

JUDICIARY OF GEORGIA

AN INTRODUCTION
TO THE GEORGIAN JUDICIAL SYSTEM

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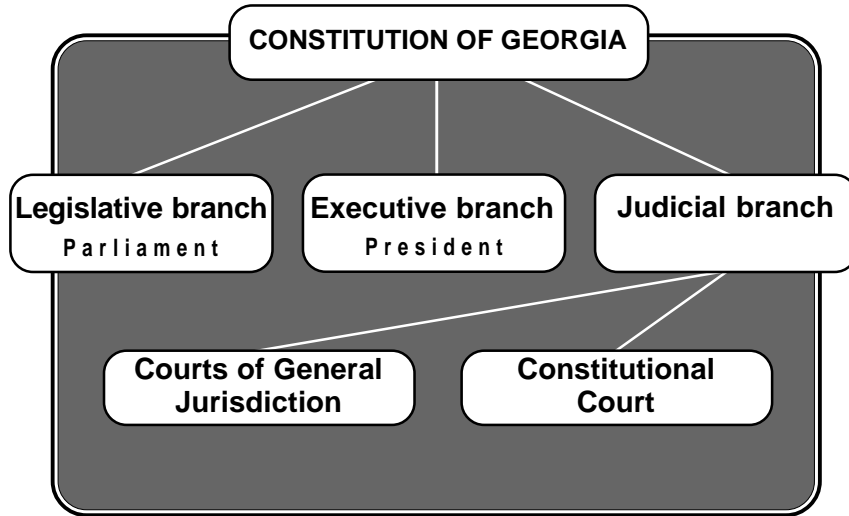
PREFACE

The structure of Judicial Power in Georgia is defined and outlined in the Constitution adopted by Parliament in 1995. Chapter Five of the Constitution deals specifically and solely with Judicial Power. It identifies all the judicial bodies that implement justice in the country (the constitutional court, courts of general jurisdiction and military courts within the system of the courts of general justice in time of war). Under the Constitution, the Public Prosecutor's Office is a body of Judicial Power and its authority, competence and some procedural rules are defined in the relevant paragraphs of Chapter Five.

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In order to guarantee human rights and uphold the rule of law, the Constitution prohibits the establishment of *ad hoc* courts. It also lays down some general principles:

- The independence and inviolability of Judicial Power
- The independence, immunity and security of judges
- Transparency of court proceedings
- The authority and competence of the Constitutional Court and the rules governing its establishment
- The authority and competence of the Supreme Court and the rules governing its establishment



1. THE CONSTITUTIONAL COURT

The Constitutional Court was established to ensure observance and implementation of the Constitution. It is the supreme body of constitutional control. The Constitution determines the composition of the Constitutional Court: nine judges, each with a 10-year term of office. Three are appointed by the President of Georgia, three are elected by Parliament with a quorum of no less than three fifths of all MPs, and three are appointed by the Supreme Court of Georgia.

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According to the Constitution, the Constitutional Court has remit in the following areas:

- a) To ensure that normative acts¹ of legislation and the actions of the President (and of the supreme bodies of power in Abkhazia and Adjara) comply with the Constitution
- b) Lawsuits related to the competence of state bodies
- c) The creation and constitutionality of citizens' political associations
- d) Constitutionality of referenda and elections
- e) Constitutionality of international treaties and agreements
- f) Constitutionality of normative acts on the basis of applications filed by citizens related to Chapter Two of the Constitution

¹ Normative Act is a legal act issued by the official State Body who has the right by law to issue such an act which defines obligatory rules of behaviour in perpetuity.

The Constitutional Court fulfils other functions defined by the Constitution and Organic Law.

The Constitutional Court considers a case if an application has been filed by any citizen, Legal entities of Georgia, the President, no less than one fifth of MPs, any court, representative bodies of Abkhazia or Adjara, or the Public Defender. A decision by the Constitutional Court is final and the normative act or a part of it, which is considered unconstitutional, loses its legal force once the decision has been made public. The Organic Law on the Constitutional Court provides for its authority, the rules of its creation and activities.

2. THE COURTS OF GENERAL JURISDICTION

General Courts are governed by the Constitution and the Organic Law “On General Courts” adopted by Parliament in 1998.

All issues connected with property lawsuits, the redress of moral or material damage, the registration of commercial and non-commercial legal entities², the establishment of legal facts, and the observance of other civil rights are within the competence of the Courts of General Jurisdiction. They also consider criminal cases and administrative grievances.

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The General Courts in Georgia are:

- The Supreme Court
- District Courts
- Regional (City) Courts
- The High Courts of Abkhazia and Adjara

² Foundations are exempted from this form of registration and must register with the Ministry of Justice

The above courts are divided into three instances:

I instance:

Regional City Courts
 The Collegium³ of District Courts in Tbilisi and Kutaisi and
 the Collegium of the High Courts of Adjara and Abkhazia
 The Criminal Collegium of the Supreme Court

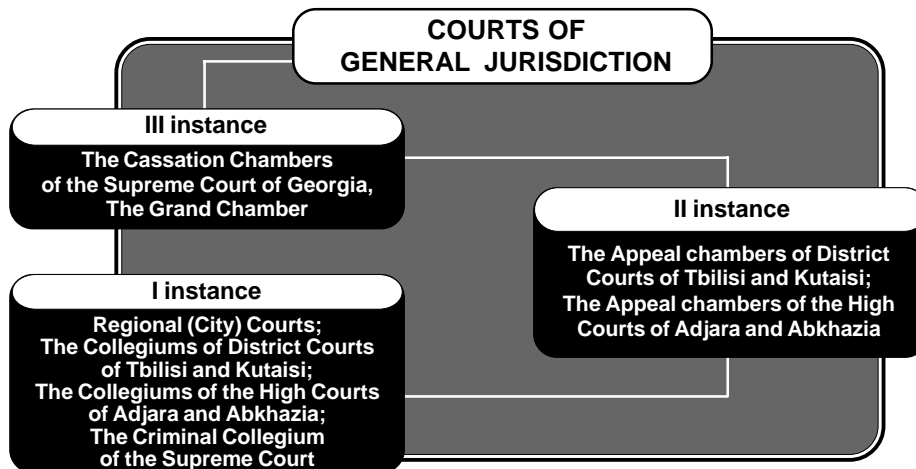
II instance – Appeal:

The Appeal Chambers⁴ of Tbilisi and Kutaisi District Courts
 The Appeal Chambers of the High Courts of Adjara and Abkhazia

III instance – Court of Cassation:

The Cassation Chambers of the Supreme Court of Georgia and
 the Grand Chamber are courts of the final instance

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³ Collegium – a sitting of three judges of the first instance making a joint and/or majority decision in a case
⁴ Chamber – a sitting of three judges of the appeal or cassation making a joint and/or majority decision in a case

I. THE SUPREME COURT OF GEORGIA

The Supreme Court of Georgia is the highest judicial body in Georgia. It supervises the execution of justice in all the general courts of Georgia. Its Chairman is nominated by the President and elected by Parliament for a 10-year term. Judges of the Supreme Court are also nominated by the President and elected by Parliament for 10-year terms. There are 30 judges in the Supreme Court at present.

In the Supreme Court there are three Chambers of Cassation and a Collegium of Criminal Law.

The Chambers are:

- The Chamber of Civil, Entrepreneurship and Bankruptcy Cases
- The Chamber of Criminal Cases
- The Chamber of Administrative and Other Categories of Cases

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The chairmen of the Chambers and the Collegium are also deputies of the Chairman of the Supreme Court.

Chambers of the Supreme Court, composed of three members, consider complaints relating to decisions of the Courts of Appeal and those of the High Courts of the Autonomous Republics.

The Collegium of Criminal Cases, within the Supreme Court, considers in the first instance only grave criminal cases such as terrorism, assassination on a senior official etc.

Since 2001 a Grand Chamber has been operating within the Supreme Court. It consists of the Chairman of the Supreme Court, the Chairman of the Collegium and at least 12 other judges from the chambers elected by the Plenum. The Chambers of the Supreme Court referred to above can refer a case to the Grand Chamber if:

Consideration and settlement of the case is of utmost importance for the establishment of judicial practice

Due to the complexity of the case, a new definition of a legal norm is required

The case concerns a unique legal issue

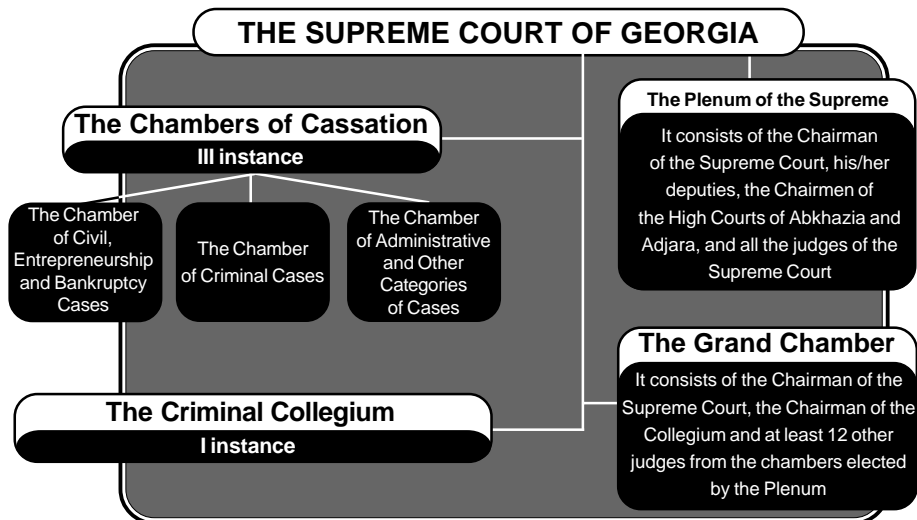
Cases are heard by nine judges and include the judges who sat on the original decision. The Chairman of the Supreme Court chairs the sittings of this Chamber or delegates this authority to a chairman of one of the Chambers of Cassation.

Decisions by the Supreme Court are public and are available in special publications.

The Plenum of the Supreme Court

The Plenum works within the Supreme Court. It consists of the Chairman of the Supreme Court, his/her deputies, the Chairman of the High Courts of Abkhazia and Adjara, all the judges of the Supreme Court and Chairman of Tbilisi and Kutaisi District Courts.

It appoints the members of the Constitutional Court and one member of the Council of Justice, elects the Chairman and members of the Collegiums and the Chambers of the Supreme Court, upon the recommendation of the Chairman of the Supreme Court, and under Articles 64-65 of the Constitution it has the power to impeach both the President of Georgia and the Chairman of the Supreme Court. It receives the reports of the Chairman of the Collegiums and those of the Chambers, and their proposals on improving the work of the Board and Chambers. It is responsible for the official publication of the Su-



preme Court, appointing its editor and the board of editors. It establishes scientific-consultative councils of the Supreme Court, confirms their composition and elaborates on and publishes their recommendations in order to introduce uniform practice in applying the law.

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Similar to the Constitutional Court, there is a separate Organic Law “On the Supreme Court of Georgia”, which provides for its authority, rules of creation and activities.

II. DISTRICT COURTS

There are two District Courts in Georgia: in Kutaisi and Tbilisi. The District Court, like the Regional one, is a court of the first instance, where cases are considered by three judges.

Within the District Courts there is:

1. A Collegium of Criminal Cases
2. A Collegium of Civil and Bankruptcy Cases
3. A Collegium of Administrative Justice and Taxation

District Courts consider the following:

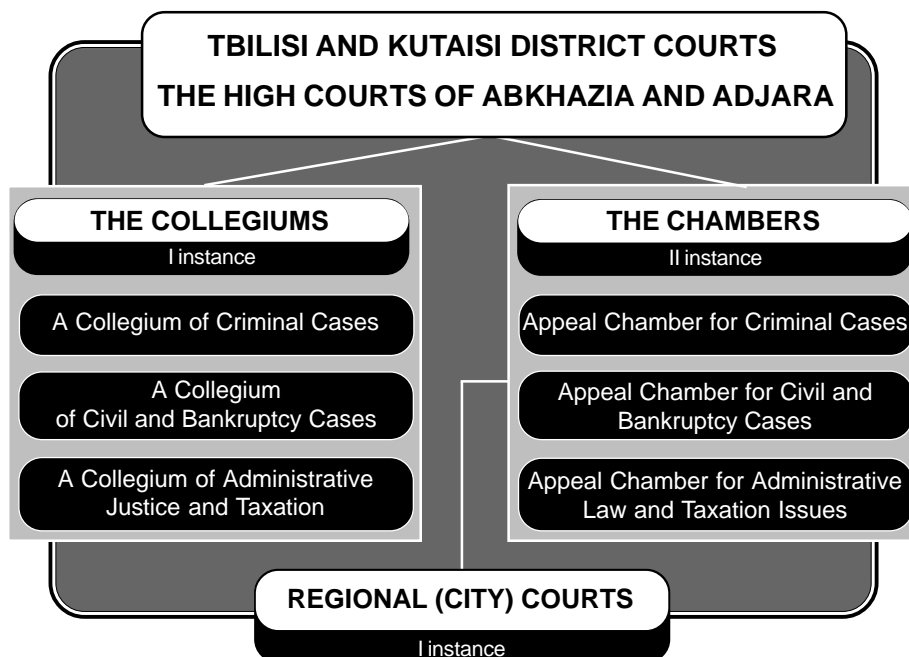
- Lawsuits related to intellectual property
- Lawsuits which exceed 500,000 Lari
- Administrative cases - but unlike Regional Courts, District Courts can discuss the legitimacy of presidential orders or other acts, and can determine if acts of the Supreme state bodies and of
- Presidential appointees are in keeping with legislation. Acts of the autonomous republics can also be scrutinised. It is also the competence of the District Court to consider cases on issuing, revoking or denial of licenses Criminal cases of certain categories provided for by law.

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Special Chambers of Appeal have been created within the District Courts. These chambers are II Instance Courts. They consider appeals from the Regional (City) Courts. There are three chambers for criminal cases, civil and bankruptcy cases and administrative law and taxation cases.

III. REGIONAL (CITY) COURTS

Regional (City) Courts are the lowest level of general courts. Cases are considered by one judge. Regional (City) Courts function in those towns that are not divided into administrative units and in districts of larger towns and cities. There are 75 Regional (City) Courts.



They consider:

- Disputes between citizens, citizens and legal entities, and legal entities involving civil, family, labour, land, natural resources and environmental issues
- Cases about disputes between public and religious organisations
- Cases not involving disputes
- Cases arising from international treaties or where foreign citizens, stateless persons, enterprises or organisations are involved
- Criminal cases which come under the Criminal Code of Georgia (excluding those crimes which fall under the competence of the Supreme Court of Georgia, the High Courts of the Autonomous Republics of Abkhazia and Adjara and the District Courts of Kutaisi and Tbilisi)
- Cases of administrative law
- Other categories of cases, as outlined by the law.

The High Courts of Abkhazia and Adjara

The Autonomous Republics of Adjara and Abkhazia have their own High Courts. These High Courts have collegiums and chambers.

The collegiums are:

1. Collegium of Criminal Cases
2. Collegium for Civil Cases and Bankruptcy
3. Collegium of Administrative Law and Taxation Issues

The Chambers are:

1. Appeal Chamber for Criminal Cases
2. Appeal Chamber for Civil and Bankruptcy Cases
3. Appeal Chamber for Administrative Law and Taxation Issues

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The collegiums of the High Courts of Abkhazia and Adjara, like District Courts, consider cases in the first instance, while the chambers, in accordance with the rules of appeal, consider appeals on the verdicts of Regional (City) Courts.

3. JUDGE AND COURT STAFF

I. JUDGE

According to the Georgian Constitution and the Organic Law “On General Cases”, anyone who is 30 years old or more, who has a university law degree and a good command of the national language, and who has passed the judges’ qualification exam can be appointed as a judge. The qualification exam consists of three stages: multiple-choice, written composition and an oral test. The Council of Justice of Georgia conducts all three stages, in accordance with a programme approved by the President of Georgia. An exception to this qualification procedure is made in regard to Supreme Court Judges, who may also be selected from amongst prominent academics or distinguished legal experts.

The appointment of a judge (except for a Supreme Court Judge) is made by the President for no less than a 10-year term following nomination by the Council of Justice.

The Law on General Courts defines that all Judges prior to starting their practice should pass a two month training course in the Judicial Training Center⁵ according to a training programme devised by the Council of Justice. Judges who have at least 1 year’s experience working as a judge are exceptions to this rule.

⁵ The Judicial Training centre is a non -governmental organization established to provide and conduct training courses for Judges, Judge’s assistants, court secretaries and other judicial staff.

The Constitution forbids a judge from holding other posts, being a member of a political party or participating in political activity. The Constitution guarantees the independence and inviolability of a judge and the security of his/her family. The prosecution, detention or arrest of a judge or the search of his/her apartment, workplace or him/her personally is prohibited without the permission of the Chairman of the Supreme Court.

Competence of Judges

There is no specialization for judges in Regional (City) Courts. Every judge considers civil, administrative and criminal cases. In the Supreme Court and in collegiums and chambers of District Courts, judges are differentiated by their duties. Criminal, civil and administrative cases are considered by judges with experience in each specific field. There are 388 judicial positions in Georgia.

II. COURT EMPLOYEES

Judge's Assistant

The Organic Law "On General Courts", adopted in 1997, instituted a new post in the national court system, a Judge's Assistant. The assistant meets citizens and receives their applications, prepares cases for court consideration and does other work related to cases as instructed by the judge. The criteria for the position of judge's assistant are; he/she must have legal education and undergo a three-month training course in the Judicial Training Centre and/or have one year of experience of working as a judge, investigator, prosecutor or lawyer. An amendment to the law introduced on May 28, 1999 has obliged all judges' assistants who were appointed to the position without having completed the special training course, to pass the exam within a year, or face dismissal.

The chairman of the court⁶ appoints and dismisses a judge's assistant on the recommendation of the judge.

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Clerk of the Court

Clerks of the Court play an important role in court routine. Cases may not be considered by the court without their participation. The Clerks keep minutes of the proceedings, prepare materials for pending cases and, together with the judge, act as a signatory on decisions. Generally, each judge is attended by a Clerk of the Court. They are appointed and dismissed by the chairman of the court. Those selected for the position either have passed a special training course at the Judicial Training Centre or have at least a year's experience of working as a Clerk of the Court. All functions and procedures connected with Clerks of the Court are regulated by the organic law "On General Courts".

⁶ Chairman of the Court is appointed by President from the Judges of the court for a 5 year term.
The Chairman hears cases, manages staff, nominates and dismisses staff members, distributes cases among judges, receives citizens and complaints etc.

III. THE STAFF OF THE SUPREME COURT

The composition and functions of the Supreme Court staff are the same as those of other courts. The only difference is that Supreme Court staff also analyzes and elaborates court practice and statistical data. The statutes of the staff sections and subsections are approved by the Chairman of the Supreme Court of Georgia. Staff work is managed by the head of staff, who is appointed by the Chairman of the Supreme Court.

4. DISCIPLINARY PROCEDURES FOR THE JUDGES OF GENERAL COURTS AND THE DISCIPLINARY COUNCIL

I. DISCIPLINARY PROCEDURES FOR JUDGES

The main features of the disciplinary responsibility, the types of disciplinary penalties and the rules for imposing disciplinary sanctions on judges are outlined in the law “On disciplinary responsibility of judges of general courts and disciplinary legal proceedings”, adopted in 2000. Under this law, the following bodies are entitled to bring disciplinary procedures against judges:

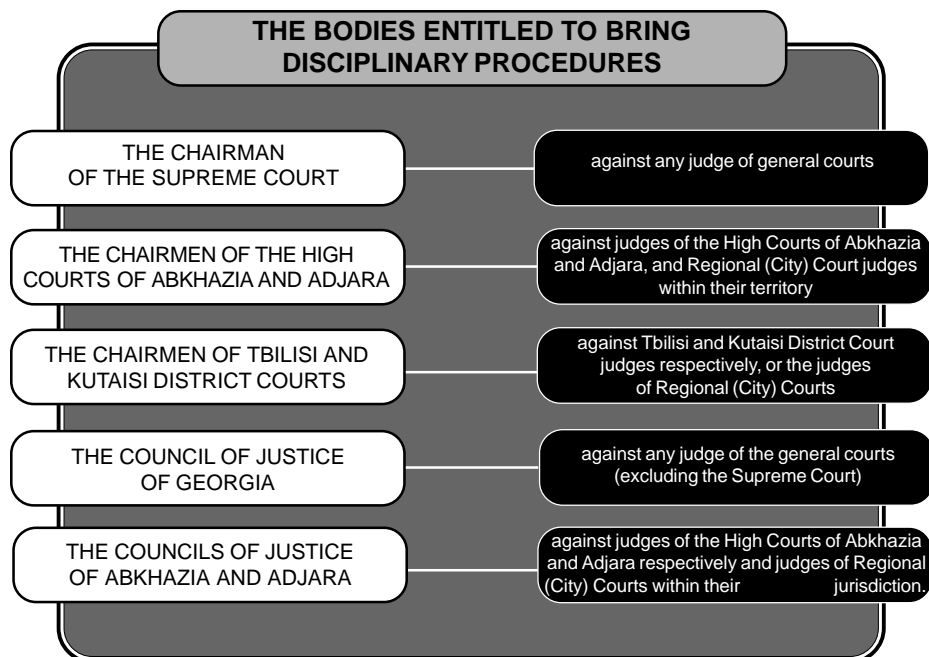
- The Chairman of the Supreme Court against any judge of general courts
- The Chairmen of the High Courts of Abkhazia and Adjara against judges of the High Courts of Abkhazia and Adjara, and Regional (City) Court judges within their territory
- The Chairmen of Tbilisi and Kutaisi District Courts against Tbilisi and Kutaisi District Court judges respectively, or the judges of Regional (City) Courts
- In certain cases provided for by the legislation, disciplinary sanctions may be imposed by the Council of Justice of Georgia against any judge of the general courts (excluding the Supreme Court)
- The Councils of Justice of Abkhazia and Adjara against judges of the High Courts of Abkhazia and Adjara respectively and judges of Regional (City) Courts within their jurisdiction.

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Disciplinary procedures commence following a complaint or an application to the appropriate body as listed above by, any individual (but not anonymously), a report by another judge or a court employee alleging disciplinary abuse, notification from a higher instance court of a gross violation of law by a judge in relation to a pending case, an allegation made by the head of an investigative agency, an investigator or a prosecutor, an allegation made by another judge or court of a disciplinary abuse by the judge in question, media allegations of disciplinary abuse or a petition of the Disciplinary Collegium.

In such a situation an officer or a body with the authority to bring a disciplinary procedure shall conduct a preliminary investigation of the allegations. Within two weeks a decision must be made either to proceed with an inquiry or dismiss the charges.

If the decision is to proceed, a disciplinary committee is established consisting of three members. If the decision to proceed is made by the Council of Justice, then the committee is composed of a member of the Council of Justice, a judge and an employee of the Council of Justice. If the decision is made by the court, two judges and a staff employee are assigned to the committee. The committees must complete the inquiry within a month. The result issued by the committee is considered by the body which initiated the disciplinary procedure. Notably if the Council of Justice initiates the procedure then by law the President of Georgia is not allowed to participate in the deliberation process. If a decision is made to discipline a judge, the file is sent to the judges' disciplinary council to be considered within three days.



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II. DISCIPLINARY COUNCIL

Disciplinary files are considered by the Disciplinary Council of the General Courts of Georgia and the Disciplinary Councils of the Autonomous Republics of Abkhazia and Adjara.

The Disciplinary Council of the General Courts of Georgia is composed of 12 members. Eight members - three Supreme Court judges, two Supreme Court judges from each of the autonomous republics, one judge from both Tbilisi and Kutaisi District Courts and a Regional (City) Court judge - are elected by the Conference of Judges of Georgia. The four other members are elected by the Conference of Judges by a simple majority of votes from a list of eight candidates nominated by the Council of Justice of Georgia.

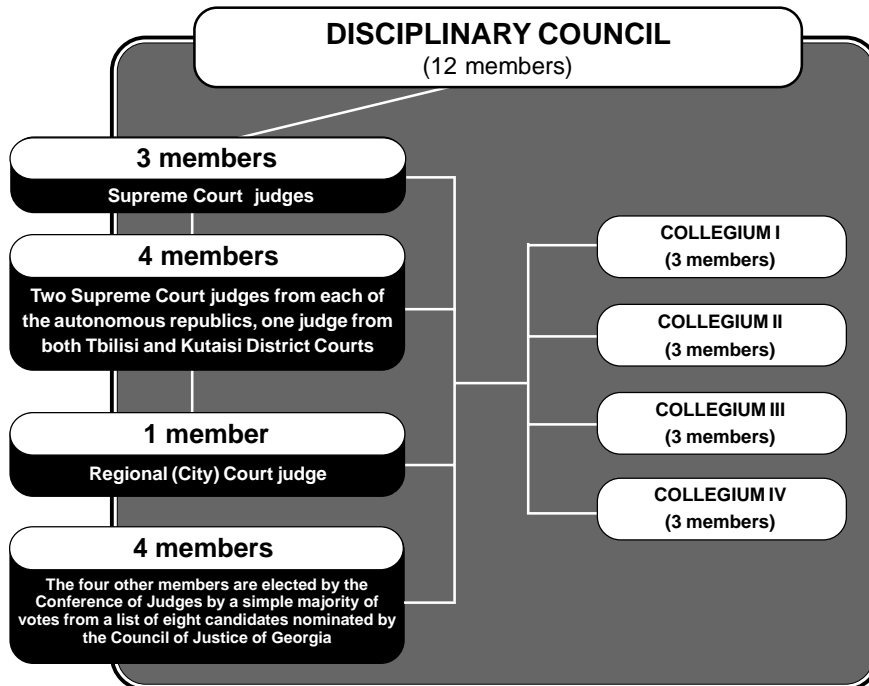
The Disciplinary Councils of the Autonomous Republics of Abkhazia and Adjara are composed of nine members. Six – of whom half are judges of the

High Courts of Abkhazia and Adjara respectively and the remaining three are judges of Regional (City) courts acting on the territory of the autonomous republics . They are elected by the Conference of Judges of General Courts of the autonomous republics by simple majority from a list of six candidates nominated by their respective Councils of Justice.

Each Disciplinary Councils has a chairman. Each one also has a chamber of three members which makes the final decision in a disciplinary case. A decision by the chamber may be challenged solely by the Disciplinary Council itself. All the procedural actions, rights and duties of the parties, the rules establishing the board and other procedural aspects are specified by law.

If there is any question of criminal activity, then the disciplinary case file is sent to a criminal prosecution agency. All materials of a disciplinary case are confidential.

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5. SELF-REGULATION AND GOVERNING BODIES OF JUDGES

I. CONFERENCE OF JUDGES

New legislation provides for a judicial self-governing body. This Conference of Judges, involving all judges of Georgia (except Constitutional Court Judges), is convened once every six months.

The Conference acts under a charter submitted by the Council of Justice and approved by the Conference. The organisational structure of the Conference is as follows:

- a) **The Administrative Committee**, which is composed of nine judges elected by the Conference, exercises decision-making power and is authorized to analyse administrative acts for the courts of general jurisdiction. The acts are submitted to the Conference of Judges for approval. The Administrative Council is chaired by the Chairman of the Supreme Court of Georgia
- b) **The Coordination Council**, which is composed of managing judges appointed by the Administrative Committee and other judges elected by the Conference for five-year terms, is responsible for promoting and administering policy in the general courts
- c) **The Disciplinary Council** - its composition, authority and procedures are regulated by a separate law

The Conference of Judges receives annual reports from the chairmen of the Coordination Council, Disciplinary Committee and Department of Logistics on the functioning of these bodies. The Conference may apply to the Chairman of the Supreme Court of Georgia to have the Chairman of the Department of Logistics removed from his post. The Conference adopted the Judicial Code of Ethics in June 2001.

II. THE ASSOCIATION OF JUDGES OF GEORGIA

The Association of Judges of Georgia was formed as a professional unit in 1999 by a group of Judges. Almost all judges of Georgia are members of the association. The Association is an NGO and aims to represent interests of Judges, to guarantee security, independence and sustainability of the Judge's position. The Association publishes a monthly newsletter, organizes conferences, meetings on diverse topics such as rights of judges, different legal issues, improving legislation in different judicial areas and elaborates proposals for legislative changes.

6. COUNCIL OF JUSTICE OF GEORGIA

The Council of Justice, composed of 12 members, is an advisory body to the President of Georgia. It works out proposals for implementing judicial reform, selects and nominates candidates for judicial posts, organises qualifying exams and fulfils other tasks designated by the law. The Council is composed of four members appointed by the President of Georgia and four appointed by Parliament (only two of whom can be representatives of the parliamentary majority.) The Chairmen of the Supreme Court of Georgia and the High Courts of Abkhazia and Adjara are *ex officio* members. One member is appointed by the Supreme Court of Georgia.

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Any citizen of Georgia, unless a Member of Parliament, may sit on the Council. One only needs to be twenty-five or more and have a university degree in law. Tenures last for three years and may be renewed only once.

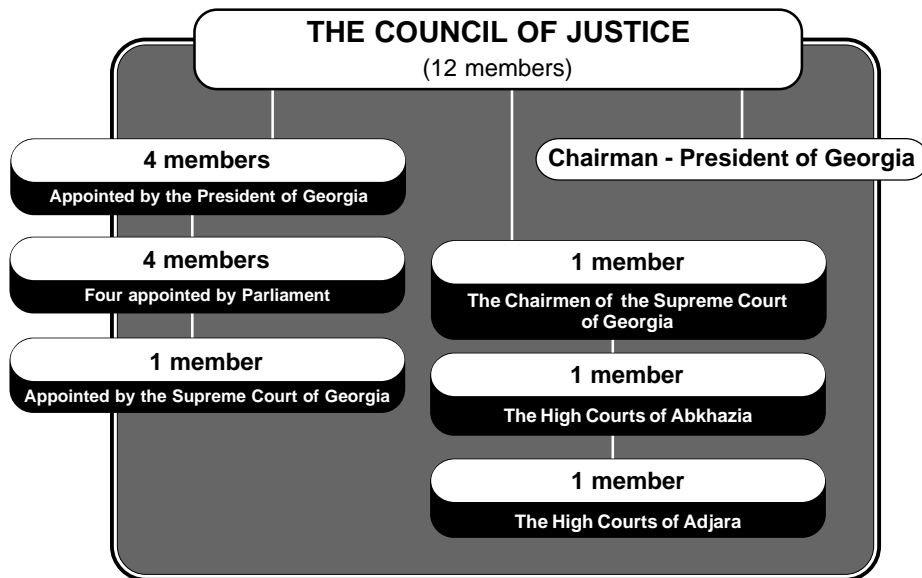
Members must not hold any other position in the public service or any self-governing body, or be engaged in any other activity for which he/she is paid, with the exception of pedagogical, scientific or creative work. Salaries paid to a member of the Council of Justice may not be less than those paid to a Member of Parliament.

Sessions of the Council of Justice are chaired by the President of Georgia, or if assigned by the President, by the Chairman of the Supreme Court of Georgia.

The functions of the Council of Justice are as follows:

- To propose judicial candidates to the President of Georgia
- To submit a list of qualifying-exam board members to the President of Georgia
- To define the specialisations for Regional (City) Court judges
- To draw up, and submit to the President of Georgia for approval, a list of positions of the general courts (excluding the Supreme Court of Georgia) based upon proposals made by the Department of Logistics
- To analyse judicial statistical data
- Where provided for by legislation, to initiate disciplinary procedures against judges of the general courts (excluding the judges of the Supreme Court of Georgia)
- To receive the annual report of the Chairman of the Department of Logistics
- To submit a list of judges entitled to incentives under legislation to the President of Georgia
- To work out proposals on issues related to judicial reform for the President of Georgia
- To discharge other duties specified by law

The procedures and functions of the Council's staff are designated by the President of Georgia. The staff is managed by the secretary of the Council of Justice who is appointed by the President of Georgia for a three-year term. He is selected from the Council of Justice (though not the Minister of Justice or a Member of Parliament). He/she provides organisational and technical support to the Council of Justice, prepares Council sessions, signs documents within the scope of his/her competence and fulfils other duties designated by legislation.



Adjara and Abkhazia have their own Councils of Justice, which fulfill similar functions.

7. ENFORCEMENT SERVICE OF THE MINISTRY OF JUSTICE OF GEORGIA

Procedures to enforce decisions made by courts of general jurisdiction (in criminal, civil and administrative cases) are regulated by the law “On enforcement procedures” passed in 1999. Under this law, enforcement procedures are implemented by the Department of Enforcement, which is a structural unit within the Ministry of Justice of Georgia, and the enforcement bodies of Adjara and Abkhazia. There is also an Enforcement Police Division which is authorised to use force, within the limits specified by law, in the course of executing a decision.

8. DEPARTMENT OF THE GENERAL COURTS

Operating within the Supreme Court of Georgia, this agency, created by the organic law “On general courts”, manages the logistics for the general courts. Its chairman is appointed by the Chairman of the Supreme Court on the recommendation of the Council of Justice of Georgia. The Department's functions are:

- To command funds assigned for the provision and logistics of the courts
- To provide buildings and facilities for the courts
- To provide courts with relevant normative acts and other materials necessary for their functioning
- To check court spending on materials
- To provide other forms of logistical support to the courts

The Department is accountable to the Chairman of the Supreme Court of Georgia, the Conference of Judges of Georgia and the Council of Justice of Georgia.

9. PUBLIC PROSECUTOR'S OFFICE OF GEORGIA

Under the Constitution, the Prosecutor's Office of Georgia is an organ of judicial power. The Prosecutor's Office: 1. Initiates criminal prosecutions; 2. Supervises the investigatory agencies and the execution of sentences; 3. During court proceedings, the Prosecutor's Office acts as party and supports state prosecution; 4. Supervises competent and accuracy of implementation of the law by the inquiry and investigative devices; 5. Supervises competent and accuracy of implementation of court decisions; 6. Coordinates fighting against crime.

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The head of the Prosecutor's Office, the Prosecutor General, is proposed and nominated by the President and is appointed by Parliament. He serves a five year term. He appoints the lower level prosecutors. The law provides for qualification exams for prosecutors, which are conducted by the Council of Justice.

The examination rules, the competence and authority of the Prosecutor's Office and its organisational structure and procedures are designated by the organic law "On the Prosecutor's Office".

APPENDIX

LIST OF NORMATIVE ACTS RELATED TO THE JUDICIARY ADOPTED BY PARLIAMENT

1. Concerning the Constitutional Court of Georgia – 1996
2. Concerning Constitutional Legal Proceedings - 1996
3. Concerning Social Security Guarantees of Members of the Supreme Court of Georgia - 1996
4. Concerning Social Security Guarantees of Members of the Constitutional Court of Georgia 1996
5. Concerning Salary of Members of the Supreme Court of Georgia - 1996
6. Concerning Salary of Members of the Constitutional Court of Georgia - 1996
7. Concerning General Courts - 1997
8. Concerning the Supreme Court of Georgia - 1999
9. Concerning the Disciplinary Responsibilities of Judges of General Courts and Disciplinary Legal Proceedings – 2000
10. Concerning the Prosecutor's Office - 1997

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