

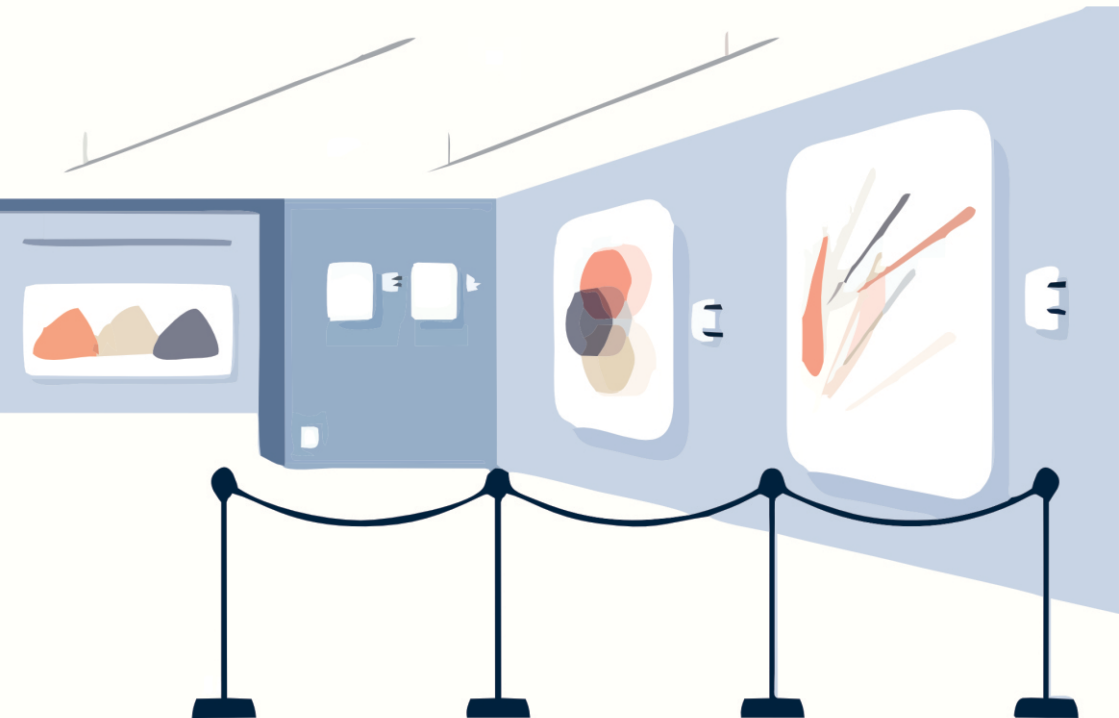


**GEORGIAN  
YOUNG  
LAWYERS'  
ASSOCIATION**



# **NEW PERSONNEL POLICY OF THE MINISTRY OF CULTURE AND ANALYSIS OF LABOR DISPUTES**

**The report is based on the proceedings  
of the GYLA's cases**



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## INTRODUCTION

As is known to the public, after the appointment of Tea Tsulukiani as the Minister of Culture, Sports and Youth, large-scale changes and reorganization began in the institutions subordinate to the Ministry. As a result, many employees were released from their positions both directly from the Ministry of Culture, Sports and Youth of Georgia, and from the agencies under the Ministry. The process not only took the form of removing undesirable personnel from the leadership positions, but also demonstrated that the purpose of these decisions is to control and censor the cultural sphere.

Opposition to the minister's policy first arose at the level of the national museum, among people who were in solidarity with the values of the National Museum of Georgia and signed the protest petition drawn up by the initiative group "For the Museum of Art" – aimed at the preservation of the historical building, unfair personnel policy and lack of public information.<sup>1</sup> Today, many of the petition's signatories have been released from both the museum and the National Agency for Cultural Heritage Protection.

The manipulative levers at the disposal of the new minister, through which she tries to intimidate the dismissed or demoted employees, so that they refrain from legal disputes, should be emphasized. After engaging in organized resistance by demoted and fired employees, some employees were first transferred to other positions (demoted) and when they appealed the change of position, they were fired from their new positions, mostly on the grounds of reorganization.<sup>2</sup>

In addition, on January 22, 2022, the minister voiced baseless accusations against the dismissed individuals on a TV interview of the Public Broadcaster.<sup>3</sup> In the statements made by the dismissed employees in response to the Minister, it was explained that the facts named by the Minister were either not related to the official functions of the specific employee mentioned by her, or there is no evidence of the misconduct of a specific employee's.<sup>4</sup>

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<sup>1</sup> <https://manifest.ge/petitions/>

<sup>2</sup> <https://gyla.ge/ge/post/tsulukianis-danishvnis-shemdeg-erovnuli-muzeumidan-gatavisuflebulebis-interesebs-socialuri-samartlianobis-centri-da-saia-daicavs> (viewed on 06.06.2023)

<sup>3</sup> <https://1tv.ge/video/interviu-tea-wulukiantan-4/> (viewed on 06.06.2023)

<sup>4</sup> <https://gyla.ge/ge/post/tsulukianis-mier-kulturis-sferoshi-chatarebuli-sakadro-tsmendis-shedegad-gatavisuflebulta-interesebs-socialuri-samartlianobis-centri-saia-da-isfed-daicavs> (viewed on 06.06.2023)

In this report, the cases in the GYLA's proceedings are reviewed. The assessments made in the document represent the legal opinions of GYLA as an organization involved in these cases and are based on the various types of evidences and explanations of the parties in the individual cases.

## **CASES IN THE GYLA'S PROCEEDINGS**

GYLA currently has 11 cases of 12 persons in the proceedings. Most of the cases are still in the initial stages of consideration. Only the case reviewed by the Equalities Department of the Public Defender's Office, which concerned the determination of discriminatory treatment, has been completed. From the disputes in the court, as of today, only one dispute of the labor category has been discussed including the appeals court, and - the consideration of two disputes was completed only in the Tbilisi City Court. None of the decisions taken on the cases discussed in the report has entered into legal force so far, and the disputes are expected to continue in the higher authorities.

Statistics of cases in GYLA's proceedings according to the dispute mechanisms used:

<b>Civil</b>	7
<b>Administrative</b>	3
<b>Constitutional</b>	1
<b>Public Defender</b>	1

The results of the applications to the public defender's office and the court, according to the relevant institutions, are as follows: the fact of discriminatory treatment was established by the recommendation of the public defender. Of the cases completed in the first instance of the court, two of them are completed successfully (partially successfully), and one case was unsuccessful. Other cases are still being considered in the first instance of the court.

## **THE MAIN TENDENCIES HIGHLIGHTED IN THE CASES IN THE GYLA PROCEEDINGS**

The cases in GYLA's proceedings have highlighted several types of Tendencies or individual problems, which are discussed in detail in the report. Upon analysis of the cases in the proceedings of the GYLA, the following types of problems had a tendentious character:

- In each case, the reorganization was not carried out in the interests of the public service in accordance with the law, but to disguise the dismissal of unwanted personnel. In those institutions, from which the above-mentioned persons were released, after a comprehensive reorganization in order to optimize the personnel, a number of competitions were announced and new personnel were appointed. The prerequisites for the dismissal on the basis of reorganization to be considered legal are not met, since they were based on personal opinions and/or discrimination expressed on various grounds.
- Within the framework of the reorganization process, competition commissions were created in the institutions, which had to make decisions based on the interviews with which employee the labor-legal relationship would continue. Despite prohibited by the law, the questions asked at the interview were directed to the views and actions of a particular employee, which were not related to the performance of the service obligation or its quality. The composition of the evaluation commission and the majority of its members were not related to the fields of culture or science.
- During the conducted interviews, there were formal errors. Among them, the contestant was not given the opportunity to avoid a specific member of the commission, and despite the request, he received neither a written nor an oral answer regarding his request. During the interview, the Commission did not take any recording reflecting the process, nor did the Commission directly give the employee the right to make a recording.
- The non-appearance of the employee at the commission's interview, regardless of a number of circumstances and reasons, was automatically evaluated against him, and regardless of other evaluations, the institution made a decision to dismiss him.
- Neither the Ministry of Culture, Sports and Youth nor the agencies included in its governance provide information/documentation based on the request of the parties, which is often a hindering factor for employees to conduct disputes.
- Of the 12 cases in the GYLA's proceedings, not a single case has been reviewed within the time limits stipulated by the law, and the reviews were unreasonably delayed, which prolonged the violation of the plaintiffs' rights even more and often created a problem with the enforcement of the court's decision in the part of reinstatement.

## REORGANIZATION AS A “SUPPOSED” BASIS FOR DISMISSAL OF EMPLOYEES

The goal declared by the law of reorganization is to ensure systematic, effective governance by changing the institutional arrangement of the public institution and adopting a partially or completely new structure of the public institution. However, in the cases in the GYLA’s proceedings, there are reasonable doubts that in each case the reorganization was carried out not in the interest of the public service and in accordance with the law, but to disguise the dismissal of unwanted personnel.

It is important to note that according to well-established judicial practice, the fact of reorganization itself is not enough to consider dismissal as legal, because dismissing a person based on “reorganization” can cover up discriminatory motives and become a legal basis for making unjust decisions by the administration.<sup>5</sup> Reorganization is therefore, necessarily accompanied by a reduction in positions of employment, but a mere change in the name or jurisdiction of a position does not constitute sufficient grounds for exemption.<sup>6</sup> In order for the dismissal of a person on this basis to be considered legal, there must be a real reorganization and a need to reduce the workforce. However, candidates for dismissal should be selected based on specific criteria, through a transparent procedure, and the dismissal should be justified.<sup>7</sup>

Some of the GYLA’s beneficiaries were released from the National Museum of Georgia. The explanation of the representatives of the National Museum in different cases is similar and related to the legislative changes, which resulted in the dismissal of the employees. In particular, the reason for the dismissal is the change implemented in the order of the Minister of Education, Science, Culture and Sports of Georgia dated January 18, 2019 N110/N “On the approval of the statute of the legal entity of the National Museum of Georgia”.<sup>8</sup> Based on which the statute of the National Museum of Georgia was changed and the organizational structure of the museum formed differently.

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<sup>5</sup> Decision of the Supreme Court of Georgia on June 18, 2021 in case No. 235-2021

<sup>6</sup> Decision of the Administrative Affairs Chamber of the Supreme Court of Georgia of April 17, 2019, Case No. BS-595-595 (2k-18)

<sup>7</sup> Tkemaladze S., Chachava S., Management and effective resolution of service/labor disputes in the public service - situational analysis and needs research, June 2018, 18.

<sup>8</sup> Order No. 05/01 of April 19, 2021 of the Minister of Culture, Sports and Youth of Georgia “On Approving the Regulations of the Legal Entity of the National Museum of Georgia” on amending Order No. 110/N of June 18, 2019 of the Minister of Education, Science, Culture and Sports of Georgia , <https://www.matsne.gov.ge/ka/document/view/5153753?publication=1>



According to the new structure of the National Museum, five museums/groups of museums formed on its base: 1. Shalva Amiranashvili Art Museum, National Gallery and Sighnaghi Historical-Ethnographic Museum; 2. Sports Museum; 3. Ethnographic Museum named after Giorgi Chitaya; 4. Historical and Ethnographic Museum of Svaneti and 5. Museum named after Simon Janashia, which also includes all other museums.

According to the above-mentioned changes, the directorate, consisting of the general director and four directors, became the implementing body for the management of the national museum. The heads of the above-mentioned five museums/groups of museums were given the authority to independently manage the funds, collections and personnel resources of the organizations subordinate to them. Because of these changes, Nika Akhalbedashvili was appointed as the first deputy general director of the National Museum of Georgia and the director of the museum group, whose personal retribution can be seen in the case of the three people dismissed from the National Museum.

In particular, I. K. From July 1, 2018 to July 5, 2021, was employed at the Shalva Amiranashvili Art Museum of the National Museum of Georgia, from which Nika Akhalbedashvili dismissed him without any justification, despite the clear fulfillment of his obligations by the plaintiff. Considering the fact that I. K. was an exemplary employee, based on the recommendation of his immediate superiors (not Nika Akhalbedashvili), he became employed in the Simon Janashia Georgian Museum named, in the position of curator's assistant in the Tbilisi collections accounting-protection and management sector. A similar path was taken by V.Z, who was dismissed from the Shalva Amiranashvili Art Museum by Nika Akhalbedashvili. V.Z also became employed in the Simon Janashia Georgian Museum. The latter was released from the Shalva Amiranashvili Art Museum by Nika Akhalbedashvili's personal decision, because he made unsubstantiated accusations against him for filming and distributing photo-videos of the museum's exhibits.

Recently, the National Museum of Georgia and the Simon Janashia National Museum, operating within its framework, also started to reorganize. By this time, Nika Akhalbedashvili was already the first deputy general director of the National Museum of Georgia, the director of the group of museums and, accordingly, one of the persons authorized to determine the results of the reorganization. It was Nika Akhalbedashvili, who was the chairperson of the commission created during the reorganization process, which was supposed

to conduct interviews and make decisions on the issue of employee evaluation. Which, in turn, was the legal basis for dismissing employees. Because of the reorganization, three employees who distinguished themselves by healthy criticism and innovative ideas towards the activities of the National Museum were released from their positions.

In the cases of V. Z. and G.F. The reason for dismissal given was insufficient grades at the interview. As for the case of I.K, that he did not show up for the interview. The illegality of their release based on reorganization manifested in the fact that the request of the I.K. to remove one member of the commission, namely, Nika Akhalbedashvili, was completely ignored. In addition, in the case of the other two persons, no questions related to their activities were asked during the interview, and therefore, their dismissal should be considered illegal and unjustified.

Ekaterine Kiknadze was also dismissed from her job because of reorganization and with a discriminatory motive. She was transferred from the position of the manager of Shalva Amiranashvili Museum of Art of Georgia and Dimitri Shevardnadze National Gallery of Georgia to the position of laboratory assistant, and later, based on reorganization, she was dismissed from this position. Ekaterine Kiknadze, because she had doubts about the impartiality of the competition commission, requested permission to record the interview, which was refused by the commission. As Ekaterine Kiknadze's positional demotion was unfounded and completely inconsistent with her qualifications and experience, she did not trust the decision-makers, and since commission refused to record, she did not participate in the interview either. It is significant that the Tbilisi City Court, by its decision on May 29, 2023, considered the order on the appointment of Ekaterine Kiknadze as a laboratory technician illegal and ordered the defendant to pay forced labor and compensation. Regarding the illegality of dismissal from the position of a laboratory assistant, the court did not share the plaintiff's position, however, the dispute continues in this part.<sup>9</sup>

N. Kh. Referee of the General Director of the National Museum of Georgia and A.V. Public relations manager of the administrative service were also released from the National Museum based on reorganization. The basis for their dismissal is insufficient grades at the interview, however, neither the audio-video recording of the interview, nor the question-and-answers

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<sup>9</sup> Decision of Tbilisi City Court of May 29, 2023, in case N2/21612-21

are not available, and in some cases, neither the evaluation criteria are assessable. All this raises doubts about the legality of their release. On the same basis, N. A.'s dismissal from the Ministry of Culture, Sports and Youth of Georgia is illegal. In the latter case, in the absence of interview, question-and-answer and interview criteria, the discriminatory motive of the employee's dismissal is evident, because his brother was an active member of one of the opposition parties at the time of the interview and strongly criticized the minister's policy.

It is also significant that in those institutions, from which the above-mentioned persons were released, after the package reorganization in order to optimize the personnel, a number of competitions were announced and new personnel were appointed. In each of the above-mentioned cases, it is clear that the prerequisites for the dismissal on the basis of reorganization to be considered legal are not met and the dismissals were based on personal opinions and/or discrimination on various grounds. In addition, no negative evaluation or disciplinary responsibility of the released persons was detected/confirmed during the entire period of work before the release.

#### **FORMAL INTERVIEWS WITH EMPLOYEES AND THE PROBLEM OF SUBJECTIVE EVALUATION OF EMPLOYEES (COMMISSION STAFFING ISSUE)**

Within the framework of the reorganization process, a competition commission was created in the National Museum of Georgia, which, based on the interviews, had to make decisions regarding which employee the National Museum would continue the labor-legal relationship with. The interview process should serve to check the knowledge, competence and skills of employees.<sup>10</sup> In this case, often, the questions asked during the interview were directed to the views and actions of a specific employee, which were not related to the performance of the service obligation or its quality. For example, in the case of several employees dismissed from the National Museum, questions were raised regarding why they signed the petition mentioned in the introduction, how involved they were in petition advocacy, and why they attended protests of cultural events.

In the case of several persons dismissed from the National Museum of Georgia, it was revealed that Nika Akhalbedashvili was not interested in the qual-

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<sup>10</sup> Decision of Tbilisi Court of Appeal of February 15, 2018 on case 3b/2095-17

ifications and professional achievements of the employees during the interview, but voiced unsubstantiated accusations or claims due to the different opinions expressed by the employee in various ways. For example, During V. Z.'s interview, Nika Akhalbedashvili again made unsubstantiated accusations related to photo-video recording and distribution of museum exhibits. In the case of F., G., Posts posted on F.G.'s social network "Facebook" was discussed by Nika Akhalbedashvili. It is significant that other members of the commission are not involved in the interview process. In the end due to insufficient number of points, G. F. and V. Z. were dismissed from the job.

It is important to draw attention to the composition of the evaluation commission and the sectoral connection of the majority of its members with culture. In the competition commission, as a collegial decision-making body, it was important that not only one or two, but also all members had the appropriate competence, so that there were no question marks regarding the results of the evaluation of the employees' qualifications. However, none of GYLA's beneficiary interviews was held by a commission, in which each member would have the education and experience to assess the candidate's professional competence and skills. Moreover, in the case of N.Kh., not even one member of the interviewing commission was a person related to the museum and artistic activities. Besides, only one member of the commission, Nika Akhalbedashvili, asked questions, while other members were not actively involved. In the case of N.S, who was fired directly from the Ministry of Culture, the minister was also present at the interview and only she asked questions, however, the other members of the commission also evaluated the candidate. It is significant that the majority of the members of the commission did not have field knowledge, however, in the end it was the insufficiency of the points awarded that became the basis for the dismissal of N.S.

Because of the study of the above-mentioned cases, it is clear that the competition commission did not aim to evaluate the knowledge, experience and other necessary skills of the employees. Even if it were so, due to the lack of field expertise, the majority of the commission members could not assess the competencies of the employees properly. There is reasonable suspicion that the interview process was formal, non-transparent and aimed at creating the necessary legal basis for the dismissal of undesirable personnel.

## LEGAL CONSEQUENCES OF EMPLOYEES' REFUSAL TO INTERVIEW

Along with the formal nature of the conducted interviews, it should also be noted the consequences that resulted from the non-appearance of specific employees at this interview. Two employees of the National Museum were not interviewed, because the administration of the National Museum did not meet their legitimate demands regarding the dismissal of one of the members of the commission and the making of a video recording of the interview, or left them unanswered at all.

In particular, I. K. requested in writing that his interview to be conducted without the participation of Nika Akhalbedashvili. The basis for this request was Nika Akhalbedashvili's negative attitude towards him and the fact that he dismissed I.K. from his previous job, precisely because of his involvement, completely unjustly. The plaintiff's written statement did not receive a response, despite the fact that the administration of the National Museum officially accepted his statement. Therefore, the claimant did not appear for the interview, which was automatically evaluated with 0 points, and based on this, he was released from his position.

I.K.'s non-appearance at the interview became one of the main reasons for the outcome of the decision of February 21, 2023 by the Civil Affairs Board of the Tbilisi City Court. In particular, his claim was not satisfied. According to the court's explanation, the results of the interview and the protocol of the interview are of crucial importance during the personnel selection, because without it the court cannot judge whether there were pre-established objective criteria during the reorganization and whether the employer objectively evaluated the plaintiff's competence in relation to other employees.<sup>11</sup>

In the aforementioned decision, the court focused on the collegial nature of the competition commission and pointed out that the individual assessment of a specific member of the commission should not influence the assessment of other members of the commission and the results of the competition. In addition, according to the court's assessment, the fact that the plaintiff was not even informed about the refusal to meet his request (referring to the issue of removing one of the members of the commission) did not release him from the obligation to appear for the interview. What remained beyond the court's assessment was that during all the interviews, only the member

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<sup>11</sup> Tbilisi City Court's decision of February 21, 2023 in case N2/19655-22

of the commission asked the questions that were requested to be avoided and whose negative attitude towards the plaintiff was clear.

The court of appeal shared the decision of the court of first instance. However, not a single court of instance has legally evaluated the fact that the employee's request that one particular member of the commission, whose impartiality had reasonable questions, was completely ignored.

Ekaterine Kiknadze also did not appear at the scheduled interview during the reorganization process. In this case, the reason was that she refused Ekaterine Kiknadze's verbal request to videotape the interview. After the verbal refusal, Ekaterine Kiknadze applied to the administration of the National Museum with a substantiated written request. During this period, Ekaterine Kiknadze already argued in court regarding her illegal demotion-dismissal and discrimination. Nika Akhalbedashvili and Tea Tsulukiani repeatedly insulted and humiliated her. Accordingly, the Claimant had sufficient reason to request that the interview be videotaped and to await a reasoned decision as to why he was refused on this matter.

The mentioned examples show that the administration of the National Museum of Georgia did not cooperate with its employees who had different views, did not respect their reasonable demands and dismissed them for formal reasons at the first opportunity.

## **REFUSAL TO THE REQUEST OF INFORMATION OF DISMISSED PERSONS AND ITS EFFECT ON THE RESULTS OF THE LAWSUIT**

In the cases in the GYLA proceedings, it was revealed that the defendant party does not cooperate with the plaintiff party. Neither the Ministry of Culture, Sports and Youth nor the agencies under its management will provide information/documentation based on the request of the parties. Moreover, in the case of Ekaterine Kiknadze, she was not even given a release order, and she did not even have a document at the time of filing the lawsuit. The order became available to the claimant only after the submission of the counterclaim, which is a violation of the labor legislation and may represent an attempt by the respondent administrative authorities to prevent the employees from preparing the claim in a timely manner.

In each case in the proceedings of GYLA, since the dismissal of the beneficiary took place on the basis of reorganization, it was necessary to obtain a number of information. In particular, information on staff lists updated after

the reorganization, budgets of institutions, vacancies of estimated equivalent positions, as well as employee evaluations, evaluation criteria and other documents.

Out of the six labor disputes in GYLA's proceedings, in none of the cases did the respondent institutions provide the employees with any of the requested information, including the information classified as public information. The tendency of the respondent party to try to delay the process was also revealed. The representatives of the defendants repeatedly announced at the hearings that they would give the information that only the court would order them to give. Such an approach is a deliberate attempt to delay the adjudication of the dispute, because the court will not hear motions for subpoenas without holding a hearing to hear the other party's position on the motion. Since, in a number of cases, hearings are scheduled at a fairly long interval, moreover, an oral hearing may not be scheduled for a year or more after the filing of the lawsuit, the consideration of the request for information is meaningless, because the factual circumstances also change (eg: a new staff list is approved). In addition, the party that starts a dispute needs this type of information even before filing a lawsuit, in order to assess the perspective of the dispute, and thus, it is important to have available to the party both personal labor information and public information available in the institution at the first stage.

Late receive of information in most of the cases in GYLA's proceedings also caused the problem of identifying the equal position at the initial stage of the dispute. As a result, it was not possible to determine which position the plaintiffs could claim within the scope of the dispute, because most of the positions defined by the state before the dismissal no longer existed. From the procedural point of view, it became difficult for the plaintiffs to submit a petition regarding the measure of securing the claim in connection with the fact that the defendant institution was prohibited from appointing another person in an equal position for life until the end of the dispute. According to the current practice, the defendant employers try to avoid reinstatement of the illegally dismissed persons based on the court decision by appointing another person to the same position.

## **REFUSAL OF THE COURT TO USE THE MEASURE OF SECURING THE CLAIM**

If the lawsuit of the dismissed person is satisfied by the court, the question of enforcement of the decision arises. In case of annulment of the dismissal order, restoration of the employee's rights, first, means restoration to the same position from which he was illegally dismissed. Since, after the dismissal of the employee, as a rule, another person is appointed/accepted in the vacant position, the use of the enforcement measures is often the only way to ensure the enforcement of the decision made by the court.

In the case of Ekaterine Kiknadze, taking into account the experience and the attitude of the National Museum to the plaintiff, there was reason to assume that the defendant would make a decision to employ another person for an indefinite period in the position to which the plaintiff requested to be reinstated. In order to make it impossible to reinstate the plaintiff in a position equal to the plaintiff's, Therefore, the plaintiff applied to the court with a request to use the enforcement measures. Since the plaintiff requested to be reinstated to an equal position in the National Museum of Georgia, the requested motion consisted in prohibiting the defendant from appointing someone on the position of case management specialist in the group of museums of the National Museum of Georgia, (Shalva Amiranashvili State Museum of Art of Georgia, the National Gallery of Georgia and the Historical and Ethnographic Museum of Signaghi), under the employment contract or Appointment of employees for an indefinite period in another manner, except for of the duty holder. Keeping the said position vacant provided the possibility that if the plaintiff's dismissal were to be considered illegal, he would be reinstated.

According to the well-established practice of the Supreme Court, when there is no longer a specific position vacant in the institution, the employee cannot be reinstated even if his dismissal is recognized as illegal. The reason for this is to avoid harming the interests of the person who took this position during the litigation. In case of impossibility of restoration to the same or equal position, an alternative measure is used - the imposition of compensation, which cannot fully and effectively ensure restoration of the plaintiff's violated labor right.

Accordingly, taking into account the experience and the attitude of the National Museum to the plaintiff, there was a reasonable assumption that the defendant would decide to employ another person in this position for an indefinite period, so that it would be impossible to restore the plaintiff to a position equal to the plaintiff.



According to the decision of the Civil Affairs Board of the Tbilisi City Court dated September 26, 2022, the claimant was refused to satisfy the claim security application.<sup>12</sup> The approach of the Court of First Instance was shared by the Court of Appeals, which explained that it did not consider it appropriate to use a measure of security for the claim for the following reasons: interfering with the hiring of employees for the effective implementation of the museum's activities could harm both the interest of the individual LEPL and hinder the promotion of employment. The court considered it doubtful whether the State Museum of Georgia - the National Museum of Georgia would be able to attract and hire qualified staff that would meet its requirements, in case of applying the requested security measures. Based on the confrontation of protective and preventive interests, the court considered that the type and size of the requested security was disproportionate to the legitimate interest of the plaintiff. In addition, the court's ruling indicates alternative means of restoring the employee's violated right, established in the Labor Code of Georgia.

The court's argumentation deserves criticism in the context of a number of circumstances. In particular, the established practice for labor relations is to employ an employee for a specified period; therefore, the defendant could appoint a qualified staff to a specific position, but not for life. The argument that it will be difficult to find a qualified staff in the case of a fixed-term contract is only a general assumption, and the refusal to consider the plaintiff's interests due to this assumption is unfounded. The alternatives established by the Labor Code, which imply the possibility of providing compensation in the absence of a vacant position of the same or equivalent position, cannot ensure the full restoration of the right of an illegally dismissed employee. The priority is to maintain the service and work, not a one-time monetary compensation. If the argumentation indicated by the court is accepted, the result will be that the measure of ensuring the claim due to the possibility of compensation, which has been used by the court in many cases up to now (regarding the prohibition of appointing another person to a work position for life) should not be satisfied in any case, thus the essence of this institution in labor disputes is lost.

Based on all of the above, the refusal to use the measure of guaranteeing the claim for Ekaterine Kiknadzi led to the fact that today the position of case management specialist is no longer vacant in the National Museum of

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<sup>12</sup> Judgment of Tbilisi City Court of September 26, 2022, in case N2/21612-21

Georgia. In terms of the right to a fair trial, it was important for the plaintiff to have the opportunity to protect his rights as much as possible, however, the plaintiff's labor rights were ignored on the basis of prevention of unforeseeable and likely future harm to the defendant.

## **PROTRACTED PROCEEDINGS**

Out of the 12 cases in the GYLA's proceedings,<sup>13</sup> not a single case has been considered within the time limits stipulated by the legislation, and the consideration of the majority of them is unjustifiably delayed.

For example, In the case of N.A., the claim was submitted to the court in August 2021, and only in May 2023, its consideration in the first instance was transferred to the final stage. On the example of this case, it can be said that the reason for the delay in the consideration of the case, together with the overcrowding of the court and the scheduling of sessions at intervals of several months, was the failure of the defendant to provide information/documentation on time. Since the actual circumstances might have changed by the time of the hearing, it was necessary to re-request information several times, which delayed the process independently of the plaintiff. In the same case, there were cases when the session was postponed based on the petition of the defendant. As a result, currently, not a single equivalent position is vacant, which already creates a significant problem in the part of the restoration to the work.

Even though A. V., V. Z. and G. F., submitted the applications in July 2022, the trials have not yet started and no hearing has been scheduled so far.

In the process of consideration of the above-mentioned cases, the principle of procedural economy is neglected, the vulnerability of which, in terms of practical results, is often equal to injustice. According to the European Court of Human Rights, consideration of the case within a reasonable period of time is one of the fundamental rights, and its insecurity leads to a result when the case is considered late, and the latter directly proportionally leads to the impossibility of exercising the party's rights.<sup>14</sup> According to the defi-

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<sup>13</sup> According to Article 3 of the Civil Procedure Code of Georgia, the case of claims arising from labor relations must be considered within 1 month at the latest.

<sup>14</sup> MIKULIĆ v. CROATIA, no. 53176/99, 07.02.2002

niton of the European Court, “delayed justice is equal to denied justice”.<sup>15</sup> For justice, it is important that the violated right be restored quickly. Delayed realization of the right in many cases may lead to the loss of social and legal significance and value of this right, which practically means that the party will not be able to realize the right granted to him by the law and will be harmed.

Observance of the principle of procedural economy acquires special importance in disputes of a social nature. Losing a job means losing a stable income, which, considering the current economic and social conditions, puts the dismissed person in a difficult situation, and the delay in the consideration of the case further aggravates this background. It should also be taken into account the fact that in case of non-use of the measure of guaranteeing the claim during the dispute against public institutions or private companies, very few employees manage to restore their original position.

## **THE PUBLIC DEFENDER’S RECOMMENDATION AND THE PROBLEM OF ITS NON-COMPLIANCE**

The Public Defender’s office established the fact of discrimination against Ekaterine Kiknadze, Dinara Vachnadze, Nino Khundadze and Davit Nioradze, on the basis of which it issued a recommendation on October 26, 2022 on the elimination of direct discrimination based on different opinions.<sup>16</sup>

On January 28, 2022, the Shota Rustaveli National Science Foundation of Georgia published the list of winning projects in the competition. The joint project of Ekaterine Kiknadze, Dinara Vachnadze, Nino Khundadze and Davit Nioradze was among the 13 winning projects of the National Museum of Georgia.

After it became public knowledge that the applicants’ project received funding from the Rustaveli Foundation, with the aim of preventing critical (former) employees from carrying out scientific research in the museum, the minister developed a mechanism to remove specific individuals from research projects due to differing opinions. In particular, by the regulation,

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<sup>15</sup> Ochigava v. Georgia, no. 14142/15, 16.02.2023, § 58

<sup>16</sup> <https://gyla.ge/ge/post/sakhalkho-damcvelma-ekaterine-kiknadzis-dinara-vachnadzis-nino-khundadzis-da-davit-nioradzis-mimart-diskriminaciuli-mopyrobis-faqti-daadgina> (viewed 06.06.2023)

the directorate was given the authority to apply to the financier about the financed projects and request the grant money. The directorate is also given the right to decide whether to admit a researcher to the museum for the purpose of carrying out a research project.

In accordance with the adopted changes, the majority of the directorate enforced the minister's discriminatory intent. In particular, the applicants learned from a post on the "Facebook" page of the National Museum of Georgia on March 28, 2022, that the National Science Foundation of Georgia - Shota Rustaveli, on behalf of the National Museum of Georgia, sent approval for the implementation of 12 winning projects in the fund's competition, and agreements were signed.<sup>17</sup> The only project that was refused to be implemented by the directorate of the group of museums created in the National Museum of Ukraine and the newly created scientific council is the project of the applicants. This made it practically impossible to implement the winning scientific project of the applicants.

It should be noted, that the applicants are signatories and organizers of petitions prepared in August and December 2021, which were related to the most important issues surrounding the Art Museum. On the part of the new administration of the museum, the persecution of the petition signatories was also clearly seen in the results of the reorganization.

The recommendation states that the sequence of events proves that the initiation of legislative changes and the subsequent refusal to finance the winning project were due only to the positions taken by the applicants. Accordingly, by comparing the facts, evidence and legal standards, the Public Defender believes that the defendants interfered with the applicant's personal life and the right to free development of the person due to the opinion protected by the freedom of expression.

Taking into account all of the above, the Public Defender addressed the Minister of Culture, Sports and Youth of Georgia and the members of the Directorate of the National Museum of Georgia with the following recommendation:

- The winning project - "Integrated research of the Georgian easel portrait painting collection of the 18th-19th centuries of the Shalva Amiranashvili Art Museum of the National Museum of Georgia" should apply to the Shota Rustaveli National Science Foundation of Georgia;

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<sup>17</sup> <https://www.facebook.com/GNMuseum/posts/10158412015271269> (seen 06.06.2023)

- In the future, not to allow discriminatory treatment of different opinions and/or on other grounds, and to conduct activities in accordance with the principle of equality, including ensuring compliance of internal organizational acts and policies with the law of Georgia “on the elimination of all forms of discrimination”.

Despite the recommendation of the Public Defender, no action has been taken by the administration of the National Museum of Georgia, and therefore, the problem is still relevant. Thus, this time, the applicants are disputing this matter in the Tbilisi City Court with the request to eliminate the discriminatory treatment and to compensate the plaintiffs for moral damages.

### **INTERFERENCE IN THE ACTIVITIES OF THE CENTER UNDER THE MINISTRY**

Tbilisi City Court is in the process of the case regarding the Ministry of Culture’s interference in the authority of the Scientific Council of the Giorgi Chubinashvili National Research Center for the History of Georgian Art and Monument Protection (hereinafter - the “Scientific Council”) and the issue of discriminatory treatment towards Tamar Belashvili.

According to the case, as of February 15, 2022, the term of office of the director of the center, Tamar Belashvili, has expired. In accordance with the legislation, on February 16, 2022, the Scientific Council made a decision to announce an open competition for the position of the director of the center, of which the Ministry was notified. The competition was held in full compliance with the requirements of the law, and the scientific council of the center chose the candidacy of Tamar Belashvili again. The Scientific Council submitted the results of the competition to the Ministry for further formal procedures. The Ministry was obliged to approve the candidate selected by the Scientific Council (the law specifies only violation of the election procedures as the basis for refusing to approve the candidacy of the director selected by the Council, and not the evaluation of the skills of a specific candidate), however, the Ministry refused to fulfill this obligation without justification and indicated to the Scientific Council, to announce a new competition. In addition, the Ministry requested a preliminary agreement on the director’s candidacy. All this clearly indicates that the candidacy of Tamar Belashvili was unacceptable for the Ministry; the refusal to approve the staff selected by the Council had no legal basis.

According to the Center, the refusal to approve the candidate chosen according to the law and the request to agree on the probable candidate before the start of the director election procedure for the Center's Scientific Council, in the Center's opinion, represents an attempt to interfere with the competence of the Council and actually excludes an objective decision based on an open competition. In addition, such a decision is discriminatory against Tamar Belashvili.

According to Article 7, Clause 7 of the Organic Law of Georgia "On Normative Acts", "Legislative acts of Georgia have superior legal force over subordinate normative acts of Georgia." Thus, in the case of inconsistency of the provision with the law, priority is given to the norms established by the law. The reference of the respondent ministry that the competition and the election of the director held by the Giorgi Chubinashvili National Research Center for the History of Art and Monuments Protection could not be considered as conducted in accordance with the law and is unclear and groundless. Since the above mentioned elections were held precisely on in accordance of the law on "science, technology and their development" of Georgia, which prevails over the subordinate act. Which In this case is the regulation of the center. In addition, the party points out that the regulation does not regulate the re-nomination of the same candidate by the center, however, in this part it should be taken into account that this issue is regulated by the Law of Georgia "On Science, Technology and Their Development". Since the statute regulates this issue, the law should guide the center.

The substantive consideration of this case is ongoing in the Tbilisi City Court. It should be noted that the Ministry requests the Scientific Council to be removed from the group of plaintiffs and the case terminated because the Scientific Council is not a separate legal entity and has no right to dispute. According to the law, it is the scientific council of the center that is authorized to select the director of the center; therefore, the refusal to approve his choice is an interference in the authority of the council and is perceived by the 26 scientists who are members of the council as discrediting and damage to the reputation. Accordingly, the Council should have the opportunity to protect its rights established by law. It is also worth noting that during all this time, the Ministry creates artificial obstacles for the center, which is manifested in making changes in the regulations, delaying the approval of the staff list and delaying the formation of the budget.

## **REFUSAL OF ACCESS TO THE MUSEUM EXHIBITS OF THE SCIENTIST**

GYLA filed a constitutional lawsuit on behalf of Ekaterine Kiknadze to the Constitutional Court.<sup>18</sup> The contested norm determines the procedure for the admission of researchers to the National Museum of Georgia for the purposes of research activities. In particular, it is possible to admit persons interested in the museum funds of the National Museum for the purposes of research activities by the decision of the Directorate of the Museum, of which the Ministry must be notified.

The contested norm gives the Directorate of the National Museum the authority to decide on the admission of researchers to the museum; however, it does not define the criteria according to which the said decision should be made. Similar guiding criteria are not defined by other legal acts either. According to GYLA, the authority of the directorate in such a case is unlimited, which gives rise to the possibility of its misuse against researchers.

Based on the above, GYLA requests that the appealed norm be recognized as unconstitutional in relation to Article 18, Clause 2 of the Constitution of Georgia, which protects the right to access to public information.

The same issue is echoed by the administrative dispute initiated by the plaintiff on August 18, 2022 against the National Museum of Georgia. The dispute concerns admission to four funds of the National Museum of Georgia in order for the claimant, after his dismissal, to fully continue his research with his own resources. However, he received a refusal from the National Museum of Georgia for access to the mentioned funds, which manifested in the violation of the deadline set for the release of information and complete inaction. According to the legislation, this is considered a refusal to provide public information.

The above-mentioned funds are public information protected by a state institution. That is why Ekaterine Kiknadze disputes the obligation of admission to specific funds of the National Museum of Georgia, as a complete transfer of the requested public information to her.

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<sup>18</sup> <https://constcourt.ge/ka/judicial-acts?legal=14006>

## **CONCLUSION**

Based on the cases discussed in the report, it is clear, that the removal of unwanted employees from the institution under the Ministry of Culture is done in complete disregard of the labor legislation and gross interference in their rights. Moreover, the policy of persecution against certain scientists continues even after their release, denying them the opportunity to carry out independent scientific activities. It is worth noting the role of the court in terms of restoring the rights of illegally released persons. In certain cases, decisions have been made in favor of the employees. However, in some cases, court decisions/judgments are unsubstantiated and deserve criticism.



