

Lado Chanturia

**Judicial
Reform
The Georgian
Experience**



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Lado Chanturia
Judicial Reform:
The Georgian Experience

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Preface

For those who want to trace the history of judicial reform in Georgia, this compilation of speeches by Lado Chanturia, will serve as a valuable primer. At another level, however, these speeches offer an insight into the thinking of a person who has observed the reform as a scholar, participated in its making as a member of the Council of Justice and as the Minister of Justice, and now as the Chairman of the Supreme Court is most influential in establishing its future directions. These talks, therefore, are invaluable not only as a record of what has occurred in the past but for what they suggest of the future.

In these addresses, delivered at different times to different audiences, there is one consistent theme: the struggle to mold a modern judiciary in Georgia. Mr. Chanturia touches upon various aspects of the reform process and its institutions. He reserves one entire talk to the important contributions of the Council of Justice. But it is to judicial education that he gives the most detailed attention. As a former law professor who has assumed important responsibilities for educating his nation about the rule of law, his views on this subject are especially important. His approach is comprehensive, not limited to the education of judges in which he demonstrates detailed knowledge and interest, but extends to the education in law of the lawyers, the entire civil service, and ultimately to every citizen.

In its selection of models for judicial reform, Mr. Chanturia reveals a Georgia that is not only open to new ideas and experiences, but is selective and pragmatic in terms of what it chooses to adapt as its own. Mr. Chanturia points out that it has drawn

upon its traditional links to continental systems for substantive law development and looks to the United States to strengthen court administration and case management practices. Court administration, of course, includes internal institution building to promote and protect judicial independence. The fusion of these various strands of judicial development will result in a judicial system that is uniquely Georgian in character, but entirely western in orientation.

In these speeches, Mr. Chanturia demonstrates his firm commitment to the reforms already undertaken and to the values they represent. Therefore, while these speeches are retrospective views of actions taken, they bespeak a strong conviction that the judiciary of Georgia is headed in a right and proper direction. Thus, this compilation contains an implicit message of reassurance to Georgian citizens as they work their way through a still turbulent transition era: that judicial leadership will continue to be inspired by the same system of values that has energized its reform and has led to the long list of accomplishments Mr. Chanturia so ably records in his talks.

Robert D. Lipscher
Director of CMA
(Court Management Associates)

Experience of Legal and Judicial Reform in Georgia

Speech at the lawyers' forum of the World Bank
5.11.1999

Before I begin speaking about the ongoing legal reform in Georgia, I would like to recall one story which precisely shows the necessity of legal reform in Georgia. I got to know the Director of the Goethe Institute in Georgia in 1994 when I was flying from Germany to Georgia. He was not happy when he found out that I was a lawyer and told me that he did not like lawyers. I met him again after a while, but this time in Tbilisi. His response this time was absolutely different. I have just realized, he said, how vital it is to have a sound legal system and qualified lawyers.

The establishment of precisely this type of legal system and preparation of highly qualified lawyers - this is the main goal of the reform now underway in Georgia. My generation has been given an historic opportunity - to participate in the building of a democratic state.

I would like to talk about Georgia very briefly.

Georgia is one of the oldest countries located in the Southern Caucasus. It's population nowadays is 5,6 million people. The capital city is Tbilisi. Historically, Georgia has functioned as the connection between Asia and Europe. The so called "Silk Road" initiative of the President of Georgia, Edward Shevardnadze, has received a lot of international recognition and support. Because Georgia offers the shortest road to transport oil, gas and other goods produced in the countries of Central Asia and the Caspian Sea to Western Europe, it is returning to it's traditional, and most important, role of providing a bridge between continents.

1. Indispensability of the Legal Reform

Let's go back to the question now: Why was it so indispensable to carry out such a large-scale legal reform in Georgia?

Georgia is one of the countries that reestablished its independence after the collapse of the Soviet Union. The inherited structure of government became a strong barrier to building a new state: Georgia, which had been considered the richest country among the republics of the Soviet Union, found itself in deep economic crisis after several years. Ethnic problems had isolated the country from the markets where Georgia was once strong. It became necessary to integrate Georgia into the Western Community right away.

To achieve that aim, the most critical step was to create a new legal framework and thereby to establish new rules of behavior. This was to be the foundation for developing private initiative among the people, and for attracting foreign investment to the country. This is why it became urgent to adopt new laws.

The Adoption of the Constitution of Georgia was a step of revolutionary importance in achieving this aim. As a result of three years of intensive work, the Parliament adopted the Constitution of Georgia. The Constitution has strengthened the fundamental rights and freedoms of the people.

The concept of the division of powers contributes greatly to the protection of human rights and fundamental freedom.

Traditionally, the Georgian legal system was considered an integral part of the European legal family. It is worth mentioning that even during the Communist era our legal methodology was very close to that of continental Europe. Recent efforts of several private attorneys to lay a foundation for private law and common law systems

have failed. It is difficult for lawyers who have grown up with continental law to function effectively under a common law system. But ongoing reforms in Georgia have clearly shown that it is possible for lawyers from the common law system to effectively cooperate with others. Later I will talk about the actual results of this cooperation.

For these reasons, we started our cooperation with our European colleagues, particularly with German lawyers. That's how we started the German technical cooperation project with GTZ in civil and commercial law reform in 1993 and it's still going on.

The very first law, which was the result of our bilateral efforts, was "The Law of Georgia on Entrepreneurs". In other words, "The Law on Companies". The aim of this law was to grant entrepreneurs a stable legal framework for commercial activity, as well as to facilitate the establishment of western-style companies in Georgia. This was of vital importance for a country in which, a few years earlier, owning private property and running a private business were prohibited.

At the same time, it was obvious that simply adopting the Law on Entrepreneurs could not guarantee freedom of the individual, freedom of contract, protection of property rights, etc. That is why the enactment of the Civil Code was a key step in jettisoning the old structure, and creating the legal basis for a new civil society.

The new Civil Code, comprising 1500 Articles, includes everything positive created by the western legal system during last two centuries. It is based on the experience of both the Continental Law and Anglo-American Law.

The Civil Code strengthened the level of private property protection and freedom of its utilization. Georgia was among the first of the post-communist countries, to recognize private property related to real estate.

The new Civil Code strengthened freedom of contract.

At present, all participants of the market are free to regulate relations with their partners by means of various contracts, even by ones not prescribed by the law. "Freedom of Contract" is thereby maximized.

The Civil Code has laid the foundation for the establishment and further development of NGOs. It has fostered increased public participation.

Georgia also adopted Civil Procedure, Criminal, and Criminal Procedure Codes, and Laws on Private International Law and Bankruptcy. These are necessary for ensuring democratic transformation and the creation of a free market economy.

In cooperation with international colleagues and experts we prepared draft laws, which despite strong parliamentary opposition, were enacted.

Though this process of preparation and enactment of new laws was not at all easy, it will be a much more difficult task to follow up with enforcement and implementation because the current legal consciousness of the general public still retains the old totalitarian mentality. That's why the implementation of these laws required special effort.

2. Implementation of the Adopted Laws

Implementation of recently enacted laws still remains a very difficult task to perform in Georgia, as well as in other post-communist states. There are several reasons why:

a) It is not easy for lawyers who grew up under the previous legal system to become familiar with the new laws. The absence of special literature, such as textbooks and legal commentaries etc., makes it difficult for the lawyers to acquire new knowledge.

b) The old governmental structures do not fit the new laws. For this reason it is necessary to initiate infrastructural changes. That is why the judiciary, the advocates, the notaries and the prosecutors should become the next targets of change.

c) The general public must become familiar with the new laws in order to benefit from them.

That is why enactment of new laws was followed by the preparation and publication of legal commentaries and text-books to educate of the Bar and judges. These projects have already resulted in positive changes. Unfortunately, some laws have not been implemented yet because of the lack of legal commentaries and textbooks.

Institutional reform was a significant precondition for the implementation of the laws. It is very difficult to cover this subject in one report. That's why I will concentrate on the judicial reform implemented in Georgia.

Independent Georgia inherited a corrupt judiciary from its Communist past. It was decided to reform that old system entirely. The Constitution of Georgia established the judiciary as an independent branch of government. The reforms were aimed at creating an independent judiciary. But for particular reasons it was necessary to create favorable conditions for such independence. We had to make sure that this branch of government consists of truly independent, impartial, competent and honest individuals. It was necessary to change the old system of appointing judges in order to enact a new one, allowing publicity and transparency while identifying candidates for judicial positions.

The Parliament of Georgia adopted the Law on Common Courts on June 13, 1997. This law laid down the basis for judicial reform, one which has been greatly supported by the whole population of the country. In accordance with this law, the Council of Justice - a special body dealing with the reform - was established. The Council is

a consultative body to the President of Georgia, and consists of 12 members. Four members are appointed by the President of Georgia, four members are elected by the Parliament, and the other four represent the judiciary.

The courts have been freed from subordination to the Executive Branch of government by the establishment of the Council of Justice. The Council of Justice was created to conduct an impartial process for the selection and appointment of judges.

One of the most crucial goals of the judicial reform was to select qualified judges who were knowledgeable about the new legislation.

For this reason, the law authorized existing judges, as well as those wanting to become judges, to take an examination. Together with testing the qualification of the judges, the aim of the exam was to gain the trust of society by insuring that the exam procedure was transparent. It was very important to assure the secrecy of the exam questions, and to form a monitoring group that would supervise the exams.

The American Bar Association has contributed greatly in the process of preparing and holding the exams. With the assistance of the ABA, experts worked out the methodology of preparing the exam questions, and training Georgian lawyers. After that, the exams were printed in the US with the assistance of the ABA. The exams were delivered to Georgia in a diplomatic pouch of the German Government. Four examinations have been prepared in this way.

The new law determined the rules and subjects of the exams. There are two exams; one multiple choice and one essay. These exams cover the following subjects : Constitutional Law; Criminal law and Criminal Procedural Law, Civil Law and Civil Procedural Law; Administrative Law and Procedure; International Acts and International Agreements of Georgia.

Five judicial qualification examinations have taken place in Georgia with 1600 candidates participating. Of that number, 314 have passed the exams. Less than one third of the existing judges have been able to pass the exams.

So far, 169 qualified judges have been assigned to work in the courts. There are 136 vacancies.

International observers, Georgian observers, and representatives of the mass media all have evaluated the examination process to have been transparent and impartial. According to the members of the International Monitoring Group as set forth in their post-exam protocols, all the rules and procedures of the exams were maintained. It's also worth mentioning that part of the exam was broadcast live, and all the events related to the exam had very good coverage in the mass media. This provided the population with information on the judicial reform that was starting to take place in the nation.

An important step after the qualification exams is the selection of judges. The selection is based upon evaluation using established criteria. The main criteria for the selection of judges are the following: a law degree, work experience in the field of law; the grade achieved in the qualification exam, professional and moral reputation, and health status. We also pay attention to the comments of the public, which means gathering information from the citizens of Georgia about a person's qualifications. The list of judicial candidates is published in the newspaper.

The Council of Justice makes the decision about the selection of judges on the basis of ballot by majority vote.

The Council of Justice presents the successful candidates to the President of Georgia for appointment to the bench. The term of office is 10 years.

The President of Georgia presents candidates for the Supreme Court to the Parliament. The Judges of the

Supreme Court of Georgia are elected by the Parliament for 10-year terms.

Getting rid of corrupt judges and conducting qualification exams does not complete the process of judicial reform. Institutional changes are made in the courts. For example:

The new instance court, the appellate court, started to work as a second instance court.

The institution of lay judges that existed during the Soviet era was abolished. Now, only one judge considers cases in first instance courts, while three judges consider particular categories of cases.

We are working on creating a new system of court management. With assistance from the World Bank, we conducted important preliminary work concerning this issue.

Great changes were made at the Supreme Court. It was established as a court of cassation; especially covering civil cases. Before the reform, the Supreme Court had the right to consider civil cases in the first instance. Since the reform, it has no such right. It is a cassation instance court concerning civil cases. The Supreme Court has Civil, Entrepreneurial, and Bankruptcy Divisions. Other divisions consider administrative, tax, customs and certain other cases.

Before the reform, the Chairman of the Supreme Court and his or her deputies had the right to submit a protest about a court decision, and to ask the Plenum of the Supreme Court for the reversal of the judgement. Since the reform, this can not happen. The Supreme Court decision is final.

The Plenum of the Supreme Court was the highest and final court prior to the reform. It was able to overrule decisions based on protest from the Chairman or his or her deputies. The Plenum consisted of 47 members. The obvious result was that 47 members, who were special-

ists in different fields of law, were not able to make competent decisions in particular cases. Nowadays, this practice has been eliminated.

Before the reform, the participants in a court proceeding were allowed to meet separately with the judges before the court hearing. Now such *ex parte* activities are prohibited; the rights of both parties are equally protected.

One of the most important tasks of the Supreme Court is to provide the country with impartial justice. One of the important ways of fulfilling this aim is to publish court decisions. We need to create one computer network, which will make accessible the information existing in the court system. One of the World Bank Projects, costing 1,5 million dollars, is to computerize the whole judicial system.

The success of judicial reform depends on the trust and support of society. The relationship with the mass media is of great importance. An independent mass media is one of the results of this young Georgian democracy. Independent journalists are the best evaluators of the processes going on in society. Also, they help mold public opinion.

Judicial reform has had great coverage and the mass media representatives have been highly interested in the process of how court proceedings are conducted, how judges do their work, and in their professional responsibility and moral reputation. The Georgian press informed the public about the first successful steps of judicial reform. 800 articles were published, 250 programs were prepared and broadcast, 40 briefings and press conferences were organized, concerning the judicial qualification exams, their results and the opinions of international observers. The media covered the main issues of judicial reform, its financing, and other important and difficult issues. Cooperation with donor organizations was also covered.

It is worth mentioning that people are very much interested in educational publications about judicial reform,

and the new judicial system. A great number of letters were received at the newspaper publishing offices from the citizens of Georgia. Also, many articles were published by lawyers, most of whom were supportive. This illustrates the interest of the public. We received interesting opinions on some of the problematic issues.

The print and broadcast media publicly disseminate information concerning the ongoing judicial reform. The press covers the particular facts, court hearings, etc.

The preparation of a special project in the sphere of public legal education and legal information with the World Bank was not accidental. The 1.3 million dollars allocated by the World Bank for this project will play a key role in the successful implementation of judicial reform.

Judicial reform will have real results and effect, only if the main element of the judicial system, the judge, is independent and impartial. Fulfilling this aim is more difficult than conducting judicial qualification exams and appointing judges.

One of the most important guarantees for judges' independence is the provision of a reasonable salary.

As a result of the judicial reform, judges receive the highest salaries among public servants in Georgia. But even this salary is not enough to provide the judges with material independence.

Another important guarantee for judges' independence is to provide them with a self governing judicial system. As a result of judicial reform the Conference of Judges of Georgia was created. It consists of all Georgian Judges. An important objective of this organization is to improve the trust and confidence of society toward the courts and to elevate the prestige of judges.

3. The coordination of the work of international development organizations

In conclusion, I would like to mention one very important issue of great importance for the successful implementation of judicial reform in a transitional society. The obvious fact is that it would be impossible to implement judicial reform without the assistance of the international development organizations, and our foreign colleagues.

After the creation of new States, it has often happened that the international development organizations began competing with each other and thus harmed the effort to achieve their goals.

Fortunately in Georgia this did not occur. We were able to coordinate the work of international organizations. We conducted three coordinating meetings wherein we clearly identified which organization would be involved in which sphere of judicial reform. The benefits were real and positive both to the donors and to Georgia.

I would like to underline, especially, the role of the World Bank and its experts. It's a well-known fact that in some countries the World Bank had become the target of criticism several times. The reason was that it rejected or sought changes in projects that were being implemented by other organizations. The World Bank is the most powerful and wealthy international organization. And the success of the reforms depends on implementing correct policies. The work of the World Bank in my country, in the field of the judiciary and judicial reform, is distinguished by constructive cooperation with other donor organizations. We feel that it's easier and more beneficial to achieve the common aim by joint effort. I can give you a number of examples:

The Civil Code Establishment Project. Three different organizations cooperated in this project: The German Technical Assistance Association (GTZ), The United

States Agency of International Development (USAID) and The Foreign Ministry of the Netherlands.

Judicial Reform. Especially worth mentioning are the joint projects implemented by the World Bank, USAID, the American Bar Association, the European Council, the European Union, and the governments of France and Germany.

The obvious fact is that the World Bank project has been beneficial to Georgia's judicial reform. The process is already underway.

The aim of the project is to establish a modern judicial administrative system; to renovate court buildings and to build new ones; to establish a new system of case management and court administration in the courts, and to develop sound court infrastructure, to improve the execution of civil judgments with the help of the Ministry of Justice; to train judges of the Supreme Court and their assistants; and to provide for the legal education of citizens.

The amount allocated for this project is \$1.3 million. This credit should enable the realization of the final goal of the ongoing judicial reform; the creation of a judicial system that provides equal justice for all.

In conclusion, I can say that a stable legal basis has been developed. This will lead to an improved economy in which foreigners will want to invest, thereby assisting our country to prosper.

Please visit Georgia. In the large world about us, it is a small, but welcoming, paradise.

**A Comprehensive legal and judicial
approach
(The Georgian Experience)**

Speech at the Europe and Central Asia (ECA)
Forum on Legal and Judicial Reform in
Saint-Petersburg
11.07.2001

The emergence of new states in the wake of the collapse of the Soviet Union made it necessary to implement broad-scale legal and judicial reforms. But, as the experience of the last decade has shown, it is far easier to pronounce principles of democracy, civil society, and a law-governed state than to achieve their actual translation into the life-blood of the nation. This has been invariably true for all the new states, irrespective of certain success in particular spheres.

I believe Georgia has been and continues to be one of the most successful countries in terms of legal and judicial reform. The joint efforts of the President of Georgia and the legislative and executive authorities has led to the creation of a legal framework that meets the fundamental requirements of a democratic society and a rule-of-law state. For the most part, the laws basic to this framework have already been enacted.

The spirit of these laws has become an important tool in the hands of legal practitioners and scholars. These laws are taught in law schools and have served as the basis for legal textbooks, commentaries, research, and practical and scholarly works. The country has seen the birth and growth of a young generation of lawyers, some of whom have received education abroad under the supervision and with the support of our foreign friends and colleagues.

The legal nihilism inherited from the Soviet era and the ignorance of new laws has been a serious constraint to the actual implementation of these laws. Therefore, it

became necessary to launch a massive institutional reform, one that primarily involved the court system.

Judges were put through qualification exams that took place with maximum transparency and with wide public as well as international support. As a result of these exams, the new judicial system came into being with more than two-thirds of its judges having an in-depth knowledge of the new laws.

Under legal reform of the Georgian court system the State Arbitration Court has been abolished, and was replaced by general jurisdiction courts that hear all cases. In addition, the supervisory power of the Prosecutor's Office over courts was also terminated.

The Judiciary was separated from the executive branch of government and began functioning as an independent branch of government. The first concrete demonstration of such independence was the transfer of administrative authority of court operations from the jurisdiction of the Ministry of Justice to the Judiciary itself.

In order to help implement the court reform, a new body called the Council of Justice, was called into being. The Council of Justice consists of 12 members with equal representation by all the three branches of government. An important further development has been the creation of the Conference of Judges, composed of all the judges of Georgia, This primary organ of judicial self-governance has proven itself to be an effective body.

The goal of judicial self-management was advanced by the creation of the Department of Logistical Support of the Supreme Court of Georgia. The department is accountable to both the Conference of Judges and the Council of Justice.

On May 15, 1999 the new court system, consisting of three instances of court, went into effect. An appellate court, an entirely new legal institution for Georgia, was established as a court of second instance. Panels of three

professional judges hear cases in these courts. The Soviet jury system was abolished.

The Supreme Court of Georgia was transformed into a court of cassation. Its decisions are final and are not subject to revision by the Chairman of the Supreme Court or his deputies. This has eliminated the distorted practice that existed during the Soviet period by which the Chairman of the Supreme Court or his deputies could change valid and effective court decisions. Also abandoned was another distorted Soviet-era tradition by which the Plenum of the Supreme Court gave binding directions to judges with regard to their judicial decisions.

The Administrative Chamber is another innovation of great value and importance. It has laid a foundation for administrative justice in Georgia. It gives citizens the means to challenge abusive administrative regulations and decisions, and offers them additional guarantees for the protection of their rights.

Within the Supreme Court of Georgia, a Grand Chamber was created just a few days ago. The Grand Chamber consists of nine judges and is designed to hear especially complex cases. The Chamber is presided over by the Chairman of the Supreme Court.

One of the great achievements of Georgia's Court reform has been the introduction of transparency into the conduct of court business, namely:

All the court hearings are public. Interested parties as well as representatives of the media, both print and electronic, can attend the hearings;

Since the year 2000, all rulings of the Supreme Court have been published and are accessible to all interested individuals. Jointly, with the OSCE and the German Government, we are working on the translation of these rulings into English and Russian and will make them available on the Internet;

Information concerning the Court budget and expendi-

tures are published and are available to any interested person, especially to the judges of the courts;

All hearings in the Supreme Court, are held within a week after filing. Notice of the date of hearings is published in advance. Summaries of cases are provided to the mass media; and

Under the auspices of the World Bank project, we are working to create a unified computer network for all the courts of Georgia. This will help make judicial system information even more accessible.

The Conference of Judges elects members of the Judiciary's Disciplinary Council. Through the workings of this Committee, no single complaint concerning an alleged violation of a judge's professional responsibility is left without review and response.

In my opinion, even this short list of activities is enough to illustrate the extent of legal and judicial reform in Georgia that has already been undertaken

Now Georgia is entering a second phase of its judicial reform.

The basic structures, while not problem free, have given the Georgian judiciary a good start. The courts are in place throughout the country, the judges are working hard, and the level of public trust and confidence in the courts has improved as is demonstrated concretely by the increasing volume of filings.

Nevertheless, there is substantial dissatisfaction with the administration of justice in Georgia. Much concern is directed at the as-yet unreformed portions of the justice system: police, prosecutors, and attorneys. But the level of dissatisfaction with the performance of the court system, itself, remains high.

The court system is not yet working entirely right, necessitating further reform and improvement. The basic structural components are essentially sound. Although

slight modifications may be required here and there, there is no need to re-design the existing foundation. But refinement and further development are required.

The next level of judicial reform will focus on improved performance, that is, achieving better results from the work of the judiciary. Experience has demonstrated several performance areas where the judiciary must deliver improved results if it is to succeed. These areas include: independence, integrity, management and administration, service delivery, and public trust and confidence.

Our experience thus far demonstrates the need for basic changes in the way we educate and train judges. Theoretical education provided at the university level for future lawyers is not enough to meet the practical demands on judges and other justice system professionals. That's why the idea to establish a High School of Justice has emerged in Georgia. The aim of this School is to prepare judges, prosecutors and investigators for their responsibilities. Admission to the School will be on an open and competitive basis.

It gives me great pleasure to acknowledge the assistance and cooperation of international development organizations. One of the main reasons for the success of the legal and judicial reform in Georgia is the high level of cooperation with donor organizations and foreign colleagues. Georgia has had very good experience in this regard. Cooperation has replaced competition. Working together under our guidance, all have become truly collaborative partners in the reform process.

Historically, Georgia is a Civil Law country. For this reason, legislative drafting was basically done with the help of European experts. The role of the experts of the German Technical Assistance Association (GTZ) in preparing new laws and in helping with practical implementation should be highlighted. With the joint efforts of the European Union (TACIS), United States International

Development Agency (USAID), and the American Bar Association, it became possible to practically implement the objectives of the reform.

The role of the World Bank in ongoing judicial reform is particularly noteworthy. Under the auspices of the World Bank Project, eleven model courts with their essential infrastructure will be created in Georgia. These courts will be automated and a computer network will be built to tie all courts together electronically. A completely modern system of court administration and case management will also be created.

Due to the time limit, it is impossible to mention all the initiatives that are underway. But I hope I have said enough, to give you some idea of the achievements and future prospects of legal and judicial reform in Georgia.

Legal Training in a Transitional Democracy: The Georgian Experience

Comprehensive Legal and Judicial development.
Toward an Agenda for a Just and Equitable Society in
the 21st Century. Edited by Rudolf V. Van Puymbroeck.
WB. Washington D.C. 2001, P.307-312

The collapse of the Soviet Union and the creation of new, independent states across Eastern Europe, the Caucasus and Central Asia have presented an opportunity for legal reform unlike any other time in modern history. My homeland, Georgia, has proudly joined the family of democratic nations and has taken great steps towards establishing a market economy and a society based on the rule of law.

As I begin my remarks, I must first pause to express the deep thanks of my nation and its government – particularly its judiciary – for the assistance provided by international organizations like the World Bank in helping us to draft and implement the changes necessary to reform our legal system. Historically, Georgia has many links to the continental law system and we have benefited from a close collaboration with European legal experts. We have also relied on the American legal community for help in those areas where we have chosen to model our system more closely on the adversarial system in the United States.

As we have built our new legal system in Georgia, we have learned many lessons. We realize that we must have strong institutions able to implement the many changes from the old Soviet system. But we have also learned that our institutions are only as strong as the people who serve in them. We recognize that successful legal reform cannot occur without lawyers and judges who understand the advantages of a system based on the rule of law. We also realize that to have lawyers and

judges with such understanding, we must reform our system of legal education.

The importance of reform in our method of educating those who will practice and judge the law is clear to us in Georgia. We also know that it is not only the future lawyers and judges, but also all public servants, who must understand our new legal system.

But I must leave the topic of reform of our legal education system for another time. Today I want to focus my remarks mainly on the critical areas of judicial reform and training for those who currently sit in judgment of the legal disputes that come before the courts of Georgia.

In 1998, Georgia took a historic step to insure that its judges knew and understood the many new laws in our nation. We began Judicial Qualification Examinations for all those who were judges under the old Soviet system and for new judicial candidates.

This was a crucial reform in our system. It gave the people confidence in the judiciary of our newly independent country and insured that judges would be appointed based on their legal knowledge.

An indication of the level of change this reform brought to our judicial system is the fact that since 1998 we have had six judicial qualification examinations. Over 1500 candidates have taken the examinations, but only 287 have passed and only 70 of those were former judges.

There are 388 judicial positions in Georgia and we have filled 206 of these positions with men and women who have passed the Judicial Qualification Examination. Thus, over half our judiciary consists of these newly qualified judges. This is a reform that we are truly proud of and from which we will never turn back.

Passing the Qualification Examination is just the beginning of the reform process. Good judges must not only know the law, they must know how to apply the law

and to fulfill their duties as judges. That is why we have now placed judicial training among our highest priorities.

Let me provide details of some of the ways we are giving our new judges the tools necessary to do their jobs in the most professional way.

We have created a Judicial Training Center to determine the areas where judges themselves feel the most need for instruction and then provide training and seminars in these fields. The Center coordinates the assistance provided by international organizations like the European Union, the Council of Europe, the World Bank, USAID and GTZ in arranging seminars and workshops for the judges. In many of these, Georgian judges serve as speakers and help organize the training sessions. Seminars are arranged in various locations around the country to insure that training is provided to judges in all the regions.

We have made maximum use of foreign legal experts to share their experiences with our new judges. These experts provide practical examples to show judges how cases can be heard and decided. During the Soviet regime, the judiciary was never exposed to outside experiences and we know the damage that such isolation caused. Judges have a crucial role to play in a democratic society with a market economy. Our judges need to closely cooperate with, and learn from, European and American judges and legal experts during our transition period.

We have begun a program of training Georgian judges in the methods of teaching their fellow judges. We have created a group of judges from our Supreme Court and our Appellate Courts who are specially trained to conduct seminars and provide workshops for their associates.

Important changes have also been made in our court organization in Georgia. Court reform laws created an Appellate Court level in our system and restructured the

functions of the Supreme Court, which has now become a court of cassation. As a result of this reform, judges have required training in hearing and deciding cases on appeal from lower instance courts. It has become important for appeal judges to learn the process of discussing and analyzing the decisions of lower courts and identifying possible errors in those decisions. Seminars on these topics have become a tradition in our Supreme Court and Appellate Courts and we recognize this as an important area of judicial training.

The publication of court decisions has also had a great impact on the level of legal education of our judges. The decisions of the Supreme Court are now published and distributed to every judge in the nation. This is part of our effort to develop a body of law that can be applied consistently throughout our court levels.

An important part of our training system has been our ability to send Georgian judges on training tours of European and American courts. These tours allow judges to observe practices in other courts and to apply these experiences when they return to Georgia. The World Bank has been very helpful in this field and our Supreme Court has cooperated with the Supreme Court of Germany and GTZ in providing six-week training courses in Germany for our judges. We have also been able to send judges for training to the United States and France. The sharing of experiences with judges of different nations is of great importance to our developing court system.

In Georgia we are in the unique position of being able to draw upon two legal systems in creating our training programs. We have strong historical links to the family of European Continental Law but we are also learning from experts in Common Law courts. Our legal education is strongly linked to continental law so our training programs for judges are designed to emphasize this connection.

Judicial education programs based on Continental Law help the judges in applying the relevant law to the facts of a case and reach a decision which complies with the requisites of the law and court procedures.

Our friends in countries using the Common Law system, particularly judges in the United States, have been of great assistance in sharing their experiences about court administration and case management. Also, American judges have conducted many seminars on judicial discipline and judicial ethics. Their contributions to our knowledge in these fields have been of crucial importance as we begin our effort to establish a disciplinary system for the judges of Georgia.

These training programs have all been organized to accomplish our goal of improved judicial knowledge and professionalism. Our training system takes three forms:

Joint discussions between Georgian judges and foreign experts about the facts of a case and the possible methods of resolving the dispute in accordance with applicable law.

Identification of problems in court practice and administration and use of foreign experiences to solve these problems.

Translation of decisions of Georgian judges into foreign languages and assessment of those decisions by foreign judges who discuss their conclusions with our judges.

We have found all three methods extremely useful and apply the appropriate training method to particular problems facing our system.

I should mention one practical problem that we face in conducting all of these training programs. Judges must first of all be judges – they must spend time in their courtrooms hearing cases and in their offices giving consider-

ation to their opinions. We have tried to schedule as many seminars and training sessions as possible for weekends and we have arranged for regional training sessions so that judges can gather in one place and meet for workshops and seminars together with foreign experts.

Finally, I must mention our great need for legal textbooks and commentaries. Our judicial reform turned all our old law books based on the Soviet system into paper for our fireplaces. The judges need new textbooks and commentaries to help them gain insight into the application of all the new legislation that our Parliament has enacted to implement these reforms.

Again, international organizations have played a crucial role in helping us prepare and publish such commentaries. USAID, GTZ and the Dutch Ministry of Foreign Affairs' - Center for International Legal Cooperation have been closely involved in this effort in connection with our Civil Code. The American Bar Association has sponsored publication of commentaries by one of our Supreme Court judges on the new Criminal Code which will be distributed to every Georgian judge at the upcoming Conference of Judges.

Our law library has benefited from purchases of literature by USAID, GTZ, the ABA and OSGF. Without their assistance, we would have very limited research materials. The American Bar Association is assisting the Supreme Court in designing and equipping our Supreme Court Law Library, which will be open not only to judges but to law faculty students and the public.

Let me end these remarks with a very special word about our relationship with the World Bank. The Bank plays a key role in our judicial training effort and without their financial and technical assistance many of the projects I have discussed today could not exist. The Judicial Training Center is a prime beneficiary of the Bank's support and our credit agreement makes judicial reform a reality in Georgia. The training of our judges, the reform of our court structures and the modernization of our equipment is possible because of the World Bank's support.

With the help of our friends in the World Bank, the United States and throughout Europe, each new day brings Georgia closer to its goal of a modern, professional court system that is the foundation of a society based on the rule of law. This is the dream of every judge in Georgia and of all our citizens.

**Specifics of the Training of
Judges in a Transitional Society
(Georgia's Example)**

The collapse of the Soviet Union and the establishment of new independent states have prepared the ground for a large-scale process of legal reform. The collapse of the Soviet system required the transformation of the old legal system into a new one. Only through adoption of new laws, oriented to the market economy, was it possible to achieve this. International organizations played a large role in these activities, particularly with regard to the legal and legislative drafting process. All the new laws that have prepared the fundamental legislative program for building the state, for establishing a democratic society, and for achieving a market economy were formulated with the participation and consultation of foreign experts.

Considering the fact that from the very beginning the Georgian legal system was a continental law system we relied on these historical ties to establish an active collaboration with European experts in the legislative drafting arena. We preferred to cooperate with American lawyers in those fields where American law plays a more significant role and is more developed.

Adoption of the laws and their enforcement mechanisms have demonstrated that it was absolutely necessary to look to the institutions and people who would actually implement the laws. For the lawyers who grew up in the old regime (they represented the majority), it was difficult to recognize the advantages of the new laws. Therefore, it was impossible to conduct a successful legal reform without reform in legal education and training.

Legal training is absolutely necessary, first of all, for lawyers; but not only for them. Legal reform must cover the whole field of public service. So it is necessary for all state employees to receive the benefit of the new legal knowledge. But in my speech I will only cover the intricacies of training judges.

Georgia has carried out a crucially important reform – Judicial Reform. The Judicial Qualification Examination was one of the most important parts of this reform. Adoption of the new laws made the examinations a necessity: it was difficult for judges imbued with the old Soviet mentality to fully comprehend and implement the new laws. That is why it was determined that all occupants of judicial office as well as all those seeking judge-ships had to pass the qualification examination.

Six judicial qualification examinations were held since 1998. To date, 1587 candidates participated in them. Only 287 candidates passed the examinations, and only 70 of them are former judges.

The total number of judicial positions in Georgia is 388. New judges, those who have passed the judicial qualification examination, occupy 206 of them. Therefore, more than half of our reformed judiciary consists of newly appointed judges.

Experience since the activation of the new judicial system has demonstrated that the newly appointed judges well understand the new laws. But as for the other skills that are required for judges to become good professionals, they need training and they need experience. That is why at this stage of judicial reform we give such high priority to the training of judges. We will use several ways to achieve this aim:

a) Creation of the Judicial Training Center (JTC)

Training of judges and the perfection of their skills is the task of the Judicial Training Center.

The Judicial Training Center exists as an association formed by judges to provide for the training of judges. The Judicial Training Center actively cooperates with international organizations such as the European Union, (TACIS project), GTZ, the ABA, OSGF, etc. to fulfill this aim.

All the plans of cooperation with each of these organizations provide for training seminars. These seminars are arranged by geographical regions so that local judges can easily participate in them.

The Center determines the learning priorities based on requirements of the judges, especially the fields of law of most interest for them. It is also worthy to mention that the judges themselves arrange for the organization of these seminars.

b) Participation of Foreign Experts in the Trainings

As a result of the fact that the judiciary was isolated during the Soviet regime, Soviet judges did not have a right to be in contact with foreign colleagues. This had a negative influence on the qualifications and mentality of the judges. Judges have a crucial role and importance in a democratic society based on a market economy. That is why it is absolutely necessary for judiciaries during this transitional period to cooperate intensively with European and American Judges.

The TACIS project of the European Union provides for the training of Georgian judges. This project has already held several seminars with the participation of European judges. Training based on specific cases is of much greater benefit than discussions of theoretical issues.

c) Training of Trainers

Training of trainers is one of the most important tasks in the field of judicial training. This means training of Georgian judges who will then themselves train other judges.

We have had interesting results in Georgia in this aspect as well. A group of judges of the Supreme Court and Appellate Court has been created as trainers. They have taken a special training program and will later train other judges.

d) The Role of Higher Instance Courts in the Training of Judges

A new second instance court, the Appellate Court, has been created as a result of the Georgian judicial reform. As a result, the Supreme Court has had to undertake new functions. It has been restructured as a cassation instance court. New laws have carefully spelled out the precise jurisdiction of cassation and appeal. This in itself has required training judges of the cassation and appeal level courts. Consequently, the training programs include the specific features of hearing appeals and cassation cases in the relevant instance courts. The judges of the higher instance courts discuss and analyze errors made by the lower instance courts. These kinds of seminars already have become a tradition and are recognized as one of the most important forms of judicial training.

Publication of court decisions is also a very important part of this process. We already have started publishing all decisions of the Supreme Court and all interested persons have access to them.

e) Organization of the Training Tours

One of the most effective ways for training judges is the organization of training tours. Our experience proves that even short-term training tours in the European and American courts are very effective for the judges' mental outlook and attitudes. The judges who return from these types of tours try to use their learning experience to manage their courts and cases.

We have enjoyed valuable cooperation in this field as well with the World Bank and also with other international organizations. For example, pursuant to an agreement between the Supreme Court of Georgia and the Supreme Court of Germany and GTZ, judges of the Supreme Court have the opportunity to undertake six weeks of training in the Supreme Court of Germany.

One and two week training tours in the courts of the United States, Germany, and France have already been held.

These kinds of training tours are extremely useful and effective for judges.

When talking about the training of judges we should not only cover the organizational forms of the training. Their methods and substance are also of crucial importance. We have quite an interesting experience in that respect as well:

a) Methodology of Training

When we discuss judicial training problems, it is very important to indicate whether the judges represent European Continental Law or Common Law systems.

The Georgian legal system historically belongs to the European Continental law family. The specific feature of this law family is that the judge decides the issue based

on the norm of the law. The judge's task is to apply the relevant law, and a particular sentence in the law, to the case. This is called *Sumsuntion* in the European Continental Law and it requires specific methodological training. Legal education at university is based on this methodology. That is why cooperation with judges representing the Continental Law system becomes a key issue when we discuss matters of methodological training for Georgian judges.

We can say the same about the form and structure of the court decisions. The law determines the content and requisites of the court decisions; as for their actual addition in to the court decision, specific knowledge and training are required.

As for the participation of the judges representing the Common Law system, we use their experience and knowledge in designing methods and practice for court administration, case management, and judicial discipline and ethics. Their involvement in these areas has filled an absolutely crucial need.

Thus, we established the best tradition of cooperation in the judicial training process with the judges representing European Continental Law as well as Common Law systems.

b) The Forms of Training

In order to gain the most benefit from our judicial training programs we have worked out some very satisfying forms of collaboration with foreign judicial experts:

I. Georgian judges and foreign experts jointly discuss cases that were decided or are the subject of current consideration and try to reason out solutions to the problems they present.

II. Discussions are held concerning existing difficulties

in court practice and approaches are developed to overcome them;

III. Decisions made by the Georgian judges are translated into foreign languages. Foreign judges assess these decisions and engage in spirited discussions concerning them with Georgian judges.

c) Intensity of the Trainings

Obviously, these training programs and training seminars are not the only work of the judges. Their main objective is to preside at hearings to implement justice. That is why it was not an easy task to combine ongoing judicial activities and training. Training must not interfere with the work of the courts. That's why we developed the so called "weekend seminars". Regional judges gather on a weekend in one of the regional courts of Georgia and the foreign experts join them there for instructional purposes.

d) Textbooks and Other Training Materials

Effective training requires relevant literature and textbooks. Ongoing judicial reform in Georgia made legal materials from the Soviet era fit only for the trash heap. Creation of the new literature requires time and people who will prepare the textbooks and commentaries to the laws.

Much good work has been accomplished in this aspect also. Many textbooks and commentaries have been prepared for the new laws. The involvement of international development organizations has been of key importance here as well. For example, USAID, GTZ and the Dutch Ministry of Foreign Affairs' – Center for

International Legal Cooperation (CILC) have jointly sponsored the preparation and publication of the comments to the Civil Code.

The ABA is sponsoring publication of comments to the general part of the new Criminal Code.

The assistance of international organizations in purchasing the new legal materials and providing them free of charge to libraries plays a significant role. The activities of USAID, GTZ, ABA and OSGF are very important in this field.

We greatly appreciate the effort of ABA/CEELI in assisting the Supreme Court of Georgia to arrange its new library, which will be equipped up to modern standards.

Role of the World Bank in the Field of Judicial training

In the final part of my speech I'd like to concentrate on the issues of cooperation with the World Bank. First of all, I would like to state that this cooperation on the judicial reform issues has been very constructive and productive. There is a credit agreement between the government of Georgia and the World Bank in the amount of \$13.4 million for carrying out judicial reform.

Components of judicial training represent a significant portion of this amount. The total dedicated for this purpose comes to \$1,117,000. Part of this amount was used to support the Judicial Training Center and for training judges.

The purpose of these components is to assist the Judicial Training Center in arranging ongoing educational and training courses to improve the qualifications of sitting judges, their assistants, the employees of the chancellery, and other technical staffers.

Groundwork has already been laid for the further implementation of these efforts.

This briefly summarizes our experience in the field of judicial training. While impossible to describe in detail all the aspects of judicial training, it has at least touched upon some of the significant highlights of an effort that all agree is fundamental to the success of judicial reform.

The Council of Justice and the Reform of the Georgian Judiciary

Second speech prepared for the lawyers' forum
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The ongoing judicial reform in Georgia is a constituent element of the general legal reform. Judicial reform is unimaginable without the principle of judicial independence. The legal system which we had inherited from the Soviet Union failed to conform to the principle of judicial independence, given the Soviet forms of judicial appointment, court administration and logistical support.

Although a separate branch of government, the independence of the judiciary was limited by its dependence on executive authority. This meant that the executive branch had the right to determine the material and technical requirements of the courts - a strong lever to influence the judicial branch. Such relationships between the two branches negated not only the principle of judicial independence, but also the principle of the Rule of Law, which at the very least means fidelity to legal principles without subordination to executive branch power.

Accordingly, it was necessary to form the judicial system in such a manner as to prohibit the domination by any branch over the court's legitimate authority and to establish a relationship of equality among the three branches.

The Council of Justice of Georgia was formed to achieve this goal. The structure of the Council of Justice provoked heated debates. The Council, itself, had to be independent of all three branches of government. Nevertheless, according to its structure, the Council had to join one of them, since pursuant to the Constitution of Georgia, the President of Georgia conducts not only the executive authority, but is also the head of State.

Therefore, the decision was made to form the Council as a consultative body to the president.

The formation of the Council was based upon the principle of parity among the three branches of government. The same principle had already been employed in setting up the Constitutional Court.

The Council of Justice of Georgia consists of 12 members. Among them are four members appointed by the President of Georgia and four members elected by the Parliament of Georgia, no more than three of whom can be Parliamentarians. (No more than 2 representatives of the parliamentary majority can be elected to the Council.) Four members represent the Judiciary. One of them is appointed by the Supreme Court of Georgia. The other three enter the Council of Justice by virtue of their offices: the Chairman of the Supreme Court of Georgia, and Chairmen of the Highest Courts of the Adjarian and Abkhazian Autonomous Republics.

Setting up the Council of Justice in this manner gave the three branches of government equal participation in the formation of the judicial system. The Council of Justice deals with matters on the basis of drawing lots, which include: matters concerning judicial reform, selection and presentation of nominees for judgeships, removal of judges from office, organization of the judicial qualification examinations and other tasks as provided by law.

The Council of Justice of Georgia is empowered to propose candidates for judicial office to the President of Georgia. Among its other significant duties are to recommend the composition of the Qualification Examination Commission; to define the remit of the regional courts; to approve the suggestion of the Logistic Department of General Courts, vis-a-vis Common Law Court staff structure; to define the structure and quantity of the Common Law Courts' staff; to work out the organizational order of

Common Law Courts' activities and present it to the President for approval; to analyze court statistics; to review the annual report of the Chairman of Common Law Courts' Department of Logistical Support; to recommend judges to the president for his approval and appointment, as provided by law; to prepare proposals concerning judicial reform and present them to the President of Georgia; to address the president with a petition for the dismissal of a judge, and to carry out other duties established by the law.

In addition to these duties, the Council of Justice also is empowered to recommend disciplinary action against a judge. But the Council of Justice may initiate disciplinary procedures only in instances where the disciplinary violation concerns matters other than the fundamental consideration of the case. During the disciplinary procedures in Civil, Criminal or Administrative cases, the Council of Justice is forbidden to examine the lawfulness of a judicial decision or to ask a judge for a report on a particular case.

The Council of Justice of Georgia is authorized to initiate disciplinary procedures against a judge if he violates the statutory time limits for hearing or deciding cases. Also, he may be prosecuted for violation of labor discipline and inappropriate judicial conduct.

Given the imperfect nature of this world, instances of judicial misconduct, while hopefully rare, will be inevitable. Therefore, this kind of corrective tool, independent of the judicial branch, helps guarantee the integrity of the judiciary while preserving public trust and confidence.

The Council of Justice investigated 173 potential disciplinary matters. Disciplinary prosecution was carried out 56 times against 41 judges. Nineteen judges were given **under disciplinary amenability 21 times.**

One of the important responsibilities undertaken by

the Council of Justice, has been the judicial qualifying examinations. It was a procedure previously unknown in the Georgian experience. So far, five qualification examinations have been given. Of the 1335 persons who took the examinations, 265 passed. Of those who passed, 73 were judges, 45 advocates and 30 prosecutors. Note: the sum doesn't equal 265.

For the judicial qualification examinations, the Council of Justice set up an extensive program including the establishment of a Qualification Examination Commission and the preparation of Rules for the Qualification Examination.

The Council of Justice paid close attention to assuring the transparency of the examination process. The mass media and public observers were included as essential components of the examination routines. To provide full information, the Council of Justice arranged "Open Doors Days" for candidates and the public. Through the mass media, the Council of Justice provided full information concerning the examinations and judicial reform as a whole.

The Council of Justice, together with the ABA, created an International Monitoring Group which functioned as observers to the qualifying examinations. This group had ongoing meetings with the Council of Justice. Members of the Monitoring Group attended all examination proceedings, including the actual testing.

There are no doubts that exams were carried out without any violation of the laws, and this is reflected in the protocols of the Monitoring Group as well as in reports by the press and other media. All the requirements of confidentiality, transparency, and impartiality have been met.

Choosing nominees for judicial office from among the candidates who passed the exam was a most critical phase of the judicial selection process. Passing the Judicial Qualification Examination with its demonstration

of knowledge of the law is but one of the requisites for judicial selection. By itself, this is not enough to qualify one to hold such a responsible office.

The selection process gives the Council of Justice the opportunity to learn much more about each candidate. Not all candidates meet with the Council of Justice in person. However, some are called in for interviews. During its selection process, the Council of Justice considers such matters as academic degrees, work experience, qualification examination score, official and personal reputation, and the candidate's state of health. The Council of Justice looks into the integrity of the candidate, particularly regarding unwholesome activities or disciplinary offenses in the candidate's past. It also investigates whether a candidate has received official favor.

The selection process in the Council of Justice is not a closed one. The process is open to community participation. The list of the candidates is published in the press. After publication, citizens are able to provide the Council of Justice with additional information about particular candidates. By analyzing these responses, the Council of Justice gains an insight into the reputation of a particular candidate. These efforts help the Council of Justice to gain a clear impression of each candidate.

The last stage of the process of selection is the vote of the Council of Justice. A candidate passes if he/she gains a majority vote. Then the nomination is presented to the President of Georgia who approves or rejects the appointment. (The Council of Justice of Georgia has presented and the President of Georgia has appointed 208 candidates). **This fact has already been stated.**

All the above-mentioned defines the competency of the Council of Justice of Georgia, the order in which it is formed, its activities and responsibilities and also its role in the creation of a strong and independent judicial branch of government.