet generation of Georgian lawyers took place during the Great Soviet Terror – 1937-1938. During mass terrorism, the Soviet penal apparatus arrested, shot, or deported many representatives of the older generation of lawyers to the “Gulag”. Among them were former and active members of the Board of Defenders – Evgeni Bokeria, Ivane Gobechia, Samson Dadiani, Shota Dadiani, Mikheil Gvamichava, Nikoloz Atoev, Ioseb Baratashvili, Ioseb Machavariani, Ilia Firtskhalayishvili, Petre Kavtaradze, Kirile Ninidze, Dimitri Gambashidze, Ivane Cherkezishvili and others—many, whose identity and fate are the subject of further in-depth research.

## CONCLUSION

During the years 1921-1938, formed a quasi-judicial space created by the Soviet Russian occupation and totalitarian regime by establishing an atmosphere of permanent and total terror as a result of campaigns of psychological and physical attacks on the lawyers/advocate corps and mass repressions, the system succeeded and came close to the ideal model set by Giorgi Sturua. – where the Soviet court, prosecutor’s office, and bar were an organically connected and harmoniously co-operating structure, and the rare exceptions faithful to the professional code could not change the

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43 Art. 88. Resolution of the Central executive Committee and Council of State Commissars. On the reorganization of the board of the College of Defenders and the approval of the temporary statute of the board of defence attorneys at the Supreme Court of the Georgian SSR. On Some Amendments and Additions to the Provisions on the Judiciary of the Republic. Collection of Laws and Decrees of the Workers’ and Peasants’ Government of the Socialist Soviet Republic of Georgia #8, Part One (1931) Tiflis, 06.05.1931. p. 187.

general climate in this system. By trying to protect their principles, even in post-Stalin's softened totalitarianism conditions, they often posed a physical threat to themselves and their colleagues.

The generation of lawyers and attorneys borne of such an environment faced establishing one of its fundamental elements of founding a democratic country in the 1990s – an independent justice system. The apparent result of their solution is the contemporary Georgian judiciary. By critical analysis, contrasting the different dimensions of past centuries, and identifying legacy through this retrospective, it becomes a relatively easy task for the reader to recognize the ideals and values of the contemporary Georgian judiciary.