

**Lia Ablotia\***

## **Specific Aspects of Establishing Specialized Courts**

*Specialized courts represent the highest form of judicial specialization. The establishment of such courts is the subject of considerable debate, with a variety of perspectives and approaches reflected in the legal literature. Nonetheless, the majority of scholars, along with the European Court of Human Rights, advocate for the creation of specialized courts. This endorsement stems from the fact that such mechanisms for the protection of human rights contribute to a higher standard of justice and enhance the overall efficiency of the judicial system. The core focus of this article is the analysis of the standards and particularities associated with the establishment of specialized courts. Each state determines the need to establish such courts based on its individual requirements and in accordance with specific criteria. In particular, the branch of law in which the court is to specialize must be complex, specific, and/or sensitive in nature. Furthermore, there must be significant national challenges in the relevant legal field, along with a high volume of cases brought before the courts. The author examines various international models, including those of Germany, the United States, and France. Based on the best international practices, the article proposes a potential model for the establishment of specialized courts in Georgia and provides an analysis of the necessary legislative, staffing, systemic, and other reforms required for its implementation. The article also explores, in light of Georgia's unique national context, the potential types of specialized courts that may be established.*

**Keywords:** *specialized courts, specialization, specialized judges, judicial system efficiency.*

### **1. Introduction**

In many countries, specialized courts have been established as effective mechanisms for safeguarding human rights and enhancing the efficiency of the judiciary. These courts engage in sectoral adjudication, thereby rendering the protection of specific rights more tangible and accessible to the relevant subjects. States make decisions regarding the establishment of particular types of specialization or specialized courts based on their individual legal and societal needs. Within the Georgian legal context, this critically important aspect of judicial governance remains largely underexplored, with only a few minor exceptions. The relevance of the topic is underscored, on the one hand, by the scarcity of available information and the absence of pertinent academic literature, and on the other hand, by the novelty of the concept of specialized courts in Georgia. Their potential establishment may prove to be a crucial step toward improving the administration of justice.

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This article examines the theoretical foundations, advantages, and criteria associated with the establishment of specialized courts. It also presents relevant examples from international practice. Accordingly, the aim of this paper is to assess the prospects for institutionalizing specialized courts in Georgia, based on a comprehensive analysis of best practices from foreign jurisdictions, and to evaluate the necessary reforms and measures required for their effective implementation.

## **2. Peculiarities of Specialized Courts**

### **2.1. The Nature of Specialized Courts**

Generally, specialization refers to a specific subject area that is coupled with expert-level knowledge in that domain<sup>1</sup>. Judicial specialization implies that judges possess advanced knowledge and practical experience in a particular branch of law.<sup>2</sup> More specifically, certain categories of cases demand a distinctive and specialized approach – often necessitating their separation from general case categories and adjudication in isolation. Specialization is a gradual process and may manifest in several forms. The lowest level of specialization is the appointment of individually specialized judges within the general court system; a more advanced stage involves the establishment of specialized chambers within the general courts. The highest level of specialization is represented by the creation of an independent system of specialized courts.<sup>3</sup> Specialized courts are typically established with limited but exclusive jurisdiction over a specific area or a cluster of closely related legal fields.<sup>4</sup> They are characterized by proceedings conducted by judges who are highly qualified in the relevant domain, with procedural rules and courtroom practices adapted to the subject matter's complexity and specificity. As a rule, such courts or tribunals are created to handle complex, sensitive, or otherwise distinct legal matters requiring not only specialized legal knowledge but sometimes expertise in other disciplines, along with practical experience or a tailored judicial approach.

The rationale for establishing specialized courts varies from state to state, depending on national legal needs. Generally, such courts are created in response to specific challenges faced by a country. The decision to establish a specialized court is driven by individual state requirements, often identified through empirical studies or through analysis of problems and deficiencies within the existing judicial system. Consequently, a specialized court may be established:

- (a) to improve the quality of justice in a particularly problematic or complex legal area;
- (b) to alleviate the workload of general courts and promote decentralization – allowing general jurisdiction judges to focus on other matters;
- (c) to improve the overall functionality and credibility of the judiciary, thereby enhancing public trust in the justice system.<sup>5</sup>

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<sup>1</sup> *Legomsky S.H.*, Specialized Justice, Courts, Administrative Tribunals, and a Cross-National Theory of Specialization, Oxford Academic Books, 1990, 3.

<sup>2</sup> *Baum. L.*, A First Look at Judicial Specialization, The University of Chicago Press, 2011, 3.

<sup>3</sup> *Gramckow H., Walsh B.*, Developing Specialized Court Services: International Experiences and Lessons Learned, Justice & Development Working Paper Series, The World Bank, 2013, 16.

<sup>4</sup> *Zimmer M.B.*, Overview of Specialized Courts, International Journal for Court Administration, 2009, 1.

<sup>5</sup> *Ibid.*

The more specialized a court is, the greater the likelihood that it will issue well-reasoned, legally sound judgments in its field of expertise – thereby fostering public confidence in the judiciary.

Nevertheless, even when such challenges exist, a state may fail to recognize the need for specialization or for the establishment of specialized courts. In several instances, the European Court of Human Rights (ECtHR) has issued judgments that influenced or even necessitated the creation of specialized courts within domestic legal systems. A seminal case in this context is *Sramek v. Austria* (1984), which laid the groundwork for the development of independent administrative courts in Austria.<sup>6</sup> The case concerned the presence, on a regional administrative commission, of a civil servant who simultaneously represented one of the parties to the proceedings. The ECtHR found this to be a violation of Article 6 of the European Convention on Human Rights.<sup>7</sup> As a result, Austria was compelled to reform its administrative procedures, eventually leading to the establishment of independent administrative courts.

## 2.2. Types of Specialized Courts

Specialized courts can vary significantly depending on the reasons for their establishment. This diversity may be reflected in their duration of operation or the subject-matter of their jurisdiction.

From the perspective of **duration**, specialized courts may be established as either temporary tribunals or permanent institutions. If a specialized court is created to address short-term challenges or issues that are expected to be resolved within a limited timeframe, a state may choose to establish a temporary tribunal. Such a tribunal is designed to fulfill a specific function, address the relevant legal problems, and cease to operate once its purpose has been achieved. Conversely, where the underlying legal issues are enduring and systemic, the establishment of a permanent specialized court is required. Naturally, if a court is established on a temporary basis, the appointment of judges and the criteria applied to their selection may be less stringent, since their tenure is not permanent and they are not entitled to the full range of institutional guarantees provided to permanently appointed judges.

An illustrative example is the creation of a specialized appellate body in the United States following the enactment of the Emergency Price Controls Act in 1942. This so-called “Emergency Court of Appeals” was established to adjudicate legal disputes concerning government-imposed economic stabilization regulations during World War II.<sup>8</sup> Another example of a temporary specialized court in the U.S. is the Special Court of Appeals created in 1971, pursuant to the Economic Stabilization Act of 1970. Although this court still exists in Washington, D.C., it operates with limited jurisdiction and its judges are appointed on a rotating basis from among sitting state court judges.<sup>9</sup>

In addition to classification by duration, specialized courts may also be distinguished based on their **subject-matter jurisdiction**. Over the past two to three decades, many such courts have been established in various countries, tailored to the specific legal and social needs of each jurisdiction. Among the most common types of specialized courts globally are the following:

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<sup>6</sup> *SRAMEK v. AUSTRIA* [1984] ECHR, [26.02.2025].

<sup>7</sup> *Ibid*, para. 42.

<sup>8</sup> *Zimmer M.B.*, Overview of Specialized Courts, *International Journal for Court Administration*, 2009, 1.

<sup>9</sup> *Ibid*.

- (a) **Commercial, Financial, Tax, or Business Courts:** These courts deal with economic and financial matters, which are highly specialized areas of law. Adjudication in such cases often requires that judges possess not only legal expertise but also substantial knowledge in commercial or financial fields. Given the urgency and complexity of such disputes, the procedures of these courts are typically adapted for expedited resolution.
- (b) **Social and Family Law Courts:** These include family courts, labor courts, or social security tribunals. The issues addressed in such courts often pertain to the rights and welfare of individuals within familial or employment relationships and require sensitivity as well as a nuanced understanding of human dynamics.
- (c) **Criminal Courts with Specialized Jurisdiction:** Notably, courts dealing with juvenile justice or mental health issues. Since these courts serve vulnerable populations, judges must combine legal qualifications with psychological competence and possess specialized skills in handling such cases. Judicial procedures must be fully adapted to the specific needs and best interests of minors or other vulnerable groups.
- (d) **Administrative or Related Courts:** These include, for example, courts specializing in construction law, environmental protection, or public regulation. Such courts address matters that are technical in nature and often intersect with administrative governance.

This subject-matter-based classification highlights the adaptability of specialized courts to national priorities and the necessity of tailoring judicial mechanisms to the substantive needs of society.

One of the most widespread types of specialized courts is the **labor court**. Labor courts adjudicate disputes arising from employment relationships, primarily between employees and employers. The resolution of such disputes typically occurs within a short, reasonable timeframe, which is of crucial importance in labor relations. In some cases, labor disputes are resolved at a single instance without the possibility of appeal; however, in most countries, appeal mechanisms are available. There are also models in which the first instance of a labor dispute is handled by a general court, and the appeal is heard by a labor court whose decision is final. Alternatively, labor courts may have their own three-instance structure.

A prominent example of a well-developed system of labor courts is found in Germany, which has a three-tier structure:

- (a) the Labor Court (Arbeitsgericht) at the Länder level;
- (b) the Regional Labor Court (Landesarbeitsgericht) as the appellate instance;
- (c) the Federal Labor Court (Bundesarbeitsgericht) as the final instance.<sup>10</sup>

Labor courts are also widely established in countries such as Belgium<sup>11</sup>, Finland<sup>12</sup>, Ireland<sup>13</sup>, Israel<sup>14</sup>, Norway<sup>15</sup>, Sweden<sup>16</sup>, Switzerland<sup>17</sup>, and others.

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<sup>10</sup> National Specialized Courts: Germany, European E-Justice, <[https://e-justice.europa.eu/19/EN/national\\_specialised\\_courts?GERMANY&member=1](https://e-justice.europa.eu/19/EN/national_specialised_courts?GERMANY&member=1)> [26.02.2025].

<sup>11</sup> *Rauws R.*, *The Labour Court System in Belgium*, *Labour Courts in Europe*, International Institute for Labour Studies, Geneva, 1986, 11.

Another widespread category comprises courts dealing with financial matters, including **commercial/business courts, tax courts, and fiscal tribunals**. For example, Germany has a system of fiscal courts, which includes first-instance fiscal courts and a Federal Fiscal Court (Bundesfinanzhof) as the court of last resort. These courts exercise jurisdiction over disputes involving taxation, customs, and other financial issues.<sup>18</sup> The United States is also known for its specialized Tax Courts, which play a significant role in resolving federal tax disputes. In Austria, the Vienna Commercial Court has exclusive jurisdiction over disputes concerning intellectual property, including copyright and patent law.<sup>19</sup> Another historic example is found in England, where the Commercial Court of the Queen's Bench Division (now the King's Bench Division) in London handles both domestic and international commercial, trade, banking, and arbitration-related disputes. It is considered one of the oldest and most prestigious commercial courts in the world.<sup>20</sup>

**Juvenile courts**, meanwhile, fall within the category of so-called “problem-solving courts.” Due to the sensitive nature of juvenile justice, some countries have established specialized juvenile courts to hear cases involving minors who have committed criminal offenses. These courts typically employ a more lenient and rehabilitative approach, prioritizing resocialization and the best interests of the child rather than punitive measures. The United States has one of the most developed systems of juvenile justice courts.

The European Court of Human Rights (ECtHR) has repeatedly emphasized – both directly and indirectly – the importance of establishing specialized courts for juvenile justice. In its 1999 judgment in *T. and V. v. the United Kingdom*<sup>21</sup>, the Court stressed that it is essential for a child accused of a crime to be tried in a manner that takes into account their age, maturity, intellectual and emotional capacity, and level of development. Furthermore, the proceedings must be comprehensible to the child, enabling them to understand and actively participate in the trial.<sup>22</sup> In *S.C. v. the United Kingdom*<sup>23</sup> (2004), the ECtHR held that the right to effective participation is best ensured when a

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<sup>12</sup> *Pelkonen J., Tiitinen K.P.*, The Labour Court System in Finland, Labour Courts in Europe, International Institute for Labour Studies, Geneva, 1986, 14.

<sup>13</sup> *Cosgrave M.P.*, The Labour Court System in Ireland, Labour Courts in Europe, International Institute for Labour Studies, Geneva, 1986, 30.

<sup>14</sup> *Bar-Niv Z.*, The Labour Court System in Israel, Labour Courts in Europe, International Institute for Labour Studies, Geneva, 1986, 41.

<sup>15</sup> *Enju S.*, The Labour Court System in Norway, Labour Courts in Europe, International Institute for Labour Studies, Geneva, 1986, 44.

<sup>16</sup> *Bouvin A.*, The Labour Court System in Sweden, Labour Courts in Europe, International Institute for Labour Studies, Geneva, 1986, 52.

<sup>17</sup> *Berenstein A.*, The Labour Court System in Switzerland, Labour Courts in Europe, International Institute for Labour Studies, Geneva, 1986, 57.

<sup>18</sup> *Zimmer M.B.*, Overview of Specialized Courts, International Journal for Court Administration, 2009, 14.

<sup>19</sup> *Ibid.*

<sup>20</sup> National Specialized Courts: Germany, European E-Justice, <[https://e-justice.europa.eu/19/EN/national\\_specialised\\_courts?GERMANY&member=1](https://e-justice.europa.eu/19/EN/national_specialised_courts?GERMANY&member=1)> [26.02.2025].

<sup>21</sup> *T. and V. against United Kingdom*, [1999] ECtHR, [26.02.2025].

<sup>22</sup> *Ibid.*, para. 84.

<sup>23</sup> *S.C. against the United Kingdom*, [2004] ECtHR, [26.02.2025].

juvenile defendant is tried in a specialized court, with procedural guarantees fully adapted to their intellectual maturity and developmental needs.<sup>24</sup>

**Drug Courts** also fall under the category of problem-solving courts within the field of criminal justice. The main objective of these specialized tribunals is to address the root causes of criminal behavior when it stems from drug addiction. Instead of focusing solely on punishment, drug courts aim to support individuals struggling with substance abuse through rehabilitation, resocialization, and treatment programs. The ultimate goal is to reduce recidivism and facilitate the reintegration of drug-dependent offenders into society. Drug courts are widely established in the United States, where they exist in both adult and juvenile formats<sup>25</sup>, and are also present in countries such as Ireland.<sup>26</sup>

**Land and Environmental Courts** have become increasingly prevalent in recent years due to the growing complexity and importance of environmental protection and land-use governance. For example, Sweden has established Land and Environmental Courts, which adjudicate a wide range of issues, including water usage permits, operations involving ecological risk, public health matters, environmental protection, hazardous waste management, building permits, land-use rights, and expropriation. These courts provide expertise in resolving technically complex disputes in a manner aligned with environmental sustainability.<sup>27</sup> Similar models can also be found in the United States and other jurisdictions that prioritize environmental law.

One of the most widespread and foundational types of specialized courts is the **Administrative Court**. These courts handle appeals against decisions made by administrative authorities and local self-governing bodies. Among the most notable examples is France, which maintains a comprehensive system of administrative justice. The French administrative court system includes a variety of specialized courts, such as financial courts, social security courts, and disciplinary tribunals for public professionals. These courts are distinguished by their focus on public law and their structural independence from the ordinary judicial system.<sup>28</sup>

In summary, the diversification of specialized courts reflects a broader trend toward functional specialization and procedural adaptation in contemporary judicial systems. Whether dealing with addiction, environmental regulation, or the legality of administrative acts, these courts are designed to ensure expertise-driven, efficient, and context-sensitive adjudication processes tailored to the specific nature of the disputes they handle.

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<sup>24</sup> Ibid.

<sup>25</sup> Butts J., Roman J., Lynn-Whaley J., *Varieties of Juvenile Court: Nonspecialized Courts, Teen Courts, Drug Courts, and Mental Health Courts*, *The Oxford Handbook of Juvenile Crime and Juvenile Justice*, 2012, chapter 25, 615.

<sup>26</sup> National Specialized Courts: Ireland, European E-Justice, <[https://e-justice.europa.eu/19/EN/national\\_specialised\\_courts?IRELAND&member=1](https://e-justice.europa.eu/19/EN/national_specialised_courts?IRELAND&member=1)> [26.02.2025].

<sup>27</sup> National Specialized Courts: Sweden, European E-Justice, <[https://e-justice.europa.eu/19/EN/national\\_specialised\\_courts?SWEDEN&member=1](https://e-justice.europa.eu/19/EN/national_specialised_courts?SWEDEN&member=1)> [26.02.2025].

<sup>28</sup> National Specialized Courts: France, European E-Justice, <[https://e-justice.europa.eu/19/EN/national\\_specialised\\_courts?FRANCE&member=1](https://e-justice.europa.eu/19/EN/national_specialised_courts?FRANCE&member=1)> [26.02.2025].

### **3. Specialized Courts: Advantages and Establishment Criteria**

#### **3.1. The Benefits of Establishing Specialized Courts**

The establishment of specialized courts is a fundamental component of broader judicial reform. It entails significant financial investments, administrative restructuring, and the recruitment of highly qualified personnel. Accordingly, before undertaking the creation of such courts, the state must carefully weigh the advantages and disadvantages and make an informed, evidence-based decision.

Legal scholarship typically identifies three principal benefits of specialized courts:

1. Increased Judicial Efficiency<sup>29</sup> – Specialized judges, who possess in-depth knowledge and expertise in a narrowly defined field of law, are better equipped to render timely, legally sound, and well-reasoned decisions. For example, in commercial disputes, the capacity of a judge to facilitate settlements is crucial, and specialized judges are more likely to have the requisite negotiation and subject-matter skills. Moreover, procedural frameworks in specialized courts are often tailored to the specific nature of the disputes they adjudicate, which contributes to expedited proceedings and helps prevent case backlog. By redirecting complex and technical cases to specialized courts, the caseload of general courts is reduced, enhancing the overall efficiency of the judiciary.

2. Enhanced Quality of Justice within Exclusive Jurisdiction<sup>30</sup> – Because specialized courts adjudicate disputes in complex, sensitive, or technically demanding areas of law, their judges must possess advanced, domain-specific qualifications. The higher the level of expertise and practical experience, the greater the quality, accuracy, and consistency of judicial decisions. This is particularly vital in areas such as commercial, tax, administrative, or juvenile justice.

3. Development of Uniform and Predictable Jurisprudence – When certain categories of cases fall under the exclusive jurisdiction of specialized courts, it helps to standardize judicial interpretation and foster a consistent body of case law.<sup>31</sup> This reduces legal uncertainty, discourages the filing of frivolous or speculative claims, and can lead to a decline in the number of appeals. A stable and coherent jurisprudence contributes to the overall credibility and trust in the legal system, while also providing clearer expectations for litigants and legal practitioners.

#### **3.2. Criteria for the Establishment of Specialized Courts**

In the 1980s, the United States Congress established the Federal Courts Study Committee, one of whose primary tasks was to assess the performance and effectiveness of specialized courts. In its 1990 report, the committee formulated a set of criteria deemed essential for the creation of a specialized court:<sup>32</sup>

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<sup>29</sup> Gramckow H., Walsh B., *Developing Specialized Court Services: International Experiences and Lessons Learned*, Justice & Development Working Paper Series, The World Bank, 2013, 6.

<sup>30</sup> Ibid.

<sup>31</sup> Gramckow H., Walsh B., *Developing Specialized Court Services: International Experiences and Lessons Learned*, Justice & Development Working Paper Series, The World Bank, 2013, 6.

<sup>32</sup> Ibid, 14.

1. Narrow Legal Domain: The court must operate within a distinct and narrowly defined area of law, which can be clearly separated from the jurisdiction of general courts.
2. High Volume of Cases: There must be a substantial number of cases within the relevant legal field, such that diverting them to a specialized court would relieve the caseload of the general judiciary.
3. Requirement for Technical Expertise: The legal domain in question must necessitate specialized knowledge or competencies – such as scientific, technical, psychological, or economic expertise – beyond the general legal training of judges.
4. Need for Uniform Administration: There must be a demonstrable need for uniformity in adjudication and legal administration within the area concerned.

In addition to these criteria, the committee emphasized that specialized courts or tribunals should be established only in response to specific national needs. The newly formed body must be capable of managing the nature, complexity, volume, and specificity of the incoming cases effectively.

Further insight into the issue of specialization comes from the work of Edward Cazalet, who studied the English legal system and proposed additional criteria for determining the necessity of judicial specialization.<sup>33</sup> Although initially aimed at broader specialization trends, his framework is equally applicable to the creation of specialized courts. These criteria include:<sup>34</sup>

- a) Time Frame of the Specialization: Determining whether the specialized court is intended as a temporary measure or a long-term institutional solution.
- b) Pilot Programs and Preliminary Studies: Conducting preliminary research or pilot initiatives to empirically assess whether specialization is necessary and viable.
- c) Caseload Management: Evaluating whether specialization will alleviate high caseloads in overburdened areas of the judicial system.
- d) Quality of Adjudication in Complex Fields: Assessing the adequacy and quality of decisions rendered in complex or highly specific legal fields by generalist judges, in order to determine whether a more specialized approach is warranted.
- e) Public Confidence and Satisfaction: Measuring public trust in the judiciary and user satisfaction with judicial outcomes, particularly in fields where specialized expertise may improve perceptions of fairness and competence.

#### **4. International Standards of Specialized Courts**

The necessity of specialized courts is best understood through the analysis of individual national practices. When developing a potential model for the institutionalization of specialized courts in Georgia, it is essential to take into account the best foreign experiences.

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<sup>33</sup> Cazalet E., *Specialised Courts: Are They a ‘Quick Fix’ or a Long-Term Improvement in the Quality of Justice?*, Washington, DC, World Bank, 2001, [26.02.2025].

<sup>34</sup> Gramckow H., Walsh B., *Developing Specialized Court Services: International Experiences and Lessons Learned*, justice & development Working Paper Series, The World Bank, 2013, 15.



#### **4.1. The Example of Germany**

Germany is one of the leading countries in Europe with regard to specialized courts. There are five main types of specialized courts in the German judicial system: administrative, social, fiscal, labor, and constitutional courts.<sup>35</sup> The administrative courts encompass general administrative, social, and fiscal jurisdictions. Both general administrative and social courts operate within a three-instance structure, while fiscal courts are organized in two instances. Labor courts, for their part, are entirely separate from the general judiciary. Germany's fiscal (tax) courts represent one of the most advanced models globally. Currently, there are 18 fiscal courts functioning in the country, handling approximately 37,000 to 38,000 tax-related cases annually.<sup>36</sup> Judges may be appointed for life starting at the age of 35.<sup>37</sup> Germany's fiscal courts are characterized by a particularly interesting organizational structure. The courts are divided into eleven senates, each dealing with specific categories of tax disputes, thereby achieving a further degree of specialization within the field.<sup>38</sup>

#### **4.2. The Example of the United States of America**

The United States has a wide array of specialized courts. At the federal level, it has established one of the most effective tax court systems in the world. The U.S. federal government has created specialized courts in domains considered to be of strategic national importance, particularly in the areas of economy/taxation and national security.<sup>39</sup> As a result, specialized courts have been established for bankruptcy, the armed forces, and international trade. In addition, at the state level, various specialized courts operate, including:

- a) Family Courts, whose jurisdiction varies from state to state, typically adjudicating matters involving domestic violence, minors, adoption, divorce, alimony, child custody, and other family-related issues;
- b) Environmental Courts;
- c) Probation Courts;
- d) Workers' Compensation Courts;
- e) Water Courts;
- f) Land Courts;
- g) Administrative Courts;

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<sup>35</sup> National Specialized Courts: Germany, European E-Justice, <[https://e-justice.europa.eu/19/EN/national\\_specialised\\_courts?GERMANY&member=1](https://e-justice.europa.eu/19/EN/national_specialised_courts?GERMANY&member=1)> [26.02.2025].

<sup>36</sup> Cordewener A., Hendricks M., *The Disputes and Litigation Review: Germany*, Chapter 11, Seventh Edition, London, 2019, 102.

<sup>37</sup> Fiscal Court Code of Germany, article 14, 01.10.2022, <[https://www.gesetze-im-internet.de/fgo/\\_14.html](https://www.gesetze-im-internet.de/fgo/_14.html)> [26.02.2025].

<sup>38</sup> Effective Institutions for Resolving Tax Disputes: Tax Courts and Alternative Mechanisms, USAID & Eurasia Partnership Foundation, Research Report, 2012, p. 29 (in Georgian).

<sup>39</sup> Howard M. R., Comparing the Decision Making of Specialized Courts and General Courts: An Exploration of Tax Decisions, *The JUSTICE SYSTEM JOURNAL*, VOL. 26, NUMBER 2 (2005), 136.

- h) Small Claims Courts, which resolve property disputes with a value not exceeding a specified threshold;
- i) Juvenile Justice Courts;
- j) Drug Courts and Mental Health (Therapeutic or Problem-Solving) Courts;<sup>40</sup>
- k) Business or Commercial Courts, which handle corporate, commercial, and other business-related disputes.<sup>41</sup>

#### **4.3. The Example of France**

France is particularly noteworthy for having one of the most developed, successful, and decentralized models of administrative courts.<sup>42</sup> Within the system of administrative justice, France has established specialized courts dealing with financial and audit-related matters, disciplinary issues, and asylum claims.<sup>43</sup> Due to France's uniquely complex and intricate system of decentralization, administrative courts play a key role in balancing this structure.<sup>44</sup> In addition, France has established tribunals within the jurisdiction of the general courts, such as juvenile courts, social security tribunals, employment tribunals, labor courts, and commercial courts.<sup>45</sup>

### **5. The Justification and Potential Model for the Establishment of Specialized Courts in Georgia**

Judicial specialization has existed in Georgia since the early 2000s; however, it has not acquired a universal or systemic character. At present, limited specialization is in place within the Tbilisi City Court and the Tbilisi Court of Appeals. The Civil Law Chamber of the Tbilisi City Court is divided into six specialized units, the Administrative Law Chamber into five, and the Criminal Law Chamber – covering investigative, pre-trial, and trial stages – is also divided into six specialized divisions.<sup>46</sup> These include, inter alia, tax, administrative offenses, juvenile justice, and other areas. In principle, judicial specialization implies that cases are adjudicated by judges possessing specific knowledge and expertise in a given legal domain. However, paradoxically, this principle does not operate effectively in Georgia. Instead, court chairpersons distribute cases among judges based on specialization

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<sup>40</sup> Butts, J.A., Roman J.K., Lynn-Whaley J., *Teen Courts, Drug Courts, and Mental Health Courts, Varieties of Juvenile Court: Nonspecialized Courts*, Oxford, 2011, Chapter 25, 627.

<sup>41</sup> Zimmer M.B., *Overview of Specialized Courts*, International Journal for Court Administration, 2009, p. 7-13.

<sup>42</sup> Schwartz B., *The Administrative Courts in France*, 1951 29-4 Canadian Bar Review 381, 1951 CanLIIDocs 59, 381.

<sup>43</sup> National Specialized Courts: France, European E-Justice, <[https://e-justice.europa.eu/19/EN/national\\_specialised\\_courts?FRANCE&member=1](https://e-justice.europa.eu/19/EN/national_specialised_courts?FRANCE&member=1)> [26.02.2025].

<sup>44</sup> Flavier H., Froger C., *Administrative Justice in France: Between Singularity and Classicism*. BRICS Law Journal, 2016, 3 (2), 82.

<sup>45</sup> National Specialized Courts: France, European E-Justice, <[https://e-justice.europa.eu/19/EN/national\\_specialised\\_courts?FRANCE&member=1](https://e-justice.europa.eu/19/EN/national_specialised_courts?FRANCE&member=1)> [26.02.2025].

<sup>46</sup> The Form of Narrow Specializations within the Common Court System, Transparency International Georgia, Research Report, Tbilisi, 2020, p. 25 (in Georgian).

categories at their own discretion, and, most importantly, these cases are often adjudicated by generalist judges without any formal or narrow specialization. Moreover, one of the purported objectives behind the introduction of specialization was to reduce the workload of the courts, yet no increase in the number of judges occurred at the time. Given these conditions, several questions arise: what is the purpose of specialization if cases assigned to specialized categories are not heard by truly specialized judges? Is the current model functional and effective?

To address these challenges, one of the most effective mechanisms may be the institutionalization of truly specialized courts. In legal scholarship, specialization – particularly in the form of specialized courts – is frequently recognized as one of the most effective instruments for protecting human rights.

Should Georgia move toward the establishment of specialized courts, it is essential that this development target legal domains where there is demonstrable and pressing need. If we take into account the criteria formulated by the U.S. Congressional Committee, several such areas emerge. One example is tax law – globally one of the most common areas of judicial specialization. It is a particularly technical and complex field with a high volume of cases;<sup>47</sup> however, in Georgia, judges lack specialization in this domain, resulting in judgments of inconsistent or lower quality.<sup>48</sup>

Another area that warrants attention is juvenile justice – a highly sensitive field requiring a distinct approach toward minors. Specialization in this case should extend beyond judges to include prosecutors and defense attorneys, and the process as a whole must be adapted to serve the best interests of the child, with a focus on their rehabilitation and reintegration. In the near future, it may also be worth considering the establishment of family/social courts or environmental courts.

Regardless of the domain in which specialized courts might be introduced, their establishment in Georgia would necessitate resolving a number of legal and institutional issues. The first step would involve legislative reform. According to Article 59(3) of the Constitution of Georgia, justice is administered by the common courts, and specialized courts may only be established within the framework of the common court system.<sup>49</sup> This implies that any attempt to create specialized courts outside the common court structure would require a constitutional amendment. Additionally, it would be necessary to adopt organic laws for each type of specialized court, setting forth their organizational structures and procedural norms tailored to the specific characteristics of each legal field.

It is preferable that specialized courts in Georgia be established from the outset with their own autonomous structure and hierarchy. Judicial systems are generally organized in two or three tiers. For instance, due to the nature of tax and commercial disputes – which demand swift resolution – a two-tier structure may be optimal; by contrast, in the context of juvenile justice, a three-tier system is typically more appropriate.

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<sup>47</sup> Data from the official website of IDFI (Institute for Development of Freedom of Information), court statistics, <[https://idfi.ge/ge/courtstat/?lang=ge&type=1&case=administrative\\_cases&j\\_case=179&year=2022&f\\_stat=1&quarter=2022\\_0](https://idfi.ge/ge/courtstat/?lang=ge&type=1&case=administrative_cases&j_case=179&year=2022&f_stat=1&quarter=2022_0)> [26.02.2025].

<sup>48</sup> Ibid.

<sup>49</sup> The Constitution of Georgia, Article 59(3), Legislative Herald of Georgia, 24 August 1995, <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [26.02.2025].

A separate institutional system would entail dedicated court buildings, specialized judges, an independent administrative staff, procedures tailored to the particular legal domain, a distinct appellate structure, and even differences in how claims are submitted – similar to the Constitutional Court model. If such a structure cannot be fully implemented at the outset, specialized courts may initially be introduced through pilot programs during a transitional phase. Under this model, they could be incorporated within the existing common court system. Moreover, during the initial stage, only the first instance might be specialized, while appeals and cassation would continue to be handled by generalist judges.

One of the most critical prerequisites for the effective functioning of specialized courts is the appointment of narrowly specialized judges, who possess high-level expertise, experience, and specific skillsets in their respective fields. Naturally, this would require an increase in the number of judges. Highly qualified specialists in relevant areas would need to be identified and appointed as judges. In parallel, it would also be possible to retrain interested generalist judges.

Significant changes would manifest as early as the claim submission and admissibility stages. It may be necessary to establish distinct procedural deadlines for lodging claims, rendering decisions, and submitting appeals or cassation complaints. For instance, in commercial and tax disputes, there must be expedited deadlines for decisions (within the bounds of reasonableness), as prolonged litigation often results in parties losing their legal interest or suffering increased material harm. Procedural rules would also need to be adapted to the nature of the legal domain. Specifically, for commercial disputes, a reduction in formalities and bureaucracy is essential, along with shorter decision timelines and greater opportunities for settlement. Furthermore, exhaustion of legal remedies should not be a strict prerequisite (or should be subject to exceptions) where such remedies are clearly futile due to the prevailing legal framework or established court practice.<sup>50</sup> In contrast, juvenile justice courts would require procedures fully adapted to the best interests of the child, including child-friendly courtrooms and sentencing practices focused on rehabilitation and reintegration rather than punishment. The European Court of Human Rights has explicitly recommended that states establish specialized juvenile courts as independent bodies that are structurally, procedurally, and substantively adapted to the needs and interests of minors.<sup>51</sup>

With respect to specialized judges, it will also be necessary to revise their appointment procedures and establish distinct qualification standards for selection. Common criteria for specialized judges include:

- “1. Expert-level knowledge in a specific field of law;
2. Technical or non-legal skills relevant to the area of specialization;
3. Awareness and understanding of key contextual factors such as public policy, social, economic, and environmental considerations;
4. Strong communication skills;
5. Possession of specific competencies required by the legal domain in question.”<sup>52</sup>

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<sup>50</sup> Loladze, B., Macharadze, Z., Firtskhalashvili, A., Constitutional Justice, Tbilisi, 2021, p.117 (328), Maunz, GG, Art. 93, Rn 71 (in Georgian).

<sup>51</sup> Rap S., The Participation of Juvenile Defendants in the Youth Court: A Comparative Study of Juvenile Justice Procedures in Europe, 2013, chapter 2, par. 5.1., 67.

<sup>52</sup> Gramckow H., Walsh B., Developing Specialized Court Services: International Experiences and Lessons Learned, Justice & Development Working Paper Series, The World Bank, 2013, 21.

The Consultative Council of European Judges (CCJE) also recommends that specialization may arise from a judge's professional background (e.g., as a practicing lawyer) or from experience acquired post-appointment. Additionally, judges should pass relevant examinations and complete specialized training.<sup>53</sup> Continuous professional development is considered essential. Similar requirements should be introduced in Georgia as well. Legislation should define the minimum years of experience in the relevant field required for appointment. Since the Georgian Constitution currently mandates at least five years of professional experience in the legal field for judges of common courts, it may be advisable to apply the same requirement initially to specialized judges.

As for the number of specialized judges, the Council of Europe recommends that each specialized court should have at least ten judges.<sup>54</sup> Nonetheless, there is no internationally accepted standard regarding the optimal number of judges in specialized courts. States are free to make such decisions based on their specific needs and contexts.

Finally, appointments of specialized judges may be either for a fixed term or indefinite. In Georgia, it would be possible – especially during a pilot phase – to appoint specialized judges for a defined period (e.g., three or five years), after which, based on evaluation, they could be confirmed for an indefinite term.

## **6. Conclusion**

Understanding the particularities associated with the establishment of specialized courts – and adapting them to the specific needs of a given country – is by no means a simple task. The aim of this article has been to offer clarity on the matter by analyzing these peculiarities alongside international standards. The discussion has highlighted the various goals and needs that may compel a state to establish specialized courts. It has also examined the key criteria by which states determine which types of specialized courts to introduce.

Although the academic literature reflects divergent approaches, this article identifies four core, relevant criteria for the creation of specialized courts: A specialized court may be warranted in areas of law that are complex, sensitive, or highly specific, requiring narrowly focused expertise, experience, and/or skills; Where the quality of justice in a given legal field is unsatisfactory – i.e., where courts are unable to effectively fulfill their adjudicative function – the lack of well-reasoned and legally sound decisions necessitates the introduction of specialized courts; A high case volume in a particular legal domain may also justify specialization. Conversely, if case volume is low, alternative forms of specialization may be more appropriate. As discussed in this article, if specialized courts are to be introduced in Georgia, a range of legislative, staffing, structural, and institutional reforms will be required. Nevertheless, based on the specific needs of the country, the author argues that Georgia should, at the very least, initially implement pilot projects, with a view toward the eventual

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<sup>53</sup> Consultative Council of European Judges (CCJE), Opinion (2012) NO 15 of the Consultative Council of European Judges on the Specialization of Judges, Paris, November 2012, C.1.II, 45.

<sup>54</sup> European Network of Councils for the Judiciary (ENCJ), “Development of Minimum Judicial Standards. Report 2010–2011” (Brussels: ENCJ, n.d.), <[http://www.encj.eu/images/stories/pdf/workinggroups/encj\\_report\\_project\\_team\\_minimum\\_standards.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_project_team_minimum_standards.pdf)> [26.02.2025].

establishment of permanent specialized courts in legal areas such as commercial/tax law, juvenile justice, environmental protection, and others. Moreover, some legal scholars suggest that administrative courts should be separated into an independent judicial branch. Ultimately, the creation of specialized courts would promote higher-quality adjudication, increase the efficiency of the judicial system, and raise the standard of human rights protection in the country.

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