

Snail-paced justice *in* GEORGIA & the need for procedural reform

It has long been said that justice delayed is justice denied. An inefficient court system not only ignores the violated rights of plaintiffs but can also aggravate the harm done to them, costing exorbitant amounts of money and time.

In Georgia, inefficiencies in the court system have remained a significant challenge for years. It is not unusual for preliminary hearings to take months (and sometimes years) to be scheduled. Even on the rare occasions when hearings are scheduled promptly, other inefficient procedures make it nearly impossible to obtain a final ruling within statutory deadlines.

These unreasonable delays are particularly problematic for businesses. Most companies seek a speedy resolution to their disputes, and due to the importance of the subject matter and/or the injunctive measures taken by the court, these delays can bring businesses' activities to a standstill until the pending cases are resolved. For local companies as well as foreign investors, the risks of ending up in a quagmire of litigation are a deterrent to doing business. Companies and indi-

viduals therefore tend to be risk-averse when approaching deals, resulting in lost opportunities for businesses and less value added to the economy.

The primary reasons for these inefficiencies are threefold: a shortage of judges and staff in the court, underdeveloped alternative dispute resolution services, and inherently inefficient procedures under the Code of Civil Procedure of Georgia. This article will discuss a few of those procedural inefficiencies.

One notable example of an inefficiently designed procedure within the Georgian judicial system is the absence of summary judgment. Under the current procedure, when a lawsuit is filed after the expiration of the limitation period, a judge is still required to hear the case. The defendant is not able to file a pre-trial motion to dismiss the time-barred lawsuit or request summary judgment at a preliminary stage. Instead, the issue of the limitation period can only be addressed in the final judgment. Because there is no guarantee that the judge will deny the claims due to the expiration of the limitation period, both parties must collect evidence on the disputed issues. Often, the parties obtain

expert reports and testimonies, bring witnesses, and file motions for document production. Only after the judge has heard both parties' arguments can he or she issue a ruling, which in most cases, is to deny the claims on the basis that the limitation period has expired. This results in time and money wasted on evidence collection and related proceedings, harming both sides and adding additional work for an already overburdened court system.

In addition to this, every civil case must go to trial even when it is evident that there is no genuine dispute as to any material fact and the alleged facts do not legally justify the claims. In other words, this means that even if the court were to establish all alleged facts in favor of the claimant, the claim would still fail as a matter of law. Regardless of this, the current procedure requires the judge to hear the case on merits.

This waste of time and resources could be eliminated through the introduction of a procedure under which judges could address the preliminary issues (such as the limitation period) at an initial stage. This would significantly reduce the time commitment for judges in all three instances of the court.

Another procedural inefficiency that is currently burdening the Georgian court system is the lengthy appeals process. The right to appeal is available for virtually any kind of case and can be taken all the way to the Supreme Court. Despite the fact that the number of judges in the Supreme Court doubled from 16 to 28 in 2018, the court sometimes takes more than a year to deliver its decision on the admissibility of a case.

The reason for these delays lie in the fact that the Supreme Court has failed to adopt simple rules that would fill in the existing gaps in the law and make deciding admissibility more efficient, fair, and predictable. The decisions that declare cases inadmissible are often tens of pages long and often address the merits of the case. This defeats the purpose of the admissibility stage, which is designed to relieve the backlog of cases in the Supreme Court. In order to at least partially solve this problem, the relevant qualifications for admissibility should be revisited in the code of Civil Procedure. Also, the court should not be reluctant to adopt standards and factors of admissibility that will be common, clear, and predictable for relevant parties.

In recent years, parties have adopted strategies that exploit these inefficiencies within the system. Knowing that cases often require years of work and heavy resources, some parties have begun intentionally overburdening their opponents with frivolous claims that de facto force them to negotiate a settlement. There are no effective measures against such parties prescribed in the Code of Civil Procedure. Neither the parties nor their lawyers are punished for this abuse of process. However, this practice could be eliminated if

the concept of summary judgment is adopted as described above. In addition, it is necessary for some clear, fair, and certain rules to be adopted to prevent future abuses of process.

These procedural inefficiencies are just some of the issues within the Georgian judicial system that are causing excessive delays. While additional large-scale problems require systemic changes, these proposed procedural changes could act as a small but important catalyst to accelerate snail-paced justice in Georgia.



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