



# **JUDICIAL REFORM INDEX**

FOR

# **GEORGIA**

*September 2005*

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ISBN: 1-59031-689-4

Printed in the United States of America

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740 15<sup>th</sup> Street, NW, Washington, DC 20005

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## Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central and East European Law Initiative (ABA/CEELI). Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA/CEELI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA/CEELI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, ABA/CEELI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

## Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L.. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

- (1) the reliance on formal indicators of judicial independence which do not match reality,
- (2) the dearth of appropriate information on the courts which is common to comparative judicial studies,
- (3) the difficulties inherent in interpreting the significance of judicial outcomes, or
- (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

*Id.* at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: "[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy." Larkins, *supra*, at 616.

### **ABA/CEELI's Methodology**

ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary*; *Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"*; and *Council of Europe, the European Charter on the Statute for Judges*. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA/CEELI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA/CEELI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA/CEELI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI's Executive and Advisory Boards, as well as outside experts, ABA/CEELI decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If

the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Cf. Cohen, *The Chinese Communist Party and ‘Judicial Independence’: 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and — as JRIs are updated — within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help ABA/CEELI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA/CEELI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country’s judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA/CEELI offers this product as a constructive step in this direction and welcomes constructive feedback.

## **Acknowledgements**

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association’s Central and East European Law Initiative (ABA/CEELI) (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-Present) directed the finalization of the JRI. Assistance in research and compilation of the JRI was provided by Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI.

During the course of developing the JRI, ABA/CEELI benefited substantially from two expert advisory groups. ABA/CEELI would like to thank the members of ABA/CEELI’s First Judicial Advisory Board, including Tony Fisser, Marcel Lemonde, Ernst Markel, Joseph Nadeau, Mary Noel Pepys, and Larry Stone, who reviewed earlier versions of this index. Additionally, ABA/CEELI would like to thank the members of its Second Judicial Advisory Board, including Luke Bierman, Macarena Calabrese, Elizabeth Dahl, Elizabeth Lacy, Paul Magnuson, Nicholas Mansfield, Aimee Skrzekut-Torres, Roy T. Stuckey, Robert Utter, and Russell Wheeler, who



stewarded its completion. Finally, ABA/CEELI also expresses its appreciation to the experts who contributed to the ABA/CEELI Concept Paper on Judicial Independence: James Apple, Dorothy Beasley, Nicholas Georgakopolous, George Katrougalos, Giovanni Longo, Kenneth Lysyk, Roy Schotland, Terry Shupe, Patricia Wald, and Markus Zimmer.

## **Assessment Team**

The Georgia JRI 2005 analysis assessment was conducted by Thomas F. Cope, with the assistance of ABA/CEELI Staff Attorneys Valeri Amisulashvili and Marika Bandzeladze. The team received strong support from the ABA/CEELI staff in Tbilisi and Washington, including Country Director Marilyn Zelin, Associate Country Director for ABA/CEELI's Caucasus Programs Claude Zullo, Judicial Reform Focal Area Deputy Coordinator Olga Ruda, and Program Officer Julie Garuccio. The conclusions and analysis are based on interviews conducted in Georgia during September 2005 and documents reviewed at that time. Records of relevant authorities and individuals interviewed (whose names are kept confidential) are on file in the Washington, DC office of ABA/CEELI. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

## Executive Summary

### Brief Overview of the Results

The 2005 Judicial Reform Index (JRI) assessment for Georgia was conducted at a time of considerable change and uncertainty about the future of the judiciary due to the reorganization of the courts that began in 2005 and will continue through 2006. As illustrated in the Table of Factor Correlations, Georgia scored positively on only two of the thirty JRI factors (Adequacy of Judicial Salaries and Public and Media Access to Proceedings). Fifteen factors received a negative correlation, including most factors related to judicial accountability and efficiency, financial resources and structural safeguards, and judicial powers. These results are comparable to the performance of other similarly situated countries in the region, where the ABA recently implemented the JRIs.<sup>1</sup> It should be noted that after the JRI assessment was conducted, the Parliament addressed a number of shortcomings that are identified in the assessment.

### Concerns Relating to Judicial Independence

- One of the most serious issues facing the Georgian judiciary is ***improper influence from the executive branch and the procuracy***, particularly in criminal cases, despite constitutional and other guarantees of judicial independence. Such influence is said to have increased since 2003. Some respondents asserted that no court in Georgia had the reputation for being independent, and that even the Constitutional Court seeks ways to avoid deciding difficult issues in politically sensitive cases. On the other hand, others commended the Constitutional Court for being effective.
- Another threat to judicial independence is ***the use of disciplinary proceedings*** for gross or repeated violations of the law in hearing a case — that is, for making mistakes. It appears that most disciplinary cases are commenced not for ethical violations per se, but for judicial mistakes. Apparently, the practice has developed of ***filing disciplinary complaints against judges in lieu of formally appealing a decision***. Judges may, in fact, be disciplined for decisions that are not appealed and therefore remain in effect. Further, prosecutors have reportedly used the threat of filing a disciplinary complaint to influence judges' decisions, particularly in matters of pretrial detention. For example, in 2005, one judge who had denied a prosecutor's request for pretrial detention was disciplined for mistakes following an extensive review of his decisions by the High Council of Justice (HCOJ), an advisory body to the president of Georgia addressing issues affecting the judiciary's ability to function and administer justice effectively. Disciplining a judge for mistakes is also reportedly used to accomplish other HCOJ objectives, such as disciplining judges for ethical violations that cannot be proven. For example, when a judge is suspected of corruption, but evidence to prove it is lacking, the HCOJ reportedly reviews the judge's decisions, looking for mistakes that can form the basis for discipline.
- Judicial independence may be questioned even in the ***selection and appointment process***. Except for the Supreme Court judges, judges of the common courts are appointed and dismissed by the President of Georgia on the recommendation of the HCOJ. Although such judges must pass a qualification examination – which has improved significantly in the past year – and meet other objective criteria, selection and appointment are also based on subjective criteria, such as professional and moral reputation, and professional work experience. The basis for selecting certain judicial candidates rather than others is neither clear nor transparent.

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<sup>1</sup> Other JRI reports are available at <<http://www.abanet.org/ceeli/publications/jri/home.html>>.

## Concerns Relating to Reorganization of the Common Courts

- The ongoing reorganization of the common courts, expected to be completed by the end of 2006, will consolidate the 75 existing first instance courts into some 15 unified regional (city) courts, with the appointment of magistrate judges for administrative-territorial units under the jurisdiction of the regional (city) courts. Whether the benefits of the reorganization will outweigh its costs remains to be seen. Significant issues include the problem of **how existing courthouses can accommodate all the judges** of the consolidated courts, and the potentially complicating effect of consolidation on **access to justice**.
- One important consequence of the reorganization has been the **placing of many judges of the reorganized courts on the “reserve list.”** This reduction in the number of active judges has exacerbated the problem of judicial vacancies and has led to increased delays in hearing cases. Concerns have also been raised about the lack of transparency in the HCOJ’s decisions as to which judges to assign to the consolidated courts and which to place on the reserve list, as well as the apparent absence of objective criteria for making such decisions. This, in turn, has fueled suspicion among judges about the HCOJ and its motives. A more important result is that the uncertainties surrounding the reorganization and the reserve list have caused many judges to be fearful and concerned about their future. Judges who have such fears and concerns are less likely to be independent and more likely to be susceptible to influence.

## Other Concerns

The JRI identified a number of additional important issues concerning the judiciary, including the following:

- shortage in the number of existing judicial positions and problems with a large number of **judicial vacancies**, which have resulted in significant **delays** in the resolution of cases;
- lack of a meaningful **initial judicial training** program and limited availability of **continuing education** for judges;
- insufficient emphasis placed on and little training in **professional ethics**;
- limited influence afforded to the judiciary over the amount of **funds budgeted** for the common courts and inadequate **material and technical support** provided to them; and
- **ineffective enforcement of judgments**, particularly those against the state.

## Significant Judicial Reform Measures since the Assessment

It should be noted that after this JRI assessment was conducted, the Parliament addressed a number of shortcomings that are identified in the assessment. Significant amendments were made to the Law on Common Courts, the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts, the Civil Procedure Code, and the Criminal Procedure Code.

- **The HCOJ was expanded** from nine to eighteen members. Four are ex officio (Chairperson of the Supreme Court, Chairperson of the Legal Committee of the Parliament, Minister of Justice, and Prosecutor General). Two members of the HCOJ are appointed by the President, four (three of whom must be members of the Parliament) are elected by the Parliament, and eight are elected from among the judges of the common courts by the Administrative Committee of the Conference of Judges. This amendment

gives judges half the seats on the HCOJ, in accordance with Principle 1.3 of the Council of Europe's European Charter on the Statute for Judges. Nevertheless, the HCOJ remains part of the executive branch and is considered highly politicized.

- **To address concerns about the protracted disciplinary process**, the Parliament adopted amendments to the Law on Disciplinary Responsibility of Judges, which become effective in March 2006. One of these changes eliminated the three-person disciplinary commission that was responsible for investigating complaints against a judge, but it did not identify who will conduct the investigation. Perhaps the most significant change was replacing panels of the Disciplinary Council (appointed by the Conference of Judges) with a six-member Disciplinary Collegium (three of whose members must be judges) to decide disciplinary cases. Because the new Disciplinary Collegium is elected by the HCOJ from among its members, the HCOJ's authority over the disciplinary process will be considerably increased. Previously, parties to disciplinary proceedings could appeal a decision issued by a Disciplinary Panel to the full Disciplinary Council, and then to the Disciplinary Chamber of the Supreme Court, which could review only procedural issues. In the future, appeals of the Disciplinary Collegium's decisions will go directly to the Disciplinary Chamber, which will have authority to review both factual and procedural issues.
- Effective January 1, 2006, the Parliament **significantly raised judicial salaries**, which had not been raised since 1998, making judges among the highest paid employees in public service and thus removing a possible cause for corruption.
- Amendments to the procedural codes that came into effect on October 1, 2005, gave judges **contempt powers** to impose a fine of GEL 50 to 500 on those who cause disorder in court. Additionally, persons who show obvious and egregious disrespect toward the court can be jailed for up to thirty days.
- **Court marshals** were introduced to protect courthouses and maintain order in courtrooms during proceedings, thereby **improving judicial security**.
- A law to establish a **"High School of Justice"** has been adopted. The High School of Justice is scheduled to begin operations in Spring 2006. Initially, it will provide continuing education for sitting judges. Beginning in 2008, it will offer fourteen months of theoretical and practical training for "students of justice," that is, candidates for appointment as judges.



## Georgia Background

Georgia is located in the south Caucasus, bordering Russia, Armenia, Turkey, and Azerbaijan. Georgians trace their roots back to the mythic heroes Prometheus and Jason. The first settlements date back more than two million years. Georgia's early story is one of invasion and domination by Romans, Turks, and Persians, alternating with periods of unification under strong kings. Georgia was the second country in the region to convert to Christianity – after Armenia. At the beginning of the nineteenth century, it was annexed by Russia. Georgia asserted its independence for a few years beginning in 1918, but once again came under Russian domination when the Soviet Army captured the country. In 1991, with the collapse of the Soviet Union, Georgia became independent, but civil war soon broke out with devastating social and economic impacts. Two regions, South Ossetia and Abkhazia, broke away with Russian support, and still retain de facto independence.<sup>2</sup> Over two hundred thousand internally displaced persons from those regions fled to other parts of Georgia, where they still suffer economic deprivation.

In 1995, former Soviet Foreign Minister Eduard Shevardnadze was elected President after a period as head-of-state, succeeding the ultranationalist leader Zviad Gamsakhurdia, who had been deposed in 1992. Shevardnadze led the country until November 2003, when Mikhail Saakashvili, a 35-year old member of the reforming faction of the government, came to power on the tide of the so-called Rose Revolution. The Rose Revolution brought optimism, a promise of democratic reform, and an improved economy. While many strides toward democracy have been made – notably the establishment of a relatively uncorrupt police force—the country is still beset with high unemployment, corruption, and poverty. As the Freedom House *Nations in Transit* report for Georgia observes, “The new government, eager to maintain the momentum of revolutionary change and achieve fast results, has not always respected existing laws and procedures in pursuing its policies.” FREEDOM HOUSE, *NATIONS IN TRANSIT 2005: DEMOCRATIZATION IN EAST CENTRAL EUROPE AND EURASIA 260* (2005) [hereinafter NIT 2005].

## Legal Context

Georgia's legal system is based on the civil law tradition. Georgia adopted its post-Soviet Constitution, recognized as the supreme law of the state, on August 24, 1995. CONSTITUTION OF THE REPUBLIC OF GEORGIA (Aug. 24, 1995) [hereinafter CONSTITUTION]. The Constitution guarantees basic human rights and mandates the separation of powers and the independence of the judiciary. Georgia has a representational form of government with a unicameral parliament. The country is organized into regional and urban administrative-territorial units. The Government consists of a Prime Minister and other ministers. The President both serves as head of state and exercises special jurisdiction over the Ministries of Interior and Defense. The Prime Minister heads the remaining ministries. The Constitution was amended in February 2004 to establish a new governmental structure. According to Freedom House, the 2004 amendments to the Constitution “weakened the Parliament and moved Georgia in the direction of superpresidentialism.” NIT 2005, at 260. The Constitution was amended again in 2005 to reduce the number of members of Parliament from 235 to 150, with 100 proportionally elected and 50 elected by a majority system for four-year terms. This amendment will become effective in 2008. President Saakashvili's party currently has a parliamentary majority of almost 70%.

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<sup>2</sup> The Constitution of Georgia does not accept the de facto status of Abkhazia and South Ossetia. It affirms, rather, that “[t]he territory of Georgia shall be determined as of December 21, 1991. The territorial integrity of Georgia and the inviolability of the state frontiers, being recognized by the world community of nations and international organizations, shall be confirmed by the Constitution and laws of Georgia.” CONSTITUTION, art. 2.1. Because no JRI interviews were conducted in Abkhazia or South Ossetia, the description of Georgia's judiciary and the conclusions of this assessment apply only to the remainder of Georgia.

Since 1999, Georgia has been a member state of the Council of Europe. It ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and acceded to the jurisdiction of the European Court of Human Rights in Strasbourg on May 20, 1999. According to the Constitution, international treaties ratified by Georgia take precedence over domestic legislation, if they do not conflict with the Constitution. CONSTITUTION, art. 6.2.

During the Soviet era, the prosecutor controlled the outcome of cases when a political interest was at stake or when one party had the right personal connections. Although the Soviet Constitution included a right to defense counsel and presumption of innocence in criminal cases, the advocate's role was circumscribed in practice, with representation that was more pro forma than real. Despite the constitutional presumption of innocence, the defendant's guilt was assumed, and the advocate's role was simply to negotiate a more lenient sentence, if possible. In political cases, Communist Party leaders instructed judges how to decide a case, a practice that was referred to as "telephone justice." Such directives were rarely ignored. Civil cases were largely confined to domestic matters and minor disputes involving personal property, since the state owned large commercial and industrial enterprises and agricultural properties. Private legal practice, as it is known in western countries, was largely nonexistent. Although Georgia has made progress since independence in moving toward the rule of law, its legal system still reflects aspects of the Soviet legacy.

## History of the Judiciary

A series of laws in 1990 and resolutions of the Supreme Council of the Republic of Georgia in 1991 and later years established the structure of the post-independence judicial system, which included arbitration courts for commercial disputes, as well as military courts. Enactment of the Organic Law on Common Courts on June 13, 1997 swept away the arbitration and military courts and provided for a three-tier court system consisting of regional courts, district courts of appeal, and a Supreme Court. Regional courts heard routine criminal, civil, and administrative cases. The district courts heard appeals from the regional courts and also had first instance jurisdiction in major criminal and civil cases (e.g., civil cases with a claim of more than GEL 500,000, or about \$278,000).<sup>3</sup> Although the Supreme Court functioned as a court of cassation hearing appeals from the regional courts, it was also a court of first instance for capital crimes.

Amendments to the Law on Common Courts in June 2005 essentially maintained the three-tier structure, but transferred the first instance jurisdiction of the district courts (now called appellate courts) and of the Supreme Court to the regional courts effective 1 November 2005. Under this judicial reorganization, which will continue through 2006, the first instance courts of a region are being consolidated into unified regional (city) courts, thereby reducing the number of first instance courts from 75 to approximately 15. Magistrate judges will be appointed for administrative-territorial units under the jurisdiction of the regional (city) court to conduct trials of less important civil cases (e.g., disputes involving GEL 2,000 or less, about \$1,100 or less) and rule on issues relating to criminal investigations, such as detention of suspects. Civil cases involving more than GEL 2,000, divorces, and adoptions of children will be decided in the regional (city) court. Among the anticipated benefits of the reorganization are that judges will be more specialized and "new faces" can be appointed to the bench. On the other hand, the reorganization is expected to result in a loss of experienced judges, with newly appointed regional (city) court judges trying complex criminal cases that were formerly tried by higher instance courts, and to result in hardships for parties who will have to travel considerable distances (as much as 250 km, according to one judge) to the regional court, thereby potentially limiting access to justice.

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<sup>3</sup> In this report, Georgian lari are converted to United States dollars at the approximate rate of conversion at the time when the interviews were conducted (\$1.00 = GEL 1.80).

## Structure of the Courts

The regional (city) courts, appellate courts, high courts of autonomous republics, and Supreme Court are referred to collectively as common courts or courts of general jurisdiction. Georgia also has a Constitutional Court.

The **regional or city courts** are courts of first instance and are established by Presidential decree, based on the recommendation of the High Council of Justice (HCOJ). ORGANIC LAW OF GEORGIA ON THE COMMON COURTS OF GEORGIA, art. 13.1 (Dec. 12, 2004) [hereinafter LAW ON COMMON COURTS]. A city court has jurisdiction in the city in which it is located, and a regional court has jurisdiction in the region outside a city. *Id.* arts. 13.2-3. Regional (city) courts have two or more judges (at least one for criminal cases, and another for civil and other cases), as determined by the President, and may include magistrate judges. *Id.* arts. 14, 15<sup>1</sup>.1. Cases in regional (city) courts are heard by a single judge or, if required by law (e.g., for serious crimes), by a three-judge panel. *Id.* art. 15.1. If necessary, the HCOJ can temporarily assign a judge from another regional court to sit on a three-judge panel. Magistrate judges hear cases individually. *Id.* art. 15.2. By an amendment to the Constitution in February 2004, juries are now authorized in the common courts, “in accordance with a procedure and in cases prescribed by law.” CONSTITUTION, art. 82.5. Draft amendments to the Criminal Procedure Code have not yet been enacted to specify the role of juries.

The **appellate courts** are courts of second instance and are established by Presidential decree, based on the HCOJ’s recommendation. LAW ON COMMON COURTS, art. 19. In addition, two **high courts of autonomous republics**, which function as appellate courts, have been established: the High Court of the Abkhazian Autonomous Republic and the High Court of the Adjarian Autonomous Republic.<sup>4</sup> *Id.* arts. 28, 29. Each appellate court consists of a Chamber of Civil Cases, Chamber of Administrative Cases, Chamber of Criminal Cases, and an Investigative Collegium. *Id.* arts. 20.2, 30. High courts of autonomous republics also have a Presidium, which consists of the chairperson and deputy chairperson of the court, the chairpersons of its chambers and collegium, and three other judges. *Id.* art. 30.6. It decides motions from the Prosecutor General of Georgia or the chairperson of the court regarding judgments in criminal cases when there is newly discovered evidence. *Id.* art. 32.3. Appellate courts hear appeals from the regional (city) courts, as well as disputes arising under the Election Code, generally in three-judge panels. *Id.* arts. 21.1, 32.1. Appeals relating to arrest and detention are heard by individual judges in the Investigative Collegium. *Id.* arts. 21.2, 32.2. There are presently appellate courts in Tbilisi and Kutaisi.

The **Supreme Court** is a court of cassation, that is, it reviews the lower courts’ application of law to the facts, but does not re-evaluate the facts themselves. It hears appeals from the appellate courts and has discretion as to what cases to review. The court consists of forty-four judges. It has a Chamber of Civil, Entrepreneurial, and Bankruptcy Cases; Chamber of Administrative Cases; Chamber of Criminal Cases; Grand Chamber; Plenum; and Disciplinary Collegium. ORGANIC LAW OF GEORGIA ON THE SUPREME COURT OF GEORGIA, art. 7.1 (June 13, 1997) [hereinafter LAW ON THE SUPREME COURT]. The various chambers hear cases in three-judge panels, but the nine-member Grand Chamber hears especially complicated cases. LAW ON THE SUPREME COURT, arts. 9.2, 10. The Supreme Court has authority to:

- supervise the administration of justice by the common courts;
- try cases in the first instance when authorized by law to do so;
- confirm the commission of high treason or other criminal offense by the President, the Chairperson of the Supreme Court, members of the Government, the Prosecutor

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<sup>4</sup> Following completion of this assessment, the Parliament amended the Law on Common Courts to liquidate these courts effective November 2005.

- General, the President of the Chamber of Control, or members of the Council of the National Bank, thereby rendering them subject to dismissal by Parliament; and
- participate in disciplinary proceedings against judges.

CONSTITUTION, arts. 63, 64, 75.2(b); LAW ON THE SUPREME COURT, art. 8.

The **Constitutional Court** consists of nine judges, including a Chairperson, two Vice Chairpersons, and a Secretary. CONSTITUTION, art. 88.2; LAW OF GEORGIA ON THE CONSTITUTIONAL COURT OF GEORGIA, art. 5 (Jan. 31, 1996) [hereinafter LAW ON THE CONSTITUTIONAL COURT]. The Constitutional Court's primary function is to be "the judicial body of Constitutional review." CONSTITUTION, art. 83.1; LAW ON THE CONSTITUTIONAL COURT, art. 1. It hears constitutional claims and submissions either in the Plenum of all nine judges, presided over by the Chairperson, or in one of two boards of four judges each, presided over by a Vice Chairperson. *Id.* arts. 11, 12.1(d), 13.1, 53.2. The court has a number of responsibilities, many of them with important political implications, in addition to determining the constitutionality of laws, international treaties, and governmental actions, including the following:

- resolve disputes on the constitutionality of referenda and elections;
- confirm a violation of the Constitution by the President, the Chairperson of the Supreme Court, members of the Government, the Prosecutor General, the President of the Chamber of Control, or members of the Council of the National Bank, thereby rendering them subject to dismissal by Parliament;
- adjudicate disputes between state bodies concerning their respective spheres of authority;
- determine the constitutionality of the formation and activity of political associations; and
- hear appeals of the pre-term termination of office of a member of the Parliament.

CONSTITUTION, arts. 54.1, 63, 64, 75.2(a), 89.1; LAW ON THE CONSTITUTIONAL COURT, art. 19.

## Conditions of Service

### *Qualifications*

Common court judges must be legally competent, citizens of Georgia, at least twenty-eight years of age, with a university degree in law and at least five years of experience practicing law, and be able to speak the state language. CONSTITUTION, art 86.1; LAW ON COMMON COURTS, art. 46.1. Except for current or former members of the Constitutional Court, candidates for appointment to the common courts must also pass a qualification examination. LAW ON COMMON COURTS, arts. 46.1, 46.5; LAW ON THE SUPREME COURT, art. 20.1. A prior criminal record or dismissal as a judge for a disciplinary violation or for holding an office or engaging in activities incompatible with judicial status,<sup>5</sup> or termination of judicial authority under the Law on Common Courts disqualifies a candidate for appointment as a common court judge. LAW ON COMMON COURTS, art. 46.2.

Constitutional Court judges must be citizens of Georgia, at least thirty years of age, and have a university degree in law. CONSTITUTION, art. 88.4; LAW ON THE CONSTITUTIONAL COURT, art. 7. There is no formal requirement that judges of the Constitutional Court have any legal experience.

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<sup>5</sup> Judges are prohibited from engaging in any other occupation or "remunerative activity," except for teaching, and may not be members of a political association or party or engage in any political activity. CONSTITUTION, arts. 26.5, 86.3; LAW ON THE SUPREME COURT, art. 20.4; LAW ON THE CONSTITUTIONAL COURT, art. 17.

## **Appointment and Tenure**

The President has authority to appoint and dismiss judges of the regional (city) courts, appellate courts, and high courts of autonomous republics, on the recommendation of the HCOJ. CONSTITUTION, art. 73.1(p); LAW ON COMMON COURTS, arts. 48, 53. In addition to making such recommendations, the HCOJ advises the President on judicial reform. LAW ON COMMON COURTS, art. 60.1. When this assessment was conducted, it consisted of nine members, only four of whom were required to be judges. *Id.* arts. 60.2-3.

The selection of judges for the regional (city) courts, appellate courts, and high courts of autonomous republics is based on a competition, following public announcement of a judicial vacancy. *Id.* arts. 47.1-3. The HCOJ selects a candidate for each position based on his or her qualification examination results, “professional and moral reputation, professional work experience, and physical health.” *Id.* arts. 47.3-4. The HCOJ then submits the name of each candidate selected to the President of Georgia for appointment. *Id.* arts. 47.5, 48. If the HCOJ does not select a candidate or if the President does not appoint the candidate it selects, a new competition for the position is announced. *Id.* art. 47.6. Common court judges are appointed for a term of not less than ten years, and may serve for more than one term. CONSTITUTION, art. 86.2.

The placing of judges on the “reserve list” as part of the reorganization of the common courts during 2005 and 2006 has raised significant issues regarding the tenure of judges in the affected courts. Under the Law on Common Courts, if a regional (city) court, appellate court, or high court of an autonomous republic is liquidated or if the number of its judicial positions is reduced as part of a reorganization of the judiciary, the judges can be assigned to a court of the same or a lower instance with their prior written consent. *Id.* art. 54<sup>1</sup>.1. Judges who cannot be assigned to another court are dismissed and, if they consent in writing, are placed on the reserve list within three months after liquidation of the court or reduction in positions. *Id.* art. 54<sup>1</sup>.2. Judges on the reserve list are entitled to receive their usual salary until their term expires or they are expelled from the reserve list (for example, for a disciplinary violation while serving as judge) and may be assigned to another court if they consent. *Id.* art. 54<sup>1</sup>.3.

The Chairperson and other judges of the Supreme Court are appointed by a majority vote in the Parliament, upon nomination by the President, for a term of ten years. CONSTITUTION, art. 90.2; LAW ON THE SUPREME COURT, art. 21.1. They are not prohibited from serving more than one term.

Three judges of the Constitutional Court are appointed by the President, three are elected by the Parliament, and three are appointed by the Supreme Court. CONST., art. 88.2; LAW ON THE CONSTITUTIONAL COURT, art. 6. They serve for a ten-year term and may not be reappointed. CONSTITUTION, arts. 88.2-3; LAW ON THE CONSTITUTIONAL COURT, art. 8. The Chairperson, two Vice Chairpersons, and a Secretary of the Constitutional Court are elected by a majority of the Court’s judges. CONSTITUTION, art. 88.2; LAW ON THE CONSTITUTIONAL COURT, arts. 10.1, 10.5, 14.1. The Chairperson is nominated by the President of Georgia, the Chairperson of Parliament, and the Chairperson of the Supreme Court; and the Vice Chairpersons and Secretary are nominated by the Chairperson of the Constitutional Court. LAW ON THE CONSTITUTIONAL COURT, arts. 10.3-4, 12.1(c). The Chairperson, Vice Chairpersons, and Secretary serve five-year terms, and only the Secretary may serve for more than one term. CONSTITUTION, art. 88(2); LAW ON THE CONSTITUTIONAL COURT, arts. 10, 14.

## **Training**

Judges newly appointed to the regional (city) courts, appellate courts, and high courts of autonomous republics must complete a judicial training course before they are allowed to serve as judges, unless they already have at least one year of judicial experience. LAW ON COMMON COURTS, arts. 47.8, 69.2. The course may not exceed three months in duration, but in practice it is only two weeks long.



Sitting judges are not required to participate in continuing legal education courses, but are encouraged to do so by their Code of Ethics. Judges may participate in seminars offered by a host of organizations, including the World Bank supported Judicial Training Center, but sustainability of these efforts largely depends on international donors.

## Georgia Judicial Reform Index (JRI) 2005 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

### Table of Factor Correlations

I. Quality, Education, and Diversity		
Factor 1	Judicial Qualification and Preparation	Neutral
Factor 2	Selection/Appointment Process	Neutral
Factor 3	Continuing Legal Education	Negative
Factor 4	Minority and Gender Representation	Neutral
II. Judicial Powers		
Factor 5	Judicial Review of Legislation	Neutral
Factor 6	Judicial Oversight of Administrative Practice	Neutral
Factor 7	Judicial Jurisdiction over Civil Liberties	Negative
Factor 8	System of Appellate Review	Neutral
Factor 9	Contempt/Subpoena/Enforcement	Negative
III. Financial Resources		
Factor 10	Budgetary Input	Negative
Factor 11	Adequacy of Judicial Salaries	Positive
Factor 12	Judicial Buildings	Negative
Factor 13	Judicial Security	Negative
IV. Structural Safeguards		
Factor 14	Guaranteed Tenure	Negative
Factor 15	Objective Judicial Advancement Criteria	Neutral
Factor 16	Judicial Immunity for Official Actions	Neutral
Factor 17	Removal and Discipline of Judges	Negative
Factor 18	Case Assignment	Neutral
Factor 19	Judicial Associations	Negative
V. Accountability and Transparency		
Factor 20	Judicial Decisions and Improper Influence	Negative
Factor 21	Code of Ethics	Negative
Factor 22	Judicial Conduct Complaint Process	Neutral
Factor 23	Public and Media Access to Proceedings	Positive
Factor 24	Publication of Judicial Decision	Neutral
Factor 25	Maintenance of Trial Records	Neutral
VI. Efficiency		
Factor 26	Court Support Staff	Neutral
Factor 27	Judicial Positions	Negative
Factor 28	Case Filing and Tracking Systems	Negative
Factor 29	Computers and Office Equipment	Negative
Factor 30	Distribution and Indexing of Current Law	Negative

## I. Quality, Education, and Diversity

### Factor 1: Judicial Qualification and Preparation

*Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Judges are required to have a university degree in law and, except in the case of the Constitutional Court, five years of legal experience, though the experience need not involve practicing before courts. Despite significant shortcomings in legal education, newly appointed judges are said to be reasonably well qualified, though lacking in practical skills.</p>	

#### Analysis/Background:

Common court judges, including Supreme Court judges, must be legally competent, citizens of Georgia, at least twenty-eight years of age, with a university degree in law and at least five years of experience practicing law, and be able to speak the state language. CONSTITUTION, art. 86.1; LAW ON COMMON COURTS, art. 46.1; LAW ON THE SUPREME COURT, art. 20.1. The five years of required legal experience do not necessarily involve practice before courts. Except for current or former members of the Constitutional Court, candidates for appointment to the common courts must also pass a qualification examination (see Factor 2 below). LAW ON COMMON COURTS, arts. 46.1, 46.5; LAW ON THE SUPREME COURT, art. 20.1. Passing the qualification exam is not required, however, for a “leading legal specialist” to be appointed to the Supreme Court. LAW ON THE SUPREME COURT, art. 20.2. A candidate for appointment as a common court judge must not have a prior criminal record, must not have been dismissed as a judge for a disciplinary violation or for engaging in activities incompatible with judicial status,<sup>6</sup> and must not have had his or her judicial authority terminated under the Law on Common Courts. LAW ON COMMON COURTS, art. 46.2; LAW ON THE SUPREME COURT, art. 20.3.

Following independence, there was a proliferation of law faculties and an increase in the number of students studying law. Georgia has some 245 private educational institutions that grant law degrees. Many lack adequate faculty and facilities. There are estimated to be at least 7,000 law students in Georgia, 3,000 of them at Tbilisi State University (TSU). In 2003, there were approximately 800 correspondence students at TSU, but beginning in 2006 it will no longer be possible to study law as a correspondence student. Because law professors are not paid adequate salaries, some reportedly accept bribes from students for giving “private law classes,” a euphemism for payments in exchange for passing grades.

The Law on Higher Education, enacted in 2004, adopted the four-plus-two formula; that is, a student is awarded a baccalaureate degree upon completion of four years of study, and a master’s degree with two additional years of study. Most of the private institutions therefore grant a law degree after four years. TSU, on the other hand, grants a law degree only after completion of five years of study. Graduates of TSU must also satisfy the requirements of their law faculty and pass a state examination. During their final year of study, students at TSU and private

<sup>6</sup> All judges are prohibited from engaging in any other occupation or “remunerative activity,” except for teaching, and may not be members of a political association or party or engage in any political activity. CONSTITUTION, arts. 26.5, 86.3; LAW ON THE SUPREME COURT, art. 20.4; LAW ON THE CONSTITUTIONAL COURT, art. 17.

educational institutions must complete a six-month internship with the courts, private law offices, law departments of government ministries, or a legal clinic. Nevertheless, many graduates are said to lack practical skills, perhaps because these internships are not well organized or supervised, and sometimes are merely fictitious. Interviewees noted a general need for improvement in legal education.

Before carrying out their judicial duties, newly appointed judges must complete a judicial training course, unless they have at least one year of previous judicial experience. LAW ON COMMON COURTS, arts. 47.8, 69.2. A judge’s unjustified failure to attend the course “within determined limits” is a basis for dismissal. *Id.* art. 54.1(k). The duration of the course is determined by the HCOJ, but may not exceed three months. *Id.* art. 69.1. In practice, it is only two weeks long. The curriculum differs for judges specializing in civil, criminal, or administrative law and focuses on procedural issues, not practical skills. The course does not cover judicial ethics.

To be appointed as a judge of the Constitutional Court, one must be at least thirty years of age and have a university degree in law. CONSTITUTION, art. 88.4; LAW ON THE CONSTITUTIONAL COURT, art. 7. Neither the Constitution nor the Law on the Constitutional Court requires legal experience for appointment to that Court.

When asked how effective these requirements are in selecting qualified judges, many interviewees described recently appointed judges as reasonably well qualified, though lacking in practical skills. Supreme Court judges were described as quite competent.

## Factor 2: Selection/Appointment Process

***Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Common court judges are appointed based on objective criteria, such as performance on the qualification examination, as well as subjective criteria, such as professional and moral reputation, and professional work experience. Procedures for appointment of Constitutional Court judges are not transparent, and no criteria for their selection are specified.</p>	

### Analysis/Background:

The President of Georgia appoints and dismisses judges of the regional (city) courts, appellate courts, and high courts of autonomous republics. CONSTITUTION, art. 73.1(p). The President’s advisory body, the HCOJ, provides recommendations on the appointment and dismissal of judges, including organizing qualification examinations, nominating members of the Qualification Examination Commission, and conducting disciplinary proceedings against judges. LAW ON COMMON COURTS, art. 63. When this assessment was conducted, the HCOJ consisted of nine members; five were ex officio (the Chairpersons of the Supreme Court, the High Court of the Abkhazian Autonomous Republic, and the High Court of the Adjarian Autonomous Republic; the Chairperson of the Legal Committee of the Parliament; and the Minister of Justice), two were appointed by the President, and two (one of whom was required to be a member of the Parliament) were elected by the Parliament. LAW ON COMMON COURTS, arts. 60.2-.3. Thus, only four of the nine members were required to be judges. Many interviewees commented that at least half the members of the HCOJ should be judges. The HCOJ’s composition contravened Principle 1.3 of the Council of Europe’s European Charter on the Statute for Judges, which

provides that “[i]n respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.” According to one interviewee, consideration was being given to increasing the size of the HCOJ to sixteen, with eight members being judges. Subsequently, the size of the HCOJ was increased to eighteen members, half of whom must be judges, but it remains part of the executive branch. Members of the HCOJ serve no more than two four-year terms. *Id.* art. 60.6. The President chairs the HCOJ’s meetings, except that the Secretary does so when the HCOJ meets to consider disciplining judges. *Id.* arts. 60.9-10.

Passing the qualification examination is necessary to become a candidate for appointment as a judge of a regional (city) court, appellate court, or high court of an autonomous republic, except that current or former members of the Constitutional Court are not required to take the exam. *Id.* arts. 46.1, 46.5. Citizens of Georgia with a university degree in law may take the qualification examination when they are twenty-five years of age — three years before they are old enough to qualify for judicial appointment. *Id.* art. 68.1. The President appoints the ten members of the Qualification Examination Commission, on the nomination of the HCOJ, and approves regulations for the qualification exam, on the proposal of the HCOJ. *Id.* arts. 67, 68.2. The exam consists of two parts. The first is a 100 question multiple choice test, covering constitutional law, criminal law, criminal procedure, civil law, civil procedure, administrative law, administrative procedure, international human rights law, and international treaties and agreements to which Georgia is a party. *Id.* art. 68.3. A minimum score of 75% is required to proceed to the second part of the exam. During the exams given in 2005, only about one-quarter of the candidates received a passing score on the first part. The second part is an essay examination consisting of five hypothetical questions. It gives candidates an opportunity to demonstrate their ability to apply the law to facts and to support their conclusions. About half the candidates pass this part, with a score of at least 15 out of 25 points. Candidates who took the qualification exam in 2005 were impressed by its thoroughness and objectivity. However, it should be noted that judicial ethics was not covered at all in the exams.

A passing grade on the qualification examination is valid for seven years. *Id.* art. 68.4. Because of that, the qualification of newly appointed judges who took the exam during the Shevardnadze regime may be open to question. It is rumored that one could pass the qualification exam by paying a bribe of \$2,000.

According to the Law on Common Courts, the selection of judges for regional (city) courts, appellate courts, and high courts of autonomous republics is “competitive.” *Id.* art. 47.1. It is competitive at least in form, although there are significant subjective aspects to the process. Within seven days after a judicial vacancy is created or between thirty and sixty days before expiration of a judge’s term, the HCOJ announces a competition for the position in the official print media. *Id.* art. 47.2. Anyone who satisfies the qualifications for appointment (see Factor 1 above), including having passed the qualification examination, may become a candidate for appointment by submitting an application for the position. *Id.* art. 46.3. He or she must also file a declaration of financial status with the Bureau of Registration of Material and Financial Status of Public Officials. *Id.* art. 47.2. The names of all applicants are published in the official print media. *Id.* The HCOJ then schedules a competition for the selection of a candidate between three and thirty days after the deadline for submission of applications and selects a candidate based on his or her qualification examination results, “professional and moral reputation, professional work experience, and physical health.” *Id.* arts. 47.3-4. The competition also includes interviews with the HCOJ (with psychologists present), an I.Q. test, and, in 2005, a psychological test. Other than the qualification exam results, the criteria appear somewhat subjective. As one interviewee commented, although the process may be fair, it is not transparent. There may even be some questions about whether the process is entirely fair.

Some of the subjective aspects of the selection process may be consistent with the views of ordinary citizens. In a survey of 1,200 randomly chosen respondents throughout Georgia, the most important criteria for appointment of judges were honesty/integrity (30.3%), followed by professionalism/competence (23.2%) and experience (13.8%). Interestingly enough, the number of respondents who chose the results of the qualification examination as the most important factor was too low to be statistically significant. ABA/CEELI, JUDICIAL SYSTEM KNOWLEDGE AND PERCEPTION SURVEY FOR GEORGIA 19 (June 2005) [hereinafter JUDICIAL PERCEPTION SURVEY].

Once the HCOJ has selected a nominee, it submits his or her name to its Chairperson – the President of Georgia – who then decides whether to appoint the nominee. LAW ON COMMON COURTS, arts. 47.5, 48, 63.1(a). If no candidate is selected or if the President does not appoint the HCOJ’s nominee, a new competition for the position is announced. *Id.* art. 47.6. In practice, the President invariably accepts the recommendation of the HCOJ. Before exercising their judicial functions, newly appointed judges must complete the special training course (see Factor 1 above). *Id.* art. 47.8.

The President also has authority to appoint and dismiss chairpersons of the regional (city) courts, appellate courts, and high courts of autonomous republics, as well as of their collegia and chambers, upon the recommendation of the HCOJ. LAW ON COMMON COURTS, arts. 15<sup>1</sup>.4, 17.1, 20.5-6, 30.4, 31.

The Parliament appoints the Chairperson and other judges of the Supreme Court by a majority vote, upon the nomination of the President. LAW ON THE SUPREME COURT, art. 21. Passing a qualification examination is not required, and political considerations may predominate.

Three of the nine judges of the Constitutional Court are appointed by the President, three are elected by the Parliament by a three-fifths majority, and three are appointed by the Supreme Court. CONSTITUTION, art. 88.2; LAW ON THE CONSTITUTIONAL COURT, art. 6. From their number, the members of the Constitutional Court elect a Chairperson, two Vice Chairpersons, and a Secretary. CONSTITUTION, art. 88.2; LAW ON THE CONSTITUTIONAL COURT, art. 5. The Chairperson must be nominated by the President of Georgia, the Chairperson of Parliament, and the Chairperson of the Supreme Court; and the Vice Chairpersons are nominated by the Chairperson of the Court. LAW ON THE CONSTITUTIONAL COURT, arts. 10.3-4.

### Factor 3: Continuing Legal Education

***Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Although judges are not required to participate in continuing legal education (CLE) courses, their Code of Ethics encourages them to do so. Judges believe that a sufficient number of training courses is offered, but the availability of CLE largely depends on international donors.</p>	

#### Analysis/Background:

Judges are not required to participate in CLE courses; however, the Code of Ethics adopted by the Conference of Judges urges them to work continually on improving their professional knowledge. JUDICIAL ETHICS CODE OF GEORGIA, art. 30 (Jul. 23, 2001) [hereinafter CODE OF ETHICS]. Several judges spoke of the critical importance of CLE because of frequent changes in

the law. Another factor is the reorganization of the common courts, which will result in greater specialization of judges. Interviewees were generally pleased with the number of seminars offered for judges, as well as their quality, but most interviewees appear to have attended CLE courses only infrequently. If the availability of CLE may be adequate in the larger cities, it is much more limited in the regions.

There are a number of different sources for judges to participate in CLE in Georgia. Established in 1999, a Judicial Training Center, which is funded by the World Bank and others (such as ABA/CEELI), offers training courses. Its sustainability is, however, uncertain, because it depends largely on international funding. The Judges of Georgia (see Factor 19 below) and the Georgian Young Lawyers Association also offer CLE seminars, but they too depend on funding from international donors. Finally, international organizations, such as the Organization for Security and Cooperation in Europe (OSCE), *Gesellschaft für Technische Zusammenarbeit* (GTZ), and ABA/CEELI sometimes organize seminars themselves. For example, ABA/CEELI sponsored training courses throughout the country on the Code of Ethics. Although seminars sponsored by international organizations tend to be ad hoc and reflect the sponsors' interests, they do nonetheless contribute to the availability of CLE for judges.

A law to establish a "High School of Justice" has been introduced in Parliament. If enacted, it would provide fourteen months of theoretical and practical training for students of justice, that is, candidates for appointment as judges. The High School of Justice would also provide continuing education for sitting judges and would replace the existing Judicial Training Center. Its success will depend upon funding and the availability of qualified trainers.

#### **Factor 4: Minority and Gender Representation**

***Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>The Constitution prohibits discrimination on the basis of gender, ethnicity, religion, and other similar factors. Women are adequately represented in the judiciary and reported no discrimination on the basis of gender. The situation for ethnic and religious minorities is less clear. Although interviewees believed that there was no discrimination on that basis, few judges are in fact members of such minorities.</p>	

#### Analysis/Background:

The Constitution provides that all are "equal before the law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social origin, property and title, [and] place of residence." CONSTITUTION, art. 14. In addition, citizens are equal in social, economic, cultural, and political life, without regard to their nationality, ethnicity, religion, or language. *Id.* art. 38.

Unfortunately, no statistics on the composition of the judiciary, disaggregated by gender, ethnicity, or religion, were available to the assessment team. Almost without exception, though, interviewees did not perceive any discrimination based on gender, ethnicity, or religion. At least 50% of all judges are said to be women. No judge reported experiencing discrimination on the basis of gender. Indeed, some interviewees described women judges as more impartial, less corrupt, and generally more effective than their male counterparts. The absence of discrimination on the basis of gender is also reflected in the views of the public at large. In a recent survey of public perceptions about the judiciary, the majority (69.1%) responded that gender would not

influence them if they made decisions on the appointment of judges. JUDICIAL PERCEPTION SURVEY, at 20.

Several interviewees said, however, that ethnic and religious minorities are underrepresented in the judiciary, not because of discrimination, but because they lack access to legal education. One estimated that there were at most five judges who are members of ethnic or religious minorities. Anecdotal evidence seems to confirm that assessment. When interviewees were asked about the composition of their courts, they invariably replied that there were no judges from ethnic or religious minorities. Several added that ethnicity or religion are not matters one asks about. The experience of a Georgian judge who was appointed in 2000 to the court in Akhalkalaki, where ethnic Armenians comprise more than 97% of the population, suggests that there may in fact be ethnic antagonisms, at least beneath the surface. She did not speak Armenian and therefore needed a translator for her work. Friction developed between her and the chair of the court, and after she had been there for six months, the townspeople nailed the door to the courthouse shut to exclude her. When members of the HCOJ came to Akhalkalaki to investigate, they were told at a public meeting that although people liked her as a judge, she was not Armenian. She was later appointed to another court in an ethnically Georgian town.

Public attitudes across Georgia are almost evenly divided as to whether judges should be ethnic Georgians (50.2%) or could be members of any ethnic group (49.8%). JUDICIAL PERCEPTION SURVEY, at 20. When asked to express their attitudes toward judges of different nationalities on a five-point scale, respondents were far more favorably disposed to ethnic Georgians (4.7) than to those in the next highest group, ethnic Armenians, Azeri, and Russians (each 2.9). *Id.* at 20-21. Ethnic Kurds, Ossetians, and Abkhazians received the lowest ratings (each 2.7). *Id.*

## II. Judicial Powers

### Factor 5: Judicial Review of Legislation

***A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The Constitutional Court has the power to determine the constitutionality of legislation and official acts. There was no consensus among interviewees on whether the court is independent and willing to tackle difficult issues, or whether its decisions are carried out.</p>	

#### Analysis/Background:

The Constitution of Georgia is “the supreme law of the state,” and all legal acts must conform to it. CONSTITUTION, art. 6.1. Furthermore, international treaties or agreements take precedence over all “domestic normative acts,” but only if they do not conflict with the Constitution. *Id.* art. 6.2. The Constitutional Court consists of nine judges, including a Chairperson, two Vice Chairpersons, and a Secretary. CONSTITUTION, art. 88.2; LAW ON THE CONSTITUTIONAL COURT, art. 5. It hears constitutional claims and submissions either in the Plenum of all nine judges, presided over by the Chairperson, or in one of two boards of four judges each, presided over by a Vice Chairperson. *Id.* arts. 11, 12.1(d), 13.1, 53.2. The Court has a number of responsibilities in addition to determining the constitutionality of laws, many of them with important political implications. The court is authorized to:

- determine the constitutionality of constitutional agreements, laws, and normative acts of the President, the Government, and the higher state bodies of the Autonomous Republics of Abkhazia and Adjara;
- resolve disputes on the constitutionality of referenda and elections;
- determine the constitutionality of international treaties and agreements;
- confirm a violation of the Constitution by the President, the Chairperson of the Supreme Court, members of the Government, the Prosecutor General, the President of the Chamber of Control, or members of the Council of the National Bank, thereby rendering them subject to dismissal by Parliament;
- adjudicate disputes between state bodies concerning their respective spheres of authority;
- determine claims by citizens that normative acts violate any of the basic rights and freedoms enumerated in Chapter Two of the Constitution;
- determine the constitutionality of the formation and activity of political associations; and
- hear appeals of the pre-term termination of office of a member of the Parliament.

CONSTITUTION, arts. 54.1, 63, 64, 75.2(a), 89.1; LAW ON THE CONSTITUTIONAL COURT, art. 19. The first four issues must be heard by the Plenum of the Court; the others may be decided by one of its boards. LAW ON THE CONSTITUTIONAL COURT, art. 21.

The President of Georgia or not less than one-fifth of the members of the Parliament may submit a constitutional claim to the Court raising such issues.<sup>7</sup> LAW ON THE CONSTITUTIONAL COURT, arts. 21.1, 33, 38. Another way issues of constitutionality may reach the Constitutional Court is when one of the common courts determines, in the course of a hearing, that there is a sufficient basis to believe that a relevant law or other normative act contravenes the Constitution in whole or in part. LAW ON COMMON COURTS, art. 7.2; LAW ON THE CONSTITUTIONAL COURT, arts. 20, 42. In such event, the judge must suspend the hearing and file a constitutional submission with the Constitutional Court for a decision on the law's constitutionality. LAW ON COMMON COURTS, art. 7.2; LAW ON THE CONSTITUTIONAL COURT, arts. 20, 42. Only after the Constitutional Court reaches a decision on constitutionality may the common court resume the hearing. LAW ON COMMON COURTS, art. 7.2. The Plenum of the Supreme Court may also file a motion with the Constitutional Court to determine the constitutionality of a normative act. LAW ON THE SUPREME COURT, art. 12.3(d).

Issues regarding the constitutionality of laws, other normative acts, and international treaties and agreements are decided by the Constitutional Court's Plenum. LAW ON THE CONSTITUTIONAL COURT, art. 21.1. Its decisions are final, and any normative act or portion thereof held unconstitutional ceases to have any legal effect upon publication of the Court's judgment. CONSTITUTION, art. 89.2; LAW ON THE CONSTITUTIONAL COURT, art. 25(2).

Interviewees differed widely in their assessments of the Constitutional Court. One asserted that no court in Georgia had the reputation for being independent and that the Constitutional Court was no exception. In politically sensitive cases, he said, even the Constitutional Court seeks ways to avoid deciding difficult issues. A focus group of judges agreed, saying that they had no confidence in the Court. One first instance court judge reported that several years ago he made a submission to the Court and never received an official response. Furthermore, he argued, all too often the Court's decisions are not enforced, particularly on social issues. The Constitutional Court, he contended, should be more courageous than it is. On the other hand, one judge argued that the Court is indeed effective, as did another interviewee, who contended that its decisions are well grounded. Another judge said that the judges of the Constitutional Court are

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<sup>7</sup> The President also has authority to suspend or abrogate acts of the Government or "bodies of the executive power" if they conflict with the Constitution, international treaties or agreements, or laws and normative acts of the President. CONSTITUTION, art. 73.3.

professionals and their decisions are carried out. Several interviewees praised the courage of the Court for a decision in 1997 on the tenure of judges.

Because Georgia is a party to the European Convention on Human Rights, the Convention is a source of law that can be applied directly by courts in Georgia. See CONSTITUTION, art 6.2. In addition, parties may lodge an application with the European Court of Human Rights in Strasbourg after they have exhausted all domestic remedies.

## Factor 6: Judicial Oversight of Administrative Practice

***The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Although the judiciary has the power to review acts by state bodies and compel them to act where a legal duty to act exists, such review is reportedly plagued by lengthy delays, and it may be difficult to enforce a judgment against the state.</p>	

### Analysis/Background:

The General Administrative Code of Georgia and the Administrative Procedure Code of Georgia, which were adopted in 1999, govern the review of decisions of administrative agencies by, respectively, higher administrative agencies and the common courts. The General Administrative Code provides that any interested party may file an administrative complaint with a higher administrative agency to review an act of an administrative agency. GENERAL ADMINISTRATIVE CODE, arts. 177-178. Review of the administrative complaint must be completed within one month. Only in exceptional circumstances that prevent timely completion of the administrative appeal can the period for decision be extended by up to one additional month. *Id.* art. 183. At the conclusion of the administrative appeal, the higher administrative agency has authority to amend, revoke, or invalidate the act challenged. *Id.* art. 203. The General Administrative Code also allows persons to seek judicial review directly, without the need to file an administrative complaint first. *Id.* art. 178.3. To encourage the filing of administrative complaints and their efficient resolution, thereby reducing the burden of administrative cases on the courts, the Administrative Procedure Code provides that a person who first filed an administrative complaint is not obliged to pay a state duty while a subsequent appeal to court is pending. See ADMINISTRATIVE PROCEDURE CODE, art. 10.1.

Provisions of the Civil Procedure Code apply to appeals of administrative acts, unless the Administrative Procedure Code specifies otherwise. *Id.* art. 1. Among such provisions are the time periods within which civil cases must be adjudicated. Cases involving payment of alimony, damages for mutilation, health disorders, and death of a breadwinner, or labor relations must be examined within one month. All other civil cases must be adjudicated within two months or, in cases of particular complexity, the court may extend the period by not more than five months. CIVIL PROCEDURE CODE, art. 59.3. These provisions should ensure timely judicial review of administrative acts.

Nevertheless, according to one interviewee, the most significant problem with review of administrative decisions is delay. It can often take five months before a court addresses a claim, which is longer than most people can wait, he said. Another echoed these concerns, noting that delays in resolving administrative cases — as long as three years — are worse than those in criminal or civil cases. A positive aspect of judicial review of administrative acts is that the procedures for filing a claim are reported to be relatively simple. Although it is advisable to have

a lawyer at trial, 30-40% of plaintiffs appear without lawyers. One judge said that such cases are not handled in an adversarial way and that judges can often assist plaintiffs who are not represented by lawyers.

It may be difficult, however, for a successful plaintiff to enforce a judgment against the state. For example, in two cases decided September 27, 2005, the European Court of Human Rights noted a persistent problem of non-enforcement of final judgments against state institutions. The court ruled that the Georgian government must pay the firm Amat-G Ltd EUR 200,000 in pecuniary damages, and the firm Iza EUR 10,000 in pecuniary damages, as well as EUR 1,000 for non-pecuniary damages. Amat-G Ltd had supplied the Georgian Ministry of Defense with fish products in 1998-99. Although the Georgian courts ordered the Ministry of Defense to pay Amat-G Ltd, the debt was never paid. The construction firm Iza, which had a building repair contract with a state school in 1998, received only part of the payment from the Ministry of Education. The company complained that it had difficulty carrying out its business activities while this debt remained unpaid. The company successfully sued the Ministry of Education in 2001, but orders to pay the debt were never enforced.

## Factor 7: Judicial Jurisdiction over Civil Liberties

***The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Although the Constitution includes an impressive catalog of rights, vindicating those rights in practice can often prove difficult, both in securing a decision and enforcing it. Georgia has ratified the European Convention on Human Rights, but courts rarely base their decisions on it.</p>	

### Analysis/Background:

The Constitution requires the state to “recognize and protect universally recognized human rights and freedoms as eternal and supreme human values.” CONSTITUTION, art. 7. Its second chapter includes an extensive list of constitutionally guaranteed rights and freedoms, such as equality before the law, freedom of movement and choice of residence, the right to medical care and to live in a healthy environment, freedom of speech, freedom of assembly, freedom of the mass media, the right to form and participate in political parties, the right to vote and hold public office, freedom of religion,<sup>8</sup> the right to life, the right to property, the right to privacy, freedom of association, the right to strike, limits on arrest and detention, freedom from torture, the right to legal defense, the presumption of innocence, the right not to be convicted twice for the same offense or to be convicted for an act that was not a crime when committed, the right not to testify against oneself or certain relatives, a prohibition against inhumane and cruel punishment, and the right to apply to court to protect one’s rights and freedoms. *Id.* arts. 14, 15.1, 17.2, 18, 19, 20, 22.1, 24.2, 25, 26, 28, 29, 33, 37, 40, 42.

The Constitutional Court has jurisdiction to determine the constitutionality of normative acts relevant to these and the other provisions of Chapter Two of the Constitution. CONSTITUTION, art. 89.1(f); LAW ON THE CONSTITUTIONAL COURT, art. 19(e). The Public Defender of Georgia or anyone, regardless of nationality, whose rights and freedoms were violated may file a constitutional claim with the Court. LAW ON THE CONSTITUTIONAL COURT, art. 39. Such issues are determined by one of the Court’s four-member boards. *Id.* art. 21.2.

<sup>8</sup> The Constitution does, however, recognize the “special role” of the Apostolic Autocephalous Orthodox Church “in the history of Georgia and its independence from the state.” See art. 9.1.

According to one interviewee, the most serious human rights issues in Georgia concern workers' rights and social rights generally. Another significant problem is the number of defendants held in pretrial detention, often reportedly with little evidence to support their detention. An interviewee contended that although first instance courts tend to favor the state, appellate courts are more objective, and the Supreme Court is even more so. In any event, difficulties in enforcing judgments against the state can reduce the benefit of a favorable decision. Another interviewee suggested that the courts in Georgia did a poor job in addressing human rights issues, primarily because of the delays in hearing cases.

Georgia ratified the European Convention on Human Rights (ECHR) on May 20, 1999, and since then has ratified Protocols No. 1, 4, 6, 7, 12, and 13. As a result, courts in Georgia may apply the ECHR directly in deciding cases. According to a first instance judge, judges receive training in the ECHR, have copies of it, and cite it when they can. Another confirmed that judges received training in the ECHR and predicted that it would become an increasingly important source of law in Georgia. Furthermore, international human rights law is among the subjects tested in the qualification examination for judges (see Factor 2 above). LAW ON COMMON COURTS, art. 68.3(g). On the other hand, a human rights lawyer said that few judges understand the ECHR, and judges very rarely cite it. In addition to the ECHR's potential importance in litigation in Georgia, parties may lodge an application with the European Court of Human Rights in Strasbourg against Georgia after they have exhausted all domestic remedies. For example, Tenzig Asanidze had been imprisoned by the government of Adjara for two crimes. In 1999 the President of Georgia pardoned him for one crime, and in 2001 the Supreme Court of Georgia acquitted him of the second one. Aslan Abashidze, the then leader of Adjara, refused to execute the decision and kept Asanidze in prison despite numerous warnings from the central government. Asanidze's advocate brought a case against Georgia (since Adjara is an autonomous republic within Georgia) in Strasbourg on the basis of Article 34 of the ECHR. The court ruled in Asanidze's favor and he was released.

The Constitution prohibits the creation of extraordinary or special courts, and allows the introduction of military courts only during the time of war and within the courts of general jurisdiction. CONSTITUTION, arts. 83.3-.4; see *also* LAW ON COMMON COURTS, arts. 2.3-.4.

## Factor 8: System of Appellate Review

*Judicial decisions may be reversed only through the judicial appellate process.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Decisions can only be reversed through the formal appellate process.	

### Analysis/Background:

The Constitution provides, "Only a court shall be authorized to repeal, change, or suspend a court judgment in accordance with a procedure determined by law." CONSTITUTION, art. 84.5; see *also* LAW ON COMMON COURTS, art. 4.2; LAW ON THE SUPREME COURT, art. 3.2. These provisions are respected in practice. The appellate courts and high courts of autonomous republics have jurisdiction over appeals from the regional (city) courts and hear cases in three-judge panels, except for appeals on arrest and detention, which are heard by individual judges in the Investigative Collegium. LAW ON COMMON COURTS, art. 21. The Supreme Court serves as a court of cassation – that is, it reviews the lower courts' application of law to the facts, but does not re-evaluate the facts themselves. It hears appeals from the appellate courts and has discretion as to what cases to review. The Court sits in three-judge panels established within its various

chambers, but the nine-member Grand Chamber hears especially complicated cases. LAW ON THE SUPREME COURT, arts. 9.2, 10.

The unfortunate practice has developed of using the judicial conduct complaint process instead of appealing decisions. For example, disgruntled litigants (and prosecutors) often file complaints with the HCOJ against judges rather than appeal their decisions (see Factors 22 and 17 below). Furthermore, the practice of filing complaints as a form of pseudo-appeal receives encouragement when judges are disciplined, as they frequently have been, for gross or repeated violation of the law in hearing a case, that is, for making a mistake (see Factor 17 below).

Judgments of the Constitutional Court are final, not subject to appeal or revision, and any normative act or portion thereof held unconstitutional ceases to have any legal effect upon publication of the judgment. CONSTITUTION, art. 89.2; LAW ON THE CONSTITUTIONAL COURT, arts. 25.1, 43.8. Although other branches of government cannot overrule the Constitutional Court's decisions, they are sometimes reluctant to implement them (see Factor 5 above).

### **Factor 9: Contempt/Subpoena/Enforcement**

***Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Judges have adequate subpoena powers in criminal cases, but not in civil or administrative cases. They do not have contempt powers or any authority over the enforcement of civil judgments.	

#### Analysis/Background:

In criminal cases, prosecutors can issue notices to summon witnesses. Criminal defendants have the right to summon and question witnesses under the same conditions applicable to witnesses for the prosecution. CONSTITUTION, art. 42.6. Judges can issue notices to summon witnesses. If a witness does not appear for a criminal hearing, the judge can order the police to bring the witness to court. CRIMINAL PROCEDURE CODE, arts. 173-176. Compelling the attendance of criminal defendants is usually not a problem, because of the prevalence of pretrial detention. In eastern Georgia, it can be difficult to schedule criminal trials because the only pretrial detention centers are located in Tbilisi and Kutaisi, which requires defendants to be brought long distances for a hearing and then returned to the pretrial detention center the same day. In civil and administrative cases, on the other hand, judges cannot require witnesses to appear, and frequently they do not appear. The failure of witnesses or parties to appear for hearings is a significant cause of delay. However, if a party does not appear, it is possible for the judge to go forward with a hearing in a civil case and, under certain circumstances, in an administrative case. See CIVIL PROCEDURE CODE, arts. 229.1-.2, 230.1-.2; ADMINISTRATIVE PROCEDURE CODE, art. 26<sup>1</sup>.

With regard to contempt powers, the Law on Common Courts provides that behavior by anyone attending a hearing that conveys disrespect toward the court will result in liability as prescribed by law. LAW ON COMMON COURTS, art. 9. A judge did not, however, have authority to punish disorder in the court or punish a lawyer who does not appear for a hearing. All the judge could do is refer the case of disorder to a prosecutor and reschedule the hearing when a lawyer does not appear. Because disorder in the courts is such a significant problem, the Parliament was considering

legislation to authorize judges to punish contempt by imprisonment for up to thirty days.<sup>9</sup> One interviewee suggested, however, that judges are afraid to be too strict, lest a complaint be filed with the HCOJ.

Under the Constitution, “Acts of courts shall be obligatory for all state bodies and persons throughout the territory of the country.” CONSTITUTION, art. 82.2. The Law on Enforcement Proceedings implements this provision by providing for the enforcement of decisions of the common courts (excluding those for tax liability), administrative bodies for minor offenses, private arbitration, the European Court of Human Rights, and the International Criminal Court. LAW OF GEORGIA ON ENFORCEMENT PROCEEDINGS, arts. 1, 2, 17<sup>1</sup>.3. Enforcement of judgments is entrusted to local enforcement bureaus within the Enforcement Department of the Ministries of Justice of Georgia, Abkhazia, and Adjara. *Id.* arts. 3-4. Actual enforcement is performed by bailiffs with the assistance of enforcement police, pursuant to an enforcement writ issued by the court. *Id.* arts. 5, 14<sup>3</sup>, 20. Unless an issue arises that requires resolution by the court, execution of the writ proceeds without further court involvement or supervision. The law includes an unequivocal declaration on the enforceability of the judgments of common courts (echoing that of the Constitution): “An act of court, decree or order for exercising its authorities shall be mandatory in the whole territory of Georgia for all private and legal persons, state and local self-government bodies.” LAW ON COMMON COURTS, art. 4.1. Indeed, failure to comply with a court’s decision will result in liability. *Id.* art. 4.3. No law has been enacted, however, to specify the extent of such liability.

Enforcement of civil judgments is a serious problem. Although it is a crime not to comply with a court decision, judgment debtors frequently ignore judgments. Those against the state are reported to be particularly difficult to enforce. The most common complaint received by the Judges of Georgia’s hotline in 2005 concerned enforcement of judgments. Because enforcement of judgments is under the jurisdiction of the Ministry of Justice, there is little that the courts can do about these problems. Interviewees said that some bailiffs are not very diligent, sometimes subject to influence, and even corrupt. Judgments in criminal cases, on the other hand, are invariably enforced.

A decision of the Constitutional Court is “final and its non-fulfillment is punishable by law.” LAW ON THE CONSTITUTIONAL COURT, art. 25.1. No law has been enacted, however, to specify the punishment for such conduct. Judgments of the Court holding all or any part of a normative act unconstitutional become effective upon publication of the judgment. CONSTITUTION, art. 89.2. Every state body, legal entity, and individual is obligated to comply with a decision of the Constitutional Court. LAW ON THE CONSTITUTIONAL COURT, art. 24.1. The Secretary of the Constitutional Court is responsible for enforcement of the Court’s decisions and reports to the Plenum monthly on enforcement of the Court’s judgments. *Id.* arts. 14.2(d), 51. Sometimes, however, state bodies delay in complying with judgments of the Court.

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<sup>9</sup> The Parliament did in fact amend the Civil Procedure Code and the Criminal Procedure Code, effective October 1, 2005, to accomplish that goal. Judges now have the authority to warn anyone who causes disorder in a courtroom, expel any such person from the courtroom, fine him or her from GEL 50 up to GEL 500, and imprison him or her for up to thirty days, with no right to appeal. CIVIL PROCEDURE CODE, arts. 211, 212.1-6; CRIMINAL PROCEDURE CODE, arts. 205-208.

### III. Financial Resources

#### Factor 10: Budgetary Input

***The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>The common courts have limited opportunities to influence the amount of money allocated to them, and the Department of Common Courts has authority over drafting the common courts' budget and spending such funds. The Supreme Court and the Constitutional Court, on the other hand, prepare their own budget requests and control the expenditure of funds allocated to them.</p>	

#### Analysis/Background:

The courts do not have a separate budget and have limited ability to influence the amount of money the Parliament appropriates for their operations. Only the Government has authority to submit a draft budget to the Parliament. CONSTITUTION, art. 93.1. By the middle of July, the Ministry of Finance (MOF) sends a letter to the various state bodies with instructions for the following year's budget, as well as the maximum amount they can request. Before August 15 they submit budgetary statements to the MOF, which combines them and submits the result to the Government and the President. By October 1, not later than three months before the beginning of the new budget year (which begins on January 1), the Government submits a draft budget to the Parliament. *Id.* art. 93.2. The Parliament may make no changes in the draft budget without the Government's consent. *Id.* art. 93.4. What this means in practice is that the Parliament reviews the budget, and the various committees and factions submit comments to the MOF before December 1. While the Parliament is considering the draft budget, the Supreme Court, the Constitutional Court, and the HCOJ (on behalf of the common courts) reportedly lobby the Parliament's Judicial and Legal Committee. The MOF then revises the budget in light of the comments and in consultation with the Government and resubmits it to the Parliament before year end. The Parliament may adopt the budget by a majority vote, and it is then signed by the President. *Id.* art. 92.1. If the Parliament fails to do so by January 1, the President may either (1) dismiss the Government or (2) dissolve the Parliament, schedule extraordinary elections, and approve the budget by decree. *Id.* arts. 93.6-.7. The state budget includes separate line items for the common courts, the Supreme Court, and the Constitutional Court.

The Department for Material and Technical Supplies of the Common Courts (also known as the Department of Common Courts) has general responsibility for the material and technical support of the regional (city) courts, appellate courts, and high courts of autonomous republics. LAW ON COMMON COURTS, art. 70.1. The President approves the Department's structure and regulations, and the Secretary of the HCOJ appoints and dismisses its chairperson and deputy chairpersons, with the consent of the Conference of Judges or its Administrative Committee (see Factor 19 below). *Id.* art. 70.2. Among other things, the Department of Common Courts prepares a draft of that part of the state budget relating to the common courts (except the Supreme Court) and submits it to the HCOJ, which in turn submits it to the MOF. *Id.* art. 81.3. No decrease in funding from the prior year is possible, unless the Conference of Judges consents. *Id.* art. 81.4. The Department typically does not consult with the common courts about their needs when preparing the draft budget. Indeed, one judge who made requests to the Department said that he did not receive an answer. When preparing the draft budget, the Department relies on norms specifying what furniture, equipment, supplies, etc. a judge is thought to need. The Department submits the draft to the MOF, which may reduce the amount requested. In recent years, it has reportedly made reductions of about 20%. Because of the state of Georgia's economy, the amount

appropriated for the common courts has not always been adequate to cover their needs. For example, several judges complained about not having had sufficient stationery and other supplies in recent years.

Until 2005, funds budgeted for the common courts have increased, both in GEL and as a percentage of the state budget, as the following table illustrates:

#### COMMON COURTS BUDGET

Year	Amount in GEL	\$ equivalent	Percentage of Budget
2000	4,773,600	2,652,000	0.5%
2001	6,299,000	3,499,444	0.6%
2002	7,142,000	3,967,778	0.6%
2003	9,960,000	5,533,333	0.7%
2004	15,954,000	8,863,333	0.9%
2005	13,238,000	7,354,444	0.5%

Funds budgeted for the Supreme Court and the Constitutional Court present a similar picture:

#### SUPREME COURT BUDGET

Year	Amount in GEL	\$ equivalent
2000	1,359,000	755,000
2001	1,785,000	991,667
2002	1,785,000	991,667
2003	2,285,000	1,269,444
2004	2,398,738	1,332,632
2005 <sup>10</sup>	2,561,500	1,423,056

#### CONSTITUTIONAL COURT BUDGET

Year	Amount in GEL	\$ equivalent	Percentage of Budget
2000	610,000	338,889	0.06%
2001	1,087,600	604,222	0.10%
2002	1,087,600	604,222	0.09%
2003	1,087,598	604,221	0.08%
2004	1,268,698	704,832	0.07%
2005	1,715,218	952,899	0.06%

The Department of Common Courts also supervises the expenditure of funds budgeted for the common courts (except for the Supreme Court). *Id.* arts. 71(a), (d). It does not send funds to the courts to purchase equipment and supplies, but purchases and ships them to the courts. A consequence of this is that when a court needs supplies, it cannot simply purchase them locally, but must submit a request to the Department and await delivery of the supplies, which may result in delays and temporary shortages.

The Supreme Court and the Constitutional Court have a greater ability to influence the amount of funds appropriated for them than do the other courts. The chairpersons of those Courts prepare and submit budget requests for their courts to the MOF. LAW ON THE SUPREME COURT, art. 6; LAW ON THE CONSTITUTIONAL COURT, art. 3.2. They also supervise the expenditure of funds that are budgeted for their Courts. LAW ON THE SUPREME COURT, art. 3.2; LAW ON THE CONSTITUTIONAL COURT, art. 12.1(f).

<sup>10</sup> In 2005, the President's Development and Reform Fund allocated an additional \$75,000 to the Supreme Court of Georgia to enable it to function more effectively.

## Factor 11: Adequacy of Judicial Salaries

***Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.***

<b>Conclusion</b>	<b>Correlation: Positive</b>
Judicial salaries, which will increase significantly effective 2006, will help to attract and retain qualified judges and enable them to support their families well, without the need for recourse to other sources of income.	

### Analysis/Background:

A judge's salary cannot be reduced during his or her tenure. LAW ON COMMON COURTS, art. 82.2. In addition to a salary while serving as a judge, at the end of his or her tenure or upon reaching the mandatory retirement age, a judge is entitled to a pension equal to his or her salary. *Id.* art. 82.3. For judges of the Supreme Court and the Constitutional Court, the state must guarantee a salary adequate to ensure their independence. LAW ON THE SUPREME COURT, art. 3.3; LAW ON THE CONSTITUTIONAL COURT, art. 4.3.

Effective January 1, 2006, judicial salaries, which had not been raised since 1998, will increase significantly to the following levels:

#### **NEW JUDICIAL SALARIES**

<b>Court</b>	<b>Position</b>	<b>GEL</b>	<b>\$</b>
<b>Constitutional Court</b>	Chairperson	4,100	2,278
	Deputy Chairperson	3,300	1,833
	Judge	3,000	1,667
<b>Supreme Court</b>	Chairperson	4,100	2,278
	Deputy Chairperson	3,600	2,000
	Judge	3,000	1,667
<b>Appellate Court</b>	Chairperson	3,000	1,667
	Judge	1,650	917
<b>Regional (City) Court</b>	Chairperson	1,650	917
	Judge	1,450	806

LAW ON REMUNERATION OF COMMON COURT JUDGES OF GEORGIA, art. 1 (2005); LAW ON REMUNERATION OF MEMBERS OF THE CONSTITUTIONAL COURT, art. 1 (2005).

Previously, judicial salaries were fixed by Presidential decree. Interviewees generally agreed that prior to this increase, judicial salaries were inadequate, but following the increase they are quite acceptable. Several interviewees commented that with these new salaries judges will be among the highest paid employees in public service and will be able to have quite a comfortable life. The increased judicial salaries eliminate a possible cause for corruption.

Some judges receive benefits in addition to salaries. For example, the Chairpersons and Vice Chairpersons of the Supreme Court and the Constitutional Court are provided with automobiles and drivers, as well as mobile phones at state expense. Although judges in the regions were entitled to a housing allowance, they typically did not receive it. The lack of a housing allowance was one of the reasons why judges who were assigned to the regions as part of the reorganization of their courts declined to go there and were placed on the reserve list (see Factor 14 below).

## Factor 12: Judicial Buildings

***Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
<p>The vast majority of courthouses in Georgia are in serious need of renovation and lack sufficient number of courtrooms and adequate facilities. The twelve model courts renovated with funds from the World Bank do, however, provide a respectable environment and adequate infrastructure.</p>	

### Analysis/Background:

The Department of Common Courts has general responsibility for the material and technical support of the common courts (see Factor 10 above), including providing suitable courthouses. LAW ON COMMON COURTS, art. 71(b). The Department has been hampered, however, by insufficient funding for renovation or construction of courthouses. Thanks to the World Bank's model courts project, ten of seventy-five regional courthouses will have been renovated by the end of 2005, and an additional two will be completed in 2006. These courthouses have a sufficient number of courtrooms and adequate facilities. The Kutaisi City Court, for example, currently has seven courtrooms and six judges. The first instance court in Kakheti has three judges and three courtrooms. The Gori City Court has four courtrooms and two judges, however, with four vacancies. Apart from the model courts, though, courthouses are in serious need of renovation and lack sufficient courtrooms and adequate facilities, particularly in the regions. Some courthouses reportedly are not supplied with electricity and some are heated with wood burning stoves.

The reorganization of the common courts will place significant demands upon existing courthouses. Unification will result in fifteen or sixteen regional courthouses, which will need to house all the first instance judges in the region (except for magistrate judges). For example, the City Court in Gori, a model court, had four courtrooms and two judges. After unification, it will have nineteen judges. The courthouse in Zugdidi, which was built with funds from the World Bank, currently has four judges and three courtrooms. After unification, it will have eight judges. The Batumi City Court has only two courtrooms for nine judges. After unification, it will have twenty-two judges.

Another issue regarding the adequacy of courthouses is the amendment of the Constitution in 2004 to authorize jury trials. When that provision is eventually implemented, courtrooms will need to be remodeled to accommodate juries.

## Factor 13: Judicial Security

***Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
<p>Insufficient resources have thus far been allocated to protect judges and provide security in courtrooms.</p>	

Analysis/Background:

The Constitution requires the state to “ensure the security of a judge and his/her family.” CONSTITUTION, art. 88.1; see also LAW ON COMMON COURTS, art. 52.2; LAW ON THE SUPREME COURT, art. 3.3; LAW ON THE CONSTITUTIONAL COURT, art. 4.4.

Little in fact has been done up to the time the assessment was conducted to carry out this mandate. Although a handful of courts have guards to control entry and metal detectors to screen those entering the building, the vast majority of courts do not have any security arrangements. Furthermore, except in criminal cases when the defendant is escorted by the police, there is no one to provide security in the courtrooms. As a result, witnesses are sometimes intimidated. According to one judge, protecting the parties from each other is more of a concern than protecting the judge from a disgruntled party. For example, in a hearing at the Supreme Court in 2005, the defendant assaulted the prosecutor. To address such concerns, the HCOJ proposed creating a marshal service to maintain order in the courtrooms. In late 2005, the Parliament amended the Law on Common Courts to establish a court marshal service responsible for protecting courthouses and maintaining order during proceedings. Although interviewees could not recall police protection being provided to a judge or a judge’s family in response to threats, it is unclear whether such protection was ever requested and refused.

## IV. Structural Safeguards

### Factor 14: Guaranteed tenure

*Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Judges are appointed for ten-year terms. As a result of the reorganization of the common courts in 2005-2006, judges are being placed on the reserve list and not allowed to exercise judicial authority for the remainder of their tenure. The HCOJ decides which judges to place on the reserve list, apparently without objective criteria and by a process that lacks transparency.</p>	

Analysis/Background:

Although the Constitution provides that common court judges, including Supreme Court judges, shall be appointed for terms of not less than ten years, the Law on Common Courts and the Law on the Supreme Court specify a term of exactly ten years (extended, if necessary, until the final ruling in any pending case in which the judge was participating). CONSTITUTION, art. 86.2; LAW ON COMMON COURTS, arts. 49.1-.2; LAW ON THE SUPREME COURT, art. 21.1. The term of a common court judge can also end when he or she reaches the retirement age of 65, unless the President of Georgia, on the HCOJ’s recommendation, extends the judge’s term beyond that date. Common court judges may serve more than one term.

As discussed above under *History of the Judiciary*, the common courts of Georgia are being reorganized pursuant to amendments to the Law on Common Courts adopted in June 2005. The reorganization began in November 2005 and will continue through 2006. As part of the reorganization, Georgia’s 75 first instance courts are being consolidated into approximately 15 regional (city) courts. Under the Law on Common Courts, if a regional (city) court, appellate court, or high court of an autonomous republic is liquidated or if the number of its judicial positions is reduced as part of a reorganization of the judiciary, the judges can be assigned to a court of the

same or a lower instance with their prior written consent. LAW ON COMMON COURTS, art. 54<sup>1</sup>.1. Judges who cannot be assigned to another court are dismissed and, if they consent in writing, are placed on the “reserve list” within three months after liquidation of the court or reduction in positions. *Id.* art. 54<sup>1</sup>.2. Judges on the reserve list are entitled to receive their usual salary until their term expires or they are expelled from the reserve list (for example, for a disciplinary violation while serving as a judge). *Id.* art. 54<sup>1</sup>.3. However, an amendment to the Law on Remuneration of Common Court Judges reduced the salary of judges on the reserve list to GEL 500 (about \$278), effective January 1, 2006. The HCOJ considers Article 54<sup>1</sup> applicable because it believes the effect of the June 2005 amendments to the Law on Common Courts constitutes a liquidation of the common courts. Whether there is in fact a legal basis for assigning judges to the reserve list is not entirely clear. Some interviewees questioned whether Article 54<sup>1</sup> of the Law on Common Courts in fact applies, arguing that the courts are not really being liquidated, but are merely being renamed with comparatively minor changes in their jurisdiction.

This reorganization of the common courts poses a threat to the tenure and independence of judges in the affected courts. Concerns have been raised about the lack of transparency when the HCOJ decides which judges to assign to the reorganized courts and which to place on the reserve list, as well as the absence of objective criteria for making such decisions. In Tbilisi, for example, the five regional courts were replaced with one city court. Some judges of the regional courts were offered positions in the new city court, while others were offered positions in remote regions, which they declined to accept, resulting in their being placed on the reserve list. As of September 2005, seventeen judges, all from first instance courts, were on the reserve list. One judge described the status of those on the reserve list as “dead judges who are still alive.”

Even the judges themselves were not told why they were selected for the reserve list. The HCOJ reportedly based its decisions on the judges’ reputations and prior disciplinary record. Noting that some experienced and well regarded judges were placed on the reserve list, several interviewees were puzzled about those decisions. Only the HCOJ knows why some judges were allowed to continue to serve as judges, while others were placed on the reserve list, but interviewees suggested the following reasons for the HCOJ’s decisions: adding “new faces” to the bench; removing judges who cannot be influenced; removing judges who were frequently disciplined in the past or who are thought to be corrupt, without having to comply with the procedures for dismissing judges (see Factor 17 below); packing the bench with judges who are disposed to support the government; or purging judges who did not support the Rose Revolution. It is of course impossible to know whether any of these reasons are correct, given the lack of transparency or criteria for implementing the reorganization. Because many of the reasons do not reflect favorably on the HCOJ, the fact that at least some people consider them plausible suggests the existence of suspicion about the HCOJ and its motives — which may or may not be justified.

Several judges, particularly judges in the regions, complained about the lack of current information concerning plans for reorganization of their courts. One consequence of the uncertainties surrounding the reorganization and the reserve list is that many judges are fearful and concerned about their future. One said that he felt under assault by the government and, if he did not have children to support, would simply resign. Another complained that being a judge in Georgia now is a punishment and that he was considering resigning if conditions do not improve. Some judges have in fact resigned as a result of the reorganization.

The Chairperson and other judges of the Supreme Court are appointed for a term of not less than ten years. CONSTITUTION, art. 90.2. There is no Constitutional prohibition against serving more than one term. The Chairperson of the Supreme Court is subject to dismissal through impeachment by the Parliament for violation of the Constitution (as confirmed by the Constitutional Court) or commission of high treason or other criminal offense (as determined by the Supreme Court). *Id.* art. 64. Since January 2005, a number of Supreme Court judges have resigned. Several interviewees reported that Supreme Court judges are subject to the same pressure as lower court judges.

The judges of the Constitutional Court are appointed for a ten-year term and cannot be reappointed. CONSTITUTION, arts. 88.2-3; LAW ON THE CONSTITUTIONAL COURT, art. 8. The members of the Constitutional Court elect a Chairperson, two Vice Chairpersons, and a Secretary from among their number for five-year terms; none except the Secretary can be re-elected. CONSTITUTION, art. 88.2; LAW ON THE CONSTITUTIONAL COURT, arts. 10.1, 10.6, 14.

### Factor 15: Objective Judicial Advancement Criteria

*Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.*

<b>Conclusion</b>	<b>Correlation: <i>Neutral</i></b>
Georgia as yet lacks a formal system for advancement through the judicial system. The criteria discussed above for appointment to judicial positions apply equally to judges seeking appointment to higher courts.	

Analysis/Background:

One interviewee explained that there is no judicial promotion system in Georgia, in the sense that there is no formal process for advancement through the judicial system. Rather, the HCOJ selects judges for appointment based on the criteria described in Factor 1 above, and the procedures described in Factor 2. Another respondent said that because judges were appointed in 1998, there have been few vacancies yet, and therefore few opportunities for advancement, but that appears to be inconsistent with the statistics on judicial vacancies discusses in Factor 27 below. There are, however, no limitations on advancement, he said, noting that since the Rose Revolution five judges have been appointed to the Supreme Court. Two were very well qualified district court judges, but the other three had no prior judicial experience.

### Factor 16: Judicial Immunity for Official Actions

*Judges have immunity for actions taken in their official capacity.*

<b>Conclusion</b>	<b>Correlation: <i>Neutral</i></b>
Judges have broad immunity from criminal prosecution, arrest, and search. They are, however, subject to discipline for mistakes in their decisions.	

Analysis/Background:

The Constitution guarantees the personal immunity of judges. A judge may not be arrested, detained, or prosecuted for a crime, nor may a judge’s apartment, car, workplace, or person be searched without the consent of the President of the Supreme Court for a common court judge, of the Parliament for a Supreme Court judge, or of the Constitutional Court for a Constitutional Court judge. A judge who is caught in the act of committing a crime may, however, be arrested and detained, provided that the President of the Supreme Court, Parliament, or the Constitutional Court, as appropriate, is immediately notified; and unless consent for the arrest or detention is given, the judge must be released immediately. CONSTITUTION, arts. 87.1, 88.5, 90.4; see also

LAW ON COMMON COURTS, art. 52.1; LAW ON THE SUPREME COURT, art. 4; LAW ON THE CONSTITUTIONAL COURT, art. 15.1.

Although one interviewee thought that this immunity is not respected in practice, the majority believed that it was. A significant threat to the immunity of judges for actions taken in their official capacity is that judges can be disciplined for gross or repeated violation of the law in hearing a case, that is, for judicial mistakes (see Factor 17 below).

## Factor 17: Removal and Discipline of Judges

***Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Some of the grounds for disciplining judges are ambiguous and subjective. One of them, which amounts to disciplining judges for their mistakes, appears to be used in lieu of disciplining judges for ethical violations that cannot be proven, and perhaps as a means of influencing judges. Although the disciplinary process includes safeguards to protect the rights of judges, it is unduly protracted and lacks transparency as to the general public.</p>	

### Analysis/Background:

The President of Georgia is authorized, on the recommendation of the HCOJ, to dismiss judges of the regional (city) courts, appellate courts, and high courts of autonomous republics. CONSTITUTION, art. 73.1(p); LAW ON COMMON COURTS, arts. 53, 63.1(k). Judges of the Supreme Court, except for its Chairperson, may be dismissed by a majority vote in the Parliament on the recommendation of the President, following the same disciplinary procedures applicable to other common court judges. LAW ON THE SUPREME COURT, art. 23.3. Different procedures, discussed at the end of this Factor, apply to dismissal of the Chairperson of the Supreme Court and Constitutional Court judges.

Grounds for dismissal of common court judges are listed in two different laws. The lists overlap to some degree. The grounds in the Law on Common Courts include disciplinary violations, but also issues relating to qualification for judicial office. They include:

- commission of a disciplinary violation;
- commission of a second “corruptive violation” under the Law on Conflict of Interests and Corruption in Public Service within one year;
- enforcement of a criminal conviction against the judge;
- termination of judicial authority pursuant to the Law on Common Courts;
- engaging in activities or holding an office incompatible with judicial status;
- not having passed the qualification examination;
- unjustified failure to attend the mandatory training course;
- loss of Georgian citizenship;
- determination by a court of a judge’s incapacity;
- failure to perform judicial functions for more than six months;
- attaining the age of sixty-five (unless the President of Georgia, on the HCOJ’s recommendation, extends the judge’s term beyond his or her sixty-fifth birthday); and

- liquidation of the judge's court or reduction in the number of judicial positions as part of a reorganization of the judiciary.

See LAW ON COMMON COURTS, art. 54.

The grounds listed in the Law on Disciplinary Responsibility, on the other hand, focus on ethical violations, and specifically identify the following as “disciplinary violations” (the first ground for dismissal listed in the summary for the Law on Common Courts):

- gross or repeated violation of the law in hearing a case;
- corruptive violation or misuse of public office resulting in harm to justice or official interests;
- engaging in activity inconsistent with the position of a judge or with the interests and duties of a judge;
- an inappropriate action damaging the prestige and authority of a court or causing loss of confidence in a court;
- unwarranted extensions, improper performance of judicial duties, or “other kinds of violations of official duties”;
- disclosure of confidences concerning meetings of judges or of professional secrets;
- hindering the activity of disciplinary bodies or showing disrespect toward them; and
- “other kinds of violation of norms of judicial ethics.”

See LAW OF GEORGIA ON DISCIPLINARY RESPONSIBILITY AND DISCIPLINARY PROSECUTION OF JUDGES OF THE COMMON COURTS OF GEORGIA, art. 2 (Feb. 23, 2000) [hereinafter LAW ON DISCIPLINARY RESPONSIBILITY]. Some of these disciplinary violations are obviously ambiguous and subjective, thus making it relatively easy for the HCOJ to recommend dismissal, and for the President to dismiss, a judge. For example, a gross violation of the law is defined as one that caused or could cause damage to the legal rights and interests of a participant in the trial or of a third person, and a repeated violation is one that is committed three or more times. Although a good faith, but incorrect, interpretation of the law cannot constitute a gross or repeated violation, applying this exception may be difficult in practice, because of the need to make a subjective judgment about whether the judge acted in good faith. *Id.*

Disciplinary proceedings for gross or repeated violations of the law in hearing a case — that is, for making mistakes — are said to be problematic. Indeed, according to interviewees, most disciplinary cases are commenced not for ethical violations per se, but for mistakes made by judges. When a judge is suspected of being corrupt, but evidence of corruption is lacking, the HCOJ reportedly reviews the judge's decisions, looking for mistakes that can form the basis for a disciplinary case. In 2005, at least one judge is reported to have been disciplined for mistakes following an extensive review of his decisions by the HCOJ, after he denied a prosecutor's request for pretrial detention. The prosecutor did not, however, appeal the denial of pretrial detention. This suggests that discipline based on judicial mistakes may occasionally be used more to influence judges' decisions, particularly with regard to pretrial detention, than to identify their misconduct.

The procedures from complaint (see Factor 22 below) to dismissal of a common court judge are labyrinthine and protracted.<sup>11</sup> Following a preliminary investigation of a complaint, either the HCOJ or the Chairperson of the Supreme Court, a high court of an autonomous republic, or an appellate court can commence a disciplinary prosecution against a judge. LAW ON DISCIPLINARY RESPONSIBILITY, arts. 6, 8. The Secretary of the HCOJ convenes and chairs HCOJ meetings that consider disciplining judges. LAW ON COMMON COURTS, art. 60.10. Because of the Secretary's

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<sup>11</sup> Placing judges on the reserve list (see Factor 14 above) appears, at least sometimes, to have been used as a mechanism for dealing with judges whom the HCOJ decides not to discipline by these procedures.

role in such proceedings, one interviewee argued that it would be better if the Secretary were a judge. The Judicial Disciplinary Department has eleven employees who conduct preliminary investigations of complaints and prepare a report for the HCOJ. According to one interviewee, the employees are young and inexperienced. It was estimated that only 5-15% of complaints received by the HCOJ result in disciplinary prosecutions.

A disciplinary prosecution begins with the designation of a two-member disciplinary commission to investigate the complaint fully, seeking information from both the complainant and the judge, which concludes with issuance of a written report containing the commission's conclusions and recommendation whether to proceed to the next stage of the process: bringing a disciplinary case.<sup>12</sup> LAW ON DISCIPLINARY RESPONSIBILITY, arts. 10, 12, 14. The Chairperson of the court or the HCOJ, as appropriate, then decides whether to bring a disciplinary case against the judge and, if so, sends a written accusation to the judge, the complainant, and the Disciplinary Council of Common Courts of Georgia. *Id.* arts. 16-17. If, on the other hand, the Chairperson or the HCOJ decides not to bring a disciplinary case, even though a disciplinary violation was proven, a private recommendation letter may be sent to the judge, the contents of which are confidential. *Id.* art. 19.

The following information, obtained from the HCOJ, shows that the number of disciplinary cases commenced in recent years has remained relatively constant until 2003, when they increased sharply:

#### **DISCIPLINARY PROCEEDINGS AGAINST JUDGES**

<b>Year</b>	<b>Disciplinary matters</b>	<b>Judges prosecuted</b>
<b>2000</b>	N/A	90
<b>2001</b>	59	78
<b>2002</b>	39	47
<b>2003</b>	32	48
<b>2004</b>	78	132
<b>2005</b>	N/A	130

The Disciplinary Council consists of eight members (three of whom are judges) nominated by the HCOJ and appointed by the Conference of Judges (see Factor 19 below), who hear disciplinary cases in four-member panels.<sup>13</sup> *Id.* arts. 22, 24. The accused judge has the right to seek disqualification of the panel or any of its members on the grounds of partiality. *Id.* art. 35. At the hearing, both the representative of the complaining court Chairperson or the HCOJ, as the case may be, and the accused judge (who has the right to be represented by counsel) state their positions, present documents and other information, question witnesses and each other, and may move to obtain other documents or summon additional witnesses. *Id.* art. 39. If the panel decides that the judge intentionally committed the disciplinary violation of which he or she was accused, it may, depending upon the severity of the violation and its circumstances, issue a private letter of reprimand, impose another disciplinary penalty or measure, or recommend

<sup>12</sup> The Law on Disciplinary Responsibility was amended effective March 2006 to eliminate appointment of a disciplinary commission for this stage of the process. As amended, however, Article 12 does not specify who is responsible for conducting a disciplinary investigation.

<sup>13</sup> Effective March 2006, a six-member Disciplinary Collegium (three of whose members must be judges), elected by the HCOJ from among its members, will replace the Disciplinary Council as the body authorized to hear disciplinary cases — thereby considerably increasing the authority of the HCOJ over the disciplinary process. See LAW ON DISCIPLINARY RESPONSIBILITY, arts. 21, 24.1. (Sometimes the amended Law on Disciplinary Responsibility refers to a Disciplinary Panel. Whether this was due to an inadvertent failure to amend existing provisions that referred to a four-member panel of the Disciplinary Council or whether the term is intended to be a synonym for the Disciplinary Collegium, is unclear.)

dismissal of the judge in the case of serious and repeated violations of the law. *Id.* arts. 51, 53, 56. Other disciplinary penalties that may be imposed are notice, reprimand, strict reprimand, dismissal, and dismissal from the reserve list. *Id.* art. 4. The most common form of disciplinary measure, used in approximately 70% of disciplinary cases, is the recommendation letter, which identifies the mistakes made by the judge and includes recommendations for avoiding such mistakes in the future. Several judges who had received them complained that the recommendation letters were insulting.

If the panel imposes a disciplinary penalty or measure, including a private letter of reprimand, the judge may appeal to the full Disciplinary Council. Similarly, if the panel decides that the judge did not commit a disciplinary violation, the complaining court Chairperson or the HCOJ may appeal to the full Disciplinary Council.<sup>14</sup> *Id.* art. 60. The Disciplinary Council may modify the panel's decision based on its lawfulness and fairness, but as a general rule will not examine the factual basis for the decision. *Id.* arts. 63, 65. The rights of the parties to participate in the Disciplinary Council's consideration of an appeal are considerably more limited than in a hearing by a panel. Unless the Disciplinary Council holds a hearing to address factual issues, the parties may attend but may not participate in the session. *Id.* art. 67. The Disciplinary Council sends its decision to the judge concerned and the HCOJ. *Id.* art. 73. The decision may be appealed only by means of cassation (reviewing application of the law to the facts, but not re-evaluating the facts themselves) to the three-member Disciplinary Collegium of the Supreme Court, which may either affirm the decision or remand it to the disciplinary panel for reconsideration. *Id.* arts. 74<sup>1</sup>, 74<sup>6</sup>.

Once the disciplinary decision is final, the Chairperson of the Supreme Court (if the decision concerns a Supreme Court judge) or the HCOJ (if it concerns a judge in another court) is responsible for enforcement of the decision. *Id.* art. 75. If the decision recommends dismissing the judge, the Chairperson of the Supreme Court or the HCOJ submits it to the President, who then forwards the decision to the Parliament in the case of a Supreme Court judge, or decides himself whether to remove the judge if another court is involved. *Id.* arts. 77-79; LAW ON COMMON COURTS, art. 63.1(g). Between August 2004 and August 2005, fifteen judges were dismissed. In addition, three judges have been arrested and charged with crimes since 2004. (Criminal violations are handled by the criminal justice system, not the disciplinary process described in this Factor.)

A notice expires in six months, a reprimand in nine months, and a strict reprimand in one year, if the judge does not commit another disciplinary violation within that period. LAW ON DISCIPLINARY RESPONSIBILITY, art. 84.1. A judge who is subject to an unexpired disciplinary measure cannot be appointed to a higher court and, if he or she commits another violation before the disciplinary measure expires, can be given a more severe penalty. *Id.* arts. 54.3, 85. One way to avoid these consequences is for a judge to admit the violation and receive a personal reprimand. In those circumstances, the judge is not considered to be subject to a disciplinary measure. *Id.* art. 84.2.

Several interviewees complained that the process outlined above, which may take ten months or a year to complete, needs to be shortened. The anxiety caused by any disciplinary proceeding can make a judge more susceptible to influence and is exacerbated by the current protracted procedures. It was reported, however, that the HCOJ is considering a proposal to reform this process. Under this proposal, the HCOJ would be enlarged to sixteen members, half of whom would be judges, and groups of four members of the enlarged HCOJ would replace the Disciplinary Council. The Supreme Court's Disciplinary Collegium would also be eliminated. The Law on Disciplinary Responsibility was in fact subsequently amended to implement this proposal, although with some minor differences. Effective March 2006, a six-member Disciplinary Collegium (three of whose members must be judges), elected by the HCOJ from among its

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<sup>14</sup> Effective March 2006, appeals to the full Disciplinary Council will no longer be possible. Then decisions of the Disciplinary Collegium can be appealed directly to the Disciplinary Collegium of the Supreme Court, which, under article 65.1 of the Law on Disciplinary Responsibility, will have authority to review both factual and legal issues.

members, will replace the Disciplinary Council as the body authorized to hear disciplinary cases — thereby considerably increasing the authority of the HCOJ over the disciplinary process. See *id.* arts. 21, 24.1.

A striking characteristic of this disciplinary process is its lack of transparency as to the public at large, that is, toward those whose trust in the judiciary's integrity could be enhanced if the process were more transparent. Some requirements of confidentiality early in the process make sense, because they can protect the reputation of a judge who is found to be innocent of a violation. Once a judge has been disciplined, however, there is less justification for secrecy, but secrecy is nonetheless required. For example, sessions of disciplinary panels and of the full Disciplinary Council are closed to the public. Furthermore, "Information on the discussion of the disciplinary case is confidential. Members of the Disciplinary Council and the person presenting the accusation are obliged to keep this information confidential." *Id.* arts. 30.4, 64. In addition, officials, public servants, and their staff must not reveal any information they learn during the investigation of a disciplinary case. *Id.* art. 5. Finally, the only part of a decision by a disciplinary panel or the Disciplinary Council that may be published is the disciplinary penalty or measure, but not the grounds for imposing it, except when the judge is dismissed. *Id.* art. 81. Members of a disciplinary panel or the Disciplinary Council are forbidden to reveal the basis for discipline. *Id.* art. 82. Only the judge is advised of the reason for discipline. The reason given for this secrecy is that if litigants knew why a judge had been disciplined, they could request that their case be assigned to a different judge. It should be noted, however, that judges who were disciplined said that the process was transparent as to them. They were aware of the charges against them and had ample opportunity to participate in the process, which some described as fair. Others, however, called it insulting and demeaning.

These procedures do not apply to the Chairperson of the Supreme Court, who is subject to dismissal through impeachment by a majority vote in the Parliament for violation of the Constitution, if confirmed by the Constitutional Court, or for commission of high treason or other criminal offense, if confirmed by the Supreme Court. CONSTITUTION, art. 64; LAW ON THE SUPREME COURT, arts. 23.1-.3; LAW ON THE CONSTITUTIONAL COURT, art. 19(h).

A Constitutional Court judge can be dismissed by a majority vote of the Court's Plenum on the following grounds:

- failure to perform his or her duties for six consecutive months;
- determination by a court of the judge's incapacity;
- enforcement of a criminal conviction against the judge;
- disclosure of professional secrets;
- engaging in an occupation incompatible with judicial office or other activities prohibited by law; and
- loss of Georgian citizenship.

See LAW ON THE CONSTITUTIONAL COURT, art. 16.1.

## Factor 18: Case Assignment

***Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Cases are assigned by an objective method and may be reassigned only to equalize the caseload among judges.	

### Analysis/Background:

The chairperson of a regional (city) court, appellate court, or high court of an autonomous republic assigns cases “according to rules prescribed by law.” LAW ON COMMON COURTS, arts. 17.3(c), 22(f). The procedure generally used is to assign cases alphabetically. The names of the judges are listed in alphabetical order, and the first judge on the list receives the first case filed, the second judge receives the second case filed, and so on. The chairperson of the court may reassign cases if necessary to ensure an equitable distribution of the cases. LAW OF GEORGIA ON GUIDELINES TO DISTRIBUTE CASES AND DESIGNATE AUTHORITY TO JUDGES, art. 4 (June 26, 1998). In the regional courts, cases are assigned to magistrates according to location. *Id.* art. 4.2. None of the interviewees suggested that cases were assigned to particular judges to ensure a desired result. The public is unaware, however, of how cases are assigned. Only 3% knew that they were randomly assigned, while 36% believed that the chairperson made such decisions. JUDICIAL PERCEPTION SURVEY, at 36.

The Chairperson of the Constitutional Court assigns those cases not required to be heard by the Plenum of the Court to boards in accordance with the Regulations of the Court. REGULATION OF THE CONSTITUTIONAL COURT, art. 37. These Regulations provide that after a claim is registered, it is sent to the Chairperson, who assigns it to one of the boards for resolution.

## Factor 19: Judicial Associations

***An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
The Judges of Georgia is an association founded in 1999 to protect and promote the interests of judges. The majority of judges who were interviewed criticized it for its inactivity and inability to protect their interests. Another judicial association, the Conference of Judges of Georgia, was established pursuant to the Law on Common Courts. Although it is supposed to meet twice a year, it has not met at all during the past two years.	

### Analysis/Background:

The Constitution guarantees the right to form and join public associations. CONSTITUTION, art. 26(1). Judges exercised this right to form a voluntary judicial association, the Judges of Georgia (JOG), in 1999. Its primary purposes are to defend the rights of judges, increase their authority, protect their material and social interests, and make the judiciary less corrupt. It also offers CLE seminars and training courses. Judges pay 1% of their salary as membership dues. JOG also

receives significant funding from ABA/CEELI and other donors. As of September 2005, it had 303 members, or about 90% of Georgian judges. Although a few judges praised JOG for defending their interests, most criticized it for not doing enough, particularly as the HCOJ has become more powerful. One said that he and his colleagues had little faith in the JOG’s ability to protect judges, a function they considered more important than providing CLE. Another noted that JOG had become especially passive during 2005, and was not able to do much to protect the interests of judges during the reorganization of the courts (see Factor 14 above). Noting that although the existence of the organization is a very positive thing, one judge remarked that it was not very active. “It is not enough to hold meetings once or twice a year,” he complained.

Another judicial association is the Conference of Judges of Georgia, which was established pursuant to the Law on Common Courts as a self-governing judicial body consisting of the judges of the Supreme Court, high courts of autonomous republics, appellate courts, and regional (city) courts. LAW ON COMMON COURTS, art. 77.1. That is, it includes all judges except those of the Constitutional Court. Its purpose is to protect and strengthen judicial independence, increase public trust in the judiciary, and increase judicial authority. *Id.* art. 77.2. Regular meetings are to be held every six months, and extraordinary meetings may also be called. *Id.* arts. 78.1-2. Sessions are open to the public. *Id.* art. 78.3. Because a quorum is half the number of judges in Georgia, sessions of the Conference of Judges should represent the diversity of views among judges. See *id.* art. 78.4. Its organizational structure includes an Administrative Committee and Coordinating Council. *Id.* arts. 78.2(a), 79(a)-(b). The Conference of Judges hears annual reports from the Chairman of the Conference of Judges, the Chairman of the Coordinating Council of the Conference of Judges, and the Chairman of the Department of Common Courts concerning the activity of these bodies; it approves regulations for the Conference of Judges; and it carries out other duties pursuant to law. *Id.* arts. 79(c)-(f). The Conference of Judges also appoints the eight-member Disciplinary Council, on the nomination of the HCOJ, which decides disciplinary cases (see Factor 17 above).<sup>15</sup> LAW ON DISCIPLINARY RESPONSIBILITY, art. 24. According to interviewees, however, the Conference of Judges had not met in two years. During this time, the power exercised by the HCOJ over judges has increased.

## V. Accountability and Transparency

### Factor 20: Judicial Decisions and Improper Influence

***Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Improper influence by the executive branch and the procuracy has increased since 2003. The reorganization of the courts and non-transparent placing of judges on the reserve list have contributed to an atmosphere of fear that has made judges more vulnerable to influence.	

#### Analysis/Background:

One of the most serious issues facing the judiciary in Georgia is improper influence from the executive branch and the procuracy, particularly in criminal, and to a lesser extent in administrative cases, despite constitutional and other guarantees of judicial independence. For

<sup>15</sup> The Law on Disciplinary Responsibility was amended effective March 2006 to replace the Disciplinary Council with a six-member Disciplinary Collegium, elected by the HCOJ from among its members, as the body authorized to hear disciplinary cases.

example, the Constitution provides that a judge “shall be independent in his/her activity and shall be subject only to the Constitution and law. Any pressure upon the judge or interference in his/her activity with a view to influencing his/her decision shall be prohibited and punishable by law.” CONSTITUTION, art. 84.1; see also LAW ON COMMON COURTS, arts. 7.1, 8; LAW ON THE SUPREME COURT, art. 3.1; LAW ON THE CONSTITUTIONAL COURT, art. 4.1. Furthermore, “All acts restricting the independence of a judge shall be annulled.” CONSTITUTION, art. 84.4. The Law on Common Courts proclaims the judiciary to be “an independent branch of government,” with justice administered by the common courts. LAW ON COMMON COURTS, art. 1.1-.2. In addition, the Code of Ethics admonishes judges to be “independent and unbiased while making a decision” and not to discuss a decision with anyone else before making or carrying out orders or recommendations that could hinder their independence. CODE OF ETHICS, arts. 13, 16, 17.

Following the Rose Revolution, according to the Freedom House, “The new government, eager to maintain the momentum of revolutionary change and achieve fast results, has not always respected existing laws and procedures in pursuing its policies.” NIT 2005, at 260. Indeed, “the actual independence of the judiciary decreased in 2004 owing to more blatant political pressure from the government.” *Id.* at 277. Interviewees also reported an increase in political pressure since 2003. One commented that the government violates constitutional and international guarantees and exercises influence over the courts in its efforts to bring about reform. When asked if “telephone justice” still exists in Georgia, one judge responded, “Of course.” She noted, however, that judges who are unwilling to be influenced do not receive such calls. Several other interviewees reported instances of judges receiving telephone calls from high government officials. Another said that telephone calls are unnecessary in political cases, since judges know what they are expected to do. It is rumored that the executive branch is very interested in learning about corruption by judges in the past as a means of influencing them in the present. Several judges said that the process of judicial reform, begun by President Saakashvili in 1998 while he was a member of the Parliament, was quite successful initially, but has stalled in recent years, when the government influence on the courts increased.

Influence from the government is not the only problem judges face. Judges in the regions are said to be subject to influence by local authorities. Sometimes local governmental bodies shut off the electricity or water to courthouses in order to influence judicial decisions.

Several judges said that they had never been subject to attempts by prosecutors to influence their decisions. Likewise, a prosecutor argued that judges are not influenced by prosecutors, pointing out that judges occasionally acquit criminal defendants (formerly, he said, a prosecutor’s permission was needed for that), and sometimes deny requests to hold defendants in pretrial detention (about 3% of requests for pretrial detention were denied in his region). This would not be possible, he asserted, if judges were afraid of prosecutors. Most judges reported, however, that prosecutorial influence is widespread, particularly with regard to issues of pretrial detention. When prosecutors request that a defendant be held in pretrial detention, it is reported that judges almost invariably grant such requests. Although a number of judges said that they had received telephone calls from prosecutors attempting to influence them (sometimes by doing no more than urging them to make sure they reached a proper decision), another judge said that prosecutors do not telephone judges directly. According to that judge, prosecutors instead contact the Prosecutor General or Deputy Prosecutor, who speaks with the Chairman of the Supreme Court, a member of the HCOJ. Referring to the present “environment of fear,” a judge joked that if you say only “pros[ecutor],” some judges would have a heart attack. At least one incident suggests that such fear may not be unfounded. A prosecutor requested recusal of a judge in a case against an organization for which the judge had worked as a lawyer fifteen or twenty years earlier. The judge refused, and an investigation against the judge involving a decision on pretrial detention that had been closed four years ago was reopened. When describing the result of influence by prosecutors, several interviewees said that judges have become like notaries: they write what they are told to. Several interviewees suggested, however, that overt influence by prosecutors is rare, because judges know what is expected of them and what will happen if they decide against a prosecutor.

A significant factor contributing to judges' susceptibility to influence is the reorganization of the courts and the resulting uncertainty about which judges will end up on the reserve list (see Factor 14 above). As one judge put it, "It is difficult not to be influenced when you are unsure if you will be removed." Another remarked, "Judges who are afraid of the near future are inclined toward conformity." A third spoke of a "syndrome of fear" resulting from the reorganization and said that judges believe that "the only thing left is to please the government." One consequence of the reorganization is that many sitting judges are being replaced by "new faces," and such newly appointed judges, it is argued, are easier to influence. Beyond the HCOJ's role in the reorganization, its present composition, with judges making up fewer than half its members, has led many to question its independence and ability to protect the interests of the judiciary. One reported that at least one prosecutor would remind judges about the secretary of the HCOJ — a former prosecutor (who resigned, however, in late September 2005) — with the implicit threat that the HCOJ would favor a prosecutor if he filed a complaint against a judge. Advocates also threaten to file complaints with the HCOJ. The protracted and, from the standpoint of judges, unsatisfactory process for addressing complaints (see Factor 17 above) contributes to the lack of confidence many judges feel toward the HCOJ. In the words of one judge, "We have no one to protect our interest." A focus group of judges said that if they were certain the HCOJ would support them, they would stand up to the influence of prosecutors. At the same time, a member of the HCOJ stated publicly that he was unaware of any attempts to influence judges and that the HCOJ had received no such complaints. Judges who are subject to influence and remain silent, he asserted, do not deserve to be judges. Under the circumstances, however, it is naïve to expect judges to complain to the HCOJ, which some see as an agent of intimidation.

The Law on Conflict of Interests and Corruption in Public Service prohibits corruption. It provides that an official (a term defined to include judges) who is obligated to make decisions free of charge may not receive or demand compensation or any kind of benefits for performing that service. LAW OF GEORGIA ON CONFLICT OF INTERESTS AND CORRUPTION IN PUBLIC SERVICE, arts. 2, 9.1 (Oct. 17 1998). Like other officials, judges must file property declarations within one month after their appointment, and annual property and financial declarations thereafter. *Id.* art. 14.

Determining the extent of corruption is often difficult, but it appears to have become less frequent than in the past. When asked if corruption still exists, one interviewee replied, "Of course." Others said that now it is more common in the regions. However, the overwhelming majority of interviewees reported that corruption has become considerably rarer over the past few years, in large part due to the government's crackdown on corruption. This has led to several well-publicized prosecutions of judges who were videotaped accepting bribes. As a result, judges are now afraid to engage in corruption. In a recent survey of public perceptions about the judiciary, although half the respondents thought that the judiciary was fully or partially corrupt, three-quarters of them believed that the level of corruption had decreased significantly since 1998. JUDICIAL PERCEPTION SURVEY, at 29-31. Further improvement is needed, however. According to Transparency International's Global Corruption Barometer, a public opinion survey released in December 2005, 51% of Georgians considered the judiciary to be the most corrupt institution, well ahead of the second and third institutions, the customs (37%) and political parties (36%).

## Factor 21: Code of Ethics

***A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
<p>The Conference of Judges adopted a code of ethics addressing major issues of importance to Georgian judges. No training concerning the code is required, and compliance with the code is voluntary. Many interviewees were skeptical about the extent to which the code actually affects the conduct of judges.</p>	

### Analysis/Background:

On July 23, 2001, the Conference of Judges (see Factor 19 above) adopted a code of judicial ethics for judges of the common courts, consisting of 45 brief articles. The Code of Ethics' purpose is "to support the independence, impartiality, and unity of the judiciary, to establish and promote public trust and confidence toward the judiciary, [and] to protect the prestige and authority of the judiciary and position of a judge." CODE OF ETHICS, art. 2. Some provisions speak in generalities about the importance of these goals, but provide little in the way of practical guidance for judges to achieve them. For example, "A judge shall strengthen public trust and confidence in the independence, fairness, objectivity, or impartiality of the judiciary" and "A judge shall protect the prestige of the judiciary." *Id.* arts 5, 6. The most unambiguous guidance relates to avoiding statements or other actions that could cast doubt on the judge's impartiality or independence. *E.g., id.* arts. 13, 14, 16, 17, 19-21. Although the Code of Ethics does not explicitly prohibit conflicts or interest or ex parte communications, it does prohibit judges from engaging in political activity, including making speeches on behalf of a political organization, supporting or opposing a political candidate, or even revealing their political views. *Id.* arts. 36-38. This restriction echoes those found in other legal acts. According to the Constitution, all judges are prohibited from engaging in any other occupation or "remunerative activity," except for teaching, and may not be members of a political association or party or engage in any political activity. See CONSTITUTION, arts. 26.5, 86.3; LAW ON THE SUPREME COURT, art. 20.4; LAW ON THE CONSTITUTIONAL COURT, art. 17.

The lack of enforceability of the Code of Ethics may well reduce its influence on the conduct of judges. A violation of the Code of Ethics per se cannot result in discipline of a common court judge, unless the violation is also a basis for discipline under the Law on Common Courts or the Law on Disciplinary Responsibility. CODE OF ETHICS, art. 3. In that case, of course, the judge would be subject to discipline under those laws anyway. Judges are not required to receive training on the Code of Ethics, and the required course for newly appointed judges does not cover it; however, in 2002-2003, ABA/CEELI sponsored training courses throughout the country on the Code of Ethics. The Code, together with a code of ethics for court personnel, is posted in at least the model courts, which may help increase awareness of its provisions.

Some judges praised the Code of Ethics as well written, even "brilliant," in the words of one. Many interviewees were skeptical, however, about whether many judges had read it or whether it affected their conduct to any noticeable extent. One questioned whether judges, or lawyers for that matter, had any understanding about what professional ethics involves.

The Law on the Constitutional Court provides guidance on conflicts of interest. It requires a judge to recuse him or herself when one of the parties or a party's representative is a close relative, when a judge is directly or indirectly interested in the results of the case, or when other

circumstances call into question his or her impartiality. LAW ON THE CONSTITUTIONAL COURT, art. 46.

## Factor 22: Judicial Conduct Complaint Process

***A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>Procedures exist for judges, lawyers, and the public to file complaints concerning judicial misconduct. Members of the public are often, however, unaware of where to file such complaints. Sometimes disgruntled litigants and prosecutors file complaints in lieu of appealing a decision.</p>	

### Analysis/Background:

The chairpersons of regional (city) courts, appellate courts, and high courts of autonomous republics can receive and consider complaints from citizens and report to the HCOJ on those complaints. LAW ON COMMON COURTS, arts. 17.3(e)-(f), 22(c)-(d). Complaints may also be filed directly with the HCOJ. LAW ON DISCIPLINARY RESPONSIBILITY, art. 7(a). However, no complaint can serve as a basis for discipline if the alleged misconduct occurred more than three years in the past. *Id.* art. 3.

Although people are generally aware that they can complain about judges, they often do not know where to file the complaints. For example, complaints are filed with the President of Georgia, the President of the Parliament, the Minister of Justice, the Chairperson of the Supreme Court, and the Ombudsman. All such complaints are forwarded to the HCOJ for investigation and may result in the commencement of a disciplinary case against a judge (see Factor 17 above). An estimated 80-90% of complaints are filed by citizens, about 8% by prosecutors, and the remainder by lawyers. As of September 2005, some 1,600 complaints were pending, some concerning the same event.

People reportedly often file complaints as a kind of informal appeal of decisions that they are unhappy with, usually concerning procedural issues (see Factor 8 above). One judge, for example, recounted a civil case in which she made a procedural error. The losing party complained to the HCOJ, but did not appeal the judge's decision. The HCOJ concluded that the judge had committed a gross or repeated violation of the law in hearing the case and therefore disciplined her (see Factor 17 above). Ironically, the judge was disciplined for a decision that was not appealed and therefore remained in effect. Although the vast majority of citizens surveyed (89.9%) knew that parties could express their dissatisfaction with a court proceeding, and a majority (58.7%) knew that a decision could be altered only by an appeal, 13.1% believed that the President could alter a decision and 9.7% believed that the prosecutor's office could do so. JUDICIAL PERCEPTION SURVEY, at 40-41.

In mid-2005, the Judges of Georgia established a hotline so that citizens could express their concerns about the judiciary. In its first few months of operation, the complaints received were directed not so much against individual judges but against systemic problems, such as delays resulting from an insufficient number of judges.

## Factor 23: Public and Media Access to Proceedings

*Courtroom proceedings are open to, and can accommodate, the public and the media.*

<b><i>Conclusion</i></b>	<b><i>Correlation: Positive</i></b>
<p>Courtroom proceedings are generally open to the public and the media, and courtrooms are usually adequate to accommodate them.</p>	

### Analysis/Background:

The Constitution requires that court proceedings be open, except “in the circumstances provided for by law” and that all judgments must be announced publicly. CONSTITUTION, art. 85.1; *see also* LAW ON COMMON COURTS, arts. 12.1-.3. Criminal cases involving minors, domestic relations cases, and hearings when the judge believes that disorder may occur are sometimes closed, as can be cases involving state, official, or commercial secrets. CRIMINAL PROCEDURE CODE, arts. 16.1-5; CIVIL PROCEDURE CODE, arts. 9.1-.3, 350.3. Photography, filming, and audio or video recording may be prohibited, but only when the court provides a justifiable explanation. LAW ON COMMON COURTS, art. 12.4. Furthermore, the Code of Ethics encourages judges to “support the interest of the representatives of the press to obtain and disseminate information about the administration of justice, the activities of the court or a specific case.” CODE OF ETHICS, art. 18. The Supreme Court has a press center, which is responsible for communicating with the mass media. LAW ON THE SUPREME COURT, art. 14.2.

Proceedings of the Constitutional Court are open, but may be closed to protect a “person’s private, professional, commercial, or a state secret.” LAW ON THE CONSTITUTIONAL COURT, arts. 27.1-.2. Persons under the age of sixteen or those who are armed (except those present to secure the Court) are not, however, permitted to attend proceedings of the Constitutional Court. *Id.* art. 27.4.

There was widespread agreement among interviewees that court proceedings, even hearings involving pretrial detention, are generally open to the public and, as a general rule, courtrooms are sufficient to accommodate the public and media. During the past five years, almost 10% of citizens surveyed attempted to attend a trial, and the vast majority (88.7%) were allowed to do so. JUDICIAL PERCEPTION SURVEY, at 38. In politically sensitive cases, however, hearings may be held in small courtrooms, thereby limiting media and public access. Even though the media usually have access to proceedings, several interviewees voiced concern about the low level of sophistication and professionalism in media coverage of trials.

## Factor 24: Publication of Judicial Decisions

*Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.*

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>Judicial decisions of first instance courts are a matter of public record and are open for examination upon written request. Decisions of the Supreme Court and the Constitutional Court are published, and the Supreme Court’s decisions are also available on the Court’s website.</p>	

Analysis/Background:

A case file is a public document once the case is completed. Members of the public who wish to examine the file or obtain copies of a decision must submit a written request to the chairperson of the court. Within ten days, permission to examine the file should be given or the copy of the decision provided. Although it sometimes takes longer than ten days to receive a decision, interviewees reported that they usually received the requested decisions eventually. Practices appear to differ among the courts, however. For example, a judge in one court said that only court decisions are provided to members of the public, while the media are entitled to examine the entire case file. Only a small number of citizens surveyed have attempted to obtain court documents (5.2%), and of those that did, 60.6% were successful. JUDICIAL PERCEPTION SURVEY, at 40.

Supreme Court decisions in civil cases from 2001 to the present and from 2002 in criminal and administrative cases are available on the Court’s website, <<http://www.supremecourt.ge>>. This database was compiled with support of the Judges of Georgia. Decisions of the Constitutional Court are to be announced publicly and published (together with any separate opinions, if their authors so request). LAW ON THE CONSTITUTIONAL COURT, arts. 27.5, 47. Decisions of both the Supreme Court and the Constitutional Court are in fact published.

**Factor 25: Maintenance of Trial Records**

***A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>No verbatim transcripts of court proceedings are maintained. Instead, the court secretary summarizes proceedings in the form of minutes. These are handwritten in most courts, but in the Supreme Court, they are typed on computers. Although the accuracy of minutes varies depending on the secretary, they are generally of acceptable accuracy.</p>	

Analysis/Background:

Court secretaries are present during every hearing to summarize the proceedings in the form of minutes. To be eligible for a position of court secretary, one must have attended a special training course at the Judicial Training Center or have at least one year of prior work experience as a court secretary. LAW ON COMMON COURTS, art. 75. In the Supreme Court, minutes of court proceedings are typed on computers, but in other courts they are handwritten. The accuracy of the minutes varies from secretary to secretary, but most judges found them adequate. When judges have a full schedule and hurry through proceedings, however, the accuracy of the minutes may suffer. Although parties and their lawyers have the right to review minutes for accuracy, they reportedly rarely do so. Because he distrusts the accuracy of minutes, one advocate said he provides a copy of his speech for the case file. Minutes are included in the case file and are available only to the parties until the case has been decided. Thereafter, their availability appears to depend on the court’s procedures regarding access to case files (see Factor 24 above). If a court denies the public but not the media access to case files, only the media are allowed to review the minutes.

## VI. Efficiency

### Factor 26: Court Support Staff

*Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Judges have adequate numbers of generally well-trained support staff to assist them in preparing cases for trial and summarizing proceedings.	

#### Analysis/Background:

Personnel in common courts are public employees subject to the supervision of a court's chairperson. LAW ON COMMON COURTS, art. 72. Court support staff include court secretaries (see Factor 25 above) and judges' assistants. The latter are responsible for meeting with citizens, reviewing their applications, preparing cases for hearing, conducting legal research, and performing such other duties as a judge may request. *Id.* art. 73.1; LAW ON THE SUPREME COURT, art. 15.1. To qualify for appointment as a judge's assistant, one must have a university degree in law and either have completed a three-month training course at the Judicial Training Center or have at least one year of experience as a judge, prosecutor, investigator, advocate, or consultant in a high court of an autonomous republic or the Tbilisi District Court (i.e., Appellate Court), or have passed the qualification examination for judges (see Factor 2 above). LAW ON COMMON COURTS, art. 73.2; LAW ON THE SUPREME COURT, art. 15.2. The HCOJ determines the number of judges' assistants in the common courts. LAW ON COMMON COURTS, art. 73.4.

Many judges, at least in the model courts, have an assistant and a secretary. Although judges' assistants handle documentation for their judges' cases, they usually do not, in practice, assist with legal research. For the most part, interviewees were quite satisfied with the number and training of their support staff. Several, in fact, described them as well qualified. Moreover, given the number of unfilled judicial positions (see Factor 27 below), one judge reported that his court has more support staff than it presently requires. On the other hand, a member of the HCOJ commented that many complaints regarding first instance courts concern the court staff, and this is an issue the HCOJ is planning to address.

### Factor 27: Judicial Positions

*A system exists so that new judicial positions are created as needed.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
The President of Georgia has authority to determine the number of judges in the common courts. Not only is the number of existing positions inadequate given the caseload of most courts, but there are a large number of vacancies in existing positions, resulting in significant delays in the resolution of cases.	

#### Analysis/Background:

The President of Georgia has authority to determine the number of judges in the regional (city) courts, appellate courts, and the high courts of autonomous republics, based on the HCOJ's

recommendation. LAW ON COMMON COURTS, arts. 14.2, 20.1. The President also has authority, upon the HCOJ's recommendation, to create new regional (city) courts and appellate courts and to specify their territorial jurisdiction. *Id.* arts. 13.1, 19.

Many judges said that additional judicial positions are necessary to handle their courts' caseloads. For example, a judge in a court with three judicial positions said that seven or eight were needed. Another judge in a court with sixteen authorized positions (only twelve of which were filled) said that a total of twenty were needed to handle the caseload. A common complaint among judges was their heavy caseloads. Some reported having to hear and decide two or three cases a day, and several said they sometimes hear and decide as many as five cases a day. Judges were concerned that having to decide so many cases made them more prone to error and therefore to possible discipline (see Factor 17 above). As one of them remarked, "It is dangerous to have judges who are too busy." Because the law requires requests for pretrial detention to be decided within 24 hours, those cases are given priority, and backlogs of other cases increase. In calls received the hotline set up by the Judges of Georgia, citizens frequently complained about delays in civil and administrative cases.

The problem of delays is compounded by the number of judicial vacancies. In late 2005, 364 judicial positions were authorized, with 256 acting judges and 108 vacancies. In other words, more than 30% of judicial positions were unfilled. The problem was particularly acute in the Supreme Court, which had 44 positions, with 21 acting judges and 23 vacancies. Thus, more than 52% of judicial positions in the Supreme Court were unfilled. These vacancies have placed a heavy burden on judges.

To avoid delays in trying cases, the chairperson of a regional (city) court may request that a judge try cases in a panel different from that to which he or she is normally assigned or as a magistrate judge; or that a magistrate judge try cases in a regional (city) court outside the territory of his or her assigned court. *Id.* art. 15<sup>1.5</sup>. For example, the Batumi City Court has three regularly assigned judges and six temporarily assigned judges — a sufficient number to handle the court's caseload. Similarly, the chairperson of an appellate court or high court of an autonomous republic may request a judge to try cases in a different chamber or in the Investigative Collegium. *Id.* art. 20.4. Judges may not, however, be assigned to another court on the same or lower level without their consent. *Id.* art. 49.4. At the same time, the problem of judicial vacancies is so severe that this authority to transfer judges temporarily or seek their consent to reassignment appears inadequate to solve this problem.

The following table, which shows the number of cases decided annually between 2000 and 2005,<sup>16</sup> illustrates the impact of insufficient number of judges (principally due to the level of judicial vacancies). Whereas the number of cases decided by the Supreme Court has increased steadily, as has the number of cases decided by the appellate courts except for a slight decrease in 2005, the number of cases decided by first instance courts increased each year until 2004, when it fell precipitously and decreased further in 2005.

#### CASES DECIDED

	2000	2001	2002	2003	2004	2005
<b>First Instance</b>						
Civil	49,817	43,714	36,242	31,760	22,127	20,280
Criminal	35,223	37,860	42,691	43,985	9,182	9,395
Administrative	23,983	28,451	48,487	54,770	11,357	9,511
<b>Total</b>	<b>109,023</b>	<b>110,025</b>	<b>127,420</b>	<b>130,515</b>	<b>42,666</b>	<b>39,186</b>
<b>Appeals</b>						

<sup>16</sup> Because statistics for 2005 were available only for the first nine months, estimated annual numbers were calculated by multiplying the numbers for nine months by 4/3.

Civil	1,757	2,737	2,947	3,100	3,334	3,125
Criminal	1,072	1,301	1,587	1,911	1,147	1,569
Administrative	224	571	1,345	1,998	2,809	2,483
<b>Total</b>	<b>3,053</b>	<b>4,609</b>	<b>5,879</b>	<b>7,009</b>	<b>7,290</b>	<b>7,177</b>
<b>Supreme Court</b>						
Civil	1,274	1,175	1,348	1,398	1,339	1,236
Criminal	429	675	727	870	1,014	1,205
Administrative	205	287	509	920	1,318	1,807
<b>Total</b>	<b>1,908</b>	<b>2,137</b>	<b>2,584</b>	<b>3,188</b>	<b>3,671</b>	<b>4,248</b>
<b>Grand Total</b>	<b>113,984</b>	<b>116,771</b>	<b>135,883</b>	<b>140,712</b>	<b>53,627</b>	<b>50,611</b>

The reorganization of the courts (see Factor 14 above) also contributed to judicial vacancies and the resulting backlogs of cases. For example, significant delays began to occur after the May 2005 unification of the regional courts in Tbilisi into one city court. Although there had been delays in trying criminal cases before the unification, they reportedly became more severe following the reorganization. One interviewee complained that the delays in criminal cases have placed the pretrial detention centers, filled with defendants awaiting trial, under considerable strain. Delays are said to be particularly severe in administrative cases, with some taking more than three years to be heard. One solution that interviewees suggested would be to use the judges on the reserve list to help reduce the backlog of cases. According to Article 113 of the Law on Civil Service, the goal of the reserve list is to find new positions for civil servants on the list. If judicial vacancies arise, judges on the reserve list should be used to fill them, but thus far they have not been called upon to do so.

## Factor 28: Case Filing and Tracking Systems

*The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
The Supreme Court has a computerized case tracking and management system. Other courts rely on a manual system that is excessively bureaucratic and consumes considerable time of court chairpersons with inefficient formalities.	

### Analysis/Background:

The Supreme Court has a computerized case tracking and management system. The software permits searching the database by names of parties and displays information regarding the progress of the case and the decision, if the case is completed. All documents prepared by the Court are available on the system. Citizens interested in a case can come to the Court and obtain information using the system, and court personnel are available to assist them.

All other common courts rely on manual case tracking and management systems. Although procedures vary among the courts, the following description, based on the Kutaisi City Court, is generally representative of procedures used in other first instance courts. When a document is filed with the chancellery, a clerk stamps it with the court seal, writes the date in the seal, enters the document in a register, and assigns it a number. If the document relates to pretrial detention, it is sent to the Chairman, who assigns it to the judge responsible for decisions on pretrial detention, and an entry is made in another register. If the Chairman is not available, the document is sent directly to the judge, because a decision is required within 24 hours. The

Chairman then officially assigns it after the fact. Indeed, the Chairman must sign every document filed in the court, a formality that consumes two or more hours a day.

When a document is filed to commence a civil case, it is registered and assigned a number, and then is sent to the Chairman for assignment to the judge on duty. If the Chairman is not available, it is sent directly to the judge on duty, and the formal assignment occurs later. Within five days, the judge on duty reviews the document for adequacy. In 70-80% of instances, there are inadequacies, and documents are returned to the plaintiff for correction within ten days. If it is not corrected within that period, the judge enters an order dismissing the case. If it is corrected, the judge sends it to the chancellery, where it is entered in another journal under the names of the parties, and then sent to the Chairman for assignment. Cases are assigned based on an alphabetical list of judges (see Factor 18 above). The Chairman returns the assigned document to the chancellery, which sends it to the appropriate judge. A copy is sent to the defendant, who has fifteen days to respond. The judge who is assigned the case keeps the case file, which includes an index of all documents filed in the case. When a case is decided, the case file is returned to the chancellery. If a decision is appealed, the case file is sent to the appellate court, and then returned to the chancellery of the city court after a final decision is rendered. It is stored in the chancellery's archive.

Procedures for filing and tracking criminal cases are similar, except that the initial review for adequacy is not performed, and the documents collected during investigation are also included in the file sent to the court.

At the end of each month, each judge's assistant prepares a report on the cases accepted, decided, and postponed.

## **Factor 29: Computers and Office Equipment**

***The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
<p>Some courts, such as the Supreme Court, appellate courts, and model courts have a sufficient number of computers, at least for judges, and other equipment. Other courts are less well equipped. All in all, many more computers are needed.</p>	

### Analysis/Background:

The Department of Common Courts (see Factor 10 above) has general responsibility for the material and technical support of the common courts. LAW ON COMMON COURTS, arts. 70.1, 71(e). Many of the computers placed in the courts in recent years were provided by the World Bank through its model courts project. Typically each judge in model courts has a computer, but his or her assistant and secretary usually do not. The computers are primarily used for word processing, due to lack of access to the Internet. Judges in the Supreme Court and at least some judges in the appellate courts also have computers, but other courts have few computers. Overall many more computers are needed. In the Tbilisi City Court, for example, sixty additional computers are required. Eventually it is hoped that all judges will have computers with a unified network linking all the courts.

The situation with regard to other equipment is similar. The Supreme Court, appellate courts, and model courts generally have sufficient equipment, while other courts often do not.

### **Factor 30: Distribution and Indexing of Current Law**

***A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
<p>Although judges in some courts receive copies of current and newly enacted laws, those in other courts do not and must purchase them with their own money.</p>	

#### Analysis/Background:

The Department of Common Courts (see Factor 10 above), which has general responsibility for the material and technical support of the common courts, is specifically responsible for providing the common courts with texts of normative acts and other documents necessary to perform their work. LAW ON COMMON COURTS, art. 71(c).

The Supreme Court has a computerized legal database for use by its judges and other employees, as well as a center to copy and distribute new laws. The Judges of Georgia has compiled a database of the Supreme Court's decisions dating from 2001 onwards for civil cases and from 2002 for administrative and criminal cases. This database, which may be accessed from the Court's website, will be an important tool for judges in other common courts, who lack the resources available to the Supreme Court judges — once they have access to the Internet. Their present situation varies from one court to another. In one court, each judge receives a copy of the Official Gazette and the Supreme Court's decisions, with additional copies for the law library. In another court, where judges formerly received individual copies of the Official Gazette, they now receive only one copy for the entire court. Judges who want to have their own copy of the Official Gazette must subscribe to it at their own expense, at a cost of GEL 20 per month (about \$11). Some judges reported that they no longer receive copies of new codes in a timely manner, if at all, and therefore have to purchase copies themselves (generally at a cost of GEL 12 or 13 each, or about \$6 or 7). Some courts have no libraries; in one court, the judges contributed toward establishing a law library for the court.