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MONITORING CRIMINAL TRIALS IN TBILISI AND KUTAISI CITY AND APPELLATE COURT

The Georgian Young Lawyers' Association presented the results of its monitoring of criminal cases in Kutaisi and Tbilisi City and Appellate Courts on 8 December 2016. The court monitoring conducted by GYLA is funded by USAID through the Promoting Rule of Law in Georgia (PROLoG) Activity implemented by the East-West Management Institute (EWMI).

The project aims at increasing the transparency of criminal proceedings in Georgian courts and improving the standards of protection of human rights by monitoring the proceedings at court hearings and analysing collected factual information.

To date, GYLA presented eight court monitoring reports that together covered the period from October 2011 to October 2016. GYLA's report №9 covers the period from February 2016 to July 2016. **During this reporting period the monitoring was implemented based on a new methodology which, in addition to other issues, includes the evaluation of accessibility of justice for vulnerable groups (women, people with disabilities, religious and ethnic minorities, representatives of the LGBT community, etc.).**

The monitoring revealed the following trends with regard to accessibility of justice for vulnerable groups:

- Sometimes judges do not adequately assess threats and risks related to cases of domestic violence, domestic crimes or violence against women and impose unreasonably lenient preventive measures on defendants. Namely, the imposition of bail in 2 (20%) cases out of 10 cases of on domestic violence and domestic crime was unreasonably lenient. In addition, the imposition of an agreement on not to leave the country and due conduct in one case was unreasoned. This poses potential risks to

the lives and health of women who are victims of violence. Also, the adequacy of punishment is a problematic issue in relation to such crimes. **Only in 6 cases out of 22 judgements of conviction (27%) an actual sentence, namely imprisonment at a penitentiary facility, was imposed on the defendants.**

- The prosecutor did not point out a discriminatory motive in any of the cases on domestic violence, domestic crime or violence against women. However, in some cases, the factual circumstances revealed that the behaviour of a defendant was based on the motive of gender discrimination.

- During the reporting period, there were certain cases of stereotypical, stigma-based and unethical attitude of judges, prosecutors and lawyers towards vulnerable groups (women, foreigners, etc.). Such attitudes contained possible discriminatory approaches to a person and created barriers/obstacles for him/her to access justice. However, the fact that the judge reprimanded the party to the proceedings for unethical and inappropriate attitude towards the defendant and his/her rights deserves positive evaluation.

- Although in most cases foreign defendants were provided with interpreters who comprehensively translated for them the issues discussed at the hearings, there were exceptions when the participation of an interpreter was ineffective, due to which the defendants could not perceive and understand the court proceedings.

The general monitoring of court trials revealed the following cases:

- In the majority of cases, preventive measures are applied to defendants. Generally, courts are still using two types of preventive measures: bail and imprisonment.

- The percentage of unsubstantiated decisions imposing bail significantly increased. However, the fact that the number of decisions unreasonably imposing imprisonment

was slightly reduced is welcome. Special gaps are identified with respect to the determination by prosecutors of the amount of bail. **Almost in all cases prosecutors demanded the imposition of bail on defendants without having information on their financial status, and the granting of such demands by the court could be equivalent to imprisonment.**

- Inconsistent approaches by the Prosecutor's Office and the courts have been identified in demanding and selecting preventive measures, despite the fact that the cases did not contain different circumstances of the commission of alleged crimes. This left an impression of administration of justice on an inconsistent and, in a number of cases, selective basis.

- In the majority of cases, the Prosecutor's Office still conducts searches and seizures based on the rule of exception, and the court mainly recognises the investigative actions conducted in such a way to be lawful.

- The situation deteriorated in terms of exercising by the court of proper control over the conclusion of plea agreements. There was an increase in the number of cases when judges failed to fully explain to defendants their rights and paid less attention to the evaluation of the lawlessness and fairness of punishment. Compared to the previous reporting period, the judge approved the plea agreements in all cases. However, it should be noted positively that in individual cases a judge was concerned about the financial status of the defendant and found out whether the defendant could afford to pay fine.

- Courts have inconsistent approaches in making decisions on closing hearings. Sometimes, they are guided by the procedure established by legislation and publicly announce their decisions to close the hearing, which is a positive and correct approach. However, there were individual cases when the hearings were conducted in a closed manner from the very beginning and nobody was aware of the reason for closing the hearing, which constitutes a violation of legislation and of the right to

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public trial.

GYLA remains hopeful that the recommendations prepared and conclusions made by GYLA will be taken into consideration by representatives of judicial authorities. Also, the report contains information which is of interest to the Prosecutor's Office and members of the Bar Association. We also hope that the legislative body will pay an appropriate attention to our findings and recommendations and introduce appropriate legislative changes to facilitate the respect to and the protection of the rights of parties to criminal proceedings under high standards. GYLA believes that the consideration of the recommendations will contribute to better improving the criminal system in Georgia.

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