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PROACTIVE PUBLICATION OF JUDICIAL ACTS

LEGISLATION AND PRACTICE

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INTRODUCTION

Access to judicial acts by the public facilitates the realization of the right to freedom of information and a fair trial and increases accountability, transparency, and public trust in the judicial system itself.

Unfortunately, accessibility to judicial acts has been a significant challenge in Georgia for years, which was confirmed by the fact that the issue of ensuring the accessibility to decisions made at open court sessions was first considered in the so-called “Charles Michel Agreement,”¹ of April 19 and then was defined as one of the elements for the implementation of the priorities set for Georgia by the European Commission on June 17, 2022.²

Both receiving judicial acts in the form of public information and their proactive publication are substantive instruments for achieving access to judicial acts, but it is important to note that these two methods differ from each other - they are regulated differently at the normative level, and these regulations were preceded by different sequences of events in Georgia.

The present document concerns the proactive publication of judicial acts, analyzing both international experience and approaches as well as national normative framework and practice.

In the beginning, the publication provides information about the methods and scope of the report and highlights the main findings revealed. The first chapter of the report is devoted to the overview of the importance of proactive access to judicial acts, its connection with the right to privacy, and international approaches developed, while the subsequent parts analyze the existing normative framework in Georgia and reveal systemic challenges in terms of non-enforcement of legislation in practice.

¹ A way ahead for Georgia, 2021, p. 5, available at the following [link](#).

² See Institute for Development of Freedom of Information (IDFI), From 2024, Court Decisions Will Become Accessible Again: An Overview of the Problem and the Chronology of their Resolution, 2023, available at the following [link](#).

RESEARCH METHODOLOGY AND SCOPE

Content and time scope: This document concerns the proactive publication of judicial acts and related topics. It does not cover the aspects related to requesting judicial acts in the form of public information.

Although the publication of judicial acts in the unified search system has still not resumed, IDFI still studied some functional features of the search system available at ecd.court.ge.

The assessments, findings, and recommendations expressed in the publication are based on the situation present as of September 30, 2024.

Research methodology: While working on the document, IDFI used the following methods and sources of information:

1. Analysis of international recommendations/guiding principles and experiences of EU member states – In this regard, IDFI searched for and analyzed the documents of the European Commission, the Committee of Ministers of the Council of Europe, and the Venice Commission relevant to the publication of judicial acts and used the recommendations/approaches reflected in these documents for assessing national legislation and practice; At the same time, IDFI sought and analyzed information on the experience of publication of judicial acts in the EU member states;
2. Analysis of national legislation – The document analyzes the main legal framework concerning the proactive publication of judicial acts from 2017 to September 30, 2024;
3. Analysis of subordinate normative acts – The document, among other sources, was based on the analysis of the decision of the High Council of Justice of September 12, 2016, and the Order of the Chairman of the Common Courts Department of March 7, 2019;
4. Analysis of Open Government Georgia Action Plans – The document analyzes the Open Government Georgia Action Plans adopted in

different periods, which include obligations related to the publication of court decisions/acts;

5. Requests for and analysis of public information - The document reflects the information and results of public information requests made by IDFI on issues related to the publication of judicial acts;
6. Monitoring of the search system for court decisions at ecd.court.ge - One of the goals of the document is to assess the current situation with regard to the publication of judicial acts in practice. The webpage represented one of the sources of information from this perspective;
7. IDFI's previous reports and assessments regarding the accessibility of judicial decisions - IDFI has prepared and published a number of reports and assessments on the topic of access to judicial acts since 2015. These documents and the assessments found therein therefore represented an important source during the preparation of this document.

FINDINGS

- The legislative amendments of 2023-2024 established an obligation to publish not only judicial decisions but also judicial acts in general;
- With the legislative amendments of May 29, 2024, the entry into legal force of the final decision of the court on a corresponding case is no longer a prerequisite for the publication of the judicial act. This is an improvement in the regulation of this issue;
- In practice, real access to judicial acts remains a systemic challenge, as the High Council of Justice does not enforce legislation;
- Despite the adoption of the new legislative regulation, the publication of judicial acts on the website (ecd.court.ge) has not been resumed;
- The study of the acts published before May 2020 and the search functionality of ecd.court.ge indicates that the existing system contains significant shortcomings;
- No information is available on whether the High Council of Justice has taken effective steps to ensure the enforcement of the legislation;
- No information is available on whether the High Council of Justice has brought the subordinate normative acts regulating the proactive publication of judicial decisions into line with the legislative changes;
- Within the system of common courts, only the Supreme Court of Georgia ensures proactive access to the depersonalized texts of its decisions on its electronic platform.

1. PUBLICATION OF JUDICIAL DECISIONS – GENERAL OVERVIEW OF EXISTING APPROACHES

Many international documents highlight the importance of publishing judicial decisions and the interconnection between this topic and the transparency and accountability of the judicial system.

It can be said that, on the one hand, there is a broad consensus on the need to publish judicial decisions, but on the other hand, the approaches regulating certain aspects of this issue differ from one jurisdiction to another. Despite these varying approaches, however, a number of guiding principles exist, which should be followed during this process, as well as a number of indicators that are used to evaluate the practical components of the publication of judicial decisions.

The purpose of this chapter is to draw attention to the widely recognized importance of the publication of judicial decisions and to the principles and indicators that should be considered when regulating the issues related to this process.

1.1. IMPORTANCE OF PUBLISHING JUDICIAL DECISIONS

The publication of judicial decisions is critically important in ensuring the transparency and accountability of the judicial system. This issue is also closely related to the principle of open justice and the concept of open data.³ At the same time, the publication of judicial decisions increases and in turn facilitates public oversight and ultimately promotes the rule of law.⁴

That court proceedings are of high public interest is indisputable.⁵ At the same time, it is also indisputable that public oversight and control over the actions of public officials, politicians, and representatives of public

³ The Council of Europe's points for consideration, Publication of judicial decisions, 2023, p. 9, available at the following [link](#).

⁴ Ibid, p. 13.

⁵ Ibid, p. 14.

institutions is required.⁶ Access to judicial decisions impacts the overall trust of the public towards state institutions and the judiciary.⁷ Additionally, the publication of judicial decisions and public control and analysis of them may lead to the improvement of the quality of decisions.⁸

Issues related to access to judicial decisions are reflected in the Rule of Law Checklist of the Venice Commission. The Checklist notes that the availability of judicial decisions is part of legal certainty, as they clarify and explain legislation.⁹ Legal certainty in turn represents an important element of a fair trial.¹⁰

It should also be noted that online access to decisions is one of the indicators in determining the digitalization of justice by the European Union. Digitalization of justice in turn contributes to increasing the transparency of court activities and access to justice.¹¹

According to one of the recommendations of the Committee of Ministers of the Council of Europe, adopted in 1995, the objectives of implementing automated search systems are:¹²

- Supporting legal professionals by providing complete and up-to-date information;
- Providing information to all parties with a direct or indirect interest in legal topics;
- Timely availability of judicial decisions, especially in areas where legislation is still being developed;

⁶ Ibid, p. 14.

⁷ Ibid, p. 14.

⁸ Ibid, p. 14.

⁹ European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, 2016, p. 25, available at the following [link](#).

¹⁰ The Council of Europe's points for consideration, Publication of judicial decisions, 2023, p. 13, available at the following [link](#).

¹¹ Ibid, p. 17.

¹² Council of Europe Committee of Ministers, Recommendation No. R (95) 11 concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval system, 1995, p. 2, available at the following [link](#).

- Availability of a large volume of judicial decisions, concerning both legal issues as well as the availability of facts (for instance, size of imposed compensation, duration of the sentence, etc.);
- Enabling legislators to analyze aspects of the law's application in practice;
- Facilitating the study and research of jurisprudence;
- Availability of information for statistical data analysis.

1.2. THE RELATION BETWEEN THE NEED TO PUBLISH COURT DECISIONS AND THE RIGHT TO PRIVACY

Along with the importance of the publication of judicial acts, one should also consider the fact that most judicial acts contain some personal data, and in certain cases even special categories of data.

In general, the concept of personal data encompasses any information concerning an identified or identifiable individual.¹³ The latter refers to a person who is identifiable directly or indirectly.¹⁴ As for the special category of data, various definitions exist, but in general, it refers to data that are of special importance/value and thereby fall under special protection regime.¹⁵ Examples of data of special category include genetic and biometric data, data related to racial or ethnic origin, political views, religious, philosophical, or other beliefs, health, and others.¹⁶

Personal data protection is one of the elements of the right to privacy and family life. As such, in a democratic society, any exceptions and imposed restrictions must be envisaged by the national legislation, pursue legitimate aim, and be necessary in a democratic society.¹⁷ In this way, a national

¹³ The Council of Europe's points for consideration, Publication of judicial decisions, 2023, p. 24. Available at the following [link](#).

¹⁴ Ibid, p. 24.

¹⁵ Ibid, p. 24.

¹⁶ Ibid, p. 25.

¹⁷ Ibid, p. 12.

legal framework must exist to ensure personal data protection in the process of publication of judicial acts.¹⁸

At the same time, it is important to note that anonymization and pseudonymization are two different approaches used across jurisdictions to protect personal data while meeting public demand for access to judicial decisions and transparency of court procedures.¹⁹

In the case of pseudonymization, no personal data is attributed to a given individual (data subject) without additional information, which is stored separately.²⁰ Although the data subject is unknown to the public, the separately stored information still allows for their repeat identification. Therefore, personal data protection rules still apply when this approach is used.²¹

Unlike pseudonymized data, with anonymized data personal data can no longer be used to identify that subject. In other words, re-identification is not possible.²² Therefore, personal data protection rules do not apply to this approach.²³

Determining whether a particular group has the right to anonymize/pseudonymize their personal data depends on a fair balancing of interests, which should be regulated by a special legal framework.²⁴

1.3. OVERVIEW OF EXISTING EXPERIENCES AND APPROACHES

It can be said that approaches related to the scope of publication of judicial acts, to the institutions responsible for the publication, and other aspects vary across jurisdictions.²⁵ At the same time, numerous documents provide

¹⁸ Ibid, p. 27.

¹⁹ Ibid, p. 43

²⁰ Ibid, p. 44.

²¹ Ibid, p. 44.

²² Ibid, p. 44.

²³ Ibid, p. 44

²⁴ Ibid, p. 45.

²⁵ Ibid, p. 17-21.

guiding principles for this process and indicators that can be used to assess the accessibility of judicial acts in practice.

It is noteworthy that one of the recommendations of the Committee of Ministers of the Council of Europe defines the guiding principles for the relevant jurisdictions in publishing legal information.²⁶ According to this recommendation, “the term “legal information” includes all official texts of laws, regulations and relevant international agreements binding on the State, together with important court decisions.”²⁷ According to these principles:²⁸

- States should make official legislative texts and important court decisions easily accessible in electronic form;
- Any legislation, including regulations, case law, and parliamentary materials must be available to all;
- To ensure effectiveness, public legal information systems must be up-to-date and information must be published without delay. Lack of delays is of crucial importance concerning court decisions;
- Strict oversight procedures are required to ensure that texts published in electronic form are identical to adopted ones;
- The authenticity of electronic texts must be ensured through relevant methods, such as electronic/digital signatures;
- Although legal texts are not copyrighted in most countries, it is the responsibility of the state to ensure the accuracy of the texts. If official texts are reproduced by a private publisher, the source must be indicated, and the publisher becomes responsible for the accuracy of the text;
- The public publisher is responsible for the accuracy of information available in electronic form;

²⁶ Recommendation Rec(2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies, 2001, available at the following [link](#).

²⁷ Ibid, paragraph 4.

²⁸ Ibid, paragraph 4.

- Access to legal data, in relation to official legal texts, should generally be free of charge;
- The question related to the issues of privacy in judicial decisions is resolved differently depending on the country, as such the recommendation points out that this issue may need to be addressed in a European context.

As for the assessment of existing practices in other countries, for instance, the European Commission prepares a document (EU Justice Scoreboard) that aims to support the EU and EU member states in improving the effectiveness of national judicial systems.²⁹ The document contains data on various indicators for assessing the effectiveness, quality, and independence of the judicial system.³⁰ According to this document, online access to judicial decisions, *inter alia* increases the transparency of the judicial system.³¹ At the same time, with regard to the publication of decisions, the document points to a need for the adoption of measures that would ensure that search systems are user-friendly and that case law is more accessible to legal professionals and the wider public, including persons with disabilities.³²

According to the document published in 2024, which is based on the data of 2023 in this area, the decisions of the courts of each instance are published in almost all EU member states.³³ The document assigns scores to each EU member state concerning the publication of court decisions. In this regard, the document considers the scope of the online accessibility of judgments to the wider public. Specifically, according to the explanation of the methodology, the maximum score is 9 (nine).³⁴ Points are assigned to

²⁹ Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions COM (2024) 950, 2024, EU Justice Scoreboard, p. 2, available at the following [link](#).

³⁰ *Ibid*, p. 2.

³¹ *Ibid*, p. 39.

³² *Ibid*, p. 39.

³³ *Ibid*, p. 39.

³⁴ *Ibid*, p. 39

the judicial systems of a given jurisdiction according to the following principle:³⁵

- One point for each court instance if all the judgments made on civil/commercial, administrative, and criminal cases are available; (The corresponding score is assigned for each legal direction and instance separately);
- 0.75 points for each court instance if more than 50% of judgments on civil/commercial, administrative, and criminal cases are available; (The corresponding score is assigned for each legal direction and instance separately);
- 0.5 points for each court instance if less than 50% of judgments on civil/commercial, administrative, and criminal cases are available; (The corresponding score is assigned for each legal direction and instance separately).

According to 2023 data, EU member states were assigned the following scores with regard to the online accessibility of judgments:³⁶

1. 9 (maximum) points were given to 4 member states;
2. Fewer than 9 points, but 8 and/or over 8 to 6 member states;
3. Fewer than 8 points, but 7 and/or over 7 to 3 member states;
4. Fewer than 7 points, but 6 and/or over 6 to 10 member states;
5. Fewer than 6 points, but more than 4 points to 4 member states.

According to this data, 23 of the 27 member states of the European Union have been assigned at least 6 points, which indicates a fairly high rate of publicity of judgments in EU member states overall.

The European Commission document also provides a list of indicators used to evaluate “arrangements for producing machine-readable judicial

³⁵ Ibid, p. 39

³⁶ Ibid, p. 39

decisions”.³⁷ In this regard, the issues of the publication of judgments in civil/commercial as well as administrative and criminal cases are all subject to assessment.³⁸ Specifically, the European Commission uses the following indicators when assessing this aspect:³⁹

- Decisions and related metadata are free to download through a database or other automated means;
- The anonymization/pseudonymization process is assisted by an algorithm;
- There are rules for determining whether a decision published online has revealed personal data;
- Decisions are accompanied by relevant information (metadata) on citations and references to national and/or EU law or case law;
- Decisions are accompanied by related/associated information (metadata) on keywords, decision date, etc.;
- Decisions are assigned a European Case Law Identifier (ECLI);
- Solutions are modeled according to a standard that makes it possible to be read/processed by a computer device/program;
- The wider public can access the website free of charge.

As a result of the evaluation of these measures, the European Commission indicates that each Member State has adopted at least some arrangements concerning civil/commercial, administrative, and criminal cases, although with significant variability across states.⁴⁰ The Commission also states that a growing trend with regard to the implementation of arrangements can be observed, especially, for instance, about the ability to download decisions free of charge or anonymization/pseudonymization via algorithms.⁴¹

³⁷ Ibid, p. 40.

³⁸ Ibid, p. 40.

³⁹ Ibid, p. 40.

⁴⁰ Ibid, p. 43.

⁴¹ Ibid, p. 43.

2. PUBLICATION OF JUDICIAL ACTS OF COMMON COURTS – NORMATIVE REGULATION OF THE ISSUE IN NATIONAL LEGISLATION

The Parliament supported the introduction of amendments to the Organic Law of Georgia "On Common Courts" within the framework of the implementation of the priorities defined for Georgia by the European Commission. As a result, the issue of publication of judicial acts was regulated anew at the normative level.

It should be noted that before the topic of publication of judicial acts was defined anew at the legislative level, the discussion on the issues of access to judicial acts, in general, took place in Georgia for years. At the same time, ensuring the publication of judicial decisions had become an integral part of many documents.

The purpose of this chapter is to present the chronology of events that preceded the legislative changes of 2023-2024 and to assess the existing legislative framework.

2.1. COMMITMENT TO PUBLISH JUDICIAL DECISIONS DEFINED IN THE OPEN GOVERNMENT GEORGIA ACTION PLANS

The 2016-2017 Open Government Georgia Action Plan included a commitment to establish a unified rule for the publication of judicial decisions, with the Supreme Court of Georgia as the institution in charge of implementing this commitment.⁴² The commitment to ensure the publicity of judicial decisions was established to increase the accountability and efficiency of the judicial system and access to public information, considering the high public interest.⁴³

According to the Action Plan of this period, the working group had to develop a project for establishing the main directions and principles of the

⁴² Open Government Georgia 2016-2017 Action Plan, Commitment 10, available at the following [link](#).

⁴³ Ibid.

uniform rules for the publication of judicial decisions.⁴⁴ The project had to be submitted for approval to the High Council of Justice.⁴⁵ According to the Action Plan, the introduction of a unified rule for the publication of judicial decisions, with personal data hidden, was determined as the corresponding indicator.⁴⁶

The creation of a search system for decisions of common courts and the commitment to publish decisions in a single database was also reflected in the Action Plan of Georgia for 2018-2019, which was approved by the Ordinance of the Government of Georgia.⁴⁷ The Action Plan stated that proactive access to decisions is an essential component and prerequisite for a transparent judicial system.⁴⁸ The document also highlighted the importance of having a unified standard for proactive publication of information concerning the judicial process.⁴⁹

Provision of proactive access to court decisions was also included in the Open Government Georgia Action Plan for 2024-2025.⁵⁰ The following is indicated in the Action Plan as the expected result of the activities: full documents of all judicial decisions (while ensuring the protection of personal data) are published proactively, including in an open format, with the High Council of Justice of Georgia determined as the agency responsible for implementation.⁵¹

The brief description of the commitment states that "in alignment with the requirements outlined in the Organic Law of Georgia 'On Common Courts,' the full text of judicial acts arising from open court sessions in common courts will be proactively published in a depersonalized form once the final court decision enters into legal force. It should be noted that any decision made by a common court of Georgia is considered a judicial act, including

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Open Government Georgia 2018-2019 Action Plan, Commitment 9, p. 17-18, available at the following [link](#).

⁴⁸ Ibid, p. 17.

⁴⁹ Ibid, p. 17.

⁵⁰ Open Government Georgia 2024-2025 Action Plan, p. 19, available at the following [link](#).

⁵¹ Ibid, p. 19.

those decisions not resolving a case on its own merits."⁵² It is important to note that the 2024-2025 Open Government Georgia Action Plan was approved by the Ordinance of the Government of Georgia on December 29, 2023,⁵³ when the legislation still stipulated the entry into legal force of the final decision of the court on a corresponding case as a prerequisite for their publication.

2.2. NORMATIVE REGULATION PRIOR TO THE LEGISLATIVE AMENDMENTS OF 2023-2024

The obligation to create a unified registry of decisions and to publish decisions in the registry was first established at the normative level by the subordinate normative act of the High Council of Justice of Georgia in 2016,⁵⁴ and later, the issue appeared in the Organic Law of Georgia "On Common Courts".⁵⁵

In 2017, paragraph 3¹ was added to Article 13 of the Organic Law of Georgia "On Common Courts", which stated that a court decision delivered as a result of the consideration on the merits of a case at an open session should be published in its entirety on the court's website, and in the case of a court decision delivered as a result of consideration on the merits at a closed session, only the resolution part of the decision was subject to publication on the court's website. The issue of disclosure of personal data of the person included in the decisions had to be decided in accordance with the law.

Before the adoption of the aforementioned amendment to the Organic Law of Georgia "On Common Courts", the normative act of the High Council of Justice regulated the topic of issuing and publishing court decisions.⁵⁶ It was

⁵² Ibid, p. 15.

⁵³ Ordinance of the Government of Georgia No. 555, December 29, 2023, available at the following [link](#).

⁵⁴ Decision N1/250 of September 12, 2016 of the High Council of Justice of Georgia "On Approval of the Procedure for Issuing and Publishing Court Decisions by Common Courts".

⁵⁵ Organic Law of Georgia on Amendments to the Organic Law of Georgia "On Common Courts", February 8, 2017.

⁵⁶ Institute for Development of Freedom of Information (IDFI), Accessibility of Judicial Acts: Progress and Key Challenges, 2024, p. 32-33, available at the following [link](#).

this subordinate normative act of the High Council of Justice that determined the deadline for adding decisions to the search system – no later than 1 month after sending the reasoned decision to the relevant parties.⁵⁷

The practice of proactive publication of decisions of common courts on the website ecd.court.ge did not last even one year. From May 1, 2020, the publication of depersonalized texts of court decisions has ceased completely.⁵⁸

2.3. LEGISLATIVE AMENDMENTS OF 2023-2024

The cessation of publication of decisions in the unified search system and the delay in the implementation of the decision of the Constitutional Court on issuing judicial decisions in the form of public information made the issue of ensuring access to judicial decisions relevant once again. As such, it was included first in the so-called "Charles Michel Agreement", and later in the implementation of the 12 priorities defined by the European Union.⁵⁹

For some time, the Parliament made no progress in the direction of access to court decisions, although it finally resumed work on the draft law in 2022 within the framework of the implementation of the 12 priorities of the European Union.⁶⁰ Although the initiated draft law was largely concerned with the issue of the provision of judicial acts in the form of public information,⁶¹ the amendments adopted on June 13, 2023, ultimately also touched on the aspects of proactive publication of judicial acts.

⁵⁷ Paragraph 4 of Article 5 of the Decision N1/250 of September 12, 2016 of the High Council of Justice of Georgia "On approval of the procedure for issuing and publishing court decisions by common courts".

⁵⁸ Institute for Development of Freedom of Information (IDFI), *Accessibility of Judicial Acts: Progress and Key Challenges*, 2024, p. 31, available at the following [link](#).

⁵⁹ *Ibid*, p. 5.

⁶⁰ *Ibid*, p. 15.

⁶¹ Draft Law on Amendments to the Organic Law of Georgia "On Common Courts", initiated version available at the following [link](#).

The June 13, 2023 amendments established the general rule of openness of judicial acts, as well as the obligation to proactively publish not only court decisions but also judicial acts in general. Despite the positive change, obtaining timely access to court decisions and other acts remained a challenge, as the entry into force of the final decision in a case became a prerequisite for the publication of the depersonalized texts of the corresponding judicial acts.⁶² January 1, 2024, was determined as the date for entry into force of the amendments.

The new legal regulation adopted in 2023 on access to judicial acts was also evaluated by the report on Georgia published by the European Commission on November 8, 2023. Specifically, when discussing the issues related to the transparency of the judicial system, the European Commission emphasized that when it comes to both public information requests and proactive publication, “the decisions will only be available after final resolution of the case, which can take years”.⁶³ The European Commission emphasized the necessity of aligning this process with European standards and European Commission recommendations.⁶⁴

The new rule for proactive publication of judicial acts entered into force on January 1, 2024; however, access to judicial acts was still not ensured on a practical level, with no decisions published on the electronic portal.⁶⁵

Even before the amendments supported in June had not entered into force, in September 2023, the Parliament sent the draft of new amendments to the Organic Law of Georgia "On Common Courts" to the Venice Commission for evaluation.⁶⁶ The draft law, among other things, provided different regulations on the issue of access to judicial acts. In an opinion published in October 2023, the Commission welcomed the draft amendments in so far

⁶² Institute for Development of Freedom of Information (IDFI), *Accessibility of Judicial Acts: Progress and Key Challenges*, 2024, p. 17, available at the following [link](#).

⁶³ The report of the European Commission on November 8, 2023 on Georgia, p. 24, available at the following [link](#).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, p. 17, also, ecd.court.ge as of September 30, 2024.

⁶⁶ Venice Commission, *Georgia - Draft amendments to the Organic Law of Georgia On Common Courts*, 2023, available at the following [link](#).

as they provided for access to judicial decisions from the moment of their adoption and not from the moment they enter into legal force.⁶⁷ The Venice Commission also noted that “it remains to be seen if these improvements will prove to be effective and the right of access to court decisions will be free of practical obstacles.”⁶⁸

On May 29, 2024, the Parliament supported the amendments that improved the proactive publication of judicial acts at the normative level and established the obligation to publish the depersonalized texts of judicial acts after their adoption.⁶⁹ The clause that connected the access to judicial acts with the entry into force of the final decision on a given case and thereby unreasonably delayed the waiting process had been taken out of the organic law. As such, the latest amendments have removed an important legislative barrier that would have delayed the proactive publication of court documents.

According to the 2024 amendments, "a judicial act is any decision issued by a common court of Georgia, including a decision that does not decide a case on its merits" and it must be published "on the website determined by the High Council of Justice of Georgia or the court."⁷⁰ This change gives reason to assume that the publication of judicial acts may resume on an electronic portal different from ecd.court.ge. In addition, there is a risk that not all judicial acts will be published in a single database, which will complicate the process of access to judicial acts. This will become especially complicated if the acts are only published on the website of the court that has taken the corresponding decision.

Additionally, according to the current edition of the Organic Law,⁷¹ the depersonalization of the text of the judicial act implies the complete depersonalization of the following information specified within:

⁶⁷ Venice Commission, Follow-up Opinion to Previous Opinions concerning the Organic Law On Common Courts, 2023, paragraph 46, available at the following [link](#).

⁶⁸ Ibid, paragraph 46.

⁶⁹ Paragraph 3¹ of Article 13 of the Organic Law "On Common Courts".

⁷⁰ Ibid.

⁷¹ Ibid.

- a) Person's identity, name, date of birth, personal number, identification number, identity document number, workplace and position;
- b) Addresses of the person's place of registration, location, place of residence, and workplace;
- c) The person's phone number and email address;
- d) Other types of information defined by the High Council of Justice of Georgia as representing personal data. The information provided by this subsection shall be determined by the High Council of Justice of Georgia if necessary.

As of September 30, 2024, it is unknown whether the High Council of Justice has defined additional information as subject to depersonalization.

3. SYSTEMIC NEGLECT OF THE LEGAL OBLIGATION BY THE HIGH COUNCIL OF JUSTICE OF GEORGIA

Although the obligation to publish judicial decisions has been provided for in national legislation for years, it has been systematically neglected by the High Council of Justice.

The practice of proactive publication of decisions of common courts on the website ecd.court.ge, which started in 2019, did not last even 1 year. The legal basis for ceasing the publication of court decisions in the unified search system for decisions from May 2020 is still unclear.

The goal of this chapter is to present the chronology of events related to the aspects of the publication of judicial acts in practice and to identify/evaluate several criteria, which, based on European standards and experience, IDFI considers to be critically important for the maintenance of a platform for proactive publication of judicial acts in Georgia and for laying the groundwork for further development.

3.1. UNIFIED SEARCH SYSTEM OF DECISIONS OF COMMON COURTS

The website of the proceedings system of the courts of Georgia, ecd.court.ge⁷², was created in 2019, to increase the transparency of the court system and promote access to court decisions and proactive publication of depersonalized decisions in the search engine began from this period.⁷³ The website is comprised of four independent sections and is supposed to offer a user such services as a search of depersonalized texts of court decisions; a search of judicial acts through a unique number (barcode), where the personal and identification data of the parties are not hidden; public notices published by the court and schedule of court

⁷² High Council of Justice of Georgia, "From today, users can learn about court decisions on the new website", 2019, available at the following [link](#).

⁷³ Institute for Development of Freedom of Information (IDFI), *Accessibility of Judicial Acts: Progress and Key Challenges*, 2024, p. 31, available at the following [link](#).

sessions. The website has an additional section "My Cabinet", which allows the user, through proper authorization, to access documents related to a specific case.

The proactive publication of decisions of common courts on ecd.court.ge began in 2019 with the promise that decisions made before this period would be added to the search system. The High Council of Justice indicated⁷⁴ on its website that the decisions made in previous years would be gradually added to the electronic database, although the acts made before 2018 cannot be found in the database.

The practice of proactive publication of decisions of common courts on the website ecd.court.ge did not even last 1 year. The publication of depersonalized texts of court decisions ceased completely from May 1, 2020.⁷⁵ The termination of the practice of proactive publication of decisions on ecd.court.ge coincided with the period⁷⁶ when the normative contents of certain provisions of the Law "On Personal Data Protection", which restricted the release of the full text of court decisions obtained as a result of an open court session in the form of public information, were declared unconstitutional by the decision of the Constitutional Court of Georgia on June 7, 2019.⁷⁷ It should be highlighted that the decision of the Constitutional Court does not concern the proactive publication of judicial acts or their posting on the website. Thus, it is not clear what became the basis for ceasing the publication of depersonalized decisions.

It should also be noted that prior to the creation of the website ecd.court.ge and before the introduction of the practice of publishing the decisions of the courts of all three instances, the decisions of the Supreme Court of Georgia

⁷⁴ High Council of Justice of Georgia, "From today, users can learn about court decisions on the new website", 2019, available at the following [link](#).

⁷⁵ Institute for Development of Freedom of Information (IDFI), *Accessibility of Judicial Acts: Progress and Key Challenges*, 2024, p. 31, available at the following [link](#).

⁷⁶ According to the decision of the Constitutional Court, the normative content of Article 5 and Article 6, Paragraphs 1 and 3 of the Law of Georgia "On Personal Data Protection", which precludes the release of the full text of judicial acts obtained as a result of an open court session in the form of public information, was declared invalid from May 1, 2020. Decision available at the following [link](#).

⁷⁷ Institute for Development of Freedom of Information (IDFI), *Accessibility of Judicial Acts: Progress and Key Challenges*, 2024, p. 31, available at the following [link](#).

were being published⁷⁸ on the website of the Supreme Court for years.⁷⁹ Even after terminating the practice of publishing decisions in the unified search engine, the Supreme Court continued the practice of publishing its decisions.⁸⁰ However, the publication of Supreme Court decisions cannot fill the gap created after the publication of decisions in the unified search engine has ceased. One should consider at least the circumstances that, in certain categories of cases, the final instance is the Court of Appeals, while at the same time, it is possible that a case ends in the court of first and/or second instance and the authority of appeal is not used.

Despite the legislative amendments adopted in 2023 and 2024, after May 1, 2020, no judicial act has been proactively published on the ecd.court.ge electronic portal - as of September 30, 2024, the publication of the last judicial act is dated again with April 30, 2020.⁸¹

On September 17, 2024, IDFI submitted a request⁸² for public information before the High Council of Justice of Georgia and requested the following information:

The N1/250 decision of the High Council of Justice of Georgia dated September 12, 2016 - "On Approval of the Procedure for Issuing and Publishing Court Decisions by Common Courts" - a copy of the current version;

1. If available, information on the measures/activities taken by the High Council of Justice of Georgia in the last 2 years aimed at ensuring the implementation of the obligation to publish judicial acts provided for by Article 13, paragraph 3¹ of the Organic Law of Georgia "On Common Courts";

⁷⁸ It should also be explained here that the purpose of this document was not to assess how well the Supreme Court publishes its decisions. Therefore, for the purposes of this report, reference to the fact of publication of decisions does not imply an assessment of whether the Supreme Court is publishing judgments on its website in full.

⁷⁹ Search system for decisions of the Supreme Court of Georgia available at the following [link](#).

⁸⁰ Institute for Development of Freedom of Information (IDFI), Accessibility of Judicial Acts: Progress and Key Challenges, 2024, p. 31-32, available at the following [link](#).

⁸¹ Decision search engine of the website ecd.court.ge as of September 30, 2024.

⁸² September 17, 2024 statement N09/24-006 of the Institute for Development of Freedom of Information (IDFI).

2. Information on whether the High Council of Justice of Georgia has determined the website on which judicial acts should be published as provided for in Article 13, paragraph 3¹ of the Organic Law of Georgia "On Common Courts"; Additionally, all the legal acts/documents in which the respective website is identified and which regulate this issue were requested as well;
3. If available, a copy of the legal act, instruction, or another type of document provided for in Article 13, paragraph 3¹, sub-paragraph "d" of the Organic Law of Georgia "On Common Courts", which reflects other types of information determined by the High Council of Justice of Georgia to belong to the category of personal data.

As of September 30, 2024, IDFI had not received the requested public information.

3.1.1. IDFI'S ONGOING LEGAL DISPUTE AGAINST THE HIGH COUNCIL OF JUSTICE

In April 2023, IDFI addressed⁸³ the LEPL Common Courts Department with a request to resume the proactive publication of judicial acts. More specifically, IDFI requested that the publication of judicial acts be resumed on the website ecd.court.ge and that the publication of acts that had not yet been entered into the system be ensured. LEPL Common Courts Department, however, responded to IDFI, explaining that, according to the Order No. 17 of the Chairman of the Common Courts Department of March 7, 2019, a working group had been tasked only with the creation of software modules necessary for the creation of an electronic search system for proceedings, and that it lacks the ability to fulfill IDFI's request.⁸⁴ The Common Courts Department did not forward the request to an authorized administrative body.

⁸³ April 7, 2023 statement N20230404 of the Institute for Development of Freedom of Information (IDFI).

⁸⁴ Letter N06-3368 of April 20, 2023 from the LEPL Common Courts Department.

IDFI soon addressed the High Council of Justice with the same request, but the request and the subsequent administrative complaint remained unanswered. In August 2023, IDFI filed a lawsuit against the High Council of Justice in the Tbilisi City Court and requested ordering the Council to renew the proactive publication of judicial acts and ensure the proactive publication of the acts not published since May 1, 2020.⁸⁵

In its lawsuit against the High Council of Justice, IDFI argues that:

1. Lack of publication of court decisions is an illegitimate and disproportionate interference with access to information and right to a fair trial;
2. Suspending the publication of judicial acts is contrary to the principle of the rule of law and the right to a fair trial, violating Article 13, paragraph 3¹ of the Organic Law of Georgia “On Common Courts” and the subordinate normative act adopted by the High Council of Justice in 2016.

The case was initially assigned to Judge Liela Poladashvili, and almost a year later, the case was transferred to Judge Nino Buachidze. As of September 30, 2024, not a single session has been scheduled for this case.

3.2. CHARACTERISTICS OF THE UNIFIED SEARCH SYSTEM OF COURT DECISIONS

In general, the main purpose of a website for the publication of judicial acts is to ensure the availability of judicial acts to the general public in such a way as to achieve the legitimate goals that proactive publication of judicial acts serves. Legal certainty is foremost among these goals, although this goal naturally cannot be achieved unless a platform for proactive publication is organized and/or organizable. Specifically, placing tens of thousands of documents in one space without an organized catalog cannot ensure the achievement of legitimate goals, since subjects will not have the

⁸⁵ Institute for Development of Freedom of Information (IDFI), *Accessibility of Judicial Acts: Progress and Key Challenges*, 2024, p. 34, available at the following [link](#).

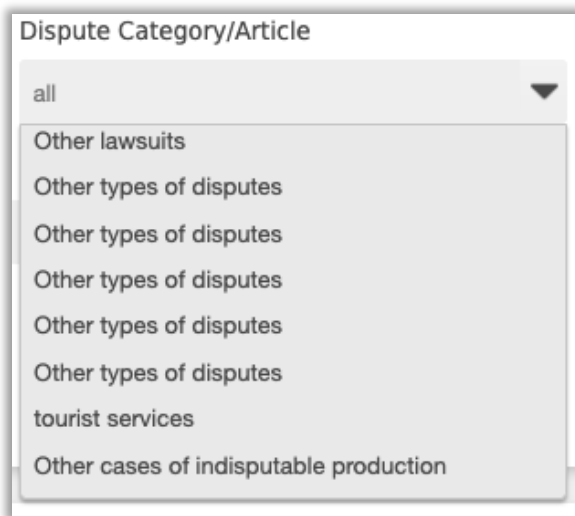
opportunity to obtain information regarding legal definitions, precedents, or other legal issues of interest to them, or they will expend an unreasonable amount of effort or resources to do so. Simply put, a proactive publication platform should not resemble an "electronic repository" of court decisions.

Therefore, the document in this section focuses on several criteria that IDFI considers to be critically important for maintaining a platform for proactive publication of judicial acts in Georgia and for laying the groundwork for further development.

Legitimate expectations for the platform and rule of predictability of its administration - The Organic Law of Georgia "On Common Courts" established an obligation of proactive publication. The platform ecd.court.ge has been created, although judicial acts are not being published on this platform. Despite the unequivocal requirement of the legislation to publish all judicial acts, the High Council of Justice of Georgia, as a body administering justice, refuses to fulfill the obligation stipulated by the Organic Law of Georgia. At the same time, the rules concerning the proactive publication of judicial acts are not publicly available. On the whole, the obvious neglect of the obligation stipulated by the Organic Law not only demolishes all types of legitimate expectations but also creates the obvious lack of trustworthiness, in general, regarding the proper administration of the platform for the publication of judicial acts.

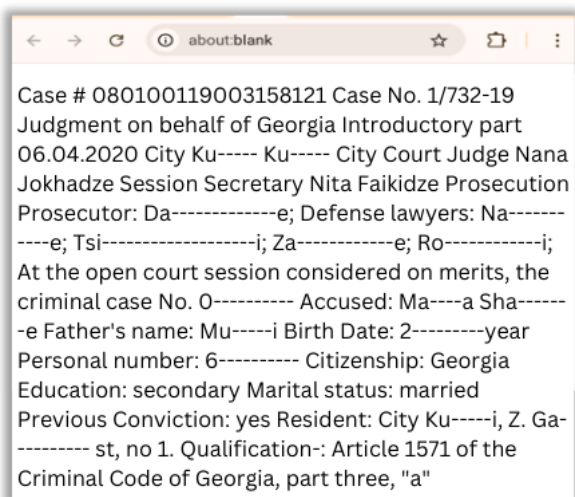
Trust in the information placed on the platform and the ability to use it - Information on platform administration rules, such as, for example, for the correction of human or software errors in published information, etc. either does not exist or if it does, is not publicly available. At the same time, the platform does not allow users to download a judicial act in such a way that the recipient of the downloaded file/document could easily verify its authenticity (origin) (for example: the documents generated/uploaded on the platform do not have the stamp or other type of digital certificate stipulated by the law of Georgia "On Electronic Documents and Electronic Trust Services").

The current catalog of the platform and search functions - As already mentioned, the publication of judicial acts on the platform has ceased. Studying the acts published before May 2020 and search functionality, however, indicates that the current system is characterized by significant shortcomings. Although it is impossible to make comprehensive conclusions about the system's shortcomings by external observation only, it is possible to provide a few observations:



1. The search capabilities of the platform are extremely limited and, in some cases, misleading. For example, with respect to civil law cases, the platform allows the act to be searched by dispute category, although these categories are usually broad. In some cases, they overlap each other in terms of content, while the user does not

have the ability to choose several categories at once;



2. The platform provides an opportunity to review the document on the spot with editable/open format text, although the text of the act is often not readable to the user. It is important to note that once downloaded, the mentioned technical problem in the document will be corrected by itself. Importantly, neither the file

published on the website nor the downloaded file contains information about the international or local precedent case law used as a source of the decision. Learning the above can only be done by studying the act in full;

3. The scarcity of data, including metadata, for the information uploaded to the platform makes it significantly more complicated and at times almost impossible to automatically process the data on the platform and create necessary and useful data or services based on the information.

External observation of the technical side of the platform reveals that the platform is not connected to the internal proceedings systems of common courts. Management of the platform is a separate/alternative workflow from the digital proceedings system. This kind of arrangement not only increases the burden on the judicial system but also creates a fertile ground for inconsistent decisions.

CONCLUSION

The updated legal regulation of proactive publication of judicial acts, considering the amendments of May 29, 2024, does not contain a significant barrier in terms of access to acts.

The obligation to proactively publish judicial acts has been included for years in the Organic Law of Georgia "On Common Courts" in various formulations, although the High Council of Justice - the administrative body of the system of common courts - **does not fulfill this obligation.**

The fact that ensuring access to judicial acts was included in the implementation of the 12 priorities defined by the European Union and the legislative amendments implemented in 2023-2024, unfortunately, did not become a sufficient prerequisite for fulfilling the legal obligation neglected for years by the High Council of Justice of Georgia.

The suspension of publication of judicial acts by the High Council of Justice from May 1, 2020, has no legal basis. Restricting access to judicial acts significantly hinders public oversight of the judicial system, violates the obligation established by Article 13, paragraph 3¹ of the Organic Law of Georgia, and represents a gross, illegitimate, unjustified, and disproportionate interference with the right to a fair trial and access to information guaranteed by the Constitution.

At the same time, the search engine, on which the publication of the last judicial act is dated again with April 30, 2020, with its technical characteristics, cannot achieve those objectives for which the importance and necessity of publication of judicial acts are recognized by a number of international documents. This, however, cannot be considered as the basis for the suspension of the publication of judicial acts during the last four years, since during this period, the High Council of Justice has been inactive, completely neglecting the legislation rather than taking appropriate measures to improve the system.

IDFI believes that to eliminate systemic challenges in practice concerning the publication of judicial acts, at the initial stage:

- The High Council of Justice must stop the systematic violation of the current legislation and ensure the immediate publication of judicial acts;
- In relation to the updated legal framework defined by the Organic Law, rules for the proactive publication of judicial acts and operation of the search system should be adopted;
- The search system for judicial acts, both in terms of technical characteristics and search parameters, should respond to the goals of publishing judicial acts and should be user-oriented.

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