Georgian Young Lawyers' Association

MONITORING CRIMINAL TRIALS IN TBILISI AND KUTAISI CITY COURTS

Monitoring Report №5
Period Covered: July - December, 2013
April, 2014
Tbilisi, Georgia

The monitoring project is made possible by the generous support of the American People through the United States Agency for International Development (USAID). The contents are the responsibility of GYLA and do not necessarily reflect the views of USAID, the United States Government or East West Management Institute, Inc. (EWMI).

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The Judicial Independence and Legal Empowerment Project (JILEP)

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GYLA thanks Georgian Court System for its cooperation in the process of court monitoring.

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THE MAIN TRENDS IDENTIFIED IN THE TRIAL MONITORING PROCESS (July-December, 2013)

Initial Appearance Hearings (preventive measures)

- Compared to the previous monitoring period (January-June 2013):
    - The percentage of the cases, in which the prosecution requested the improsonment of the defendants as a preventive measure increased from 41% to 55%.
    - The percentage of the cases, in which the imprisonment of the defendants was applied as a preventive measure increased from 30% to 42%.
    - The percentage of the cases, in which the bail was applied as a preventive measure decreased from 69% to 55%.
- Since the beginning of the monitoring (in October 2011) the second case of the court not ordering any preventive measure was identified. Unlike the previous one, this case did not involve a high-level official[1]; in this case the court decided not to apply any preventive measures against the defendant who was not a high level official. GYLA considers this to be a positive development and hopes that the courts will release more defendants without a preventative measure where there's no necessity of such measures.
- As in the previous monitoring cycles the courts almost exclusively applied just the two types of the preventive measures: imprisonment and bail. Only three exceptions were identified within the monitoring cycle: one case of the travel ban and the proper conduct, one case of personal guarantee, and one case when the court released the defendant without any preventive measure.
- Compared to previous reporting cycles, the courts adequately substantiated a higher percentage of rulings on imprisonment (87%) and on bail (84%). In the previous reporting period, these figures were 81% and 51%, respectively.

[1] Giorgi Ugulava – Tbilisi Mayor at that time.

- Starting from the previous reporting cycle, the tendency of the judges giving more consideration when imposing preventive measures, instead of automatically approving the request of the prosecution, continued
    - In the 21% of cases in which the prosecution requested imprisonment, the court ordered a bail instead.
    - In the 71% of the cases, in which the prosecution requested a bail, the court ordered less amount than requested by the prosecution.
    - In one case, in which the prosecution requested an imprisonment, the court released the defendant without any preventive measure.
    - There were two cases, in which the prosecution requested a bail; the judge ordered personal guarantee in one of the cases and a travel ban and the proper conduct agreement in the second case.
- As in the previous monitoring cycles, the courts failed to publish the information about the initial appearances in advance. However, in the Kutaisi City Court halls, the bailiffs continued to verbally announce the information regarding the first appearance hearings[2].

Pre-trial Hearings

- For the first time since the beginning of the monitoring (in October 2011), we identified the case when the judge terminated the criminal prosecution during the pre-trial hearing and did not forward the case for substantial consideration. GYLA considers this to be a positive development, and hopes that the judges will terminate prosecutions more often at the pre-trial stage, where appropriate.
- As in the previous reporting cycles, the judges seemed to be predisposed to granting the prosecution's motions regarding the submission of the evidence. As for the defense representatives,

[2] By contrast, in hearings other than first appearances, the courts failed to publish advance information about cases in 22% of hearings.

they seemed to be more active than in the previous reporting cycles. In this period defense made motions on submitting the evidence in 14 out of 39 (36%) non high profile cases. The previous monitoring cycle revealedonly 14% of such cases. However, similar to the previous monitoringcycle, defense in high profile cases were much more active and made motions regarding the submission of the evidence in 100% (9 out of 9) of the high profile cases.

Plea Agreement Hearings

- As in the previous reporting cycles, the judges remained passive during the plea bargaining agreement process and almost automatically approved the motions of the prosecution regarding the plea agreements. GYLA believes that the courts should take a more active role in the process of the plea agreements.
- The percentage of the plea agreements imposing a fine has been decreasing for the past two reporting cycles and currently stands at 49%. The average fine in concluded plea agreements dropped by 28% as well. It should be noted that the previous reporting cycle also demonstrated the significant decrease in the amount of the average fines imposed.
- As in the previous reporting cycle, the instances of applying community service in plea-agreements comprised 7%. In the previous reporting period the indicator increased from 1% to 7%.

Other Key Findings

- In almost one-fourth of the cases (100 of the 451 cases), which does not include the initial appearances, the court failed to publicize the information about the date and time of the hearings in advance.
- As in the previous reporting cycles, the defense was typically more passive compared to the prosecution (except for the high-profile cases, in which the defense was very active).
- Of the finalized 81 cases (68 plea bargain hearings and 13 hearings on merit) the defendant was acquitted only in three cases

(two of these three cases were high-profile[3]). The previous reporting cycle revealed only one acquittal. This was the first verdict in favor of the defendant since the beginning of the monitoring by GYLA in October 2011.

- As in the prior monitoring cycle, judges did a much better job of informing the defendants of their rights in the context of the plea agreements than other rights.
- No changes were observed regarding the search and seizures. Of 38 search and seizure motions, the court issued advance permission to conduct the search in only two cases. In the remaining 36 cases, the court has legalized the searches after they were already conducted. It strengthens the doubt that the law enforcement authorities and the court do not perform their obligations – the search and seizure should not be conducted and/or legalized afterwards if they are not justified by the urgent necessity.
- Although the citizen participation is ensured at trials, significant gaps remain in this regard. In addition to the information not being published regarding any of the first appearance hearings, the same problem was also observed at the jury selection sessions, where the citizens were not allowed to attend, despite the fact that the judges did not officially close the hearings.

The timely start of the court hearing remains to be the problematic issue. 37.5% of the sessions (excluding the initial appearance hearings) started with more than a 5 minute delay.

[3] Nikoloz Gvaramia (former Minister of Justice and Education and Science) and Kakha Getsadze, (former Gamgebeli of Zestaphoni Municipality).

INTRODUCTION

Georgian Young Lawyers' Association (GYLA) has been carrying out its court monitoring project since October 2011. GYLA initially implemented its monitoring project in the Tbilisi City Court's Criminal Chamber. On December 1, 2012, GYLA broadened the scope of the monitoring to include the Kutaisi City Court. The methods of monitoring in both Kutaisi and in Tbilisi are identical.[4]

GYLA presented its first and second trial monitoring reports to the public and the stakeholders (covering October 2011 to March 2012) in June 2012. Presentation of GYLA's third report (covering July to December 2012) was held in April 2013. The fourth monitoring report (covering January to June 2013) was presented in October 2013.

This is GYLA's fifth trial monitoring report, covering the period from July to December 2013. The current report also reflects the results of jury trial monitoring. Similar to the previous reporting periods, the purpose of monitoring criminal case proceedings was to increase their transparency, reflect the actual process in courtrooms, and to provide the public with the relevant information. This report includes the recommendations on both newly discovered problems and on the problems, maintaining from the previous reporting cycle. The main goal of the recommendations is to support the improvement of the criminal justice system.

Between July and December 2013, GYLA monitored 538 court hearings, including:

- 87 initial appearance hearings;
- 83 pre-trial hearings;
- 68 plea bargaining hearings;
- 271 main hearings;
- 12 appellate hearing;
- 6 jury selection hearings; and
- 12 jury trials.

Of these 538 hearings, 327 took place in Tbilisi City Court (TCC), 119 took place in Kutaisi City Court (KCC), 5 were held in Tbilisi Appellate

[4] Due to the smaller number of cases in Kutaisi, monitoring is conducted by a single observer. In Tbilisi City Court monitoring was conducted by three observers, as in the previous reporting periods.

Court, and 7 in Kutaisi Appellate Court. The only significant difference between the procedures in the TCC and in the KCC concerned the advance publication of initial appearance hearings.[5] GYLA did not discuss the jury and the appeal trials separately, since no distinctive trends were identified at these hearings - jury and other substantial hearings seemed to be handled in the same manner.

In its previous monitoring report, GYLA noted that certain improvements took place during after the 2012 parliamentary elections, which extended beyond cases involving high-profile defendants. It should be noted that this positive trend was maintained in this reporting cycle as well. Specifically, judges appear to give more consideration when imposing preventive measures as to all the defendants, instead of automatically imposing the preventative measure requested by the prosecution.

METHODOLOGY

All of the information for this report was obtained by monitors through their direct monitoring of the hearings. GYLA's monitors did not communicate with the parties, and did not review the case materials or decisions. GYLA's experienced lawyers and analysts performed the analysis of the obtained information.

Similar to the previous reporting cycles, GYLA's monitors used questionnaires created specifically for the monitoring project. The information gathered by the monitors and the compliance of the court activities with the international standards, the Constitution of Georgia, the applicable procedures and laws were evaluated.

The questionnaires included both close-ended questions requiring a "yes/no" answer and open-ended questions that allowed monitors to explain their observations. Further, similar to the previous reporting cycle, GYLA's monitors made transcripts of trial discussions and particularly important motions in certain cases, giving more clarity and context to their observations. Through this process, monitors were able to collect objective, measurable data, while at the same time to record other important facts and developments. The annexes to this report may not fully

[5] In KCC, the court bailiff verbally announced the name of a defendant, the charge against him/her, and the judge; in TCC, no information concerning first appearance hearings was provided in advance.

reflect this information; however, GYLA's conclusions are based on its analysis of all of the information gathered by the monitors..

In the view of the complexity of the criminal proceedings, GYLA's monitors typically attended individual court hearings rather than monitoring one case throughout the entire cycle. However, there were some exceptions, so called "high-profile" cases, as well as cases selected by GYLA's monitors and analysts according to criteria elaborated beforehand, were monitored throughout the entire cycle, to the extent possible. These cases were selected because of the allegations of the gross violations of rights, high public interest, or other distinguishing characteristics. GYLA monitored such cases in the Appellate Court as well.

STRUCTURE OF THE REPORT

There are five key sections of the report:

The first section presents key observations related to the two stages of the criminal proceedings (the initial appearance of the defendants before the court and the pre-trial hearings) and the plea bargaining agreement hearings.

The report then provides an evaluation of the basic rights that defendants have during the criminal proceedings. These rights include equality of arms and adversarial principle, the right to defense, the prohibition of the ill-treatment, the right to substantiated judgment, and the right to an interpreter.

The third part of the report relates to the conduct of the parties at the trial. It covers only the conduct that directly violates procedural legislation or ethical norms.

The fourth part of the report covers technical gaps associated with court proceedings.

Lastly, the report's Conclusion highlights the key issues identified during the reporting cycle and presents GYLA's recommendations based on observed problems during the monitoring period.

GYLA remains hopeful that the information obtained through the monitoring process will help create a clearer picture of the current situation in Georgia's courts, and serve as a useful source of information for the ongoing debates on judicial reform.

A. OBSERVATIONS REGARDING SPECIFIC STAGES OF CRIMINAL PROCEEDINGS

I. Initial Appearances

According to the Article 198 of the Criminal Procedure Code of Georgia (CPC), during a defendant's first appearance the court considers what measure should be used to ensure that the defendant will return to court for the further hearings and does not either commit a crime while awaiting resolution of the case or obstruct investigation. This "preventive measure" must be substantiated, meaning that the preventive measure imposed must correspond to the goals of the preventive measure.

Many different types of the preventive measures are available to the court. These include: imprisonment, bail, and appropriate conduct, and supervision of the conduct of a military serviceman by commanders–in-chief.

Code of Criminal Procedure (CPC) Article 198(3) provides:

> When filing a motion to apply a preventive measure, the prosecutor must justify the reason behind his/her choice of preventive measure and the inappropriateness of a less restrictive preventive measure.

Accordingly, the burden of justifying a preventive measure is carried by the prosecution; the defense does not need to submit the evidence, opposing the preventive measure.

Further, CPC Article 198(5) imposes obligations on the court before it can impose a preventive measure:

> When deciding on the application of a preventive measure and its specific type, the court shall take into consideration the defendant's character, scope of the activities, age, health condition, family and financial status, restitution made by the defendant for the damaged property, whether the defendant has violated the previously applied preventive measure and other circumstances.

The decision of the court on the preventive measures must be substantiated, as a substantiated decision at each stage of the proceedings is part of the right to a fair trial, guaranteed by the Criminal Procedure Code[6] and reinforced by a number of judgments by the European Court of Human Rights (European Court).[7]

[6] Criminal Procedure Code of Georgia, Article 194 para.2.

[7] E.g., Hiro Balani v. Spain, no. 18064/91,Para. 27 (9 December 1994).

1.1. General Trends

During this reporting cycle, GYLA monitored 87 initial appearance hearings (64 in TCC, 23 in KCC) regarding106 defendants.[8] Compared to all of the previous monitoring periods, at first sight some regress is observed in certain aspects, yet general picture has improved considerably. Nevertheless, other previous troubling practices remained unchanged.

The situation regarding substantiation of preventive measures has improved since GYLA started monitoring. During the first and the second court monitoring cycles, courts granted all of the prosecution's motions for preventive measures, which indicate apparent bias in favor of the prosecution. During the third monitoring period the situation changed slightly, particularly after the October 2012 elections, with courts sometimes rejecting the prosecution's motion for preventive measures. During the next monitoring period, the trend against automatically granting prosecutor's request maintained. Courts were relatively active in examining motions for preventive measures, and were not merely bound by the prosecution's demand. In the current reporting cycle the approach has improved even more, and judges demonstrated more efforts with a view to determine grounds for the prosecution's motions and the defense position. Accordingly, the number of substantiated judgments of preventive measures has increased significantly.

Although the positive trend of the previous reporting cycle in terms of fewer requests by prosecutors for imprisonment as a preventive measure was reversed during this period, the prosecutor's motions requesting imprisonment were more substantiated than in the past. When requesting bail as preventive measure the prosecution's motions still lacked substantiation, since they seldom submitted information about the defendant's financial condition. However, in such cases the court played its positive role and attempted to acquire information from the defendants more frequently.

The situation at first appearance hearings has improved in certain aspects in terms of the actions of the defense, (though not significantly). In cases where the prosecution requested imprisonment and bail, the defense less frequently agreed with the prosecution's position and attempted to substantiate its position. However, there were still some cases when the defense objected the prosecutions' charges formally but did not raise any valid arguments in support of the objection.

[8] More than one accused participated in some initial appearance hearings.

GYLA detected some cases when the judge helped the defendants without an advocate to defend themselves more effectively. For the first time since the beginning of the GYLA's monitoring program (in October 2011), after the judge explained to the defendants alternative preventive measures, in two ordinary cases the court considered defendant's request and applied personal guarantee in one case and the agreement on the travel ban and proper conduct in another. GYLA considers this to be a positive trend and hopes to see the alternative preventative measures, or none, imposed in appropriate cases in the future.

Despite this positive development, as in the previous reporting cycles, only two preventive measures were used almost exclusively: *imprisonment* and *bail.* There appeared to be several reasons for this. First, prosecutors never requested a preventive measure other than imprisonment or bail. Second, in cases where defendants without advocate are not clear in their requests, judges rarely inform them about the possible application of other less strict preventive measures. Although obligated to do so, judges hardly ever attempted to investigate the possibility of ordering preventative measures other than imprisonment or bail. Third, the passive position of the defense appeared to be a contributing factor. The defense rarely asked for the alternative preventative measures.

Of 106 defendants, the defense asked for a preventative measure other than bail only in 8 cases (in 4 cases it asked to leave defendant without any preventive measure, in 3 cases it asked to order personal guarantee, and in one case it motioned for a travel ban and proper conduct as the preventive measure). Of these 8 motions the court granted 3 (one defendant was left without preventive measure; in the other two cases, personal guarantee and agreement and proper conduct was applied). It is noteworthy, that in two cases, when the defense asked for application of personal guarantee, the relevant individual was did not arrive submitted to the courtroom and it prevented the court from granting the defense's motion. GYLA believes that in similar cases judge is entitled announce a break on her/his initiative if she/he considers that in that time period it is possible for a personal guarantee to appear at the hearing and the personal guarantee to be applied. At the same time GYLA cannot evaluate in which specific cases the court could have done this, as under the procedure law judge has to deal with the case on preventive measure within 24 hours. If the 24 hours period is about to be expired, it is logical that judge cannot announce a break at the hearing to give defense the possibility to provide a person for submitting the personal guarantee. In

the previous reporting period, the court granted none of the 14 defense motions on application of the alternative preventive measures.

GYLA considers that the court could have left the defendant without a preventive measure in one case, where it applied small bail. (It was the case of an extremely poor defendant which is examined in details in the bail section).

1.2. Specific Preventive Measures

1.2.1. Bail

Bail is a preventive measure which helps ensure the defendant's return and prevent the commitment of the future crimes or interference with the prosecution by requiring that the defendant deposit funds in order to be released until the judgment is delivered. The defendant or the person who posted bail in favor of the defendant shall be repaid the amount of the bail in full (with consideration of the rate at the time when the bail was posted), or the lien which was imposed shall be lifted from the pledged property, within one month after the execution of the court judgment, provided that the defendant has fulfilled his/her obligation precisely and honestly, and a preventive measure applied against him/her has not been replaced by a more restrictive preventive measure.[9]

As a type of a preventive measure, bail is subject to all of the obligations under the Criminal Procedure Code for the application of a preventive measure. As a result, the prosecutor must justify the reason behind his/her choice of preventive measure, and the court must take into consideration a variety of factors, including the defendant's character, financial status and other significant characteristics, even where the prosecutor does not provide such circumstances. The defense is not obligated to present information about these circumstances, as it is the prosecution that must justify the relevance and proportionality of the preventive measure sought.[10]

Hence, the appropriateness of the bail depends on substantiation of its necessity.

[9] Criminal Procedure Code, Article 200.

[10] According to Criminal Procedure Code, Article 200 para.2, the amount of bail is determined according to gravity of crime committed and financial position of defendant.

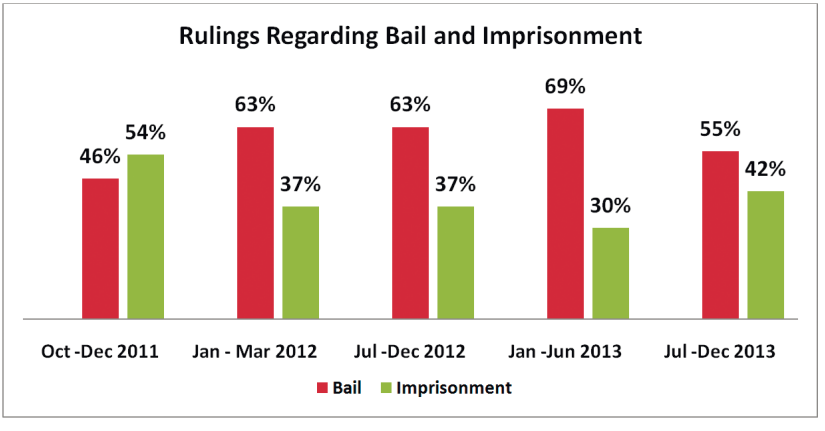
Findings

Current statistics differ significantly from those observed during first monitoring cycles, with courts no longer automatically upholding the prosecution's motion for preventive measures and judges making more substantiated decisions on preventive measures.

In this period GYLA's monitoring found significantly differing results regarding the bail compared to the previous monitoring cycle. Most notably, bail was ordered for a smaller share of defendants than in the previous monitoring cycles. Nonetheless, bail was sometimes ordered even though the prosecution requested imprisonment, although courts again failed to adequately consider less strict preventive measures as well as the necessity of ordering preventive measures at all.

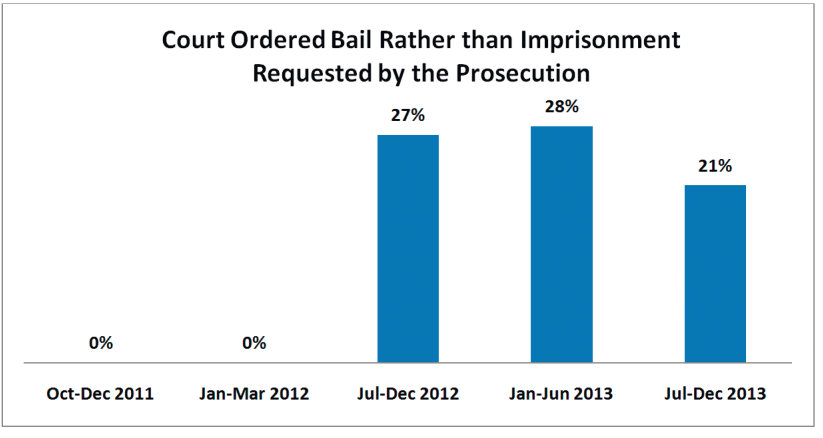
The chart below demonstrates the situation over the entire monitoring (from October 2011 until December 2013). Of 106 defendants for whom preventive measures were ordered, bail was imposed in 55% of cases, whereas the imprisonment was applied as a preventive measure in the 42% cases. In addition, one defendant was released under the obligation not to leave the country and an agreement to maintain the proper conduct, one was released under personal guarantee, and a third defendant was released without any preventive measure.

Chart N1



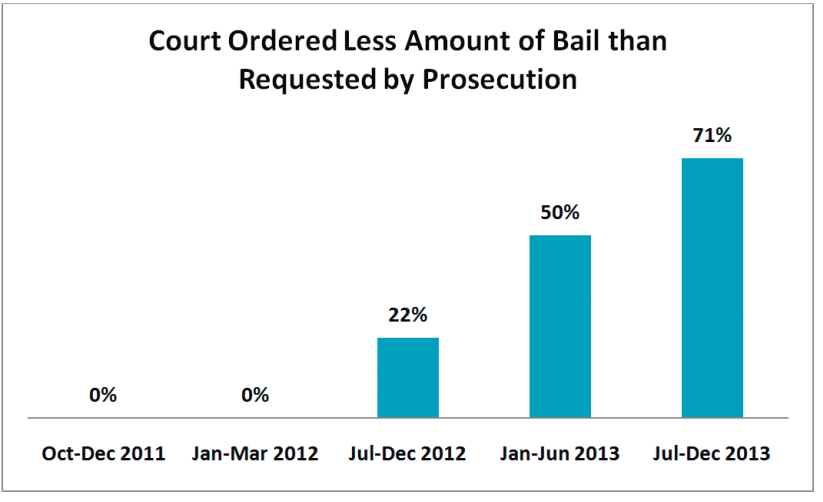
During this past monitoring period, bail was ordered as a preventive measure in 21% of the cases where the prosecution requested imprisonment (12 of 58 individuals). Until October 2012, the court always granted the prosecution's motions for imprisonment. Only after October 2012 did the judicial practice change when, despite the prosecution's requests of imprisonment, courts started ordering bail as a preventive measure. The chart below illustrates the situation over the entire monitoring (since October 2011 until December 2013).

Chart N2



Where the prosecution requested bail, in 71% of the cases (35 of 49) the amount of the bail imposed was less than initially requested by the prosecution. In the 12 cases the imposed amount of the bail was equal to the amount requested by prosecution (the chart below illustrates situation over the entire monitoring since October 2011 until December 2013). In two additional cases, the court rejected the prosecution request for bail. In particular, the court applied personal guarantee in one case, and imposed a travel ban and made an agreement of the proper conduct in another case.

Chart N3



The maximum amount of the bail ordered during this monitoring period was GEL 50.000,[11] and the minimum was GEL 1.000. In the prior monitoring cycles the maximum amount of the bail was GEL 35.000, and minimum was GEL 1.000.

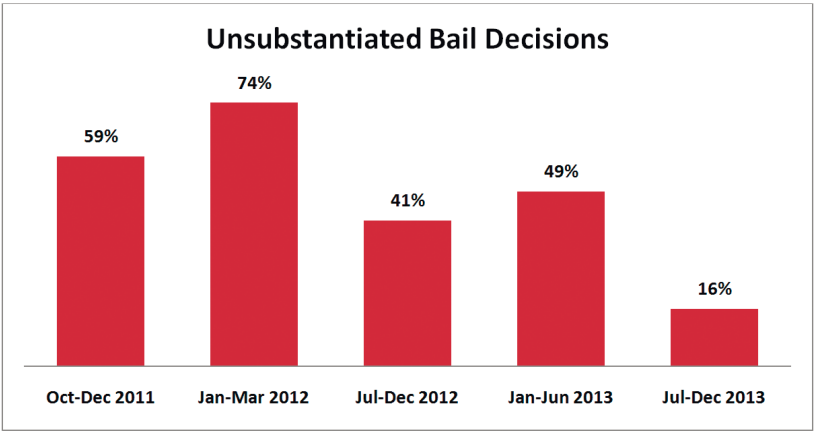
Despite the positive developments, there was a significant shortcoming regarding the use of the bail as a preventative measure.

Bail must be proportional and substantiated; this means that the bail must be commensurate to the defendant's financial status and the alleged crime. All of the relevant circumstances must be examined during a hearing on the preventive measures so that the judge is assured of the defendant's ability to pay the bail. This is because in case of not paying the imposed amount, bail is changed to the more severe preventive measure of imprisonment. Therefore, an unsubstantiated amount of bail may equal to the imprisonment.

Of the 58 defendants, upon which the bail was imposed, GYLA determined that 9 bail decisions (16%) were unsubstantiated, which is a much better result compared to the initial monitoring periods. The chart below illustrates the situation over the entire monitoring (since October 2011 until December 2013).

[11] This was in case of Giorgi Ugulava, former Mayor of Tbilisi.

Chart N4



GYLA considers bail decisions unsubstantiated for the following reasons:

- Judges granted the prosecution's motion on ordering bail without submitting sufficient reasoning by the prosecution or examining financial condition of the defendant. In other cases a defendant, not represented by a lawyer, disagrees with the prosecution's demand, but the judge orders bail without further investigation.
- When judges granted bail notwithstanding the demand of the prosecution for imprisonment, the judges failed to examine financial condition of the defendant.

Below are examples of unsubstantiated bail:

- Two individuals were charged with theft;[12] in particular, defendants had stolen a vehicle battery but later voluntarily appeared in the police department, confessed the crime, and cooperated with the investigation. Even though they had no prior criminal record, the prosecutor demanded bail in the amount of GEL 5.000 for each defendant. Defense lawyer asked to reduce the amount of bail to GEL 2.000. Judge set the bail at GEL 4.000 for one defendant and at GEL 5.000 for another. They remained in custody before providing the bail, which was completely disproportionate measure considering factual circumstances of the case.

[12] Criminal Code of Georgia Article 177, para.3, subparagraphs "a" and "b".

- Defendant was charged with narcotic crime.[13] He had been convicted of narcotic crime before. Prosecution demanded bail in the amount of GEL 5.000. The defendant stated that he and his family were registered in the database of the socially vulnerable and could not afford to post the bail. During the trial it was found that the prosecutor had not examined financial status of the defendant but he had learned from his co-worker that the defendant did not have a status of a socially vulnerable person. After the prosecutor provided a verbal explanation, the judge set the bail at GEL 4.000 for the defendant without providing any justification.
- A father who was a sole breadwinner for his child was charged with narcotic crimes.[14] He had no prior criminal record; he confessed to the crime and requested a bail of GEL 2.000, stating

Setting Bail for the Underprivileged

A citizen of Nigeria, who earned a living by begging in the streets of Tbilisi, was charged for damaging a police car (Criminal Code of Georgia, Article 187 para.1). The defendant had thrown a stone at the police vehicle. He explained that he acted out of anger. Prosecution demanded bail in the amount of GEL 1.000, while the defense argued that the defendant should have been freed without a preventive measure. Despite substantiated arguments of the defense, court set the bail at GEL 1.000 for the defendant, which basically equaled imprisonment as the defendant could not afford posting the bail. *GYLA believes that the court should not have ordered any preventive measure against the defendant due to the following circumstances: first, the defendant had a place of permanent residence in Tbilisi (which was rented by the defendant) where he could have been found when needed; second, defendant could not have interfered with the investigation or pressured witnesses considering that patrol officers were the witnesses, and lastly, the defendant had been living in Georgia since Spring 2006, during which he had not committed any violation of law.*

[13] Criminal Code of Georgia Article 260 para.2, subparagraph "a," Illicit preparation, production, purchase, keeping, shipment, transfer or sale of drugs, the analogy or precursor thereof, in large quantities.

[14] Criminal Code of Georgia Article 265 para.3, subparagraph "a" - Illicit sowing, growing or cultivating of plant containing narcotics, in especially large quantities.

that he could not afford to pay more. The prosecutor demanded imprisonment. Without any examination or providing any justification the judge set the bail at GEL 10.000 for the defendant, which was a disproportionate measure considering his financial status. If it was not the aim of the judge to keep the defendant in custody, he should have set the bail at the amount that the defendant could afford to pay. The rationale behind judge's decision remained ambiguous. In addition, the judge could have better explained to the defendant the possibility of imposing other preventive measures and inquired whether the defendant was requesting any of them.

1.2.2. Imprisonment

Imprisonment is the deprivation of liberty. Therefore, application of this measure – particularly before the final determination of guilt has been made – must be considered in relation to an individual's right to liberty, one of the most important rights in a democratic society.

The right to liberty is guaranteed by the Constitution of Georgia,[15] the European Convention on Human Rights,[16] and the Criminal Procedure Code.[17]

Under these provisions, the grounds for imprisoning a defendant before a final determination of guilt are: a) a threat that the individual would flee; b) need to prevent the obstruction in obtaining evidence; and c) to avoid the committing of a new crime. Even then, imprisonment may only be used when other measures are insufficient. Under the European Convention on Human Rights (ECHR),[18] and national procedural legislation,[19] a court is obliged to review the imprisonment upon the party's request, and the denial to consider such request is also a deprivation of the right to liberty.

[15] Constitution of Georgia, Article 18 Para.1 and 2.

[16] European Convention on Human Rights, Article 5 para.1.

[17] Criminal Procedure Code of Georgia, Article 205 para.1.

[18] Jėčius v. Lithuania; The Right to Liberty and Security of the Person, A Guide to the Implementation of Article 5 of the European Convention on Human Rights, Monica Macovei, Human Rights Handbooks, No.5, Council of Europe, p.60-61.

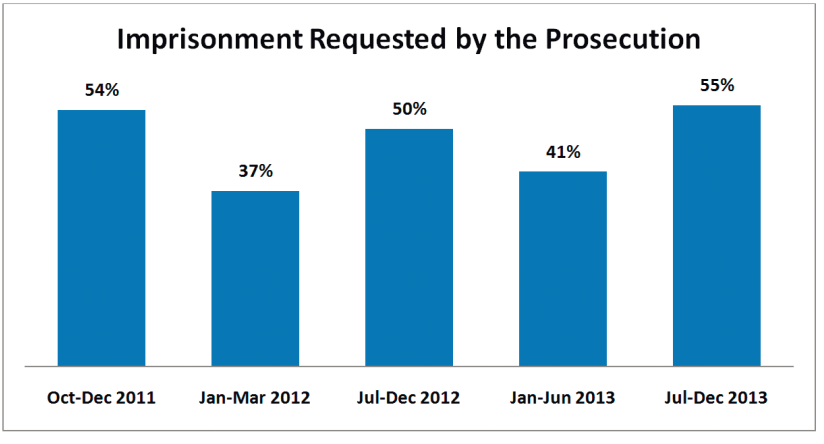
[19] Criminal Procedure Code of Georgia, Article 206.

Findings

Application of imprisonment as preventive measure was more frequent than in the previous reporting cycles, however, some positive developments were still revealed in other aspects. The prosecution's requests for the imprisonment as a preventative measure were significantly more substantiated. Moreover, when the prosecution's requests for the imprisonment as a preventative measure were not substantiated, courts granted those requests less frequently.[20]

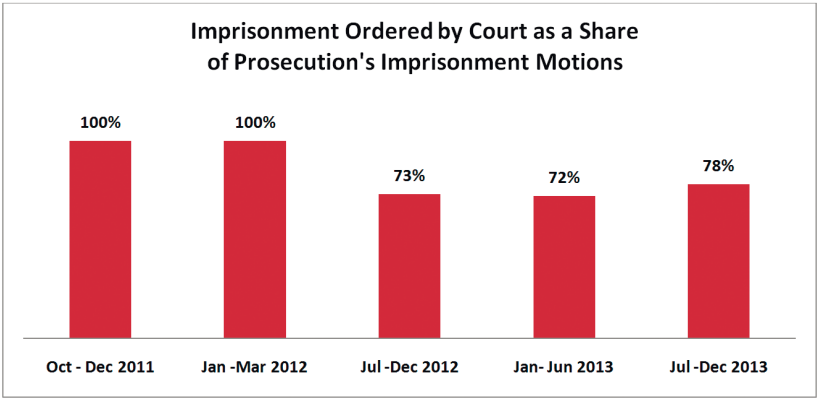
Of 106 defendants observed at first appearances, the prosecution requested imprisonment of 58 (55%), the highest percentage since GYLA began its monitoring in October 2011. The court upheld the prosecution's motion in 45 cases (78%). The charts below demonstrate the situation over the entire monitoring (from October 2011 until December 2013).

ChartN5



[20] It was only during the previous monitoring period that GYLA observed the first case since it began monitoring in October 2011, when the court did not grant prosecution's motion to order imprisonment as a preventative measure.

Chart N6



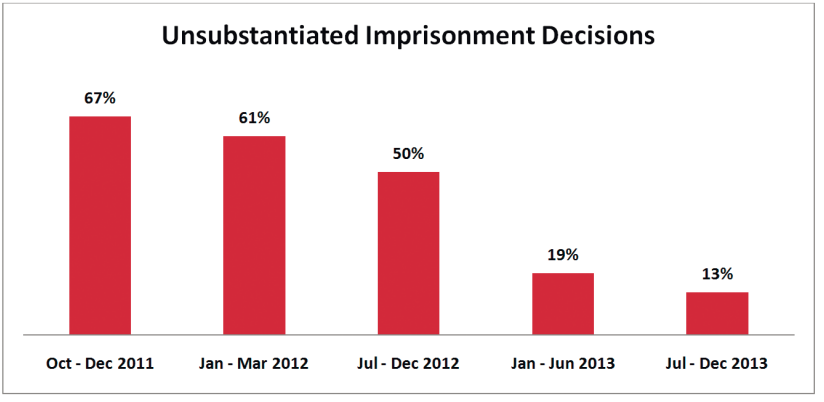
Of the 45 imprisonment decisions during this monitoring period, GYLA considered only six (13%) to be unsubstantiated, with the prosecution not having enough evidence to show the necessity of imprisonment.

An Example of Unfounded Imprisonment

The court granted the motion filed by the prosecution seeking imprisonment for a defendant charged with illegal carriage and storage of arms (Criminal Code of Georgia, Article 236, paragraphs 1 and 2). The prosecutor argued that the defendant could hide, influence witnesses and continue criminal activity, without providing any evidence supporting those arguments. The defense stated that the only witness in the case was a policeman, therefore the pressure could not be exercised against him. In addition, the risk of escaping or continuing criminal activity was only an assumption and was not supported by the evidence. Therefore, the defense did not agree with use of the measure of imprisonment and demanded bail; nevertheless, the court ordered imprisonment.

The percentage of the unsubstantiated imprisonments is far lower than in the previous reporting periods, which is a really positive development. The charts below illustrate the situation since GYLA began monitoring in October 2011:

ChartN7



1.2.3. Personal Guarantee

Of the first appearance hearings observed during this monitoring period, the defense proposed a personal guarantee as the preventative measure in 3 of 106 cases. Of these three cases the judge granted the motion only in one case, in other two instances the individuals offering the personal guarantee did not appear in the court. As mentioned above, GYLA believes that in similar cases judge is entitled to announce a break on her/his initiative if she/he considers that in that time period it is possible for a personal guarantor to appear at the hearing and personal guarantee to be applied.

In some cases, there was an opportunity for applying a personal guarantee as a preventive measure in minor crime cases but the defendant did not request a personal guarantee. GYLA deems that the judge could, on his/her own initiative, find out from the defense whether a personal guarantee could be used as a preventive measure and make the decision based on hearing the position of the both sides (judge could have explained to the defendant the possibility of applying other preventive measures and ask if there was any potential guarantor in the courtroom).

1.2.4. Agreement on not leaving the country (Travel Ban) and Proper Conduct

An agreement on not leaving the country (travel ban) and of proper conduct may be used as a preventive measure if the defendant is charged with a crime that envisages imprisonment for less than one year.[21] During this monitoring period GYLA observed 14 defendants who were eligible for this preventive measure, but the court applied this preventive measure only once. It was the second time GYLA observed this preventative measure being used. In the other 13 cases, the judge did not attempt to find out possibility of applying other alternative preventive measures and has imposed either imprisonment or bail.

An Example of Positive Use of Alternative Measure

Defendant was charged with narcotic crime (Criminal Code of Georgia, Article 273). Notably, the defendant was defending his own interests. Judge fully lived up to his obligation by explaining to the defendant his rights and possibilities of using other types of preventing measures in a manner understandable for the defendant. The defendant requested an agreement not to leave the country (travel ban) and proper conduct. The judge granted the request. This is a clear illustration of how court should be acting in all similar cases.

1.2.5. Military Command's Supervision over a Military Servant's Behavior

Military command's supervision over a military servant's behavior is a preventive measure that may be applied to a military servant.[22]

During this monitoring period, GYLA did not observe any case when it was possible to apply this preventive measure.

1.3. Publishing Information about Hearings in Advance

The monitoring of the initial appearances also confirmed an ongoing procedural problem that obstructs a defendant's right to a public hearing, as

[21] Criminal Procedure Code of Georgia, Article 202.

[22] Criminal Procedure Code of Georgia, Article 204.

guaranteed by the Constitution of Georgia[23], the European Convention on Human Rights,[24] and the Criminal Procedure Code of Georgia.[25]

To make this right effective, it is not sufficient for the public to merely have the right to attend a criminal proceeding; the public must also have the right to be informed in advance about the proceeding so that it has the opportunity to attend. Therefore, the right to a public trial obligates the court to publish in advance the date and place of the first appearance hearing, the full name and surname of a defendant, and the articles with which s/he has been charged.

Findings

Once again, in *none* of the 87 initial appearances monitored by GYLA (64 hearings held in TCC, 23 held in KCC) did the Court publish information about those hearings in advance.

This complete failure to publish information on the initial appearance hearings in advance has been observed since GYLA began monitoring in October 2011, and was reflected in all the monitoring reports. Despite GYLA's active involvement in raising the awareness of the judiciary about this problem, the situation remains unchanged. Representatives of the judiciary previously claimed that this was because of technical limitations associated with the fact that initial appearances are held within the 24 hours of the arrest, and expressed readiness to settle the technical problems. Despite this declared interest in resolving this violation of rights, no apparent action has taken place. GYLA remains hopeful that judiciary will be able to solve the problem in the nearest future.

The situation at KCC is slightly better. Although KCC does not publish information about dates of the hearings on electronic monitors, as TCC does for most hearings other than first appearances, a court bailiff in KCC announces the information in the hall some time before the start of the hearing and informs interested individuals about the place of an upcoming hearing and the name of the defendant. He does not, however, announce the charges to be submitted.

[23] Constitution of Georgia, Article 85.

[24] European Convention on Human Rights, Article 6 para.1.

[25] Criminal Procedure Code of Georgia, Article 10.

GYLA is of the opinion that the method of publishing information on anticipated hearings in KCC is not comprehensive, since an individual wanting to attend a hearing is not able to determine the time or place of the hearing within a reasonable period in advance. Moreover, the public is not informed about the charges. However, GYLA believes this is a reasonable *temporary* solution until the court administration resolves the technical issue.

II. Pre-Trial Hearings

At a pre-trial hearing, the court considers the admissibility of evidence that will be considered at the main hearing. This stage is of the extreme importance, as only evidence deemed admissible by the court at the pre-trial hearing may be considered at the main hearing, and the verdict at the main hearing will be based on that evidence. In addition, the issue of whether to terminate the prosecution or continue the proceeding for an examination on the merits is decided at this stage.[26]

The court's rulings on pre-trial motions must be impartial and free from bias in favor of the either side. The right of a defendant to impartial proceedings is guaranteed by Article 84 of the Constitution of Georgia, Article 6 of the ECHR, and is guaranteed by the Criminal Procedure Code of Georgia.

Although pre-trial hearings typically concern admissibility of evidence, parties can also submit other motions at that stage.

Findings

It is very significant that, for the first time since GYLA began court monitoring in October 2011, GYLA observed the first case where the court terminated a criminal prosecution at the pre-trial hearing (description of the case is provided below in the special box).

Otherwise, the results of GYLA's observation of the pre-trial hearings in this monitoring cycle are nearly identical to the previous monitoring cycles. With only one exception, the court seems predisposed to granting all of the prosecution's motions seeking the submission of evidence,

[26] The court is to terminate a prosecution if it determines that, with a high probability, the evidence submitted by the prosecution fails to establish the committing of an offence by the defendant.

Termination of Prosecution by the Court

In one case the court deemed the personal search of a defendant invalid, and ruled that the narcotic substance claimed to have been found in the defendant's pocket was inadmissible evidence. Afterwards, the court ruled that corroborating evidence did not allow to conclude with a high degree of probability that the defendant was guilty as charged. As a result, the judge terminated the prosecution and released the defendant, who was being held in jail.

while the defense mainly agrees to the prosecution's motions. Nevertheless, compared to the previous reporting cycle, objections of the defense on the prosecution's motions increased from 21% to 37%. As in the previous period, defense was very active in high-profile cases; specifically, defense were submitting evidence and asking that some of the prosecution's evidence be held inadmissible.

Following trends were observed at the pre-trial hearings:

- 20 of the 83 pre-trial hearings observed were postponed. The prosecution submitted motions to submit evidence in the remaining 63 hearings, three of which were postponed before the judge made the decision. Of the 60 remaining cases, in 57 cases the court completely granted all prosecution's motions on admissibility of the evidence; in two additional cases, the court partially granted the prosecutor's motions. In the remainig one case, it was the first case in the history of GYLA's court monitoring when the judge did not grant the prosecution's motion on submission of the evidence and terminated the prosecution. In the four prior reporting periods combined, the court granted all 251 of the prosecution's motions, even though the defense objected to 30 of them.
- The defense objected to 11 of 63 prosecution motions. Of these 11 objections, the court held the prosecution's evidence partially inadmissible in two cases and held the prosecution's evidences completely inadmissible in one case.
- The defense submitted motions to introduce the evidence in only 23 of 62 cases (37%)[27].

[27] One of the 63 cases was postponed before defense's time to submit the motion to submit evidence.

- Of the 62 cases nine were high-profile cases, and the defense submitted motions in each of those high-profile cases (100%).
- The 53 remaining cases were not high-profile. Of those 53 cases, the defense submitted motions in only 14 cases (26%).
- Of the nine high-profile cases, the prosecution agreed to the defense motion in two cases (22%). Nonetheless, the court granted the defense motion in six of the nine high-profile cases (67%).
- Of the 14 cases that were not high-profile the prosecution agreed to defense motion in all 14 cases and the court granted the motion in 100% of the cases.
- Three of the 23 cases in which the defense filed motions were postponed before the judge made a decision on the motions.
- Of the 63 pre-trial hearings observed, motions unrelated to the submission of evidence were submitted in 22 cases (six of them in high-profile cases). Of these motions, 20 were submitted by the defense and two by the prosecution. Five motions requested an alternative preventive measure, three requested that the preventive measure be annulled, nine sought removal of the charges, one requested assignment of a lawyer for concluding a plea agreement, one motion sough granting of the right to the defendant to communicate with relatives, 1 challenged prosecution, 1 challenged Kutaisi City Court[28] and 1 requested that the prosecution's motion be considered inadmissible.[29] Out of these 22 motions, the court granted eight, among them one motion of the prosecution (50%) and seven motions of the defense (35%).

[28] This motion was ordered in one of the high-profile cases, in Ivane Merabishvili's (the former Minister of Interior and the former Prime Minister) and Zurab Chiaberashvili's case (the ex-minister of Health, Labor and Social protection). Merabishvili's defense requested recusal of all the Kutaisi City Court bench and the case to be tried in Tbilisi city court as they considered Kutaisi City Court biased. The ground for this was following: Kutaisi City Court imposed imprisonment as preventive measure on Merabishvili. The defense appealed this decision at the Kutaisi Appeals Court. In this Court the appeal was to be dealt with by the bench of criminal cases. The presiding judge of Kutaisi Appellate Court himself joined the bench and dealt with the case. The head judge of Kutaisi Appeal Court upheld the appealed decision. This was the reason for the defense to consider all Kutaisi courts biased and to shift the case to Tbilisi City court.

[29] Ibid.

III. Plea Agreement Hearings

A plea agreement is a type of accelerated proceeding during which the defense and prosecution present to the court an agreement regarding the guilt and the punishment, through either admitting the guilt or not.

Under Article 213 of the Criminal Procedure Code, when a plea agreement is reached the judge must verify whether the charges brought against the defendant are lawful and whether the agreed punishment set out in the prosecutor's motion for acceptance of the plea agreement is fair.

In order to ensure that the punishment is fair, a judge must consider the circumstances involved, taking into consideration the individual characteristics of the defendant, the circumstances under which the crime was committed, and the agreed punishment.[30] The law does not specify how to ensure that the punishment is fair. However, in view of the general principle of the sentencing, for example, where the agreed punishment is a fine the judge should determine: What is the defendant's financial condition? Can s/he afford to pay the fine? Is the amount of the fine commensurate to the damage inflicted, the circumstances under which crime was committed, and the likely punishment if the defendant is convicted after a main hearing? In addition, according to the law, if the judge believes that a plea agreement does not meet the requirements of the Criminal Procedure Code, the judge may offer to the parties a plea agreement with altered conditions.[31] These confer upon the judge limited, yet clear, levers to influence the fairness of the punishment.

It should be noted that under the draft law initiated by the Minister of Justice on changes and amendments to the Georgian Criminal Procedural Code,[32] (which is still in progress), a judge will be given authority to make changes in the conditions of the plea agreement with the parties' consent, and the authority to order less severe penalty than requested in the motion without parties' consent. GYLA welcomes the initiative, since it aims improvement of the defendants' legal condition and increases the judge's role in the process.

[30] Criminal Code of Georgia, Article 53 para.3.

[31] Criminal Procedure Code of Georgia, Article 213 para.5

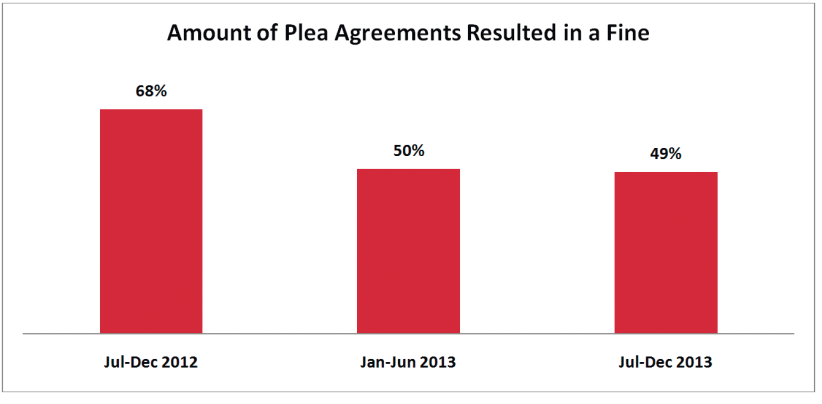
[32] Legislative Herald of Georgia https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2083606&lang=ge

Findings:

As in the prior court monitoring period, the court was taking a passive role in the plea bargaining process. At the hearings, the judge limited his/her activity to only procedural obligations and asking the defendant a pro-forma question as to whether the defendant agrees with plea agreement. In taking such a passive role, the judge violates his/her obligation to make sure that agreed punishment is fair. It is notable that no plea agreements were observed in the high-profile cases.

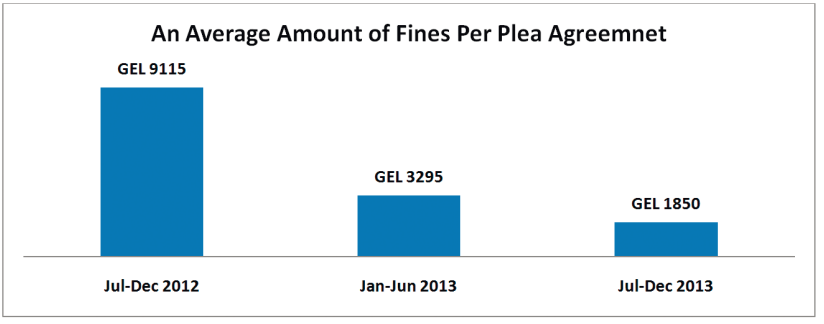
The percentage of the plea agreements in which a fine was imposed remained unchanged from last monitoring period. During this monitoring period, 49% of defendants (40 of 81) concluding the plea agreements paid a fine. Chart below illustrates the situation during the last three reporting periods (from July 2012 until December 2013).

Chart N8



In addition, the amount of fines imposed was greatly reduced again. During the current monitoring period, 40 plea agreements resulted in a total of GEL 74,000 in fines (an average of GEL 1,850 per plea agreement); the chart below illustrates the situation during the last three monitoring cycles (from July 2012 until December 2013).

Chart N9



The range of fines during the current monitoring period was between GEL 500 and GEL 5.000; during the previous monitoring period, fines ranged from GEL 1.000 to GEL 6.000.

The percentage of applying community labor in plea-agreements remains 7%. In the prior monitoring cycle (January-June 2013) this percentage was 7%. But during the third reporting period (July-December 2012) it was only 1%.

GYLA's court monitors observed only one case (presented in the box), when the judge asked additional question to determine whether the plea agreement was fair.

In another case, GYLA's monitors observed the court's genuine attempt to find out whether the defendant agreed to the plea agreement with full consideration of its outcomes and if he received adequate legal consultation. The case is discussed further in the section on the right to defense.

However, GYLA also observed one case when, prior to the start of the plea bargaining, defendant's relative gave the prosecutor a green check showing the plea agreement fine was paid in advance. This proves once again the court's pro-forma role in plea agreement hearings, when parties have expectations that plea agreement will necessarily be approved by the judge. The trend of giving preliminary paid checks to the prosecution was especially frequent in the initial stage of court monitoring, though no such fact was observed in the previous reporting period.

A Case in Which Judge Looked into Fairness of Punishment

The case involved robbery but the goods amassed by the robbery included only a single can of beer. In the attempt to find out whether the punishment envisaged by a plea bargain was fair, the judge asked the prosecutor about the reason why he believed a six-month deprivation of liberty was fair considering that the defendant had robbed a victim of a 0.5 liter beer can, valued at a mere 2 laris (GEL) and 70 tetris. The prosecutors stated that considering that it was a repeat crime (the defendant had been tried before for the same crime), considering the risk of a future crime envisaged by law, it was a fair punishment. The judge asked the defendant whether he thought the punishment was fair, and after he said "*yes*" the judge approved the plea bargain.

B. OBSERVATIONS REGARDING SPECIFIC RIGHTS

I. Equality of Arms and the Adversarial Process

Equality of arms and the adversarial process are the key principles of the criminal proceedings, established by Article 42 of the Constitution of Georgia, Article 6 of the ECHR, and Articles 9 and 25 of the Criminal Procedure Code of Georgia.

The meaning of these principles is that the parties to a proceeding have an equal right to present evidence in the case and to enjoy equal rights during the process.[33] To safeguard this right, the judge must ensure the equality of arms during the trial, meaning that s/he must provide both parties an equal opportunity to examine evidence without interference. Further, the judge should not exceed the scope of the charges, but should be bound by the positions presented by the parties.

The principle of equality of arms is of particular importance in criminal proceedings, where the prosecution has the resources and power of the state behind it and the defense is at a disadvantage.

[33] Constitution of Georgia, Article 42 para.6.

Findings

Based on GYLA's observation, judges mostly acted within their competence and ensured that all parties had an equal opportunity to represent their interests.

In most cases, judges did not interfere in the questioning of witnesses or go beyond the scope of the charges. Mostly judges were successful in maintaining order in the courtroom and ensuring the equality of arms.

Nevertheless, the court monitors observed some gaps and inconsistencies:

- Courts' practice on examination of evidence gathered during investigation is inconsistent. In some cases, the court allowed lawyers to cite evidence given by a witness at the investigation stage or to ask questions about that evidence, and in other cases it did not. This was observed in two high-profile cases. Namely, at Ivane Merabishvili's[34] trial the judge allowed to ask such questions, while in Bachana Akhalaia's case it did not.[35]
- Courts made inconsistent decisions about inadmissibility of questions asked to a witness. During Ivane Merabishvili's trials when a party protested against questions that had already been answered, the judge responded that the protest was late and allowed the questions. But during Bachana Akhalaia's trials, the judge deemed such questions and answers as inadmissible evidence.

GYLA believes that it is important to have a uniform court practice on witness questioning in order to rule out any possibility of the selective justice and to provide equal conditions for both parties, giving them an opportunity to predetermine a strategy for advancing their positions.

GYLA also found that court employed an unequal approach towards defendants in one of the publicized cases. In particular:

- In the case of Nikoloz Gvaramia,[36] where other former high-ranking officials were also charged, the judge gave 10 minutes to each defendant for closing remarks and strictly demanded that

[34] Ivane Merabishvili was the former Minister of Interior and the former Prime Minister.

[35] Bachana Akhalaia served as the Minister of Defense and the head of Penitentiary Department.

[36] Nikoloz (Nika) Gvaramia served as the Minister of Education and Science. He also served as Minister of Justice and was appointed to various high-ranking offices. He is currently serving as director of Rustavi 2 TV Company.

they abide by the time constraints. On the other hand, Nikoloz Gvaramia was given almost 30 minutes for his closing remarks. The judge slightly reminded him several times that his time was up; nevertheless, Nikoloz Gvaramia's closing remarks were three times longer than that of other defendants.

- In the same case, when one of the defendants Aleksandre Khetaguri[37] kept referring to the prosecutor as "incompetent", the judge reminded him to be respectful after the prosecutor protested. On the other hand, when Nikoloz Gvaramia referred to the prosecutor as "incompetent" in the very same case, in response to the prosecutor's protest the judge stated that "incompetent" does not imply insult.

GYLA also found that courts employed unequal approaches in keeping order in courtrooms. In certain cases a court was inadequately forgiving, which had a negative impact on quality of the proceedings, while in other cases the court was inadequately strict. For instance:

- During one of the trials the court had a hard time keeping order, as attendees were noisy, fighting with each other. The judge issued only a warning in response, without utilizing tighter measures prescribed by law and failed to control the situation in the courtroom.
- In another case, where attendees were openly swearing at the prosecutor in a considerably loud voice, court bailiff issued only warnings while the judge did not take any adequate measures in response.
- In contrast, in a highly publicized case[38] where crowded courtroom was making slight noise, judge declared immediately that if the noise continued court proceeding would adjourn.
- In another ordinary case the judge was particularly strict towards defendants, reprimanding them for every exchange with their lawyer. By doing so, the judge may have jeopardized the right to defense during the trial. During the same trial the judge expelled from the courtroom one of the attendees for one exchange in a low voice with a person sitting next to him, without actually violating order. The judge could have resorted to the lightest measure at first – warning.

[37] Aleksandre Khetaguri, former Minister of Energy.

[38] Case of Giorgi Ugulava, former Mayor of Tbilisi.

Other findings:

- Out of 281 main hearings (including 11 jury trials) attended by monitors of GYLA, two were held behind the closed doors. Of the remaining 279 cases, witnesses were questioned in 120 cases, with judge asking questions in 18. In four of these eighteen cases (22%), judges violated procedural requirements by asking questions to witnesses without prior consent of the parties. There has been an improvement compared to the initial monitoring periods, when judges often asked questions in violation of procedural requirements; however, there has been a decline compared to the previous monitoring period when judges asked a question to a witness without consent of the parties only once out of 27 cases.
- During one of the main trials the judge encroached upon the authority of the prosecutor by determining the order of evidence to be examined. In particular, the judge had all exhibits delivered to his desk and determined which exhibit was to be examined first. The prosecutor asked to examine other piece of evidence first but the judge responded: *"it makes no difference, give me the bags"* and decided which bag to start with. The judge was reading names of sealed bags, preventing the prosecutor from doing so. This way, the judge violated the principles of adversary proceedings and the equality of arms, not allowing the prosecution to present evidence according to the order that their strategy envisaged.
- During several main hearings the court failed to ensure the separation of witnesses already examined and those to be examined. Witnesses were standing outside, sharing with each other what statement they gave.[39] No one did anything to prevent this. However, in another case, during one of the hearings an attendee notified the bailiff that a witness that had been questioned and had exited the courtroom was talking to other witnesses to be questioned, and the bailiff demanded that the witness go downstairs.[40]

[39]Criminal Procedure Code, Article 118 Para.2 stipulates that, "a witness should be questioned in isolation from other witnesses. Further, court should take measures for preventing witnesses summoned for questioning in the same case from communicating with one another before the questioning is over."

[40] Publicized case brought against Guram Chalagashvili (former Chairman of the National Regulatory Commission).

Lack of Guarantees for Witness Protection

One of the jury trials where a witness was questioned clearly suggested a lack of guarantees for witness protection provided by the criminal procedure legislation. A witness, a single mother testifying before the court, has clearly been intimidated. Her answers to the defendant's questions as well as her visible emotions (nervous tension demonstrated by the facial expressions and her voice) clearly indicated that her testimony describing arrest of defendants was the result of intimidation.

In that case, the prosecutor asked the witness whether she had been subject to any intimidation, violence or any other illegal actions during investigation. Even though the witness said "no", her answer did not weaken suspicions about witness pressure. The judge did not react in any way – for instance, he did not suggest to the prosecutor the necessity of using special means for protection. Further, under the procedural legislation, the judge lacks the authority to take any witness safety measures; rather, the Criminal Procedure Code delegates the power solely to prosecutor (Articles 67-71 ofthe CPC). This suggests that the legislation regulating grounds for the use of measures to protect parties and witnesses is flawed.

In its Recommendation on the protection of witnesses and collaborators of justice (Rec. 9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice. 20 April, 2005. European Council). the Committee of Ministers of the Council of Europe urges member states: 1. To implement measures for the protection of witnesses, where appropriate; 2. Adopt protection measures where appropriate on an urgent and provisional basis before a protection program is formally adopted; 3. Afford operational autonomy for staff dealing with the implementation of protection measures; they should not be involved either in the investigation or in the preparation of the case where the witness/collaborator of justice is to give evidence.

Article 67 of the Criminal Procedure Code of Georgia, which provides grounds for special witness protection measures does not correspond to the Committee of Ministers recommendations. In particular, because of the limited list, protection measures may not always be applied where applicable. Article 68 of the Criminal Procedure Code that determines authorized individuals also falls short of the Committee of Ministers recommendations. In particular, it delegates the authority to conduct special measures to the investigating authorities and their supervising agency – police and the office of the prosecutor.

These deficiencies prevent witnesses from benefitting from the protection guarantees granted to them by the applicable law. This is demonstrated in the trial described above.

II. Right to Defense

The defendant's right to a defense is of critical importance in criminal proceedings, and is guaranteed under the Article 42 of the Constitution of Georgia and the Article 6 of the ECHR. In addition, Article 45 of the Criminal Procedure Code requires that the defendant to have a lawyer if the enjoyment of the right to defense may be at risk, such as when the defendant does not have command of the language of the proceedings, or is in the process of the plea bargaining, or has certain physical or mental disabilities that hinder him/her from defending him/herself.

For a full enjoyment of the right to defense, the defense should be given adequate time and opportunity to prepare its position. Further, the defense attorney should use all of the available legal means for defending the client.

Findings

The monitoring results suggest that the right to defense was generally protected and that an attorney was provided in cases of mandatory defense.

Moreover, in all those cases where the defense asked for postponement of the case to become more familiar with the case materials and prepare the defense, the judge granted the motion. It should be noted that the prosecution did not oppose the motions as well.

Nevertheless, GYLA's monitors observed some instances of violation of the right to defense, when either the court did not give the chance to implement the effective defense, or the lawyer was too passive and fell short of applying all available resources for protection of defendant's interests.

An Example of Effective Assistance to Implementation of the Right to Defense

At one plea agreement hearing, the judge was suspicious of the lawyer's familiarity with the case and applied all available measures to protect defendant's interests effectively. Namely the judge asked the lawyer: *"Are you familiar with the case materials?"*
Lawyer: "*Not so well, I was involved in the case only yesterday*"
Judge: "*So, you are not familiar with case materials.*"
Lawyer: "*I know circumstances of the case from the defendant.*"
Judge: "*How long will it take you to get familiar with the case materials?*"
Lawyer: "*20 minutes. Please give me the case materials*".
Judge: "*Mrs. Lawyer, the case materials were given to your defendant, and when you come to the trial you should be prepared for implementation of effective defense! The new process [Criminal Procedure Code], does not envisage forwarding of case materials again, though I will make an exception now and will give you chance to get familiar with the case materials."*

Some of the examples of violating the right to defense are as follows:

- In one case[41], in which the court also violated presumption of innocence (the details of which are provided in the section on conduct of the parties to the process) GYLA's monitors revealed certain violations of the right to defense. Namely,

1. At the merit hearing the lawyer failed to appear at the trial because she had gotten into a traffic accident, but she informed the judge's assistant via mobile that she could not be on time for the session. The judge, however, incorrectly announced that the lawyer was in critical condition and it was unknown when she would be able to come. As a result, the court appointed the defense for the future hearing (at the expense of the State) and continued the hearing without the defendant's lawyer.

At the hearing the prosecution submitted an important motion requesting interrogation of the witnesses and experts indicated

[41] This is one of the interesting cases, where gross violations are observed and which will be monitored by GYLA to conclusion, if possible. The case is pending in the Appellate Court, though the date of the appeal has not been set yet.

by the defense, even if the defense removed them from evidence and did not interrogate them at the trial (this would allow the prosecution to examine the witnesses, whether defense examined them or not). The court granted the motion without even asking the opinion of the defendant and without informing the defendant of the right to object the motion.

The second day, the defendant's original lawyer appeared at the trial. She was deeply concerned for non-postponement of the trial and for conducting the hearing in her absence. Moreover, the lawyer also disapproved of the granted motion and demanded its annulment since it was granted during the hearing that should have been postponed. The lawyer accused the judge of bias and reported that she had clearly explained to the assistant of the judge that she wanted postponement of the trial for one day only. Instead, the court appointed mandatory defense for the future hearing and continued that hearing without the defense (attorney).

In this case GYLA observed several instances of violation of the right to defense, namely: a. notwithstanding the lawyer's legitimate request, the judge did not postpone the hearing; b. the judge did not postpone the hearing despite the fact that even the state-appointed attorney could attend the next hearing only; the court continued the hearing without the defendant being represented by an attorney; c. the court granted the prosecution's motion without even asking for the opinion of the defendant.

2. During another hearing on the same case, the remarks were made by the mother and relatives of the deceased, which hindered the process of the lawyer interrogating the witnesses. The judge only made verbal warnings which were futile, and effective implementation of the defense was hindered.

3. During yet another hearing of this case, the courtroom was filled with noise and the foul language was explicitly towards the defense lawyer and the defendant. The defense mentioned several times that she was hindered in implementing effective defense, though the judge made only some verbal warnings and called on the attendees to keep silence which was an ineffective measure. Afterwards the lawyer announced: "*I will not continue interrogation until you let these individuals out of the courtroom.*" The

judge responded "*Nobody will leave the room. The case is loaded emotionally and remarks are natural from the side of attendees.*" GYLA opines that such statement of the judge further encouraged disrespectful conduct instead of assisting in the implementation of the effective defense and ensuring the due process.

4. The similar situation was observed during a hearing of the same case, where the judge did not create adequate environment for the effective defense.

- In another merit hearing, when the prosecution's witness was interrogated, the defendant (not the defendant's lawyer) announced that he had an objection. In response, the judge advised him to refrain from interfering with the process and to tell his objection to his counsel who would later voice it at the trial. With his conduct, the judge breached the right to the self-defense and disallowed the defendant to express his position and to protect himself. Procedural legislation does not limit a defendant to expressing his position through the lawyer only and does not prohibit defendant's speech at the trial.
- In another case, GYLA's monitors observed that the defense acted indifferently when it should have acted: At the merit hearing, in the course of the direct examination, the prosecution asked leading questions in violation the law;[42] however the defense did not react.

However, GYLA has also identified two positive examples of the court providing assistance in implementation of the right to defense. In one of the cases, the judge interpreted the Criminal Procedure Code in a broad manner and indicated the norms of the European Convention on Human Rights. Specifically, the judge ordered the prosecution to provide the defense with the list of the witnesses to be interrogated.[43] The decision of the judge was based on the fact that the prosecution submitted a large number of witness testimonies, and the defense had to go through ap-

[42] Criminal Procedure Code of Georgia, Article 224, para.2, "In the course of direct examination it is prohibited to askany leadingquestions. The party is entitled to make motion on diversion of the question or/and considering such question or response as inadmissible evidence. "

[43] The high-profile case against Ivane Merabishvili (former Minister of the Internal Affairs and former Prime Minister).

proximately 450 witness testimonies and a large number of materials right before the hearing. Therefore, non-provision of the information prior to the hearings disabled the defense to prepare for the interrogation of each witness, which naturally compromised the implementation of an effective defense.[44] The second positive case of the judge assisting the implementation of the right to defense is given in the text box above.

III. Prohibition against Ill-Treatment

Ill-treatment is prohibited under the Constitution of Georgia, the ECHR and the Criminal Procedure Code. The prohibition provides protection against torture and degrading treatment.

For the implementation of this right, the defendant must be aware of his right to be protected from the ill-treatment and be informed of the right to file a claim against the ill-treatment with an impartial judge. Logically, this means that the court has an obligation to inform the defendant of these rights. The obligation is particularly important when the defendant is in the custody and the state has a complete physical control over him/her.

As a result, GYLA would again like to highlight a legal gap related to the ill-treatment of defendants. Under the Criminal Procedure Code, a judge is authorized only to explain to a defendant his/her right against ill-treatment and to hear alleged facts of ill-treatment. The law does not establish a procedure through which a judge can take meaningful action when ill-treatment is alleged; instead, a judge is only empowered to declare whether ill-treatment took place.

Findings

Compared to the previous monitoring cycle, there were fewer cases where the judge explained to defendants the right to file a complaint over alleged ill-treatment:

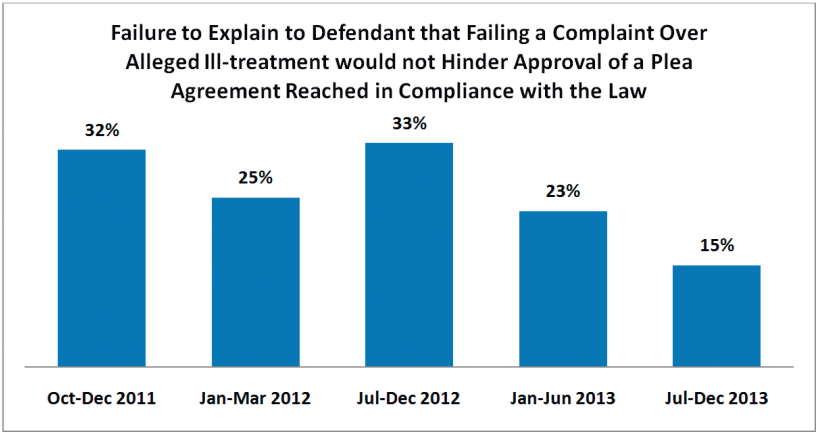
- Of the initial appearances observed, judges failed to explain to defendants their right to file a complaint over ill-treatment and did not inquire whether the defendant alleged ill-treatment in 9 of 87 hearings (10%). During the previous reporting period,

[44] According to the Article 6, para. 3, sub-paragraph "b" of the European Convention on the Human Rights, the defense should be given reasonable time and possibility to prepare.

judges failed to do so in only 4 of 99 hearings (4%). However the current situation is still much better than it was at the beginning of the monitoring in October-December 2011(28%).

- In this monitoring period the situation improved considerably in terms of explaining plea-agreement rights. Of 68 observed cases, the court inquired in all cases whether the plea bargain has been reached through coercion, pressure, deception or any illegal promise. During the previous period, judges failed to do so in 10 of 69 cases (14%).
- GYLA found that during this monitoring period in only 15% of plea agreements (10 of 68) did judges fail to explain to defendants that filing a complaint over alleged ill-treatment would not hinder approval of a plea agreement reached in compliance with the law. The chart below illustrates the situation over the entire monitoring cycle (since October 2011 until December 2013).

Chart N10



- In 22% of cases where a plea bargain was reached (15 of 68), judges failed to explain to a defendant that if the plea agreement was not approved, information that was revealed in the process of arranging the plea agreement would not be used against them. This is a slight improvement from the last monitoring period, when the judge failed to inform the defendant in 21 out of 69 cases (30%).

A Positive Example of Further Actions taken by Judge

GYLA found one positive example when the judge acted in the best interests of a defendant and acted beyond minimum requirements of the law. In particular, after the judge deemed the search and seizure conducted in violation of law and the evidence seized as inadmissible, he urged the prosecutor to institute an investigation against the perpetrators of the illegal measure.

The pro-forma role of a judge in terms of the investigation of ill-treatment and the failure of the law to require an effective investigation of allegations of ill-treatment was clearly demonstrated in the following case:

> In one of the high-profile cases, the defendant Ivane Merabishvili made a statement at the hearing and accused Otar Partskhaladze, (currently resigned General Prosecutor), of the pressure[45]. Merebashvili said that on the night of December 13, 2013 he was illegally taken blindfolded from the penitentiary and driven to an unknown building, where two individuals met him. One of them was Mr. Partskhaladze, the General Prosecutor. As the defendant alleges, the General Prosecutor offered him cooperation in resolution of Zurab Zhvania's murder case and in addition demanded the ex-president, Mikheil Saakashvili's, bank account numbers. As the defendant Merabishvili reports, if he refused the Prosecutor Partskhaladze threatened to aggravate his prison conditions, arrest his friends and relatives, and obstruct his business activities. Alternatively, if he cooperated, the General Prosecutor promised assistance in Merabishvili leaving the country and in taking his "stolen" money.
>
> Following the statement, Merabishvili consulted with his lawyers and motioned for their recusal for that particular and the following hearing; then Merabishvili left the courtroom to return to prison[46]. One of the lawyers declared that he could not wait for the judge's decision on the issue, since his defendant's

[45] Ivane Merabishvili made this statement on December 17, 2013 at the trial held in Kutaisi City Court.

[46] Merabishvili recused the defense councils for the on-going and the next hearing. These defense councils currently continue Merabishvili's defense on trial.

security in prison was jeopardized and he had to accompany him immediately. He and another lawyer left the trial after Merabishvili's exit. The third lawyer remained in the courtroom, since he was also representing interests of the second defendant, Zurab Chiaberashvili, though he also declared that he could not continue to defend Merabishvili's interests.

The judge fined all three lawyers GEL 200 each for the contempt of the court. In addition the judge ordered the involvement of the defense at the expense of the State, since the defendant Merabishvili was left without defense and he did not attend the hearing.

GYLA opines that the two issues need to be assessed: the possible response of the judge in terms of the alleged ill-treatment of the defendant and the fairness of fining the lawyers.

After Merabishvili alleged that he had been threatened and pressured, the judge only mentioned that the statement should be written down in the minutes of the session. Obviously, it could not be treated as an adequate measure from the side of the court, which again demonstrates the necessity of legislatively increasing the judge's role in terms of ill-treatment, so that the judge possesses the relevant legislative levers to demand investigation of the alleged facts of ill-treatment and punishment of offenders under the law.

As for penalizing the lawyers, GYLA considers the court's conduct unreasonable, since it is the defendant's right to decide who will represent his interest in the court. After the defendant challenged his lawyers, they were deprived of the chance to implement the defense; therefore there was no use for them to stayin the courtroom. Moreover, the lawyer should be interested in protection of the defendant with all available means, and that was the motive of leaving the courtroom by the lawyers. As they reported, the defendant was at risk and they had to accompany him to the prison immediately. The judge, though, ignored the argument and fined them.

IV. Right to a Motivated (Reasoned) Decision

The right to a fair trial is an internationally recognized right of a defendant, which is encompassed with the right of a defendant to a motivated decision by the court.[47]

To assess the reasoning of the decisions and determine if there was a trend, GYLA again monitored search and seizures that were conducted without prior approval by a judge and subsequently justified on the grounds of urgent necessity. GYLA opines that this is an area that requires separate research that is outside the scope of the current court monitoring project. Although GYLA only provides a snapshot of the issue, we believe this information helps to demonstrate the situation in the Georgian courts.

Search and seizure is an investigative action that curtails the right to privacy; the law therefore provides for the court's control of search and seizures. All motions for search and seizure must be examined by court, and a reasonable decision on the motion must be delivered.

Articles 119-120 of the Criminal Procedure Code strictly outline the two preconditions for search and seizure: substantiated presumption that the evidence of a crime and a court's warrant will be obtained as a result of the search. Search and seizure without a court's warrant is also allowed, but only in extraordinary cases when there is an urgent necessity to do so. Even so, the judge must then either legalize or invalidate the search and seizure post factum.

Findings

Situation has not changed in case of decisions with regard to search and seizures where GYLA still observed apparent violations of the right to a motivated (reasoned) decision.

As in previous reporting periods, in nearly all cases observed by GYLA search and seizures were justified based on urgent necessity and legalized later by court. Namely, of 38 cases of search and seizure only two were performed with a court's warrant, while the remaining 36 cases were legalized by the court post factum.

GYLA was unable to determine whether the after-the-fact legalizations

[47] Criminal Procedure Code of Georgia, Article 194 para.2.

of searches and seizures were substantiated, due to the fact that they are not discussed in the open court. However, the fact that 95% of searches were only justified after having been performed creates the doubt as to the compliance of the law enforcement authorities and the court with their obligations not to conduct or legalize searches that are not appropriately justified on the basis of urgent necessity.

V. Right to a Public Hearing

As noted above, the right to a public hearing is an important right of a defendant and the public itself, guaranteed at both the national and international level.

For comprehensive implementation of the right, the court must ensure that proceedings are conducted in a way that if a representative of the public attends, s/he has no trouble hearing and understanding the ongoing processes. It also means ensuring an equal opportunity for attendance at the hearing. Furthermore, the court must make the verdict public, indicating punishment, the applicable legislation on which the verdict was based, and the right of a defendant to appeal the decision.[48]

It should be noted that amendments were made to the Organic Law on Common Courts in May 2013, with a view to ensure more publicity of the hearings. As a result of those amendments, the public broadcaster and other TV companies became entitled to carry out video and audio recording of the trials.[49]

Findings

Monitoring revealed that the right to a public hearing was observed in most of the cases. Similar to the previous reporting period, the major exception was initial appearance hearings in TCC, where information about the hearings was never provided in advance.

In addition to the above, in 100 of the 451 (22%) hearings that did not involve the initial appearances, no information was published about the date and time of the hearings in advance. This figure is quiet large and

[48] Criminal Procedure Code of Georgia, Article 277 para.1.

[49] Organic Law of Georgia on Common Courts, Article 13[1] (effective since 1 May, 2013).

it is very important that the court takes proper measures to deal with it. It should be noted, that in KCC the process is more organized than in Tbilisi.

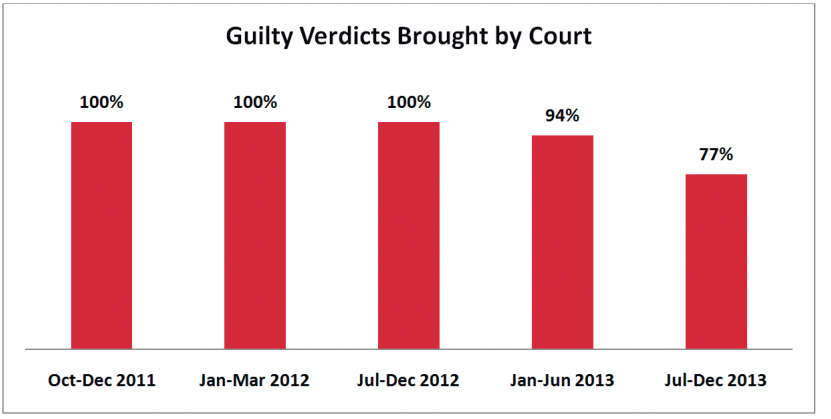
GYLA also observed the following additional violations:

- In 6 of 351cases (1.7%), information published about the court sessions was either incomplete or incorrect. For instance, the notice provided either did not specify the relevant articles of the Criminal Code that the defendant was charged with or listed the wrong time or courtroom. In one case, the monitor for publishing information about the sessions was turned off for few hours.
- In all of the 6 open hearings individuals had no opportunity to attend the jury selection session, since bailiffs were guarding the entrance to the room. Though the session was not officially closed by the judge, neither bailiffs nor jury coordinators allowed interested individuals to attend the session. GYLA's monitor communicated with the court assistant and explained to bailiffs and jury coordinators[50] that any interested individual is entitled to attend such session, unless the judge makes decision to close it. The situation was similar also in the previous monitoring period. Regardless of the court administration's promise to GYLA that the problem would have been fixed in the future, it still remains unchanged.
- In 20 of 535cases (4%), defendant's relatives or other interested persons were unable to attend due to the small size of the courtroom. There were three high-profile cases among them (the case of Giorgi Ugulava and Davit Kezerashvili, Bachana Akhalaia's case and that of Ivane Merabishvili).
- 13 of the 269 main hearings observed[51] ended with the public announcement of a final judgment. Of those 13 judgments, 10 (77%) were convictions. Other three judgments were acquittals. Of the three acquittals one was an ordinary case and two were high profile cases. The chart below illustrates the situation during the entire monitoring (from October 2011 until December 2013).

[50] The Jury coordinators, as they explained to the monitor, are the court staff members in charge of technical and organizational matters relating to jury candidates and active jurors in the court.

[51] Two hearings were closed.

Chart N11



- Of the 13 final judgments observed, in four of those cases (31%) the court failed to cite applicable legal provisions.
- As in previous reporting periods all plea agreements were approved. Of the 68 approved plea-agreements, in one case the judge failed to announce the judgment publicly. He only announced that the plea agreement had been approved and left the room.

Other observations:

- In one of the initial appearance hearings the defendant was accused of sexual offence against an underage girl. Identity of the victim was revealed several times at the trial and thus the privacy interest of the minor was violated. Notwithstanding the grave offence and the possible risks to the juvenile, the judge did not apply his legitimate authority and did not close the hearing or use any other mechanism to protect the victim's identity.[52]
- Although the internal regulations of TCC specify that no one is allowed to enter the courtroom after the beginning of a trial, representatives of various organizations who monitored the process were allowed to attend one session (Bachana Akhalaia's trial) after the trial began.

[52] According to Criminal Procedure Code of Georgia, Article 182, para.3 subparagraph "b", "On the motion of the parties' or its own initiative the court may decide to partially or fully close the session to protect the interests of a juvenile."

- The judge closed the hearing only when the attendants started to abuse each other physically. The judge, though, did not announce publicly his decision to close the hearing, he only ordered bailiffs to expel attendances from the courtroom. Therefore, the judge has violated stipulations of the Criminal Procedure Code, according to which he had to announce the grounds for the closure of the public. [53]

VI. Right to be assisted by an Interpreter

The Constitution of Georgia[54], the Criminal Procedure Code[55] and international conventions to which Georgia is a party[56] stipulate that when an individual does not have command of the language of the proceedings, s/he must be assisted by an interpreter at the state expense.

Findings

In the course of monitoring GYLA observed 13 hearings where participation of an interpreter was mandatory. From these hearings, defendant's right to an interpreter was violated only once, when the interpreters failed to perform their obligations in a qualified manner. Translators of Turkish and Azeri languages were invited to the hearing. The judge stated the grounds for challenging the judge in details, but the translators did provided the information to the defendants. The interpreters translated only the questions of the judge, in which the judge asked whether the defendants had any motion. However, the judge as well as the appointed defense failed to react and protect the defendant's legitimate interest.

The opposite case was observed as well, in which the judge, on his own initiative, announced a break at the trial to appoint a translator (the example is provided in the special box).

[53] Criminal Procedure Code of Georgia, Article 182, para.6.

[54] Constitution of Georgia, Article 85 para.2: „Legal proceedings shall be conducted in the state language. An individual not having a command of the state language shall be provided with an interpreter".

[55] Criminal procedure Code of Georgia, Article 38 para.8.

[56] European Convention on Human Rights, Article 6 para.3.

Appointment of an Interpreter upon the Judge's Initiative

In one case an Azerbaijani defendant could not understand Georgian well enough. An interpreter was not invited at the hearing since in the course of investigation it was presumed that the defendant knew Georgian language. At the trial the judge determined that the defendant did not have a good command of Georgian language and he could not understand many terms, such as "*criminal record"* and *"wife".* The prosecution declared that since the defendant was Azeri, he could not understand Georgian words spoken quickly. The judge replied though, that he was not able to assess the defendant's command of language and he could not continue the hearing in such a manner. Consequently, he announced a break to invite a translator of the Azeri language.

C. CONDUCT OF PARTIES DURING THE TRIAL

GYLA observed both unethical and illegal actions of parties, including the court, at a number of hearings. Even though every such case also entails curtailing of individual rights to a certain extent, they predominantly illustrate a lack of professionalism and lack of competence of the parties. The present section of the report does not include cases that involve interpretation of norms or unreasonable use of their discretionary powers by parties.

Courts

- In one of the cases Kutaisi City Court grossly violated the presumption of innocence and the principle of adversary proceedings. The court made a statement about one of its pending cases in relation to an article published by a newspaper about the case, stating that the "factual circumstances of the case are as follows: "*on March 4, 2013, intoxicated D.D. motivated by revenge inflicted life-threatening injuries to D.G.by firing a shotgun at him three times during an argument. The shotgun was registered to his name, and he had the right to carry it. D.G. died before being delivered to the hospital. Furthermore, as a result of one of the shots fired during the criminal act, a person accompanying him suffered light bodily harm, a gunshot wound, resulting in the temporary deterioration of his health.*" Without examining and

putting together all the pieces of evidence, the court referred to the defendant as a criminal by affirming his alleged criminal actions. Notably, the court's statement was published on its official website.

GYLA applied to Kutaisi City Court with a letter requesting to remedy the violation by any possible means. In response the court stated that the statement contained factual circumstances of the case, and therefore it did not violate the presumption of innocence. GYLA believes that in its statement the court should have indicated that the defendant had been charged with certain crime allegedly committed under certain circumstances and with certain motives. This would have provided an objective description of the case. Instead, court presented the factual circumstances of the case just as if it was the prosecution party and not the neutral arbiter and grossly violated interests of the defense.[57] Regrettably, the statement is still available in its original form on the website of Kutaisi City Court.[58]

- During a defendant's first appearance before the court the judge made a legal mistake; while explaining his rights to the defendant, he misinformed the latter about anticipated punishment. The defendant was charged with attempted murder rather than murder, and the judge wrongfully informed him that if found guilty he would be sentenced to imprisonment for life, which is prohibited by the Criminal Code.[59] The same mistake was repeated by the prosecutor. He founded his motion for the preventative measures on the possible punishment of life-long imprisonment. Notably, the defense did not object to it.
- The Criminal Procedure Code stipulates that cases that involve murder charges should be tried by the juries. In a pre-trial hearing where defendant was charged with murder, judge did not inform him about his right to a jury trial; instead, the judge

[57] GYLA could not appeal against court's illegal action as it was only the defendant who had the right to do so. GYLA is ready to provide legal assistance to the defendant if he wishes to lodge a complaint.

[58] See: http://court.ge/courts/quTaisis_saqalaqo_sasamarTlo/?page=25&id=885 (last accessed on _31/03/2014).

[59] Criminal Code of Georgia, Article 56 para.4 stipulates: "life-long imprisonment shall not be ordered for plotting a crime or attempting to commit a crime."

proceeded to the main hearing. By doing so, he violated the law and stripped the defendant of his legal right to a jury trial.[60]It is noteworthy that the defense did not object, which demonstrates either his/her incompetence or indifferense. Also, Criminal Procedure Law does not explicitly determine the proceeding which can restore this right of the defendant. Protection of this right essentially affects the legal interest of the defendant; consequently it is important for the law to regulate restoration of this right if violated.

Prosecutor, Bailiff, Police

- A prosecutor, a policeman and a bailiff violated norms of ethics before one trial.

  During his jury trial for punishment, a defendant (found not guilty of murder but guilty of hooliganism) was sitting on a window-sill with his back tilted back. Bailiff told him aggressively "are you lying down? Do you need a blanket too?!" The defendant responded: "what is your problem, brother?" The bailiff got into an argument with him over his response. The prosecutor approached the defendant and said: "*he's still in a chatty mood**, these murderers freed by jurors, this is what the system and jurors are all about!"*** The bailiff responded: *"is this the one who was freed?"* Suddenly a policeman standing in front of the courtroom for administrative violations approached the prosecutor and offered: *"do you want me to arrest him on administrative grounds?"* The prosecutor said: *"no".*

  Considering that the court's final verdict had already come into force**, the prosecutor's words** did not violate presumption of the innocence, but he did violate the code of ethics for employees of prosecutor's office of Georgia.[61] The code demands that a

[60] Under Criminal Procedure Code of Georgia, Article 129 para.3: "if a defendant has been charged with a crime subject to a jury trial, judge shall inform the defendant of regulations of jury trial and his relevant rights. Afterwards, judge should seek to determine whether the parties choose to waive their right to a jury trial. In absence of a joint decision of parties to waive the right to a jury trial, judge should set the date for selection of jurors".

[61] Code of Ethics of Employees of the Office of Prosecutor, adopted under the Order N5 of the General Prosecutor of Georgia, dated June 19, 2006.

prosecutor express his opinions by means of a founded criticism and with tact. The criticism about the verdict of a jury trial was unfounded.[62] Furthermore, the same normative act stipulates that a prosecutor should be promoting respect for justice by all[63], while his words were of no indicative of respect.

The bailiff's attitude towards the defendant was offensive, and his actions were provocative. He violated the regulation of the standards of communication with citizens in the High Council of Justice of Georgia and in common courts of Georgia, mandating that bailiffs act courteously and favorably towards citizens, as prescribed by Chapters 2 and 5 of the regulation.

Policeman's actions were indicative of his inclination towards abuse of power; he offered to place defendant under administrative arrest, indicating that he is able to place an individual under administrative arrest without any grounds. In particular, had the prosecutor consented, he would have arrested the individual illegally, by abusing his power. Considering that he made an offer of illegal arrest, he did not in fact abuse his powers but he violated police norms of ethics stipulating that a policeman should always abide by law in planning and executing his actions[64], and that he should act in defense of basic human rights and liberties including the right to freedom and safety.[65]

- In the case against Bachana Akhalaia (one of the high-profile cases) GYLA determined that the prosecution caused deliberate prolongation of the case, which was not adequately reacted upon by the judge. First, the prosecution should have made its concluding speech on September 17, which was not possible due to the absence of this prosecutor (it is noteworthy that the previous day, the case against Megis Kardava and others was postponed based on the written statement of the prosecutor that he needed to prepare the concluding speech for the Akhalaia case). At the next court hearing, the prosecutor was again absent, claiming a worsening of the prosecutor's health condition;

[62] Code of Ethics of the Employees of the Office of Prosecutor, Article 6 para.1.

[63] Ibid, Article 10 para.2.

[64] Police Code of Ethics, Chapter 1, para.2.

[65] Ibid, Chapter 1, para.6.

up until now, there is no medical certificate confirming this fact. Another prosecutor then got involved in the case on September 19, and requested a 30-day postponement of the case claiming a need to get acquainted with the case materials. The prosecutor was given 10 days for that. The same prosecutor arrived at the hearing on September 30 unprepared, and again requested postponement of the case for 20 days to get acquainted with the case materials. The judge granted an additional 7 days to the prosecution. On October 7, the same prosecutor made a motion for self-recusal. The prosecutor's motion mentioned that, just as the spouse of Bachana Akhalaia, she was an Internally Displaced Person (IDP) from Abkhazia and that they had the same circle of acquaintances, which psychologically pressured him personally and through the social networks. The prosecutor also mentioned having friendly relations the attorneys of Bachana Akhalaia (the attorneys do not confirm the friendship, saying they were only colleagues and that their relations did not exceed professional relations). The judge granted the prosecutor's motion for self-recusal. At the October 8 hearing, the newly-appointed prosecutor asked for additional time to get acquainted with the case materials. The judge granted a 10-day postponement to the prosecution.

According to the Criminal Procedure Code (Article 62, paragraph 6), self-recusal should be substantiated. The first prosecutor did not substantiate the recusal argument of "worsening of the health conditions". As for the second prosecutor, she knew of the grounds for the recusal prior to the hearing; however, the prosecutor did not motion for recusal in a timely manner. In addition, the prosecutor's argument of having a common circle of acquaintances with Akhalaia's spouse and the pressure from their side is unconvincing. The time when the acquaintances started pressuring the prosecutor is unknown; it is also unclear why the prosecutor did not move for self-recusal on September 30, when he asked the judge for postponement of the hearing to prepare for the case.

Delayed court procedure violates Article 6(1) of the ECHR. The Convention provides that everyone is entitled to a fair and public hearing within a reasonable time. When determining a violation of Article 6(1), the ECtHR considers whether the delay of

the hearing was caused by the conduct of state agencies. The ECtHR has declared that state representative should refrain from an unreasonable delay of the court hearing when the court would not allow it (Baraona v. Portugal). As for the observance of reasonable terms, the requirements of the European Court are especially strict when a delay of the proceeding causes the detained to remain in prison (Smirnova v. Russia).

- In another case brought against Bachana Akhalaia, during questioning of one of the witnesses, the defense attorney said: "*you came to my office and told me that you and your wife were followed by a pickup truck on your way home. Then they picked you up in Land Cruisers, took you to a forest, threw your cell-phone away and told you: 'We'll now force you to remember what you should be remembering!' Then they left you in the forest. Is that true?"* The witness responded: *"yes, this is what happened."* The prosecutor turned to the judge saying "*your honor, I don't see any sign of crime in the testimony of the witness as the witness was not able to identify persons who abducted him.*"

  GYLA believes that the prosecutor's statement violated procedural law stipulating that a statement indicative of signs of crime serves as grounds for launching an investigation.[66]

- During his first appearance before the court, a defendant stated: *"the computer that I've been accused of stealing was lent to me by my friend. His mother thought that it was stolen and called the police. Afterwards, investigators threatened my friend to coerce him into writing that I stole it; otherwise, they said that he would share my fate [i.e. arrest him]."* Neither the prosecutor nor the court reacted to the statement.

  As we noted above, it is the obligation of a prosecutor to launch an investigation on the incidents indicative of a crime,[67] while regrettably the court has no direct legal right to do so; however, the court may act in best interests of the defendant and urge the prosecutor to investigate such cases.

[66] Criminal Procedure Code of Georgia, Article 100.

[67] Criminal Procedure Code of Georgia, Article 100.

D. TIMELINESS OF THE COURT PROCEEDINGS

GYLA's monitoring revealed problems with the timely start of the court proceedings. During this monitoring period, 169 of the 451 hearings that did not involve first appearances (37.5%) started with more than five minutes delay:

- In 70 cases (41%), the judge was late;
- In 24 cases (14%), another hearing was running overtime in the same courtroom;
- In 21 cases (13%),a defense lawyer was late;
- In 19 cases (11%), the defendant was late;
- In 16 cases (10%), the prosecutor was late;
- In the remaining 19 cases (11%), various other reasons were cited.

GYLA's monitoring revealed one case in which the court failed to conduct the process in an organized manner:

In the course of examining one of the cases, with multiple defendants, many individuals attended the trial. The judge appointed two hearings simultaneously and one session started with 75 minute delay. Improper planning of the session, caused chaos and noise in the hall of the court building for more than an hour (the whole territory of the hall was occupied by attendees and they were waiting for the start of the trial).

CONCLUSIONS

- In some aspects, courts continued to improve their approach to both high-profile and more typical cases. Although the percentage of the defendants given imprisonment as a preventative measure has increased, the percentage of rulings upholding unsubstantiated motions for the preventive measures has significantly decreased.
- The types of preventive measures applied, however, have not changed significantly. Bail and imprisonment remain the only measures used, except for rare exceptions. There were only three of such exceptions: one personal guarantee, one case of agreement not to leave the country (travel ban), and one case of leaving defendant without any preventive measure. None of these three were high-profile cases.
- The prosecution's motions for preventive measures are still not sufficiently substantiated, particularly in the case of bail. One positive change is that court itself mostly tries to examine defendants' financial condition. Moreover, the judiciary no longer routinely grants the prosecution's motions for imprisonment, and more of its decisions are substantiated.
- In the course of monitoring since October 2011 GYLA encountered the first case, when court made decision on termination of criminal prosecution at pre-trial hearing.
- The problem of attending the jury selection hearings remain unchanged similar to the previous reporting cycle. GYLA monitors had to communicate with the administration of the TCC in to be able to enter these hearings. Unfortunately, attendance of the jury selection hearings was restricted even though these hearings were not officially closed by the judge's ruling.
- As in the previous monitoring cycles, the courts failed to publish any information about the initial appearances in advance.
- Except for the initial appearances, the court failed to publicize the information about the hearings in advance almost in one-fourth of cases.
- As in the previous reporting cycles, pre-trial motions took place in a routine manner. Courts routinely granted prosecution mo-

tions to submit the evidence. The defense was typically hesitant to bring motions, whether to submit its own evidence or to declare the prosecution's evidence inadmissible. The defense was most active in the high-profile cases.

- Regarding search and seizures, there is the reason to doubt the compliance of the law enforcement authorities and the court with their obligations not to conduct or legalize searches and seizures that are not appropriately justified on the basis of urgent necessity.
- The handling of the plea agreement hearings remained unchanged. The court maintained a passive role and automatically approved almost all plea agreements. However the percentage of the plea agreements imposing a fine has decreased and average fine in concluded plea agreements has again dropped significantly.
- GYLA observed no particular changes in the specific rights of the defendants in the criminal proceedings. However, judges did a much better job of informing defendants of their right to be protected against the ill-treatment and inquiring as to whether the plea agreements were the result of ill-treatment.
- The problem with the timely start of court proceedings maintains, often due to the judges being late.

RECOMMENDATIONS

Based on the observations in this as well as all the previous reporting cycles, GYLA proposes the following recommendations:

1. Courts should take advantage of their discretion regarding preventive measures. Courts should use less severe measures (measures other than imprisonment and bail) in appropriate cases, and refrain from applying any preventive measure when prosecution fails to justify its necessity. Courts must also demand more reasoned preventive measure motions, and impose the burden of proof on the prosecution, especially in the bail cases.
2. Judges should fully explain the options of preventive measures and the possibility of their imposition to the defendants who do not have lawyers. Besides, judges should try to find out on their own initia-

tive whether it is possibile to use a less restrictive preventive measure rather than bail or imprisonment.

3. When hearing a plea agreement, judges should not remain as passive as they currently are: they do not use their power to reject the plea agreements, or fulfill their obligation to determine whether the punishment is appropriate. Judges should take appropriate measures to ensure that the punishment is proportional to the crime.

4. In the course of witness examination the judge should follow the rule established by law, and ask witnesses questions only upon the parties' permission.

5. The court should establish uniform practice regarding using at the trial evidence given by witnesses during investigation, as well as the admissibility of a question objected to by a party. The court should also avoid inconsistent approaches towards the defendants.

6. Defense lawyers should carry out effective and vigorous defense at all stages of a case.

7. Judges should apply all proportionate measures to maintain order in the courtroom and ensure that parties are able to fully represent their positions.

8. Judges should provide defendants with a complete and clear explanation of their rights.

9. The law should be amended in a way that broadens the scope of judges' authority in combating ill-treatment of defendants; further, prosecutors should take adequate further actions in response to any allegations of ill-treatment.

10. Applicable norms of the Criminal Procedure Code regulating special measures for witnesses should be improved; in particular, grounds for their application should be broadened; authority of the office of the prosecutor and the Interior Ministry to implement these measures should be delegated to an agency which is not involved in investigation and has operational autonomy in this respect.

11. A change should be made to the procedure law that will allow a defendant to request a jury trial even if the pre-trial hearing judge violated his legal interest by not explaining to the defendant the right to a jury before proceeding to the main hearing.

12. Courts and law enforcement authorities should show more responsibility towards the measures of the search and the seizure. Law enforcement authorities should apply these measures as a last resort, and judges should grant a warrant for search and seizure only on the basis of comprehensive examination.

13. Courts should ensure publication of full and accurate information about upcoming trials. Courts should also ensure free public access to jury selection hearings that are not officially declared to be closed by a judge. Judges should exercise their power of closing a trial reasonably, where necessary to protect the interests of parties.

14. Courts should ensure the full implementation of the right to an interpreter, employing these services from the qualified interpreters.

ANNEXES

Tbilisi City Court

***First Appearance hearings* – Number of hearings attended: 64**

Was the announcement published outside the courtroom?	**64**	
Yes	0	**0%**
No	64	**100%**
Did anybody in the courtroom mention that judge's speaking was not understandable (in only this 3 cases was the judge speaking in terms not understandable for the public)?	**3**	
Yes	1	**33%**
No	2	**67%**
Could anyone freely attend?	**64**	
Yes	63	**98%**
No	1	**2%**
Did the judge explain all the rights to the accused?	**64**	
Yes	44	**69%**
No	20	**31%**
Did the judge comprehensively explain to the accused his/her rights?	**64**	
Yes	55	**86%**
No	9	**14%**
Was there a translator invited where necessary? (Translator's attendance does not necessarily mean the right was provided – e.g. when the translator is visibly not doing his job)?	**64**	
Yes	1	**2%**
No	0	**0%**
There was no need of translator	63	**98%**

Was a preventive measure imposed (at the hearings observed the court dealt with the preventive measure of 73 defendants in total)?	**73**	
Bail	42	**68%**
Imprisonment	28	**29%**
Personal guarantee	1	**0%**
Agreement on not to Leaving a Country and Proper Conduct	1	**1%**
Military command's supervision over a military servant's behavior	0	**0%**
no preventive measure imposed	1	**1%**
Did the judge explain to the defendant his right to lodge a complaint about ill-treatment?	**64**	
Yes	56	**88%**
No	8	**12%**
Did the judge ask the defendant whether defendant wished to lodge a complaint about the violation of his/her rights?	**64**	
Yes	53	**83%**
No	11	**17%**

Pre-trial Hearings **– Number of hearings attended: 50**

Was the announcement published outside the courtroom?	**50**	
Yes	24	**48%**
No	26	**92%**
Could anyone freely attend?	**50**	
Yes	47	**94%**
No	3	**6%**
Did the judge explain all the rights to defendant?	**50**	
Yes	21	**42%**
No	16	**32%**

No information obtained (hearing was postponed/ defendant did not attend the hearing)	13	**26%**
Did the judge comprehensively explain to the accused his/her rights?	**50**	
Yes	26	**52%**
No	11	**22%**
No information obtained (hearing was postponed/ defendant did not attend the hearing)	13	**26%**
Did the prosecutor make a motion for presenting evidence (15 hearings were postponed)?	**35**	
Yes	35	**100%**
No	0	**0%**
Was the motion granted?		
Yes	31	**89%**
No	1	**3%**
Hearing was postponed	3	**8%**
Did the defense agree to the prosecution's motion?	**35**	
Yes	27	**77%**
No	8	**23%**
In case of Search and Seizure	**21**	
The acts were legalized in advance by the judge	2	**10%**
The acts were legalized later by the judge	19	**90%**
Did the defense make a motion for presenting evidence (16 hearings were postponed)?	**34**	
Yes	15	**44%**
No	19	**56%**
Was the motion granted?	**15**	
Yes	12	**80%**
No	0	**0%**
Hearing was postponed	3	**20%**
Did the prosecution agree to the defense's motion?	**15**	
Yes	**11**	**73%**
No	**3**	**20%**

Hearing was postponed	**1**	**7%**
Did the judge approve the list of evidence submitted by the prosecution?	**35**	
In full	30	**86%**
In part	1	**3%**
Was not approved	1	**3%**
Hearing was postponed	3	**8%**
Did the judge approve the list of evidence submitted by the defense	**15**	
In full	12	**80%**
In part	0	**0%**
Was not approved	0	**0%**
Hearing was postponed	3	**20%**

Main trial hearing **– Number of hearingsattended: 150**

Was the announcement published outside the courtroom?	**150**	
Yes	114	**76%**
No	36	**24%**
Could anyone freely attend?(1 hearing was closed)	**149**	
Yes	138	**93%**
No	11	**7%**
Was there a translator invited where necessary?(Translator's attendance does not necessarily mean the right was provided – e.g. when the translator is visibly not doing his job)?(1 hearing was closed)	**149**	
Yes	2	**1.3%**
No	1	**0.7%**
There was no need of translator	146	**98%**
Was the judgment publicly announced? (This question was relevant only in 5 observed hearings).	**5**	
Yes	5	**100%**

No	0	**0%**
Did the judge explain all the rights to the defendant? (This question was relevant only in 18 observed hearings)	**18**	
Yes	10	**56%**
No	6	**34%**
Hearing was postponed	1	**5%**
Defendant did not attend the hearing	1	**5%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 18 observed hearings)	**18**	
Yes	14	**79%**
No	2	**11%**
Hearing was postponed	1	**5%**
Defendant did not attend the hearing	1	**5%**
Were witnesses other than the defendant present in the courtroom before their examination? (This question was relevant only in 59 were witnesses were invited)	**59**	
Yes	2	**3%**
No	57	**97%**
Did the judge ask questions to witnesses in favor of any parties (including defendants and experts)? This question was relevant only in 89 were witnesses were invited	**59**	
Yes	6	**10%**
No	53	**90%**
In favor of which party?	**6**	
Prosecution	1	**17%**
Defense	0	**0%**
Both	5	**83%**

***Plea agreements*– Number of hearings attended: 51**

Was the announcement published outside the courtroom?	**51**	
Yes	21	**41%**
No	30	**59%**
Could anyone freely attend?	**51**	
Yes	50	**98%**
No	1	**2%**
Was there a translator invited where necessary (Translator's attendance does not necessarily mean the right was provided – e.g. when the translator is visibly not doing his job)?	**51**	
Yes	2	**4%**
No	0	**0%**
There was no need of translator	49	**96%**
Did the judge explain to the defendant that lodging complaint about ill-treatment would not impede the approval of a plea agreement concluded in accordance with the law?	**51**	
Yes	43	**84%**
No	8	**16%**
Did the judge explain all the rights to defendant? (This question was relevant only in 31 observed hearings that were the first hearing of plea agreements)	**31**	
Yes	15	**48%**
No	16	**52%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 31 observed hearings that were the first hearing of plea agreements).	**31**	
Yes	23	**74%**
No	8	**26%**

Kutaisi City Court

First Appearances **- Number of hearings attended: 23**

Was the announcement published outside the courtroom?	**23**	
Yes	0	**0%**
No	23	**100%**
Could anyone freely attend?	**23**	
Yes	22	**96%**
No (not enough space in the courtroom)	1	**4%**
Did the judge explain all the rights to the accused?	**23**	
Yes	12	**52%**
No	10	**44%**
Defendant was not present	1	**4%**
Did the judge comprehensively explain to the accused his/her rights?	**23**	
Yes	18	**78%**
No	4	**18%**
Defendant was not present	1	**4%**
Was there a translator invited where necessary? (Translator's attendance does not necessarily mean the right was provided – e.g. when the translator is visibly not doing his job)	**23**	
Yes	0	**0%**
No	0	**0%**
There was no need of translator	23	**100%**
Number of imposed preventive measures (at the attended hearings court imposed preventive measures on 33 defendants in total)	**33**	
Bail	16	**48%**

Imprisonment	17	**52%**
Personal guarantee	0	**0%**
Agreement on not to Leaving a Country and Proper Conduct	0	**0%**
Military command's supervision over a military servant's behavior	0	**0%**
Did the judge explain to the defendant his right to lodge a complaint about ill-treatment?	**23**	
Yes	21	**92%**
No	1	**4%**
Defendant was not present	1	**4%**
Did the judge ask the defendant whether defendant wished to lodge a complaint about the violation of his/her rights? (1 hearing was closed)?	**23**	
Yes	19	**83%**
No	3	**13%**
Defendant was not present	1	**4%**

Pre-trial Hearings **– Number of hearings attneded: 33**

Was the announcement published outside the courtroom?	**33**	
Yes	32	**97%**
No	1	**3%**
Could anyone freely attend?	**33**	
Yes	29	**88%**
No (1 hearing was closed)	4	**12%**
Was there a translator invited where necessary?(Translator's attendance does not necessarily mean the right was provided – e.g. when the translator is visibly not doing his job)	**33**	

yes	1	**3%**
No	0	**0%**
There was no need of translator	32	**97%**
Did the judge explain all the rights to defendant?	**33**	
Yes	5	**15%**
No	24	**73%**
Monitor could not fix the data (hearing was postponed; defendant was not present)	4	**12%**
Did the judge comprehensively explain to the accused his/her rights?	**33**	
Yes	8	**24%**
No	21	**64%**
Monitor could not fix the data (hearing was postponed; defendant was not present)	4	**12%**
Did the prosecutor make a motion for presenting evidence? (5 hearings were postponed)	**28**	
Yes	28	**100%**
No	0	**0%**
Was the motion granted?		
Yes	28	**100%**
No	0	**0%**
Did the defense agree to the prosecution's motion?		
Yes	25	**89%**
No	3	**11%**
In case of Search and Seizure	**17**	
The acts were legalized in advance by the judge	0	**0%**
The acts were legalized later by the judge	17	**100%**
Did the defense make a motion for presenting evidence? (5 hearings were postponed)	**28**	

Yes	8	**29%**
No	20	**71%**
Was the motion granted?	**8**	
Yes	8	**100%**
No	0	**0%**
Did the prosecution agree to the defense' motion?	**8**	
Yes	5	**63%**
No	3	**37%**
Did the judge approve the list of evidence submitted by the prosecution?	**28**	
In full	27	**96%**
In part	1	**4%**
Was not approved	0	**0%**
Did the judge approve the list of evidence submitted by the defense	**8**	**100%**
In full	8	**100%**
In part	0	**0%**
Was not approved	0	**0%**

Main trial hearing **– Number of trial attended: 121**

Was the announcement published outside the courtroom?	**121**	
Yes	121	**100%**
No	0	**0%**
Could anyone freely attend?	**120**	
Yes	119	**99%**
No	1	**1%**
Was the judgment publicly announced? (This question was relevant only in 13 observed hearings).	**13**	

Yes	13	**100%**
No	0	**0%**
Did the judge explain all the rights to the defendant? (This question was relevant only in 15 observed hearings)	**15**	
Yes	5	**33%**
No	5	**33%**
Hearing was postponed	3	**21%**
Defendant was not present	2	**13%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 15 observed hearings)	**15**	
Yes	8	**54%**
No	2	**13%**
Hearings was postponed	3	**20%**
Defendant was not present	2	**13%**
Were witnesses other than the defendant present in the courtroom before their examination? (excluding defendants attending hearings)	**53**	
Yes	1	**1%**
No	52	**99%**
Did the judge ask questions to witnesses in favor of any parties (including defendants and experts)? This figure indicates the number of those hearings at which witnesses testified and not the total number of witnesses	**53**	
Yes	12	**23%**
No	41	**77%**
In favor of which party?	**12**	
Prosecution	1	**8%**
Defense	1	**8%**

Both	10	**84%**
Did the judge give any instructions to any of the parties (1 hearings was closed)	**120**	
Yes	19	**16%**
No	101	**84%**
To which party?		
Prosecution	5	**26%**
Defense	13	**69%**
Both	1	**5%**

***Plea agreements*– Number of hearings attended: 17**

Was the announcement published outside the courtroom?	**17**	
Yes	14	**82%**
No	3	**18%**
Could anyone freely attend?	**17**	
Yes	17	**100%**
No	0	**0%**
Was there a translator invited where necessary (Translator's attendance does not necessarily mean the right was provided – e.g. when the translator is visibly not doing his job.)?	**17**	
Yes	1	**6%**
No	0	**0%**
There was no need of translator	16	**94%**
Did the judge explain to the defendant that lodging complaint about ill-treatment would not impede the approval of a plea agreement concluded in accordance with the law?	**17**	
Yes	15	**88%**

No	2	**12%**
Did the judge explain all the rights to defendant? (This question was relevant only in 11 observed hearings that were the first hearing of plea agreements)	**11**	
Yes	8	**73%**
No	3	**27%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 11 observed hearings that were the first hearing of plea agreements).	**11**	
Yes	9	**82%**
No	2	**18%**
Did the judge give any instructions to any of the parties	**17**	
Yes	1	**6%**
No	16	**94%**
Which party?	**1**	
Defense	1	**100%**
Prosecution	0	**0%**

Tbilisi and Kutaisi City Courts

Appellate hearings **– Number of Hearings Attended: 11**

Was the announcement published outside the courtroom?	**11**	
Yes	11	**100%**
No	0	**0%**
Could anyone freely attend?	**11**	
Yes	11	**100%**

No	0	**0%**
Did the judge explain all the rights to the defendant? (This question was relevant only in 1 observed hearings)	**1**	
Yes	0	**0%**
No	1	**100%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 1 observed hearings)	**1**	
Yes	1	**100%**
No	0	**0%**
What was the ground for appeal?	**11**	
Legality of verdict	3	**27%**
Substantiation of verdict	8	**73%**

Jury Selection Hearings **– Number of Hearings Attended: 6**

Was the announcement published outside the courtroom?	**6**	
Yes	3	**50%**
No	3	**50%**
Could anyone freely attend?	**6**	
Yes	0	**100%**
No	6	**0%**
Did the judge instruct the juror candidates the law to be applied during trial?	**6**	
Yes	5	**83%**
No	1	**17%**
Did the parties make motions on changes or amendments to the instructions given by judge to the juror candidates?	**6**	

Yes	0	**0%**
No	6	**100%**
Did the juror candidate ask the question or stated any remark?	**6**	
Yes	2	**33%**
No	4	**67%**
Did the prosecution party ask the questions to juror candidates? (on 1 hearing only names of the selected jurors were announced, as it was last hearing of jury selection)?	**5**	
Yes	5	**100%**
No	0	**0%**
Did the defense party ask the questions to juror candidates? (on 1 hearing only names of the selected jurors were announced, as it was last hearing of jury selection)?	**5**	
Yes	5	**100%**
No	0	**0%**
Did the party present materials on substantiated challenge?	**6**	
Yes	0	**0%**
No	6	**100%**

Tbilisi City Court

***Jury Trials* – Number of hearings attended: 11**

Was the announcement published outside the courtroom?	**11**	
Yes	10	**91%**
No	1	**9%**
Could anyone freely attend?	**11**	
Yes	11	**100%**

No	0	**0%**
Did the judge explain all the rights to the defendant? (This question was relevant only in 2 observed hearings)	**2**	
Yes	2	**100%**
No	0	**0%**
Did the judge comprehensively explain to the accused his/her rights (this question was relevant only in 2 observed hearings)?	**2**	
Yes	2	**100%**
No	0	**0%**
Did the jurors take the oath (this question was relevant only in 6 observed hearings)?	**6**	
Yes	6	**100%**
No	0	**0%**
Aftertheoathdidthejudgeexplain therightsandobligationstojurors(this question was relevant only in 6 observed hearings)?	**6**	
Yes	6	**100%**
No	0	**0%**
Did the judge notify the jurors about the responsibility in case of breach their obligations (this question was relevant only in 6 observed hearings)?	**6**	
Yes	4	**67%**
No	0	**0%**
Information was not obtained	2	**33%**
Did the judge instruct the jurors before jurors' retiring to the deliberations room (this question was relevant only in 2 observed hearings)?	**2**	
Yes	2	**100%**
No	0	**0%**

Partially	0	**0%**
Did the parties make motions on changes or amendments to the instructions made by judge to the jurors (this question was relevant only in 3 observed hearings)?	**3**	
Yes	1	**33%**
No	2	**67%**
Which Party?	**1**	
Defence	1	
Prosecution	0	
Did the judge express his/her personal opinion on the issues that are to be decided by the jury?	**11**	
Yes	0	**0%**
No	11	**100%**
Were the jurors able to see, hear and understand everything happening in the courtroom?	**11**	
Yes	11	**100%**
No	0	**0%**
Did any of the juror express any concern that he/ she was not able to understand the part or the whole process?	**11**	
Yes	0	**0%**
No	11	**100%**
After delivering verdict, did the judge or parties express their consideration regarding the fairness of the verdict (this question was relevant only in 1 observed case)?	**1**	
Yes	0	**0%**
No	1	**100%**