GEORGIAN YOUNG LAWYERS' ASSOCIATION

№16

MONITORING OF CRIMINAL TRIALS REPORT

MONITORING PERIOD: MARCH 2021 - SEPTEMBER 2022

Georgian Young Lawyers' Association

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INTRODUCTION

The purpose of monitoring criminal court trials is to look at trends identified at court hearings through the eyes of an objective observer. The organization's observers have been attending criminal court trials in various courts for years, trying to provide the public with information about the events taking place in the courtroom, using the identified shortcomings and positive examples.

In its monitoring reports, the GYLA has repeatedly noted the importance of ensuring the transparency of court trials, pointing out that stakeholders should be able to attend court hearings. The pandemic somewhat limited the possibility of stakeholders being present at public court hearings, which placed an even greater responsibility on the GYLA observers, who were allowed to attend court hearings on an exceptional basis per the regulations, imposed in connection with the Covid-19 pandemic. Recently, court hearings have mostly been held in courtrooms, but in certain cases, trials are conducted remotely.

An unsolved problem in the current reporting period is still the publication of information about the first appearance court hearing of the accused. In addition, the recommendations prepared by the GYLA in an attempt to solve the problem of publicity of remote court trials have not yet been put into practice.

Traditionally, the court most frequently uses two types of preventive measures- bail and imprisonment. This once again points to the lack and/or ineffectiveness of current measures of restraint. It is noteworthy that, along with bail, the court often imposed additional obligations on the accused, thereby seeking to minimize potential threats from defendants.

The growing number of unsubstantiated or insufficiently substantiated use of detention and bail remains a problem. The organization has for years been pointing out the importance of the prosecution and the court to be more focused on finding and evaluating information about the personal characteristics of the accused. During the given reporting period, there were a number of cases where the prosecution did not study the material situation of the defendants.

It should be appreciated that compared with the previous periods, the court showed more interest in the property status of defendants and often determined the amount of bail to be imposed as a preventive measure based on such knowledge.

Although the law provides for a mechanism for a periodic review of imprisonment used as a preventive measure, the reality shows that in many cases the reviews are carried out formally, and the court does not properly investigate at the review stage the threats coming from the accused. This is confirmed by the low rate of replacement of imprisonment with a lighter restraining measure.

In the current reporting period, the rate of presenting evidence by the defense at preliminary court trials has slightly increased, which has had a positive effect on the adversarial principle. Again, the lawfulness of arrests is not discussed at public court hearings, suggesting that judges are reluctant to hear arguments of both sides on their own initiative.

Judicial oversight over the imposition of plea agreements is weak, since the court, in almost all cases, approves motions presented by the prosecution requesting a plea agree-

ment. Judges approve plea agreements without a thorough examination of the circumstances of plea agreements or the truthfulness of the defendant's confession of guilt.

An alarming issue is the legal status of persons during criminal case proceedings who do not speak the Georgian language. At several trials, the qualifications of interpreters were questionable.

The report also focuses on the court's response to any information disclosing the alleged ill-treatment against defendants. Even if there are the slightest doubts about such violations, the court must address the relevant authorities for further response.

Another major problem is the inadequate communication and/or confidentiality of communication between the lawyer and the accused. There were cases when the lawyers met with their clients for the first time at first appearance court hearings. Insufficient communication affects the ability to properly voice the positions of defendants and fully protect their interests.

The report also discusses approaches and trends identified in domestic crime cases. The protection of victims of domestic crime remains an unsolved issue. Several women were brutally assaulted in the current reporting period, which is why the organization constantly calls on the relevant authorities to coordinate their work to protect the rights of victims of domestic crimes and guarantee their safety.

The number of acquittals has increased in recent years, and the trend causing the growth is worth noting. Most of the acquittals were upheld in cases of domestic crimes.

The aim of the preparation of the report and the public discussion of the matters covered in it is to increase the awareness of citizens about current case proceedings and to improve the participation of relevant authorities in finding solutions to the identified issues.

METHODOLOGY

The Georgian Young Lawyers' Association (GYLA) has been monitoring court trials since 2011. To this date, the GYLA has produced fifteen monitoring reports on criminal court trials and published two special reports on criminal court proceedings in connection to the pandemic.[1] This №16 report presents the results of observing criminal court trials in five courts,[2] from March 2021 to September 2022.[3]

During the given reporting period, the GYLA observed criminal court trials using the same methodology. As in the previous reporting period, monitoring was carried out in a mixed form, remotely, using electronic means, and directly, by attending court trials in the courtroom. In both types of observations, the monitors utilized the questionnaires prepared specifically for the monitoring project. All information presented in the report has been obtained as a result of attending and observing court hearings. The GYLA's observers did not speak to the parties, nor did they review case files or summary judgments. The questionnaires included close-ended questions, requiring "yes" or "no" answers, as well as open-ended questions, allowing the monitors to interpret and record the results of their observations in detail. Besides, the GYLA monitors, in certain cases, made transcripts of court trials and particularly important motions to give more clarity and context to their observations. Through this procedure, the monitors were able to collect impartial, measurable data and, simultaneously, identify other important facts.

The compliance of the court's activities with international standards, the Constitution of Georgia, and applicable domestic laws has been evaluated by analysts. The report does not review or process all court proceedings or hearings, yet the information presented contains important and noteworthy data for members of the judiciary, the Prosecutor's Office, and the Bar Association of Georgia, as well as for members of the legislative and executive branches of the government. Furthermore, the factual circumstances of cases, statements made by the participants of court trials, and the content of case materials did not fall within the scope of the court monitoring. In particular, the GYLA has not analyzed the circumstances concerning specific criminal cases that could determine the guilt or innocence of specific individuals. Given the length of case proceedings and various stages therein, the GYLA observers attended individual trials on a random basis rather than all hearings.

However, there were several exceptions:

- **The so-called "high-profile"** cases that concerned former political officials;
- Cases involving **gross violations of human rights**, cases of **high public interest**, or **other specific factors**.

[1] 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: 25.10.2022].

[2] In the City Courts of Tbilisi, Kutaisi, Batumi, Rustavi and Zugdidi District Court (only electronic);

[3] For clarification, the monitoring was carried out in the period of April-June 2021 and September 2021-September 2022.

From April 2021 through September 2022, the GYLA monitored 2,064 court trials:

- Court hearings on the merit - 851;
- Plea agreement court hearings – 369;
- Preliminary court hearings - 354;
- Restraining measure court hearings – 490.

KEY FINDINGS

First appearance court hearings

- The GYLA's observers attended 490 first-appearance court hearings, with the participation of 559 defendants. The court imposed preventive measures on 531 (95%) persons, and left 28 (5%) persons without any restraining measures.
- The most severe type of preventative measure, imprisonment, was applied in 253 (48%) cases during the reporting period, a decrease of 6 percentage points from the prior reporting period.
- The prosecution demanded imprisonment against 323 (**58%)** defendants, in 73 (**22%)** cases, the prosecutor's motion for imprisonment was turned down by the court.
- As determined by GYLA, 82 (32%) of the people who were imprisoned had their sentences improperly or unjustly justified.
- It **took the court only 15 minutes** to send 33 (13%) persons to jail, as a preventive measure.
- During the reporting period, the court approved **bail** for 271 (**51%)** defendants, as a form of a restraint measure. The prosecution demanded the use of bail as a preventive measure against 226 (**40%)** persons. The court rejected the motion of the prosecutor demanding bail in relation to merely 22 (**10%)** persons.
- The court secured incarceration for 134 (49%) individuals as bail.
- The court imposed the minimum amount of bail on 52 (19%) defendants.
- In 204 (90%) out of 226 motions demanding bail as a restraining measure, the court considered the amount of the requested bail to be inconsistent with the gravity of the crime and/or the material capabilities of the accused and reduced it.
- GYLA believes that the bail used against 114 (42%) defendants at the first appearance court hearings was unsubstantiated or insufficiently substantiated.
- The court used an **agreement on not to leave the country and behave properly** against **6 (1%)** defendants, and a **personal surety** against one individual.
- During the given reporting period, **28 (5%)** defendants appearing at the first court trial were not imposed any type of restraining measures. In only 10 (2%) cases of these, the prosecution did not request any prevention measures.

Proper judicial control:

- In the given reporting period, 353 (63%) defendants appeared at 268 first-appearance court hearings as detainees.
- 9 defendants who appeared in court spoke about ill-treatment by police officers.

Preliminary court hearings

- The GYLA monitors attended 354 pre-trial hearings, where 409 persons appeared in court as detainees.
- Out of 354 preliminary court hearings, in 342 (97%) of them, the prosecution filed motions for the admissibility of evidence. In 327 **(96%)** cases, **the court fully approved the prosecution's motions for the admissibility of evidence,** in 5 (2%) cases, the court did not grant it, and in 8 (2%) cases - partially granted.
- At 96 (27%) court hearings, the defense requested the admissibility of defense evidence. **The court approved the motion of the defense** at **86 (90%)** hearings **and recognized the defense's evidence as admissible,** in 4 (4%) cases, partially approved it, and in 6 (6%) cases, the court did not accept the motion of the defense regarding the admissibility of the evidence.
- The GYLA attended 131 preliminary hearings, where 173 (42%) defendants were brought from prison. In 5 (3%) cases, imprisonment, imposed as a preventive measure on the accused, was replaced by bail.

Plea agreements

- Out of the plea agreement court hearings observed by the GYLA, in 289 (78%) cases out of 369, the plea agreement was approved at the first appearance court session.
- The monitoring showed that the plea agreement is often signed for property crimes - 111 (30%) and drug-related crimes - 101 (27%). There are also frequent plea agreements for crimes against the rule of law - 43 (12%) cases.
- Compared to the previous reporting period, the number of plea agreements for particularly serious crimes has increased by 4%.
- The tendency that the court almost always approves a plea agreement submitted by the prosecution is still retained. In merely 1 case the judge doubted the defendant's confession of guilt and refused to approve the plea agreement at the hearing.
- An alarming fact was identified when the defense counsel arrived at the court trial with a receipt in his hand certifying the payment and declared that he had paid the fine stipulated in the protocol of the plea agreement in advance.
- At plea agreement court hearings, the rights of the accused were not fully explained in 35% of cases, which is an indicator that has worsened by 8 percent compared to the previous period.
- The observation showed that plea agreement trials are finalized within 15 minutes in more than half of the cases (51%). There are cases (64 cases) when the prosecutor reads out only the resolution part of the motion at the trial and does not mention the actual circumstances of the case.

- As a result of plea agreements, the court mostly imposes a fine - 108 (29%) cases, as well as a suspended sentence and a fine together - 85 (23%) cases. The number of persons sentenced to a suspended sentence is only 73 (20%), which is a 5 percent decrease compared to the previous year's data. The type of punishment - community service - in the current reporting period was imposed by the court against 36 (10%) persons.
- Compared to the previous reporting period, the average amount of the fine has increased by 330 GEL, amounting to **3451** GEL. The trend of increasing the average amount of the fine has been identified for the first time in the last five-year period.
- The monitoring has shown that the number of persons who were sentenced to a fine as a punishment under the plea agreement has also increased. This number has grown by 15 percent compared to the previous year and amounted to 60%.

Merits court hearings:

- The analysis of the court hearings shows that the main consideration of 419 (49%) cases was delayed. The frequent reason for the delay is another court trial in progress in the same courtroom - 24%, the lateness of the judge - 21% or the lateness of the parties 11%; the delay by the penitentiary service was also frequent - 10 %.
- The trials, which started more than an hour late, were mostly remote or semi-remote court hearings.
- Compared to the previous reporting period, the postponement of court hearings decreased by 3 percent. In particular, during the current reporting period, 333 (39%) merits court hearings monitored by the GYLA were postponed.
- The major reason for the postponement of court hearings is the negotiation of the plea agreement - 79 (24%) or the absence of the prosecutor's witnesses - 71 (21%).
- There were 13 cases where the court hearings were postponed as the parties were waiting for the expert's report.
- Compared to the previous reporting period, there is a 2 percent increase in acquittals, which has amounted to 19% in the given reporting period. It is worth noting that the majority of acquittals were ordered for domestic crimes.
- The rate of using imprisonment as punishment has increased; in particular, the so-called "custodial sentence" was used against 57% of persons.

Domestic crimes

- Cases of femicide and murder of women are still an acute problem. In the current reporting period, the GYLA was observing 3 cases concerning the murder of women, within domestic criminal case proceedings. The monitoring also identified a case of forced marriage.
- The court sentenced 56 (46%) persons accused of domestic violence to detention, 59 (48%) persons to - bail, and 1 (1%) person - an agreement not to leave the country and behave properly; it is noteworthy that in the latter case the accused was a woman.
- The judge left 6 (5%) persons accused of domestic violence without any preventive measures.
- In relation to domestic crimes, in most cases (88%), the prosecution petitioned the court for imprisonment, and in the remaining cases, motions were demanding bail.
- There were 2 cases where the prosecutor did not request any restraining measures at all. The reason for the prosecutor's request to leave a person without a preventive measure was the sex and age of the accused or the defendant who had already been placed in a penitentiary institution.
- The Prosecutor's Office is cautious to enter into a plea agreement with domestic abusers, however, in the given reporting period, the GYLA recorded 3 cases where a plea agreement was signed with a person charged with a domestic crime.
- As a punishment for domestic crimes, the court most often (46%) uses a suspended sentence, compared to the previous reporting period, the rate of using detention has increased by 5 percent, amounting to 29%. As for community labor, the court imposed it on 25% of those convicted of domestic violence.

Other important issues

- Publishing the information about the first appearance court trials remains a problem. It is hardly ever possible to find information about court trials of this stage on the court's website.
- The monitoring showed that the court has a non-homogeneous approach to media outlets regarding the live broadcasting of court hearings.
- There were cases when an interpreter was not provided for persons who did not speak the language of the court proceedings, due to the fact that the court administration could not find an interpreter of a specific language (Turkmen language and Romany language interpreters). Monitoring has also identified the problem of low qualification of translators.

- As a result of the analysis of court trials, it was found that, at different stages of case proceedings, the lawyers did not have the possibility to have effective communication with the accused in an average of 7 percent of the cases, which was manifested to a greater extent in the non-coincidence of the opinions of the accused and the lawyer, and defendants' unawareness of certain legal matters.

THE RIGHT TO A PUBLIC HEARING

A case shall be considered in court at an open hearing - according to the Constitution of Georgia,[4] the Criminal Procedure Code[5] and international acts.[6] In order to exercise the guaranteed principle, it is important that the case of all the accused be heard in public, unless there are clear grounds provided by law for closing the hearing.[7] In addition, information about court trials should be published through publicly available means, and the persons present in court should be given the opportunity to attend the public hearing.

The COVID -19 pandemic has presented the court with a number of serious challenges, including with regard to ensuring the principle of transparency in court proceedings. Throughout the pandemic, the judicial system was assuming diverse approaches, depending on the spread of the pandemic in the country. In some cases, when the number of infected people decreased, the court would try to hold hearings in the courtroom, and when the scale of the spread of the Coronavirus increased, the court would mostly switch to online court hearings.[8]

Even two years after the onset of the pandemic, we still do not have any rules that could regulate the attendance of interested persons at remote court trials. The involvement of interested persons in the sessions held by electronic means is also associated with technical difficulties, however, conducting court trials electronically during the pandemic has shown that the mentioned form of holding the hearings in certain categories of criminal cases and stages of the judicial proceedings may become a future proceeding. That is why it is important to start working on issues of publicity of remote court trials.

The GYLA has been pointing out for years that publishing the schedule of the first appearance court hearings is a problem. Almost no court trials of this stage can be found on the website of the court. The reason for the non-publication of the information provided by the court's administration is the excessive number of trials and their conduct within limited timeframes. However, the problem can be solved by an electronic system that would distribute such cases and at the same time automatically display the schedule of the court hearings on the screen. Along with publishing a schedule of general information about hearings on the court's website, it is also important to indicate the stage of the hearing.[9]

In the current reporting period, out of the court hearings monitored by GYLA, information was published about the first appearance court hearings –139 (31%) cases, pretrial hearings - 283 (91%), merits hearings - 618 (92%), and 189 (59%) plea agreement hearings.

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[4] Article 62 of the Constitution of Georgia.

[5] Article 10 of the Criminal Procedure Code.

[6] Universal Declaration of Human Rights, Article 10, 11 (1); International Covenant on Civil and Political Rights, Article 14(1); Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6 (1).

[7] Article 182(3) of the Criminal Procedure Code.

[8] GYLA's Criminal Court Monitoring Report N15. p. 23.

[9] For example, the first appearance court hearing of the accused in court, the preliminary court trial, the main consideration of the case.

The reporting period also revealed mixed attitudes towards the media outlets regarding live broadcasts. **At one of the court trials, the defense lawyers and representatives of other media outlets declared that the Public Broadcaster did not transmit the footage to other media outlets upon their request.** In certain cases, the Public Broadcaster did not transmit the court hearings live, while other media outlets that wanted to do so were denied this opportunity at specific trials.

Although the court did not formally violate the law in the mentioned cases,[10] we believe that the court should be more focused on cases in which there is a high public interest and give people the opportunity to watch the trial at least through live streaming if this does not interfere with the normal administration of justice.

Providing interested persons with the possibility to attend court hearings not only meets the requirements of Georgian and international legislation but also ensures greater transparency and increases trust in the court. Court trials conducted under public surveillance are a better guarantee of human rights protection during criminal proceedings.

[10] Organic Law on Common Courts, Article 13^1.

THE FIRST APPEARANCE COURT HEARING

Introduction

The first appearance court hearing of the accused (hereinafter the first appearance court hearing) is one of the most important trials from the point of view of the legal status of the accused. Although, unlike other stages, the lowest reasonable doubt standard is used at the first appearance court hearing, this does not diminish the importance of the court hearing. Moreover, at this stage of the proceeding, the accused is given an opportunity to share his/her position with the neutral arbitrator, to talk about tortures, ill-treatment, and other violations of the defendant's rights. On the other hand, the judge finds out whether the accused understands the language of the criminal proceedings (Georgian language), explains to him/her the essence of the charge and his/her rights, including the right to file a complaint (lawsuit) on torture and inhumane treatment, finds out the possibility of concluding a plea agreement and, if the parties agree, delivers a relevant decision.[11]

At the first appearance court hearing, the judge reviews motions presented by the parties regarding the application of any restraining measure, evaluates the threats coming from the accused and imposes an appropriate type of restraining measure against the accused to neutralize such threats.[12]

Analysis of first appearance court trials

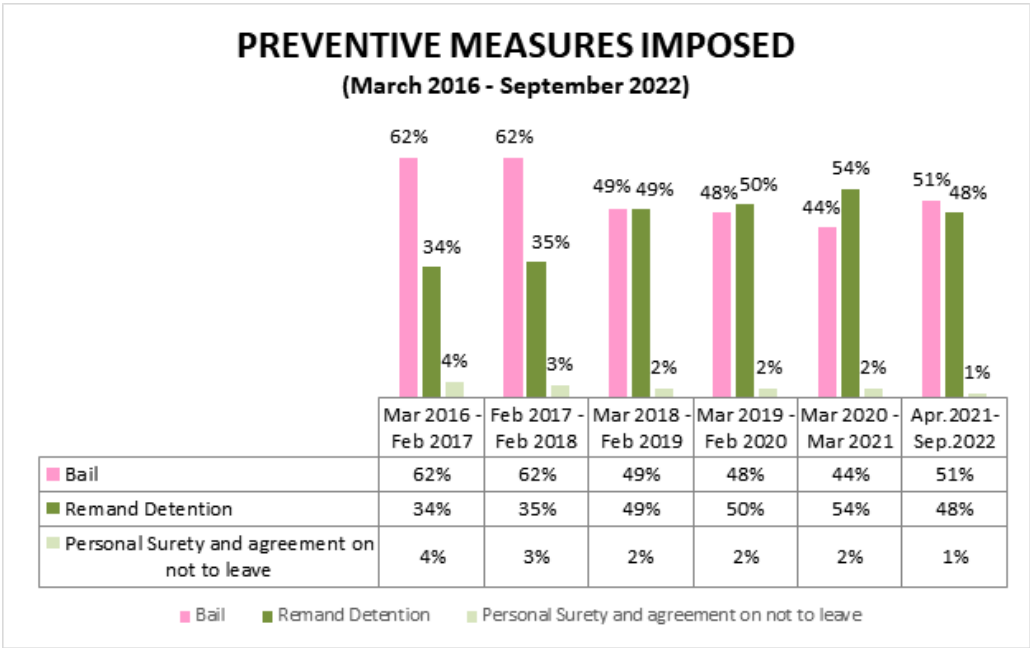
During the reporting period, the GYLA monitors attended 490 first court hearings of the accused, where 559 persons appeared in court as detainees. The court imposed a preventive measure on 531 (95%) persons and did not apply any type of restraining measure against 28 (5%) persons.

[11] Criminal Procedure Code of Georgia, Article 197.

[12] Types of restraining measures are: bail, an agreement on not to leave the country and proper conduct, personal surety, supervision of the serviceman's conduct by a chief commander, and imprisonment. Criminal Procedure Code of Georgia, Article 199(1).

The chart below illustrates the information on the use of preventive measures (from March 2016 to September 2022).

Chart №1



	Mar 2016 - Feb 2017	Feb 2017 - Feb 2018	Mar 2018 - Feb 2019	Mar 2019 - Feb 2020	Mar 2020 - Mar 2021	Apr. 2021- Sep.2022
Bail	62%	62%	49%	48%	44%	51%
Remand Detention	34%	35%	49%	50%	54%	48%
Personal Surety and agreement on not to leave	4%	3%	2%	2%	2%	1%

The data in the diagram shows that for years the court mainly uses two types of restraining measures: bail and imprisonment.[13]This is due to the lack of types of prevention measures and the ineffectiveness of the existing types, for example, the personal surety is rarely used because it is difficult to find guarantors and bring them to court, while the use of agreements on not leaving and appropriate conduct is prevented by narrow legal regulation.[14]

The following chart shows preventive measures used according to cities, from April 2021 through September 2022.[15]

[13] See GYLA's Report - Standards of Usage of Preventive Measures, 2020, available at: https://bit.ly/3fPYq2s , [updated 26.10.2022].

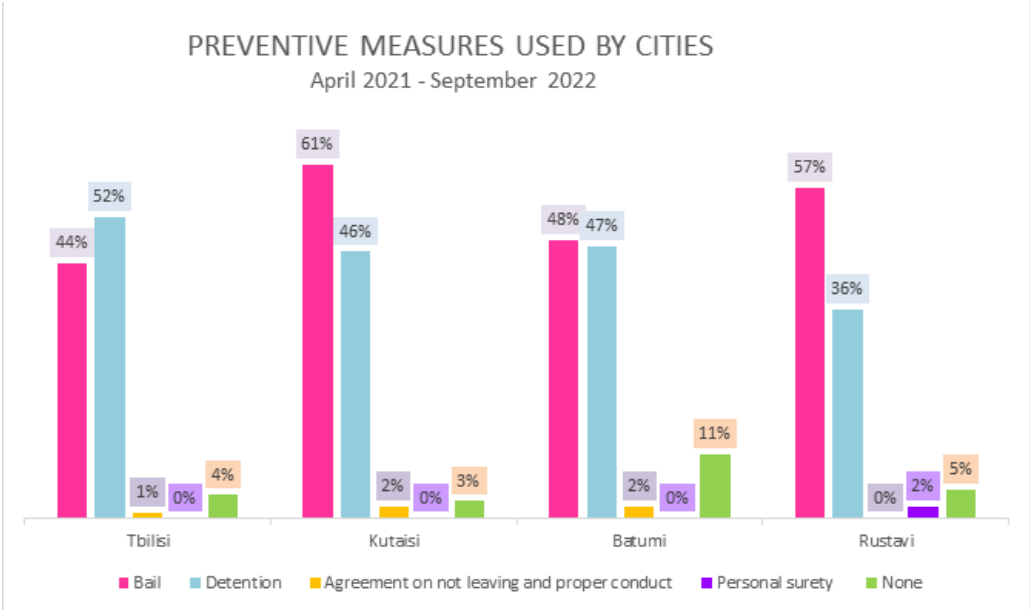
[14] The agreement on not to leave and appropriate conduct can be used only in the case of a crime that is not punishable by imprisonment for more than 1 year. Criminal Code of Georgia, Article 202.

[15] In the current reporting period, the GYLA's monitors attended 262 hearings in **Tbilisi City Court** against 294 defendants, out of which in 115 (44%) hearings - the court used bail as a preventive measure against 128 (44%) persons. In 134 (51%) court trials - 153 (52%) persons were imprisoned. At 1 (1%) trial, one person was granted an agreement on not to leave and appropriate behavior, and 12 (4%) persons at 12 (4%) court hearings were left without any restraining measures.

In **Batumi City Court,** GYLA's monitors attended 83 court hearings against 110 defendants, the court imposed bail on 53 (48%) defendants in 52 (63%) hearings, 52 (47%) defendants at 26 (31%) hearings were sent to prison, 2 (2%) persons at 2 (2%) hearings were imposed an agreement on not to leave and appropriate behavior, while at 3 (4%) court hearings, 3 (3%) persons were not subject to any type of prevention measure.

In **Kutaisi City Court,** GYLA's monitors attended 89 court hearings against 92 persons, 56 (61%) defendants

Chart №2



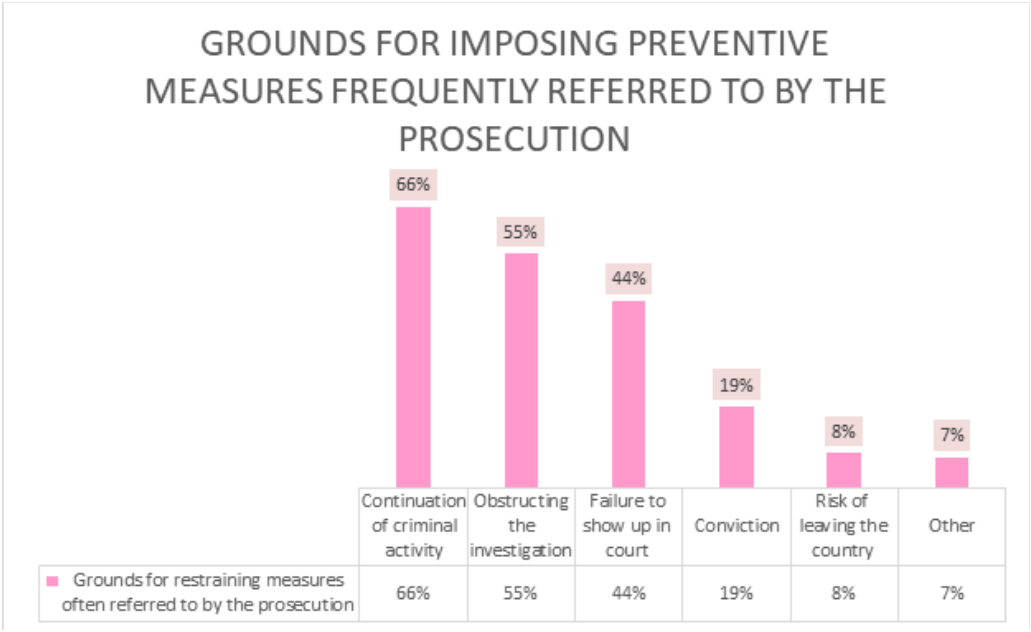
were imposed bail in 53 (59%) court hearings, 24 (26%) defendants were sent to prison at 24 (27%) hearings, 2 (2%) persons in 2 hearings were granted an agreement on not to leave and proper behavior, and in 10 (11%) hearings, no form of preventive measure was imposed on 10 (11%) persons.

In **Rustavi City Court**, GYLA's monitors attended 53 court hearings against 59 defendants, out of which 34 (57%) persons were imposed bail at 31 (58%) hearings, 21 (35%) persons were sent to prison at 18 (34%) hearings, 1 person was granted personal surety at 1 (1%) court hearing, and in 3 (5%) court trials, no type of restraining measure was used against 3 (5%) persons.

In **Zugdidi**, during 3 court hearings against 4 defendants, 3 persons at 2 hearings were sentenced to prison and one defendant was given an agreement on not to leave and appropriate behavior.

In the diagram below, you can see the grounds for the preventive measures imposed (from September 2021 through September 2022).

Chart №3



It is still a problem that the prosecution does not provide more information about the defendant's personality in the courtroom, which could more clearly substantiate the threats. It is important to note that when substantiating preventive measures, the prosecution often speaks about the need to use detention against the accused because the defendant must undergo a forensic psychiatric examination or there is a risk of destruction of evidence, especially in those cases where the evidence[16] has already been obtained and the majority of persons to be questioned in court are police officers. There were cases when the prosecution, justifying the preventive measures, expressed the doubt that the charge against the accused could be aggravated, in connection with which it was necessary to imprison him. The rate of replacing the charges at the preliminary court hearings clearly shows that the charges are rarely changed in the interval between the first appearance court hearing and the preliminary court trial.[17]

[16] For example, a narcotic drug was seized and sent for an expert examination, and it is kept in the relevant office of the Ministry of Internal Affairs. In such a case, the accused cannot have physical access to material evidence.

[17] In the current reporting period, 7 persons were identified whose charges had been replaced at the previous court hearing.

Types of restraining measures and the main trends in their imposition

Imprisonment

Imprisonment, due to its nature of interference with the right to liberty, is permissible only if it is the only way to avoid absconding of the accused and obstructing the administration of justice, interference by the accused in obtaining evidence and committing a new crime by the accused.[18]

Identified results

In the current reporting period, the court sentenced 253 (48%) persons to imprisonment, which is a 6 percent decrease compared to the previous reporting period. The prosecution demanded the use of imprisonment against 323 (58%) defendants, in 73 (22%) cases, the motion of the prosecution demanding the imprisonment was dismissed.[19]The detention applied against 82 (32%) persons was unsubstantiated or inadequately substantiated.[20]

The observation of court trials revealed that the court paid less attention to the justification of detention as a preventive measure in the public hearing, and in the case of substantiation, the grounds accepted by the court were often general and formalistic. Despite the multitude of procedures and issues to be discussed at the first appearance court hearing, it **took the court just 15 minutes** to use preventive detention against 33 (13%) persons.[21]Among them, 3 (9%) defendants did not speak the Georgian language. The mentioned time is very short to listen to the justified positions of the parties and explain the rights to the accused in a language he/she understands.

[18] Criminal Procedure Code, Article 205.

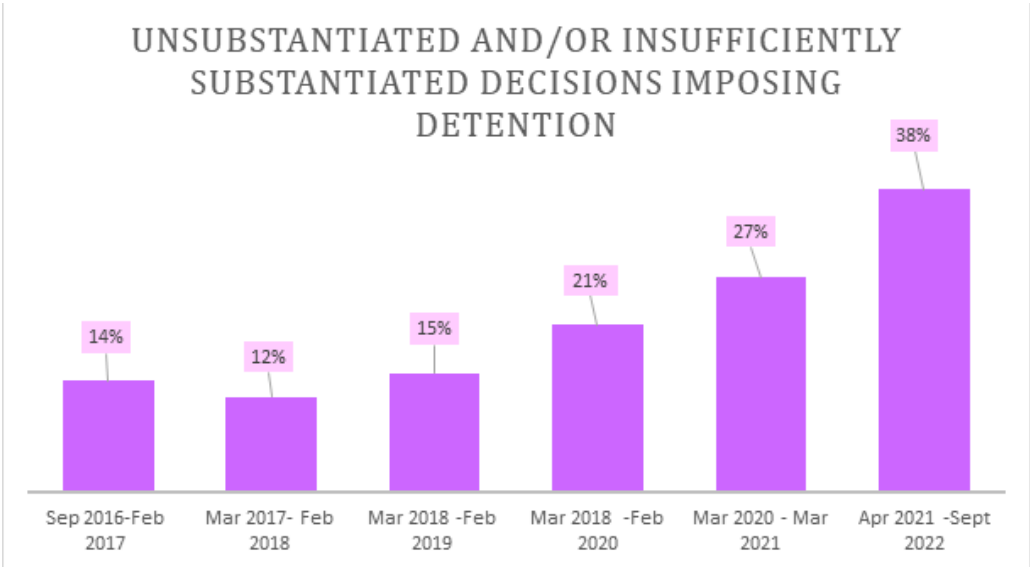
[19] In the previous reporting period, the prosecution requested imprisonment as a preventive measure against 333 (72%) defendants, which the court did not satisfy in the case of 93 (28%) defendants.

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

[21] In the previous reporting period, 170 out of 393 (43%) first appearance court hearings were held within 20 minutes, and in 109 (27%) cases, the duration of the trial did not exceed 15 minutes. GYLA's Criminal Court Monitoring Report N15. p. 50; available at: https://bit.ly/3NkLjTG , [updated: 26.10.2022].

The chart below shows the number of unsubstantiated and/or insufficiently substantiated decisions ordering imprisonment as a measure of restraint (from September 2016 through September 2022*).*

Chart №4



The GYLA believes that the prosecution and the court should be more focused so as not to isolate a person from his social life by imposing imprisonment where it is not necessary or a last resort. We believe that in certain cases, even in the lack of preventive measures, the court can impose a less stringent preventive measure along with an additional obligation to neutralize the threats coming from the accused.

Bail

Introduction

Bail is a monetary sum or immovable property.[22]Bail is imposed to ensure the proper behavior of the accused. The minimum amount of bail cannot be less than 1000 GEL, and the maximum amount depends on the financial situation of the accused. **The amount of bail amount is determined based on the gravity of the committed crime and the property capabilities of the accused.** 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. According to the same ruling, the money deposited as bail shall be transferred to the state budget, and the immovable property, in order to collect the money provided as bail, shall be transferred for enforcement. Real property bail is sometimes associated with the risk of total or partial loss of residence, yet in some cases it is a way for disadvantageous defendants to avoid prison.

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

In the event that the imposed obligations are fully implemented, within one month from the enforcement of the judgment, the money shall be returned to the depositor, and the seizure on the immovable property shall be released. **In addition, if the accused conscientiously fulfills the 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.**

The legislation provides for cases where bail can be secured with remand detention. In order not to turn bail into the so-called unrecognized detention, the amount determined for bail must correspond to the financial capabilities of the accused.

Identified results

During the given reporting period, the GYLA monitors attended 251 (51%) first appearance court hearings of 271 (48%) defendants, against which the court used bail as a measure of restraint. The prosecution requested bail as a preventive measure against 226 (40%) persons, but the court did not grant the bail requested for 22(10%) persons. The court imposed on 134 **(49%)** persons the **bail secured with custody**, and in the case of 6 (2%) arrested persons, the court imposed bail without remand detention. In one of these cases, the arrest was recognized as illegal. In 4 cases, the defendants mentioned at the court hearing that they would not be able to pay the bail amount while in prison. The court probably took into account the request of the defendants and did not grant bail secured with imprisonment.

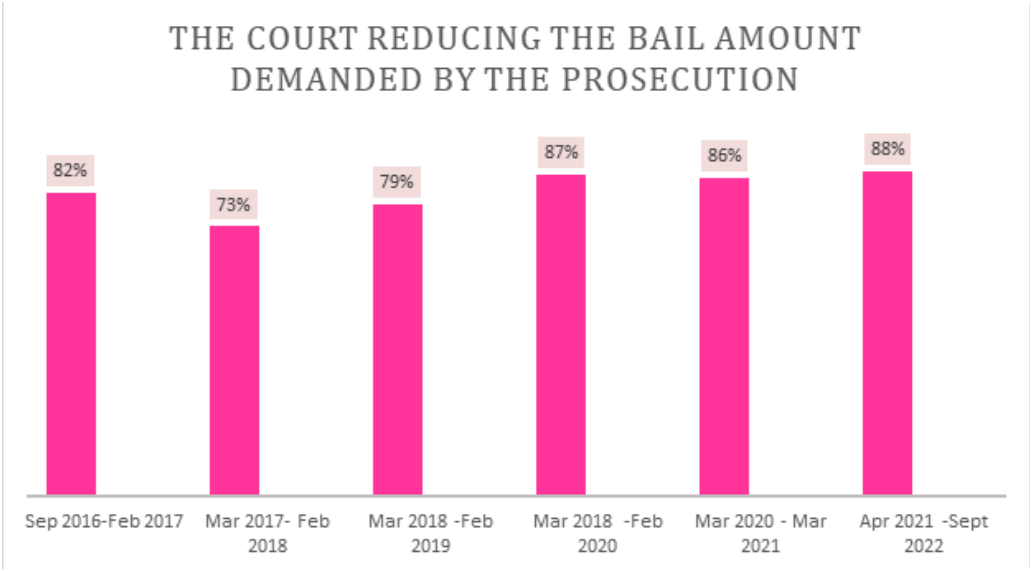
During the given reporting period, the court approved the **minimum amount of bail for 52 (19%) defendants**.[23] The prosecution, as in the previous reporting period,[24] requested the minimum amount of bail for only 2 persons. In 204 (90%) cases, the court considered the motion to be inadequately substantiated in the part of the amount requested and reduced it.

The following chart shows the rate of the court reducing the bail amount requested by the Prosecutor's Office (from March 2016 through September 2022).

[23] Among them, 5 persons were accused of committing a serious crime provided for in the Criminal Code (236 (3); 19-177 (3) of the CC; 180 (3) of the CC and 362 (2) of the CC; 25- 180 (3) of the CC; 177 (3) of the CC, and domestic violence against 9 persons (Article 126[1] of the CC).

[24] GYLA's Criminal Court Monitoring Report N15. p.55, 2021, available: https://bit.ly/3TXaYGf, [updated: 27.10.2022].

Chart №5



For the illustration, please see the following example of an unjustified motion of the prosecution demanding bail, where the court did not grant the prosecutor's request and selected an adequate restraining order for the accused, which could guarantee his adequate behavior.

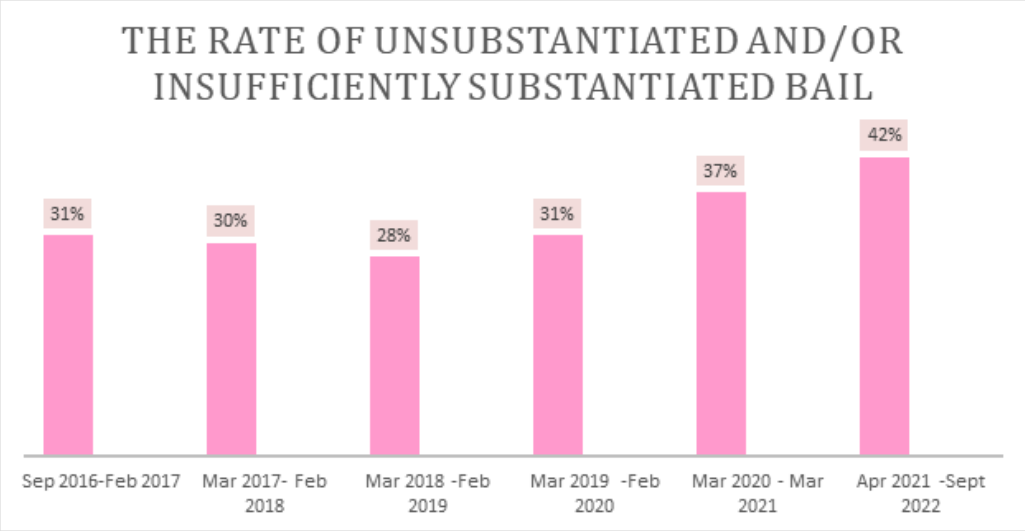
The prosecution was demanding bail in the amount of 2000 GEL against the defendant. The prosecutor only pointed out the risk of influencing a witness. According to the prosecutor, since the victim was a close relative of the accused, the latter might influence him/her in order to receive the desired testimony. The defense lawyer requested to leave the accused without a preventive measure. According to the lawyer, the accused was charged with a less serious category of crime, he had never dealt with the law enforcement authorities, was cooperating with the investigation, the victim and the accused lived far from each other, and the threat of influence was excluded. The judge asked the defendant questions about his material situation. The accused said that his **monthly income was 140 GEL, i.e. the pension he received for being a diabetic.** The judge imposed on the accused an agreement not to leave the country and behave properly as a measure of restraint.

The court, as a rule, reduces the amount of bail requested by the prosecution, despite this, the prosecution still demands the amount of bail without justification, not taking into account the property situation of the accused or the gravity of the allegedly committed act. This attitude and the frequent radical reduction of the bail amount by the court prove that the prosecution pays less attention to the defendant's property status.

At 110 (42%) first appearance court hearings, the bail imposed against the accused was unsubstantiated, and the reasonableness of the amount and/or the appropriateness of its use were not properly substantiated. Compared to the previous reporting period, the rate of unsubstantiated or insufficiently substantiated bail has increased by 8 percent.

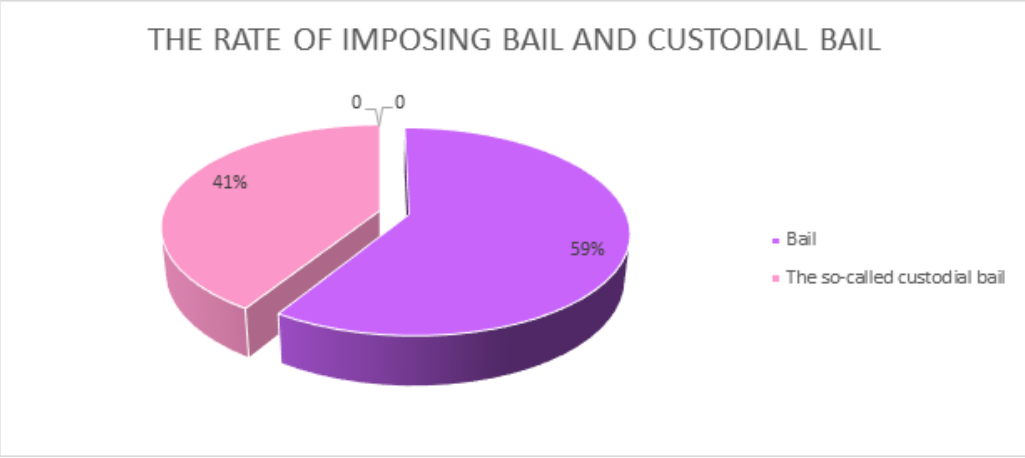
The chart below shows the rate of unsubstantiated bail (in the period from September 2016 through September 2022).

Chart №6



The chart below shows the rate of imposing bail and bail secured with remand detention (from April 2021 through September 2022).

Chart №7



The **GYLA** has noted multiple times in its monitoring reports of criminal trials that the first sentence of Article 200, Paragraph 6 of the Criminal Procedure Code - "*The court shall, upon a motion of the prosecutor or on its own initiative, impose detention on an accused who was subjected to arrest as a coercive measure in criminal procedure until he/she deposits the bail amount*..."was interpreted by the court non-homogeneously and/or to the detriment of the accused. The application of bail as a preventive measure against an arrested person in all cases resulted in the detention of the accused, which limited the defendant's right to freedom, remanded the person in custody against whom there were no legal grounds to use imprisonment as a preventive measure. It is

significant that in the case of detained persons, the rate of unsubstantiated or insufficiently substantiated bail requested and granted by the court was a disturbing problem. Given the vague legislation and case-law, in such cases, with rare exceptions, judges almost always used detention to secure bail. The problem was further exacerbated by the annual number of persons appearing as detainees in court.[25] In the case of those arrested, there is often no reason to remand a person in custody, although the bail, disproportionate to the assets owned by the defendants, turned their detention into a long, groundless imprisonment. In the event of failure to pay, the bail imposed as a preventive measure created the risks of unrecognized detention.

On June 24, 2022, the Plenum of the Constitutional Court of Georgia granted the constitutional submissions №1341 and №1660 (the constitutional submissions of the Tetritskaro District Court regarding the constitutionality of the first sentence of Article 200, Paragraph 6 of the Criminal Procedure Code of Georgia), accepted the position of the judge of Tetritskaro District Court and **held that the judge when reflecting on the need to remand a person in custody to ensure the immediate payment of bail should make a decision based on the individual circumstances of the case, taking into account the existing threats.[26]**

We positively evaluate the decision of the Constitutional Court and hope that after the above decision of the Constitutional Court, judges when choosing bail secured with detention against detained defendants will take into account the financial capabilities of the accused and will not turn the bail imposed into the so-called unrecognized imprisonment.

Agreement on not to leave the country and behave properly, and personal surety

An agreement not to leave the country and behave appropriately can be used as a measure of restraint against defendants whose sentence for any alleged crime does not envisage more than one year of imprisonment.[27]

Unlike the above-mentioned preventive measures, the use of a personal guarantee does not have any limitations and can be used for all categories of crimes if there are proper grounds. In the case of a personal surety, trustworthy persons sign a written commitment that they will ensure the proper behavior of the accused and his appearance to the investigator, the prosecutor, and the court. If the accused commits an act for the prevention of which the surety is used, the court may impose a fine on each surety based on a motion of the party. The number of guarantors is determined by the court. Selecting a personal surety is allowed only with the consent of the accused and a guarantor.[28]

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[25] In the reporting period from March 2016 to February 2017, 140 (48%) defendants out of 290 appeared in court as detainees; In the next reporting period, 218 (54%) out of 402 accused; in the subsequent reporting period, 452 (68%) out of 668 defendants; In the reporting period from March 2019 to February 2020, 518 (76%) of the 686 defendants. From March 2020 to March 2022, 299 (64%) defendants appeared in 256 hearings as detainees.

[26] The decision of the Plenum of the Constitutional Court delivered on June 24, 2022; Available at: https://bit.ly/3ODsFHR .

[27] Criminal Procedure Code, Article 202.

[28] Criminal Procedure Code, Article 203.

Results identified

In the current reporting period, as well as in the previous one, these two types of measures of restraint were the least used measures.

The GYLA monitors attended 6 (1%) trials where the court used an agreement on not to leave and behave properly as a preventive measure against 6 persons and a personal guarantee for one (1%) person. The prosecution was demanding bail for all 7 defendants.

It is worth noting that in the reporting period the defense requested the use of personal surety as a preventive measure in only 2 cases. The application of a personal surety largely depends on the activeness of the defense lawyers, their efforts to find and present reliable persons to the court.

The GYLA constantly notes that binding the agreement on not leaving and proper behavior to crimes punishable by imprisonment for a term of one year often prevents the parties and the court from requesting and imposing the restraining measure. We believe that it is important to regulate this issue at the legislative level in a timely manner so that the use of an agreement on not to leave and behave appropriately does not depend on a specific size of the punishment, which will ultimately make it a more flexible and effective measure of restraint.

Additional obligations

Along with a main measure of restraint, the following can be also imposed on the accused: 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 the agency designated by the court; electronic monitoring; an obligation to remain at a certain place during certain hours or without that; 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.[29]

The court, along with a type of restraining measure that does not order to send a defendant to prison, often imposes additional obligations on the defendant, if necessary. In certain cases, for example, electronic surveillance may be the best guarantee for the protection of victims. In addition, if the prosecution requests imprisonment, referring to the threats arising from the accused if he is at liberty, the defense can propose to the court, along with a lighter restraining measure, to impose additional obligations to invalidate the assumptions of the prosecution.

The court must choose an additional obligation carefully so that it is not more severe for the accused than the preventive measure already imposed, given that the additional obligation cannot be appealed separately in the court of superior instance.

[29] Criminal Code, Article 199 (2).

Court hearings where the court did not impose any restraining measure

In the absence of grounds for using a preventive measure, the prosecution and judicial authorities are entitled not to demand and not to impose a measure of restraint on the accused.

In the current reporting period, 28 (5%) defendants who showed up at the first appearance court trials were not imposed any type of preventive measure. The prosecution demanded bail against 16 persons, including in the amount of **20,000 GEL** and **10,000 GEL**, yet the court deemed the requested bail unreasonable and did not apply the preventive measure against the defendants. In the majority of cases where the prosecution requested a large amount of bail,[30] at least 2 years had passed since the commission of the act.

In 10 (2%) cases, the prosecution did not ask for a restraining order, 5 defendants were convicted in another case, and 2 were already incarcerated for another crime. In 1 case, the accused was a 77-year-old woman, and in the other case, the person was under the age of 21.

There was a case when the prosecution canceled a motion for a restraining order in favor of a plea agreement because the accused showed up at the first appearance court hearing with his/her child, since she/he could not leave the child with anyone, as a result, the trial was halted because of the baby's crying. In another case, the defendant with hearing problems was joining the court trial remotely and since he could not understand anything, the judge considered it necessary to summon the defendant to the courtroom.

In another case that concerned a domestic violence case where the prosecutor was demanding remand detention, the court released the defendant without a restraining order.

For illustration, please see the following example:

> The prosecution demanded a prison term against the person accused of domestic violence. The prosecutor pointed to the motive of intolerance based on gender. According to the prosecutor, the accused would continue to abuse his wife with the motivation of revenge, since she gave a whistle-blowing testimony to law enforcement officers. In addition, the persons interviewed as witnesses in the case were family members of the accused, and if being at large, the accused would definitely influence them. The accused did not admit to the crime, nor did he agree to the use of imprisonment. **The judge left the defendant without a restraining order, explaining that the defendant had never been involved in any illegal activity, had never been convicted, and two years had passed since the alleged offense.**

Similar to the previous reporting period, in the current reporting period, no form of preventive measures was used against 5% of the accused.[31]

[30] In 2 cases, the prosecution was demanding 10,000 GEL, in one case, 20,000 GEL, and in none of the cases did the prosecution request the minimum amount of bail.

[31] GYLA's Criminal Court Monitoring Report N15. p. 65. Available at: https://bit.ly/3NkLjTG , updated: 26.10.2022

JUDICIAL CONTROL OVER THE LAWFULNESS OF DETENTIONS

An arrest is a short-term restriction of a person's liberty. A person is considered detained from the moment of restriction of his or her freedom of movement.[32] The ground for the arrest shall be a well-founded assumption that a person has committed an act punishable by imprisonment; may abscond or not appear before the court; 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.[33]In the existence of specific assumptions 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.

Analysis of court hearings

In the current reporting period, reviewing the lawfulness of arrests at the public court hearing remains a problem. In every report during its ten-year monitoring of criminal court trials, the GYLA has pointed out the importance of reviewing the legality of detention in a public hearing, even when a person has been arrested based on a court ruling. The current legislation does not recognize the mechanism of appealing the decision of the first instance court on the legality of the detention to the higher instance court. This adds even greater importance to the public scrutiny of the arrest by the judge of the first appearance court hearing. Judges, when explaining why they do not discuss the issue of the legality of detention at an open court hearing, usually state that they actually assess the lawfulness and validity of grounds based on which the arrest was carried out and indicate this in the court ruling. However, it is noteworthy that the judgments do not show why the court considered the detention to be legal, what circumstances it relied upon, and to what extent the arrest was necessary based on the evidence presented.[34]Frequently, defendants are not represented by a lawyer, and due to their lack of knowledge of the procedures they are deprived of the opportunity during the court hearing to speak on their own initiative about the arrest. Everyone has the right to directly participate in the discussion of the arrest carried out against him and in order to ensure that this right is exercised, the court must in all cases publicly examine and evaluate the lawfulness of detention and refrain from relying only on the evidence presented by the prosecution.

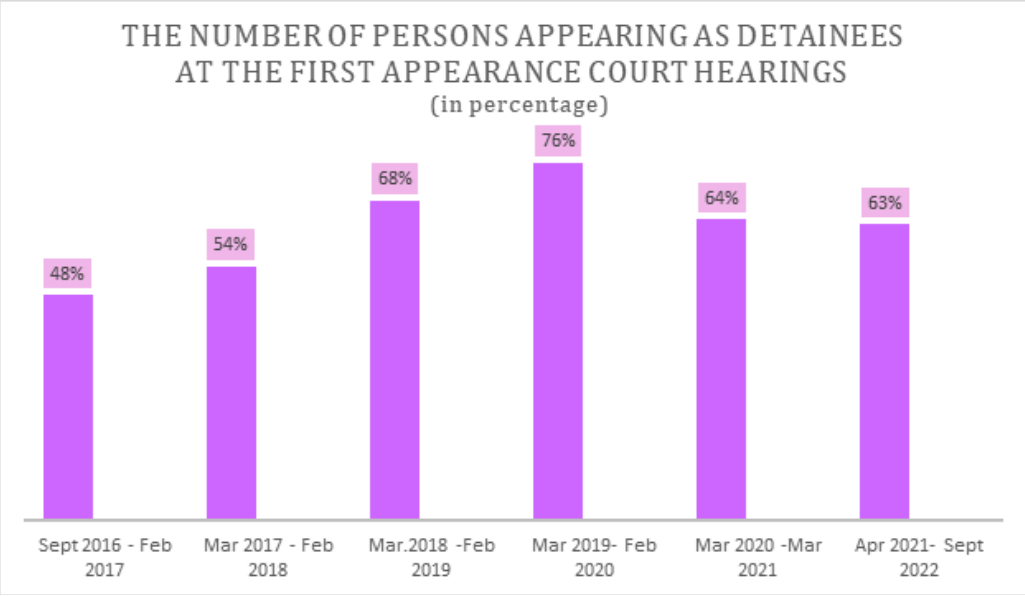
During the current reporting period, 353 (63%) defendants appeared before the court as detainees at 268 court hearings. During the monitoring, it was revealed that 9 (2%) of them were detained with a prior ruling of the court, 49 (14%) – based on urgent necessity, and the grounds for the detention of the remaining 258 (73%) defendants were not announced at the hearing. Compared to the previous reporting period, the rate of

[32] Article 170 of the Criminal Procedure Code of Georgia.
[33] Article 171 of the Criminal Procedure Code of Georgia.
[34] Results of the GYLA's Four-Year Monitoring of Criminal Trials - Trends and Identified Challenges, p. 35 (2021).

arrests has decreased by one percent.[35]

In the chart below, you can see the percentage of persons appearing as detainees at the first appearance court hearings, from September 2016 through September 2022.[36]

Chart №8



There was a case when the court did not consider the arrest of a person to be legal and released him from the courtroom.

For illustration, please see the following example of a person arrested without appropriate grounds:

A person accused of theft[37] appeared before the court as a detainee. The judge discussed the issue of the legality of the arrest at the trial and asked the prosecution why a prior ruling of the court was not sought to arrest the person, to which the prosecutor replied that the accused was identified by the victim, which is why there was a risk that he would abscond. The judge asked the defendant to tell how his personal search took place and whether he voluntarily followed the law enforcement officers. The accused stated that he was told to simply follow them and he did as he was told. The judge asked the prosecutor: "*After receiving the report, how long did it take you to arrest the accused?"* The prosecutor replied that the report is not time-limited, it

[35] In 256 sessions, 299 (64%) defendants appeared before the court as detainees. See GYLA's Criminal Court Monitoring Report N15. p. 66. Available at: https://bit.ly/3NkLjTG , [updated: 26.10.2022].

[36] In the reporting period from March 2016 to February 2017, 140 (48%) out of 290 defendants appeared in court as detainees; In the next reporting period, 218 (54%) out of 402 accused; in the subsequent reporting period, 452 (68%) out of 668; In the reporting period from March 2019 to February 2020, 518 (76%) out of 686 defendants. From March 2020 to March 2022, 299 (64%) defendants appeared at 256 hearings as detainees.

[37] Article 177, 2, 3 of the Criminal Code of Georgia. The crime belongs to the category of serious crimes, and the accused was imposed bail in the amount of 5,000 GEL as a preventive measure.

was received in the morning and the arrest took place in the evening. After receiving these explanations, the judge considered the arrest unlawful and released the accused from the courtroom.

In another case, the court granted bail in the amount of 1000 GEL to an arrested person of 80, who was accused of threatening a family member and released him from the courtroom. The judge did not discuss the legality of the arrest in a public hearing. The court probably decided not to impose detention to secure bail because of the age of the accused. However, it is unclear what exactly we were dealing with in this case, whether it was the bail secured with imprisonment or the court recognized the arrest illegal (was not announced at the hearing though) and released the accused from the courtroom.

The fact that the court often does not consider the lawfulness of detention in a public court hearing, nor does it inquire about the opinion of the defense on its own initiative indicates the one-sided attitude of the court and the lack of interest in the position of the defense, which is also problematic from the point of view of the competitiveness and equality of the trial.

PRELIMINARY COURT HEARINGS

Introduction

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, inquire whether the accused pleads guilty to the charges brought, explains to the accused the possibility of concluding a plea agreement, and if the crime charged is tried by a jury trial, the judge is obliged to explain to the accused the provisions of the jury trial and the rights of the accused related to it, as well as to find out whether the accused agrees that his case to be tried by a jury. If the accused consents, the judge shall set the date of the jury selection session.[38]

The judge of the preliminary trial shall also review motions requesting to apply, change, or revoke a restraining order, among other motions. If the accused has been sentenced to imprisonment, the judge is obliged to review the necessity to leave the imprisonment in force at the very first pre-trial court hearing, regardless of whether the party has filed a motion to change or annul the imprisonment.

If the court is convinced that the evidence submitted by the prosecution provides the grounds to believe with a high probability that the accused committed the crime, the judge shall transfer the case for a substantive hearing and set the date for a merits court trial. Otherwise, the judge of the preliminary hearing shall terminate the criminal prosecution by a ruling.[39]

A judgment rendered by the court is based on the evaluation of the evidence known to be admissible at the preliminary court hearing. Having this in mind, the GYLA's monitors paid special attention to the review of motions presented by the parties and the decisions made by the court.

Analysis of court hearings

During the current reporting period, the GYLA's monitors attended 354 preliminary court hearings, where 409 persons appeared before the court as detainees.[40]

In 342 (97%) of the 354 preliminary hearings, the prosecution filed motions on the admissibility of evidence. In the remaining 12 (3%) court hearings, the GYLA monitors did not attend the motion submission stage because the hearings were either postponed or extended. However, we can say that, as a rule, the prosecution presents evidence at every session. In 111 (33%) cases, the defense made the prosecution's evidence undisputed, and in 230 (67%) cases, it requested to examine the evidence at a hearing on

[38] Criminal Procedure Code of Georgia, Article 219.
[39] Criminal Procedure Code of Georgia, Article 219 (6).
[40] April-June 2012, 57 sessions - 60 defendants; From September 2021 to September 2022. The united data by cities: Tbilisi 80 trials - 107 persons; Kutaisi 89 trials - 92 persons; Batumi 116 trials - 136 defendants; Rustavi 65 trials - 70 defendants; Zugdidi 4 trials - 4 persons;

the merits, and in 23 (7%) cases, the defense motioned to recognize the evidence as inadmissible. In 327 (96%) cases, the court fully satisfied the motion of the prosecution regarding the admissibility of evidence, in 5 (2%) cases did not grant it, and in 8 (2%) cases, the evidence was partially approved.

Compared to the previous reporting period, the rate of satisfaction of motions on admissibility submitted by the prosecution **has decreased by 3 percent.**[41]

At 96 (27%) court hearings, the defense requested to review the admissibility of the defense's evidence. In the previous reporting period, the rate of presentation of evidence by the defense was 26%.[42] In 19 (20%) cases, the prosecution recognized the motions of the defense undisputed and in 11 (11%) cases requested the inadmissibility of evidence. In 86 (90%) court hearings, the court approved the motion of the defense and declared the evidence admissible, in 4 (4%) cases partially approved it, and in 6 (6%) cases, the court did not grant the motion of the defense regarding the admissibility of evidence.

In the reporting period of 2019-2020, the rate of evidence presented by the defense at the pre-trial session was 34%.[43] During the previous reporting period, it was 26%, which was most likely related to the challenges posed by the Covid-19 pandemic.[44] In the given period, the rate of evidence presented by the defense has increased by one percent.

The chart below shows the number of decisions made by the court on the motions of the parties regarding the admissibility of evidence at the preliminary court hearings - (April-June 2021, from September 2021 through September 2022).

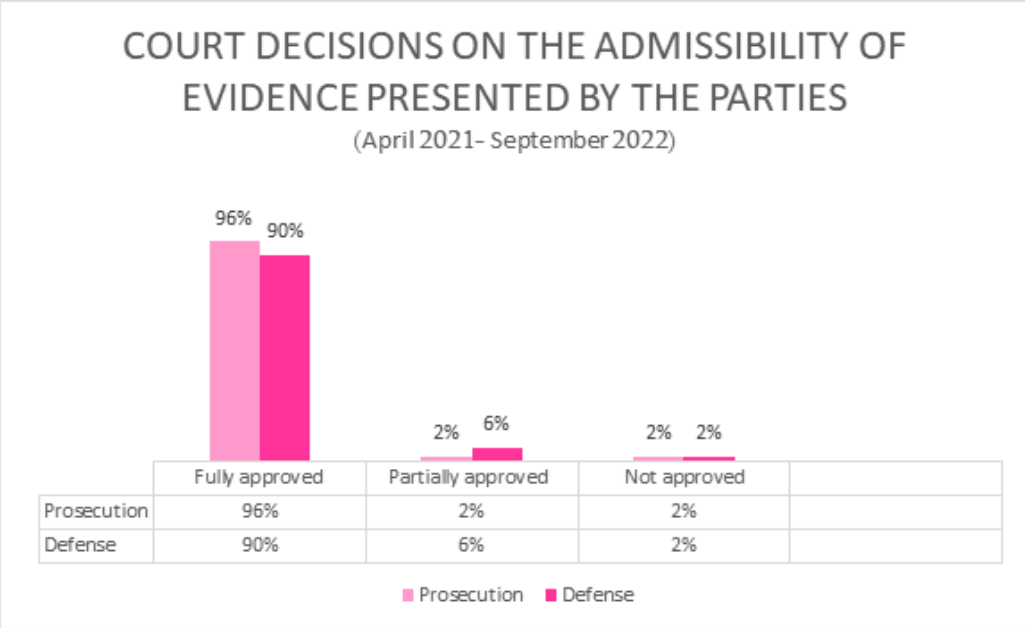
[41] In the reporting period from March 2020 to March 2021, in 399 (99%) cases, the court fully approved the motions of the prosecution regarding the admissibility of evidence, and in 5 (1%) cases - partially. See the GYLA's Criminal Court Monitoring Report N15. p. 70. Available at: https://bit.ly/3NkLjTG , Updated: 23.10.2022.

[42] Ibid.

[43] Results/Trends and Identified Challenges of the GYLA's Four-Year Monitoring of Criminal Trials, p. 42, available at: https://bit.ly/31RnX35 , updated: 23.10.2022.

[44] See the GYLA's Criminal Court Monitoring Report N15. p. 70. Available at: https://bit.ly/3NkLjTG, updated: 23.10.2022.

Chart №9



The GYLA positively evaluates the improved activity of the defense in terms of presenting evidence. The current legislation places the burden of proof on the prosecution but since the investigator and the prosecutor both represent the side of the prosecution[45]there is a doubt that the investigator, who is also the prosecution, will be less reluctant to conduct the investigation in a comprehensive, complete and unbiased manner.

In the given reporting period, at 9 court hearings, the defense lawyers submitted a motion to terminate the prosecution, but none of them was granted. Similarly in the previous reporting period, no criminal case proceedings brought to the preliminary court trial were terminated.

[45] Criminal Procedure Code of Georgia, Article 8 (6).

COURT DECISIONS ON THE IMPOSITION, REPLACEMENT, OR CANCELLATION OF RESTRAINING MEASURES

As already mentioned above, if a person has been arrested, the reasonableness of imprisonment shall be considered at the very first pre-trial hearing.

In the current reporting period, the GYLA attended 131 preliminary court hearings, at which 173 defendants were brought from the detention facility. In 5 cases, the imprisonment imposed on the accused as a preventive measure was replaced by bail. In 2 cases, the prosecution requested to replace the bail with custody, which was approved in one case, and in the other case, since the prosecution failed to present any corresponding evidence in court, which could prove that the accused was deliberately evading the payment of the bail, the motion of the prosecutor was turned down. In none of the cases did the prosecutor request the court to reduce the amount of bail.

It is important to note that, in many cases, reviewing the reasonableness of leaving the temporary detention in force as a preventive measure is conducted in a formal manner, creating the impression that judges are mostly echoing the goals and grounds stipulated in the Criminal Procedure Code.

For illustration, please see the example of leaving custodial bail unchanged.

> A person was charged with theft, and bail in the amount of 5,000 GEL secured with imprisonment had been imposed as a preventive measure. The defense lawyer filed a motion to release the accused from prison until the bail was paid, which the prosecution protested. According to the prosecutor, there was a risk that the accused would commit a new crime as the defendant had been convicted of the same crime in the past, and the current indictment envisaged imprisonment from 6 to 10 years, which created a risk that the accused would go hiding, and also added that the accused could influence the witnesses to be questioned. The court accepted the prosecution's assumptions.

The above example clearly shows how the prosecution substantiates the necessity for deprivation of liberty, where bail was imposed on the accused as a preventive measure and the only reason why the accused had to remain in prison was his inability to post the bail amount, whereas the court unequivocally accepted the arguments brought by the prosecution.

Bail secured with remand detention often turns into the so-called "unrecognized imprisonment", where the inability to post bail amount can become the basis for restricting one's freedom.

The GYLA believes that not only the court should be more careful when dealing with defendants' freedom, but also when the goals and grounds for the imprisonment voiced at the first appearance court hearing cease to exist, the prosecution should be the initiator of replacing the remand detention and reducing the amount of bail secured by imprisonment, especially in the cases where the bailed accused remains in the detention facility only because of lack of money.

ALLEGED ILL-TREATMENT CASES

From November 1, 2019, crimes committed by a representative of a law enforcement agency, an official, or a person equal to them were investigated by the investigative department of the State Inspector.[46]On March 1, 2022, the State Inspector's Service and the position of the state inspector were abolished.[47]Based on Law No. 1312 of December 30, 2021, an independent state body, the Special Investigation Service, was created, the goal of which is to conduct an impartial and effective investigation of crimes under the jurisdiction of the Special Investigation Service.[48]

After entrusting the Inspector's Service with investigative powers, Article 191^1 of the Criminal Procedure Code came into force in 2019, aiming to ensure a more effective judicial response to possible facts of torture, humiliating and/or inhumane-treatment.[49]

In the 6th month of 2022, 1267 reports were submitted to the Investigation Department of the Special Investigation Service concerning representatives/employees of the law enforcement agency who allegedly committed crimes provided for in Article 19, Paragraph 1, subparagraphs "a" and "b" of the Law of Georgia "On Special Investigation Service". In 47 (3%) cases, the author of the reports was the court.[50]

It should be noted that the Special Investigation Service has prepared guidelines, on the basis of which the victim is granted the right to access the case files about any ill-treatment cases investigated by the Special Investigation Service, certainly in compliance with the principle of protecting the personal data of the participants to case proceedings, including the right to personally familiarize with expert conclusions, video and audio materials, and other investigative/procedural actions.[51]

The GYLA highly appreciates the initiative, since we believe that informing victims and affected persons of the progress of the investigation will have a positive effect on the realization of the rights of the mentioned persons, also contribute to increasing the confidence of the victims in the Agency and enhance the efficiency of the investigation involving them.

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[46] Torture - Article 144^1 of the Criminal Code; Threat of torture - Article 144^2; Degrading or inhumane treatment - Article 144^3; Abuse of official authority, committed by violence or using weapons, or insulting the personal dignity of the victim - Article 332 (3)(b) and (c); Exceeding official authority, committed by violence or using a weapon, or insulting the victim's personal dignity - Article 333 (3)(b) and (c); Compulsion to give an explanation, testimony or conclusion - Article 335; forcing a person placed in a penitentiary institution to change his testimony or refuse to testify; Also, coercion of a convicted person in order to prevent him from fulfilling his civic duty - Article 378(2); other crimes that resulted in the loss of a person's life and during the commission of which this person was in a detention center or a penitentiary institution, and/or any other place where he was forbidden to leave the place against his will by a representative of a law enforcement agency, an officer or a person equivalent to him, and/or the said person was otherwise under the effective control of the state.

[47] The Law of Georgia "On Special Investigation Service," Article 27^1.

[48] Law of Georgia "On Special Investigation Service," Article 2.(19).

[49] Criminal Procedure Code. Article 191^1.

[50] The six-month activity report of the Special Investigation Service, p. 48. 2022, available at: https://bit.ly/3UhX6WQ . Updated: 02.11.2022.

[51] On approval of the guidelines for informing current victims of ill-treatment of a criminal law case material and providing with information, Order №01/165 dated July 27, 2022, the website of the Special Investigation Service, 27.07.2022, available: https://bit.ly/3zceAvK , Updated: 26.10.2022.

Results identified

During the reporting period, 9 defendants who appeared before the court spoke about the facts of improper treatment by police officers. In only 3 of these cases, the judge declared that he/she would inform the relevant authority about the case. In one case, the accused noted that he had already referred to the Special Investigation Service.

Below you can see the statements made by the defendants regarding an ill-treatment case in which three persons were involved.

An example for illustration

> **One** of the defendants stated that the police officers physically assaulted him. The police officers attacked him in his own residence, punched his wife, who still had traces of injury, and then he was locked in a room where two police officers were beating him while the residence was being searched.
>
> The **second** defendant stated that he was first assaulted physically at his residence where he was arrested, and then he was subjected to physical and psychological abuse in the police department for a very long time so that the police could receive the desired testimony.
>
> The **third** defendant declared that he was beaten and his ribs were broken; the injuries were confirmed by a medical examination at the penitentiary institution.

To illustrate the response of the judge to a fact of ill-treatment, please see the following example:

> The defendant noted that police officers exceeded their authority when arresting him. According to the accused, the police officers did not produce any kind of identification documents and exerted both physical and verbal insults against him. According to the accused, despite showing no resistance, he was pushed to the ground, and his hands were twisted and handcuffed. The judge inquired what exactly the ill-treatment meant and also informed the defendant that he had the right to appeal against the actions of the police officers, at the same time explained that he could go directly to the prosecutor who would take appropriate actions. Having heard that, the accused said he did not want to appeal, nor did he have any complaints, he just talked about the fact that happened during his arrest.

In another case, the defendants declared they had been beaten and their ribs were broken during their arrest, to which the defense lawyers declared they did not know about the incident and just heard about it. The judge said that he/she would send the information to the relevant authority for further investigation.

The above-mentioned case once again points to the necessity for effective communication between lawyers and their clients, especially in ill-treatment cases. It is important for the court to inform a relevant investigative body for a further response even if there is a slight suspicion of improper treatment against the accused.

PLEA AGREEMENTS

An instrument allowing the court to render a verdict into a case without a merits hearing is a plea agreement, based on which the accused pleads guilty and agrees with the prosecutor to a sentence proposed, either to mitigation or partial removal of charges.[52]

A plea agreement means speedy justice when the parties agree to specific terms and complete the case proceeding in a timely manner. The court renders a guilty verdict without a direct and oral examination of evidence, which saves time and resources that can be used for the consideration of more important cases.

However, entering into a plea agreement does not exempt the accused from civil and other types of responsibilities.

When making a decision on a plea agreement, the prosecutor takes into account the public interest, which the prosecutor determines based on the evaluation of the state's legal priorities, the gravity of the crime committed, and the expected punishment, the nature of the crime, the degree of guilt, threats to the public from the accused, personal characteristics, conviction, cooperation with the investigation, and the behavior of the accused in order to compensate for the damage caused as a result of the crime.[53]

The plea agreement is reached between the parties and is ultimately approved by the court. The judge has no obligation to approve a plea agreement. The court must carry out judicial control, and find out a number of circumstances provided for in Article 212 of the Criminal Procedure Code (whether the plea agreement has been entered into without torture, inhuman or degrading treatment or other violence, intimidation, deception or any illegal promise; whether the plea agreement is entered into voluntarily and the accused voluntarily admits to the guilt; whether the accused is fully aware of the legal consequences of the plea agreement, including the conviction; whether the accused had the opportunity to receive qualified legal assistance, etc.) and only then make a decision.

According to official statistics,[54] a large portion of criminal cases are concluded with a plea agreement, in 2020, the plea agreement was approved in 63% of the cases submitted to the court of the first instance, while in 2021, the data was 64%. Accordingly, the institution of plea agreement has a significant place in Georgian justice, and it is very important to use it in accordance with the law.

Observation results

During the current reporting period, the GYLA attended 369 hearings against 392 persons, at which plea agreements were approved. Plea agreements are mostly signed at the first appearance hearings.

In particular, in 289 (78%) cases out of 369, the plea agreements were approved at the first appearance court sessions, in 19 (5%) cases - at the preliminary court hearings, 38

[52] The Criminal Procedure Code, Article 209 (1).
[53] Ibid. 210 (3).
[54] For the basic statistical data of the Common Courts, see: https://www.supremecourt.ge/files/upload-file/pdf/2021w-statistic-3.pdf .

(10%) at the main court trials, and in the remaining 23 (6%) cases - at other stages of the case proceedings.[55]

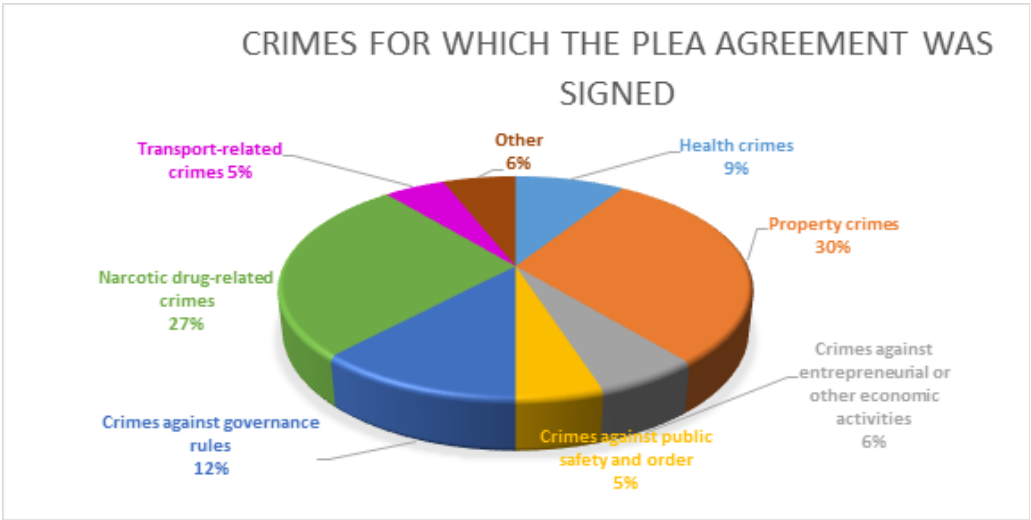
The observation has proved that the most frequently a plea agreement is signed for crimes against property - 111 (30%) and drug-related crimes - 101 (27%), also it is quite often for crimes against governance rules - 43 (1 2%) (In 26 cases of these, the crime was related to Article 362) and against bodily health - 32 (9%), which were concluded without substantial consideration of the cases.

As for crimes against entrepreneurial or other economic activities - in 23 (6%) cases (22 cases concerned the release, storage, sale or transportation of excisable goods without excise stamps),[56]and traffic crimes - in 19 (5%) cases, the plea agreements were signed.

We have not recorded any plea agreements signed for crimes against life in this reporting period.

The chart below provides information about crimes for which plea agreements were approved from April 2021 through September 2022.

Chart №10



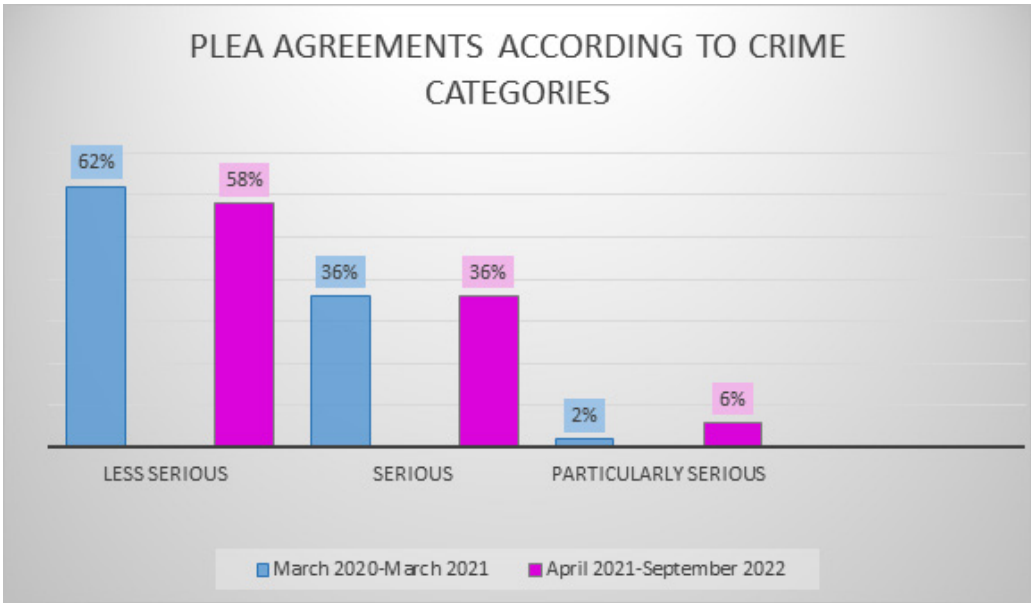
The statistics according to the crime categories again show that plea agreements are most often signed and approved for less serious crimes, and least often for cases of particularly serious crime categories. In particular, 227 cases were less serious crimes, 134 – serious and 8 –particularly serious crimes.

[55] It means the stage of the appeal and/or when the stage of the court proceeding remains unknown to the observer.

[56] Crime envisaged by Article 200 of the Criminal Code

The chart below shows the statistics on the conclusion of plea agreements according to crime categories from April 2021 through September 2022.

Chart №11



Compared to the previous reporting period, the number of plea agreements signed for particularly severe crimes has slightly increased - by 4%.

Four of the above cases are related to narcotic drug crimes, and 3 to crimes against property - misappropriation or embezzlement (Article 182 of the CC).

Only one case concerned the crime against public security and order, namely, the crime provided for in Article 236 of the Criminal Code - illegal purchase, storage, carrying, manufacturing, transportation, forwarding or sale of firearms (other than hunting smoothbore firearms (shotguns)), ammunition, explosive substances or explosive devices).

During the given monitoring period, the court in all cases approved the motions of the prosecution requesting plea agreements. Only one case was identified where the judge doubted the validity of the defendant's willingness to confess to the crime and did not approve the plea agreement at that specific court trial.

See an example for illustration:

A person was accused of illegal purchase, storage and carrying of firearms.[57]According to the plea agreement, the defendant was supposed to be sentenced to 9 years of prison, of which 4 years to be served in a penitentiary institution, and 5 years as a probationary sentence with the same period.

During the trial, the accused declared that he only stored the weapon, while actually he was accused of carrying the firearm as well; he also said "this should not be a crime and a man should have a weapon at home".

The judge doubted to what extent the defendant understood the essence of the crime since in fact the accused believed that he did not commit a crime. The judge explained that admitting to the crime is a prerequisite for a plea agreement, and allowed the parties several minutes in the courtroom to have legal consultations with the accused. The defendant expressed his willingness to the plea agreement and agreed to the proposed sentence, however, after the break, the judge still could not become assured about the opinion of the accused. Therefore, since the defendant was remotely joining the court hearing, the judge requested to bring the defendant to the courtroom to find out in more detail what the accused really wanted. Thus, the trial was postponed to the next day.

The fact that virtually all motions for plea agreements are approved by the court is an indication to some extent of the weakness of judicial control. The attitude of the parties to the case proceedings proves that the court's role remains formal and they expect the agreement to be automatically approved.

See an illustrative example of this:

In one case, prior to the start of the court proceeding, the lawyer appeared in the courtroom together with the accused, holding a receipt in his hand, and declared that he had already paid the fine stipulated in the protocol of the plea agreement because the prosecutor had told him to do so. Seeing this, the judge got very angry and told the party that the plea agreement had not been approved yet and perhaps would not be approved, so it was unclear to the court why he had paid the bail. The judge pointed out that the court hearing approving a plea agreement is not just a formality and all this was disrespectful of the court. The judge then turned to the prosecutor and asked why he had told the lawyer to pay the bail, but the prosecutor denied having said anything like that to either the lawyer or the accused. The prosecutor added that the lawyer had called him and asked for the bank details, although he didn't

[57] More specifically, in the commission of the crime provided for by Articles 236 (1) and 236 (6-b) of the Criminal Code, which implies Illegal purchase, storage, carrying, manufacturing, transportation, forwarding or sale of firearms (other than hunting smooth-bore firearms (shotguns)), ammunition, explosives or explosive devices (guns)), ammunition, explosive substances or explosive devices, making, transporting, sending or receiving by a person who has been convicted for the crime provided for in the 3rd, 4th or 5th part of the same article.

really know for what purpose. The defense lawyer, on the other hand, stated that this (the prosecutor's request) was incomprehensible to him as well, he heard such a thing for the first time, blamed the prosecutor and agreed with the judge that it was an unacceptable action. The court ultimately approved the plea agreement.

The alarming cases of this kind have not been identified by the GYLA in recent years. However, even a single case makes us believe that previously existing vicious practices still exist, which diminishes the role of the court in exercising judicial control.

An objective observer is sometimes left with the feeling that an agreement is reached between the lawyer and the prosecutor without taking into account the interests of the accused, while the accused makes complaints about the sentence or plea of guilty at the court hearing. There were several cases where the defendants' understanding of the essence of the crime and/or their confession of the crime was questionable, yet the court still approved the presented plea agreements.

See the examples below for illustration:

In one case, it seemed that the defendant was not properly informed of the essence and nature of the plea agreement. The defendant asked the judge for an explanation of each statutory provision. He appealed to the court to reduce the period of restriction to drive a vehicle. The judge explained that he was supposed to agree on these matters with the prosecutor. Having heard that, the defendant got irritated and remarked that the court was manipulated by the Prosecutor's Office.

In another case, there was a reasonable doubt that the accused had committed battery (the crime provided for in Article 126(1) of the CC). The criminal act was manifested as follows: on November 28, 2021, in the city of Batumi, during an argument, the accused beat R. Sh., resulting in the latter's physical pain. According to the plea agreement, the accused was sentenced to 100 hours of community service as the form and measure of punishment.

It is worth noting that after hearing the factual circumstances, the answer of the accused, when asked whether he admitted to the defamatory act, was "more or less". The accused in tears referred to the court, "*What would you do if swearing words were used against your mother*?" After this reaction, the court explained to him that given his position, the court could not approve the plea agreement. The judge announced a break and added that if ambiguous positions were made again, he/she would consider the prosecutor's motion for a restraining order. After the break, the defendant told the judge that he accepted the charges and confessed to the crime.

In yet another case, the defendant's consent to the terms of a plea agreement was not quite clear. During the court trial, when the judge reminded the defendant of the type and size of the agreed punishment, the defendant asked the court: "I am a socially vulnerable person, and you are imposing a fine on me and depriving me of that, does not it mean anything to you?" Having heard this, the judge asked to repeat the question to the court, as the judge could not quite clearly understand what he asked. After this, the defendant said, "OK, sir, let it be as it is!"

The above proves that in some cases the negotiation between the parties is not properly conducted and is superficial, where the accused does not develop his/her final position and the validity of his will is questionable. Insufficient consultation of the lawyer with the client is also evident.

Informing the accused of the rights related to the plea agreement

Providing the defendant with comprehensive information on his or her rights to a plea agreement is particularly important, including at plea agreement court hearings, where the court makes an important decision to deliver a verdict without considering the case on merits. The accused must be informed about all his rights provided by law and all procedures in progress must be fully understandable to him.

Results identified

The observation of the court hearings shows that the rights of the accused were not fully explained to the defendants in 35% of the cases, which is a worsened indicator by 8 percent compared to the previous period.

As regards the issues directly related to the plea agreement and those stipulated in Article 212 of the Criminal Procedure Code, the judge did not inquire from the accused in 107 (25%) cases whether there was any torture or humiliating treatment from representatives of the law enforcement body.

In 125 (33%) cases, the judge failed to inform the accused that if the court does not approve a plea agreement, it is prohibited to use against the accused in the future any information that he/she provides to the court during the consideration of the plea agreement.

The judge also failed to explain in 120 (32%) cases to the accused that filing a complaint about any fact of torture, inhuman or degrading treatment against him/her cannot become an obstacle to the conclusion of a plea agreement in compliance with the law.

Time allocated for the consideration of plea agreements

Considering any motion requesting a verdict without substantive review of the case and approval of a plea agreement shall be done at an open and public court trial with the participation of the parties, at the hearing where the court must inspect the agreement reached between the parties.

Observation results

Years of experience show that plea agreement hearings are in most cases formal, since the court approves a plea agreement within several minutes, without mentioning the factual circumstances of the case or following other procedural rules.

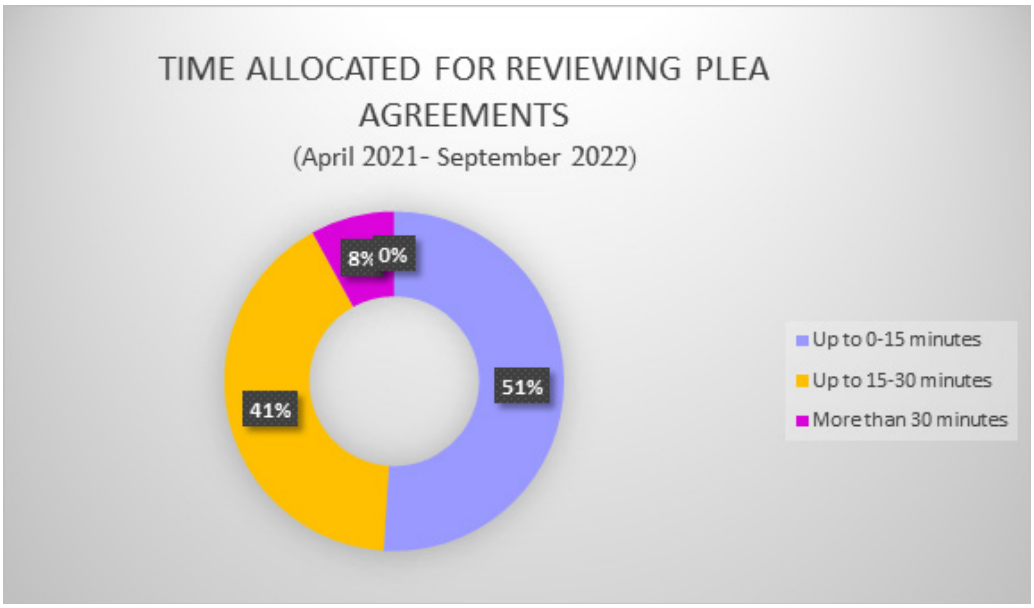
There were 64 (17%) court hearings where the prosecution only read out the resolution part of the motion during the trial, in particular, only announced the punishment imposed on the accused under the agreement, did not discuss the reasonableness of

the plea agreement and the circumstances of the case or other details. It is noteworthy that this is an agreed practice and sometimes the court urges the prosecutor to refrain from presenting the circumstances of the case - 19 (30%) cases.

The monitoring has revealed that the plea agreements were reviewed within 15 minutes in more than half of the observed cases (51%).

The chart below shows the length of plea agreement court hearings from April 2021 through September 2022.

Chart №12



We identified 3 cases where the judge spent only 5 minutes to approve the plea agreement.

This is problematic as we have identified multiple cases where defendants did not understand the essence of the charges imposed on them and often agreed to proposed punishment with the only desire to early terminate the case proceeding based on a plea agreement.

In these cases when the court does not show interest in all circumstances of the case, nor does it investigate in depth the content of the plea agreement, the court itself diminishes the mechanism of judicial control.

Lawfulness and fairness of sentences imposed under plea agreements

The analysis of the court trials shows that judges in only 11 court hearings discussed publicly the fairness and lawfulness of the sentences proposed under the plea agreement, which only amounts to 3% of the fully observed hearings.[58]

[58] In the previous reporting period, the mentioned figure was 11%.

There was a case when the judge doubted the reasonableness of the sentence and asked questions to the parties, yet still approved the plea agreement under the terms originally presented.

See an illustrative example

There were two defendants in the case; one was accused of fraud committed in large quantities using the official position[59]as well as producing a fake document,[60] and the other only of making a fake document.[61]

According to the plea agreement, the first defendant was sentenced only to imprisonment for a period of 3 years, which would be fully considered a probationary sentence, and the other accused was supposed be sentenced for 5 years, which would be considered fully a probationary sentence and an additional punishment – the fine in the amount of 10,000 GEL.

The judge inquired why the Prosecutor's Office chose a three-year suspended sentence for the defendant accused of committing two serious crimes, and a five-year suspended sentence and an additional fine for the other one charged only with the falsification of documents.

The prosecution explained the difference by the fact that the second defendant (accused only for Article 362) committed a new offense while on probation. Having heard this, the judge addressed the prosecutor, "*Come on, the punishment should leave the impression of fairness, so as not to embarrass the court."* The judge then inquired about the defense's opinion. The defense lawyer explained that the sentence seemed harsh, although the accused wanted to sign the plea agreement with these terms, because he was not sure that he would manage to convince the court that he specified the incorrect data in the documentation by mistake, without any malicious intent. The judge made a rhetorical response to the lawyer's explanation, "OK, stop it now, do you want it not to be approved?!" and proceeded with further procedures.

At the moment when the judge deemed the sentence to be unfair, he/she had the right to send the case back to the prosecutor to specify the sentence, yet the judge did not do so.

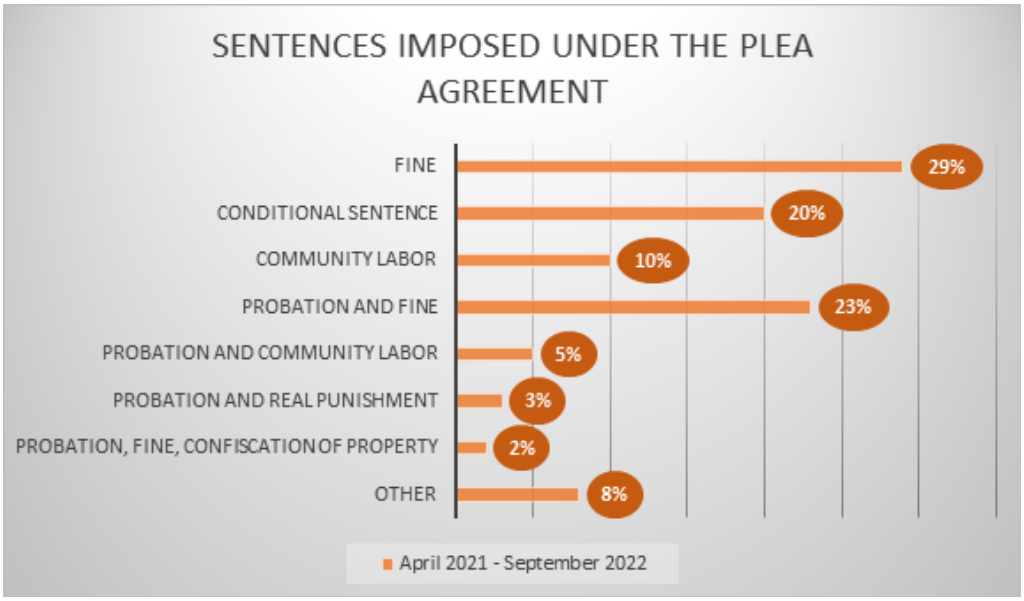
Sentences imposed under plea agreements

As a result of the observation of the court hearings, it was revealed that when signing plea agreements, the court most often imposed a fine as the form and measure of punishment in 108 (29%) cases, as well as a suspended sentence and a fine together in 85 (23%) cases. Imposing a suspended sentence independently was identified in 73 (20%), which is a five-percent decrease compared to the previous year. As for the type of punishment - community service- it was imposed on 36 (10%) persons in the current reporting period.

[59] The commission of the crime provided for in subsections Article 180(3) (a) and (b) of the Criminal Code.
[60] Article 362(2) (b) of the Criminal Code
[61] The same Article, Article 362(2) (b) of the Criminal Code

In the chart below, you can see the sentences imposed as a result of plea agreements, from April 2021 through September 2022.

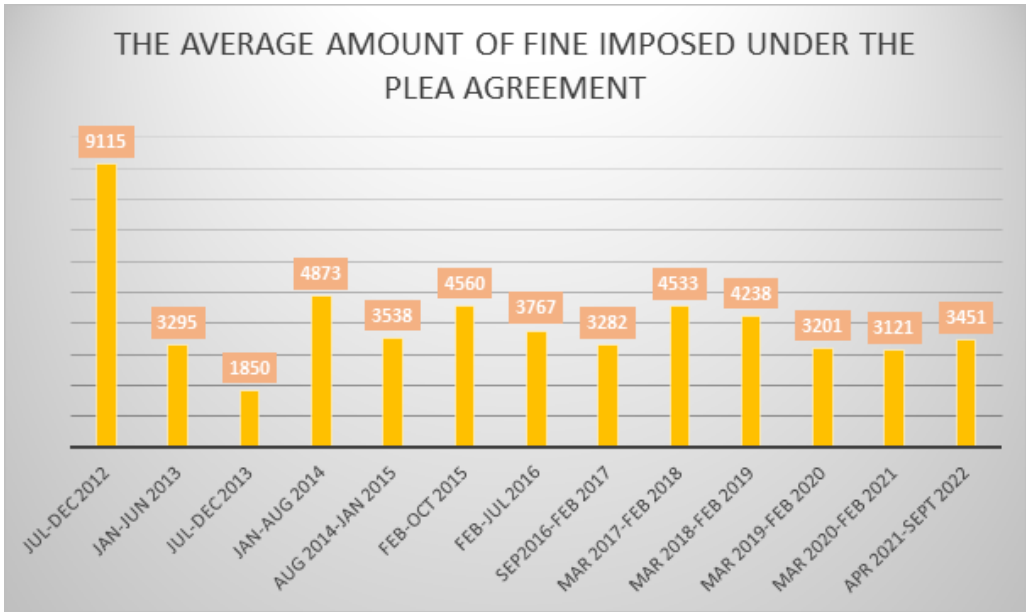
Chart №13



The average amount of fine is 3451 GEL. Compared to the previous reporting period, the average amount of the fine has increased. In the previous year, it was 3121 GEL.

The chart below shows the average amount of fines imposed under plea agreements by year.

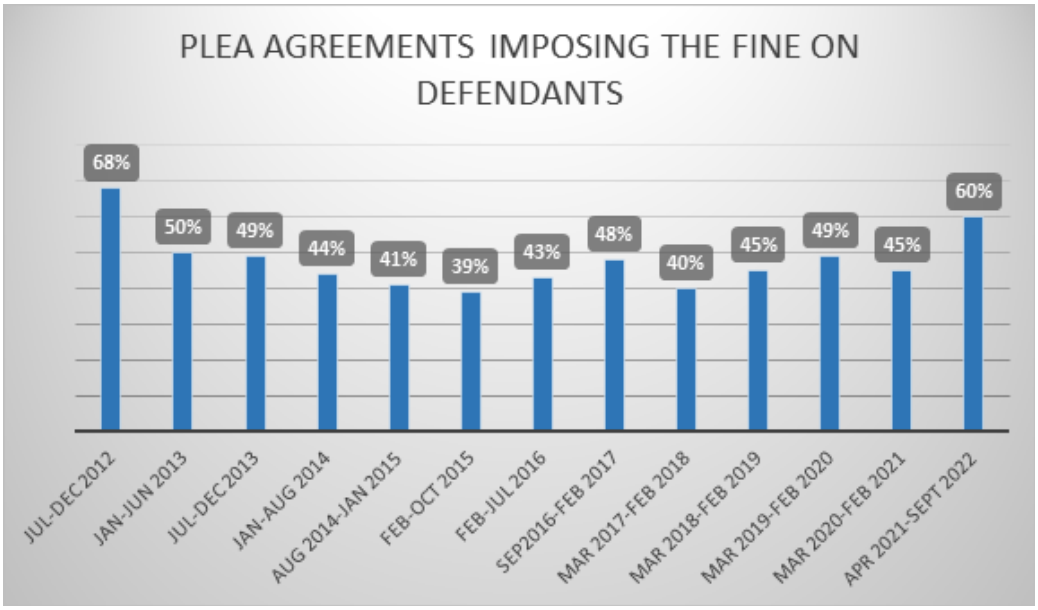
Chart №14



The observation shows that the number of persons who received a fine as a punishment under the plea agreement has also increased. The figure has increased by 15 percent compared to the previous year and has amounted to 60%.

The chart below shows the number of plea agreements under which the defendants were fined.

Chart №15

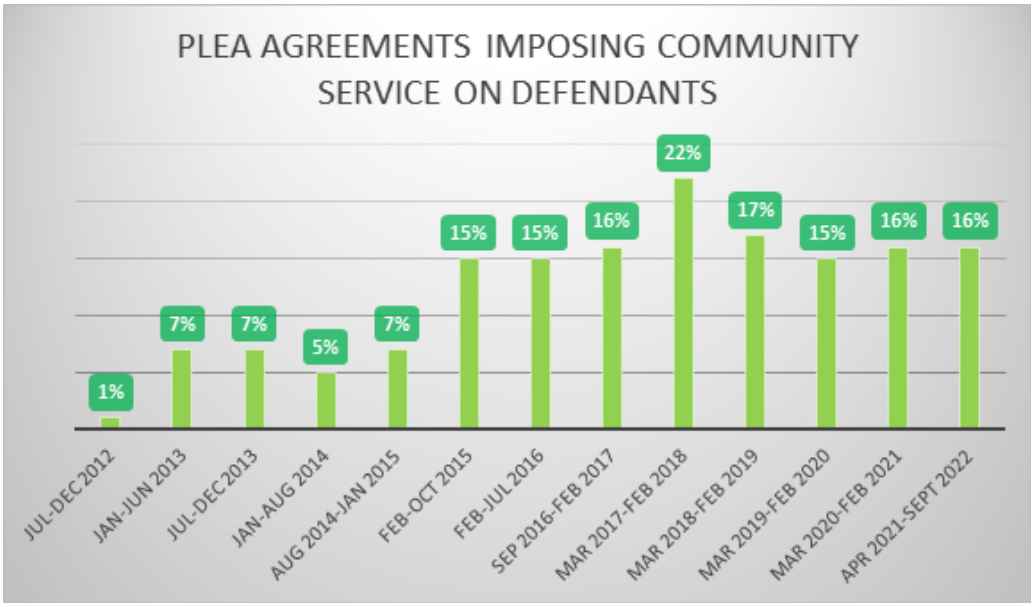


The percentage of plea agreements ordering the defendants to community labor remains literally unchanged.[62] The number is 16%, just like in the previous year.

[62] This refers to cases when community service is imposed both as the main punishment and as an additional obligation.

The following chart shows the number of plea agreements, in which the defendants were imposed community service.

Chart №16



THE HEARING ON THE MERITS

Delaying and suspending court trials

The problem of postponing and delaying court sessions is not a novelty for criminal justice; GYLA has pointed out the issue in its several reports, yet the data do not improve from year to year.

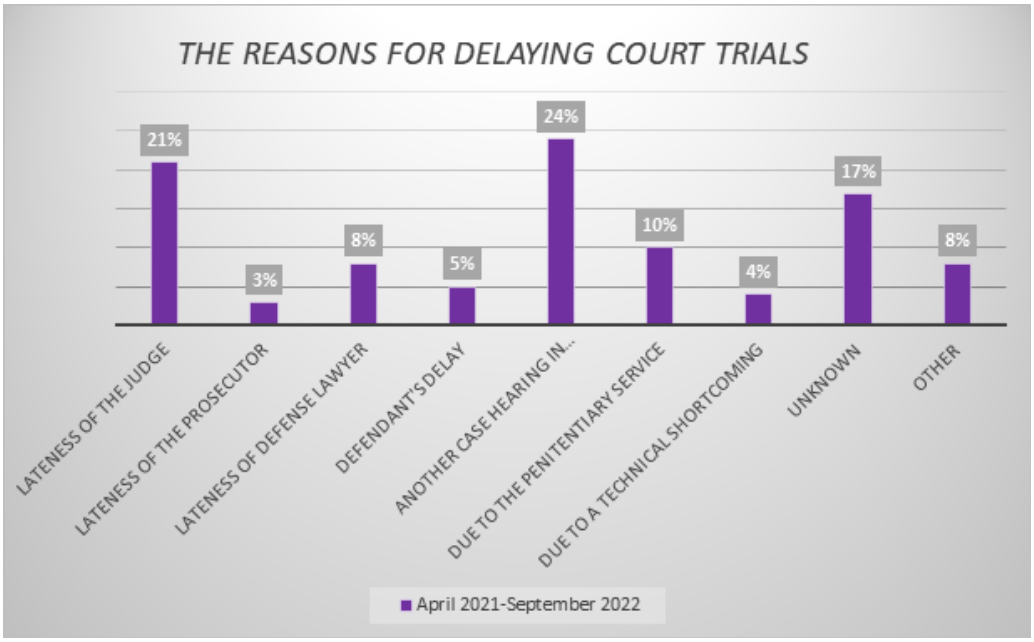
The GYLA monitored 851 merits hearings against 1377 defendants. The analysis of the court sessions shows that the main hearing of 419 (49%) cases was delayed.

Among the causes of delay, prevailing is another case proceeding in progress in the same courtroom - 99 (24%) cases, the lateness of the judge - 87 (21%) or the parties (11%), frequent was also the late appearance of the penitentiary service - 42 (10%).

In multiple cases, namely in 71 (17%), it remained unknown as to why the trial was delayed, however, since these trials were mostly held remotely, we can assume that they were delayed due to technical shortcomings.

In the chart below, you can see the reasons for the delay of court hearings in the period from April 2021 to September 2022.

Chart №17



47 (11%) court trials were opened an hour or more late. Most of them, namely, 33 court hearings were held remotely or semi-remotely.

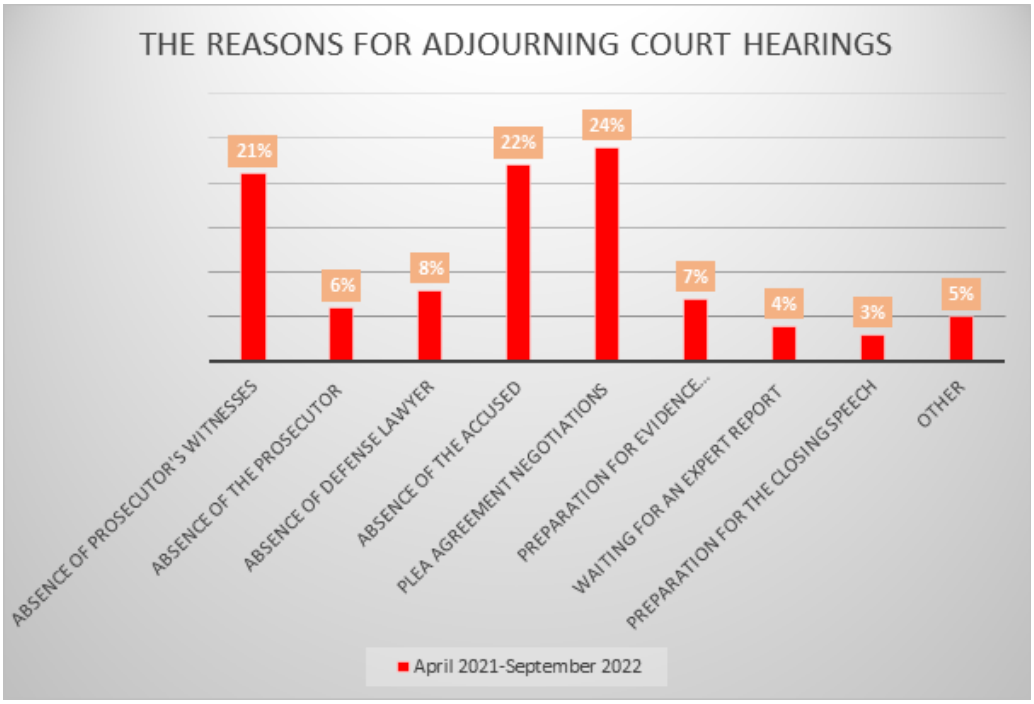
As for the postponement of court trials, 333 (39%) of the main court hearings monitored by the GYLA in this reporting period were postponed, which is a 3 percent decrease compared to the previous year.

Among the reasons for the postponement of court sessions, the leading is the negotiation of a plea agreement - 79 (24%) and the absence of the prosecutor's witnesses - 71

(21%), followed by the absence of defendants - 73 (22%), which was mainly due to the lack of escort officers or technical shortcoming during the remote court trials, which ought to have been ensured by the penitentiary service.

In the chart below, you can see the reasons for the postponement of the court trials in the period from April 2021 to September 2022.

Chart №18



The GYLA has paid significant attention to those court hearings that were delayed because the parties were waiting for an expert conclusion. We identified 13 (4%) cases when the trial was postponed on this ground. In reality, however, there are more cases of postponement or delay of court hearings due to the above reason, but they did not fall within the scope of the monitoring. This was due to the automatic postponement of trials when GYLA's monitors were not able to record the reasons for the adjournment of the hearing.

Statistics on judgments

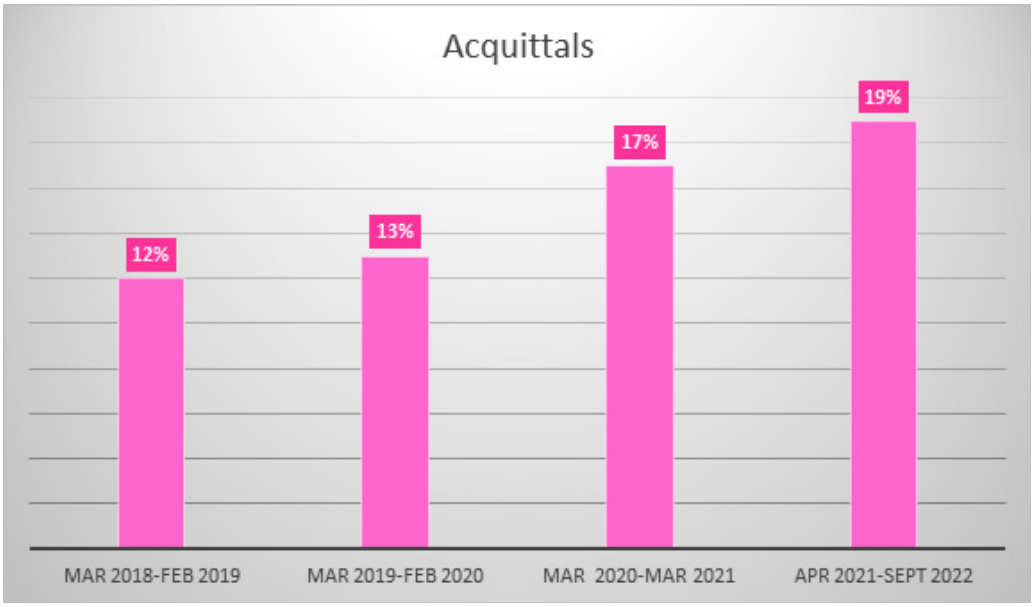
In the given reporting period, the GYLA's monitors attended 108 case proceedings against 133 persons, where the verdicts were handed down. Of these, 82 (62%) persons were found guilty, 25 (19%) were acquitted, and 9 (7%) were partially acquitted.

The charges brought against 17 (12%) persons were reclassified to a lighter article.

It is noteworthy that the rate of acquittals has increased slightly compared to the previous year.

The chart below shows the rate of acquittals in the period from March 2018 through September 2022.

Chart №19



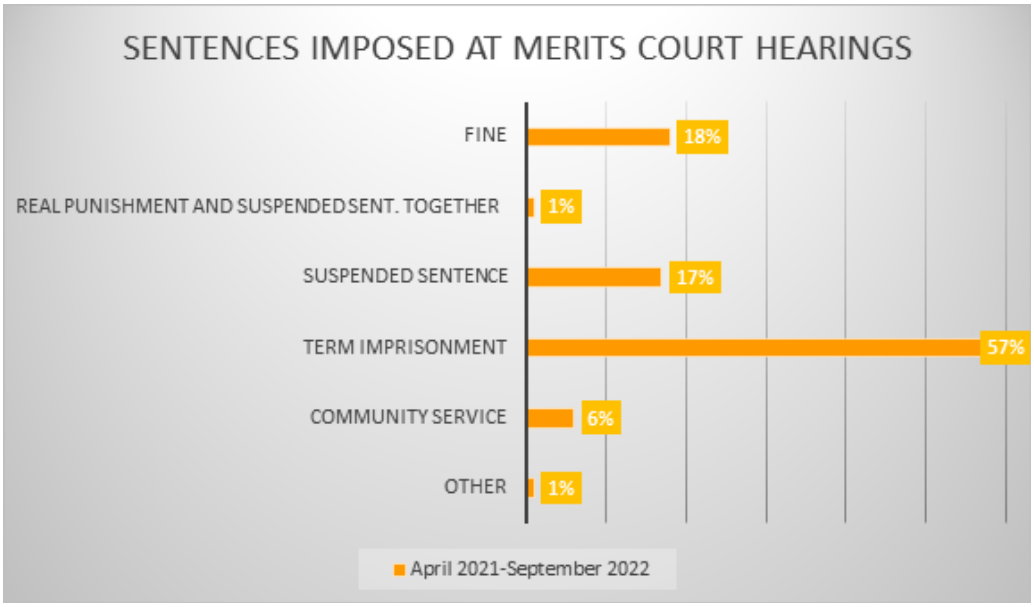
Sentences imposed as a result of merits hearings

Out of the guilty verdicts against 108 persons, the sentences were distributed as follows - 62 (57%) persons were sent to prison- the so-called "prison sentence", which is significantly increased data compared to the previous reporting period.[63] Fine was imposed on 19 (18%) persons and a suspended sentence against 18 (17%) defendants.

[63] In the previous reporting period, imprisonment was used against 25% of the accused.

In the chart below, you can see the sentences applied by the court as a result of the merits hearings, from April 2021 through September 2022.

Chart №20



DOMESTIC CRIMES

Although certain positive steps have been taken to combat violence against women and domestic violence, as well as the legislative leverage has been improved and some progress has been observed in terms of state policy, the public has still witnessed a number of brutal manslaughters. The statistics of femicide are alarming. Last year, the GYLA observed 7 cases related to murder or attempted murder in the family, in 6 cases of which the victims were women. In the current reporting period, 3 women were murdered.

The cases of women killings:

The accused, with the intention of killing his pregnant wife, Q.K., inflicted approximately 30 injuries with a cold weapon on her, thereby committing knowingly the premeditated murder of a pregnant woman with special cruelty, committed against a family member, the crime provided for in Article 11^1, Article 109 (2)(a)(b) and (3)(b).[64] Having committed the act, the accused contacted the law enforcement authorities and reported about the incident. During the course of the proceedings, it was revealed that the expert examination established the defendant's diminished capability.

In another case, the person was charged with premeditated murder, committed on the ground of gender, with special cruelty against a family member, the crime provided under Articles 11^1, 109 (h)(j)(l) of the CC. According to the factual circumstances of the case, the ex-husband inflicted deadly wounds on the throat and head areas of a 36-year-old woman with a knife. The prosecutor pointed out the motive of discrimination based on gender, in particular on the grounds that the accused was a man and had the right to dominate a woman, forbidding the victim to communicate with other people.

A 38-year-old male was charged with intentional murder committed with extreme cruelty against a family member (Article 11^1, Article 109 (2)(f) and (3)(b) of the CC[65]). On May 21, 2022, during the daytime, S.K, 31, his wife R. M, 38, and their two minor children were traveling together on the bus when the accused inflicted ten wounds on the woman with a cold weapon, mostly in the throat area. The woman died on the spot. The man was arrested at the scene of the crime.

We deem it necessary that any agency involved in the implementation of justice should make a proper assessment of risks and threats and then make decisions. Only a repressive and punishment-oriented approach may not yield proper results. In order to ensure that the fight against domestic violence is effective, it is necessary to carry out comprehensive measures, for instance, the relevant agencies must organize active information and educational campaigns.

Years of experience have shown that after being released from prison, the perpetrator tends to reoffend. Courts should therefore be encouraged to use sanctions aimed at correcting violent behavior, including requiring the perpetrator under Article 65 of the Criminal Code to take a mandatory training course aimed at changing his aggressive attitudes and behavior.

In the current reporting period, 1 case of alleged forced marriage was identified, the

[64] The edition of the Criminal Code in force at the moment of the alleged crime (02.07.2022).
[65] The edition of the Criminal Code in force at the moment of the alleged crime (21.05.2022).

crime provided for in Article 11^1, 150^1(2)(a) of the CC. The prosecution adequately indicated the motive of gender discrimination.

According to the factual circumstances of the case, the accused wanted to forcefully wed his daughter. According to the prosecutor, the motif of gender discrimination was obvious; the father believed that his daughter could not do anything but get married.

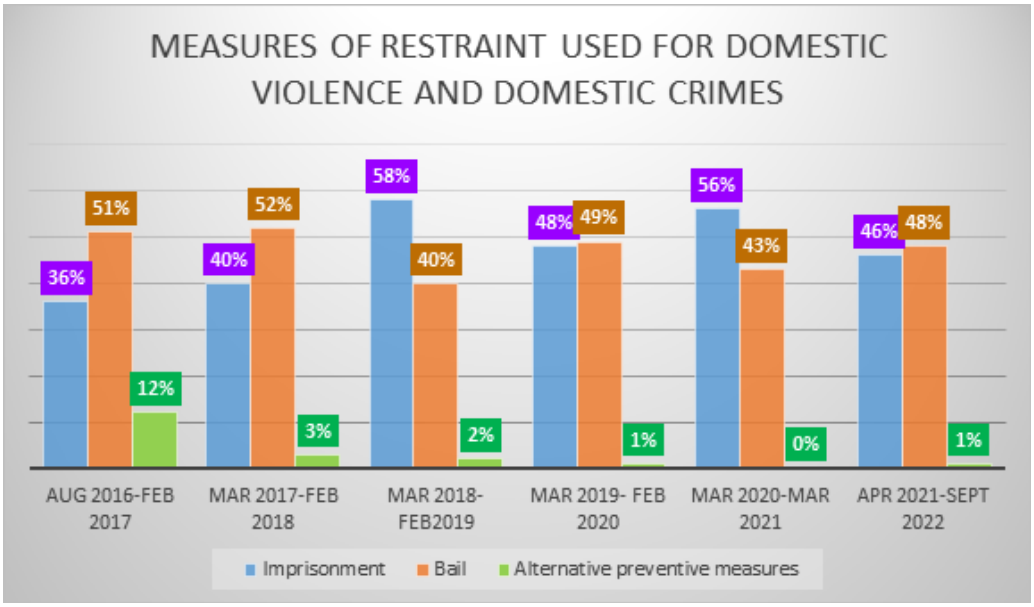
The example clearly shows the gender stereotypes still deeply rooted in society that a woman should be submissive to a man and the decision-maker in her life must be a man.

Measures of restraint applied for domestic crimes

The GYLA attended prevention measure court trials against 122 individuals accused of domestic crime. Of these, the court sentenced 56 (46%) defendants to prison, 59 (48%) defendants – to bail, 1 (1%) person – to an agreement on not to leave and behave appropriately (the defendant was female), and 6 (5%) persons were left without any preventive measures.

The following chart shows the types of preventive measures imposed into domestic violence and family crimes, expressed in percentage, in the period from August 2016 through September 2022.

Chart №21



Those released without any preventive measures were both female and male defendants.

In one case, the defendant charged with domestic violence was a pensioner. Taking into account his health condition, the judge did not impose any measure of restraint on the accused; in the given case, the prosecutor was demanding bail in the amount of 2000 GEL.

In the other case, the person was accused of threatening a family member (Articles 11^1, 151 (2) (d)), three counts, and the prosecution demanded 3000 GEL bail. The accused declared that he would not be able to pay the amount of the bail requested by the prosecutor because he was not employed and had no income.

In another case of domestic violence, the prosecution requested the use of imprisonment and indicated the motive of intolerance on the basis of gender. The judge released the defendant without a restraining order, explaining that the defendant had never been caught in any illegal activity, had never been convicted, and two years had passed since the commission of the alleged offense.

In one of the cases, the court recognized the detention as unlawful and left the defendant without a preventive measure for this reason.

In one case,[66] the prosecution did not motion for any preventive measure, without specifying the reason for the same, yet perhaps it was the accused's gender (female) and age (77 years) that the prosecutor took into account.

As for the **motions of the Prosecutor's Office** concerning domestic violence and family crimes, the agency, in the majority of the cases, demands custodial measures. In particular, in 88% of the cases, the Prosecutor's Office demanded imprisonment, and in the remaining cases - bail, while in only 2 cases, the prosecutor did not request any kind of measure of restraint.

Of these, one concerned the aforementioned case, **where, according to our assumption**, **the accused's gender (female) and age (77 years) were the decisive factors for the decision,** and in the other case, the accused person was already serving a sentence for another crime and was already in custody (in a penitentiary institution).

Sentences imposed on domestic crimes

Most of the acquittals - 23 cases (92%) – were upheld in domestic crime cases. This indicates that, despite the strict policy of investigative agencies, the quality of investigations into family crimes remains a problem. Given the specifics of the crime, frequent are the cases where the victims change their position, which leads to depriving the majority of cases of substantial evidence, which could serve as the ground for convicting a person beyond a reasonable doubt.

Victims usually tend to change their position and develop a tolerant attitude towards the perpetrator because of fear, economic or other types of dependence on the perpetrator, mistrust and/or lack of confidence in investigative bodies. Therefore, it is important to work harder with potential victims to empower them, by offering relevant services. The victim and witness coordinator should have a clear role in this process.

Sentences

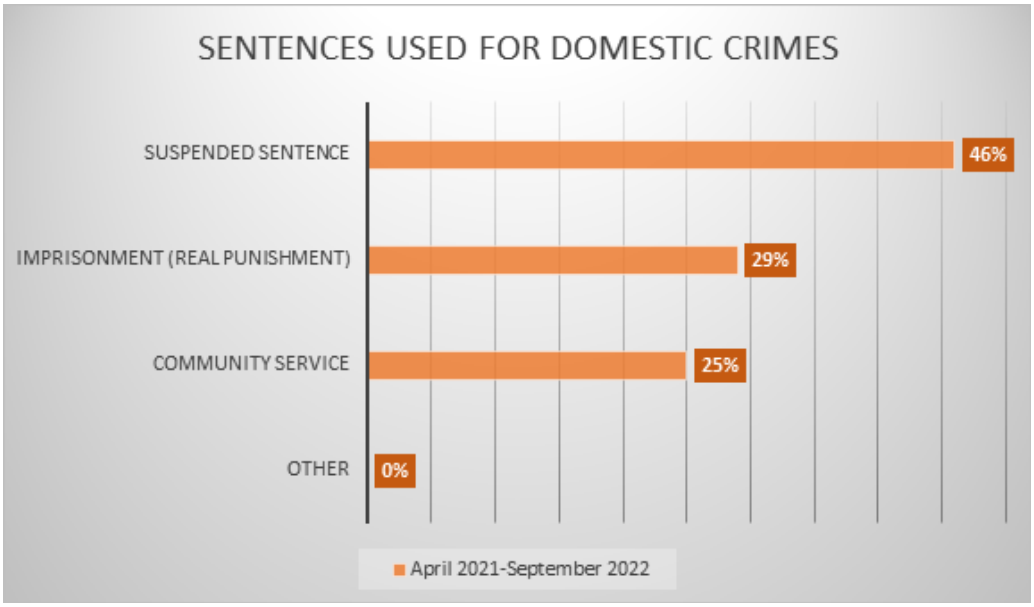
In the given reporting period, the court mainly used imprisonment as a punishment in cases of domestic violence and domestic crime, which was then considered as sus-

[66] The charge - Article 126^1, Part 1 (two counts), Article 11^1, Article 151, Part 2,(d) of the Criminal Code.

pended, namely, 11 (46%) such cases were identified. Compared to the previous reporting period, the rate of sending defendants to prison has increased by 4 percent and has amounted to 7 (29%). The so-called term imprisonment was imposed in cases where defendants did not plead guilty and/or were charged with multiple counts of crime. As for community labor, it was used in 6 (25%) cases.

The following chart shows the types of sentences imposed on domestic abusers, from April 2021 through September 2022.

Chart №22



When sentencing, the court took into account the position of the victim. There were several cases where a statement of the victim served as a determining factor for imposing a relatively lighter sentence on the person convicted of domestic violence. For example, in one case, the victim declared that she had reconciled with the accused and continued to live together, and in another case, the victim said that she no longer had any disagreement with the accused, etc.

When ordering a suspended sentence, the court has the right, if there are appropriate grounds, to instruct the convicted person to undertake a certain obligation, including if the convicted person is a perpetrator of a family crime - a mandatory training course focused on changing his violent attitudes and behavior.

Two cases have been identified when the court imposed an additional obligation on the defendants together with the suspended sentence; in particular, the court ordered them to take a mandatory training course focused on changing violent attitudes and behavior, as well as a relevant program for dealing with alcohol problems and anger management. The court forbade them to drink alcohol, which would be checked from time to time by a probation officer, and also ordered them to visit a psychologist for consultations.

We deem it problematic to link an additional obligation to a probation sentence. In

GYLA's opinion, it would be better if the court could impose this obligation together with any other sentence, which would be an effective preventive measure for ensuring the safety of the victims.

Plea agreements

Generally speaking, the Prosecutor's Office maintains a strict policy towards domestic violence and family crimes, therefore, except for rare cases, the plea agreement is not concluded with persons accused of domestic violence and family crimes. However, in the current reporting period, three cases have been reported where plea agreements were signed with domestic abusers.

- The Prosecutor's Office signed a plea agreement with a person accused of domestic violence. N. L. was charged with violence against her minor child due to a conflict with her father at home on November 26; in particular, the woman hit her child twice on the head with the TV remote controller.[67] According to the judge, the prosecution took into account the fact that the accused was a woman, mother, and the act was a single action, and signed a plea agreement with her, whereas, in the similar case, a male would be definitely arrested. According to the court, it served the purpose to help the accused understand the gravity of her action.
- In the other case, the defendant was a male accused of coercion and threats against a family member.[68] The actual circumstances of the case were not announced at the court hearing, as the prosecution only read out the resolution part. Based on the presented plea agreement, the defendant was sentenced to one year of imprisonment, which was considered a suspended sentence, with a one-year probationary period.
- A person was charged with two counts of domestic violence (Article 126^1(1) of the CC). Based on the plea agreement, one-year imprisonment was chosen as the form and measure of the punishment, which was considered suspended, with the same probationary period. The accused was a male. The details of the case were not disclosed.

Concluding a plea agreement and generally offering favorable terms to domestic abusers need to be done carefully. Only after an adequate assessment of risks, the Prosecutor's Office should make this decision and only in the cases where the threats to the victim have been completely prevented.

[67] He was charged with Article 126^1(2)(a) of the Criminal Code.
[68] Crimes stipulated in Article 11^1, Article 150(1), and Article 11^1, Article 151(2) (d) of the Criminal Code.

QUALIFICATION OF INTERPRETERS

Criminal proceedings in Georgia are held in the state language, yet a person who does not speak the state language must be provided with an interpreter. This is a provision provided in the Constitution[69] and is reiterated in the Criminal Procedure Code,[70] according to which, a participant in the case proceeding who has no or proper command of the language of the criminal proceedings, shall be provided with an interpreter in the manner as provided in this Code. Providing the defendant with the opportunity to enjoy the free service of an interpreter is viewed by the Convention for the Protection of Human Rights and Fundamental Freedoms within the right to a fair trial.[71]

The observation results

The GYLA attended the court hearing against 222 defendants,[72]where the accused did not speak the language of the criminal proceedings - Georgian, and they needed the help of an interpreter. In particular, in 8% of the cases monitored by the GYLA in the current reporting period, the accused needed the services of an interpreter.

There were two cases where the trials were postponed twice in a row due to the inability to find an interpreter for a particular language. In one case, a Turkmen language interpreter was needed, and a Romany language interpreter in the other. The defendants did not speak any other languages.

Several cases of unqualified interpreters have also been identified. See the examples below for illustration:

During the trial, the defendant declared that he/she did not understand what the interpreter was translating, said that the translator did not know the Arabic language, and requested to bring a citizen of Audi Arabia as an interpreter. The prosecutor said that the accused wanted to delay the process since it was the same interpreter who provided translation the day before and the accused did not have any complaints then. The prosecution called the Bureau, but the interpreter was not found, and the same interpreter continued to translate, but in English.

The Turkish language interpreter initially allocated for the case was not good at all at the legal terminology, could not understand what the judge was saying, used body language and gestures to talk to the accused, and could not provide an accurate translation. The judge noticed this, the interpreter also confirmed the same, after which he/she was changed at the judge's initiative. A 20-minute break was announced and another interpreter joined the court hearing remotely.

In another case proceeding, where the interpreter did not have the relevant knowledge and had difficulty translating, the defense lawyer performed the function of the

[69] Constitution of Georgia, Article 62 (4).
[70] Criminal Procedure Code, Article 11.
[71] Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6.
[72] During the preventive measure court trials, 73 persons needed the interpreter's service, at the pre-trial trials - 75 persons, at the plea agreement court trials - 48 persons, and at the merits review of cases- 26 persons.

interpreter several times during the trial and translated the opinions voiced in court to the accused. After some time, the judge gave a verbal warning to the lawyer to let the interpreter do her/his job.

The judge warned the interpreter to provide an accurate translation and reminded her of the possible consequences.

Despite this, the judge did not replace the interpreter.

PARTICIPATION OF DEFENSE LAWYER IN CRIMINAL CASE PROCEEDINGS

Proper communication between the accused and the lawyer according to the stages of the case proceeding is as follows:

In the majority of cases, defendants are represented by lawyers at **main court sessions** - 92% of cases. At this stage, the lawyer appointed at the expense of the state represented 18% of the accused. According to the GYLA, in 9% of cases, the lawyers could not establish effective communication with the accused, mostly manifested in the non-coincidence of the positions of the accused and the lawyer, and it was also felt that the accused was not informed about certain legal issues.

At **preventive measure court hearings** - in 63% of cases, the lawyer was present at the trial, 19% of them were hired at the expense of the state, and ineffective communication between the lawyer and the accused was revealed in 9% of the cases.

As for the **preliminary court hearings,** the defendants were represented by defense counsels in 77% of the cases. The lawyers appointed at the expense of the state defended the interests of the accused in 25% of the cases. Ineffective communication between the accused and the lawyer was identified in 8%.

At every court hearing dedicated to the **plea agreement**, the accused were represented by lawyers, thus meeting the requirement of the law. 42% of the defense counsel was appointed at the expense of the state, and ineffective communication was observed in 3% of cases.

The problem of the confidentiality between the accused and the lawyer was observed mostly during remote court sessions, and later when the majority of court hearings again relocated to the courtrooms, the issue was no longer an alarming problem.

Ethical behavior of lawyers

Lawyers must observe the norms of the professional code.[73] The principles of legal practice are the lawyer's integrity, good reputation and respect for the legal profession.[74]Violation of the principles by any lawyer may cast a shadow on the whole body of lawyers. The lawyer must protect the interests of his/her client so that not to offend another participant in the proceeding, be it a person affected by the crime, a witness, or someone else.

The lawyer is obliged to conscientiously fulfill his professional duties, strictly and accurately adhere to the norms of the professional code of ethics, and refrain from violating the rights of the court and other participants in the case proceedings.

See a counterexample:

> At one of the preliminary court hearings, relating to the charge of theft where the victim was from a foreign country, the lawyer of the Russian citizen referred to the victim as a "vagrant".

[73] Law of Georgia on lawyers, Article 3(k).
[74] Ibid., Article 3(d).

The **behavior of lawyers** at the ongoing court sessions of the July 5-6 cases was quite noteworthy. During the court trials, some of the defendants and their lawyers made unethical, sexist, and threatening statements in the courtroom.

During the questioning of the victims at the merits hearings, the lawyers asked the victims questions relating to provoking violence. In some cases, the victim was directly accused of instigation to violence.

At one of the court hearings, the lawyer asked the victim whether the violence had been provoked by him, in the same context, asked again whether he wore LGBTQ+ symbols, to which the victim gave a negative answer. Then the same victim was asked by another lawyer if he was wearing an earring at that moment [during the events of July 5-6] (the witness was wearing an earring during the court hearing), which he confirmed. This was followed by laughter and shouts of unclear content from the defendants.

While the court was reviewing the detention used as a preventive measure, the lawyer declared that the argument of the Prosecutor's Office regarding the commission of a new crime and the threat of influencing the witnesses was devoid of sense and added "what new crime, are they going to come out again or what?", the prosecutor objected to this, noting that the lawyer by profession should not need to be informed what equality of people and freedom of expression means. This caused the lawyer's irritation, who noted that the prosecutor insulted the lawyer's profession with his reply, jeopardized the principle of trust between the lawyer and the client and that the prosecutor was biased and overly prejudiced. Therefore, based on this, the lawyer filed a motion for the recusal of the prosecutor on the aforementioned grounds, yet it was rejected.

We believe that in the above case, with such an attitude towards human rights, equality, and freedom of expression, it was not the prosecutor, but the lawyer who insulted the lawyer's profession.

The lawyer asked the witness (victim) how long he has been a member of the LGBTQ+ community. The prosecutor requested to dismiss the question on discriminatory grounds, the judge dismissed the question and urged the party to refrain from making discriminatory statements and questions.

At other court hearings, the court often had to make such calls to the representatives of the defense side.

During the questioning of an investigator (female), the defendants began to sexually harass the witness. In particular, as soon as the accused persons appeared into the courtroom, they started laughing, shouting phrases of different content at the witness, e.g. "What a beautiful girl investigator she is", "If she catches me, I'll be happy", etc. They were using obscene gestures when indicating at the witness. The judge removed one defendant from the courtroom.

One of the lawyers during the questioning of the victim made the following comment, "Now you say that he was beaten by 200 men?"Does he really look like to have been beaten by 200 men?".

One of the lawyers declared that he was also present at the protest rally and described the manifestation as protection of the tradition and honor of the country by the Georgian males.

Moreover, defendants were threatening the victims directly in the courtroom.

At one of the court hearings, the defendant verbally abused the injured journalist and told the judge: "Give him to me for just one minute and then add another 6 years to me, let me snatch this loser"...

Most of the defendants were particularly aggressive; during an interrogation one of them even inquired where the victim lived. This attention was interpreted by the victim as a subtle threat.

When reviewing the imprisonment used as punishment for another defendant, the lawyer declared that "the guys sitting on the defendant's bench represented the voice and opinion of 80% of the population of Georgia. When referring to the risk of committing a new crime, the prosecutor should take into account that these people are in the majority and if someone wants to commit the crime again, their associates remaining outside will do it. Also, he asked the prosecutor the following question _ "are journalists the representatives of the LGBTQ+ community of what?" **At the same time, he noted that on that day those boys were carrying out the instructions and the will of the Georgian government, which was based on the state's interests. According to the lawyer, the Prime Minister directly pointed[75] on the day of the incident that he only recognized the pride of lions and the other forms he deemed inappropriate.**

One of the witnesses noted that before the violent events of July 5-6, he had never been afraid to express his identity and demonstrate his orientation, but now he could relate to those friends of his who were keeping it a secret and trying "not to attract somebody's attention."

We believe that the assessments made and the questions posed by the lawyers in the aforementioned manner were improper in the interests of the accused's defense, went against the fundamentals of criminal procedural law, and were intended to violate the dignity of those who were negatively impacted. Additionally, we believe that the question's unethical and discriminatory wording raised concerns about the lawyers' qualifications. The lawyer's honorable career was damaged by the immoral character of the material and actions.

[75] GYLA's report "Chronology and legal evaluation of the events of July 5-6" p. 20 available at: https://bit.ly/3Nn8rmg, [updated: 01.11.2022].

IMPORTANCE OF JUDICIAL OVERSIGHT

The accused, while in jail, has the right to send and receive correspondences at his/her expense under the surveillance of the penitentiary institution and to have 3 telephone conversations per month.[76] In addition, the accused has the right to no more than 4 short visits a month.[77] In the interests of the investigation, the accused may be restricted to have contact with the outside world pursuant to a motivated decision of an investigator/prosecutor. From January 1 through September 30, 2021, based on the prosecutor's decree, 222 defendants were prohibited to contact the outside world.[78] The limitation on the right to a telephone conversation may also include the telephone of the defendant's lawyer.[79] It is worth noting that, in contrast to the restriction of the right to telephone conversations, the investigator/prosecutor can restrict the right to visitations without any justification. In 2021, the Public Defender submitted a constitutional lawsuit regarding the inconsistency of the aforementioned rule with the Constitution.[80] Also, as a rule, phone conversations and short visits are altogether restricted. The fact that there is no timeframe stipulated for limiting the accused to have communication with the outside world enables the investigator/prosecutor to impose such restrictions for the period of imprisonment (9 months). Limiting the communication between the accused and the lawyer is particularly alarming, and this has been assessed by the Public Defender as a violation of the defendant's right to defense.[81]

Granting the authority without any control to the investigator/prosecutor to limit the right of the accused increases the risk of unreasonable and unsubstantiated use of the restrictions.

During the current reporting period, the GYLA monitors attended the court trials of the third president of Georgia, Mikheil Saakashvili. At the hearing, the defense lawyers declared that the accused/convict had been restricted contact with the outside world based on a relevant resolution. At several court hearings, the defense put forward a motion to cancel the resolution, yet in vain. The court explained that the matter is not regulated by criminal procedural legislation.

Given that in the mentioned case there was a low risk of the accused directly influencing the victims and destroying the evidence, we believe that restricting contact with the outside world did not serve at all the purpose of avoiding potential obstruction to the investigation. An unbiased observer would develop a doubt that the defendant's contact with the outside world was restricted in order to neutralize him as a politician.

The GYLA believes that due to the impact of the mentioned norms on the rights of the accused, it is important to have a mechanism of judicial control during such restrictions, and communications between the accused and the lawyer should not be restricted at all.

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[76] Law of Georgia "On Imprisonment Code", Article 79. 1,c.

[77] Ibid. Article 77 (1).

[78] The 2021 Report of the National Prevention Mechanism, p.89, available at https://www.ombudsman.ge/res/docs/2022050612391096568.pdf . [Updated: 03.11.2022].

[79] Law of Georgia on Prison Code, Article 79 (2^1).

[80] Constitutional Lawsuit No. 1632 - Public Defender of Georgia v. the Parliament of Georgia, available at: https://bit.ly/3zGrm5Q [updated: 03.11.2022].

[81] The 2021 Report of the National Prevention Mechanism, p.90, available at: https://www.ombudsman.ge/res/docs/2022050612391096568.pdf . [Updated: 03.11.2022].

Impartiality of the judge

Justice must be administered in such a manner that an objective observer is not left with the feeling of biased judiciary, undue influence, and/or arbitrariness, which may have a negative impact on the public's confidence in the system.

One case proceeding that the GYLA was monitoring during the given reporting period, namely, the ongoing criminal case against **Nika Gvaramia, Kakhaber Damenia and Zura Iashvili,**[82] gave rise to doubts regarding the impartiality and objectivity of the judge. In particular, the defense lawyers filed a motion for the recusal of the judge, due to the close friendship of the judge reviewing the case with the director of the holding owning the Rustavi-2 and suspicions of his alleged interest in the outcome of the case. The evidence confirming the friendship between the judge and Z. G. was presented at the court hearing, which the judge did not reject. It was clear from the evidence that they maintained close communication during the case proceedings. Moreover, it is logical that Z.G., the director of the holding, had a direct financial interest in the outcome of the case. Despite this, the judge rejected recusal.

It is true that in the above cases, the law does not indicate the circumstances for mandatory recusal, yet it determines that the judge cannot participate in the criminal process if there is a circumstance that can make his objectivity and impartiality doubtful.[83] In addition, according to the rules of judicial code of Georgia, a judge must inspire public faith in the independence, fairness and impartiality of the judiciary, and the judge shall be prohibited from meeting with parties to the proceedings or persons interested in the case separately (ex-parte) or in any other form to communicate inside or outside from the moment the case is filed with the court until the court decision into the case enters into legal force.[84] The above-mentioned circumstances raised doubts about the judge's objectivity and impartiality.

[82] **Nika Gvaramia** was accused of **power abuse**, as well as the use of official status by a group upon a prior agreement, **illegal embezzlement** of a large amount of property in another person's ownership, **commercial bribery** and **producing a fake official document for the purpose of its use** and **the facts of its use**, which caused significant damage. Also, the fact of **legalization of illegal income**, resulting in receiving a particularly large amount of income; **Kakhaber Damenia** – of the involvement into a group upon a prior agreement, using his official position, the illegal embezzlement of a large amount of the property owned by another person, and **Zurab Yashvili** - of **commercial bribery and the production of a fake official document for the purpose of its use and the fact of use, which caused significant damage**.

[83] Criminal Code, Article 59 (1-a).

[84] Code of Judicial Ethics of Georgia, Article 7 (1), available at: https://bit.ly/3E6GVqp.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The trends identified during the current reporting period clearly show a number of challenges in the process of implementation of criminal justice. The lack of types of preventive measures still results in the unequivocal imposition of bail and imprisonment by the court, the substantiation of which is not given due attention and time in an open court hearing. The opinions expressed by the prosecution and the judge at court trials sometimes create an impression that the case proceeding is just a part of their routine and not a realm of their actual interest. This, to some extent, is caused by a busy work schedule and a multitude cases.

Nevertheless, while monitoring court hearings, we also meet highly qualified prosecutors and lawyers, whose motions deserve the highest appreciation. There are several judges who opt for a minimally restrictive criminal law policy focused on re-socialization.

The cases of femicide discussed in the report make us believe that domestic violence and violence against women is a category of crimes, on which tangible results cannot be achieved by the prosecution's efforts only unless the court takes effective steps. Considering the risks, it is important to use electronic surveillance as an additional obligation, which is one of the effective means of preventing crime.

During the given reporting period, there were cases when the Prosecutor's Office restricted the right of detainees to have a telephone conversation. In such cases, it is important, through judicial control, to identify whether the powers are being abused.

The increase in the number of persons appearing before the court as detainees further necessitates proper judicial control over the lawfulness of arrests. For years now we have been pointing out the need to verify the legality of detention in an open public hearing, but the court still does not pay due attention to this.

Unfortunately, there were cases when the accused mentioned the facts of alleged ill-treatment inflicted on him, but the court showed less sensitivity or in several cases, did not even inform the accused that the court would refer information about the fact to the relevant authority.

The increase in the rate of obtaining alternative evidence by the defense and the motions submitted on the inadmissibility of the evidence obtained by the prosecution deserve appreciation.

We hope that the relevant authorities will understand the importance of implementing the recommendations presented below and adopt them in order to improve the quality of justice.

Recommendations

For Common Courts

- Judges should pay more attention to the substantiation of the restraining measure at a public court hearing.
- The judge must fully and clearly explain to the accused his rights, especially when the defendant is not represented by a lawyer.
- At an open court trial, without the initiative of the defense lawyer, the court must examine the legality of the arrest and try to establish a high standard in terms of preventing the restriction of the right to human freedom.
- When reviewing the imprisonment, thoroughly discuss the reasonableness of leaving the detention unchanged.
- Judges should exercise proper judicial control and refrain from approving a plea agreement if they have any doubts concerning the defendant's confession of guilt and/or the lawfulness and justice of the punishment determined by the plea agreement.
- Plea agreement court hearings should be conducted in full compliance with procedural rules and should not be just a formality.
- When considering cases of domestic violence, judges should be focused on ensuring the safety of alleged victims and thereby decide which type of preventive measure or specific punishment to impose.
- Judges must try to reduce the number of the late opening of court trials, develop better time management skills in a more organized manner and use appropriate levers if the parties to case proceedings are late.
- The court must comply with the statutory deadlines for the consideration of cases and take appropriate measures to prevent the suspension of case proceedings.

For the Parliament of Georgia

- Article 199, Paragraph 1 of the Criminal Procedure Code should be amended and the main types of preventive measures should be increased. Amendments should be introduced to the Criminal Procedure Code of Georgia and the type of restraining measure - the agreement on not to leave the country and conduct appropriately - should become applicable to any type of crime, regardless of the punishment envisaged for it or the category of the crime.
- Mechanisms and procedures for reviewing the lawfulness of detention should be regulated by law. The judge must be required to always examine the legality of the arrest at the first appearance court session both if the arrest was carried out under a prior court ruling or in case of urgency.

- An amendment should be made to the Criminal Procedure Code to regulate explicitly the right of the investigator/prosecutor to restrict the right of the accused/convicted person to telephone communication and provide the mechanisms of its appeal. The limitation of the right to telephone conversation shall not apply to the telephone number designated by the accused for contacting his/her lawyer. The mechanisms for appealing the restriction of contact with the outside world should also be written.
- The Criminal Procedure Code must be amended to provide the basic regulations for remote case proceedings, including the minimum standards for ensuring publicity and conduct of attendees at remote court trials.
- A legislative change should be introduced and a compulsory training course focused on changing violent attitudes and behavior should be imposed on domestic abusers as an obligation along with the punishment, which should not be used only together with a suspended sentence but be imposed as an additional obligation along with any other types of punishment.

For the Prosecutor's Office of Georgia

- The prosecution should pay due attention to the substantiation of the motions submitted to the court on the application of a restraining measure.
- Examine the personal characteristics of the accused in order to better identify threats coming from the accused.
- To pay more attention to the justification of the amount of bail requested as a preventive measure, for which the material situation of the accused must be studied.
- If the grounds of remand detention identified at the first appearance court hearing are neutralized, the prosecution shall seek to replace the remand detention imposed as a preventive measure.
- If there are appropriate grounds, prosecutors should apply to the court for the reduction of the amount of bail amount whenever the defendants are not capable of posting it.

For the High Council of Justice of Georgia

- To prepare the guiding principles on preventive measures, based on which the court proceedings and the decision-making process will be conducted in accordance with international standards. The guidelines must be clear and detailed to guarantee the uniform application of national legislation and international standards across the country.
- In order to ensure the publicity of remote court trials as well as the participation of interested persons in such proceedings at the legislative level, recom-

mendations should be developed, which will make it possible to prevent interference with the course of the trials and, at the same time, the interests of the participants to the case proceedings will be protected.

For the Penitentiary Department

- Penitentiary facilities should ensure timely transportation of the accused/convicts to court trials or their electronic involvement in court hearings.
- Penitentiary facilities should be equipped with the required number of technical means. In addition, staff should be added and trained to ensure the smooth involvement of the accused in the case proceedings.
- The penitentiary institutions should ensure that, during online participation in a court hearing, the accused/convicts are protected from any negative influence on the free expression of their will, as well as the confidentiality of any information disclosed by them during the trial is guaranteed.

For the Georgian Bar Association

- Encourage defense lawyers to seek, to the fullest extent possible and in the best interests of the accused, any alternative measures to prevent the imposition of bail and imprisonment.
- Lawyers should strive to act in accordance with the code of ethics, treat other participants in case proceedings with respect, and exercise the right to a defense in a way that does not cause secondary victimization of affected persons.