



Special Report of the Public Defender of Georgia

Monitoring Report on Remote Hearings of Criminal Cases

Drawn up in accordance with Article 21 (g) of the Organic Law of Georgia on the Public Defender of
Georgia

2020

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Introduction

A state of emergency was declared on the territory of Georgia on March 21, 2020. On the same day, the President of Georgia issued a decree that had the same force as the organic law. The decree provided, inter alia, for the possibility of remotely holding the court hearings falling under the Criminal Procedure Law.¹

After the expiration of the interim rule under the presidential decree, there was no longer legal basis for holding hearings remotely. That is why legislative amendments were adopted on May 22, 2020 and the common courts of Georgia have been authorized to hold court hearings remotely, by using electronic technology, until July 15, 2020.²

It is noteworthy that the initial version of the bill empowered judges to make a decision on the remote conduct of hearings of all types of criminal cases, while those involved in the hearing were not allowed to refuse or appeal against it.³

Blanket approach to the hearings of criminal cases of all categories posed a threat to the right to a fair trial, which is why the Public Defender addressed the Parliament with a proposal⁴ that included preliminary results of the monitoring of remote court hearings carried out by the Public Defender's Office and referred to the importance of holding hearings remotely only if their postponement caused irreparable damage.⁵

The above recommendations relied on the documents of the UN High Commissioner for Human Rights⁶ and the Council of Europe Commission for the Efficiency of Justice,⁷ which directly referred to the need of focusing on the categorization of criminal cases and the risk of irreparable harm. At the same time, the Consultative Council of European Judges (CCJE) pointed to the need of ensuring the rule of law and the efficiency of justice during the state of emergency. According to the Council, it is essential that remote hearings be provided with adequate videoconference technologies so that all parties could fully participate in the hearing.⁸ It should also be borne in mind that in accordance with the case law of the European Court of Human Rights, the remote hearing does not violate the right to a fair trial if the exercise of the right of defence can be fully realized.⁹

¹ Decree N1 of the President of Georgia of March 21, 2020, Art. 7.

² Law of Georgia N5973 of May 22, 2020.

³ Legislative Package N07-3/450 of 13 May 2020.

⁴ Proposal of the Public Defender of Georgia N02-1/5118 of May 20, 2020.

⁵ See <<https://bit.ly/2CYUoDp>>

⁶ See <<https://bit.ly/2NMZxjX>>

⁷ See <<https://bit.ly/3ihkaCZ>>

⁸ See <<https://bit.ly/2VuSmBp>>

⁹ Judgment of the European Court of Human Rights in the case of *Marcello Viola v. Italy*, 45106/04; See also *Sakhnovskiy v. Russia* [GC], 21272/03.

It is welcome that the Parliament of Georgia has considered the observations of the Public Defender.¹⁰ According to the legislative amendments, the *temporary* rule of holding a trial will be in force until July 15, 2020. Pursuant to the rule, the court is authorized to hold a remote hearing only if: (1) it has the consent of the accused/convicted/acquitted person; (2) pre-trial detention is applied as a measure of restraint, the person is sentenced to imprisonment and/or the failure to hold the hearing remotely may hamper the investigation of the crime and lead to the violation of public interest of criminal liability of the person.¹¹

As soon as the decree came into force, the Public Defender's Office tried to monitor remote court hearings and began to prepare relevant methodology on the basis of international law.

For assessing the practical implementation of the interim regulation of the Criminal Procedure Code, the Public Defender's Office monitored the common courts of Georgia from 18 May to 22 June, during which, authorized representatives of the Public Defender attended 279 remote hearings across the country. **As a result, a number of shortcomings have been identified, which were largely caused by the remote format of the hearings and endangered or might endanger the rights of the defendant or other parties, as well as the proper functioning of the court and the achievement of public goals.**

The present report describes the problems relating to the attendance at hearings in some of the courts. The report also indicates a number of technical deficiencies that often led to unreasonable delays and postponement. The main part of the report will be devoted to the shortcomings that significantly damage the realization of the right to a fair trial and the right of defence.

Key findings

- A considerable number of hearings started significantly late. In 44 cases (16% of all cases) the delay exceeded an hour
- The main reason for the late start of the hearings was the infrastructure of the penitentiary establishments
- The vast majority of hearings were characterized by substantial visual and auditory technical problems, which greatly hindered normal course of the hearing, and in some cases – led to the postponement of the hearing
- The vast majority of defendants did not have the opportunity to have confidential communication with their lawyers
- A significant number of defendants were not able to properly see or hear the witness due to technical problems, which remained an unresolved issue during the whole hearing
- In some cases, the court failed to check the credibility of witnesses (e.g., alleged influence, pre-written text)
- Defects in translation were reported during several hearings

¹⁰ See <<https://bit.ly/2ZksTvy>>

¹¹ Criminal Procedure Code of Georgia, Art. 332⁵, part. 1.

- Issues relating to the measure of restraint were largely justified
- Most of the courts facilitated the presence of the Public Defender and other monitors at the hearing, although there were unfortunate exceptions as well
- The judicial system has no unified approach to posting the schedule of hearings or allowing Public Defender's representative to attend closed hearings.

Methodology

The hearings were monitored in three stages. Monitoring was conducted by five authorized representatives of the Public Defender, who randomly attended the hearings. At least two authorized representatives monitored each hearing for the purpose of ensuring as objective and complete monitoring results as possible.

At the first, preparatory stage, on May 18-19, monitoring was carried out in four city courts (Tbilisi, Batumi, Kutaisi, Rustavi). The authorized representatives attended 42 hearings. The purpose of the monitoring at this stage was to identify the main problems at the hearings, which would serve as basis for planning the next stages.

The second and main stage was carried out from May 22 to June 5. The authorized representatives used special questionnaires, which made it possible to document the key issues that were outlined during the previous stage and that were related to the court hearings (see Appendix). 204 hearings were monitored by the use of special questionnaires in 21 city and district courts at the second stage.

Out of 204 sessions monitored at the second stage, 136 were consideration of cases on their merits, 47 were pre-trial hearings, 20 were initial appearance hearings, and one was the selection of the jury. 20 sessions were held for negotiating a plea bargain, 11 of which were held at the stage of initial appearance and 9 were held at the stage of consideration of a case on its merits. Accordingly, the monitoring covered all categories of court hearings.

At the third, additional stage, on June 16-22, monitoring was conducted in a focused manner in the district and city courts, where specific problems had been identified based on the analysis of the previous two stages or additional observation was necessary to clarify certain issues. 33 hearings were monitored at the third stage. 31 of them were consideration of cases on their merits, one was initial appearance and one was a pre-trial hearing. 16 of these hearings were monitored in the Rustavi District Court, 4 - in Bolnisi, 2 - in Gori, Mtskheta, Senaki, Telavi and Ozurgeti, and 1 - in Sachkhere, Akhalkalaki, Sighnaghi District Courts.

In total, 279 hearings were monitored in the following courts:

Diagram N1: Number of hearings according to district and city courts

Tbilisi	Kutaisi	Batumi	Rustavi	Poti
43	41	41	29	10
Khelvachauri	Bolnisi	Mtskheta	Akhaltsikhe	Gurjaani
12	12	10	10	9
Zestaponi	Senaki	Tetritskaro	Khashuri	Akhalkalaki
8	7	6	6	6
Zugdidi	Gori	Sighnaghi	Ozurgeti	Telavi
6	6	5	5	4
Sachkhere				
3				

During the monitoring of each hearing, representatives of the Public Defender's Office filled in the questionnaires that are kept in the Public Defender's Office. The analysis of the questionnaires served as basis for the findings presented in this document.

1. Problems relating to attendance at remote hearings

It is noteworthy that the vast majority of courts were positive about cooperation. Most of the persons in contact with Public Defender's representatives - assistant judges and secretaries of the hearings - did their best to facilitate monitoring. The Public Defender is especially grateful to the staff of Gurjaani, Tetritskaro, Sighnaghi, Kutaisi, Khelvachauri and other district and city courts for their diligent and effective cooperation.¹²

It is unfortunate, however, that certain judges directly objected to the presence of Public Defender's representatives at the hearings, as a result of which, Public Defender's representatives were not allowed to attend the hearing without any justification. These types of problems were encountered in the Gori and Mtskheta District Courts.

Gori District Court Judge **Germane Dadeshkeliani** categorically refused to allow Public Defender's representatives to attend remote hearings on June 4 and 5. The judge's office told the Public Defender's representatives, and later confirmed in writing, that they would only allow the parties and witnesses

¹² In contrast, it should be noted that the office of Rustavi City Court Judge Ekaterine Partenishvili on June 17 and the office of Telavi District Court Judge Tamar Kapanadze on June 18 did not send the relevant online links to the Public Defender's representatives, so they could not attend the hearings. However, it should be noted that these judges later changed their approach and allowed the representatives to attend the hearings.

to attend the remote hearing, while any other person had to physically arrive at the courtroom.¹³ On June 17, Mtskheta District Court Judge **Bidzina Sturua** did not allow Public Defender's representatives to attend the hearing for a similar reason.

The above represents the neglect of the amendments made to the Procedure Code. Holding court hearings remotely serves the very purpose of preventing persons from arriving at the courtroom and implementing the recommendation of social distancing as much as possible. It is noteworthy that no similar practices have been used by other judges of Gori or Mtskheta District Courts.

It should also be noted that out of 279 hearings monitored, only 12 were attended by monitors from NGOs or other organizations. Consequently, it can be said with certainty that if the Public Defender's Office is not given the opportunity to attend and observe remote hearings, the public accountability of courts will decrease, as the number of physical attendees is limited and citizens also avoid physical attendance during the pandemic.¹⁴

There were also cases when Public Defender's representatives were asked to leave the hearing despite the fact that technical problems were related to other persons involved in the hearing. A similar decision was made by Rustavi City Court Judge **Madona Maisuradze** on June 16. In addition, Rustavi City Court Judge **Ketino Luashvili** (on June 19) and Telavi District Court Judge **Mamuka Tsiklauri** (on May 18) refused to allow Public Defender's representatives to attend the hearings on the grounds that the strength of the internet connection did not allow the above.

Problems related to the mandate of the Public Defender were encountered by Public Defender's representatives when attending closed hearings. Public Defender's representatives have been attending closed hearings for many years, although a small number of courts¹⁵ requires a prior request in writing. It is impossible to send a request to the court in writing a few days earlier under given circumstances, which makes it impossible to remotely monitor closed court hearings.

We should also underline an issue that is not related to the constitutional mandate of the Public Defender, but may complicate the attendance of other persons at the hearings. As it turned out during the monitoring, the courts upload the schedule of hearings not to the joint site of the court case proceeding system (ecd.court.ge), but only to their own websites.¹⁶ It is important to unify the above information to make it easier for the stakeholders to monitor the hearings.

¹³ Letter N4578 of the Gori District Court of June 11, 2020.

¹⁴ Recommendation N1 of the High Council of Justice of Georgia of March 13, 2020, subparagraph d.

¹⁵ May 19, Kutaisi City Court; May 25, Sighnaghi District Court.

¹⁶ The mentioned site (ecd.court.ge) is a case proceeding system of Georgian courts, which brings together all the schedules of courts of appeal, city courts, district courts and magistrate courts, their decisions, acts and other materials. If courts upload their data to their own websites instead of the mentioned site, then the person wishing to carry out monitoring will have to check the page of each of the court, which is unreasonable.

2. Technical problems during hearings

The remote nature of court hearings gave rise to a number of recurring technical problems. The judiciary and the penitentiary system turned out not to be ready for a similar challenge. The start of the hearings was often delayed for hours due to technical problems, which substantially hindered the course of the hearing, and in some cases even led to the postponement of the hearing.

2.1. Late start of the hearing

The initial stage of the monitoring showed that the late start was a hallmark of remote hearings and its main reason was the infrastructure of penitentiary establishments. A total of 93 hearings started late for the above reason. Of these, 44 hearings were delayed by more than an hour, while the maximum delay was **3 hours and 46 minutes**.

Penitentiary establishments could not ensure the timely connection of prisoners to the hearing, which was especially common in the courts of eastern Georgia. The involvement of prisoners was particularly delayed from Penitentiary Establishment No 8, which was to be expected given that the largest contingent of defendants is placed in this very establishment.

The Public Defender's Office tried to find out how many special rooms each penitentiary establishment had. Unfortunately, the Penitentiary Department of the Special Penitentiary Service did not provide this information.¹⁷ Neither Penitentiary Establishment No 8 replied to us in writing.¹⁸ However, oral explanations made by the staff of Establishment No 8 made it clear that 11 special rooms were allocated for hearings as of late May. In the same period, 5 special rooms were functioning in Establishment No 2.¹⁹

Consequently, it is not surprising that the involvement of prisoners in the hearings from the above establishments was often delayed due to the lack of appropriate rooms, security rules or day schedules.²⁰ Judges, prosecutors and lawyers had to be logged in the programme waiting for the defendants for hours.

In some cases, postponement of the hearing was necessary due to other technical connection problems even when the defendant was in the special room. In similar cases, the courts used to announce a break until it was possible to connect the defendant to the programme.²¹

Since June 1, the courts have changed their approach probably due to similar technical reasons. The number of remote hearings of the cases of defendants, who had been ordered to non-custodial measure,

¹⁷ As of July 1, 2020, the Public Defender's Office had not received a reply to the letter N15-11/5262 of May 25, 2020.

¹⁸ As of July 1, 2020, the Public Defender's Office had not received a reply to the letter N15-11/5266 of May 25, 2020.

¹⁹ Letter N129130/20 of 29 May 2020 of Penitentiary Establishment No 2.

²⁰ For example, the time of prisoners' dinner, the number of staff in the establishment.

²¹ June 2, Poti City Court.

has significantly reduced. In similar cases, judges preferred holding a hearing in the courtroom, without waiting.

2.2. Substantial defects and postponement of the hearing

Technical problems were particularly evident after the start of the hearings. Almost all the hearings in the city and district courts were characterized by serious technical problems, which significantly hindered the parties from being fully involved in the hearing. Technical problems also led to hours of delays or postponement of the hearings.

Technical problems were usually related to visual and audio defects emerging throughout the hearing.²² However, there were cases when the court²³ or witnesses did not have electricity,²⁴ or the voices of the lawyers could not be heard as they were in a non-office space.²⁵

It was particularly problematic that sometimes parties, including the lawyer, could not be seen during the hearing.²⁶ In one of similar cases, the judge even noted that the lawyer and the defendant could not be seen, although no steps were taken to resolve the issue.²⁷

There were even more frequent cases, when the voices of the defendant,²⁸ lawyer,²⁹ prosecutor and³⁰ judge³¹ or several of the participants³² were faulty or periodically lost. It was especially problematic for the defendants to hear others' voice, when they were connected from the penitentiary establishments.³³ The sound-related issue was further complicated by the use of masks.³⁴

As a rule, slowing down one's speech was a way of solving the above problem.³⁵ In other cases, judges used to repeat what the parties had said in order to help the defendants understand their speeches, which is a welcome practice.³⁶ It was the most problematic case³⁷ when one of the defendants said he could not hear the voices of other parties, after which, the judge conveyed the content of what other parties had said to him, and later obtained the defendant's consent to the admission of evidence without

²² May 27, Poti City Court.

²³ June 19, Akhalkalaki District Court.

²⁴ June 5, Tetrtskaro District Court.

²⁵ May 25, Gurjaani District Court; June 18, Sachkhere District Court.

²⁶ June 5, Gurjaani District Court; June 5, Batumi City Court.

²⁷ June 19, Ozurgeti District Court.

²⁸ June 5, Ozurgeti District Court; May 25, Gori District Court; May 25, Bolnisi District Court.

²⁹ June 5, Tetrtskaro District Court; May 25, Gori District Court.

³⁰ June 3, Tbilisi City Court; May 28, Khelvachauri District Court.

³¹ June 3, Telavi District Court; June 22, Gori District Court.

³² May 29, Tbilisi City Court, May 25, Gori District Court.

³³ June 1, Kutaisi City Court; May 29, Kutaisi City Court.

³⁴ June 22, Gori District Court; June 02, Mtskheta District Court.

³⁵ 4 June, Rustavi City Court.

³⁶ June 4, Batumi City Court; June 3, Rustavi City Court.

³⁷ June 3, Telavi District Court.

explaining what the above meant or asking him whether he had received appropriate legal advice from the lawyer.

The practice of a number of judges,³⁸ who used to often ask the parties whether they could hear the voices of other participants, should be praised. In addition, witnesses in the Rustavi City Court were questioned from a specially arranged questioning room in the court, which significantly impacted the quality of sound.³⁹ It is also welcome that after one of the defendants said he could not hear the sound of the video evidence, the judge adjourned the hearing so that to ensure the examination of evidence without similar technical flaws.⁴⁰

The most common reason of the postponement of a hearing was the failure of the penitentiary establishment to ensure the timely connection of the defendant to the hearing. 20 hearings were postponed for the above reason.⁴¹ In 16 cases, the defendant,⁴² witness,⁴³ or another person was unable to arrive at the hall or participate in the hearing online.⁴⁴ In 5 cases, the hearing was postponed after the defence requested to change the online format, while one hearing was postponed due to the expulsion of the defendant. Another reason for the postponement of the hearings was the placement of a person in the quarantine zone.⁴⁵

Technical deficiencies were also the reason for the postponement, namely poor sound,⁴⁶ problems caused by the use of masks,⁴⁷ or failure to connect to the programme.⁴⁸

3. The rights situation of the defendant at the remote hearing

The effects of technical problems were not limited to delays or faulty course of the hearing. The remote format of hearings became a serious problem for the realization of the rights of defendants, provision of the adversarial procedure, proper translation, etc.

3.1. Lack of confidential communication with the lawyer

The right of defence is a fundamental element of a fair trial, which includes the right of a person to have a confidential communication with his/her lawyer.⁴⁹ According to the case law of the European

³⁸ Violeta Porchkhidze (Batumi), Levan Nutsbidze (Senaki), Mamia Pkhakadze (Rustavi), Giorgi Arevadze (Tbilisi).

³⁹ June 17, Rustavi City Court.

⁴⁰ May 22, Rustavi City Court.

⁴¹ May 29, Akhalkalaki District Court; June 3, Rustavi City Court.

⁴² May 28, Mtskheta District Court; June 1, Kutaisi City Court.

⁴³ May 29, Batumi City Court; June 17, Mtskheta District Court.

⁴⁴ May 28, Mtskheta District Court; May 29, Kutaisi City Court.

⁴⁵ June 3, Zestaponi District Court.

⁴⁶ May 29, Tbilisi City Court; May 29, Batumi City Court; June 4, Tbilisi City Court.

⁴⁷ June 2, Mtskheta District Court.

⁴⁸ June 4, Tbilisi City Court.

⁴⁹ Judgment of the European Court of Human Rights in the case of Yaroslav Belousov v. Russia; 2653/13 & 60980/14; para. 151-154.

Court of Human Rights, if the defendant is involved in the hearing remotely, it is necessary to equip him/her with technologies necessary for confidential communication with his/her lawyer.⁵⁰

Unfortunately, the monitoring period showed that the defendants under pre-trial detention, who participated in the hearing from the penitentiary facility, did not have the opportunity to communicate with their lawyers confidentially. The conversation between the lawyer and the defendant took place in the presence of other persons involved in the hearing. Private communication could be enjoyed only by the defendants who were physically together with the lawyer and jointly took part in the hearing.⁵¹

Defendants had the opportunity to communicate partially confidentially with their lawyers before the hearing. Their conversation could not be heard by the judge or the prosecutor (since they were not yet connected to the programme), although it could be heard by the secretary of the hearing and other attendees.⁵² All the participants could hear the advice given by the lawyer to the defendant during the hearing.⁵³ This was especially problematic when the lawyer was advising the defendant on a strategy for appealing against the judgment.⁵⁴

All of the above indicates that remote hearings should not be conducted at the expense of gross breach of confidential communication between the defendant and the lawyer. Otherwise, the accused person will not be able to agree his/her position with the lawyer during the hearing,⁵⁵ which represents a violation of the right to a fair trial.⁵⁶

In order to eliminate the above problem, it is necessary to technically ensure the confidential communication between the lawyer and the defendant during the hearing. In terms of the protection of the defendant's personal information, it is noteworthy that at one of the hearings, the defendant, who was connected to the hearing from a temporary detention facility, fainted and was provided medical aid, during which, his conversation with the doctor and his medical information (special category personal data) could be heard by other persons in the facility and those involved in the hearing, whereas there was no legal need for this.⁵⁷

⁵⁰ Judgment of the European Court of Human Rights in the case of *Marcello Viola v. Italy*, 45106/04, Para. 63-67; See also *Sakhnovskiy v. Russia* [GC], 21272/03, para. 98.

⁵¹ May 29, Khelvachauri District Court; May 18, Senaki District Court; May 19, Ozurgeti District Court.

⁵² June 3, Tbilisi City Court; May 27, Poti City Court.

⁵³ June 1, Tbilisi City Court.

⁵⁴ May 5, Gori District Court.

⁵⁵ June 1, Tbilisi City Court.

⁵⁶ Judgment of the European Court of Human Rights in the case of *Sakhnovskiy v. Russia* [GC], 21272/03, para. 104.

⁵⁷ May 25, Gori District Court.

3.2. Problems relating to the adversarial procedure and questioning of witnesses

The adversarial procedure and the principle of equality of arms allow the defendants to present and examine evidence,⁵⁸ personally question witnesses⁵⁹ and defend themselves.

The primary problem in this regard was that the defendants were not informed, or were nominally or incomprehensibly informed of their rights,⁶⁰ including of their right to the lawyer.⁶¹ Several judges - **Alexander Iashvili** (Tbilisi), **Tatia Gogolauri** (Kutaisi), **Nana Jokhadze** (Kutaisi) - should be praised in this regard, as they thoroughly and clearly informed the defendants of their rights.

Problems relating the perception of the witness

Naturally, the hearing should be fully perceptible for the accused and the voice of the witness, prosecutor and judge should be clearly heard. Visual perception of witnesses is also important in terms of planning a trial strategy, as each gesture of the witness can be essential in building the judge's internal belief.⁶²

Contrary to this, in some cases, the face of the witness could not be seen at all during the questioning,⁶³ or the defendant could not hear his/her voice.⁶⁴ Sometimes it was impossible to see the mimics of the witness as they wore masks.⁶⁵ The questioning of one of the witnesses ended so that the defendant could not hear his voice at all. The defendants complained about the above during the questioning of the second witness, however, the first witness has not been questioned anew.⁶⁶

There was a case when the defendant told his lawyer that he could not understand the content of what other parties had said, but the lawyer "calmed him down" by saying that he did not need to hear what was said during the hearing, as the hearing would be postponed anyway.⁶⁷ At one of the hearings, the prosecutor could not hear the questions asked by the defence to the witness and was unable to object. Instead of taking any action to eliminate the technical defect, the judge offered the prosecutor to physically arrive at the courtroom.⁶⁸

When one of the defendants under pre-trial detention was remotely connected to the hearing from the penitentiary establishment, the video camera was constantly turned towards the judge, making it

⁵⁸ Judgment of the European Court of Human Rights in the case of *Öcalan v. Turkey* [GC], 46221/99, para 140.

⁵⁹ Judgment of the European Court of Human Rights in the case of *Murtazaliyeva v. Russia* [GC], 36658/05, para. 139.

⁶⁰ Under conditions when the accused can poorly hear the course of hearing due to technical defects (May 25, Gurjaani District Court), or when he is without a lawyer and an important procedural decision is to be made (e.g. admission of evidence, May 27, Kutaisi City Court), only reading the norms of the law may not be enough to be sure that the accused fully understood his or her procedural rights.

⁶¹ May 28, Sachkhere District Court.

⁶² Judgment of the Supreme Court of Canada *N.S. v. Her Majesty the Queen, et al.*; 2012, para. 18.

⁶³ May 28, Kutaisi City Court; June 03, Batumi City Court.

⁶⁴ June 3, Batumi City Court.

⁶⁵ June 17, Rustavi City Court; June 5, Batumi City Court.

⁶⁶ May 25, Gori District Court.

⁶⁷ May 25, Gurjaani District Court.

⁶⁸ June 5, Batumi City Court.

impossible for the defendant to see the prosecutors, lawyers⁶⁹ or other persons in the courtroom.⁷⁰ It was even more problematic when the defendants could not see witnesses during questioning,⁷¹ despite expressing the relevant desire.

By contrast, it should be noted that some of the judges substantially tried to eliminate technical deficiencies, asking the parties to speak clearly and close to the microphone. They also used to turn the video camera towards the persons in the courtroom so that the defendant and other persons involved in the hearing remotely could see the speaker.⁷²

There was a positive exception, when Judge **Giorgi Gratiashvili** postponed the questioning of a witness due to the technical problem relating to the sound and only written evidence was examined.⁷³ In another similar case, by contrast, the hearing was held and witnesses were also questioned despite numerous deficiencies and sound-related problems, and instead of eliminating the deficiencies, the judge instructed the parties to physically arrive at the courtroom.⁷⁴

Questioning of witnesses

At the stage of consideration of a case on its merits, it was problematic to check whether the witnesses were alone and free from influence when testifying. In one of the cases, the judge wanted to view the room where the witness was sitting, however, the latter refused the above on the motive that it was impossible to move the camera.⁷⁵

During the remote questioning of witnesses, as a rule, the items in front of them (for example, on the table) were usually not visible. In one of the cases, during the questioning of the inspector-investigator, the witness was constantly looking down and left the impression that he was reading something. However, it was not possible to assess whether he had a paper or anything else on the table, or what he was specifically looking at and for what purpose.⁷⁶

Similarly, there was a case when three experts were questioned remotely. All three of them were reading some documents. It was assumed that the experts were reading their own expert opinions, however, this has not been verified.⁷⁷ It is true that witnesses may use documents, notes, or anything else containing information,⁷⁸ but this does not mean that they should be allowed to entirely read a pre-written testimony.

⁶⁹ June 5, Batumi City Court.

⁷⁰ June 5, Batumi City Court.

⁷¹ June 3, Batumi City Court.

⁷² E.g. Maia Kvirikashvili (Tbilisi), Giorgi Gratiashvili (Batumi), Violeta Porchkhidze (Batumi).

⁷³ May 29, Batumi City Court.

⁷⁴ June 5, Batumi City Court.

⁷⁵ May 27, Poti City Court.

⁷⁶ June 17, Rustavi City Court.

⁷⁷ May 22, Tbilisi City Court.

⁷⁸ Part 6 of Article 115 of the Criminal Procedure Code of Georgia.

There was an alarming case when police officers, who had conducted investigative activities, were questioned as witnesses. They were connected to the hearing from a police station. Only the witness could be seen during the video questioning, however, another voice could also be heard, which dictated someone's name to the witness. The above was objected by the lawyer, after which, the judge asked the witness who was present in the room. The witness verbally denied the presence of another person in the room and the court did not take any other measure to prove/rule out the presence of another person together with the witness or dictation of information to him.⁷⁹

Influence was not ruled out even when the defendant under pre-trial detention was connected to the hearing from an unidentifiable space, sitting away from the video camera; the image was blurred, the room looked like an office and there were two other persons.⁸⁰

It is noteworthy that the defendants under pre-trial detention, as a rule, were connected to the hearing from a police station.⁸¹ In one of similar cases, police officers jokingly told the defendant before the hearing that if he challenged the evidence and "make noises", the hearing would last for a long time. It is noteworthy that the defendant gave his consent to the admission of all the evidence. It should also be noted that the defendant did not have a lawyer.⁸²

There was a case when the lawyer, defendant and Public Defender's representative were temporarily cut off from the hearing due to a technical problem. After connection was re-established, it became clear that the judge had begun reviewing the measure of detention. It was ultimately unclear whether the defendant and his lawyer could listen to the review of the measure of detention or not.⁸³

3.3. Problems relating to the interpreter's involvement

The right to a fair trial requires that the defendants, who can only speak a foreign language, be provided with translation of information that is important for fully understanding the charge against them, perceiving the evidence and following the hearing.⁸⁴

Good practice was identified when the judge stopped the parties to allow the interpreter to translate properly.⁸⁵ However, other hearings gave rise to a reasonable suspicion of incomplete translation - when translating the closing remarks of the prosecutor, the interpreter used to take disproportionately short pauses.⁸⁶

⁷⁹June 16, Sighnaghi District Court.

⁸⁰ June 1, Tbilisi City Court.

⁸¹ May 27, Sighnaghi District Court; May 27, Kutaisi City Court.

⁸² May 27, Kutaisi City Court.

⁸³ June 17, Mtskheta District Court.

⁸⁴ Judgment of the European Court of Human Rights in the case of Vizgirda v. Slovenia, 59868/08, para. 79.

⁸⁵ June 3, Batumi City Court.

⁸⁶ May 22, Khashuri District Court.

Similarly, during another hearing, the interpreter misinterpreted the words of the prosecutor for the defendant, which made the judge point out that the prosecutor had said something different and the interpreter had misinterpreted it.⁸⁷

In one of the cases, even though the interpreter was present at the hearing, the judge presumed that the defendant could understand Georgian, so he urged the defendant not to "bother" other participants and speak in Georgian. The defendant said he could understand Georgian, although he periodically asked for translation. The judge eventually had to involve the interpreter as he was could not understand whether the defendant pleaded guilty or not. The lawyer said that according to the position agreed with the defendant in advance, he pleaded guilty. The judge explained that the defendant "still pleads guilty, he just cannot express it properly."⁸⁸

Unfortunately, there were also cases when it was impossible to observe the circumstances relating to interpretation as the interpreter's voice was not heard at all, or the interpreter was not physically visible and it was impossible to hear or see whether interpretation was provided or not, or to assess the quality of interpretation.⁸⁹

3.4. Other issues relating to remote justice

Refusal of remote hearing

The primary purpose of introducing the remote format of hearings was to provide access to a trial during the pandemic. It should be noted that this goal has not been achieved for some citizens, as they do not have a computer at home,⁹⁰ or live in a highland village with no access to the internet.⁹¹

Given the above problems of technical and legal nature, it is logical that some of the defendants refused to hold the hearing remotely. Some of the judges⁹² considered and granted their refusal, however, there were cases when the court held the hearing remotely despite the refusal and decided to remotely hold the next hearing as well.

The above does not contradict the law,⁹³ however, we believe that when deciding the above issue, the court should additionally pay special attention to the issue of whether it is fully possible for the defendant to exercise his/her right to a fair trial in a remote hearing.

⁸⁷ June 16, Rustavi City Court.

⁸⁸ May 25, Gurjaani District Court.

⁸⁹ May 25, Gurjaani District Court.

⁹⁰ May 22, Tetrtskaro District Court.

⁹¹ May 28, Mtskheta District Court.

⁹² For example, Judge Mamia Pkhakadze (Rustavi), Judge Zurab Balavadze (Zestaponi).

⁹³ Subparagraph "b" of the first part of Article 332⁵ of the Criminal Procedure Code of Georgia.

Issues relating to the measure of restraint

During monitoring, judges used detention as a measure of restraint in 15 cases, while bail was used in 9 cases. No measure of restraint has been considered at 16 hearings, as a non-custodial measure had already been ordered for the defendant.

It is welcome that when using the measure of detention, judges paid particular attention to the substantiation of their own decisions. Detention was used only if similar crime had been committed in the past or if there was a substantiated suspicion that the defendant would influence the witness.⁹⁴ One of the judges reviewed the already applied measure of restraint on his own initiative and replaced detention with bail.⁹⁵ It is welcome that similar practices were reported during the stage of consideration of a case on its merits as well.⁹⁶

Justification of the measure of bail remained problematic.⁹⁷ There were cases when the judge did not take the defendant's personal or financial circumstances into account when using bail as a measure of restraint.⁹⁸ Similar attitude was identified during negotiating a plea bargain. Moreover, although the judge himself noted that the fine indicated in the plea bargain was too high considering the defendant's financial state, he still approved it.⁹⁹ In this regard, there was a positive case when the judge took the defendant's financial situation into account and appointed defence for him at the expense of the state, even though it was not mandatory.¹⁰⁰

Conclusion

During the pandemic, holding court hearings remotely is, in fact, the only way to ensure that, on the one hand, the normal functioning of the court continues and cases are not unreasonably delayed, and, on the other hand, the health and safety of the population is not endangered. However, the present report unequivocally indicates that the judicial system encountered serious challenges in this regard between May and June 2020.

First of all, in order to maintain the publicity of court hearings and enable their external monitoring, it is necessary to allow representatives of the Public Defender's Office to attend remote (including closed) court hearings without any obstacles. In addition, uploading the schedule of hearings to a joint site would make it easier for the third parties to carry out monitoring.

Infrastructural equipment of penitentiary establishments is key for the proper functioning of the remote judicial system. In particular, Establishments No 8 and No 2, where male defendants are placed,

⁹⁴ May 27, Khashuri District Court; June 05, Khashuri District Court.

⁹⁵ June 1, Tbilisi City Court, Judge Levan Gelovani.

⁹⁶ June 5, Kutaisi City Court, Judge Nana Jokhadze.

⁹⁷ June 1, Tbilisi City Court, 29 May, Akhalkalaki District Court.

⁹⁸ May 29, Akhalkalaki District Court.

⁹⁹ June 4, Rustavi City Court.

¹⁰⁰ June 3, Batumi City Court, Judge Davit Mamiseishvili.

should be equipped with additional special rooms, from which prisoners would be able to attend hearings. Otherwise, there will still be situations when courts have to wait for hours for a hearing to begin.

The infrastructure of both the relevant rooms of penitentiary establishments and courtrooms, as well as the technical/software infrastructure, should be substantially improved so that defendants and other parties, who are remotely involved in the hearing, could properly perceive the hearing and the persons involved.

The courts' software infrastructure should be changed so that to ensure confidential communication between the defendants and lawyers during a hearing, which is explicitly required by the right to a fair trial.

The questioning of a witness should not begin unless the court is sure that he or she is in an appropriate room alone, free from influence. In addition, if it becomes clear that it is objectively difficult for the parties to see or hear the witness during questioning, the courts should make every effort to eliminate the relevant technical problems. If the defendant still cannot hear the testimony of the witness or cannot see him/her, the courts should postpone the questioning.

In addition, courts should pay special attention to the full involvement of an interpreter in the hearing and to the justification of the use of a measure of restraint, as well as the defendant's request to hold the hearing without online format.

Recommendations

To the Parliament of Georgia:

- In case of holding court hearings remotely in the future, the relevant norm in the Criminal Procedure Code should clearly provide for the opportunity of any person to monitor the hearing;
- In case of holding court hearings remotely in the future, the Criminal Procedure Code shall indicate that:
 - Questioning of a witness should not begin unless the court makes it clear that he or she is alone in the room and is free from influence
 - Questioning of a witness should not begin or end if the defendant or any party is unable to properly hear or see the witness.

To the Minister of Justice of Georgia:

- Improve the technical infrastructure of penitentiary establishment, namely:
 - Increase the number of special rooms and computers in the establishments to facilitate defendants' connection to the remote hearing

- Strengthen the quality of internet connection and other technical equipment to eliminate technical problems during the remote involvement of defendants from the special room

To the High Council of Justice of Georgia:

- Improve the technical and software infrastructure of the common courts of Georgia in order to:
 - provide the opportunity of confidential communication between the defendant and the lawyer within the relevant programme
 - ensure that the internet connection and software capacity of the court enables the proper course of the hearing and smooth involvement of third parties in it.
- Make relevant recommendations to the judges of common courts so that during remote hearings, they:
 - pay special attention to the consideration of the defendant's request to hold the hearing in a non-remote manner
 - pay special attention to the provision of comprehensive information to the defendants of their rights during the admission of evidence
 - pay special attention to the duration of interpretation, as well as smooth and proper communication between the interpreter and the defendant (or another person in need of interpretation)

Appendix

Questionnaire for remote monitoring of court hearings

1. Preparatory process	
Which court is being monitored?	
What time is the hearing scheduled for?	
Name of the judge	
Name of the assistant judge	
Content of the case (initial appearance, pre-trial hearing, consideration of a case on its merits)	
When did you contact the assistant judge?	
Has consent been obtained for monitoring? If not, provide the reason of the refusal:	
When did you get consent for monitoring?	
Other relevant circumstances:	

2. Start of the hearing	
Did the hearing start as it was scheduled? If not, please indicate the reason:	
Is the defendant attending the hearing?	
Does a person with disabilities, a minor or a foreigner/interpreter participate in the hearing?	
In case of a minor, is his or her legal representative attending the hearing?	

Is the lawyer attending the hearing? (Please indicate if a public lawyer is attending the hearing)	
Is the victim attending the hearing?	
Is the third party attending the hearing?	
Is another monitor attending the hearing?	

3. Course of the hearing	
Were there any technical problems during the hearing? If yes, please specify the type of the problem and how long it lasted	
Did they check the internet connection and technical details in case of such a necessity? If so, who did it?	
Was it possible to clearly hear the voices of the parties?	
Was it possible to clearly see the persons involved in the hearing?	
Were both of the parties given enough time to present their opinions? If not, please specify:	
Did the judge set a specific time for any of the parties for expressing an opinion? If so, specify the time? Was this restriction justified?	
Did any party request the postponement of the hearing due to its online format?	
Did the court grant the above motion and why?	
Was the hearing postponed?	
What time did the hearing end?	

4. Initial appearance	
Did the defendant have the opportunity to communicate with the lawyer before the hearing?	
Does the defendant have the opportunity to speak confidentially with the lawyer during the hearing?	
Did the defendant complain in relation to the effective exercise of the right of defence?	
What is the person charged with?	
Did the judge fully inform the defendant of his/her procedural rights?	
Did the defendant report any ill-treatment? If yes, please describe:	
How did the judge react to the allegation of ill-treatment?	
Did the defence make a statement on the illegal conduct of any procedure? If yes, please describe:	
How did the judge respond? Did the judge consider the statement?	
Did the parties have the opportunity to adduce evidence?	
Were there any technical or content-related deficiency when adducing evidence?	
What type of measure of restraint was requested by the prosecution?	
What type of measure of restraint was requested by the defence?	
What type of measure of restraint was applied by the court?	
Please indicate the justification provided by the court relating to the measure of restraint applied	

Did the court take into account the personal (including financial) data on the defendant when making a decision on the measure of restraint?	
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5. Pre-trial hearing	
Did the defendant have the opportunity to communicate with the lawyer before the hearing?	
Does the defendant have the opportunity to speak confidentially with the lawyer during the hearing?	
What is the person charged with?	
Did the defendant complain in relation to the effective exercise of the right of defence?	
Did the judge fully inform the defendant of his/her procedural rights?	
Did the defendant report any ill-treatment? If yes, please describe:	
How did the judge react to the allegation of ill-treatment?	
Did the defence make a statement on the illegal conduct of any procedure? If yes, please describe:	
How did the judge respond? Did the judge consider the statement?	
What type of measure of restraint was requested by the prosecution?	
What type of measure of restraint was requested by the defence?	
What type of measure of restraint was applied by the court?	

Please indicate the justification provided by the court relating to the measure of restraint applied	
Did the court take into account the personal (including financial) data on the defendant when making a decision on the measure of restraint?	
Did the parties have the opportunity to adduce evidence?	
Were there any technical or content-related deficiency when adducing evidence?	
Did any of the parties object to the admission of evidence? If yes, please specify:	
Did the judge grant the above motions? Please indicate the justification for each motion:	

6. Consideration of a case on its merits	
Did the defendant have the opportunity to communicate with the lawyer before the hearing?	
Does the defendant have the opportunity to speak confidentially with the lawyer during the hearing?	
Did the defendant complain in relation to the effective exercise of the right of defence?	
What is the person charged with?	
Did the judge fully inform the defendant of his/her procedural rights?	
Did the defendant report any ill-treatment? If yes, please describe:	
How did the judge react to the allegation of ill-treatment?	

Did the defence make a statement about the illegal conduct of any procedure? If yes, please describe:	
How did the judge respond? Did the judge consider the statement?	
What type of measure of restraint was requested by the prosecution?	
What type of measure of restraint was requested by the defence?	
What type of measure of restraint was applied by the court?	
Please indicate the justification provided by the court relating to the measure of restraint applied	
Did the court take into account the personal (including financial) data on the defendant when making a decision on the measure of restraint?	
Was a witness(es) questioned during the hearing?	
Was physical evidence examined? Under what circumstances?	
Was there any technical defect during the questioning of a witness?	
Was it possible to clearly hear the speech of the witness and see his/her mimics during questioning?	
Was there any reason to suspect that the witness had communication with another person during questioning (including electronically), or that he/she was reading a pre-written testimony?	
Did any of the parties express protest during the questioning of the witness? If yes, please indicate:	
Which position did the court agree with? Please specify the relevant justification:	

Did any of the parties protest regarding the delay of the hearing?	
Which position did the court agree with? Please specify the relevant justification:	
Other relevant circumstances:	

7. Plea bargain hearing	
Did the defendant have the opportunity to communicate with the lawyer before the hearing?	
Does the defendant have the opportunity to speak confidentially with the lawyer during the hearing?	
Did the defendant complain in relation to the effective exercise of the right of defence?	
What is the person charged with?	
Did the judge fully inform the defendant of his/her procedural rights?	
Did the defendant report any ill-treatment? If yes, please describe:	
How did the judge react to the allegation of ill-treatment?	
Did the defence make a statement about the illegal conduct of any procedure? If yes, please describe:	
How did the judge respond? Did the judge consider the statement?	
Did the judge additionally inform the defendant of his/her right relating to plea bargaining?	
Was there any technical defect when the defendant was speaking?	

<p>Was it possible to clearly hear the speech of the defendant and see his/her mimics during questioning?</p>	
<p>Was there any reason to suspect that the defendant had communication with another person during questioning (including electronically), or that he/she was reading a pre-written testimony?</p>	
<p>Did the defendant change his mind relating to plea bargaining? If so, why?</p>	
<p>Did the judge approve plea bargain?</p>	
<p>Was there any problem of legal nature with the content of plea bargain? If so, why?</p>	