Georgian Young Lawyers' Association

MONITORING CRIMINAL TRIALS IN TBILISI AND KUTAISI CITY COURTS

Monitoring Report #4
Period Covered: January - June, 2013
October, 2013
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.

Author: **EKA KHUTSISHVILI**

Editor: **KHATUNA KVIRALASHVILI**

Tech. Editor: **IRAKLI SVANIDZE**

Responsible of publication: **EKATERINE POPKHADZE**
TAMAR GVARAMADZE

The following GYLA monitors took part in the preparation of the monitoring and research results: **MARIAM NIKOLASHVILI**
GIORGI POPANDOPULO
VLADIMER BEKISHVILI
LEVAN VEPKHVADZE
ANA SIGUA

Was edited and published
in the Georgian Young Lawyers' Association
15, J. Kakhidze st. Tbilisi 0102, Georgia
(+99532) 293 61 01, 295 23 53

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THE MAIN TRENDS REVEALED IN TRIAL MONITORING PROCESS (January-June, 2013)

First Appearance Hearings (preventive measures)

- Compared to the previous monitoring period (July-December 2012):
  - The percentage of defendants for whom the prosecution requested imprisonment as a preventive measure decreased from 50% to 41%.
  - The percentage of defendants given imprisonment as a preventive measure decreased from 37% to 30%.
  - The percentage of defendants ordered bail as a preventive measure increased from 63% to 69%.
- For the first time since the start of monitoring, the court let one defendant go on his own recognizance and did not order any preventive measure. This however was a high profile case involving Tbilisi Mayor Giorgi Ugulava.
- As in previous monitoring periods, the courts almost exclusively used two types of preventive measures: imprisonment and bail. There were only two exceptions: 1 case of agreement not to leave the country and 1 case of leaving defendant without any preventive measure under his own recognizance.
- The court adequately substantiated higher percentage of its rulings on imprisonment (81%) than its rulings on bail (51%) respectively.
- Judges appeared to give more consideration when imposing preventive measures, instead of doing it automatically upon the request of the prosecution:
  - In 28% of cases where the prosecution requested imprisonment, the court ordered bail.
  - In 51% of the cases where the prosecution requested bail, the court ordered less amount than requested by the prosecution.
  - In two high-profile cases where the prosecution requested bail, the court ordered either lesser or no preventive measures.

- Current and former high government officials were treated more favorably than the general public when courts determined preventive measures.
- As in previous monitoring periods, the courts failed to publish any information about first appearances in advance. However, in Kutaisi Criminal Court the bailiffs verbally announced information concerning the first appearance hearings.

Pre-trial Hearings

- Similar to previous reporting periods, courts seems predisposed to granting all of the prosecution's motions seeking the submission of evidence. In only one fifth of cases defense submitted motions to submit evidence. It often failed to submit a list of proposed evidence or object to evidence submitted by prosecution.
- As in previous monitoring periods, there was not a single case where the court terminated the prosecution at the pre-trial hearing on the grounds that there was a high probability that the defendant had not committed the offence.

Plea Agreement Hearings

- As in previous reporting periods judges were too passive in plea agreement hearings, automatically approving the prosecution's motion to approve the plea agreement.
- The percentage of plea agreements imposing fines dropped, from 57 % to 50%. Also, the amount of the average fine dropped to only 36% of the average fine during the prior period.
- Compared to previous reporting periods, the instances of applying community labor in plea-agreements increased from 1% to 7%.

Other Key Findings

- Although the defense continued to be passive in typical cases, in high-profile cases the defense was often more active than the prosecution.

- Of the 84 cases finalized (69 with a plea agreement and 15 after hearing the case on merits) only in one case was the defendant acquitted.
- During the current monitoring period, judges did a much better job of informing defendants of their right to be free of ill-treatment and inquiring as to whether plea agreements were the result of ill-treatment.
- Of 30 search and seizures hearings monitored by GYLA, only one search was performed with a court's warrant; the remaining 29 searches were justified based on urgent necessity and legalized later by the court. This engenders doubt as to the compliance of 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.
- Althought the public's right to attend hearings was usually observed, significant short-comings were observed.
- There continues to be a problem with the timeliness of court proceedings. Of the hearings that did not involve first appearances, 39% started with more than five minutes delay.

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INTRODUCTION

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

GYLA presented to the public and stakeholders its first and second trial monitoring reports (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.

This is GYLA's fourth trial monitoring report, covering the period from January 2013 to June 2013. Similar to previous reporting periods, the purpose of monitoring criminal case proceedings was to increase their transparency, reflect the actual process in courtrooms, and provide information to the public. In addition to reporting its findings during the reporting period, this report also presents recommendations for improving the criminal justice system based on observations GYLA has made since it began monitoring project.

Between January and June 2013, GYLA monitored 600 court hearings, including:

- 99 first appearance hearings;
- 70 pre-trial hearings;
- 71 hearings where plea agreements were discussed;
- 359 main hearings; and
- One appellate hearing.

Of these 600 hearings, 371 took place in Tbilisi City Court (TCC), 228 took place in Kutaisi City Court (KCC), and one was held in Kutaisi Appellate Court. The only significant difference between the procedures in TCC and KCC concerned the advance publication of the first appearance hearings.[2]

[1] 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.

[2] 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.

In its previous monitoring report, GYLA noted that certain improvements took place during the period after the 2012 parliamentary elections (October-December 2012). However, these improvements were largely in cases involving former governmental officials. Because of this, and because of the short period of observation after the election, it was impossible to assess whether the court's general approach had improved, or whether the court was merely treating former officials more favorably than other defendants. GYLA is pleased to report that the current monitoring revealed certain general improvements by the court that extended beyond cases involving high-profile defendants. Specifically, judges appear to give more consideration when imposing preventive measures, instead of automatically imposing the preventive measure requested by the prosecution.

METHODOLOGY

All of the information in this report was obtained by monitors through their direct monitoring of hearings. GYLA's monitors do not communicate with the parties, and do not review case materials or decisions. However, unlike in previous reporting periods, during this monitoring period GYLA requested individual court decisions to determine whether judges in first appearance hearings based their rulings on facts not presented orally by the parties. GYLA's experienced lawyers and analysts performed the analysis of the obtained information.

Similar to previous reporting periods, GYLA's monitors utilized questionnaires prepared especially for the monitoring project. Information gathered by the monitors was evaluated, and the courts' compliance with international standards, the Constitution of Georgia and applicable procedures and laws was determined.

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 period, 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 record other important facts and developments. The annexes to this report may not fully reflect this more subjective information; however,

GYLA's conclusions are based on its analysis of all of the information gathered by the monitors.

In view of the complexity of criminal proceedings, GYLA's monitors typically attended individual court hearings rather than monitoring one trial from start to finish. However, there were some exceptions. "High-profile" cases – cases selected by GYLA's monitors and analysts according to criteria elaborated beforehand – were monitored from beginning to end, to the extent possible. GYLA observed five such cases. These cases were selected because of allegations of blatant violations of rights, high public interest, or other distinguishing characteristics. GYLA will monitor such cases in the Appellate Court as well.

STRUCTURE OF THE REPORT

This report first presents key observations related to three stages of criminal proceedings: the first appearance of defendants before the court, pre-trial hearings, and hearings to confirm plea agreements.

The report then provides an evaluation of the basic rights that defendants have in criminal proceedings, regardless of the stage of the proceeding. These rights include the right to public hearing, equality of arms, the prohibition against ill-treatment, and the right to reasoned judgment.

The report's conclusion highlights the key issues identified during the reporting 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.

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A. OBSERVATIONS REGARDING SPECIFIC STAGES OF CRIMINAL PROCEEDINGS

I. First Appearances

According to 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 later 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 a preventive measure.

Many different types of preventive measures are available to the court. These include: imprisonment, bail, agreement of residence 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 on the prosecution; the defense does not need to submit evidence in opposition to a 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 activities, age, health condition, family and financial status, restitution made by the defendant for damaged property, whether the defendant has violated a preventive measure previously applied, and other circumstances.

The decision of the court as to 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[3] and reinforced by a number of judgments by the European Court of Human Rights (European Court).[4]

1.1. General Trends

During this reporting period, GYLA monitored 99 first appearance hearings (66 in TCC, 33 in KCC) concerning 121 defendants.[5] Compared to previous monitoring periods, some significant improvements were observed. However, other troubling practices remained unchanged.

During the first and second court monitoring periods, courts granted all of the prosecution's motions for preventive measures, indicating apparent bias in favor of the prosecution. During the third monitoring period the situation changed to some extent, particularly in the period after the October 2012 elections, with courts sometimes rejecting the prosecution's motion for preventive measures. During the current monitoring period, this trend in favor of the defense continued. Courts were relatively active in examining motions for preventive measures, and were not merely bound by the prosecution's demand.

Another positive trend was that the prosecution less frequently requested imprisonment as a preventive measure. However, the prosecution's motions for preventive measures usually still lacked support. For example, when requesting bail as a preventive measure the prosecution typically did not submit information about the defendant's financial condition. On its side, the defense also failed to substantiate its position although it is not obliged to. For example, when a bail motion is examined, the defense provides only general information about defendant's financial condition and does not submit supporting documents or other evidence. The defense, however, was more active in so called "high-profile cases" which involved former government officials (discussed below in detail).

As in previous reporting periods, two preventive measures were used almost exclusively: *imprisonment* and *bail.* There appeared to be several reasons for this. First, prosecutors never requested a preventive

[3] Article 194.2 of the Criminal Procedural Code of Georgia.

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

[5] More than one defendant participated in some first appearance hearings.

measure other than imprisonment or bail. Second, judges appeared indifferent when hearing the motions, and not concerned with applying preventive measures proportionate to the charges. Although obligated to do so, judges hardly ever attempted to investigate the possibility of ordering other preventive measures. Third, the passive position of the defense appeared to be a contributing factor. The defense rarely asked for alternative preventive measures, and when they did (14 of 121 defendants asked for alternative preventive measures; 13 for personal guarantee, and 1 for the military command's supervision over a military servant's behavior) the requests were not accepted by the courts.

In response to GYLA's prior criticism that imprisonment and bail ordered as preventive measures lacked substantiation, the judiciary stated that when imposing preventive measure judges consider not only the information presented orally at court hearings, but also written information not discussed at the hearing. Therefore, the judiciary argued, GYLA's monitoring of first appearance hearings is insufficient for determining the proportionality of the imposed preventive measures.[6]

GYLA does not agree with this position. The procedural law requires that the judge's decision on first appearance motions be based on only facts and information publicly discussed at the hearing, which were submitted to both parties on equal footing. Nonetheless, although GYLA does not agree that the court may base its decision on evidence not discussed at the hearing, GYLA requested from the courts written decisions from preventive measure hearings so that it could determine whether they were based on evidence that had not been examined at the hearing.[7] Comparing 24 written court decisions with GYLA's monitoring questionnaires revealed that none contained evidence supporting the appropriateness of the ordered preventive measures beyond what was publicly discussed at the hearing. Therefore, the judiciary's claim appears to lack support.

[6] The Chair Judge from Tbilisi City Court expressed his position during the presentation of GYLA's Monitoring Report #3, on April 2, 2013.

[7] GYLA requested random court rulings on applications for preventive measure during the current monitoring period. In all, 14 rulings were requested from TCC, and 10 from KCC.

1.2. Specific Preventive Measures

1.2.1. Bail

Bail is a preventive measure by which the court achieves its goals of assuring the defendant's return and preventing the commission of future crimes or interference with the prosecution by requiring that the defendant deposit funds in order to be released until 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 bail was posted), or lien which was imposed on shall be lifted from property, within one month from 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.

As a type of a preventive measure, bail is subjected 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.[8]

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

Findings

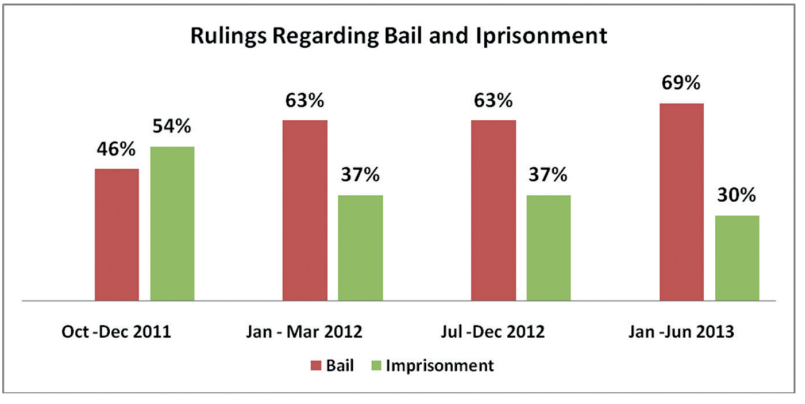
GYLA's monitoring revealed significantly different results regarding bail from the previous monitoring period. Most notably, bail was ordered for a higher percentage of defendants than in previous monitoring periods (in previous report it was 63% while in the current it is 69%), and bail was sometimes ordered even though the prosecution

[8] Under CPC Article 200.2, the amount of bail is determined according to gravity of crime committed and financial position of defendant.

requested imprisonment. However, courts still failed to adequately consider lesser preventive measures.

a. Of 121 defendants for whom preventive measures were ordered, 69% had bail imposed, whereas 30% were sentenced to imprisonment as preventive measure. In addition, one defendant was released under the obligation not to leave the territory and maintain proper conduct, and another defendant was released without any preventive measure.[9] The chart below illustrates the situation over the entire monitoring (since October 2011)

chart #1



b. Bail was ordered as a preventive measure in 28% of the cases where the prosecution requested imprisonment (14 of 50 individuals). Until October 2012, the court always granted the prosecution motions on imprisonment. Only after October 2012 did the judicial practice change when despite the prosecution's requests of imprisonment, court started ordering bail as a preventive measure. The chart below illustrates the situation over the entire monitoring (since October 2011)

[9] This was in the high-profile case of Giorgi Ugulava, Mayor of Tbilisi and Davit Kezerashvili, the former Minister of Defense. (see details on this case, below).

chart #2

c. Where the prosecution requested bail, in half of the cases (36 of 71) the amount of bail imposed was less than requested by the prosecution. In 33 cases, the imposed amount of bail was equal to the requested by prosecuion. In two additional cases, the court rejected the prosecution's request for bail. In particular, the court refused to impose any preventive measure in relation to one high-ranking official, and imposed another defendant the obligation of not leaving the country and proper conduct.

d. The maximum amount of bail ordered during this monitoring period was GEL 35000, and the minimum was GEL 1000.

Current statistics differ significantly from those observed during previous monitoring periods, with courts no longer automatically upholding the prosecution's motion for preventive measures. This indicates a step forward in terms of a strengthened role of judges, and that judges are making more reasonable decisions on preventive measures.

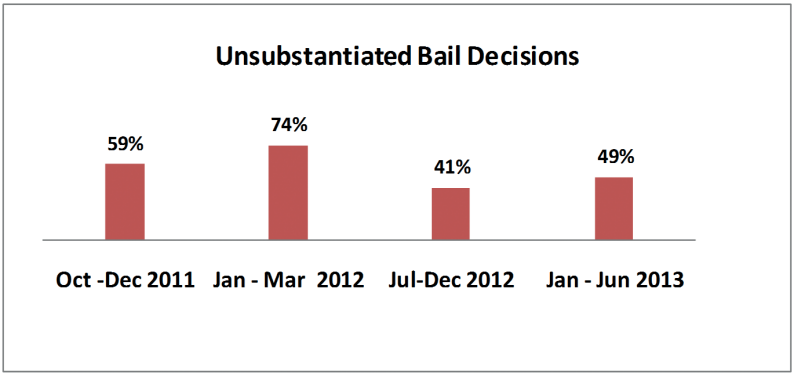
Despite these positive developments, significant shortcoming was observed regarding the use of bail as a preventive measure.

Similar to imprisonment, bail as the preventive measure must be proportional and substantiated; this means that the property serving as bail must be commensurate to the defendant's financial status and alleged crime. All relevant circumstances must be examined during a

hearing on preventive measures so that a judge is assured of the defendant's ability to pay the bail. In case of not paying the imposed amount, bail is changed to the more severe preventive measure, imprisonment, thus causing the same legal condition for the defendant.

Of the 83 defendants who were ordered bail, GYLA determined that 41 bail decisions (49%) were unsubstantiated; this was an improvement from the initial monitoring periods but worse than the prior monitoring period [10]. The chart below illustrates the situation over the entire monitoring (since October 2011)

chart #3



These decisions were unsubstantiated for the following reasons:

- Judges ruled on the prosecution's motions for bail without requiring that the prosecution provide proper reasoning for the request or investigating the defendant's financial status. On the other hand, the defense usually confined itself to making the incorrect legal argument that the defendant pleads not guilty, so no preventive measure should be imposed, or a defendant who is not represented by a lawyer simply disagrees with the prosecution's proposal.

[10] GYLA deems bail decisions substantiated whenever: 1) the bail amount was agreed to by both parties (except for three cases where the facts of the case were clearly incommensurate with the bail agreed upon); 2) the judge agreed to the defense-proposed amount of bail; or 3) the amount of bail only slightly exceeded the amount proposed by the defense.

- In overruling the prosecution's request for imprisonment and ordering bail instead in 14 cases, judges did not investigate the defendant's financial circumstances in 10 of those cases. In one additional case, however, the judge was unusually lenient to the defendant[11]. In only the remaining three of 14 cases did the court investigate the financial status of the defendant.

Examples of cases where unsubstantiated bail was ordered include the following:

- *Defendant was charged under Article 260(2).[12] The prosecution requested imprisonment, and the defense stated he could pay up to GEL 5,000 as bail. The judge ordered bail of GEL 10,000 without any investigation.*
- *In a case involving two defendants, the prosecution demanded GEL 5,000 for the first defendant and GEL 7,000 for the other defendant. The judge inquired whether the prosecution had investigated the defendant's financial status, and was told it did not have enough time to do so. Though judge imposed a lesser amount of bail on each defendant (5000 GEL instead of 7000 GEL requested and 3500 GEL instead of 5000 requested GEL) this case still can be demed as a good example where judge imposes a bail without any investigation thus makes unsubstantiated decision.*
- *In another case, the prosecution itself motioned for replacing imprisonment with a bail of GEL 5,000, because the defendant was charged with only a property crime and needed surgical intervention for gangrene on his face that made him unable to eat or drink. Although the defense agreed to the proposed amount of bail, the judge was required to determine the amount of bail that the defendant was capable of paying. The judge did not do so, despite the fact that it appeared that the bail was disproportionate to the defendant's financial status.*

By contrast, in high-profile cases courts appeared unusually lenient towards former government officials regarding preventive measures.

In one, case, the former executive of Vani, a member of the National

[11] See below the case of Davit Kakabadze, Gamgebeli of Vani Municipality.

[12] Illegal manufacturing, production, purchase, storage, transportation, dispatch or sale of narcotic drugs.

Movement, was charged with inflicting less serious bodily injury in an aggravating circumstance[13], persecuting an individual through abusing official powers,[14] and official forgery.[15] Imprisonment was imposed as a preventive measure, and the defense brought a motion that it be replaced with bail in the amount of GEL 5,000, arguing that some of the crimes that the defendant was charged with fell within the scope of the "Amnesty Law." The prosecution objected, stating that the defendant had received bail as a preventive measure and then committed a new crime. KCC nonetheless largely upheld the defense's motion, replacing imprisonment with bail of GEL 7,000. GYLA believes the defense argument was not sufficiently strong to warrant a change in preventive measures.

Another case of concern involved Giorgi Ugulava, the mayor of Tbilisi. Ugulava was charged with serious crimes: misappropriation committed by an organized group in large amounts by abusing official status (two counts)[16] and legalization of unlawful income committed by an organized group in large amounts.[17]In one of the misappropriation counts, Ugulava was accused of committing the crime with Davit Kezerashvili, former Defense Minister.

The prosecution demanded that the court impose bail of GEL 1,000,000 as a preventive measure; as an additional measure, the prosecution demanded that the court prohibit the defendant from leaving the country and oblige the defendant to register at the investigation authority once a week. The prosecution's demands were based on the following arguments: 1) Seriousness of the crimes, which were punishable only with imprisonment, giving motivation to flee; 2) Proportionality, because defendant's salary for the past five years equaled GEL 500,000, his father owned land, and GEL 10 million had been spent from the state budget for defendant's personal expenses; and 3) The defendant did not appear at the investigation authority several times despite receiving summons, and provided inaccurate information during his questioning by police officers.

[13] Article 118.3 of the Criminal Code of Georgia.

[14] Ibid., Article 156(2)(b).

[15] Ibid., Article 341.

[16] Ibid., Articles 182(2)(d)(3)(a,b); 182(2)(d)(3)(b); 194(3)(a,g).

[17] Ibid., Article 194(3)(a, g).

The defense demanded that the court either not impose any preventive measure or order Ugulava released under personal guarantee, with 34 members of Parliament and 24 members of the Tbilisi Sakrebulo (legislature) acting as personal guarantors. The defense emphasized that the requested amount of bail was incommensurate with the defendant's financial status and his role as breadwinner for five underage children. The defendant also said he could not agree not to leave the country because of his official position and upcoming visits abroad.

In response to these arguments, the court asked the prosecution about the defendant's financial status and obtained only the information provided in the prosecution's prior arguments. The prosecution also stated that personal guarantee should not be used as a preventive measure because the potential guarantors were members of the same political party as the defendant and the charges in this case could affect them, too.

In ruling on the motion, the court did not impose any preventive measure.

GYLA believes the court's decision completely inappropriate, even thought the prosecution's motion was not supported with appropriate evidence concerning the defendant's financial status. The defendant faces serious charges with severe penalties. In addition, as a high-ranking official, defendant could negatively influence the progress of the investigation. Significant preventive measures were warranted in that case. The failure to impose such measures indicates bias on the part of the court.

1.2.2. Imprisonment

Imprisonment is a deprivation of liberty. Accordingly, application of this measure – particularly before a 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,[18] the European Convention on Human Rights,[19] and the Criminal Procedure Code.[20]

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

[19] Article 5.1. of the European Convention on Human Rights.

[20] Article 205.1 of the Criminal Procedure Code of Georgia.

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) to prevent obstruction in obtaining evidence; and c) to avoid the commission of a new crime; even then imprisonment may only be used when other measures are insufficient. Under the European Convention on Human Rights (ECHR),[21] and national procedural legislation,[22] 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.

Findings

Positive trends were observed this monitoring period regarding the use of imprisonment as a preventive measure.

First, the prosecution requested imprisonment as a preventive measure less frequently than it did in the past. Second, the prosecution's requests for imprisonment as a preventive measure were significantly more substantiated. Finally, when the prosecution's requests for imprisonment as a preventive measure were not substantiated, courts less frequently granted those requests.[23]

Of 121 defendants observed at first appearances, the prosecution requested imprisonment for only 50 (41%). Of those 50 defendants, the court upheld the prosecution's motion as to only 36 (72%). The charts below illustrate the situation over the entire monitoring:

[21] 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.

[22] Article 206 of the Criminal Procedure Code of Georgia.

[23] 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 preventive measure.

chart #4

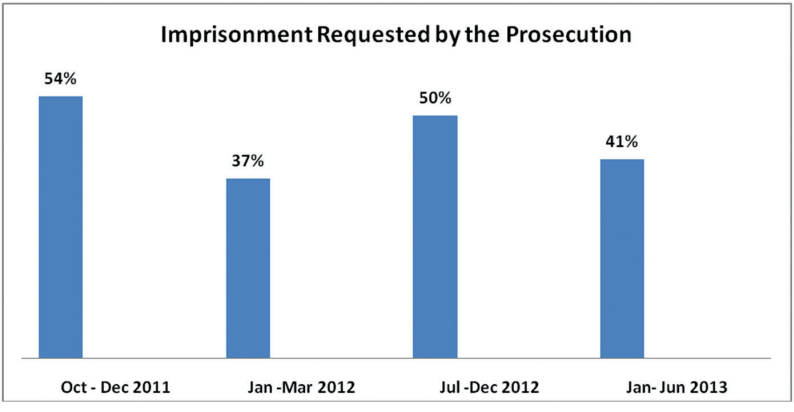
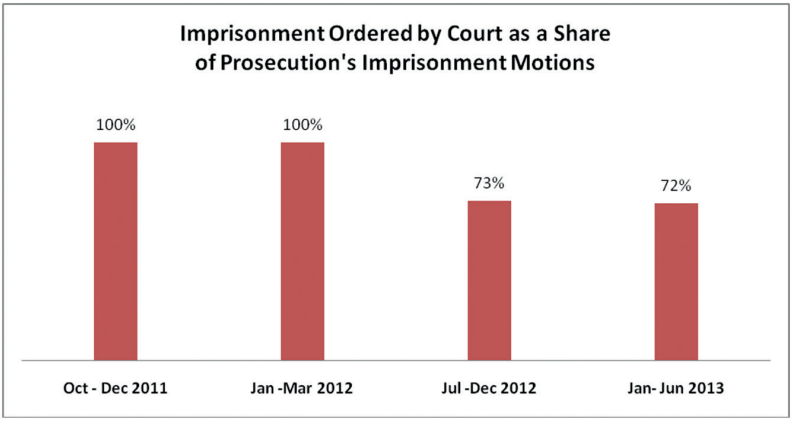


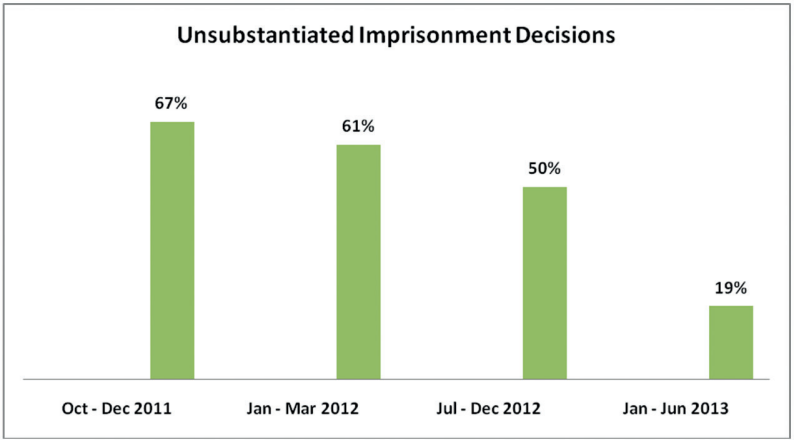
chart #5



Of the 36 imprisonment decisions during this monitoring period, GYLA considers only seven (19%) unsubstantiated, with the prosecution not having enough evidence to show the necessity of imprisonment. For example, in one case TCC upheld the prosecution's motion for imprisonment of an individual charged with theft. The prosecution stated that the individual had been amnestied after previous convictions, and had tried to flee after committing a new crime. The prosecution provided no evidence to support the statement, which the defendant disputed, but the court nonetheless ordered imprisonment.

Nonetheless, this figure differs significantly from the results of the previous reporting periods. The charts below illustrate the situation over the entire monitoring:

chart #6



One of these seven unsubstantiated imprisonment decisions demonstrates an inconsistent approach to similar cases. In that case, KCC upheld the prosecution's motion for imprisonment as a preventive measure, even though the same preventive measure had already been imposed upon the defendant for other charges, and despite defendant's argument that there was no need for an additional preventive measure. By contrast, during the previous monitoring period, TCC rejected the prosecution's motion for applying a preventive measure to the former Chief of Joint Staff (Giorgi Kalandadze), stating that no preventive measure was necessary because the same type of preventive measure had been imposed in connection with other charges.

GYLA believes courts must develop a uniform approach to deciding applications on preventive measures in similar circumstances. Justice will be served only if uniform approach and certainty is ensured so that selective justice is prevented.

1.2.3. Personal Guarantee

Of the first appearance hearings observed this monitoring period, the defense proposed a personal guarantee as the preventive measure for 13 of 121 defendants.[24]

In one of the cases, there was an interesting opportunity for applying a personal guarantee as a preventive measure but this chance was not used:

2 females together with 2 male accomplices were charged with theft. The defense provided a document corroborating that the 2 females were on the list of individuals below the poverty line and they were thus unable to pay the bail of GEL 5,000 proposed by the prosecution office. As an alternative, the defense motioned for a bail of GEL 1,000. The judge satisfied himself that the defendants owned a residential house where they lived and considered this circumstance enough to impose a bail of GEL 1,000 upon the two female defendants.

GYLA deems that the aforementioned decision cannot be considered proportional; in particular, the judge could, on his own initiative, find out from the defense whether a personal guarantee could possibly be used as a preventive measure and decide based on that information. This particular case best describes the need for applying other alternative measures (such as a personal guarantee) in criminal justice.

1.2.4. Agreement on Not Leaving the Country and Proper Conduct

An agreement to not leave the country and behave properly may be used as a preventive measure if the defendant is charged with a crime that envisages imprisonment for less than one year.[25] During this monitoring period GYLA observed 13 defendants who were eligible for such a preventive measure, but the court only utilized this preventive measure once.[26]

In two similar cases, both involving consumption of a small amount of a narcotic substance, this preventive measure was imposed in one case and rejected in another:

[24] Six of the 13 requests involved high-profile cases.

[25] Article 202, of the Criminal Procedure Code of Georgia.

[26] It was the first time GYLA observed this preventive measure being used.

In one case, the defendant objected to the prosecution's demand of GEL 1,000 as bail, stating that he lived in extreme poverty. The defendant did not have a defense counsel. The judge then assumed an active role, appropriate for a preventive measure hearing. The judge explained to the defendant that it was possible to apply a less severe preventive measure, and then assured himself of impossibility of using a personal guarantee. The judge then ordered an agreement on not leaving the country and behaving properly to be applied to the defendant as a preventive measure.

In the other case, the defendant objected to the prosecution's demand of GEL 2,000 as bail, stating that he lived with his sick father and his family was dependent on his father's pension. The judge asked the defendant: "What do you think, should we not use any preventive measure at all or what do you say?" This indicates that the judge deemed bail the only possibility and did not want to consider alternative, more appropriate measures. The judge ordered bail of GEL 1,000, which GYLA thinks was excessive.

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 military servants.[27]

During this monitoring period, GYLA observed its first instance of this preventive measure being requested by a defendant. *The defendant was a military servant accused of committing theft in aggravating circumstances. The prosecution requested imprisonment as a preventive measure, and the defense requested that defendant be put under his military command's supervision. The judge, however, found that the defense had not furnished the court with the relevant military command's consent to exercise supervision over the defendant and ordered bail of GEL 10,000.*

GYLA is of the view that the court's ruling was not proportional. Although the judge did question the defendant about his financial status, defendant earned only GEL 700 per month. Although defendant also stated that he owned immovable property in his village, the judge did not inquire as to the value of the property. Furthermore, defendant's

[27] Article 204, of the Criminal Procedure Code of Georgia.

failure to furnish the court with the military command's consent to supervise is not a legal obstacle for applying the preventive measure,[28] which would have been proportional in this case.

1.3. Publishing Information about Hearings in Advance

The monitoring of first appearances also confirmed an ongoing procedural problem that defeats a defendant's right to a public hearing, as guaranteed by the Constitution of Georgia[29], the European Convention on Human Rights,[30] and the Criminal Procedure Code of Georgia.[31]

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

In *none* of the 99 first appearances monitored by GYLA (33 hearings held in KCC, 66 held in TCC) did the Court publish information about those hearings in advance.

This complete failure to publish information on first appearance hearings in advance has been observed since GYLA began monitoring in October 2011. Despite GYLA's active involvement in raising the awareness of the judiciary about this situation, it remains unchanged. Representatives of the judiciary previously claimed that this was because of technical limitations associated with the fact that first appearances are held within 24 hours of the arrest, and expressed readiness to settle the technical problems. However, no changes have been implemented in TCC.

[28] Ibid.

[29] Article 85 of the Constitution of Georgia.

[30] Article 6.1 of the ECHR.

[31] Article 10 of the Criminal Procedure Code of Georgia.

The situation at KCC is somewhat better. Although KCC does not publish information about dates of hearings on electronic monitors, as TCC does for most hearings other than first appearances, a court bailiff announces 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.

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 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 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.[32]

The court's rulings on pre-trial motions must be impartial and without bias to either side. The right of a defendant to impartial proceedings has been recognized 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.

[32] 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.

Findings

The results of GYLA's observation of pre-trial hearings this monitoring period are almost identical to the previous monitoring period. For the most part, the court seems predisposed to granting all of the prosecution's motions seeking the submission of evidence, while the defense mainly agrees to the prosecution's motions. When the defense does object the arguments are mostly irrelevant, such as that the defendant has not committed offence and that the court should therefore not recognize the evidence as admissible.[33] The defense was, however, active in high-profile cases, requesting the submission of evidence and asking that certain of the prosecution's evidence be held inadmissible.[34]

Cases involving multiple charges against a single defendant should, by definition, involve submission of a large volume of evidence. Monitoring, however, revealed at least one case where the defense was exceedingly passive. For example, in one multi-count case where the defendant was accused of attempted murder, illegal acquisition of firearms and undetermined health damage, the defense failed to submit any evidence.

As in previous monitoring periods, there was not a single case where the court terminated the prosecution at the pre-trial hearing because there was a high probability that the defendant had committed the offence.

Specific observations at pre-trial hearings included the following:

- Twelve of the 70 pre-trial hearings observed were postponed. In the remaining 58 hearings, the court fully granted the prosecution's motions to submit evidence except in three high profile cases, even though the defense objected to seven of those motions. In the three prior periods combined, the court granted all 191 of prosecution's motions, even though the defense objected to 23 of them.

[33] According to procedural legislation, the parties should focus on the method by which evidence was obtained, since evidence is admissible if it is obtained in observance with the law.

[34] In the cases against Mayor Giorgi Ugulava and former Defense Minister Davit Kezerashvili, the defense submitted 22 volumes of evidence and demanded the right to question between 100 to 200 witnesses.

- In three of the seven cases where the defense objected to the prosecution's evidence, the court partially held the prosecution's evidence inadmissible. All three involved high-profile defendants (Giorgi Kelbakiani[35], Giorgi Kalandadze[36] and Giorgi Ugulava[37]).
- The defense submitted motions to submit evidence in only 12 of 58 (21%) cases; four of these were high-profile cases. Of the 12 cases, the prosecution partially agreed to five motions. The court fully granted nine of the defense motions to submit evidence, and partially granted three motions.
- All of the defense motions to submit evidence in the four high-profile cases were partially agreed to by the prosecution. In each of these cases, the motions were partially granted.
- Of the 58 pre-trial hearings observed, non-evidentiary motions were submitted in only eight cases (two of which were high-profile), all of which were submitted by the defense. Three motions requested that the preventive measure be annulled, three requested an alternative preventive measure, one sought termination of the prosecution due to the amnesty law, and one sought audio-video broadcasting. The prosecution objected to all of the motions. The court only partially granted the motion for audio-video broadcasting on Akhalaia case. GYLA considers the decisions reasonable.

III. Plea Agreement Hearings

A plea agreement is a type of expedited proceeding at which the defense and prosecution present to the court an agreement as to punishment if the defendant pleads guilty to a particular charge.

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-to punishment set out in the prosecutor's motion for acceptance of the plea agreement is fair.

[35] Gegi Kelbakiani was known to be close friend of Tbilisi Mayor Giorgi Ugulava. His company he led construction and rehabilitation activities in Tbilisi on government contracts.

[36] Giorgi Kalandadze was the Chief of Joint Staff of Georgia.

[37] Giorgi Ugulava is Tbilisi Mayor.

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 to punishment.[38] The law does not specify how to ensure that the punishment is fair. However, in view of general principle of sentencing, for example, where the agreed-to 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.[39] This confers upon the judge a limited, yet certain, lever to influence the fairness of punishment.

Findings:

As in the prior court monitoring period, plea agreement hearings were routine with the court taking a passive role. 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. There were only three cases, discussed below, where the judge asked additional questions to determine whether the punishment was fair.

Compared to the prior monitoring period, the percentage of plea agreements in which a fine was imposed decreased significantly. During the previous period (July–December 2012), 57% of defendants (47 of 82) entering into plea agreements paid a fine; during this monitoring period, only 50% of plea agreements (39 of 77) resulted in a fine.

In addition, the amount of fines imposed was greatly reduced. During the current monitoring period, 39 plea agreements resulted in a total of GEL 128,500 in fines (an average of GEL 3, 295 per plea agreement);

[38] Article 53.3 of the Criminal Code of Georgia.

[39] Article 213.5 of the Criminal Procedure Code of Georgia.

during the prior monitoring period, 47 plea agreements resulted in GEL 474,000 in fines (an average of GEL 9,115 per agreement). The range of fines during the current monitoring period was between GEL 1,000 and GEL 6,000; during the previous monitoring period, fines ranged from GEL 500 to GEL 100,000.

Compared to previous reporting periods, the instances of applying community labor in plea-agreements increased from 1% to 7%.

Other observations at the 71 plea agreement hearings observed by GYLA:

- *In one case, the plea agreement was not consumated because the defendant decided not to plead guilty because he was waiting for a more lenient penalty based on the amnesty act.*
- *At another hearing, the judge postponed the hearing to read and consider the prosecution's plea agreement motion. GYLA did not have an opportunity to observe the postponed hearing.*
- *At a third hearing, the parties had agreed on community service as punishment. The defendant was in a wheelchair, and the judge inquired as to whether he was disabled. As the defendant was not disabled, the court approved the plea agreement.*
- *There was one plea agreement where the agreed-to and judicially approved punishment was severely disproportionate. The defendant pled guilty to theft of a bottle of vodka worth GEL 16. The penalty imposed was imprisonment for a year plus two years of probation.*

No plea agreements were observed in high-profile cases.

B. OBSERVATIONS REGARDING SPECIFIC RIGHTS

I. Equality of Arms and the Adversarial Process

Equality of arms and the adversarial process are key principles of 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 present their case under equal conditions.[40]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.

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 also successful in maintaining order in the courtroom and ensuring the equality of arms.

An exception was the high-profile case against Bachana Akhalaia[41]. *More than 100 witnesses were to be questioned in the case, which involved multiple defendants and multiple lawyers. Both defendants and their lawyers repeatedly asked the same, often irrelevant, questions; this caused the interrogation process to take an unnecessarily long time. In*

[40] Article 42.6 of the Constitution of Georgia.

[41] Bachana (Bacho) Akhalaia was most recently Minister of Defense and previously head of penitentiary.

addition, the defendants and their lawyers were very aggressive, shouting at and humiliating the prosecution's witnesses. Neither the prosecution nor the judge objected to the behavior, and no fine was imposed.

GYLA is of the opinion that the judge in the Akhalaia case should have set a reasonable time for each defendant's examination of witnesses to ensure that the case would progress without unnecessary delay. In addition, in response to the aggressive behavior of both defendants and their lawyers, the judge should have given relevant procedural instructions to the parties. For example, he should have instructed the prosecution to state its position on the presentation of the defense. In addition, the prosecution should have objected to the conduct of the defense to the extent necessary to ensure the adversarial process and protect the dignity of participants.

There were instances of contrary behavior in the same case as well, when the judge gave instructions to the prosecution that contradicted procedural rules. In one case the judge declared, "You object to everything and the hearing is delayed, it might be that the protest is well-grounded, but anyway."

GYLA's monitoring also revealed courts' inconsistent practice in terms of the examination of evidence gathered during investigations by the police. In some cases, the court allowed citing evidence given by a witness to the police during the investigation stage, and in some cases it did not. In addition, in one high-profile case the court took a different approach to such evidence within the same case, at times allowing parties to cite testimonies obtained at the pre-trial investigation stage, and at times not allowing the practice.

Other observations included:

- In none of the main hearings did the judge express bias to any of the parties to the process. However, GYLA did observe a judge at a first appearance hearing violate the presumption of innocence and adversarial principle. When considering preventive measures, the judge asked an individual accused of forgery: *"Why are you doing this? We have no guarantee that you will not do this again. You have been forgiven once, haven't you?"* The judge improperly assumed that the defendant was guilty.
- Of the 359 main trial hearings that GYLA tried to attend, four hear-

ings were closed. Of the remaining 355 pre-trial hearings, witnesses were questioned in 165 cases. Of these 165 cases, the judge asked questions to witnesses in 27 cases. Of these 27 cases, the judge violated procedural requirements in only one case, when the judge asked a question to a witness without the parties' consent. Compared to previous reporting periods, when judges frequently asked questions in violation of procedural requirements, the situation has improved considerably.

II. Right to Defense

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

For a full realization 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 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 prosecution did not oppose the motions.

GYLA's monitors did observe one case that revealed a practical and legislative gap. *In the high-profile case of Akhalaia and others, an intern of one of the defense lawyers asked a substantial number of questions*

to witnesses at a hearing. At one of the next hearings in that case, the same judge prohibited the intern from participating in the defense and removed him from the proceeding. In his decision, the judge stated that under Georgian legislation a lawyer's intern is not entitled to participate in the protection of defendant's interests.

The issue is problematic both in terms of the Akhalaia case and more generally. First, the legal consequence of the intern's participation in the case is unclear (for example, whether the witness testimony obtained by the intern is part of the official record). More generally, the absence of a uniform practice regarding the participation of an intern is of concern. In view of the above, legislation should be developed to resolve the problem and the judiciary should agree upon a uniform practice.[42]

III. Prohibition against Ill-Treatment

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

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

As a result, GYLA would 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.

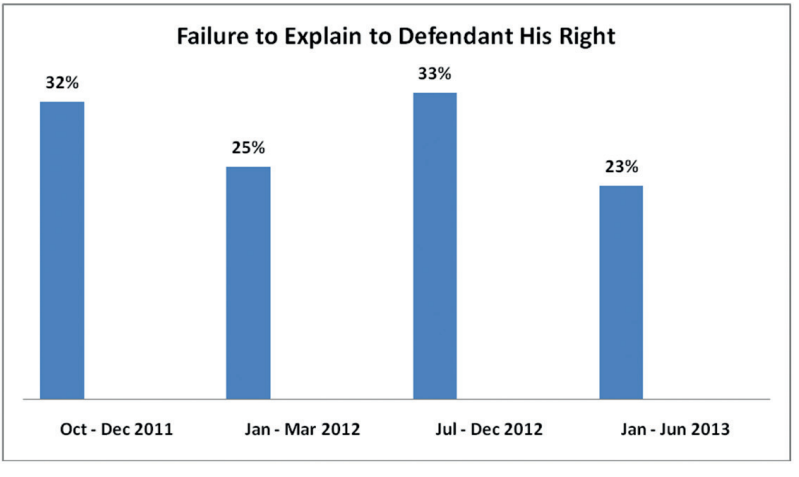
[42] GYLA requested from TCC statistics as to interns' participation in cases, however, TCC responded that it did not track such statistics, that a precise response to the question required detailed examination of several thousands of cases and would required significant time and administrative resources, and that TCC did not have such resources. TCC response to GYLA's application No. 14553-1.

Findings

Compared to the previous monitoring period, the judge explained to defendants the right to file a complaint over alleged ill-treatment in a higher percentage of cases:

- Of the first appearances observed, judges failed to explain to defendants their right to file a complaint over alleged ill-treatment and did not inquire whether the defendant alleged ill-treatment in only 4 of 99 hearings (4%). During the previous reporting period, judges failed to do so in 18 of 73 hearings (24%).
- During this monitoring period, the court failed to inquire whether a plea bargain had been reached through coercion, pressure, deception or any illegal promise in 10 of 69 cases (14%). During the prevous period, judges failed to do so in 12 of 69 hearings (17%).
- GYLA found out that during this monitoring period in only 23% of plea agreements (16 of 69) 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 period:

chart #7



- In 30% of cases where a plea bargain was reached (21 of 69), 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 much improved since the last monitoring period, when the judge failed to inform the defendant in 46 out of 69 (67%).

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 revealed in two cases:

- *At a first appearance hearing, the defendant alleged that the police officer abused him physically. The judge only explained that he was entitled to file a complaint.*
- *In another case, the defendant alleged that police officers abused him physically and that about 30 other individuals humiliated him. The judge asked the prosecutor if any action had been taken in response to the allegations, and the prosecutor responded that he had already submitted the information to his superior prosecutor. GYLA did not observe the judge take any other action.*

IV. Right to a Motivated (Reasoned) Decision

The right to a fair trial is an internationally recognized right of a defendant. Encompassed within this right is the right of a defendant to a motivated decision by the court.[43]

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

Search and seizure is an investigating 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 a court, and a reasonable decision on the motion must be delivered.

[43] Article 194.2 of the Criminal Procedure Code of Georgia.

Articles 119-120 of the Criminal Procedure Code strictly outline the two preconditions for search and seizure: probable cause to believe that evidence of a crime will be obtained as a result of the search and a court's warrant. 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 after the fact.

Findings

As noted in the section on preventive measures, the court frequently violated a defendant's right to a reasoned decision when determining preventive measures. GYLA also observed apparent violations of the right to a motivated (reasoned) decision with regard to search and seizures.

GYLA observed 70 hearings involving search and seizures, but was only able to determine whether the search was authorized in advance in 30 cases. Of those 30 searches, only one was performed with a court's warrant; the remaining 29 searches were justified based on urgent necessity and legalized later by the court.

GYLA was unable to determine whether the after-the-fact legalizations of searches and seizures were substantiated, due to the fact that they are not discussed in open court. However, the fact that 97% of searches were only justified after having been performed engenders doubt as to the compliance of 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.

The failure to provide a motivated decision was also revealed in cases unrelated to search and seizure, but only fragmentally. For example, when reviewing the written decision of a judge's denial of preventive measures, GYLA observed that the judgment accidentally contained the name of another judge's secretary. This indicates that the judge used a template when preparing the judgment and did not provide a reasoned decision.

Observations also indicated that the ability of a court to deliver a motivated decision is sometimes undercut by defects in the minutes of hearings, which are essential for substantiated final decisions. For ex-

ample, in the high-profile case of Akhalaia and others, a motion by defendant's lawyer for disclosure of the recording of witness testimony revealed that a portion of the recording was defective, with only certain sounds audible. As a result, the judge was required to rely on his memory for the witness testimony and parties' presentation from that portion of the proceeding. Because the main hearing involved multiple defendants and tens of witnesses, the absence of adequate minutes of the hearing would make it difficult for the court to deliver a well-motivated judgment.

V. Right to 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 realization of the right, the court must ensure that proceedings are conducted in a way that if a representative of public attends, s/he has no trouble hearing and understanding what takes place. 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.[44]

It should be noted that amendments were made to the Organic Law on Common Courts effective May 2013, with a view to ensure more publicity of 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.[45]

Findings

Monitoring revealed that the right to a public hearing was usually observed. The major exception was first appearance hearings in TCC, where information about the hearings was never provided in advance.

[44] Article 277.1 of the Criminal Procedure Code of Georgia.

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

GYLA also observed the following additional violations:

- In 112 of the 501 (22%) hearings that did not involve first appearances, no advance information was published about the date and time of the hearings.
- In 14 cases, 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 30 of 589 open hearings (5%), defendant's relatives or other interested persons were unable to attend due to the small size of the courtroom. Among them were two high- profile cases (the case of Ugulava and Kezerashvili, and the case of Nika Gvaramia[46]). Although the biggest courtroom was vacant both times, the hearings were not moved there.
- 15 of the 359 main hearings observed ended with the public announcement of a final judgment. Of those 15 final judgments, 14 (94%) were convictions.
- Of the 15 final judgments observed, in five cases (33%) the court failed to cite applicable legal provisions.
- In all of 69 approved plea-agreements (100%), the verdict was announced publicly, but in one case the judge failed to announce the relevant articles of law.

The following additional issues were observed:

- Although the court's internal regulations specify that no entry to a courtroom is permitted after a hearing has begun, representatives of other organizations which observed hearings were permitted to enter at two separate hearings in the high profile case of Gvaramia after it began.
- In the high-profile case of Tengiz Gunava[47], a witness submitted

[46] Nikoloz (Nika) Gvaramia was most recently Minister of Education and Science, before that he was the Minister of Justice and held other high offices in the government. He is currently the director of Rustavi 2, a private TV company.

[47] Tengiz Gunava was the President's representative to Samegrelo-Zemo Svaneti Region.

photographs claiming they proved that pressure was put upon him. These photographs were not shown to those attending the hearing, although that part of the hearing was public. This material should have been shown to those attending the hearing.

- A hearing in the high-profile case of Gunava was delayed for 50 minutes because of the absence of the judge. Although required to do so, the judge did not explain the reason for his delay.

GYLA also observed inconsistent practices as to the closing of high-profile hearings to the public. As detailed below, a hearing in the case of Akhalaia and others was closed without sufficient reason, but a hearing in the case of Gunava was not closed despite the victim's reasonable request.

- *In the Akhalaia case, an individual attending the hearing stood up and verbally abused the victim during cross-examination. After the prosecutors objected to the judge's passiveness, the judge evicted the individual and then closed the session to the public. The closing of a hearing in which there was high public interest was inappropriate, since the troublesome individual had been removed and it was primarily court monitors and interns who attended the session.*

- *In the Gunava case, the prosecutor submitted a motion for the partial closing of a hearing upon the application of the victim; the victim made the request because he was going to disclose details that breached his honor and dignity. The judge, however, refused to close the session, even though the Criminal Procedural Code obliges the court to protect the honor of a party to the process (a witness, for example). As a result, the victim was inappropriately required to publicly disclose information concerning his romantic/intimate correspondence.*

The recent expansion of jury trials has also resulted in issues related to the public's right to attend court proceedings. During the current monitoring session GYLA's monitors were unable to attend any jury selection sessions at TCC, and GYLA was told by the court administration that the jury selection process is always closed. In response, GYLA requested from the court a judge's ruling on closing the session and determined that no such decision had been rendered. The public's right to attend court proceedings was therefore inappropriately denied.

It should be noted that GYLA communicated with TCC administration about the issue. Based on their statement, GYLA monitors will not have this problem in the future, and if there is a problem the court administration is ready to communicate with GYLA's monitors. However, this cannot be considered a solution to the problem, since there should not be any barriers to attendance and any interested individual should be permitted to attend; GYLA monitors should not get special privileges.

The monitoring also revealed legislative gaps related to the media's right to record public hearings, which is especially important in high-profile cases. Under the applicable legislation, the public broadcaster has the right to record court hearings; other TV companies are only allowed to record a hearing if the public broadcaster waives its right. If several companies request the right to record the hearing, prior to start of the process the judge is to confer the right to one company by casting a lot. However, the law does not regulate the process of determining the broadcaster clearly enough. It fails to specify if the court session for selecting a TV company is independent from other hearings, or if interested companies are entitled to attend the session. As a result, GYLA could not attend the process by which the court granted TV companies the right to record public hearings.

C. TIMELINESS OF COURT PROCEEDINGS

GYLA's monitoring revealed problems with the timeliness of court proceedings. During this monitoring period, 196 of the 501 hearings that did not involve first appearances (39%) started with more than five minutes delay:

- In 60 cases (12%), the judge was late;
- In 32 cases (6%),a defense lawyer was late;
- In 24 cases (5%), the defendant was late;
- In 14 cases (3%), the prosecutor was late;
- In 4 cases (1%), another hearing was being held in the same courtroom;
- In the remaining 62 cases (12%), various other reasons were cited.

Conclusions

- In at least some respects, courts have improved their approach to both high-profile and more typical cases. Most notably, the percentage of rulings upholding unsubstantiated motions for preventive measures has significantly decreased. In addition, the percentage of defendants given imprisonment as a preventive measure has decreased.
- The types of preventive measures applied have not changed significantly. Bail and imprisonment remain the only measures used, except for rare exceptions. There were only two exceptions: one case of agreement not to leave the country, one case of leaving defendant without any preventive measure under his own recognizance.
- In general, current and former high government officials were treated significantly more favorably than the general public when courts determined preventive measures.
- The prosecution's motions for preventive measures are still not sufficiently substantiated. On the positive side, the number of unsubstantiated motions for imprisonment as a preventive measure significantly decreased – a development that we believe is attrib-

utable to the judiciary, because it no longer routinely grants the prosecution's motions for imprisonment. On the other hand, the share of unsubstantiated bail decisions increased.

- As in previous monitoring periods, the courts failed to publish any information about first appearances in advance.
- As in previous reporting periods, pre-trial motions took place in a routine manner. Courts routinely granted prosecution motions to submit 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 active only in high-profile cases.
- The handling of plea agreement hearings remained unchanged. The court stayed in a passive role and automatically approved virtually all plea agreements. However the average fine in concluded plea agreements dropped significantly.
- With regard to the specific rights of criminal defendants, we did not notice any particular change of practice. However, judges did a much better job of informing defendants of their right to be free of ill-treatment and inquiring as to whether plea agreements were the result of ill-treatment. But a procedure should be established through which a judge can take meaningful action when ill-treatment is alleged.
- Regarding search and seizures, there is reason to doubt the compliance of 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.
- There continues to be a problem with the timeliness of court proceedings, often because judges are late.

Recommendations

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

- Courts should take advantage of their discretion regarding preventive measures, and use less severe measures (measures other than imprisonment and bail) in appropriate cases. Courts must also demand from the prosecution more reasoned preventive measure

motions, and impose on the prosecution the burden of proof so as to prevent the arbitrary and illegal curtailing of liberty.

- When hearing a plea agreement, judges should not remain as passive as they are: they do not use their power to reject plea agreements, or fulfill their obligation to determine that the punishment is appropriate. Judges should take appropriate measures to make sure that the punishment is proportional to the crime.
- The current reporting period revealed a legislative ambiguity: the law is not clear as to the actions a legal intern may take to defend a defendant's interests. This causes uncertainty and leaves a room for the inconsistent interpretation of the law. GYLA recommends that this situation be clarified.
- The recently amended provisions of the Organic Law on Common Courts on the audio and video recording of court hearings should be clarified. GYLA is concerned that the rules do not require a court to publicly draw lots to decide on permitting the audio, video and photographic recording of court hearings.
- The law should be amended to broaden the authority of a judge to combat the ill-treatment of defendants;
- It is necessary that defense counsel actively exercise the right to defense.

ANNEXES

Tbilisi City Court

***First Appearance hearings* – Number of hearings attended: 66**

Was the announcement published outside the courtroom?	**66**	
Yes	0	**0%**
No	66	**100%**
Was the hearing closed?	**66**	
Yes	0	**0%**
No	66	**100%**
Did the judge make an announcement about the hearing of the case?	**66**	
Yes	64	**97%**
No	2	**3%**
Was the judge speaking in terms understandable for the public?	**66**	
Yes	63	**95%**
No	3	**5%**
Could anyone freely attend?	**66**	
Yes	64	**97%**
No	2	**3%**
Did the judge/secretary state the names of the parties?	**66**	
Yes	66	**100%**
No	0	**0%**

Did the judge explain to the accused the right to recuse a judge/secretary? (1 hearing was held without defendant)	**65**	
Yes	65	**100%**
No	0	**0%**
Did the judge explain all the rights to the accused (1 hearing was held without defendant)	**65**	
Yes	28	**43%**
No	37	**57%**
Did the judge comprehensively explain to the accused his/her rights? (1 hearing was held without defendant)	**65**	
Yes	63	**97%**
No	2	**3%**
Did the judge use intimidation or other informal action against any of the parties	**66**	
Yes	0	**0%**
No	66	**100%**
Did the judge give any instructions to any of the parties	**66**	
Yes	2	**3%**
No	64	**97%**
Was there any other reason to believe the judge was biased	**66**	
Yes	0	**0%**
No	66	**100%**
Did the defense counsel attend the hearing?	**66**	

Yes	36	**55%**
No	30	**45%**
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 held without defendant)	**65**	
Yes	3	**5%**
No	0	**0%**
There was no need of translator	62	**95%**
Number of defendants (the number of hearings are different from the number of defendants as more than one defendant were attending some of the hearings)	**82**	
Bail	56	**68%**
Imprisonment	24	**29%**
Personal guarantee	0	**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? (1 hearing was held without defendant)	**65**	
Yes	62	**95%**
No	3	**5%**

Did the judge ask the defendant whether defendant wished to lodge a complaint about the violation of his/her rights? (1 hearing was held without defendant)	**65**	
Yes	64	**98%**
No	1	**2%**

Pre-trial Hearings – Number of hearings attneded: **44**

Was the announcement published outside the courtroom?	**44**	
Yes	27	**61%**
No	17	**39%**
Was the judge speaking in terms understandable for the public?	**44**	
Yes	43	**98%**
No	1	**2%**
Could anyone freely attend?	**44**	
Yes	38	**86%**
No	6	**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)	**44**	
Yes	1	**2%**
No	0	**0%**
There was no need of translator	43	**98%**
Did the judge/secretary state the names of the parties?	**44**	
Yes	44	**100%**
No	0	**0%**
Did the judge explain to the accused the right to recuse (defendant did not attend 1 hearing)	**43**	
Yes	31	**72%**
No	3	**7%**
Hearing was postponed	8	**21%**
No information obtained as the monitor attended the hearing after recess	1	**100%**

Did the judge explain all the rights to defendant? (defendant did not attend 1 hearing)	**43**	
Yes	12	**28%**
No	22	**51%**
Hearing was postponed	8	**19%**
No information obtained as the monitor attended the hearing after recess	1	**2%**
Did the judge comprehensively explain to the accused his/her rights? (defendant did not attend 1 hearing)	**43**	
Yes	31	**72%**
No	3	**7%**
Hearing was postponed	8	**19%**
No information obtained as the monitor attended the hearing after recess	1	**2%**
Did the prosecutor make a motion for presenting evidence?	**44**	
Yes	36	**82%**
No	0	**0%**
Hearing was postponed	8	**18%**
Was the motion granted?	**36**	
Yes	36	**100%**
No	0	**0%**
Did the defense agree to the prosecution's motion?	**36**	
Yes	30	**83%**
No	6	**17%**
In case of Search and Seizure	**23**	
The acts were legalized in advance by the judge	1	**4%**
The acts were legalized later by the judge	22	**96%**

Did the defense make a motion for presenting evidence?	**44**	
Yes	9	**20%**
No	25	**57%**
No information obtained as the monitor attended the hearing after recess	1	**3%**
Hearing was postponed	9	**20%**
Did the judge approve the list of evidence submitted by the prosecution?	**36**	
In full	35	**97%**
In part	1	**3%**
Did the judge approve the list of evidence submitted by the defense	**9**	
In full	7	**78%**
In part	1	**11%**
Hearing was postponed	1	**11%**
Did the judge use intimidation or other informal action against any of the parties?	**44**	
Yes	0	**0%**
No	44	**100%**
Did the judge give any instructions to any of the parties?	**44**	
Yes	2	**5%**
No	30	**68%**
Hearing was postponed	12	**27%**

***Main trial hearing – Number of trial attended*: 211**

Was the announcement published outside the courtroom?	**211**	
Yes	59	**28%**
No	152	**72%**
Did the judge make an announcement about the hearing of the case?	**211**	
Yes	205	**97%**
No	6	**3%**
Was the judge speaking in terms understandable for the public?	**211**	
Yes	208	**99%**
No	3	**1%**
Could anyone freely attend?(1 hearing was closed)	**210**	
Yes	94	**45%**
No	16	**55%**
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)	**210**	
Yes	2	**1%**
No	0	**0%**
There was no need of translator	208	**99%**
Did the judge/secretary state the names of the parties? (This question was relevant only in 23 observed hearings that were the first hearing in the main trial).	**23**	
Yes	23	**100%**
No	0	**0%**

Was the judgment publicly announced? (This question was relevant only in 7 observed hearings).	**7**	
Yes	7	**100%**
No	0	**0%**
Did the judge explain to the accused the right to recuse (This question was relevant only in 23 observed hearings)?	**23**	
Yes	21	**91%**
No	0	**0%**
Hearing was postponed	2	**8%**
Did the judge explain all the rights to the defendant? (This question was relevant only in 23 observed hearings)	**23**	
Yes	10	**43%**
No	11	**48%**
Hearing was postponed	2	**9%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 23 observed hearings)	**23**	
Yes	21	**91%**
No	0	**0%**
Hearing was postponed	2	**8%**
Did the judge use intimidation or other informal action against any of the parties (1 hearing was closed)?	**210**	
Yes	0	**0%**
No	210	**100%**

Were witnesses other than the defendant present in the courtroom before their examination? (This question was relevant only in 89 were witnesses were invited)	**89**	
Yes	0	**0%**
No	89	**100%**
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	**89**	
Yes	9	**10%**
No	80	**90%**
In favor of which party?	**9**	
Prosecution	0	**0%**
Defense	1	**11%**
Both	8	**89%**
Did the judge give any instructions to any of the parties (1 hearing was closed)?	**210**	
Yes	11	**5%**
No	199	**95%**

***Plea agreements*– Number of hearings attended: 50**

Was the announcement published outside the courtroom?	**50**	
Yes	20	**40%**
No	30	**60%**
Did the judge make an announcement about the hearing of the case?	**50**	
Yes	49	**98%**
No	1	**2%**
Was the judge speaking in terms understandable for the public?	**50**	
Yes	46	**92%**
No	4	**8%**
Could anyone freely attend?	**50**	
Yes	49	**98%**
No	1	**2%**
Was there a translator invited where necessary?	**50**	
Yes	1	**2%**
No	0	**0%**
There was no need of translator	49	**98%**
Did the judge explain to the accused the right to recuse (This question was relevant only in 22 observed hearings that were the first hearing of plea agreements)?	**22**	
Yes	19	**86%**
No	3	**14%**
Did the judge use intimidation or other informal action against any of the parties	**50**	
Yes	0	**0%**

No	50	**100%**
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?	**50**	
Yes	39	**78%**
No	11	**22%**
Did the judge explain all the rights to defendant? (This question was relevant only in 22 observed hearings that were the first hearing of plea agreements)	**22**	
Yes	11	**50%**
No	11	**50%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 22 observed hearings that were the first hearing of plea agreements).	**22**	
Yes	21	**95%**
No	1	**5%**
Did the judge give any instructions to any of the parties	**50**	
Yes	2	**4%**
No	48	**96%**

Kutaisi City Court

***First Appearances -number of hearings attended*: 33**

Was the announcement published outside the courtroom?	**33**	
Yes	0	**0%**
No	33	**100%**
Was the hearing closed?	**33**	
Yes(The judge opened the hearing and announced that it was closed as the juvenile defendant was attending the hearing)	1	**3%**
No	32	**97%**
Did the judge make an announcement about the hearing of the case? (1 hearing was closed).	**32**	
Yes	32	**100%**
No	0	**0%**
Was the judge speaking in terms understandable for the public? (1 hearing was closed)?	**32**	
Yes	32	**100%**
No	0	**0%**
Could anyone freely attend? (1 hearing was closed).	**32**	
Yes	30	**94%**
No	2	**6%**
Did the judge/secretary state the names of the parties? (1 hearing was closed).	**32**	
Yes	32	**100%**
No	0	**0%**
Did the judge explain to the accused the right to recuse a judge/secretary? (1 hearing was closed).	**32**	
Yes	32	**100%**

No	0	**0%**
Did the judge explain all the rights to the accused (1 hearing was closed)?	**32**	
Yes	16	**50%**
No	16	**50%**
Did the judge comprehensively explain to the accused his/her rights? (1 hearing was closed).	**32**	
Yes	32	**100%**
No	0	**0%**
Did the judge use intimidation or other informal action against any of the parties (1 hearing was closed)?	**32**	
No	32	**100%**
Yes	0	**0%**
Did the judge give any instructions to any of the parties (1 hearing was closed)?	**32**	
No	31	**97%**
Yes	1	**3%**
Was there any other reason to believe the judge was biased (1 hearing was closed)?	**32**	
No	32	**100%**
Yes	0	
Did the defense counsel attend the hearing?	**33**	
Yes	22	**67%**
No	11	**33%**
Was there a translator invited where necessary? (1 hearing was closed). (Translator's attendance does not necessarily mean the right was provided – e.g. when the translator is visibly not doing his job)	**32**	
Yes	1	**3%**

No	0	**0%**
There was no need of translator	31	**97%**
Number of defendants (the number of hearings are different from the number of defendants as more than one defendant were attending some of the hearings)	**39**	
Bail	27	**69%**
Imprisonment	12	**31%**
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? (1 hearing was closed).	**32**	
Yes	31	**97%**
No	1	**3%**
Did the judge ask the defendant whether defendant wished to lodge a complaint about the violation of his/her rights? (1 hearing was closed)?	**32**	
Yes	27	**84%**
No	5	**16%**

Pre-trial Hearings – Number of hearings attneded: **26**

Was the announcement published outside the courtroom?	**26**	
Yes	26	**100%**
No	0	**0%**
Was the judge speaking in terms understandable for the public?	**26**	
Yes	26	**100%**
No	0	**0%**
Could anyone freely attend?	**26**	
Yes	26	**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)	**26**	
Hearing was postponed to invite translator	1	**4%**
No	0	**0%**
There was no need of translator	25	**96%**
Did the judge/secretary state the names of the parties?	**26**	
Yes	26	**100%**
No	0	**0%**
Did the judge explain to the accused the right to recuse (defendants did not attend 2 hearings)?	**24**	
Yes	20	**83%**
No	0	**0%**
Hearing was postponed	4	**7%**
Did the judge explain all the rights to defendant? (defendants did not attend 2 hearings)	**24**	

Yes	3	**13%**
No	17	**71%**
Hearing was postponed	4	**16%**
Did the judge comprehensively explain to the accused his/her rights?	**24**	
Yes	19	**79%**
No	1	**4%**
Hearing was postponed	4	**17%**
Did the prosecutor make a motion for presenting evidence?	**26**	
Yes	22	**85%**
No	0	**0%**
Hearing was postponed	4	**15%**
Was the motion granted?	**26**	
Yes	22	**85%**
No	0	**0%**
Hearing was postponed	4	**15%**
Did the defense agree to the prosecution's motion?	**26**	
Yes	19	**73%**
No	3	**12%**
Hearing was postponed	4	**15%**
In case of Search and Seizure	**7**	
The acts were legalized in advance by the judge	0	**0%**
The acts were legalized later by the judge	7	**100%**
Did the defense make a motion for presenting evidence?	**26**	
Yes	3	**12%**
No	19	**73%**

Hearing was postponed	4	**15%**
Did the judge approve the list of evidence submitted by the prosecution?	**26**	
In full	22	**85%**
In part	0	**0%**
Was not approved	0	**0%**
Hearing was postponed	4	**15%**
Did the judge approve the list of evidence submitted by the defense (defense submitted evidence in 3 cases)?	**3**	
In full	3	**100%**
In part	0	**0%**
Was not approved	0	**0%**
Did the judge use intimidation or other informal action against any of the parties?	**26**	
Yes	0	**0%**
No	26	**100%**
Did the judge give any instructions to any of the parties?	**26**	
Yes	1	**4%**
No	25	**96%**

***Main trial hearing – Number of trial attended*: 148**

Was the announcement published outside the courtroom?	**148**	
Yes	143	**97%**
No	5	**3%**
Did the judge make an announcement about the hearing of the case?	**148**	
Yes	147	**99%**
No	1	**1%**
Was the judge speaking in terms understandable for the public?	**148**	
Yes	148	**100%**
No	0	**0%**
Could anyone freely attend?	**148**	
Yes	145	**98%**
No	3	**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).	**148**	
Yes	3	**2%**
No	0	**0%**
There was no need of translator	145	**98%**
Did the judge/secretary state the names of the parties? (This question was relevant only in 20 observed hearings that were the first hearing in the main trial).	**20**	
Yes	20	**100%**
No	0	**0%**

Was the judgment publicly announced? (This question was relevant only in 8 observed hearings).	**8**	
Yes	8	**100%**
No	0	**0%**
Did the judge explain to the accused the right to recuse (This question was relevant only in 19 observed hearings)?	**19**	
Yes	18	**95%**
No	0	**0%**
Hearings was postponed	1	**5%**
Did the judge explain all the rights to the defendant? (This question was relevant only in 19 observed hearings)	**19**	
Yes	12	**63%**
No	6	**32%**
Hearing was postponed	1	**5%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 19 observed hearings)	**19**	
Yes	14	**74%**
No	4	**21%**
Hearings was postponed	1	**5%**
Did the judge use intimidation or other informal action against any of the parties	**148**	
Yes	0	**0%**
No	148	**100%**
Were witnesses other than the defendant present in the courtroom before their examination? (This question was relevant only in 76 were witnesses were invited)	**76**	

Yes	0	**0%**
No	76	**100%**
Did the judge ask questions to witnesses in favor of any parties (including defendants and experts)? This question was relevant only in 76 were witnesses were invited	**76**	
Yes	18	**24%**
No	58	**76%**
In favor of which party?	**18**	
Prosecution	4	**22%**
Defense	5	**28%**
Both	9	**50%**
Did the judge give any instructions to any of the parties	**148**	
Yes	25	**17%**
No	123	**83%**
To which party?	**25**	
Prosecution	2	**8%**
Defense	16	**64%**
Both	7	**28%**

***Plea agreements*– Number of hearings attended: 21**

Was the announcement published outside the courtroom?	**21**	
Yes	21	**100%**
No	0	**0%**
Did the judge make an announcement about the hearing of the case?	**21**	
Yes	21	**100%**
No	0	**0%**
Was the judge speaking in terms understandable for the public?	**21**	
Yes	21	**100%**
No	0	**0%**
Could anyone freely attend?	**21**	
Yes	21	**100%**
No	0	**0%**
Was there a translator invited where necessary?	**21**	
There was no need of translator	21	**100%**
Did the judge explain to the accused the right to recuse (This question was relevant only in 14 observed hearings that were the first hearing of plea agreements)?	**14**	
Yes	14	**100%**
No	0	**0%**
Did the judge use intimidation or other informal action against any of the parties	**21**	
Yes	0	**0%**
No	21	**100%**

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?	**21**	
Yes	16	**76%**
No	5	**24%**
Did the judge explain all the rights to defendant? (This question was relevant only in 14 observed hearings that were the first hearing of plea agreements)	**14**	
Yes	7	**50%**
No	7	**50%**
Did the judge comprehensively explain to the accused his/her rights? (This question was relevant only in 14 observed hearings that were the first hearing of plea agreements).	**14**	
Yes	14	**100%**
No	0	**0%**
Did the judge give any instructions to any of the parties	**21**	
Yes	2	**10%**
No	19	**90%**