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GYLA Presented №15 Criminal Trial Monitoring Report

The Criminal Trial Monitoring Report №15 is the first annual report that assesses the impact of restrictions introduced due to the Covid-19 pandemic on pending court trials in Tbilisi, Kutaisi, Batumi, Rustavi City Courts, and Zugdidi and Telavi District Courts.

The report discusses the trends identified as a result of monitoring court hearings held without courtroom attendees and analyzes the pros and cons of remote litigation. The compliance of the decisions of parties and court rulings with the law is assessed as well as the challenges the court, parties, and penitentiary institutions were exposed to due to the Covid-19 pandemic are analyzed. The pandemic-induced changes in the criminal court proceedings and their consequences are also evaluated. The report analyzes the impact of the decisions made at different stages of the pandemic on the litigation process and provides the necessary recommendations for improving the current situation.

The report presents the results of the criminal court monitoring conducted from March 2020 through March 2021, as well as the key trends identified at different stages of the monitoring.

Criminal trial monitoring has revealed as follows:

Findings from remote court hearings:

- **The Covid-19 pandemic** has had a significant impact on the right to public scrutiny. Court trials **are not always made public**. This problem is especially acutely felt **at the first appearance court sessions**.
- It was revealed that **it is problematic to involve inmates from penitentiary facilities in virtual hearings**. Insufficient technical means and the lack of knowledgeable staff lead to the queues of prisoners, which is why trials are frequently

postponed or delayed. **For this very reason, 135 (27%) of 471 sessions were delayed.**

- **The biggest challenge of virtual court hearings is technical shortcomings,** mostly related to the failure of software, which is required for remote sessions. Technical problems were reported in 156 cases, of which 146 (94%) were remote trials.

- **Examining the evidence in remote hearings is problematic.** In 6 cases physical evidence was examined during the virtual court hearing. Most of the remote trials were adjourned as requested by the parties for the purpose of examining the material evidence.

- In 180 cases witnesses were interviewed at virtual court hearings. **The monitoring has confirmed that questioning witnesses remotely contains risks,** in particular, the court finds it difficult to check whether someone is present along with the witness in the room, who might be dictating answers for specific questions and/or whether the witness is reading a text prepared in advance.

- **In 7 cases the witnesses were interviewed from the police units.** This created suspicion that the police station might itself have inflicted some psychological influence on the witnesses coercing them to provide a pre-agreed/favorable statement for the prosecution.

- The pandemic further exacerbated the problem of effective communication between lawyers and defendants. **Confidentiality of communication between the lawyer and his/her client was not ensured during remote trials.**

- Due to the impact of the pandemic, **two new crime components have been added to the Criminal Code** - Article 248¹ of CC (violation of isolation and/or quarantine rules) and Article 359¹ of CC (violation of the state of emergency or martial law). The results of the analysis of 25 court rulings delivered in connection with the above two articles and the observations of court hearings show that in all cases individuals accused of violating the isolation and/or quarantine regulations were found guilty.

- Those convicted for the above offenses were sentenced **as a result of the substantive hearings to lighter punishments compared to those specified in plea agreements.**

Proper judicial control:

- GYLA ☐ monitors attended **396 first appearance court hearings with the participation of 464 defendants.** During the reporting period, **the rate of imposing bail and detention amounted to 98%.** In 196 (44%) cases, the court used bail, 240 (54%) defendants were remanded in custody, and in 6 (2%) cases, an agreement on not to leave the country and to behave properly was signed. **In none of the cases did the court use personal surety. In 16 (3%) cases, the court did not grant the motion of the prosecution and refused to impose any form of restraint measure on the accused.**

- **Remand detention applied against 66 (27%) individuals and bail imposed on 71 (36%) persons were unsubstantiated** or the expediency thereof was not properly substantiated at the court hearing.

- **The prosecution demanded pre-trial detention as a measure of restraint against 333 (72%) accused,** which the court refused to grant in the case of **93 (28%)** defendants.

- **The court used custodial bail in 81 (41%) cases,** of which 27 (33%) of the so-called prison bail applied was unsubstantiated or insufficiently substantiated.

- The prosecution presented **85 (43%) motions requesting bail** as a measure of restraint. **In 73 (86%) of these, the court did not deem the motion in the part of the requested amount to be reasonable and reduced the amount.**

- In merely 2 out of **85 motions for bail** did the prosecution request **the minimum amount of bail (1000 GEL).**

- During **256 first court hearings, 299 (64%) defendants appeared before the court as detainees.** In 255 (86%) cases, the grounds for the detention remained unknown since the lawfulness of the arrest was not discussed at the hearing. **In 4 cases,**

the court found the arrest illegal.

- During the reporting period, the GYLA monitors attended 444 pre-trial hearings against 539 defendants. At **118 (26%) trials, the defense presented the evidence and requested to find it admissible**, which is 8 percent lower compared to the previous reporting period. This may be related to the difficulty of obtaining evidence due to the Covid-19 pandemic constraints.
- During the reporting period, **only 1 case was identified** where the judge did not approve the prosecutor's motion for a plea agreement. Plea agreements were most common for **property crimes - 89(32%), narcotic drug-related offenses - 67(24%), and traffic offenses -20(7%)**.
- Just like the previous reporting periods, plea agreement hearings were short. 60% of such sessions ended within up to 15 minutes. **There were 15 cases where the length of the plea agreement court hearings did not exceed 5 minutes, of which five hearings lasted only 1 minute.**
- **Delaying court trials remains a problem**, which is due to the delayed opening and postponement of the hearings. Of 993 merits hearings attended by the GYLA monitors, 412 (42%) were **adjourned**. The trials were frequently postponed due to the failure of the prosecutor to present witnesses (21%) or negotiation of a plea agreement (19%). Among the reasons for the postponement of the court hearings during the reporting period was also the problem of involving the accused inmates in the virtual trials by the penitentiary facilities.
- The opening of court sessions was delayed by **1 hour and/or more** in 176 (37%) cases, which is quite a high rate.
- Compared to the previous year, the number of acquittals has increased by **5 percent**. GYLA attended the merits hearings against 161 individuals, at which the court ruled. In **130 (80%)** cases of these, the court delivered a guilty verdict, **27 (17%)** were acquittals, **3(2%)** were partial acquittals, and in **1(1%)** case, the judge changed the qualification of the case. **Of the 27 acquittals**, 11 (41%) concerned domestic violence, during which the victim refrained from testifying against the close relative, which ultimately resulted in the acquittal of the defendants.
- In the current reporting period, domestic violence cases have become even more

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significant in light of the existing constraints since victims have to spend more time at home with abusers. Another problem is the exercise of the right to refrain from testifying by victims of domestic crimes.