Georgian Young Lawyers' Association

MONITORING OF CRIMINAL TRIALS
REPORT №13

(In Tbilisi, Kutaisi, Batumi, Gori and Telavi Courts)

Period covered: March 2018 - February 2019

The monitoring project is made possible by the generous support of the American People through the United States Agency for International Development (USAID). The contents are the responsibility of Georgian Young Lawyers' Association and do not necessarily reflect the views of USAID, the United States Government or EWMI.

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Promoting Rule of Law in Georgia (PROLoG)

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

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EXECUTIVE SUMMARY

The aim of the report is to identify gaps in the legislation and practice as well as positive trends by attending and analyzing criminal court trials throughout Georgia. The report reflects the issues identified at criminal court proceedings conducted from March 2018 to February 2019, as well as the main trends revealed since the launch of the monitoring to present.

The problem that has been repeatedly highlighted by the court monitoring over the years is the formal or inadequate role of the judge in exercising judicial control over the implementation of human rights, including as follows:

- Judges refrain from examining and assessing the lawfulness of remand detentions. To some extent, this is due to the deficiencies of the case law as well as legislation. The legislation must regulate adequately the mechanism and procedures for reviewing detentions and clearly define the responsibility of the judge to examine the lawfulness of the arrest at the first appearance court hearing. Otherwise, the detainee may unlawfully remain in custody or be imposed an overly strict preventive measure.

- The court monitoring has shown that judges make less effort during periodic review of detentions and leave remand detentions unchanged almost in all cases. In most cases the court does not substantiate the necessity of extending the term of imprisonment.

- Examination of the lawfulness and fairness of the sentence by the court when signing a plea agreement is formulaic. The courts should demonstrate more diligence regarding this issue and explicitly declare whether they agree with the article and sentence determined for a specific crime.

- Almost always the Prosecutor's Office conducts searches and seizures on the grounds of urgent necessity, which in almost every case are legalized by the court. The rule of exception strictly defined in the law has become a commonly applied norm in practice.

- For years GYLA has indicated that the role of the judge envisaged by legislation into alleged ill-treatment cases was a problem. The role of the judge in such cases was not clearly defined by law. GYLA has appreciated the amendments introduced to the Criminal Procedure

Code of Georgia according to which the judge is entitled to apply to a specific investigative body in case of above-mentioned crime, but it is still unclear why this provision did not come into force on 1 January 2019, as planned, and was postponed until 1 July 2019.

This reporting period, like the previous ones, has been characterized by a high rate of the imposition of the most severe preventive measures – remand detention and bail. Alternative preventive measures are hardly used in practice and only in rare and exclusive cases defendants are left without a preventive measure. In the majority of the cases, this is due to the lack of substantiation in the use of preventive measures. However, there are the cases when the court is obligated to apply a severe form of preventive measure due to faulty legislation, as the law provides for an insufficient number of alternative measures and legal restrictions on their use. This means that more severe preventive measures are applied against defendants even if such necessity does not exist.

For years, delaying court hearings has remained an issue, which undermines the reputation of the judicial system, the efficiency and credibility of justice. The Criminal Procedure Code of Georgia provides for a 24-month term for the substantive examination and delivery of a decision into a case. The monitoring has shown that there are cases where the deadline determined by the law for the examination of the case in the court has expired before the court made a decision. Argument from the parties or from the judge, that the expiry of this term in certain cases is due to objective circumstances is not grounded. The legislator defined a 24-month term, took into consideration all the objective and subjective circumstances which may affect the delays of the court hearings and determined maximum timeframe of the case.

GYLA hopes that the findings and recommendations provided for in the present report will be applied to improve the case-law, approaches of the Prosecutor's Office and defense counsel and the legislation.

METHODOLOGY

Georgian Young Lawyers' Association (GYLA) has been implementing the court monitoring project since October 2011. Initially, GYLA carried out the monitoring project in the Criminal Cases Panel of Tbilisi City Court. On 1 December 2012, GYLA expanded the scope of the monitoring and covered Kutaisi City Court as well. In March 2014, the monitoring was launched in Batumi City Court. In September 2016, Telavi and Gori courts

were added to the monitoring process. In all five cities, the identical monitoring methodology was applied.

So far, GYLA has prepared twelve monitoring reports covering the trends identified from October 2011 to March 2018. This time we present court monitoring report №13, which covers the period from March 2018 to February 2019. All the data and information provided in the report has been obtained by attending and observing court hearings. GYLA monitors did not communicate with the parties to case proceedings and did not discuss case materials or final decisions with them.

Like the previous monitoring periods, GYLA monitors used questionnaires prepared specifically for the monitoring project. The information obtained by the monitors as well as the compliance of the court's activities with international standards, the Constitution of Georgia and the current legislation was assessed by GYLA analysts and lawyers. The questionnaires included both close-ended questions requiring "yes/no" answers as well as open-ended questions which allowed the monitors to explain extensively and provide their observations thereof. In addition, similar to the previous reporting periods, the GYLA's monitors, in certain cases, made transcripts of trial discussions and particularly important motions in order to add more clarity and context to their observations. Through this procedure, the monitors were able to collect objective, measurable data and at the same time, identify other important aspects.

The report does not have the ambition to review and process all court trials and sessions taking place in the courts and the data provided contains important and noteworthy information for members of the judiciary, Prosecutor's Office and Bar Association, as well as legislative and executive authorities. Moreover, factual circumstances of cases, statements made by participants of the court sessions and the content of case materials did not fall within the scope of the court monitoring. In particular, GYLA did not analyze the issues related to the circumstances of specific offences and refrained from determining the guilt or innocence of particular persons.

Depending on the length and different stages of criminal proceedings, the GYLA's monitors, through a random selection attended specific court hearings rather than all court sessions. Nevertheless, the following exceptions were made:

- The so-called 'high profile' cases, in which defendants were former political figures;
- GYLA also monitored the cases which were selected due to gross violation of human rights, high public interest and other specific factors;

From March 2018 to February 2019 inclusive, the GYLA monitors attended and monitored 2754 court hearings. Among them were:

- 594 - First appearance court hearings;
- 500 - Plea agreement court hearings;
- 433 - Pre-trial court hearings;
- 1202- Court hearings on the merits;
- 25 - Merits hearings in the Court of Appeals;

KEY FINDINGS

Preventive measures:

- In the last three reporting periods, the rate of application of the most severe preventive measures - imprisonment and bail - has increased. In this reporting period, The court imposed preventive measures against 653 defendants at first appearance court hearings and applied remand detention and bail in 643 (98%) cases. The courts do not actually use other preventive measures;
- Gori and Telavi Courts in single cases only applied an agreement on not leaving and proper conduct. Telavi Court in three cases and Kutaisi Court in two cases imposed the above-mentioned preventive measures. It was only Tbilisi City Court that imposed personal surety as a preventive measure in 3 cases. An agreement on not leaving and proper conduct has not been used at all in Tbilisi;
- The unsubstantiated imposition of detention and bail as preventive measures still remain problematic. The rate of application of unsubstantiated detention has increased, in particular, 49 (15%) out of 322 remand detentions were unsubstantiated and/or were not used as a measure of last resort as required by law. The percentage of unsubstantiated application of bail has slightly decreased – the imposition of bail was unsubstantiated in 91 (28%) out of 321 cases.
- The highest percentage of unsubstantiated bail decisions was 36%, in Kutaisi. In other cities, the rate of unsubstantiated bail verdicts was as follows: Gori and Telavi - 31%, Batumi - 30% and Tbilisi- 25%. The highest number of unsubstantiated decisions imposing remand detention

was 19% in Telavi and Batumi. In other cities as follows: Tbilisi - 14%, Kutaisi - 15%, Gori - 17%;

- During this reporting period, 452 (68%) out of 668 defendants showed up as the detainees at the initial appearance court hearings, which is 12 percentage points higher compared to the previous reporting period.
- At the court trials of the above 668 defendants, the Prosecutor's Office motioned for the remand detention in 399 (60%) cases, whereas the motions of the prosecution for the imposition of remand detention as a preventative measure did not exceed 45% in the previous reporting period. One of the reason is that in 182 cases related to domestic crimes, the Prosecutor's Office demanded custody in 163 (90%) cases.
- The court granted the prosecution's motions for the remand detention in 81% of the cases. The last three reporting periods have shown the trend of increase in granting the detention motions by the court. In the previous reporting period, the judge granted the prosecutor's motion for the remand detention in 75% of the cases; this figure was 72% in the reporting period of 2017 and 60% during the reporting period of 2016;
- With the exclusion of the monitoring results of domestic violence cases, the Prosecutor's Office requested imprisonment against 236 (49%) defendants out of 486, and the Court granted the motions in 217 (92%) cases. The rate of the court granting the solicitations for the detention is critically high. More than 92% of granting the motions was observed in 2011 and 2012 when the court satisfied all motions (100%) submitted by the Prosecutor's Office.
- When requesting bail against 82% of the defendants, the prosecution did not pay attention to their financial capabilities and did not even present any grounded justification thereof. The bail with a remand guarantee was used in 164 cases, 61 (37%) of these were unsubstantiated and / or poorly substantiated.
- In the reporting period, there were cases when the judge could not impose other less strict measures but the bail. In some cases, when it comes to formal and factual circumstances of the use of preventive

measures, the court encounters a problem as it is obliged by law to apply a strict preventive measure -bail or imprisonment - even when there is no need to use such a severe measure.

Review of preventive measures:

- GYLA attended 190 pre-trial court sessions, which discussed the issue of revising preventive measures. The court left unchanged the imposed preventive measure - remand detention- in 182 (96%) cases. In 137 (75%) cases from the above, the court did not substantiate at all or inadequately substantiated why it was necessary to leave the custody in effect;
- In 10 cases, the Prosecutor motioned for the replacement of the preventive measure -bail with remand detention - with imprisonment under the argument that the defendant was not able to pay the bail amount. The court did not grant the motion of the prosecutor in 8 cases.

Adequate judicial control:

- The lack of proper judicial control over the lawfulness of remand detention remains a significant challenge. In most cases, judges do not examine the lawfulness of arrests at court trials. In 376 (83%) cases out of 452 detainee defendants, the lawfulness of their arrest was not discussed at the court trial at all.
- The frequency of conducting searches and seizures under an exception rule is still a problem. In 151 (88%) cases out of 172, the searches and seizures were carried out under the pretext of urgent necessity, and the court deemed lawful the searches and seizures conducted under an urgent necessity in 150 (99%) cases.
- GYLA attended 169 court hearings where the interpreter's service was provided. In addition GYLA identified 3 more cases, where the defendants could not understand what the judge was saying and needed an interpreter's assistance. There were also 4 court hearings where the defendant declared that the interpreter was not providing an accurate translation.

- First appearance court sessions, as a rule, are not announced. Only in 123 (21%) cases, the information about the court hearings was made public.

Plea agreements:

- The duration of 213 (43%) out of 500 plea agreement court hearings was from 5 to 15 minutes. In 26 cases, the court hearings lasted for no more than 5 minutes. In such a short time period, the court cannot fully inform the defendant of his/her rights envisaged by the chapter XXI of the Criminal Procedure Code of Georgia (CPCG), become convinced that the defendant agrees to the terms of the plea agreement, examine whether the size/form of the sentence imposed under the plea agreement is proportionate and then deliver a proper decision.
- For the offences which result in the death of humans or damage of bodily health or property, plea agreements were signed in such a manner that the position and interests of victims are not presented by prosecutors to the court; court;
- Out of 535 motions submitted by the prosecutor, the judge approved plea agreements in 534 cases, and only in 11 (2%) cases, declared that he/she considered fair the punishment the defendant was sentenced to.
- In the current reporting period, 43 cases have been reported when the prosecutor presented only the resolution part of the agreement at the court hearing.
- The plea agreement court hearings again revealed the problem of poor communication between defendants and the defense counsel appointed at the expense of the State, in particular, in 56 cases (23%) out of 143, miscommunication was a clear problem.

Hearing on the merits:

- 477 (40%) out of 1202 court hearings on the merits were postponed as soon as they were opened. The most common reason for adjourning court hearings is the prosecution's failure to present prosecution witnesses (195 (32%) court trials). 140 (23%) court hearings were postponed due to the negotiation of a plea agreement by the parties.

- The court proceedings were delayed in 361 (30%) out of 1202 cases. 46 trial sessions were delayed for more than an hour. The delayed launch of court hearings does not usually become a subject of discussions - neither the parties nor the judge makes any relevant explanations about their tardiness.
- The monitoring has shown that court sessions are usually delayed due to the late appearance of the judge - 134 (37%) court trials. The lateness of the parties and / or the parties attending other court hearings was observed in 65 (18%) cases. One of the main reasons for the delay is the deliberation of other cases in the same courtroom- 98(27%) cases.
- The final verdict was delivered at 171 (14%) out of 1202 court hearings on the merits. In 144 (84%) cases – it was a guilty verdict, at 6 (4%) court trials – a partial acquittal, and in 21 (12%) cases – an acquittal. In comparison with the previous reporting period, the percentage of the acquittal verdicts has dramatically increased,[1] although it is noteworthy that the majority of the acquittals are delivered into domestic violence cases.[2]

Domestic violence cases

- During the previous reporting period, GYLA attended the initial appearance court hearings of 71 defendants charged with domestic crime / domestic violence, which constituted 17% of all monitored first appearance hearings.[3] In this reporting period, GYLA monitored 182 first appearance hearings on domestic crimes, which amounted to 30% of the court hearings.[4] The increase in the share of domestic violence cases by 13 percentage points indicates that the identification by law enforcement agencies of domestic offences / domestic violence has increased.

[1] In the previous reporting period, the final verdict was rendered at 191 (20%) court trials: 178 (93%) – guilty verdicts, 3 (2%) – a partial acquittal, 10 (5%) – an acquittal.

[2] The acquittal verdicts in 16 cases out of 21 were delivered into domestic offences.

[3] During the previous reporting period, GYLA attended the first appearance court trials of 402 defendants.

[4] GYLA attended the first appearance court trials of 594 accused.

- GYLA monitors attended 182 court hearings considering the preventive measures for the commission of domestic crime. The Prosecutor's Office requested remand detention for such offences in 163 (90%) cases, and the court granted the motion of the prosecution regarding the remand detention in 105 (64%) cases.

- Plea agreements were signed with 534 defendants, among them were only 9 (2%) defendants charged with domestic offence (Article 11^1 and / or 126^1 of the CCG), who were ultimately awarded a plea agreement.[5] This shows that the attitude of the Prosecutor's Office in relation to domestic offences has changed, as the conclusion of plea agreements in the past years was quite frequent. In the last two reporting periods, the Prosecutor's Office has refrained from signing plea agreements into such cases.

- As a result of plea agreements, 5 defendants were sentenced to imprisonment, a part of which was considered a suspended sentence, 3 defendants were sentenced to imprisonment, which was considered as a suspended sentence, and one defendant was sentenced to imprisonment considered as a suspended sentence and community labour.

- In this reporting period, GYLA has attended 310 court hearings on the merits related to domestic offences. The final court verdicts were delivered in 81 of them.

- In comparison with the previous reporting period, the percentage of the acquittal verdicts has significantly increased. The acquittal verdict was delivered in 16 (20%) out of 81 cases. [6] In 14 out of 16 acquittals, the victim refused to testify against the accused and this served as the ground for the acquittal.

- In 11 (17%) out of 65 cases, the court sentenced the accused to community labor, as a punishment. The suspended sentence and probationary period were applied against 31 (48%) persons, while the term imprisonment - a real punishment - was imposed on 21 (32%) defendants.

[5] In the previous reporting period, plea agreements were signed with 19 (6%) defendants out of 303.

[6] In the previous reporting period, only 4 out of 73 sentences were acquittal verdicts.

Identification of discriminative motive

- At 9 (5%) out of 182 first appearance court hearings, where the victim of domestic violence was a woman, the prosecutor indicated that the discriminatory motive was obvious. GYLA observers revealed eight more cases where the prosecutor wasted the chance to indicate the discriminatory motivation of the crime.
- During this reporting period, the prosecution has referred to discriminative motivation at 11 merits hearings, 2 of which dealt with intolerance based on gender identity, and one case involved the discrimination on the ground of sexual orientation. [7]

Drug-related crimes:

- Against 100 defendants who were charged with drug-related offences (purchase, storage, transportation, forward and/or illegal consumption of small quantities of cannabis or marijuana plant without a doctor's prescription – except for narcotic drugs), remand detention was imposed against 45 (45%) and bail against 55 (55%) defendants.
- In all 48 cases, the court granted the prosecutor's motion requesting the remand detention.
- We attended 123 court hearings on preventive measures related to drug offences, among which 46 (37%) decisions were unsubstantiated. In total, preventive measures were unsubstantiated in 140 (21%) out of 668 cases.
- GYLA monitored 171 court hearings that considered the issue of signing plea agreements with defendants charged with drug-related offences.[8]

[7] In the previous reporting period, GYLA identified only 2 cases where the Prosecutor's Office referred to discriminative motives.

[8] Of these, 117 defendants were accused of committing drug-related crimes, namely, illegal manufacturing, purchase, storage, transportation, transfer or sale and / or illegal consumption of small quantities of drugs without a doctor's prescription (Articles 260-272 of the CCG), and the remaining 54 accused were charged with illegal manufacturing, purchase, storage, transfer or forward and/ or illegal consumption of small quantities of narcotic drugs without a doctor's prescription or illegal purchase, storage, transportation, transfer and/or sale of cannabis or marijuana plant. (Articles 273 and 2731 of the CCG).

- The amount of fines[9] imposed on drug-related offences is significantly higher than the average amount of fines applied for other types of offences.[10]
- The GYLA monitors attended 6 court proceedings related to drug offences (Article 260 of the CCG), where the guilty verdicts were delivered against all of the defendants.

Crimes committed due to economic hardship

- GYLA identified the first appearance court hearings of 25 defendants in whose case the reason for the commission of the crime was economic distress. In all 25 cases, the court imposed bail or remand detention. In none of the cases was imposed a personal surety or were defendants left without a measure of restraint. In 9 out of 25 cases, the prosecutor motioned for the detention, which the court granted.
- In 16 cases, the prosecutor requested the imposition of bail. In 2 cases, the prosecutor requested the minimum possible amount of the bail. It should be noted that the court, as a rule, reduced the amount of the bail requested by the prosecutor, took into consideration the gravity of the offence and the social status of the defendant and applied the minimum amount of bail in 12 (75%) cases out of 16.
- GYLA attended 20 post-plea agreement court trials which made it clear that the defendants committed the offence due to destitution. There were 6 cases when the prosecutor could choose not to initiate the criminal prosecution at all and / or offer the diversion to the party, and the court could also reject a plea agreement due to the insignificance of the offence committed. However, despite the insignificance of the offense, these cases still ended up in the already clogged court system.

[9] Does not include the fine used as a penalty for the crimes envisaged under Articles 273 and 273[1] of the Criminal Code of Georgia.

[10] The average amount of the fine imposed for drug-related offences has amounted to 6778 GEL, while the average amount of the fine for all other offences is 4238 GEL.

I. TRENDS IDENTIFIED AT FIRST APPEARANCE COURT HEARINGS- GENERAL OVERVIEW

A BRIEF OVERVIEW OF THE LEGISLATION

Article 196 of the Criminal Procedure Code of Georgia (hereinafter CPCG) provides for the right of a defendant to be subjected to judicial control within the shortest period of time. The judge shall discuss the lawfulness of detention, the expediency of application of restraint measures, and types of preventive measures to be imposed. At the same time, proper/ qualified judicial control plays a significant role in preventing any possible ill-treatment against the accused.

Article 198 of the CPCG sets out the goals and grounds in which cases a particular preventive/ restraint measure shall be used. First of all, it is noteworthy that the use of restraint measures shall have a preventative purpose. The goal of a preventive measure is not to prove the guilt of a person, but the deliberation should be about whether it is reasonable to impose a measure of restraint. The goal or purpose of imposing a preventive measure is to ensure the proper implementation of justice.[11] At the initial appearance of an accused before the court trial, in addition to other procedures, the court shall examine which preventive measure shall be imposed to prevent the defendant from avoiding the court trial, prevent him/her from further criminal activity and eliminate any interference with the investigation until the final verdict is announced into the case. Imposition of a preventive measure shall be substantiated, which means that the use of a specific kind of constraint measure shall be in compliance with the goals envisaged by law.

The court may use one of the several preventive measures envisaged by the Criminal Procedure Code of Georgia: remand detention, bail, personal surety, an agreement not to leave and proper conduct, supervision by the command of the behaviour of a military service member. In addition, the court shall be authorized to apply additional measures against the accused along with the main preventive measure.[12]

[11] The transcript of the protocol №646ბ II-40 of the Constitutional Court of Georgia of 26/06/2015;

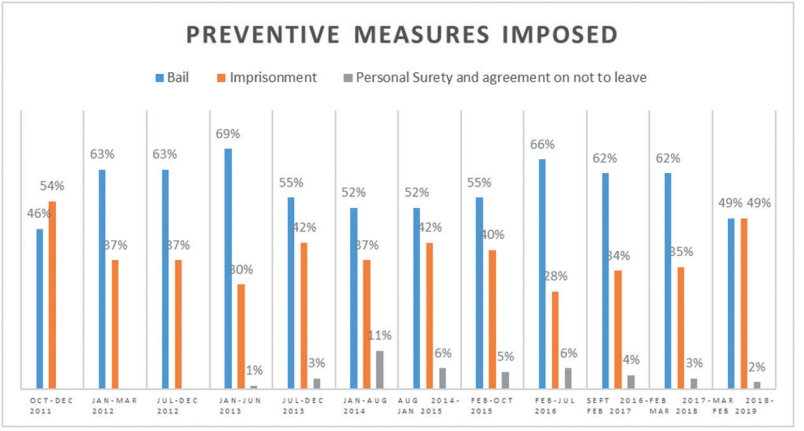
[12] Article 199(2) of the CPCG;

ANALYSIS OF COURT HEARINGS

In the reporting period, GYLA monitored 594 initial appearance court hearings against 668 defendants. It has been established that the court mainly imposes two types of preventive measures - bail and remand detention (98% in total). However, the last three reporting periods have seen a further reduction in the rate of other preventive measures -2%[13], which definitely means that the courts do not perceive an agreement on not to leave, proper behavior and personal surety as the real alternatives to bail or imprisonment. The decisions on the imposition of remand detention were unsubstantiated in 15% of the cases, whereas the decisions ordering bail in 28% cases were unsubstantiated and/or overly strict.

The chart below illustrates the overall picture of applying preventive measures during the entire monitoring period (from October 2011 to February 2019)

Chart №1:



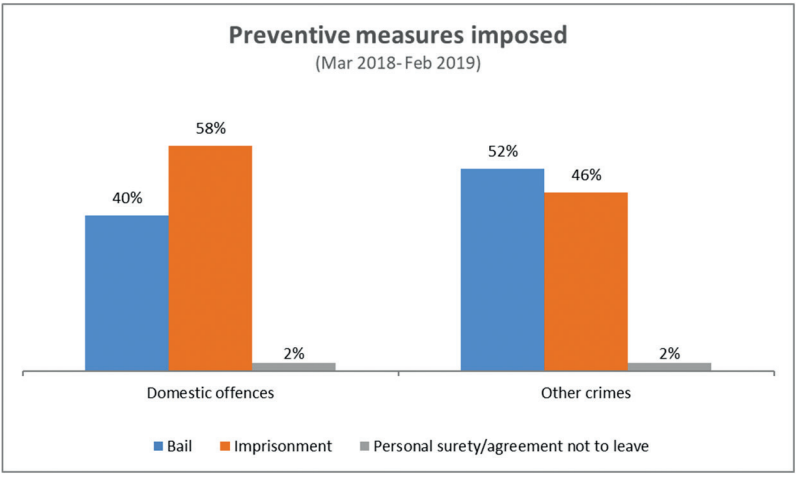
It is noteworthy that in this reporting period, the number of domestic offences has sharply increased. In the previous reporting period, the domestic crime cases were 18% of the proceedings attended, and in this reporting period, 31%. It is of note that the executive authorities have demonstrated a new and strict approach to the crime. The Prosecutor's Office in most cases requests detention. All of the above-mentioned significantly

[13] In the previous reporting period, other types of preventive measures were used in 3% of the cases, in 4% cases according to the 2017 report, and in 6 percent in 2016.

changes the picture of the overall statistics. Consequently, GYLA decided to analyze / process certain data (all other crimes and domestic offences were counted separately) to make it possible to compare the data objectively to the previous reporting years.

The chart below illustrates the information on the imposition of preventive measures by the court on domestic offences and other crimes (from March 2018 to February 2019)

Chart №2:



Except for domestic offences, the data analysis shows that the rate of imposing detention has amounted to 46%. The high percentage like this has never been detected in the last ten reporting periods. It is also noteworthy that for the last three reporting periods, the rate of imposing detention by the court has increased.

PREVENTIVE MEASURES ACCORDING TO CITIES / DISTRICTS[14]

In comparison with the previous reporting periods, Tbilisi City Court applies alternative types of preventive measures even more rarely than be-

[14] The statistics offered in this chapter do not contain the trends identified at domestic offences court trials.

fore.[15] GYLA monitored 260 initial appearance court hearings against 309 defendants, where the court applied personal surety only in 3 cases. An agreement on not leaving and proper behavior have not been applied at all.

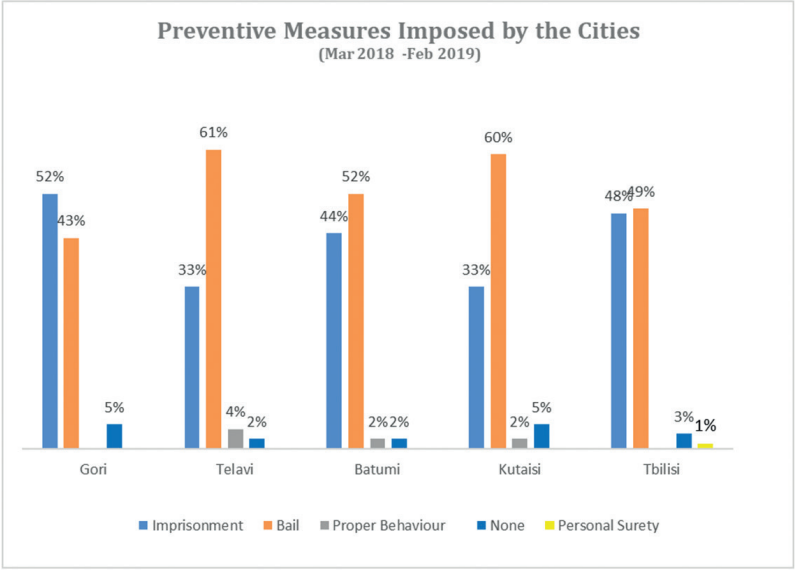
Gori District Court uses bail and remand detention only. Telavi District Court has applied the agreement on not leaving and proper behavior in 2 cases (out of 48 defendants) in this reporting period. Batumi Court (52 defendants) and Kutaisi Court (57 defendants) applied the agreement on not leaving and proper conduct in single cases only.

In this reporting period personal surety was applied by Tbilisi City Court only.

Telavi, Batumi and Gori Courts left defendants without a preventive measure in single cases, 3 such cases were reported in Kutaisi, and Tbilisi court applied none of the preventive measures in case of 8 defendants.

The chart below provides the statistics on the preventive measures applied by the cities from March 2018 to February 2019 (except for domestic offences).

Chart №3:



[15] In the previous reporting period, the Tbilisi City Court applied personal surety 4 times in 186 cases and the agreement on not to leave and proper conduct - 5 times.

Duration of Initial Appearance Court Hearings

The initial appearance of the defendant before the court is of great importance for the implementation of the right to fair trial. The judge shall be obligated to inform the defendant in an easy and comprehensible language of all his/her rights envisaged by law,[16] in particular: the content of a specific charge, the types and size of the expected sentence determined for a specific offence. At the same time, if the accused is a detainee (68%, 452 persons out of 668 cases in the reporting period), the judge is obliged to examine the lawfulness of the detention, inform the defendant of the right to file a complaint about torture and inhuman treatment and find out whether the defendant has any complaint about any violation of the procedural rights. After this, the Court shall consider a motion submitted by the prosecutor on a preventive measure and examine the existence of threats for the use of the preventive measure,[17] discuss the expediency of imposition of a specific preventive measure, provide clarification regarding the decision delivered and prove the impossibility of imposing other less lenient preventive measures.

It is a welcome fact that during this reporting period the number of those court hearings which lasted no more than 15 minutes has decreased by 6 percentage points.[18] Within the period of up to 15 minutes, it is practically impossible to provide a comprehensive and qualified examination of all the issues envisaged by law at the preventive measure court trial.

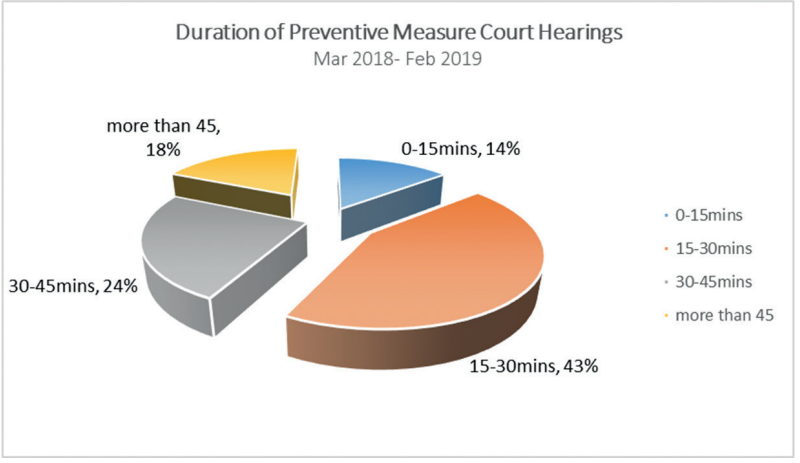
[16] Article 197 of the CPCG;

[17] Article 198(2) of the CPCG;

[18] During this reporting period, it has amounted to 14% and it was 20% in the previous reporting period.

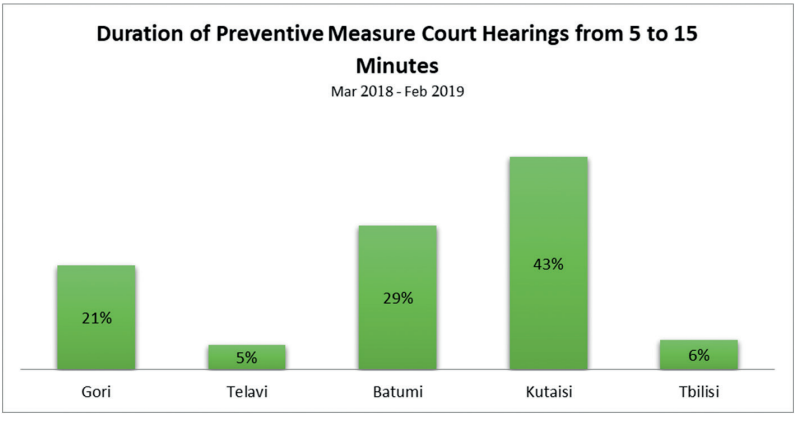
The chart below shows the duration of initial appearance court sessions in minutes from March 2018 to February 2019

Chart №4:



The chart below shows the length of the court hearings according to the cities the duration of which did not exceed 15 minutes from March 2018 to February 2019.

Chart №5:



The monitoring has shown that at 36 (42%) out of 86 court hearings which lasted no more than 15 minutes, the court did not comprehensively inform the accused of their rights.

Although the number of those court hearings[19] which do not last more than 15 minutes in Kutaisi City Court has decreased, the share still remains high- 43% of the court hearings were 15 minutes long, leaving the impression that the judges do not comprehensively scrutinize case circumstances during the court trial and mostly deliver insufficiently grounded decisions on the imposition of preventive measures.

Approaches of the Prosecutor's Office

Like the previous reporting period, the issues identified by GYLA regarding the attitudes of the Prosecutor's Office are still in place

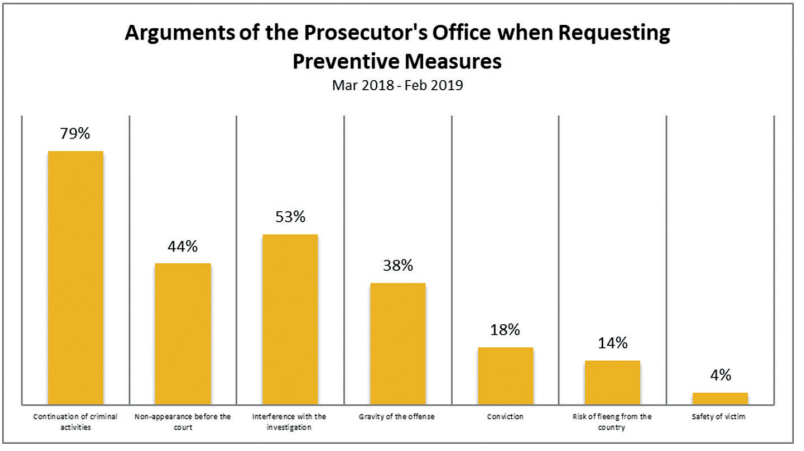
. Unfortunately, there were a number of cases when motions submitted by the Prosecutor's Office were merely of template nature. Although the prosecution indicated the goals and grounds for the use of preventive measures, the arguments in some cases were not related to specific factual circumstances. It seemed that the prosecution was more focused on the gravity and essence of the offence rather than the threats and risks which could hinder the achievement of the goal of preventive measures.

The prosecution requested bail in 236 cases. In 193 (82%) cases of these, the prosecution did not have information or appropriate reasoning on the financial condition of the defendants. Consequently, there were a number of cases when the bail amount requested by the prosecutor was disproportionate and not corresponding to the property status of the defendant.

[19] In the previous reporting period, the duration of the first appearance court hearings of defendants in Kutaisi City Court did not exceed 15 minutes in 51% of the cases.

The chart below provides the reasons which the Prosecutor's Office presented as the substantiation of the motions for the restraining measures from March 2018 to February 2019.

Chart №6:



As the above diagram shows, prosecutors refer to several grounds simultaneously provided for in Article 198 (2) of the CPCG when submitting a motion for the application of a restraining measure. However, they fail to provide proper reasoning for those several grounds referred.

The Prosecutor cannot *in abstracto*[20] refer to any grounds, as it is necessary to provide the maximum reasoning for the basis of each restrictive measure mentioned in the motion, otherwise the court shall not take into consideration any unsubstantiated / inadequately reasoned *in abstracto* grounds of the prosecutor.

The prosecutor appealed to the threat of leaving and fleeing from the country in 384 cases,[21] in 269 (70%) of which, the court did not accept the threat indicated by the Prosecutor's Office. The above-mentioned dangers were formulaic and unsubstantiated. In particular, the prosecution claimed that the person was under the threat of imprisonment as a penalty and the likelihood of his fleeing was high, the person had an interna-

[20] Becciev v. Moldova, §§ 61-62; 04/01/2006

[21] In 293 cases, the prosecution referred to the risk of go hiding, and in 91 cases, the risk of fleeing the country;

tional passport and had travelled abroad, which increased the likelihood of fleeing and also indicated that Georgia has two occupied territories and the borders are not protected sufficiently.

Approaches of the Court

Court decisions regarding preventive measures were similar to the previous reporting period. There were positive examples observed though, which could be deemed the examples of best practice. However, the percentage of unjustified decisions on the imposition of remand detention and bail indicates the gaps and challenges existing in this regard. In some cases, the court gave abstract explanations when justifying the use of a preventive measure, which contradicts with the standard of a reasonable assumption that requires substantiation of the use of a specific restraining measure.

It is of note that in this reporting period, the court has more often granted the motions submitted by the Prosecutor's Office for the imposition of preventive measures.

Position of Defense Counsel

The court monitoring has shown that lawyers do not often have sufficient time to review case materials adequately. Nevertheless, the lawyer is required to protect the best interests of the defendant effectively, including, demand from the prosecutor at a court trial to provide proper reasoning of the motion requesting a preventive measure.

The monitoring has shown that there are shortcomings in respect of the defense counsel. In some cases, unprepared and passive attorneys failed to protect the interests of defendants. Unfortunately, there were cases when the lawyers, instead of protecting the defendants' best interests, formally opposed the prosecution's arguments, showed up unprepared at the court trial or positively evaluated the motions submitted by the prosecutor.

To illustrate this, please see the following example:

A person was accused of theft of 550 GEL and a mobile phone from the neighbour's house (Article 177 (2)(a) and 177 (3) b /c of the CCG). The prosecutor spoke comprehensively about the factual and formal grounds of the case and requested the imposition of remand detention.

The lawyer did not provide any motion, only declared that the parties wished to sign a plea agreement and agreed with the use of detention.

The judge finally sentenced the defendant to imprisonment.

GYLA has also identified cases where due to the mistake made by the Prosecutor's Office, the defense counsel did not have enough time to review the case materials in order to develop the defence strategy. **To illustrate this, please see the following example:**

At one of the court trials, the defendant declared that he/she was a socially vulnerable person and wished to have an attorney at the expense of the State. Although the defendant told the investigator and the prosecutor thereupon, he was not provided with one. The judge announced an hour break and called upon the prosecution to verify whether the defendant was really registered as a vulnerable person and to apply to the bureau for the appointment of a lawyer at the expense of the State.

An hour later, when the court hearing was resumed, the defendant was represented with a lawyer appointed by the State.

II. USING IMPRISONMENT AS A PREVENTIVE MEASURE

A BRIEF OVERVIEW OF THE LEGISLATION

Imprisonment is the most severe measure when a person, based on a court ruling, is deprived of liberty for a definite period of time. Imprisonment can only be used when other means have proved to be ineffective. In addition, the threats must be confirmed with convincing and relevant circumstances and evidence. The burden of proof in case of requesting the application of remand detention shall be always imposed on the prosecution. The prosecutor shall, to the maximum extent, present facts and information that will convince an unbiased observer of the existence of the grounds for the use of detention.

On the other hand, the Court shall properly examine the motion submitted by the prosecution, take into consideration of risks and threats and provide sound reasoning for the decision on the use of remand detention. Any imprisonment imposed by the Court shall be unjustified if such decision is not based on specific factual circumstances, provides an abstract assessment of threats, and a particular goal can be achieved with other less severe measures of restriction.

In any case, it is essential that priority should be given to less lenient forms of restriction of human rights and freedoms. As the European Court of Human Rights has indicated, the detention of the defendant can be justified only if there are special signs of genuine public interest which, in spite of the presumption of innocence, outweigh the requirements of freedom of the individual. Furthermore, remand detention should be reasonable and necessary in all cases.[22] In addition, according to the recommendations of the Committee of Ministers of the Council of Europe, detention should be used as an exceptional measure. Moreover, it must not be mandatory and must not be used for the purposes of punishment.[23]

Analysis of court hearings

Compared to the previous reporting period, the situation in terms of imposing remand detention as a preventive measure has deteriorated. The percentage of unsubstantiated decisions rendered in relation to remand

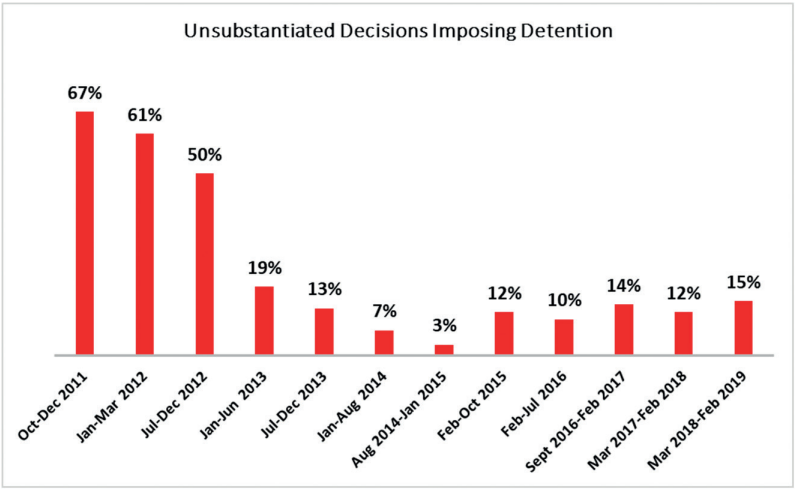
[22] Pacuria v. Georgia, no. 30779/04, 6 November, 2007, §62-65.

[23] Recommendation №R (80)11 of the Committee of Ministers of the Council of Europe concerning Custody Pending Trial

detention has increased and amounted to 15% in total.[24] In particular, imprisonment was applied to 322 defendants. The decisions against 49 defendants were unsubstantiated and / or overly strict. Unfortunately, the prosecution and judicial authorities still find it difficult to understand that arrest is an extreme measure and merely the gravity of an offence and the severity of the sentence cannot justify its use.

The chart below illustrates the judgments imposing unsubstantiated remand detention during the whole monitoring period (from October 2011 to February 2019).

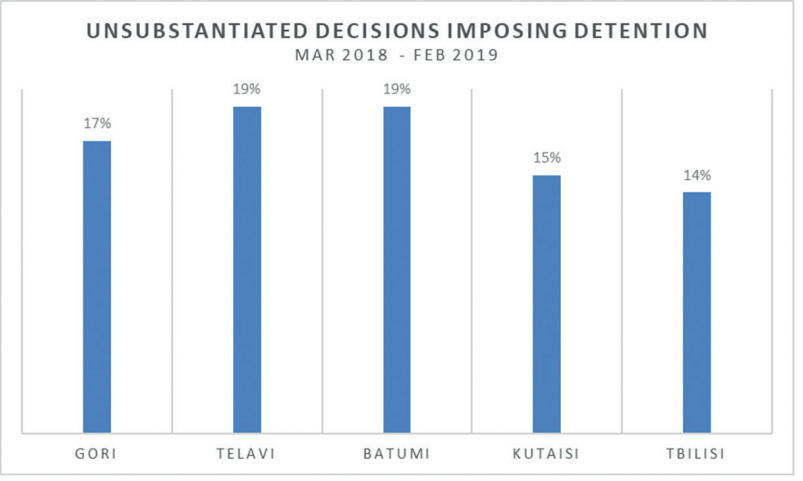
Chart №7:



[24] In the previous reporting period, 12% of the application of detention was unsubstantiated.

The chart below shows unjustified court decisions on imposing the detention as a restraining measure according to the cities from March 2018 to February 2019.

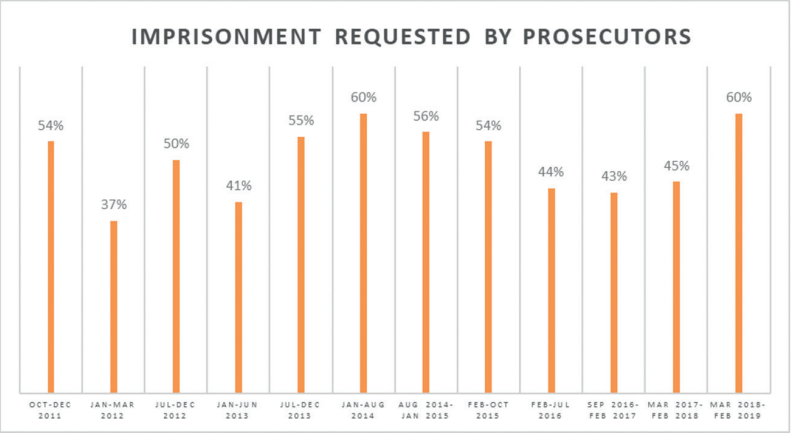
Chart №8:



In this reporting period the Prosecutor's office requested remand detention in 60% of the cases, the highest rate since the beginning of monitoring in 2011. In total, at 594 court trials, the Prosecutor's Office demanded custody against 399 (60%) out of 668 defendants.

The diagram below illustrates the frequency of remand detention requested by the prosecution during the entire monitoring period (from October 2011 to February 2019).

Chart №9:



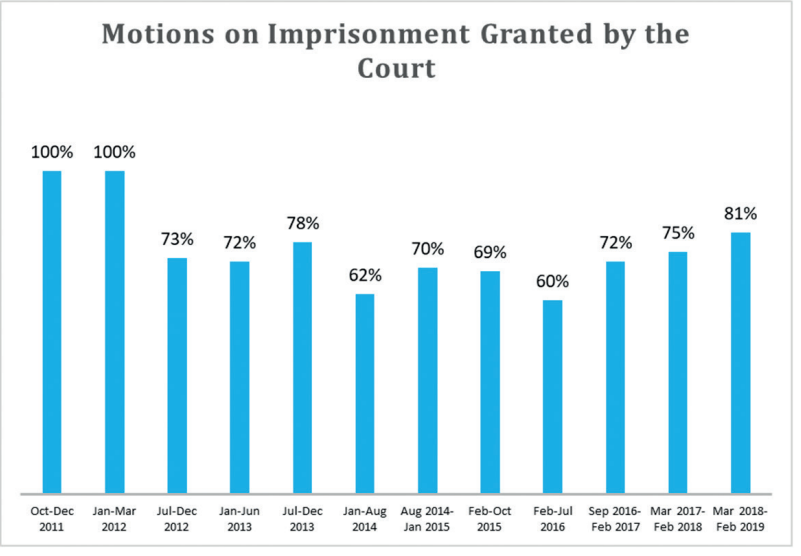
If we exclude the number of detentions requested by the Prosecutor's Office into domestic offences, the above data will change as the Prosecutor's Office has requested imprisonment in 163 (90%) out of 182 cases.

Except for domestic offences, the Prosecutor's Office requested the application of remand detention for other types of offences at 414 initial appearance court hearings, there were 486 defendants and demanded custody against 236 (49%) of them.. It is noteworthy that the number of the prosecution's request for the remand detention has increased by 4 percent.[25]

[25] In the previous reporting period, the rate of imposing the detention requested by the Prosecutor's Office was 45%; currently, if we exclude the cases of domestic offences, the figure accounts for 48 percent.

The chart below shows the statistics of the court granting the detention motions throughout the entire monitoring period (from October 2011 to February 2019)

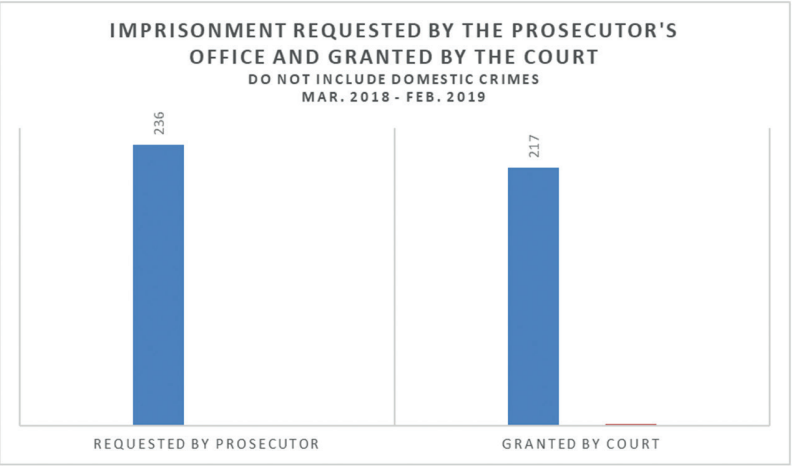
Chart №10:



The rate of granting imprisonment motions by the court has been steadily on the rise since a dip in Feb-Jull 2016, reaching new high of 81%. This figure is second only to the 100% fulfillment rate that the prosecution enjoyed with the courts in the very beginning of the project, in 2011-2012.

The chart below shows the statistics of the motions for the remand detention submitted by the Prosecutor's Office and granted by the court during the entire monitoring period (from March 2018 to February 2019 inclusive) ***Note: The data do not include the number of detentions requested by the prosecutor and imposed by the judge on domestic offences;***

Chart №11:



Except for domestic offences, the Prosecutor's Office requested imprisonment in 236 (49%) out of 486 defendants, and the court granted the motions for the detention in 217 (92%) cases. It is noteworthy that the rate of the court granting the solicitation for the remand detention is critically high. Throughout all monitoring periods carried out by GYLA, more than 92% granting rate was observed in 2011 and 2012 only, when the court showed the tendency of granting the prosecution motions in all cases.

It should be noted that when justifying the application of the remand detention in 49 (15%) cases, the judge indicated abstract threats that were not confirmed by any specific circumstances of the case. Moreover, the judge did not specify why it would have been impossible to achieve the goals of a specific preventive measure by imposing other less lenient preventive measures. **To illustrate this, please see the following example:**

A person was charged with disrespect expressed towards the court (Article 366 (1) of the CCG), which was manifested in the following way: upon the completion of one of the court proceedings, the defendant threw a cigarette lighter into the courtroom. The prosecution requested remand detention and indicated the circumstances as follows: the accused could avoid appearing before the court due to the anticipated punishment, the offence was directed against the governing rule, the accused was prone to violence, the crime committed clearly showed his attitude toward the judicial authority and therefore he could avoid appearing before the court.

The defense counsel said that the accused admitted to and repented the offence. The defendant declared that his behavior was unacceptable. Besides, he had never been convicted. As regards appearing before the court, the lawyer said that the accused was cooperating with the investigating body and would show up in the court as required. The attorney pointed out that the defendant fully admitted to the offence and therefore, there was no threat of pressurizing the witnesses. The lawyer also commented on the threat of fleeing for the fear of the sentence. In particular, the lawyer said that the offence envisaged deprivation of liberty for up to one year. Thus, the argument of the prosecutor that due to the fear of the punishment the defendant would evade justice was unsubstantiated. The accused was married with a one-year-old child and he was the only breadwinner of his family. The lawyer also presented the personal characteristics of the defendant issued by his employer.

Ultimately, the court granted the prosecution's motion, even though the prosecutor failed to refer to any adequate, real and relevant threats when requesting the most severe preventive measure.

III. USING BAIL AS A PREVENTIVE MEASURE

A BRIEF OVERVIEW OF THE LEGISLATION

Bail is a strict form of preventive measure, when the accused is required to pay a specific amount into the state budget and, therefore, restricts property rights.

According to Article 200 (2) of the CPCG, the amount of the bail shall be determined by taking into consideration the gravity of the crime committed and the financial status of the accused. The minimum amount of the bail shall not be less than 1 000 GEL. The accused or the person, who posted bail or the equivalent real property, shall be fully reimbursed with the monetary sum deposited as the bail or the immovable property within a month after the execution of the judgment. The above-mentioned regulation applies if the accused has fulfilled his/her obligations properly and in good faith and the preventive measure used against him/her has not been replaced with a more severe measure of restraint.[26]

The bail, as one of the types of the preventive measures, shall be subjected to all compulsory requirements determined for the use of a preventive measure. The prosecutor shall substantiate the motion for the bail and the court shall be obliged to take into consideration different circumstances, including the personal characteristics, financial status and other aspects of the defendants even if the Prosecutor's Office fails to provide relevant information regarding the above-mentioned. The defense counsel is not obliged to submit the same information, since it is the responsibility of the prosecution to prove the expediency and proportionality of the preventive measure requested.

Analysis of court hearings

GYLA has revealed the cases of the breach of the above-mentioned regulations and standards where the prosecution unjustifiably demanded the use of bail and failed to present any information on the financial status of the defendant. Frequently, the prosecution limits itself to only justification of the bail and refrains from commenting on the amount of the bail. Although the court tried to establish the financial status of defendants, the bail amount imposed against defendants in the majority of the cases was not a proportionate and relevant preventive measure.

[26] Criminal Procedure Code of Georgia, Article 200.

The court monitoring has shown that the percentage of unsubstantiated decisions on the use of the bail has actually slightly decreased compared with the previous reporting period and amounted to 28%, which is still a very high figure.[27] The prosecutors often failed to substantiate the necessity of the bail and in contrast to imprisonment, demonstrated less effort to justify its expediency. In certain cases, the prosecution did not even speak about the goals and threats of the preventive measure, and only read out the content of the charge imposed. In addition, sometimes, even though the prosecutor indicated abstract risks, the judge upheld the motions and demonstrated less enthusiasm to examine the grounds and reasonability of the measure requested.[28]

During this reporting period, the prosecutor has requested the imposition of the bail against 38%[29] of the defendants. If we exclude the statistics of domestic offences from the data, we will see that the prosecutor demanded the imposition of bail against 49%[30] of the defendants. The amount of bail imposed varied between 1000 and 30 000 GEL. The average amount of the bail used during this reporting period amounted to 3 202 GEL, which is slightly lower than in the previous reporting period.[31]

[27] In the previous reporting period, the use of the bail was unsubstantiated in 30% of the cases.

[28] GYLA believes that the bail is unsubstantiated when for example, judges support the prosecution's motion on the imposition of a bail without proper justification and reasoning, which shall be based on the guilt, personality of the accused, his/her financial status and other important circumstances of the case. Non-examination of these circumstances by judges is even more damaging when a defendant does not have a defense lawyer; despite the prosecution's demand for the imposition of the bail instead of imprisonment, judges do not examine the defendant's financial status and other essential circumstances for imposing bail; Although defense agrees with the prosecutor on the imposition of the bail and the defense lawyer's consent on the imposition of the bail, GYLA still deems the imposed bail unsubstantiated, as the defense's consent or willingness to pay the bail amount does not exacerbate or neutralize those threats for which prevention measures are applied.

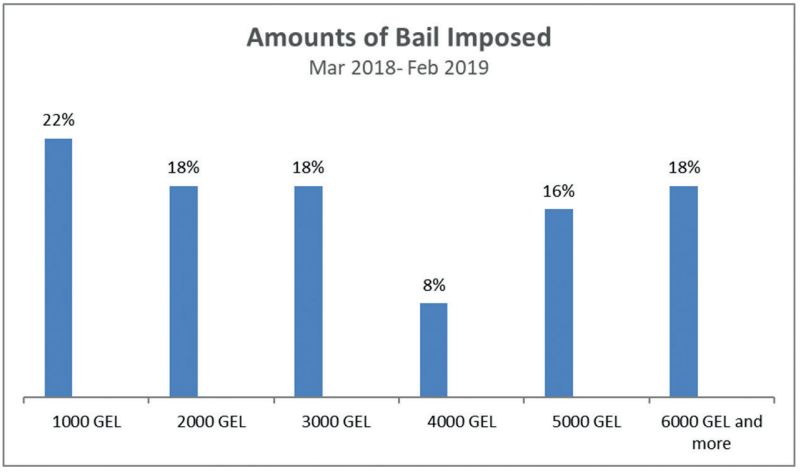
[29] Against 257 out of 668 accused at 594 first appearance court hearings;

[30] Against 239 out of 486 accused at 414 first appearance court hearings;

[31] The average amount of the bail used during the previous reporting period was 3 245 GEL.

The chart below illustrates the amounts of the bail applied by the court from March 2018 to February 2019.

Chart №12:



At 594 initial appearance court hearings, the prosecutor motioned for imposition of bail against 257 persons out of 668. The court did not grant the prosecution's request for bail in 11 (4%) cases only. Compared to the previous reporting period, the court satisfied the prosecutor's motion on the bail more often.[32] The court left 6 (54%) out of 11 defendants without a preventive measure, in 4 (36%) cases, an agreement on not leaving and proper behaviour and in 1 (9%) case, personal surety was applied. GYLA welcomes the instances of the court using various alternative measures and releasing the defendant without a preventive measure.

Besides the cases of the court not imposing a preventive measure, there were cases where the prosecutor did not request to use a preventive measure. Nine such examples have been reported, but the reason for the aforementioned was that the defendant had already been convicted into another case or had been sentenced to imprisonment as a preventive measure.

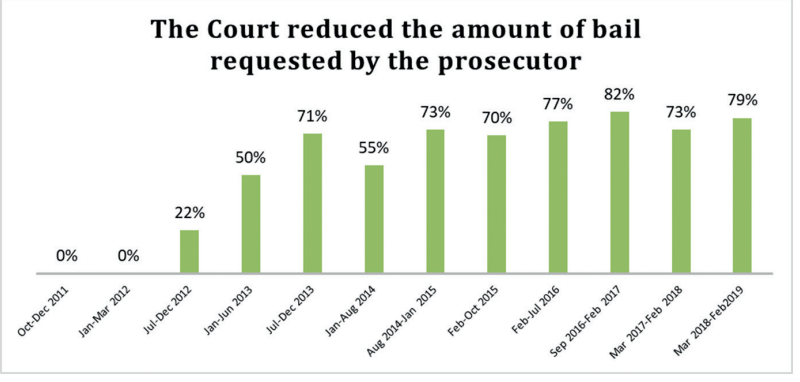
It should be also noted that the court, in most cases, reduced the amount

[32] In the previous reporting period, the Prosecutor's Office requested the use of bail against 205 defendants. In 24 (12%) cases, the Court did not grant the prosecution's motions for the use of the bail.

of bail requested by the prosecutor. In particular, in case of 79% of the accused, the court granted the prosecutor's request for the use of bail, but at the same time decreased the amount of the bail. This approach indicates once again that the Prosecutor's Office does not properly investigate the financial capabilities of defendants and demands to impose an irrelevant amount of bail which might be a much higher burden for a person than it is necessary to achieve the specific goals of the preventive measure. Although the court often reduced the amount of bail requested by the prosecutor, the bail imposed by the court was in some cases still unsubstantiated.

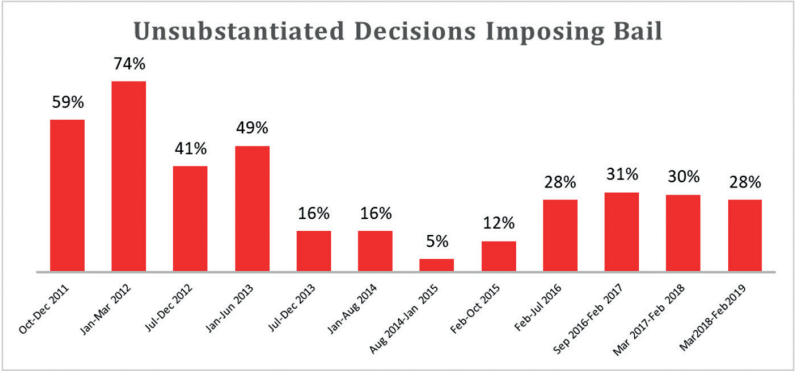
The diagram below shows the tendency of the court reducing the amount of bail requested by the prosecutor during the entire monitoring period (from October 2011 to February 2019)

Chart №13:



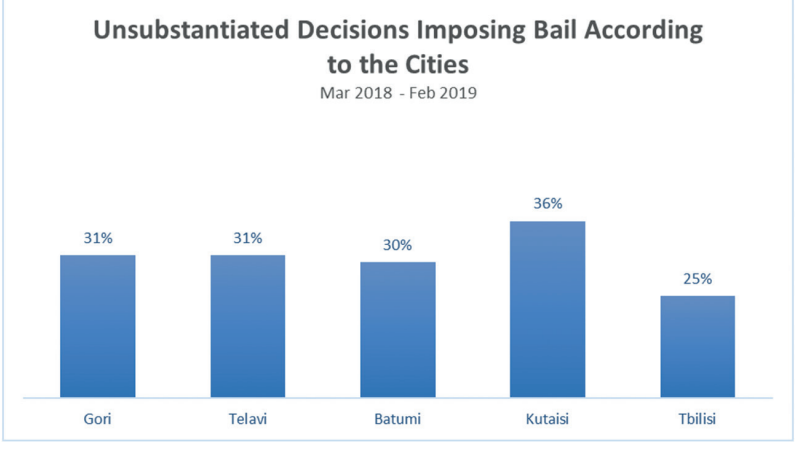
The chart below illustrates the trend of unsubstantiated imposition of the bail throughout the monitoring period (from October 2011 to February 2019)

Chart №14:



The chart below provides the information on the unsubstantiated use of bail according to the cities from March 2018 to February 2019.

Chart №15:



Substantiation of the requested bail amount is another challenge. The prosecution does not often study solvency of defendants. In 82% of the cases, the prosecutor did not have any arguments or substantiation about the financial possibilities of the defendants. Sometimes, the court would ask the prosecutor how the amount of bail was determined, but the prosecution could not provide any convincing arguments.

To illustrate this, see the example of the unsubstantiated bail:

The factual circumstances of the case revealed that the defendant was accused of appropriation of a horse without the owner's permission (Article 182 § 2 of the CCG). At the court trial, the defendant declared that, as he was feeling ashamed for his action, he purchased another horse for the victim with the money he had received from the sale of the original horse. The victim was using the horse for his/her own purposes for several months, but later the horse got sick and died.

The prosecutor, without examination of the defendant's financial position, motioned for the bail in the amount of 5000 GEL. The prosecutor substantiated the bail amount with the argument that the risk of committing a new crime and destruction of evidence was high.

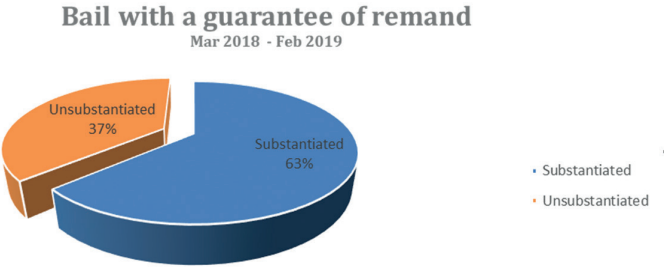
The accused declared that he was the only person working in the family and his monthly income did not exceed 500 GEL.

The judge imposed the bail in the amount of 2000 GEL as a preventive measure pointing out that the court considered the financial position of the defendant and substantiated the bail with the threat of destruction of evidence.

The alleged offence took place several months ago since when the defendant has not committed a new criminal act and has not tried to influence the victim. GYLA considers that in such circumstances the court should not have used any form of the preventive measure or should have imposed the minimum amount of bail.

The chart below provides the information on the number of unsubstantiated bail with a guarantee of remand imposed from March 2018 to February 2019 inclusive.

Chart №16:



The court used the bail with a guarantee remand in 164 cases (164 out of 320 bails were the so-called bail with a guarantee of remand (51%)), 61 out of which (37%) were unsubstantiated and / or inadequately grounded.

Apart from the above negative instances, positive approaches demonstrated by the judge have been reported as well.

To illustrate this, please see the following example where the court with great responsibility and in good faith examined a completely formulaic motion submitted by the prosecutor and delivered a fair and well-grounded decision.

In connection with a car accident which occurred in 2015 (Article 276 § 1), a person was charged in 2018. The prosecutor requested bail in the amount of 1000 GEL as a preventive measure and explained that by violating traffic rules the defendant demonstrated negligence, and as the above-mentioned article envisaged imprisonment as a penalty, there was a danger of his fleeing. The prosecutor pointed out that the accused frequently crossed the Turkish border. The defendant explained that he was studying for the Master's degree in Turkey and if he had wanted to flee, he would not have showed up at the investigative body concerning the accident of 2015. Nevertheless, the defendant agreed to the imposition of the bail in the amount of 1000 GEL as a preventive measure.

Despite the consent of the defendant, the judge considered that there was no need to use a preventive measure against the defendant and did not apply any restraint measure at all.

Personal Surety

When providing personal surety, trustworthy persons shall assume a written obligation to ensure the appropriate behaviour of the accused and his/her appearance before the investigator, prosecutor and the court.[33]

At the initial appearance court hearings during the monitoring period, personal surety, as a form of a preventive measure, was offered by defense counsel in case of 8 out of 668 defendants. From these 8 proposals, the judge granted the personal surety in 3 cases. In one case, the prosecutor appealed for the personal surety and in 2 cases - for remand detention.

According to GYLA, there were the cases when the defendant did not ask for personal surety, and the use of bail and / or detention would be inappropriate due to the specifics of the cases. In such cases, GYLA considers that the judge, at own initiative, should have investigated the possibility of imposing personal surety (for example, the judge could inform comprehensively and clearly the defendant of other types of preventive measures and enquire whether there was a relevant trustee in the courtroom) and only after that deliver a decision.

Agreement on not leaving and proper behaviour

An agreement on not leaving and proper behaviour may be applied as a preventive measure only if a person is charged with a criminal offence that carries imprisonment for not more than one year.[34]

During the monitoring period, pursuant to the legislation, it was possible to apply the above measures against 169 defendants, since the punishment for the criminal act allegedly committed by them envisaged imprisonment for up to one year. However, the court applied the measure in 7 (4%) cases only. In the remaining 162 cases, the court imposed bail or imprisonment.

The data indicate that the judge, on the one hand, is limited by the legislation to apply an agreement on not leaving and appropriate behaviour, and on the other hand, he/she refrains from considering them as a real alternation to bail and remand detention even when the court can use the above-mentioned sanctions.

[33] Criminal Procedure Code of Georgia, Article 203.

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

To illustrate this, please see a positive and exceptional example where the defense lawyer provided a substantiated and well-grounded motion on the use of the above preventive measure and the court upheld it:

A person was charged with physical violence against the victim (Article 126(1) of the CCG). The prosecutor submitted a motion for the imposition of bail, indicating that there was a danger that the defendant would refrain from showing up before the court and interfere with the proceedings.

The defense counsel pointed out that three months passed since the incident, the victim did not express any complaints, and the defendant had a family and a permanent residence place, did not commit a new criminal act since then and requested the use of an agreement on not leaving and proper behaviour.

The judge took into consideration the solicitation of the lawyer and applied the agreement on not leaving and proper behavior.

IV. COURT TRIALS REVISING PREVENTIVE MEASURES

ANALYSIS OF THE LEGISLATION

The Criminal Procedure Code of Georgia was amended on 8 July 2015,[35] according to which the judge of the preliminary court hearing shall be obligated to review, revise, and unless there is the necessity of using the deprivation of liberty, change the detention used as a preventive measure against the defendant with another sanction and / or shall leave the accused without a preventive measure. Besides the preliminary court hearings, the judge shall review the expediency of the detention once in 2 months at his/her own initiative.

The legislation also envisages the possibility to change bail with a stricter preventive measure if the defendant: a) fails to pay the amount of the bail in a timely manner; b) violates the bail terms; c) violates the law.

In the event of failure to pay the bail, it may be replaced with a stricter preventive measure – remand detention. This provision means that it is not obligatory to apply a preventive measure against the defendant due to non-payment of the bail amount. Initially, the prosecutor shall decide whether to apply to the court to change the preventive measure, and then the court shall review the necessity to replace the preventive measure. First, the prosecutor and then the court shall examine why the bail amount was not paid – whether the defendant deliberately avoided posting the bail or it happened due to some objective circumstances.

Analysis of Court Hearings

GYLA attended 207 pre-trial hearings where the defendants were brought from penitentiary facilities. In 190 cases, the remand detention imposed as a preventive measure was reviewed by the court at its own initiative, in 10 cases the court reviewed the motions submitted by the prosecution on the change of the bail with remand detention and in 7 cases the preventive measures were not revised at all due to the adjournment of the preliminary hearings.

It is noteworthy that the court left unchanged the remand detention applied as a preventive measure in 182 (96%) out of 190 cases, and in 137 (75%) of these, the court did not substantiate or insufficiently substantiate why it was necessary to leave the imprisonment in effect.

[35] Criminal Procedure Code of Georgia, Article 219(4) (b).

To illustrate the aforementioned, see the example which shows that the imposed bail with remand detention was the so-called "clandestine custody" as the court changed the "bail with a guarantee of remand" to imprisonment for non-payment of the bail:

> A person was accused of storage and consumption of narcotic drugs (Article 260 (3)(d) and Article 273 of the CCG). He was imposed bail with remand detention, but he appeared before the preliminary court hearing as a detainee due to his inability pay the bail amount. The prosecutor appealed to the court to replace the bail with custody.
>
> The court granted the prosecutor's motion, indicating Article 200(5) of the CPCG as the argument saying that the defendant had failed to make a timely payment of the bail imposed.

In 45 (25%) cases, the court fully substantiated its decision on leaving the custody unchanged. In such cases, the court argued that although the evidence into the case had been obtained, there was a threat of committing a new offence, the safety of the victim, etc (for example, re-victimization of the victim into domestic violence cases).

In 8 (4%) cases out of 190, the court replaced the remand detention of the accused with bail. In 10 cases where the prosecutor motioned for the replacement of the bail with imprisonment as the defendants failed to post the bail amount, the court did not grant majority of such motions and in 7 cases left the so-called bail with a guarantee of remand unchanged, and in 1 case only changed the bail with a guarantee remand to bail. **To illustrate this, please see the following positive example where the judge considered the bail with imprisonment as an example of clandestine custody and changed the preventive measure:**

> The defendant fully admitted to the criminal offence and made all the evidence indisputable. At the court trial, it was established that the defendant had been imposed the bail 1000 GEL with remand detention. Due to the fact that the defendant was brought to the courtroom from the penitentiary facility where he had been detained all that time, he was not able to collect the bail amount.
>
> The defendant declared that he would willingly pay the bail in 2-3 days if he was released as he was expecting his salary to be deposited.

The prosecutor requested to change the bail detention with imprisonment. The judge did not grant the prosecutor's motion and imposed on the accused the bail in the amount of 1000 GEL saying that the defendant had not been able to deposit the bail, and the imposition of the bail with a remand guarantee against the accused was an obvious "clandestine custody". The judge released the defendant from the courtroom and sentenced him to 1000 GEL bail.

Such facts should be considered as the best practice of the judicial case-law when the judge fully examines the issue of the expediency of the detention and only after a thorough investigation, replaces imprisonment with a less strict measure of restraint.

V. IMPLEMENTATION OF JUDICIAL CONTROL OVER THE LAWFULNESS OF DETENTIONS

A BRIEF OVERVIEW OF THE LEGISLATION

Pursuant to the Criminal Procedure Code of Georgia, there are two forms of detention: an arrest of a person on the basis of a court ruling, or in urgent necessity when there are appropriate grounds.

In order to obtain a court ruling to detain a person, a prosecutor shall file a motion with the court, and the latter shall deliver a relevant ruling without an oral hearing. The court ruling may not be appealed.[36] If there is an urgent necessity for arresting a person as provided for in the law, the person shall be detained without a court ruling and at the first appearance court hearing, the court shall review the lawfulness of the arrest as well as the substantiation of the arrest carried out due to urgent necessity.[37]

The assessment of the lawfulness of detention by the judge is also important for the proper implementation of the request for compensation of damages due to illegal and / or unjustified procedural actions against a detainee.[38] However, this right, without real judicial control of the necessity and legality of detention, is practically of formal nature.

Analysis of court hearings

The court monitoring has shown that in the majority of cases courts tend to avoid reviewing and assessing the lawfulness of arrests and mainly limit themselves to selecting and deciding which preventive measures to impose.

This approach manifested by the courts poses a risk of apparent arbitrariness by law enforcement bodies, especially, if taken into account the fact that within 48 hours after the arrest of a person, prior to bringing the accused first time before the court, the Georgian legislation does not provide for other mechanisms to evaluate the lawfulness of the person's arrest.[39]

During this reporting period, 452 defendants (68%) out of 668 who ap-

[36] Criminal Procedure Code of Georgia, Article 171(1).

[37] Criminal Procedure Code of Georgia, Article 171(2 and 3).

[38] Criminal Procedure Code of Georgia, Article 176(5).

[39] Bokhashvili B., Mshvenieradze, G., Kandashvili, I., The Procedural Rights of Suspects in Georgia, Tbilisi, 2016, 19

peared before the initial appearance court hearing had the status of arrested defendants, which is 12 percentage points higher than in the previous reporting period.[40] In the majority of the cases -376 (84%), neither the court reviewed the lawfulness of the arrest, nor the parties raised the issue. Thus, it remained unknown to us what procedure was applied during the detentions: whether the arrests were carried out based on a prior court ruling or on the grounds of urgent necessity.[41]

In 29 (38%) out of the remaining 76 cases, there was a court ruling ordering the arrest of a person, but none of the initial appearance court hearings reviewed and examined the lawfulness of the detentions, and in the remaining 47 (62%) cases, the persons were arrested on the basis of urgent necessity.[42] Lawfulness of the detention was examined by the judge only in 6 cases out of 47 urgent detentions, and in 5 out of 6 cases, the court deemed the arrest lawful. The consideration of the cases by the judge was of rather superficial character.

In one case only, the court deemed the detention unlawful and comprehensively discussed the matter in the court ruling. **The example below clearly shows the positive approach demonstrated by the court in this respect.**

> Although the defense counsel did not request at the court trial, the judge, at his/her owns initiative, decided to review the lawfulness of the arrest and deemed the latter illegal. The judge indicated that the accused showed up voluntarily at the law enforcement agency and the prosecutor's argument that there was a threat of him fleeing was unreasonable, so the arrest under the urgent necessity was unsubstantiated. The judge also noted that the person was arrested 8 months after the crime was committed. The judge released the defendant from detention and sentenced him to bail as a preventive measure.

[40] In the previous reporting period, 218 (54%) out of 402 defendants appeared before the court as detainees;

[41] In the previous reporting period 140(48%) out of 290 defendants appeared as detainees before the court. In 116 (83%) cases, neither the court reviewed the lawfulness of the arrests, nor did the parties mention the issue at the court hearings.

[42] In the previous reporting period, in 4 (17%) cases, a court ruling on the arrest of the person was issued, and in the remaining 20 (83%) cases, the persons were arrested under urgent necessity.

GYLA identified 3 cases where the defense counsel pointed out the unlawfulness of the detention, but the court did not consider the matter at all.

> The accused was detained under urgent necessity. The defense counsel argued that detention was unlawful and noted that there were no grounds for arresting the defendant under urgent necessity as he did not attempt to hide. Upon his arrest, the defendant was going to work and the police officers knew about it.
>
> The judge did not review lawfulness of the detention at all even though the attorney indicated in the motion the lack of substantiation for the detention of the accused under the urgent necessity.

Frequent negative examples indicate that the court does not work effectively to protect the rights of detained persons and one of the reasons for this is the faulty legislation.

VI. ALLEGED FACTS OF ILL-TREATMENT BY LAW ENFORCEMENT AGENCIES

INTRODUCTION

Torture and ill-treatment are prohibited by the Constitution of Georgia[43], the European Convention of Human Rights[44] and the national legislation[45]. The prohibitions guarantee the protection of a person against torture and degrading treatment. For the adequate realization of this right, a person must be aware of his/her rights. Certainly, this imposes on the court an obligation to inform the defendant of his/her rights, that the accused has the right to file a claim (complaint) in any case of torture of ill-treatment and at the same time, the judge shall inquire from the accused whether he/she intends to file any complaint or motion with regard to a violation of his / her rights.[46] This obligation is of paramount importance when a person is detained or is held in custody and is therefore subject to full physical control by the State. Therefore, it is important that the supervision conducted by the court be effective and the judge, as a neutral observer, should assist the defendant to properly carry out relevant procedures in case of violation of his/her rights. According to the law, the judge is only authorized to do the above and he/she does not have any additional tools to have an effective response to such facts.

It should be noted that Article 191^1 introduced into the Criminal Procedure Code of Georgia stipulates the judge shall have the authority to apply to any relevant investigative body in case of infliction or alleged infliction of torture, inhuman treatment and / or humiliation of defendant / convict. The above-mentioned article was supposed to enter into force on 1 January 2019, but its enforcement was postponed until 1 July 2019. The reason for the postponement was named the Law of Georgia "On State Inspector" regulating the investigation of these types of criminal offences, which was not fully enacted on 1 January 2019 due to the lack of funds.

Despite the above-mentioned reason, it is unclear why Article 191^1 of the CPCG did not come into effect. Nevertheless, according to the goals of the law, prior to the establishment of the investigating body within the State Inspector, it is the Prosecutor's Office responsible for investigating such offences and the judge could have appealed to it.

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[43] The Constitution of Georgia, Article 9(2)

[44] The European Convention on Human Rights and Fundamental Freedoms, Article 3

[45] Criminal Code of Georgia, Article 144^1 ; 144^2; 144^3;

[46] Criminal Procedure Code of Georgia, Article 197(1) ("c" and "g").

Analysis of court hearings

In contrast to the previous reporting period, the statements made by defendants at court hearings concerning torture and / or ill-treatment have reduced in this reporting period.

Nevertheless, at various stages of the proceedings, defendants or participants to proceedings reported that they had fallen victim of torture and ill-treatment carried out by law enforcement officers. At the initial appearance court hearings, 7 such cases were recorded, at preliminary court sessions – 2, and at the merits hearings - 4.

In 12 cases from the abovementioned 13, the defendants mentioned that they had become victims of psychological violence, and in one case the accused claimed to be physically assaulted. In all cases, the judge ordered the prosecutor to launch an investigation regarding the information provided by the defendants. In 11 out of 13 cases, the prosecutor was not aware of the information provided at the court trial and in 2 cases the investigation had already been in progress.

VII. ADMISSIBILITY OF EVIDENCE AT PRELIMINARY COURT HEARINGS

INTRODUCTION

At a pretrial hearing, the court examines the admissibility of evidence that will be reviewed at hearings on the merits. This stage is of vital importance as the court delivers a judgment at the main hearing based on the evidence which has been deemed admissible. In addition, this is the stage when the court renders a decision to terminate the criminal persecution or continue the proceeding at the main hearing.[47] It should be noted that the grounds for the termination of the criminal prosecution can be not only insufficiency of evidence, but also a substantial violation of the procedural law.

The court ruling rendered concerning a motion submitted at the pre-trial session shall be impartial and without prejudice to the interests of either party. The right of a defendant to impartial court proceedings is recognized by Article 62 of the Constitution of Georgia, Article 6 of the European Convention on Human Rights and Freedoms, and is guaranteed under the Criminal Procedure Code of Georgia.

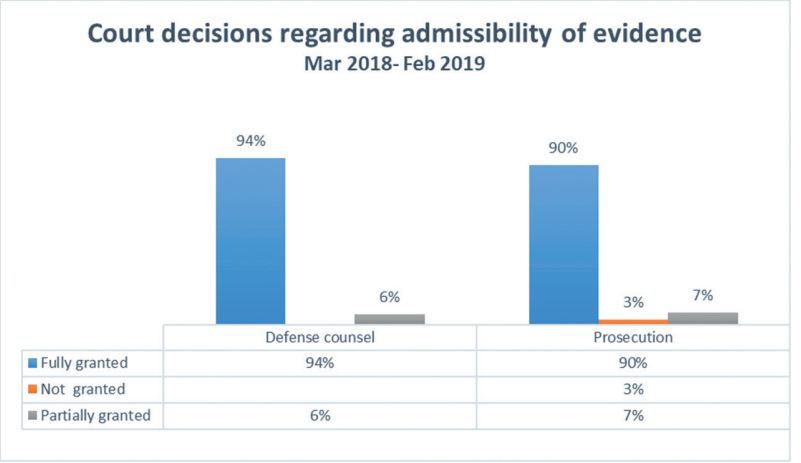
Analysis of court hearings

At the preliminary court hearings, in the part of examining the admissibility of evidence, the prejudiced or biased attitude of the judge towards either party was not observed in the majority of the cases. In general, the courts equally granted the motions of both the prosecution and defense counsel on the admissibility of evidence.

[47] The court shall terminate the criminal prosecution if it finds out with a high degree of probability that the evidence submitted by the Prosecutor's Office does not confirm the commission of the offence by the accused.

The chart below illustrates the percentage of the decisions delivered by the court on the admissibility of evidence presented by the prosecution and the defense counsel during the monitoring period from March 2018 to February 2019.

Chart №17:



In this reporting period, there have been no cases reported when the judge terminated the criminal prosecution at the preliminary court hearing.

Motions of the prosecution regarding the admissibility of evidence:

The prosecution, wherever it was possible,[48] submitted the motions on the admissibility of evidence in 420 cases.

At 420 preliminary court hearings that were reviewing the issue of the admissibility of the evidence, 323 (77%) defendants were represented by a defense counsel.[49]

[48] From 443 pre-trial hearings 8 court sessions were postponed, and at 5 court trials the prosecutor failed to present the evidence as it was the second hearing of the pre-trial session.

[49] 168 (81%) out of 207 detainees were represented by lawyers.

The position of the defense counsel concerning the prosecutor's motions on the admissibility of evidence:

- In 201 (**48%)** cases, fully agreed with the admissibility of evidence;
- In 32 (**8%)** cases, partially agreed with the prosecution on the admissibility of evidence;
- In 187 (**44%)** cases, fully opposed with the prosecutor's motions.

Motions of the defense counsel regarding the admissibility of evidence:

The defense counsel submitted evidence before the court in 141 (34%) cases and requested the recognition of their admissibility. Of these, the prosecution fully agreed with the defense on the admissibility of the evidence in 90 (64%) cases, partially agreed in 7 (5%), and in 44 (31%) cases, motioned to recognize the evidence submitted by the defense side as inadmissible. In comparison with the previous reporting period, the defense counsel has become 13 percentage points more active with respect to demanding the recognition of the admissibility of evidence.[50]

Consequently, preliminary court hearings, like in the previous reporting periods, were conducted smoothly and without incidents. The courts did not demonstrate any biased or unfair attitudes towards either party.

In two cases, based on the motions presented by the lawyer, the judge returned the cases to the prosecutor for the purpose of diverting the accused. These cases should be highly appreciated as they are rendered in the best interests of the defendant.

SEARCHES AND SEIZURES CARRIED OUT ON THE GROUNDS OF URGENT NECESSITY AND JUDICIAL CONTROL

Introduction

Searches and seizures are a massive interference in the right to privacy of a person, on the basis of which items, documents, substances or other means containing information relevant to a case are searched, seized and applied to the case. Due to the above-mentioned and in accordance with the law, searches and seizures are mainly conducted on the basis of a pri-

[50] During the previous reporting period, the defense counsel presented the motion on admissibility of evidence in 21% of the cases.

or court ruling. However, if the situation of urgent necessity arises, when even a little delay of conducting search and seizure may result in irreversible consequences, the investigative actions may be performed without a prior court ruling, based on an order of a prosecutor or an investigator.[51] Thus, the legislator requires that searches and seizures under urgent necessity shall be carried out only in exceptional cases, and the main requirement prior to the start of investigative actions shall be a court ruling.

Analysis of court hearings

As a result of the court monitoring, we can conclude that in this reporting period the Prosecutor's Office has carried out searches and seizures without due observance of the general rules and often used the rule of exception for conducting investigative actions. Unlike the previous reporting period, the number of searches and seizures on the grounds of urgent necessity as well as the percentage points of legalizing such cases has slightly decreased. Nevertheless, it is still a very high rate and the abovementioned requirement of the law on conducting searches and seizures in exceptional cases on the ground of pressing necessity is not fulfilled.

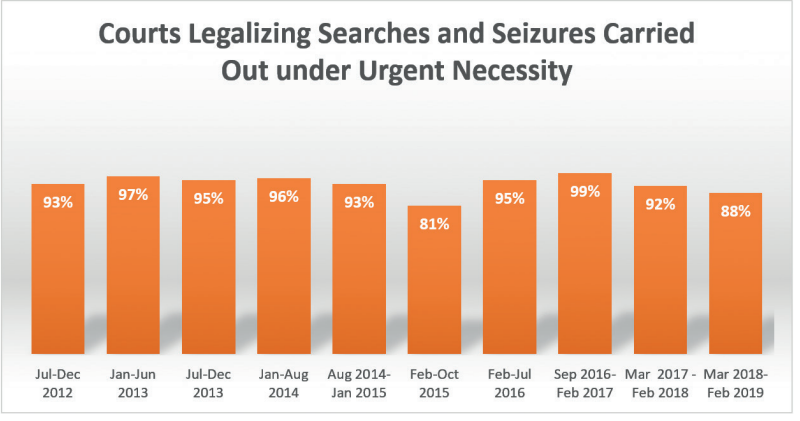
In 198 cases out of 420 preliminary court hearings, the prosecutor submitted the protocol of search and seizure and requested their application to the case materials as the evidence. In 26 cases, it is unknown how the searches and seizures were carried out.

However, based on the motions submitted by the prosecution and other circumstances presented at the court hearings, it was established that searches and seizures were conducted under a prior court ruling only in 21 (12%) cases out of 172, and in 151 (88%) cases – on the ground of urgent necessity. In this reporting period, the court has rejected to accept as evidence and has not granted the motion of the prosecutor on the search and seizure in 1 case, and in 23 cases, the observers were not able to find out the decisions made at the court hearing.

[51] Criminal Procedure Code of Georgia, Article 112 (1)(3).

The chart given below illustrates the situation relating to the legalization of searches and seizures conducted on the ground of urgent necessity during the monitoring period when GYLA was observing the frequency of the lawfulness of the mentioned investigative actions.

Chart №18:



It was impossible to determine if the legalization of searches and seizures conducted on the ground of urgent necessity was substantiated by the court or not, since such matters are not as a rule reviewed during oral court hearings. However, the fact that 88% of the investigative actions were conducted in an exceptional manner and were only legalized after their completion, raises doubts whether law enforcement authorities and the court perform their duties properly, as the law states that they are not allowed to conduct or legalize any investigative actions which are not well-grounded and are conducted on the basis of urgent necessity.

VIII. COURT PROCEEDINGS OF PLEA AGREEMENT

INTRODUCTION

A plea agreement is a type of expedited proceedings at which the defendant pleads guilty to a particular charge and enters into an agreement with the prosecutor on the punishment, mitigation of conviction or its partial removal.

According to Article 213 of the Criminal Procedure Code of Georgia, if a judge considers that sufficient evidence has been provided to render a judgment without the main hearing and if the judge has received convincing answers from the defendant related to circumstances provided in the law, and if the sentence requested by the prosecutor is lawful and fair, the judge may decide to render a judgment without a main hearing.

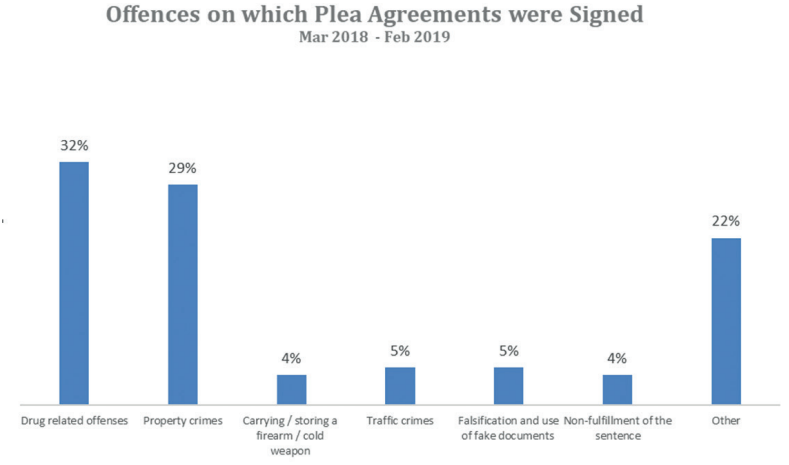
For the purpose of ensuring fairness of the punishment, the judge shall review existing circumstances, individual characteristics of a defendant, the motives for committing the crime and agreed sentence. The law does not specify the method for ensuring fairness of the punishment. However, according to the general principles of determining the sentence, there is a possibility to support the above-mentioned criteria, for instance, while imposing a fine, the judge has a possibility to find out the following: the financial status of the defendant, his/her ability to pay the penalty, whether the amount of the fine is adequate to the inflicted damage, the circumstances surrounding the commitment of the criminal act and the severity and size of the expected sentence.

Monitoring results

During this reporting period, we attended 500 court hearings reviewing plea agreements where 535 persons appeared as defendants. The court did not approve a plea agreement only in 1 case. The majority of the plea agreements -172 out of 534 - were related to drug-related offences, 153 to property crimes – of which 122 were the cases of theft.

The following chart shows the offences upon which plea agreements were signed from March 2018 to February 2019 inclusive.

Chart №19:



ANALYSIS OF COURT HEARINGS

Informing defendants of their rights provided in the Law and length of court trials

When signing a plea agreement, the judge shall be obligated to inform the accused of his/her rights envisaged by Article 212 of the CPCG and while doing so use a non-technical terminology, so that the defendant/ can understand his/her rights. Another aspect of the law requiring from the judge to inform the defendant of his/her rights and obtain convincing answers to the questions asked is that the judge may refuse to approve a plea agreement unless he/she receives meaningful and convincing answers concerning the circumstances envisaged by law.

Monitoring results

compared to the previous reporting period, the situation in terms of the judges comprehensively informing defendants of their rights provided for in the law has improved. Specifically, in 53 (10%) cases only [52], the judge

[52] 60 (20%) out of 303 court trials were reported in the previous reporting period.

did not inform the defendants that unless the court approves a plea agreement, it is inadmissible to use any information which the accused submits to the court hearing against him/her in the future. In addition, in 34(6%) cases, the judge failed to inform the accused that his/her complaint on any fact of torture, inhuman or degrading treatment would not prevent the approval of a plea agreement concluded in accordance with the requirements of the law.[53]

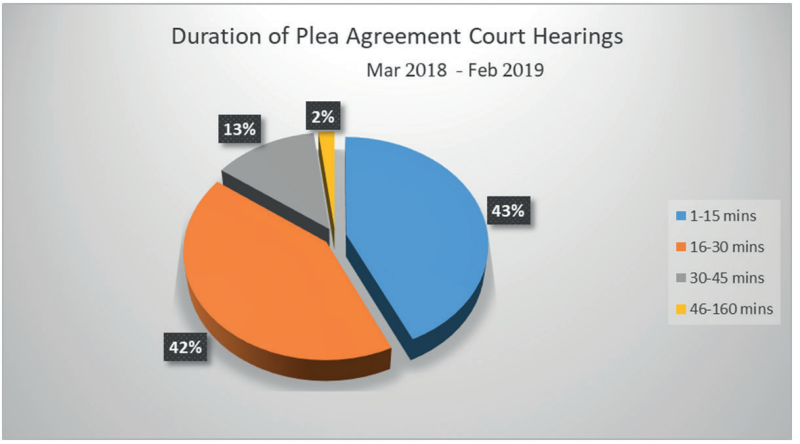
It is essential that the court should comprehensively inform defendants / convicts of their rights, as it is the prerequisite that the court will definitely render a ruling reflecting the will of the defendant as well.

It should be noted that the average length of plea-agreement court hearings was 5-15 minutes in 43%[54] of the cases.

However, there were 26 court sessions with the duration not exceeding 5 minutes.

Please see the following chart showing the duration of plea agreement court hearings from March 2018 to February 2019.

Chart №20:



Within 5-15 minutes, even worse in 5 minutes, the court cannot fully inform the defendant of the rights provided for in Chapter XXI of the CPCG, become convinced that the defendant agrees with the terms of the plea

[53] 44 (14%) out of 303 court trials were reported in the previous reporting period.

[54] 213 court hearings out of 500 lasted for 15 minutes.

agreement, review the proportionality of the size / type of the sentence envisaged by the plea agreement and eventually render a proper decision.

In the reporting period, there were 43 cases, when the prosecutor presented only the resolution part of the decision at the court trial. It is noteworthy that in 23 out of the 43 cases, the judge asked the prosecution to read only the resolution part. The defendant has the right to ask the court to examine his/her case openly and publicly, which is the cornerstone of Article 6 of the European Convention on Human Rights. It is the right of the defendant that any third party concerned may receive information on transparency and impartiality of the trial. However, where the Court asks the prosecution to present only the resolution (conclusive) part of its decision, it directly contradicts the right to a fair trial, since the defendant is deprived of the possibility to have his/her case reviewed transparently, which, on the one hand, reduces the credibility towards the court and on the other hand, hinders the proper realization of the defendant's rights.

Frequently a the explanations provided by the judge are incomprehensible to defendants. The monitoring of the court trials left the impression that the defendants did not often understand the reasoning offered by the judge, as well as defendants did not express clearly the desire to sign plea agreements but the judge did not scrutinize the matter at the court hearing.

Court's approach to examining fairness and lawfulness of sentence

Pursuant to Article 212(5) of the Criminal Procedure Code of Georgia, the judge shall deliver a decision on a plea agreement based on the law and shall not be obliged to approve the agreement reached between the accused and the prosecutor. This right of the judge serves as an important tool to control the fairness and lawfulness of plea agreements and prevent the abuse of the institute.

Although the legislation does not equip the judge with the right to independently alleviate or change the sentence, this does not justify the judge who consents to impose excessively lenient or severe punishment if the prosecution submits the motion with such terms. One of the important components of the fair trial is the imposition of a fair sentence. Accordingly, the judge shall closely observe the process of determining the punishment and prevent the imposition of an inadequate sanction.[55]

[55] Guidelines on the form, substantiation and stylistic accuracy of judgments in criminal law cases; Tbilisi, 2015, 63.

Monitoring results

Despite the fact that the legislation grants the judge this significant right, in the reporting period, judges in most of the cases did not inquire whether the sentences determined by the parties were fair and lawful. Moreover, the judge approved 534 (100%) plea agreements out of 535 motions submitted by the prosecutor and only in 11(2%) cases, noted that he/she deemed the imposed sentence fair and useful for the defendant.

There were cases where it would have been possible not to approve the plea agreement due to the insignificance of the offence and dismissed the case altogether if the court had reviewed the applications for plea agreements properly.[56]

To illustrate the aforementioned, see the following example:

> A person was accused of stealing the flag of Georgia and the European Union from school premises. The price of each flag was 9 GEL (Article 177 (1) of the CCG). The person had not been convicted. A plea agreement was signed under which the person was sentenced to six-month imprisonment, which was considered as a suspended sentence.

In one case, the judge made the prosecutor change the terms, as the conditions proposed by the prosecutor created risk to the legitimate interests of the defendant.

To illustrate this, please see the example where the judge required from the prosecutor to remove a term from the plea agreement:

> The judge returned the case to the prosecutor and demanded to withdraw one of the terms of the plea agreement, namely - the provision obligating the defendant to testify against another person involved into the case. The judge asked the lawyer why he/she agreed with the condition. After removing the term, the court approved the plea agreement with the revised terms.

[56] Criminal Code of Georgia, Article 7(2).

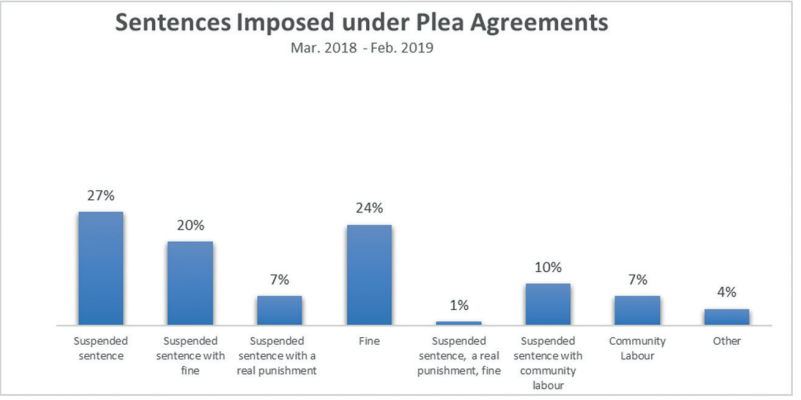
With the above act, the judge showed reasonableness. If the plea agreement was entered into force with this term provided by the prosecutor, there would be a risk, that the defendant would give an incriminating testimony against a person, just because it is written in plea agreement, so he/she would not give such testimony under his/her free will.

Sentences Imposed under Plea Agreements

The court monitoring has shown that a suspended sentence is frequently applied independently or in combination with other sanctions upon entering a plea agreement.

The chart below illustrates the percentage of the sentences imposed under plea agreements.

Chart №21:

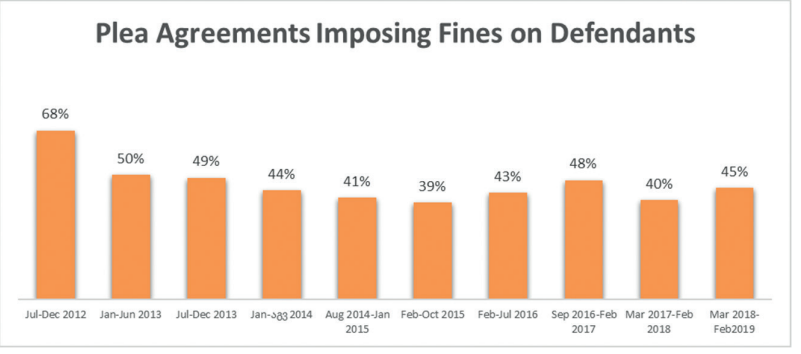


During this reporting period, the number of the defendants who were imposed a fine under plea agreements has significantly increased.[57]

The chart below illustrates the frequency of imposing the fine in the periods monitored by GYLA (from July 2012 to February 2019)

[57] In this reporting period, the fine, as a main and / or an ancillary measure, has been used in 45% of the cases, whereas it was 40% in the previous reporting period.

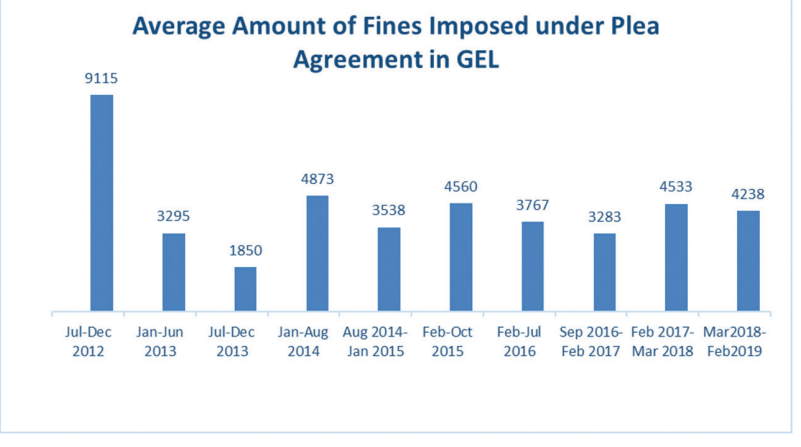
Chart №22:



The average amount of penalties imposed under plea agreements has decreased and amounted to 4238 GEL compared to the previous reporting period when the figure was 4 533.

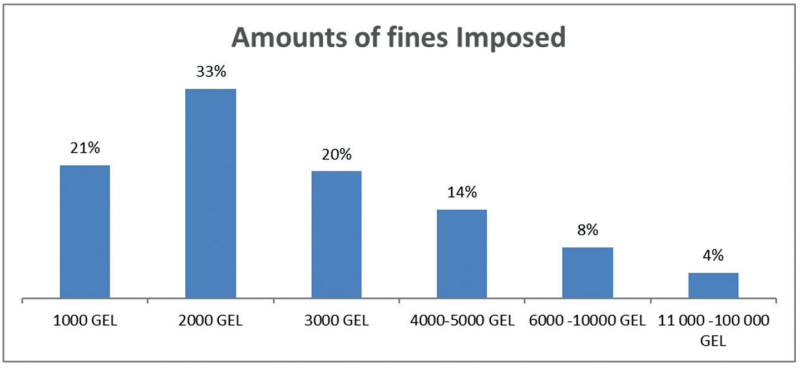
The chart below illustrates the average amount of fines imposed under plea agreements from July 2012 to February 2019.

Chart №23:



The chart below illustrates the percentage of the fine amounts imposed under plea agreements:

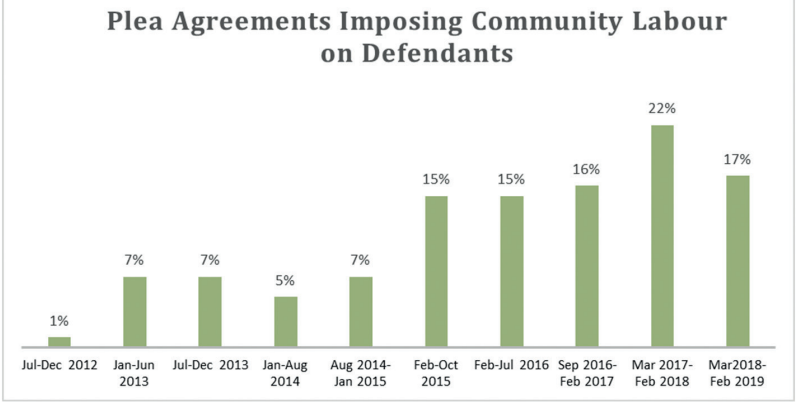
Chart N24:



The rate of imposing community labour has reduced. In the previous reporting period, the above-mentioned measure was imposed in 22% of the cases, and in this reporting period in - 17%. Five percentage point decrease in the application of community labour and five percentage point increase in the imposition of fines can be assessed negatively.

The chart below illustrates the frequency of imposing community labour against defendants under plea agreements during the periods when GYLA observed the issue (from July 2012 to February 2019).

Chart №25



CONSIDERING THE INTERESTS OF VICTIMS IN OFFENCES AGAINST LIFE, BODILY HEALTH AND PROPERTY

According to the law, the prosecutor shall be obligated to hold consultations with the victim before entering into a plea agreement with the defendant and notify the victim of the conclusion of the plea agreement, following which the prosecutor shall prepare a relevant protocol/record.[58] The victim shall not be allowed to have any influence on the procedure of a plea agreement or to appeal against the agreement reached between parties, although the victim shall have the possibility to provide to the court any written or oral information at the court session on the damage he/she has sustained as a result of the criminal act.[59] Although the victim's refusal may not become an obstacle for signing a plea agreement, the prosecutor shall actively cooperate with the victim and take into consideration his/her position.

Monitoring results

The interests of victims in the process of reviewing plea agreements at the court trials and involvement of victims in the proceedings are usually neglected and / or fragmentary. This, apart from the gap of the legislation, is due to the faulty practices and less sensitive approach of prosecutors and judges. Of the plea agreement approved by the court, 178 cases were related to offences against human life, health and property, however, in 126 (71%) cases, as the plea agreements were signed the prosecutor did not voice the position or interests of the victim, and did not discuss them at the court session either. Only in 52 (29%) cases, the prosecution submitted a protocol of consultation with the victims or presented their positions regarding the punishment of the perpetrator. This figure compared to the previous reporting period has increased.[60]

[58] Criminal Procedure Code of Georgia, Article 217(1).

[59] Criminal Procedure Code of Georgia, Article 217(1^1 and 2).

[60] During the previous reporting period, in 13% of the cases, the victim's position was examined at the court sessions or the Prosecutor presented the protocol of the consultation with victims.

Transport Related Crimes

Violation of traffic safety rules or rules for operating transport is envisaged by Article 276 of the Criminal Code of Georgia. It means an unpremeditated offence caused by the driver's negligence / carelessness. In this reporting period, plea agreements were signed with 25 defendants charged with the offence under Article 276 of the Criminal Code of Georgia.

In 11 cases, the prosecutor presented the statements of victims/ victims' legal successors noting that the prosecutor had informed the victims of the plea agreement to be concluded with the accused.

Six cases out of 25 resulted in the loss of human life. In such cases, it is even more important to inform the victim's successor that the plea agreement is planned to be signed with the defendant and take into consideration the position of the victim's representative. The GYLA's monitoring has shown that the statement of the victim's successor was announced in 3 cases out of 6.

Participation of Defense Counsel in Plea Agreement Court Hearings

Upon entering into a plea agreement, the legislation requires it mandatory for the accused to have a defense counsel.[61] From the moment of proposing a plea agreement, the main duty of the defense counsel shall be the provision of qualified legal consultations for the accused. It is true that the defense lawyer is unable to prove the innocence of the person or propose more lenient terms for the accused at court trials, but the defense lawyer's support can be expressed in providing legal assistance and qualified counseling.

Monitoring results

511 lawyers represented the interests of 535 defendants. During the court monitoring, it was difficult to identify whether 143 out of 511 lawyers were state-funded or private attorneys.

120(33%) out of 367 lawyers were the lawyers hired by the accused. It is

[61] Criminal Procedure Code of Georgia, Article 45(f).

also noteworthy that the problem of communication between the lawyers hired by the accused and the defendants was minimal, namely, there were 11(9%) cases out of 120 where the defendant and the defense counsel did not communicate effectively.

The problem of poor communication between the lawyers hired at the State's expense and defendants was revealed at 56 (23%) out of 247 court trials. This number is far lower compared with the previous reporting period.[62]

The GYLA monitor witnessed the fact when the lawyer, upon entering the courtroom, was enquiring who the defendant was.

[62] In the previous reporting period, miscommunication was identified in 72 (48%) cases out of 150.

IX. TRENDS IDENTIFIED DURING COURT HEARINGS ON THE MERITS

DELAYED COURT TRIALS

Introduction

The right to expedite and effective justice within a reasonable timeframe is an important right provided by national law as well as international standards.[63] Effective implementation of justice, which means bringing the accused to trial within a reasonable time, is the responsibility of the court. The right to fair trial within a reasonable timeframe releases persons expecting the trial from long-term uncertainty.

Delayed implementation of justice undermines the reputation of the judiciary, the efficiency and the credibility into justice. Lengthy court proceedings negatively affect the quality of evidence or their further admissibility.

The court shall be obliged to review any submitted case in a proper and timely manner. Judge's ill health, overcrowded courts, lack of personnel, increase in the crime rate or any other reasons may not serve as a good reason and excuse for delaying the court proceeding. The State shall organize the judicial system in such a manner so as to ensure that justice is implemented within a reasonable timeframe.

The court shall prioritize the review of those criminal cases in which the accused has been remanded to custody.[64] According to the same Code, a court of the first instance shall render a judgment not later than 24 months after the judge in the preliminary proceedings makes a decision to refer the case for the main hearing.[65]

There are cases where the criminal proceedings are pending for years without any specific results which hinder the implementation of justice. Conducting court proceedings within unreasonable timeframes violates the term envisaged by the Criminal Procedure Code, as well as important international standards provided for the implementation of expedient and effective justice.

[63] The European Convention on the Protection of Human Rights and Fundamental Freedoms, Article 6 (1) International Covenant on Civil and Political Rights, Article 14 (3) (c)

[64] Criminal Procedure Code of Georgia, Article 8(2,3).

[65] Criminal Procedure Code of Georgia, Article 185(6).

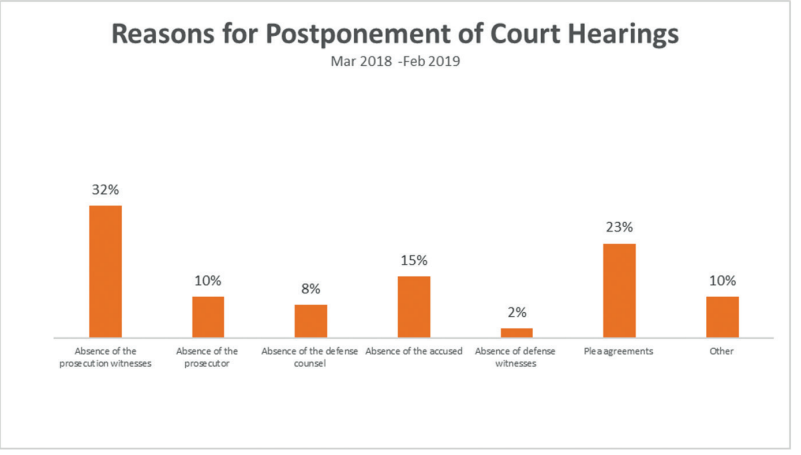
GYLA's court monitoring has identified a number of cases of delaying and adjourning court hearings, which are the most serious factors for prolongation and delay of case deliberations.

Postponement of Court Trials

During this reporting period, GYLA has attended 1202 main court hearings. At 606 (50%) of these trials, at least one activity envisaged by law was carried out, and 477 court trials out of 606 were adjourned immediately after their opening. In the majority of the cases, the reason for the postponement was not adequately substantiated, and in several other cases, we can say directly, it served for the case delay.

The chart below shows the reasons for the postponement of court trials.

Chart №26:



- The most common reason for postponing court trials is the absence of the prosecution's witnesses - 32% (195 court hearings). In majority of the cases, the prosecutor only declared at the court session that he/she failed to present the witnesses and did not provide any further explanations. In number of cases, several consecutive court hearings were delayed for the same reason.

Pending case of "The former Heads of Batumi Prison"

GYLA is monitoring the case proceedings of the so-called "Former heads of Batumi prison" considered by Batumi City Court. The case of former head of the Batumi prison and head of the facility has been under deliberation for years. The defendants are accused of inhuman or degrading treatment by an official or a person holding equivalent position by abusing the official position and knowingly by the offender against two or more persons detained or otherwise deprived of freedom (Article 144[3](2) ("a", "b" , "d", and "g").

Following the initiation of the investigation based on the complaints of more than one hundred prisoners, on 4 March 2014, Batumi City Court launched the case proceeding which has been pending for almost five years now.

GYLA's court monitoring has shown that the process has been repeatedly delayed throughout this period. There were the cases when the court trials were scheduled with a few month intervals. The main reason for postponing the court hearings is the failure of the prosecution to present the witnesses or the judge's illness. There was a case when only one court trial was held throughout 1 year.

It should be noted that both the victims and defendants have complaints about the delaying of the court proceedings.

The timeframes envisaged by the law for the consideration of the case in the court have expired. In particular, according to the Criminal Procedure Code of Georgia, a judgment into the non-custodial case had to be delivered no later than 36 months (3 years) after the entry into force of the amendment,[66] which expired on 1 January 2019. GYLA believes that the proceedings are obviously delayed, which has been also confirmed by the violation of the terms envisaged by law.[67]

[66] Criminal Procedure Code, Article 333 (8): "A court of the first instance shall deliver a judgment on the criminal cases pending in the court at the time of entry into force of Article 185(6) of this Code not later than 36 months after the entry into force of that article."

[67] The information was processed on 2 May 2019.

According to the Criminal Procedure Code, the parties shall ensure the appearance of their witnesses before the court,[68] In addition, often it remains unknown whether the prosecutor had summoned the witnesses within a reasonable notice period or he/she expressed negligence to the appearance of the witnesses. Where the witness refuses to appear before the court, the law grants the right to the party to make a motion for summoning a witness, and if satisfied, the court shall summon the latter and if the witness fails to appear, the witness may be compelled to appear before the court.[69]During this reporting period, the prosecutor submitted the motion on the above-mentioned matter only in 3 cases out of 195 court hearings which were postponed due to the absence of witnesses.

23% (140 court hearings) of the court sessions were postponed due to the planned plea agreement. A number of cases have shown that the negotiation for a plea agreement is the pretext for postponing the proceedings and not a real reason. It is true that there are cases when reaching a plea agreement is the real interest, but the parties inadequately treat the issue and do not make efforts to conduct the negotiations in a timely manner and without delay.

> In one of the cases, the court proceedings had been pending since 2015. In March 2018, the prosecutor appealed to the judge for the adjournment of the trial as the parties wished to sign a plea agreement. The judge indicated for the prosecutor that the case had been under deliberation for 3 years already and they had to sign the plea agreement and / or present the witnesses in a timely manner.

- Due to the absence of the defense counsel or the prosecutor, 18% (10% and 8%, respectively) of the court sessions were canceled, in total 114 court hearings. There were the cases when the parties to the proceedings did not notify the court and missed the hearings, which hindered the implementation of fast and effective justice.
- In comparison with the previous reporting period, the number of court hearings adjourned due to the absence of defendants has increased and is 15% (86 court hearings).[70] In the previous reporting

[68] Criminal Procedure Code of Georgia, Article 228 (1)

[69] Criminal Procedure Code, Article 149

[70] In the previous reporting period, the rate of postponement of court trials due to the absenteeism of defendants was 7%.

period, the reason for postponing 3 (1%) court proceedings was the failure of the penitentiary facility to deliver the accused from the penitentiary establishment to the court, while in this reporting period, the above problem was identified in 47 (10%) cases.

Basically, the above problem was revealed in the regions and most frequently in Gori District Court. The penitentiary department has the obligation to bring the accused to the court session, and insufficient resources may not serve as a good reason for the failure.

Delayed opening of court hearings

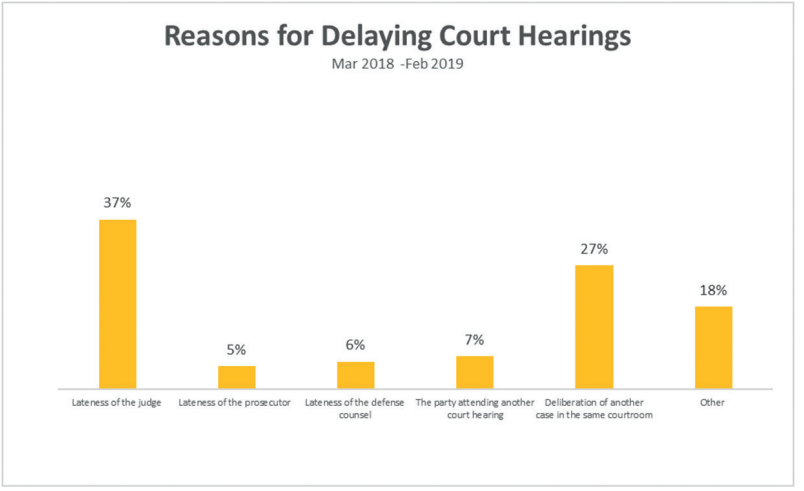
Delayed opening of court hearings, as a rule, does not become the subject of discussions. Neither the parties nor the judges make any relevant explanations about the delay, and generally the above-mentioned issue is perceived as a less important matter. However, delaying the court hearings for more than one hour leads to a number of problems and ultimately contributes to the process prolongation.

As regards lateness, the GYLA's court monitoring has shown that in 361(30%) out of 1202 court hearings, the case deliberation is delayed. 46 trials were delayed for more than an hour, which is a serious problem for the parties, since the prosecutor and / or lawyer often have other court trials scheduled on the same day and delaying of one hearing automatically means that the prosecutor's / lawyer's other trials will be delayed or adjourned.

The monitoring has shown that the reason for the delay is often the late appearance of the judge – observed at 134 (37%) court trials During this reporting period. The lateness of the parties and / or the parties attending other hearings were observed in 65 (18%) cases. One of the main reasons continues to be other case hearings taking place in the same courtroom, as it was observed in 98 (27%) cases. Other reasons include the cases such as the late appearance of the accused, delayed delivery of the offender by the penitentiary facility, technical problems, lateness of the interpreter, lateness of witnesses, etc.

The chart below shows the reasons for delaying court hearings.

Diagram №27:



Finally, we can conclude that delaying or postponement of court hearings impedes the implementation of justice and provides an important basis for pending court processes.

INTERFERENCE WITH THE EQUALITY OF ARMS AND ADVERSARIALITY

Introduction

Equality of arms and the adversarial process are the key principles reinforced by the Constitution of Georgia[71] and the provisions of the Criminal Procedure Code of Georgia.[72] The current Criminal Procedure Code of Georgia is based on the principles of equality of arms and competition of parties, which means that collecting and presenting evidence is the responsibility of parties. A court shall be prohibited from independently obtaining and examining the evidence.[73] In addition, the judge is not permitted to interrogate a witness. In exceptional cases, a judge may ask clarifying questions if so required for ensuring a fair trial and when consented

[71] The Constitution of Georgia, Article 62(5)

[72] Criminal Procedure Code of Georgia, Article 9

[73] Criminal Procedure Code of Georgia, Article 25 (2)

by a party. This is justified with the argument that the judge in the adversarial criminal proceedings shall play the role of a neutral arbitrator, which contradicts the rule of interrogating a witness, as a question may serve the interests of either party.

Analysis of court hearings

The monitoring of the reporting period has revealed that judges do not exercise the right of asking questions. However, there were cases when the judge asked questions without obtaining permission of the parties or otherwise interfered with the competence of the party.

The witnesses were interviewed at 366 court hearings and in 68 (19%) cases questions were asked by the judge. In 43 (63%) cases, the judge did not obtain permission from the parties for asking the questions. 25 (21%) questions were not clarifying but actually, the witness was being re-interrogated by the judge.

In this reporting period, there have been no cases of discourteous and/or ironic attitude expressed by the judge to the parties.

Court Judgments

Within the court monitoring, the GYLA monitors attended 1202 main court hearings. In 171 (14%) cases, court rulings were delivered: 144 (84%) guilty verdicts, 6 (4%) partial acquittals and 21(12%) acquittals.

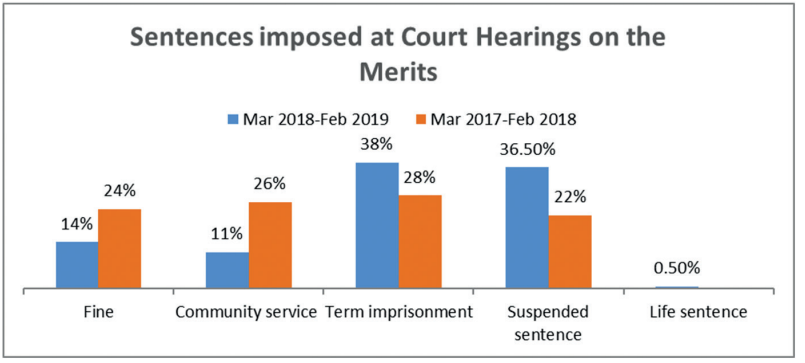
In comparison with the previous reporting period, the percentage of the acquittal verdicts has sharply increased,[74] although it is noteworthy that the majority of the acquittals were rendered into domestic offences.[75]

[74] In the previous reporting period, final verdicts were rendered into 191 (20%) cases: 178 (93%) – guilty verdicts, 3 (2%) - partial acquittals, 10 (5%) - acquittals.

[75] 16 out of 21 acquittal verdicts were awarded into domestic violence cases.

The chart below provides the types of sentences imposed under guilty verdicts from March 2017 to February 2019.

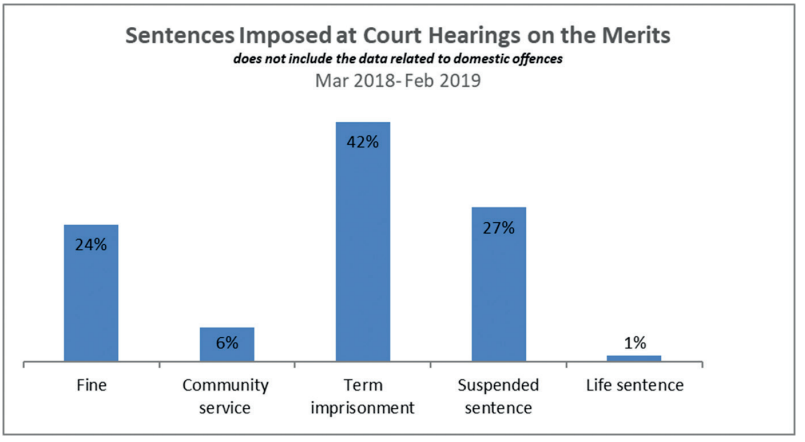
Chart №28



It should be noted that compared with the previous reporting period, the situation has changed in terms of imposition of sentences. The percentage of the use of fine and community labour has dramatically decreased, while the rate of term imprisonment has significantly increased.

The chart below shows the types of sentences imposed under guilty verdicts (does not include the data related to domestic offences).

Chart №29:



X. TRENDS IDENTIFIED THROUGH THE MONITORING OF DOMESTIC OFFENCES

USE OF PREVENTIVE MEASURES INTO CASES OF DOMESTIC VIOLENCE AND DOMESTIC CRIMES

A brief overview of the legislation

Criminal liability for domestic offences is envisaged by Article 11^1 of the Criminal Code of Georgia.[76] According to Article 126^1 of the Criminal Code, battery, systematic insult, blackmail and humiliation of one member of the family against another member of the family, which caused physical pain, but did not result in an intentional serious, less serious or light injury of bodily health shall be punishable. Article 126^1(1) of the Criminal Code of Georgia was amended on 30 November 2018, according to which the size of the sentence provided for domestic violence is deprivation of liberty for up to 2 years.[77]

Analysis of court hearings

It is noteworthy that unlike the previous reporting period, the attitude shown by prosecutors / judges has radically changed towards domestic offences. Prosecutors in almost all cases request remand detention and courts often grant the prosecutor's motions.

In the previous reporting period, GYLA attended the initial appearance court hearings of 71 persons accused of domestic crime / domestic violence, which amounted to 17% of the court trials,[78] whereas in this reporting period, 182 court hearings were attended, which is 30% of total.[79] The increase by 13 percentage points indicates that the identification by law enforcement agencies of domestic violence / domestic offences has increased. From 182 court hearings the perpetrator was a man in 178 cases. In 171 cases out of 192 victims were women: wives/ex-wives in 157 cases;

The chart below shows the preventive measures imposed on domestic crime and domestic violence cases.

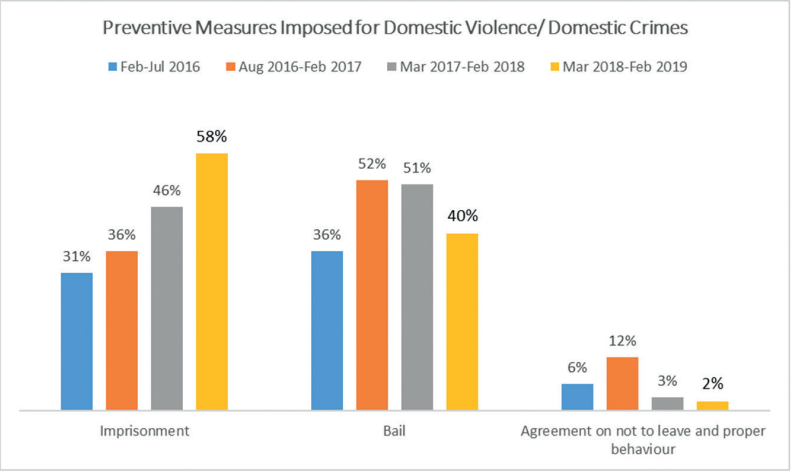
[76] Domestic crime shall mean the commission by one family member against another family member of the offences determined under Articles 108, 109, 115, 117, 118, 120, 126, 1331, 1332, 137, 141, 143, 144, 1443, 149, 1511, 160, 171, 187, 253, 255, 2551, 3811 and 3812 of the Code.

[77] Prior to 30 November 2018, domestic violence (Article 126^1(1) of the Criminal Code) was punishable by imprisonment for up to one year.

[78] In the previous reporting period, GYLA attended the first appearance court trials of 402 accused.

[79] GYLA attended the first appearance court trials of 594 accused.

Chart №30:



The Prosecutor's Office motioned for remand detention for the above offences in 90% of the cases,[80] which is 13 percentage points higher than in the previous reporting period.[81] Compared to the previous reporting period, the motions submitted by the Prosecutor's Office requesting the use of preventive measures were generally well-grounded and reasonable. However, there were cases when the Prosecutor's Office motioned for the use of detention or bail without the substantiation of the requested preventive measure.

To illustrate this, please see the example of unsubstantiated detention:

A person was charged with violence against a minor child and threatening the former spouse (article 11^1, 151, 126^1(2) (a) of the CCG). Although eight months had passed since the incident, the prosecutor applied for the imprisonment.
The judge did not grant the prosecutor's motion with the argument that a long time had passed since the moment of the occurrence of the criminal act within which the defendant did not commit another criminal act.

[80] In 163 out of 182 cases, the prosecution requested remand detention.

[81] In the previous reporting period, the prosecution requested imprisonment in 79% of the cases.

In 64% of the cases,[82] the court granted the motions of the Prosecutor's Office requesting remand detention, whereas this number was 57% in the previous reporting period.

There are the cases when the defense counsel produces a notarized letter at the preventive measure court hearing, indicating that the victim (spouse) has no more complaints against her husband. There were 8 (4%) cases like this in total.

Imposing a fine for the offences envisaged by Article 126^1 of the Criminal Code of Georgia is not allowed. With the provision, the legislator considered that depositing cash in favour of the State could harm the family's financial condition. During this reporting period, there have been the cases when the amount of bail used by the Court obviously contradicted the financial capabilities of the accused or the court trial revealed that the victim had to pay the bail.

- A person was charged with violence against his spouse in the presence of a child (Article 126^1(2)(b) of the CCG). The prosecutor applied for remand detention. The defendant declared that it was his first incident and he regretted the act. He requested the court to take into consideration that he was unemployed and his family was registered in the **database of socially vulnerable persons.**

  The court imposed against the defendant the bail in the amount of 3,000 GEL with a remand guarantee, which definitely exceeded the material status of the defendant.

- In September 2018, the defendant verbally insulted his spouse, daughter and grandchild (Article 126^1(2)(a and c) of the CCG). The prosecutor motioned for the detention. At the court hearing, the defense counsel presented a notarized statement of the victims declaring that they had no complaints against the offender. The court imposed 5,000 GEL bail with remand detention.

  During the court hearing, the defendant referred to one of the victims: "**You wanted to arrest me, now you pay the money!".**

[82] The court granted 105 out of 163 motions of the prosecutor requesting the custody.

The above-mentioned examples illustrate that the imposition of bail as a form of preventive measure is an issue into the above-mentioned offences. In the majority of the cases, the defendants showed up before the court as the detainees, while according to the case-law established by the court, bail with remand detention is used in all cases. Consequently, if the defendant cannot pay the bail amount, then there are two options: 1. the victim shall pay the bail for the defendant; 2. the accused cannot pay the bail and has to remain in custody.

Since 30 November 2018, judges no longer have the opportunity to apply an agreement on not leaving and proper behavior for the offences envisaged by Article 126^1 of the CCG. On top of the scarcity of the options, the judges now have only three forms of preventive measures that they can use: bail, remand detention and / or personal surety.

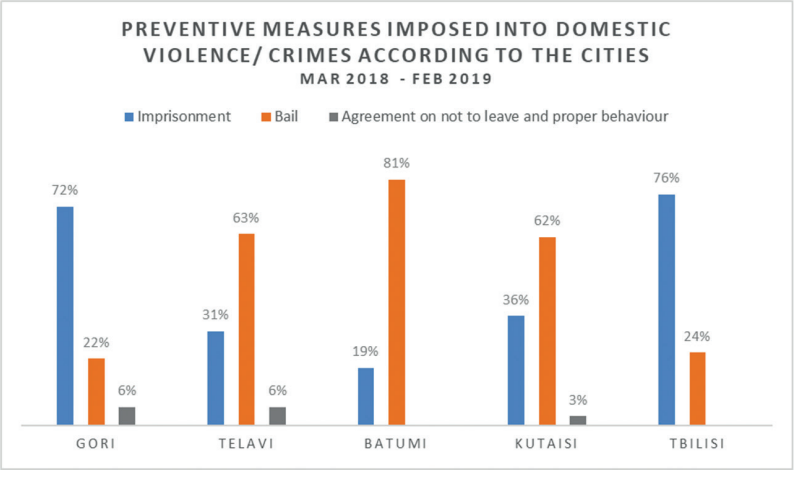
Trends regarding domestic offences according to the cities

In contrast to the previous reporting period, the approaches of the courts of the cities/districts have changed. The analysis of the data according to the cities shows that several cities demonstrate different attitudes. Tbilisi and Gori courts have a stricter approach and in most cases impose remand detention. Kutaisi and Telavi courts mainly use bail and Batumi City Court almost in all cases imposes bail.

It is noteworthy that in the previous reporting period, Kutaisi City Court did not use remand detention as a preventive measure at all, whereas in this reporting period, the court approach has changed and imprisonment was applied in 14 (41%) cases out of 34.

The following chart shows the preventive measures imposed into domestic violence cases (the offences envisaged by Article 11^1 of the CCG) according to the cities from March 2018 to February 2019.

Chart №31:



Sentences imposed under plea agreements for domestic offences

During this reporting period, plea agreements were signed with 534 defendants, out of which only 9 (2%) charged with the commission of a domestic offence (Criminal Code 11[1] and / or Article 126[1] of the Criminal Code of Georgia) were awarded a plea agreement.[83] This indicates that the attitude of the Prosecutor's Office in relation to domestic offences has changed, while in the previous years, mostly a plea agreement was concluded. In the last two reporting periods, the Prosecutor's Office refrains from signing a plea agreement.

It is noteworthy that at 4 court hearings, the Prosecutor publicly presented the victim's position, and in the remaining 5 cases, the victim's opinion remained unknown.

Five defendants were sentenced to custody, a part of which was considered as a suspended sentence. Three defendants were sentenced to deprivation of liberty which was considered as a suspended sentence. In respect to 1 accused, the judge imposed remand detention which was considered as a conditional sentence, and community labour.

[83] In the previous reporting period, 19 (6%) out of 303 defendants were awarded plea agreements.

Sentences imposed by main court hearings into domestic violence and domestic offences

During this reporting period, GYLA has attended 310 substantive court hearings related to domestic offences. The final verdicts were delivered in relation to 81 of them. It is noteworthy that in comparison with the previous reporting period, the percentage of the acquittal verdicts has significantly increased – in 16 (20%) out of 81 cases the acquittal sentence was rendered.[84]

In the majority of the cases, the acquittal verdict is delivered if the victim refuses to testify against the family member. Consequently, in 14 out of 16 cases, the acquittal judgments were delivered on these grounds and the judge noted that there was no direct evidence against the defendant to allow the court to render a guilty verdict.

> The judge delivered an acquittal verdict. After the announcement of the verdict, the judge explained that there was no direct evidence in the case to prove the guilt of the defendant, as the victim, who at the same time was a direct witness, refused to testify. The judge also noted that according to the decision of the Constitutional Court of Georgia, the court was legally bound and could not deliver a guilty verdict by relying merely on indirect evidence. However, the judge added that the evidence submitted by the prosecution was sufficient to develop an inner faith and become convinced that the defendant had really committed the offence he was charged with.

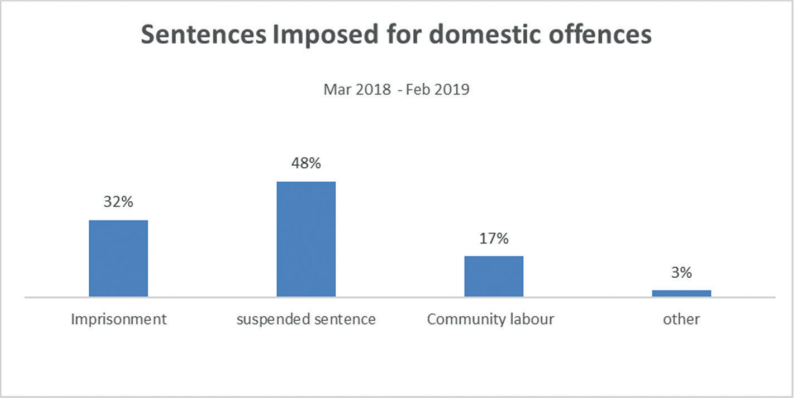
Unlike the previous reporting period, the types of sentences in relation to domestic offences have become relatively severe. If in the previous reporting period, 25% of the guilty verdicts sentenced defendants to remand detention, this figure has increased by 7 percentage points and reached 32% in this reporting period.

In 11 (17%) cases out of 65, the court sentenced the defendants to community labour. The suspended sentence and probationary period were applied against 31 (48%) persons, while the term imprisonment - a real punishment - was imposed on 21 (32%) defendants.

The following chart shows the types of sentences imposed for domestic offences from March 2018 to February 2019.

[84] In the previous reporting period, only 4 out of 73 were acquittal verdicts.

Chart №32:



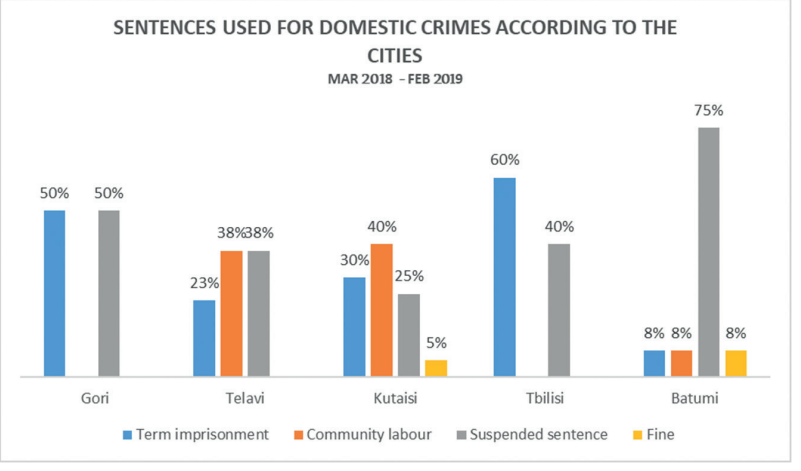
As regards the situation according to the cities, it has changed in Kutaisi City Court. In the previous reporting period, the court did not use deprivation of liberty as a form of sentence, while in 6 cases out of 26 in this reporting period, the court imposed remand detention.

Tbilisi and Gori Courts still have a strict approach to domestic offences. As for Batumi City Court, GYLA attended 12 court hearings, at which the verdict was announced. In 9 cases, the court used imprisonment counted as a suspended sentence.

The GYLA monitors attended the court hearings of the cases related to domestic crimes where the verdicts were announced: Gori - 14; Tbilisi - 14; Telavi -15; Batumi - 12.

The chart below shows the types of sentences used for domestic offences according to the cities from March 2018 to February 2019.

Chart №33:



Identification of Discriminative Motive

In cases of violence against women, the qualification of the offence must be in conformity with the gravity of the act committed. The wrong article determined for the offence and / or prosecutor's failure to indicate the discriminative motivation hinders the development of a gender-sensitive criminal justice through which prosecution and judicial bodies will be able to recognize, qualify and determine a relevant sanction for the offence committed against women.[85]

In comparison with the previous reporting period, the rate of identification of discriminative motive by the Prosecutor's Office has significantly increased. However, investigation and assessment of gender-motivated crimes still remains a significant problem.

It should be assessed positively that in the reporting period in 9(5%) cases out of 182 where the victim of domestic violence was a woman, the prosecutor indicated the discriminatory motive. In all the above-mentioned

[85] Dekanosidze, T., Judgments of 2014 Femicide Cases in Georgia, GYLA's Survey, Tbilisi, 2016, 35-36.

cases, the court imposed remand detention. In the previous reporting period, GYLA could not identify any case where the prosecutor referred to a discriminatory motive at preventive measure court hearings.

GYLA has also revealed 8 cases when the prosecutor wasted the chance to indicate the discriminatory motive.

- A person was charged with threatening his child (Article 11^1, 151(1) of the CCG). The defendant declared at the trial: "I honestly raised my child but she has changed after moving to Tbilisi. she has tattoos all over his/her body; she has a piercing as well and works for an NGO.
- A person was accused of threatening his daughter (Article 11^1, 151(1) of the CCG). The conflict was caused due to the young woman's work schedule, which, according to the accused, did not correspond to the woman's role.

In this reporting period, the prosecutor referred to the discriminative motivation in 11 cases at merits hearings. In 2 cases, the motive was the gender identity and in 1 case sexual orientation was named as a discriminative motive.[86]

Using discriminatory terminology by certain lawyers remains a problem, which further deepens the negative attitude of the public towards vulnerable groups and strengthens gender stereotypes.

[86] In the previous reporting period, GYLA identified only 2 cases where the Prosecutor's Office referred to discriminative motives.

XI. TRENDS REVEALED AS A RESULT OF OBSERVATION OF DRUG-RELATED OFFENCES

PREVENTIVE MEASURES ON DRUG-RELATED OFFENCES

A brief overview of the legislation

This reporting period has not seen any significant amendments to the chapter of the Criminal Code of Georgia related to narcotic drug offences, and this happens when the Constitutional Court of Georgia has found unconstitutional the sanctions envisaged by a number of articles of the Criminal Code of Georgia in recent years.[87]

The decisions of the Constitutional Court of Georgia clearly show that the provisions related to drug offences envisaged by the Criminal Code of Georgia are not adequately regulated. The sentences are often incompatible with the degree of the criminality of the act and presumably, the Constitutional Court will further recognize other normative content / sentences as unconstitutional.

The Constitutional Court's decision of 2 August 2019[88] clearly showed

[87] The punishment envisaged by Article 260 (1) of the CCG - imprisonment for the purchase / storage of raw marijuana (100 grams) for personal consumption. Judgment of the Plenum of the Constitutional Court of Georgia of 15 February 2017 - N3/1/855 – website, 21.02.2017;
The normative content of Article 260 (3) of the CCG which provides for imprisonment for manufacture, purchase and storage of (0,00009 grams) narcotic drug- dezomorphine.- Decision No. 1/8/696 of the Constitutional Court of Georgia of 13 July 2017 – website, 20.07.2010;
The normative content of Article 265 (2) of the CCG which provides for imprisonment for illegal sowing or cultivation of cannabis (plant) (up to 10 grams) for personal consumption - Decree No. 1/9 / 701,722,725 of the Constitutional Court of Georgia of 14 July 2017, website 20.07.2010;
The normative content of Article 265 (2) of the CCG which provides for imprisonment for illegal sowing or cultivation of cannabis (plant) (up to 64 grams; up to 151 grams) for personal consumption - Decree No. 1/9 / 701,722,725 of the Constitutional Court of Georgia of 14 July 2017, website 20.07.2010;
On 30 November 2017, the Constitutional Court of Georgia adopted a precedent decision and considered imposing criminal liability for marijuana consumption unconstitutional, in particular, with regard to Article 16 of the Constitution of Georgia - Decision No. 1/13/732 of the Constitutional Court of Georgia; 30 November 2017

[88] Application: Public Defender of Georgia v. Parliament of Georgia; 1/6/770; 2.08.2019; A) the words of Article 45 of the Administrative Offenses Code of Georgia, "... or, in exceptional cases, if the application of this measure is considered insufficient after taking into account the circumstances of the case and the person of the offender – administrative detention for up to 15 days." (effective until 28 July 2017); The provision which envisages administrative detention as a sanction for the consumption of a drug or purchase and storage of a drug

the necessity to amend the Criminal Code as well as to provide the list of small, large, and particularly large quantities of drugs and psychotropic substances seized from illegal possession or circulation.

The Constitutional Court in its ruling has distinguished between the cases of purchase, storage, manufacture of a drug amount sufficient for a single consumption and the cases where the amount of a drug is intended for more than one use. The Court has also determined the drugs that do not lead to a rapid addiction and/or aggressive behavior and vice versa.

The Constitutional Court has deemed unconstitutional the imposition of imprisonment into the cases where the following cumulative circumstances are obvious: 1. the purchase, storage, and manufacture of the amount of drug needed for a single consumption, and 2. the consumption of a substance which does not lead to a rapid addiction or aggressive behavior.

Accordingly, the State, at this stage, does not offer a well-regulated list of narcotic drugs (psychoactive substances) that could determine a single-use amount. Moreover, small quantities are not specified at all in connection with a range of drugs on the list. It is necessary to provide the list and accurate classification of narcotic drugs, as well as to revise the part of the sentences in the Criminal Code.

A brief overview of court hearings

The percentage of offences related to illegal manufacture, purchase, storage, transportation, transfer, forward and / or illegal consumption without medical prescription of drugs, their analogues or precursors and / or illegal purchase, storage, transportation, transfer, forward and / or sale of cannabis or marijuana in small quantities (Articles 273 and 273[1] of the CCG) compared to the previous reporting period has decreased.[89] GYLA

amount sufficient for a single use, the consumption of which does not lead to rapid addition and/or aggressive behaviour.
b) The words of Article 273 of the Criminal Code of Georgia "... or by imprisonment for up to a year" (effective until 28 July 2017), which provides for the possibility of applying detention for consumption and manufacturing, purchase, storage of a single consumption amount of drugs, their analogues or precursors which do not lead to rapid addiction and / or aggressive behavior.

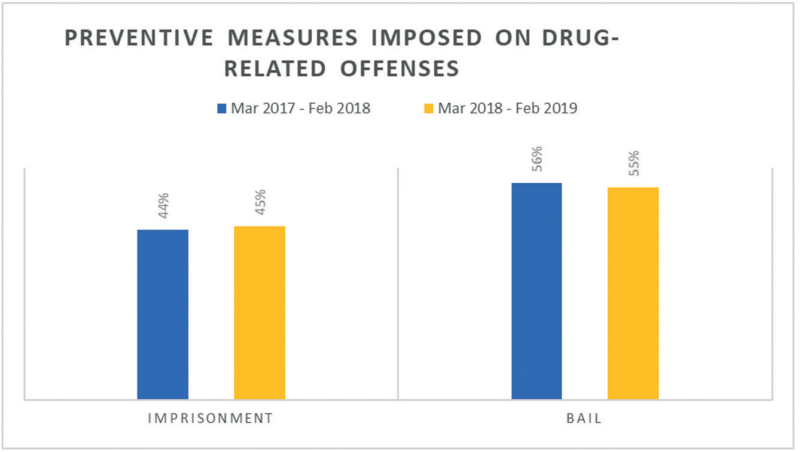
[89] During this reporting period, GYLA attended 668 court hearings, at which the prosecution charged only 23 (3%) defendants with the offences under Article 273 and 273[1] of the Criminal Code of Georgia, and in the previous reporting period, this number was 32 (8%) out of 402 accused.

attended 111 drug-related court hearings against 123 defendants, 23 of which were charged with offences incriminated under Article 273 or 273[1] of the Criminal Code of Georgia.

It should be noted that the approaches of the court and the prosecution have not changed regarding the above offences and are identical to those of the previous reporting period. In this reporting period, the Court granted all motions of the prosecutor requesting imprisonment into 48 cases, while for other offences, the court granted the prosecutor's motions in 81% of the cases.

The chart below shows the preventive measures imposed for drug-related offences. The diagram does not provide preventive measures against the offences under 273 and 273[1] of the Criminal Code of Georgia.

Chart №34:



Preventive measures on drug-related offences are more unsubstantiated and / or insufficiently substantiated than into other types of offences. During the reporting period, we identified in total 140 unsubstantiated and / or insufficiently reasoned decisions on preventive measures, 46 (33%) of the cases were related to drug offences. The Prosecutor's Office, like the previous reporting period, provides the following arguments for the use of the preventive measure: 1. the risk of continuing criminal activities - as the drug-related offences are characterized by recidivism; 2. the gravity of the act and 3. the risk of fleeing.

A person was accused of keeping a narcotic drug- heroin (Article 260 (3)(a) of the Criminal Code of Georgia). The prosecutor motioned for the use of imprisonment, referred to the risk of fleeing based on the argument that the sentence envisaged imprisonment. The prosecutor also noted the threat of committing a new offence, as it was characteristic of drug offences.

The defense lawyer noted that the risk of the defendant fleeing did not exist as the defendant had a family, a permanent residence, had never been convicted, had never received even an administrative penalty, which was the indication of his law-abiding personality, and on top of that, the accused was going to cooperate with the investigation.

The court granted the prosecutor's motion and sentenced the defendant to remand detention.

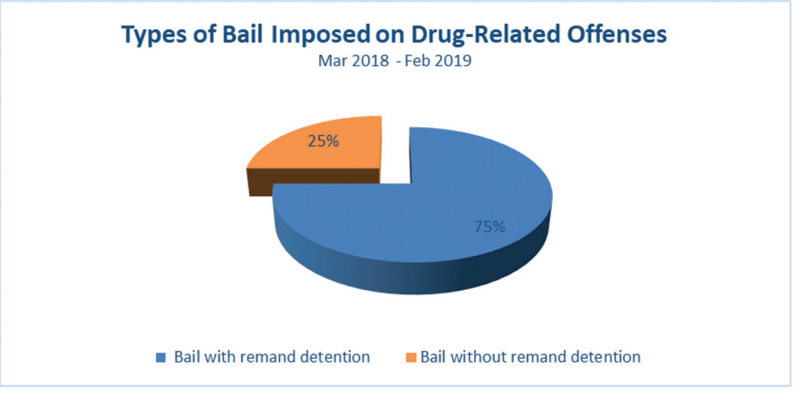
It is true that the court usually reduces the amount of the bail requested by the prosecutor, but the amount of the bail for drug-related offences is higher than in other types of crimes.[90]

In this reporting period, 86 (86%) out of 100 defendants who were accused of drug-related crimes appeared before the court as the detainees, 45 of whom were sentenced to imprisonment and 41 to bail with a remand guarantee.

[90] The average amount of bail on drug offences is 3855 GEL, which is 650 GEL higher than the amount of bail imposed for other crimes.

The following chart shows the types of the bail used for drug-related offences (Note that the chart does not reflect the types of the bail applied in case of Articles 273 and 273[1] of the CCG)

Chart №35:



To illustrate this, please see the example of the judge violating the presumption of innocence and imposing an unreasonable amount of bail ("clandestine detention"):

A person was charged with illegal purchase and storage of narcotic drugs (Article 260(1) of the CCG). The prosecutor motioned for the bail with a remand guarantee in the amount of 5000 GEL and substantiated the motion in a standard and template manner. The defence counsel requested 1000 GEL bail noting that the accused was a socially vulnerable person and could not post 5 000 GEL bail; he was a craftsman and did not have regular employment and also had a wife and two minor children. The accused did not plead guilty. The judge asked him the questions which were in contrary to the interests of the defendant: "Where did you get the drug?" "Did you buy it from someone?" to which the defendant answered that he was innocent.

Finally, the judge sentenced the defendant to the bail of 2500 GEL with remand detention but failed to provide the reasoning for the decision delivered.

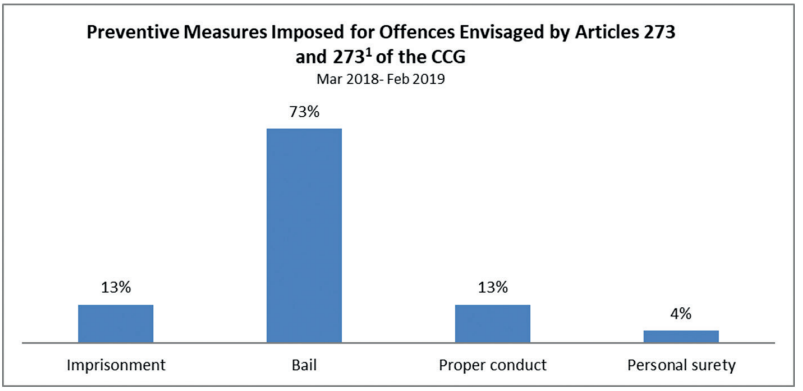
The prosecutor requested remand detention against all detainees charged with the offences incriminated under Article 260(6) (a) of the Criminal Code of Georgia (illegal manufacturing, production, purchase, storage, transportation, transfer or sale of drugs in particularly large quantities), and in the same template manner provided the motions by referring to **alleged/ possible** goal of the defendant to **sell the drugs**. However, out of the requested detentions against 24 defendants, the prosecutor could present evidence at 11 preventive measure court hearings which could convince an unbiased observer that the accused really kept the drugs for further sale.

Article 273 and 273[1] of the Criminal Code of Georgia

In this reporting period, we attended 23 court hearings determining the preventive measures in relation to the above articles. The criminal qualifications against 19 out of 23 defendants allowed the prosecutor / judge to motion / impose an alternative preventive measure - the agreement on not leaving and proper behavior, but the prosecutor did not submit a motion in any of these cases and the court imposed the alternative preventive measures only in 3 cases. This once again confirms that the parties to case proceedings and the judge do not perceive the agreement on not leaving and proper behavior as a real alternation to imprisonment and bail.

Please see the statistics of the preventive measures imposed for offences under Article 273 and Articles 273[1] of the Criminal Code of Georgia from March 2018 to February 2019.

Chart №36:



In most cases, the prosecutor did not investigate the financial situation of the defendant when requesting the bail. However, the Court examined the material status of the defendants and, in spite of their poor financial situation, in most cases used bail rather than lenient measures of restraint.

The Prosecutor's Office motioned for the imposition of bail in 20 cases of criminal offences under Article 273 and 273[1] of the Criminal Code of Georgia, and the Court granted the bail in 16 cases,[91] in 3 cases, the court used an agreement on not to leave and adequate behaviour, and in one case did not apply a restriction measure at all. The Prosecutor appealed to the court three times for the imprisonment and the court granted all three motions.

Sentences imposed for drug-related offences at plea agreement court hearings

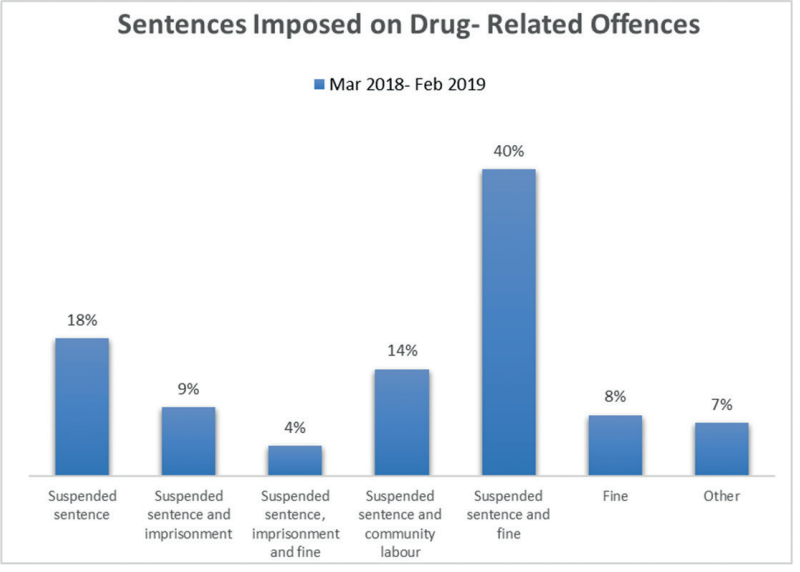
Plea agreements with the obligation to pay a fine have been signed with more than half of the persons charged with drug-related offences. In total, GYLA monitored 171 court hearings considering the issue of signing a plea agreement for drug-related offences. Of these, 117 defendants were charged with criminal acts pursuant to Articles 260-265 of the CCG and the remaining 54 accused - for the offences under Article 273 and 273[1] of the CCG.

The following chart shows the types of sentences imposed for drug-related offences after signing the plea agreement.

**Note: The chart does not reflect the types of sentences under Articles 273-273[1] of the CCG from March 2018 to February 2019.*

[91] (The amount of the bail varied from 1000 GEL to 5000 GEL)

Chart №37:



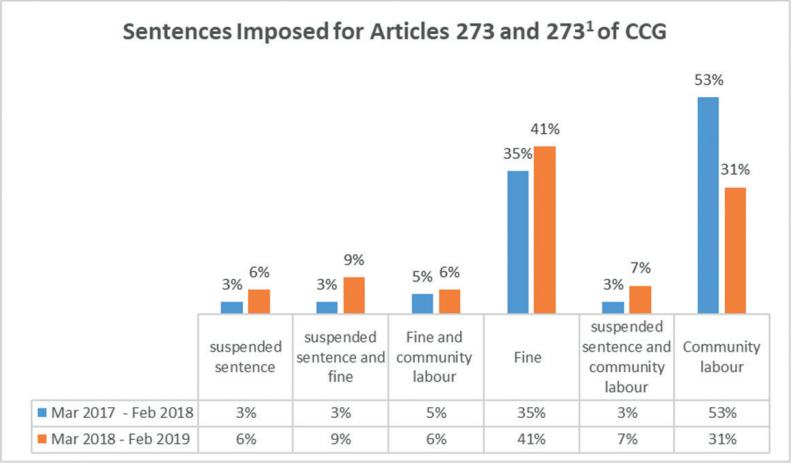
It should be noted that the amount of the fine used for drug-related offences[92] is significantly higher than the average amount of fines used for other types of criminal offences. The average amount of fines used for drug-related offences is 6778 GEL, while the average amount of fines for all other crimes has amounted 4238 GEL. Perhaps, this approach is conditioned by the fact that drug-related offences belong to serious and / or particularly serious category of offences. However, pursuant to the law, it is also necessary to take into consideration the material status of the convicted person when determining the amount of fine.[93]

The chart below shows the types of sentences after signing plea agreements for the commission of the offences under Articles 273 and 273[1] of the Criminal Procedure Code from March 2017 to February 2019.

[92] It does not include the fine imposed for crimes under Articles 273 and 273[1] of the CCG.

[93] Article 42(3) of the CCG.

Chart №38:



Compared with the previous reporting period, the percentage of the fines for these types of offences has sharply increased and the rate of application of community labour significantly decreased.

Sentences imposed at court hearings on the merits

The GYLA monitors attended six court proceedings related to drug offences (Article 260 of the CCG), where the judge delivered the final judgments: guilty verdicts were rendered in all 6 cases – in 5 cases, the defendants were sentenced to term imprisonment and in 1 case remand detention that was considered as a suspended sentence. As for the offences envisaged by Articles 273 and 273[1] of the Criminal Code of Georgia, the court ruling was delivered in 1 case and the defendant was imposed a fine in the amount of 2000 GEL.

In 1 case, the court found the person guilty in the purchase and storage of narcotic drugs in particularly large quantities (Article 260(3)(a) of the CCG) and sentenced him to a minimum sentence - 5 year imprisonment. It is noteworthy that in this reporting period, 27 plea agreements have been signed into the above-mentioned offences and in 24 cases, the defendants were sentenced to a suspended sentence, fine, community labour or other. Only 3 defendants were sentenced to term imprisonment for no more than 1 year.

XII. CRIMES COMMITTED DUE TO ECONOMIC HARDSHIP

The difficult social situation in the country in certain cases is reflected in the offences committed by individuals.[94] GYLA attended the court hearings which revealed that the degree of the act committed, motivation and goal of the offenders were due to the social hardship the accused person was going through. It is important to find the approaches that the Prosecutor's Office and the court held in this respect and whether they take into account the above-mentioned circumstances - social status of the defendant, the commission of an offence and other aspects.

Trends identified during prevention measure court hearings

In the current reporting period, GYLA has identified the initial appearance court trials of 25 defendants where the reason for the criminal act committed was poverty. In all 25 cases, the court imposed bail or remand detention. In none of the cases was personal surety applied or was the accused left without a preventive measure. Out of these 25 cases, the prosecutor submitted a motion for imprisonment in 9 cases, which the court granted in all cases.

Please see the examples of offences committed due to poverty for which the court applied remand detention:

- A person was accused of theft (Article 177(2,a) (3,b) of the CCG), in particular, stealing items from two different vehicles, the total damage amounted to 120 GEL. The prosecutor motioned for the use of remand detention with the argument that the defendant had committed the offence within the suspended sentence, that he had been convicted for the similar offence and that there was a risk of recidivism.

  The accused is 18, homeless, lives on the street and does not have any income. The defendant pleaded guilty and agreed with the prosecutor's motion. The court granted the motion on the imprisonment.

[94] According to the data provided by the National Statistics Office of Georgia, in 2017, the number of persons receiving subsistence allowance was 450423. http://pc-axis.geostat.ge/PXWeb/pxweb/ka/Database/Database__Social%20Statistics__Social%20Protection/Beneficiaries_of_Subsistence_Allowance.px/table/tableViewLayout2/?rxid=85999b07-769f-4cac-ae81-594234635249

- A person was accused of breaking into the hen house located in the yard of a church and stealing 21 chickens (Article 177(2,a) (3,b) of the CCG) – each worth 20 GEL. The total damage amounted to 420 GEL. The prosecutor submitted the motion for the remand detention with the argument that the person had been charged with the theft in the past and that there was a risk of him fleeing and committing a new crime.

  The defendant's lawyer explained that the defendant was living in hard social conditions, pleaded guilty and requested the bail of 1000 GEL. The court granted the prosecutor's motion.

In 16 cases, the prosecutor demanded bail. In 2 cases of these, the prosecutor requested the minimum amount of the bail. It is noteworthy that the court, as a rule, reduced the amount of the bail requested by the prosecutor, took into consideration the gravity of the act and the social status of the defendant. In the 12 (75%) cases out of 16, the court applied the minimum amount of bail.

Please see the examples of criminal acts committed due to poverty where the court imposed bail:

- A person was accused of theft (Article 177(3)(b) of the CCG). In particular, the person secretly stole 54 GEL worth face cream from a pharmacy store. At the court trial, the defendant declared that she pleaded guilty and the reason for committing the crime was her aim to sell the face cream in order to buy food for her child.

  The prosecutor explained that the defendant had committed theft previously and referred to a risk of committing a new offence, and applied to the court with a motion to impose a preventive measure in the amount of **6,000 GEL** bail. The court reduced the bail amount requested by the prosecutor to the minimum possible amount and imposed 1000 GEL bail.

- ❖ Two persons were charged with attempted robbery (Article 19, 177 (2,a) (3,a) of the CCG). In particular, according to the prosecution, they tried to steal scrap materials from the premises of a company, and in case of completing the theft successfully, the damage would have accounted for - 160 GEL. The defendants noted at the trial that they were living in severe financial condition that motivated them to commit the crime. The prosecutor applied for the bail of 4000 GEL against each defendant and the court imposed 2000 GEL bail for both of them.

Trends revealed when signing plea agreements

GYLA attended 20 plea agreement court hearings which clearly illustrated that the offence committed by the defendants was the result of social hardship.

There were 6 cases where the prosecutor could opt to not initiate criminal prosecution at all and / or offer the diversion to the party, and in turn, the court could also not approve the plea agreement due to the insignificance of the act.

- ➢ A person was accused of stealing 21 GEL worth scrap metal (Article 19 and 177 of the CCG). The court trial established that the person was living in hard social conditions and had never been convicted. The defendant earned his living as a porter, carrying other people's baggage on a wooden cart. The plea agreement was approved with the following terms: 6 months imprisonment considered as a conditional sentence and 1 year probationary period.
- ➢ The charge: the accused secretly obtained details of ferrous metal causing the property damage in the amount of 50 GEL (Article 177(1) of the CCG). The person had never been convicted. Pursuant to the plea agreement, he was imposed the minimum amount of fine GEL 500, however, it was revealed at the court hearing, that the defendant was not able to pay the fine.

- According to the factual circumstances of the case, the defendant tried to steal different goods from a shop near a subway station, with the total worth of 7 GEL (Article 19, 177(1)). The court requested a break, went to the consultation room and after returning asked the accused whether the fine in the amount of 1000 GEL as a punishment would be a fair sentence for the attempted theft of 7 GEL worth goods. The defendant expressed the desire to sign the plea agreement.

In 6 cases out of 20, the defendants were imposed a fine as a punishment measure. In the cases when a person commits a criminal act due to hard social conditions, application of the fine as a punishment worsens his/her financial status and may result in a new criminal offence.

XIII. OTHER ISSUES IDENTIFIED THROUGH THE MONITORING

THE RIGHT TO AN INTERPRETER

Constitution of Georgia, Criminal Procedure Code of Georgia[95] and international conventions[96] of which Georgia is a signatory party, envisage that if the person does not have a good command of the language which is used during the court proceeding, he / she shall have the right to enjoy the services of an interpreter at the expense of the State.

In this reporting period, GYLA monitors have attended 87 court hearings in Bolnisi, Khelvachauri, Marneuli and Gurjaani Courts. The aim of the aforementioned was to evaluate the situation in the courts operating in ethnic or / or religious minority settlements.

Identified trends

In total, GYLA attended 169 court hearings, where the interpreter's service was provided. In addition to the above-mentioned 169 court proceedings, GYLA identified 3 cases when the accused persons were not able to understand what the judge was saying and obviously required the assistance of an interpreter.

It should be noted that in 7 cases, the judge announced a break at his/her own initiative to allow the possibility to provide an interpreter for the accused, which must be highly appreciated.

GYLA attended 4 cases where the interpreter could not provide an adequate translation for the accused.

[95] Article 38(8) of the CPCG.

[96] European Convention on Human Rights, Article 6.3.

The defendant requested to be provided with full translation as he/she did not understand Georgian language properly. The judge told the interpreter that it was not necessary to translate every detail. During the course of the proceedings, the accused and the interpreter had a verbal argument. As it was revealed, the defendant had some complaints regarding the quality of the translation as the translator was not providing an accurate translation from the Georgian into Azerbaijani language.

After that, the defendant repeatedly complained about the quality of the translation, but the court did not react to it in any way.

Right to public hearings

The right to public hearing is an important right of the defendant and the public and is guaranteed by national and international laws. For the purpose of exercising the right, the Court shall ensure that the case proceedings be carried out in such a way that any interested person attending the court hearing does not have a problem to understand the essence of the trial. In addition, a court verdict shall be declared publicly indicating the size of the sentence, a relevant article and the right of the defendant to appeal the court judgment.[97]

Identified trends

The monitoring has shown that, as a rule, the right to public hearing is guaranteed. Like the previous monitoring periods, the initial appearance court hearings are not usually announced - only 123 (21%) out of 594 cases were announced publicly.

As for the announcement of preliminary court hearings and merits hearing, the information on the date and time of the court trials was not announced in 233 (14%) cases out of 1635 court hearings. This is quite a high rate and the court should necessarily take efforts to address the problem.

[97] Article 277 (1) of the CPCG.

Use of Visually Degrading Measures against Defendants

One of the forms of violation of presumption of innocence is the use of visually degrading conditions against defendants, since the application of such safety measures created an impression that the defendants were dangerous criminals from which the society needed to be protected, which harmed the principle of presumption of innocence.[98] The above issue has been highlighted in the OSCE/ODIHR Trial Monitoring Report. According to the United Nations Human Rights Committee, "any person charged with a crime shall be treated in accordance with the principles of presumption of innocence, which implies that "defendants shall not be hand locked and placed in the enclosure during court proceedings or present before the court as dangerous criminals."[99]

The European Court of Human Rights also refers in some of its decisions to issues of treatment of defendants during the proceedings, which can potentially contradict the presumption of innocence and cause degrading treatment towards a person. For instance, in one case it was established that the use of iron cage in the court trial can lead "an average observer to believe that an extremely dangerous criminal is on trial."[100] In another case, the Court concluded that such measure would never be justified under the provision of Article 3 of the European Court of Human Rights, because it amounted to the degrading treatment.[101]"

[98] OSCE/ODIHR, Trial Monitoring Report Georgia, p108;

[99] General comments N.32, quote from the paper, Article 113, p 30.

[100] Piruzyan v. Armenia, ECtHR, 26 June 2012, Article 73.

[101] Ramishvili and Kokhreidze v. Georgia, ECtHR, 27 January 2009, par. 100-101, where the court criticized the metal enclosure of defendants' chairs and unjustified presence of "special security guards" at public hearings, and the Human Rights Committee No. 1405/2005, Mikhail Pustavoit v. Ukraine Article 9.2, 9.3 and 10 where the use of iron cage was deemed as the violation of Articles 7 and 14 (30 (b) along with Article 14 (1) of ICCPR.

Identified trends

Although the rate of using visually degrading measures in respect of accused detainees during the reporting period has decreased compared with the previous reporting period, GYLA has still found that in 435 cases of merits hearings the defendants were presented as the detainees, 117 (27%) of them were placed in a cage.[102]

In a number of cases, the use of the above-mentioned measures against the defendants can be related to safety precautions. However, the court proceedings did not create the impression that the risks, which served as the basis for the application of such measures, had been adequately measured and assessed at an individual level. Namely, the behavior of the defendants was not inadequate or aggressive towards the court, nor were there any criminal background or other circumstances that would pose a potential threat.

32 out of 117 defendants who were placed in the cage committed non-violent acts where no person was damaged (drug offences / carrying a firearm). In all 32 cases, the defendants were not behaving inadequately, aggressively and / or did not express any disrespect to the court.

The above mechanisms are used without assessing the threats and assessing individual circumstances. Thus, the use of such items can only be allowed when there is an obvious and real danger that the defendant may try to escape or commit another unlawful act.

[102] In the previous reporting period, 350 persons were brought from the penitentiary facility, 140 (40%) of which were placed in a cage.

CONCLUSION AND RECOMMENDATIONS

The report has shown that criminal proceedings are conducted with shortcomings but some improved approaches have been observed either.

The report has indicated that the issues identified at **initial court hearings** of defendants in the past still persist, which is manifested by the court usually applying two forms of **preventive measures**: bail and detention. An increasing trend in the Prosecutor's Office requesting detention and critically high rate of granting such requests by the court has also been observed. Throughout the history of the court monitoring, the higher rate of granting detention motions compared to this reporting period was reported only in 2011–2012, when the court granted requests of the Prosecutor's Office for detention in all cases (100%). Of note that the rate of unsubstantiated/partially substantiated application of imprisonment has also increased.

The number of defendants appearing as the detainees at pretrial court hearings has increased dramatically. In such cases, exercising judicial control over the **lawfulness of detention** is becoming more and more important. Sadly, again in this reporting period, the court in most cases did not focus on the legality of the arrest.

It should be appreciated that the allegations made by defendants at court hearings regarding **torture and/or ill-treatment** have decreased in this reporting period. Prohibition of torture is one of the fundamental and absolute rights, and each case must be subjected to strict state control. GYLA believes that the amendment allowing the judge to refer to a relevant investigative body in the event of any alleged/ actual torture, degrading and/or inhuman treatment of the accused/convicts should become effective as soon as possible.

During this reporting period, the court, except for individual cases, showed no biased or prejudiced attitude towards either party of the proceedings at **pretrial hearings**. The defense has become significantly active in terms of demanding the admissibility of evidence. Implementing the practice of **searches/seizures** conducted under an urgent necessity in exceptional cases remains an issue, which increases the likelihood of arbitrariness of investigative authorities.

The report has shown that the court less often discusses the lawfulness and fairness of the sentence during **plea agreement hearings**. At plea

agreement hearings, there were cases when the prosecution produced only the resolution part of motions, sometimes the court encouraged the prosecution to do so, and the defense did not object to such approach. This rendered the process formal in the eyes of an objective observer.

The monitoring of **main court hearings** has revealed numerous pending cases, which is due to the delayed commencement of case hearings. Frequent were the cases when the court trial was postponed once it was opened. GYLA has identified the cases where the 24-month timeframe as envisaged by the law for the deliberation and adjudication of the case was violated. All the aforementioned damages the court's image, authority, and reputation.

In the current reporting period, the number of initial appearance hearings relating to **domestic offences** has dramatically increased, indicating that the State has improved the crime detection rate. Although the prosecution sought to substantiate the necessity of applying the type of preventative measure requested, GYLA identified the cases that made it clear that the detention motions were conditioned only by the strict policy of the State. It is noteworthy that signing plea agreements into domestic crimes has become even less common in this reporting period. Moreover, the types of sentences for domestic offences have been tightened, in particular, the rate of applying detention has increased.

As regards **drug-related offences**, the monitoring has shown that the amount of bail and fines imposed as the punishment for such crimes is significantly higher than the average amount of bail or fine determined for other offences.

The observation of court hearings and the judgments rendered by the Constitutional Court of Georgia have proved that the current legislation on drug-related offences is flawed and should be revised. The recent ruling[103] of the Constitutional Court has made it even clear that it is necessary to update the so-called list to determine the adequate amounts based on the decision of the Constitutional Court (an amount for single consumption; small, large, particularly large quantities), as well as to revise the types of sentences. The implementation of the abovementioned amendments will ensure the minimum standard set by the Constitutional Court.

[103] Application: Public Defender of Georgia v. Parliament of Georgia; 1/6/770; 2.08.2019;

GYLA hopes that the positive findings provided in the report will continue and the shortcomings identified by the monitoring will be gradually addressed. For this purpose, GYLA has developed specific **recommendations** for the relevant agencies:

For Common Courts

- Judges should more often apply less severe measures (alternative measures vis-à-vis imprisonment and bail) where applicable or refrain from using such measures at all in the cases where the prosecution fails to substantiate the necessity of using the preventive measure. In addition, the courts should require from the prosecution to submit adequately substantiated motions for the use of preventive measures and impose the burden of proof on the prosecution;
- Remand detention as a preventive measure should be applied only as a last resort when all other less severe preventive measures prove to be ineffective. Preference should be always given to lenient forms of preventive measures;
- Judges should inform the defendants, who are not represented by defense counsel, comprehensively of the types of all preventive measures and the scope of their application. Judges should more actively try to find out at their own initiative whether it is possible to use a more lightweight preventive measure rather than bail and imprisonment;
- At the court hearing revising the remand detention as a preventive measure, the judge should prove the need to leave the detention in force;
- When signing a plea agreement, the judge must be more active and approve only fair and reasonable plea agreements in order not to provoke any suspicion about the proportionality of the sentence and the offence;
- With the view to avoiding the delays of court proceedings, the court should examine in depth the reasons for such delays or absence of either party and in case of an inadequate reason, impose the sanctions envisaged under the law;

- When the judge believes that the size of the sentence for a specific action obviously exceeds the gravity of the offence and this violates the constitutional right of a particular person, he/she should exercise the power granted by law and apply for the decision to the Constitutional Court of Georgia prior to rendering the final decision.

For the Prosecutor's Office of Georgia

- Better substantiate the necessity and expediency of application of a specific preventive measure, in particular, they should explain why other lenient measures cannot ensure the achievement of a specific goal.
- Substantiate the amount of requested bail and thoroughly examine the material and financial status of defendants.
- Investigative and prosecution authorities should carry out searches and seizures without a prior court ruling only in exceptional cases and under urgent necessity.
- The Prosecutor's Office should investigate all cases of violence against women in any possible way to find whether the offence is committed on the ground of gender or other intolerance and if any, highlight discriminative motives at the court hearing.
- When entering into a plea agreement, pay particular attention to the victim's position and inform the court hearing about the consultation with the victim and his/her position.
- Use the powers granted by law and refrain from conducting criminal proceedings or / and persecution in case of a minor offence and/or offer the diversion to defendants. The above-mentioned becomes even more important if the alleged motive of the offence committed is poverty, the accused has never been convicted and the damage is of little importance.

For the Parliament of Georgia

- Article 199 (1) of the Criminal Procedure Code of Georgia should be amended to add more types of preventive measures.
- The law should regulate the mechanisms and procedures for the review of the lawfulness of arrests. The law should determine the obligation of the judge to examine at the first appearance court hearing the lawfulness of detention both on the basis of a prior court ruling or on the ground of urgent necessity;
- The law should regulate the Chapter of the Criminal Code of Georgia on drug-related offences and determine relevant sanctions according to the judgment of the Constitutional Court of Georgia;

For the Georgian Bar Association

- Lawyers should defend their clients in a qualified, active and credible manner at all stages of court proceedings. For this purpose, the Georgian Bar Association should provide permanent retraining and advanced professional training for lawyers in different areas of criminal proceedings (for example, with respect to the standards of application of preventive measures, the rules for obtaining and recognition of admissibility of evidence, etc.).
- Lawyers should express high ethical behaviour towards participants of court proceedings, especially vulnerable groups. Their activities should not be stereotyped and stigmatizing.