



Legal and Technical Analysis of the New System of Case Distribution in General Courts

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1. Introduction

In accordance with the amendment made to the Organic Law of Georgia on General Courts¹ (hereinafter the “organic law”), within the framework of the “Third Wave” of justice reform, on 31 December 2017, the procedure for case distribution among judges through an electronic system came into force in general courts of Georgia.

The said amendment is a step forward towards improving independence of the judicial system. The amendment is expected to address multiple challenges in case distribution, *inter alia*, impartiality of judges and ensuring their equal caseload. The new regulation in force is particularly important in terms of reducing the role played by court presidents in case distribution. The power of court presidents to assign cases to judges, in the opinion of the Venice Commission, involved an element of discretion, which could be misused as a means of putting pressure on judges.² The Venice Commission positively assessed the amendment. However, the commission found that Article 58¹ of the Organic Law “is very short and provides only that the case distribution shall be made by an electronic system”. “... Detailed provisions do not exist ... and it is not clear how the electronic system should operate in practice. Also, the second paragraph of the draft article, which regulates the case distribution in case the electronic system is temporarily inaccessible, is also drafted in a very concise manner and does not provide for detailed rules on case distribution when the electronic system is out of order.”³

Under decision no. 01/56, dated 1 May 2017 and in accordance with the amendment to the organic law, the High Council of Justice (hereinafter the “HCoJ”) approved The Procedure for Automatic Distribution of Cases Through Electronic System in General Courts of Georgia” (hereinafter the “electronic case distribution procedure”).⁴ The procedure regulates assigning cases to judges by the system using the principle of random distribution and based on a number generation algorithm. In courts, cases are distributed among judges based on the specialisation of the latter. In general, the software ensures equal distribution of cases among judges to the possible extent. The system calculates an average indicator of distributed cases; the number of cases assigned to each judge; a number generated through random selection and logs all these parameters.⁵

¹The Organic Law of Georgia on Common Courts, Article 58¹, available at: <https://matsne.gov.ge/ka/document/view/90676>, (accessed 30 November 2018).

² Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Law on Amendments to the Organic Law on General Courts of Georgia, CDL-AD(2014)031, para. 78, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)031-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-e), (accessed 30 November 2018).

³ *Ibid.* para 79.

⁴ Decision no. 1/56-2017 of the High Council of Justice of Georgia, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/56-2017.pdf>, (accessed 30 November 2018).

⁵ Term logging implies storing information about all programme actions implemented by the software, including an average indicator of distributed cases, number of cases assigned to each judge, number generated through random selection, filing a case with a court and every action taken after its registration. It should be possible to extract the stored information from the programme and decipher it.

Based on the electronic case distribution procedure, an electronic programme of case distribution has been developed. It has been operational in beta mode at Rustavi City Court since 1 July 2017 and in all general courts of Georgia since 31 December 2017.

When assessing legal and technical aspects of the new procedure of case distribution, it is important to analyse how efficient the electronic case distribution procedure is and to what degree the electronic programme corresponds to it; also, whether the electronic case distribution procedure and the programme developed based on the former allow court presidents any kind of leverage to influence distribution of cases or case outcomes.

The report presents an overview of the electronic case distribution procedure and technical analysis of the functioning of the electronic programme that has been developed based on the procedure.

Main Findings:

- Of the 29 courts in the general courts system,⁶ **random distribution of cases** is actually unoperational in those district (city) courts (6 courts in total) and municipalities (in almost all magistrate courts) where there is only one judge. The existence of benches is ensured only in 6 district (city) courts, and in other district (city) courts due to the objective reason that there are not two and more judges with the same specialisation, the different specialization cases are simultaneously distributed to the same judge;
- **The number of amendments made**⁷ to the electronic case distribution procedure and the frequency of such changes indicate that not all the challenges that the procedure was to address had been analysed adequately by the time the programme became operational⁸;
- Court presidents, having the power to determine composition of judges **in narrow specialisations**, retain a significant leverage on case distribution. The power stems from a controversial interpretation of the law;
- When a case is examined by a bench of judges in a district (city) court, the **court president decides unilaterally about** the composition of the bench with the default participation of the judge who examined the case originally. Furthermore, in appellate and cassation courts, cases are assigned to a presiding judge/a judge *Rapporteur*, whereas selection of other judges within a section/chamber is not regulated by the electronic case distribution procedure;
- Article 4.12 of the electronic case distribution procedure entitles court presidents to draft a **shift schedule of judges on duty** for certain categories of cases. There is no normative act determining procedural issues of drafting a shift schedule, duration of shifts or a procedure to make changes to shifts;
- When a judge **is recused on statutory basis from the consideration of a case or recuses himself/ herself**, it is obscure and uncertain how the case is reassigned since the case

⁶ The System of the Common Courts of Georgia, available at: <http://hcoj.gov.ge/ge/common-courts/organization-charter>, (accessed 30 November 2018).

⁷ After the electronic system has been operational in all general courts of Georgia, there have been 12 amendments made to the procedure on electronic case distribution.

⁸ See Annex 1: “Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts”. Section 2.

distribution that is different from electronic distribution is determined by civil procedural and criminal procedural legislation of Georgia;

- The rules applicable to the **downtime** of the electronic programme are set out in sub-legislative acts;
- Electronic programme was developed so that there had been no **technical task** to serve as its basis. The technical task is supposed to determine the means employed for creating the programme, programme algorithms, technical description and specifications, substantive and functional elements as well as types of programme users and rights of each user;
- The **main module of the electronic programme is not properly secured**; international best practices for securing programmes are not applied either; therefore the possibility of making covert changes of various types to the programme that would be hidden from outside observers is not excluded;
- The **Management Department** of the HCoJ entrusted by the electronic case distribution procedure to supervise the electronic system and carry out administrative functions is unable to process and analyse adequately information stored in the programme⁹. Besides, the department still does not have its director¹⁰.

2. Review of the Electronic Case Distribution Procedure in General Courts of Georgia

2.1. The objective of Influence-Free and Transparent Distribution of Cases

Well-founded misgivings regarding manipulation by court presidents in assigning cases to judges were raised on numerous occasions during examination of high-profile cases by certain judges.¹¹ Before the new procedure for case distribution came into force, court cases used to be distributed according to the sequence of their filing with courts and sequential order of judges. While there was no statutory obligation to issue an act by a court president for determining sequential order, it was determined by court presidents in several courts. Even when there was sequential order determined by an act, it was possible to assign a case to a judge according to a court president's preferences. It is difficult to assess

⁹ *From February 2018, GDI constantly requested the case distribution statistical data (public information) from the Management Department of the HCoJ. Information was always provided with the breach of timeframe stated by the law for issuing public information and was always incomplete, due to the fact, that the department was not processing and analyzing respective information (Letters: N521/367-03-ც, N662/414-03-ც, N705/640-03-ც, N706/739-03-ც, N858/881-03-ც, N951/1073-03-ც, N899/1029-03-ც, N913/1074-03-ც, N919/1082-03-ც, N1038/1070-03-ც). Later, the responsibility to provide us with the requested public information was taken by the Supreme Court of Georgia.*

¹⁰ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 8.

¹¹ Georgian Democracy Initiative (GDI), *Politically Biased Justice in Georgia*, 2015, p. 7, available at: <http://gdi.ge/uploads/other/0/227.pdf>, (accessed 30 November 2018).

to what extent the law was upheld in the process of distribution of cases in those courts where there was no act or other written document issued.¹²

Under the new electronic case distribution procedure, the above power of court presidents is practically limited. Under the new system, cases in general courts of Georgia are distributed in accordance with three main procedures. These are the following: random distribution procedure, procedure applicable to exceptional cases and procedure applicable to shifts.

a) Random Distribution Procedure

Under the general rule of the electronic case distribution procedure, cases are assigned to judges in general courts of Georgia following the principle of random distribution, based on a number generating algorithm. Random distribution of cases implies assigning cases by the electronic programme to a judge of a respective section/chamber/narrow specialisation.¹³

While the electronic programme is fully operational, random case distribution is available when there are two or more judges with a respective specialisation so that selection among two or more judges is possible. Taking into account the fact, that in some district (city) courts there are only one or two judges (10 courts in total), it is impossible to preserve the principle of random distribution¹⁴.

Under the electronic case distribution procedure, cases are randomly distributed also in those instances when there is a ground for recusal or self-recusal of a judge in procedural legislation or it is impossible for a judge to consider a case due to objective reasons. In such instances, cases are distributed without the participation of a respective judge. However, **it is obscure as to which procedure** applies to the reassignment of a case when a judge is recused or recuses himself/herself; especially against the background where under the civil procedural and criminal procedural legislation of Georgia¹⁵ a recused judge refers the case to a court president and the latter reassigns it to another judge. At the same time, the electronic case distribution procedure excludes direct involvement of a court president in case distribution.

We consider it important, that based on public officials' asset declarations and lists submitted by judges themselves, the electronic programme should register those companies where judges or their family member have interest of any type so that respective judges are automatically eliminated from distribution of cases involving such companies/organisations in any way. Accordingly, based on the relevant legislative changes the electronic program should drop off the relevant judge from the process of case distribution when there is a clearly established grounds of recusal set out by the applicable law¹⁶.

¹² Coalition for an Independent and Transparent Judiciary, *Court System: Reforms and Perspectives*, 2017, p. 71, available at: http://www.coalition.ge/index.php?article_id=150&clang=0, (accessed 30 November 2018).

¹³ Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 2.

¹⁴ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 1.

¹⁵ The Civil Procedure Code of Georgia, Article 34.3, available at: <https://matsne.gov.ge/ka/document/view/29962>, (accessed 30 November 2018). The Criminal Procedure Code of Georgia, Article 62.3 and Article 65, available at: <https://matsne.gov.ge/ka/document/view/90034>, (accessed 30 November 2018).

¹⁶ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 6.

B) Exceptional Cases to Which Random Distribution Does Not Apply¹⁷

Random distribution does not apply to those cases determined in Article 3 of the electronic case distribution procedure. These are the following circumstances:

- There is only one judge with a certain specialisation in a district court or only one judge with a certain specialisation is on duty; also, when only one judge acts as a magistrate judge in a respective municipality;
- All documents, claims, motions, appeals and complaints that are processed by one judge in relation to one case and afterwards the same parties regarding the same issue submit another claim etc; in such instance the case will be assigned to the same judge;
- Instances established by law in express terms, when a particular case must be assigned to a particular judge or due to the category of a case, it falls within a court president's jurisdiction; and
- Other cases that do not directly stem from statutory requirements although, based on the electronic case distribution procedure, exceptional rules are applicable to them.

The fact that there are such exceptions prevents (1) unreasonable expenditure of resources; (2) attempts of court users to lodge several identical claims, motions, appeals, complaints, etc., so that a case ends up with a particular judge; and (3) different judgments by various judges in identical cases.

Existence of exceptional cases can be considered as significant and even necessary. However, the fact that the list of exceptional cases is far broader than the above instances endangers the random distribution principle and makes it relatively easier to foresee the identity of a judge to consider a certain case¹⁸.

C) Case Distribution in Shifts

The electronic case distribution procedure entrusts the chairmen of the court with the right to set up the **shifts**.¹⁹ in case of necessity by its own order for certain administrative and criminal law, where the duration of the case consideration does not exceed 72 hours. Under a court president's order, a shift schedule of judges on duty (according to alphabetical sequence and index) is drafted in advance and cases are accordingly distributed in working and non-working hours.

Because there is no normative act determining procedural issues of drafting a shift schedule, duration of shifts or a procedure to make changes to shifts, there is no common approach, but according to the established practice, a shift schedule is set up by chairmain's order in agreement with the judges and taking into consideration their plea days and leave.

Shifts are regulated differently in courts. In some district (city) courts requirement of specialisation of judges on duty is preserved, while in some courts it is not applicable. The procedure of distribution of cases in working and non-working hours is also regulated differently and random distribution of cases during shifts occurs rarely. Different approaches are related to the publication of the shift schedules²⁰.

¹⁷ Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 3.1.

¹⁸ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 3.

¹⁹ Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 4.12.

²⁰ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 4.

2.2. Purpose of Ensuring Equal Caseload of Judges

As already mentioned, one of the main purposes of introducing the electronic case distribution system is to ensure equal caseload of judges.²¹ Namely, the electronic system ensures equal distribution of cases to judges to the possible extent. However, in this context, those cases are not taken into account that had been distributed to judges and processed before the electronic programme became operational.²² The same applies to the number of cases that are assigned to a judge on duty.

Paragraphs 4, 4¹ and 4² of Article 5 of the electronic case distribution procedure determine the categories of those cases which are assigned to judges according to the principle of random distribution principle and with regard to which equal caseload of judges with the same specialisation (narrow specialisation) should be ensured.

Considering that sometimes it is not possible to distribute cases among judges equally, for such occasions, Article 5.3 determines that 3 cases can be the maximum difference among the number of cases assigned to judges with a certain specialisation. When the difference among the number of cases assigned to judges with a certain specialisation amounts to 3, the judge assigned the most cases will be removed from the electronic distribution until the above difference decreases.²³

Under the electronic case distribution procedure, it is also possible to assign cases lodged with a district (city) court to:

- a) Magistrate judges instructed by a court president to examine a case outside their jurisdictional territory in accordance with Article 30.5 of the Organic Law of Georgia on General Courts; and
- b) Judges with a respective specialisation within a district (city) court in the cases of absence of a magistrate judge.

The equal caseload and minimum 3-case difference applies to judges with the **same percentage indicator**. According to the general rule, if there is no percentage indicator specifically determined by the electronic case distribution procedure for a particular judge, or this percentage indicator is not determined by a court president for certain cases, judges usually do 100% of caseload (according to distribution indicator).

For instance, if there are three judges in a court section and 100% indicator of case distribution is determined for each, cases are assigned equally among the three judges. Accordingly, if 90 cases are lodged with the court, each judge will be assigned 30 cases (difference between case numbers should not exceed 3) as each has 100% caseload.

²¹ Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 5.1.

²² Those cases that had been distributed to judges and processed before the electronic programme became operational are not considered.

²³ Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 5.5.

For preventing delay in the administration of justice, due to a judge's health or family condition or other objective reason, a court president is entitled to reduce percentage indicator of case distribution by no more than 50%.²⁴

A court president determines the percentage indicator of case distribution in a specialised bench/section/chamber/investigative board or for discharging the power of a magistrate judge in a respective municipality in those cases, where:

- a) A judge is instructed to examine a case in the same court, within another specialisation/section/chamber/investigative board; and
- b) A district (city) court judge is instructed to discharge the powers of a magistrate judge or *vice versa* a magistrate court is instructed to examine cases of a district court.

The electronic case distribution procedure determines default percentage indicators for the following judges:

- a) A member of the HCoJ – 20%; if he/she is also a court president, a vice president or a section/chamber president – 10%²⁵ (percentage indicator can be increased by a court president by 25%);
- b) A court president, his/her deputy, or a section/chamber president in a court where the number of judges does not exceed seven – 50%; whereas a court president, his/her deputy, or a section/chamber president in a court where the number of judges exceeds seven – 20% (percentage indicator can be increased by a court president by 25%); and
- c) The President of the Supreme Court of Georgia, a president of an appellate court and the President of Tbilisi City Court, except for the cases falling under their respective jurisdiction as established by express statutory terms, as well as the secretary to the High Council of Justice of Georgia, under special circumstances, can be assigned cases, usually no more than 5%.²⁶

For illustration, below is an example where 271 cases have been filed with a court that has 4 judges with a certain specialisation.

Among 4 judges, there are:

- A – Court president with a 20% distribution indicator;
- B – Judge with a 100% distribution indicator;
- C – Judge with a 100% distribution indicator; and
- D – Magistrate judge instructed by a court president to carry out powers of a city court judge with 50% distribution indicator.

According to the procedure:

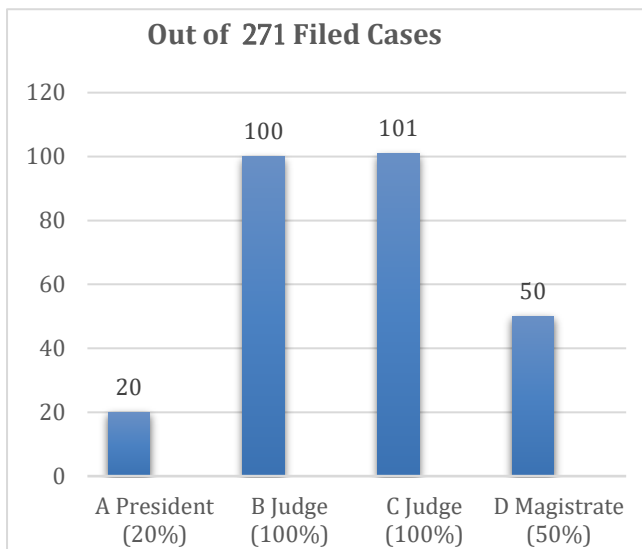
²⁴ When a judge is assigned cases according to a 100% indicator, the indicator showing the percentage of assigned cases will be reduced by 50% and become 50%. It means this judge will be assigned 50% of the caseload assigned to him/her earlier.

²⁵ Under the original wording, percentage indicators were set at 25% and 20% respectively.

²⁶The original wording referred to the objective of “avoiding delay in administration of justice” instead of a “special circumstance” and percentage indicator was set at 10%.

- Out of cases assigned through electronic programme, the difference between judges B and C should not be more than 3;
- Judge D should have half of the caseload to be assigned to judge B or C;
- Judge A should have 20% of caseload to be assigned to judge B or C.

Where cases are assigned to judges through the electronic case distribution programme, out of 271 cases:



- Judge A will be assigned 20 cases;
- Judge B will be assigned 100 cases;
- Judge C will be assigned 101 cases; and
- Judge D will be assigned 50 cases.

Example 1

The electronic case distribution procedure regulates differently those cases where a judge takes up office (when a judge is transferred to another court or the term of this transfer is over) as well as the cases where judge returns from a leave related to pregnancy, childbirth or childcare.

Under the rule,²⁷ an average number of cases in a respective section, (except for an investigative board)/chamber/narrow specialisation is determined and calculated in the following way – the number of cases distributed electronically among all judges within a section/chamber/narrow specialisation and already processed are added on and divided by the number of judges.

For instance, if there are four judges with narrow specialisation within the Section of Civil Cases of Tbilisi City Court (*example 1*) and the number of cases electronically distributed and processed within that narrow specialisation is 271 cases, in order to calculate the **average indicator**, the number of cases is divided by the number of judges – 271 cases / 4 judges and the answer is the average indicator i.e., approximately 68 cases.

When new judge E is appointed to the position (transferred to another court, or the term of transfer is over); also, when a judge returns from a leave related to pregnancy, childbirth or childcare, in order to equalise the number of cases assigned to this judge with the average indicator of cases distributed among judges with narrow specialisation (68 cases) the case distribution indicator for judge E will be

²⁷ Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 5.10.

increased by 200%²⁸. This means judge E will be assigned tripled the number of cases (300% caseload indicator) in comparison with other judges with the same percentage caseload until the number of cases assigned to judge E reaches the average indicator.²⁹

The electronic case distribution procedure refers to the term “average number of cases” instead of an average indicator calculated by percentage. The procedure in force is fair when judges in a section/chamber/narrow specialisation have equal (similar) distribution percentage indicators. However, since the likelihood that there will be judges with equal distribution percentage indicator in all sections/chambers/narrow specialisations is rather low, it is reasonable to determine the average indicator of case number in accordance with percentage of caseload.

Under the electronic case distribution procedure, the case distribution percentage indicator is increased by 200% until it **reaches** the average indicator of case number for a judge recently appointed to office (transferred to another court, returned from this transfer), returned from a leave related to pregnancy, childbirth or childcare.

Based on *example 1*, under the procedure in force, average indicator amounts to 68 cases before the distribution of cases started; whereas, out of 4 judges in a section/chamber/narrow specialisation only 2 have 100% caseload indicator.

Judges	Distribution Indicator	Number of distributed Cases	Average number of Cases
A Judge	20%	20	$(20+100+101+50)/4 = 68$
B Judge	100%	100	
C Judge	100%	101	
D Judge	50%	50	
	total:	271	

Example 2

Under the existing regulation, when new judge E is assigned triple the number of cases than other judges B and C with 100% caseload, the latter are still assigned certain number of cases (example 3) and by the time the number of cases assigned to judge E reaches the average indicator (approximately 88 cases), the number of cases assigned to judges B and C will already reach approximately 130-131. According to the electronic case distribution procedure, at the time when E judge will reach the

²⁸ Decision no. 1/263-2018 of the High Council of Justice of Georgia. Available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/263-2018%20001.pdf> (accessed 30 November 2018).

It is noteworthy, that before the abovementioned change into the procedure, when judge was recently appointed to office (transferred to another court, returned from this transfer), returned from a leave related to pregnancy, childbirth or childcare, case distribution indicator was increased for 100% (was 200% in total), which was considered totally enough in the remarks presented by the HCoJ on the this report, however, after a week since the report was publicly discussed on HCoJ session on October 1, 2018, the above-mentioned amendment was made in the rules of distribution of cases and increased distribution rates by 100% (became 300%).

²⁹ The said indicator will increase for a judge returning from a leave related to pregnancy, childbirth or childcare by 150% until her child turns 1 year and afterwards by 200%.

average number of cases, his/her increased distribution indicator should be turned off and he/she must move into a normal (100%) distribution indicator. Therefore, despite the requirement of the electronic case distribution procedure that difference among the number of cases assigned to judges B, C and E should not exceed 3 cases, difference among the number of cases assigned to new judge E and judges B and C amounts to approximately 41 cases. Under the equation in force, it is practically impossible to reach this goal.

Judges	Distribution Indicator	Number of distributed Cases	Pending Cases (Existing cases in example 2 plus newly distributed cases)	Average number of Cases
A Judge	20%	5.964912281	25.96491228	87.88157895
B Judge	100%	29.8245614	129.8245614	
C Judge	100%	29.8245614	130.8245614	
D Judge	50%	14.9122807	64.9122807	
E Judge	300%	89.47368421	89.47368421	
		total: 170		

Example 3

As verbally explained by the Head of the IT and Development Group of the Supreme Court of Georgia, **average indicator** of cases is determined progressively instead of once and based on the data existing at the moment (finished cases are subtracted from the total number of cases) of designation of a new judge to office. Even if we assume that the programme continues progressively calculating average indicator of cases, even by subtracting the finished cases and distributes cases according to increased caseload (300%) indicator for judge E, it is still impossible to reach the 3-cases difference among the cases assigned to judges B, C, and E. And while A,B,C and D judges will finish certain number of cases, E judge, acting in the same narrow specialization will also finish number of cases, therefore the argument can not make any effect on the general picture³⁰.

It is noteworthy that the electronic case distribution procedure does not determine who cancels an individual judge’s increased caseload percentage indicator. According to the established practice, a judge’s increased caseload percentage indicator is activated/de-activated automatically by a programmer. This should be clearly assessed negatively. It is necessary that these actions are performed by the programme itself without external actions.

2.3. Case Distribution During a Judge’s Holiday, Official Trip and Temporary Disability Leave

Under the general rule of the electronic case distribution procedure, when official relations are suspended³¹ (holiday, official trip and leave because of temporary disability, pregnancy, child birth or childcare) judges are not assigned cases except for those instances, when:

³⁰ See Annex 1: “Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts”. Section 7.

³¹ The following are implied: holiday, official trip, leave related to temporary disability, pregnancy, childbirth or child care, as well as a special objective circumstance.

a) Duration of official trip and temporary disability leave does not exceed 5 days and the term of examination of cases to be distributed is more than 72 hours;³² and

b) Cases to be distributed fall under the exceptional category and only where it is possible to follow statutory terms established by the procedural legislation.³³

When a judge's office is suspended, cases can be temporarily transferred based on random distribution principle to another judge with the same specialisation. The reason thereof is to avoid breach of terms established for a case by the procedural legislation or possible harm to a party's legal right and interest that could be inflicted due to the failure of examination of a motion. After the said procedural activity is performed, the case is returned to the judge examining the case.³⁴

When a judge's office is temporarily suspended (due to a leave related to pregnancy, childbirth or childcare) terminated or transferred to another court or to another specialised bench/section/chamber of the same court, cases that were to be assigned to this judge according to the exceptional case distribution rule are randomly assigned to another judge with the same specialisation. Where a judge is transferred to another narrow specialisation within the same section, he or she will only be assigned to certain category of cases in accordance with the exceptional case distribution rule.³⁵

Furthermore, under the electronic case distribution procedure, when a judge is on a **holiday or official trip** that lasts less than 7 days, or his/her office is suspended due to **temporary disability that was known in advance**, there will be no cases assigned to the judge (except for the cases lodged with court during shifts) one day before suspending the office in case of a judge of a district (city) court and 5 days before suspending the office in case of a judge of an appellate court or the supreme court.

It is noteworthy that under the changes made to the electronic case distribution procedure on 8 January 2018,³⁶ Article 4.14 was modified and now it refers to "special objective circumstance". Due to such a circumstance those cases the terms of examination of which do not exceed 72 hours are not assigned to a judge concerned. These could be various circumstances of family or personal nature that arise unexpectedly and prevent a judge from being at his/workplace or carrying out official duties.³⁷ While the electronic case distribution procedure does not determine the possible duration of a special objective circumstance, it is supposed to continue for a reasonable period not exceeding 2-3 days.

As a result of the amendments of 12 February 2018,³⁸ paragraph 14¹ was added to the above article with the following wording: for 3 months before the end of a judge's term of office he or she will be assigned no cases except for those civil, administrative and criminal cases the terms of examination of which do not exceed 72 hours. This amendment was aimed at stopping distribution of cases to those

³² Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 4.14.

³³ *Ibid.* Article 3.7.

³⁴ *Ibid.* Article 4.15.

³⁵ *Ibid.* Article 3.8.

³⁶ Decision no. 1/1-2018 of the High Council of Justice of Georgia, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/1-2018.pdf>, (accessed 30 November 2018).

³⁷ While the rule of electronic case distribution itself does not specify what can be considered a special objective circumstance, the author of the amendment gave this very definition of the above notion at a session of the High Council of Justice of Georgia held on 8 January 2018.

³⁸ Decision no. 1/94-2018 of the High Council of Justice of Georgia, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/92.pdf>, (accessed 30 November 2018).

judges whose term of office was to be terminated due to the statutory age limit. However, under the later amendment to the electronic case distribution procedure the above rule does not apply to judges with a 3-year term of office.³⁹

Under Article 5.16, if within a 3-month period from the termination of office a former judge is appointed to the same position, cases previously assigned to him/her and after termination of office randomly distributed to other judges with the same specialisation will be returned to the judge.

2.4 Case Distribution During Temporary Downtime of the Electronic System

Efficient functioning of the electronic system is directly linked with the proper operation of the new procedure of case distribution. It is important that the rules applicable during the system's temporary downtime should be governed by a legislative and not sub-legislative normative act. The same recommendation is also given by the Venice Commission.⁴⁰

Under the electronic case distribution procedure, an authorised official of a court's registry is entitled to distribute cases without the electronic programme, in accordance with the sequential order in the following instances:

- The electronic system's temporary downtime lasts more than 2 days;
- The cases of administrative violations that are to be examined immediately and the term of examination is 24, 48 or 72 hours, whereas the electronic system's downtime lasts more than 3 hours; and
- Any shortcoming in the electronic system that is not covered by the above procedure.⁴¹

During the downtime of the electronic system, a court president, vice president, president of a section/chamber or an authorised official of the court's registry notifies the Management Department of the High Council of Justice of Georgia, LEPL Department of General Courts and the person responsible for the efficient operation of the electronic system. The notification is set out in a respective act.

It is the responsibility of LEPL Department of General Courts and the person responsible for efficient operation of the electronic system to respond to temporary downtime of the electronic system. The relevant information should be submitted to the Management Department of the High Council of Justice of Georgia and the president of the respective court, vice president or president of a section/chamber.

When temporary downtime of the electronic system is solved, court registry's authorised official submits an explanatory report to the Management Department of the High Council of Justice of Georgia, informing it concerning the cases distributed by the official. After this, the cases distributed in accordance with the sequential order are marked in the electronic programme as "without electronic registration".

³⁹ Decision no. 1/213-2018 of the High Council of Justice of Georgia, available at: <http://hcoj.gov.ge/files/pdf/%20gadacyvetilebebi/gadawyvetilebebi%202018/213.pdf>, (accessed 30 November 2018).

⁴⁰ Venice Commission CLD-AD 2014, para. 80, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)031-geo](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)031-geo), (accessed 30 November 2018).

⁴¹ Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 8.2.

2.5. Risks of Court President's Interference in Case Distribution

While distancing court presidents from case distribution is one of the most important positive aspects of electronic distribution of cases, under the electronic case distribution procedure in force they still maintain significant leverages to influence the process.

➤ *Determining Benches within Narrow Specialisation and amending it According to Personal Opinion*

The Organic Law on General Courts stipulates that in a district (city) court with particularly large caseload and composed of more than 2 judges, a **narrower specialisation**⁴² of judges could be introduced or specialised judicial benches can be set up by a decision of the High Council of Justice of Georgia.⁴³ Narrower specialisation can be introduced in an appellate court only under a decision of the HCoJ. Until 30 April 2018, narrow specialisation was only practised in Tbilisi City Court⁴⁴ and was introduced in Tbilisi Court of Appeals on 30 April, under an order of the HCoJ.

While the law does not regulate the authority of a court president to determine narrow specialisation of judges, according to the established practice, the President of Tbilisi City Court determines it unilaterally by an order.⁴⁵ This means that, while the electronic programme distributes cases among judges with particular specialisation and narrower specialisation, it is completely up to the court president which judge will be in the composition. Under the decision of the HCoJ of 30 April 2018, the same powers were vested with the President of Tbilisi Court of Appeals. We believe that the existence of such powers gives rise to realistic risks of interference on the part of a court president in case distribution.⁴⁶ For example, if there is a narrow specialization that deals with the category of cases related to state, business, or private interest and the chairperson of the court will unilaterally form that narrow specialization with desirable judges, by all means, it will have a real possibility to have a significant impact on the results of cases distributed within that narrow specialization⁴⁷.

➤ *Forming a Section*

Those instances are noteworthy when cases are examined not by one individual judge but by a bench composed of three judges. In the latter case, in a district (city) court, its president determines the composition of a bench, with the default participation of the judge originally examining the case. It is noteworthy that in the electronic case distribution procedure this amendment was moved on 24 July

⁴² There are narrow thematic specialisations in administrative, civil and criminal sections that are practised only in Tbilisi City Court and Tbilisi Court of Appeals.

⁴³ The Organic Law of Georgia on Common Courts, Article 30.2.

⁴⁴ Decision no. 1/176-2018 of the High Council of Justice of Georgia, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202018/176-2018.pdf>, (accessed 30 November 2018).

⁴⁵ Order no. 02-S, §01 of the President of Tbilisi City Court, dated 28 January 2018 On Determining Composition of Judges according to Narrow Specialisation Established in Sections of Tbilisi City Court (electronic version is not available).

⁴⁶ A public statement of the Coalition for an Independent and Transparent Judiciary, available at: <http://gdi.ge/ge/news/koalicia-mixeil-chinchaladzisatvis-uflebamosilebis-gazrdas-saqmeta-shemtxveviti-ganawilebis-principis-safrtxed-afasebs.page>, (accessed 30 November 2018).

⁴⁷ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 5 (a).

2017.⁴⁸ Before that, under the wording in force at the material time, the electronic system selected the requisite number of judges for bench examination of a case. Despite the fact, that the abovementioned ruling is in line with the Civil Procedural Code of Georgia⁴⁹, we believe, that this power of chairman contains real risk of influencing the outcome of the case. Accordingly, the legislative proposal on the changes to the Civil Code and Criminal Procedure Code of Georgia was prepared by the Georgian Democratic Initiative (GDI) and submitted to the Parliament of Georgia⁵⁰.

Regarding appellate and cassation instances, the electronic case distribution procedure only determines the procedure for distribution of cases to a presiding judge/judge rapporteur and does not regulate forming a section/chamber.⁵¹ This paragraph was amended on 18 December 2017.⁵² In the original wording, courts were not specified and only the cases to be considered by a bench were referred to. Furthermore, the electronic system additionally selected requisite number of judges from the composition of a section/chamber (except for a judge being a member of the HCoJ). Considering that a court president can very easily move judges within narrow specialisations without any justification, there is a high risk that a president could interfere in the formation of a section by appointing a certain judge thus affecting the impartiality of proceedings.

The argument of the High Council of Justice⁵³, that the formation of a bench via the electronic system may cause delayed consideration of cases is unlogical, as the cases are not considered at the moment of distribution and there is a timeframe stated by the law which is absolutely enough for the management of case preparation and consideration. As regards to the solidity of the benches, Georgian legislation does not envisage the so-called "solid / permanent" composition of benches. Accordingly the existing benches in the Tbilisi Court of Appeal are just a result of judge's agreement between each other, which can easily be changed anytime, including according to the will of the chairman⁵⁴.

➤ *Scheduling Judges' Shifts*

A court president through his/her order prepares shift schedule of judges on duty. A judge on duty in working and non-working hours, mostly irrespective of the principle of specialisation and random selection, examines those criminal and administrative cases the terms of consideration of which do not exceed 72 hours.

It is noteworthy that the procedure for preparing shift schedule is not determined by law, which indicates that a court president is able to schedule shifts with preferred judges based on subjective

⁴⁸ Decision no. 1/243-2017 of the High Council of Justice of Georgia, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/243-2017.pdf>, (accessed 30 November 2018).

⁴⁹ The Civil Procedural Code of Georgia, Article 26.2. Available at: <https://matsne.gov.ge/ka/document/view/29962?publication=127> (accessed 30 November 2018).

⁵⁰ Legislative proposal of GDI. Available at: <https://info.parliament.ge/#law-drafting/16334> (accessed 30 November 2018).

⁵¹ Decision no. 1/56-2017 of the High Council of Justice of Georgia, Article 4.9.

⁵² Decision no. 1/326-2017 of the High Council of Justice of Georgia, available at: <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202017/326..pdf>, (accessed 30 November 2018).

⁵³ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 5 (b).

⁵⁴ *Ibid.* Section 5 (c).

reasons. Besides the fact, that the shift schedules are prepared by the beginning of the month and is into force for one month⁵⁵, the argument that it is impossible to determine the judge on duty who will consider the case, is not convincing, since the legislation gives the law enforcement agencies flexibility to appeal to the court. Also, it may be possible to submit the investigative, procedural and operative searching activities related to the restriction of citizens' constitutional rights during the investigation by the investigative authorities to the desired judges on duty⁵⁶.

➤ *Instructing a Judge to Examine Cases*

Certain risks are also related to a court president's power to instruct a judge to examine a case of other specialisation bench (section) within the same court; to instruct a magistrate judge to examine cases outside his/her territorial jurisdiction; and to instruct a district (city) court judge to examine cases of a magistrate judge. However, this rule does not stem directly from the electronic case distribution procedure since it is regulated by the Organic Law of Georgia on General Courts. Article 30.5 of the law refers to the aim of "preventing delay of administration of justice" and "consent" is required; however, it is controversial as to what extent the aforementioned provisions could serve as adequate and sufficient safeguards against undue influence on a judge.

Under decision no. 1/243 of 24 July 2017, presidents of sections/chambers and, under decision no. 1/329 of 27 December 2017, a vice president and a president of a section/chamber also can view the number of cases already distributed to judges and whenever a system is temporarily disrupted circumvent it by assigning cases according to the sequential order of judges. The HCoJ explains this change by relieving presidents of administrative duties. However, the draft amendment that was submitted mentioned nothing as to under what circumstances this power was discharged by a vice president or presidents of sections and chambers. This could cause a real risk of duplication.

Another change was made to the above-mentioned procedure later on 8 January 2018, under which a respective competent official in the court registry was entrusted with distributing cases according to judges' sequential order whenever the computer system failed temporarily, whereas the court presidents, vice presidents and presidents of sections/chambers only retained the power to view the distributed cases. It was maintained by the HCoJ at its session,⁵⁷ when the change was initiated, that it aims at ensuring that presidents are not involved in case distribution. However, in our view, this is more about avoiding formal responsibility on the part of the presidents, rather than preventing their involvement in the process. We believe that the existing practice is less likely to ensure that presidents distance themselves from the distribution of cases as the presidents supervise and control courts' registry, for instance by appointing its head. Therefore, there is still a leverage of indirect control for court presidents over case distribution during system failures⁵⁸.

⁵⁵ In case of Batumi City court, the shift schedule is prepared for 3 months period.

⁵⁶ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 5 (d).

⁵⁷ A session of the High Council of Justice of Georgia held on 8 January 2018.

⁵⁸ See Annex 1: "Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts". Section 5 (e,f).

3. Technical Specifications of the Case Distribution Programme and Identified Problems

On 23 March 2017, through a resolution, the Government of Georgia⁵⁹ set up a working group that was accountable to the President of the Supreme Court of Georgia and the Minister of Justice of Georgia. As a result of three-month work of the group, the electronic case distribution procedure was drafted. On 1 July 2017, the electronic system became operational in beta mode in Rustavi City Court and in general courts of Georgia on 31 December 2017.

Since the programme became operational in beta mode, we filed numerous requests for obtaining its technical task⁶⁰ from the HCoJ, the Supreme Court of Georgia and the Ministry of Justice of Georgia. Despite this, neither the technical task nor a clear response about whether this document existed was received. Later, it was confirmed in personal communication that there had been no technical task either at the time of developing the programme or after it became fully operational.

Developing software without its technical task and the fact that the electronic case distribution procedure does not say anything about the programme itself raises many questions regarding the quality of the programme. If there was no previously written document that would determine in detail the means employed for creating the programme, programme algorithms, technical description and specifications, substantive and functional elements – then how it was determined that the programme algorithm complied with the electronic case distribution procedure; or based what it would be possible to raise the issue of responsibility of the group in charge of developing the software if an external observer concluded that the programme was faulty.

At the initial stage of monitoring, as it was impossible to obtain the technical task since there was no such thing, the programme was studied on the spot and its technical specification and functions were presented by the IT and Development Group of the Supreme Court of Georgia. During the presentation, the programme's technical specifications were verbally described, and users' functions and their interfaces were viewed from the test profile.

Later, the Supreme Court of Georgia submitted the functional description document of the automatic distribution of cases through the electronic system – the so called technical task. It covers the technical aspect of the programme and the administration module of case distribution and description of roles of various users in more detail.

3.1. Technical Specifications of the Case Distribution Electronic Programme

The software environment is developed in Microsoft Windows Forms, C# programming language using .Net Framework 4.5. DevExpress WinForms v.17 is also used. The electronic distribution system is not an altogether new programme. Its module is inbuilt (integrated) in the case distribution programme that has authorisation function and therefore the distribution module does not need independent (separate) authorisation.

⁵⁹ Resolution no. 145-2017 of the Government of Georgia, available at: <https://matsne.gov.ge/ka/document/view/3616935>, (accessed 20 April 2018).

⁶⁰ The document which is supposed to determine in detail the means employed to develop the programme, programme algorithms, technical specifications and other features, substantive and functional elements as well as types of programme users and entitlement of each user in the programme.

The major innovation of the electronic programme is the module of random distribution of cases (randomiser) which ensures assigning cases to a judge randomly selected by the programme. The programme uses Microsoft's standard functional random, (Microsoft's inbuilt "Random" library) which is non-professional and relatively less secured. Gambling businesses (for instance, casinos) for which "random" function is crucial use randomiser's special paid device that is far more professional and reliable.

The central challenge of the case distribution programme is the lack of security in its main module – there is no so-called hard lock which means sealing off the system and providing multiple-key (multiple-step) security so that any programme change (change in the programme algorithm, increasing/decreasing functions of various users, adding new users, etc.) needs consent of each key-holder. The unsecured programme leaves the impression that the group in charge of technical maintenance of the programme can at any time make changes that would enable the programme to control case distribution and make sure that a specific case is assigned to a certain judge. For instance, it is possible to set up a new user that, based on the previously written algorithm, will be able – before the case goes to the random distribution stage (pre-control) – to ensure certain cases are assigned to a particular judge and after some time to cancel this user so that it will be impossible to confirm that such a user existed.

To prevent such tampering, there is an international best practice of using a multiple-key system to secure the programme. The best practice is as follows: the programme is audited; the system algorithm, information stored in the system, and all users and their functions are inspected; the programme is sealed off and every time there is a need for making programme changes, consent from all key holders is obtained; after the changes are made to the programme the system is sealed off again.

According to the IT and Development Group, the electronic programme is almost updated every week. This implies minor technical updates and programme updates which depend on the amendments made by the HCoJ to the electronic case distribution procedure. It is unclear at the moment as to what the mechanism is and who is authorised to give consent for updating the programme.

3.2. Case Distribution

A claim, rebuttal, application, motion and other documents that are lodged with a court are given a registration number which is notified to a party. After this, the case is examined formally by a registry's official and if the submitted documentation meets statutory requirements it is scanned and uploaded in the electronic programme. After uploading the documentation, the registry's official himself/herself assigns specialisation to the case (in case of Tbilisi City Court and Tbilisi Court of Appeals – also narrow specialisation) and selects case distribution procedure (see chapter 2 for details): random distribution, distribution during exceptional cases and distribution during shifts. When distribution during exceptional cases is selected, the official indicates which judge should be assigned to the case. In case of shifts also a judge is indicated according to the shift schedule. In random distribution of cases, the programme itself selects a judge.

Under the electronic case distribution procedure, the difference among the number of cases assigned to judges with the same specialisation/narrow specialisation/section/chamber and having the same caseload percentage indicator should not exceed 3. A court president, vice president, president of a section/chamber who can view the number of cases assigned to judges can easily calculate by high probability as to which judge the case uploaded in the system at a particular time will be assigned and therefore can influence the distribution and case outcome.

For example, judge A within a certain narrow specialisation has 25 cases assigned; judge B is assigned 23 and judge C – 21 or even 22 cases. It is very easy to foresee that a case, most probably, will be assigned to judge C in this scenario.

To prevent such possibilities, it is necessary to determine the exact time when lodged cases should be distributed simultaneously (for instance, 2-3 times a day, at the same time) and the programme should disorder the sequence of entered®istered cases. This will exclude the possibility of identifying a judge to whom a particular case will be assigned.

All actions performed in the electronic programme are logged. This means that the programme stores all programme actions, including the information about all the activities performed regarding a case from the very moment it was lodged with a court. In case of a programme audit, it is possible to obtain information about the chronology of these actions. While this function is clearly to be assessed positively, it is important to determine and establish who and based on which grounds should be vested with the authority to extract logs from the programme and who can inspect whether logs comply with the rules established by the electronic case distribution procedure.

Observing the functioning of the electronic programme leaves an impression that it is not completed yet and remains at the stage of further development and improvement; furthermore, several important issues directly related to its efficient and reliable functioning are left beyond statutory regulation.

3.3. Types of Programme Users

- *Administrator / the Management Department of the HCoJ;*

The user with the system administrator's privileges, i.e., the Management Department of the HCoJ can view (throughout Georgia) the information stored in the programme and edit the following information (not programme-related):

- a) Registering, changing, editing or completing registration data in a certain specialised bench/section/chamber/narrow specialisation of judges;
- b) Cancelling registration data; and
- c) Entering information on a judge's leave, official trip and temporary disability leave into the electronic system;

- *A Court President, Vice President, President of a Section/Chamber;*

A court president, vice-president, president of a section/chamber can view cases distributed within their respective court (including cases assigned to individual judges) and select substitute judges for cases.

- *Viewer;*

A user with a viewer's rights can only view the data stored in the system.

- *Court's Registry;*

A court's registry has access to the case distribution window where the mode of distribution depends on which function is activated for a particular court.

Apart from the above users, there is a technical group of programme developers who discharge the system administrator's function, can view (throughout Georgia) information stored in the electronic program and make necessary software changes to the programme.

4. Recommendations

- The rules applicable when the electronic system is functioning and is temporarily out of order should be set out in detail;
- Composition of judges with narrower specialisation within specialisations in general courts should be determined by the HCoJ, based on a respective court president's recommendation;
- The electronic case distribution procedure should restrict all the powers that allow a court president to interfere with case distribution and influence the case outcome;
- The electronic case distribution procedure should determine adequately the procedure for reassignment of a case when a judge is recused or recused himself/herself and relevant draft legislative proposal amending civil procedural and criminal procedural legislation should be prepared;
- In those cases where a judge takes up office (when a judge is transferred to another court or the term of this transfer is over) as well as the cases where a judge returns from a leave related to pregnancy, childbirth or childcare, an average indicator calculated as a percentage should be used to identify the average number of processed cases out of the cases distributed through the electronic system;
- The electronic case distribution procedure should determine the procedural issues of drafting a shift schedule, duration of shifts or a procedure to make changes to shifts;
- Relevant changes should be made in the electronic programme in order to ensure the possibility to distribute cases simultaneously while disordering the sequence of entered/registered cases;
- The main module of the electronic programme should be sealed off; several keys should be created out of which one will be held by a non-judicial representative so that any changes to the programme should be effected only with the consent of each security key holder;
- Based on public officials' asset declarations and lists submitted by judges themselves, the electronic programme should register those companies where judges or their family member have interest of any type so that respective judges are automatically eliminated from distribution of cases involving such companies/organisations in any way;
- The HCoJ members should be entitled to view the number of cases assigned to individual judges;
- A system for assessing the functioning of the electronic system should be introduced; and

- A respective person in charge (Head of the Department) should be appointed in the Management Department of the HCoJ.

(Annex 1)

5. Comments and Opinions of the High Council of Justice of Georgia Concerning Legal and Technical Analysis of the New System of Case Distribution in General Courts

1. According to the research, of the 29 courts in the general courts system, random distribution of cases is operational only in eight courts as two or more judges with the same specialisation are not present in rest of the courts.

Such assessment does not correspond with the reality. Cases are allocated based on the random distribution principle in all courts except for the district court of Gali-Gulripshi and Ochamchire-Tkvareli as there is only one judge with a respective specialisation in this court. Besides, the random distribution principle is not applicable to those municipalities where only one judge acts as a magistrate judge, this situation being covered by Article 3.1.a) of the Procedure for Automatic Distribution of Cases Through Electronic System in General Courts of Georgia. There is a corresponding number of judges with a respective specialisation at all other courts. Their specialisation is determined in accordance with a decision of the High Council of Justice or they are instructed to examine cases within other specialised benches (court sections) by a court president, based on the Organic Law of Georgia on General Courts. Accordingly, cases are assigned to judges based on the random distribution principle.

2. It should be mentioned, concerning the number of amendments made to the Procedure for Automatic Distribution of Cases through Electronic System in General Courts of Georgia, that the procedure became fully operational in all courts as of 31 December 2017. At the initial stage of the electronic system becoming operational, it was necessary to amend the procedure that was necessary for eliminating the shortcomings identified in the practice. It would be impossible to foresee these shortcomings in the process of developing the procedure. Accordingly, the majority of the amendments were made to the procedure at the initial stage of the electronic system becoming operational. This is a natural process and does not allude to shortcomings in the legal regulation of the programme's functioning.

3. The research discusses the exceptional cases under the Procedure for Automatic Distribution of Cases through Electronic System in General Courts of Georgia, to which the random distribution procedure does not apply. The existence of such cases is assessed as significant and even necessary. However, it has been claimed that the above instances endanger the random distribution principle and make it relatively easier to foresee the identity of a judge to examine a certain case.

It should be noted that the exceptional instances under the electronic case distribution procedure are mostly uniform in nature and each exceptional case serves the interest of effective administration of justice. Therefore, the numerical factor of exceptional cases should not be considered to be a risk to the random distribution principle.

4. According to the research, the requirement of judges' specialisation and random distribution does not apply to cases to be assigned during shifts. This claim is not accurate. Under Article 3.1.c) of the Procedure for Automatic Distribution of Cases Through Electronic System in General Courts of Georgia, the random distribution principle does not apply to those cases where there is only one judge with a respective specialisation on duty in a district (city) court. Accordingly, the principles of specialisation and random distribution principle are upheld in the courts with sufficient number of judges.

According to the research, in case of shifts, a judge is assigned to a case according to a shift schedule. This does not correspond with the reality. When distributing cases subject to shifts, only the case category and shift type are indicated; the electronic programme distributes those cases among judges indicated in a shift schedule, based on the random distribution principle.

5. Risk of court presidents' interference in case distribution is pointed out in the research. It is claimed, in particular, that:

a) Court presidents, having the power to determine judicial composition within narrow specialisations, retain a significant leverage over case distribution.

Under Article 30.2 of the Organic Law of Georgia on General Courts, "in a district (city) court with a particularly large caseload and composed of more than two judges, a narrower specialisation of judges can be introduced or specialised judicial benches ("judicial benches") can be set up by a decision of the High Council of Justice of Georgia." Under Article 30.3, "the number of judges in benches and the composition thereof shall be determined by the High Council of Justice of Georgia." Stemming from the aforementioned provisions, unlike court sections, it does not fall within the competence of the High Council of Justice to determine judicial compositions within narrow specialisations. This power rests with a court president based on judges' will. It is noteworthy that narrow specialisation is practiced only in Tbilisi City Court and Tbilisi Court of Appeals. In these courts, stemming from the total number of judges, there are several judges within each narrow specialisation and cases are assigned to them based on the random distribution principle. Furthermore, judges' narrow specialisation does not change as a rule. Accordingly, it is impossible to allow court presidents' arbitrariness through determining judicial composition within narrow specialisations in the process of distribution of cases. Therefore, we are unable to agree with the viewpoint expressed in the research that the existence of such powers gives rise to realistic risks of interference on the part of a court president in case distribution.

b) The power to determine the composition of a bench during bench examination of a case in a district (city) court rests with a court president under procedural legislation. Under Article 26.1 and Article 26.2 of the Civil Procedure Code of Georgia, when there is a sufficient number of judges in a district (city) court to examine cases by a bench of judges, the judge who examines the case alone may decide that the case is to be examined by a bench of three judges. A judge delivers a reasoned ruling on the examination of a case by a bench of judges. The ruling is forwarded to a court president who determines the composition of the bench. The bench includes the judge who participated in the original hearing of the case. Accordingly, the regulation in the electronic case distribution procedure is in line with the requirements of procedural legislation.

c) As regards the procedure of forming the composition of sections in appellate and cassation courts, according to the research, the electronic case distribution procedure only determines the procedure for distribution of cases to a presiding judge/judge rapporteur and does not regulate forming a

section/chamber, whereas in the original wording of the electronic case distribution procedure, the electronic system additionally selected requisite number of judges from the composition of judges. Forming a bench composition through the electronic system might cause delay in consideration of cases by judges. If the electronic system selects judges for bench composition, the management of scheduling and consideration of cases by a judge (a judge rapporteur in another case) will become difficult. Therefore, there are no permanent bench compositions in practice. This contributes to proper management of cases by judges. Therefore, the suggestion that there are risks associated with forming bench compositions by court presidents through selecting a particular judge is groundless.

d) The research points out that there is no normative act determining procedural issues of drafting a shift schedule, duration of shifts or a procedure to make changes to shifts. This gives court presidents the discretion to unilaterally schedule shifts according to their subjective preferences and without taking into consideration either specialisation or random selection. Such discretion enables a court president to unilaterally determine judges on duty to examine particular cases and change the schedule every month according to his/her wish.

Such assessment is completely groundless. Shift schedules are not drafted by the time of consideration of a particular case. They are prepared for a specific period (for instance, in the beginning of each month) in advance, according to the alphabetical order of judges or their feedback. A shift schedule is drafted much earlier than a case is filed with a court. Accordingly, a case will be assigned to a judge who is on duty at the time of case distribution. There is no possibility of determining which judge will be assigned to a case during shifts a month ahead.

e) It is important to shed light on the issue brought up in the research concerning the right of presidents of sections/chambers, a vice president and a president of a section/chamber to view the number of cases already distributed to judges. The possibility of viewing the number of cases already distributed to judges is distanced from the distribution of cases and only serves the interest of proper functioning of a court. It is about enabling the above-mentioned officials to check within certain periods whether cases are equally distributed among judges and to which extent the requirements of the electronic case distribution procedure are followed in the distribution of cases. Accordingly, such power does not imply supervision of the technical process of distribution of cases by a court president. The process of distribution of cases among judges is managed by the electronic programme and a court president has nothing to do with it. Besides, the random distribution principle makes it impossible to foresee a judge in advance. Therefore, the example given in the research, according to which a court president can predict with high probability a judge that will be assigned to a case uploaded into the system at a particular time, is wrong.

The research gives a recommendation that exact time and periodicity of distribution of cases during a day by a court's registry through the electronic programme should be determined. This will exclude the possibility of identifying a judge to whom a particular case will be assigned.

As already mentioned above, there is no risk of interference on the part of court presidents in the case distribution procedure. However, even if there was such a risk, the suggested recommendation does not enable the resolution of the alleged issue. Even if it is assumed that it were possible to predict judges when distributing cases, it would be even easier to do so when filed cases were accumulated and distributed at once.

Against the background of the aforementioned “risks,” it is even more unclear what the rationale of the recommendation is when suggesting that members of the High Council of Justice should also be entitled to view the number of distributed cases.

f) Regarding the role of court presidents concerning distribution of cases in sequential order during temporary downtime of the electronic system, it should be noted that implementation of the Procedure for Automatic Distribution of Cases Through Electronic System in General Courts of Georgia eradicated numerous questions concerning the risks pertaining to the involvement of court presidents in the case distribution. The Organic Law of Georgia on General Courts determines the possibility of distributing cases circumventing the system only during its temporary downtime. However, even for such instances, to eliminate any suspicions, the electronic case distribution procedure determines the rules for case distribution, namely in sequential order, according to the order of filing cases and alphabetical order of judges. Furthermore, to avoid any misgivings, the distribution procedure regulates in detail and exhaustively those instances where it is allowed to interfere in distribution; it lays down the obligation of notification during system downtime and the possibility of control over cases that have been distributed without the electronic system, thus leaving no room for arbitrary interference on the part of external actors. Moreover, under the amendment made to the electronic case distribution procedure, during temporary downtime of the electronic system, the power of distribution of cases in sequential order is transferred to an authorised official of a court’s registry. Therefore, a court president is completely distanced from the process of distribution of cases.

6. According to the research, it is obscure and uncertain how the case is reassigned since the case distribution that is different from electronic distribution is determined by procedural legislation.

It should be noted in this context that whenever a judge is recused or recuses himself/herself under procedural legislation cases are distributed in accordance with Article 4.11 of the Procedure for Automatic Distribution of Cases through Electronic System in General Courts of Georgia. Under this provision, in the instances of recusal or self-recusal of a judge as determined by procedural legislation, a case is distributed based on the random distribution principle excluding the judge. The civil and criminal procedural legislation of Georgia determines referral of a case to a court president in the instances of recusal or self-recusal of a judge. The court president reassigns the case to another judge. It should be pointed out that procedural legislation does not lay down the procedure of reassignment of the case to another judge; distribution of cases among judges is governed by Article 58¹ of the Organic Law of Georgia on General Courts which lays down the mandatory nature of distribution of cases based on the random distribution principle. Therefore, the regulation of the electronic case distribution procedure is in line with the requirements of procedural legislation.

Regarding the recommendation given in the document to register commercial and non-commercial interests that would ensure elimination of a judge from distribution of cases, it should be noted that procedural legislation lays down the exhaustive grounds for recusing a judge from a case and requires individual assessment and decision by a judge/bench. A judge enjoys a wide margin of appreciation in the process of assessing specific circumstances. Elimination of a judge through the software from those cases from the very beginning that could raise doubts concerning the impartiality and objectivity of a judge is not in line with statutory requirements. This casts doubts in general on the concept of recusal. Furthermore, the technical aspects of implementation of such a task should also be borne in mind.

7. It is claimed in the research concerning ensuring equal caseload of judges that, under the equation in force, it is practically impossible to reach this goal since a judge whose 100% caseload should be equalised with a newly appointed judge’s caseload, is still assigned cases. This is an inaccurate

assessment of the issue since it does not take into account the number of completed cases of a judge with 100% caseload.

Furthermore, according to the research, when a judge returns from a holiday, official trip, or a temporary disability, the programme should ensure not conditional increase in the number of cases assigned to a judge but increase in the actual percentage indicator. It should be noted that the electronic case distribution procedure rejected the application of the principle of increase in percentage number to such cases. Mainly, all judges use the aforementioned ground for suspending official relations and it does not lead to significantly disproportionate caseload for judges. The electronic case distribution procedure introduced the notion of conditional increase in the number of distributed cases, which implies equalising only in software of case distribution indicators with the lowest indicator of a judge and is used to maintain the difference among the number of cases assigned to judges that is allowed under the electronic case distribution procedure.

8. According to the research, the Management Department of the High Council of Justice is unable to process and analyse information stored in the programme adequately. Besides, the department still does not have its director.

Such assessment does not correspond with the reality. The Management Department of the High Council of Justice, which is in charge of the functioning of the case management software, ensures that information stored in the electronic system is adequately processed and supplied to stakeholders diligently. Furthermore, presently, the High Council of Justice announced competition for the vacant position of the Head of the Management Department.

9. It is noted in the research that no updated version of the Procedure for Automatic Distribution of Cases through Electronic System in General Courts of Georgia or other decisions of the High Council of Justice have been posted on its official website to this day. It should be pointed out that, under decision no. 226 of the High Council of Justice, dated 2 July 2018, the rules of the High Council of Justice were amended to lay down the procedure for publishing the council's decisions on its official website and updating them. Therefore, as of today, the procedure at stake, as well as other updated decisions of the council are published on the official website of the High Council of Justice and are accessible for all stakeholders.

10. Regarding the comments made concerning the technical specifications of the electronic programme:

a) According to the research, at the initial stage of monitoring, it was impossible to obtain the technical task since it did not exist. At the initial stage, it was requested to provide the document describing the programme's functions. Concerning this issue, the IT and Development Group explained that the description of actions to be carried out by the system is regulated automatically by the electronic case distribution procedure. During further communication, the gist of requested information was ascertained, after which, as the research itself points out, it was supplied in writing. Regarding the case distribution algorithm, due to security issues, it is not advisable to impart it.

b) Concerning the reliability of the system's programming language it should be noted that the random distribution module, as the research mentions it, is based on Microsoft's random number generator module. It is also noteworthy that, when discussing the technical design of the case distribution software module, the working group suggested two alternatives. The first alternative was based on Microsoft technology and the other on purchasing special equipment. Considering the project's limited time-frame and budget, the decision was made in favour of the use of Microsoft's random number

generator module. Furthermore, it should be pointed out that the software module allows such high probability of random number generation when generating a small quantity of random numbers that completely meets the requirements of the business process in courts.

c) The comment made in the research concerning the failure to secure the main module of the Hard Lock software is not accurate. It should be noted that the decision about the existing security code is based on the use of fragmented environment for internal procedures and programme maintenance. It should also be taken into account that, in the process of ensuring software maintenance in court, there are test and industrial environments for product development. As a result of passing through these very phases, new or updated software is published. Efforts are underway to improve the procedure and further increase its security. It is planned for the immediate future to reorganise the IT service and IT management model and at a later stage to introduce information security management module that would ensure information security systematically.

d) The research discusses the obscure mechanism of updating the electronic programme. It should be noted that any change that should be reflected in the electronic system stems from amendments made to the electronic case distribution procedure. A draft on changing/optimising the programme's functions is adopted by the High Council of Justice after which it will be reflected in the electronic programme.