GEORGIAN YOUNG LAWYERS' ASSOCIATION

№18

MONITORING OF CRIMINAL TRIALS REPORT

Monitoring period: August 2023 - February 2024

Georgian Young Lawyers' Association

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(TBILISI, KUTAISI, BATUMI CITY COURTS)

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REVIEW

The findings presented in this report, covering the period from August 2023 to February 2024, are based on the monitoring of criminal justice cases in Tbilisi, Kutaisi, and Batumi regional courts.[1] The report analyzes problematic issues arising at various stages of the criminal justice process, potentially compromising the principles of criminal justice and necessitating corrective action to uphold the rights of the accused.

Specifically, the report examines trends noted during the first appearance court hearings of the accused; in the judicial oversight concerning the lawfulness of detention; circumstances surrounding cases of alleged ill-treatment identified during court monitoring; issues with pre-trial hearings; the reasonableness of judicial acts regarding investigative actions of search and seizure; matters related to plea agreement court hearings and court hearings on the merits. Additionally, due to the increasing number of femicide cases and violence against women in the country, the report dedicates a separate section to circumstances related to domestic violence crimes.

[1] For the detailed methodology, please, refer to the Methodology Chapter.

PREFACE

Since 2011, the Georgian Young Lawyers' Association has been monitoring trials in Georgia. It is the first organization in the country to initiate and develop a systematic, professionally managed monitoring system for the administration of justice. This system employs both quantitative and qualitative indicators, ensuring consistent representation of public monitoring outcomes.[2] During this time, the organization has produced 17 monitoring reports on judicial processes and issued two special reports addressing the management of criminal proceedings during the pandemic. [3]

The monitoring of judicial processes aims to examine various stages of the process through objective observation, evaluating trends, including positive ones, within the justice system. This includes identifying institutional practices and positions established by oversight and enforcement authorities, as well as those responsible for prevention and defense. Through years of monitoring result analysis, it contributes to fostering accountability within the justice system, bridging gaps between the society and stakeholders such as the Judiciary, the Prosecutor's Office, the Ministry of Internal Affairs and providing crucial information related to the administration of justice. Its primary objective is to enhance the quality of justice administration and ensure the protection of individuals' rights to a fair trial.

[2] GYLA, The Criminal Trial Monitoring Manual, 2021, 4, available at: https://shorturl.at/jovFM, updated: 01.10.2023.

[3] GYLA Special Report "The Court during the Pandemic", 2020, available at: https://shorturl.at/dwxAF; GYLA Special Report "The Impact of the Pandemic on the Criminal Justice System", 2022, available at: https://shorturl.at/ixIL6, [last accessed: 02.05.2024].

METHODOLOGY

Report No. 18 presents the findings of monitoring activities on **criminal justice cases** in three courts of **Tbilisi, Kutaisi, and Batumi, spanning from August 2023 to February 2024.**

During this period, the GYLA observed 664 court hearings.

Table №1: Breakdown of the hearings monitored by GYLA during the reporting period

i.	**Main trial court hearings**	**184**
ii.	**Plea bargain court hearings**	**170**
iii.	**Preliminary court hearings**	**99**
iv.	**Restraint measure court hearings**	**211**

GYLA trial monitors chose the cases or hearings to be monitored using a random selection approach. However, in the following types of cases, the organization carried out systemic monitoring:

I. Cases where gross violations of human rights were alleged, involving a high public interest or other special factors.

II. High-profile cases that concerned former political figures.

In the reporting period, the GYLA embarked on implementing monitoring covering both criminal and civil law cases, based on an updated and novel methodology, namely demand-based court monitoring.[4] Citizens could request GYLA to have the court proceedings monitored, in the event that a case concerned one of the following matters:

i. Cases involving a high risk of violation of basic human rights and freedoms;

ii. High-profile criminal cases that have drawn significant public interest;

iii. Alleged politically-motivated criminal cases;

iv. Criminal cases involving the media;

v. Criminal cases where discrimination has been used as the basis for an offense committed against vulnerable groups (women, victims of violence and domestic violence. persons with disabilities, and other minority groups);

vi. Civil cases related to any alleged politically-motivated or media-related criminal trials;

vii. Cases in which the accused is a former and/or current employee of a law enforcement agency.

All information presented in this report has been obtained as a result of attending and observing court hearings. Trial monitoring was carried out by physical presence in the courtroom. In the spirit of the principle of non-intervention in the ongoing proceedings, the trial monitors refrained from speaking to the parties or discussing the case files or summary judgments. During the observation process, GYLA's trial monitors used questionnaires specifically designed and updated for the purpose. The questionnaire included closed-ended questions, requiring "yes" or "no" answers, as well as open-ended questions allowing the observers to comment on their observations in detail. When relevant, in addition to using the questionnaires, GYLA trial monitors took verbatim notes of court proceedings and of particularly important motions to add more clarity and context to their findings. Trial monitoring further abided by the principles of inde-

[4] During the current reporting period, the organization monitored 14 cases following citizens' requests.

pendence and impartiality, in accordance with the Program's procedure, collecting a plethora of facts and measurable data, which are analyzed herein.

The factual information on the procedure, as collected by trial monitors, was subsequently evaluated by analysts to assess the compliance of judicial proceedings vis-à-vis international standards, the Constitution of Georgia, and applicable domestic laws. Select procedural issues that were noted in different cases and were deemed to have a more systemic character are the focus of this report. Examples are used to illustrate the main concerns and graphs depicting the respective data are extensively used to present and support the monitoring findings. Of note that the figures and percentages used in this report pertain to the cases monitored by the GYLA, unless it is otherwise stipulated.

It should be highlighted that the analysis in this report pertains to procedural issues and not to the merits of the respective cases. GYLA has not in every occasion analyzed issues related to the circumstances of paritcular crime and whether the accused was indeed guilty or innocent.

At the end of this report, GYLA proceeds to put forward a number of recommendations to the Courts, Prosecutor's Office, and Parliament of Georgia, to the responsible authorities in developing their policies and practices.

KEY FINDINGS

1. First appearance court hearings

1.1. During the current reporting period, GYLA monitors attended 211 first appearance court hearings, where 224 individuals were presented as accused. Out of these, the courts utilized restraint measures in 206 (97%) cases out of 218 cases (97%).

1.2. However, in 6 (3%) cases against 6 (3%) individuals, no type of restraint measure was imposed.

1.3. For years, the court has used two types of restraint measures - bail and detention. Despite numerous calls from GYLA, the existing types of prevention measures have not been expanded at the legislative level, which would give judges the opportunity to use an effective alternative measure of bail and detention.

1.4. In the current reporting period, the rate of use of bail and detention without justification or improper justification is still high. The prosecutor's office does not try in every case to obtain and present to the court complete information based on evidence to study the person of the accused, his property situation, and the threats coming from the accused.

Measure of restraint – Pre-trial Detention

1.5. In the reporting period, the court imposed pre-trial detention on 64 (30%) individuals in 61 (30%) first appearance court hearings.

1.6. The prosecution motioned for pre-trial detention against 91 (42%) accused. In 27 (30%) cases, the court rejected the prosecution's motion for pre-trial detention, and the court utilized bail instead of pre-trial detention.

1.7. Demanded pre-trial detention by the prosecution was not properly substantiated against 43 (47%) individuals. In particular, it was not clear from the motion why the use of other, less restrictive restraint measures could not have ensured the proper behavior of the accused.

1.8. The court applied pre-trial detention against 16 (25%) individuals in an unsubstantiated and/or improperly substantiated manner.

Measure of restraint - bail

1.9. The court used bail as a restraint measure against 153 (68%) accused individuals out of 224.

1.10. Of these, the prosecution requested bail for 129 (57%) persons, of which the prosecution's motion was granted in 126 (98%) cases. In 1 (1%) case, the court used an agreement on not leaving the country and appropriate behavior as a restraining measure for the defendant, and in 2 (1%) cases, the accused was not subjected to any preventive measure.

1.11. The court granted the minimum (1000 GEL) bail amount for 24 (16%) persons.

1.12. The prosecution did not demand a bail amount of 1000 GEL for any accused (in the previous reporting period, the prosecution demanded bail of 1000 GEL only in one case).

1.13. The amount demanded by the prosecution in the form of bail was reduced by the court in the case of 81 (64%) persons. In the last reporting period, this data was equal to 89%.

1.14. In the current reporting period, the bail used for 56 (37%) accused was unsubstantiated, the amount of money was appropriate, and/or the appropriateness of its use was not consistent. Compared to the previous reporting period, this indicator decreased by 6%.[5]

1.15. It should be noted that 29 (19%) accused were ordered bail secured with detention. Compared to the previous reporting period, the mentioned indicator has increased by 3%.[6]

2. Proper Judicial Oversight & Ill-treatment cases

2.1. During the reporting period, 100 accused individuals appeared at 97 first appearance court hearings as detainees. The court examined the lawfulness of detention only in one case during the public hearing and concluded that the detention grounds were not violated.[7]

2.2. In the current monitoring period, three defendants spoke about the alleged ill-treatment they had been subjected to by law enforcement officers. In all cases the court acted in the scope of its competence.

2.3. During the current monitoring period, GYLA monitors reviewed 22 (22%) preliminary court hearings, of which 23 (23%) involved revision of restraining measure – pre-trial detention. Notably, the court changed the detention measure for only 2 individuals.

3. Preliminary court hearings

3.1. During the current reporting period, GYLA trial monitors attended 99 preliminary hearings, during which 110 individuals appeared as detainees before the court.

3.2. In all 99 (100%) court hearings, the prosecution submitted motions requesting to render evidence admissible.

3.3. In 20 (20%) court hearings, the defense considered the prosecution's evidence to be indisputable, while in 3 (3%) cases, it was partly disputable.[8]

3.4. The defense requested to have the evidence declared inadmissible in 2 (2%) court trials and presented a motion to cease criminal prosecution in 4 (4%) cases. However, the court did not admit any of these motions.

3.5. The interests of 81 (74%) defendants were protected by a lawyer. In 21 (21%) cases, the defense presented evidence, mainly consisting of information about the defendant's health condition, descriptions, witness interview protocols, and, in one case, an alternative expert report.

[5] In the previous reporting period, the bail in 81 (43%) cases was unsubstantiated, the reasonableness and/or expediency of the bail amount were contradictory. See, GYLA, Monitoring of Criminal Trials Report N17, 22.
[6] *ibid.*
[7] Criminal Procedure Code of Georgia, Article 171.
[8] The Defence requested to examine victim's examination records during the hearing on merits in 2 cases, while in one case, witnesses' examination records were contested.

4. Plea Bargain

4.1. Judicial review of plea bargain is weak, as judges tend to uphold the bargains reached by the parties in nearly all instances. Only one case was revealed in which the judge did not approve the plea bargain reached by the parties;

4.2. Plea bargain hearings are often formal completed within minutes without the judges explaining to the accused individuals their legal rights regarding the plea bargain;

4.3. A positive trend is emerging in the clarification of the rights of the defendants during plea bargain hearings. More particularly, during the current reporting period, judges explained **general rights** to 162 defendants (90%), marking a 14% improvement compared to the previous period.

4.4. In recent years, GYLA reports have uncovered instances indicating a lack of robust court oversight over plea bargains - **cases involving advance payment of fines established through plea bargain.** During the current reporting period, there was also an instance where the judge asked after the hearing whether the defendants had paid the fine in advance or not.

4.5. Sometimes plea bargains are heard in such a short time that the discussion concerning the adherence to relevant procedures is not possible. Instances have been noted where judges concluded plea bargains in 2 or 3 minutes

4.6. The Prosecutor's Office enters into a plea bargain primarily for drug-related crimes, crimes against property, and crimes against administrative order.

4.7. The Prosecutor's Office generally enters into plea bargains for both less serious and serious crimes. Only four cases were recorded where the prosecution signed a plea bargain with an individual accused of a particularly serious crime, three of which were related to drug offenses.

4.8. Within the stages of the proceeding, mostly the plea bargain is entered at hearing of restraint measures, more particularly, in 160 cases out of 170 **(89%) the plea bargain was entered during the first appearance court hearing.** Only in 4 (2%) cases – at the pre-trial hearing, and in 14 (8%) cases – at a hearing on merits, only in 1 (1%) case at another stage.

4.9. As a consequence of the plea bargain, **a fine** was imposed as punishment in 65 (36%) cases, **conditional sentence along with a fine** were together applied – in 55 (31%) cases, while only **conditional sentence** – in 23 (13%) cases. As for the utilization of community service alongside conditional sentence, there were 22 (12%) such cases.

4.10. Over the past three reporting periods, there has been an increase in the use of fines as a result of plea bargains. Nevertheless, the average amount of the fines has been decreased to **3234 Gel.**

5. Domestic Violence Crimes

5.1. The prosecution's policy on these types of crimes continued to be intolerant, which was also reflected in motions of measure of restraints. The pre-trial detention was sought in 38 (97%) instances, showcasing a steadfast commitment to the most severe deterrent, while bail was requested in merely 1 (3%) case.

5.2. According to the information provided by the the Prosecutor's Office, they actively invest in the training of prosecutors specializing in this type of crime. Specifically, 225 prosecutors (with 100 being females), are specialized in combating domestic violence

and domestic crimes, while 139 prosecutors (with 65 being female), are specialized in addressing crimes motivated on grounds of intolerance.

5.3. As for the court, in 19 (49%) instances, the court applied pre-trial detention against the accused as a measure of restraint, while bail was applied in 19 (49%) cases. Only in one case the Court did not opt to any measure of restraint.

5.4. Courts exhibit a lenient approach towards alleged domestic abusers. Even despite the motion of the prosecution for pre-trial detention, in **some cases** the Court chose a minimal amount of bail. Moreover, in numerous instances, the rationale behind a judge's decision to impose lighter measures on those people allegedly committing crimes repeatedly was questionable.

5.5. Through court monitoring and analysis of decisions by GYLA, it becomes evident that a significant hurdle in domestic crime cases lies **in the reluctance of victims to testify, often leading to the frequent acquittal of alleged abusers.**

5.6. It is imperative for the court to assess the safety risks of the victim and accordingly determine the necessity of implementing measures of restraint or specific punishment against individuals accused of domestic violence and related crimes.

6. Other Important Issues

6.1. **For years, the courts failed to ensure the public disclosure of the information related to first appearance court hearings.** In the current reporting period, in 155 (73%) cases out of 213 of the first appearance court hearing, the information regarding the hearing was not publicly announced. Publishing plea bargain hearings poses another challenge, specifically, out of 170 hearings, details were not disseminated in 106 (62%) instances.

6.2. Sometimes courts do not comprehensively consider the principle of public hearings; in three instances, interested parties were unable to attend the hearing due to the proceedings being held in small halls. Given the significant public interest in these cases, it was reasonable to anticipate a high attendance at the hearing.

6.3. The right to trial within a reasonable time is an important challenge for Georgian justice system. In the current period, several long-pending high-profile criminal cases, remaining at the first instace court, have not been completed.

6.4. The postponement of hearings is common. Out of 184 hearings monitored by GYLA 89 (48%) were postponed. The primary reasons for these delays are: **negotiations for plea bargain** in 30 (34%) cases and the **prosecutor's failure to present witnesses** in 17 (19%) cases.

6.5. Judges seldom pose clarifying questions to witnesses. However, there was one instance observed when a judge opted to re-interrogation of a witness rather than asking clarifying questions. This violated the principle of Equality of arms and adversarial principle. Judges tend to be more active in providing instructions to the involved parties.

THE JUDICIARY

At different stages of court hearings, GYLA monitors encounter different challenges. Therefore, below we would discuss the primary findings from the court monitoring.

It still remains problematic that the courts continue to disregard the rights of the detainees presented to the hearing, which is manifested in the discussion of the lawfulness of their detention without their participation. For years, a persistent issue has been the lack of judges' interest in hearing the defendant's position regarding their detention. While the defence has the option to file a motion to review the lawfulness of the detention, it is crucial to note that not all accused individuals have legal representation. Frequently, due to a lack of legal understanding, they are unable to advocate for themselves on this critical matter.

During the current reporting period, in 25% cases the imprisonment was unjustified, a significant figure given the restrictive nature of imprisonment. However, due to the courts' failure to provide or completely provide public information, we are unable to assess the rationale behind the courts' decisions. Nevertheless, from observing public hearings, it is evident that the courts rely on unsubstantiated motions presented by the prosecutor's office.

The ongoing challenge remains in conducting first appearance court hearings in short duration, often limited to 15 minutes. This poses particular difficulty when the individual is detained.

Furthermore, several cases were observed where the judge unilaterally voiced the request outlined in the prosecution's motion, without giving the prosecutor a chance to speak.

Refer to Illustrative Example N1

> J.H. was charged with illegal sowing, growing or cultivation of plants containing narcotics in large quantities. The prosecutor did not substantiate the motion. The judge addressed the accused and outlined that they themselves would read out the prosecutor's motion. Following this, the judge turned to the accused, informing them of the prosecution's motion for bail of 5000 GEL. The accused expressed partial agreement, proposing bail at 2000 GEL. Subsequently, the judge approved bail at 2000 GEL.

This is particularly noteworthy, as during the public hearing, neither the accused nor the attending public were informed of the grounds upon which the prosecutor requested the imposition of bail.

The majority of plea bargain hearings remain formalistic. Judges often fail to thoroughly explain the rights related to the plea bargain and inadequately study the legality and equity of the proposed sanction. In some instances, the accused paid the fine outlined in the plea bargain beforehand. These occurrences further diminish the court's role in the approval process of plea bargains.

At hearings on merits, judges seldom pose clarifying questions to witnesses. However, there was one noteworthy instance observed when a judge opted to re-interrogation of a witness rather than asking clarifying questions and violated the principle of Equality of arms and adversarial principle. Judges tend to be more active in providing instructions to the involved parties.

Although judges are well-aware of Norms of Judicial Ethics of Georgia, which emphasize that during both in the exercise of official authority and in other non-judicial activities, the ethical conduct of the judge upholds the court's authority and public trust,[9] the aforementioned examples reveal instances where several judges vividly breached these ethical standards. They show a disrespectful attitude towards the participants of the proceedings. Furthermore, parties who

[9] Norms of Judicial Ethics of Georgia, available at: https://shorturl.at/qENPU, [last accessed: 02.05.2024].

arrive punctually to the courtroom often have to wait without any explanation for judge and the commencement of the hearing.

Refer to Illustrative Example N2

I.Sh. was charged with theft committed by illegally entering the premises, the prosecution was requesting a bail of 7000 GEL. The judge was late for 3 hours, during this period, the accused, who was not detained, requested permission to leave the courtroom to use the restroom, but the request was denied. After the judge inquired whether the accused agreed with the prosecutor's motion to impose a measure of restraint of 7000 GEL, the accused appeared confused and unsure, struggling to grasp the question's essence. He/She was uncertain whether he/she had the opportunity to present his/her own request. Subsequently, the judge started shouting and arguing, telling him/her that he/she was wasting his/her time, was incomprehensible and made him/her repeat the same thing a thousand times when he/she had a lot to do. This aggressive tone persisted even after the conclusion of the hearing, as the judge urged the accused to promptly free the hall, saying he/she was obstructing the start of another session and to leave the hall on time.

Refer to Illustrative Example N3

The hearing started late due to the prosecutor's delay. The judge, angered by the mentioned fact, did not commence the hearing for several minutes even after the prosecutor's arrival.

Such stubbornness is unacceptable and casts doubt on the professionalism of the judge.

Refer to Illustrative Example N4

H.K. was charged with a failure to execute a judgment, while the accused was submitting the position, the judge rudely urged them to be brief and not to repeat the same thing and not to waste time. He also told them that if they had violated the restraining order once and now had a "broken neck" [with a connotation that the accused had already been in a disadvantaged position due to the former violation in the eyes of the judge) a second time, they should not talk much.

In addition to the fact that such an appeal by the judge is unethical, it also violates the presumption of innocence.

It is also problematic that judges do not fully inform the accused people regarding their rights, also, using language that may not be entirely comprehensible to them. Several instances have been identified where although the accused was informed regarding their right to recusal, the accused remained unclear about its meaning.

Refer to Illustrative Example N5

N.G. was charged with a theft committed repeatedly. The prosecution was requesting a bail of 7000 GEL. The judge arrived several hours late for the hearing, with subsequent sessions scheduled afterward, which led to a rush in formulating their statements as succinctly as possible. The accused, who lacked legal representation, was not afforded a full explanation of their rights.

THE PROSECUTOR'S OFFICE

The level of justification in the motions presented by the prosecution during the first appearance court hearings remains a concern. While many prosecutors approach this responsibility with diligence, despite their training, there persists an issue with providing specific and adequate justification for the requested measures of restraint. Prosecutors frequently refer to abstract threats posed by the accused. A prime illustration of this is evident in cases where evidence is seized, witnesses solely consist of law enforcement officers, yet the prosecution still relies on the grounds of destruction of evidence.

Instances persist where the prosecution justifies the need for detention as a measure of restraint against the accused, on the basis of conducting a forensic psychiatric examination, even when the presented data during the hearing fails to support such an assumption based on the accused's prior history.

The background of the accused continues not to be appropriately examined, this is particularly evident when the prosecution asks for bail as a measure of restraint. Often, the bail amount is unreasonably high, disregarding the financial capacity of the accused.

The prosecution typically seeks two forms of measures of restraing: bail and detention, even in cases where alternatives like an agreement not to leave and to behave properly could be sought.

It is noteworthy that when it comes to the periodic review of detention as a measure of restraint, the prosecutor's office rarely requests its replacement with another measure, even in cases where the threats initially presented by the prosecution are no longer present. In the current reporting period, in one case the prosecutor filed a motion regarding changing a detention as a measure of restraint with bail, however, we can assume that this was motivated not because of the good will of the prosecution, but as a result of a public protest.

Generally speaking, the Prosecutor's Office maintains a strict policy towards domestic violence and family crimes. Furthermore, the Prosecutor's Office is re-training prosecutors on issues of gender-based violence.

DEFENCE LAWYERS

Monitoring reveals that the defence side often fails to effectively utilize alternative measures of bail and detention. Even when legislation allows for an agreement not to leave and to behave properly as measures of restraint, defence lawyers still frequently opt for minimal bail amounts.

Three cases were identified where the lawyers were not acquainted with the case materials and did not have a unified position with the accused, which, of course, impacts the realization of the rights of accused.

Additionally, during the current reporting period, two instances of unethical conduct by lawyers were noted.

Refer to Illustrative Example N6

L.S. was charged with Illegal purchase, storage of drugs, the prosecution was requesting a bail of 5000 GEL, the lawyer acknowledged the necessity of bail and requested a reduction in the amount. However, both the lawyer and the prosecutor demonstrated disrespectful treatment towards the accused in their statements. Additionally, the lawyer displayed a lack of familiarity with the case materials. Despite these issues, the court imposed bail in the amount of 2000 GEL against the accused.

Refer to Illustrative Example N7

In another case, the accused talked about violence committed by the police officers against him. When asked by the Court whether the defence applied to the Special Investigation Service, the defence lawyer stated that he had not had time.

GYLA reiterates that it is vital that lawyers adhere to ethical norms and demonstrate a high level of responsibility in their professional activities.

It should be positiely outlined that lawyers demonstrate proactive efforts in gathering evidence, as well as the high standard of argumentation demonstrated by several lawyers while submitting motions in the courtroom.

FIRST APPEARANCE COURT HEARINGS

Introduction

The monitoring of the first appearance court hearings annually underscores the importance of conducting these hearings in strict accordance with the Criminal Procedure Code, particularly, the explanation of the essence of the charges brought against the accused and the rights of the accused; in case of detainees, the public hearing of the lawfulness of the detention; the application of the court to an appropriate investigative body in case of alleged torture, ill-treatment.[10]

At the first appearance court hearing, the judge, among other things, examines the parties' motions regarding the application of the measure of restraint, assesses the threats coming from the accused and uses the appropriate type of a measure of restraint against the accused to mitigate those threats.[11] When deciding to apply a measure of restraint and its specific type, the court shall take into consideration the personality of the accussed[12] and and the threats emanating from the accused, for which a measure of restraint is imposed.

The Analysis of the First Appearance Court Hearings

During the first appearance court hearings, the court again applied two types of measures of restraint – bail and detention – against 99% of the accused. Compared to Tbilisi and Batumi, , the highest rate of the application of bail (81%) was recorded in the Kutaisi City Court.

In some cases, the court does not use sufficient time to explain the rights to the accused in a language they understand, nor does it fully consider the positions of the parties. Instead, hearings are often conducted in a brief period of time (lasting up to 15 minutes).

The frequency of unjustified use of detention and bail is noteworthy. In most cases, the court deems the prosecutor's requested bail amount unreasonable and subsequently reduces it.

During the current reporting period, GYLA monitors attended 211 first appearance court hearings, where 224 individuals were presented as accused. Out of these, the courts utilized restraint measures in 206 (97%) against 218 individuals (97%). However, in 6 (3%) cases against 6 (3%) individuals, no type of restraint measure was imposed.

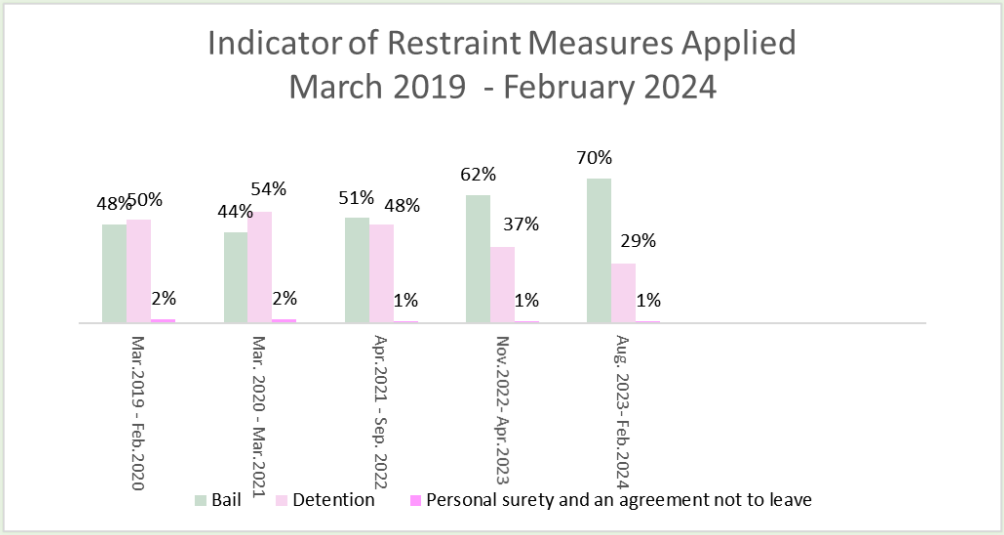
[10] The Criminal Procedure Code of Georgia, Article 191[1].

[11] Types of a measure of restraint include: bail, an agreement not to leave and to behave properly, personal surety, supervision by the command of the behaviour of a military service person, and detention. The Criminal Procedure Code of Georgia, Article 199 (1).

[12] The Criminal Procedure Code of Georgia, Article 198(1,5).

See the basis for restraint measures in the diagram below (duration: March 2019 - February 2024).

Diagram №1



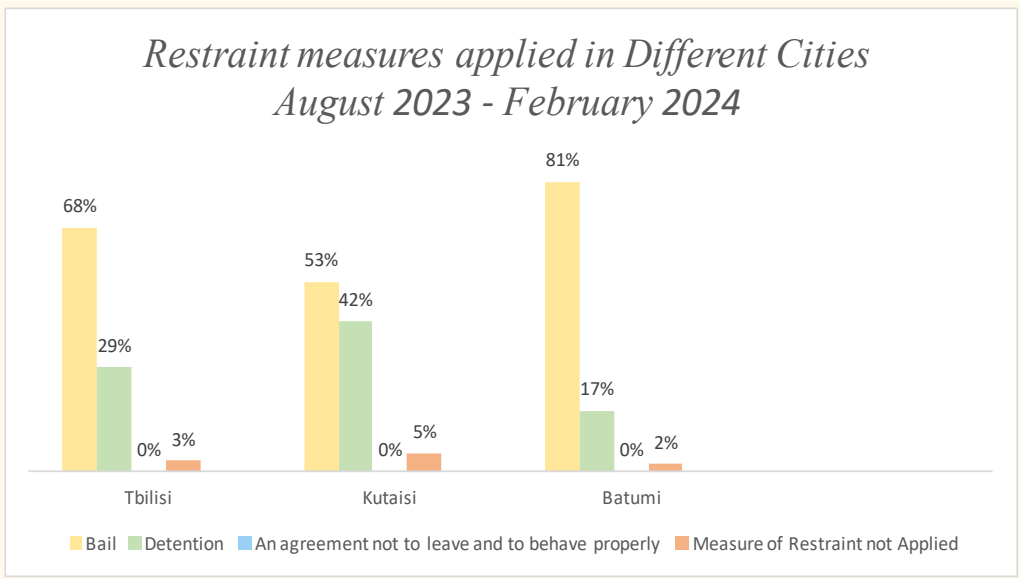
Compared to the previous reporting period,[13] the rate of the application of bail as a measure of restraint has increased by 8%. Moreover, the high rate of application of only two types of restraint measures, bail and detenetion, remains unchanged. In the current reporting period, the defence requested the use of personal surety for only 2 (1%) individuals in a single hearing, which the court did not approve. Additionally, motions regarding the use of an agreement not to leave and to behave properly were not heard in any hearing, despite the court independently assigning this form of restraining measure to the accused.

For years, GYLA has been raising the issue of narrow legal regulation of an agreement not to leave and to behave properly, more particularly, an agreement not to leave or to behave properly may be applied only for crimes that carry imprisonment of not more than one year.[14] Nevertheless, the defence frequently neglects to request the application of an agreement not to leave and to behave properly even in cases where the charge does not legally preclude such a request. This could be attributed to the longstanding practice of courts primarily resorting to bail and detention as restraint measures. Additionally, depending on the objectives of the restraint measure, its effectiveness may be questioned.

[13] Referring to the period from November 2022 to July 2023, GYLA, Monitoring of Criminal Trials Report N17, available at: https://shorturl.at/LYpCa, [last accessed: 24.03.2024].
[14] The Criminal Procedure Code of Georgia ('CPCG'), Article 202.

See the restraint measures applied in different cities in the diagram below (duration: August 2023 - February 2024)[15]

Diagram №2



Compared to the previous monitoring period, the application of bail has significantly increased in Tbilisi and Batumi City Courts.[16]

Detention

Detention, as a measure of restraint, shall be applied only if it is the only means to prevent the accused from: hiding and interfering with the rendering of justice; interfering with the collection of evidence; committing a new crime. The total term of detention of the accused may not exceed nine months. After this period expires, the accused shall be released from the detention.[17]

Detention constitutes one of the most severe forms of interference with human rights and freedoms, therefore, it shall be applied only in exceptional circumstances. Any interference with person's freedoms must be assessed in accordance with, on the one hand, the importance of the presumption of innocence and, on the other hand, the right to a fair trial. The imposition of

[15] During the current reporting period, GYLA monitors attended 128 hearings against 136 accused at **Tbilisi** City Court, where the courts utilized bail as a restraint measure in 87 (68%) cases against 92 (68%) individuals, while detention was applied in 37 (29%) cases against 40 (29%) individuals. While in 4 (3%) cases against 4 (3%) individuals no type of restraint measure was imposed. At **Batumi** City Court – 47 hearings against 52 individuals were attended. Out of these, the court imposed bail in 37 (79%) against 42 (81%) individuls, 9 (19%) cases against 9 (17%) individuals - detention, while in 1 (2%) case against 1 (2%) individual - an agreement not to leave and to behave properly. At **Kutaisi** City Court - 36 hearings against 36 individuals were monitored. Out of these, in 19 (53%) cases bail was imposed on 19 (53%) individuals, in 15 (42%) against 15 (42%) individuals - detention, while in 2 (5%) cases against 2 (5%) individuals, no type of restraint measure was imposed.

[16] Quantity of restraint measures used in the previous monitoring period: the quantity is as follows: **Tbilisi** City Court - 44% detention, 52% bail. **Kutaisi** City Court - bail - 58%, detention - 30%. **Batumi** City Court - bail - 70%, detention - 28%. See, GYLA, Monitoring of Criminal Trials Report N17, 19.

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

detention is relevant only[18] "if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty"[19].

Article 5 of the European Convention imposes a positive obligation on national authorities to present to the court convincing arguments for the necessity of arresting or detaining a person. "The presumption is always in favour of release."[20] The accused must be presumed innocent and it is unacceptable to detain him/her without justification. The accused should not be detained, unless the state presents "relevant" and "sufficient" grounds to justify continued deprivation of liberty.[21]

"To strike a fair balance between state security and personal freedom, it is imperative to ensure that any restriction of freedom outlined in the Criminal Procedure Code is based on exceptional circumstances, serves as a specific measure, is objectively justified and reasonably long."[22]

Identified Trends

During the current monitoring period, at the first appearance court hearings, the court imposed detention at 61 (30%) hearings against 64 (30%) individuals. The prosecution was requesting the application of detention against **91 (42%)** accused. In relation to **27 (30%)** persons, the motion of the prosecution was not satisfied and the court imposed bail instead of the requested detention. With regards to 43 (47%) people, requested detention was not sufficiently justified, more particularly, the motions failed to explain why other, less restrictive restraint measures would not suffice to ensure the proper behavior of the accused. Concerning 16 (25%) people, the court applied detention without justification and/or improper justification.[23]

A case emerged in which the prosecution overstepped legal boundaries, attempting to justify detention by citing an abstract and unsubstantiated argument. The prosecutor unjustifiably referenced the defendant's prior conviction, disregarding the fact that the conviction had been expunged.

Refer to Illustrative Example N8

> At one of the hearings, while justifying the use of detention as a measure of restraint, the prosecutor referred to the defendant's prior conviction. The judge, however, observed that despite this assertion, no supporting evidence was presented in the case. The prosecutor noted that the accused, G.K had not been convicted, was not accused, but was exposed for committing a crime. The judge asked whether the prosecutor knew what exposure meant. The prosecutor argued that there was specific suspicion against the accused because they had been stopped by the police. The judge clarified that without formal charges, there is no evidence to suggest that a crime was committed.

[18] T. Avaliani, *"An analysis of the Latest Standards for the Application of Restraint Measures according to the Case Law of the European Court of Human Rights",* 14.05.2020, 143.
[19] *Labita v. Italy*, no. 26772/95, 06.04.2000, §152.
[20] *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, 13.01.2009, §75; *Patsuria v. Georgia*, no. 30779/04, 06.11.2007, §§66-67.
[21] *Bakhmutskiy v. Russia*, no. 36932/02, 25.06.2009, §§135-136.
[22] T. Avaliani, *"An analysis of the Latest Standards for the Application of Restraint Measures according to the Case Law of the European Court of Human Rights",* 14.05.2020, 144 (Primary Source: Aydin Y., *"The delimination of the scope of one of the guarantees of personal security set out in the European Convention on Human Rights"*, 14)
[23] **GYLA considers detention to be unjustified or improperly justified when the prosecution's grounds are abstract, not specific to the individual or the factual circumstances of the case. This is particularly evident when the court, during a public hearing, justifies imprisonment as a restraint measure with a blanket explanation without discussing why less restrictive measures could not ensure the proper behavior of the accused.**

Bail

Bail is a monetary sum or immovable property.[24] It is used to ensure the proper conduct of the accused. Bail amount shall not be less than GEL 1 000. The maximum amount of bail is not prescribed. **The bail amount shall be determined taking into consideration the gravity of the crime committed and the financial status of the accused.** Before posting bail, the bailor shall be warned about the potential consequences in the case of non-performance of the conditions set out in the written obligation.[25] If the accused against whom bail has been selected as a measure of restraint violates the conditions of this measure or the law, the court, upon motion of the prosecutor, shall render a ruling replacing the bail with a more severe measure of restraint. Under the same ruling, the monetary sum posted as bail will be transferred to the State Budget, and the immovable property, to ensure the recovery of the bail amount, will be transferred for enforcement. Securing bail with immovable property is related to risks of fully or partially losing the residence, however, sometimes it serves as a possibility for an indigent detainee to avoid the detention. In case of proper compliance with duties, the bailor, within a month after the enforcement of the judgment, is fully reimbursed with the monetary sum deposited as bail and the immovable property is released from the arrest. In addition, if the accused fulfils the assumed obligation in good faith, the prosecutor may file, according to the place of investigation or jurisdiction, a motion with the court requesting the reduction of the bail amount. **Bail is frequently used to secure custody. To avoid the risk of covered custody in such cases, it is crucial to set the bail amount based on the financial capabilities of the accused.**

Review of International Standards regarding the Imposition of Bail

Article 5(3) of the European Convention guarantees the right to bail and is in favour of imposing bail during the hearings. The longer the trial is delayed, the more the European Court supports application of bail. Release from detention on the basis of imposing bail can be refused in following cases: the threat of absconding, the threat of interference with the administration of justice, the need to prevent crime and protect public order. The main purpose of the bail is to ensure the appearance of the accused at the court hearing and its amount should also correspond to the said purpose.[26]

According to the European Court of Human Rights, the guarantee of bail is to ensure not the reparation of loss but, in particular, the appearance of the accused at the hearing. The guarantee required for release must not impose a burden on the accused greater than what is warranted by a reasonable level of security.[27] The bail amount should not be set excessively high so as to create an unreasonable expectation that the accused will be unable to pay, thereby unduly prejudicing their legal standing.[28] The amount of bail should be determined in accordance to what is necessary to act as a sufficient deterrent to dispel any wish on his part to abscond, rather than ensuring alleged responsibility for the compensation.[29]

The amount of bail must be set by reference to the detainee, his assets and his relationship with the persons who are to provide the security. The court must take into account the degree of confidence that is possible that the prospect of loss of the security or of action against the

[24] The Criminal Procedure Code of Georgia, Article 200.
[25] *Ibid*, 200(3).
[26] T. Avaliani, *"An analysis of the Latest Standards for the Application of Restraint Measures according to the Case Law of the European Court of Human Rights",* 14.05.2020, 154.
[27] K. Korkelia, N. Mchedlidze, A. Nalbandovi, *"Compliance of Georgian Legislation with the Standards of the European Convention on Human Rights and its Protocols",* 2003, Tbilisi, 100.
[28] T. Avaliani, *"An analysis of the Latest Standards for the Application of Restraint Measures according to the Case Law of the European Court of Human Rights",* 14.05.2020, 154.
[29] *Iwańczuk v. Poland*, no. 25196/94, 15.11.2001, §66.

guarantors in case of his non-appearance at the trial will act as a sufficient deterrent to dispel any wish on his part to abscond.[30] Therefore, national courts should properly justify the need to fix a specific amount of bail in their decisions[31] and must take into account the accused's means to pay the bail.[32]

"The authorities must take as much care in fixing appropriate bail as in deciding whether or not the accused's continued detention is indispensable."[33]

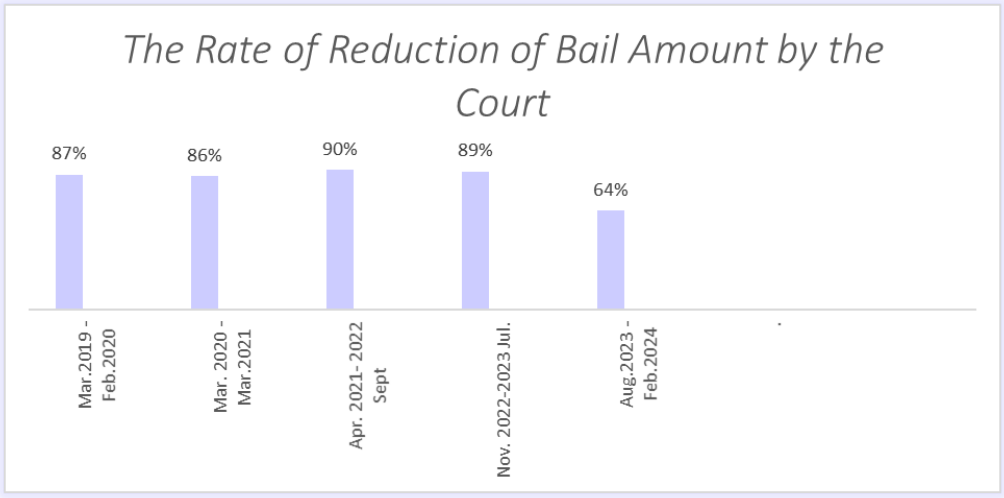
Identified Trends regarding the Imposition of Bail as a Measure of Restraint

The court used bail as a restraint measure against 153 (68%) accused individuals out of 224. Of these, the prosecution requested bail for 129 (57%) persons, of which the prosecution's motion was granted in 126 (98%) cases. In 1 (1%) case, the court used an agreement not to leave and to behave properly as a restraining measure for the accused, and in 2 (1%) cases, the accused was not subjected to any restraint measure. The court granted the minimum (1000 GEL) bail amount for 24 (16%) persons. The prosecution did not demand a bail amount of 1000 GEL for any accused (in the previous reporting period, the prosecution demanded bail of 1000 GEL only in one case). The amount demanded by the prosecution in the form of bail was reduced by the court in the case of 81 (64%) persons. In the last reporting period, this data was equal to 89%.

Despite the reduction from the court, the data is still high. Based on this, it can be concluded that the prosecution's request is largely unsubstantiated, resulting in a significant reduction by the judge.

See the rate of reduction in amount of bail (as a restraint measure) by the court in the diagram below (duration: August 2023 - February 2024)

Diagram №3



In the current reporting period, the bail used for 56 (37%) defendants was unsubstantiated, the amount of money and/or the appropriateness of its use was not consistent. Compared to the

[30] *Gafà v. Malta*, no. 54335/14, 08.10.2018, §70.
[31] *Georgieva v. Bulgaria*, 16085/02, 03.10.2008, §15, §§30-31.
[32] *Gafà v. Malta*, no. 54335/14, 08.10.2018, §70.
[33] *Toshev v. Bulgaria*, no. 56308/00, 10.08.2006, §68.

previous reporting period, this indicator decreased by 6%.[34] **29 (19%) defendants were ordered bail secured with detention by the Court. Compared to the previous reporting period, the mentioned indicator has increased by 3%.**[35]

As mentioned above, the rate of reduction of bail amount by the court decreased. However, the 64% reduction rate indicates that, in many instances, the prosecutor's motions are not adequately supported by the evidence regarding the requested amount.

It is noteworthy that, considering the socio-economic conditions in the country, many individuals cannot afford to pay even the minimum bail amount. Furthermore, the court is unable to set bail at amounts less than 1000 GEL. Securing bail with immovable property also presents a significant challenge, especially for those without a lawyer or a relative to handle the legal procedures associated with securing property while they are detained.

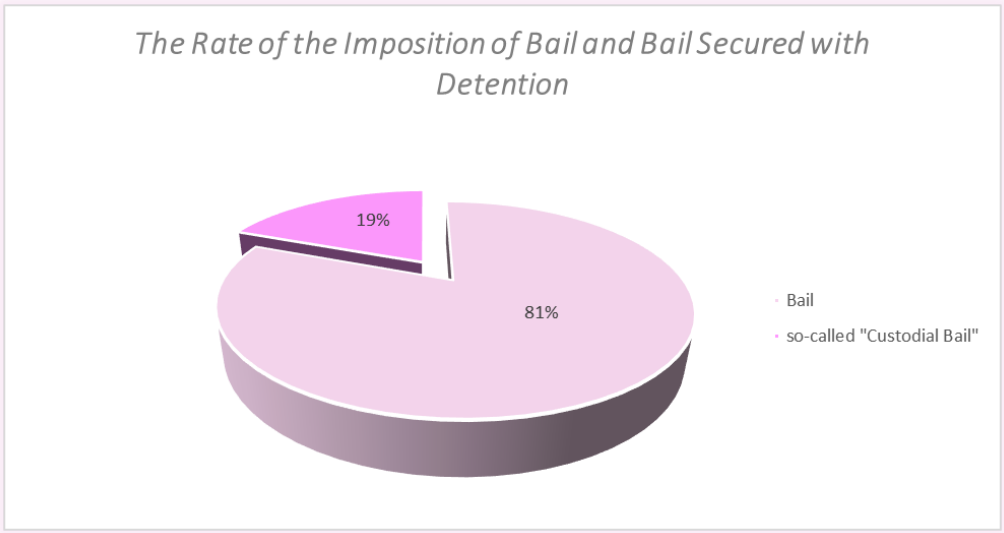
In some cases, the prosecutor's office sumbits a motion for a large amount of bail without assessing the financial situation of the accused.

Refer to Illustrative Example N9

I.D. was charged with misappropriation that has resulted in considerable damage. Appealing to the threats coming from the accused, the prosecution demanded 7000 GEL as a measure of restraint, without providing any evidence about the financial condition of the accused. The accused stated that they were vulnerable. In contrast to this, the prosecutor did not present information that the accused was not registered in the unified database of socially vulnerable families. The court agreed with the position of the accused and granted bail in the amount of 1000 GEL.

See the rate of the imposition of bail and bail secured with detention in the diagram below (duration: August 2023 - February 2024)

Diagram №4



[34] In the previous reporting period, the bail in 81 (43%) cases was unsubstantiated, the reasonableness and/or expediency of the bail amount were contradictory. See, GYLA, Monitoring of Criminal Trials Report N17, 22.
[35] *Ibid.*

In the current reporting period, the court, in addition to bail, imposed 27 (18%) persons with mainly 2 types of additional obligations – appearing at the investigative body with certain periodicity and/or banning communication and approach to the victim.

GYLA still views it as a problem that, **in accordance with the legislation, the accused cannot independently challenge the additional obligations imposed by the court as part of the restraint measure**. **Therefore, it is crucial for the court to impose any additional obligations in a manner that does not unduly burden the accused, given the restrictive nature of the restraint measure.**

An agreement not to leave and to behave properly and Personal surety

In the current reporting period, the court applied an agreement not to leave and to behave properly against only one person, while the defence sought bail. It should be noted that the defence, even when it is allowed by the legislation, does not request the application of an agreement not to leave and to behave properly and personal surety. The defence requested the application of personal surety against only two individuals, but the court denied this request, resulting in their detention. In the courtroom, the judge explained that the guarantors could not ensure the proper behavior of adult defendants. This reasoning, linking personal surety to the age of majority, lacks legal basis and is unsubstantiated. Furthermore, the guarantors present at the public hearing asserted that they were informed and willing to assume the responsibility of personal surety.

Hearings where the Court did not Apply Measures of Restraint

During this reporting period, 6 accused people presented at their first appearance court hearing were not imposed any type of a restraint measure. The proseuction did not request measures of restraint for four of these people. Of these, three were already detained for other cases, and one had been convicted. In one instance, only the scheduling of the preliminary hearing date was requested. In two cases, the prosecutor requested bail for the accused people, but the court denied these requests.

THE JUDICIAL OVERSIGHT OVER THE LAWFULNESS OF THE DETENTION

It is still a notable trend that the courts do not actively engage in discussions regarding the lawfulness of detention with the involvement of all parties in a public hearing. During the current reporting period, the court addressed the lawfulness of a detention during a public hearing in only one case.

The right to liberty and privacy stands as one of the most fundamental rights, transcending territorial, political, legal, or international boundaries[36] and all states are equally obliged to protect one's right to liberty. The right to liberty[37] is safeguarded by both – the Constitution of Georgia[38] and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Nevertheless, all these documents also set forth the mechanisms for deprivation of liberty and the entities authorized to impose such limitations. According to the purposes for the Criminal Procedure Code of Georgia, arrest is a short-term restriction of a person's liberty.[39] The legislation of criminal procedure defines two types of arrest: to arrest a person with the prior ruling of the judge or on the grounds of urgent necessity, if there is a probable cause. Upon motion of the prosecutor, the court shall deliver a ruling for the arrest of the person without an oral hearing. The ruling may not be appealed.The legislation defines the term of the arrest that shall not exceed 72 hours. Not later than 48 hours after the arrest, the arrested person shall be given an indictment. If an indictment is not given to the arrested person within that period, he/she shall be immediately released.[40] At the first appearance court hearing, the court studies the lawfulness of detention without a prior court ruling, which is crucial to uncover instances of severe interferences in an individual's liberty and mitigating associated risks. Judicial oversight affords the accused the opportunity to address the lawfulness of their detention in a public hearing. **A court decision on arrest, reached after considering arguments from both parties, holds greater legitimacy as the judge does not solely rely on the prosecution's record of arrest**. Ensuring the lawfulness of detention through prior authorization is also crucial, particularly given that court rulings on detention are not subject to appeal. The accused may, by way of civil/administrative proceedings, request and obtain compensation for the damage caused as a result of the unlawful procedural action.[41]

Indeed, the legislation proposes a compensatory mechanism for violated rights, however, as this mechanism is prolonged, it serves as a procedural tool rather than an effective safeguard for weak judicial oversight.

Identified Trends

During the reporting period, 100 defendants appeared at 97 first appearance court hearings as detainees. The court examined the lawfulness of detention only in one case during the public hearing and concluded that the detention grounds were not violated.[42] In this instance, as explained by the judge, an audio-video recording of the detention process was available, seemingly contradicting the circumstances described by the accused. During the previous reporting period, the discussion regarding the lawfulness of detention during public hearing also occurred only once, initiated by a motion from the defence.

For years, GYLA has emphasized that audio-video recordings of detentions serve to protect not

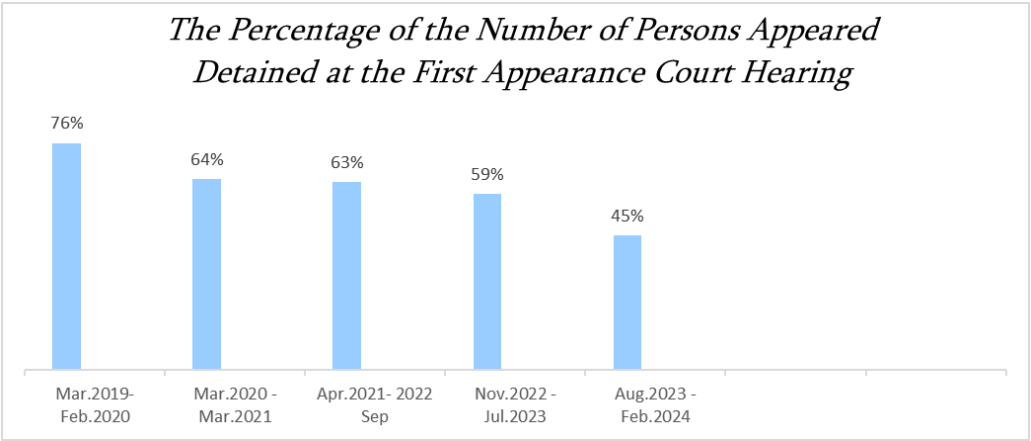
[36] The Universal Declaration of Human Rights, Article 2.
[37] The European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5.
[38] The Constitution of Georgia, Article 13.
[39] The Criminal Procedure Code of Georgia, Article 170 (1).
[40] The Criminal Procedure Code of Georgia, Article 174 (5).
[41] The Criminal Procedure Code of Georgia, Article 38 (11); The Constitution of Georgia, Article 18 (4).
[42] The Criminal Procedure Code of Georgia, Article 171.

only the accused, but, also, police officers from baseless accusations. The aforementioned case serves as a clear illustration of this assertion.

It is noteworthy that the Public Defender has been consistently issuing recommendations regarding video recordings for several years. These recommendations cover various legal aspects, including the requirement to record videos using body cameras and in police vehicles, and the need to store the recorded material for a reasonable period of time. The recommendations also emphasize the importance of equipping police facilities with video infrastructure to ensure comprehensive coverage of the movement of detained individuals. Unfortunately, there have been no legal framework changes to address these recommendations in 2023. Specifically, patrol inspectors and employees of the Central Criminal Police Department and territorial bodies are not obliged to video record their interactions with citizens. Furthermore, there are no explicit rules or deadlines specified for the storage of video material, except for patrol inspectors. In practice, patrol inspectors and employees of the Central Criminal Police Department and territorial bodies rarely record their interactions with citizens.[43]

Diagram №5

See the percentage of the number of persons appeared detained at the first appearance court hearing in the diagram below (Duration: March 2019 – February 2024)



The indicators shown in the diagram demonstrate that the number of persons presented to the court as detainees decreases from year to year. The 45% indicator can be due to the shorter monitoring period and the number of observed processes, in contrast to the previous reporting periods.

For years, GYLA has advocated for the importance of discussing the lawfulness of detention in a public hearing, irrespective of whether the detention was in advance authorized by the court. As previously noted, **the current legislation does not have an appeals mechanism to challenge the initial court's detention rulings.** This underscores the significance of the judge's oversight of the lawfulness of detention during the public hearing of the first appearance. Judges assert that even though they do not publicly discuss this matter during hearings, they still assess the lawfulness and grounds of the detention and incorporate these considerations into their rulings. Nevertheless, it is worth noting that the judgments do not explicitly outline why the court deemed the detention lawful, the circumstances relied upon, or the extent to which detention was deemed necessary based on presented evidence.[44]

[43] The 2023 Report of the Public Defender of Georgia, 71, available at <https://ombudsman.ge/res/docs/2024040116015759558.pdf> [last accessed: 02.05.2024].
[44] GYLA, Monitoring of Criminal Trials Report N17, 28.

PRELIMINARY COURT HEARINGS

At the preliminary court hearing, a judge considers the motions of the parties regarding the admissibility of evidence. If, after the first appearance court session, the charges are changed, the court shall inform the accused of the essence of the charge and the measure of punishment envisaged for the charge.

Similarly, it also examines whether the accused acknowledges their guilt, informs them of the possibility of plea bargain, and also, if the charged crime is triable by a jury, the judge is obliged to explain the provisions of the jury trial and the rights of the accused in relation to it. In addition, it is determined whether the accused agrees to have his case tried by a jury. In case of consent, judge schedules the date of the jury selection session. [45]

The judge of the preliminary hearing, among other things, on his own initiative or on the basis of the motion of the parties, considers the motion to apply, change or annul the restraining order.[46]

If the evidence presented by the prosecution does not provide grounds for the assumption that this person committed the crime with a high degree of probability, the judge of the pre-trial session terminates the criminal prosecution. Otherwise, the case will be referred for consideration on the merits.[47]

Taking into account that the judgment rendered by the court is based on the evaluation of the evidence known to be admissible at the preliminary court hearing, in the current reporting period, GYLA monitors also paid special attention to the consideration of the motions presented by the parties at the session and the decisions made by the judge.

Analysis of the court hearings

Taking into account the equality of arms, the activity of the defence side in the presentation of evidence at the preliminry hearing should be positively noted.

The trial observers attended 99 preliminary court hearings, where 110 persons appeared in court as defendants. In 99 (100%) court hearings, the prosecution submitted motions on the admissibility of evidence. In 20 (20%) cases, the defence considered the evidence of the prosecution to be indisputable, and in 3 (3%) cases, partly disputable. [48] In 2 (2%) cases, the defense party requested the declaration of inadmissibility of the evidence presented, and in the case of 4 (4%) cases, the court did not satisfy any of the mentioned motions. In one criminal case, the insanity of the accused was established when committing the crime, the court stopped the prosecution based on the motion of the prosecution.[49]

The interests of 81 (74%) defendants were protected by a lawyer. In 21 (21%) cases, the defence presented evidence, the defense mainly presented information about the defendant's health condition, descriptions, witness interview protocols, and in one case, an alternative expert opinion.

GYLA positively evaluates the activity of the defense side in the presentation of evidence. In accordance with the current legislation, the burden of proof rests with the prosecution. Albeit this, until both the investigator and the prosecutor are representatives of the prosecution[50],

[45] The Criminal Procedure Code of Georgia, Article 219.
[46] The Criminal Procedure Code of Georgia, Article 219 (6).
[47] *Ibid.*
[48] The Defence requested to examine victim's examination records during the hearing on merits in 2 cases, while in one case, witnesses' examination records were contested.
[49] The Criminal Procedure Code of Georgia, Article 191. 2
[50] The Criminal Procedure Code of Georgia, Article 3(6)

there is a concern that the investigator, as part of the prosecution, may not make sufficient efforts to conduct an investigation thoroughly, fully and impartially.

The court fully satisfied 97 (98%) of the parties' motions regarding the admissibility of evidence, in one case the evidence presented by the defense was considered partially admissible, in one case the hearing was postponed.[51]

In the current reporting period, as well as in the previous reporting period, the court established that a set of mutually compatible and convincing evidence was presented at all hearings, which was sufficient for a high level of presumption that a guilty verdict would be issued in the given case, [52] and in no case the prosecution stopped.

On a positive note, it should be underlined that in those cases where the accused was represented without a lawyer and despite the court's explanation, they could not understand well what it meant that the evidence was not disputed, in such cases the court approved the presented evidence as disputed.

Refer to Illustrative Example N10

> In one of the criminal cases, the accused, who did not have a lawyer, was advised by the prosecutor to declare the evidence indisputable before the trial hearing began. During the session, despite the judge's explanation, the defendant did not understand what it meant to prove the evidence as indisputable. The judge classified the evidence presented by the prosecution as disputed evidence and notified the prosecutor accordingly. Specifically, if the defendant did not know what it meant to admit the evidence undisputable, the prosecutor should not have urged him not to dispute it.

The prosecutor represents the Prosecution in court and is not allowed to consult with the accused regarding supporting a certain position during the hearing. If the prosecution observes that a case defined by legislation exists and the accused is unable to defend themselves independently, they are entitled to apply to the relevant body to appoint a lawyer. The process being conducted in compliance with the principles of equality of arms, it is important for the prosecution to understand that it represents the state and is not allowed to interfere in decisions made by the accused.

Refer to Illustrative Example N11

> At another hearing, the accused did not have a lawyer. When questioned by the judge, the accused provided ambiguous answers. A family member sitting in the hall then announced that the accused had suffered a stroke, resulting in memory problems. When asked by the judge if he would be able to defend himself without a lawyer, he responded vaguely. In the aforementioned case, after the prosecution submitted a motion on the admissibility of evidence, the court postponed the hearing. It considered it would be difficult for the accused to defend his rights without legal representation and therefore decided to appoint a lawyer for the accused at the state's expense.

The action of the court in both of the above-mentioned cases should be evaluated positively, because the court acted in accordance with the high standard of protection of the rights of the accused during the court hearings.

[51] See, the example on p.
[52] *Ibid*, Article 3. 12

THE COURT RULINGS ON THE APPLICATION, CHANGE OR ANNULMENT OF A MEASURE OF RESTRAINT

Reviews of detentions as a measure of restraint are frequently still formal in nature.

As mentioned above, the judge of the preliminary hearing, among other things, considers the motion to apply, change or annul the measure of restraint. If detention has been imposed on an accused person, the judge shall, on his/her own initiative, review, at the first preliminary hearing, the necessity to leave the detention in force, regardless of whether the party has filed a motion for change or annulment of the detention.[53]

During the current monitoring period, GYLA monitors attended 22 (22%) preliminary court hearings, where a restraining measure – pre-trial detention - were revised with regards to 23 (23%) individuals. Notably, the court changed detention with bail for only 2 individuals. Reviews of detention often follow a template approach. In some cases, observing the process gives the impression that it is not genuinely aimed at determining whether there is a need to continue detention as a measure of restraint.

According to international standards, existence of reasonable suspicion of the accused having committed a crime is a a condition sine qua non for the lawfulness of the continued detention.[54] The court must give relevant grounds to justify the deprivation of liberty and display special diligence in the conduct of the proceedings.[55]

Refer to Illustrative Example N12

During the session, the detention was also reviewed. The prosecutor argued that the measure of restraint should remain in force because the accused had a prior conviction for a similar crime and was out on bail when the alleged offence had been committed. The prosecutor did not address the threat of evidence destruction. In an irritated tone, the judge questioned why the prosecution had not mentioned this threat, essentially reprimanding the prosecutor. The prosecution responded that the risk of committing a new crime was more significant than the threat of evidence destruction, which was why the latter had not been mentioned. This response further displeased the judge. The defence lawyer contended that there was no threat of evidence destruction during either the investigation or the trial. However, the lawyer could not deny that the accused was on bail. The judge upheld the detention, explaining that, given that evidence in this case was disputed, therefore, the threat of its destruction was still valid, as was the threat of committing a new crime since the accused was on bail for a crime against the same victim.

Such intervention by the judge is impermissible, particularly when their conduct exceeds ethical boundaries and lacks collegiality. The prosecution, in their motion, independently determines which threats justify requesting a specific type of a measure of restraint, without direction or interference from the court. The court retains the authority to assess additional circumstances in their judgment.

It is noteworthy that in many hearings, there were instances where the judge seemed to take on the role of the prosecution. Such occurrences cast doubt on the judges' qualifications, their understanding of the principles of the criminal proceedings, and their proper perception of their role within it.

[53] The Criminal Procedure Code of Georgia, Article 219(4(b)).
[54] *Merabishvili v. Georgia* [GC], no. 72508/13, 28.11.2017, §234.
[55] *Bykov v. Russia* [GC], no. 4378/02, 10.03.2009, §64.

Refer to Illustrative Example N13

During the hearing, the issue of upholding the measure of restraint was considered. The prosecutor did not substantiate the existing threats, merely stating that a search warrant had been issued for the accused and that detention should continue. The defence lawyer argued that the accused had voluntarily appeared at the police station with a confession, explaining his previous absence due to leg and back injuries that left him bedridden. The lawyer added that the accused still experiences leg pain and has difficulty moving, and noted that he is the father of four children. The defence requested bail of 5000 GEL, which the judge granted.

For years, GYLA has called on the Prosecutor's Office of Georgia to assess the threats posed by the accused and, if continued detention is no longer necessary, to initiate changes to the restraint measures.

During the current reporting period, in two cases, upon the prosecutor's motion, restraint measures were reviewed and changed.

INVESTIGATIVE ACTIONS – SEARCH AND SEIZURE

Judicial oversight over investigative actions interfering with the right to private life, such as search and seizure, is weak. The rulings of the courts are mostly blanket and unsubstantiated.

The national legislation and international standards protect the right to respect for private and family life. According to the law, there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[56] The strengthened protection of the private life is also confirmed as rights to personal and family privacy, personal space and privacy of communication is protected by the Constitution of Georgia[57] as well as the principles of the Criminal Procedure Code of Georgia.[58] The interference in accordance with the law can occur through search and seizure during the course of an investigation.[59] The purpose of a search is to find a person, an object, to determine the circumstances, and the purpose of a personal search is to find an object. This investigative action is conducted based on a court ruling authorizing search or seizure or, in the case of urgent necessity, based on a decree of an investigator. Before starting a seizure or search, an investigator is obliged to present a court order, or in the case of urgent necessity, a decree, to a person subjected to the seizure or search. The presentation of the ruling (decree) shall be confirmed by the signature of the person subject to search.[60] In order to conduct search and seizure the prior authorisation is given by the court, in case of urgent necessity, the court shall verify the legality of the investigative action conducted without authorisation.[61]

It is prohibited to arbitrarily conduct the specified investigative action without prior court approval. In each specific case, the prosecution must justify what legal interest urgently needed protection and what substantial harm would result from seeking prior court authorisation. The court, in turn, must safeguard an individual's private life to a high standard.

GYLA litigated two cases[62] at the European Court of Human Rights, where the violation of Article 6 of the European Convention (Right to a fair trial) was established. In both cases, convictions had been based on only the report of the search conducted on the basis of operational information, on the statements of the officers who had participated and the physical evidence obtained as a result of the searches. Additionally, the European Court outlined that the searches in question were conducted on the basis of so-called operational information which, without prior judicial authorisation, was not subjected to judicial scrutiny at either the pre-trial or trial stages.[63]

Furthermore, on 25 December 2020, the Constitutional Court of Georgia significantly strengthened the existing standard in relation to search and seizure.[64] In the aforementioned judgment,

[56] The European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8.
[57] The Constitution of Georgia, Article 15.
[58] The Crminal Procedure Code of Georgia, Article 7.
[59] *Ibid*, Article 119.
[60] The Crminal Procedure Code of Georgia, Article 119.
[61] *Ibid*, Article 120 (1, 2).
[62] *Megrelishvili v. Georgia*, no. 30364/09), 07.05.2020, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202419%22]} ; *Tlashadze and Kakashvili v. Georgia*, no. 41674/10), 25.03.2021, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-208752%22]
[63] The Statement of GYLA: "The European Court has found a violation in the case of planted drugs and a gun," 25.03.2021, available at: https://shorturl.at/f6Fal, [last accessed: 02.05.2024].
[64] The Judgment of II Chamber of the Constitutional Court of Georgia, 25.12.2020, №2/2/1276 - №1276 Constitutional Claim "Giorgi Keburia v. the Parliament of Georgia", available at: https://matsne.gov.ge/ka/document/view/5071269?publication=0, [last accessed: 02.05.2024].

the court addressed the legality of a search conducted under urgent necessity. It established that even if law enforcement officers discover and seize an illegal item during such a search, this fact alone does not justify the legality of a search conducted without prior court approval. The Constitutional Court emphasized that the outcome of the search is irrelevant when assessing whether a search conducted under urgent necessity was justified. Furthermore, the court noted that searches should not be conducted solely based on information from an operative source or an anonymous individual. Reasonable belief requires at least one additional piece of information or fact for the authorized person to have an appropriate level of suspicion. Therefore, under the Criminal Code, conducting a search based solely on information from an operative source or an anonymous person should be excluded. The Constitutional Court noted that given the complexity of investigative actions, the fact of a search might not always be supported by neutral evidence due to objective circumstances. However, it must be demonstrated that the authorized person took all reasonable measures to obtain such evidence. The court also stated that modern technological advancements allow for the videotaping of the search process to support the prosecution's position. If there was a viable means to videotape the search and the police did not utilize it, it casts doubt on the reliability of the evidence. Furthermore, receiving operational information does not always require urgent action. The authorized person may have time and opportunity to prepare for the search, equip themselves with the appropriate technical means, and, where possible, record the search with a video camera. Even in emergencies, using a mobile phone camera, which is now a common everyday object, is typically not an insurmountable difficulty.

According to GYLA[65], the legislative amendments adopted by the Parliament following the constitutional judgment do not establish a high standard for protecting the rights of the accused, allowing the police significant leeway in failing to obtain neutral evidence. Therefore, it is even more crucial for court decisions to enforce a high standard for neutral evidence

Four years of GYLA's monitoring of criminal trials have revealed that searches and seizures are generally conducted without a prior authorisation, which is consequently recognized lawful by the courts.[66]

During the current monitoring period, the prosecution frequently failed to present the list of evidence at preliminary hearings. It was again observed that searches and seizures are predominantly conducted without prior court authorisation, referring to urgent necessity. The monitoring did not identify a single instance where the court deemed evidence obtained from such investigative actions inadmissible. In many criminal cases, the outcome heavily relies on the evidence obtained through search and seizure, determining the fate of the case and the accused.

To evaluate the existing standards in search and seizure court rulings, GYLA requested copies of related court decisions from the city/district courts in Tbilisi, Batumi, Kutaisi, Rustavi, Gori, Zugdidi, and Telavi. However, only the Batumi City Court responded, providing 10 decisions.

The assessments of the decisions revealed that out of the 10 cases examined, the investigative action of seizure was conducted with prior court authorisation in only one instance. In the re-

[65] GYLA's statement "GYLA responds to the draft law "On Amendments to the Criminal Procedure Code of Georgia" is available at: https://shorturl.at/Gg9Dp.

[66] In 2016, the prosecution submitted 4655 motions to the Tbilisi City Court seeking judicial ruling on the lawfulness of searches and seizures conducted without prior authorisation. The court did not satisfy 431 of these motions. In 2017, 29 motions were dismissed out of 8495; In 2018 – 10 out of 11364, in 2019 – 18 out of 12767, according to data of June 2020 – 9 out of 6002. The data of the Rustavi City Court is as follows: in 2016 – 15 motions out of 238 were dismissed, in 2017 – 1 out of 588, in 2018 – 3 out of 913, in 2019 – 1 out of 983, according to data of June 2020 - all 511 motions were approved. The data of Telavi District Court: in 2016 – 81 motions out of 148 were dismissed, in 2017 – 1 out of 455, in 2018 – 2 out 379, in 2019 – all 350 motions were approved, according to data of June 2020, 1 out of 241 was dismissed. The data of Batumi City Court: in 2016 – 26 motions out of 117 were dismissed, in 2017 – 18 out of 254, in 2018 – 23 out of 333, in 2019 – 8 out of 308, according to data of June 2020 – only 2 out of 171.

maining cases, the search and seizure were conducted without prior court authorisation, justified on the basis of urgent necessity. The court deemed all conducted investigative actions as lawful in all cases.

All 10 decisions were blanket and repetitive in their reasoning section. In terms of justification, the court cited the judgment of the European Court in one case, while in the others, it merely copied relevant legal articles without discussing the specific circumstances or evaluating the grounds of urgent necessity.

From these observations, it can be thought that the court continues to overlook the high standard of protection of private life guaranteed by both domestic and international regulations, and fails to exercise rigorous judicial oversight.

Ill-TREATMENT

In 2023, the Special Investigation Service received 2245 notification regarding the alleged crimes committed by a representative of a law enforcement body/an officer[67], out of these 90 (4%) were initiated by the Court.[68]

Since 2019, Article 191[1] of the Criminal Procedure Code has been enacted to enhance the court's ability to respond effectively to instances of torture, degrading, and/or inhuman treatment.[69] Since 2022, impartial and effective investigation into alleged facts of torture, degrading and/or inhuman treatment falls within the jurisdiction of the Special Investigation Service.[70]

In 2023 Report, the Public Defender outlines that some detainees within the internal affairs system continued to report cases of excessive use of force, physical and psychological violence committed by law enforcement officials. It remains problematic to ensure detainees receive information on their rights, to secure timely access to defence attorney, informing their families. The lack of mandatory use of body cameras and the production of audio and video recordings remain significant challenges. Unfortunately, police facilities where detainees are held still lack comprehensive video surveillance systems. Furthermore, it is deeply concerning that the number of cameras in the police institutions has decreased year by year significantly, rather than increased.[71]

The methods of physical violence commonly observed in 2023 by the law enforcement were tight handcuffing and beatings with hands and feet. Detained individuals reported ill-treatment by police officers inside police vehicles. During the reporting period, the National Prevention Mechanism of the Public Defender identified 431 suspicious cases while studying the personal files of detainees in temporary detention centers. The cases include both administrative and criminal detentions.[72]

The Public Defender believes that in terms of the treatment of individuals detained by the police, the situation in 2023 has not undergone significant changes compared to previous years.[73]

In 2023, the Special Investigation Service received 2245 notification regarding the alleged crimes committed by a representative of a law enforcement body/an officer[74], out of these 90 (4%)

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[67] A crime provided for by Articles 144[1]–144[3], Article 332(3)(b) and (c), Article 333(3)(b) and (c), Article 335 and/or yArticle 378(2) of the Criminal Code of Georgia if it has been committed by a representative of a law enforcement body, or by an officer or a person equal to him/her; another crime committed by a representative of a law enforcement body, an officer or a person equal to them, which has caused the death of a person and at the moment of committing it, this person was in the temporary detention cell or in penitentiary institution or in any other place, where he/she was forbidden to leave the place against his/her will by a representative of a law enforcement body, an officer or a person equal to him/her, and/or this person was otherwise under the efficient control of the state;

[68] The Special Investigation Service, Statistics of 2023, 8-9, available at: https://shorturl.at/xHJZ4, [last accessed: 02.05.2024].

[69] The Crminal Procedure Code of Georgia, Article 191[1].

[70] The Law of Georgia on the Special Investigation Service, Article 19.1

[71] The 2023 Report of the Public Defender of Georgia, 44, available at <https://ombudsman.ge/res/docs/2024040116015759558.pdf> [last accessed: 02.05.2024].

[72] *Ibid,* 47.

[73] *Ibid,* 47-48.

[74] A crime provided for by Articles 144[1]–144[3], Article 332(3)(b) and (c), Article 333(3)(b) and (c), Article 335 and/or Article 378(2) of the Criminal Code of Georgia if it has been committed by a representative of a law enforcement body, or by an officer or a person equal to him/her; another crime committed by a representative of a law enforcement body, an officer or a person equal to them, which has caused the death of a person and at the moment of committing it, this person was in the temporary detention cell or in penitentiary institution or in any other place, where he/she was forbidden to leave the place against his/her will by a representative of a law enforcement body, an officer or a person equal to him/her, and/or this person was otherwise under the efficient control of the state;

were initiated by the Court.[75] Compared to the previous year, the data has increased by 1%.[76]

Since 2024, the Special Investigation Service launched the instruction on the use of handcuffs against detained persons, which defines the form, size, and cases of handcuffing and use of force.[77] GYLA monitors and positively assess **the instruction on the use of handcuffs against detained person.** The aforementioned document represents a significant precedent, enhancing clarity regarding the guidelines for the utilization of handcuffs, a crucial law enforcement tool. Nevertheless, given the complexities associated with the restrained application of handcuffs within policing practices, it would be beneficial to introduce a comparable instruction within police procedures to establish a standardized framework governing the appropriate use of handcuffs across law enforcement agencies.

In the current reporting period, 3 accused people spoke about alleged ill-treatment at the court hearing, in all cases the court reacted within the scope of competence.

Refer to Illustrative Example N14

Following the explanation of rights, the accused raised complaints regarding violations. He stated that during a personal search, his mobile phone was confiscated and information was sent to the investigators. Additionally, he alleged threats, having been told that his friends would also face arrest. Furthermore, verbal abuse also had taken place. The judge inquired whether the lawyer had reported this information to the relevant authorities, to which the lawyer responded that he had not had time to do so. The judge acknowledged this and expressed the intent to forward the information to the Special Investigation Service.

Refer to Illustrative Example N15

The lawyer of the accused asserted that the current criminal case involved violations of criminal law, with the accused subjected to threats and coercion by the police. The accused participated in investigative actions against their will and signed relevant protocols under duress.

Refer to Illustrative Example N16

Another accused stated that during the arrest and transportation process, police officers subjected them to verbal and physical abuse. The court inquired whether they had lodged a complaint with the relevant authorities. Upon receiving a negative response, the court indicated that they would forward the matter to the Special Investigation Service.

[75] The Special Investigation Service, Statistics of 2023, 8-9, available at: https://shorturl.at/xHJZ4,[last accessed: 02.05.2024].
[76] In 2022, within 10 months, the Special Investigation Service received 2017 notifications regarding the same crime, out of these 77 (3%) were initiated by the court. See, https://sis.gov.ge/uploads_script/statistics/pdf/7-434187a988c1_specialuri-sagamodziebo-samsaxuris-2022-wlis-saqmianobis-angarishi.pdf_01708007264.pdf, 119-120, [last accessed: 02.05.2024].
[77] The instruction on the use of handcuffs to protect the detained person's rights was approved, 2024, available at: https://shorturl.at/gsHZ9, [last accessed: 02.05.2024].

It is alarming that also in the current monitoring period, one person, who was charged with resistance, threat or violence against a protector of public order or other representative of the authorities,[78] noted that during the arrest, the policemen were not identifiable to him, leading to uncertainty and conflict. A similar incident occurred during the previous reporting period.[79]

GYLA again outlines that to prevent such occurrences, it is imperative that if a police officer's identity is not immediately apparent during an arrest, they should identify themselves either before or, if not feasible, promptly after the arrest. This identification should include the display of official identification and a clear explanation of the grounds for the arrest, as well as the rights of the detained individual.

[78] The Criminal Code of Georgia, Article 353.

[79] GYLA, Monitoring of Criminal Trials Report N17, 31, available at: https://shorturl.at/LYpCa, [last accessed: 24.03.2024].

PLEA BARGAIN

Domestic Legislation and International Standards

The basis for the judgment to be passed by the court without considering the merits is a plea bargain under which the accused pleads guilty and agrees with the prosecutor to a sentence, to mitigation or to partial removal of charges.[80]

When requesting a commutation of a sentence, or when making a decision to mitigate or partially remove the charges against the accused, the prosecutor shall take into account the public interest, which he/she shall determine based on the legal priorities of the State, the crime committed and the gravity of the potential sentence, the nature of the crime, the degree of culpability, public danger posed by the accused, personal characteristics, record of conviction, collaboration with the investigation, and the assessment of the conduct of the accused with respect to the indemnification of damages caused as a result of the crime.[81]

According to the Concluding observations, dated 13 September 2022, of the United Nations Human Rights Committee, with respect to drug policy and plea-bargaining system, the Committee again urges the State party to continue its efforts to:

(a) provide and ensure respect for adequate legal safeguards to defendants in the context of plea bargaining, including against abuse and coercion to enter into plea-bargaining agreements, in line with defendants' rights under the Covenant;

(b) increase the transparency of plea-bargaining negotiations and strengthen the role of the judge and the defence in that process.[82]

Plea bargaining, apart from offering important benefits of speedy adjudication of criminal cases and alleviating the workload of courts, prosecutors and lawyers, can also, if applied correctly, be a successful tool in combating corruption and organised crime and can contribute to the reduction of the number of sentences imposed and, as a result, the number of prisoners (*Natsvlishvili and Togonidze v. Georgia*, 2014, § 90).[83]

Results of Monitoring

Judical Oversight over Plea Bargain

Judicial review of plea bargain is weak, as judges tend to uphold the bargains reached by the parties in nearly all instances. Plea bargain hearings are often formal completed within minutes without the judges explaining to the defendants their legal rights regarding the plea bargain.

During the current reporting period, GYLA monitored 170 plea bargain hearings involving 180 individuals. Only one case was identified where the judge did not approve the plea bargain and postponed the session.

[80] The Criminal Procedure Code of Georgia, Article 209 (1).
[81] *Ibid*, Article 210 (3).
[82] Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, CCPR/C/GEO/CO/5, 13.09.2022, para. 32, available at: https://digitallibrary.un.org/record/3987487?ln=en&v=pdf, [last accessed: 02.05.2024].
[83] Guide on Article 6 of the European Convention on Human Rights, para. 289, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_eng, [last accessed: 02.05.2024].

Refer to Illustrative Example N17

The person was charged with abuse of official powers (Criminal Code of Georgia, Article 332(1)). The factual circumstances of the case remained undisclosed during the hearing. Prior to the judge's approval of the plea bargain, a trial recess was announced.

The judge asked the prosecution whether it was known that the accused had been convicted on 16 March 2023.

The prosecution admitted that this circumstance was unknown to them. Surprisingly, the defence lawyer also learned about the conviction from the judge during the hearing.

Subsequently, the prosecutor requested a postponement of the hearing. Additionally, they mentioned that another prosecutor, who was overseeing the case in question, was on vacation.

Furthermore, during the current reporting period, in one case the judge questioned whether the accused comprehensively understood the plea bargain and the extent of their agreement to the conditions outlined therein. Nonetheless, despite these reservations, the judge approved the plea bargain. More particularly.

Refer to Illustrative Example N18

The person was charged with Article 260(1) of the Criminal Code, illegal purchase/storage of drugs. According to the motion of the prosecution, under the plea bargain, the individual would receive a two-year prison sentence, which was deemed conditional, with an identical probation period and a 4000 GEL fine as additional punishment. Moreover, rights granted by the Law on Combating Drug Crime were revoked. The accused expressed a request to the court not to restrict these rights.The judge clarified the provisions of the special law, which mandated the limitation of the mentioned rights, and also emphasized that they lacked the authority to determine the punishment independently.

The judge questioned whether the accused fully understood the essence of the plea bargain and sought clarification from the lawyer. According to the lawyer, the defendant believed they could express their stance to the court concerning the deprivation of rights. It emerged that the lawyer themselves misunderstood the court's role in approving the plea bargain. The judge repeatedly posed questions to the defendant concerning the plea bargain. The accused expressed that the issue should not have been raised and offered an apology. Despite these circumstances, the judge approved the plea bargain.

Informing the accused of their rights

The court does not inform the accused regarding their rights during the plea bargain hearings. However, during the current reporting period, the rate at which these rights were explained improved by 14%.

GYLA is also interested in the issue of informing the rights of the accused at the plea bargain hearings. It is important that the judge informs the accused of their rights and guarantees, and studies the circumstances provided by Article 212 of the Criminal Procedure Code, for example, whether: the plea bargain has been entered into voluntarily and the accused voluntarily pleads guilty, the accused is fully aware of the legal consequences of the plea bargain, the accused had the opportunity to receive qualified legal aid, the accused is fully aware of the nature of

the crime of which he/she is accused, also the sentence foreseen for the crime to which he/she pleads guilty, and others.

It should be positively noted that judges have shown greater diligence in explaining the rights to the accused during plea bargain hearings. In the current reporting period, judges explained the general rights to 162 out of 180 accused (90%). Consequently, 18 defendants (10%) were not informed of their rights. This represents a 14% improvement compared to the previous year's data

Regarding the specific issues related to the plea bargain, as defined by Article 212 of the Criminal Procedure Code, and the explanation of rights, judges predominantly inquired whether the **plea bargain resulted from coercion, intimidation, or other unlawful promises.** Only 2 accused were not asked about these matters.

In 18 (10%) cases, the judge did not clarify to the accused that **if the court does not approve the plea bargain, any information provided by him/her to the court during the review of the plea bargain may not be used against him/her in the future.** While in 19 (11%) cases, the judge did not inform the accused that **a complaint about being subjected to torture, inhuman or degrading treatment filed by the accused will not interfere with the approval of the plea bargain concluded in compliance with the law.**

In last two years, GYLA reports have uncovered instances indicating a lack of robust court oversight over plea bargains - **cases involving advance payment of fines established through plea bargain.**

The current reporting period also revealed that this is an established practice, namely, there were two instances where the judge asked after the hearing whether the defendants had paid the fine in advance or not.

Refer to Illustrative Example N19

> Two people were charged with release, storage, sale or transportation of excisable goods without excise stamps,[84] the prosecution read only the resolution part of the motion. Under the terms of the plea bargain, each person was fined 10,000 GEL. After concluding the session, the judge inquired whether the accused had already paid the fine. If not, they were instructed to provide their exact addresses to the secretary of the hearing.

Paying fine prior to approval of the plea bargain, especially when the punishment is not assigned, falls outside the legal framework.

It remains unclear how authorities proceed when a fine is paid in advance and the court subsequently does not approve the plea bargain. GYLA critically evaluates the diminishing role of the court in the plea bargain hearings.

Conducting plea bargain hearings in a short time

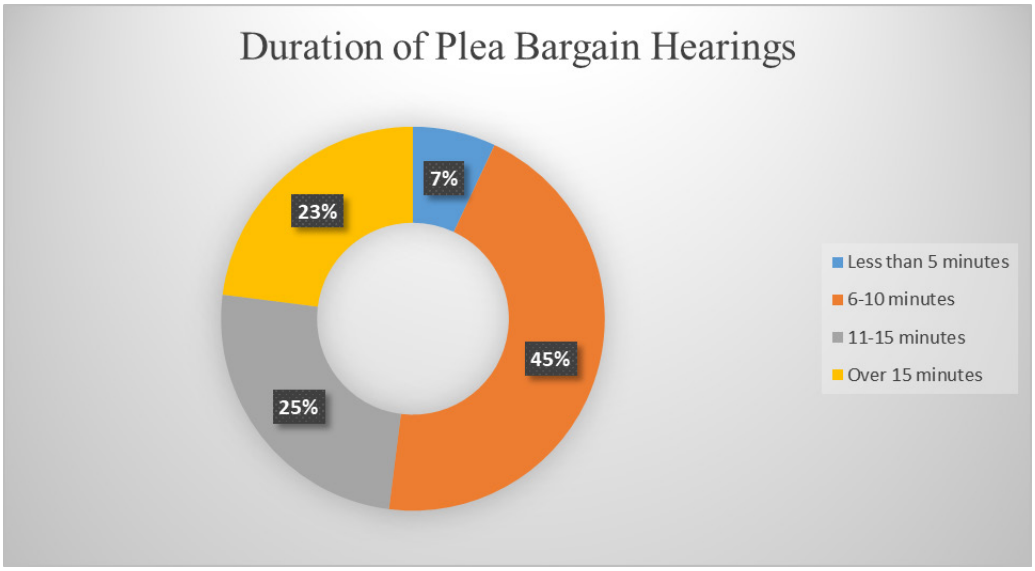
Conducting plea bargain hearings in a short time remains a challenge. From an objective observer's perspective, it appears that some judges do not give these hearings the necessary attention, often approving plea bargains mechanically.

Sometimes plea bargains are heard in such a short time that the discussion concerning the adherence to relevant procedures cannot be assessed. In the current monitoring period, 13 (7%)

[84] The Criminal Code of Georgia, Article 200(2)(c) and Article 25 along with Article 200(2)(c).

hearings were conducted in less than 5 minutes. The hearings of 90 (52%) cases did not exceed 10 minutes.

Diagram №6



We believe that judges should not merely act formally in this process. They should thoroughly review all relevant circumstances, examine the terms of the plea bargain between the accused and the prosecutor, and assess the legality and fairness of the sentence before making a decision on its approval.

The thorough examination required for plea bargains cannot be ensured in 3-4 minute hearings, yet such brief proceedings are common in Georgian criminal justice practice. Notably, during the current reporting period, there were instances where judges concluded their review of cases in less than 3 minutes.

Refer to Illustrative Example N20

In one case at the Tbilisi City Court involving charges under Article 180(2)(b) of the Criminal Code, the judge failed to explain any rights to the accused or to examine the prerequisites outlined in Article 212 of the Criminal Procedure Code. The judge limited the proceedings to hearing only the resolution part and approved the plea bargain within 2 minutes.

Refer to Illustrative Example N21

In another case, the person was charged with theft, a crime envisaged by Article 177(1) of the Criminal Code. The judge did not inform the accused regarding main part of the rights (that he/she has the right a hearing on merits, to waive the right to hearing on merits and others) and concluded the hearing in two minutes.

Refer to Illustrative Example N22

> In another case related to a drug crime (Article 260 of the Criminal Code), the judge did not announce the composition, factual circumstances, or qualification of the crime. The judge also did not ask the accused for basic details such as their name, surname, or age, nor did they explain their rights. Instead, the court moved directly to the prosecutor's motion. The prosecutor briefly read the resolution part and announced only the terms of the plea bargain. The judge asked the accused only two questions: "Do you know what the plea bargain is?" and "Have you been subjected to torture?" After receiving responses, the judge approved the plea bargain. The entire hearing lasted just 3 minutes.

All three cases mentioned above took place at Tbilisi City Court.

Several judges overlook the fact that concluding a case with a plea bargain implies a guilty verdict for the accused and the court must adhere to the appropriate standard[85] when determining whether to approve a plea bargain.

Prosection's attitude towards plea bargain hearings

The prosecution typically enters into plea bargain at the first appearance court hearing, primarily for a less serious crime. These bargains predominantly involve drug and property-related crimes, with fines being the most common form of punishment.

The prosecution mainly enters into plea bargain[86] regarding **drug-related crime**, also, **crimes against property** and **crimes against administrative order**. Within the crimes against administrative order, most frequent was making, sale or use of a forged document, seal, stamp or blank formsmostly,[87] particularly, out of 27 crimes against administrative order, 17 were about the above-mentioned crime.

Plea bargain for crimes against health were also identified (13 cases). Among these, two cases involved intentional serious harm to health[88], while the remaining cases pertained to less serious crimes.

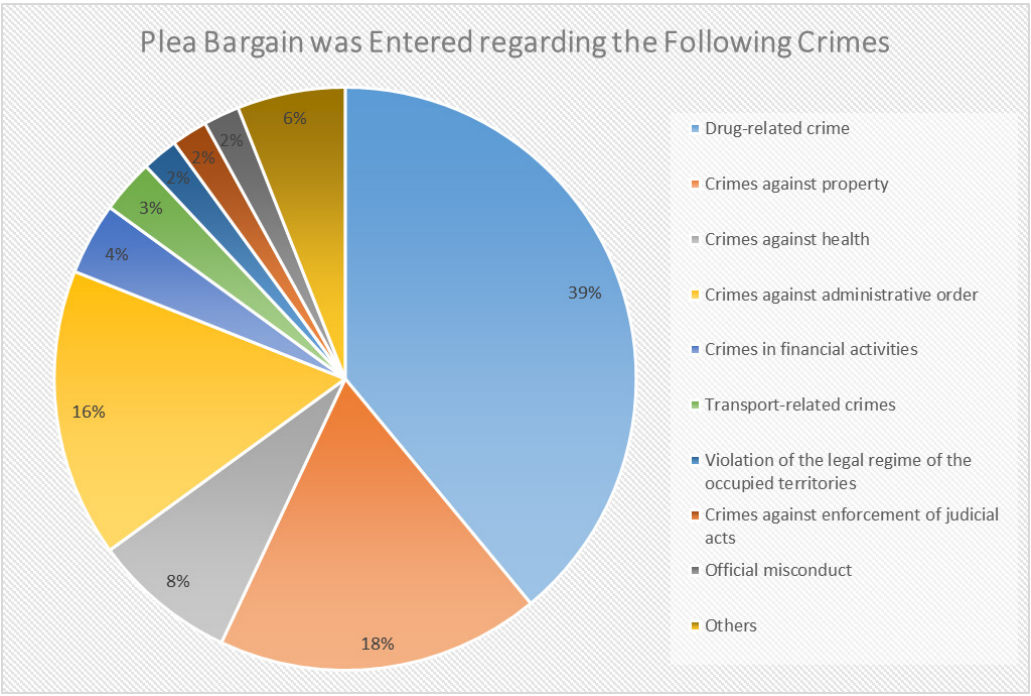
[85] The Criminal Procedure Code of Georgia, Article 3 (11^1).

[86] The data is estimated in accordance with monitored 170 plea bargain sessions and the results are as follows: drug-related crime - 66 (39%); crimes against property - 30 (18%); crimes against health - 13 (8%); crimes against administrative order - 27 (16%); crimes in financial activities - 7 (4%); transport-related crimes - 5 (3%); violation of the legal regime of the occupied territories - 4 (2%); crimes against enforcement of judicial acts - 3 (2%); official misconduct - 3 (2%); others - 6%.

[87] The Crime envisaged by Article 362 of the Criminal Code.

[88] The Crime envisaged by Article 117 of the Criminal Code

*See the Percentage in the **Diagram №7***

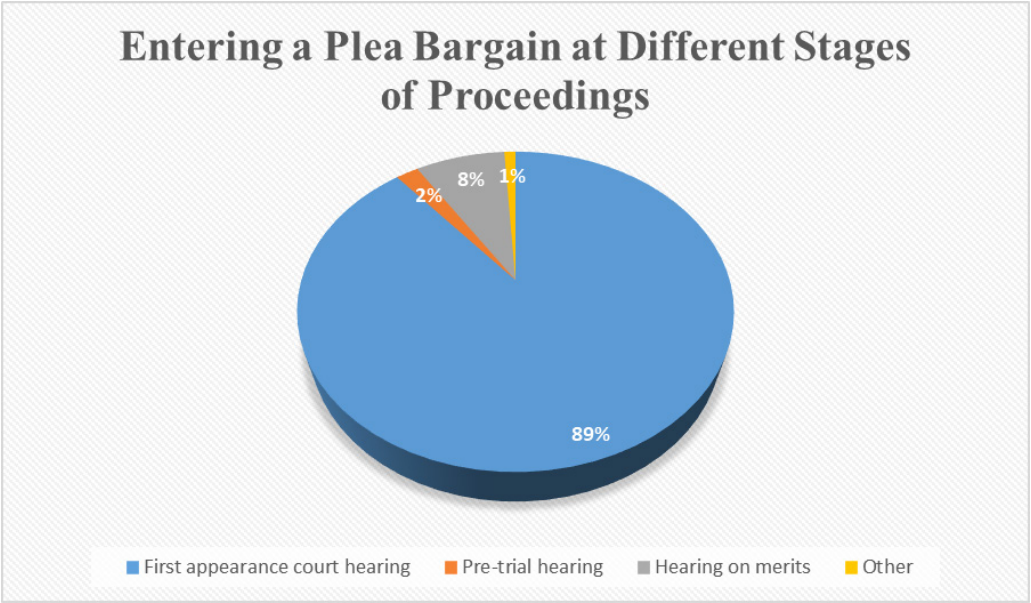


It is notable that the prosecution predominantly enters into plea bargain with individuals accused of less serious crimes, accounting for 52% (94 accused), while 82 individuals (46%) who committed serious crimes also entered into plea bargain.

Only 4 instances were recorded when the prosecution reached a plea bargain with people charged with a particularly serious crime. Out of these, three people were charged with drug-related crimes, while one was charged with Article 378(5) of the Criminal Code, interference with or disorganisation of the activities of a penitentiary institution, by a person convicted of a serious or particularly serious crime.

As for the stages of the proceeding, mostly the plea bargain is entered at **the first appearance court hearing**, thereby further saving the time and resources of the actors involved in the proceedings. In the current reporting period, this indicator increased by **7 percentage points**, and in 160 **(89%)** cases, a plea bargain was entered during the hearing of restraint measure. Only in 4 (2%) cases – at the pre-trial hearing, and in 14 (8%) cases – at a hearing on merits, only in 1 (1%) case at another stage.

Diagram №8



Imposed Punishments[89]

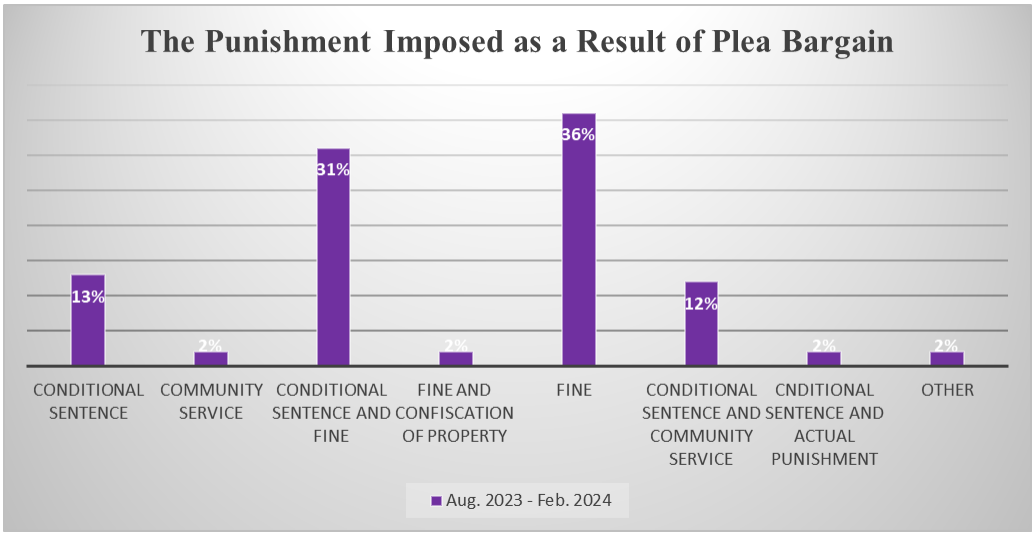
As a result of plea bargains, mostly fines are imposed. Nevertheless, in the current monitoring period, the average amount of the fines has been decreased.

During a plea bargain, the primary concern of the accused typically revolves around the punishment. They seek a lighter sentence in exchange for pleading guilty, compared to what could be imposed based on the merits of the case.

The prevailing trend in practice indicates that a **fine** is the most commonly imposed punishment resulting from a plea bargain, accounting for 65 cases (36%). Additionally, there are significant instances where a conditional sentence and fine are imposed, totalling 55 cases (31%). A separate conditional sentence was utilized in 23 cases (13%). Furthermore, community service with conditional sentence was employed in 22 cases (12%).

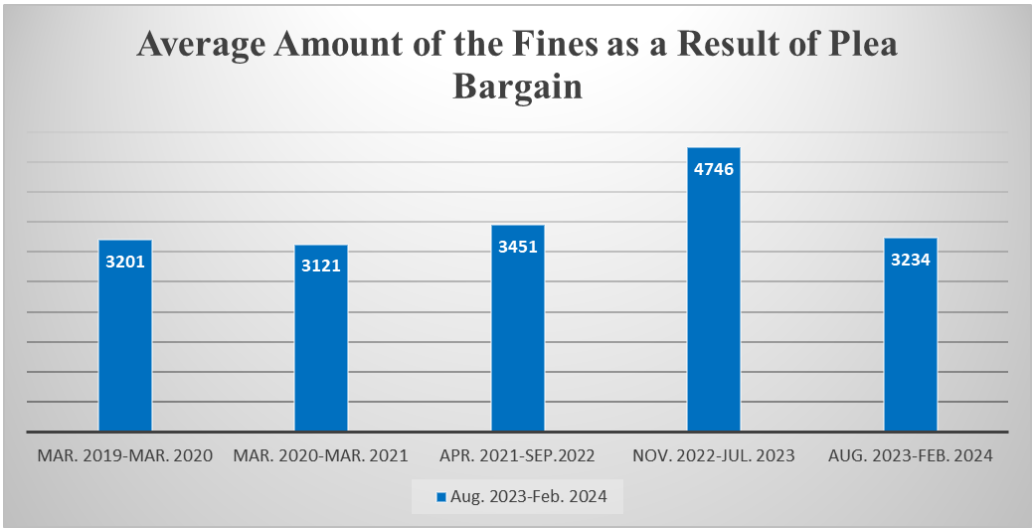
[89] The data is calculated from the plea bargain signed with 179 accused. Penalties expressed as amounts and percentages are as follows: conditional sentence - 23 (13%); community service - 3 (2%); conditional sentence and fine - 55 (31%); fine and confiscation of property - 3 (2%); fine - 65 (36%); conditional sentence and community service - 22 (12%); conditional sentence and actual punishment - 3 (2%); conditional sentence, actual punishment, fine - 2 (1%); other - 3 (2%).

Diagram №9



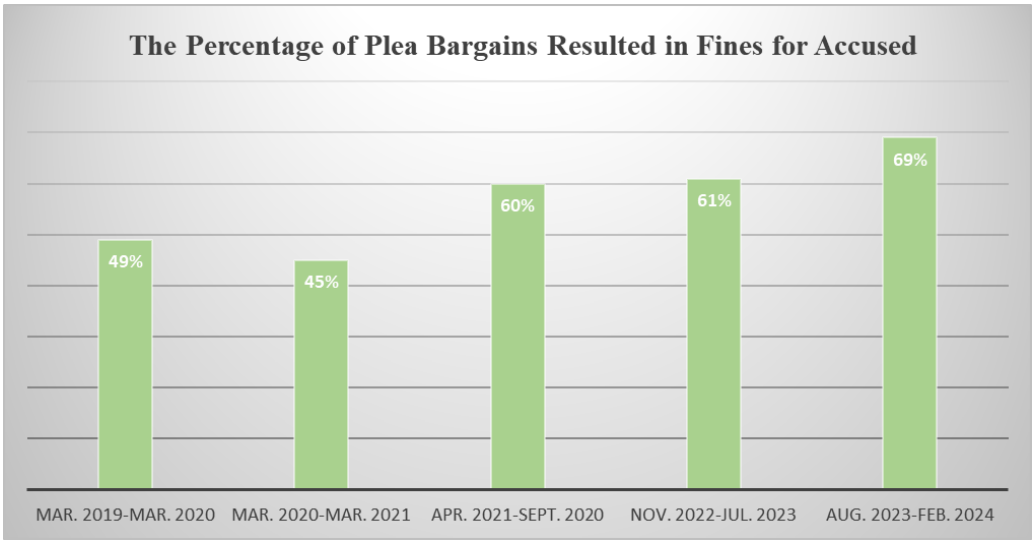
In the current reporting period the average amount of the fines as a result of plea bargain has been significantly decreased compared to previous period amounting to **3234 Gel.**

Diagram №10



The monitoring revealed, in comparison to the previous reporting period, there was an 8-percentage-point increase in the number of accused sentenced to a fine as a result of plea bargain. It is also worth mentioning that this trend has been consistently rising over the past three reporting periods.

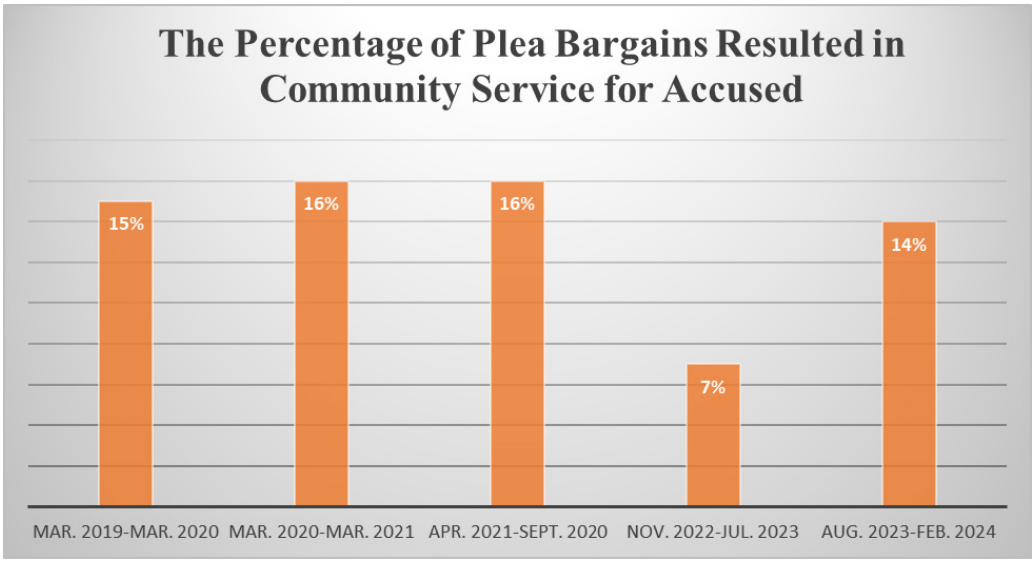
Diagram №11



In accordance with current report data, also, in this reporting period, the application of community service as a punishment increased as a result of the plea bargain.

Generally, compared to other punishments, this type of punishment is less relevant, this could be attributed to the preferences of the accused individuals themselves, as well as to the challenges faced by the state in executing this type of punishment.

Diagram №12



RIGHT TO A PUBLIC HEARING

Domestic Legislation and International Standards

The Constitution of Georgia prescribes court hearings to be generally open,[90] closed hearings shall be permitted only in cases provided for by law and a court judgment shall be declared publicly. The Criminal Procedure Code of Georgia also acknowledges the right to a public hearing, according to the Criminal Procedure Code,[91] *"a hearing, as a rule, shall be public and oral. A hearing may be closed only where so provided for by this Code."* Although some hearings can be closed, it is the constitutional duty of the judge to publicly announce every court judgment, underscoring the significance of the right to a public hearing in a contemporary democratic society.

Public hearing of criminal proceeding is one of the most fundamental principles guaranteed by the international mechanisms – Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms prescribe right to a public hearing.[92]

According to the European Court of Human Rights, the principle of the public nature of court proceedings entails two aspects: the holding of public hearings and the public delivery of judgments.[93]

However, the right to a public hearing cannot be viewed as absolute and unlimited, in line with both current Georgian and international standards. Conducting a closed hearing is allowed only in cases prescribed by law, highlighting its relative nature. *"[...] the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*[94] Holding proceedings, whether wholly or partly, in camera, must be strictly required by the circumstances of the case.[95]

Results of Monitoring

Publishing information about the conduct of hearings, particularly first appearance court hearings, poses a significant challenge. In some high-profile criminal cases, hearings are held in halls so small that most people wishing to attend are unable to do so.

The vast majority of hearings on merits are published publically. Specifically, information about the hearing was publicly available for 106 out of 109 hearings on merits (97%) and for 99 out of 101 pre-trial sessions (98%). **Public availability means displaying information about the hearings on monitors specially placed in the court, in the court building or posting information on the website of the court.**

Unlike pre-trial hearings and hearings on merits, **publishing information about first appearance court hearings has been a persistent challenge.** The judiciary has struggled to mobilize the necessary human resources to ensure timely publication of these hearings, which are subject

[90] The Constitution of Georgia, Article 62 (3).
[91] The Criminal Procedure Code of Georgia, Article 10.
[92] The Universal Declaration of Human Rights, Article 10 and 11(1); The International Covenant on Civil and Political Rights, Article 14(1); The European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6(1).
[93] *Tierce and Others v. San Marino*, nos. 24954/94, 24971/94, 24972/94, 25.07.2000, § 93; *Sutter v. Switzerland*, no. 8209/78, 22.02.1984, § 27.
[94] The European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6(1).
[95] *Welke and Białek v. Poland*, no. 15924/05, 01.03.2011 § 74; *Martinie v. France* [GC], no. 58675/00, 12.04.2006, § 40.

to tight deadlines. In the current reporting period, 155 out of 213 (73%) first appearance court hearings were not publicly announced. Similarly, information about 106 out of 170 (62%) plea bargain hearings was not publicly published.

It is crucial for the courts to allocate adequate resources from their staff to eliminate delays in publishing information about hearings.

In three cases, interested parties were unable to attend the public hearings because the proceedings were held in small courtrooms. Given the high-profile nature of these cases, the court should have anticipated a large number of attendees.

I**n two instances** related to the case of Lazare Grigoriadis[96], the hearing was conducted in a small hall. Despite significant public interest, many people were left outside, unable to attend the hearing.

The **third instance** involved the high-profile so-called Vake Park[97] case, where the final court session was also conducted in a small hall.

In such situations, it is essential for the court to uphold the principle of publicity and conduct cases of high public interest in larger courtrooms whenever possible.

There were also seven instances where public hearing were closed. In two cases, the closure was legitimately to protect the interests of minors, while in five cases, the reason for closing the hearing remained unknown to the monitor; only the bailiff indicated this.

Despite the closure of some court hearings, judges have a legal obligation to announce their judgments publicly. In this regard, no challenges have been observed in practice.

[96] Regarding the case of Lazare Grigoriadis - https://www.gyla.ge/en/post/saqartvelos-akhalgazrda-iuristta-asociacia-ekhmianeba-lazare-grigoriadisis-saqmes.

[97] Regarding the case of Lazare Grigoriadis - https://www.interpressnews.ge/en/article/128030-court-sentences-former-head-of-city-hall-environmental-protection-service-accused-in-vake-park-case-to-3-years-in-prison .

RIGHT TO A HEARING WITHIN A REASONABLE TIME

Domestic Legislation and International Standards

Right to hearing within a reasonable time is one of the fundamental principles guaranteed by the Constitution of Georgia and the Criminal Procedure Code[98], this right is also protected by various international instruments.[99]

The accused has the right to the expediency of justice within the time limits prescribed by Criminal Procedure Code. A court shall prioritise the review of the criminal case in which detention has been applied against the accused as a measure of restraint.[100]

On so-called custodial cases, the consideration of case may not exceed nine months,[101] while in other cases – 24 months (2 years).[102]

Cases should be adjudicated within a reasonable time, without unnecessary delays, and in compliance with the deadlines established by law.

The European Court of Human Rights does not consider the argument from the States regarding the heavy work-load of the courts and efforts made aiming at overcome it as decisive and weighty.[103]

Delayed justice not only prolongs the legal process but also complicates the determination of truth. Witnesses may become harder to find or their testimonies may become less reliable over time, raising doubts about the accuracy of their recollection of events and others.

Identified Trends

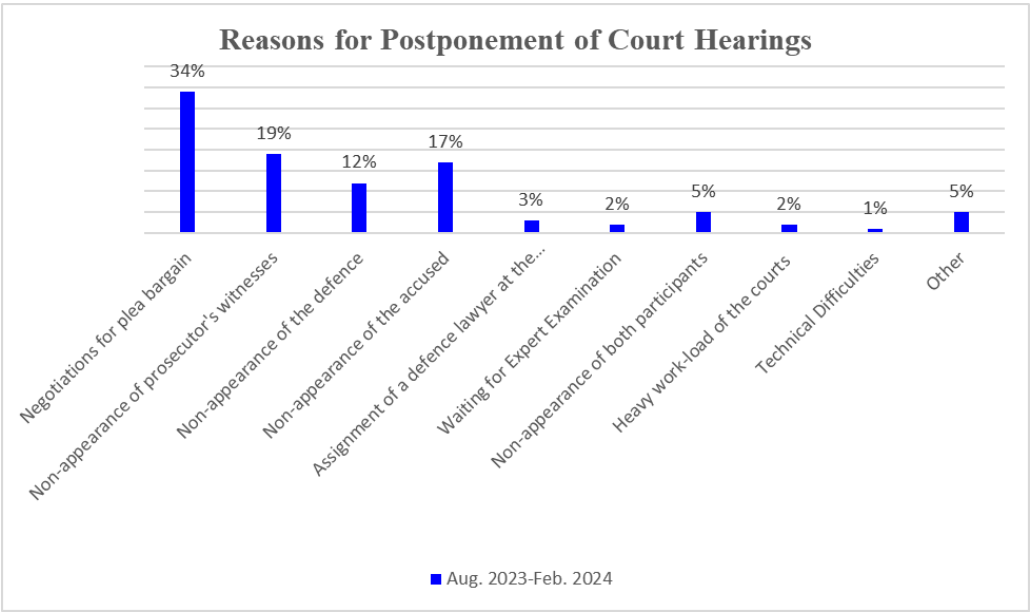
Nearly half (48%) of the hearings monitored by GYLA were delayed. The most common reasons for these delays included plea bargain negotiations and prosecution's failure to present witnesses. Additionally, the monitoring identified several prolonged criminal cases.

GYLA monitored 184 hearings on merits involving 246 individuals, of which 89 (48%) were postponed.

The primary reasons for these delays were **negotiations for plea bargain** in 30 (34%) cases and the **prosecutor's failure to present witnesses** in 17 (19%) cases. Additionally, there were 15 (17%) instances of **the accused not appearing,** often due to lack of escorting or unawareness of the hearing date.

[98] The Constitution of Georgia, Article 31 (1); The Criminal Procedure Code, Article 8.
[99] International Covenant on Civil and Political Rights, Article 3 (3) and Article 14 (3); The European Convention on Human Rights, Article 6 (1), Universal Declaration of Human Rights, Article 10.
[100] The Criminal Procedure Code, Article 8 (2, 3).
[101] The Criminal Procedure Code, Article 205(2).
[102] The Criminal Procedure Code, Article 185(6).
[103] *Eckle v. Germany*, no. 8130/78, 15.07.1982, § 92.

Diagram №13



GYLA has repeatedly outlined the delayed proceedings in the reports.[104]

One of the most visible examples of delays in Georgian justice is the case of the former heads of the Batumi prison. The former heads of the Batumi prison, the head of N3 prison facility and his deputy - Giorgi Vekua and Zaza Jikia - have been charged by the Prosecutor's Office with torture and inhuman treatment of inmates. This case has been under consideration by Batumi City Court since 2014. The case was scheduled to conclude by 1 January 2019. However, the court failed to meet the legally prescribed deadline, leaving the case unresolved even five years after that. Currently, nearly ten years have passed, and the case remains unresolved (no final judgment). Such a prolonged delay unequivocally constitutes a violation of the right to a fair trial.

In the current period, several high-profile criminal cases have not been concluded, such as the case of so-called November 7, the so-called Jackets case, the case of preparing the murder of Badri Patarkatsishvili, the case of Buta Robakidze (part of the indictment of Zurab Adeishvili and Irakli Okruashvili), the Cartographers' case, the Isani district case, and Nika Melia indictment case.[105]

[104] GYLA, Monitoring of Criminal Trials Report N17, 43.47, available at: https://shorturl.at/LYpCa, [last accessed: 30.04.2024].

[105] See the Details of the Cases in Annex N1.

EQUALITY OF ARMS AND ADVERSARIAL PRINCIPLE

Domestic Legislation and International Standards

Criminal proceedings are carried out based on the equality or arms and adversarial principle.[106] A court is obliged to provide the parties with equal opportunities to protect their rights and lawful interests without giving preference to either of them.

A court shall be prohibited from independently obtaining and examining evidence that proves the guilt or supports the defence. The collection and presentation of evidence is the responsibility of the parties.[107]

By limiting the ability of a judge hearing to ask question, the court is prevented from reaching a reasoned and fair judgment. Therefore, the judgment of the Constitutional Court on this issue was important.[108] More particularly, the Plenum of the Constitutional Court with regards to Constitutional Submission of judge declared invalid the normative content of the third sentence of Article 25(2) (in exceptional cases, a judge may, after obtaining consent of the parties, ask clarifying questions if so required for ensuring a fair trial), which limits the ability of a judge hearing the case to ask questions.

Also, the European Court of Human Rights also emphasized that it is a fundamental aspect of the right to a fair trial that criminal proceedings, should be adversarial and that there should be equality of arms between the prosecution and the defence.[109]

Results of Monitoring

At hearings on merits, judges seldom pose clarifying questions to witnesses. However, there was one noteworthy instance observed when a judge opted to re-interrogation of a witness rather than asking clarifying questions. Judges tend to be more active in providing instructions to the involved parties.

In 109 hearings on merits, witnesses were not interrogated at 75 hearings. As for remaining 34 cases, the judge posed a clarifying question only in one instance, more precisely, opted for re-interrogation of a witness.

It is also important that judges do not limit themselves to the function of an arbitrator at the hearings and the court gave instructions to the parties in 7 cases.

In many instances, the court directed the parties to treat specific witnesses as incontrovertible. For instance, in one case, six investigators were interrogated, some of whom were not even cross-examined by the defence. The judge advised both sides, saying, *"it is preferable to treat these witnesses as incontrovertible".* In another instance, the judge told the parties that *"there are 21 witnesses to interrogate, and only the most crucial ones should be interrogated."*

In one instance, the judge's instruction to the accused was to focus on questioning rather than formulating a stance during interrogation. Moreover, the judge repeatedly called for calm during the proceedings, culminating in the accused being escorted out of the courtroom upon the judge's instruction, only to be brought back in during the judgment announcement.

[106] The Constitution of Georgia, Article 62 (5).
[107] The Criminal Procedure Code, Article 25.
[108] The Judgment N3/2/1478 of the Plenum of the Constitutional Court on Constitutional Submission of Tetritskaro District Court, available at: https://constcourt.ge/ka/judicial-acts?legal=12979, [last accessed: 30.04.2024].
[109] *Dowsett v. The United Kingdom*, no. 39482/98, 24.06.2003, §41.

While it is essential for the judge to provide instructions for an efficient process, it is equally crucial to maintain equality of arms and adversarial principle. The judge shouldn't unduly restrict a party's decision on which witnesses to interrogate or deem incontrovertible.

DOMESTIC CRIME

The prosecution maintains a strict stance on domestic violence cases, whereas the courts tend to adopt a more lenient approach toward accused perpetrators of alleged domestic abuse. This leniency is evidenced by the application of less severe restraint measures and the imposition of lighter sentences.

Domestic crimes are still very common, the statistics of this crime is high every year.[110]

GYLA requested information from 7 courts[111] regarding the number of cases involving domestic violence (crime under Article 126^1 of the Criminal Code of Georgia, also, crimes in conjunction with this Article) and domestic crimes (in connection with Article 11^1 of the Criminal Code of Georgia) from 15 July 2023 to 15 February 2024, that were adjudicated by each respective court.

The Gori District Court considered 140 criminal cases regarding domestic violence (crime under Article 126^1 of the Criminal Code of Georgia, also, crimes in conjunction with this Article) and domestic crime (Criminal Code of Georgia, Article 11^1)[112], while Zugdidi District Court heard 14 cases regarding Article 126^1 of the Criminal Code of Georgia[113].

The Telavi District Court considered 47 criminal cases under Article 126^1 of the Criminal Code as well as crimes in conjunction with this Article (in conjunction with Article 11^1 of the Criminal Code).[114]

As per information of the Tbilisi City Court[115], the Tbilisi City Court does not carry out the statistical recording, processing, or placement of information and judicial decisions in the requested form in the public database. Furthermore, due to the volume of information, searching and processing it in the requested format would require a significant amount of time and resources, consequently, fulfilling GYLA's request is not feasible.

According to Kutaisi City Court[116], the City Court does not process or keep statistical records of the requested information. Due to the lack of statistical data, providing the requested information would require the special mobilization of judicial resources. Consequently, given the high number of cases and limited resources, we are unable to fulfill your request. Similarly, the Rustavi City Court cited resource constraints as a barrier to providing the requested public information.[117]

However, even the partial information provided by the courts demonstrates that the figure presented in the six-month period is quite impressive and reflects the reality that the cases of this type of crimes are relevant for different courts, even in terms of geographical distribution.

Imposed Measures of Restraint

In the current reporting period, GYLA monitors attended 39 restraint measure hearings related to domestic crime or domestic violence.

The prosecution's policy on these types of crimes continued to be intolerant, which was also

[110] United Report on Criminal Justice Statistics, available at: https://www.geostat.ge/en/modules/categories/679/unified-report-on-criminal-justice-statistics, [last accessed: 30.04.2024].
[111] City Courts of Tbilisi, Kutaisi, Batumi, Rustavi and District Courts of Zugdidi, Telavi and Gori.
[112] The Response of the Gori District Court, #2312 ð/ფ, 29.02.24.
[113] The Response of the Zugdidi District Court, #176, 28.02.24.
[114] The Response of the Telavi District Court, #96, 01.03.24.
[115] The Response of Tbilisi City Court, #1-0102/10135-10136-10147, 04.03.24.
[116] The Response of the Kutaisi City Court, #1-985-1, 29.02.24.
[117] The Response of the Rustavi City Court, #420/ჯ, 02.03.24.

reflected in motions of measure of restraints. The pre-trial detention was sought in 38 (97%) instances, showcasing a steadfast commitment to the most severe deterrent, while bail was requested in merely 1 (3%) case.

As for the court, in 19 (49%) instances, the court applied pre-trial detention against the accused as a measure of restraint, while bail was applied in 19 (49%) cases. Only in one case the Court did not opt to any measure of restraint.

Refer to example N23 - the case of accused not having being imposed a measure of restraint

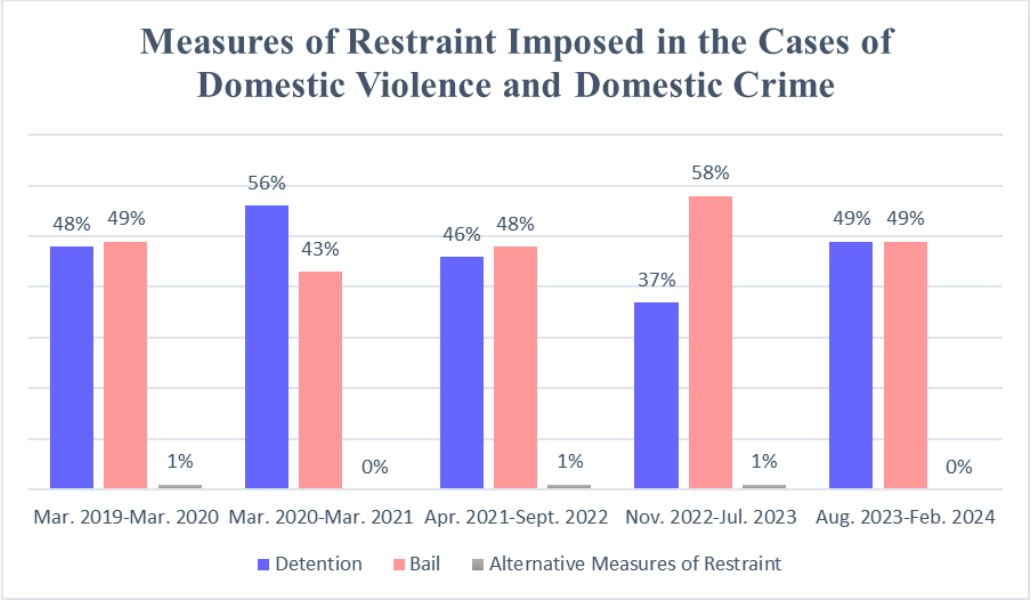
The person was charged with threat against a family member (Articles 111, 151 (2) (d) of the Criminal Code). The hearing did not disclose factual circumstances. The prosecutor was requesting a bail in amount of 3000 GEL against the accused. According to the prosecutor, there was a high probability of commission of a new crime, as the accused had been convicted with violence against a family member. The accused did not plead guilty, in order to improve his legal standing, the accused would have influenced the victim.

As per the explanation of the defence lawyer, there should not have been any restraint measure imposed on the accused, as their monthly salary amounted to 600 GEL, which had been used to take care of the minor children.

The lawyers also pointed out that the accused was a victim of manipulation from the person recognised as victim in this case, as the latter wanted to take their common children abroad. It was also outlined that the accused had not had any communication with the victim and they only wanted to see the children.

The Court did not impose any measure of restraint.

See the number of measures of restraint imposed into cases of domestic violence and domestic crime in the following Diagram N14 (Duration: March 2019 – February 2024)



Compared to the prosecutor's office, the court's approach towards individuals accused in such cases appears to be more lenient and humane In numerous instances, the court granted bail at the minimum amount despite the prosecution having requested detention. The rationale behind the judge's decision to employ lenient measures against individuals accused of repeated violations of the law was sometimes unclear.

Refer to Illustrative Example N24

The judge imposed a minimal amount of bail on person, who was charged with two Articles – Article 11^1, 381 (1) - Failure to execute or interference with the execution of a judgment or other court decisions committed against a family member and – threat committed against a family member (Article 11^1, 151(2)(d) of the Criminal Code).

The prosecution was talking about the threats of committing a new crime and destruction of evidence. It was also pointed out that the accused breached the restraining order in two days afters its imposition, and the wife and the husband had had a conflict since 2016 which had not been resolved. Also, it was outlined that the accused had been previously convicted and the conviction had not been expunged.

The accused did not agree with the position of the prosecutor and noted that they had entered the house to take their coat as they had not known the obligations imposed by the restraining order. The accused also stated that they were employed and had an independent residence. The court opted for bail in the amount of 1000 GEL secured with detetion and assumed that this measure would have had a deterrent effect.

Refer to Illustrative Example N25

In one case the person was charged with Article 126^1 (1) with regards to two episodes of domestic violence, the prosecution was referring to the grounds of gender intolerance. According to the prosecution, the accused had been frequently verbally insulting the victim due to jealousy. Also, the accused had committed various violent acts against the victim in the past. Therefore, there was a risk that the accused would commit a violent act against the victim again.

According to the prosecution, the witnesses interrogated in this case and the victim themselves were the family members of the accused and there was a high probability of influencing them to modify their testimonies. The defence submitted a motion requesting a bail in the amount of 2000 GEL, the defence lawyer was indicating that the accused had never been previously convicted or subjected to an administrative penalty. As stated by the lawyer, the victim themselves visited the accused and tried to provoke them.

The judge did not ask any questions to the accused regarding the financial condition and imposed a bail in amount of 1000 GEL secured with detention, also, prohibiting the accused from approaching or communicating with the victim in any manner without the consent of the latter.

Refer to Illustrative Example N26

In another case, a person was charged with Article 11^1, 381 (1) - Failure to execute or interference with the execution of a judgment or other court decisions committed against a family member.

The prosecutor was requesting the imposition of detention on the accused. As the prosecution explained, there was a high probability that the accused would have committed a new crime, as the **accused had been convicted and sentenced for three episodes of domestic violence**. The accused had just left the penitentiary when the latter violated a restraining order and re-committed the crime. Also, although the accused was divorced from the victim, they had a child together and the accused may have influenced the child.

The prosecutor also indicated that the accused had spent some time in the penitentiary. The indictment included detention, and there were risks of hiding due to the fear of the possible punishment.

The prosecution did not discuss the financial conditions of the accused.

The accused did not discuss any type of measure of restraint from the court and mainly concentrated on the facts of the case.

The accused did not respond to the justification of the prosecutor. The accused only stated that after having left the penitentiary, they visited their child.

The judge asked the accused whether they had been employed and what their income had been. The accused noted that they had been employed daily.

The judge imposed a bail in amount of 1000 GEL secured with detention. After paying the bail, the accused was forbidden from approaching or communicating with the victim in any manner.

Beyond the instances of imposing the minimum bail amount, there were also cases where bail was used without sufficient justification, raising concerns regarding the effectiveness of this measure of restraint.

Refer to Illustrative Example N27

According to the motion of the prosecution, the accused, on the grounds of gender intolerance, committed physical violence, shook and hit the victim 3 times in the face having demanded to get back together. Later, as if the victim did not have the right to lead their private life independently, the accused threatened to cut their throat with a knife and kill them.

According to the prosecution, there was a risk of committing a new crime and destruction of evidence, depending on the nature and intensity of the alleged actions. The accused continuously engaged in unwanted communication with the victim. The accused knew all the witnesses personally and the risk of influencing them was real. The prosecution submitted a motion for detention.

According to the arguments of the defence, the accused has a husband/wife, a minor 13-year-old son, they started a family 14 years ago, the accused and the victim studied in the same class, their relationship started on the initiative of the victim, they knew well that the accused had a wife/husband and a child, they admit that they had only an intimate relationship. They spent only 1 night. The victim wanted the accused to separate from their wife/husband and children, which the accused refused, and after that the problems started. According to the defence, this is a well-thought-out punitive operation.

The judge imposed a bail (2000 GEL) secured with detention.

Refer to Illustrative Example N28

The person was charged with coercion and stalking, the prosecution was asking the detention against the accused. As per the prosecution, the interview protocol of the victim outlined that the accused had frequently verbally abused the victim, had tracked and controled them. Also, the accused had been previously convicted with violent crime. The accused had been under conditional sentence related to the same victim. Therefore, considering this, there was a high probability of committing a new crime.

Also, according to the prosecutor's explanation, the indictment provided up to 2 years of imprisonment. Since they had committed the alleged criminal act under a conditional sentence, they were facing actual punishment. There was a danger of the accused hiding out of fear of impending punishment.

The defence lawyers requested bail for the accused in the amount of 1000 GEL. They explained that the accused had confessed to and repented for the crime. The lawyers focused primarily on the accused's serious health condition, emphasizing the urgent need for medical assistance. However, they did not discuss the factual circumstances of the case or address the justification presented by the prosecutor.

The judge asked the defendant questions about the alleged incident. The accused reiterated his confession and repentance, assuring that such an incident would not occur again.

Ultimately, the judge set bail at 2000 GEL. As an additional condition upon paying the bail, the accused was forbidden from approaching or communicating with the victim in any manner.

The Decisions and Sentences Imposed on Domestic Crimes

The significant hurdle in domestic violence and domestic crime cases lies in the reluctance of victims to testify, often leading to the frequent acquittal of alleged abusers.

Among the 109 hearings monitored by GYLA, 31 hearings on merits related to domestic crime. Out of the latter, where the judgment was reached in 9 cases, while in one case[118], the criminal prosecution was terminated and the accused was ordered a compulsory psychiatric treatment of that person for 1 year and six months, because the prosecutor had presented a report of a examination confirming that the accused was insane.

Out of 9 judgments, 4 were acquittal. **In three of these cases, the person's acquittal was conditioned by the victim's refusal to testify**.

Refer to Illustrative Example N29

The person was charged with coercion committed against a family member, the crime envisaged by Article 111, 150 (1) of the Criminal Code. As per the factual circumstances of the case, the accused had wanted to go abroad, and the accused told their grandmother that if she had not provided them with financial resources for that, they would have burnt her house.

The victim refused to be interrogated at the court. Hence, the information and facts provided to the investigation were not confirmed in court, hence, the judge decided on an acquittal.

[118] In this case, the person was charged with Articles 11^1, 126^1 and 151.

Refer to Illustrative Example N30

In accordance with the facts of the case, the person was charged with domestic violence. The accused allegedly slapped the victim due to **gender discrimination and a stereotypical attitude towards women**. The victim refused to testify in court and continued living with her husband (the accused). The judge remarked to the victim, *"your position had been already clear when you said that you continued to live together with the accused."* As a result, the court could not rely on the inspection and investigative experiment protocols involving the victim, as she did not confirm the circumstances in court. With all other evidence being indirect, the judge ultimately delivered an acquittal.

In recent years, the most serious challenge in addressing these types of crimes has been primarily stemming from victims' reluctance to testify against alleged perpetrators during hearings on merits. Such hesitancy is sometimes the outcome of undue pressure exerted on them. Additionally, economic dependence on the abuser frequently leads to reconciliation. Also, regrettably, victims often find themselves lacking adequate support from the state, investigative bodies, or coordinators of victim. In some instances, victims, subjected to further coercion, may even ask the court for leniency towards the alleged perpetrators. It is imperative for the court to accurately assess the risks to the victim's safety and make decisions accordingly.

See an example of a judge's positive effort in advising a victim to think carefully about exercising the right to avoid testifying against a family member.

Refer to Illustrative Example N31

Prior to escorting the accused to the courtroom by the penitentiary institution, the judge was inquiring the victim and parties regarding the positions.

The defence was stating, "*let's limit ourselves to the plea bargain, we all will be satisfied."*

The victim was accompanied by her son and the accused's cousin. The victim indicated to the judge her intention to testify, immediately after the hearing commenced, regarding the release of her accused husband from the courtroom, expressing that she no longer held any claims against him. **The judge, speaking candidly, urged her to reconsider, citing previous instances where the accused had relapsed into alcohol abuse and inflicted harm, warning of potentially fatal consequences**. The judge also sought the opinion of the child of the accused on his father's addiction, to which he responded that his father would change and abstain from drinking.

The cousin of the accused addressed the judge with following phrases: *"you release him and I know how to take care of him," "they are little birds, sometimes they fight, sometimes they reconcile, everything is acceptable between wife and husband."* The cousin was also laughing and cynically looked at the created situation. The accused's cousin spoke to him/her and stated that the victim was their childhood friend and they knew better than him/her what would be better for both the accused and the victim.

At the beginning of the hearing, the prosecutor in the opening statement outlined the factual circumstances, according to which the accused had forcefully pushed his wife down the stairs, inflicted physical harm by kicking her, and subsequently attempted to strangle her the following day. The victim expressed no claims against the accused and insisted on his release. The judge asked her several times – *"Aren't you afraid?"* She negatively responded and stated that she believed that the accused would change.

There was a visible influence of her family members, notably her son and the accused's cousin present in the courtroom. Eventually, the judge adjourned the session, citing unpreparedness to render a decision.

We believe it crucial to enhance the involvement coordinators of witness and victim in domestic violence cases to alleviate the stress endured by victims, prevent re-victimization and secondary victimization, and ensure their informed participation throughout the investigation and trial stages. This would, at least partially, mitigate the changes in victims' positions. Furthermore, the existence of separate coordinators within the Ministry of Internal Affairs and the Prosecutor's Office poses challenges to achieving a unified support system, as they cannot support the victims during the proceedings, diminishing the effectiveness of their role.

As a result of monitoring, it was found that guilty verdicts were reached in five domestic crime cases, resulting in varied punishments. Two cases resulted in conditional sentences, while community service was imposed in another two instances. Additionally, one case led to "an actual punishment" - imprisonment.

The stringent stance of the prosecutor's office regarding these crimes is evident from requesting severe restraint measures, as well as, indicating gender-based intolerance as a motive, whenever applicable.

Furthermore, as provided by the Prosecutor's Office, they are re-training prosecutors. **Specifically, they are enrolled in two specialized courses aimed at addressing gender-motivated violence. These courses are a specialized course on combating domestic violence and family crime, as well as a specialized course on crimes committed with the motive of intolerance.**

225 prosecutors (with 100 being females), are specialized in combating domestic violence and domestic crimes, while 139 prosecutors (with 65 being female), are specialized in addressing crimes motivated on grounds of intolerance.[119]

In order to support the results of court monitoring, GYLA requested judgments from 7 courts[120] regarding domestic violence and domestic crimes, however, only Batumi City Court provided GYLA with 20 judgments.

Among the 20 cases examined, two resulted in acquittals, in both instances the victim refused to testify.

Refer to Illustrative Example N32

While at their residence, due to a conflict erupted between the accused and a family member, the accused physically assaulted his wife, striking her forcefully on the left side of her face and subsequently grabbing her left hand. This resulted in the woman experiencing physical pain due to the accused's acts of violence.

The person was charged with **Article 126[1] (1) of the Criminal Code.**

As revealed from the case file, the victim refused to tesitfy, while the testimonies of the police officers having been indirect, they had not witnessed the fact.

According to the court's assessment, the prosecution did not present **reliable, convincing and mutually compatible body of evidence**, which would convince an neutral person of his guilt, therefore, **the accused** should be found not guilty and acquitted.

[119] The Response of the Office of the General Prosecutor, #13/15206, 06.03.2024.
[120] City Courts of Tbilisi, Kutaisi, Batumi, Rustavi and District Courts of Zugdidi, Telavi and Gori.

Refer to Illustrative Example N33

During a domestic dispute, **the accused** committed violence against his family member, against a pregnant wife knowingly by him, with whom he shared a household. He forcefully struck her chest with both hands and pushed her against a wall, causing her significant physical pain.

Additionally, in a seaside park near the "Ferris wheel", **the accused** committed another act of violence by striking the woman's left hand with his right hand, resulting in severe physical pain.

Furthermore, in their apartment, the **accused** assaulted his wife by hitting her left hand, leading to intense physical pain.

Moreover, the accused issued threats to his wife, indicating an intent to kill her and destroy her property, causing her to have a reasonable sensation of fear that the threat will be carried out.

The victim exercised her rights under Article 15 and Article 49(1)(d) of the Criminal Procedure Code of Georgia by opting not to testify against her husband during the court proceedings.

The accused did not plead guilty.

The court stated that testimony from witnesses who did not directly witness the ev ents (eyewitnesses) did not constitute direct evidence. Their statements merely conveyed information provided by the victim, rendering their testimony indirect and insufficient for a guilty verdict. Furthermore, the statements made by these indirect witnesses during the investigation failed to corroborate all essential aspects of the violence and threats, notably the absence of details regarding the victim's physical suffering and whether there was a reasonable fear of threat. It is noteworthy that during interrogation, a witness (the victim's mother) affirmed that the victim had not sustained any injuries.

Additionally, other written evidence and submitted documents in the case lacked pertinent information crucial for establishing guilt.

The judge reached acquittal of the accused.

As for the punishment, the study of the courts' judgments reveals that most often the court in cases of domestic violence imposed **community service** as punishment - 8 (45%) cases, the so-called actual punishment in the form of imprisonment - 4 (22%) cases, conditional sentence - 3 (17%) and the so-called actual punishment and conditional sentence together - in 3 (17%) cases.

The court imposed actual imprisonment for particularly serious crime related to a case of murder in family and sentenced the accused to 18 years of imprisonment. This included two instances of violence against the accused and one instance of violence against the mother.

For vivid examples, see the justification of judges when imposing imprisonment, so-called actual punishment

During a dispute stemming from disagreement, the accused threatened to kill a woman with whom he shared a household. This threat causing her to have a reasonable sensation of fear that the threat will be carried out. The victim testified that she had resided with the accused in Batumi and jointly managed a household. In April 2023, the accused sent explicit videos of a sexual nature to her relatives, friends, and colleagues, followed by threats of murder. He expressed

intentions to end her life after viewing the videos, vowing to destroy her reputation thereafter. Given the accused's history of unstable behavior and mental health issues, the victim regarded the threat as as real and feared that the threat would be carried out.

The court imposed a six-month prison sentence on the individual, emphasizing that the nature and severity of the punishment were intended to provide clarity to the accused regarding the gravity of his actions, the societal risks involved, and the consequential severity. This decision aimed to deter future criminal behavior, thus fostering a sense of justice and accountability.

In another instance of domestic violence, the accused physically assaulted his mother by striking her hands and feet multiple times across various parts of her body, causing her significant physical pain. Additionally, the accused issued death threats against his mother, causing her to have a reasonable sensation of fear that the threat will be carried out.

The judge sentenced the accused to a three-year term of imprisonment, with the following explanation provided: - **Considering the personal characteristics of the accused, who has a prior conviction for committing intentional family crimes and exhibits recidivism, having committed a crime against a family member, a mother, in addition to having a history of prior family crime convictions, the court acknowledges the significant suffering endured by the victim, who continues to fear the accused. The court also takes into account that the lenient punishment previously imposed failed to rehabilitate the accused, leading to a repeated offense. Moreover, the court recognizes the accused's mental health condition at the time of the crime, characterized by a disorder induced by simultaneous substance abuse, resulting in impaired cognitive functions and limited awareness of the nature and gravity of his actions (partial sanity). Presently, the current mental state does not preclude the execution of the sentence. He has a mental problem which does not hinder his self-defence. The court also takes into consideration the facts established by the report that he exhibits emotional instability, categoricality impulsivity... – Therefore, the accused should receive a punishment that is both proportionate and deterrent, aiming to foster appropriate conduct in the future. This punishment should serve as a means for the accused to assimilate new social norms, rectify his behavior, and raise self-awareness.**

RECOMMENDATIONS

To Judges

1. More attention should be paid to substantiating a restrictive measure of restraint at the public court hearing, including the reasonableness of a specific amount when granting bail.
2. During the public hearing, the issue of the legality of the arrest should be discussed without the initiative of the defense side, aiming to establish a high standard in terms of preventing the restriction of the right to human freedom.
3. Judges should conduct sessions in compliance with the principles of criminal law and judicial ethics.
4. Ensure the publication of information about hearings, especially to address challenges related to first appearance hearings, and allocate appropriate human resources to ensure the release of public information.
5. Proper judicial oversight should be implemented when approving plea agreements. Judges should demonstrate in the public hearing that they consider all material aspects of the case and adhere to procedural rules, avoiding the perception that plea agreement trials are merely formalities.
6. Judges should fully and clearly inform the accused of their rights granted by law, especially when the person does not have a defense lawyer.
7. To prevent unnecessary delays in proceedings, respond adequately to instances of tardiness or non-appearance of parties at court hearings, and, if deemed appropriate, apply penalties provided by law.
8. In cases of domestic violence and domestic crimes, judges should pay particular attention to the rights of the victim/survivors, in addition to the rights of the defendants, considering the special circumstances of proximity between the perpetrator and victim.
9. When discussing cases of domestic violence and family crime, priority should be given to the safety of the victims, and specific decisions regarding the use of restraint measures or punishment should be made accordingly.

To the Prosecutor's Office of Georgia:

1. The prosecution needs to focus more on the evidence used to support motions for restrictive orders presented to the court.
2. The prosecution should study the personal characteristics of the accused to better determine the risks posed by the accused.
3. When requesting bail as a preventive measure, the prosecution should focus more on substantiating the request, taking into account the defendant's financial situation.
4. If the grounds for remand detention are canceled at the first appearance court session, the prosecution should submit a motion to replace the temporary detention imposed as a preventive measure.
5. If there are sufficient grounds that the defendants are insolvent, the prosecution should ask the court to reduce the bail amount.
6. The involvement of witness and victim coordinators in domestic violence cases should be increased.

To the Georgian Parliament:

1. Legislative changes should be made to the first paragraph of Article 199 of the Criminal Procedure Code of Georgia to increase the number of main types of preventive measures. Additionally, the Criminal Procedure Code of Georgia should be amended so that the prevention measure—an agreement on not leaving the country and appropriate behavior—is not dependent on punishment or crime classification.
2. Consider amending the law to remove the minimum amount of bail from legislation and instead determine it at the discretion of the court, after considering all circumstances of the person concerned.
3. The mechanisms and procedures for reviewing the lawfulness of detention should be regulated at the legislative level. The obligation of the judge to always examine the lawfulness of detention at the first appearance court hearing, both in the presence of a prior ruling or in cases of urgent necessity, should be expressly stipulated.
4. The legislation should be modified to ensure that the Ministry of Internal Affairs and the Prosecutor's Office have joint witness and victim coordinators, and the coordinator involved from the investigation stage can, if necessary, support the victim during interrogation in court.
5. Amendments should be made to the law regarding those who commit domestic crimes; along with punishment, the mandatory education course aimed at modifying violent attitudes and behavior should no longer be linked only to a suspended sentence but should be available for the court to use in conjunction with any other punishment.

To the Georgian Bar Association:

1. Actively plan and implement professional development courses to elevate the professional qualification of lawyers.
2. Ensure that lawyers adhere to the Code of Ethics, positively engage with other participants in the legal process, and ensure their conduct in the defense of rights does not lead to the secondary victimization of the parties involved.

ANNEX

1. Case of November 7[121]

Tbilisi City Court is considering the criminal charges against Mikheil Saakashvili[122] regarding the cases of raiding TV Imedi and dispersing the demonstration of November 7 and the misappropriation of the property of the Patarkatsishvili family. The crime envisaged under Article 333(3 (b; c)) of the Criminal Code of Georgia ("CCG") (Exceeding official powers by a public political official using violence and by offending the personal dignity of the victim, that has resulted in the substantial violation of the rights of natural persons, or of the lawful interests of the public or state) and Article 333(2) of CCG (Exceeding the official powers by a public political official that has resulted in the substantial violation of the rights of natural persons, or of the lawful interests of the public or state). The crime is punished by imprisonment for a term of five to eight years.

According to the position of the prosecution, the investigation has established that in 2006-2007, TV Imedi aired many sensitive reports. This was radically unacceptable to President Saakashvili. He demanded that Badri Patarkatsishvili voluntarily concede the TV company and threatened him with prosecution and forceful confiscation of TV Imedi and other assets if he did otherwise. Despite the threat, Badri Patarkatsishvili did not concede the TV company and, to ensure more solid guarantees for keeping it, in November 2007, he transferred TV Imedi with the right of management to a large media company NEWS CORP EUROPE Inc, which was registered in the United States.

Massive public dissatisfaction with the government escalated in the demonstrations of November 2007. On 4 November 2007, a meeting was held in the Ministry of Internal Affairs of Georgia. Besides other high-ranking officials, Prosecutor General of Georgia Zurab Adeishvili also attended the meeting. At the meeting, Ivane Merabishvili gave an illegal so that law enforcement authorities beat up the demonstrators and use illegal means against them, which would stop the wave of protest in the country.

In the morning of 7 November 2007, police officers armed with batons attacked the demonstrators gathered in front of the Parliament on hunger strike without a warning, and cracked them down. This caused an increase in the number of protesters. In order to disperse them, disproportional force and a prohibited non-lethal weapon was used. The Public Defender, political party members, and journalists were beaten, while the Special Forces physically abused the demonstrators who were seeking shelter in different buildings.

To prevent the protesters from gathering again, in violation of the Constitution of Georgia and the legislation in force, by the decision of the President and the Supreme Commander-in-Chief of the country Mikheil Saakashvili, Armed Forces of the Ministry of Defense of Georgia were deployed in the vicinity of Rustaveli Avenue, who were led by Minister of Defence Davit Kezerashvili on spot.

Apart from the aforesaid, under the instruction of Minister of Internal Affairs Ivane Merabishvili, armed Special Forces of the Security Police Department of the Ministry of Internal Affairs broke into the territory of Mtatsminda Park owned by Badri Patarkatsishvili without legal grounds. They illegally occupied the territory and kicked out the employees.

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[121] See the information from the Official Website of the Prosecutor's Office of Georgia: Prosecutor's Office Has Brought New Charges against the Former High-Ranking Officials Charged with the Dispersal of the Demonstration on November 7 and Intrusion into IMEDI TV, 14.03.2015; Prosecutor's Office Applies to Ukraine with a Request to Detain and Extradite M. Saakashvili, 05.11.2017; Statement of the Prosecution Service of Georgia, 01.10.2021.

[122] Mikheil Saakashvili – The President of Georgia during the commission of the act, currently a former president of Georgia being imprisoned.

Mikheil Saakashvili used the situation and, in violation of the Constitution of Georgia and the legislation in force, decided to raid TV Imedi and stop its broadcasting. On 7 November 2007, under the instruction of Minister of Internal Affairs Ivane Merabishvili and Prosecutor General Zurab Adeishvili, the Special Forces and operatives of the Ministry of Internal Affairs and the Ministry of Finance unlawfully broke into the building of TV Imedi, having no legal grounds. They intentionally smashed the equipment for broadcasting and turned off the television signal of the TV company. They also physically and verbally abused the journalists and the employees of the TV company and the people who were there, including using a non-lethal weapon (rubber bullets) against journalists in the yard of TV Imedi, ignoring the requirements of Article 12 of the Act of Georgia on Police. Afterwards, law enforcement officers blocked off the territory of the TV company for a month.

To create an artificial basis for terminating the broadcasting of TV Imedi, by the organization of Prosecutor General of Georgia Zurab Adeishvili and Ivane Merabishvili, the operation of LEPL National Communications Commission of Georgia was interfered with illegally. As a consequence of the pressure, the Commission members decided to temporarily suspend the broadcasting license of the TV channel on 8 November 2007 in violation of the Act of Georgia on Broadcasting.

After this, Giorgi Ugulava, as Head of Tbilisi Government, exceeded his official power and, on 19 November 2007, annulled the agreement with Linx LTD (owned by Badri Patarkatsishvili) on the lease of the territory of Mtatsminda Park without legal grounds based on the decree bearing his signature on the pretense that Linx LTD refused to fully pay the lease amount determined by the agreement. In reality, the company was honestly fulfilling the obligations undertaken by the agreement and in 2006-2007, GEL 33 637 279 was invested into the rehabilitation of Mtatsminda Park, funded by Badri Patarkatsishvili. The action of Giorgi Ugulava caused a substantial violation of the right of a legal person and the lawful interest of the state.

Moreover, under the instruction of the Minister of Defence of Georgia, Davit Kezerashvili, and with the direct participation of and the pressure from high-ranking Military Police officers and a representative of the Presidential Administration, TV Imedi LTD and Radio Imedi LTD were confiscated from Badri Patarkatsishvili's trustee in a notary bureau in Tbilisi on 19 February 2008. By this, Badri Patarkatsishvili's family was ultimately removed from the activities of the companies. In order to disguise the real owner of the unlawfully acquired assets, Davit Kezerashvili's trustees became the owners of TV Imedi LTD and Radio Imedi LTD on the same day as a result of the sale of shares.

On 20 February 2008, TV Imedi was transferred to a company for management for five years. Consequently, TV and Radio Company Imedi was transferred under Davit Kezerahsvili's factual ownership. It seemed that Badri Patarkatsishvili's relative became the holder of the control package of the company, while Davit Kezerashvili's trustee became the manager. This disguised the identity of the real owner – Davit Kezerashvili.

Furthermore, in February and March 2008, Davit Kezerashvili fraudulently acquired the company of the Patarkatsishvili family – Energy and Industry Complex LTD (former Rustavi Metallurgic Factory).

In this case, along with Saakashvili, the following people are accused: Ivane Merabishvili[123], Zurab Adeishvili[124], Davit Kezerashvili[125] and Gigi Ugulava[126].

[123] Ivane (Vano) Merabishvili – The Minister of Internal Affairs of Georgia during the alleged commission of the act. Is currently free and does not hold office.

[124] Zurab Adeishvili – The Prosecutor General of Georgia during the alleged commission of the act.

[125] Davit Kezerashvili – The Minister of Defenec of Georgia during the alleged commission of the act.

[126] Giorgi (Gigi) Ugulava - The Mayor of Tbilisi during the alleged commission of the act.

2. The Jackets Case[127]

The Office of the Chief Prosecutor of Georgia issued decrees to prosecute Mikheil Saakashvili, the former President of Georgia, and Teimuraz Janashia, the former Head of the Special State Protection Service, related to the embezzlement of State funds in large quantities. The case concerns the embezzlement of State funds in amount of GEL 8 837 461.

According to the prosecution, the investigation has ascertained the following:

In February 2009, Mikheil Saakashvili invited the massage therapist Dorothy Stain, a.k.a. "Dr. Dot" to Georgia. The latter provided relevant services to Mikheil Saakashvili. Video footage depicting the visit of "Dr. Dot" to Georgia was leaked to the internet and, correspondingly, the public learned about her visit and the services provided to the President. It is noteworthy that the fact of crossing the Georgian border by massage therapist Dorothy Stain had not been registered.

In order to avoid the disclosure of the information concerning the expenditures of the President in future, in April 2009, Mikheil Saakashvili decided to covertly spend the sums necessary for his personal purposes. Before that, the expenditures of the President were public and were financed from the resources of the Administration of the President and LEPL "State Maintenance Agency". Therefore, Mikheil Saakashvili would mobilize the necessary sums allocated from the Budget at the Special State Protection Service – an organization directly subordinated to him. This organization would further covertly cover the personal expenses of Mikheil Saakashvili.

Teimuraz Janashia, the former Head of the Special State Protection Service, was commissioned to accomplish the criminal plan.

Through Teimuraz Janashia, in breach of the requirements of the Law of Georgia on State Secrets, the expenditure of the budgetary funds by Mikheil Saakashvili for personal purposes was disguised as the covert (secret) expenditures. To this end, the President Mikheil Saakashvili issued "classified" decrees, upon which GEL 5 952 500 in total were allocated from the Presidential Reserve Fund for the Special State Protection Service. In addition, upon the "classified" decrees issued by Mikheil Saakashvili, the Special State Protection Service was assigned to cover various expenses of the President of Georgia and his family as well as their guests within the country and abroad, in particular: travel and living expenses, the expenses related to cosmetic procedures, food, education, gifts and souvenirs, daily and other expenses.

During the period from 2009 to 2013, upon behest of Mikheil Saakashvili, the Special State Protection Service secretly covered the expenses of the President which could not been legally covered by the Administration of the President of Georgia and LEPL "State Maintenance Agency". The sums addressed for covering such expenses were written-off at the Economic Department of the Special State Protection Service based on the "Classified" reports. The mentioned reports were "Classified" in violation of the requirements of the List of the Data Pertaining to State Secrets, as none of these reports and the attached documents confirming the expenditures contained the information pertaining to the category of state secret.

According to the deal already agreed between Mikheil Saakashvili and Teimuraz Janashia and in compliance with the request of the President, within the period from September 2009 to February 2013, GEL 8 837 461 of public funds were embezzled by covertly covering the costs of services provided for the President of Georgia Mikheil Saakashvili himself and various individuals in Georgia as well as abroad.

[127] See the information from the Official Website of the Prosecutor's Office of Georgia: Office of the Chief Prosecutor Filed Charges Against M. Saakashvili and T. Janashia over the Embezzlement of GEL 8 837 461 Public Funds, 13.08.2014.

3. The Case of Preparing the Murder of Badri Patarkatsishvili[128]

On the basis of a court ruling, on 17 October 2018, the former head of the first service of the second division of the Tbilisi Main Division of the Constitutional Security Department Giorgi Merebashvili was detained on the fact of preparing the murder committed in excess of official power and aggravating circumstances, while former deputy head of the Second Main Division of the department Levan Kardava and head of the second service of the same division Revaz Shiukashvili have been charged.

The investigation has established: during the searches, conducted in the house of one of the accused, within the case well-known to the public, so-called "case of people conducting secret recordings", the recording device owned by the Ministry of Internal Affairs of Georgia was found, which was examined and the forensic examination revealed that two recordings, dated back to 4 and 5 February 2007 were related to the preparation of liquidation of a particular person.

In particular, in the recording dated back to 4 February 2007, the senior official of the Constitutional Security Department, G.D. speaks with Badri Patarkatsishvili's security guard, trying to winning over to his side. While speaking, G.D. confirms that the preparation of the murder is sanctioned by then President of Georgia Mikheil Saakashvili, as Badri Patarkatsishvili is their political opponent and a fierce enemy of the government. According to the recording, it is also established that the liquidation should be executed by the Constitutional Security Department.

As for the second recording, which is dated back to 5 February 2007, it contains the meeting held in the so called "Module" building, during which the senior official of the Constitutional Security Department G.D. and his subordinates, also the employees of the Constitutional Security Department and currently accused, L.K., R.S. and G.M. were preparing Badri Patarkatsishvili's murder to get rid of him from the political space. According to their conversation, they discuss the creation of appropriate conditions for the liquidation of Patarkatsishvili, including the option of obtaining the list of security staff and collecting information about the personnel. Also, they were discussing different ways of murder, in particular, his poisoning with substances that cause the effect of a natural death. According to the same conversation, it is established that all the issues, including the methods of Badri Patarkatsishvili's liquidation, are agreed with the former head of the Constitutional Security Department, Data Akhalaia.

Number of witnesses interrogated in the case and obtained written evidence confirms that in order to prepare the murder, the route of Badri Patarkatsishvili's movement was constantly controlled, including the exits of the airport, he was using.

In addition, R.S. systematically collected data on security staff, while the employees of the Constitutional Security Department offered different kinds of privileges in the part of the persecution to Patarkatsishvili's security members, against whom charges had been brought, in return for creating conditions for the preparation of the murder.

Prosecution against three senior officials, participants of the recordings, of the Constitutional Security Department, exposed by the Prosecutor's Office, continues under Article 18, 209(2 (e) and 3(f)) and Article 333(1) of the Criminal Code of Georgia, which envisages imprisonment from sixteen to twenty years as a punishment.[129]

[128] See the information from the Official Website of the Prosecutor's Office of Georgia: Statement of the Prosecutor's Office on Preparation of Badri Patarkatsishvili's Murder, 17.10.2018.

[129] The Article of Civil.ge, Prosecution: Security Service Planned Patarkatsishvili Murder in 2007, 17.10.2018.

4. The Case of Irakli Okruashvili and Zurab Adeishvili[130]

As a result of the investigation conducted by the Prosecutor General's Office of Georgia, a decree to prosecute has been issued against former Minister of Internal Affairs Irakli Okruashvili and former Prosecutor General Zurab Adeishvili on abuse of powers against Amiran (Buta) Robakidze and the persons in the car with him.

The investigation into the case revealed the following:

On 24 November 2004, late night, at about 02:00 am, on the Akaki Tsereteli Avenue in Tbilisi, near Didube Pantheon, patrol police patrol-inspectors stopped a BMW car with driver and five passengers. During their stoppage and personal inspection, Patrol Inspector G.B. accidentally fired a bullet from a service weapon and severely wounded Amiran Robakidze - a passenger getting out of the car, in the left armpit, who died at the scene.

The same night, then Minister of Internal Affairs of Georgia Irakli Okruashvili received information about the incident. He instructed high-ranking officials of the Ministry of Internal Affairs at the scene, to save the reputation of patrol police and to portray the incident as an attack on the police by an armed group. According to the order issued by Irakli Okruashvili, the high-ranking officials of the Ministry of Internal Affairs put the firearms and ammunition in to deceased Amiran (Buta) Robakidze and the persons in the car. Following that, on the instruction of the former Prosecutor General of Georgia, Zurab Adeishvili, the investigation was conducted in an incorrect legal direction, which was manifested in the procedural fastening of falsified evidence and reinforcing the version developed by high-ranking MIA officials.

As a result of all the above, on the basis of forged evidence, the following persons: G.K., I.M., K.A. L.D. and A.B. were unlawfully convicted under Article 353(2) and Article 236(1 and 2) of the Criminal Code of Georgia. While the deceased, Amiran (Buta) Robakidze was also declared as a member of the criminal group.

A ruling on the charges has been issued against Zurab Adeishvili and Irakli Okruashvili under Article 332 §3 subparagraph "c" (edition effective until May 31, 2006), that is punishable by imprisonment from three to eight years

The decree to prosecute under Article 332(3(c) of CCG (The edition in force until 31 May 2006) has been issued against Irakli Okruashvili and Zurab Adeishvili. The crime is punishable by an imprisonment for a term of three to eight years.

5. "The Cartographers' Case"[131]

On 7 October 2020, the General Prosecutor's Office of Georgia through the cooperation with the State Security Service of Georgia detained the head of Border Relations Service of the Department of Neighboring Countries of the Ministry of Foreign Affairs of Georgia – **Iveri Melashvili**, and the Chief Inspector of the Land Border Protection Department of the Border Police of the Ministry of Internal Affairs of Georgia – **Natalia Ilichova**.

Prior to this, on 17 August 2020, the General Prosecutor's Office launched an investigation into a criminal case, an act intended to transfer part of the territory of Georgia a foreign country, a crime envisaged under Article 308(1) of the Criminal Code of Georgia.

As per the Prosecution, the commencement of the investigation was based on the written in-

[130] See the information from the Official Website of the Prosecutor's Office of Georgia: Former Minister of Internal Affairs and Former Prosecutor General will be Charged with Abuse of Power, 19.11.2019.
[131] See the information from the Official Website of the Prosecutor's Office of Georgia:
Statement of Prosecutor's Office of Georgia, 07.10.2020; Statement of the Prosecutor's Office of Georgia, 21.01.2021.

formation received from the Ministry of Defence of Georgia. According to the information, the experts of the State Border Delimitation-Demarcation Commission under the Ministry of Foreign Affairs were constantly ignoring relevant documents during the agreement of the state borders, and through bypassing these documents, they were making harmful decisions for Georgia. The same information noted that the citizen of Georgia found important archival material in the other countries and handed over to the Ministry of Defence, including topographic maps, which were presented to investigation.

On the basis of the received information the investigation started to study the lawfulness of the actions of certain experts of the Government Commission of Georgia. About 60 people were questioned as witnesses in the case, dozens of investigative and procedural actions were carried out; these actions also consisted of requesting important documents, including cartographic materials, from the National Archives of Georgia, the Public Registry, the Border Police, the archives of the National Security Council and the Ministry of Foreign Affairs, the Administration of the President of Georgia, the National Library, the National Environmental Agency, also, relevant examinations were appointed, as a result of which the following was determined:

During the Soviet Union times, the administrative boundary line between the republics of Georgia and Azerbaijan has been changed several times and it was finally mutually agreed in 1938.

In particular, in March 1938, the supreme governing authorities of Georgia and Azerbaijan approved the administrative boundary line drawn on a map with 1: 500 000 scale.

After the dissolution of the Soviet Union, there was a necessity to establish a border between Georgia and its neighboring countries, for which purpose, a special governmental commission of Georgia was created in 1994 with the task to delimit and demarcate the border between the countries.

In June 1996, at a joint meeting, the special governmental commissions of Georgia and Azerbaijan agreed that the basis of establishment the state border between the countries would be the administrative boundary line mutually approved in 1938.

One of the members of the governmental commission of Georgia and at the same time the head of the group of experts was I.M. This process was led by the expert-cartographer of the commission N.I. The mentioned persons were obliged to carry out geodetic and cartographic works, to find relevant maps and other materials, to check, analyze them and to create map albums of the Georgian border based on them in order to implement the process of delimitation-demarcation. Contrary to abovementioned, the accused did not ensure the conduction of relevant necessary expert examinations and also, they did not involve specialists of the field of cartography in the mentioned process.

It is noteworthy that the sections of the border agreed by the accused individuals themsleves were included in the albums created by them. The latter was the main guide material for the negotiation and agreement process about borders between the two countries, including the period of 2007.

The defendants were obliged to create map albums based on constitutional principles and relevant cartographic material, where the real, historical border of Georgia (1938) would be drawn, which would be the basis for negotiations and agreements between the two countries.

Despite that they had the original topographic map with the scale of 1:200 000 of 1937-1938 years during the whole period of their activity, they were hiding the information from the members of the governmental commission of Georgia for the purpose to not use it in the delimitation process of borders. The original of mentioned map was found in the work cabinet of accused N.I. by the investigation on the basis of a court ruling.

It should be noted that the copy of the mentioned map was available to the members of commission and despite numerous requests from them to use this map in the delimitation process of the border, the defendants were opposing stating that the original of that map had not existes and its copy was not an authentic document.

When lining the state border in the album, the defendants intentioanlly used cartographic material, which did not historically and legally represent or reflect the real position of our country in relation to its territories.

Particularly, in the process of delimitation, I.M. and N.I., while agreen the border line, instead of cartographic material of 1938, intentionally used maps with 1:100 000 and 1:50 000 scale published in 1970-80s, which had never been mutually approved by the countries and were in substantial conflict with our historical boundaries.

It should be outlined that the defendant, I.M., did not hand over to the investigation the maps with 1:100 000 scale published in 1970-80s, which had been in his possession and he had actually used in the process of delimitation of boundaries against the interests of the country. The investigation was able to obtain the mentioned materials only as a result of the search of the working room of I.M.

After the investigation obtained the map with 1:200 000 scale of 1937-1938 for the purpose to study and compare with the agreed border line, cartographic examination was appointed at LEPL Levan Samkharauli National Forensics Bureau where Professors of Ivane Javakhishvili Tbilisi State University, Sokhumi State University and Technical University and leading experts in the field of cartography were involved.

The examination concluded that in the process of delimitation of the borders, the defendants were guided by the boundary lines drawn on maps published in 1970-80s, which, as it was mentioned, contradicts the historical border of our country, including with respect to David Gareja.

The examination also found that drawing made in 1:500 000 scale, which, according to defendants, they were guided with in the process of delimitation of borders having been their main guiding document, cannot be used as a basis of cartographic work, because such drawings do not contain complete topographic information, geographical objects and topographic elements of the location (peaks, solid points, height marks, road crossings, settlements, etc.).

And most importantly, the expert examination concluded that the number of sections of the agreed border between Georgia and Azerbaijan, including the period of 2007, do not comply with the Georgian border line drawn on topographic maps with 1:200 000 scale published in 1937-1938, the difference is up to 3500 hectares to Georgia's detriment. Accordingly, as a result of the criminal actions of the defendants, the threat of losing the territories historically belonging to Georgia has been created.

The prosecution against I.M. and N.I. has started under Article 308(1) of the Criminal Code of Georgia, which considers the imprisonment from ten to fifteen years as the form and size of punishment.

It is a fact that the consideration of this case has been significantly delayed. Even today, witnesses are still being interrogated, and the case remains at the hearing on merits.

6. The Case of Isani N5 District Election Commission (Khuskivadze - Kobaladze)[132]

On 9 November 2020, the Prosecutor's Office charged the detainees – Akaki Khuskivadze and Akaki Kobaladze – for the fact of group coercion, threat and bribe-giving of T.G, also, for the fact of the illegal purchase and storage of ammunition.

The investigation conducted by the Ministry of Internal Affairs concluded that on 6 November 2020, in Tbilisi, on behalf of "United National Movement", A.Kh. and A.K. met T.G. - Chairperson of District Election Commission of Isani N5, Tbilisi – and in exchange for paying 50 000 USD in the form of a bribe, the latter was offered to make a statement in the presence of the media that the electoral fraud had taken place, after which they had to demonstratively leave the post. The defendants threatened that if refused, after the shift of government, they would arrest the chairperson. Also they also threatened with physical retribution of the chairperson and their family members. Also, A.K. had illegally purchased and stored ammunition in his apartment until 7 November 2020, which was taken as a result of a search of his apartment.

On 9 November 2020, the Prosecutor's Office charged A.K. with Article 339(1), Article 150(2(b)), Article 151(2(a)) and Article 236(3). A.Kh. was charged with Article 339(1), Article 150(2(b)), Article 151(2(a)).

As of today, the process is practically terminated, and decision-making on these cases is significantly delayed.

7. Nika Melia Indictment Case [133]

As it is known to the public, on 25 June 2019, a criminal investigation was launched against Nikanor Melia[134], a member of the Parliament of Georgia, on the charges of organizing and participating in a group violence, the crime envisaged under Article 225(1) and (2) of the Criminal Code of Georgia.

According to the charges, on 20 June 2019, at around 21:00, MP Nikanor Melia addressed the citizens gathered at the demonstration in the vicinity of the Parliament building in Tbilisi, demanding the resignation of the Chairman of the Parliament of Georgia and other high-ranking officials, and called for breaking into the parliament if their demands were not met in the following hour. Since the ultimatum was not fulfilled, a group of the citizens gathered at the demonstration, led by Nikanor Melia, who was also himself participating, attacked the law enforcement officers securing the Parliament of Georgia with the aim to break into the Parliamentary Palace of Georgia. As a result of the violent acts, both law enforcement officers and peaceful protesters suffered injuries of various gravity while public property and property of certain individuals were damaged and destroyed.

[132] See the information from the Official Website of the Prosecutor's Office of Georgia: The Prosecutor's Office charged the detainees for the fact of group coercion and bribery, also, for the fact of the illegal purchase and storage of ammunition, 09.11.2020; Statement of the Prosecutor's Office of Georgia, 04.12.2020.

[133] See the information from the Official Website of the Prosecutor's Office of Georgia: Office of the Prosecutor General has made a request to the Parliament, seeking a consent to file a motion with court to replace the measure of constraint applied against defendant Nikanor Melia – bail – with a more severe preventive measure – detention, 12.02.2021; Defence attorney of Nikanor Melia, the member of Parliament of Georgia, has been acquainted with the decision on criminal prosecution launched against him by the Prosecutor's Office of Georgia, 26.06.2019

[134] Nikanor Melia –The Member of the Parliament during the commission of the act, currently, he is engaged in political activities.