

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Project name: Promoting Judicial Independence and Impartiality in Georgia

Georgian Young Lawyers' Association (GYLA) is implementing the project under the auspices of the Judicial Independence and Legal Empowerment Project (JILEP) funded by the USAID and implemented by the East West Management Institute. Duration of the project: December 6, 2010 – September 30, 2014.

One of the project activities includes judicial monitoring, in frames of which GYLA is monitoring criminal trials for the promotion of fair trial, for ensuring adherence to

national and international legal standards in the process of judicial reform, as well as for ensuring compliance to the international standards applicable to the realization of human rights and the right to fair trial.

The following project activities have already been carried out:

1. Preparatory stage:

- Goals, objective, methodology of the monitoring of trials under the project auspices as well as possible and anticipated results of the monitoring were determined in May 2011;
- With the help of a foreign expert, trial monitoring questionnaires were developed in May 2011.
- Guidelines for analysis of pilot results of the project were prepared pursuant to international and Georgian legal standards.
- Three monitors were selected in May 2011, who would conduct the monitoring of trials

2. Implementing pilot stage of the monitoring

- Monitoring of trials was launched on June 1, 2011. Duration of the pilot stage was two months
- Throughout the period of two months monitors attended around 540 trials, which is the number of various stages of criminal cases as opposed to the number of concluded criminal cases.
- Analysis and evaluation of questionnaires filled out during the pilot stage of the monitoring was carried out pursuant to the guidelines prepared during the preparatory stage (in compliance with international and national legal standards).

3. Implementing core stages of the project

- Monitoring methodology was improved in view of the pilot monitoring results
- Implementation of core stages of the project was launched in October 2011
- Analysis of information obtained throughout the period of 6 months was carried

out pursuant to the international and national standards

- As of now, the following two trial monitoring reports have been prepared, with reporting periods covering October-December 2011 and January-March 2012 respectively

Subsequent results:

- In majority of cases monitored by GYLA during the 6-month period, open trial requirement were observed by courts, with an outstanding exception of defendant's initial appearance before court, where court never published date and time of trial.
- Regrettably, none of defendant's initial appearances monitored by GYLA went without court ordering restrictive measure. All defendants, including those charged with petty crime, were ordered to imprisonment or bail as restrictive measure. The first report outlined similar results, which further reinforces the idea that judges are not acting independently but rather, are strictly following the government's so-called "zero-tolerance" policy.
- Although it mostly seemed that equality of arms was observed in courtroom, court's decisions suggest lack of judges' neutrality and their bias in favor of the prosecution, which was especially showcased during defendants' first appearance. In all cases observed by GYLA, court granted prosecution's motions for restrictive measure. All motions of the prosecution for imprisonment were granted. So were all motions of the prosecution for bail. Court rarely requested substantiation for ordering imprisonment. As to bails, court always ordered the exact amount demanded by the prosecution. Furthermore, court ordered bails hardly attempting or not attempting at all to determine financial condition of defendant concerned or to provide substantiation for the amount ordered.
- The monitoring revealed that in most of the main hearings monitored by GYLA, principles of the adversarial system were observed (which allowed parties to question witnesses without court's involvement); however, in several instances court diverged from its neutral role and got actively involved in questioning of witnesses. Results of the second 3-month period illustrate instances of court's interference far more severe than in the first three months. In two important cases court openly interfered and clearly helped the prosecution in questioning of witnesses.

- Judges should do a better job at explaining to defendants their rights at all stages of trial, particularly when it comes to the right to file over ill-treatment and recusal. For ensuring public access to trials judges should talk with a louder voice, in a manner comprehensible manner, to ensure that both parties and attendees have not trouble at all understanding contents of the trial.
- Judges tended to be biased in favor of the prosecution not only during defendant's initial appearance before court but in other stages of trial as well. GYLA revealed that during pre-trial hearings court always granted motions of the prosecution for deeming evidence admissible. As to similar motions of the defense, they were granted only when the prosecution agreed.
- The monitoring also revealed that overall, the prosecution was more active than the defense during the trial. For instance, in all pre-trial hearings (total of 117) monitored, the defense filed motions for deeming evidence admissible, whereas the defense filed similar motions in only 27 cases. Furthermore, the defense rarely contested motions filed by the prosecution.
- The monitoring also revealed that criminal proceedings tend to be in favor of the prosecution without any grounds. Court should take measures to observe the balance. GYLA believes that lawyers can play role in restoring the balance by being active in defending interests of defendants.

Full reports are available at.....

4. Course of the project

- In view of the results from the first stage of the project, subsequent changes were made to the methodology of trial monitoring, which will be utilized for future monitoring
- We plan to launch monitoring of trials in other city/district courts as well in addition to Tbilisi City Court