



**MORE INDEPENDENT
MORE EFFECTIVE
MORE TRANSPARENT
COURT OF EUROPEAN QUALITY
WITH BIG CHALLENGES**

fair law for all

*Report of the Judiciary 2013-2017
High Council of Justice of Georgia
2017*

“The functioning of the judiciary has improved since the transfer of power following the 2012 parliamentary elections”.

Freedom House, 2017.

“The number of decisions made in favour of the state has been significantly decreased since 2012 parliamentary elections which might be cause of reduction of the facts of political influence from the government and increase the independence of the judiciary.”

Transparency International Georgia, 2016.

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COURT IS MORE INDEPENDENT

Nowadays Georgia Judiciary is more independent than ever for 26 years of its history.

→ IN THE REGION ON THE 1ST PLACE OF THE INDEX OF THE RULE OF LAW.

According to the survey 2016 of World Justice Project (WJP), Georgia is a leader country of the index of the rule of law in Eastern Europe and Central Asia. In the world ranking, Georgia is on the 4th position among middle-income countries, as for the world scale - 34th place.

“The number of decisions made in favour of the state has been significantly decreased since 2012

“Parliamentary elections which might be cause of reduction of the facts of political influence from the government and increase the independence of the judiciary.”

Transparency International Georgia, 2016.

→ EVALUATION OF WORLD ECONOMIC FORUM

In the component of Judicial independence, according to the global competitiveness index of World Economic Forum 2015-2016, Georgia was the biggest mover, jumping 35 spots up to the 56th position, comparing to the results of 2011-2012 report.

→ INDEX OF PROTECTION OF JUSTICE SYSTEM

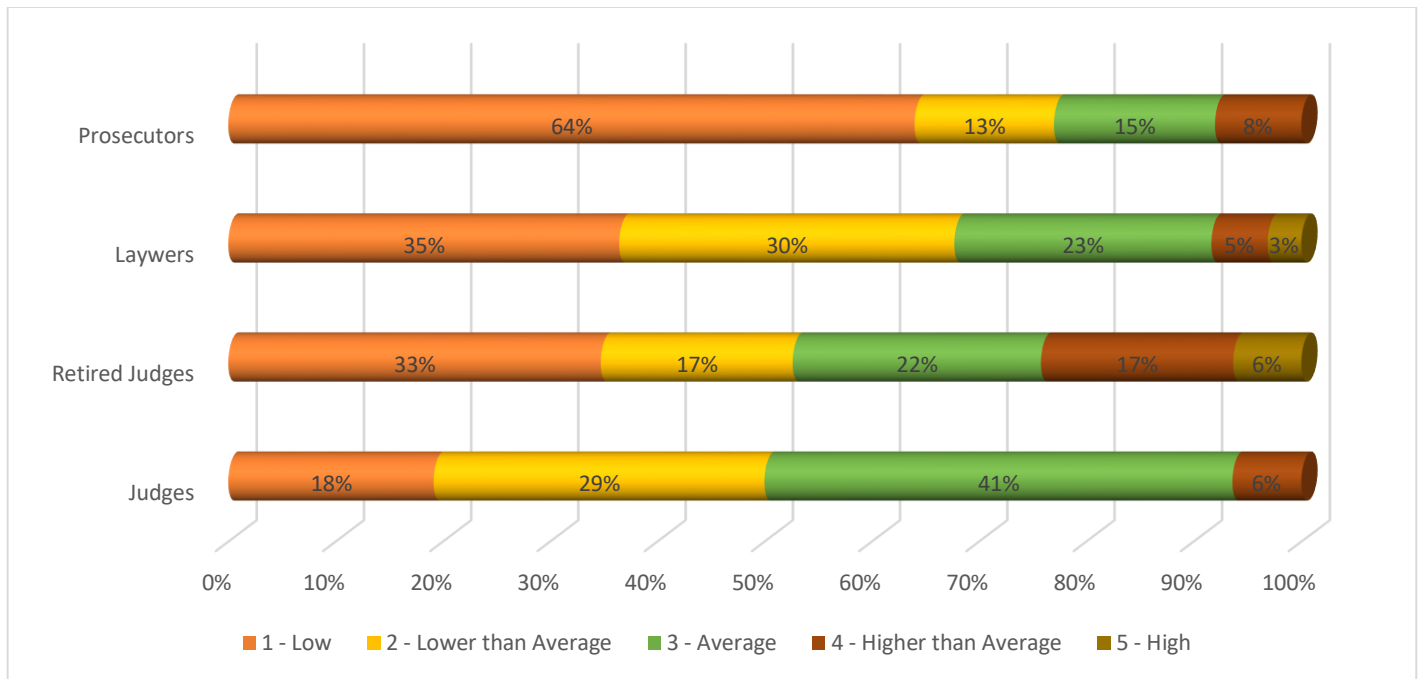
Frazer Institute researches annual ranks of Economic Freedom of the World index in 159 countries. According to the 2016 report, comparing to 2011, in the components of legal systems and property rights, Georgia moved to 35th place from 70th in the group of most free countries. It should be noted that the component of legal systems and property rights includes subcomponents such as judicial independence and impartiality.

→ PRACTITIONERS CONSIDER THAT NOWADAYS COURT IS MORE INDEPENDENT

In 2005-2016 organization “Article of 42 of The Constitution” hold a research of the opinions of practitioner lawyers on the obstacle factors of judicial independence.

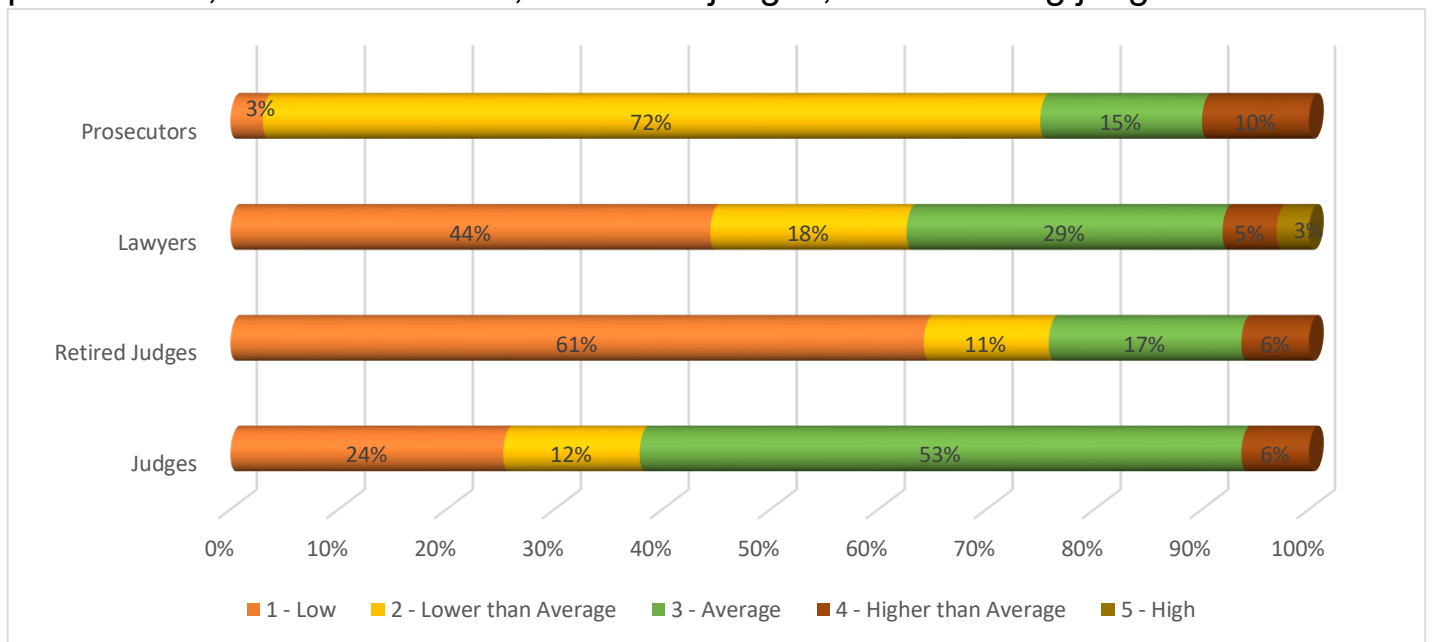
How do you estimate judicial independence 10 years ago?

8% of prosecutors, 8% of advocates, 23% of ex-judges, 6% of acting judges answered “above the average” and „high“.



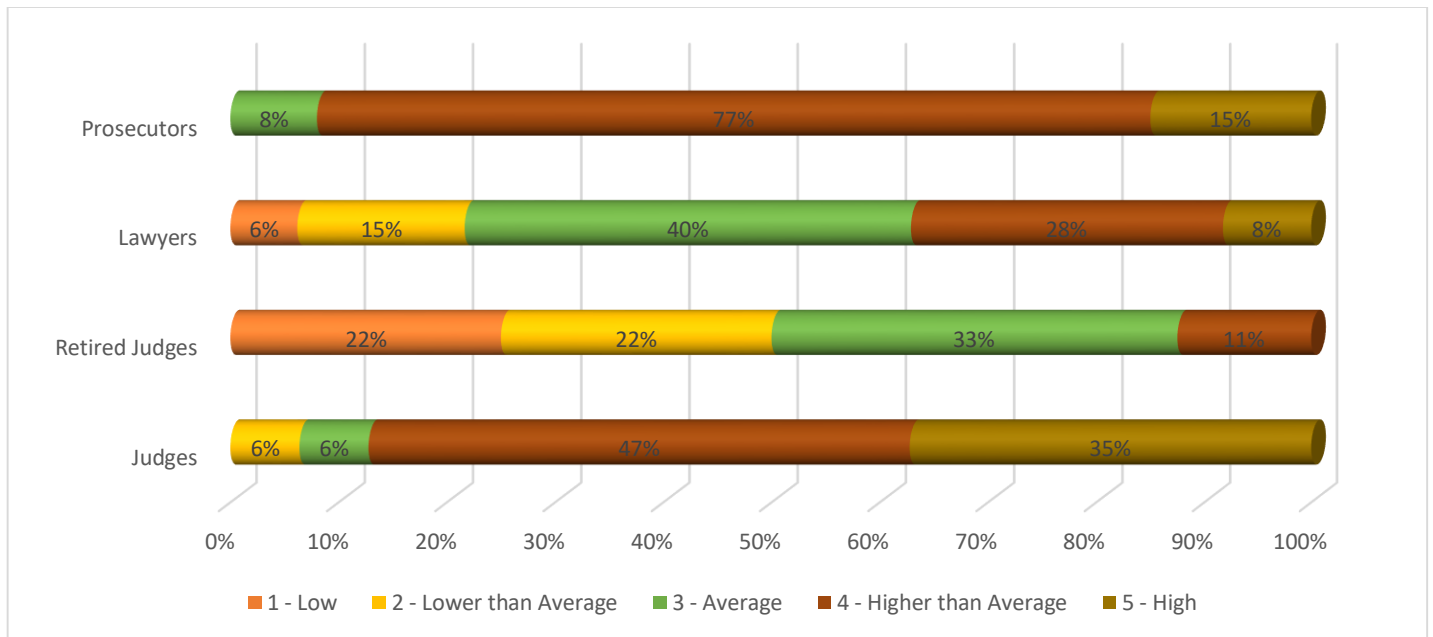
How do you estimate judicial independence 5 years ago?

On this question “above the average” and “high” answers were indicated by 10% of prosecutors, 8% of advocates, 6% of ex-judges, 6% of acting judges.



How do you estimate judicial independence for today?

On this question “above the average” and “high” answers were indicated by 92% of prosecutors, 36% of advocates, 11% of ex-judges, 82% of acting judges.



As the survey shows, all of practitioner lawyers answered on increase drastically of the quality of judicial independence.

→ PRIVATE INDIVIDUALS WIN MORE CASES THAN STATE.

In 2016 private individuals won 64% of administrative cases against state at Supreme Court of Georgia.

In 2011 private individuals won 47% of administrative cases against state at Supreme Court of Georgia.

From 2013 to 2016, at Supreme Court of Georgia the statistics of decisions made in favour of private individuals has been increased by approximately 24%.

In 2016 private individuals won 73% of tax law cases against state at Supreme Court of Georgia.

In 2011 private individuals won 59% of tax law cases against state at Supreme Court of Georgia.

From 2013 to 2016, at Supreme Court of Georgia the statistics of decisions of tax law cases made in favour of private individuals has been increased by approximately 25%.

→ JUDGES ARE APPOINTED FOR LIFE

Judge appointed for life feels safe from political, social and other alternations. Accordingly, judge is more free and impartial in making decisions.

→ SOCIAL PROTECTION OF JUDGES

After 2008, for the first time, judge's salary increased in 2014. Official rate of wages per month in each instances increased from 24% to 100%. It should be noted that salary has been increased for those judges which weren't appointed at administrative positions.

→ CASES ARE ALLOCATED EQUALLY AND WITH THE RULE OF RANDOM SAMPLING

Cases were allocated for judges by presidents of courts which was often criticised. Nowadays there is elaborated electronic system of case allocation which is based on the rule of random sampling and the principle of equal loading of judges.

NUMBER OF ACQUITTAL JUDGMENTS HAVE BEEN INCREASED BY 83%

In 2008-2011 judgments of acquittal were rendered for 112 persons. In 2013-2016 643 persons were acquitted.

In 2016, judgments of acquittal were rendered for 227 persons which is the highest index for the last 16 years.

931 cases were terminated from merit hearings of criminal law cases in 2013-2016 (increase by 19%). Termination of case is equalized with rendering a judgment of acquittal.

→ DURATION AND INTENSITY OF IMPOSING CUSTODIAL RESTRAINT ARE DECREASED

Significantly decreased the number of imposing custodial restraint as quantitative terms as duration.

1-2 years of custodial restraint

2008-2011 years:

4556 persons

2013-2016 years:

3340 persons (reduced by 27%)

Up to and including 5 years of custodial restraint

2008-2011 years

23278 persons

2013-2016 years

15737 persons (reduced by **32%**)

Up to and including 8 years of custodial restraint

2008-2011 years

28198 persons

2013-2016 years

17585 persons (reduced by **38%**)

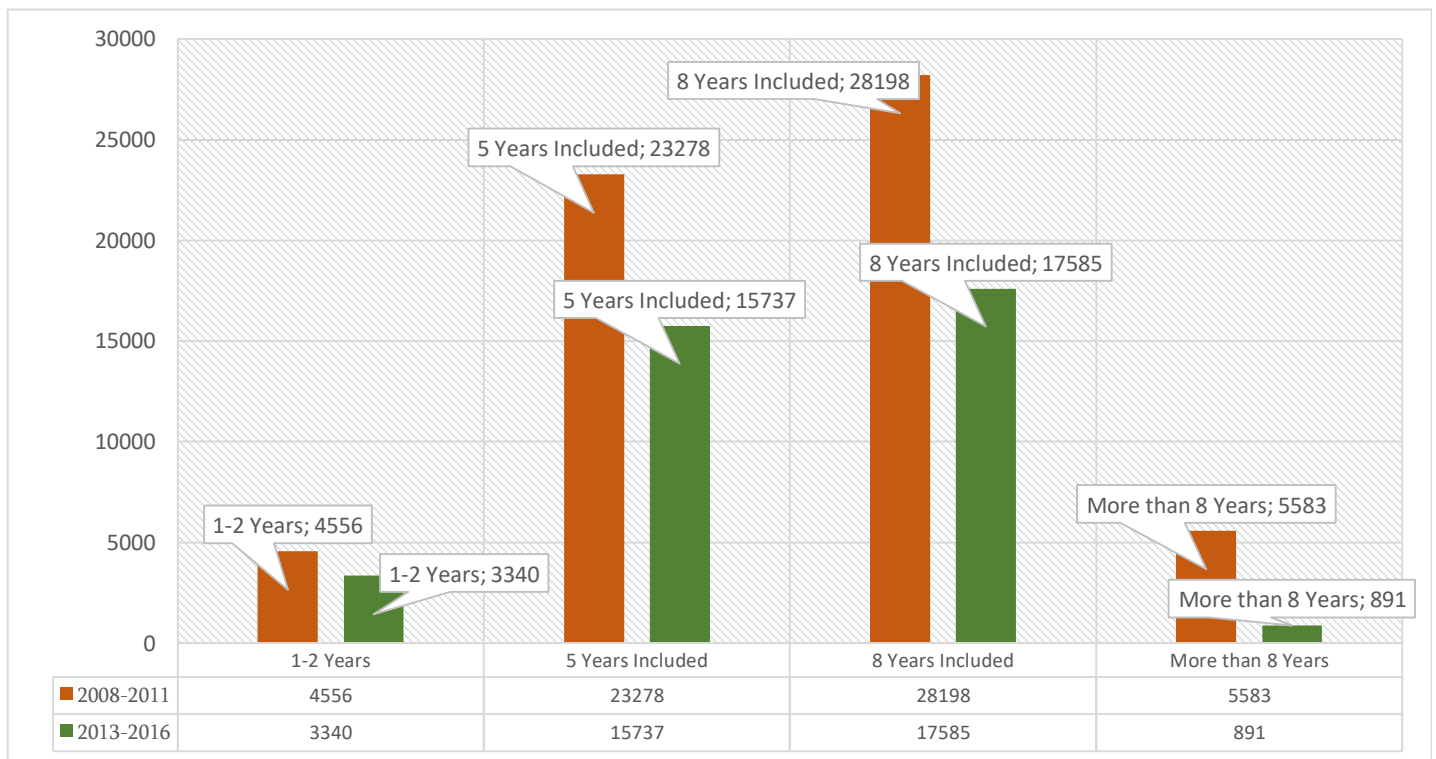
Custodial restraint more than 8 years

2008-2011 years

5583 persons

2013-2016 years

891 persons (reduced by **84%**)



→ OFFICIAL MISSIONS WITH THE AGREEMENT OF JUDGE

97 judges were on an official mission in many different courts in 2011. Nowadays this amount is reduced and totaling 3. It was considered that moving judges to the district courts (official mission) was a “punishment” for “stubborn” judges.

According to the amendments of the act, nowadays it is impossible to move judge to another court without his/her agreement.

In 2005-2016 organization “Article of 42 of The Constitution” hold a research of the opinions of practitioner lawyers on the obstacle factors of judicial independence.

Making questioning about forced official mission of “stubborn” judges for their “punishment” or “neutralizing”, 65% of participant judges of polling said that it was hazardous for justice 10 years ago; 53% of judges’ opinion – it was dangerous 5 years ago; None of judges (0%) considered that it is hazardous for judicial independence for today.

“Since last years obstacle factors of moving judges to other courts have been significantly reduced on legislative level (official missions, appointments without competition and promotions)”

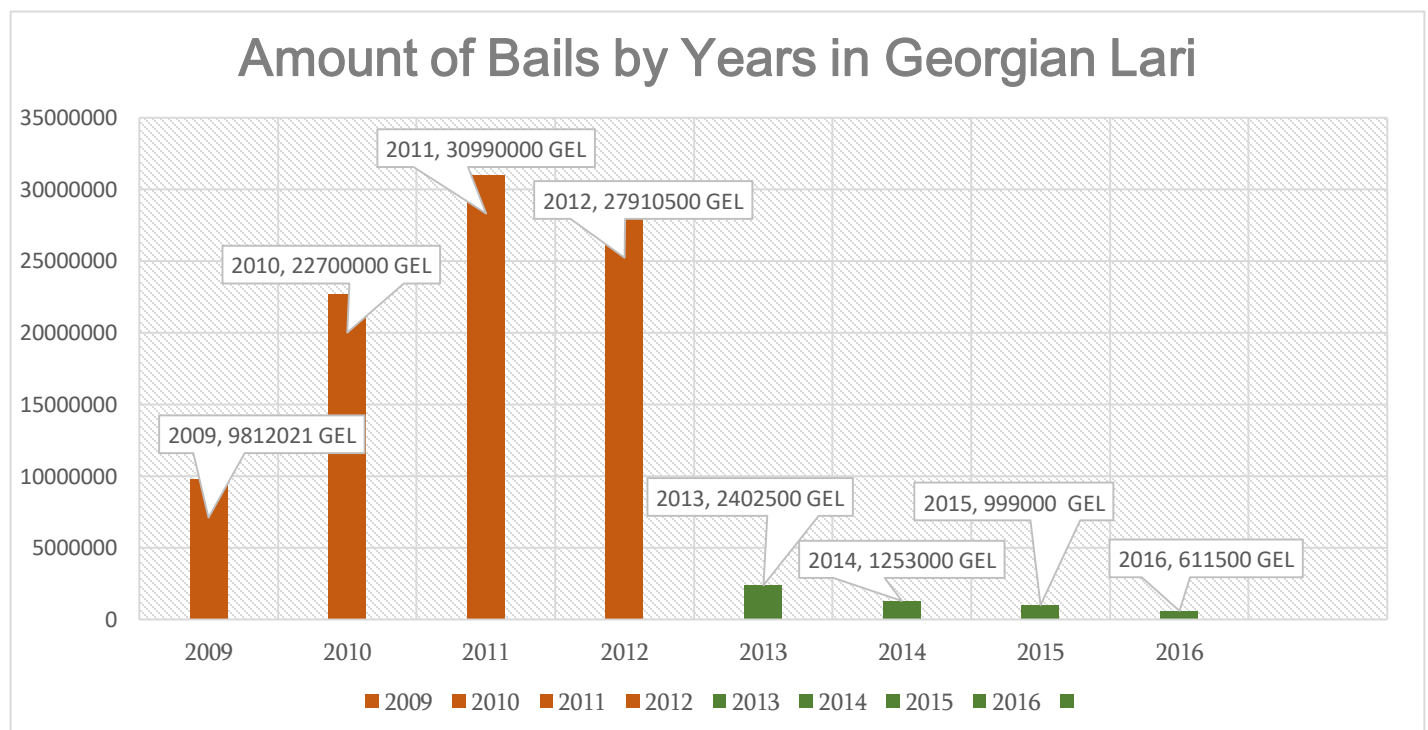
Coalition for an Independent and Transparent Judiciary, 2017.

→ AMOUNT OF A BAIL HAS BEEN REDUCED BY 94%

Index of full completion of required amount of a bail (security measure) has been reduced by 94%

In 2009-2012 total sum of full completion of a bail amounted 91 millions GEL. In 2013-2016 - 5 millions GEL. Accordingly, it is reduction by 94%.

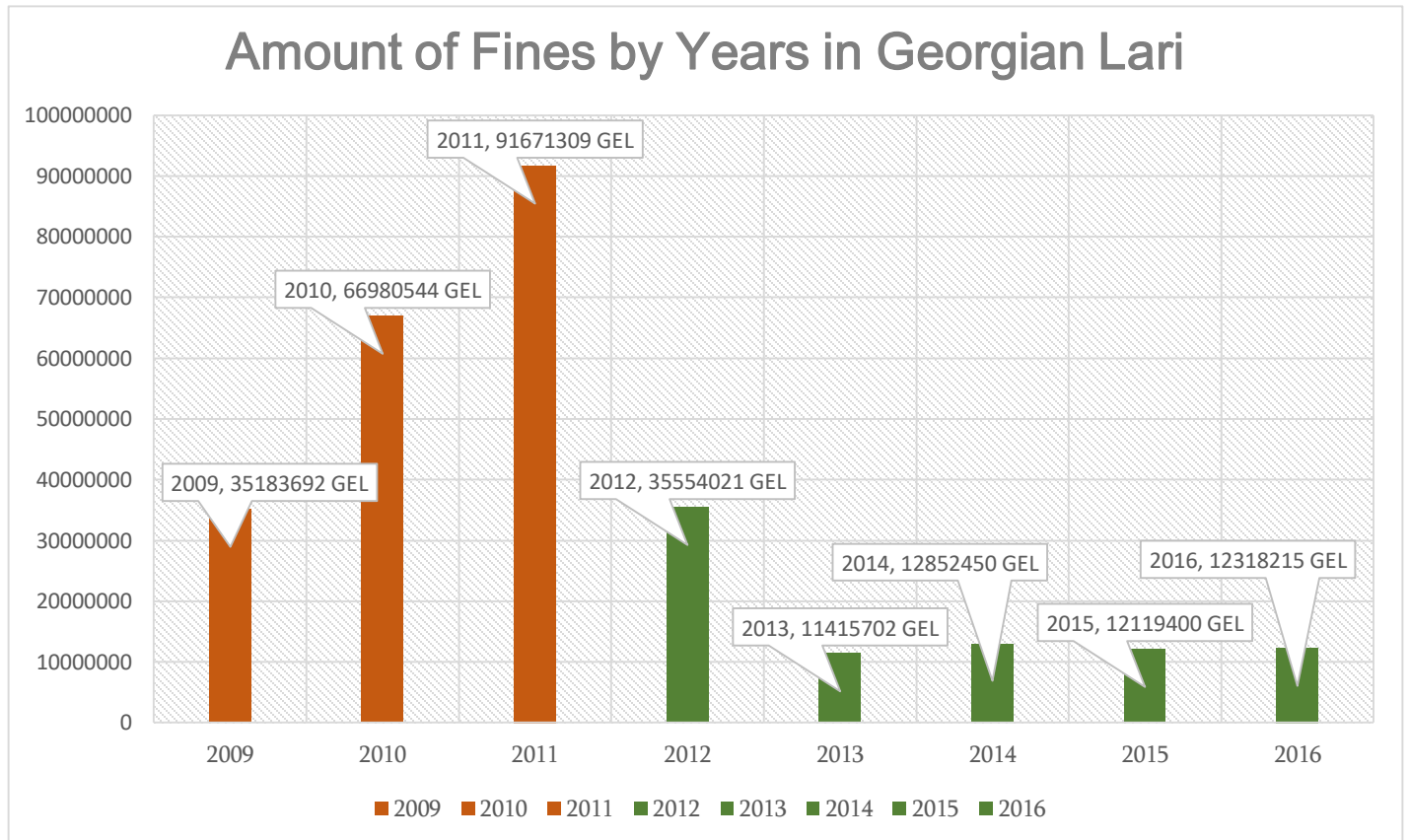
To compare, in 2011 amount of a bail was approximately 31 millions GEL, whereas the same index in 2016 was 600 thousands GEL.



→ IMPOSING FINE AS A PENALTY HAS BEEN REDUCED BY 79%

In 2009-12 total amount of fine was 229 millions GEL. As for 2013-16 - 48 millions GEL. Accordingly, it is reduction by 79%.

To compare, in 2011 imposing fine amounted approximately 91 millions GEL, whereas in 2016 – solely 12 millions GEL.

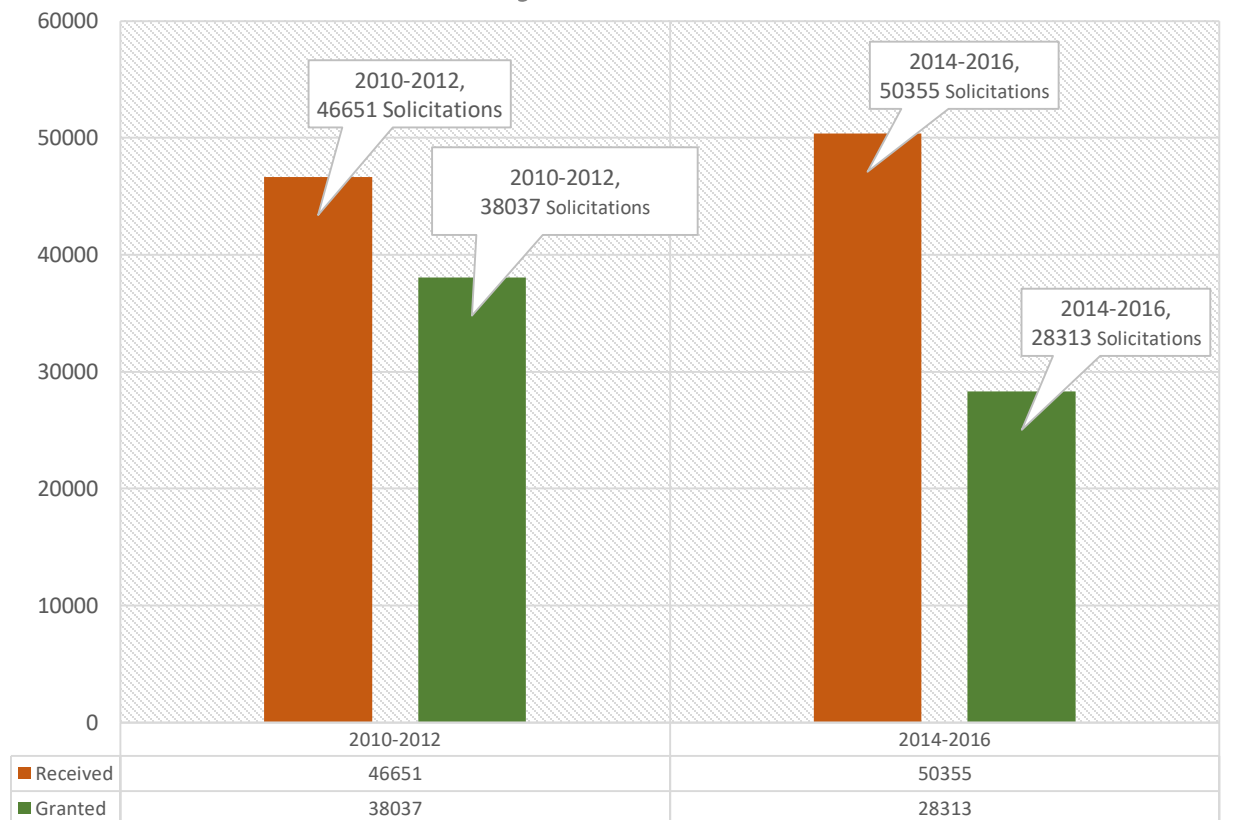


→ 26% LESS SOLICITATIONS ARE SATISFIED

Index of satisfaction of solicitations on holding investigative actions (ex. search, seizure) and secret investigative actions by investigative bodies is reduced.

In 2010-2012, 82% of those solicitations were satisfied, as for 2014-2016 - 56%.

Solicitation by Years



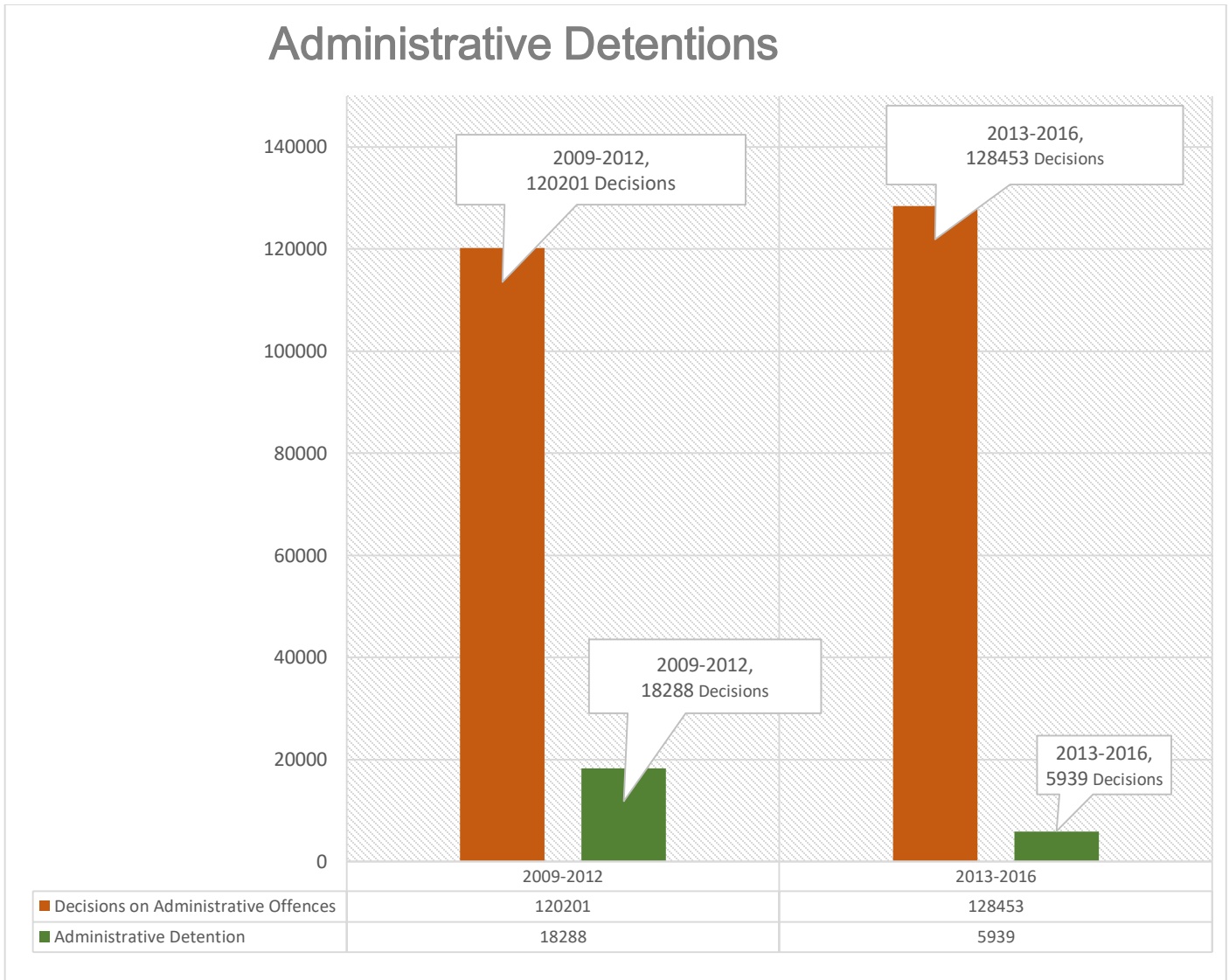
“Tendency of imposing only imprisonment as a security measure has been reduced by court, as well as index of unsubstantiated satisfactions of solicitations of prosecutors.”

Transparency International Georgia, 2016.

→ NUMBER OF ADMINISTRATIVE DETENTIONS HAS BEEN DECREASED 3 TIMES

In 2013-2016, to compare 2009-2012, there were rendered more than 8252 decisions on administrative offences. Nevertheless administrative imprisonment was used only **15,2%** of administrative cases in 2009-2012. As for 2013-2016 – approximately **3 times less**, only in **4,6%** of cases.

Administrative Detentions



→ STATISTICS OF SATISFACTION OF APPEALED FINES OF POLICE AND CT PARK HAS BEEN INCREASED BY 41%

In 2011 Court considered 28 complaints on fines of police and “CT Park” and only **10,7%** of complaints were satisfied

In 2016 in spite of the fact that the Court considered 44 times more complaints (in total 1229), the satisfaction rate was **51,8%**.

→ PRACTICE OF ENROLLMENT IN RESERVES OF JUDGES DOESN'T EXIST

Till 2013 judges were enrolled in reserve on the basis of the court's liquidation or reorganization (reduction of a judge's position) which meant removing, low wage and vague career prospects.

In 2013-2017 none of judges was enrolled in reserve and judges being in reserve were again entrusted with the judicial authority.

In 2005-2016 organization “Article of 42 of The Constitution” hold a research of the opinions of practitioner lawyers on the obstacle factors of judicial independence.

Making questioning about enrollment in reserve of “politically undesirable” judges, 59% of participant judges of polling said that it was hazardous for justice 10 years ago; 53% of judges’ opinion – it was dangerous 5 years ago; 6% of judges considered that it is hazardous for judicial independence for today.

→ REINFORCED SELF-GOVERNMENT

Judicial Conference - is the self-governance body of common courts’ judges of Georgia which consists of every acting judges.

In 2008-2011 Judicial Conference was held only 2 times, as for 2012-2016 – 11 times.

“Raise an importance of the self-governance body of judges – Judicial Conference. If before, the candidates of judge members of the Council were presented to Judicial Conference by the president of Supreme Court exclusively, according to amendments, nowadays each member of the Conference is entitled to nominate a candidate. Beside of it, the authority of the administrative body of Judicial Conference – administrative committee – has been restricted, to take so important decisions on behalf of the Conference, such as for example, election of judge members of High Council of Justice of Georgia and members of Disciplinary Collegium. In such case, it has been defined the obligation of being held an extraordinary conference.”

Transparency International Georgia, 2016.

→ OBSTACLE OF INFLUENCE FROM PROSECUTORS' OFFICE HAS BEEN MINIMALIZED

In 2005-2016 organization "Article of 42 of The Constitution" hold a research of the opinions of practitioner lawyers on the obstacle factors of judicial independence. Making questioning about the influence from Prosecutors' office, 47% of participant judges of polling said that it was hazardous for justice 10 years ago; 53% of judges' opinion – it was dangerous 5 years ago; 6% of judges considered that it is hazardous for judicial independence for today.

→ DISCIPLINARY PROCEEDING HAS BECOME MORE INTENSIVE AND EXQUISITE

In 2010-2012, 18 of disciplinary hearings were held in High Council of Justice of Georgia. In 2013-2016 the number of proceedings raised 3 times – 50 hearings were held.

Since 2013 the High Council of Justice of Georgia has been considered 1024 disciplinary complaints, from here:

- Disciplinary proceedings were terminated on 855 of complaints;
- Letters of recommendation were sent to judges on 34 of complaints;
- Judges gave an explanation on 82 of complaints.

It should be noted that 1024 of disciplinary complaints are about legality, which won't be considered within the disciplinary proceedings due to the principle of independence of judge.

The rest of 90% is about delays of the terms of proceedings which is the direct reason of lack of material and human resources at Court.

"The Disciplinary Collegium was distanced from the High Council of Justice of Georgia. A member of the High Council of Justice of Georgia cannot also be a member of the Disciplinary Collegium and non-judge members of the Collegium are being elected by the Parliament instead of the Council. It is also determined that the judge members of the Collegium are being elected directly by the Judicial Conference

and the President of the Supreme Court was deprived of the exclusive right to nominate candidates for these positions. According to the amendments, an obligation was introduced to publish the decisions of the Disciplinary Collegium and the Disciplinary Panel.“

Transparency International Georgia, 2016

“Removing “gross violence of act” from the basics of disciplinary liability is evaluated as a positive event”

Coalition for an Independent and Transparent Judiciary, 2014.

→ RAISE THE NUMBER OF SUITS TO CONSTITUTIONAL COURT

Since 1996 Common Courts have lodged submissions with the Constitutional Court 75 times, from here 68% (51 submission) were lodged in 2014-2017.

Common Courts lodge submission with the Constitutional Court if during the hearing the court infers that there is a sufficient basis to believe that a normative act to be applied by the court in deciding the case may be deemed incompatible with the Constitution of Georgia, it shall suspend the hearing and apply to the Constitutional Court.



COURT IS MORE EFFECTIVE

Despite of the lack of resources, work of the courts is successful

→ **ACCORDING TO THE SURVEY 2016 OF THE EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ), DESPITE OF THE LACK OF RESOURCES, WORK OF GEORGIA COURTS IS SUCCESSFUL**

According to the survey of CEPEJ:

- On every 100'000 inhabitants, number of judges is three times less in Georgia, than an average in Europe.
- On every 100'000 inhabitants, number of court officials is two times less in Georgia, than an average in Europe.
- In Europe per capita consumption for justice is 31EUR, as for Georgia – 6 EUR, 5 times less.

Beside of it:

- In Georgia average number of considered cases of Civil and Commercial categories is 100 per day, in Europe – 188 per day. At the end of the year remains of reviewed cases are approximately 6 times less on every 100 inhabitants in Georgia, than the average in Europe.
- In Georgia average number of considered cases of Criminal Law categories is 65 per day, in Europe – 113 per day. At the end of the year remains of reviewed cases are approximately 6 times less on every 100 inhabitants in Georgia, than the average in Europe.
- In Georgia average number of considered cases of Administrative Law categories is 130 per day, in Europe – 207 per day. At the end of the year remains of reviewed cases are approximately 3 times less on every 100 inhabitants in Georgia, than the average in Europe.

→ ON THE 16TH PLACE AMONG 190 COUNTRIES (DOING BUSINESS)

According to the survey 2017 “DOING BUSINESS” of World Bank, Georgia is on 16th place in considering Contract Law cases in World ranking among 190 countries. According the same survey of 2012, Georgia was on the 41th place.

→ ESTIMATION OF WORLD ECONOMIC FORUM

According to the report of the global competitiveness of World Economic Forum 2015-2016, in the component of effectiveness of the dispute resolution, position of Georgia was improved with 28 stances and move to 54th position.

→ ADOPTED STRATEGY AND ACTIVITY PLAN FOR 5 YEARS

Georgia Common Courts have moved to model of modern management and abandoned laissez-faire development. For the first time, in History of Georgia, High Council of Justice of Georgia adopted strategy and activity plan for 5 years.

Strategy and activity plan were prepared with the participation of:

- Judges;
- Parliament;
- Georgia Bar Association;
- Ministry of Justice;
- NGOs;
- Donor organizations.

→ DEVELOPED E-FILING

Since 2016 parties have had an opportunity to file a lawsuit, answer and other materials remotely, without leaving home and office.

→ MORE SPECIALIZED JUDGES

The more common kinds of cases are considered by judge, the more rapidly and correctly the justice is done. Despite the lack of judges, the following specializations were set up in Tbilisi City Court in 2013-2017:

- Collegium of Investigative and Preliminary Hearings;
- Specialization of Banks and Microfinance Organizations;
- Specialization of Administrative Offences.



COURT IS MORE TRANSPARENT

According to the assessment of external observers, court transparency is increasing and improving

→ IT IS ALLOWED TO TAKE PHOTOS, CINEMATOGRAPHIC, VIDEO AND AUDIO RECORDING OF A TRIAL

Before 2013 it was forbidden to take photos, video and audio recording during a trial. There were several cases when court bailiff didn't permit journalist even writing down during a trial.

“According new regulations, trials became open for media and nowadays, as a rule, it is allowed to take

as video and audio recording as make a broadcasting. International Transparency Georgia welcomes this initiative and believes that this is the right step towards expansion of the right to a public discourse.”

Transparency International Georgia, 2014.

“Recommendations of Coalition connected to raise the quality of transparency were mostly envisaged which is unquestionably positive. Opening trials for media is a significant step for judicial transparency and accountability.

Georgian Young Lawyers’ Association, 2014.

→ EVERY COURT DECISION IS PUBLICIZED

The best way to monitor the court activities is to get acquainted with the main product of the court's work - court decisions. Since 2016, all decisions are published publicly and are available to everyone at - info.court.ge

“It is welcome to make a decision by the High Council of Justice of Georgia on September 12, 2016 to approve the rule of issuing and publishing the decisions of Common Courts. Accordingly, the portal info.court.ge shall be assigned the function of the united registry of court decisions.”

Council of Europe/European Union Project, 2017.

→ HIGH COUNCIL OF JUSTICE OF GEORGIA IS OPEN FOR ALL

As a result of changes in recent years:

- The agenda of the Council meetings is published on the web-page;
- Everyone is entitled to express their opinions on the issues in question;

- The video recordings of the Council meetings are published;
- Judges can keep track of the proceedings by direct broadcasting.

“Over the last four years, significant improvements in the issues of transparency of Council were observed”.

Coalition for an Independent and Transparent Judiciary, 2017.

“Raise the quality of transparency of High Council of Justice of Georgia. For instance, publishing information about meetings, availability of decisions and broadcasting the meetings.”

Transparency International Georgia, 2016.



COURT OF EUROPEAN QUALITY

Using the European standards became an integral part of Court work

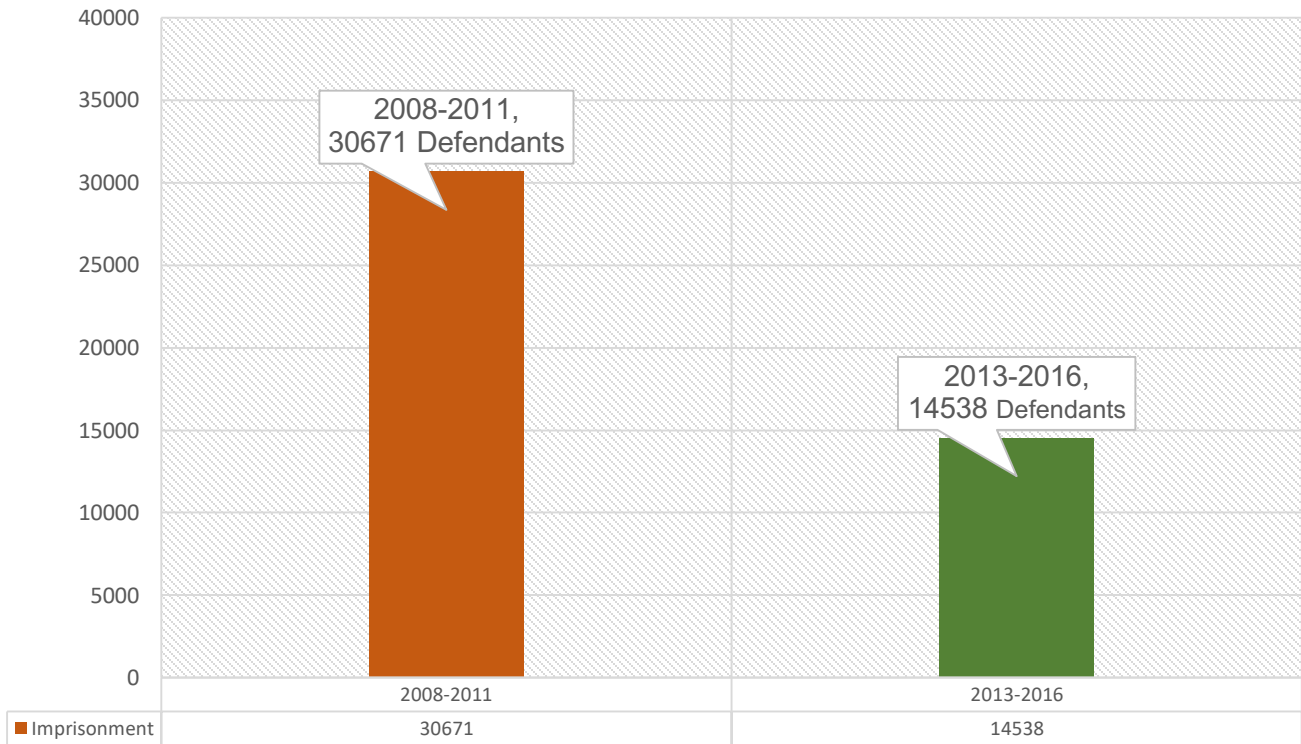
→ IMPOSING AN IMPRISONMENT DECLINED BY 53%

Compare to 2010, imposing imprisonment as a security measure has been declined by 53%. (In 2010 number of imprisonment was 8761, in 2016 - 5044).

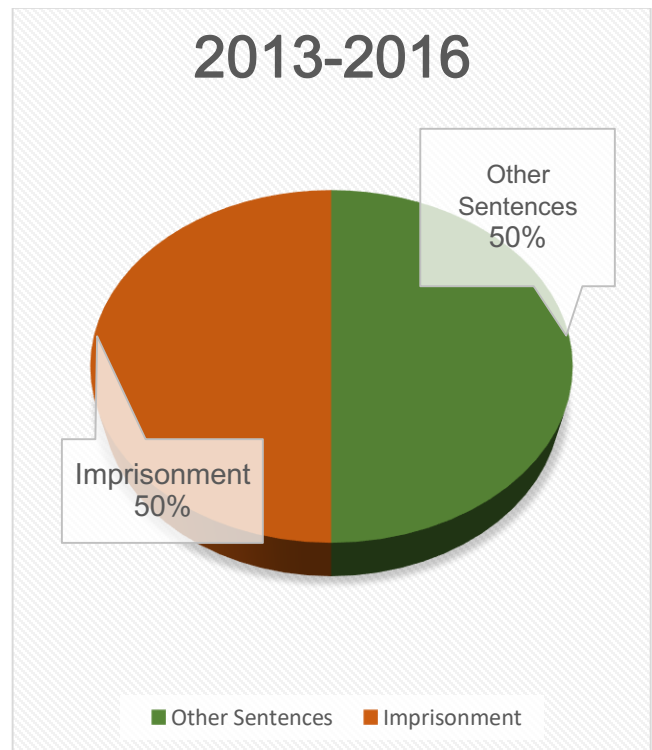
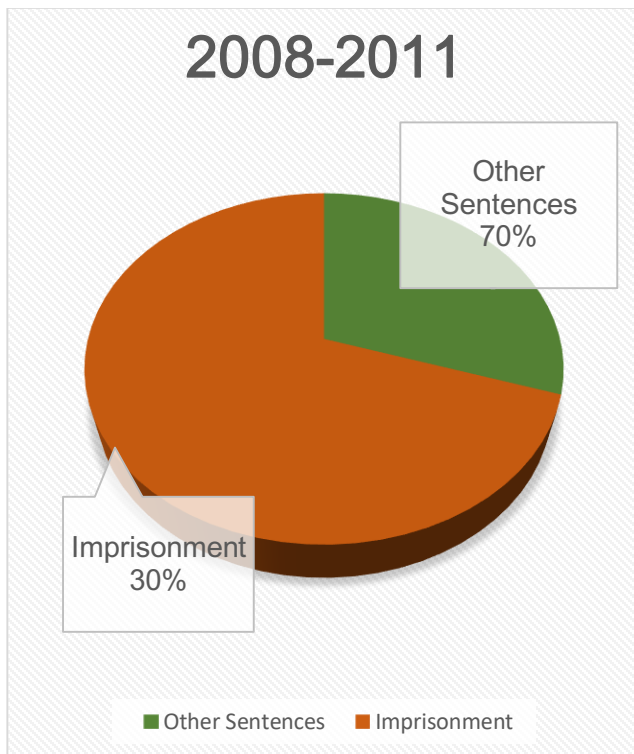
Imprisonment as a security measure can be used only as a last measure according to European standards.

In sum, in 2013-2016, to compare 2008-2011, imprisonment was imposed less than 53% of cases.

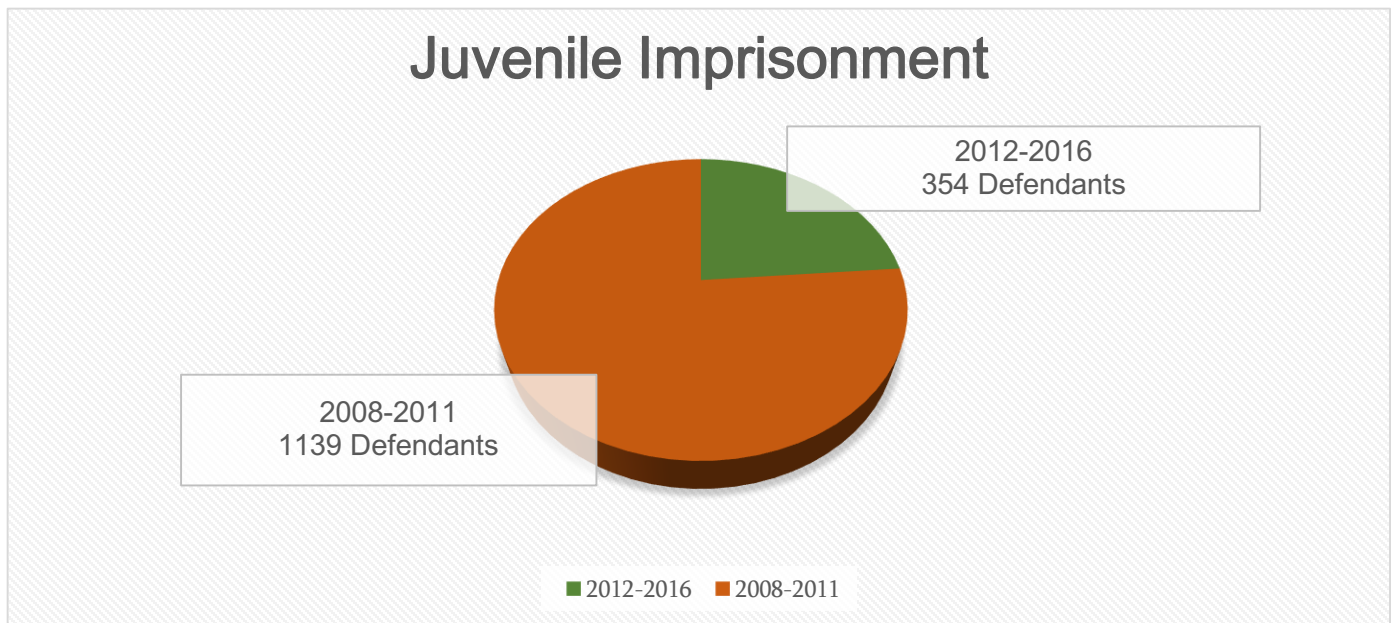
Imposing Imprisonment



In 2008-2011 imprisonment as a security measure was imposed approximately in **70%** of cases, in 2013-2016 - **50%** of cases. Reduction is **20%**.

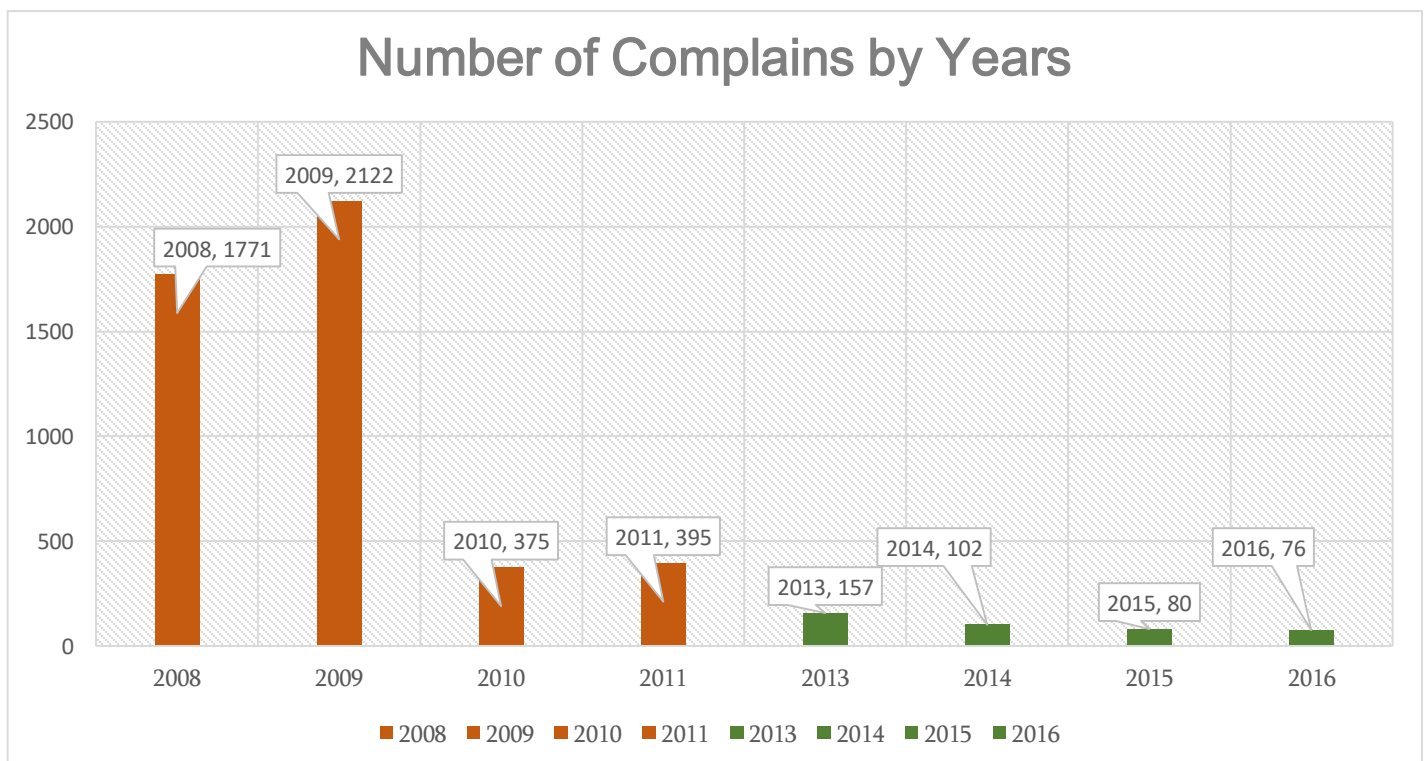


In juvenile justice, using the imprisonment as a security measure was declined by **70%**:



→ **LESS THAN 11 TIMES OF COMPLAINTS ARE SENT IN STRASBOURG**

In 2008-2011 from Georgia to European Court of Human Rights **4663 complaints** were sent, in 2013-2016 **11 times less - 415 complaints**.



→ CASE-LAW OF EUROPEAN COURT OF HUMAN RIGHTS IS USED ACTIVELY

One of the criteria of assessment of judge who is appointed with the trial period, is defined to citation case-law of ECHR in their decisions.

There are several cases when Common Courts of Georgia used assessment of foreign court for the interpretation of the norm. It shows the raise of judge's qualification.

“The Common Courts of Georgia is presented as a prior guarantor for human rights, which provides full, effective and direct utilization of the Convention and acknowledges the subsidiary role of the European Court.”
Council of Europe/European Union Project, 2017.

→ GENDER BALANCE IS PROTECTED

In Georgia 61% of judges and court officials are women.

	Judge	Official
Woman	148	882
Man	139	520



BIG CHALLENGES

Court has significant internal and external challenges

→ CRIMINAL LAW JUDGE WITH LACK OF RIGHTS

- Judge is not entitled to ask question without agreement from parties;
- Judge is not entitled to return case on investigative level;
- Judge is not entitled to use conditional sentence on his/her behalf.
- Judge is not entitled to impose less than lower limit of penalty.

To add, judge has more authority when consider cases of administrative offences. As administrative offence is less significance than crime, the current regulation of the law can be assessed as a disproportionate and inaccurate approach.

→ FINANCIAL AND MATERIAL CHALLENGES

- Difficult working conditions;
- Unregulated working hours;
- Low wages;
- Difficult unregulated pension system.

→ LARGE QUANTITY OF CASES

In 2013-2016, Common Courts (all three instances) reviewed over 500,000 cases.

To clarify, we present the situation at Tbilisi City Court. Tbilisi City Court is the biggest court and it considers more than half of the total number of cases in Common Courts.

Resources	Work	Busyness
105 acting judge	In 2016, 60,000 cases were considered	Per judge considers more than 1000 cases in a year
40 courtrooms	1 courtroom for 3 judges	Statistically, in each courtroom is hold more than 10 meetings a day
520 Court Officials	60,000 cases	+/- 12 hours working day, plus frequent working on Saturdays or/and Sundays

→ LACK OF JUDGES

According to the survey 2016 of the European Commission for the Efficiency of Justice (CEPEJ), Georgia ranks 46th place and is only ahead of Ireland, among 47 countries, with a small number of judges per 100,000 inhabitants.

Countries	Quantity	Per 100000 inhabitants
Georgia	282 judges	5,4 judges
Estonia	231 ~	17,7 ~
Latvia	469 ~	21,5 ~
Lithuania	767 ~	25,6 ~
Slovenia	970 ~	47,1 ~

→ ENHANCED PRESSURE ON THE COURT FROM MEDIA

In 2005-2016 organization “Article of 42 of The Constitution” hold a research of the opinions of practitioner lawyers on the obstacle factors of judicial independence. Making questioning about Pressure on the court from media, 35% of participant judges of polling said that it was hazardous for justice 10 years ago; 35% of judges’ opinion – it was dangerous 5 years ago; 41% of the judges considered that it is hazardous for judicial independence for today.

→ STATEMENTS OF HIGH-RANKING OFFICIALS

In 2005-2016 organization “Article of 42 of The Constitution” hold a research of the opinions of practitioner lawyers on the obstacle factors of judicial independence. Making questioning about the statements of high-ranking officials, 65% of participant judges of polling said that it was hazardous for justice 10 years ago; 71% of judges’ opinion – it was dangerous 5 years ago; 76% of the judges considered that it is hazardous for judicial independence for today.