

# Court Monitoring Report #3

**Period Covered**  
February-December 2013



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*The Judicial Independence and  
Legal Empowerment Project (JILEP)*

# **Court Monitoring Report**

**№3**

**Period Covered: February – December 2013**

**April 2014**

**Tbilisi, Georgia**

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## **Acknowledgements**

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In addition, we would like to say a special thank you to Neil Weinstein, EWMI's Legal Systems Specialist, who has significantly contributed to this study with his extremely valuable experience, suggestions, and advice, also to Folke Bernadote Academy and OSCE's Rule of Law Office for sharing their experience in the field of monitoring administrative justice.

## Executive Summary

This is TI Georgia's third report on administrative court hearings. This report covers the period from February 2013 to December 2013, and includes court monitoring data from administrative proceedings in the first instance courts in Tbilisi, Batumi, Khelvachauri, Kutaisi, Gori and Zugdidi. A total of 532 hearings in 253 cases were observed – almost double the amount of hearings and cases observed during the second monitoring period, due to the fact that this monitoring period was twice as long.

TI Georgia monitored the court administration and judges across a number of specific criteria, including: reasonable time and punctuality of the hearings, protection of the right to a public hearing, due regard to the procedural handling of the hearing, use of inquisitorial principle, and the observance of equality of arms.

The key findings of this report are:

- The overall share of cases won by state parties has significantly decreased during this monitoring period, when compared to the first and second monitoring periods. For example, in Tbilisi City Court the percentage of cases in which the state party was entirely successful has dropped from 84.4% to 63.7%; in Batumi City Court and Khelvachauri District Court it dropped from 87.1% to 45.5%.
- Throughout this monitoring period, judges showed a low initiative in applying their inquisitorial powers, especially in the areas of: giving instructions/recommendations to the parties, requesting additional information and evidence from the parties and etc. The inquisitorial powers granted to judges are highly important, since there is no legal aid available for unrepresented parties in Georgian administrative cases.
- Judges showed a low initiative in suggesting that the parties settle their disputes in Tbilisi and Kutaisi City Courts and Gori District Court– compared to the other courts that TI Georgia monitored.
- With the exception of Zugdidi District Court, the regional courts are taking a longer time to render final decisions - when compared to Tbilisi City Court, which has more cases.
- During this monitoring period, it should be highlighted that the results in which judges handled the cases at Tbilisi City Court paled in comparison to the regional courts in many areas, specifically in: the publication of the basis and/or relevant articles of law for dispute; the provision of case summaries, especially at preliminary hearings; the explanation of the rights of the parties at the opening of hearings; the explanation of the meaning of the stages in hearings to the

parties; the offer of settlements; and the announcement of both evidence and legislation relied upon when announcing the final decision.

- Compared to the previous periods, there is a clear trend of improvement in the punctuality of administrative cases monitored at Tbilisi City Court, Batumi City Court and Kelvachauri District Court. However, there have been low percentages of punctuality at Gori District Court and Zugdidi District Court.
- The courts' administrations failed to provide information on the date and time of hearings that were postponed for an indefinite period of time. Also, Tbilisi City court frequently failed to publish the relevant articles of law at issue in dispute, which has been an ongoing problem, and one in which TI Georgia has been reporting on since the first court monitoring report.
- In the majority of hearings, Tbilisi City Court judges are not providing case summaries, explaining the rights afforded to parties at the opening of hearings, nor explaining the meaning of stages in hearings, when compared to the regional courts. This is an important issue when parties are unrepresented, which is common due to the lack of legal aid for administrative cases in Georgia.
- At Tbilisi City Court the judges announced the evidence in which they based their decision on in only 28% of cases monitored. However, there has been a significant improvement in the remaining monitored courts.
- Overall, the judges are complying with the adversarial principle at all courts, thus, ensuring any lack of bias.

## Goal of the Court Monitoring and Number of Cases Monitored

TI Georgia's court monitoring project aims to facilitate the transparency, efficiency, and accessibility of Georgia's justice system in the area of administrative law. For that purpose, TI Georgia's monitoring team attends administrative court hearings, collects information on the procedures of those hearings, derives statistics, analyzes the data collected, and makes relevant conclusions. TI Georgia considers the project particularly important since the findings of the monitoring are made public and people have access to a comprehensive overview of what actually occurs in Georgia's courtrooms. This, in turn, helps instigate public debate on the state of the Georgian justice system and areas for reform.

The court monitoring observations reflected in this report cover the period from February 2013 to December 2013, including the data from the first instance courts of Tbilisi (hereinafter TCC), Batumi (hereinafter BCC), Kutaisi (hereinafter KCC), Gori (hereinafter GDC), Khelvachauri (hereinafter KDC) and Zugdidi District Court (hereinafter ZDC). This monitoring period was the first time that TI Georgia monitored cases in Kutaisi and Zugdidi.

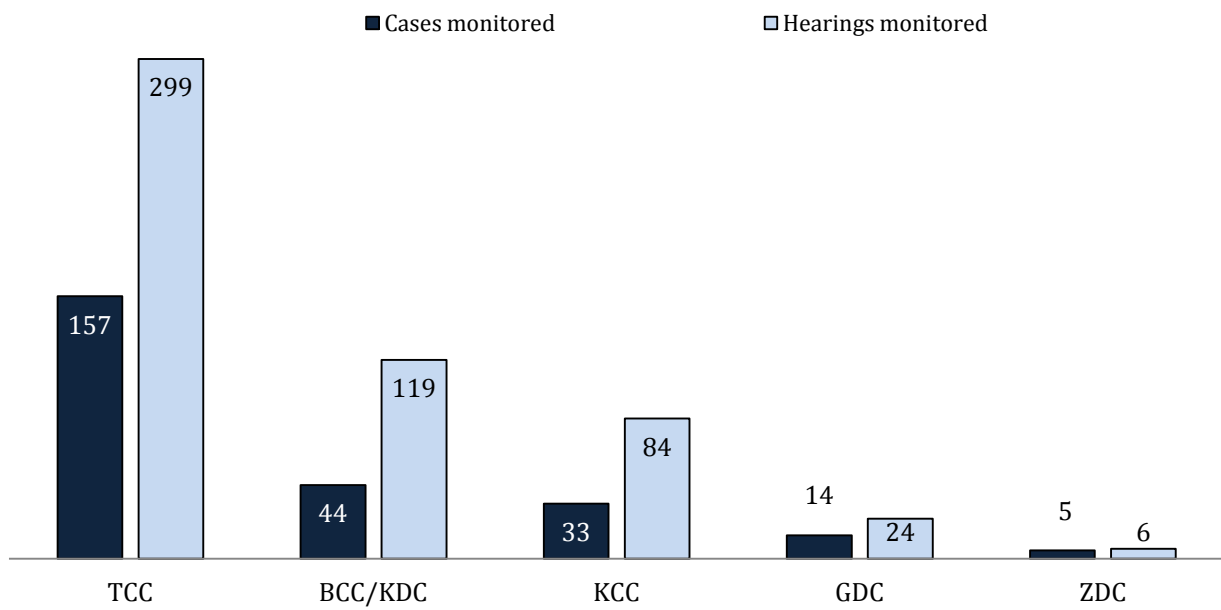
During this period, TI Georgia monitored 253 administrative law cases to the rendering of a final decision, with one case potentially including several hearings. In total our monitors attended 532 hearings with: 299 hearings (157 cases) attended in TCC; 119 hearings (44 cases) in BCC and KDC; 84 hearings (33 cases) in KCC; 24 hearings (14 cases) in GDC; 6 hearings (5 cases) in ZDC. Throughout this report, statistical data from BCC and KDC will be discussed together.

In addition to the hearings described above, TI Georgia monitors attended 161 hearings (90 cases) which were postponed for an indefinite period of time or suspended due to a settlement between the parties, declaration of the case as inadmissible, or withdrawal of the case by the parties.<sup>1</sup> In 11 cases a settlement was reached, 20 cases were declared inadmissible and 44 cases were withdrawn. These 90 cases are not included in the overall statistics of this report, however the report includes references to those cases where the parties agreed to a settlement offered by the judge.

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<sup>1</sup> See Annex 1, Table 1.2.

**Chart 1. Cases and Hearings Monitored**



## Methodology

With the purpose of court monitoring, TI Georgia first developed a detailed checklist of questions to be filled-in by its monitors (see Annex IX). Following the procedural requirements of the relevant legislation,<sup>2</sup> the checklist consisted of 140 questions. After the amendments to the Organic Law on Common Courts, introduced in March 2013, the number of questions in the checklist increased from 140 to 148. This increase in questions reflected amendments that imposed new regulations on audio and video recording – which allow TV stations to request permission from the judge to record hearings. In addition, we added questions that reflect problematic issues on the ethics of court staff and judges. Ethical issues were observed during the previous two monitoring periods.

The checklist comprises of multiple-choice questions with a space for comments after each question. This ensures that all of the important aspects of the hearings are well documented by the monitors. In addition, TI Georgia developed an electronic database that provides a simple way of processing the collected information and retrieving relevant statistics. This database, which is available upon request to any interested person, is identical to the paper version of the checklist and makes it easier to manage and administer the collected data.

TI Georgia recruited a total of 32 court monitors: 20 part-time monitors in Tbilisi; 5 part-time monitors in Batumi and Khelvachauri; 4 part-time monitors in Kutaisi; one full-time monitor in Gori; and 2 part-time monitors in Zugdidi. The monitors are graduating law students who are carefully selected through an open selection process. All monitors attended several day-long intensive theoretical and practical trainings before they started to monitor court hearings. At least two monitors per-day went to TCC to attend both new cases and those that had been postponed. At the same time, monitors went to BCC, KDC, KCC, GDC and ZDC to attend new cases according to the official schedule, they also attended cases that had been postponed. The monitors visited courts even when there were no hearings scheduled on the courts' official web pages, in order to have a clear picture of the hearings published or omitted from the web pages.

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<sup>2</sup> Georgian Administrative Procedure Code, Tbilisi 23/07/1999, №2352 RS, and Georgian Civil Procedure Code, Tbilisi 14/11/1997, №1106 IS.

## Case Selection and Focus of the Monitoring

The cases for monitoring were selected according to the official schedule published on the web pages of the relevant courts.<sup>3</sup> Our monitors also randomly attended hearings when the clerks announced the start of hearings in the corridors of the court buildings. In order to collect information on the scheduled cases, TI Georgia's monitors were also in regular contact with the assistants of judges, bailiffs, court administrative staff, the parties and their representatives.

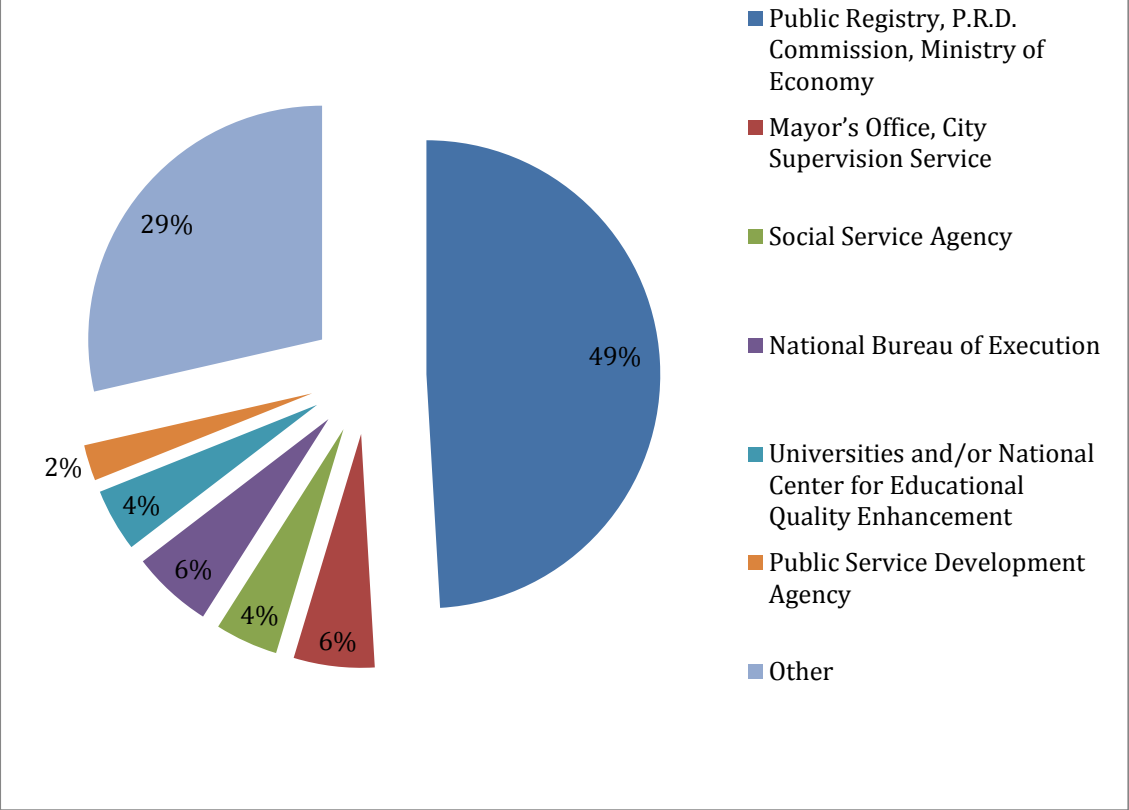
TI Georgia chose to focus its court monitoring project on property rights cases because of the increasing number of reported violations in Georgia during the past years.<sup>4</sup> However, other types of cases were also monitored. Judges in the administrative chambers of the first instances courts are specialized, which in practice means that property rights cases are heard by a handful of judges. This creates a risk of only monitoring the performance of these same judges. Due to this reason and with the aim to identify all possible flaws in the procedure, TI Georgia decided to additionally monitor other randomly selected administrative cases. (See Chart 2)

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<sup>3</sup> [Official web page of the Tbilisi City Court: www.tcc.gov.ge](http://www.tcc.gov.ge); official web page of the Batumi City Court: <http://batumi.court.gov.ge/>; official web page of Gori District Court: <http://gori.court.gov.ge/>; official web page of Kutaisi City Court: [http://court.gov.ge/courts/quTaisi/sagalaqo\\_sasamarTlo/?page=17](http://court.gov.ge/courts/quTaisi/sagalaqo_sasamarTlo/?page=17)

<sup>4</sup> Georgian Young Lawyers Association (GYLA), 2012 Annual Report, <http://gyla.ge/geo/news?info=842>, visited on 31/01/2013; Association Green Alternative, GYLA, TI Georgia, Georgian Regional Media Association, "Stripped Property Rights in Georgia", March 2012, [http://www.greenalt.org/webmill/data/file/publications/Stripped\\_Property\\_Rights\\_April2012\\_Eng.pdf](http://www.greenalt.org/webmill/data/file/publications/Stripped_Property_Rights_April2012_Eng.pdf), visited on 31/01/2013; TI Georgia "Problems Related to the Protection of Property Rights – The Case of Gonio", March 2011, <http://transparency.ge/en/post/report/problems-related-protection-property-rights-case-gonio-march-2011>, visited on 31/01/2013; "Problems Related to the Protection of Property Rights – The Case of Mestia", July 2011, <http://transparency.ge/en/post/report/problems-related-protection-property-rights-case-mestia-july-2011>, visited on 31/01/2013; Studio GNS Documentary "Property Rights Violations Digomi Case", <http://www.youtube.com/watch?v=ioAZneCQ1nw>, visited on 31/01/2013..

**Chart 2. Cases Monitored by Administrative Body**



## Dispute Outcome

In addition to monitoring the procedures at administrative hearings, TI Georgia also recorded the outcomes in the 253 cases it monitored. The outcome figure has significantly changed in this reporting period when compared to the first and second reports. TI Georgia has observed that the share of cases won by state parties has considerably decreased.

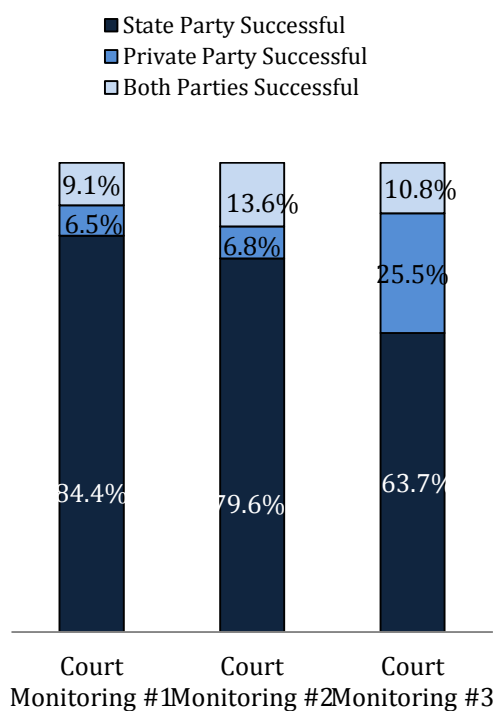
At TCC the state parties proved to be entirely successful in 64% of the cases monitored (100 of 157). During the first monitoring period this figure was 84.4%, and during the second monitoring period it was 79.6%.

At BCC and KDC, the state party was entirely successful in 45.5% (20 of 44) of the cases monitored. During the first monitoring period this figure was 87.1%, while during the second monitoring period this figure was 74.3%.

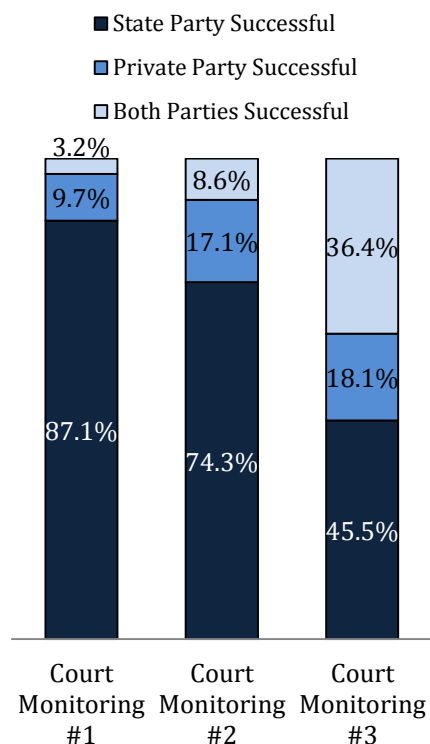
At KCC the state party was entirely successful in 48.5% (16 of 33) of cases monitored. At GDC the state party was entirely successful in 64.3% (9 of 14) of cases monitored. At ZDC the state party was entirely successful in 40% (2 of 5) of cases monitored.

Overall, in all monitored courts, the state party proved to be entirely successful in 58% of cases (147 of 253), this figure during the second monitoring period was 79% of cases (112 out of 142) and during the first monitoring period 85% of cases (92 out of 108).

**Chart 3. Dispute Outcomes  
TCC**

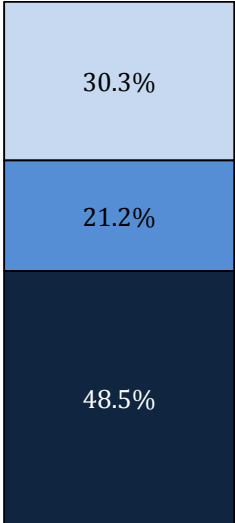


**Chart 4. Dispute Outcomes  
BCC and KDC**



**Chart 5 Dispute Outcomes  
KCC**

- State Party Successful
- Private Party Successful
- Both Parties Successful



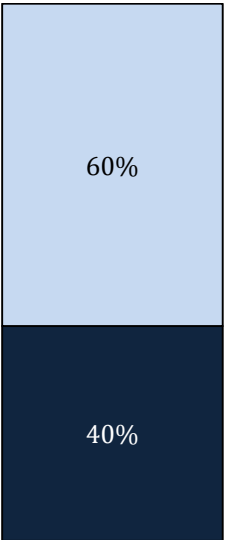
**Chart 6. Dispute Outcomes  
GDC**

- State Party Successful
- Private Party Successful
- Both Parties Successful



**Chart 7. Dispute Outcomes  
ZDC**

- State Party Successful
- Private Party Successful
- Both Parties Successful



## Fundamental Principles of Administrative Procedure

The legal principles applicable to administrative cases are divided into two main categories: general legal principles and special legal principles. The former are consolidated in the Constitution; the latter, along with general legal principles, are enshrined in specific branches of law.<sup>5</sup>

For the purpose of this study, TI Georgia has monitored the general and special legal principles that are applicable to administrative law. These are as follows:

- Reasonable Time and Punctuality;
- Right to a Public Hearing;<sup>6</sup>
- Handling of the Hearing by the Judge;<sup>7</sup>
- Inquisitorial Principle;<sup>8</sup> and
- Adversarial Principle (Equality of Arms, Unbiased Settlement of Dispute).<sup>9</sup>

Administrative proceedings in Georgia are primarily based on the inquisitorial principle, which means that the judges should be more active during administrative hearings than they are during civil and criminal hearings, which are solely based on the adversarial principle.<sup>10</sup> Bearing this in mind, TI Georgia put a special focus on monitoring how judges applied the inquisitorial principle when handling administrative hearings.<sup>11</sup>

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<sup>5</sup> M. Kopaleishvili, N. Skhirtladze, E. Kardava, P. Turava, "Handbook of Administrative Procedural Law," Tbilisi (2008), pg. 19.

<sup>6</sup> Constitution of Georgia, Tbilisi 24/08/1995, №786 RS, Art. 85; European Convention on the Protection of Human Rights and Fundamental Freedoms, Rome, 04/11/1950, Art. 6; Organic Law of Georgia on Courts of General Jurisdiction, Tbilisi, 4/12/2009, №2257-IIS, Art. 13.

<sup>7</sup> M. Kopaleishvili, et al., pg. 27.

<sup>8</sup> Georgian Administrative Procedure Code, Art. 4; M. Kopaleishvili, et al., pg. 25.

<sup>9</sup> Constitution of Georgia, Art. 14; Georgian Civil Procedure Code Art. 4, Art. 5.

<sup>10</sup> Georgian Administrative Procedure Code, Art. 4.

<sup>11</sup> M. Kopaleishvili, et al., pg. 27.

## Reasonable Time and Punctuality

Measuring punctuality is important to show how judges manage their time and how organized they are. In the course of its monitoring, TI Georgia assessed whether court hearings started later than scheduled.

The right to a court hearing within a reasonable time is an important prerequisite for having a fair trial, and also allows for better analysis of the organization and the management of the judicial system. This right serves as a guarantee to protect parties against excessive procedural delays, which could jeopardize the courts' effectiveness and credibility.<sup>12</sup> Under Georgian law, courts should decide an administrative case within two months, starting from the date the claim was registered. In cases of special complexity, this period may be extended to five months.<sup>13</sup>

## General Findings

The statistical information gathered by TI Georgia shows that during the third monitoring period the four larger courts were effective in observing punctuality in the majority of cases; whilst, GDC and ZDC had relatively high percentages of hearings starting late. Compared with the previous monitoring periods, there is a clear trend of improvement in punctuality at TCC, BCC and KDC.

During the third monitoring period, 69% (207 of 299) of the hearings in TCC started on time. During the second monitoring period, 67% of the hearings monitored in TCC (99 of 147) started on time; while during the first monitoring period, only 35% of the hearings monitored started on time. It is apparent that the overall punctuality since the first monitoring period has significantly improved.

BCC and KDC have improved compared to the first and second monitoring periods. Nearly 76% (91 of 119) of the hearings started on time during this monitoring period. In the second monitoring period, this figure was 55% (61 of 112). During the first monitoring period, only 30% of the hearings started without a delay.

In KCC, 64% (54 of 84) of hearings started on time.<sup>14</sup> In GDC, only 38% (9 of 24) of hearings started on time.<sup>15</sup> While, at ZDC, 33% (2 of 6) of hearings started on time.

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<sup>12</sup> Handbook for Monitoring Administrative Justice. Folke Bernadotte Academy and Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe's Joint Initiative, working version, pg 80.

<sup>13</sup> Georgian Administrative Procedural Code, 23.07.1999, #2352-RS, Art. 1(2); Georgia Civil Procedure Code, 14/11/1997, #1106, Art. 59 (3).

<sup>14</sup> TI Georgia started to monitor Kutaisi City Court 1 February 2013.

In TCC, only 13% (39 of 299) of hearings started with a delay of more than 10 minutes. This figure was almost the same during the second monitoring period, where 14% of the hearings (20 of 147) started with a delay of more than 10 minutes. It should be highlighted that during the first monitoring period, almost 40% of the hearings were delayed by more than 10 minutes. Therefore, this trend shows a clear improvement.

Of the hearings monitored in BCC and KDC, nearly 10% (12 of 119) of hearings were delayed by more than 10 minutes. This is a significant improvement compared to the second monitoring period, where 37% of cases started with a delay of more than 10 minutes, and during the first monitoring period, where 67% of cases started with a delay of more than 10 minutes.

In KCC and ZDC, 33% of hearings started with a delay of more than 10 minutes. In GDC, only 13% (3 of 24) of hearings were delayed by more than 10 minutes.

In TCC, during this monitoring period, the judge announced the reason for the delay in 46% (18 of 39) of hearings. During the second monitoring period, reasons were announced only in 30% of the hearings. During the first monitoring period, the figure was 26%. Our monitors were able to determine the reasons for the delay for an additional 54% (21 of 39) of TCC's delayed hearings. In 31% (12 of 39) of the hearings, the reason for delay was that the previous hearing lasted too long; in 5% (2 of 39) of hearings, one of the parties was late. In the remaining cases that started more than 10 minutes late, the reason for the delay could not be determined.<sup>16</sup>

In BBC and KDC, the judge announced the reason for a delay of more than 10 minutes in 50% (6 of 12) of hearings, while during the second monitoring period this figure was only 10%. The reason for delay in all cases was the fact that the previous hearings lasted too long.

In KCC, the judge announced the reason for the delay of more than 10 minutes in 61% (17 of 28) of hearings. In 50% (14 of 28) of hearings the reason was that the previous hearings lasted too long. In ZDC, only 2 of 6 hearings started late by more than 10 minutes.

Since TI Georgia follows cases till the end, monitors counted how many days it took for the court to render a final decision. The average number of days at TCC was almost 17 days; almost 25 days at BCC and KDC; 23 days at KCC; almost 21 days at GDC; and 5 days at ZDC. At TCC rendering a final decision took maximum 107 days, maximum is 107 days at BCC/KDC, 96 days at KCC, 85 days at GDC and 23 days at ZDC. Although the courts on average rendered a decision within the two month time period as prescribed

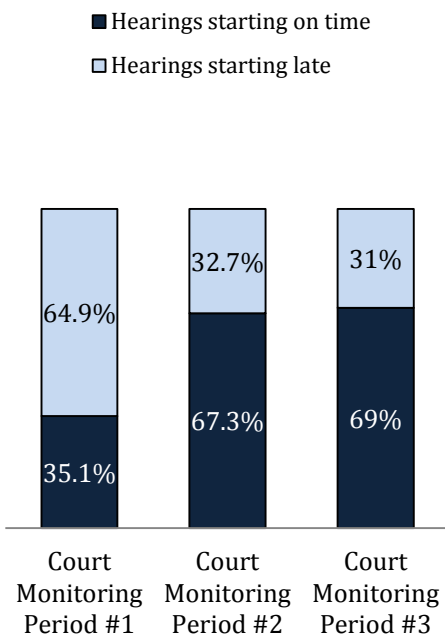
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<sup>15</sup> During the second monitoring period Gori district court data was assessed in conjunction with Telavi City Court. Current report includes data only from the Gori City court.

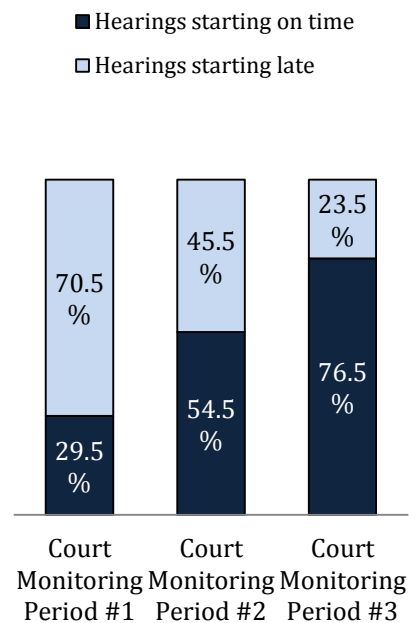
<sup>16</sup> See Annex 3, Table 3.3 and 3.4.

by law and in cases of special complexity, this period may be extended to five months. It should be noted that regional courts – with the exception of ZDC - took a longer average time to render a final decision when compared to TCC. This result should be highlighted, given the fact that TCC hears more cases.

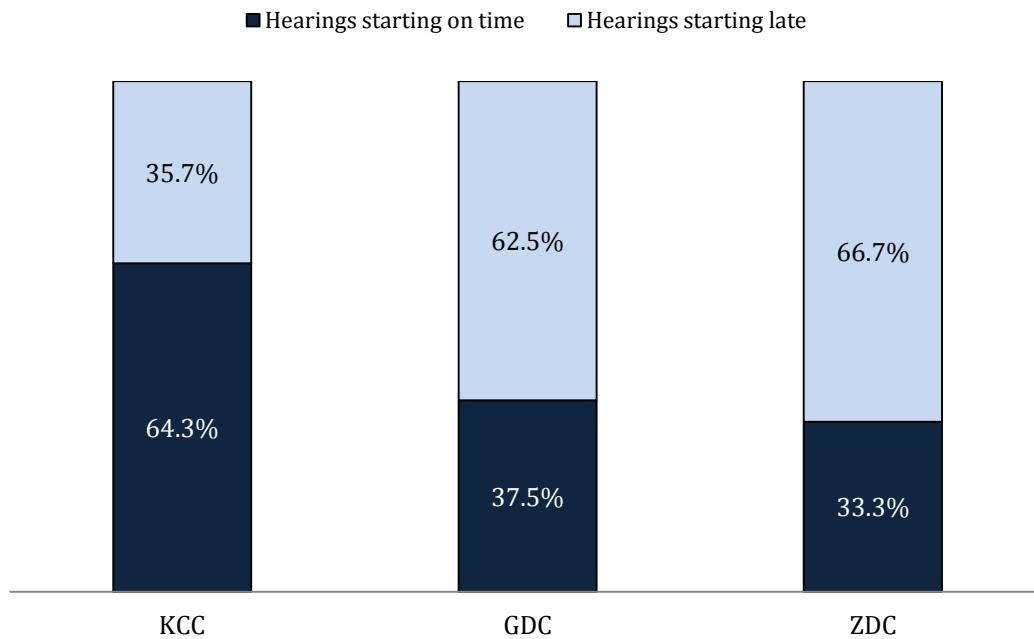
**Chart 8. Hearings Starting Late/On Time TCC**



**Chart 9. Hearings Starting Late/On Time BCC/KDC**



**Chart 10. Hearings Starting Late/On Time  
Court monitoring Period #3**



### *Recommendations*

Significant improvements have been made in the punctuality of hearings conducted in TCC, BCC and KDC. However, there are still improvements to be made in both GDC and ZDC - where less than 50% of hearings started on time.

TI Georgia reiterates the importance for judges to state the reason that a hearing is starting late, especially if the delay is more than 10 minutes. Further steps should be made for this to be mandated as a rule. This would raise the accountability and transparency of the court system from the viewpoint of persons attending a hearing.

## Right to a public hearing

The Constitution of Georgia guarantees the right to a public hearing, stating that the court should discuss the case at an open hearing.<sup>17</sup> The Organic Law on Common Courts also acknowledges this right, stating that court hearings on cases falling under that law should be open to the public unless decided otherwise by the judge.<sup>18</sup> The European Convention on Human Rights also guarantees the right to a public hearing, stating “*in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing.*”<sup>19</sup> Article 6 of the Convention did not specifically cover administrative proceedings,<sup>20</sup> however, in *Ringeisen v. Austria* and *König v. Germany* the ECtHR decided that Article 6 should cover “all proceedings,” including a dispute between a private person and a public authority and in the application of administrative law.<sup>21</sup> In addition, the obligation to ensure that everybody is entitled to a fair and public hearing in the determination of his civil rights and obligations is imposed on state parties by the International Covenant on Civil and Political Rights.<sup>22</sup> Another important international mechanism is the commitment of OSCE participating countries to accept as a confidence-building measure “the presence of observers...at proceedings before the courts”.<sup>23</sup>

To guarantee the full implementation of the right to a public hearing, courts should ensure that all interested parties are given the opportunity to freely attend hearings and to receive advance notification of the date and time of each hearing. At the same time, the relevant court or the tribunal should clearly explain the reasoning behind any restrictions of the public’s access to court hearings.<sup>24</sup> If there are no grounds for restrictions, the administrative courts should provide the public with adequate facilities to freely attend the hearings in which they are interested.<sup>25</sup>

Interested parties should also have a sound understanding of the dispute, meaning that they should be able to hear the statements and comments of all important parties to the dispute, including witnesses, experts, specialists, interpreters, judges and clerks. Therefore, judges should make sure that their statements and those of others sitting in the courtroom are loud and clear enough so that ordinary citizens attending the hearing can listen and comprehend what is discussed by the parties.

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<sup>17</sup> Constitution of Georgia, Art. 85.

<sup>18</sup> Organic Law of Georgia on Courts of General Jurisdiction, Art. 13.

<sup>19</sup> European Convention on the Protection of Human Rights and Fundamental Freedoms, Rome, 04/11/1950, Art. 6.

<sup>20</sup> See n 27, Handbook for Monitoring Administrative Justice, pg. 40.

<sup>21</sup> *Ringeisen v Austria*, (1971), ECHR, para 94; *König v Germany*, (1978), ECHR, paras 89-90.

<sup>22</sup> International Covenant of Civil and Political Rights, signed on 16/12/66, in force from 23/03/67, Art. 14(1).

<sup>23</sup> [CSCE/OSCE Copenhagen Document](#), para 12.

<sup>24</sup> See n 27, Handbook for Monitoring Administrative Justice, pg. 43.

<sup>25</sup> *Ibid*, pg.67. See n 8, pg. 67; [Van Meurs v. The Netherlands](#), HRC Communication 215/1986, UN Doc CCPR/C/39/D/215/1986 (1990), para 6.2.

## General Findings

TI Georgia's general observations are similar to what was discovered during the second monitoring period (except for the high profile cases mentioned separately in the previous report). In particular, any interested person is allowed to attend administrative court hearings in Georgia and make notes. Our monitors, for instance, were often assisted by the bailiffs and clerks to find the right courtroom and were also able to freely make notes during the hearings. Nevertheless, there were a number of instances that can be seen as infringements of the right to a public hearing, as guaranteed by Georgian law and the European Convention on Human Rights.

One of the general indicators of the accessibility of hearings is whether the basis and/or relevant articles of law for disputes are published. The failure to do so was particularly severe in TCC, where this information was not published in *any* of the cases monitored by TI Georgia. The district courts performed considerably better in this regard, and in most of the cases monitored they published the articles under dispute in their official schedules. BCC, KDC published this information in almost 91% (108 of 119) of hearings monitored. KCC published this information in 75% (63 of 84) of hearings monitored. GDC published in 96% (23 of 24) and ZDC published this information in all 6 hearings monitored.

Another general indicator of the accessibility of hearings is whether they were published on the court's official schedule. TI Georgia's monitors found that only 5% of administrative court hearings monitored in TCC (16 of 299) were not published on the court's official schedule. During the second monitoring period this figure was 16% (24 of 147). In the first monitoring period, 13% of hearings were not published. BCC and KDC did not publish information in almost 19% (22 of 119) of hearings. At KCC the picture was more positive, with only 2% (2 of 84) of hearings unpublished. In GDC this figure was nearby 8% (2 of 24). In ZDC only one of 6 hearings was unpublished.

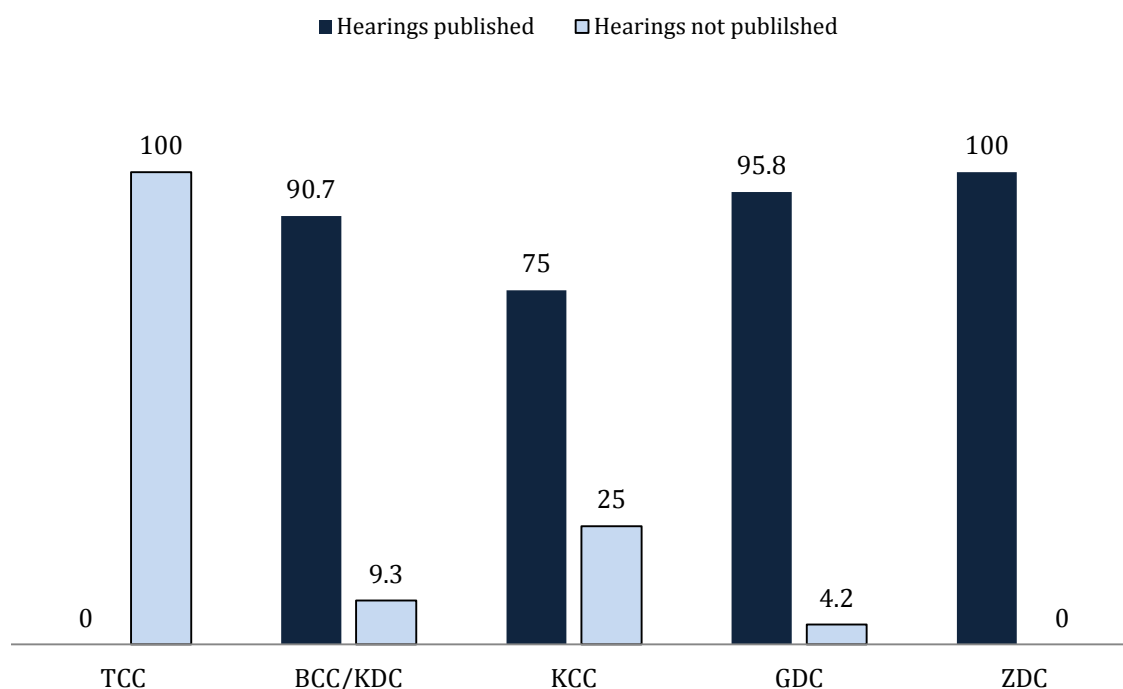
This monitoring period coincided with the changes in the Organic Law of Georgia on Common Courts, which were introduced in March 2013. Among other things, amendments concerned the audio, video recording and broadcasting of hearings. According to the new regulations, court hearings are open to the media. Audio and video recordings, as well as broadcasting, as a rule are allowed, although there are exceptional circumstances when a judge can restrict filming based on a reasoned decision.

During this monitoring period, there were no instances of audio or video recording, or requests to record the proceeding, at those cases that TI Georgia monitored. Accordingly, there is no statistical information in this regard.

It should be noted that 89 cases in TCC were postponed for an indefinite period; in these cases, our monitors were not able to obtain information on the date and time of the postponement. Due to this reason, these cases are not included in this report. Our monitors continue to keep in touch with clerks and assistants of judges to determine the dates of those court hearings. TI Georgia monitors will attend the hearings if we are provided with information regarding the continuation of the hearings, and these cases will be included in the next report.

During this monitoring period, TI Georgia monitors observed that judges sometimes requested the suspension of audio recordings at hearings. Judges ordered the clerks to pause the audio recording during the hearing in only 6% (9 of 157) of cases in TCC, while during the second monitoring period this took place in 30% of cases. During the third monitoring period this figure in BCC and KDC was 44% (20 of 44), nearly 67% (22 of 33) in KCC, one such order was given in GDC, and the order was given in 2 of 5 cases in ZDC. Although we have no statistical information for the reasons in which judges requested clerks to suspend audio recordings during hearings - according to TI Georgia's monitors, one primary reason was so that the judge could informally communicate with the parties.<sup>26</sup>

**Chart 11. Publishing of the Article Under Dispute**



<sup>26</sup> Often the communications related to the possible settlement of the case, and no significant violations regarding the substance of what was discussed were observed.

## *Recommendations*

All scheduled hearings must be appropriately published. Publications of the date and time of hearings is of particular importance. This is particularly relevant for the BCC and KDC jurisdictions – where information was not published in almost 19% of monitored hearings.

In those cases where a hearing is postponed for an indefinite period of time, administrative staff must ensure that information as to the date and time of the hearing is made available to all interested persons.

Although not required by law, publishing the relevant articles of law at issue in the dispute on court web-pages or electronic boards would enable interested persons to grasp an understanding of what will be discussed at a hearing before entering a courtroom. Publishing this information will raise the level of publicity and facilitate the full enjoyment of the right to a public hearing. TI Georgia observed the regional courts adhering to good practices in this area; however, we recommended that improvements be made at TCC. No such information was published in TCC for any of the cases monitored by TI Georgia, which is in stark contrast to BCC, KDC, GDC, KCC, and ZDC. On the basis of previous monitoring periods, this is an ongoing problem at TCC.

## Principle of handling the hearing by a judge

According to the general principles applicable to the handling of hearings, the judge should comply with procedural deadlines, pass through each and every procedural stage as envisaged by the law, investigate every aspect of the case, and ascertain the truth based on the findings. The way the judge handles the hearing becomes crucial from the moment the plaintiff submits the claim to the court until the judge renders the final decision on the case.<sup>27</sup>

In addition to these general principles, the Georgian Civil and Administrative Codes also set out specific procedures that the judge has to follow while holding an administrative court hearing. For example, the judge is supposed to announce the case to be heard and the court composition for that case, give the summary of the case, warn those attending the hearing of the consequences for disruption of the court proceedings, and introduce the parties to their rights, including the rights to challenge the judge and settle the case. When announcing the final decision, the judge should read the evidence on which the final decision was based, as well as the relevant legal articles and procedures for appeal of this decision.<sup>28</sup> In administrative court hearings, the judge should also correct procedural errors and explain all of the important procedures to the parties during the hearing.<sup>29</sup>

The judge should follow all legislatively required procedures related to the hearing and should not skip any stage of the hearing without the consent of the parties. The judge should also ensure that there is order in the courtroom, so that all parties to the dispute would be able to provide their evidence freely, defend their arguments, listen to the arguments of the other party, and ask questions to the witnesses in the case without any disturbances or interruptions.

The proper execution of these procedures serves to guarantee the full protection of both the general and specific principles governing administrative hearings. Proper handling of hearings also guarantees that parties enjoy their procedural rights, including their right to plead their case, provide arguments and evidence, examine the other party's evidence, and question witnesses and each other.

As a rule, a case is discussed at the main hearing only after it has already been through preliminary and/or arraignment hearings.<sup>30</sup> Hence, there is reason to believe that the parties have been informed of their rights, the identities have been checked, and a settlement has been suggested prior to the main hearing. For this reason, particular attention should be paid to the fulfilment of procedural requirements at the preliminary

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<sup>27</sup> M. Kopaleishvili, et al., pg. 28.

<sup>28</sup> Georgian Civil Procedure Code, Articles 210, 211, 214, 217, 218 and 257.

<sup>29</sup> M. Kopaleishvili, et al., pg. 28.

<sup>30</sup> Arraignment hearing may be held in a case when there is ground to think that parties will settle, plaintiff will withdraw the claim or defendant will accept it. An arraignment may also be held when it is important for the proper preparation of a case. Georgian Civil Procedure Code, Art. 205.

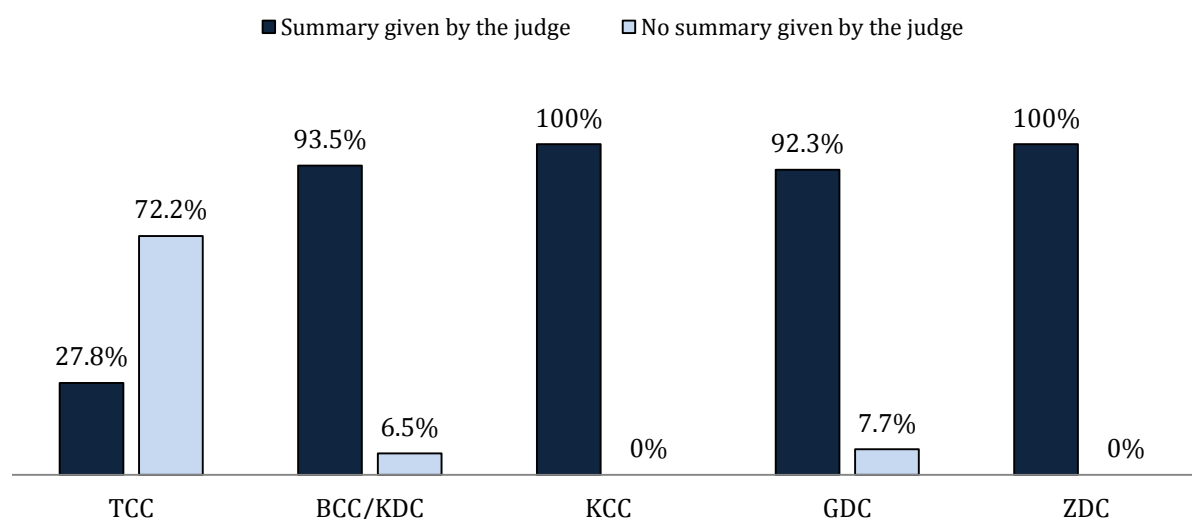
and/or arraignment hearings. Despite this fact, however, the judge is still obliged to follow the procedural requirements when opening the main hearing.<sup>31</sup>

## General Findings

TI Georgia monitors observed whether judges provided case summaries at the beginning of both preliminary and main hearings. The results show that TCC judges continue to significantly decline in providing case summaries during preliminary hearings; however, there has been an improvement in the provision of case summaries at the main hearings. During this monitoring period, TCC judges failed to provide a summary of the case in 72% (65 of 90) of preliminary hearings - this is a sizable decrease when compared to the second monitoring period, where judges provided case summaries in nearly 50% of preliminary hearings. TCC judges followed a different trend at the main hearings that were observed during this period, where they only omitted the case summary in 18% (26 of 141) of main hearings. Case summaries were omitted in almost 50% of main hearings during the second monitoring period. The statistics at TCC stand out when compared to the regional courts, which were more compliant in providing case summaries.

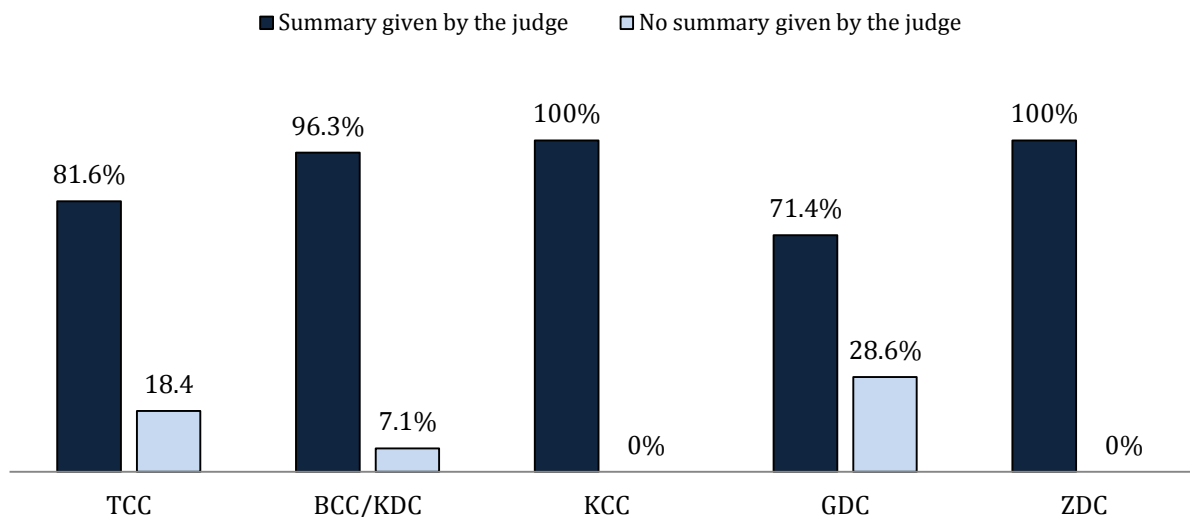
At BCC/KDC, judges did not provide case summaries in only 7% (2 of 31) of preliminary and 4% (1 of 27) of main hearings monitored. At GDC, there were only two out of seven cases where a summary wasn't provided at the main hearing and in one case at the preliminary hearing. It should be noted that the results were most favorable at KCC and ZDC, where judges gave case summaries at all of the monitored preliminary and main hearings.

**Chart 12. Summary of the Case Given by Judge  
(Opening of the Preliminary)**



<sup>31</sup> Georgian Civil Procedure Code, Arts. 203, 205, 207 and 210.

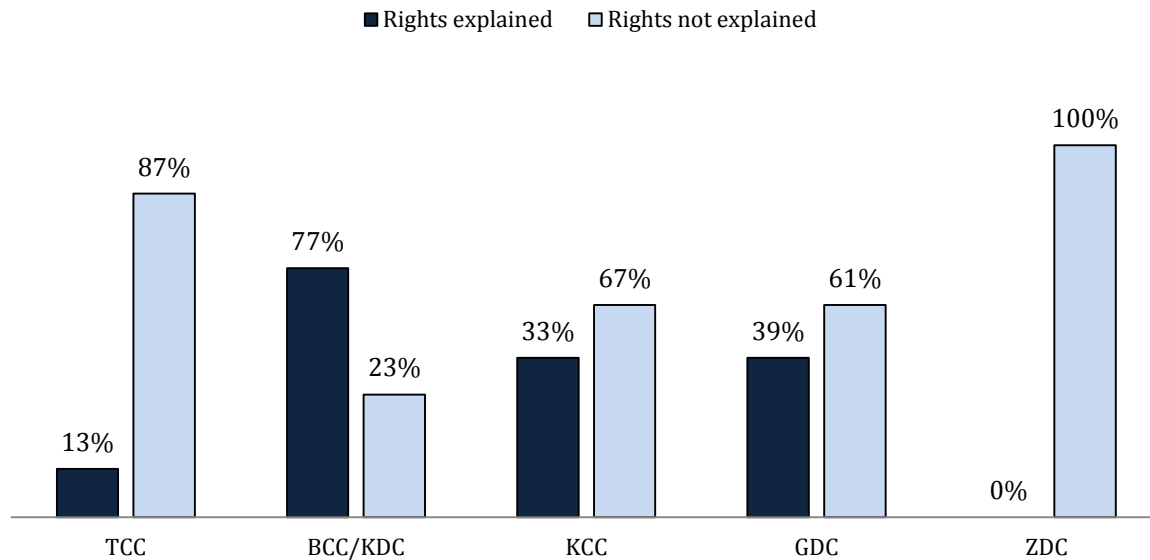
**Chart 13. Summary of the Case Given by Judge  
(Opening of the Main Hearing)**



TI Georgia also monitored the explanation of rights that were provided to the parties. There is a wide gap in the results derived at TCC when compared to the regional courts – where it is apparent that TCC judges are continuing to neglect explaining parties’ rights. In TCC, explanations of rights were provided in only 13% (12 of 90) of cases at the preliminary hearing, and in only 6% (8 of 141) of cases at the opening of main hearings. The results were almost the same during the second monitoring period, at 13% and 8% respectively. In BCC and KDC the situation was significantly better, with rights being explained at 77% (24 of 31) of preliminary hearings and 67% (18 of 27) of main hearings. At KCC an explanation of rights was given in 33% (3 of 9) of preliminary hearings, and 34% (11 of 32) at the opening of main hearings. At GDC the explanation of rights were provided to the parties in 39% (5 of 13) of cases at the preliminary hearing and almost 43% (3 of 7) of cases at the main hearing. At ZDC an explanation was given in none of the 6 hearings. Although these statistics prove to be significant, especially the contrast between TCC and the regional courts, it should be noted that the courts are not obliged to explain the parties’ rights.

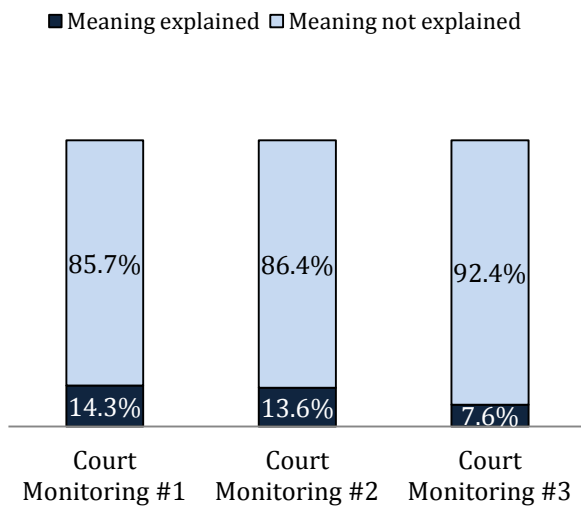
After taking the abovementioned statistics into consideration, it is important to note the cases in which parties’ rights were explained by the judge when the parties were not represented by attorneys. Plaintiffs did not have representatives or attorneys in 14 preliminary hearings and in 10 main hearings held at TCC, and the meaning of their rights were only explained in two cases at preliminary and none of the cases at main hearings. At KCC, there were three main hearings and no preliminary hearings where plaintiffs did not have representatives, and in two of the main hearings their rights were explained. At GDC, there was only one preliminary and one main hearing where a plaintiff didn’t have a representative. In both occasions, the judge explained the meaning of their rights. A plaintiff did not have a representative in only one preliminary hearing at ZDC - rights were not explained at that hearing. Plaintiffs had representatives in all cases at BCC and KDC.

**Chart 14. Rights Explained by Judge  
(Preliminary Hearing)**

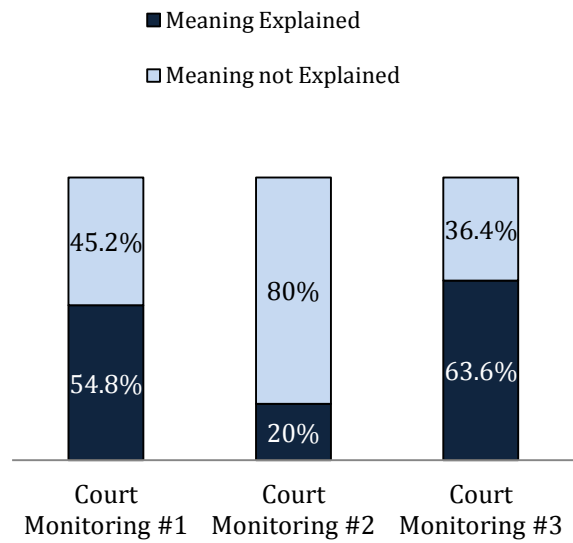


Judges in TCC explained the meaning of the stages in hearings to the parties in only 7% (11 of 157) of the cases monitored. This is a distinct decrease from the second monitoring period, where the result was 27%. Moreover, the low results produced by TCC is highlighted when compared to the regional courts, where in some instances the regional courts complied with this obligation 10 times more than TCC. At BCC and KDC the meaning of the stages were explained in almost 64% (28 of 44) of the hearings; at KCC the result was 58% (19 of 43); at GDC it was 21% (3 of 14); and in ZDC an explanation of each stage was given in none of the hearings. Just as it is important for judges to explain the rights afforded to parties at hearings, it is also vital that judges explain the meaning of stages in hearings to parties, especially when parties are unrepresented.

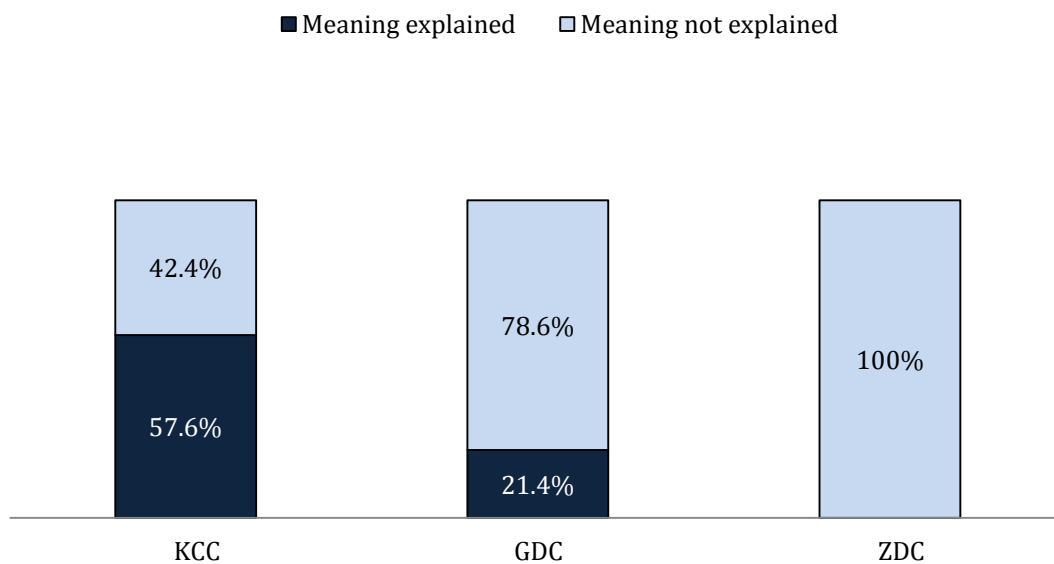
**Chart 15. Meaning of Stages  
Explained by the Judge  
TCC**



**Chart 16 Meaning of Stages  
Explained by the Judge  
BCC and KDC**



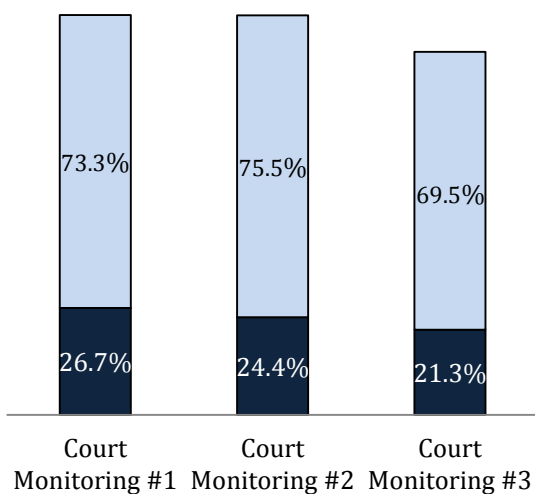
**Chart 17. Meaning of Stages Explained by the Judge  
Court Monitoring Period #3**



According to TI Georgia's statistics, in the third monitoring period, judges in TCC failed to offer settlements in nearly 61% (55 of 83) at the preliminary hearing and almost 70% (98 of 128) at the main hearing. These percentages are the lowest, when compared to the previous monitoring periods. Furthermore, results produced in TCC are in stark contrast to the regional courts. At BCC and KDC, judges did not propose a settlement in 10% (3 of 29) of cases at the preliminary hearing, and in 11% (3 of 27) of cases at the main hearing. At KCC a settlement was not offered in 33% at the preliminary hearings and in 50% at the opening of the main hearing. At GDC a settlement was not offered in 39% (5 of 13) at the preliminary hearing and 57% (4 of 7) at the main hearing. At ZDC judges offered a settlement in all hearings. When viable, settlements could be proposed at the earliest opportunity in order to ensure swift justice and a reduction in costs. <sup>32</sup>

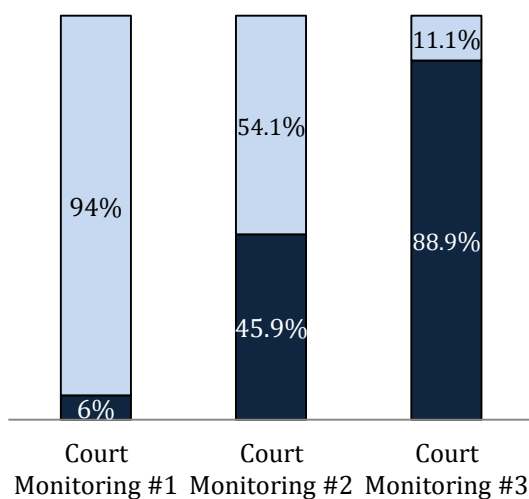
**Chart 18. Judge Offered Settlement to the Parties (at the main hearing) TCC**

■ Settlement Offered  
□ No Settlement Offered



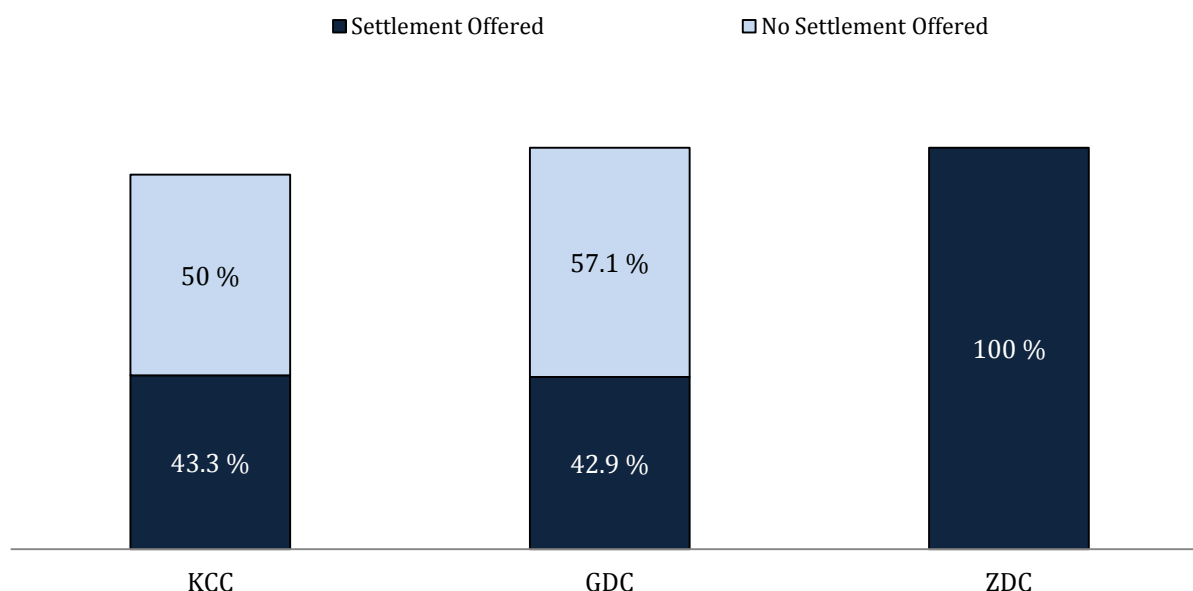
**Chart 19. Judge Offered Settlement to the Parties (at the main hearing) BCC and KDC**

■ Settlement Offered  
□ No Settlement Offered



<sup>32</sup> See Annex 5, 5.26.

**Chart 20. Judge Offered Settlement to the Parties  
(at the main hearing)  
Court Monitorin Period #3**



TI Georgia also monitored whether judges explained their decisions to the parties and stated the legal grounds upon which those decisions were based. Overall, in hearings monitored, the judges were successful in this. At TCC, the judges did not provide the legal basis for their interim decisions in 8% (12 of 157) of cases monitored, compared with 14% during the second monitoring period. At BCC, KDC, KCC, GDC and ZDC the legal basis was provided in all of the cases. The legal basis was not provided in 31% of cases at BCC and KDC during the second monitoring period. Therefore, there has been great improvement at BCC and KDC.<sup>33</sup>

TI Georgia found that the judges presiding over administrative court hearings appropriately followed some of the applicable procedural requirements. However, in the majority of cases, this practice was not consistent and relevant legal procedures were not always fully complied with.

<sup>33</sup> See Annex 5, Table 5.19.

The procedural requirements that were mostly met by the monitored courts included:

- Announcing the case to be heard;<sup>34</sup>
- Announcing the court composition;<sup>35</sup>
- Informing the parties of their right to challenge the judge and file motions.<sup>36</sup>

Exceptions from these good practices were KCC and GDC. At KCC only in 31% (10 of 32), and at GDC in only 57% (4 of 7) of main hearings was the right to challenge the judge introduced. The same low figure 57% (4 out of 7) was at GDC regarding the introduction of the right to file a motion at the main hearing.

During this monitoring period, judges did a remarkable job at maintaining order in the courtroom. Judges maintained order in almost 100% of cases monitored in all courts, the only exception being TCC, where judges failed to maintain order in only 2% (3 of 157) of the cases. This is an improvement to prior monitoring periods. During the second monitoring period the issue of maintaining order in the courtroom seemed the most problematic in BCC and KDC. In those courts, during the previous period judges failed to maintain order in 23% of the cases monitored; by contrast, the figure was 5% in TCC.

As in the previous monitoring period, in the vast majority of cases, the judges did not skip any procedural stage of the hearing without prior consultations with the parties concerned, meaning that the courts either conducted all stages or skipped some with the consent of the parties. During the second monitoring period this principle was followed in 96% of cases at TCC (84 out of 88), and in 89% of cases at BCC and KDC (31 out of 35). This trend continued in the third monitoring period, and statistics show that judges did not skip any procedural stage without prior consultation in 98% of cases at TCC (154 of 157), in all cases at BCC and KDC (44 of 44), in 97% of cases at KCC (32 of 33), in all 14 cases in GDC, and in 4 out of 5 cases in ZDC.<sup>37</sup>

The judge skipped the procedure of examining evidence at the main hearing without asking the parties in one of the cases in TCC. In this particular case, the judge announced that the evidence was considered examined and that the hearing would therefore move to another procedural step – the parties did not have any objection. Based on Georgian legislation, the judge should have asked if they wanted to overview evidences or if the evidences were considered as examined prior to moving to another step of the hearing.

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<sup>34</sup> See Annex 5, Table 5.1.

<sup>35</sup> See Annex 5, Table 5.2.

<sup>36</sup> See Annex 5, Tables 5.5; 5.6.

<sup>37</sup> See Annex 5, Table 5.16.

When moving from one stage to another, judges announced the commencement of the next stage in 96% of cases at TCC (151 of 157), in 100% of cases at BCC and KDC, in 97% of cases at KCC, in 71% of cases in GDC, and in 100% of cases at ZDC. These results show improvement from the second monitoring period, where judges announced the commencement of the next stage in 94% of cases at TCC (83 out of 88), and in 89% of cases at BCC and KDC (31 out of 35).

At TCC the judges announced the evidence they based their decision on in only 28% (44 of 157) of cases monitored, which is a remarkably lower percentage when compared to 41% during the second monitoring period. Also, it must be noted that TCC's results are much lower than the regional courts. At BCC and KDC the judges announced the evidence they based their decision on in 83% (38 of 44) of cases monitored. There is definitely an improvement in results when compared to the second monitoring period, where in BCC and KDC the evidence was announced in only 23% of cases. During this monitoring period, the evidence was announced in 97% (33 of 34) of cases monitored at KCC. GDC and ZDC were most successful in announcing the evidence used in making their decisions in 100% of the 19 cases monitored.<sup>38</sup> Judges should ensure that they make such announcements in all cases, in order to comply with applicable legislation.

When rendering final decisions, during this monitoring period, judges announced the appeal procedures in all cases that TI Georgia monitored at TCC, KCC, GDC and ZDC. Only at BCC and KDC did judges fail to announce the appeal procedure, and only in two of 44 cases.

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<sup>38</sup> See Annex 5, Table 5.24.

## *Recommendations*

Although the legislation contains no obligation for judges to explain the meaning of the parties' rights or the meaning of the stages of a hearing, we believe that this is important to ensure that there is not an unfair advantage – especially at TCC, where the results were significantly low. This is of grave concern when a private party is not represented by a lawyer, particularly as no free legal assistance is provided by the state to private parties involved in administrative disputes. Treating all parties, represented or not, with patience and courtesy will do much to enhance the public's confidence in the legal system.

It is recommended that all judges, especially in TCC, announce the evidence in which they based their decisions on, not only because of the fact that they are required to do so by law, but also to ensure transparency within the judicial system.

Judges must provide a summary of the case when opening a hearing. This is required under applicable legislation, and contributes to the full enjoyment of the right to a public hearing as it provides interested persons attending a hearing with an overview of the case. On the basis of this monitoring report, this is of particular concern for preliminary hearings held at TCC.

Despite slight improvements made between this monitoring period and the second monitoring period, it is recommended that judges be much more active when offering settlements to the parties. The percentage of hearings in which a settlement was offered still remains low, even taking into consideration that in some cases offering a settlement would have made little difference. Offering settlements, where applicable, will guarantee swift justice.

## **Inquisitorial Principle (Judge's Initiative)**

The terms “adversarial” and “inquisitorial” describe the two types of procedures used for resolving legal disputes through litigation. In the adversarial system, the parties themselves choose what kind of evidence they will submit to the court, whereas in the inquisitorial system the court can conduct investigations or collect the evidence that is used to decide the case.<sup>39</sup> The Georgian Administrative Code includes both principles, and their conjunctive use should help the judge to fully examine a case and render a fair decision.

According to the inquisitorial principle, the judge has the right by his/her own initiative to gain evidence, reasonably direct the parties, ask them to specify a claim and/or counterclaim, invite third parties to the case, and direct the parties to gain certain evidence. The judge also has the power to gather evidence by himself/herself, in order to investigate every aspect of the case and facilitate a just decision. These judicial powers are codified in the Administrative Procedure Code. One of the most obvious examples is Article 4, which states that a judge may request any additional information at his/her own initiative.<sup>40</sup>

In a civil dispute the judge is not awarded the above-mentioned rights, stemming from the fact that the purpose of a civil dispute is the protection of private interests only. By contrast, the public interests at issue in administrative cases make the appropriate use of the judge's inquisitorial powers vitally important. The execution of a judge's inquisitorial powers is particularly crucial where a private party is not represented by an attorney, as no free legal aid is provided by the state to a private party involved in an administrative dispute; in such cases, there is reason to believe that the private party will not be able to appropriately participate in a proceeding without the assistance of the judge. The inquisitorial powers give the judge a leading role in maintaining a legal balance between the public institution and the private party so that public interests are preserved. This, however, does not mean that the parties to the dispute should be passive during the hearings or unreasonably restricted by the judge in the application of their rights.<sup>41</sup> Private parties who are opposed by administrative authorities must have the opportunity to fully participate in the proceedings.<sup>42</sup>

In order to determine whether judges utilized their inquisitorial powers, TI Georgia's monitors took note of the questions that the judges asked the parties during the hearings. The monitors also observed whether the judge invited third parties to the case at his/her own initiative, gave recommendations/explanations to the parties,

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<sup>39</sup> David Jackson: Adversarial and Inquisitorial Systems Medico-Legal Society of NSW Inc Scientific Meeting, March 2009, Pg.1.

<sup>40</sup> Georgian Administrative Procedure Code, Art. 4.

<sup>41</sup> M. Kopaleishvili, et al., pg. 27.

<sup>42</sup> Council of Europe, Committee of Ministers, Res 78 (8), “Resolution on Legal Aid and Advice”, 2 March 1978; Van der Mussele v Belgium, (1983), ECHR, paras. 29-30; see n 27, pg. 59.

assisted parties in gaining evidence, established any relevant circumstances of the case, used his/her powers consistently, helped parties to fully enjoy their rights, etc.

## **General Findings**

While monitoring the judge's use of the inquisitorial principle, TI Georgia based its findings on detailed statistical information collected during the monitoring process.

During this monitoring period, as in the first and second monitoring periods, judges were reluctant to invite third parties to administrative cases. In TCC, they did so in only 10 of 231 hearings (8 at preliminary hearings and 2 at the opening of the main hearing); in BCC and KDC in 3 of 58 hearings (1 at preliminary hearings and 2 at the opening of the main hearing); in KCC the judge invited third parties in 3 of 41 hearings (2 at preliminary hearings and 1 at the opening of the main hearing); in GDC third parties were invited in 2 of 20 hearings; and no such case occurred in the 6 hearings at ZDC.

There were slight improvements where judges requested additional information or evidence from the parties when compared to the second monitoring period; however, the overall statistics still remain considerably low, given the amount of hearings monitored. There is a trend in which judges remain passive on making such requests. From the data provided, it shows that judges requested additional information or evidence from the parties in less than 25% of hearings (preliminary hearings and the opening of main hearings) at all courts.

During the third monitoring period, judges requested additional information or evidence from the parties at TCC in only 26 of 231 hearings (8 at preliminary hearings and 18 at the opening of the main hearing), which provided a result of 11%. The result at TCC was 3% (3 out of 110) of hearings during the second monitoring period.

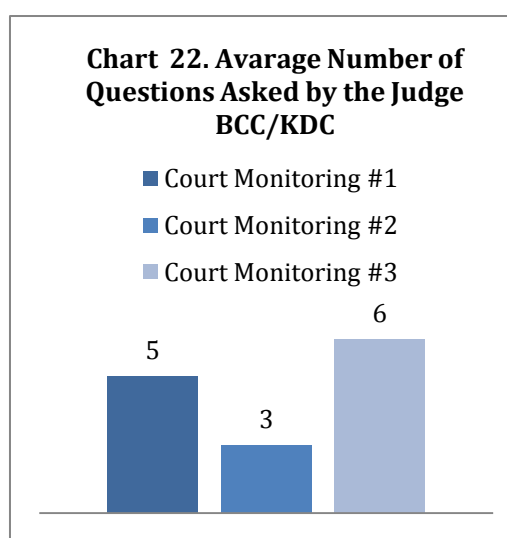
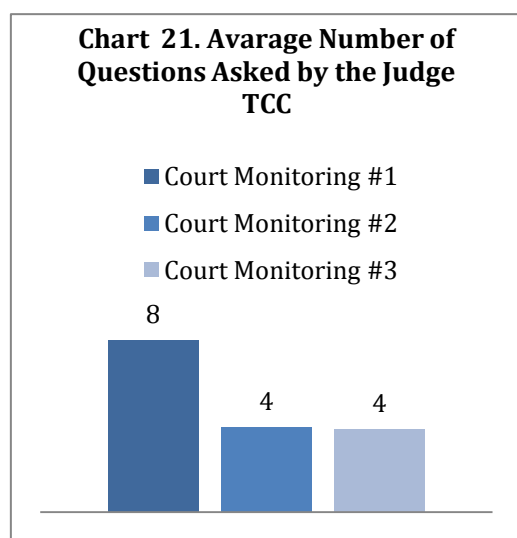
At BCC and KDC, judges requested additional information or evidence on their own initiative at 7 of 58 hearings (4 preliminary hearings and 3 at the opening of the main hearing), which resulted in 12% of hearings during the third monitoring period. The result was 7% (3 out of 41) of hearings during the second monitoring period.

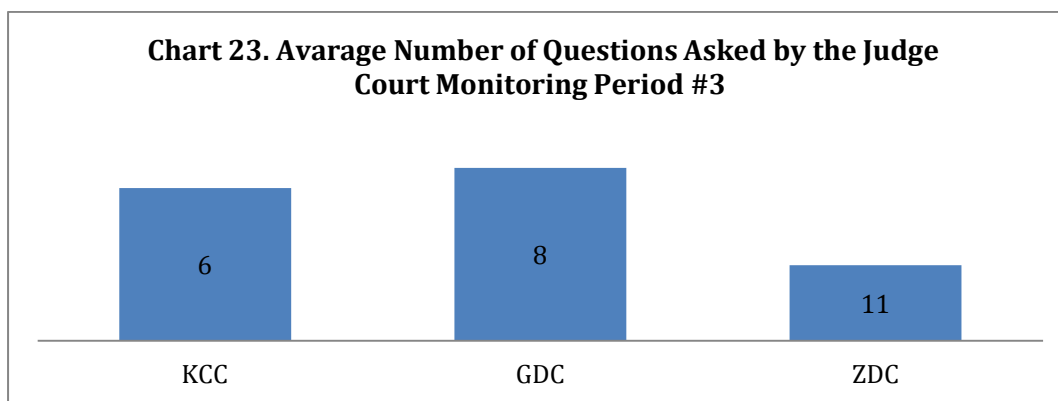
The remaining results in which judges requested additional information or evidence on his/her own initiative for the third monitoring period are as follow: 20% (8 of 41) of hearings at KCC; 10% (2 of 20) of hearings at GDC; and 0% of hearings at ZDC. TI Georgia is unable to conclude on whether the information or evidence requested helped in establishing the truth of the case.

Judges gave instructions/recommendations to the parties (without hindering the adversarial principle) in 15 out of 90 preliminary hearings and 16 out of 141 opening of the main hearings at TCC. Instructions/recommendations were given at 12 out of 33 preliminary hearings and 4 out of 27 opening of the main hearings at BCC and KDC; at 9

out of 41 hearings at KCC; at 4 out of 20 hearings at GDC; and none of the 6 hearings at ZDC.

Based on the statistics gathered by TI Georgia, judges generally asked an adequate amount of questions during the observed cases. A fundamental importance for asking questions is to establish relevant evidence in a case. On average, judges asked 4 questions at TCC, 6 questions per case at BCC and KDC, 6 questions at KCC, 8 questions at GDC, and 1 question at ZDC. During the first monitoring period the average number of questions asked by judges at TCC and BCC were 8 and 5, respectively. During the second monitoring period the average number of questions were 5 at TCC, 6 at BCC and KDC, and 2 at GDC. TI Georgia only displays statistics regarding this issue, due to the fact that asking questions is fully dependant on the content of each case. However, we also monitored if whether the questions asked by the judge established any relevant evidence. At TCC questions established relevant evidence in 93% of cases (113 out of 122); in 85% of cases (34 out of 40) at BCC/KDC; in all 26 cases at KCC; in 60% of cases (6 out of 10) at GDC; and in only 2 of 5 cases at ZDC. The results show that judges adequately initiated their inquisitorial power in asking questions, based on the high percentages produced in establishing relevant evidence in the case.





### *Recommendations*

Private parties who are opposed by the administrative authorities must have the opportunity to fully participate in proceedings. In this regard, the execution of inquisitorial powers by the judge is even more important in Georgia, where no free legal aid is provided by the state in administrative disputes. Throughout this monitoring period, judges showed a low initiative in applying their inquisitorial powers, especially in the areas of: inviting third parties to the cases; requesting additional information and evidence from the parties; and giving instructions/recommendations to the parties. Which is even more alarming is that in none of the cases observed at ZDC, did the judges apply any of the abovementioned inquisitorial powers. Therefore, it is recommended that judges take more initiative, especially at ZDC, in applying their inquisitorial powers - as administrative cases are within the public interest.

It is also recommended that judges continue to ask questions where necessary and probe for further evidence in order to fully examine a case and render a fair descision.

## Equality of Arms and Adversarial Principle

The Georgian procedural legislation clearly states that the adversarial principle is a fundamental principle of administrative hearings, working in conjunction with the inquisitorial principle. The principle of judicial impartiality is recognized by a number of international instruments, among them the International Covenant on Civil and Political Rights. The importance of this principle was also highlighted during a number of international conferences, and acts such as Council of Europe (CoE) recommendations<sup>43</sup> and ODIHR Kiev recommendations<sup>44</sup> were drafted as a result.<sup>45</sup>

Judges are obligated to insure that the adversarial principle – and party equality – is fully observed in the courtroom. The principle of equality of arms is of particular significance in administrative proceedings, where the parties are private persons and administrative authorities. A judge, who is a public employee him/herself, is required to settle disputes involving public entities. As such it is particularly important that the judge insure the equality of arms, so there is no concern that he/she is not impartial where the state is a party.<sup>46</sup>

The principle of impartiality also implies that private persons should have the ability to actively participate in the proceedings to ensure their fairness.<sup>47</sup> According to a ruling of the ECHR, the principle of equality of arms requires a “fair balance” between the parties in order for each party to be afforded a reasonable opportunity to present his/her case under conditions that do not place him/her at a substantial disadvantage against his/her opponent or opponents.<sup>48</sup>

Party equality may be violated by the judge: being too active; interrupting the parties; limiting, modifying or restricting their questions; granting the motions of only one party; requesting additional information from only one party; or gaining evidence to help justify the position of one of the parties. But the adversarial principle may also be violated by the judge being too passive. This happens when, for instance, one party disturbs the other’s enjoyment of its rights and the judge does not undertake measures to improve the situation, does not limit a question which should be limited, does not request information necessary to ascertain the truth, etc.

Impartiality of the judge is breached when there is proof of actual dependence or bias (violation of subjective impartiality), or when the factual circumstances raise a legitimate doubt as to whether there has been any dependence or bias (violation of objective impartiality).<sup>49</sup>

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<sup>43</sup> [CoE Recommendation on Judges: Independence, efficiency, responsibility and the European Charter on the Statute for Judges](#), adopted at the multilateral meeting on the statute for judges in Strasbourg from 8-10 July 1998, DAI/DOC (98) 23.

<sup>44</sup> [Kyiv Recommendations](#) on Judicial Independence in Eastern Europe, South Caucasus and Central Asia.

<sup>45</sup> See n 27, pg. 29.

<sup>46</sup> Ibid pg. 63.

<sup>47</sup> Ibid pg. 72.

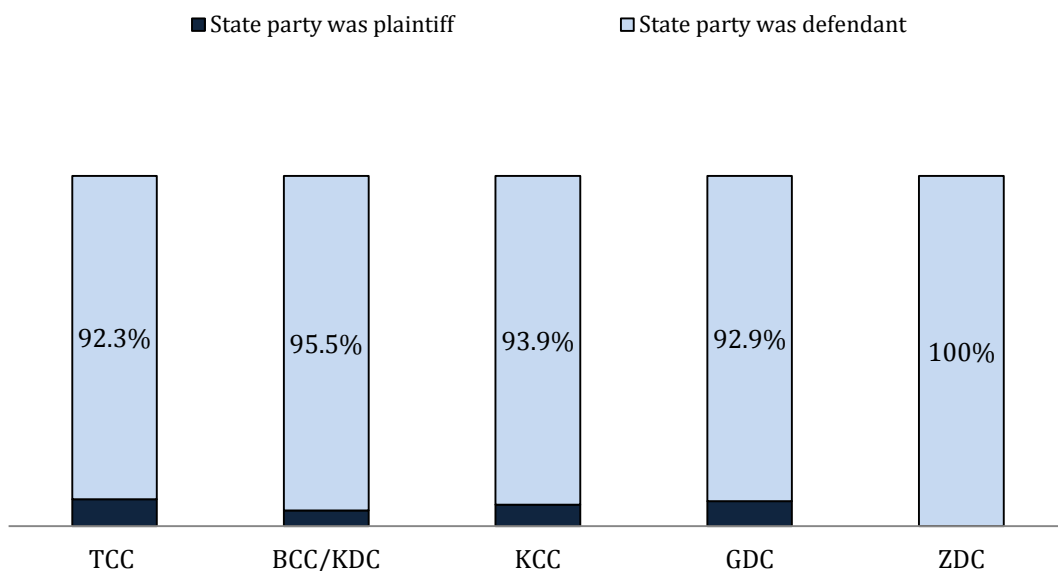
<sup>48</sup> [Schuler-Zraggen v Switzerland](#), (1993), ECHR, paras. 50-52.

<sup>49</sup> See n 27, pg. 63.

## General Findings

The data from the first monitoring report suggested that judges performed well in observing the adversarial principle/equality of arms. This trend did not change during the second and third monitoring periods, and in general both parties to the administrative dispute had equal opportunities to present their arguments. It should be noted that typically the plaintiff in administrative cases is the private party, and the defendant is the state party.

**Chart 24. Status of state party**

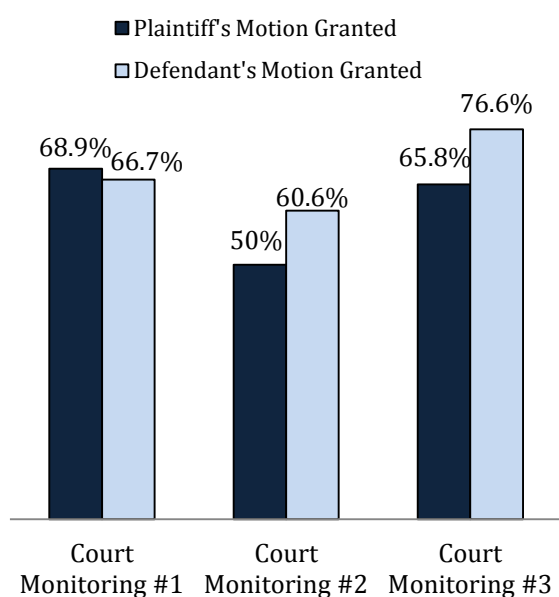


With regards to motions filed by the parties, TI Georgia monitored, in most instances, the judges granted a higher percentage of motions filed by the plaintiffs than those filed by the defendants. Where this was not the case – as in TCC and GDC - there was only a maximum difference of 11% of motions being granted in favor of the defendants, which raises no major concern. During the third monitoring period, judges at TCC granted almost 66% (54 of 82) of motions filed by plaintiffs and almost 77% (36 of 47) of motions filed by defendants. At BCC and KDC, judges granted 81% (33 of 41) of plaintiff's motions and 68% (15 of 22) of defendant's motions. At KCC, 79% (23 of 29) of motions filed by plaintiffs and 64% (16 of 25) of motions filed by the defendants were granted. At GDC, 73% (11 of 15) of motions filed by plaintiffs and 80% (12 of 15) of motions filed by defendants were granted. Only two motions were filed by plaintiffs at ZDC, of which both were granted; two motions were filed by defendants, with one being

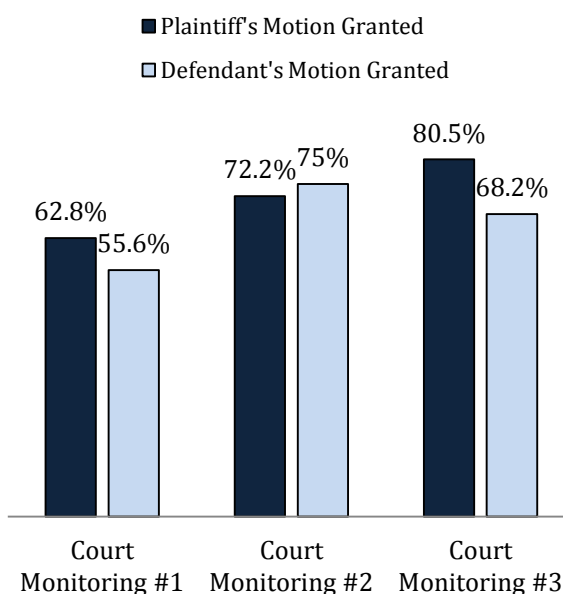
granted and the other being denied. These results show that the courts are complying with the adversarial principle.

During the second monitoring period at TCC, judges granted or denied nearly the same percentage of motions filed by both plaintiffs and defendants. Similarly, during the second monitoring period at BCC and KDC motions filed by the plaintiffs were granted in 72% of cases and those filed by the defendants were granted 75% of the time.

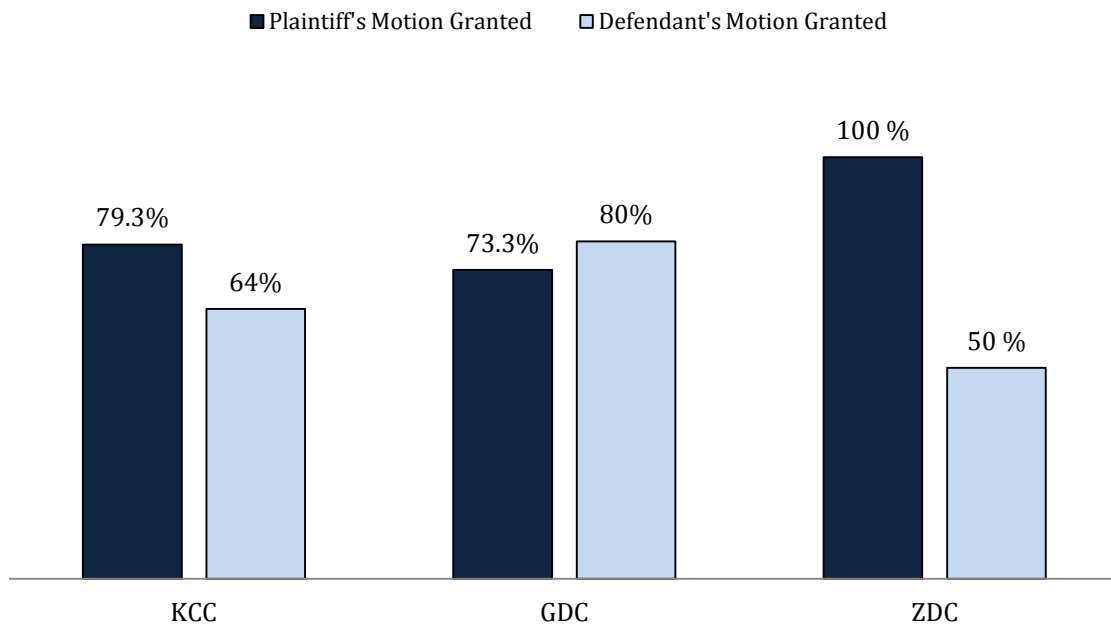
**Chart 25. Parties' Motions  
Granted by the Judge  
(at the main hearing)  
TCC**



**Chart 26. Parties' Motions Granted  
by the Judge  
(at the main hearing)  
BCC and KDC**



**Chart 27. Parties' Motions Granted by the Judge  
(at the main hearing)  
Court Monitoring Period #3**



During this monitoring period at TCC, judges struck the questions of plaintiffs in 6% (9 of 148) of cases and of defendants in 1% (2 of 148) of cases. At BCC and KDC judges did not strike any of the plaintiffs' questions, but struck one of a defendant's questions. The figure at KCC was 12% (4 of 33) and 6% (2 of 33), respectively. At GDC, plaintiffs' questions were struck in 29% (4 of 14) and no defendant's question was struck. None of the questions were struck at ZDC. These results prove that there is a clear discrepancy in the amount of plaintiffs' questions struck at GDC, when compared to the other courts; however, it should be noted that most of the plaintiffs' questions were deemed irrelevant by our monitors. However, the overall percentages gathered during this monitoring period, regarding this issue, are acceptable.

During the second monitoring period, judges at TCC struck the questions of plaintiffs in 15% of cases and of defendant's in 4% of cases. At BCC and KDC judges struck the questions of plaintiffs in 6% of cases and of defendant's in 3% of cases. At GDC judges struck the questions of plaintiffs in 11% of cases and of defendant's in 5% of cases.

## *Recommendations*

In order to ensure that party equality is fully observed, judges must on the one hand exercise their inquisitorial powers, contributing to the full enjoyment by a private party of his/her rights. On the other hand, judges must abstain from acts that could infringe upon the rights of a party. Overall, judges showed limited bias on the equality of arms and adversarial principle. TI Georgia has no recommendations on this basis, other than the courts continue to observe a fair balance between the parties.

## Conclusion

During the third monitoring period of administrative court hearings, from February to December 2013, TI Georgia observed a number of improvements from the previous monitoring periods. Yet, there are still considerable weaknesses remaining that need to be addressed by the Georgian judiciary.

The primary finding in this report is that the overall cases won by state parties have significantly decreased during this monitoring period, when compared to the first and second monitoring periods.

The way in which judges handled the cases at TCC, during this monitoring period, proved to be less favorable when compared to the cases handled at the regional courts, specifically in: the publication of the basis and/or relevant articles of law for dispute; the provision of case summaries, especially at preliminary hearings; the explanation of the rights of the parties at the opening of hearings; the explanation of the meaning of the stages in hearings to the parties; the offer of settlements; and the announcement of both evidence and legislation relied upon when announcing the final decision.

The following points that address the way judges handled the cases during this monitoring period should also be highlighted:

- There were improved results in the judges' ability to maintain order at hearings, especially in regards to entering and leaving the courtroom by spectators and/or parties during hearings.
- At a majority of the hearings observed by TI Georgia, excluding those at BCC and KDC, an explanation of rights and the meaning of each stage of the hearings were not provided to parties. This poses a concern, due to the fact that there is no free legal aid available for administrative cases in Georgia, resulting in some plaintiffs being unrepresented at hearings.
- At most hearings monitored- excluding BCC, KDC and ZDC - judges had failed to offer a settlement.
- There was an overall improvement in judges providing explanations for their decisions; the evidence and legal grounds in which those decisions were based; and the appeal procedures.

TI Georgia monitored both the inquisitorial and adversarial powers employed by judges during hearings. Throughout this monitoring period, judges showed a low initiative in applying their inquisitorial powers, especially in the areas of: inviting third parties to the cases; requesting additional information and evidence from the parties; and providing instructions/recommendations to the parties. Furthermore, in none of the cases observed at ZDC, did the judges apply any of the abovementioned inquisitorial powers. There is a strong need for improvement in these areas – again, especially given

the fact that there is no legal aid available for unrepresented parties in administrative cases in Georgia.

The data from this monitoring period suggests that judges performed well in observing the adversarial principle/equality of arms. In general, both parties to the administrative dispute had equal opportunities to present their arguments. This trend continues to improve from the first and second monitoring periods.

One improvement to the accessibility of hearings in this monitoring period is the publication on the courts' official schedule, which helps support the parties right to a public hearing. However, problems arose when hearings were postponed for an indefinite period, and our monitors were unable to obtain information on the rescheduling of postponed hearings.

Generally, the third monitoring period produced results in which punctuality improved in the majority of cases. However, further improvements are still needed. At TCC, the results of the third monitoring period are almost the same as they were during the second monitoring period, with a punctuality average of 69%. The most noticeable improvements in punctuality occurred at BCC and KDC. However, there were problems at GDC and ZDC, where less than 50% of hearings started on time. Furthermore, judges did not announce reasons for delay at most hearings, leaving it up to our monitors to determine the reason on their own.

Finally, to address the weaknesses monitored during this period, TI Georgia provides the following recommendations for the Georgian judiciary:

- Ensure that private parties to the administrative dispute have the opportunity to fully participate in court proceedings. Execution of the inquisitorial powers by the judge is particularly important because the state does not provide free legal aid in administrative disputes.
- Judges should announce both the evidence and legislation relied upon when announcing their final decision.
- Ensure that the rights of parties and the meaning of the stages of each hearing is explained to unrepresented private parties.
- When applicable, judges should suggest settlements prior to the main hearing.
- Ensure that judges are consistently providing a summary of each case when opening the hearing.
- Ensure that the relevant article of law at issue in the dispute is published on court web-pages or electronic boards so that people have a general understanding of what will be discussed during the hearing before it commences.

- Ensure that information, as to the date and time of a postponed hearing, is made available to all interested persons and provide reasonable explanations for postponements so that hearings with public interests are not unduly delayed.
- Judges should ensure that they state the reason for a late start of a hearing, especially if late by more than 10 minutes.

## Annexes

### Annex 1. Cases and Hearings Monitored

**Table 1.1 – General Information**

| Court        | Cases monitored | Hearings monitored | Preliminary hearings monitored | Opening of the Main hearings monitored | Main Hearings Monitored | Announcement of the decision monitored |
|--------------|-----------------|--------------------|--------------------------------|----------------------------------------|-------------------------|----------------------------------------|
| TCC          | 157             | 299                | 90                             | 141                                    | 93                      | 39                                     |
| BCC          | 42              | 119                | 31                             | 27                                     | 35                      | 29                                     |
| KDC          | 2               |                    |                                |                                        |                         |                                        |
| KCC          | 33              | 84                 | 9                              | 32                                     | 32                      | 20                                     |
| GDC          | 14              | 24                 | 13                             | 7                                      | 11                      | 0                                      |
| ZDC          | 5               | 6                  | 5                              | 1                                      | 5                       | 0                                      |
| <b>Total</b> | <b>253</b>      | <b>532</b>         | <b>148</b>                     | <b>208</b>                             | <b>176</b>              | <b>88</b>                              |

**Table 1.2 – Cases postponed for an indefinite period of time and suspended cases**

|         | Cases postponed          | Suspended Cases        |                           |                    |
|---------|--------------------------|------------------------|---------------------------|--------------------|
|         |                          | Settlement was reached | Was declared inadmissible | Case was withdrawn |
| TCC     | 89 cases<br>160 hearings | 3 cases                | 18 cases                  | 33 cases           |
| BCC,KDC | 0                        | 0                      | 0                         | 0                  |
| KCC     | 1                        | 1 cases                | 1 cases                   | 6 cases            |
| GDC     | 0                        | 7 cases                | 1                         | 5 cases            |
| ZDC     | 0                        | 0                      | 0                         | 0                  |

## Annex 2. Cases Monitored by Administrative Body Involved

**Table 2.1**

| Administrative body                                                              | Tbilisi    | Batumi/Khe<br>Ivachauri | Kutaisi   | Gori      | Zugdidi  |
|----------------------------------------------------------------------------------|------------|-------------------------|-----------|-----------|----------|
| Public Registry, P.R.D.<br>Commission, Ministry of<br>Economy                    | 42         | 20                      | 8         | 8         | 1        |
| Mayor's Office, City<br>Supervision Service                                      | 44         | 9                       | 5         | 2         | 0        |
| Social Service Agency                                                            | 7          | 0                       | 0         | 0         | 0        |
| National Bureau of<br>Execution                                                  | 9          | 0                       | 0         | 0         | 0        |
| Universities and/or<br>National Center for<br>Educational Quality<br>Enhancement | 5          | 2                       | 0         | 0         | 0        |
| Ministry of IDPs                                                                 | 4          | 0                       | 0         | 0         | 0        |
| Public Service<br>Development Agency                                             | 4          | 0                       | 0         | 0         | 0        |
| Other                                                                            | 42         | 13                      | 20        | 4         | 4        |
|                                                                                  | <b>157</b> | <b>44</b>               | <b>33</b> | <b>14</b> | <b>5</b> |

### Annex 3. Punctuality and Reasonable Time

**Table 3.1 – Percentage of hearings starting late or on time (out of all hearings monitored)**

|                                      | Tbilisi        | Batumi/<br>Khelvachauri | Kutaisi        | Gori          | Zugdidi      |
|--------------------------------------|----------------|-------------------------|----------------|---------------|--------------|
| <b>Total # of hearings Monitored</b> | <b>299</b>     | <b>119</b>              | <b>84</b>      | <b>24</b>     | <b>6</b>     |
| Hearings starting on time            | 207<br>(69.3%) | 91<br>( 76.5%)          | 54<br>( 64.3%) | 9<br>(37.5%)  | 2<br>(33.3%) |
| Hearings starting late               | 92<br>(30.7 %) | 28<br>(23.5%)           | 22<br>(35.7%)  | 15<br>(62.5%) | 4<br>(66.7%) |

**Table 3.2 – Percentage of hearings starting 10 minutes or more after the schedule time (out of the hearings starting late)**

|                                           | Tbilisi     | Batumi/<br>khelvachauri | Kutaisi       | Gori         | Zugdidi      |
|-------------------------------------------|-------------|-------------------------|---------------|--------------|--------------|
| <b>Total # of hearings Monitored</b>      | <b>299</b>  | <b>119</b>              | <b>84</b>     | <b>24</b>    | <b>6</b>     |
| Hearings starting 10 minutes or more late | 39<br>(13%) | 12<br>(10.1%)           | 28<br>(33.3%) | 3<br>(12.5%) | 2<br>(33.3%) |

**Table 3.3 – Whether judge announced the reason for the delay in hearings delayed more than 10 minutes**

|                                              | <b>Tbilisi</b>     | <b>Batumi/<br/>khelvachauri</b> | <b>Kutaisi</b>     | <b>Gori</b>       | <b>Zugdidi</b>    |
|----------------------------------------------|--------------------|---------------------------------|--------------------|-------------------|-------------------|
| <b>Hearings delayed more than 10 minutes</b> | <b>39 hearings</b> | <b>12 hearings</b>              | <b>28 hearings</b> | <b>3 hearings</b> | <b>2 hearings</b> |
| <b>Reason announced</b>                      | 18<br>(46.2%)      | 6<br>(50%)                      | 17<br>(60.7%)      | 2<br>(66.7%)      | 1<br>(50%)        |
| <b>Reason not announced</b>                  | 21<br>(53.8%)      | 6<br>(50%)                      | 11<br>(39.3%)      | 1<br>(33.3%)      | 1<br>(50%)        |

**Table 3.4 – What was the reason for the delay of hearings more than 10 minutes?**

|                                              | <b>Tbilisi</b>     | <b>Batumi/<br/>Khelvachauri</b> | <b>Kutaisi</b>     | <b>Gori</b>       | <b>Zugdidi</b>    |
|----------------------------------------------|--------------------|---------------------------------|--------------------|-------------------|-------------------|
| <b>Hearings delayed more than 10 minutes</b> | <b>39 hearings</b> | <b>12 hearings</b>              | <b>28 hearings</b> | <b>3 hearings</b> | <b>2 hearings</b> |
| Previous hearing lasted too long             | 12<br>(30.8%)      | 2<br>(16.7%)                    | 14<br>(50%)        | 2<br>(66.7%)      | 0                 |
| One of the parties was late                  | 2<br>(5.1%)        | 0                               | 1<br>(36.%)        | 0                 | 0                 |
| Other                                        | 7<br>(17.9%)       | 0                               | 0                  | 0                 | 1<br>(50%)        |
| Unknown                                      | 18<br>(46.2%)      | 10<br>(83.3%)                   | 13<br>(46.4%)      | 1<br>(33.3%)      | 1<br>(50%)        |

**Table 3.5 – How many days did it take for the court to render a final decision?**

|         | <b>Tbilisi</b> | <b>Batumi/<br/>Khelvachauri</b> | <b>Kutaisi</b> | <b>Gori</b> | <b>Zugdidi</b> |
|---------|----------------|---------------------------------|----------------|-------------|----------------|
| Average | 17 days        | 25 days                         | 23 days        | 21 days     | 5.4 days       |
| Maximum | 103 days       | 107 days                        | 96 days        | 87 days     | 23 days        |
| Minimum | 1 day          | 1 day                           | 1 day          | 1 day       | 1 day          |

## Annex 4. Right to a Public Hearing

**Table 4.1 – Hearings missing from the schedule**

|                                      | Tbilisi        | Batumi/<br>Khelvachauri | Kutaisi       | Gori          | Zugdidi      |
|--------------------------------------|----------------|-------------------------|---------------|---------------|--------------|
| <b>Total # of Hearings Monitored</b> | <b>299</b>     | <b>119</b>              | <b>84</b>     | <b>24</b>     | <b>6</b>     |
| Published hearings                   | 283<br>(94.6%) | 97<br>(81.5%)           | 82<br>(97.6%) | 22<br>(91.7%) | 5<br>(83.3%) |
| Unpublished hearings                 | 16<br>( 5.4%)  | 22<br>(18.5%)           | 2<br>(2.4%)   | 2<br>(8.3%)   | 1<br>(16.7%) |

**Table 4.2 – Publishing of the article under dispute**

|                                           | Tbilisi             | Batumi/<br>Khelvachauri | Kutaisi            | Gori               | Zugdidi           |
|-------------------------------------------|---------------------|-------------------------|--------------------|--------------------|-------------------|
| <b>Total number of hearings published</b> | <b>299 hearings</b> | <b>119 hearings</b>     | <b>84 hearings</b> | <b>24 hearings</b> | <b>6 hearings</b> |
| Article under dispute published           | 0<br>(0%)           | 108<br>(90.7%)          | 63<br>(75%)        | 23<br>(95.8%)      | 6<br>(100%)       |
| Article under dispute not published       | 299<br>(100%)       | 11<br>(9.3%)            | 21<br>(25%)        | 1<br>(4.2%)        | 0<br>( 0%)        |

**Table 4.3 – Cases where at least one of the hearings was not recorded using the audio/video recording system**

|                                             | <b>Tbilisi</b>     | <b>Batumi/<br/>Khelvachauri</b> | <b>Kutaisi</b>    | <b>Gori</b>        | <b>Zugdidi</b>  |
|---------------------------------------------|--------------------|---------------------------------|-------------------|--------------------|-----------------|
| <b>Total # of Cases Monitored</b>           | <b>157 cases</b>   | <b>44 cases</b>                 | <b>33 cases</b>   | <b>14 cases</b>    | <b>5 cases</b>  |
| All the hearings were recorded              | 90.4%<br>142 cases | 88.6%<br>39 cases               | 93.9%<br>31 cases | 71.4 %<br>10 cases | 5 cases<br>100% |
| At list one of the hearing was not recorded | 9.6%<br>15 cases   | 11.4%<br>5 cases                | 6.1%<br>2 cases   | 28.6%<br>4 case    | 0 case<br>0%    |

**Table 4.4 - Did the judge give directions to the clerk to turn on and off the recording system?**

| <b>Tbilisi</b>  |                    | <b>Batumi/<br/>Khelvachauri</b> |                   | <b>Kutaisi</b>    |                   | <b>Gori</b>     |                   | <b>Zugdidi</b> |                |
|-----------------|--------------------|---------------------------------|-------------------|-------------------|-------------------|-----------------|-------------------|----------------|----------------|
| <b>Yes</b>      | <b>No</b>          | <b>Yes</b>                      | <b>No</b>         | <b>Yes</b>        | <b>No</b>         | <b>Yes</b>      | <b>No</b>         | <b>Yes</b>     | <b>No</b>      |
| 5.7%<br>9 cases | 94.3%<br>148 cases | 45.5%<br>20 cases               | 54.5%<br>24 cases | 66.7%<br>22 cases | 33.3%<br>11 cases | 7.1%<br>1 cases | 92.9%<br>13 cases | 40%<br>2 cases | 60%<br>3 cases |

## Annex 5. Principle of Handling the Hearing by a Judge

**Table 5.1 – Did the judge announce the case to be heard?**

|                                           | Tbilisi        |             | Batumi/<br>Khelvachauri |             | Kutaisi      |           | Gori         |              | Zugdidi     |           |
|-------------------------------------------|----------------|-------------|-------------------------|-------------|--------------|-----------|--------------|--------------|-------------|-----------|
|                                           | Yes            | No          | Yes                     | No          | Yes          | No        | Yes          | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 83<br>(92.2%)  | 7<br>(7.8%) | 30<br>(96.8%)           | 1<br>(3.2%) | 9<br>(100%)  | 0<br>(0%) | 13<br>(100%) | 0<br>(0%)    | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 135<br>(95.7%) | 6<br>(4.3%) | 27<br>(100%)            | 0<br>(0%)   | 32<br>(100%) | 0<br>(0%) | 6<br>(85.7%) | 1<br>(14.2%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.2 – Did the judge announce the court composition (introduce himself/herself)?**

|                                           | Tbilisi        |               | Batumi/<br>Khelvachauri |             | Kutaisi      |           | Gori         |              | Zugdidi     |           |
|-------------------------------------------|----------------|---------------|-------------------------|-------------|--------------|-----------|--------------|--------------|-------------|-----------|
|                                           | Yes            | No            | Yes                     | No          | Yes          | No        | Yes          | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 78<br>(86,7%)  | 12<br>(13,3%) | 31<br>(100%)            | 0<br>(0%)   | 9 (100%)     | 0<br>(0%) | 13<br>(100%) | 0<br>(0%)    | 5 (100%)    | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 128<br>(90.8%) | 13<br>(9.2%)  | 26<br>(96.2%)           | 1<br>(3.8%) | 32<br>(100%) | 0<br>(0%) | 6<br>(85.7%) | 1<br>(14.2%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.3 – Did the judge give a summary of the case at beginning of the hearing?**

|                                           | Tbilisi        |               | Batumi<br>Khelvachauri |             | Kutaisi      |           | Gori          |              | Zugdidi     |           |
|-------------------------------------------|----------------|---------------|------------------------|-------------|--------------|-----------|---------------|--------------|-------------|-----------|
|                                           | Yes            | No            | Yes                    | No          | Yes          | No        | Yes           | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 25<br>(27.8%)  | 65<br>(72.2%) | 29<br>(93.5%)          | 2<br>(6.5%) | 9<br>(100%)  | 0<br>(0%) | 12<br>(92.3%) | 1<br>(7.7%)  | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 115<br>(81.6%) | 26<br>(18.4%) | 26<br>(96.3%)          | 1<br>(3.7%) | 32<br>(100%) | 0<br>(0%) | 5<br>(71.4%)  | 2<br>(28.6%) | 1<br>(100%) | 0<br>(0%) |

**5.4 – Did the judge warn the attendants regarding violations of the order of the court?**

|                                           | Tbilisi       |               | Batumi<br>Khelvachauri |              | Kutaisi       |               | Gori         |              | Zugdidi     |    |
|-------------------------------------------|---------------|---------------|------------------------|--------------|---------------|---------------|--------------|--------------|-------------|----|
|                                           | Yes           | No            | Yes                    | No           | Yes           | No            | Yes          | No           | Yes         | No |
| <b>At the preliminary hearing</b>         | 37<br>(48.9%) | 53<br>(51.1%) | 27<br>(85%)            | 4<br>(15%)   | 3<br>(42.9%)  | 6<br>(57.1%)  | 7<br>(42.9%) | 6<br>(57.1%) | 5<br>(100%) | 0  |
| <b>At the opening of the main hearing</b> | 69<br>(49.4%) | 72<br>(50.6%) | 20<br>(64.3%)          | 7<br>(35.7%) | 21<br>(72.7%) | 11<br>(27.3%) | 5<br>(66.7%) | 2<br>(33.3%) | 1<br>(100%) | 0  |

**Table 5.5 – Did the judge inform the parties of the right to challenge the judge?**

|                                           | Tbilisi       |               | Batumi/<br>Khelvachauri |             | Kutaisi       |               | Gori          |              | Zugdidi     |           |
|-------------------------------------------|---------------|---------------|-------------------------|-------------|---------------|---------------|---------------|--------------|-------------|-----------|
|                                           | Yes           | No            | Yes                     | No          | Yes           | No            | Yes           | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 66<br>(73.3%) | 24<br>(26.7%) | 40<br>(100%)            | 0<br>(0%)   | 8<br>(88.9%)  | 1<br>(11.1%)  | 10<br>(76.9%) | 3<br>(23.1%) | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 95<br>(67.4%) | 46<br>(32.6%) | 26<br>(96.3%)           | 1<br>(3.7%) | 10<br>(31.2%) | 22<br>(68.8%) | 4<br>(57.1%)  | 3<br>(42.9%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.6 - Did the judge inform the parties of the right to file motions?**

|                                           | Tbilisi       |               | Batumi/<br>Khelvachauri |             | Kutaisi       |              | Gori         |              | Zugdidi     |           |
|-------------------------------------------|---------------|---------------|-------------------------|-------------|---------------|--------------|--------------|--------------|-------------|-----------|
|                                           | Yes           | No            | Yes                     | No          | Yes           | No           | Yes          | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 60<br>(66.7%) | 30<br>(33.3%) | 40<br>(100%)            | 0<br>(0%)   | 8<br>(88.9%)  | 1<br>(11.1%) | 9<br>(69.2%) | 4<br>(30.8%) | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 92<br>(65.2%) | 49<br>(34.8%) | 26<br>(96.3%)           | 1<br>(3.7%) | 31<br>(96.9%) | 1<br>(3.1%)  | 4<br>(57.1%) | 3<br>(42.9%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.7 - Did the judge inform the parties of the right to make a settlement?**

|                                           | Tbilisi       |                | Batumi/<br>Khelvachauri |              | Kutaisi       |              | Gori         |              | Zugdidi     |           |
|-------------------------------------------|---------------|----------------|-------------------------|--------------|---------------|--------------|--------------|--------------|-------------|-----------|
|                                           | Yes           | No             | Yes                     | No           | Yes           | No           | Yes          | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 36<br>(41.4%) | 54<br>(58.6%)  | 28<br>(90.3%)           | 3<br>(9.7%)  | 8<br>(88.9%)  | 1<br>(11.1%) | 7<br>(53.8%) | 6<br>(46.2%) | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 33<br>(23.4%) | 108<br>(76.6%) | 24<br>(88.9%)           | 3<br>(11.1%) | 26<br>(81.2%) | 6<br>(18.8%) | 2<br>(28.6%) | 5<br>(71.4%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.8 - Did the judge inform the parties of the right to withdraw the claim (right of plaintiff) or accept it (right of defendant)?**

|                                           | Tbilisi       |                | Batumi/<br>Khelvachauri |              | Kutaisi       |               | Gori         |              | Zugdidi     |           |
|-------------------------------------------|---------------|----------------|-------------------------|--------------|---------------|---------------|--------------|--------------|-------------|-----------|
|                                           | Yes           | No             | Yes                     | No           | Yes           | No            | Yes          | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 26<br>(28.9%) | 64<br>(71.1%)  | 22<br>(71%)             | 9<br>(29.3%) | 8<br>(88.9%)  | 1<br>(11.1%)  | 4<br>(30.8%) | 9<br>(69.2%) | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 28<br>(19.9%) | 113<br>(80.1%) | 24<br>(88.9%)           | 3<br>(11.1%) | 22<br>(68.8%) | 10<br>(31.2%) | 2<br>(28.6%) | 5<br>(71.4%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.9 - Did the judge inform the parties of the right to give opinions on the motions filed by a counter party?**

|                                           | Tbilisi       |                | Batumi/<br>Khelvachauri |              | Kutaisi       |               | Gori         |              | Zugdidi     |           |
|-------------------------------------------|---------------|----------------|-------------------------|--------------|---------------|---------------|--------------|--------------|-------------|-----------|
|                                           | Yes           | No             | Yes                     | No           | Yes           | No            | Yes          | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 33<br>(36.7%) | 57<br>(63.3%)  | 23<br>(74.2%)           | 8<br>(25.8%) | 8<br>(88.9%)  | 1<br>(11.1%)  | 6<br>(40%)   | 9<br>(60%)   | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 28<br>(19.9%) | 113<br>(80.1%) | 24<br>(88.9%)           | 3<br>(11.1%) | 22<br>(68.8%) | 10<br>(31.2%) | 2<br>(28.6%) | 5<br>(71.4%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.10 - Did the judge inform the parties of the right to request safeguarding of the evidence?**

|                                           | Tbilisi       |                | Batumi<br>Khelvachauri |              | Kutaisi       |               | Gori         |              | Zugdidi     |           |
|-------------------------------------------|---------------|----------------|------------------------|--------------|---------------|---------------|--------------|--------------|-------------|-----------|
|                                           | Yes           | No             | Yes                    | No           | Yes           | No            | Yes          | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 27<br>(30%)   | 63<br>(70%)    | 22<br>(71%)            | 9<br>(39%)   | 7<br>(77.8%)  | 2<br>(22.2%)  | 5<br>(38.5%) | 8<br>(61.5%) | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 25<br>(17.7%) | 116<br>(82.3%) | 24<br>(88.9%)          | 3<br>(11.1%) | 22<br>(83.3%) | 10<br>(16.7%) | 2<br>(28.6%) | 5<br>(71.4%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.11 - Did the judge inform the parties of the right to review and copy the documents related to the case that were held in the court office?**

|                                           | Tbilisi       |               | Batumi<br>Khelvachauri |              | Kutaisi       |              | Gori         |              | Zugdidi     |           |
|-------------------------------------------|---------------|---------------|------------------------|--------------|---------------|--------------|--------------|--------------|-------------|-----------|
|                                           | Yes           | No            | Yes                    | No           | Yes           | No           | Yes          | No           | Yes         | No        |
| <b>At the preliminary hearing</b>         | 28<br>(31.1%) | 62<br>(68.9%) | 22<br>(71%)            | 9<br>(29%)   | 8<br>(88.9%)  | 1<br>(11.1%) | 4<br>(30.8%) | 9<br>(69.2%) | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 24<br>(17%)   | 117<br>(83%)  | 24<br>(88.9%)          | 3<br>(11.1%) | 23<br>(71.9%) | 9<br>(28.1%) | 2<br>(28.6%) | 5<br>(71.4%) | 1<br>(100%) | 0<br>(0%) |

**Table 5.12 - Did the judge inform the parties of all the rights listed above?**

|                                           | Tbilisi       |               | Batumi/<br>Khelvachauri |              | Kutaisi       |               | Gori         |               | Zugdidi     |           |
|-------------------------------------------|---------------|---------------|-------------------------|--------------|---------------|---------------|--------------|---------------|-------------|-----------|
|                                           | Yes           | No            | Yes                     | No           | Yes           | No            | Yes          | No            | Yes         | No        |
| <b>At the preliminary hearing</b>         | 23<br>(25.6%) | 67<br>(74.4%) | 22<br>(71%)             | 9<br>(29%)   | 6<br>(66.7%)  | 3<br>(33.3%)  | 2<br>(15.4%) | 11<br>(84.6%) | 5<br>(100%) | 0<br>(0%) |
| <b>At the opening of the main hearing</b> | 24<br>(17%)   | 117<br>(83%)  | 24<br>(88.9%)           | 3<br>(11.2%) | 19<br>(61.3%) | 13<br>(38.7%) | 2<br>(28.6%) | 5<br>(71.4%)  | 1<br>(100%) | 0<br>(0%) |

### 5.13 - Did the judge explain to the parties the meaning of the rights introduced?

|                                           | Tbilisi              |                       | Batumi/<br>Khelvachauri |                     | Kutaisi              |                      | Gori                |                     | Zugdidi          |                    |
|-------------------------------------------|----------------------|-----------------------|-------------------------|---------------------|----------------------|----------------------|---------------------|---------------------|------------------|--------------------|
|                                           | Yes                  | No                    | Yes                     | No                  | Yes                  | No                   | Yes                 | No                  | Yes              | No                 |
| <b>At the preliminary hearing</b>         | 12<br>(13.3%)<br>( ) | 78<br>(86.7%)<br>( )  | 24<br>(77.4%)<br>( )    | 7<br>(22.6%)<br>( ) | 3<br>(33.3%)<br>( )  | 6<br>(66.7%)<br>( )  | 5<br>(38.5%)<br>( ) | 8<br>(61.5%)<br>( ) | 0<br>(0%)<br>( ) | 5<br>(100%)<br>( ) |
| <b>At the opening of the main hearing</b> | 8<br>(5.7%)<br>( )   | 133<br>(94.3%)<br>( ) | 18<br>(66.7%)<br>( )    | 9<br>(33.3%)<br>( ) | 11<br>(34.4%)<br>( ) | 21<br>(65.6%)<br>( ) | 3<br>(42.9%)<br>( ) | 4<br>(57.1%)<br>( ) | 0<br>(0%)<br>( ) | 1<br>(100%)<br>( ) |

**Table 5.14 – Decision of the judge on a counterclaim filed after the opening of the main hearing?**

| <b>Court</b>                    | <b>Accepted</b> | <b>Rejected</b> | <b>No Counterclaim</b> |
|---------------------------------|-----------------|-----------------|------------------------|
| <b>Tbilisi</b>                  | 1.3%<br>2 cases | 0%<br>0 cases   | 98.7%<br>155 cases     |
| <b>Batumi/<br/>Khelvachauri</b> | 0%<br>0 cases   | 0%<br>0 cases   | 100%<br>44 cases       |
| <b>Kutaisi</b>                  | 0%<br>0 cases   | 0%<br>0 cases   | 100%<br>33 cases       |
| <b>Gori</b>                     | 0%<br>0 cases   | 0%<br>0 cases   | 100%<br>14 cases       |
| <b>Zugdidi</b>                  | 0%<br>0 cases   | 0%<br>0 cases   | 100%<br>5 cases        |

**Table 5.15 - Decision of the judge regarding motions filed by the parties after the opening of the main hearing?**

| Tbilisi             |                     | Batumi/<br>Khelvachauri |                     | Kutaisi             |                     | Gori     |          | Zugdidi  |          |
|---------------------|---------------------|-------------------------|---------------------|---------------------|---------------------|----------|----------|----------|----------|
| Accepted            | Rejected            | Accepted                | Rejected            | Accepted            | Rejected            | Accepted | Rejected | Accepted | Rejected |
| 46.7%<br>7<br>cases | 53.3%<br>8<br>cases | 62.5%<br>5<br>cases     | 37.5%<br>3<br>cases | 33.3%<br>1<br>cases | 66.7%<br>2<br>cases | -        | -        | -        | -        |

**Table 5.16 –Did the judge skip any stage of the hearing without the consent of the parties?**

| Tbilisi     |                 | Batumi/<br>Khelvachauri |              | Kutaisi   |             | Gori      |           | Zugdidi     |            |
|-------------|-----------------|-------------------------|--------------|-----------|-------------|-----------|-----------|-------------|------------|
| 157 cases   |                 | 44 cases                |              | 33 cases  |             | 14 cases  |           | 5 cases     |            |
| Yes         | No              | Yes                     | No           | Yes       | No          | Yes       | No        | Yes         | No         |
| 3<br>(1.9%) | 154 (98.1<br>%) | 0 (0%)                  | 44<br>(100%) | 1<br>(3%) | 32<br>(97%) | 0<br>(0%) | 14 (100%) | 1<br>(20 %) | 4<br>(80%) |

**Table 5.17 – When moving from one stage to the other, did the judge announce the next stage?**

| Tbilisi        |             | Batumi/<br>Khelvachauri |           | Kutaisi     |           | Gori          |              | Zugdidi  |           |
|----------------|-------------|-------------------------|-----------|-------------|-----------|---------------|--------------|----------|-----------|
| 157 cases      |             | 44 cases                |           | 33 cases    |           | 14 cases      |              | 5 cases  |           |
| Yes            | No          | Yes                     | No        | Yes         | No        | Yes           | No           | Yes      | No        |
| 151<br>(96.2%) | 6<br>(3.8%) | 44<br>(100%)            | 0<br>(0%) | 32<br>(97%) | 1<br>(3%) | 12<br>(85.7%) | 2<br>(14.3%) | 5 (100%) | 0<br>(0%) |

**Table 5.18 - Did the judge provide the parties with a relevant explanation of the meaning of each stage?**

| Tbilisi           |                  | Batumi/<br>Khelvachauri |                      | Kutaisi              |                   | Gori             |                      | Zugdidi       |                 |
|-------------------|------------------|-------------------------|----------------------|----------------------|-------------------|------------------|----------------------|---------------|-----------------|
| Yes               | No               | Yes                     | No                   | Yes                  | No                | Yes              | No                   | Yes           | No              |
| 7%<br>11<br>cases | 93%<br>146 cases | 63.6%<br>28<br>cases    | 36.3%<br>16<br>cases | 57.6%<br>19<br>cases | 42.4%<br>14 cases | 21.4%<br>3 cases | 78.6%<br>11<br>cases | 0%<br>0 cases | 100%<br>5 cases |

**Table 5.19 - Did the judge give legal bases for his/her interim decisions?**

| Court                   | Yes                   | No               | No interim decision   |
|-------------------------|-----------------------|------------------|-----------------------|
| Tbilisi                 | 24.8%<br>39 cases     | 7.6%<br>12 cases | 67.6%<br>106<br>cases |
| Batumi/<br>Khelvachauri | 27.3%<br>12 cases     | 0%<br>0 cases    | 72.7%<br>32 cases     |
| Kutaisi                 | 36.4<br>%<br>12 Cases | 0%<br>0 cases    | 63.6%<br>21 cases     |
| Gori                    | 50%<br>7 cases        | 0%<br>0 cases    | 50%<br>7<br>cases     |
| Zugdidi                 | 20%<br>1 case         | 0%<br>0 cases    | 80%<br>4 cases        |

**Table 5.20 – Did the judge maintain order in the courtroom?**

| Tbilisi      |            | Batumi/<br>Khelvachauri |           | Kutaisi     |           | Gori        |           | Zugdidi    |           |
|--------------|------------|-------------------------|-----------|-------------|-----------|-------------|-----------|------------|-----------|
| Yes          | No         | Yes                     | No        | Yes         | No        | Yes         | No        | Yes        | No        |
| 98.1%        | 1.9%       | 100%                    | 0%        | 100%        | 0%        | 100%        | 0%        | 100%       | 0%        |
| 154<br>cases | 3<br>cases | 44<br>cases             | 0<br>case | 33<br>cases | 0<br>case | 14<br>cases | 0<br>case | 5<br>cases | 0<br>case |

**Table 5.21 – Was there anything to suggest that the judge was not well-acquainted with the content of the dispute?**

| Tbilisi   |              | Batumi/<br>Khelvachauri |             | Kutaisi   |             | Gori      |             | Zugdidi   |            |
|-----------|--------------|-------------------------|-------------|-----------|-------------|-----------|-------------|-----------|------------|
| Yes       | No           | Yes                     | No          | Yes       | No          | Yes       | No          | Yes       | No         |
| 1.3%      | 98.7%        | 2.3%                    | 97.7%       | 0%        | 100%        | 0%        | 100%        | 0%        | 100%       |
| 2<br>case | 155<br>cases | 1<br>case               | 43<br>cases | 0<br>case | 33<br>cases | 0<br>case | 14<br>cases | 0<br>case | 5<br>cases |

**Table 5.22 – Did the parties of the hearing and/or the attendants leave/enter the courtroom during the hearings?**

| Tbilisi   |              | Batumi/<br>Khelvachauri |             | Kutaisi   |             | Gori      |            | Zugdidi   |            |
|-----------|--------------|-------------------------|-------------|-----------|-------------|-----------|------------|-----------|------------|
| Yes       | No           | Yes                     | No          | Yes       | No          | Yes       | No         | Yes       | No         |
| 2.5%      | 97.5%        | 2.3%                    | 97.7%       | 6.1%      | 93.9%       | 0%        | 100%       | 0%        | 100%       |
| 4<br>case | 153<br>cases | 1<br>case               | 43<br>cases | 2<br>case | 31<br>cases | 0<br>case | 7<br>cases | 0<br>case | 5<br>cases |

**Table 5.23 – When announcing the final decision, did the judge announce the procedure for appeal?**

| Tbilisi |       | Batumi/<br>Khelvachauri |      | Kutaisi |       | Gori  |        | Zugdidi |      |
|---------|-------|-------------------------|------|---------|-------|-------|--------|---------|------|
| Yes     | No    | Yes                     | No   | Yes     | No    | Yes   | No     | Yes     | No   |
| 100%    | 0%    | 95.4%                   | 4.5% | 100%    | 0%    | 100%  | 0%     | 100%    | 0%   |
| 157     | 0     | 42                      | 2    | 33      | 0     | 14    | 0 case | 5       | 0    |
| case    | cases | cases                   | case | case    | cases | cases |        | cases   | case |

**Table 5.24 – When announcing the final decision, did the judge state which evidence he/she relied on?**

| Tbilisi |       | Batumi/<br>Khelvachauri |       | Kutaisi |       | Gori  |      | Zugdidi |      |
|---------|-------|-------------------------|-------|---------|-------|-------|------|---------|------|
| Yes     | No    | Yes                     | No    | Yes     | No    | Yes   | No   | Yes     | No   |
| 28%     | 72%   | 83.4%                   | 13.6% | 97.1%   | 2.9%  | 100%  | 0%   | 100%    | 0%   |
| 44      | 113   | 38                      | 6     | 33      | 1     | 14    | 0    | 5       | 0    |
| case    | cases | cases                   | case  | case    | cases | cases | case | cases   | case |

**Table 5.25 – When announcing the final decision, did the judge announce the legislation relied upon?**

| Tbilisi |       | Batumi/<br>Khelvachauri |       | Kutaisi |      | Gori  |      | Zugdidi |        |
|---------|-------|-------------------------|-------|---------|------|-------|------|---------|--------|
| Yes     | No    | Yes                     | No    | Yes     | No   | Yes   | No   | Yes     | No     |
| 46.5%   | 53.5% | 95.5%                   | 4.5%  | 97.1%   | 2.9% | 100%  | 0%   | 100%    | 0%     |
| 73      | 84    | 43                      | 2     | 33      | 1    | 14    | 0    | 5       | 0 case |
| cases   | cases | cases                   | cases | cases   | case | cases | case | cases   |        |

**Table 5.26 – Did the judge propose a settlement?<sup>50</sup>**

| <b>Court</b>                    | <b>At the preliminary hearing</b> |                      |                               | <b>At the opening of the main hearing</b> |                      |                               |
|---------------------------------|-----------------------------------|----------------------|-------------------------------|-------------------------------------------|----------------------|-------------------------------|
|                                 | Yes                               | No                   | One of the parties was absent | Yes                                       | No                   | One of the parties was absent |
| <b>Tbilisi</b>                  | 31.1%<br>28 hearings              | 61.1%<br>55 hearings | 7.8%<br>7 hearings            | 21.3%<br>30 hearings                      | 69.5%<br>98 hearings | 9.2%<br>13 hearings           |
| <b>Batumi/<br/>Khelvachauri</b> | 83.9%<br>26 hearings              | 9.7%<br>3 hearings   | 6.4%<br>2 hearings            | 88.9%<br>24 hearings                      | 11.1%<br>3 hearings  | 0%<br>0 hearings              |
| <b>Kutaisi</b>                  | 33.3%<br>3 hearings               | 33.3%<br>3 hearings  | 33.3%<br>3 hearings           | 43.4%<br>14 hearings                      | 50%<br>16 hearings   | 6.6%<br>2 hearings            |
| <b>Gori</b>                     | 61.5%<br>8 hearings               | 38.5%<br>5 hearings  | %<br>0 hearing                | 42.9%<br>3 hearings                       | 57.1%<br>4 hearings  | 0%<br>0 hearing               |
| <b>Zugdidi</b>                  | 100%<br>5 hearings                | 0%<br>0 hearings     | 0%<br>0 hearings              | 100%<br>1 hearing                         | 0%<br>0 hearings     | 0%<br>0 hearings              |

<sup>50</sup> The cases where settlement was reached are excluded.

## Annex 6. Inquisitorial Principle

**Table 6.1 – Did the judge invite third parties to the case?**

|                                           | Tbilisi     |                | Batumi/<br>Khelvachauri |               | Kutaisi      |               | Gori         |                | Zugdidi   |             |
|-------------------------------------------|-------------|----------------|-------------------------|---------------|--------------|---------------|--------------|----------------|-----------|-------------|
|                                           | Yes         | No             | Yes                     | No            | Yes          | No            | Yes          | No             | yes       | no          |
| <b>At the preliminary hearing</b>         | 8<br>(8.9%) | 82<br>(91.1%)  | 1<br>(2.2%)             | 30<br>(97.8%) | 2<br>(22.2%) | 7<br>(77.8%)  | 2<br>(16.6%) | 10<br>(83.46%) | 0<br>(0%) | 5<br>(100%) |
| <b>At the opening of the main hearing</b> | 2<br>(1.4%) | 139<br>(98.6%) | 2<br>(7.4%)             | 25<br>(92.6%) | 1<br>(3.1%)  | 31<br>(96.9%) | 0<br>(0%)    | 8<br>(100%)    | 0<br>(0%) | 1<br>(100%) |

**Table 6.2 – Did the judge request additional information/evidence on his/her own initiative?**

|                                           | Tbilisi       |                | Batumi<br>Khelvachauri |               | Kutaisi      |               | Gori         |               | Zugdidi   |             |
|-------------------------------------------|---------------|----------------|------------------------|---------------|--------------|---------------|--------------|---------------|-----------|-------------|
|                                           | Yes           | No             | Yes                    | No            | Yes          | No            | Yes          | No            | Yes       | No          |
| <b>At the preliminary hearing</b>         | 8<br>(8.9%)   | 82<br>(91.1%)  | 4<br>(3.1%)            | 27<br>(96.9%) | 1<br>(11.1%) | 8<br>(88.9%)  | 2<br>(16.6%) | 10<br>(83.4%) | 0<br>(0%) | 5<br>(100%) |
| <b>At the opening of the main hearing</b> | 18<br>(12.8%) | 123<br>(87.2%) | 3<br>(11.1%)           | 24<br>(88.9%) | 7<br>(21.9%) | 25<br>(78.1%) | 0<br>(0%)    | 8<br>(100%)   | 0<br>(0%) | 1<br>(100%) |

**Table 6.3 – Did the judge give any instructions/recommendations to the parties?**

|                                    | Tbilisi       |                | Batumi<br>Khelvachauri |               | Kutaisi      |               | Gori         |               | Zugdidi   |             |
|------------------------------------|---------------|----------------|------------------------|---------------|--------------|---------------|--------------|---------------|-----------|-------------|
|                                    | Yes           | No             | Yes                    | No            | Yes          | No            | Yes          | No            | Yes       | No          |
| At the preliminary hearing         | 15<br>(16.7%) | 75<br>(83.3%)  | 12<br>(36.4%)          | 21<br>(63.6%) | 6<br>(66.7%) | 3<br>(33.3%)  | 3<br>(23.1%) | 10<br>(76.9%) | 0<br>(0%) | 5<br>(100%) |
| At the opening of the main hearing | 16<br>(11.3%) | 125<br>(89.7%) | 4<br>(14.8%)           | 23<br>(85.2%) | 3<br>(9.3%)  | 29<br>(90.7%) | 1<br>(14.3%) | 6<br>(85.7%)  | 0<br>(0%) | 1<br>(100%) |

**Table 6.4 – Did the Judge propose a settlement?<sup>51</sup>**

| Court                           | At the preliminary hearing |                      |                               | At the opening of the main hearing |                      |                               |
|---------------------------------|----------------------------|----------------------|-------------------------------|------------------------------------|----------------------|-------------------------------|
|                                 | Yes                        | No                   | One of the parties was absent | Yes                                | No                   | One of the parties was absent |
| <b>Tbilisi</b>                  | 31.1%<br>28 hearings       | 61.1%<br>55 hearings | 7.8%<br>7 hearings            | 21.3%<br>30 hearings               | 69.5%<br>98 hearings | 9.2%<br>13 hearings           |
| <b>Batumi/<br/>Khelvachauri</b> | 83.9%<br>26 hearings       | 9.7%<br>3 hearings   | 6.4%<br>2 hearings            | 88.9%<br>24 hearings               | 11.1%<br>3 hearings  | 0%<br>0 hearings              |
| <b>Kutaisi</b>                  | 33.3%<br>3 hearings        | 33.3%<br>3 hearings  | 33.3%<br>3 hearings           | 43.4%<br>14 hearings               | 50%<br>16 hearings   | 6.6%<br>2 hearings            |
| <b>Gori</b>                     | 61.5%<br>8 hearings        | 38.5%<br>5 hearings  | %<br>0 hearing                | 42.9%<br>3 hearings                | 57.1%<br>4 hearings  | 0%<br>0 hearing               |
| <b>Zugdidi</b>                  | 100%<br>5 hearings         | 0%<br>0 hearings     | 0%<br>0 hearings              | 100%<br>1 hearing                  | 0%<br>0 hearings     | 0%<br>0 hearings              |

<sup>51</sup> The cases where settlement was reached are included.

**Table 6.5 - Did the judge invite expert/specialist/interpreter/witness to the case on his/her own initiative?**

|                                           | Tbilisi     |               | Batumi/<br>Khelvachauri |              | Kutaisi      |               | Gori        |               | Zugdidi   |             |
|-------------------------------------------|-------------|---------------|-------------------------|--------------|--------------|---------------|-------------|---------------|-----------|-------------|
|                                           | Yes         | No            | Yes                     | No           | Yes          | No            | Yes         | No            | Yes       | No          |
| <b>At the preliminary hearing</b>         | 2<br>(2.2%) | 88<br>(97.8%) | 0<br>(0%)               | 33<br>(100%) | 1<br>(11.1%) | 8<br>(89.9%)  | 1<br>(7.7%) | 12<br>(92.3%) | 0<br>(0%) | 5<br>(100%) |
| <b>At the opening of the main hearing</b> | 0<br>(0%)   | 141<br>(100%) | 0<br>(0%)               | 27<br>(100%) | 1<br>(4.5%)  | 21<br>(95.5%) | 0<br>(0%)   | 7<br>(100%)   | 0<br>(0%) | 1<br>(100%) |

**Table 6.6 - Did the judge provide the parties with a relevant explanation about the meaning of each stage?**

| Tbilisi   |                | Batumi<br>Khelvachauri |               | Kutaisi       |               | Gori      |               | Zugdidi   |          |
|-----------|----------------|------------------------|---------------|---------------|---------------|-----------|---------------|-----------|----------|
| Yes       | No             | Yes                    | No            | Yes           | No            | Yes       | No            | Yes       | No       |
| 12 (7.6%) | 145<br>(92.4%) | 28<br>(63.6%)          | 16<br>(36.4%) | 19<br>(57.6%) | 14<br>(42.4%) | 3 (21.4%) | 11<br>(78.6%) | 0<br>(0%) | 5 (100%) |

**Table 6.7 - Did the judge establish any relevant evidence when asking questions?**

| Tbilisi           |                 | Batumi/<br>Khelvachauri |               | Kutaisi          |               | Gori           |               | Zugdidi       |               |
|-------------------|-----------------|-------------------------|---------------|------------------|---------------|----------------|---------------|---------------|---------------|
| Yes               | No              | Yes                     | No            | Yes              | No            | Yes            | No            | Yes           | No            |
| 92.6%<br>113 case | 7.4%<br>9 cases | 85%<br>34 cases         | 15%<br>6 case | 100%<br>26 cases | 0%<br>0 cases | 60%<br>6 cases | 40%<br>4 case | 50%<br>1 case | 50%<br>1 case |

**Table 6.8 - Did the judge show initiative?**

| Tbilisi |       | Batumi<br>Khelvachauri |       | Kutaisi |      | Gori |       | Zugdidi |       |
|---------|-------|------------------------|-------|---------|------|------|-------|---------|-------|
| Yes     | No    | Yes                    | No    | Yes     | No   | Yes  | No    | Yes     | No    |
| 48.4%   | 51.6% | 75%                    | 25%   | 90.9%   | 9.1% | 0%   | 100%  | 20%     | 80%   |
| 76      | 81    | 33                     | 11    | 30      | 3    | 0    | 14    | 1       | 4     |
| cases   | cases | cases                  | cases | case    | case | case | cases | case    | cases |

**Table 6.9 – Average number of questions asked by the judge?**

| Tbilisi | Batumi<br>Khelvachauri | Kutaisi | Gori | Zugdidi |
|---------|------------------------|---------|------|---------|
| 3-4     | 5-6                    | 5-6     | 7-8  | 1       |

## Annex 7. Equality of Arms (Adversarial Principle)

**Table 7.1 – How many motions did the plaintiff file and how many of these were granted?**

|                                             | <b>Tbilisi</b>       | <b>Batumi/<br/>Khelvachauri</b> | <b>Kutaisi</b>        | <b>Gori</b>          | <b>Zugdidi</b>     |
|---------------------------------------------|----------------------|---------------------------------|-----------------------|----------------------|--------------------|
| <b>Total motions filed by the plaintiff</b> | <b>82 motions</b>    | <b>41 motions</b>               | <b>29 motions</b>     | <b>15 motions</b>    | <b>1 motions</b>   |
| Motions granted                             | 65.8%<br>(54motions) | 80.5%<br>(33 motions)           | 79.3%<br>(23 motions) | 73.3%<br>(11motions) | 100%<br>(1 motion) |
| Motions denied                              | 34.2%<br>(28motions) | 19.5%<br>(8 motions)            | 20.7%<br>(6 motions)  | 26.7%<br>(4 motion)  | 0%<br>(0 motion)   |

**Table 7.2– How many motions did the defendant file and how many of these were granted?**

|                                             | <b>Tbilisi</b>         | <b>Batumi/<br/>Khelvachauri</b> | <b>Kutaisi</b>      | <b>Gori</b>        | <b>Zugdidi</b>    |
|---------------------------------------------|------------------------|---------------------------------|---------------------|--------------------|-------------------|
| <b>Total motions filed by the defendant</b> | <b>47 motion</b>       | <b>22 motions</b>               | <b>25 motions</b>   | <b>15 motion</b>   | <b>2 motions</b>  |
| Motions granted                             | 76.6%<br>( 36 motions) | 68.2%<br>(15 motions)           | 64%<br>(16 motions) | 80%<br>(12 motion) | 50%<br>(1 motion) |
| Motions denied                              | 23.4%<br>( 11motions)  | 31.8%<br>(7motions)             | 36%<br>(9 motions)  | 20%<br>(3 motion)  | 50%<br>(1 motion) |

**Table 7.3 – Was there anything to suggest that the judge was biased?**

| Tbilisi       |                   | Batumi/<br>Khelvachauri |                   | Kutaisi       |                  | Gori          |                  | Zugdidi       |                 |
|---------------|-------------------|-------------------------|-------------------|---------------|------------------|---------------|------------------|---------------|-----------------|
| Yes           | No                | Yes                     | No                | Yes           | No               | Yes           | No               | Yes           | No              |
| 0%<br>0 cases | 100%<br>157 cases | 2.3%<br>1 cases         | 97.7%<br>43 cases | 0%<br>0 cases | 100%<br>33 cases | 0%<br>0 cases | 100%<br>14 cases | 0%<br>0 cases | 100%<br>5 cases |

**Table 7.4 – Did the judge strike a question of either party?**

|                                 | At the preliminary hearing |                 |                   |
|---------------------------------|----------------------------|-----------------|-------------------|
| Court                           | plaintiff                  | defendant       | neither           |
| <b>Tbilisi<sup>52</sup></b>     | 6.1%<br>9 cases            | 1.4%<br>2 cases | 85%<br>137 cases  |
| <b>Batumi/<br/>Khelvachauri</b> | 0%<br>0 cases              | 3%<br>1 case    | 97%<br>32 cases   |
| <b>Kutaisi</b>                  | 12.1%<br>4 cases           | 6.1%<br>2 case  | 81.8%<br>27 cases |
| <b>Gori</b>                     | 28.6%<br>4 cases           | %<br>0 case     | 71.4%<br>10 cases |
| <b>Zugdidi</b>                  | 0%<br>cases                | 0%<br>cases     | %<br>5cases       |

<sup>52</sup> In two cases, during the questioning stage, one of the parties was absent. These 2 cases are not taken into consideration in the statistics given.

## Annex 8. Dispute Outcomes

**Table 8.1 – Status of state party**

|                                 | <b>Tbilisi</b>     | <b>Batumi/<br/>Khelvachauri</b> | <b>Kutaisi</b>    | <b>Gori</b>       | <b>Zugdidi</b>  |
|---------------------------------|--------------------|---------------------------------|-------------------|-------------------|-----------------|
| State party<br>was plaintiff    | 7.7%<br>12 cases   | 4.5%<br>2 cases                 | 6.1%<br>2 cases   | 7.1%<br>1 cases   | 0%<br>0 cases   |
| State party<br>was<br>defendant | 92.3%<br>145 cases | 95.5%<br>42 cases               | 93.9%<br>31 cases | 92.9%<br>13 cases | 100%<br>5 cases |

**Table 8.2 – Was the claim granted or denied?**

|                      | <b>Tbilisi</b>    | <b>Batumi/<br/>Khelvachauri</b> | <b>Kutaisi</b>    | <b>Gori</b>      | <b>Zugdidi</b> |
|----------------------|-------------------|---------------------------------|-------------------|------------------|----------------|
| Granted              | 24.2%<br>38 cases | 25%<br>11 cases                 | 24.2%<br>8 cases  | 14.3%<br>2 cases | 40%<br>2 cases |
| Denied               | 51%<br>80 cases   | 47.7%<br>21 cases               | 45.4%<br>15 cases | 64.3%<br>9 case  | 0%<br>0 case   |
| Granted<br>Partially | 24.8%<br>39 cases | 27.3%<br>12 cases               | 30.4%<br>10 cases | 21.4%<br>3 cases | 60%<br>3 cases |