



**Institute for Development
of Freedom of Information**

**Compliance with Procedural Time Limits for Considering Cases and Preparing
Judgments in Tbilisi City Court - Practice of 2015-2018**

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Key findings

- “The rule for evaluation of effectiveness of performance of judges of common courts” approved by the High Council of Justice is largely focused on the entire judicial system and not on individual judges. Consequently, there are two different processes overlapping each other - assessment of the quality of the judiciary and the professional evaluation of individual judges.
- The existing rule for the evaluation of judges is ineffective for the purposes of assessing the performance of individual judges as well as the entire judicial system and for determining the necessary number of judges.
- Statistical data envisaged by the rule for evaluation does not provide a whole picture regarding the caseload of the courts and the current state of the judicial system.
- The High Council of Justice has not approved the rule and methodology for determining the necessary number of judges in each court, which is a significant shortcoming.
- From 2015 to the first half of 2018, procedural time limits for considering cases were violated in 4 660 cases out of 51 561 completed civil cases in Tbilisi City Court.
- From 2015 to the first half of 2018, procedural time limits for considering cases were violated in 5 601 cases out of 15 451 completed administrative cases in Tbilisi City Court.
- From 2015 to the first half of 2018, time limits for preparing judgments were mainly violated in administrative cases in Tbilisi City Court.
- From 2015 to the first half of 2018, time limits for preparing judgments were violated in 4 123 cases out of 15 349 administrative cases in Tbilisi City Court.
- The statistics provided by the High Council of Justice do not include information regarding the duration of delay in considering cases and, therefore, it is not clear whether the delay constitutes such a breach, which poses a risk of violating the right to a fair trial.
- During electronic case distribution in common courts only the quantity of cases is taken into account and the system does not take into consideration the weight and complexity of a case. Consequently, there is a risk that cases between judges are not equally distributed by weight, which creates unequal conditions for them.

Introduction

The excessive caseload of common courts of Georgia has been a significant challenge for years. Procedural delays in case processing pose a risk of violating the right to a fair hearing within a reasonable period - the right to a fair trial. In addition, the abundance of cases may have an impact on the quality of judgments and their justification.

According to the latest research, Georgia needs 410 judges¹, which is considerably higher than the current number of judges in the common courts (approximately 310). According to the same research, even with 410 judges, given the current estimates for court workload the Georgian courts will have a high ratio of workload to judges when compared to most other countries with well-functioning judicial systems.

The purpose of this study is to present violation/compliance with procedural time limits for considering cases and preparing judgments in Tbilisi City Court, which is the most overloaded court in the country.

In order to get information, IDFI addressed Tbilisi City Court and requested the number of those cases that had been filed but consideration had not yet started, also, the number of those cases in which the parties had not yet received the judgments rendered by the court. Tbilisi City Court did not issue this information on the grounds that they do not record, process and enter in public information database statistics of the requested data.²

Afterwards, IDFI addressed the High Council of Justice and requested the statistical data received from Tbilisi City Court from 2015 in accordance with Article 2 of “the rule for evaluation of effectiveness of performance of judges of Common Courts”. In particular, the number of cases considered by each judge of Tbilisi City Court, and information on compliance with procedural time limits for considering a case and preparing judgments. The HCoJ did not disclose requested information to IDFI on the grounds that they did not process such statistics when the request was submitted.³

IDFI submitted an administrative complaint to the High Council of Justice of Georgia and requested to annul the illegal administrative act, since the decision violated IDFI’s right to access to public information. The HCoJ fully granted the appeal and issued the requested information to IDFI,⁴ but refused to issue the same information in electronic form, even though the current legislation envisages

¹ Assessment of the need for judges in Georgia, 2018, available at:

<http://ewmi-prolog.org/images/files/4566AssessmentoftheneedforjudgesinGeorgia-ENG.pdf>

² The letter of Tbilisi City Court N3-04130/2754711, 11 December 2018.

³ The letter of the High Council of Justice N2347/3489-03, 20 December 2018.

⁴ https://idfi.ge/ge/idfi_vs_high_council_of_justice

the right to choose the form of receiving information.⁵ Refusal to issue information in electronic form significantly complicated processing of statistical information.

The present study does not intend to offer specific recommendations and unified vision for solving the problem of case overload and delay, as it requires a thorough study of the situation in the judiciary and a detailed analysis of the existing challenges in this regard.

Legal basis for processing statistics

The legal basis for processing statistics by the High Council of Justice is “the rule for evaluation of effectiveness of performance of judges of common courts” (hereinafter “the rule for evaluation”) approved by the decision N1/226 of December 27, 2011⁶. Notably, the Organic Law on Common Courts does not say anything on the periodic evaluation of the effectiveness of judges, and therefore, the decision of the Council does not have a legislative⁷ basis, which is a significant shortcoming.

The current rule for evaluation includes the following components:

- a) Number of coefficient of considered cases;
- b) Complexity of completed cases;
- c) Compliance with procedural time limits for considering a case;
- d) Compliance with time limits for preparing a judgment;
- e) Stability of appealed judgments.

Evaluation components are evaluated independently of each other and are integrated into overall assessment. The High Council of Justice carries out the evaluation once every six months through the generalization of statistical data received from the Common Courts. The judges of the first and appellate instances are subject to evaluation.

The shortcoming of the above-mentioned decision of the High Council of Justice is that it is largely focused on the entire judicial system and not on individual judges. Consequently, there are two different processes overlapping each other - assessment of the quality of the judiciary and the professional evaluation of individual judges.

⁵ Article 37 of the General Administrative Code of Georgia.

⁶ <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/konsolidirebuli%20gadackvetilebebi/226-2011.pdf>

⁷ Kyiv recommendations state that basic criteria should be provided for in the law. The precise criteria used in periodic evaluations shall be set out further in regulations, along with the timing and mechanisms of performing evaluations. Kyiv recommendations on judicial independence in Eastern Europe, South Caucasus and Central Asia (2010), § 29.

In case of formal evaluation, the European Network of Councils for the Judiciary also underline the necessity of regulating the basic norms of the evaluation procedure at the legislative level. European Network of Councils for the Judiciary (ENCJ), Development of Minimal Judiciary Standards III, Minimum standards for evaluation of professional performance and irremovability of the judiciary, Report 2012-2013, §4.17.

The current evaluation system in Georgia is mainly based on quantitative criteria, which is a significant shortcoming⁸ for evaluating the performance of individual judges. When assessing compliance with procedural time limits for considering a case and preparing a judgment serves the improvement of the judicial system and determination of the necessary number of judges, it is one of the acceptable means for achieving this goal. However, when the quality of performance of the judges is evaluated based on the compliance with procedural time limits, other objective circumstances should also be taken into account.

According to the information provided by the High Council of Justice, when evaluating the effectiveness of the performance of the judges, together with statistical data other objective factors are also taken into consideration⁹. However, existing rule for evaluation envisages only generalization of statistical data; therefore, it is not clear, what additional information is taken into account and based on what procedures objective factors are evaluated.

Moreover, the opinion of the Venice Commission with regard to statistical data is important: Generally, a system essentially based on numerical objectives may lead to a destructive pattern of behavior. For example, personal statistics of a judge would look much better if the judge produces a big number of cases where all procedural deadlines were complied with, while there are only few cases where the judge was behind schedule. To achieve this result the judge would be tempted to put few very complex cases aside, accumulating there all the procedural delays, in order to have the overwhelming majority of his cases “clean”. It would penalize parties involved in the complex (and probably the most serious) cases.¹⁰

The existing rule for the evaluation of judges is ineffective for the purposes of assessing the performance of individual judges as well as the entire judicial system, because the statistical data envisaged by the rule for evaluation does not provide a whole picture regarding the caseload of the courts and the current state of the judicial system. In addition, the purpose of the rule approved by the Council is not determination of the necessary number of judges in each court, which is also a significant shortcoming.

Compliance with procedural time limits for considering cases at Tbilisi City Court

Processing the information provided by the High Council of Justice¹¹ revealed that compared to civil cases, procedural time limits of administrative cases were violated much more times from 2015 to the

⁸ According to the Venice Commission, a greater attribution to the qualitative criteria than to the quantitative ones should be preferred, because the former include knowledge and personal skills. CDL-AD(2014)007, Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§ 77-78.

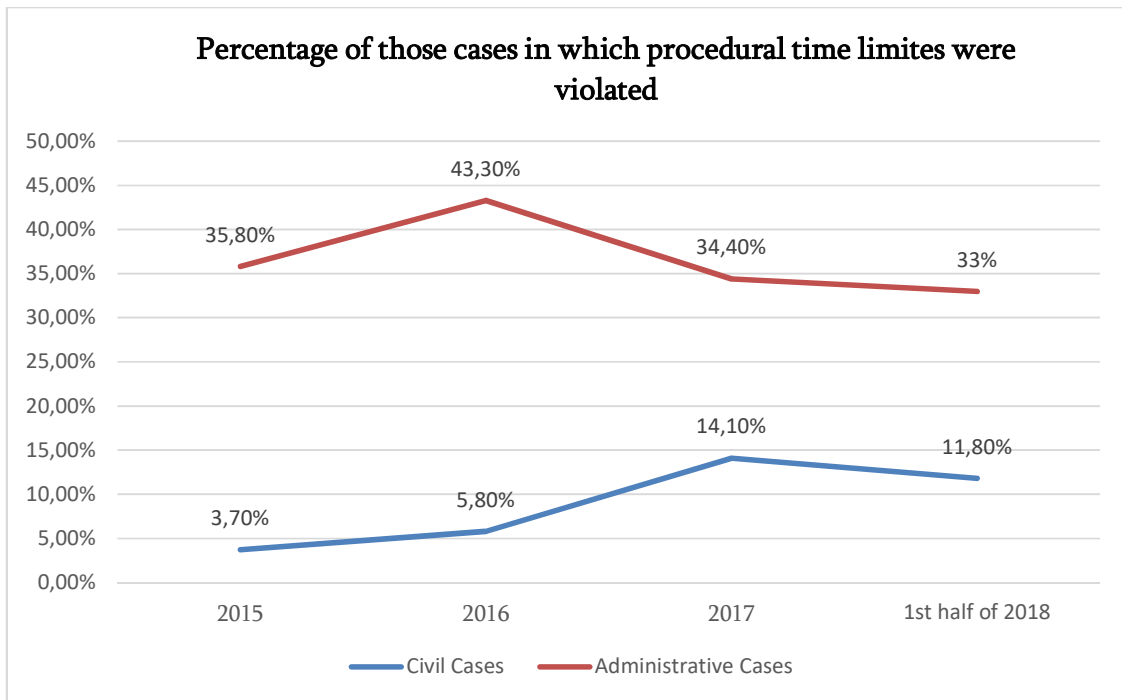
⁹ The Letter of the High Council of Justice of Georgia N486-03, 19 March 2019.

¹⁰ CDL-AD(2015)042, Opinion on the laws on disciplinary liability and evaluation of judges of the former Yugoslav Republic of Macedonia.

¹¹ The Letter of the High Council of Justice of Georgia N486-03, 19 March 2019.

1st half of 2018. The highest percentage of violated procedural time limits in administrative cases was in 2016 (43.3%),¹² and in civil cases - in 2017 (14.1%).

The chart below shows percentage of the completed cases in which procedural time limits were violated from 2015 to the 1st half of 2018:

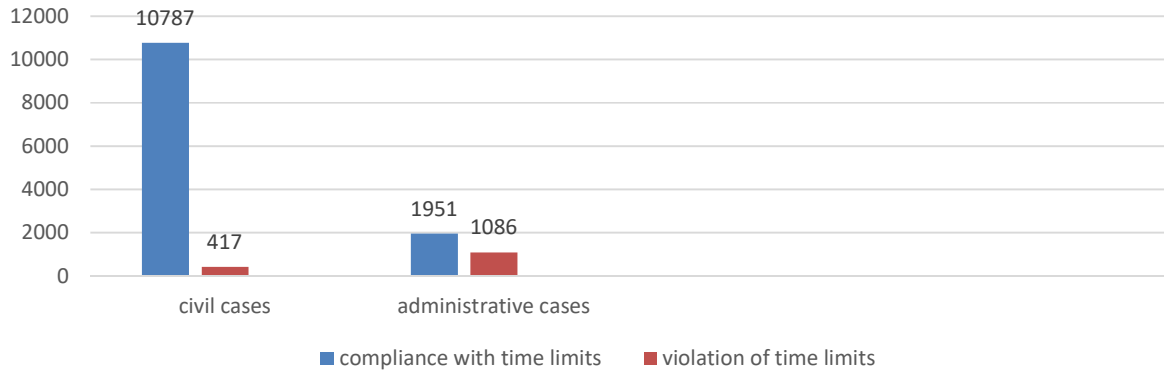


Overall, from 2015 to the first half of 2018, procedural time limits for considering cases were violated in 4 660 cases out of 51 561 completed civil cases in Tbilisi City Court (9%). In the same period, procedural time limits for considering cases were violated in 5 601 cases out of 15 451 completed administrative cases in Tbilisi City Court (36.3%).

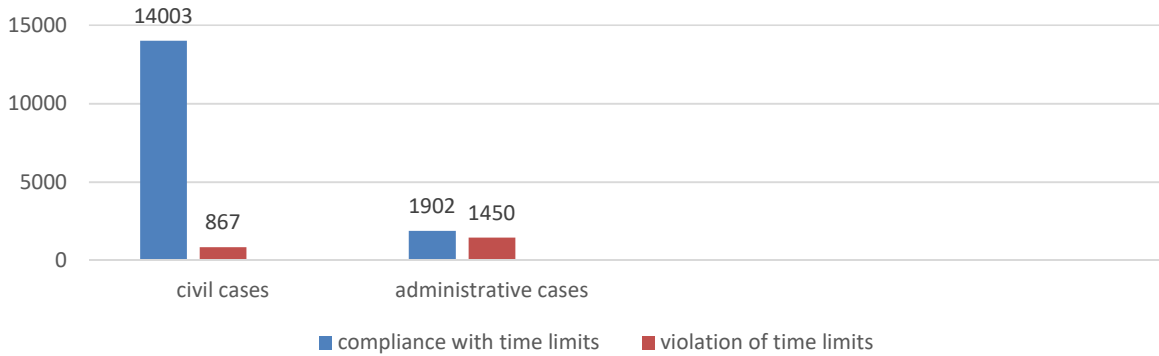
The chart below shows information on complied and violated procedural time limits in completed civil and administrative cases for each year:

¹² The percentages in this study are rounded to one decimal place.

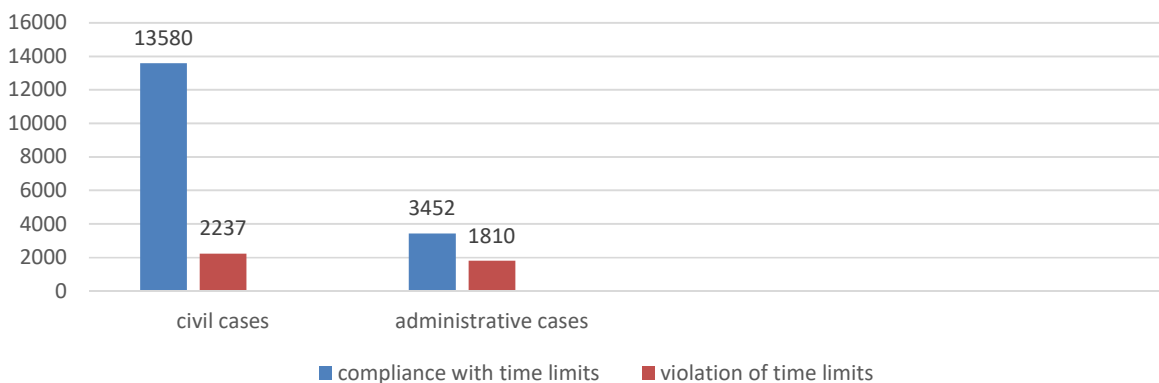
Compliance with procedural time limits for considering cases in 2015

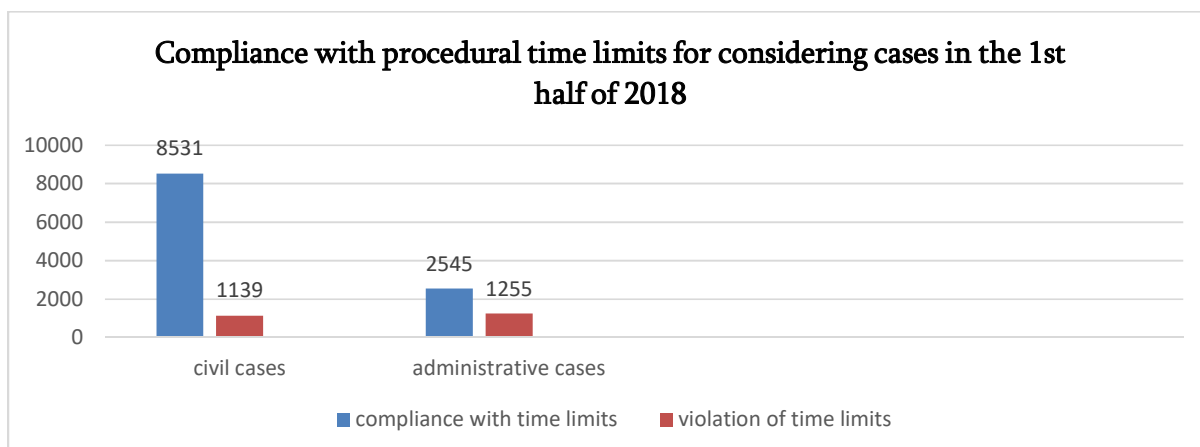


Compliance with procedural time limits for considering cases in 2016



Compliance with procedural time limits for considering cases in 2017





These statistics do not include information regarding the duration of delay in considering cases and, therefore, it is not clear whether the delay constitutes such a breach, which poses a risk of violating the right to a fair trial. Furthermore, it is impossible to determine whether the violation of procedural time limits were due to objective circumstances (large quantity of cases, complexity of the case, case actions of the parties, etc.) and whether there is a culpability of a judge.

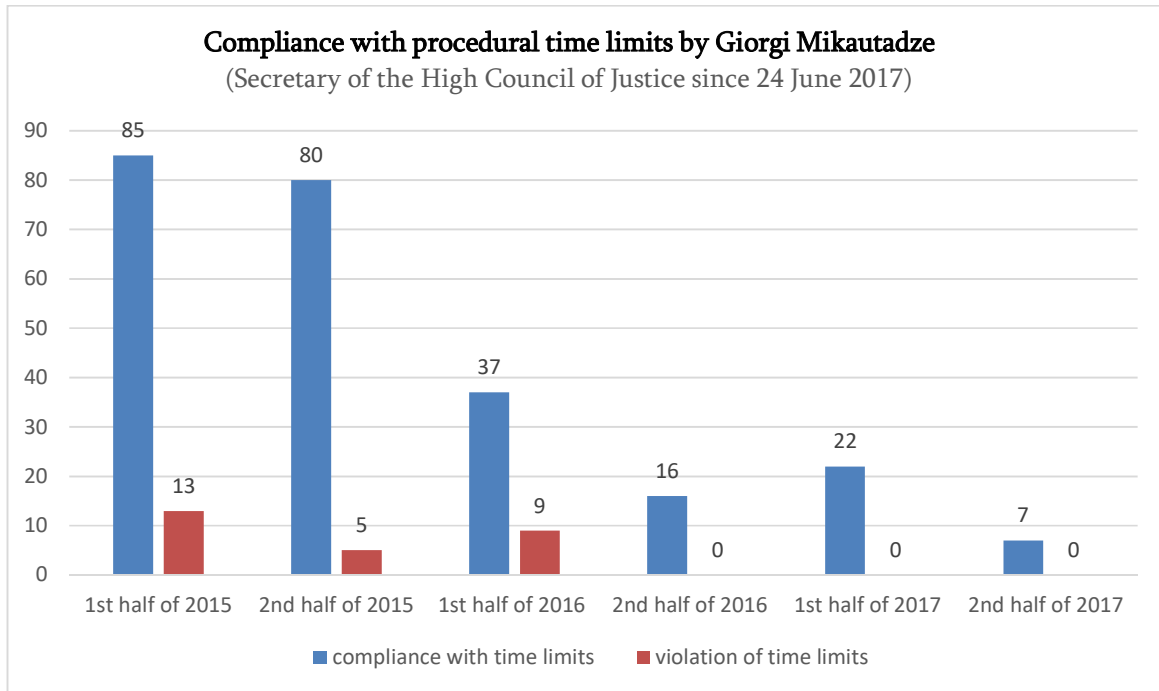
It should also be noted that electronic system of case distribution, one of the aims of which is ensuring equal allocation of cases between judges as far as possible, does not provide a fair and objective principle of the weight of the case. Considering that, cases differ by difficulty, the average time required for consideration and the weight of the case is different. According to the current rule, only the quantitative indicators are taken into consideration while distributing cases¹³. Consequently, there is a risk that cases between judges are not equally distributed by weight, which creates unequal conditions for them.

Compliance with procedural time limits for considering cases by members of the High Council of Justice

IDFI was interested to what extent the judges of Tbilisi City Court, who are members of the High Council of Justice at the same time, comply with procedural time limits for considering cases.

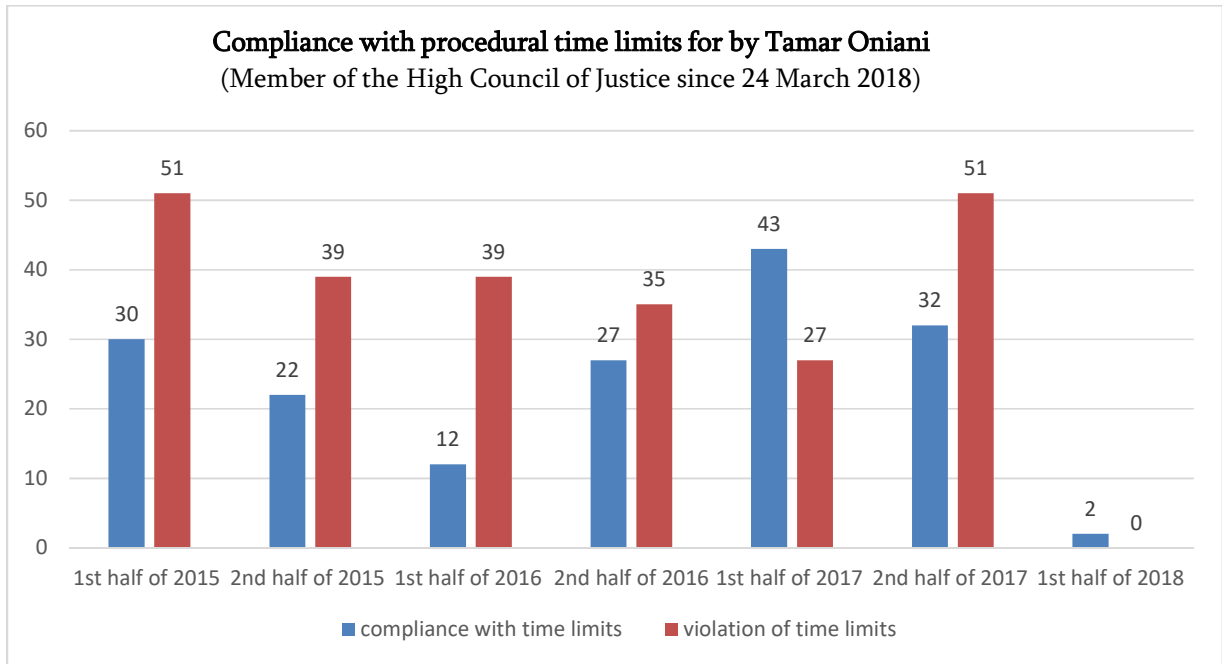
Information about the number of cases completed in compliance with procedural time limits in 2015-2017 by Giorgi Mikautadze - Secretary of the High Council of Justice is shown in the chart below:

¹³ https://idfi.ge/public/upload/IDFI_2019/rule_of_law/GEO_WEB.pdf



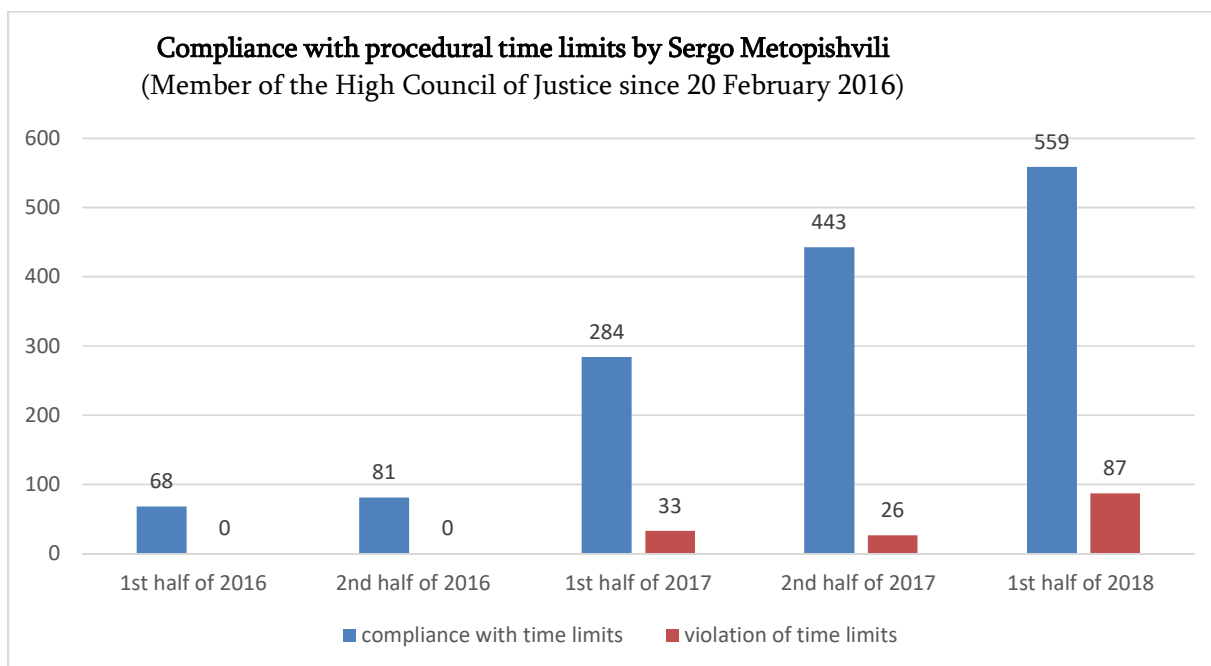
Statistical data received from the High Council of Justice does not include information about the number of cases completed by Giorgi Mikautadze in compliance/violation of time limits in the first half of 2018.

Information about the number of cases completed in compliance with procedural time limits from 2015 to the 1st half of 2018, by Tamar Oniani, member of the High Council of Justice of Georgia, is shown in the chart below:



Information about the number of cases completed in compliance with procedural time limits from from 2016¹⁴ to the first half of 2018 by Sergio Metopishvili, member of the High Council of Justice, is shown in the chart below:

¹⁴ Sergo Metopishvili was appointed as a judge of Tbilisi City Court since February 2016.



Statistical data received from the High Council of Justice does not include information about compliance with procedural time limits by Vasil Mshvenieradze¹⁵ (chairperson of Tbilisi City Court, member of the High Council of Justice).

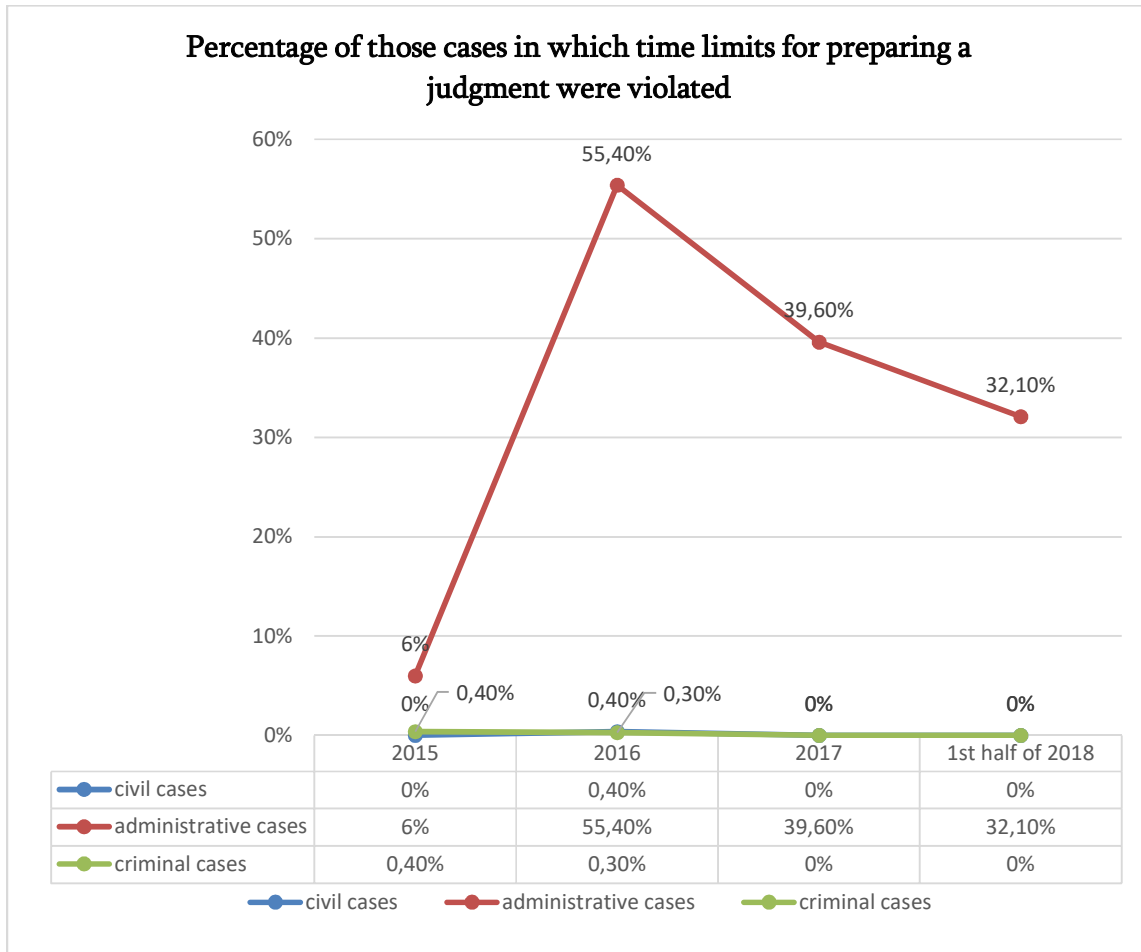
Compliance with time limits for preparing a judgment at Tbilisi City Court

Processing of the information provided by the High Council of Justice¹⁶ has revealed that time limits for preparing judgments are mainly violated in administrative cases. The highest percentage of violated time limits for preparing judgments in administrative cases was in 2016 (55.4%).

From 2015 to the 1st half of 2018, the percentage of cases in which the time limits for preparing a judgment were violated is shown in the chart below:

¹⁵ Vasil Mshvenieradze was appointed as a judge of Tbilisi City Court since May 2017.

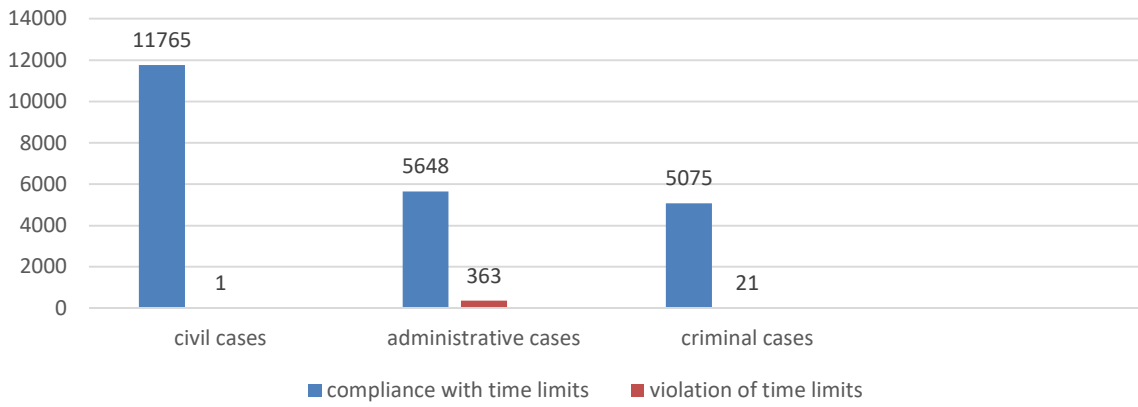
¹⁶ The Letter of the High Council of Justice of Georgia N486-03, 19 March 2019.



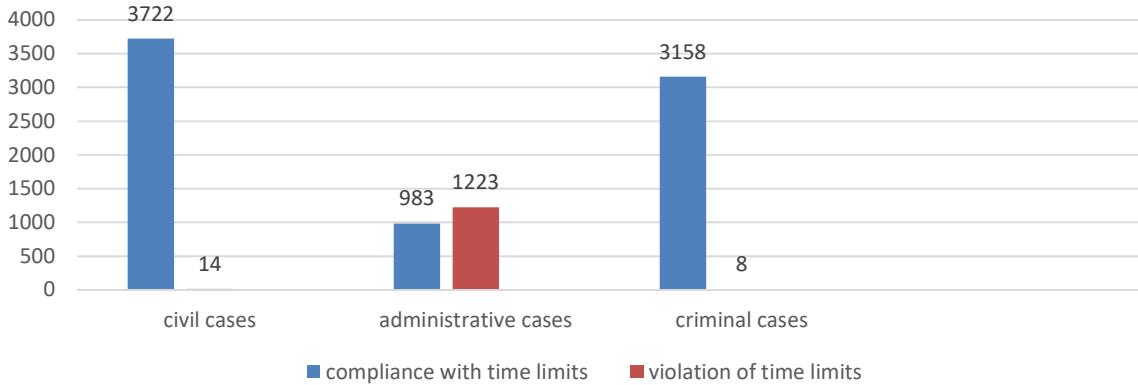
In total, in Tbilisi City Court from 2105 to the 1st half of 2018 time limits for preparing judgments were violated in 15 cases out of 29 900 civil cases ((0.05%), 4 123 cases out of 15 349 administrative cases (26.9%) and 29 cases out of 13 584 criminal cases (0.2%).

Information on compliance with time limits for preparing judgments in civil, administrative and criminal cases for each year is shown in the charts below:

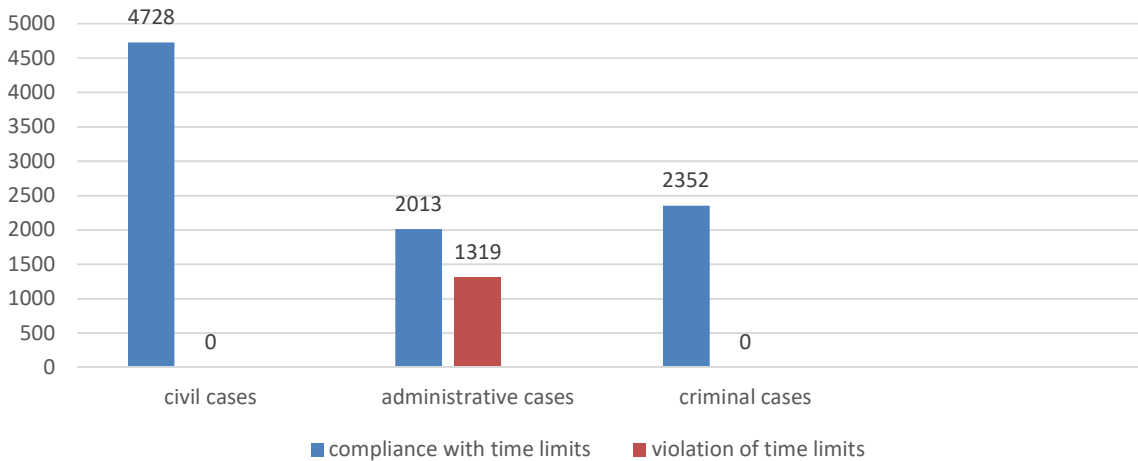
Compliance with time limits for preparing judgments in 2015

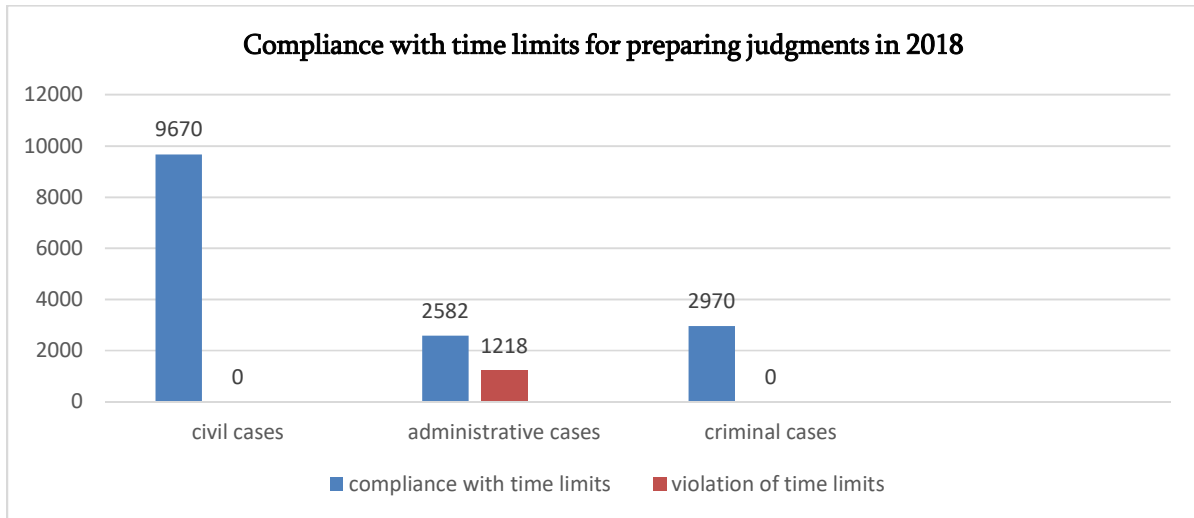


Compliance with time limits for preparing judgments in 2016



Compliance with time limits for preparing judgments in 2017

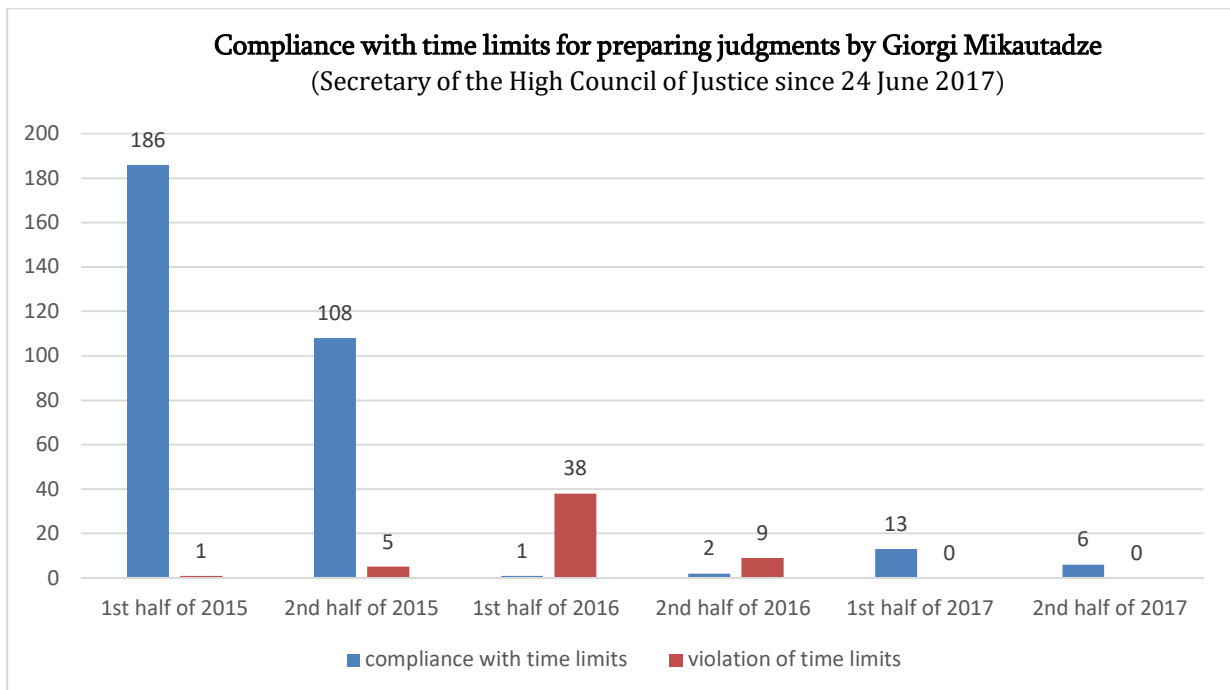




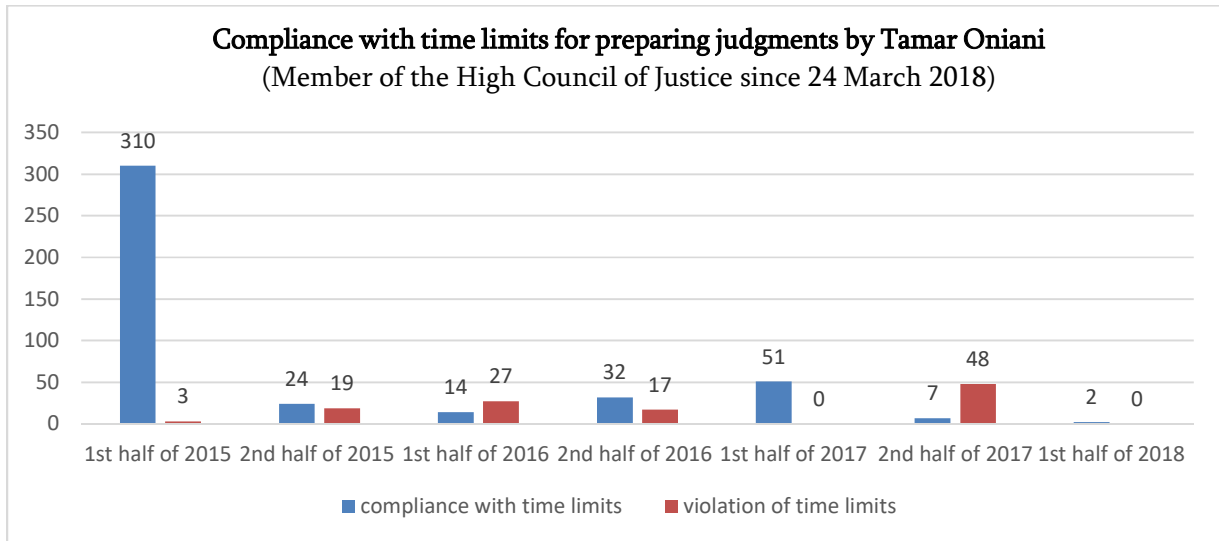
Compliance with time limits for preparing judgments by members of the High Council of Justice

IDFI was interested to what extent the judges of Tbilisi City Court, who are members of the High Council of Justice at the same time, comply with time limits for preparing judgments.

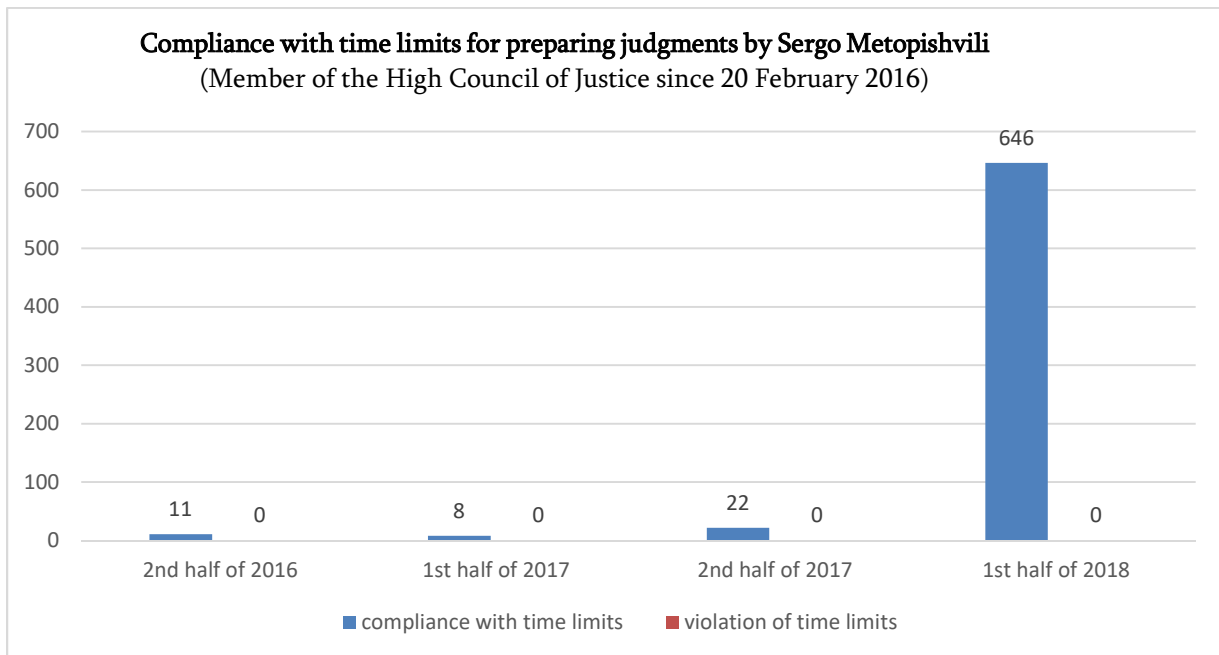
Information about compliance with time limits for preparing judgments in 2015-2017 by Giorgi Mikautadze - Secretary of the High Council of Justice is shown in the chart below:



Information about compliance with time limits for preparing judgments from 2015 to the 1st half of 2018, by Tamar Oniani, member of the High Council of Justice of Georgia, is shown in the chart below:



Information about compliance with time limits for preparing judgments from 2016¹⁷ to the first half of 2018 by Sergio Metopishvili, member of the High Council of Justice, is shown in the chart below:



Statistical data received from the High Council of Justice does not include information about compliance with time limits for preparing judgments by Vasil Mshvenieradze (chairperson of Tbilisi City Court, member of the High Council of Justice).

¹⁷ Sergio Metopishvili was appointed as a judge of Tbilisi City Court since February 2016.

Conclusion

The analysis of the rule for evaluation approved by the High Council of Justice reveals that it is ineffective for the purposes of assessing the performance of individual judges as well as the entire judicial system and for determining the necessary number of judges. It is of utmost importance to carry out a fundamental reform of the system of periodic evaluation of judges and differentiate between assessment of the performance of individual judges, on the one hand, and quality of the entire judicial system, on the other.

The High Council of Justice has not approved the rule and methodology for determining the necessary number of judges in each court, which, taking into account the excessive caseload of common courts is a significant shortcoming. Determining the necessary number of judges according to their specialization and each court is important, because the High Council of Justice should base its decision on these data when determining the number of vacancies announced during the selection of the judges.

The information provided by the High Council of Justice reveals that in Tbilisi City Court from 2015 to the first half of 2018, procedural time limits were violated in 4 660 civil and 5601 administrative cases. Consequently, the rate of violation is higher in case of administrative cases. The study also showed that the time limits for preparing judgments were mainly violated in administrative cases, in particular, in 4 123 cases.

The provided statistics do not include information regarding the duration of delay in considering cases. Therefore, these data might include cases where the violation of the term was several days as well as the cases that were delayed for a long period of time. Hence, it is difficult to judge, whether the delay constitutes such a breach, which poses a risk of violating the right to a fair trial.. Furthermore, from these statistical data it is not possible to determine whether the judge was culpable when violating the time limits.

Ensuring the quality and efficiency of justice is one of the main functions of the High Council of Justice. The Council should study information regarding compliance/violation of time limits, including the duration of delay as well as caseload and consideration of cases in courts. Results of processing of these data should be published periodically in order to inform the public about the situation in the judiciary.