Georgian Young Lawyers' Association

TBILISI CITY COURT CRIMINAL CHAMBER MONITORING REPORT

Monitoring Report №2
Period Covered: January – March 2012
May 2012
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 Georgian Young Lawyers` Association and do not necessarily reflect the views of USAID, the United States Government or EWMI.

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

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INTRODUCTION

The Georgian Young Lawyers' Association (GYLA) began the Tbilisi Court Criminal Trial Monitoring Project in October 2011.The first stage of the monitoring took place from October to December 2011 and its results were reported in the project's first report dated April 2012. This is the project's second report and is based on data gathered between Janary and March 2012.

The goal of the Georgian Young Lawyers Association (GYLA)'s court monitoring project is to increase the transparency of Georgia's criminal trial process by observing and reporting upon what actually occurs in Georgia's courtrooms. While the fairness of the Georgian justice process and the independence of Georgia's judiciary have been strongly questioned, particularly as concerns criminal justice, so far no organization has systematically collected and *publically* reported data that could be used either to support or refute the criticism expressed. And while particular cases may be cited as examples of what many believe to be systematic problems with the criminal trial process, the overall state of the process cannot be understood without wider observation, greater fact-gathering and more in-depth analysis.

METHODOLOGY

In order to "measure" the performance of the courts against the requirements of the Georgian Constitution and Georgian procedural law, as well as against internationally accepted standards of professional conduct, GYLA devised a set of checklists. GYLA's observers have used these checklists to monitor how well and how consistently the procedures and guarantees prescribed by the Georgian Constitution and by Georgian law are put into practice by the courts. More specifically, GYLA has used this set of checklists to measure compliance with the following due process and fair trial rights:

- Right to public hearing
- Equality of parties
- Right to an interpreter
- Right to liberty
- Right to a reasoned decision
- Prohibition against ill-treatment

In designing the checklists, GYLA fashioned both close-ended questions that call for simple yes/no answers, as well as open-ended questions which allow monitors to record and explain more of what they observed. This allowed monitors to gather objective, measurable data, and at the same time record meaningful, spontaneous events and testimony. While some of this information may not easily fit into a data table, all of the information appearing in the GYLA report is taken from monitors' direct observations at court.

GYLA's initial monitoring effort was designed to cover only the Tbilisi City Court; however, in the future GYLA plans to expand the program to other selected courts throughout the country. To implement the program, GYLA recruited and trained three monitors who possess a legal education. The monitors went to the courthouse every day and attended court hearings at random, usually two to four hearings per court visit. Given the complexities of the criminal trial process, GYLA's monitors attended individual court hearings and reported on what they observed in those hearings; they did not follow single cases from start to finish. The monitors witnessed the statements and behavior of the courtroom actors which indicated their compliance or noncompliance with the due process requirements of Georgian and international law, and recorded those observations. They, working with experienced GYLA attorneys, then collated and analyzed the information gathered and generated "findings" based on the analysis. The findings represent the core offering of GYLA's monitoring report. The findings will, at some later point, provide the basis for recommendations by GYLA designed to bring Georgian criminal proceedings into compliance with Georgian law and internationally accepted due process norms. At this stage of its development, the monitoring project does not aim to analyze the quality of judgments made by the court on the merits of the cases observed.

This report presents the findings of proceedings monitored by GYLA at the Criminal Cases Panel of the Tbilisi City Court during January, February and March 2012. During this period, three GYLA observers monitored 237 proceedings. These proceedings included 84 hearings on first appearance (preventative measures); 60 pre-trial hearings; 56 plea agreement hearings; and 37 main trial hearings.

GYLA hopes that the data acquired through this monitoring process and the findings reached through its data analysis will help provide a clearer picture of what is happening inside Georgia's courts and will inform the debate on justice reform.

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KEY RIGHTS AND FINDINGS

Right to a Public Hearing

The right of a defendant to a public hearing before a court is provided by Article 85 of the Georgian Constitution,[1] Article 6 of the European Convention on Human Rights,[2] and Article 10 of the Georgian Code of Criminal Procedure (CPC).[3]

The right to a public trial includes not only the right of a defendant to have the public present at his or her criminal trial and connected proceedings, but also the right of the public to be informed about the case and have the opportunity to attend. The right assumes an obligation on the part of the court to ensure that the contents of the hearing are not only open to the public but are understandable to the individual citizen. This means, among other things, that the court must publicize in advance the dates of hearings, the full name of the defendant, and the specific offense or offenses with which the defendant is charged. The court must also publically announce the judgment reached in open court; including the reasoning behind the judgment, the sentence, and an explanation of the defendant's right to appeal.[4]

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[1] Georgian Constitution Article 85.1: "Cases before a court shall be considered at an open sitting. The consideration of a case at a closed sitting shall be permissible only in the circumstances provided for by law. A court judgment shall be delivered publicly";

[2] European Convention on Human Rights Article 6.1: "In the determination […] of any criminal charge against him, everyone is entitled to a fair and public hearing […]. Judgment shall be pronounced publicly by the press and the public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice";

[3] Criminal Procedural Code of Georgia (CPC) Article 10, Para 1: "The trial shall, as a rule, be oral and public. Closing certain hearings shall be permissible only in cases provided for by this Code"; and CPC Article 10, Para. 2: "Every decision made by the court shall be publicly announced";

[4] CPC Articles 277.1: "The judgment shall be rendered in the courtroom or the deliberation room, after which the presiding judge shall publicly announce the operative part of the judgment in the courtroom"; also, Para. 3: "The presiding judge shall explain the procedure and terms for appealing the judgment to the parties. […]";

Findings

GYLA monitors found that courtrooms were generally open to the public and that anyone wishing to attend a proceeding was able to do so.

GYLA did note, however, a number of shortcomings involving the right to a public trial. In nearly half of the proceedings GYLA observed (124 of 237), the court failed to properly publicize the date and time of the proceeding.[5] This figure includes all of the 84 first appearances observed.

GYLA found that in nine of the 113 publicized case proceedings, the court published incomplete information about the case; for example, the notification of the proceeding did not list all the articles of the Criminal Code with which the defendant was charged.

GYLA noted that judges in some proceedings failed to speak loudly and clearly enough for those in the courtroom to understand what they were saying. The monitors noted this to be true in 8 (3%) cases from 237 observed proceedings. It is worth mentioning that all of these took place in first appearances.

Sixty-one of the 237 (26%) proceedings GYLA observed involved some sort of final resolution of the case. Fifty-six (92%) of these were plea agreements; five were decided at the conclusion of a main trial hearing. All of them were guilty judgments. In only one of the 61 cases, did the court fail to publically announce the final decision. However, in three of the plea agreements, the judge only announced that the plea agreement was approved but did not fully announce the judgment and sentence as required by the CPC. Also, in 63% of the cases where the court publically announced a decision, it failed to provide the legal basis for the decision.

EQUALITY OF PARTIES

Equality of the parties (sometimes called "equality of arms") means that the parties in a criminal case are treated equally in the proceedings and are placed in an equal position to present their case.[6] Equality of the par-

[5] The court publicizes the information about cases by posting it on the large screen in the lobby of the court building and on its official website. GYLA only monitored publicized information inside the court buildings.

[6] See Georgian Constitution Article 42.6: "The accused shall have the right to request summons and interrogation of his/her witnesses under the same conditions as witnesses of the prosecution"; European Convention on Human Rights Article 6.3: "Everyone charged

ties is especially important in criminal trials, where the prosecution is supported by the resources and power of the state and the defense begins at a disadvantage. The principle of equality of the parties helps ensure that the defense has the ability to present its case on equal footing with the prosecution; it requires that the defense be given adequate time and facilities to prepare its defense, the right to legal counsel, and the right to call and examine witnesses.

The Georgian CPC makes it obligatory for a defendant to have defense counsel in many types of situations where it could be said the defendant and his rights are at special risk, for example, in cases where a defendant does not speak the language of the criminal proceeding, where a defendant is in the process of negotiating a procedural agreement, or where he/she has a physical or mental disability that prevents him/her from defending himself.[7]

Findings

GYLA found that the judges monitored were generally successful in maintaining courtroom environments that, at least to outward appearances, were neutral and respectful to the parties.

- In none of the proceedings monitored did the judge act in a fashion that could be considered overtly intimidating to any of the parties present.
- Witnesses testified in 18 of the 37 main trial hearings observed. In two of these hearings witnesses were not properly excluded from the courtroom before testifying.

with a criminal offence has the following minimum rights: [...] d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

[7] CPC Article 45: "It shall be obligatory for a defendant to have a defense counsel if:
a) a defendant is a juvenile;
b) a defendant does not speak the language of the criminal proceedings;
c) a defendant has a physical or mental disability that prevents him/her from exercising a self defense;
d) a court order (ruling) assigning mental examination has been rendered;
e) the Criminal Code of Georgia foresees life imprisonment as a punishment for a committed crime;
f) a defendant is in the process of negotiating a procedural agreement. [...]";

In four of the 18 main trial hearings where witnessed were observed testifying, too-active questioning of witnesses by the judge put judicial neutrality into question. Moreover, in all four cases, the judge did not follow the CPC's rule that a judge not ask questions of witnesses without the parties' permission.[8]

In the four cases mentioned above GYLA made special note of how the judge's behavior put his or her neutrality in question. In one case, the judge deferred the hearing on his own initiative and asked the parties to start negotiating a plea agreement even though the defendant did not plead guilty and did not express a desire to start negotiation. In another case, the judge asked questions of the witness and then ordered the court secretary not to record the questions in the minutes. In yet another case the judge told the prosecutor what questions to ask the witness. And in still another case, the judge augmented the questions of the prosecutor with questions of the judge's own which had the effect of assisting the prosecution.

Similar to its findings last quarter, GYLA reports that the decision-making of judges during the proceedings continues to *suggest a strong bias in favor of the prosecution*. In this regard, GYLA noted the following:

- At the first appearance stage, the court *always* adopted the prosecution's position on preventative measures, both as to pre-trial detention and bail:
    - The court imposed pre-trial detention in *all* of the 31 cases where the prosecution requested it.
    - In *all* of the other 53 cases, the court imposed bail *whenever* it was requested by the prosecutor and *only if* the prosecution requested it. Further, in all 53 cases, the amount of bail finally imposed by the judge was *identical* to the amount requested by the prosecution. Further, in only two cases did the judge extend the date for paying bail.

In *all* 51 (9 of 60 hearings were postponed) of the pre-trial hearings monitored, *all* of the prosecution motions related to the admissibility of evidence were granted by the presiding judge.

It is also worth mentioning that in terms of the relative activity of the par-

[8] CPC Article 25.2: "[…]. In exceptional cases, the judge shall be authorized to ask a clarifying question, if this is necessary for ensuring a fair trial".

ties, GYLA found that the prosecution was by far the more active party in most cases:

- In the 51 pre-trial hearings monitored, the prosecution made 51 motions related to the presentation of evidence while the defense made only 10. The defense very rarely challenged prosecution motions; out of the 51 prosecution motions filed in pre-trial hearings, the defense challenged only eight. The court ruled against the defense in all eight instances and upheld all of the prosecution's motions. Of the 10 defense motions, the court upheld all 10 motions but these were all agreed to by the prosecution. The two other defense motions, which were not related to the presentation of evidence, were not agreed to by the prosecution and were both rejected by the court.

GYLA also found that in *none* of the five main trial hearings monitored that entailed review of cases on merits and ended up in final judgment did the court acquit the accused.

During the monitoring period GYLA noted three cases where the defendant was not able to exercise his right to defense council in situations where the CPC required it. In one of the cases, the defendant was mentally handicapped and could not seem to follow what was going on in court nor was he able to make his points clearly. The defendant's Aunt was in the courtroom and informed the judge that the defendant was mentally retarded and that he had spent four years studying at a special school for the disabled. The Aunt pointed out that the defendant could not understand the questions put to him because he was mentally handicapped. She also told the judge that the defendant sometimes suffered seizures and could not control his actions and that he was also illiterate. Despite hearing all this, the judge took no action to secure the defendant a lawyer.

In the second case, the defendant could not properly understand the proceeding in Georgian; he had difficulty answering questions put to him by the judge and requested more explanation. Because of this the prosecutor announced that in the next hearing, defense council would be appointed the defendant. The judge did nothing.

In the third case, the judge asked the defendant if he knew the language of the proceeding. At first, the defendant responded that he did know the language but it became clear as the proceeding continued that the defendant did not clearly understand Georgian. Despite the defendant's obvious confusion throughout the proceeding, the judge made no move to bring in a lawyer or a translator.

A party has the right to recuse the judge only at the beginning of each proceeding phase – be it first appearance, main trial hearing, etc. GYLA observed the beginning of 185 separate proceedings. GYLA noted that in 35 cases (19%) the court failed to inform the defendant of his or her right to recuse the judge.

RIGHT TO BE ASSISTED BY AN INTERPRETER

The Georgian Constitution,[9] the Georgian CPC,[10] and the international conventions, to which Georgia is a party,[11] provide that a person who does not know the language of the proceedings must be given an interpreter at state expense.

Findings

During the monitoring period, GYLA observed 13 proceedings when an interpreter was required. In two of these 13 proceedings, the defendant's right to interpretation was violated. In one illustrative case, referenced in the section on party equality above, during a first appearance the judge asked the defendant if he knew the language of the proceeding. At first, the defendant responded that he did know the language but when the judge asked if he could read, he did not answer at all. As the proceeding went on it became clear to GYLA that the defendant did not understand Georgian clearly. When the judge asked him what preventative measure he would agree to have imposed upon him, the defendant said that he did not understand the word "imposition" and requested a Russian explanation for the term. Even with these clues that the defendant was less than fluent in Georgian, the judge made no move to bring in a translator. Adding to the defendant's clear confusion was the fact that the judge did not attempt to explain the types of preventative measures available other than bail.

[9] Georgian Constitution Article 85.2: "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";

[10] CPC Article 38.8: "A defendant shall have the right to the services of the translator/interpreter on the expense of the State during questioning and other investigative actions, if he/she has no knowledge or has no sufficient knowledge of the language of the criminal procedure [...]";

[11] European Convention on Human Rights Article 6.3: "Everyone charged with a criminal offence has the following minimum rights: [...] (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court".

In another case, a main trial hearing, the court summoned a translator to provide Turkish translation for four defendants. The translator however, did not translate anything at all, sitting silently in the room for a period of time before getting up and leaving the courtroom. To all this, the judge exhibited no reaction at all. The judge neither ordered a new, qualified translator be provided nor did he order the old translator not to leave the courtroom without his permission.

RIGHT TO LIBERTY

The right to liberty is one of the most important guarantees of an individual in a democratic society, protecting him from the State's despotic or arbitrary action. This right is enshrined in the Georgian Constitution and international and domestic law, particularly Article 18 of Georgian Constitution,[12] Article 5 of the European Convention on Human Rights,[13] and Article 205(1) of the Georgian CPC.[14] According to this domestic and international law, the grounds for placing and keeping a person in pre-

[12] Georgian Constitution Article 18, Para. 1: "Liberty of an individual is inviolable"; Para. 2: "Deprivation of liberty or other restriction of personal liberty without a court decision shall be impermissible";

[13] ECHR Article 5.1: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
(a) the lawful detention of a person after conviction by a competent court;
(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed and offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
(f) the lawful arrest or detention of a person to prevent his affecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition";

[14] Georgian CPC Article 205.1: "Detention, as a preventive measure can be used exclusively in cases where it is the only means to:
a) to prevent absconding and obstruction of justice by the defendant;
b) to prevent obstruction in obtaining evidence;
c) to prevent commission of a new crime by the defendant".

trial detention are limited to: a) the risk of fleeing; b) the risk of undue interference with administration of justice; and c) the prevention of commission of a new crime.

Findings

GYLA found that in the 84 first appearances monitored, the court imposed pre-trial detention in 37% of the cases and bail in the remaining 63% of cases. In *no case* was the defendant allowed to go free on his own recognizance.

GYLA found that the courts used only two types of forced measures: pre-trial detention and bail pending trial. The Georgian CPC, however, lists many other types of preventative measures of lesser severity that should be considered by the court, such as: personal surety, agreement to not leave an area, and supervision over the behavior of a military serviceman by the military command. In the cases monitored, *none* of these types of forced measures was used, even in cases involving only minor crimes. In GYLA's view, in many such cases one of the less strict measures could have been considered a reasonable measure.

GYLA found that the court imposed pre-trial detention in *all* of the 31 cases where the prosecution requested it; in *all* other cases, bail was imposed. (It is worth mentioning that in one case that reached the main trial stage the court granted a defendant's motion to change pre-trial detention to bail, but this was only after the prosecution had agreed to this change).

GYLA further observed that bail was imposed exclusively at the prosecution's request. *Whenever* the prosecutor asked for bail, the judge ordered bail; *whenever* the prosecutor did not ask for bail, the judge did not order bail. Further, in *all* of the 53 cases in which bail was imposed, the amount of bail finally imposed by the judge was *identical* to the amount requested by the prosecution. Further, in only two cases the judge only prolonged the date for paying bail.

RIGHT TO A MOTIVATED (REASONED) DECISION

The right to a fair review of a case includes a requirement that the court make a motivated (reasoned) decision. The right is guaranteed by the CPC,[15] and is articulated in a number of European Court of Human Rights

[15] CPC Article 194.2: "The court decision shall be well-grounded";

(ECHR) judgments.[16] It derives from the general principle that citizens should not be subject to arbitrary decisions of the court, and applies not only to the court's ultimate decision at trial but also to the court's rulings at every stage of a case.

The Georgian Criminal Procedure Code regards pre-trial detention as the most severe forced measure. For this reason, Article 198 (3) of the Code requires that the prosecutor, when submitting a motion for use of a forced/preventative measure, substantiate the appropriateness of the forced/preventative measure being requested and the inappropriateness of other less strict forced/preventative measures. When making a decision, the court must consider whether other less severe measures may also be appropriate and also take into account the personality of the defendant, his/her occupation, age, health conditions, family and financial status, the reimbursement of financial damages, and whether the conditions of any previously imposed forced measure were violated.

Findings

As noted above, GYLA's methodology called for the monitoring of individual hearings and not individual cases moving through the system. This means that GYLA monitored many proceedings in which the court was *not* required to give a final, reasoned decision on the day GYLA was present in court to observe the proceeding. However, since first appearances usually require the court to reach a decision on preventative measures on the day of first hearing, GYLA decided to focus its monitoring on the right to a reasoned decision at the first appearance.

GYLA found that in only a small percentage of the cases observed did judges provide their reasoning for imposing pre-trial detention. They gave their reasons for imposing pre-trial detention in only 38% (12 of 31) of the cases observed.

GYLA also found that the court rarely required the prosecution to provide a rationale for requesting pre-trial detention. In 30 of the 84 first appearances monitored, the prosecution used the argument of "presumable continuation of crime," but in only 12 of those 30 cases (40%) did the prosecution explain the grounds supporting its argument.

In 43 of the 84 first appearances monitored, the prosecution used the argument of "possible interference with justice and destruction of evi-

[16] See, for example,*Hiro Balani v. Spain*, no. 18064/91, Para. 27 (9 December 1994).

dence," but in only four of these 43 cases (9%) did the prosecution refer to any specific fact to support its claim.

In only 26% (14 of 53) of the first appearances in which bail was imposed did the court provide what GYLA believed to be sufficient rationale for imposing bail. In only these 14 cases did the *prosecution* provide the court with information related to the defendant's financial status to be used in the determination of bail. In none of the other cases where bail was imposed, did the court attempt to determine the defendant's financial status before determining bail.

PROHIBITION AGAINST ILL-TREATMENT

The prohibition against ill-treatment is enshrined in the Article 17 of the Georgian Constitution,[17] Article 3 of the ECHR[18] and Article 4 of the Georgian CPC.[19] The prohibition against ill-treatment protects an individual from torture and degrading treatment.

In order to make this right meaningful, a defendant should be clearly informed of the right and be given a meaningful opportunity to complain of ill-treatment to a neutral judge. This logically places an obligation on the court to give the defendant both notice of the right and an opportunity to be heard. The obligation can be seen as being even greater when a defendant is in custody, under the complete physical control of the authorities.

Findings

GYLA found that in 27% (23 of 84) of first appearances observed, the judge *did not explain* to the defendant his/her right to lodge a complaint about torture, inhumane or degrading treatment. GYLA also found that in 19% of the first appearances observed, the judge *did not make any effort to find out* whether the defendant had a complaint about torture, inhumane or degrading treatment.

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[17] Georgian Constitution Article 17.2: "Torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honor and dignity shall be impermissible";
[18] European Convention on Human Rights, Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment";
[19] CPC Article 4.2: "It shall be impermissible to influence the freedom of the will of a person by means of torture, violence, cruel treatment, deception, medical treatment, hypnosis, as well as by means affecting the memory or mental state of a person. [...]".

GYLA found that in 44% (25 of 56), of plea agreement hearings observed the court failed to explain that should the defendant decide to file a complaint alleging torture, inhumane or degrading treatment, it would not delay a plea agreement which had been concluded in compliance with the law.

In 48% (27 of 56) of the plea agreement hearings, GYLA found that the judge failed to explain to the defendant that even though he had pled guilty he still had the right remain silent. In 35% (20 of 56) of the plea agreement hearings, the judge failed to inform the defendant that in the case the plea agreement was not approved, the information provided during the plea agreement hearings could not be used against the defendant in the future. In some cases, the court did not ensure that the plea agreement was reached without violence, coercion, deception or upon other illegal promise, or that the defendant was given an opportunity to receive qualified legal assistance. In other cases, the court did not give a full explanation of the accused's rights to be free from violence, coercion and deception in reaching his plea.

CONCLUSIONS

The conclusions reported here are very much the same as the conclusions reported after the first three-month monitoring period. This is because the data collected during the second three-month period was very similar to the data collected during the first. While it may be too early in the monitoring project to claim to have identified any "trends" in judicial behavior, GYLA believes that taken together, this six-months-worth of monitoring data has provided an objective, fact-based picture of some of what is going in Georgia's criminal trial courtrooms. The data also establishes a baseline by which positive or negative changes or trends can be identified as the project continues.

As was the case after the first three months of monitoring, GYLA found that in the majority of proceedings it monitored, the court met its obligation to provide a public trial. The notable exception to this was first appearances, where the court failed in its obligation by never providing advanced notification to the public regarding the time and place of proceedings.

While GYLA found that in most main trials the court observed the adversarial principle by allowing the parties to question witnesses without undue judicial interference, there were examples where the court forgot

its neutral role and took too active a role in witness examination. During this latest three months of monitoring, GYLA observed even more serious examples of judicial interference than in the last three months. In two notable cases, the judges involved openly and aggressively assisted the prosecution in its examination of witnesses.

GYLA again found that judges could do a better job explaining essential rights to defendants at all stages of the proceedings, especially when it comes to the right to complain about ill-treatment at the hands of the authorities and the right to recuse the judge. Some judges also need to speak more loudly and clearly during proceedings to ensure that all those attending, both the parties and the public fully understand what is happening in the courtroom.

While monitoring indicated that the court was, for the most part, providing a courtroom environment that provided the appearance of equality between parties, the monitoring of court *decisions* continued to provide disturbing evidence that the courts lack neutrality and heavily favor the prosecution. This was especially evident in the monitoring of first appearances. In *every single case* GYLA monitored, the court did exactly what the prosecution asked when it came to the imposition of preventative measures. In *every single case* where the prosecution asked for pre-trial detention, the court ordered pre-trial detention. In *every single case* where the prosecution asked for bail, the court ordered bail. The court rarely provided sufficient rationale for imposing pre-trial detention. In bail cases, the court *always* imposed the exact amount of bail requested by the prosecution, never anything less. Moreover, in making these bail decisions, the court made little or no effort to determine the defendant's financial status or justify the bail amount it ordered.

It is again troubling to note that in none of the 84 first appearances GYLA monitored, was the accused released on his or her own recognizance. All defendants – even those charged with only minor crimes – were given detention or bail. This was the same fact noted in the first report, a fact that continues to provide strong support for those who claim that judges are not acting according to their individual assessment of the need for preventative measures but instead are rigidly adhering to the so-called "zero-tolerance policy" of the government.

The court's preference shown to the prosecution continued into the other phases of the criminal trial process. GYLA observed that in pre-trial motion hearings the court *always* granted the prosecution's motion to ad-

mit evidence, but only granted the defense motion when the prosecution agreed to it. Perhaps most importantly, like in the previous reporting period, in *all* cases where the court delivered a final decision on the merits, it found the defendant guilty (56 plea agreements and 5 final judgments).

GYLA continued to observe that the prosecution was overall more active than the defense in the proceedings. For example, in the 60 pre-trial hearings monitored, the prosecution made 51 motions related to the presentation of evidence while the defense made only 10, and the defense rarely challenged prosecution motions. While GYLA's monitoring is revealing that the criminal trial process is unfairly weighted in favor of the prosecution and that the courts need to take measures to address this imbalance, GYLA believes that defense lawyers could do more to shift this balance back to the middle by being more aggressive and active in the defense of their clients.

Preventative Measures – Number of hearings attended: 84

Was the announcement published outside the courtroom?	**84**	**100%**
Yes	0	**0%**
No	84	**100%**
Did the judge make announcement about the hearing of the case?	**84**	**100%**
Yes	83	**99%**
No	0	**100%**
The observer was unable to record data	1	**1%**
Was the judge speaking in terms understandable for the public?	**84**	**100%**
Yes	76	**90%**
No	8	**10%**
Could anyone attend freely?	**84**	**100%**
Yes	84	**100%**
No	0	**0%**
Did the judge/secretary state the names of the parties?	**84**	**100%**
Yes	82	**98%**
No	1	**1%**
The observer was unable to record data	1	**1%**
Did the judge explain to the accused an accused person's right to recuse a judge?	**84**	**100%**
Yes	62	**74%**
No	20	**24%**
The observer was unable to record data	2	**2%**
Did the judge use intimidation against any of the parties?	**84**	**100%**
Yes	0	**0%**
No	83	**99%**
The observer was unable to record data	1	**1%**
Was there any other reason to believe the judge was biased?	**84**	**100%**
Yes	0	**0%**

No	81	**96%**
The observer was unable to record data	3	**4%**
Did the defense counsel attend the hearing?	**84**	**100%**
Yes	46	**55%**
No	38	**45%**
Was the defense counsel appointed at State expense?	**84**	**100%**
Yes	1	**1%**
No	39	**47%**
Not mentioned during the proceedings	44	**52%**
Was the defense counsel appointed under mandatory rule?	**84**	**100%**
Yes	1	**1%**
No	39	**47%**
Not mentioned during the proceedings	44	**52%**
Was the defense counsel invited?	**84**	**100%**
Yes	29	**34%**
No	9	**11%**
Not mentioned during the proceedings	46	**55%**
Was there a translator invited when necessary (Translator's attendance does not necessarily mean the right was provided – e.g. when the translator is visibly not doing his job)	**84**	**100%**
Yes	1	**1%**
No	1	**1%**
There was no need for a translator	82	**98%**
Was a forced measure imposed?	**84**	**100%**
Bail	53	**63%**
Detention	31	**37%**
Personal surety ship	0	**0%**
Agreement to not leave an area and behave properly	0	**0%**
Supervision of the behavior of a military serviceman by the military command	0	**0%**
Did the judge explain to the defendant his right to lodge a complaint or lawsuit about ill-treatment?	**84**	**100%**

Yes	59	**70%**
No	23	**27%**
The observer was unable to record data	2	**3%**
Did the judge ask the defendant whether defendant wished to lodge a complaint or motion about the violation of his/her rights?	**84**	**100%**
Yes	66	**79%**
No	16	**19%**
The observer was unable to record data	2	**2%**

Pre-trial hearings – Number of hearings attended: 60

Was the announcement published outside the courtroom?	**60**	**100%**
Yes	51	**85%**
No	7	**12%**
Unknown because the hearings continued in the same courtroom without a break between the hearings and the observer did not check whether the information was posted outside the courtroom	2	**3%**
Was the judge speaking in terms understandable for the public?	**60**	**100%**
Yes	60	**100%**
No	0	**0%**
Could anyone attend freely?	**60**	**100%**
Yes	59	**98%**
No	1	**2%**
Was there a translator invited when necessary (Attendance of translator does not necessarily mean the right was provided – e.g. if the translator was visibly not doing his job)	**60**	**100%**
Yes	2	**3%**
No	0	**0%**
There was no need for translator	58	**97%**
Did the judge/secretary state the names of the parties?	**60**	**100%**
Yes	54	**90%**

No	4	**7%**
The observer was unable to record data	2	**3%**
Did the judge make an announcement about the hearing of the case?	**60**	**100%**
Yes	60	**100%**
No	0	**0%**
Did the judge explain to the accused an accused person's right to recuse a judge?	**60**	**100%**
Yes	36	**60%**
No	9	**15%**
The observer was unable to record data	15	**25%**
Did the prosecutor make a motion for presenting evidence (9 hearings were postponed)?	**51**	**100%**
Yes	51	**100%**
No	0	**0%**
Was the motion granted?	51	
Yes	51	**100%**
No	0	**0%**
Did the defense agree to the prosecutor's motion?		
Yes	43	**84%**
No	8	**16%**
Did the defense make a motion for presenting evidence?	**51**	**100%**
Yes	10	**20%**
No	41	**80%**
Was the motion granted?	**10**	**100%**
Yes	10	**100%**
No	0	**0%**
Did the prosecution agree to defendant's motion?	**10**	**100%**
Yes	10	**100%**
No	0	**0%**
Did the defense claim that it did not have proper time and facilities to prepare its defense?	**60**	**100%**

Yes	0	**0%**
No	56	**93%**
The observer was unable to record data	4	**7%**
Is there a reason to believe that any of the parties experienced problems with obtaining evidence?	**60**	**100%**
Yes	0	**0%**
No	54	**90%**
The observer was unable to record data	6	**10%**
Is there a reason to believe that any of the parties was not provided with the possibility to present evidence?	**60**	**100%**
Yes	0	**0%**
No	54	**90%**
The observer was unable to record data	6	**10%**
Did any of the parties complain about access to materials or the handover of written evidence?	**60**	**100%**
Yes	0	**0%**
No	55	**92%**
The observer was unable to record data	5	**8%**
Did the judge approve the list of evidence submitted by the prosecutor?	**51**	**100%**
In full	51	**85%**
In part	0	**0%**
Was not approved	0	**0%**
Did the judge approve the list of evidence submitted by the defense?	**10**	**100%**
In full	10	**100%**
In part	0	**0%**
Was not approved	0	**0%**

Main Trial Hearings – Number of trials attended: 37

Was the announcement published outside the courtroom?	**37**	**100%**
Yes	31	84%
No	6	16%
Did the judge make an announcement about the hearing of the case?	**37**	**100%**
Yes	36	97%
No	1	3%
Was the judge speaking in terms understandable for the public?	**37**	**100%**
Yes	37	100%
No	0	0%
Could anyone attend freely?	**37**	**100%**
Yes	37	100%
No	0	0%
Was there a translator invited when necessary(Attendance of translator does not necessarily mean the right was provided – e.g. if the translator was visibly not doing his job)	**37**	**100%**
Yes	5	**16%**
No	0	**0%**
There was no need for translator	32	**84%**
Did the judge/secretary state the names of the parties? (This question was relevant only in the five observed hearings that were the first hearing in the main trial.)	**5**	**100%**
Yes	5	**100%**
No	0	**0%**
Was the judgment publicly announced?	**5**	**100%**
Yes	5	**100%**
No	0	**0%**
Did the judge explain to the accused an accused person's right to recuse a judge? (This question was relevant only in five cases.)	5	**100%**
Yes	5	**100 %**
No	0	**0%**

Did the judge use intimidation against any of the parties?	**37**	**100%**
Yes	0	0%
No	37	100%
Were witnesses present in the courtroom before their examination (except defendants, who are present in the courtroom)?	**12**	**100%**
Yes	2	**17%**
No	10	**83%**
Did the judge ask questions to witnesses (including defendants and experts)this number indicates the amount of hearings where witnesses were invited and not the number of the witnesses)	**18**	**100%**
Yes	4	22%
No	14	78%
Did the judge interrupt any witness?	**18**	**100 %**
Yes	1	**6 %**
No	17	**94 %**
If yes, which party?		
Prosecution	1	**%**
Defense	0	**%**

Plea agreements – Number of hearings attended: 56

Was the announcement published outside the courtroom?	**56**	**100%**
Yes	29	52%
No	27	48%
Did the judge make an announcement about the hearing of the case?	**56**	**100%**
Yes	56	100%
No	0	**0%**
Was the judge speaking in terms understandable for the public?	**56**	**100%**
Yes	56	100%
No	0	0%

Could anyone attend freely?	**56**	**100%**
Yes	56	100%
No	0	0%
Was there a translator invited when necessary(Attendance of translator does not necessarily mean the right was provided – e.g. if the translator was visibly not doing his job)	**56**	**100%**
Yes	4	**5%**
No	0	**0%**
There was no need for translator	52	**95%**
Did the judge explain to the accused an accused person's right to recuse a judge?	**56**	**100%**
Yes	30	53%
No	6	11%
The hearings attended were adjourned hearings and it was unknown whether the accused had this right explained at previous hearings; thus, the above question was irrelevant in these cases	20	36%
Did the judge use intimidation against any of the parties?	**56**	**100%**
Yes	0	0%
No	56	100%
Did the judge explain to the defendant that lodging a complaint about ill-treatment would not impede the approval of a plea agreement concluded in accordance with the law?	**56**	**100%**
Yes	11	20%
No	25	44%
The hearings attended were adjourned hearings and it was unknown whether the accused had this right explained at previous hearings; thus, the above question was irrelevant in these cases	20	36%