GEORGIAN YOUNG LAWYERS' ASSOCIATION

MONITORING OF CRIMINAL TRIALS REPORT

№17

Monitoring period:
November 2022 - July 2023

Georgian Young Lawyers' Association

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(TBILISI, KUTAISI, BATUMI CITY COURTS)

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EXECUTIVE SUMMARY

The present report is based on findings that have been collected through the observation of court hearings by the Georgian Young Lawyer's Association (GYLA) in the Tbilisi, Kutaisi, and Batumi City Courts, during the period between November 2022 and July 2023.[1] It analyses a selection of problematic issues noted at different stages of proceedings, which appear to be systemic within the judicial system, that can substantively impact on the right to liberty and security of person, the right to a fair trial, and the right to the effective remedy.

The report analyzes the trends noted during the first appearance court hearings of the accused; judicial oversight over the lawfulness of detention; circumstances surrounding cases of alleged improper treatment identified during the court monitoring; problems with pre-trial hearings; issues 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 devotes a separate section to the circumstances related to domestic violence crimes. It also analyzes the ways court trials are conducted (remote hearings), the issues related to the postponement of enforcing court judgments, publicly available information, and publicity of court hearings.

The monitoring found, that the judicial control falls short in relation to a range of guarantees that the defendants should enjoy by law, in particular with regard to detention and alternatives to detention pending trial, as well as to plea agreements. Judges do not hold hearings on the detention of arrested individuals in public proceedings, unless the defense submits a motion to that effect. Preventive measures other than detention and bail, such as an undertaking not to leave and appropriate conduct agreement, personal guarantee and Command oversight of military personnel's conduct are very rarely used, possibly due to a standardized and formalistic approach adopted by the court, prosecution, and defense, as well as the requirement for further legislative changes. In almost every fifth case the court routinely imposes additional obligations along with a restraining measure.

Most plea agreement court hearings are still held in a very formalistic manner. Judges do not adequately explain to the defendants which rights are attached to the plea agreement, nor do they properly investigate the legality and fairness of the sentence provided for in plea agreements. There were cases where the accused persons made an advance payment of the fine stipulated in their plea agreements. These facts further diminish the role of the court in approving plea deals.

The observation of court trials has **identified several cases of alleged ill-treatment.**

Due to the increasing number of femicide cases and violence against women in the country, the report devotes a separate section to the circumstances related to domestic violence crimes. **Acquittals have become more common in recent years,** most of these granted in **domestic violence criminal** cases. While the prosecutorial authorities declare having a zero-tolerance policy towards domestic violence and, in the majority of cases, request the most severe preventive measure, nonetheless, the number of cases in which the prosecution requested imprisonment for the above type of crimes has decreased compared to the previous reporting period[2].

[1] See the detailed methodology in the methodology chapter.

[2] The previous reporting period includes data from March 2021 to September 2022.

An additional serious challenge pertains to the **right of the defendant to be tried within a reasonable time and the time-efficiency of proceedings**, as multiple criminal cases are pending for several years in breach of the timeframes prescribed by law.

Frequent adjournment and delayed commencement of court hearings is still a problem.

Despite the fact that the COVID-19 pandemic has been on a downward trend during the reporting period, the courts took advantage of holding remote or semi-remote hearings to the maximum extent possible until the deadline determined by law expired. The report also analyzes the findings concerning the distant conduct of court trials.

After identifying the challenging issues, GYLA proceeds to make a number of recommendations, which aim at countering the shortcomings. The competent authorities are encouraged to implement these recommendations and take all necessary actions to overcome the deficiencies underscored.

BACKGROUND

The **Georgian Young Lawyer's Association (GYLA)** has been observing criminal court trials since 2011. It is the **first organization in Georgia to have begun and refined through time the procedure for observing how the criminal justice system functions across the country, using pre-designed and expertly managed quantitative and qualitative indicators,** and ensuring that the monitoring results are made available to the general public.[3]

The organization has so far prepared 16 reports on the monitoring of criminal case proceedings and has published two special reports related to criminal trials during the pandemic.[4] Through the impartial observation of various stages of court proceedings, criminal-court monitoring and reporting by GYLA endeavors to outline current trends prevailing in the justice system, to identify challenges with legislation and case-law, as well as highlight positive practices. Monitoring includes the actions of the court, as well as the positions demonstrated by the prosecution and defense. While monitoring encompasses diverse practices aligned with legal standards, the reports focus on emphasizing identified problematic issues and noteworthy positive practices. The goal is to improve judicial proceedings, encourage authorities to address challenges, and foster the development of positive examples. In order to improve the quality of justice and ultimately reinforce the guarantees for the right to a fair trial, GYLA informs the public and stakeholders, including, but not limited to: the Court system, Ministry of Interior Affairs, General Prosecutor's Office, of significant issues related to litigations, based on the analysis of the monitoring findings obtained over a period of time.

[3] GYLA, The Criminal Trial Monitoring Manual, 2021, pg.4, available at: https://shorturl.at/akmzA , [Last accessed: 25.10.2023].

[4] GYLA's Special Report - Court during the Pandemic, 2020, available at: https://bit.ly/3lLA6la; GYLA's Special Report - The impact of the pandemic on criminal justice, 2022, available at: https://bit.ly/3sLnM6K , [Last accessed: 25.10.2023].

METHODOLOGY

The present report, №17, presents the monitoring results of **criminal proceedings** in three courts namely, Tbilisi, Kutaisi, and Batumi City Courts, **from November 2022 through July 2023.**

During this period, the GYLA observed 844 court hearings.

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

i. Main trial Court hearings	247
ii. Plea agreement court hearings	217
iii. Preliminary court hearings	76
iv. Preventive measure court hearings	291
v. Trials deliberating the motions for the deferral of the enforcement/ release of the convicted person's from sentence	13

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**.[5] 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 both by physical presence in the

[5] In the current reporting period, the organization monitored 14 cases based on citizens' requests.

courtroom and remotely, by using electronic means. 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 independence 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, namely on whether the accused is 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. At the hearings of the first submission, the court usually grants the defendants a restraining order. The GYLA trial monitors attended **291** first appearance court hearings, with the participation of **315** accused. At **279** court hearings of these, the court imposed restraining measures on **303 (96%)** persons and **did not use** any type of preventive measure for **12 (4%)** persons.

For years, the GYLA has been talking about the fact that the court uses two types of restraining measures - bail and imprisonment. Despite numerous calls of the organization, 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 imprisonment.

1.2. The prosecution demanded preventive measures against **310 (98%)** persons. At **175 (63%)** hearings, the court granted **bail** for **189 (62%)** individuals as a preventive measure. In **102 (36%)** court hearings, **112 (37%)** persons were **sent to detention**. At **2 (1%)** court trials, **2 (1%)** individuals were subject to the **agreement on not leaving the country** and **behaving properly.**

1.3. In the current reporting period, the rate of use of bail and imprisonment 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 in order to study the person of the accused, his property situation and the threats coming from the accused.

Preventive measure – Pre-trial Detention[6]

1.4. The prosecution motioned for **pre-trial detention** against **167 (53%)** defendants. In **55 (33%)** cases, the court **rejected** the prosecution's motion for pre-trial detention. Of these, **53 (96%)** defendants were granted **bail** by the court, **1 (2%)** defendant signed **an agreement on not leaving and behaving appropriately**, and for **1 (2%)** defendant, **no type of restrictive measure was imposed.** The decisions imposing detention on **41 (37%)** persons were **unsubstantiated or insufficiently substantiated**, which means that **compared to the previous reporting period**, the rate of **unsubstantiated or insufficiently substantiated detentions has increased by 4 percent**.[7]

1.5. During the reporting period, the GYLA trial monitors attended **49 (17%)** first appearence court trials that took the court 15 minutes or less to finalize. Consideration of the petition for a restraining measure in a short period of time does not give the parties the opportunity to properly substantiate the positions presented to the court, and in some cases, the rights of the accused are not fully explained in a language that is understandable to them.

[6] The percentages have been calculated based on the total number of restraining measures imposed by the court.
[7] The previous reporting period covered the monitoring of 5 courts during 18 months, and observation of 2,064 case proceedings.

Preventive measure - Bail

1.6. The court used **bail** as a restraining measure for **189 (62)** defendants. Of these, the **prosecution** requested **bail** for **143 (45%)** persons, of which the **prosecution's motion was granted** in **136 (95%)** 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 **6 (4%)** cases the accused **was not subjected** to any preventive measure.

1.7. As for the amount of bail, the court granted the minimum (1000 GEL) bail amount for **35 (19%)** persons. On its part, the prosecution demanded 1000 GEL bail for only one defendant. The amount demanded by the prosecution in the form of bail was reduced by the court in the case of **127 (89%)** persons.[8]

1.8. It should be noted that **31 (16%)** defendants were ordered **bail secured with imprisonment**.

1.9. ***It should be positively noted that the decision made by the Constitutional Court in the section on the use of bail provided by imprisonment has eliminated the ambiguity, based on which a number of judges used bail secured by imprisonment without appeal in the case of arrested persons.***

1.10. During the reporting period, the bail granted for **81 (43%)** defendants was **unsubstantiated**, since the reasonableness of the bail amount and/or the expediency of its use were contradictory.

1.11. In the reporting period, the court imposed an **additional obligation** along with a specific prevention measure on **64 (34%)** defendants. **Another problem is that the party does not have the possibility to appeal the additional obligation to a higher court independent of the restraining order.**

2. Proper judicial control & Ill-treatment cases

2.1. During the reporting period, **183 (59%)** defendants appeared at **177 (56%)** first-appearance court hearings as detainees, which is a 4-percent decrease compared to the previous reporting period. It remains a problem to discuss the issue of legality of detention in a public session. It is not clear why the court has no motivation to hear the positions of the parties regarding the circumstances of the detention in a public session.

2.2. **4 defendants** spoke about the alleged ill-treatment they had been subjected to by law enforcement officers.

2.3. Despite numerous appeals, no case has been identified when the prosecutor's office, on its own initiative, requested to replace the relative detention with a less severe preventive measure. It is true that judges periodically revise the appro-

[8] The prosecution demanded a certain amount of bail against 143 persons, which the court reduced in the case of 127 persons. Moreover, in the previous reporting period, which included the monitoring of 5 courts, the mentioned figure was 90 percent, and this year, the monitoring of 3 courts shows that the rate of reduction of the bail amount has decreased by 1% percent

priateness of imprisonment based on the obligation stipulated by the law, but in many cases this has a formal character and is not a very effective mechanism at the level of practice.

3. Preliminary court hearings

3.1. The GYLA trial monitors attended **76** pre-trial hearings, in which 81 persons appeared as detainees before the court. In **70 (92%)** court hearings, the prosecution submitted motions requesting to render evidence admissible. In the remaining **6(8%)** court trials, the GYLA observers did not attend the motion submission stage as the hearings were either adjourned or carried on. However, it can be said that, as in previous years, the prosecution presented evidence at all court hearings in the current reporting period. In **24 (32%)** court hearings, the defense considered the evidence of the prosecution to be indisputable, and at **52 (68%)** court hearings, the defense requested to examine the evidence at the main trial on the merits. At **3 (4%)** court hearings, the defense sought to declare the evidence inadmissible.

3.2. In **66 (94%)** hearings, the court fully approved the motions for the admissibility of evidence presented by the prosecution, and partially approved in **1 (1%)** case.[9]

3.3. The defense requested to have the evidence declared admissible at **14 (18%)** court trials. In the previous reporting period, the rate of submitting evidence by the defense was **27 percent**.

3.4. In **5** cases, the prosecution considered the motions of the defense to be indisputable, and in **2** cases requested their inadmissibility. At the hearing of **3** defendants**,** the prosecution approved the motion of the defense and recognized the evidence as acceptable.

3.5. Monitoring has revealed cases when the prosecution party does not read the list of evidence at the public hearing at the request of the court.

4. Plea agreements

4.1. Proper judicial control over plea agreements is not exercised. At **217** plea agreement court hearings (against **248** persons), the court did not approve only **2 (1%)** plea deals.

4.2. Most frequently the plea agreement is signed for **property crimes** [**53 (22%)], narcotic drug-related** crimes [**48 (20%)],** and **crimes against governance rules** [**32 (13%)].**

4.3. The monitoring has identified **2 cases of advance payment of the fine** stipulated in the plea agreement.

[9] In the remaining cases, the court hearings attended by the trial monitors did not finalize the consideration of the case and the pre-trial court hearings were postponed, therefore, in 5% of the cases, the outcome of the prosecution's motion remained unknown to us.

4.4. The court, as a rule, does not elaborate on the legitimacy and fairness of the punishment at public court hearings. In only **5 (2%)** cases did the judge mention at the court hearing that he/she deemed the sentence to be legal and fair.

4.5. In the reporting period, the situation in terms of informing the accused persons of their rights at plea agreement court hearings has slightly **improved**. Monitoring has shown that the rights of the defendants were fully explained to the accused persons in **165 (76%)** cases, meaning that in **24%** of the cases, the rights were not clearly and completely clarified. **Compared to the previous reporting period**, **the figure has improved by 11%.**

4.6. Monitoring has identified that in **61 (28%)** court trials the prosecutor only announced the resolution part of the motions. The prosecution read out the terms of the plea agreement but failed to mention the circumstances of the case.

4.7. The discussion of plea agreements is very **brief**. During the reporting period, half of the plea agreement court hearings **(108** trials**)** were finalized within up to **15 minutes**.

4.8. As the observation has shown, the most frequently imposed punishments as a result of plea agreements are a **fine** - **35%** (86 cases), a **suspended sentence along with a fine** - **25%** (61 cases), or a **suspended sentence** - **24% (**59 cases). The use of **community labor** as a means of punishment in plea agreements has been **reduced**. In particular, in only **4% (10)** of the plea agreements was community service imposed upon the defendants. In the remaining **12%** of the cases, another type of sanction was used.

4.9. **The average amount of the fine imposed under plea deals has dramatically increased and amounted to 4746 GEL, whereas it was 3451 GEL in the previous reporting period.** As the court monitoring shows, the average amount of the fine has been increasing over the last two reporting periods.

5. Court hearings on the merits

5.1. The GYLA monitored **247** court hearings on the merits involving **484** individuals. Of these, **88** (36%) court trials were adjourned. The rate of the postponement of court trials during the substantive consideration of cases has **slightly decreased - 3%, compared to the data of the previous year.**

5.2. The merits court hearings in **92 (37%)** cases out of **247 were delayed**. Most often, the reason for the delay was the lateness of the judge, which was the reason in **32 (35%)** cases, or the lateness of the defense - in **22 (24%)** cases. Among other reasons for the delayed opening of court trials was the lateness of the prosecutor - **9 (10%)** cases or the failure of the penitentiary service to timely present defendants – in **5 (5%)** cases. The delayed opening of court trials due to the progression of another court proceeding in the same courtroom was revealed - in **7 (8%)** cases, the late arrival of the accused - in **1 (1%)** case, and other reasons - in **16 (17%)** cases.

5.3. Delays of the hearings is problematic, judicial monitoring reveals a number of high-profile criminal cases, whose trial in the courts of the first instance has been going on for years, so that no concrete legal result has been reached.

5.4. In the current reporting period, the verdicts were reached in **30 cases (12%),** of which **5 (17%)** were full acquittals and **24 (80%)** guilty verdicts. In **1** case **(3%),** the case was reclassified to a lighter crime.

5.5. **Compared to the previous reporting period, the rate of acquittals has decreased by 2 percent.**

5.6. **Compared to the previous reporting period, the share of acquittals has decreased by 2 percent.**

6. Domestic violence crimes

6.1. Of the court hearings dedicated to the selection of prevention measures for **315 persons**, **81 (26%)** cases concerned domestic crimes. The court ordered **30 (37%)** defendants for domestic violence crimes **to imprisonment**, granted bail to **47 (58%)** persons, and offered **1 person (1%) an agreement to not leave the country and behave appropriately**. In **3 cases (4%)**, the court left the persons accused of domestic violence **without any measure of restraint pending trial**.

6.2. The GYLA has not identified any cases of concluding a plea agreement with persons accused of domestic violence and domestic crime during the current reporting period.

6.3. ***The current reporting period has observed the court's more lenient approach to domestic violence cases. A number of judges underestimate the dangers posed by persons accused of domestic violence during the investigation and trial stages. The use of imprisonment as a prevention measure has decreased by 9% compared to last year's figure, whereas the use of bail has increased by 10%.***

6.4. Out of **247** court hearings on the merits observed by the GYLA, **48 (19%)** court proceedings concerned domestic crimes or domestic violence. For this type of crime, the court mostly sentences offenders to community labor **(6 cases (50%)**) or a suspended sentence - **4 (29%)** cases.

7. Other important issues

7.1.It is a challenge to publicly publish information about the sessions, information about the first submission sessions is most cases not published.

7.2. In many cases, courts do not issue public information with the argument that they do not process specific information, while it is the duty of public agencies to provide access to public information. Among them, accessibility includes, in case of request, the processing of data that the agency does not publish of its own accord.

7.3. Unreasonably restricting contact with the outside world for the accused by the prosecutor's decree is still a problem, and we believe that limiting the accused's telephone conversation with the lawyers violates the accused's right to defense.

I. TRENDS IDENTIFIED AT THE FIRST APPEARANCE COURT HEARINGS

With the first court appearance of the accused before the court (hereinafter - the first appearance court hearing), the court proceedings against the accused begin. At the first appearance hearing, the court considers a motion presented by the prosecutor on the application of a restraining measure.[10] The judge is also required to find out whether the accused understands the language of the criminal proceedings, to inform the accused of the essence of the charge and their rights, including the right to file a complaint (lawsuit) for torture and inhumane treatment. In the case of detained defendants, the court shall assess the legality of detention. The court shall inform the accused of his or her right to conclude a plea agreement. At the same time, the accused is given the opportunity to state his or her position regarding the charge and any restrictive measure requested by the prosecution, and to speak about any facts of alleged violation of his or her rights as an accused person during the arrest and the investigation in progress.[11] The judge shall assess the threats posed by the accused and impose on them a suitable type of preventive measure, if deemed appropriate [12]that can guarantee that the goals of the preventive measure are achieved to the maximum extent possible.[13]

1. The analysis of the first appearance court hearings

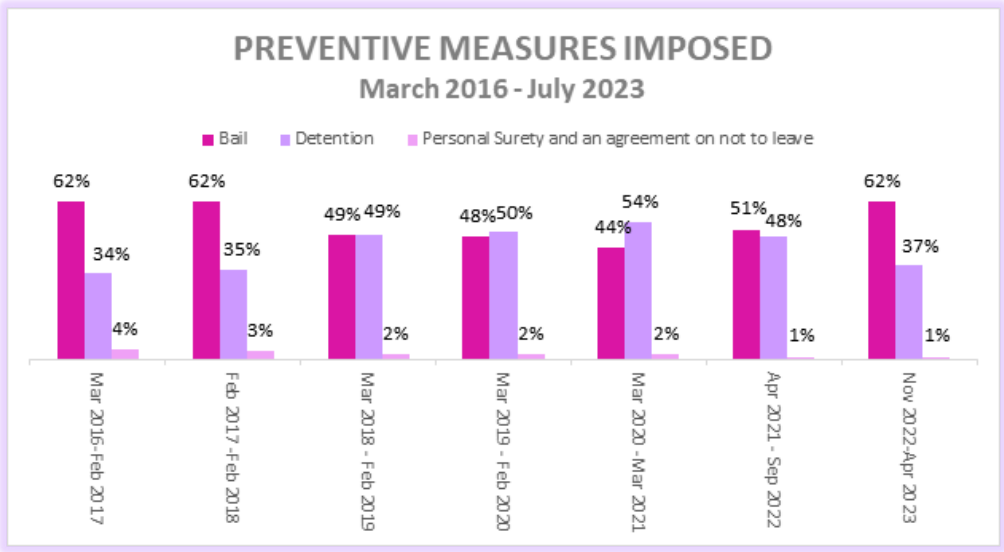
In 99% of hearings on the first presentation of the accused to court, the court applied only two types of preventive measures - bail or imprisonment. Only in 4% of cases did the court not impose any preventive measure on the person.

In the reporting period, the GYLA trial monitors attended **291** first-appearance court hearings involving **315** defendants. In **279 (96%)** court hearings, the court imposed preventive measures against **303 (96%)** defendants: **189 (62%)** persons were granted **bail** at **175 (63%)** court hearings, **112 (37%)** persons were ordered to be detained pending trial in **102 (37%) hearings**, **2 (1%)** persons at **2 (1%)** court trials were offered to sign an **agreement on not leaving the country and behaving properly**, and **12 (4%)** persons in **12 (4%)** court hearings **did not have any type of restrictive measures imposed at all.**

In contrast to the previous reporting period, the court could not even use a personal surety as the preventive measure for a single case out of 315.[14]

[10] Criminal Procedure Code (CPC), Article 196.
[11] Ibid. Article 197.
[12] Ibid. Article 200.
[13] Ibid. Article 198.1.
[14] In the previous reporting period, out of 559 defendants, the court used personal surety for 1 (1%) defendant as a preventive measure. See the GYLA's Criminal Court Monitoring Report N16, 2022, 16, 26. Available: https://bit.ly/45y4ZgR, [09.09.2023].

Diagram №1: *The diagram illustrates the situation with the use of preventive measures (from March 2016 through July 2023)*[15].



The data in the diagram show that the court continues to unalternatively rely only on two types of preventive measures - **bail and pre-trial detention.** The given reporting period has seen a relative increase in the rate of imposing bail, suggesting that ***it is critical to analyze the factors driving the growth in the bail rate to determine whether or not it is related to the court's recently observed comparatively lenient attitude to domestic violence crime cases***.[16]

On the one hand, the use of personal surety as a preventive measure may be hindered by the difficulty in finding guarantors or presenting them in court, as well as the issues associated with a surety's liability.[17] On the other hand, the application of the agreement on not leaving the country and displaying appropriate behavior is limited by the narrow legal provisions, since it can only used for crimes of lesser gravity, namely those that are not punishable by imprisonment of more than 1 year.[18]

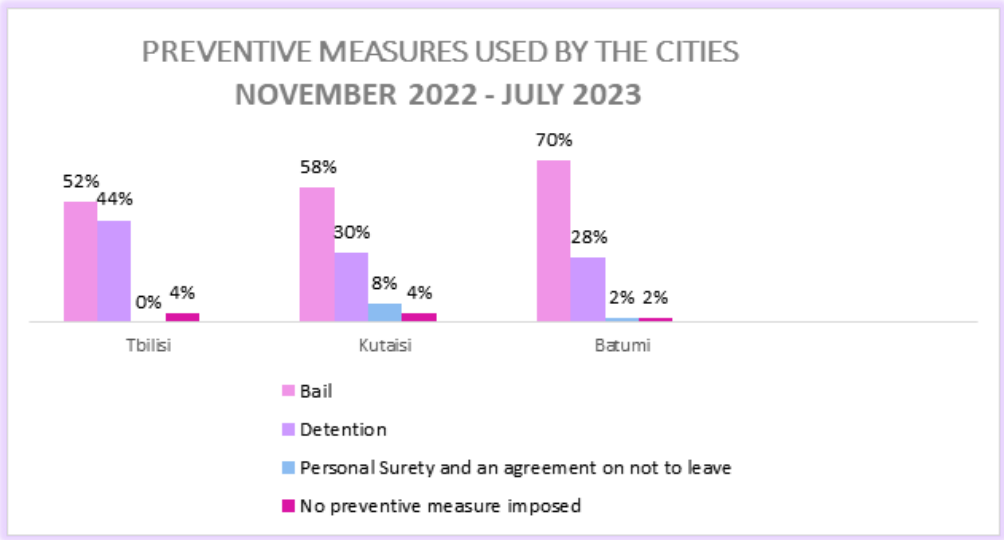
Despite these limitations, however, it may be reiterated that detention should only be used as a measure of last resort, while bail may not always be the most appropriate. In various cases monitored, the penalties envisaged for the offenses would have allowed the court the possibility to use the other alternative measures to prevent the risks, alone or in combination, for instance the agreement on not leaving the country and behaving properly along with one or more additional obligations.

In this respect, it is important to note that the **defense is often rather passive.** In the reporting period, it is in only **2 (1%)** cases monitored that the defense submitted a motion

[15] The data shown in the diagram covers a one-year reporting period from March 2016 through September 2022, and a 9-month period from November 2023 through July 2023.
[16] See Chapter - Domestic Crimes.
[17] GYLA, Standards for the Use of Preventive Measures. 2020, 48.
[18] Criminal Code of Georgia (CC), Article 202.

for the imposition of the agreement not to leave the country and behave appropriately as a preventive measure.[19] While this is probably a result of low expectations, given that the court has been primarily using only two types of coercive measures for years, It is important that the defense inform about and discussed duly with the accused person the measures foreseen by law, thereby having at their disposal sufficient individualized information to provide to the prosecutor and court, and indeed petition the court to consider these. It should be mentioned that court decisions on decision, and by analogy on preventive measures, should have appropriate and individualized reasoning, which can further help develop judicial practice.

Diagram №2: *Use of preventive measures per geographical location of the cases monitored (from November 2022 through July 2023).*[20]



Compared to the previous reporting period,[21] the rate of using bail in Tbilisi has also increased. **This can be attributed to a relatively loyal attitude demonstrated by the Kutaisi and Batumi City Courts towards domestic violence crimes. Compared to the previous years, the judicial policy in relation to domestic violence has become rather tolerant.**

[19] The prosecution demanded the use of preventive measures against 310 (98%) defendants but it is noteworthy that the defense requested to leave the accused without any preventive measures in only 9 (2%) cases, in 1 (1%) case, the defense agreed to detention, and in all other 298 (96 %) cases requested bail or to reduce the amount of bail.

[20] In the given reporting period, GYLA trial monitors attended 125 court hearings in **Tbilisi** City Court against 139 defendants, of which in 67 (53%) hearings - the court granted bail as a preventive measure for 73 (52%) persons, at 53 (42%) court trials - 61 (44%) persons were ordered to be detained, and at 5 (4%) court trials, 5 (4%) persons were left without any restraining measures. In **Batumi,** the trial monitors attended 117 court hearings against 125 defendants. Of these, the court imposed bail on 87 (70%) defendants at 80 (68%) court hearings, 36 (28%) persons at 34 (29%) hearings were sent to prison, 3 (2%) persons at 3(2%) hearings were not imposed any form of restraining measure. In **Kutaisi** City Court**,** the trial monitors attended 49 court hearings against 50 persons, 29 (58%) defendants were granted bail in 28 (57%) court hearings, 15 (30%) defendants were sent to prison at 15 (30%) trials, 2 (5%) persons in 2 (4%) court hearings were granted an agreement not to leave and proper behavior, and in 4 (8%) hearings, no form of preventive measure was used against 4 (8%) persons.

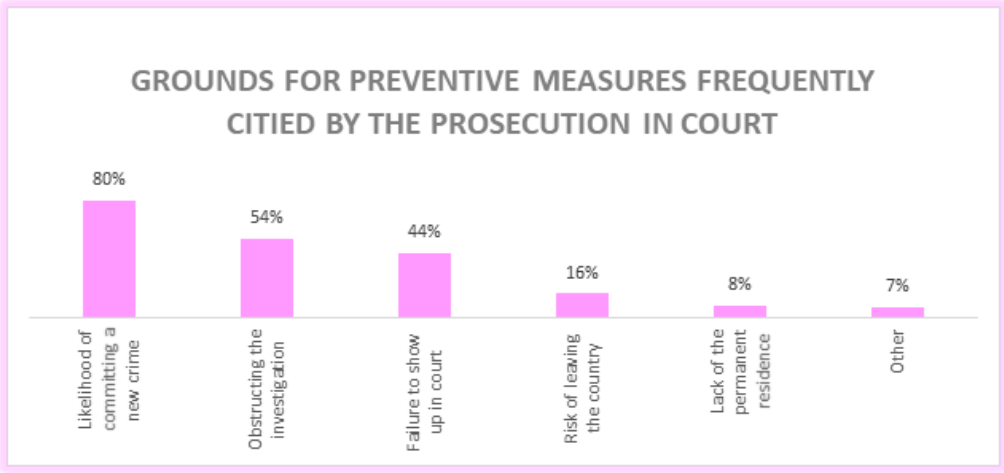
[21] In the one-year reporting period of last year, the rate of imposing bail and detention by the cities is as follows: **Tbilisi** City Court - 44% detentions - 52% bail. **Kutaisi** City Court - 61% bail and detentions - 46%. **Batumi** City Court bail - 48%, detentions - 47%.

It is important to note that in the course of monitoring court proceedings, it is becoming more frequent to observe that the prosecution often refers to the likelihood that the accused **may flee the country,** even though the court has the authority to prohibit the accused to cross the state border for a certain period of time. This leads us to think that neglecting the law or crossing the border is the problem here. The repeated reference to threats coming from the accused raises doubts about whether the state border is reliably protected. In addition, it should be noted that the lack of permanent residence cannot be considered as a factor that may hinder the accused from fulfilling the goals of the prevention measure. When discussing the threats it is crucial to avoid **exhibiting a discriminatory approach to homeless persons**, since this could serve as another ground for their social stigmatization.

GYLA reiterates the recommendation made in previous monitoring reports that the prosecution must study the accused person's personality and financial situation in order to ensure that its motions for the application of preventive measures are more reasonable[22] and to enable the court to make a more informed decision on the type of measure that is specifically tailored to a particular defendant while taking all reasonable factors into account.

Trial monitoring identified several cases where the prosecution spoke about the risk of destruction of the seized evidence and influencing the witnesses, although the only witnesses interviewed in the case were police officers. There are still instances reported where the prosecution, when substantiating a preventive measure, mentions the necessity for detaining the accused in order to undertake a forensic psychiatric examination, even though according to the information presented at the court trial, the prior behaviour of the accused does not contain any grounds for this presumption.

Diagram №3: *In the diagram below, you can see the grounds of the prevention measures imposed (from November 2022 through July 2023).*[23]



Despite prior recommendations for better substantiation of the Prosecutors' motions for preventive measures and the efforts of the Prosecutor's Office in this respect, GYLA still observes that often motions requesting pre-trial detention or bail are formalistic and lack

[22] GYLA's Criminal Court Monitoring Report N16, p. 73.

[23] The prosecution appeals to the likelihood of one or often several foreseeable risks to arise.

an individualized reasoning. A contributing factor can be the **workload of prosecutors.** The studies conducted by the Prosecutor's Office have found that, in some instances, the cases are unevenly distributed among prosecutors.[24] This results in the workload of prosecutors, ultimately affecting the quality of their performance. One of the priorities mentioned in the Prosecutor's Office 2021-2027 Strategy is to study the reasons contributing to the increase in the workload of the Prosecutor's Office employees.[25] The workload of prosecutors must not affect the quality of the work to be performed.

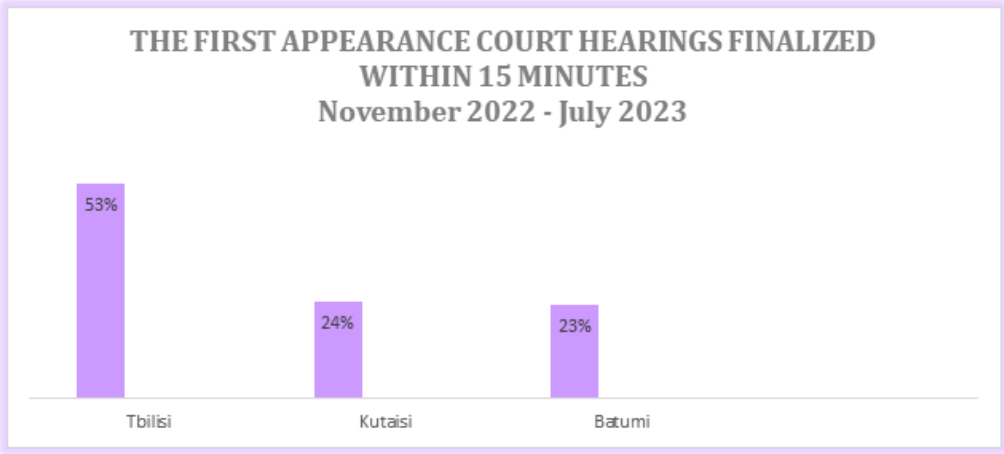
1.1. Duration of the first appearance court hearings

In some cases, the court does not devote adequate time to the explanation of the rights to the accused in a language he/she understands and to fully listen to the positions of the parties.

The rate of unjustified use of imprisonment and bail is quite high. In most cases, the court considers it unreasonable and reduces the amount of bail requested by the prosecutor.

In the reporting period, the GYLA trial monitors attended **49 (17%)** court first appearance hearings that ended in less than **15 minutes**. This fact is alarming considering that at the first appearance court hearing the court shall find out a range of issues, inform the accused of his or her rights, and hear motions if any, for which 15 minutes or less period of time is very short. This suggests that within such a short period it is very unlikely to inform, among other things, the accused of his or her rights thoroughly in the language that he or she understands.

Diagram №4: *The diagram shows the number of prevention measure court hearings held in up to 15 minutes, according to the cities (from November 2022 through July 2023).*



[24] 2017-2021 Strategy of the Prosecutor's Office of Georgia, 38, https://shorturl.at/mqtzG , [01.10.2023].
[25] 2021-2027 Strategy of the Prosecutor's Office of Georgia. p. 22. Available at: https://shorturl.at/mrwD9, updated: 01.10.2023.

1.2. Types of prevention measures and the main trends in their use

a) Detention

Pre-trial detention, the most restrictive form of preventive measure, is ordered only if it is the only means to prevent the accused from absconding, obstructing the administration of justice, obtaining evidence, as well as hindering the accused from committing a new crime. The total term of detention of the accused shall not exceed 9 months.[26]

In the reporting period, the prosecution motioned for detention against **167 (53%)** defendants, while the court imposed detention on **112 (37%)** persons at the first appearance court hearings.[27] Therefore, in **55 (33%)** cases, the motions for detention were not accepted.[28] Of these, the court granted bail for **53 (96%)** defendants, an agreement on not leaving and proper behavior for **1 (2%)** defendant, and **1 (2%)** accused person was not assigned any type of preventive measures. Detentions was applied in the case of **47 (42%)** defendants were **unsubstantiated** or **inadequately substantiated**.[29] Compared to the previous reporting period, the rate of unsubstantiated and/or insufficiently substantiated imprisonments has increased by four percent[30], which is quite a large number.

In each specific case, the prosecution's motion demanding imprisonment should be based on the risks posed by a specific individual and proper justification. The court should be provided with complete information about the personal characteristics of the accused and the risks arising if the individual stays at liberty. **Requesting detention by appealing to merely generalized or abstract circumstances does not constitute reasoning as per what is prescribed by international standards**. In order to achieve the above goals, competent authorities shall promptly and efficiently cooperate with both the prosecution and the defense to provide them with information about the personality of the accused.

[26] CPC, Article 205.

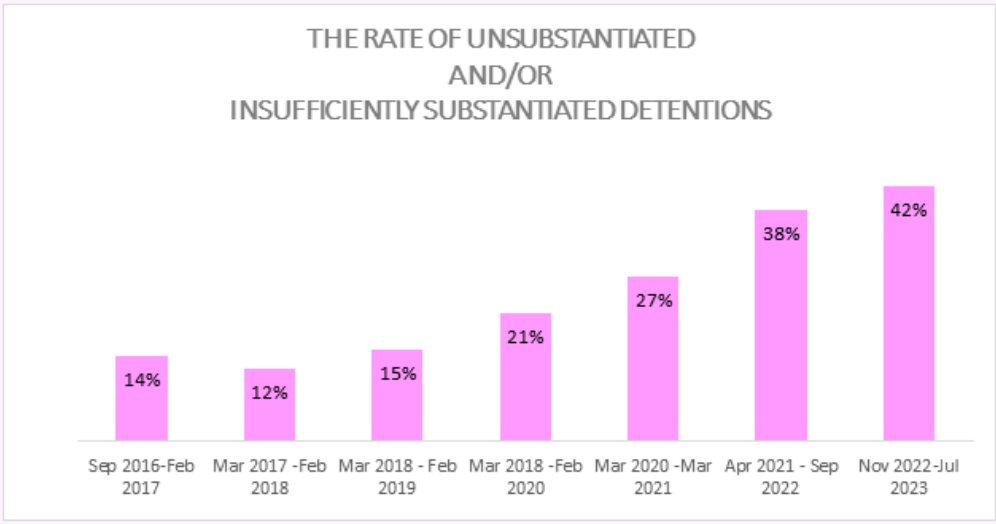
[27] Based on the one-year data of the previous reporting period, the court imposed detention on 253 (48%) persons, which is a 6% decrease compared to the reporting period of 2021. See GYLA's Criminal Court Monitoring Report N16, p. 18.

[28] In the last reporting period, the prosecution requested detention for 323 (58%) defendants. In 70 (21%) of these cases, the motion was not approved. GYLA's Criminal Court Monitoring Report N16, p. 18.

[29] The GYLA considers detention to be unjustified or improperly justified in cases where the grounds presented by the prosecution are abstract, do not relate to a specific person's personality and the factual circumstances of the case, as well as when the court in a public hearing substantiates the use of detention as a preventive measure in a formulaic manner and does not mention why other less stringent deterrence measures cannot ensure the proper behavior of the accused.

[30] During the previous one-year reporting period, the imprisonment applied against 98 (38%) persons was unjustified or improperly justified. See GYLA's Criminal Court Monitoring Report N16, p. 18.

Diagram №5: *This diagram shows the rate of unsubstantiated and/or insufficiently substantiated detention imposed as a measure of prevention (from September 2016 through July 2023).*



b) Bail

Bail is a monetary sum or immovable property.[31] Bail is imposed to ensure the proper conduct of the accused. The minimum amount of bail cannot be less than 1000 GEL. The maximum amount is not stipulated in the law. **The amount of bail is determined based on the gravity of the committed crime and the property capabilities of the accused.**

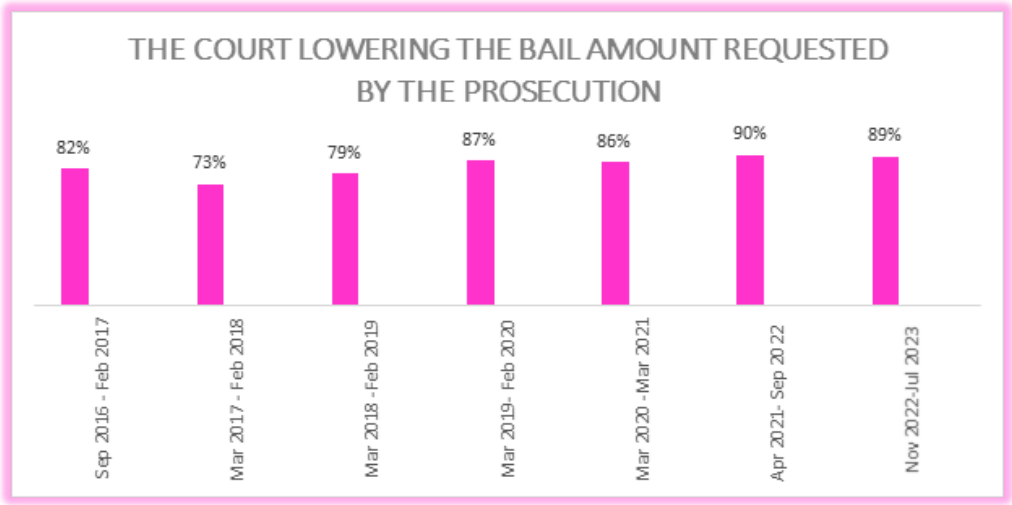
Before posting bail, the person depositing the money is warned about the possible consequences if the terms specified in the written commitment are not fulfilled.[32] If the accused, against which bail has been selected as a measure of restraint, has violated the terms of the measure or the law, upon a motion of the prosecutor, the court shall issue a ruling replacing the bail with a stricter restraining measure. With the same ruling, the money deposited as bail shall be transferred to the state budget, and the immovable property, shall be transferred for enforcement in order to collect the money set as bail. Real property bail is sometimes associated with the risk of total or partial loss of residence. This can be particularly grave in some cases, when disadvantaged defendants post their only/primary residence as bail to avoid detention. In case of thorough fulfillment of the assigned duties, within one month from the execution of the judgment, the money shall be returned to the depositor, and the immovable property shall be freed from the lien. In addition, if the accused conscientiously fulfills their obligation, the prosecutor has the right to apply to the court for the reduction of the bail amount according to the place of investigation or trial. **Bail is often used to secure detention. In such cases, in order not to turn bail into the so-called sham detention, the amount determined for bail must correspond to the financial capabilities of the accused.**

[31] Article 200 of the CPC.
[32] Ibid. 200.3

The court granted bail as a preventive measure for **189 (62%)** out of the **303 defendants**. The prosecution requested bail for **143 (45%)** individuals.[33] Of these, in **136 (95%)** cases, the motion for bail **was granted**, and in **1 (1%)** case, the court ordered an agreement on not leaving and proper behavior for the accused, and in **6 (4%)** cases, the accused was not subject to any preventive measure. The court used the minimum amount of bail (1000 GEL) in **35 (19%)** cases.[34] The prosecution requested the use of 1000 GEL bail in the case of only one defendant (in the previous reporting period, the minimum amount of bail was requested only for 2 persons).[35]The amount determined by the prosecution as the amount of bail **was reduced** by the court in the case of **127 (89%)** persons.[36] In the previous reporting period, the figure was 90 percent.[37] **Regarding the figure, we can remark that the prosecution frequently presents motions with an unsubstantiated request for an amount, which prompts the judge to reduce the bail amount in many instances**.

The court should not be limited to the stipulated minimum amount when determining the bail amount but rather be able to grant bail in the amount of less than 1000 GEL, after considering the financial capabilities of the defendants.

Diagram №6: *The diagram shows the percentage of cases in which the court lowered the amount of bail requested by the prosecution (from March 2016 to July 2023).*[38]



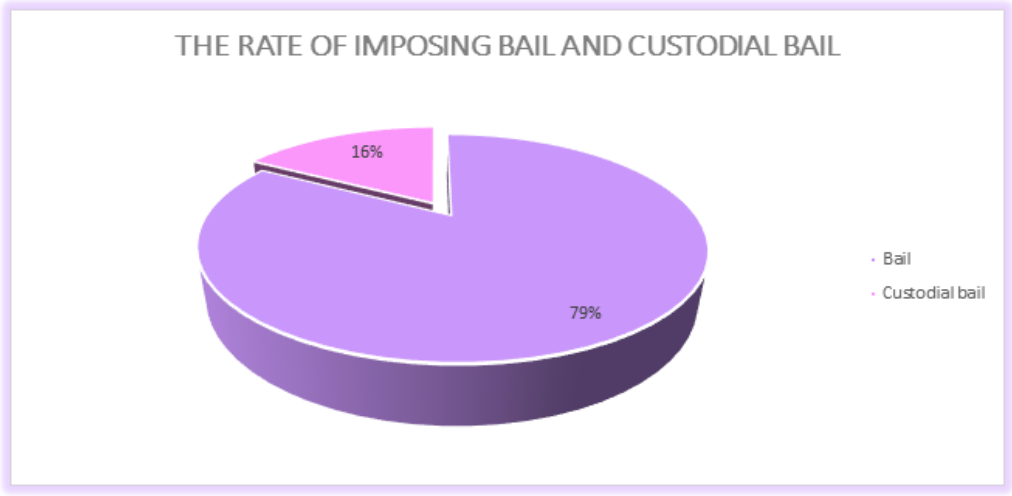
In the reporting period, the bail imposed on 81 (43%) defendants was unsubstantiated, i.e. the reasonableness and/or expediency of the bail amount were contradictory.

In the current reporting period, the court approved **bail secured with detention** for 31 (16%) defendants**.**

[33] In 53% of the cases, the prosecution was requesting detnetion, and in 2 (1%) cases did not request the use of any type of preventive measure.
[34] In the previous reporting period, the court granted the minimum amount of bail for 52 (19%) defendants. See GYLA's Report N16 on Criminal Court Monitoring, 9.
[35] GYLA's Report N16 on Criminal Court Monitoring, 22.
[36] The maximum amount that the court subtracted from the bail requested by the prosecution was 10,000 GEL.
[37] GYLA's Report N16 on Criminal Court Monitoring, 22.
[38] The data include the 9-month period from November 2022 through July 2023.

On June 24, 2022, the Constitutional Court of Georgia issued an important judgment, according to which **the judge, when reflecting on the need to remand a person in custody to ensure the immediate payment of bail, should make the decision based on the individual circumstances of the case, taking into account the existing risks**.[39] Over the years, the GYLA has highlighted in its criminal trial monitoring reports the vagueness of the legislative provision based on which judges, with rare exceptions, would often impose bail ensured with detention on arrested individuals. The imposition of bail as a preventive measure against an arrested person in all cases resulted in the imprisonment of the accused, limiting the defendant's right to liberty and remanding the person in custody against whom there were actually no legal grounds to use imprisonment as a preventive measure.[40]Despite the fact that the court considerably reduces the amount of bail requested by the prosecution, frequent are the cases when defendants cannot pay even the minimum amount of bail due to the socio-economic situation in the country, and the court lacks the leverage to determine bail in the amount of less than 1000 GEL. Another problem is securing bail amount with real property in the cases of those individuals who are either not represented by a defense counsel or have no one to arrange for them the legal procedures related to the securing of the bail with real property while the accused is in jail.

Diagram №7: *The diagram shows the rate of imposing bail and bail secured with detention (from April 2021 to July 2023 inclusive*).



Following the Constitutional Court's judgment in June 2022, GYLA addressed in August 2023 the Tbilisi, Kutaisi, and Batumi City Courts requesting data on the number of persons posting bail as a preventive measure and the number of persons where detention was used to secure bail.[41] Only the Tbilisi City Court returned the answer to our letter, yet with a mere formal notice that "*the Tbilisi City Court does not process the statistics of the requested*

[39] Decision of the Plenum of the Constitutional Court of June 24, 2022, available at: https://bit.ly/3ODsFHR .
[40] GYLA's Report N16 on Criminal Court Monitoring, 25.
[41] The registration number of Tbilisi City Court is - 31836, the registration number of the letter sent to Batumi City Court on August 17, 2023, is გ-04/133-23, the registration number of the letter sent to Kutaisi City Court on August 17, 2023, is გ-04/131-23. GYLA's enquiry was: "In the period from July 2022 to July 15, 2023, how many persons were granted bail by the court as a preventive measure, and in how many cases of these was detention used to secure the bail?"

form/type of information and subsequently it is not reflected in the public database. In addition, due to the large size of the requested information, its search/processing may require a lot of time and resources of the court, which is why we cannot satisfy your request."[42] The effectiveness of the legislative change cannot be fully evaluated when the court does not process the statistical data related to the legislative changes proactively, and even in the case of an appeal, it does not provide information. It may be recommended that such type of data be included in the standard statistics gathered by the courts, which would allow for a more effective monitoring by the authorities and by interested parties to assess compliance with relevant law and case-law.

The following are examples of bail imposed to secure detention:

Case №1: A woman and a man, foreign nationals, were accused of illegally crossing the state border into Georgia as a group.[43] The defendants were arrested and appeared in court where the prosecution requested bail in the amount of 8,000 GEL against both defendants as a preventive measure. The prosecutor invoked the risk of committing a new crime, the gravity of the crime perpetrated, and the fact that the crime was committed by a group. According to the prosecution, the defendants did not have any permanent residence in Georgia, nor did they have any relatives, therefore it would be difficult to control them if they decided to obstruct the investigation and abscond. The financial situation of the defendants was not mentioned by the prosecutor. The defendants noted that the country where they were from was amidst civil unrest, and the purpose of their arrival in Georgia was to receive asylum and live peacefully. The defense counsel requested to lower the bail amount. When asked by the judge how they were going to pay even the reduced bail amount, the defendants said that they had relatives in France who, if contacted, would be able to pay the reduced amount of bail. The judge granted bail in the amount of 5000 GEL for both defendants, secured with detention.

The judge, after explaining that it is unacceptable to equate custodial bail with detention, reduced the bail amount, yet did not consider how the defendants were supposed to pay the bail amount remaining in the detention facility until they do so.

Posting the bail amount, especially the one secured with real estate, while being detained in a closed facility is scourged by difficulties even for Georgian citizens. And for those who, along with the language barrier, do not already have ties in Georgia, the process can become much harder, as even having someone to deposit some funds on their mobile phone so that they can make a phone call, is not a given.

[42] Letter №7751343 of Tbilisi City Court dated August 23, 2023: "*The Tbilisi City Court does not process the statistics of the requested form/type of information and subsequently it is not reflected in the public database. In addition, due to the large size of the requested information, its search/processing may require a lot of time and resources of the court, which is why we cannot satisfy your request.*"

[43] Article 344(2, a) of the CC.

Case №2: The defendant was accused of not reporting a crime[44]. He was arrested and the prosecution requested bail in the amount of 4000 GEL, noting that the accused had been previously convicted of a premeditated crime, and that at the time of the court hearing, he was under a suspended sentence. The prosecutor added that based on the personality of the accused the risk of committing a new crime was high, as was the risk of influencing the persons involved in the crime since the defendant was in close to them, and the risk of absconding. However, the prosecutor did not mention the defendant's financial situation. The accused was not represented by a defense counsel. The judge asked the defendant about his financial capabilities. The accused answered that his monthly income was 1000 GEL adding that he was a socially vulnerable person, for which fact he had informed the investigator. The judge noted that the case files did not contain a corresponding document confirming his vulnerable status. The court granted bail in the amount of 1,000 GEL for the accused, without securing it with detention.

The mentioned example clearly shows that the prosecution was guided only by the severity of the committed crime and did not assess the defendant's financial capabilities when determining the bail amount. Which is the second necessary component of determining the amount of bail. The above example highlights the importance of the authorities ensuring that all pertinent information be included in the case file, such as the personal situation of the defendant and any specific needs they may have, as well as information about the person's financial situation. While the court hearing is the venue where such issues should be raised the latest, due preparation by the prosecution as regards not only the severity of the crime alleged, all necessary elements prescribed by law for the determination of the amount of bail, and, can avoid jeopardizing the rights of the defendants.

c) The agreement on not leaving the country and on behaving properly, personal surety

An agreement on not leaving the country and behaving properly can be used as a measure of restraint against defendants whose sentence for an alleged crime does not envisage more than one year of imprisonment.[45]

In the reporting period, the court used the agreement not to leave the country and to behave appropriately as a preventive measure for merely **2 (1%)** persons. The prosecution motioned for detention in the case of the first defendant, and for bail in relation to the other. As in the previous reporting period, the prosecution in none of the above cases submitted the motion for the preventive measure in a due manner.[46]

The capacity of the parties and the court to request and apply this restraining measure appears to be hindered by the fact that it can be applied only to crimes of lesser gravity. It cannot be discerned to which extent this restrictive measure alone or in combination with other non-custodial measures could have sufficiently countered the risks of absconding in cases where harsher measures were imposed in cases with a higher punishment reflected

[44] Article 376 of the CC.
[45] Article 202 of the CPC.
[46] GYLA's Report N16 on Criminal Court Monitoring, p. 26.

in the law. Namely, whether detention or bail were imposed on persons accused of crimes punishable by more than a year imprisonment, when this preventive measure could have met the same objectives. However, it could be recommended to the legislative authorities to reconsider whether this measure could also be used as an alternative to more restrictive measures, for offences punished with more than a year imprisonment. If the individual circumstances of the accused do not render it disproportionate, such a legislative amendment could render this a more flexible and effective measure of restraint.

d) Personal surety

Unlike the above preventive measure, the use of a personal guarantee does not have any limitations regarding the gravity of punishment. However, it can be used only with the consent of the accused and the guarantor himself.[47]

The court did not use a personal guarantee at all in the current reporting period.

e) Additional obligations

Along with any measure of restraint, the following obligations can be imposed on the accused person, alone or in combination:

- an obligation to appear in court at the specified time or upon summons;
- prohibition to engage in certain activities or professions;
- an obligation to show up and report daily to the court, police or other state body at different intervals;
- supervision by an agency designated by the court;
- electronic monitoring;
- an obligation to remain at a certain place during certain hours or without the time requirement;
- prohibition to leave or enter certain places;
- prohibition to meet with certain individuals without special permission;
- an obligation to surrender a passport or any other identity documents;
- any other measures determined by the court that are necessary to achieve the goals of a specific measure of restraint.[48]

In the reporting period, along with a specific type of preventive measures, the court imposed additional obligations on **64 (34%)** defendants.[49] In the case of **40 (62%)** persons, the court prohibited the defendant to communicate and approach the victim, in **21 (33%)** cases it imposed the prohibition of crossing the state border, and in **10 (15%)** cases the obligation to report to the investigative body periodically. Additional obligations were mainly used by the court in domestic violence crimes, threats, and other violent crimes.

[47] Article 203 of the CPC.
[48] Article 199(2) of the CC.
[49] The percentage number has been calculated based on the total number of defendants (191 persons) on whom bail and the agreement on not leaving the country and proper behavior were used as a preventive measure.

The law does not permit to challenge any court-imposed additional obligation separately from the restraining measure. Therefore, it is very important for the court to select the additional obligation in each specific case in such a manner that it is not more burdensome for the accused than the restraining measure itself.

f) Court hearings at which the court did not impose any restrictive measures

It should be recalled that detention and alternatives to it can only be imposed in accordance with the law and for the exclusive purposes enumerated therein, while they should not be arbitrary, but reasonable, necessary, and proportionate in the circumstances examined on an individual basis. If there are no grounds for using a restrictive measure, the court does not have the right to impose this against the accused.

In the reporting period, only **12** defendants were not subjected to any type of preventive measures at the first appearance court hearing. For **6** of these persons, the prosecution had requested bail, and detention for **1** individual. The prosecution did not request any preventive measures for **5** accused persons. Of these, **1** defendant was already serving an imprisonment sentence for another offence, **1** had been already convicted, in **2** cases only the determination of the pre-trial date was discussed, and in **1** case the prosecution did not deem it reasonable to request any preventive measures against an elderly female defendant.

II. IMPLEMENTING JUDICIAL CONTROL OVER THE LEGALITY OF DETENTION

The court is still not interested in examining the legality of the detention with the participation of the parties in a public hearing. Compared to the last reporting period, the presentation of persons as detainees to the court decreased by 4%.

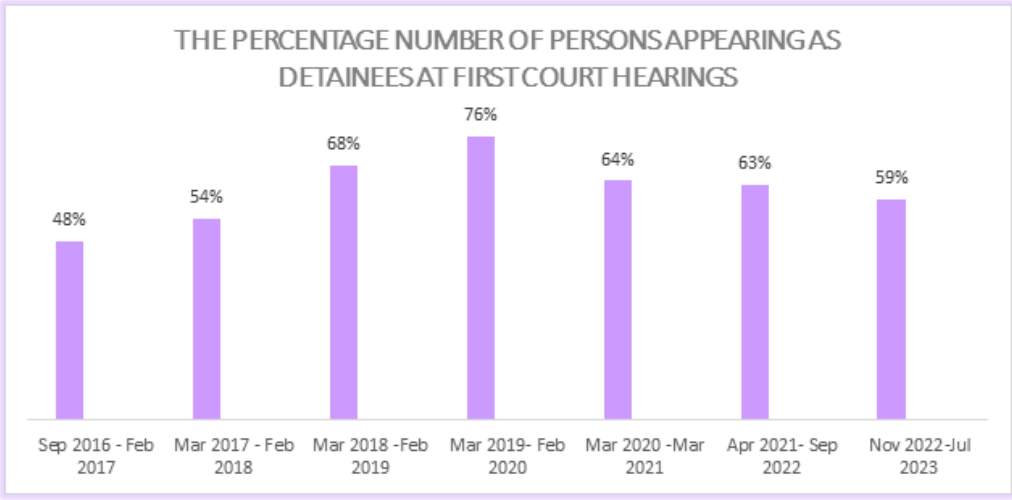
Detention is a short-term restriction of a person's liberty. A person is considered detained from the moment when his or her freedom of movement becomes restricted.[50] The ground for the arrest shall be a reasonable belief that a person has committed an act punishable by imprisonment, may abscond or not appear before the court, or may destroy information relevant to the case, or commit a new crime. In the presence of the above grounds, according to the place of jurisdiction, the court, upon a motion of the prosecutor, shall issue a ruling to arrest a person without an oral hearing.[51] In the existence of reasonable belief that the person has committed a crime and there is a threat of absconding, non-appearance before the court, the risk of destroying important information or committing a new crime that cannot be prevented by other alternative measures proportionate to the circumstances of the allegedly committed crime and the personal characteristics of the accused, the person can be detained without a court ruling.

Reviewing the lawfulness of detention at the public court hearing was still problematic in the reporting period. GYLA has raised in previous reports the importance of reviewing the legality of detention in a public hearing, even if a person has been arrested based on a court ruling. **Applicable law does not provide for any mechanism for challenging the legitimacy of the decision of the first instance court to arrest a person in the higher instance court.** This assigns even greater importance to the public scrutiny of arrest by the judge of the first appearance court hearing. According to judges, it is true that they do not discuss this issue in a public hearing, but they still analyze whether the detention was carried out lawfully or on appropriate grounds and reflect their views in court rulings. However, court decisions on detention GYLA has analyzed so far do not contain any information on why the court considered specific detention to be legal, what circumstances the judge relied upon, or to what extent it was necessary to arrest the person based on the evidence presented.[52]

Additionally, there are cases when defendants are not represented by a defense counsel,[53] and since they do not have proper knowledge of required procedures, they are deprived of the possibility during the court hearing to speak about their detention on their own initiative. Everyone has the right to participate in the consideration of their detention. With the view to ensuring that the right is exercised, the court must in all cases publicly consider and assess the lawfulness of detention, and refrain from relying merely on the evidence presented by the prosecution. The GYLA trial monitors attended **177 (56%)** first appearance court hearings,[54] where **183 (59%)** accused persons appeared before the court as detainees. There was only one case where the court discussed the lawfulness of detention, and this happened based on the motion submitted by the defendant's lawyer.

[50] Article 170 of the CPC.
[51] Article 171 of the CPC.
[52] Results/Trends and Identified Challenges of the GYLA's Four-Year Monitoring of Criminal Trials, 2021, 35.
[53] In the reporting period, 63 detainees did not have a defense lawyer.
[54] The data have been calculated based on 311 defendants appearing before the court at 287 court hearings.

Diagram №8: *On the diagram below, you can see the percentage data of persons appearing as detainees at the first appearance court hearings (from September 2016 through July 2023).*[55]



Compared to the previous one-year reporting period, the number of persons presented as detainees at the first court hearings decreased by 4 percent.[56]

[55] In the reporting period from March 2016 through February 2017, 140 (48%) out of 290 defendants, **appeared in court as detainees**; in the next reporting period - 218 out of 402 defendants (54%); in the subsequent reporting period - 452 out of 668 (68%); In the reporting period from March 2019 through February 2020 - 518 (76%) out of 686 defendants. In the period from March 2020 through March 2021 - 299 (64%) defendants at 256 hearings, and from March 2021 through September 2022 - 353 (63%) defendants at 268 hearings. In the period from November 2022 through July 2023 (9 months), 183 (58%) persons at 177 court trials.

[56] In the previous reporting period, 353 (63%) defendants appeared before the court as detainees at 268 court hearings. see GYLA's Report N16 on Criminal Court Monitoring. p. 10.

III. ALLEGED ILL-TREATMENT CASES

In the current reporting period, in only 75% of the first submissions, the judge asked the accused whether he had any complaints or petitions regarding the violation of his rights.

In 2019, Article 191[1] of the Criminal Procedure Code came into force, with the aim to ensure a more effective court response to allegations of torture, humiliating, and/or inhumane treatment.[57] Prior to this provision coming into force, the court would call on the prosecutor to respond to alleged cases of torture and ill-treatment, who at the same time along with the investigator, represents the prosecution party. Now the court has the right to take effective steps and apply for the due response to an investigative body that is institutionally independent from the police and the Prosecutor's Office. Since 2022, the impartial and effective investigation of cases of torture, degrading and/or inhumane treatment has been under the authority of the Special Investigation Service.[58] According to the ten-month data of 2022, the number of reports on crimes committed by representatives/ employees of the law enforcement agency[59] submitted to the investigative department of the Special Investigation Service was **2017**, out of which **77 (3%)** were submitted at the initiative of the court.[60]

During the reporting period, the judge asked **235 (75%)** defendants at the first appearance court hearing[61] whether they had any complaints or motions regarding the violation of their rights. Four defendants spoke about the alleged infringement of their rights.

See some examples below:

Case №1: The accused declared that police officers had verbally assaulted and threatened him. The prosecutor did not have this information. The judge announced at the hearing that the case would be transferred to the Ministry of Internal Affairs since it contained some signs of abuse of authority, which required an appropriate response.

In the above case, while it is positive that the court took the claims of the defendant seriously and was prepared to take action, it erred as regards its announcement of the competent authority to receive the complaint, referring to the Ministry of Internal Affairs rather than the Special Investigation Service.[62] As mentioned above, since 2019, when there is any suspicion about an alleged abuse of authority by police officers for insulting personal dignity, the complaint shall be sent to the Special Investigation Service.

Case №2: The judge enquired about an injury the accused had on his forehead. The defendant replied that he sustained the injury when the police officer hit him with a glass twice on his forehead. The defendant's lawyer noted that several police officers in civilian

[57] Article 191[1] of the Criminal Procedure Code.
[58] Law of Georgia on Special Investigation Service, Article 2.(19).
[59] Includes the crimes provided for in Article 19(1(a,b)) of the Law of Georgia "On Special Investigation Service".
[60] Report 2022 of the Special Investigation Service. p.118, 121. Available at: https://shorturl.at/mDHMP, Last seen: 01.10.2023.
[61] The judge was granted the possibility to ask the question to 311 defendants who were present in the courtroom.
[62] Order No. 3 of the Prosecutor General of Georgia dated August 23, 2019 - On determining the investigative and territorial investigative jurisdiction of criminal cases. Available at: https://www.matsne.gov.ge/ka/document/view/4638682?publication=0 , [09.10.2023].

clothes appeared at the defendant's residence but did not inform the defendant who they were, which resulted in a confrontation between them. The accused was taken to a police station, where he was beaten and tortured, in connection to which he applied to the Special Investigation Service. The judge noted that the defendant's complaint was recorded in the protocol and would be sent to the Special Investigation Service for further response.

The monitoring of court hearings has revealed that persons who were charged with the offences of resistance, threats, or violence against a person protecting public order or another representative of the government[63] spoke about multiple instances when police officers were dressed in civilian clothes, making it difficult for them to understand that it was the police who were ordering them to perform a specific action. They also talked about incidents in which police officers made arrests without providing a reason, resulting in the defendants' irritation, disobedience, and resistance when instructed to carry out specific actions.

To avoid such cases, if the police officer is not identifiable during the arrest, it is important for the accused to present himself before the arrest or, if this is not possible after the arrest, to show his official ID, as well as to explain the reason for the arrest and explain his rights.

Case №3: The accused is a foreign national. The interpreter failed to provide a proper translation. In particular, when the judge enquired whether there had been any violations of his rights during the detention, the interpreter translated that there were no violations during his arrest. The judge called on the interpreter to translate correctly, to which the interpreter apologized and explained that the incorrect translation was caused by his or her confusion. When asked about the complaint, the accused declared that he had a complaint. He claimed that the policeman hit him in the chest area. Having heard this, the prosecutor tried to explain that the accused did not mean hitting, but rather "pushing", which, according to the prosecutor, does not mean hitting. During the trial, the lawyer also tried to specify whether the policemen simply grabbed the defendant's hand or struck him. The judge declared that the complaint was recorded in the trial protocol and would be sent to the Special Investigation Service to initiate an investigation.

The third case shows once again how important the qualification of the persons participating in the court proceedings is in terms of protecting the rights of the accused. In the given case, the defendant was simply lucky that the judge knew the language the accused was speaking and could detect the incorrect translation. In the given case, the interests of the accused were represented by a state-funded lawyer. Quite alarming is the fact that the defense lawyer had failed to find out this important matter, namely the alleged violence on the part of the police against the accused. The observation of the court trial created the impression that neither the prosecutor nor the defense lawyer were eager to help the defendant submit the complaint.

[63] Article 353 of the Criminal Code.

IV. PRELIMINARY COURT HEARINGS

Pre-trial hearings where the parties did not read the list of evidence were highlighted. The formal nature of the review of the restraining order at the pre-trial hearing is still a problem.

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.[64] If the court is convinced that the evidence presented by the prosecution, with a high degree of probability, gives grounds for supposing that the accused has committed a crime, the case shall be transferred for consideration on the merits and the date for the main trial hearing is set. Otherwise, the judge of the pre-trial hearing shall terminate the criminal prosecution based on a court ruling.[65]

A court ruling rendered by the court shall be based on the evaluation of the evidence known to be admissible at the pre-trial hearing. With this in mind, the GYLA trial monitors pay special attention to the review of motions presented by the parties and the decisions made by the court.

The trial observers attended **76** preliminary court hearings, where **81** persons appeared in court as defendants.[66] In **70 (92%)** court hearings, the prosecution submitted motions on the admissibility of evidence. In the remaining **6 (8%)** cases, the GYLA trial monitors were not present during the motion submission stage, as the hearings were postponed or carried on. However, it can be said that, as in previous years, the prosecution presented evidence at all hearings in the current reporting period. In **24 (32%)** cases, the defense considered the evidence of the prosecution to be indisputable, in **52 (68%)** cases, requested the consideration of the evidence at the main trial, and in **3 (4%)** court hearings the defense submitted a motion on the inadmissibility of evidence. In **66** out of **70 (94%)** court hearings, the court fully approved the motions for admissibility of evidence submitted by the prosecution, and only partially upheld this in **1 (1%)** case.[67]

In **14 (18%)** out of the **76** court hearings, the defense requested the admissibility of evidence. In the previous reporting period, the rate of evidence presentation by the defense was **96 (27%).**[68] In **5** cases, the prosecution deemed the motions of the defense to be indisputable and in **2** cases requested their inadmissibility. The court approved the motions of the defense at **3** court trials and rendered the submitted evidence as indisputable.

The reporting period has attest that judges at the preliminary court trials do not examine the full list of evidence at the public session. Multiple cases were identified during court monitoring where the accused persons heard about the evidence collected about them only when the prosecutor was reading out the list of evidence. Even though the evidence

[64] Article 219 of the CPC.
[65] Article 219(6) of the CPC.
[66] Information by cities: Tbilisi - 17 hearings - 19 persons; Kutaisi - 42 hearings - 45 persons; Batumi - 17 hearings - 17 persons;
[67] Three court trials were adjourned.
[68] GYLA's Report N16 on Criminal Court Monitoring, 2022, 34.

is exchanged between the parties within the timeframes set by law and the defense is usually familiar with the evidence that the prosecution intends to present in court, there are sometimes defendants who are not represented by a defense counsel and are not informed of the list of evidence. In addition, reading out the evidence at a public hearing is very important to enable the effective exercise of the right to a public trial. Therefore, the approach taken by several judges that appears to take shortcuts and hastily go through the evidentiary material infringes upon the rights of the defendants to know the evidence against them and of the public to be informed.

1. Court decisions on the imposition, replacement, or cancellation of preventive measures at preliminary court hearings

The pre-trial judge shall, among other things, consider a motion to apply, replace, or revoke an order for detention or non-custodial measures. If detention has been imposed on the accused person, the judge is obliged, on his or her own initiative, to review the necessity of continuing detention at the very first preliminary court hearing, regardless of whether the party has submitted a motion to this effect or not.[69]

In the reporting period, the GYLA trial monitors observed **18 (24%)** preliminary hearings, in which detention on remand of **18 (22%)** defendants was reviewed. Of these, just like in the previous reporting period, the court replaced the detention imposed on 5 defendants with bail. In one case of these, the accused person requested to be granted a personal guarantee, yet he was not able to present any guarantors.

It can be added that, as per international standards, it falls on the authorities to establish the persistence of reasons justifying continued pre-trial detention.[70] The burden of proof in these matters should not be reversed by making it incumbent on the detained person to demonstrate the existence of reasons warranting his release.[71]

However, GYLA continued to observe cases where the prosecution did not appear to establish the persistence of the reasons to continue detention.

Case №1: In the given case, the court had initially imposed custodial bail as a preventive measure on the defendant, who was unable to free himself however, because he could not pay the bail amount set. At the preliminary court hearing, during the review of the preventive measure, the prosecutor motioned for maintaining the preventive measure in force, because the accused had been convicted of theft several times in the past. He had committed the alleged offense while on a suspended sentence, and he was also indicted for several counts of criminal activity. Given this, the risk of him committing a new crime was particularly high. Moreover, there was a danger of the accused absconding for fear of severe punishment; also, the person against whom the defendant had allegedly committed a violent act was his closest friend, and in order to obtain the desired testimony, the accused would likely try to influence him. Despite the motion of the prosecution to continue detention, the court replaced detention with bail in the amount of 3000 GEL.

[69] Article 219(4,b) of the CPC.
[70] ECtHR, *Merabishvili v. Georgia* [GC], 2017, § 234.
[71] ECtHR, *Bykov v. Russia* [GC], 2009, § 64.

It is worth noting here that the above-mentioned accused person had been initially imposed custodial bail as a preventive measure but was unable to free himself because he could not pay the bail amount. This example is a clear illustration of how defendants might be forced to remain in unjustified detention if their bail amount is not commensurate with their financial capabilities. In addition, the prosecution's evidence presented in court was focused on threats that could be avoided by imprisonment, while the judge decided that bail would be a proper deterrent for the accused.

GYLA reiterates the need for prosecutors to be assessing the risks posed by defendants and if there is no longer any need to keep the accused in detention on remand, to be the initiator of revoking or replacing the preventive measures.

V. PLEA AGREEMENTS

Judicial control over plea agreements is weak. In almost all cases, the court approves the motion submitted by the prosecution regarding the approval of the plea agreement.

The plea agreement is the way for rendering a verdict in a case without a trial examining the merits on the case, based on which the accused pleads guilty and agrees with the prosecutor to a sentence proposed, either to mitigation or partial removal of charges. When entering into a plea agreement, the accused may agree with the prosecutor to cooperate and/or pay damages along with the terms mentioned in the plea agreement.[72]

GYLA regularly observes plea agreement court hearings and from year to year analyzes the trends identified in this respect. The plea agreement can provide justice in a speedier manner, increas the cost-effectiveness of proceedings and save the resources of the prosecution and judicial bodies.

However, to avoid risks in delivering a verdict that is not effective or fair, the law foresees a judicial oversight mechanism. In particular, based on Article 212 of the Criminal Procedure Code, the judge is obliged, before approving a plea agreement, to make sure that the defendant signs the plea agreement without having been subjected to torture, inhuman or degrading treatment, or other violence, intimidation, deception, or any unlawful promise; that the plea agreement has been entered into voluntarily and the accused voluntarily admits to the guilt; that the accused is fully aware of the legal consequences of the plea agreement, including the conviction; that the accused had the opportunity to receive qualified legal assistance; that the accused is fully aware of the nature of the crime he or she is accused of committing and also the sentence foreseen for the crime he or she admits to committing, etc.

According to official statistics, a large portion of criminal cases are finalized with a plea agreement. In 2022, the figure increased even further compared to the previous years, and the number of cases concluded with a plea agreement amounted to 68%, while in 2020 – it was 63%, and in 2021 - 64%.[73] In the current reporting period, GYLA monitored **217** plea agreement court hearings concerning **248** persons. As in previous years, in almost all cases the court approves motions submitted by the Prosecutor's Office regarding the plea agreements reached between the parties. In only two cases did the judge not approve the plea agreements. In the first case, the court considered that the evidence presented in the case was not sufficient and refused to approve the agreement reached between the parties, while in the other, since the defendant declared he did not think that his action constituted a crime, the court decided not to accept the defendant's confession as truthful.

It should be noted that in the previous year, GYLA documented one instance of the problematic and obsolete practice – paying the fine in advance. Sadly enough in the current reporting period, there were two such cases identified by the GYLA trial monitors. This affirms the parties' perception that the court has a minimal impact on plea deals and the

[72] Article 209(1,2) of the CPC.

[73] The basic statistical data of the Common Courts (2022) are available on: https://www.supremecourt.ge/ka/statistic-documents/saerto-sasamartloebis-dziritadi-statistikuri-monatsemebi-2022-tseli, [09.10.2023].

agreement is granted in any instance, therefore the most important thing is to reach an agreement with the Prosecutor's Office.

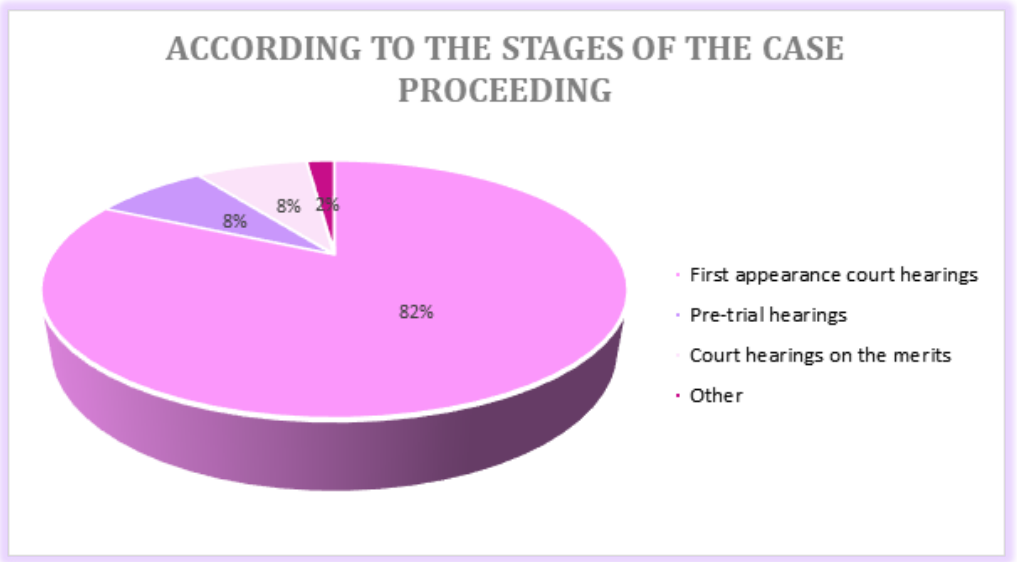
For illustration, see examples:

Case №1: Two individuals were accused of committing the offense of deceiving consumers in large numbers.[74] One was fined 10,000 GEL, and the other 15,000 GEL. Prior to the opening of the court hearing, and before the judge appeared in the courtroom, the defense lawyer noted in the conversation with the prosecutor that one of the defendants had already paid the fine and he would furnish the prosecutor with both receipts as soon as the other defendant completed the payment.

Case №2: In another case, the person was accused of making a fake document for personal use.[75] Before the court hearing began and the judge entered the courtroom, the defense lawyer asked the accused whether he had paid the fine, to which the prosecutor replied that the money had already been paid. This indicates that the accused had made the payment before the plea agreement was approved.

Plea agreements are most often signed at first-appearance court sessions. Out of **215** plea agreements monitored by GYLA, **177 (82%)** were approved at the first court hearing. Relatively seldom is the plea agreement approved in preliminary court hearings - **18 (8%)** cases or in substantive review trials - **17 (8%)** cases.

Diagram №9: *The diagram shows the number of approved plea agreements according to the stages of the case proceeding (in the period from November 2022 through July 2023).*



Plea agreements were most often approved in cases of **less serious crimes** - **132 (61%)** cases and **for serious crimes** – in **82 (38%)** cases. Compared to the previous reporting period, the rate of concluding the plea agreement for particularly serious crimes has decreased by

[74] Article 219, Paragraph 2(b) of the Criminal Code.
[75] Article 362(1) of the CC

5 percent.[76] Of the plea agreement court trials observed by the GYLA, only **in 3 (1%) cases was the plea agreement signed for particularly grave crimes, all three concerning narcotics-related offenses**.[77]

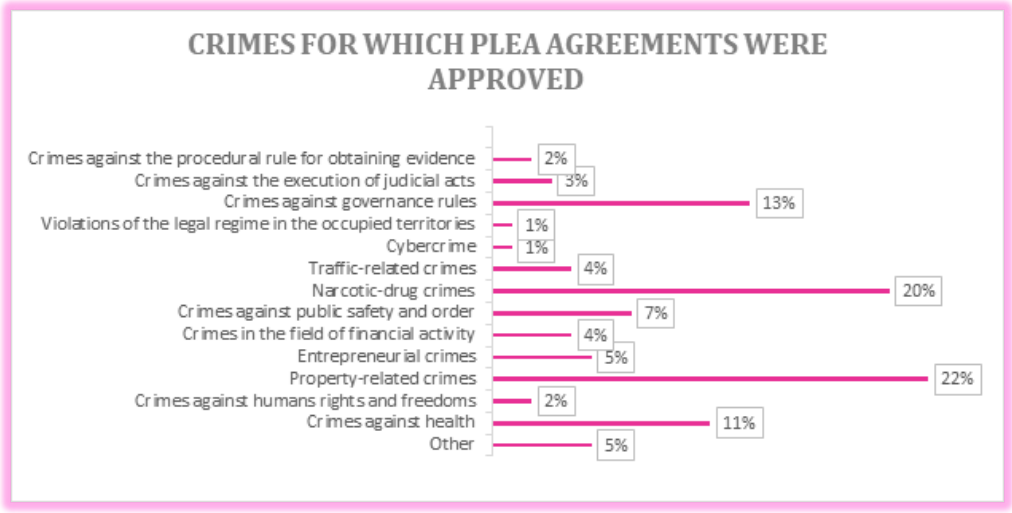
The State must understand and pay attention to its commitments undertaken by international agreements with respect to the above matter. In its concluding observations adopted on September 13, 2022, the UN Human Rights Committee reiterated that the Committee urges the State, especially in terms of narcotic-drug policy and plea deals, to continue its efforts to:

a) **Ensure and protect defendants during plea agreements with adequate legal guarantees, including against abuse and coercion to enter into plea agreements;**

b) **Increase the transparency of plea agreement negotiations, and strengthen the role of the judge and the defense in that process**.[78]

The court monitoring has shown that out of the **246** plea agreements approved, the most frequent were plea deals for property crimes **[53 (22%)]** as well as drug-related crimes **[48 (20%)].** In addition, noteworthy are the crimes committed against the governance rules **[32 (13%)]**. During the reporting period, plea agreements related to crimes against bodily health were approved in **26 (11%)** cases. In the last two reporting periods, there have not been reported any plea agreements approved for crimes against human life. Furthermore, plea agreements were granted for crimes against public safety and order - 16 **(7%)** cases, entrepreneurial crimes -**12 (5%)** cases, and 10 (4%) for crimes committed in the field of financial activity.

Diagram №10: *In the diagram below, you can see the crimes for which plea agreements were approved (from November 2022 through July 2023).*



[76] In the previous reporting period, the rate of entering into a plea agreement for particularly serious crimes was 6%.
[77] The crimes for which the persons were convicted are foreseen in Article 260 (6)(a) CC for the first case, Article 265 (3)(a) CC for the second, and Articles 260 (3)(a) and Article 262(2)(a) CC for the third.
[78] Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, CCPR/C/GEO/CO/5, 13.09.2022, para. 32.

1. Informing defendants of their rights

In all cases, the court did not explain the rights related to the plea agreement to the accused persons.

At the plea agreement session, the judge must explain to the accused about the rights and guarantees related to the plea agreement, find out the circumstances stipulated by Article 212 of the Criminal Procedure Code. In particular, if the plea agreement is voluntarily entered into and the accused voluntarily admits guilt, does the accused fully understand the legal consequences of the plea agreement, did he have the opportunity to receive qualified legal assistance, etc.

The situation in terms of informing the accused of their rights at plea agreement court hearings has **slightly improved**. Monitoring has shown that the rights of the defendant were thoroughly explained for defendants in **165 (76%)** cases, while in **24%** of the cases, the rights were not clearly and completely clarified. Compared to the previous reporting period, the figure has improved by **11%.**

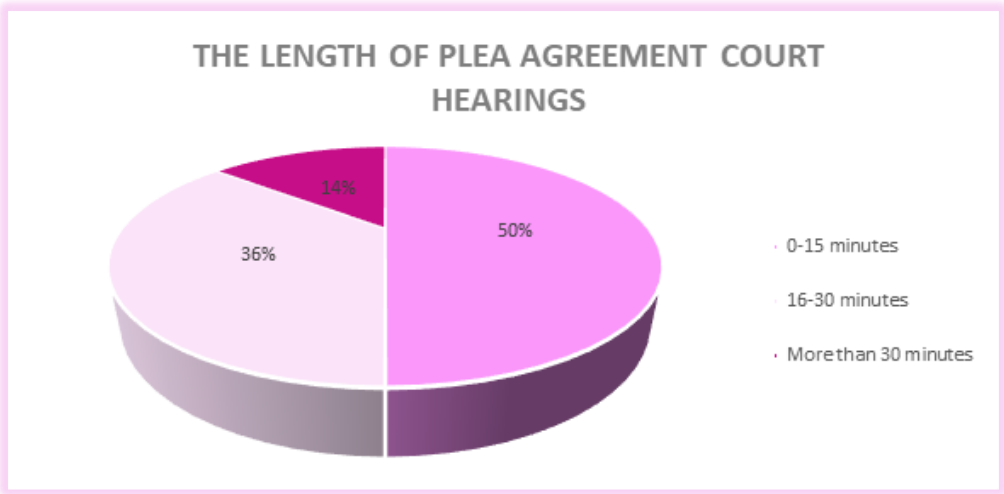
As for the rights directly related to the plea agreement, the judge did not inform the accused persons in **27 (11%)** cases that filing a complaint about any fact of torture, inhuman or degrading treatment against him or her would not hinder the approval of the plea agreement signed in compliance with the law. Moreover, judges omitted to inform defendants in **25 (10%)** cases that if the court does not approve a plea agreement, it is not allowed to use any information that has been provided to the court during the consideration of the plea deal against the defendant in the future. In **20 (8%)** cases, the judge did not enquire whether the accused had been subjected to torture, inhumane, or humiliating treatment by law enforcement officials.

2. Allocating time for the consideration of plea agreements

Often, plea agreement sessions are completed in a short time, so that the actual circumstances of the case are not revealed at the trial, and the court is limited to hearing only the resolution part of the prosecutor's motion.

The court still does not allocate adequate time for the consideration of plea agreements. The brief review of plea agreements, the practice of announcing only the operative part of motions at public hearings, and the non-disclosure of the circumstances of cases may render the court proceeding formalistic. Monitoring has shown that in **61 (28%)** hearings, only the operative part of the prosecutor's motions was announced - the prosecution read aloud the terms of the plea agreements but did not outline the circumstances of the case. **In the given reporting period, half of the court hearings - 50% (108 hearings**) - **were finalized in less than 15 minutes, which may be indicative of these proceedings having a rather formalistic nature, rather than allowing for a complete assessment of case circumstances.**

Diagram №11: *The diagram shows the length of plea agreement hearings (from November 2022 through July 2023).*



3. Lawfulness and fairness of the sentences used in plea agreements

Judges, as a rule, do not publicly discuss the legality and fairness of the sentence during the hearings.

The judge makes a decision on the plea agreement based on the law and is not obliged to unconditionally share and approve the agreement reached between the accused and the prosecutor. This right of the judge is an important lever to control the fairness/legality of the terms of the plea agreement and to prevent abuse of this institution

As a rule, judges do not discuss publicly the lawfulness and fairness of sentences during court hearings. In this reporting period, as in previous years, the situation has not improved in this respect. It was merely at **5 (2 %)** court hearings where the judge noted to what extent fair and lawful the court deemed the sentence reached under the plea agreements. **For illustration here are some examples:**

Case №1: The person was charged with the purchase and possession of a large amount of psychotropic substances.[79] The judge remarked that the defendant's plea agreement included a sentence that was less severe than what the law actually envisages for that particular crime category. The sentence would have been much harsher if there had not been the plea deal, the judge said, as he or she would not have used a fine.

Case №2: In another case where the person was charged with accountancy violations that caused significant damage,[80] the judge noted that the charge unequivocally en-

[79] Article 261(3)(a) CC.
[80] Article 204¹(2)(b) CC

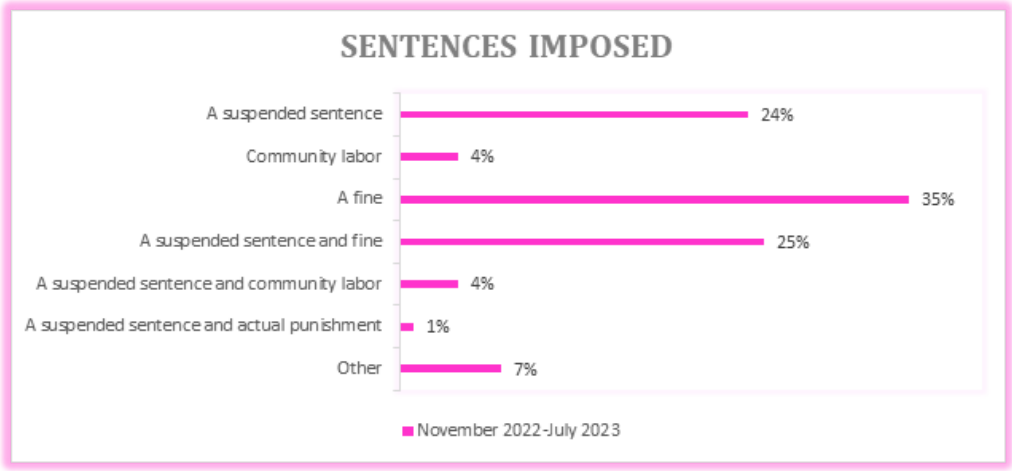
visaged imprisonment but the plea agreement sentenced the person to a fine in the amount of 3000 GEL, which the judge considered reasonable in that particular case, yet he or she would have found it difficult to select that penalty for the accused.

4. Sentences imposed under plea agreements

Among the penalties imposed as a result of a plea agreement, a fine is used most often. The average amount of the fine has been increasing for the last two reporting periods.

Similar to the previous reporting period, plea agreements mostly sentence defendants to a **fine** - **35% (86** cases), a **suspended sentence along with a fine** - **25% (61** cases), or a **suspended sentence** - **24% (59** cases). It is noteworthy that compared to the previous reporting period, the application of community labor in this reporting period has decreased by **6%**, amounting to only **4% (10** cases).[81]

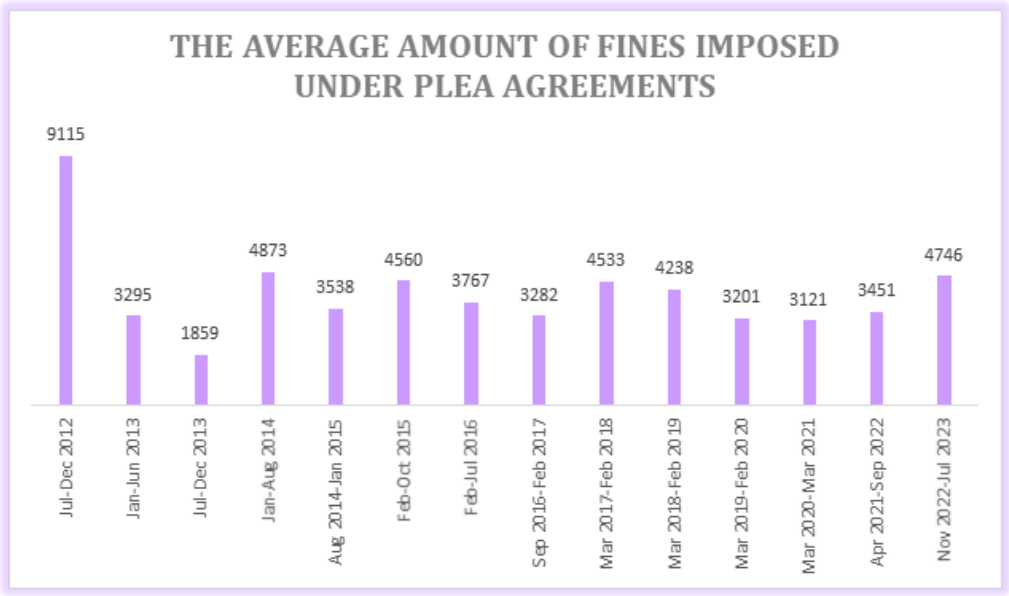
Diagram №12: See the diagram for the verdicts agreed under plea agreements (from November 2022 through July 2023).



In the current year, the average amount of the fine has increased even further and amounted to **4746** GEL, compared to **3451** GEL in the previous reporting period. The court monitoring shows that the average amount of fines has been increasing for the last two reporting periods. This matter should be paid attention to in order to avoid going back to the trend when heavy fines were one of the important sources of funding the state budget (see, for example, the monitoring results of 2012[82]), which, on the other hand, places those defendants who lack financial resources in an obviously disadvantageous position.

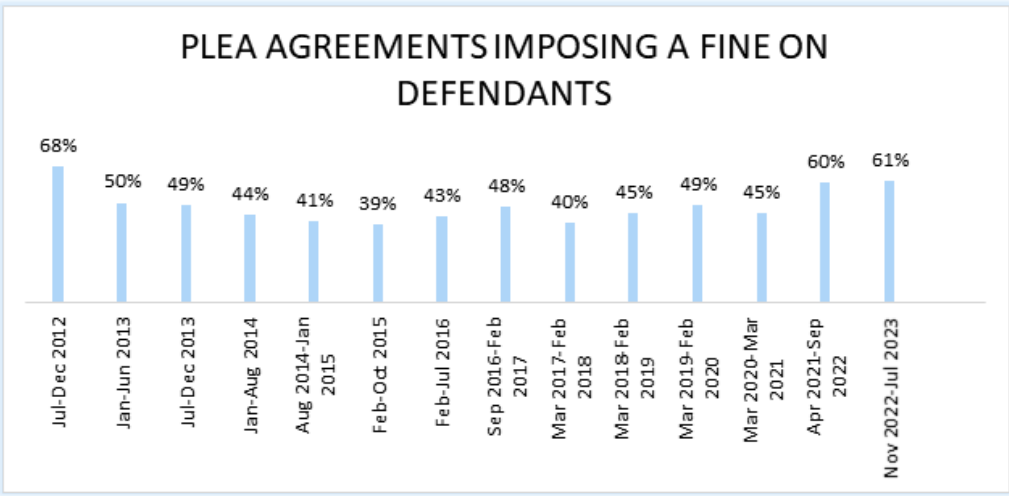
[81] In the previous period, the data was 10%.
[82] According to the GYLA's 2012 Court Monitoring Report (July-December), the average amount of the fine granted under plea agreements was 9115 GEL.

Diagram №13: *See the diagram below for the average amount of fines imposed under plea agreements (from July 2012 through July 2023).*



As the observation shows, the percentage of defendants who were granted a fine as a result of plea deals is practically similar to the previous reporting period. There is merely a 1 percent increase; accordingly, the number of persons who received a fine under the plea agreement has amounted to 61% this year.

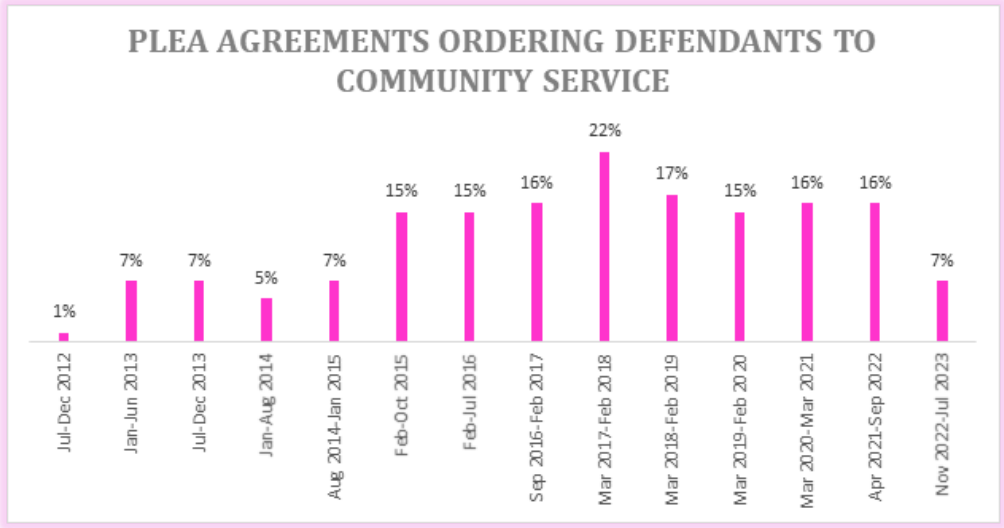
Diagram №14: *The diagram shows the percentage rate of fines imposed under plea agreements (from July 2012 through July 2023).*



This year, the use of community service in the form of punishment imposed under plea agreements has significantly decreased. In particular, the rate of plea deals in which de-

fendants were ordered to community labor is 7%. The figure has decreased by 9 percent compared to the previous period.

Diagram №15: *The diagram below shows the percentage of community service granted under plea agreements (from July 2012 through July 2023).*



VI. COURT HEARINGS ON THE MERITS

1. Postponing/Delaying of Court Hearings

There are frequent cases of postponement of court hearings, which is the basis of protracted processes.

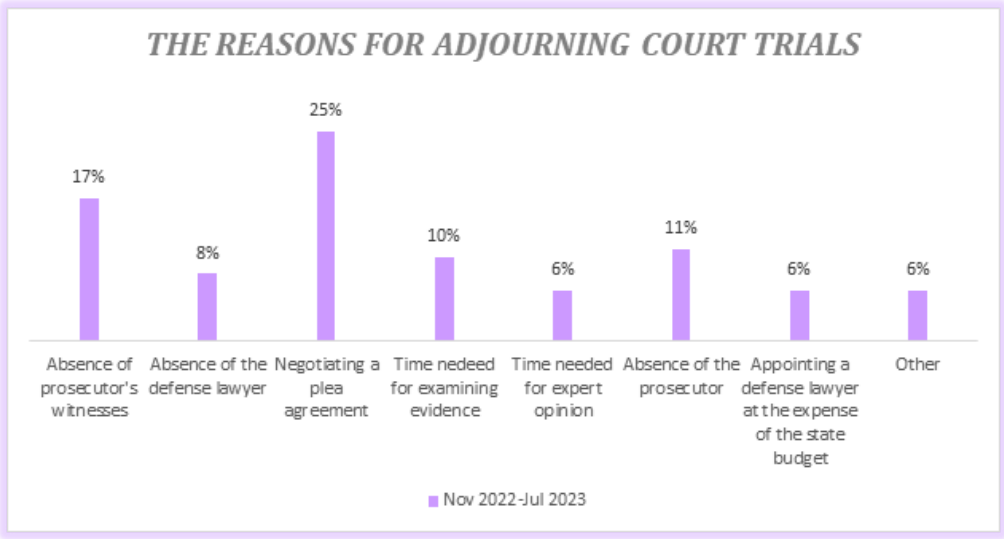
The right to a fair trial within a reasonable time is guaranteed by domestic law[83] and international instruments.[84] The court shall consider cases without unreasonable delay, and where the procedural deadlines are expressly stipulated in the law the court should adhere to them. International law stipulates that everyone arrested or detained shall be entitled to a trial within a reasonable time or release pending trial. In multifarious cases, the European Court of Human Rights has ruled that even when "relevant and sufficient" grounds continue to justify detention during the entire pretrial period, Article 5 (3) ECHR may still be infringed if the defendant's detention is prolonged beyond a "reasonable time," because the proceedings have not been conducted with the required expedition. The factors considered in assessing whether a trial has taken place within a reasonable time are, in particular, the complexity of the case, the conduct of the accused and the efficiency of the national authorities."[85]

In the given reporting period, GYLA observed **247** main court trials concerning **484** persons, of which **88 (36%)** trials were adjourned. The rate of postponing court hearings at the stage of examining the merits has slightly decreased – by **3%** compared to the data of the previous year.

The court sessions were mostly postponed for the reason of negotiating plea agreements **[22 (25%)].** Among other reasons frequently invoked for adjourning the hearings were the prosecutor's inability to present witnesses **[15 (17%)]** and the non-appearance of the prosecution **[10(11%)],** as well as the defendant's failure to appear **[10 (11%)]** has also been reported. The other reasons for the postponements include the absence of defense witnesses, the time requested to prepare the closing speech, etc.

[83] Article 8 (2) of the CPC.
[84] European Convention on Human Rights, Article 6 (1); International Covenant on Civil and Political Rights, Article 14 (3).
[85] https://www.osce.org/files/f/documents/a/6/38853.pdf:

Diagram №16: *Reasons for the adjournment of the merits court hearings (from November 2022 through July 2023).*



It is worth mentioning that the delays owed to postponements in order to obtain an expert opinion are the longest. Such court hearings often remain beyond the statistics of the monitoring, as the court automatically adjourns these trials for a considerable time period to allow the party to present the conclusion. However, in actuality, the number of cases adjourned for this reason is much higher. Delays linked with expert opinions are perhaps caused by a large volume of applications to the Expertise Bureau, the scarcity of experts with necessary qualifications, and/or the lack of other material and technical resources.

2. Pending case proceedings

Delaying the consideration of cases is a serious challenge for Georgian justice. The history of the GYLA's court trial monitoring contains a number of criminal cases that are still pending in court or the court of first instance has not yet handed down a verdict.

There are some judges who in contravention of the legal timeframes deliberate cases over a long period of time, abandoning the interest of the victims – i.e. the interest of the restoration of justice, actually forcing defendants to live with the status of the accused for an extended period of time. The trial monitoring has recorded multiple criminal cases the consideration of which has been postponed for years for unknown reasons.

In addition to this**, the quality of proceedings may decline with time,** as it can be challenging to present witnesses, witnesses' memories may fade with time, witnesses may forget specific details of the case during questioning, etc. Most of the protracted cases are high-profile and resonant cases that concern political processes or persons related to them.

According to GYLA, the following cases are delayed:

The case of November 7th – In the given case, the state indictment accuses Mikheil Saakashvili, the former president of Georgia, for his part in the mass raiding on protesters on November 7, 2007, the invasion of "Imedi" TV Company, and the criminal seizure of property belonging to Badri Patarkatsishvili. Mikheil Saakashvili has been charged under Article 333(3) of the Criminal Code of Georgia - exceeding official authority that caused a substantial violation of the rights of a natural or a legal person, society, or the legal interest of the state. Along with **Mikheil Saakashvili,** the defendants in the case are **Vano Merabishvili, Zurab Adeishvili, David Kezerashvili, and Gigi Ugulava.** The court has been deliberating the case since August 2014.

The so-called Jackets Case - According to the Prosecutor's Office, in the period from September 2009 through February 2013, 8 837 461 GEL from the state budget was secretly embezzled by Mikheil Saakashvili to cover for the services rendered to him and various individuals in Georgia and overseas. In 2014, the Prosecutor's Office indicted Mr. Saakashvili in connection to this case. **Along with Mikheil Saakashvili, Teimuraz Janashia,** the then-head of the Special Service of State Security, is another defendant in the case.

The case of preparing the murder of Badri Patarkatsishvili[86] - is still pending in the first instance court, even though the main trial commenced and the indictment was announced on 17 October 2018.

The case of Buta Robakidze[87] - The defendants in the case are **Zurab Adeishvili** and **Irakli Okruashvili** who were charged on November 19, 2019. The case is pending for consideration at the first instance court.

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[86] In the case of preparing the murder of Patarkatsishvili, three persons have been accused: **Giorgi Merebashvili, Levan Kardava, and Revaz Shiukashvili.** The indictment is based on Articles 18, 109-2-e-3-f; 333-1. According to the Prosecutor's Office and the recording dated February 4, 2007, Giorgi Dgebuadze, a former employee of the Constitutional Security Protection Department, is talking with a member of Badri Patarkatsishvili's bodyguard team, trying to recruit him, and in the second recording, dated February 5 of the same year, a meeting held in the building of the so-called "Moduli" building is recorded, where Giorgi Dgebuadze and his subordinates, the accused Levan Kardava, Revaz Shiukashvili and Giorgi Merebashvili "are preparing the murder of Badri Patarkatsishvili in order to remove him from the political arena". They were discussing how to arrange appropriate conditions for the physical liquidation of Patarkatsishvili, as well as different ways of killing the object, in particular, poisoning him with a substance that would have the effect of natural death. According to the conversation, it is established that all matters, including the methods of Badri Patarkatsishvili's liquidation, were being agreed with the then-head of the Constitutional Security Protection Department, **Data Akhalaia**.

[87] According to the Prosecutor's Office, the following was established during the investigation into Buta Robakidze's case: "On November 24, 2004, during late night hours, at around 02:00 a.m, in Tbilisi, on Akaki Tsereteli Avenue, in the vicinity of Didube Pantheon, patrol police officers stopped a "BMW" car, with the driver and five passengers in it. Upon the stoppage of the vehicle and personal inspection of the individuals, patrol inspector G.B accidentally fired a bullet from his official firearm, severely wounding the passenger Amiran Robakidze, who was at the time getting out of the car, in his left armpit area, who died on the spot. The then-Minister of Internal Affairs of Georgia, **Irakli Okruashvili,** received information about the incident on the same night. In accordance with the order issued by Irakli Okruashvili, the MIA senior officials arriving at the sport were instructed to save the image of the patrol police and portray the fact as if it was an assault on the police officials by an armed group. As instructed by Irakli Okruashvili, MIA officials placed firearms and ammunition next to deceased Amiran (Buta) Robakidze and the persons sitting in the car with him, after which, per the order of the then-Prosecutor General of Georgia, Zurab Adeishvili, initiated an investigation in a legally wrong direction, which was manifested by falsifying evidence and strengthening the version developed by the high-ranking officials of the Ministry of Internal Affairs. As a result, on the basis of falsified evidence, the persons sitting in the vehicle, in particular, G.K., I.M., K.A., L.D. and A.B were unlawfully charged with Article 353(2) and Article 236(1,2) of the Criminal Code of Georgia. Moreover, deceased Amiran (Buta) Robakidze was announced as a member of the criminal gang", declares the Prosecutor's Office. **Zurab Adeishvili** and **Irakli Okruashvili** were indicted by the Prosecutor's Office under Article 332(3,c) of the Criminal Code (the edition in force until May 31, 2006).

The case of Koba Koshadze – A member of Irakli Okruashvili's bodyguard team, Koba Koshadze has been charged with illegal purchase, storage, and carrying of firearms. The defendant denies the accusation and claims that the weapons had been planted on him. The consideration of the case has been pending at the final stage for more than two years for an unknown reason.

The case of the former chiefs of the Batumi prison[88] - The Batumi City Court began the consideration of this case in 2014 and it was supposed to be finalized on January 1, 2019. however, the court has breached all timeframes for the case consideration established by law. Even five years after the violation of all deadlines set forth for the consideration of the criminal case[89], the court is unable to bring the case to a definite legal conclusion (judgment). No matter how complicated the case is, how many witnesses are to be interviewed in the case, or whether the judge has changed or not, any argument against the fact that the first instance has been deliberating the issue for 8–9 years without reaching a verdict so far, is weak and pointless. In the given case, we clearly see the infringement of the right to a fair trial.

Even though GYLA has been calling attention to the issue for years, the judicial system has not yet been able to develop effective leverage to prevent the suspension of case deliberations.

3. Delayed opening of court trials

The court cannot regulate the schedule of hearings and almost every third court hearing starts late.

The number of main trials that began late (after more than 10 minutes) was **92 (37%)** out of **247**. As a rule, the hearings are delayed mostly due to the lateness of the judge **[32 (35%)]** or the lateness of the defense **[22 (24%)].** Moreover, among the reasons for the delay are the late appearance of the prosecutor **[9 (10%)]** or the failure of the penitentiary service to timely present the defendant **[5 (5%)].** The commencement of court hearings was delayed due to another case hearing in progress in the same courtroom in **7 (8%)** cases, the defendant's lateness - in **1 (1%)** case, and for other reasons[90] - in 16 (17%) cases.

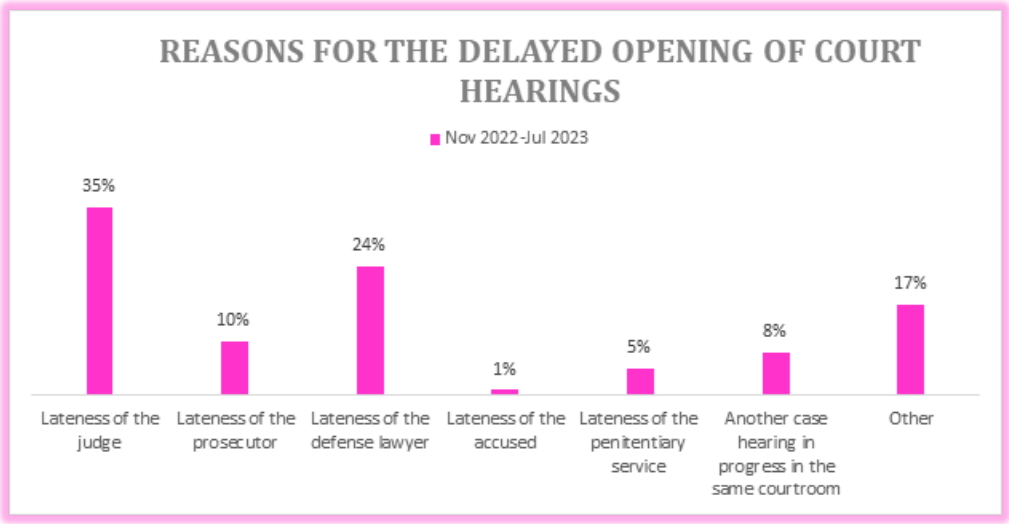
Not a single case has been reported where the judge penalized the parties for the failure to show up for the trial (or for lateness).

[88] 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 inhumane treatment of inmates.

[89] The court of first instance renders its verdict no later than 24 months after the decision of the judge of the pre-trial session to transfer the case for substantive consideration. Criminal code. Article 185.6

[90] The "other" cases may include the lack of courtrooms, the late appearance of several participants in the case proceedings, and/or such cases when the reason for the late opening of the court sessions remained unknown to the trial monitors.

Diagram №17: *In the diagram below, you can see the reasons for the delayed opening of merits court hearings (for the period from November 2022 through July 2023).*



4. Verdicts rendered as a result of merits court hearings

The rate of acquittal is 17%, which is 2 percentage points less compared to the previous reporting period.

In the reporting period, the GYLA monitored **247** main trials involving **484** defendants. Verdicts were handed down in **30 (12%)** cases, in which **24 (80%)** defendants were found guilty and **5 (17%)** persons were fully acquitted. In one case, the offense was reclassified. **Out of the 5 acquittals, 3 were related to domestic violence crimes, and in all 3 cases, the grounds for the acquittal was the victim's refusal to testify against a close relative.**

See the examples of acquittals:

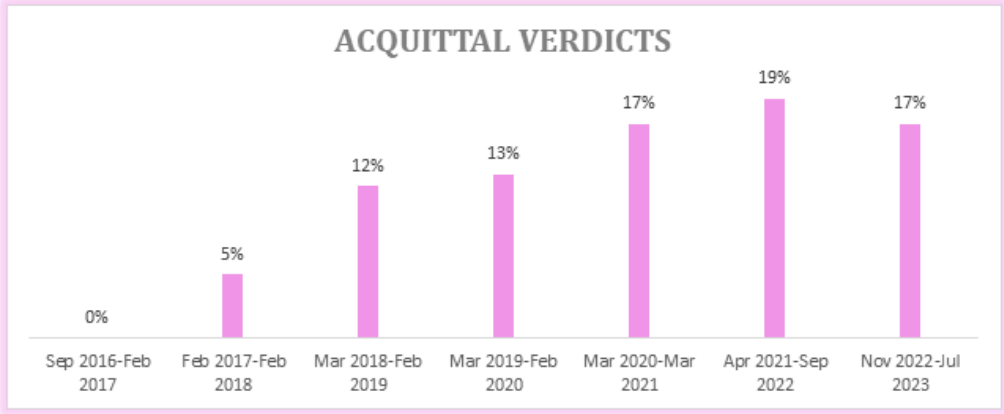
Case №1: According to the circumstances of the case, the accused threatened to cut his wife's throat open. He was charged with Article 11^1, 151(2)(d) of the CC - threatening a family member. The prosecution presented one witness (the victim) at the court hearing, who exercised her right granted by law and refused to testify. All other evidence was made indisputable by the defense. In the closing speech, the prosecution pointed out that the accused did threaten to slash his wife's throat open, but the victim decided not to testify even though throughout the interrogation, she had been requesting to severely punish the accused as she was very scared. The prosecutor requested a fair sentence. In its closing speech, the defense counsel claimed that neither direct nor indirect evidence was found in the case. **After on-the-spot consultation, the judge announced that the defendant was acquitted.**

Case №2: Another acquittal verdict was rendered in a drug-related crime case, where T. T. was indicted under Article 260(6)(a) of the CC. As the judge put it, "*The key evidence*

into drug-related crimes is the search protocol, the results of the search, the seized substance, and the linkage of the substance with the accused. In the given case, we have a search protocol confirming where the heroin was seized, and the expert's report that contains the defendant's biological sample. However, the legality of the search must be examined, whether or not there was any violation, as well as the obligation to create neutral evidence must be verified [...]". The judge ruled that the case did not meet the requirements established by the Constitutional Court as there was no neutral evidence, video evidence, or neutral witnesses. The judge also disregarded the police officers' testimonies as unreliable and ultimately found the person not guilty.

It is important to mention that in practice judges frequently refer to the decision of the Constitutional Court as the basis for acquittals.[91]

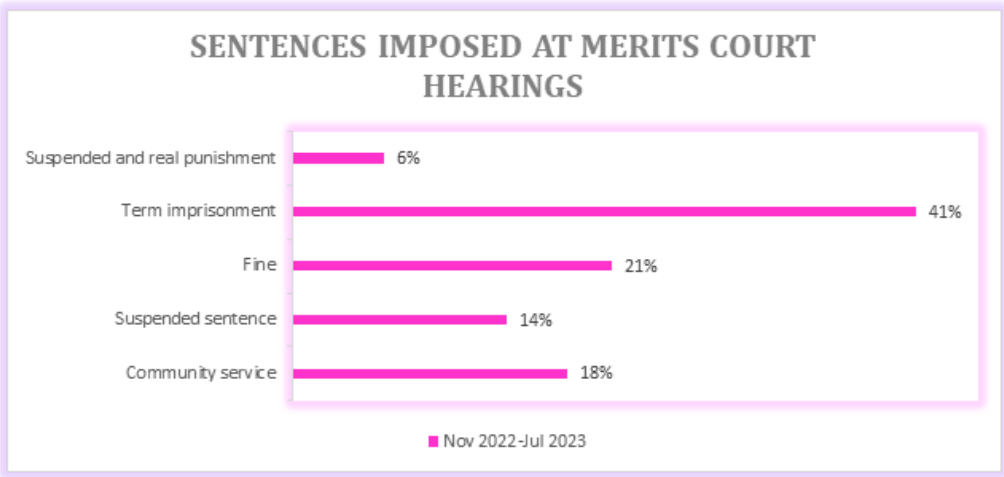
Diagram №18: *The diagram offers the statistics on acquittals (in the period from September 2016 through July 2023).*



The verdicts delivered in the cases of **34** persons were as follows: **14 (41%)** were sentenced to imprisonment i.e. serving the prison term, **7 (21%)** were fined, **6 (18%)** were sentenced to community service, and **5 (14%)** to a suspended sentence.

[91] Decision No. 2/2/1276 of the Constitutional Court of Georgia dated December 25, 2020, available at: https://www.constcourt.ge/ka/judicial-acts?legal=10430 , [30.09.2023].

Diagram №19: *In the diagram below you can see the sentences imposed as a result of the main trial cases (from November 2022 through July 2023).*



VII. DOMESTIC VIOLENCE CRIMES

The Prosecutor's Office has a strict policy on domestic crime and domestic violence cases. During the presented reporting period, The GYLA has not recorded any cases where a plea agreement was signed for this type of crimes.

The number of femicide cases is alarming. According to **the data provided by the Prosecutor's Office**, of the **186 women who were murdered** between 2014 and 2022, **92** women were murdered as a result of domestic violence, and **94** women were killed in other circumstances. In the same period, **129** attempts to kill women were committed; of these, **79** were attempts to kill women in the context of domestic violence, and **50** were attempts to kill women in other circumstances.[92]

Against this background, an effective response of state bodies and implementation of preventive measures is of particular importance. In the reporting period, GYLA observed a total of **143 court hearings** related to domestic violence crimes. Of these, **5 cases** concerned the murder or attempted murder committed in the family, in **4** of which the victim was a woman. In the reporting period, there were no cases reported approving a plea agreement by the prosecution for this type of crime.

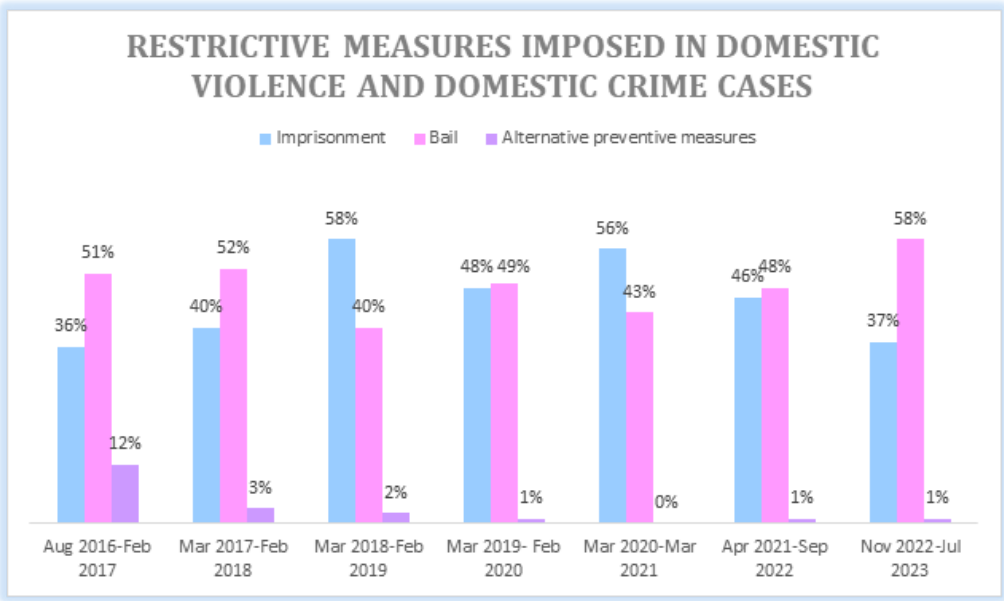
1. Preventive measures imposed in domestic violence crime cases

The court uses bail as the most frequent type of restraining measure against persons accused of domestic violence. Compared to the previous reporting period, the rate of using bail for this type of crimes has increased by 10%. Out of the **315** court hearings on preventive measures, **81 (26%)** were related to domestic violence crimes. The court imposed pre-trial detention on **30 (37%)** defendants, granted bail for **47 (58%)** persons, and approved an agreement on not leaving the country and behaving properly in **1 (1%)** case**.** In **3 (4%)** cases**,** the judge left the persons accused of domestic violence without any preventive measure.

In the given reporting period, the Prosecutor's Office motioned for the detention of alleged domestic violence perpetrators in the majority of cases. More specifically, the prosecutor presented motions for detention in **70 (86%)** cases, bail in **10 (12%)** cases, and in 1 case requested to let the accused go without a measure of restraint due to the fact that the defendant was an elderly woman.

[92] The Prosecutor's Office of Georgia, "The Prosecutor's Office pursues a strict criminal law policy on domestic crimes, which is confirmed by the significant annual increase in the number of criminal prosecutions in recent years", available at: https://www.google.ge/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjFjZXu9KGBAxUuxgIHHUYZDTwQFnoECA8QAQ&url=https%3A%2F%2Fpog.gov.ge%2Fuploads%2Feb6f7f93-Femicide.pdf&usg=AOvVaw2trPCdQiZQz1kX8IayfLZN&opi=89978449 , [03.10 .2023].

Diagram №20: *This diagram shows the prevention measures imposed for domestic violence and family crimes by courts (from August 2016 through July 2023).*



Here you can see an example of the agreement on not to leave the country and appropriate behavior as a preventive measure approved in a domestic violence case.

Case №1: The defendant was accused of coercion against his wife.[93] By using violence, the accused was forcing his wife to leave one room and go into another while shaking her violently all the time. The prosecutor demanded a prison sentence, on the grounds that there is a high likelihood that the accused will re-offend and tamper with evidence. More specifically, since he committed the crime under the influence of alcohol, so it was possible that in the future, under the influence of alcohol, he would not be able to control his actions and commit a new crime again. Additionally, since the victim was his wife, the accused would definitely influence her to obtain the desired testimony. The defense requested the minimum amount of bail. According to the defense, the victim had submitted a statement to the court, saying that she had no complaints against the accused; they had been married for eight years, he had never committed any illegal act against her, nor any restraining order had ever been issued against the offender. The judge enquired where the accused was working, what his monthly income was, and whether he had any bank debts. The accused said that he from time to time worked on construction sites and had some bank obligations. The judge ordered the defendant to sign an agreement on not leaving the country and appropriate behavior.

The above case raises suspicions that are all too common in domestic violence cases, namely that the victim's fear that the abuser may take revenge sooner or later, the pressure by the family environment and society, as well as the lack of trust in law enforcement agencies,

[93] Articles 111, 150, of the CC

forces them to act in favor of abusers. After producing a notarized statement to the court, domestic violence survivors often request favorable conditions for offenders, be it a relatively lenient restrictive measure or mild punishment. Sometimes victims claim that they have no complaints at all and refrain from testifying against domestic abusers at the main trial hearings.

According to the concluding observations of Committee on the Elimination of Discrimination against Women (CEDAW), the committee is co concerned that women and girls who are survivors of gender-based violence are often reluctant to report such violence owing to prevailing gender stereotypes, fear of stigma or reprisals, and lack of trust in law enforcement mechanisms and State support services.[94]

2. Verdicts and sentences used in domestic violence cases

In 20% of cases of domestic violence, an acquittal verdict was reached, and in cases of this type of conviction, the court rarely uses the so-called prison sentence - imprisonment.

Out of **247** cases at the stage of the main trial observed by GYLA trial monitors, **48 (19%)** trials were related to domestic crimes. The verdicts were delivered in a total of **30 (12%)** cases monitored, of which **15 (50%)** concerned domestic violence. In **3 (20%)** cases, the persons accused of domestic violence were acquitted, and in the remaining **12 (80%)**, guilty verdicts were handed down. In the **12 guilty verdicts**, the punishments imposed were as follows: in half the cases - **6** the judge ordered the convicted person to community service, in **4** cases imposed a suspended sentence, in merely **1** case, term imprisonment to be served in a penitentiary facility, and in another **1** case, the court sentenced the person to term imprisonment, a part of which was considered suspended and the other half actual punishment.

[94] Committee on the Elimination of Discrimination against Women, Concluding observationson the sixth periodic report of Georgia, CEDAW/C/GEO/CO/6, 02.03.2023, para. 15 (c).

VIII. THE WAYS OF HOLDING COURT PROCEEDINGS

Court trials held remotely

During the period of the temporary rule of holding court hearings remotely, the courts effectively benefited from conducting the hearings remotely, however, the legislator did not provide for relevant changes in the criminal procedural legislation to further determine the appropriate regulation for holding hearings remotely.

As the COVID-19 pandemic has declined, the number of remote court hearings has dropped and the majority of trials have resumed being held with physical presence in the court-rooms. However, during the reporting period, GYLA monitored **65** remote or semi-remote court trials. The temporary rule for remote conduct of court hearings stipulated in the law[95] expired on January 1, 2023, however, the Criminal Procedure Code has not yet undergone any significant amendments to add necessary legislation for holding distant hearings.

It appears that up until the last stage of case proceedings, the courts took advantage of the possibility provided in the legislation to conduct the court proceedings remotely or semi-remotely. In the reporting period, **15** plea agreement hearings, **19** main trials, **18** preliminary court hearings, and **13** first appearance court hearings were held remotely. Most often remote and/or semi-remote hearings were held by the Kutaisi City Court - **53 (81%)** cases. The courts typically deliberate all types and categories of crimes remotely including crimes against property, domestic violence, drug and traffic-related crimes, and other offenses, among them was one distant trial for a crime against human life.

It is crucial to provide at the legislative level the procedures for holding distant court hearings in order to fully ensure that publicity and other aspects associated with the right to a fair trial are guaranteed.

[95] Article 332[5] of the CPC.

IX. OTHER ISSUES

1. Deferring the enforcement of court judgments

During the reporting period, the GYLA trial monitors were present at several court sessions discussing the motions for the postponement of the verdict execution and the release of the convict, in particular, for the former president of Georgia, Mikheil Saakashvili. The court hearings clearly showed the **legal problems** that accompanied the consideration of the motions in the above case.

The **defense** requested the deferral of the sentence enforcement and the release of Mikheil Saakashvili following his conviction, on the basis of his severely deteriorated health and the need for urgent medical assistance, as the necessary medical case was not and could not be provided in the penitentiary facility.

On December 6, 2022, a **group of experts invited by the Public Defender** announced their conclusion, according to which Mikheil Saakashvili's health condition had been steadily deteriorating for 14 months and had recently taken a sharp turn for the worse, characterizing his condition as grave. The patient was not provided with medical assistance proactively as the treatment was limited to responding to various complications. Although the patient received a variety of medical tests, there was no rational plan in place to manage the patient's illnesses. In order to prevent the likely irreversible deterioration of his health, the patient needed to receive all necessary and fundamental assistance. [96]

It is worth noting that the **Public Defender**, based on the consultation with medical professionals, filed **amicus curiae with the Tbilisi City Court**, urging the court to postpone the sentence enforcement/release of Mikheil Saakashvili. In the friend's opinion, the Public Defender wrote that Mikheil Saakashvili's health condition **met at least the requirements for the postponement of the execution of his sentence because he was suffering from a serious illness, which hindered the execution of his verdict.**[97]

According to the court ruling of February 6, 2023, the court refused to release Mikheil Saakashvili or to defer the execution of the sentece. It should be noted that the court took almost 2 months[98] to announce the decision reached based on-the-spot consultation. As per the decision of March 2, 2023, the Court of Appeals upheld the decision of the first instance court.

Due to the fact that the court refused to provide the GYLA with answers regarding the questions that the organization had concerning the sentence deferral court hearings, the report is not able to pinpoint any general trends.

Despite the aforementioned, the observation of the above single case allowed us to draw attention to the following problems.

[96] The Public Defender's Report 2022, p. 67. Available at: https://shorturl.at/juN59 [01.10.2023].
[97] Ibid.
[98] The first hearing was held on December 9, 2022, and the summary court trial was held on February 6, 2023.

1.1. Timeframes for case consideration

The basis for submitting a motion in the court for the postponement of sentence enforcement/release of a convicted person due to his or her serious illness can be the health status of the person, where the implementation of speedy justice is of great importance. Prolonging the case proceedings for an unreasonable period of time may have a direct impact on the health or life of the convicted person, due to the delay and lack of effective medical treatment. **The observation of the court trials has clearly showed that the timeframes for the consideration of motions requesting M. Saakashvili's sentence to be deferred/released did not follow any reasonable timeframes stipulated in law for the postponement of sentence enforcement/release due to serious illness.** For example, at one of the court trials, a **representative of the penitentiary facility** made a motion to adjourn the court hearing for 1 month on the argument that he needed time to get acquainted with a large volume of case materials, even though the penitentiary service ought to have been proactive in getting information regarding Mikheil Saakashvili's health condition. **This approach created an assumption that the penitentiary service was trying to delay the case review.**

Based on the specifics of the case, it is essential that cases of this type be considered by judges specialized/trained in healthcare matters. In the given case, the court focused on the assessment of physical health and paid less attention to the psychological problems that may affect the quality of serving the sentence by the defendant and the goals of the sentence whatsoever.

1.2. Circumstances preventing the convicted person from participating in the motion review court hearings

Mikheil Saakashvili was not able[99] to appear at any of the court hearings due to his health-related problems. At one of the hearings, the court read aloud a protocol provided by the penitentiary facility, according to which convict Mikheil Saakashvili requested transportation and physical presence at the trial. The protocol also contained a certificate issued by the convict's doctor who advised the convict against physically attending the hearing in the courtroom due to his health condition. The court session was held without the participation of the convict. The convicted person's position in this regard remained unknown. Neither the transportation to the courtroom nor the possibility to participate in the court proceedings remotely was made available for M. Saakashvili, the convicted person.

According to the information provided by an official representative of the penitentiary facility, the "Vivamed" clinic does not have the necessary equipment to ensure the remote involvement of inmates in court proceedings. It should be noted that the "Vivamed" clinic is a contractor clinic of the penitentiary service, where accused/convicts are transferred for medical assistance. Taking into account the preventive measures introduced due to Covid-19, it is unclear why the clinic does not have all the necessary technical means for remote conduct of court hearings. **The GYLA has called on the Penitentiary Service since 2020 to equip its facilities with all necessary technical equipment to ensure the remote participation of the accused in case proceedings.[100]**

[99] Refers to the hearings about postponement of the execution of the sentence.
[100] Special Report on the Judiciary during Pandemic, p.26, available at: https://shorturl.at/gpwA6 , [01.10.2023].

1.3. Other issues related to the decision-making process

When deciding to defer the enforcement of a judgment due to serious illness, the same court shall render a ruling determining how often an expert examination is to be conducted and the expert medical opinion submitted by the convicted person, at the expense of the convicted person, in order to stay abreast with the convicted person's health status. This should be at least once a year. If the convicted person fails to submit to the court the report of examination when required, the court shall rule without an oral hearing to return the convicted person to the respective facility to serve the outstanding part of the sentence.[101]

According to the provision, if the convicted person, even due to his or her financial capabilities, is not able to conduct an expert examination and submit the report to the court, may not be able to enjoy the right to an oral hearing to make a statement in court, and may return to the penitentiary institution in the same or worse health condition. This regulation cannot obviously achieve the legitimate goals of deferral/postponement of the enforcement of sentences due to health conditions.

2. Availability of public information and publicity of court trials

The dissemination of information about court hearings is still a challenge. GYLA has been reiterating that information about the first appearance court sessions is not published. The court authorities provide as justification of this problem the fact that the publicizing the date and time of the first appearance court hearings is hindered by their high number and the shorter windows between court sessions. The problem could be solved by installing an electronic system for case distribution, which could immediately display the timetable of court trials on the board once they are scheduled. The court's website offers information about the different stages of criminal proceedings but fails to indicate which stage of consideration is the trial scheduled for a particular day, making it difficult for those interested in a particular stage of the trial to access the information.

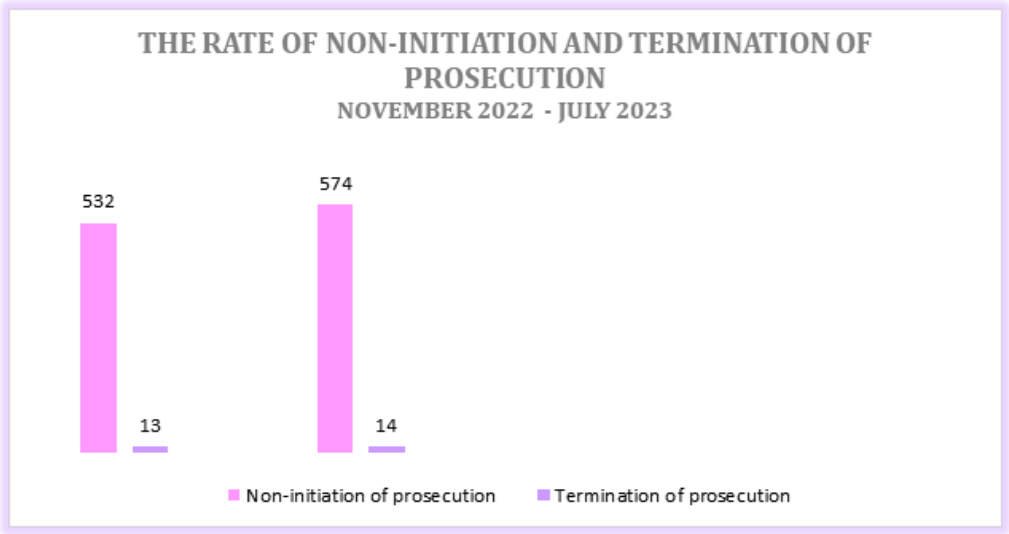
In the reporting period, with the desire to provide more information to the public on a number of issues, the organization applied to the Tbilisi, Batumi, and Kutaisi City Courts and requested public information.[102] The latter two courts did not return the answer to the organization inquiry. According to the response received from the Tbilisi City Court,[103] they do not process statistical data on the information requested by the GYLA. With the same intention, we sent an application[104] to the Ministry of Internal Affairs of Georgia. The Ministry of Internal Affairs provided in the reply letter[105] a link to the official website of the Ministry where the information about the registered crimes is published. It is appreciated that the Prosecutor's Office of Georgia provided GYLA with the requested information and noted about one of our inquiries that the requested statistical information is not being processed by the agency.

[101] Article 283 (3) of the CPC.
[102] Registration number of the Tbilisi City Court is - 31836, the number of the letter sent to the Batumi City Court on August 17, 2023, is გ-04/133-23, the number of the letter sent to the Kutaisi City Court on August 17, 2023, is გ-04/131-23.
[103] Letter N 7751343 of Tbilisi City Court dated August 23, 2023.
[104] The letter N 04/136-23 sent to the Ministry of Internal Affairs on November 17, 2023.
[105] The reply letter N MIA 9 23 02416303 of the Ministry of Internal Affairs of Georgia, dated August 18, 2023.

The availability of information helps to increase the transparency and accountability of the judiciary, which in turn has a positive effect on the level of citizens' trust in the court. Moreover, public institutions should be enthusiastic about processing certain types of statistical data in order to analyze the effect of amendments introduced to the legislation. A fair counterargument against limiting access to information cannot be that the courts are unable to produce data because of their workload. As for the terms for the case review, the court should consider cases within 2 months, and particularly difficult category cases - within a maximum of 5 months. However, the fact is that the courts usually surpass the deadlines. It is therefore generally expected that a dispute will be dragged through the courts of all instances,[106]depriving the public of the chance to have a timely, data-based assessment of important legal issues.

3. The number of cases that did not reach the main trial stage

Diagram №21: *The diagram shows the number of cases not-initiated and terminated by prosecution in the period from November 2022 through July 2023*[107]



In the same period, the Prosecutor's Office used diversion from criminal liability for 2,380 adult persons in 2,084 cases.[108] **Regarding the terms of diversion imposed on the diverted individuals,**[109] as stated in the letter of the Prosecutor's Office,[110] the overall number of

[106] How to retrieve public information; the practical guide for media representatives. p. 15. Available: https://shorturl.at/ekqrM , updated: 01.10.2023.
[107] The data shown in the diagram contain only the quantitative data of prosecutions not initiated or terminated in accordance with Article 105(3) CPC in the period from November 15, 2022, through July 15, 2023. Letter N13/62462 of the Prosecutor's Office of Georgia, dated September 14, 2023.
[108] The prosecutor may refrain from initiating or terminating criminal prosecution against a person (the subject of diversion) for committing a less serious or serious crime if the person (subject of diversion) fulfills one or more of the terms listed above.
[109] Article 168^1 of the CPC.
[110] Letter N13/62462 of the Prosecutor's Office of Georgia, dated September 14, 2023.

adult persons subject to the terms of diversion has amounted to **2454**, which exceeds the total number of diverted persons (2380 persons). The above might have occurred because, in a number of cases, more than two requirements were used simultaneously for one person.

Returning any property items obtained illegally to the state or reimbursing the value of such property	7
Transferring to the state any weapons of crime and/or objects confiscated from civilians	27
Full or partial compensation for damages caused as a result of a person's actions	527
Performing free community labor of 40 to 400 hours	613
Transferring cash into the state budget, the minimum amount of which is 500 GEL	1280

As seen from the table, transferring cash funds into the state budget is most often used as a condition for diversion. This may be an acceptable term for perpetrators, yet in each individual case, it must be assessed to what extent the goals of the criminal law policy are achieved by paying the fine.

4. 169 of the Criminal Code - violation of labor legislation

In the reporting period, public sources disseminated information about the dismissal of a number of persons from public positions.[111] GYLA is actively involved in litigations over labor disputes. In connection with this and considering that during the several year-long court trial monitoring, there have not been reported even a single case where an observer of the organization would be allowed a chance to attend the court hearing of any persons charged with Article 169 of the Criminal Code, the criminal law regulation of labor legislation fell into the organization's area of interest.

In 2013, for the better protection of employee rights, the legislator criminalized the violation of labor legislation – namely, "forcing a person to write a dismissal letter on his or her own initiative, or the failure to fulfill court decisions on the reinstatement."[112] The offense is punishable by a fine or imprisonment for a term of up to two years or by deprivation of the right to hold a position or work in a particular field for a period of up to three years or without it. Since the introduction of the amendment to the Criminal Code in 2013, according to the available data as of July 2023, the Prosecutor's Office of Georgia has initiated criminal prosecution against 5 persons in only 2 cases.[113]

Numerous times has the public been informed of cases where individuals were forced to leave their jobs due to their political opinions or other reasons,[114]yet we have hardly ever

[111] See the GYLA's research on the new personnel policy of the Ministry of Culture, available at: https://shorturl.at/hSZ27, updated: 01.10.2023.
[112] Article 169 of the CC.
[113] Letter N13/62462 of the Prosecutor's Office of Georgia, dated September 14, 2023.
[114] Several lawyers from "Fair Elections" litigated the case of a citizen who worked for the office of one of the municipal councils, was a civil servant and in general, had 20 years of successful track record of working in various municipal structures. During all that time, no disciplinary sanctions had ever been initiated against him/her. In accordance with the

heard of the response of investigative bodies to such cases, as confirmed by the above statistical data. The reluctance of the investigative bodies encourages the aforementioned crime and leaves the victims facing lengthy civil disputes and unenforceable court decisions.

5. Equality and competitiveness of the parties

In several high-profile cases, the violation of the principle of competition and equality by the judge was identifies, the judge asked the witness questions useful to the prosecution.

In two high-profile cases, which were monitored by the GYLA monitors.[115] With his active participation, the judge clearly violated the principle of equality and competition between the parties. During the interrogation of the witnesses presented by the prosecution and after their interrogation, he conducted cross-examination with the witnesses.[116] He tried to get information from the witness with leading questions. In addition, it is noteworthy that the judge showed prejudices in relation to the witnesses, until the witness e.g. The expert would talk about his qualifications, positively evaluating the qualifications of the forensic expert. GYLA believes that the court should be motivated to establish the truth in the criminal process without going beyond such important principles of criminal law as the equality of the parties and competition. In the process of questioning witnesses from the judge's side, the damaging activity of the active defense side was also revealed in the course of two other high-profile cases.[117]

6. Presumption of innocence

The case of Lazare Grigoriadis related to the events of March 7-8 came under the observation area of GYLA. Immediately after the arrest of Grigoriadis, statements made by high-ranking public officials aimed at discrediting his personality in society[118]. Additionally, based on another ongoing case, Lazare Grigoriadis was referred to as a convicted person, while the court's summary decision had not yet been made against him. Statements of similar content made by high-ranking officials in the process of consideration of the ongoing case in the court may have a negative impact on the court's activity and the credibility of the court's decision in the society.

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law "On Public Service", the employee was assessed twice a year and the results were always high, both in terms of the quality of the work performed, as well as in observing the norms of discipline and ethics. Prior to the self-government elections 2021, due to his/her association with the opposition party, he/she was asked to resign. After refusing the illegal demand, he/she was officially fired." Immediate enforcement of the court decisions on labor disputes, available at: https://shorturl.at/clOQ9 , [02.10.2023].

[115] The case of the so-called Vake Park. The case of the so-called republican.

[116] Criminal Code of Georgia, Article 245.

[117] Violation of the principle of competition on the part of the court, asking questions without agreement with the parties is not limited to the three cases mentioned above, similar attitudes were also highlighted at other hearings, although we focus only on those hearings that we systematically observed and the court systematically violated the aforementioned principles.

[118] GYLA responds to the case of Lazare Grigoriadisis, 04.04.23, available at: https://gyla.ge/ge/post/saqartvelos-akhal-gazrda-iuristta-asociacia-ekhmianeba-lazare-grigoriadisis-saqmes.

7. Limiting the right of the accused to make a call

In the 2022 report of the National Prevention Mechanism, we read that from January 1 to October 31, 2022, 403 defendants, including 3 minors, were restricted from contact with the outside world by the prosecutor's decree. It is important to note that the restrictions on phone calls and short appointments are being made at the same time.[119] In particular, when restricting the accused's telephone conversation, the prosecutor's office uses template reasoning, despite the fact that according to Article 79, Part 2 of the Prison Code, the investigator or prosecutor is required to make a reasoned decision. And, in the case of limiting the short-term appointment of the accused, Article 77 of the Prison Code does not provide for the obligation to substantiate the decision at all.

GYLA in the previous reporting period[120] called on the Parliament of Georgia to make changes in the above-mentioned articles, and in the interests of the investigation, it would be possible to limit the accused's contact with the outside world only by a court decision. On the same issue, the Parliament did not take into account the proposal of the Public Defender and unfortunately, the said legislative change was not implemented.[121] ***It is particularly alarming that the defendants' right to telephone communication with the lawyer is restricted by the prosecutor's decree.***

We believe that restricting telephone conversations with lawyers for the accused violates the right to defense of the accused.

[119] 2023 Report of the Prevention Mechanism of the Public Defender of Georgia. p. 102. Available: https://shorturl.at/gjxy4 Updated: 01.10.2023

[120] Report N16 of the monitoring of criminal justice processes. p. 69. Available: https://shorturl.at/kKLRY, updated: 01.10.2023

[121] 2023 Report of Prevention Mechanism. p. 102. Available: https://shorturl.at/gjxy4 Updated: 01.10.2023

X. RECOMMENDATIONS

To the Judicial authorities:

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) At the public hearing, without the initiative of the defense side, discuss the issue of the legality of the arrest and try to establish a high standard in terms of preventing the restriction of the right to human freedom.
3) The expediency of leaving a measure of restraint unchanged should be paid special attention.
4) Proper judicial oversight should be implemented when approving plea agreements. Judges should demonstrate in the public hearing that they take into consideration all material aspects of the case and that they adhere to the procedural rules, so that plea agreement trials are not perceived to be merely a formality.
5) Judges in all instances should fully and clearly inform the accused of the rights granted to them by law in a manner that they understand, especially when a person does not have a defense lawyer.
6) In order to prevent unnecessary delays in proceedings, to respond adequately to instances of tardiness or non-appearance of the parties at court hearings and, if deemed appropriate, to apply the penalties provided by law. In this regard, judges should also lead by example.
7) In the cases of domestic violence and domestic crimes, in addition to the rights of the defendants, judges should pay particular attention to the rights of the victim/survivors, given the special circumstances of proximity of the perpetrator and victim.
8) To ensure proactive publication of information about court trials, as well as to enhance the systematic processing and issuance of data that fall within the category of public information.

For the Parliament of Georgia:

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. In addition, 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 a crime classification.
2) To consider amending the law to remove the minimum amount of bail from the legislation, but rather be determined at the discretion of the court, after taking into consideration all the 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 the 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) Amendments should be made to the law regarding those who commit domestic crimes; along with the 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.

5) Legislation should determine the procedure for holding remote court hearings so that publicity and other aspects of the right to a fair trial are ensured.

6) Amendments should be made to Articles 77 and 79 of the Prison Code, and in the interests of the investigation, the contact of the accused with the outside world should be restricted only by court order. It should be determined by law that the limitation of the right of the accused to talk by phone does not apply to the number to be contacted by the accused to the lawyer.

For the Prosecutor's Office of Georgia:

1) The prosecution needs to focus more on the evidence used to support motions for restrictive orders that are presented to the court.

2) The prosecution, when requesting bail as a preventive measure, should duly take into consideration the defendant's financial situation.

3) The prosecution should study the personal characteristics of the accused to better determine the risks coming from the accused.

4) If the grounds for remand detention are canceled at the first appearance court session, the prosecution should submit a motion for replacing 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 current strategy for handling labor law violations should be outlined and a strict criminal law policy should be put in place.

Georgian Bar Association:

1) To continue the professional training of the corps of lawyers, including the part of professional ethics.