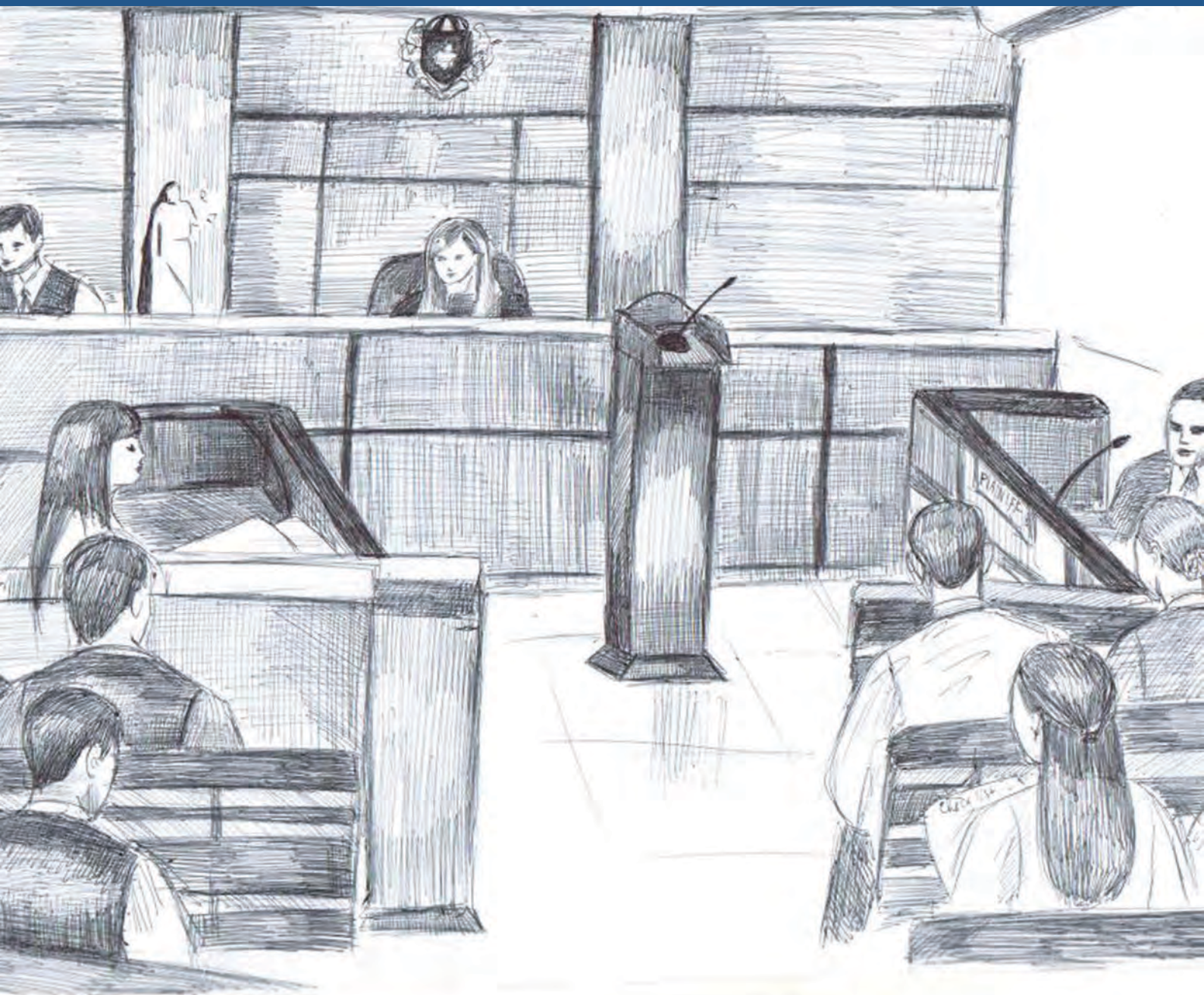


Court Monitoring Report №4

Period Covered January–July 2014



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Period Covered: January – July 2014

December 2014

Tbilisi, Georgia

The monitoring project is made possible by the generous support of the American People through the United States Agency for International Development (USAID) and Folke Bernadotte Academy. The contents are the responsibility of TI Georgia and do not necessarily reflect the views of USAID, the United States Government, EWMI or Folke Bernadotte Academy.

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Acknowledgements

Transparency International Georgia (TI Georgia) would like to express its gratitude to the High Council of Justice, Tbilisi, Batumi and Kutaisi City Courts, along with Gori and Rustavi District Courts, who are providing our monitors with the opportunity to freely make notes during the court trials. TI Georgia would also like to thank the administrative staff of the courts, including bailiffs, judges' assistants and clerks.

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 Bernadotte Academy and OSCE's Rule of Law Office for sharing their experience in the field of monitoring administrative justice. TI Georgia would like to highlight the importance of the Handbook for Monitoring Administrative Justice, which was jointly developed by the Folke Bernadotte Academy and the OSCE Office for Democratic Institutions and Human Rights. The Handbook outlines core standards that apply to administrative justice and responds to concrete needs of trial monitoring in the field of administrative justice. TI Georgia's monitoring team has consulted the Handbook and has used its practical guidance.

Executive Summary

This is TI Georgia's fourth report on administrative court hearings. This report covers the period from January to July 2014, and includes court monitoring data from administrative proceedings at the first instance courts in Tbilisi, Batumi, Kutaisi, Gori and Rustavi. This monitoring period was the first time that TI Georgia monitored cases in Rustavi. A total of 683 hearings in 268 cases were observed.

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:

- During this monitoring period, cases won by state parties had considerably decreased when compared to the first and second monitoring periods. The most significant results were at the regional courts in Batumi, Kutaisi and Gori, with the state party being entirely successful in less than 35% of cases. Taking the average of all monitored courts for this period, the state party proved to be entirely successful in 53% of cases (141 of 268).
- As mentioned above, this is the first time that TI Georgia monitored the Rustavi District Court. A number of findings generated at Rustavi District Court were considerably different from the remaining courts, which have been monitored in the past and shown vast improvements in some aspects. One significant difference is that the percentage of cases in which the state parties were entirely successful in the regional courts that were monitored in the past was less than 35%, whereas the percentage at Rustavi District Court was a high 67%. Furthermore, at Rustavi District Court, there were only 29% of hearings that started on time - an outlier when compared to the previously monitored courts that all produced results of starting on time in over 50% of hearings.
- There were also distinct differences in the way that judges handled the cases at Rustavi District Court when compared to the other courts. For example: judges failed to provide a summary of the case in 86% of main hearings; no settlements were offered at any monitored hearing; and judges announced the evidence they based their decisions on in only 33% of cases. The results were far superior in the courts that were previously monitored, indicating that the better practices adopted by those courts since the being subjected to monitoring have not been shared with other courts. It is recommended for Rustavi City Court and other courts to adopt the best practices of the courts which showed improvement between monitoring periods.

- TI Georgia observed a trend that continued from the third monitoring period, that Tbilisi City Court paled in comparison to the previously monitored regional courts in many areas. Specifically the regional courts did much better in: providing case summaries during main hearings; explaining the rights to parties; explaining the meanings of the various stages in hearings; providing legal grounds on which interim decisions were based; offering settlements; and announcing the evidence on which final decisions were based. Tbilisi City Court's failure to follow these procedures is particularly significant when parties are unrepresented, which is common due to the lack of legal aid for administrative cases in Georgia.
- Throughout this monitoring period, judges continued to show reluctance in applying their inquisitorial powers, especially in the areas of: inviting third parties to the hearings; providing instructions/recommendations to the parties; and requesting additional information and evidence from the parties. The failure of judges to use their inquisitorial powers is highly significant, 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 City Court and Rustavi District Court, compared to the other courts that TI Georgia monitored. Specifically, at Tbilisi City Court, judges failed to offer a settlement in 78% of preliminary hearings and 90% of main hearings – a significant increase from the third monitoring period, during which settlement was not offered in 66% and 77% of hearings, respectively. Meanwhile, there were great improvements made at Batumi, Kutaisi and Gori courts. For example, at Kutaisi, a settlement was not proposed in only 4% of preliminary hearings and 16% of main hearings - significant decreases from the third monitoring period, during which settlement was not offered in 33% and 50% of hearings, respectively.
- In all monitored courts, judges continued to perform well at maintaining order in the courtrooms. Additionally, judges generally did not skip any procedural stage of the hearing without prior consultations with the parties concerned.
- At Tbilisi City Court and Rustavi District Court the judges announced the evidence on which they based their decisions in only 26% and 33% of cases, respectively - considerably low percentages when compared to Batumi City Court, Kutaisi City Court and Gori District Court. The judges announced the evidence they based their decision on in 60% of cases at Batumi City Court, and in all cases at both Kutaisi City Court and Gori District Court. It should be noted that during the previous monitoring period this figure in Batumi City Court was 23%.

- Overall, all monitored courts produced acceptable results in publishing initial hearings on their official schedules. However, in some cases the court 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 the dispute, which has been an ongoing problem and one which TI Georgia has been reporting on since the start of its court monitoring.
- A tendency was observed at the regional courts that parties were largely made aware of certain rights, i.e. the right to settle, the right to withdraw the claim and the right to give opinions on the motions filed by a counter party. However, this did not occur often at TCC, where only two rights were regularly introduced in the majority of cases: the right to file a motion and the right to challenge the judge.
- Tbilisi City Court, Batumi City Court and Gori District Court were effective in observing punctuality in the majority of cases. By contrast, in Kutaisi City Court and Rustavi District Court the percentage of hearings starting late was 49% and 71%, respectively.
- All monitored courts on average rendered a final decision within the two-month period as prescribed by law.
- During the fourth monitoring period decisions were rendered in 30 days on average. These findings show that number of judges appointed at TCC is not enough to handle the rapidly increasing caseload.
- Overall, the judges are complying with the adversarial principle at all courts.

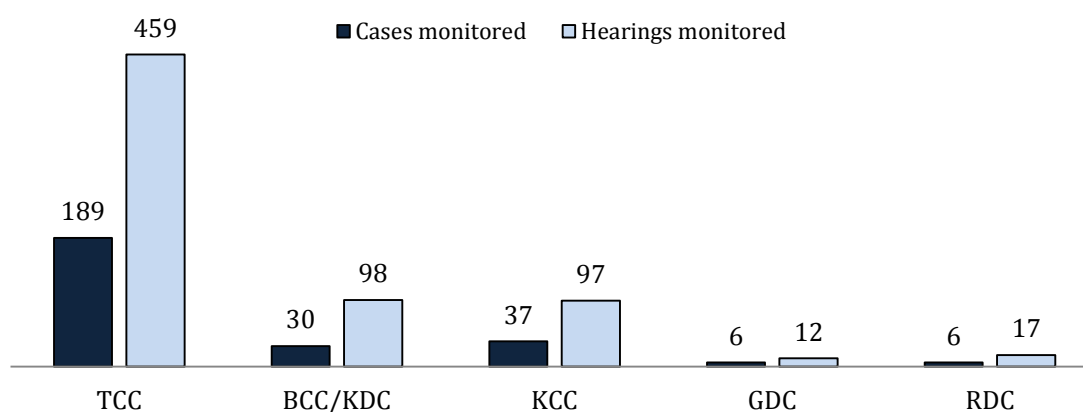
Goal of the Court Monitoring and Number of Cases Monitored

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 January to July 2014, including data from the first instance courts of Tbilisi (hereinafter TCC), Batumi (hereinafter BCC), Kutaisi (hereinafter KCC), Gori (hereinafter GDC) and Rustavi (hereinafter RDC). During this period, TI Georgia monitored 268 administrative law cases to the rendering of a final decision, with one case potentially including several hearings. In total our monitors attended 683 hearings with: 459 hearings (189 cases) attended in TCC; 98 hearings (30 cases) in BCC; 97 hearings (37 cases) in KCC; 12 hearings (6 cases) in GDC; and 17 hearings (6 cases) in RDC.

In addition to the hearings described above, TI Georgia monitors attended 241 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. A settlement was reached in 32 cases, 15 cases were declared inadmissible and 67 cases were withdrawn, 127 cases were postponed for and indefinite time. These 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.

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 our monitors (see Annex IX). Following the procedural requirements of the relevant legislation,¹ the checklist consisted of 148 questions.

The checklist is comprised 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 22 court monitors: 12 part-time monitors in Tbilisi; 5 part-time monitors in Batumi; 3 part-time monitors in Kutaisi; one full-time monitor in Gori; and one full-time monitor in Rustavi. The monitors are graduating law students who are carefully selected through an open selection process. All monitors attended several daylong 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. Monitors went to BCC, KCC, GDC and RDC 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.

¹ 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

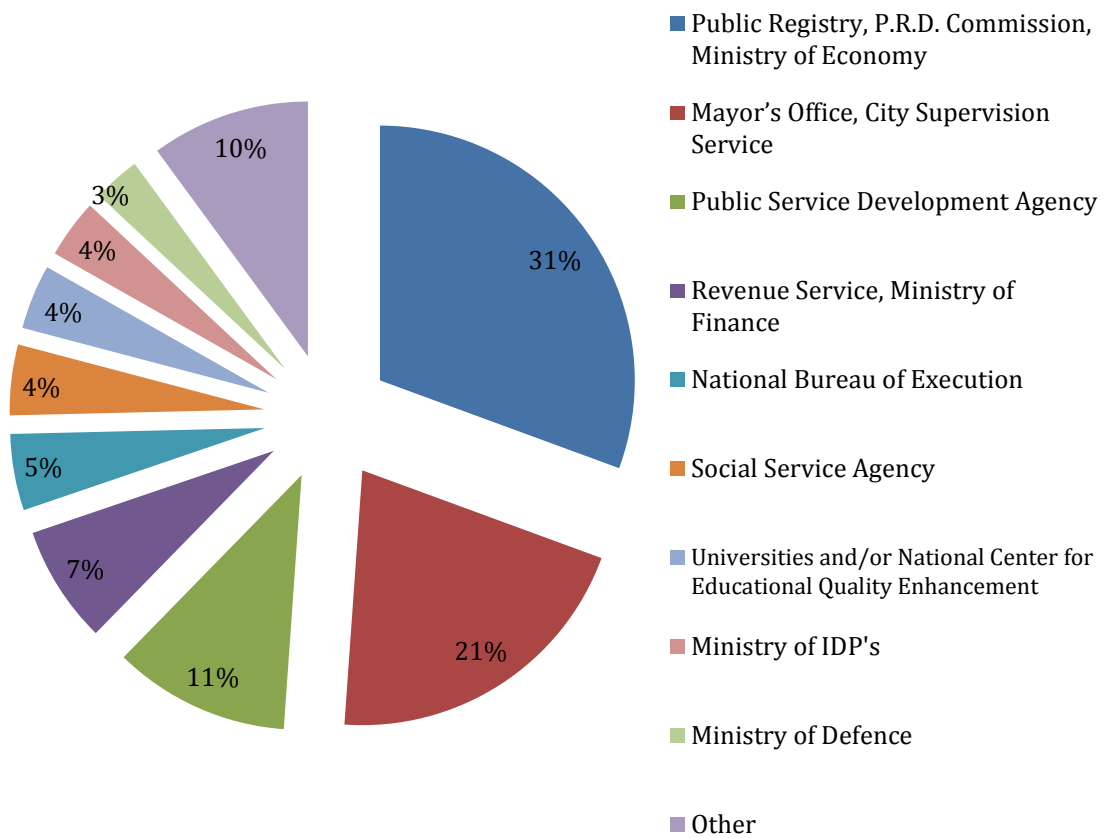
The cases for monitoring were selected according to the official schedule published on the web pages of the relevant courts.² Our monitors also randomly attended hearings when the clerks announced the start of hearings in the corridors of the court buildings. In order to collect information on the scheduled cases, TI Georgia's monitors were also in regular contact with the assistants of judges, bailiffs, court administrative staff, the parties and their representatives.

During previous years³ TI Georgia chose to focus its court monitoring project on property rights cases because of the increasing number of reported violations in Georgia. 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. For 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. During this monitoring period TI Georgia covered all types of administrative cases except administrative offences and administrative proceedings related to involuntary treatment. (See Chart 2)

² [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_saqalaqo_sasamarTlo/?page=17 official web page of Rustavi City Court: http://court.ge/courts/rustavis_saqalaqo_sasamartlo/

³ 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, 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 268 monitored cases. In the third court monitoring period, TI Georgia observed that the share of cases won by state parties had considerably decreased when compared to the first and second monitoring periods. This trend continued during this monitoring period and is most pronounced at regional courts - especially at BCC, where the state party was entirely successful in only 27% of cases.

At TCC, the state parties proved to be entirely successful in 61% of monitored cases (116 of 189). ⁴

At BCC, the state party was entirely successful in 27% (8 of 30) of monitored cases.

At KCC, the state party was entirely successful in 30% (11 of 37) of monitored cases.

At GDC, the state party was entirely successful in 33% (2 of 6) of monitored cases.

At RDC, the state party was entirely successful in 67% (4 of 6) of monitored cases – a very high percentage when compared to the abovementioned regional courts. ⁵

Overall, in all monitored courts, the state party proved to be entirely successful in 53% of cases (141 of 268). This figure, during the third monitoring period, was 58% of cases (147 of 253); during the second monitoring period it was 79% of cases (112 out of 142); and during the first monitoring period it was 85% of cases (92 out of 108).

Chart 3. State party entirely successful TCC

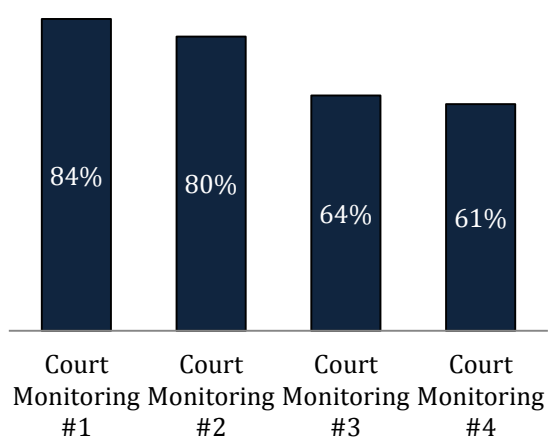
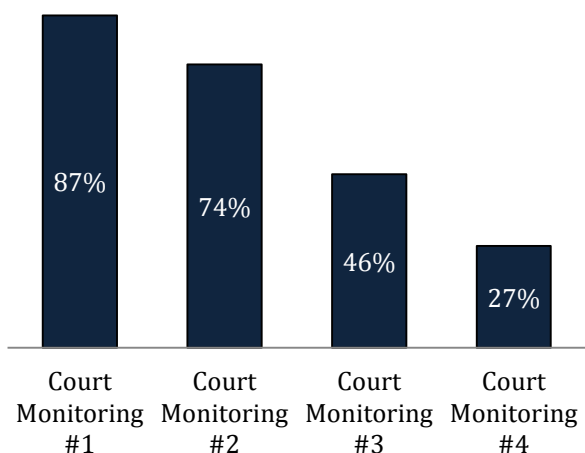
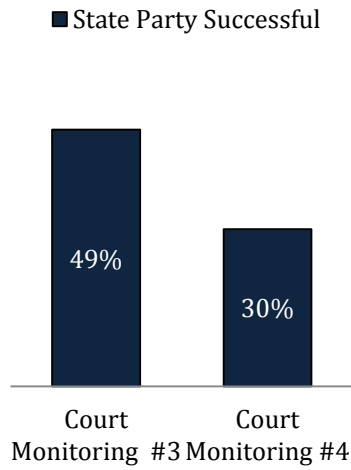


Chart 4. State party entirely successful BCC/KDC

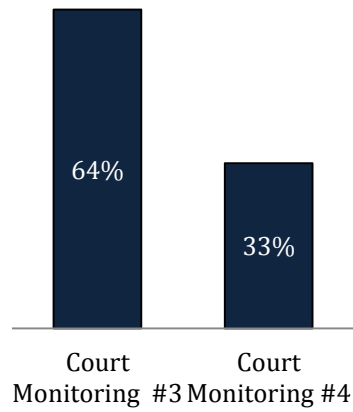


⁵ See annex 8.

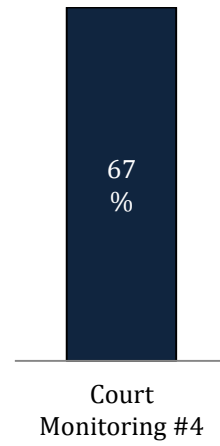
**Chart 5. State party
entirely successful
KCC**



**Chart 6. State party
entirely successful
GDC**



**Chart 7. State party
entirely successful
RDC**



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.⁶

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;⁷
- Handling of the Hearing by the Judge;⁸
- Inquisitorial Principle;⁹ and
- Adversarial Principle (Equality of Arms, Unbiased Settlement of Dispute).¹⁰

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.¹¹ Bearing this in mind, TI Georgia put a special focus on monitoring how judges applied the inquisitorial principle when handling administrative hearings.¹²

⁶ M. Kopaleishvili, N. Skhirtladze, E. Kardava, P. Turava, "Handbook of Administrative Procedural Law," Tbilisi (2008), pg. 19.

⁷ 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.

⁸ M. Kopaleishvili, et al., pg. 27.

⁹ Georgian Administrative Procedure Code, Art. 4; M. Kopaleishvili, et al., pg. 25.

¹⁰ Constitution of Georgia, Art. 14; Georgian Civil Procedure Code Art. 4, Art. 5.

¹¹ Georgian Administrative Procedure Code, Art. 4.

¹² 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.

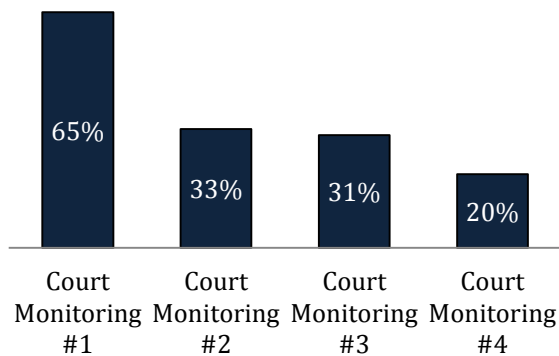
The right to a court hearing within a reasonable time is an important prerequisite for having a fair trial, and also allows for better analysis of the organization and the management of the judicial system. This right serves as a guarantee to protect parties against excessive procedural delays, which could jeopardize the courts' effectiveness and credibility.¹³ 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.¹⁴

General Findings

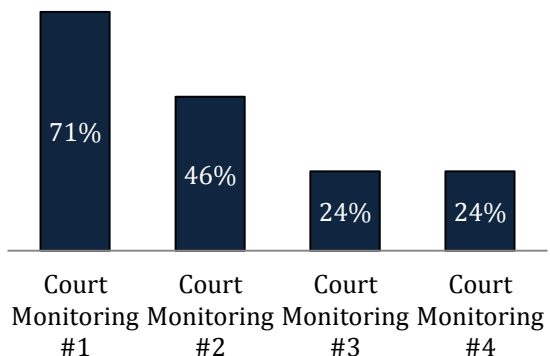
The statistical information gathered by TI Georgia shows that during the fourth monitoring period TCC, BCC and GDC were effective in observing punctuality in the majority of cases; on the other hand, KCC and RDC had relatively high percentages of hearings starting late. Compared with the previous monitoring periods, there is a clear trend of improvement in punctuality at TCC, BCC and GDC.

Overall, punctuality since the first monitoring period has significantly improved at all courts. RDC was monitored for the first time and punctuality appeared as a problematic area, 71% of hearings started late.

**Chart 8. Hearings Starting Late
TCC**

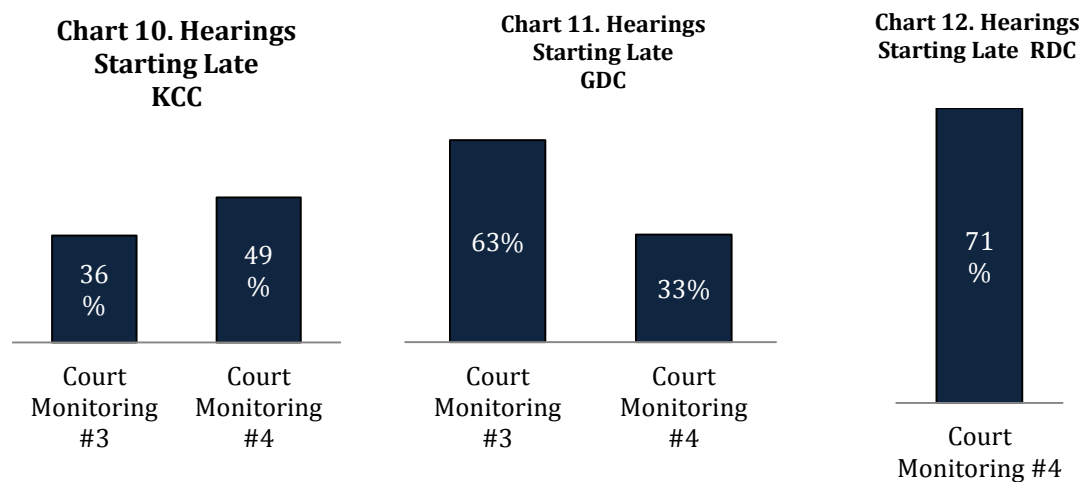


**Chart 9. Hearings Starting Late
BCC/KDC**



¹³ 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.

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



With regard to hearings starting more than 10 minutes late, there is continuous improvement at TCC and BCC during the fourth monitoring period (figures are: TCC-14%; BCC-6%). This figure in KCC (41%) and GDC (17%) slightly increased compared to previous monitoring periods. At RDC, 71% (12 of 17) of hearings started with a delay of more than 10 minutes – again, an outlier when compared to the other courts.

Since TI Georgia follows cases until completion, monitors counted how many days it took for the court to render a final decision. The average number of days at TCC was 30 days; 44 days at BCC; 31 days at KCC; 22 days in GDC; and 20 days in RDC. Therefore, all monitored courts on average rendered a decision within the two-month time period as prescribed by law. It should also be noted that in cases of special complexity, this period may be extended to five months.

During the second monitoring period TCC took average 8 days to render a final decision, during the third monitoring period the time increased to 17 days, and during the fourth monitoring period decisions were rendered in 30 days on average. These findings show that number of judges appointed at TCC is not enough to handle the rapidly increasing caseload. Official statistics from TCC shows the same tendency; for example, one of the judges heard 571 cases in all of 2013, while in the first nine months of 2014 she has already decided 414 cases and has 163 ongoing cases. Another judge finalized 316 cases in 2013, while in the first nine months of 2014 he already has decided 339 cases and has 242 ongoing cases. These numbers will likely increase further before the year's end, creating significant risks regarding the quality of the decisions on one hand and the timely delivery of justice on the other hand.

Recommendations

Improvements have been made in the punctuality of hearings conducted at TCC, BCC and GDC. However, there are still improvements to be made at KCC and especially RDC, where only 29% 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.¹⁵ 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.¹⁶ 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.*”¹⁷ Article 6 of the Convention did not specifically cover administrative proceedings,¹⁸ 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.¹⁹ 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.²⁰ 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”.²¹

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.²² 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.²³

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 the parties discuss.

¹⁵ Constitution of Georgia, Art. 85.

¹⁶ Organic Law of Georgia on Courts of General Jurisdiction, Art. 13.

¹⁷ European Convention on the Protection of Human Rights and Fundamental Freedoms, Rome, 04/11/1950, Art. 6.

¹⁸ See n 27, Handbook for Monitoring Administrative Justice, pg. 40.

¹⁹ *Ringeisen v Austria*, (1971), ECHR, para 94; *König v Germany*, (1978), ECHR, paras 89-90.

²⁰ International Covenant of Civil and Political Rights, signed on 16/12/66, in force from 23/03/67, Art. 14(1).

²¹ [CSCE/OSCE Copenhagen Document](#), para 12.

²² See n 27, Handbook for Monitoring Administrative Justice, pg. 43.

²³ *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 regarding the right to a public hearing are similar to what was discovered during the third and second monitoring periods. Noticeable violations only occurred during the second monitoring period, at high profile cases, where the courts sometimes selected inappropriately small court rooms where only 8 persons were able to attend; also, some of high profile hearings were not included in schedule on the Court's website. Otherwise, any interested person is allowed to attend administrative court hearings in Georgia and take 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. Although this is not required by law, publishing this information will raise the level of publicity. 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. This continues to be an issue for TCC, with all monitoring periods showing the same result. The regional 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 published this information in 66% (65 of 98) of hearings monitored.

KCC published this information in 99% (96 of 97) of hearings monitored.

GDC published this information in 83% (10 of 12) of hearings monitored.

RDC published this information in all 17 hearings monitored.

Another general indicator of the accessibility of hearings is whether they were published on the court's official schedule. Overall, all monitored courts produced acceptable results. TI Georgia's monitors found that only 6% (30 of 459) of administrative court hearings monitored at TCC were not published on the court's official schedule. During the third monitoring period this figure was 5% (16 of 299). During the second monitoring period this figure was 16% (24 of 147). In the first monitoring period, 13% of hearings were not published.

BCC did not publish information in 11% (11 of 98) of hearings monitored during this monitoring period. Meanwhile, at KCC, GDC and RDC all hearings were published on the courts' official schedule.

The third 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, at TCC there was only one instance where our monitors observed a TV network conducting a video recording of a hearing. In that case, the judge selected a suitable place for recording and the journalist did not disturb the proceedings in the courtroom.²⁴

TI Georgia monitors observed that judges continued the practice of sometimes requesting the suspension of audio recordings at hearings, although less frequently than in the past. Judges at TCC ordered the clerks to pause the audio recording during the hearing in only 3% (5 of 189) of cases during this monitoring period - a continuous improvement from the previous monitoring periods. During the third monitoring period, judges did so in only 6% (9 of 157) of cases in TCC, while during the second monitoring period this took place in 30% (27 of 88) of cases.

At BCC, judges ordered the clerks to pause the audio recording during the hearing in 30% (9 of 30) of cases during this monitoring period, while during the third monitoring period this figure in BCC was 44% (20 of 44). Although the percentage has declined at BCC, there is still room for improvement when taking the percentages from the other courts into consideration.

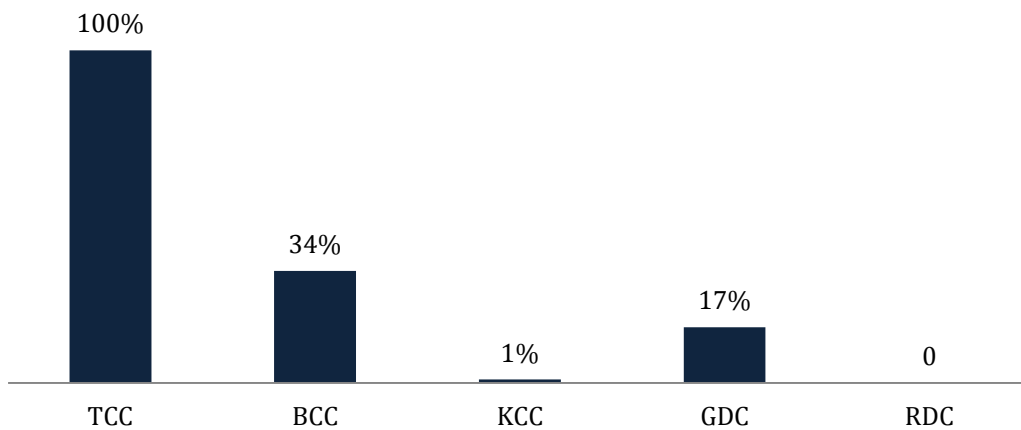
During this monitoring period the figure at KCC was 22% (8 of 37 cases), a significant improvement from the third monitoring period, which was nearly 67% (22 of 33 cases).

Our monitors saw no cases where judges requested the suspension of audio recordings during the hearings observed at GDC and RDC.

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

²⁴ During the third monitoring period, there were no instances of audio or video recording, or requests to record the proceeding at the hearings that TI Georgia monitored. Accordingly, there is no past statistical information to make any comparisons in this regard.

Chart 13. Articles under dispute not published



Recommendations

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, but no such information was published in TCC for any of the cases monitored by TI Georgia, despite our recommendations that this information be provided.

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.²⁵

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.²⁶ In administrative court hearings, the judge should also correct procedural errors and explain all of the important procedures to the parties during the hearing.²⁷

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.²⁸ 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 fulfillment of procedural requirements at the

²⁵ M. Kopaleishvili, et al., pg. 28.

²⁶ Georgian Civil Procedure Code, Articles 210, 211, 214, 217, 218 and 257.

²⁷ M. Kopaleishvili, et al., pg. 28.

²⁸ 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.

preliminary and/or arraignment hearings. Despite this fact, however, the judge is still obliged to follow the procedural requirements when opening the main hearing.²⁹

General Findings

TI Georgia monitored the explanation of rights that were provided to the parties. It should be noted that the courts are not obliged to explain the parties' rights, but we believe that this is important to ensure that the state party does not have an unfair advantage, especially when a private party is not represented by a lawyer (there is no free legal assistance provided by the state to private parties involved in administrative disputes). There is a wide gap in the results derived at TCC when compared to BCC and KCC, and it is apparent that TCC judges are continuing to fail to explain parties' rights in the vast majority of cases.

At TCC, an explanation of rights was provided in only 5% (7 of 138) of cases at the preliminary hearing, and in only 6% (10 of 175) of cases at the opening of the main hearings. During the third monitoring period, explanations of rights were provided in 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 the situation was significantly better; rights were explained in 89% (24 of 27) of preliminary hearings, and 71% (15 of 21) of main hearings. During the third monitoring period, rights were explained at 77% (24 of 31) of preliminary hearings and 67% (18 of 27) of main hearings. At KCC, rights were explained in 64% (18 of 28) of preliminary and 70% (26 of 37) of main hearings during this monitoring period. This was a significant improvement when compared to the third monitoring period, where an explanation of rights was given in only 33% (3 of 9) of preliminary hearings, and 34% (11 of 32) of main hearings. However, at GDC an explanation of rights was not given in any of the cases monitored during this period. This is a significant drop from the third monitoring period, where an explanation of rights was 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 RDC, the explanation of rights was provided in 25% (1 of 4) of preliminary hearings and none of the 7 main hearings.

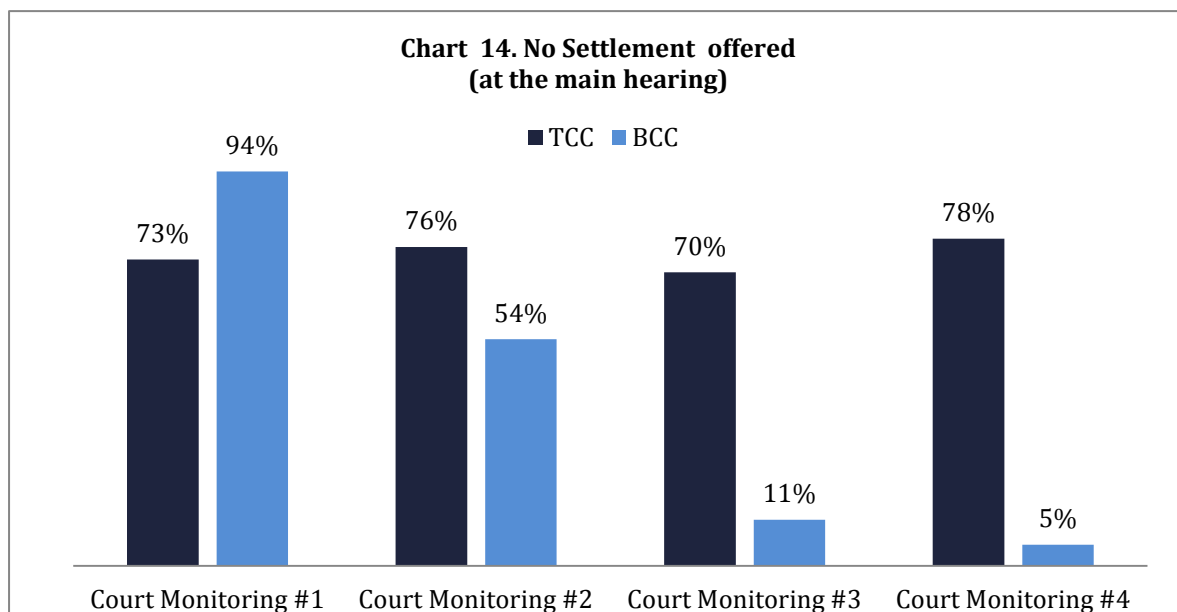
When considering the abovementioned statistics, it is particularly important to note the cases in which the court failed to explain rights to parties who did not have attorneys. At TCC, plaintiffs did not have representatives or attorneys in 21 preliminary and in 16 main hearings monitored. Of these hearings, only in one preliminary (5%) and one main hearing (6%) were the parties' rights explained. During the third monitoring period,

²⁹ Georgian Civil Procedure Code, Arts. 203, 205, 207 and 210.

plaintiffs at TCC did not have representatives or attorneys in 14 preliminary hearings and in 10 main hearings, and the meaning of their rights were only explained in two preliminary hearings (14%) and none of the cases at main hearings. At BCC there was only one preliminary hearing where the private party did not have a representative or attorney, and the rights were explained. There was only one preliminary hearing at KCC where a private party did not have a representative, and meaning of the rights was not introduced. During the third monitoring period at KCC, there were three main hearings and no preliminary hearings where plaintiffs did not have representatives; in two of the main hearings (67%) the rights were explained. During this monitoring period, private parties had representatives during all monitored hearings at both GDC and RDC.

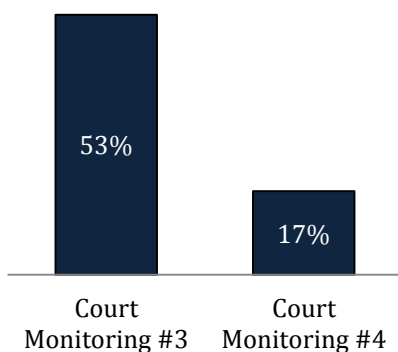
Although offering settlement is not required by law, when viable, settlements should be proposed at the earliest opportunity in order to ensure swift justice and a reduction in costs. During this monitoring period TCC demonstrates almost the same performance as in the third monitoring period. Where both parties were present, TCC judges failed to offer settlements in 78% (95 of 122) of preliminary and 78% (122 of 156) of main hearings.

Furthermore, the disappointing results in TCC are in stark contrast to the regional courts that were monitored for previous court reports, which continue to make improvements in this area. In preliminary hearings at BCC where both parties were present, settlements were proposed in all 26 hearings, and a settlement was not proposed in only one of 20 main hearings (5%). During this monitoring period at KCC judges failed to offer a settlement in only 4% (1 of 28) of preliminary and 17% (6 of 36) of main hearings. Settlements were not proposed in 20% (1 of 5) of preliminary and 33% (1 of 3) of main hearings at GDC. There were no settlements offered at any of the 11 hearings monitored at RDC during this monitoring period.

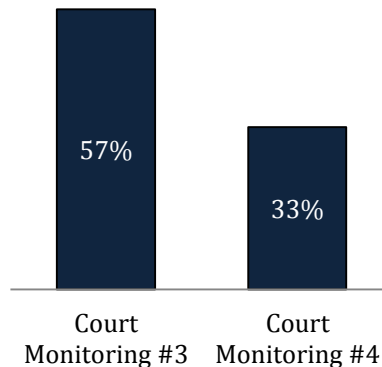


**Chart 15. No Settlement offered
(at the main hearing) KCC**

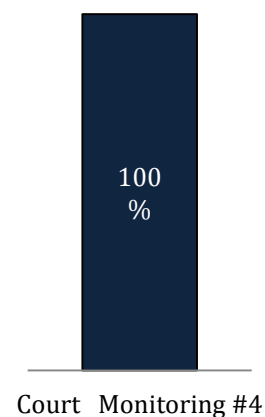
■ No Settlement Offered



**Chart 16. No Settlement offered
(at the main hearing) GDC**



**Chart 17. No settlement offered
(at the main hearing) RDC**



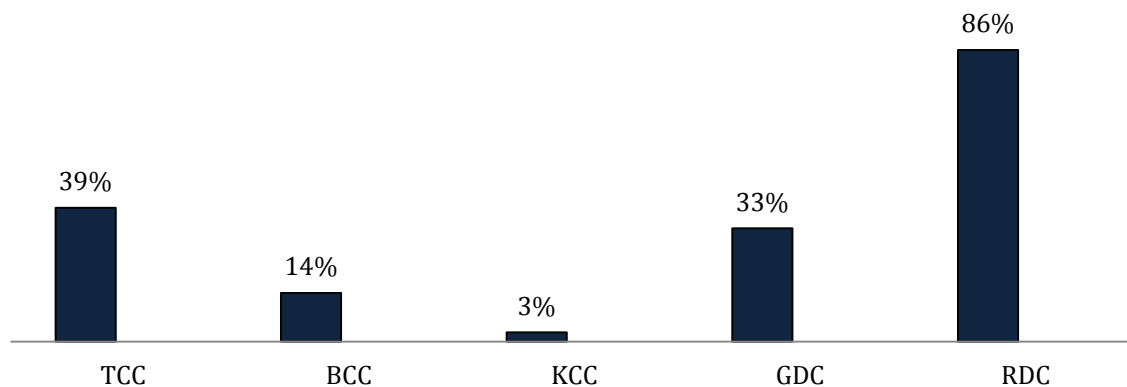
TI Georgia monitors observed whether judges provided case summaries at the beginning of both preliminary and main hearings. Providing cases summaries contributes to the full enjoyment of the right to a public hearing as it provides interested persons attending a hearing with an overview of the case.

The monitoring shows that TCC judges made improvements in providing case summaries at preliminary hearings; however, there has been a significant decline 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 66% (91 of 138) of preliminary hearings. During the third monitoring period, TCC judges failed to provide a summary of the case in 72% (65 of 90) of preliminary hearings, which was sizable worsening of what was observed during the second monitoring period where judges failed to provide case summaries in nearly 53% (16 of 30) of preliminary hearings. At main hearings this monitoring period judges failed to provide a case summary in 39% (69 of 175) of hearings, the same percentage as during the second monitoring period (31 of 80). However, during the third monitoring period judges only omitted the case summary in 18% (26 of 141) of hearings. The statistics at TCC continue to stand out when compared to the regional courts monitored by TI Georgia in the past, which more frequently provided case summaries.

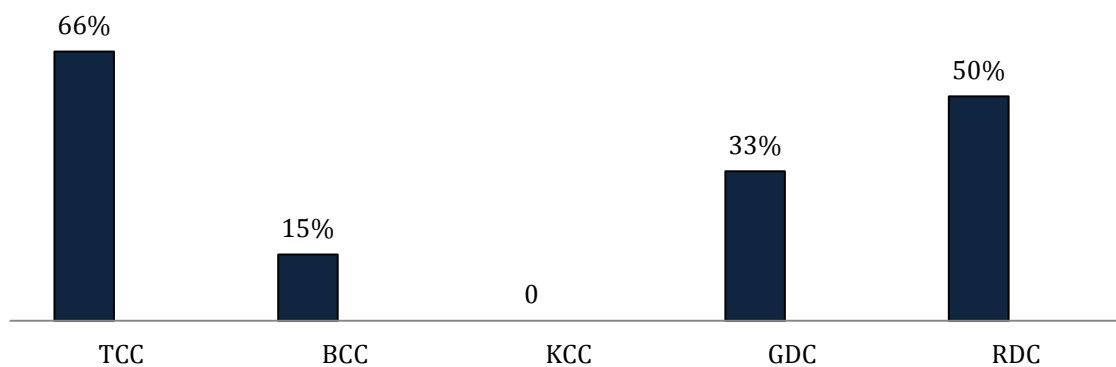
At BCC, judges did not provide case summaries in 15% (4 of 27) of preliminary and 14% (3 of 21) of main hearings this monitoring period. Even though these current percentages are low when compared to TCC, it should be noted that they have significantly increased when compared to the third monitoring period. During the third monitoring period, judges at BCC did not provide case summaries in only 7% (2 of 31) of preliminary and 4% (1 of 27) of main hearings monitored. At KCC, judges provided a summary of the cases in all 28 preliminary hearings this monitoring period, and failed to do so in only 3% (1 of 37) of main hearings. This is a positive trend that continued from the third monitoring period, where judges gave case summaries at all of the monitored preliminary and main hearings. At GDC, judges did not provide case summaries in 33% (2 of 6) of preliminary and 33% (1 of 3) of main hearings. During the

third monitoring period at GDC, there were only two out of seven cases where a summary wasn't provided at the main hearing and in one of 13 cases at the preliminary hearing. At RDC judges failed to provide a summary of the case in 50% (2 of 4) of preliminary hearings and 86% (6 of 7) of main hearings – an outlier, when compared to the other courts, that should be addressed.

**Chart 18. Failure of giving Summary of the Case by Judge
(Opening of the main hearing)**



**Chart 19. Failure of giving Summary of the Case by Judge
(Opening of the Preliminary)**



Judges at TCC made slight improvement in explaining the meaning of the stages in hearings to the parties, increasing from 8% (11 of 157) of the cases monitored during the third monitoring period to 18% (33 of 189) of cases monitored during this monitoring period. However, even taking into consideration the improvements made at TCC in this area, the percentage still remains extremely low when compared to the regional courts – a trend that continues from the third monitoring report. In BCC the meaning of the stages was introduced in 60% (18 of 30) of cases. At GDC the meaning of the stages was introduced in 33% (2 of 6) of cases. The meaning of each stage was introduced in all 37 cases at KCC, and in 83% (5 of 6 hearings) at RDC. 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.

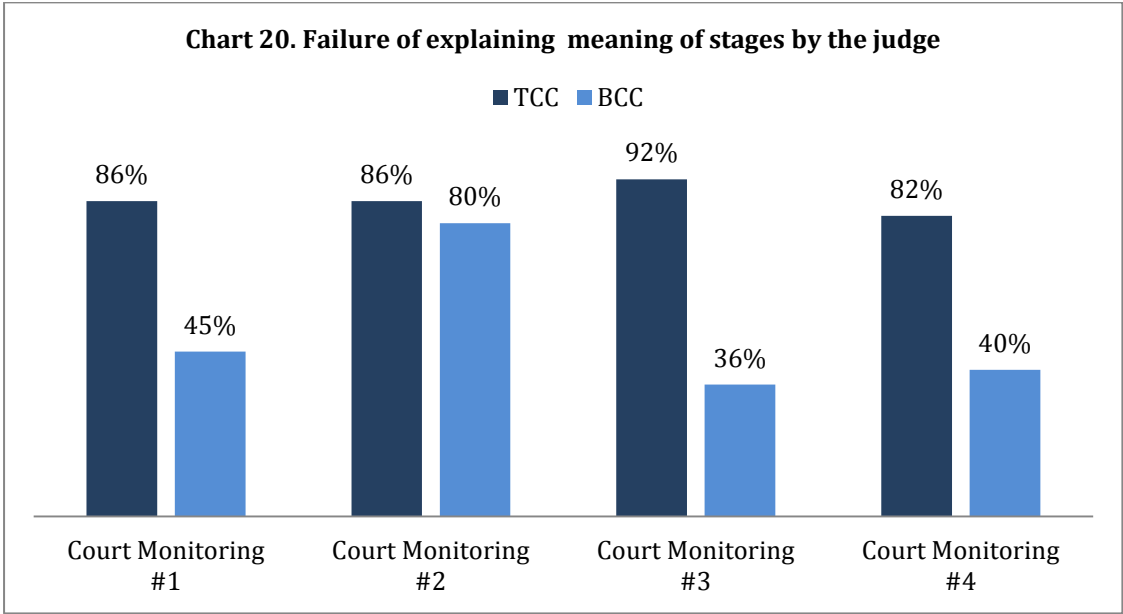


Chart 21. Failure of explaining meaning of stages by the judge KCC

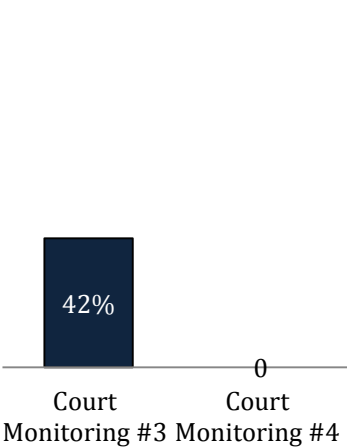


Chart 22. Failure of explaining meaning of stages by the judge GDC

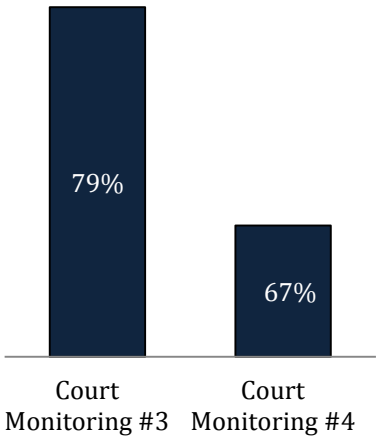
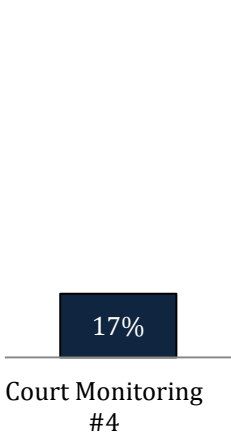


Chart 23. Failure of explaining meaning of stages by the judge RDC



TI Georgia also monitored whether judges explained the legal grounds on which their interim decisions were based. At TCC, the judges did not provide the legal basis for their interim decisions in 16% (16 of 102) of cases monitored, a doubling of the percentage when compared to the third monitoring period where judges did not provide the legal basis for their interim decisions in only 8% (12 of 157) of cases monitored. At BCC, KCC and GDC the legal basis was provided in all of the monitored cases. At RDC, there was only one of 6 cases where the legal basis was not provided.

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.

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

- Announcing the case to be heard;³⁰
- Announcing the court composition;³¹
- Informing the parties of their right to challenge the judge and file motions.³²

However, exceptions from these good practices were observed at RDC and GDC. At RDC, the right to challenge the judge was only introduced in 43% of main hearings. At GDC, the right to file a motion was introduced in only 50% of preliminary hearings. These are important rights that should have been explained to the parties, particularly if the party is not represented by an attorney.

At TCC judges failed to make parties aware of certain rights, i.e. the right to settle, the right to withdraw the claim and the right to give opinions on the motions filed by a counter party, while in the regional courts parties were largely made aware of these rights.³³

During this monitoring period, judges continued to perform well at maintaining order in the courtroom. Judges maintained order in 96% (182 of 189) of cases monitored at TCC; in 97% (29 of 30) of cases monitored at BCC; and in 100% of cases monitored at KCC, GDC and RDC.

As in the previous monitoring periods, 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. Results from this monitoring period are similar to what was observed in the third monitoring period. During the fourth monitoring period, TCC judges did not skip any procedural stage of the hearing without prior consultations with

³⁰ See annex 5. Table 5.1

³¹ See annex 5. Table 5.2

³² See annex 5. Table 5.5

³³ See annex 5. Tables 5.7, 5.8, 5.9.

the parties in 99% (187 of 189) of cases, and judges did not do so in any case at BCC, KCC, GDC and RDC. In the third monitoring period, statistics showed 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 (44 of 44); and in 97% of cases at KCC (32 of 33). 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 (31 out of 35).

During this monitoring period at TCC, when moving from one stage to another, judges announced the next stage in 99% (187 of 189) of cases, and in all cases at BCC, KCC, GDC and RDC. These results were similarly positive during the third monitoring period. When moving from one stage to another, judges announced the next stage in 96% of cases at TCC (151 of 157), in 100% of cases at BCC, and in 97% of cases at KCC.

Despite the requirement that judges announce the evidence on which the final decision was based, at TCC the judges announced the evidence they based their decision on in only 26% (49 of 189) of cases – a low percentage when compared to BCC, and especially when compared to KCC and GDC. The judges announced the evidence they based their decision on in: 60% (18 of 30) of cases at BCC; 100% in KCC and GDC and 33% in RDC. During the third monitoring period, at TCC judges announced the evidence they based their decision on in only 28% (44 of 157); at BCC in 83% (38 of 44); at KCC in 97% (33 of 34) and in GDC 100%.

The percentage of cases at which TCC judges announced the evidence they based their final decision on during the third monitoring period was a dramatically lower percentage when compared to 41% during the second monitoring period. At BCC, the judges announced the evidence they based their decision on in 83% (38 of 44) of cases monitored during the third monitoring period. There was definitely an improvement in results when compared to the second monitoring period, where at BCC the evidence was announced in only 23% of cases. During the third monitoring period, the evidence was announced in 97% (33 of 34) of cases monitored at KCC, and in 100% of cases at GDC. Judges must ensure that they make such announcements in all cases, not only to comply with applicable legislation but also to ensure transparency in the judgments rendered.

When rendering final decisions, during this monitoring period, judges announced the appeal procedures in: 97% (183 of 189) of cases at TCC; all cases at BCC, GDC and RDC; and 97% (36 of 37) of cases in KCC. This is a positive trend that continued from the third monitoring period.

Recommendations

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 main hearings held at TCC. All judges should comply with this legal requirement.

It's required by law to announce the evidence on which they based their decision, so all judges should do so – not only because of law requirement, but also to ensure transparency within the judicial system. Compliance with this requirement is especially low at TCC, BCC and RDC compared to other courts and it is especially important for them to improve their compliance with their legal obligation.

Judges should ensure that they provide the legal grounds on which their interim decisions are based. This should especially be taken into consideration at TCC, where the percentage of cases in which judges were not providing the legal grounds for their interim decisions doubled between the previous monitoring period and now.

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. 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. Informing parties of their rights and meaning of their rights will do much to enhance the public's confidence in the legal system.

It is also 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 at TCC and RDC, 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.³⁴ 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.³⁵

In a civil dispute the judge is not awarded the abovementioned 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.³⁶ Private parties who are opposed by administrative authorities must have the opportunity to fully participate in the proceedings.³⁷

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, assisted

³⁴ David Jackson: Adversarial and Inquisitorial Systems Medico-Legal Society of NSW Inc Scientific Meeting, March 2009, Pg.1.

³⁵ Georgian Administrative Procedure Code, Art. 4.

³⁶ M. Kopaleishvili, et al., pg. 27.

³⁷ 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.

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

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

The results show that judges remain reluctant in inviting third parties to administrative cases – a continuous trend that occurred throughout all four monitoring periods. At TCC, during this monitoring period judges showed less initiative in inviting third parties, whereas in BCC, KCC and GDC there is slight improvement. During this monitoring period, judges at TCC invited third parties in 26 of 313 hearings (15 at preliminary hearings and 11 at the opening of the main hearings); in 4 of 65 hearings (1 at preliminary hearings and 3 at the opening of the main hearings) at KCC; and in no instances at BCC, GDC and RDC (a total of 37 preliminary hearings and 31 main hearings). During the third monitoring period, judges at TCC invited third parties: in 10 of 231 hearings (8 at preliminary hearings and 2 at the opening of the main hearings); in 3 of 58 hearings (1 at preliminary hearings and 2 at the opening of the main hearings) at BCC; in 3 of 41 hearings (2 at preliminary hearings and 1 at the opening of the main hearings) at KCC; and in 2 of 20 hearings at GDC.

Furthermore, judges requested additional information or evidence from the parties in less than 15% of hearings (preliminary hearings and the opening of main hearings combined) at all courts, with the exception of KCC (18%). These overall percentages remain very low given the amount of hearings monitored (683 hearings). There is a trend throughout all monitoring periods in which judges remain passive.³⁸

One further criterion in which TI Georgia monitored was whether judges gave instructions/recommendations to the parties (without hindering the adversarial principle). Despite the fact that giving instructions/recommendations fully depends on the context of each case, it is recommended for judges to be more active in it. At TCC, this occurred in 24 preliminary hearings (21 to the plaintiffs' and 3 to the defendants' side) and in 12 main hearings (9 to the plaintiffs' and 3 to the defendants' side). At BCC, the results were 20 preliminary hearings (11 to the plaintiffs' and 9 to the defendants' side) and in 2 main hearings (both to the plaintiffs' side). At KCC, 4 instructions/recommendations were given to each party during preliminary hearings and 3 for each party at the main hearings. At GDC, 3 instructions/recommendations were given to each party at preliminary hearings and 3 (1 to the plaintiffs' and 2 to the defendants' side) at the main hearings. No such cases occurred at RDC.

³⁸ See annex 6. Table. 6.2

During the third monitoring period 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; at 9 out of 41 hearings at KCC; and at 4 out of 20 hearings at GDC.

One positive observation is that, based on the statistics gathered by TI Georgia, judges generally asked an adequate amount of questions during cases. A fundamental importance for asking questions is to establish relevant evidence in a case. However, it should be noted that the appropriate number of questions a judge should ask is fully dependent on the content of each case.

On average, judges asked 5 questions at TCC, 4 questions per case at BCC, 6 questions at KCC, 3 questions in GDC and 2 questions at RDC. During the third monitoring period, on average, judges asked 4 questions at TCC, 6 questions at BCC, 6 questions at KCC, and 8 questions at GDC. 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 was 5 at TCC and 6 at BCC.

We also monitored whether the questions asked by the judges established any relevant evidence. The questions asked by judges established relevant evidence in 85% (134 of 158) of the cases in which questions were asked at TCC, and in all cases in which questions were asked at BCC, KCC, GDC and RDC. 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 extremely important in Georgia, where no free legal aid is provided by the state in administrative disputes. Throughout this monitoring period - as was the case in all monitoring periods - judges showed little 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., TI recommends that judges take more initiative 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 fair decisions.

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) recommendations³⁹ and ODIHR Kiev recommendations⁴⁰ were drafted as a result.⁴¹

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 ensure the equality of arms, so there is no concern that he/she is not impartial where the state is a party.⁴²

The principle of impartiality also implies that private persons should have the ability to actively participate in the proceedings to ensure their fairness.⁴³ 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.⁴⁴

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

³⁹ [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.

⁴⁰ [Kyiv Recommendations](#) on Judicial Independence in Eastern Europe, South Caucasus and Central Asia.

⁴¹ See n 27, pg. 29.

⁴² Ibid pg. 63.

⁴³ Ibid pg. 72.

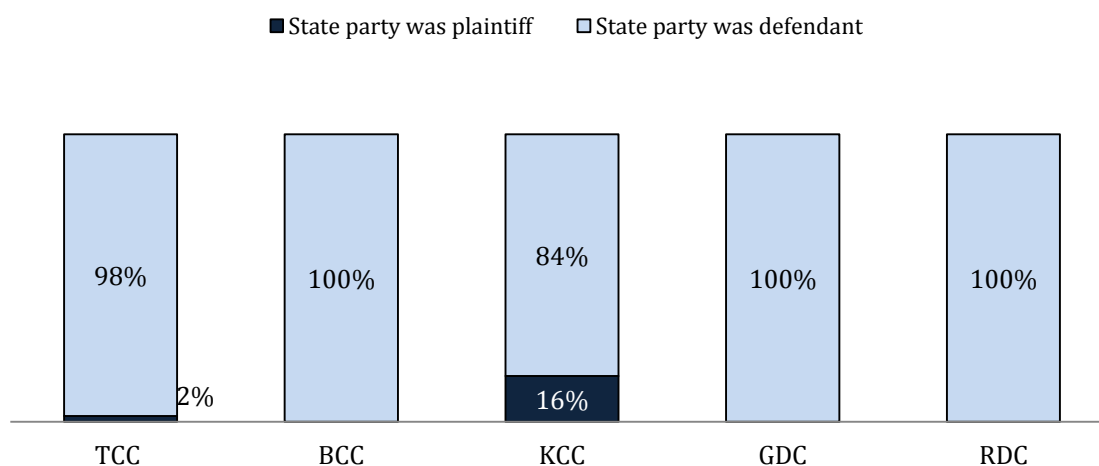
⁴⁴ [Schuler-Zraggen v Switzerland](#), (1993), ECHR, paras. 50-52.

legitimate doubt as to whether there has been any dependence or bias (violation of objective impartiality).

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 subsequent 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.

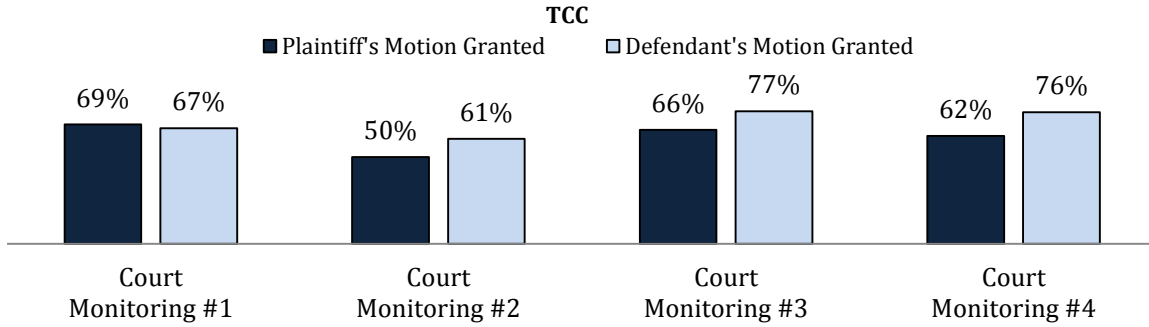
Chart 24. Status of state party



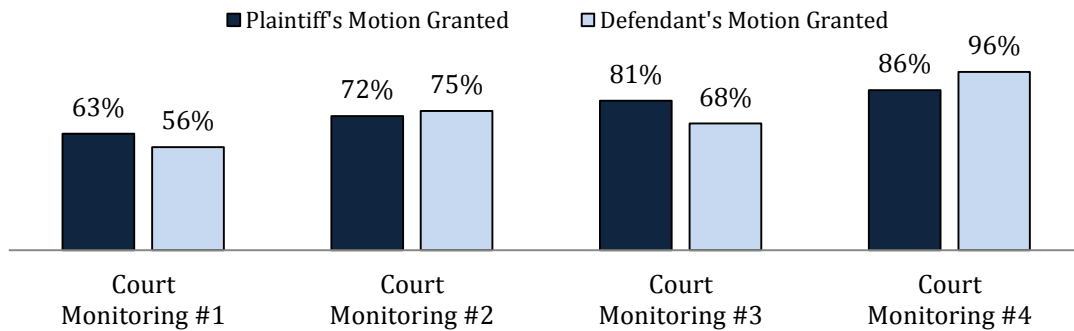
One important criterion for assessing whether the adversarial principle/equality of arms is adhered to is the percentage of filed motions granted by judges. Party equality may be violated by the judge, granting the motions of only one party. In this respect, TI Georgia found that judges granted a higher percentage of motions filed by the defendants (typically the state party) than those filed by the plaintiffs. Where this was the case – as in TCC, BCC and KCC - there was only a maximum difference of 14% of motions being granted in favor of the defendants, which raises no major concern.

No major concerns were raised regarding this issue during this monitoring period, when judges at TCC granted 62% (76 of 122) of motions filed by plaintiffs and 76% (38 of 50) of motions filed by defendants. At BCC, judges granted 86% (25 of 29) of motions filed by plaintiffs and 96% (24 of 25) motions filed by defendants. At KCC, judges granted 81% (35 of 43) of motions filed by plaintiffs and 84% (26 of 31) motions filed by defendants. At GDC, plaintiffs filed 12 motions and 50% were granted, while defendants filed 5 motions and 2 were granted (40%). At RDC, plaintiff filed 6 motions and 67% were granted, while none of the defendants filed motions in any of the cases.

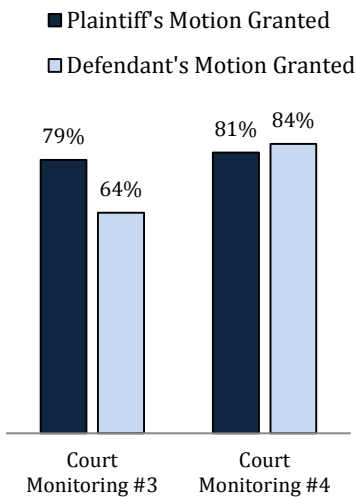
**Chart 25. Parties' Motions Granted by the Judge
(at the main hearing)**



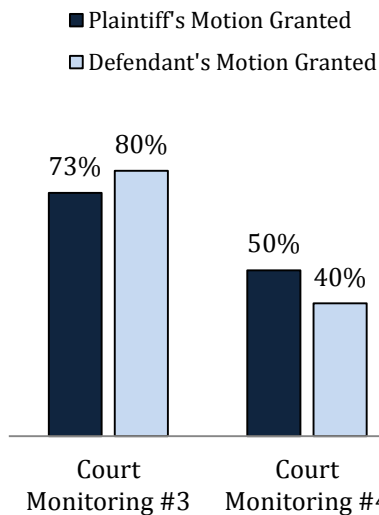
**Chart 26. Parties' Motions Granted by the Judge
(at the main hearing)**



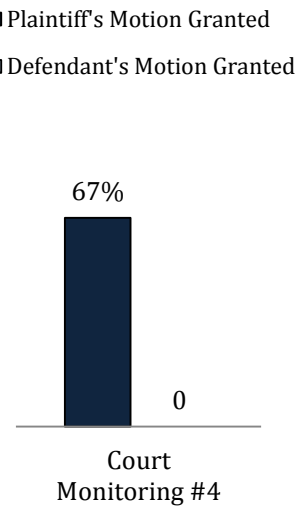
**Chart 27. Parties' Motions
Granted by the Judge
(at the main hearing)**



**Chart 28. Parties' Motions
Granted by the Judge
(at the main hearing)**



**Chart 29. Parties' Motions
Granted by the Judge
(at the main hearing)**



A second aspect that TI Georgia monitored was the number of questions that judges struck. TI Georgia did not attempt to determine whether the striking of a question was appropriate, due to the fact that striking questions is fully dependant on the content and appropriateness of each question. The results indicated a fair outcome for both plaintiffs and defendants during this monitoring period. Judges struck the plaintiffs' questions in 7 of 189 cases and the defendants' questions in 3 of 189 cases at TCC. Judges did not strike any of the plaintiffs' and defendants' questions at BCC. Judges struck the plaintiffs' questions in 1 of 37 cases and the defendants' questions in 4 of 37 cases at KCC. At RDC, only one of defendants' questions was struck. No such cases occurred at GDC.

During the third 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% of cases (4 of 14), and no defendant's question was struck.

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, judges struck the questions of plaintiffs in 6% of cases, and of defendants in 3% of cases. At GDC judges struck the questions of plaintiffs in 11% of cases, and of defendants 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. TI Georgia has no recommendations on this issue, other than the courts continue to observe a fair balance between the parties.

Conclusion

During the fourth monitoring period of administrative court hearings, from January to July 2014, 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 share of cases won by state parties continued to significantly decrease compared to the previous court monitoring periods.

This was TI Georgia's first time monitoring RDC, which produced many unfavorable findings when compared to the improvements observed at the other regional courts that were also monitored in the past. The aim of TI-Georgia's court monitoring project was to reveal problems in the system and not only in particular courts. Problematic areas and recommendations should be generalized and taken into consideration by other courts.

One significant difference between the findings at RDC and other courts is that the percentage of cases in which the state parties were entirely successful in the regional courts that were previously monitored was less than 35%, whereas, the percentage at RDC was a high 67%. RDC also had many hearings that were delayed - there were only 29% of hearings that started on time, which was an outlier when compared to the remaining courts that all produced results of starting on time in over 50% of hearings. There were also distinct differences in the way that judges handled the cases at RDC, for example: judges failed to provide a summary of the case in 86% of main hearings; no settlements were offered at any monitored hearing; and judges announced the evidence they based their decisions on in only 33% of cases.

The way judges handled the cases at TCC during this monitoring period was again much less favorable when compared to the cases handled at the regional courts, with the exception of RDC. Specifically, TCC underperformed in: providing case summaries during main hearings; explaining the rights to parties; explaining the meanings of the various stages in hearings; providing legal grounds on which interim decisions were based; the offer of settlements; and announcing the evidence on which final decisions were based on. This is problem that was first observed in the third monitoring period.

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

- Overall, judges made significant improvements in providing case summaries during hearings, with the exception of TCC.
- Judges continued to perform well at maintaining order in the courtrooms monitored, and judges generally did not skip any procedural stage of the hearing without prior consultations with the parties concerned.

- At the regional courts, parties were largely made aware of certain rights, i.e. the right to settle, the right to withdraw the claim and the right to give opinions on the motions filed by a counter party. However, this did not occur often at TCC, where only two rights were regularly introduced in the majority of cases: the right to file a motion and the right to challenge the judge.
- There were great improvements made at BCC, KCC and GDC, with regard to judges proposing settlements at hearings. However, judges showed a low initiative in suggesting that parties settle their disputed in TCC and RDC.
- Generally, judges performed well in announcing the evidence and legal grounds on which their final decisions were based – with the exception of TCC and RDC.

TI Georgia monitored both the inquisitorial and adversarial powers used by judges during hearings. Throughout all monitoring periods, judges showed little initiative in applying their inquisitorial powers, especially in the areas of: inviting third parties to the hearings; providing instructions/recommendations to the parties; and requesting additional information and evidence from the parties. As stressed in previous monitoring reports, there is a strong need for improvement in these areas – 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 three previous monitoring periods.

Overall, all monitored courts produced acceptable results in publishing initial hearings on their official schedules, which help support the parties' right to a public hearing. However, problems were encountered when hearings were postponed for an indefinite period – our monitors were unable to obtain information on the rescheduling of postponed hearings. This is a repeatedly trend from the third monitoring period. Furthermore, TCC frequently failed to publish the relevant articles of law at issue in dispute.

Generally, the fourth monitoring period produced favorable results regarding whether hearings started on time, particularly at TCC, BCC and GDC. However, KCC and RDC had relatively high percentages of hearings starting late.

Finally, to address the shortcomings that were 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. Improvement is especially needed at TCC, BCC and RDC.
- Ensure that the legal grounds on which interim decisions are based are announced.
- Ensure that the rights of parties and the meaning of the stages of each hearing are explained, particularly to unrepresented private parties.
- When appropriate, judges should propose settlements prior to the main hearing.
- Ensure that judges are consistently providing a summary of each case when opening a 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.
- Judges at KCC and RDC should ensure that hearings are starting on time.
- 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	189	459	138	71	175	75
BCC	30	98	27	23	21	27
KCC	37	97	28	5	37	27
GDC	6	12	6	3	3	0
RCC	6	17	3	2	7	5
Total	268	683	202	104	243	134

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	80 cases	3 cases	7 cases	36 cases
BCC	36 cases	4 cases	2 cases	9 cases
KCC	11 cases	9 cases	4 cases	19 cases
GDC	0	16 cases	2 cases	3 cases
RDC	0	0	0	0

Annex 2. Cases Monitored by Administrative Body Involved

Table 2.1

Administrative body	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Public Registry, P.R.D. Commission, Ministry of Economy	46	16	7	4	1
Mayor's Office, City Supervision Service	31	9	9	1	3
Social Service Agency	8	0	2	0	0
National Bureau of Execution	10	0	1	0	0
Universities and/or National Center for Educational Quality Enhancement	8	2	0	0	0
Public Service Development Agency	24	0	3	0	0
Revenue service, Ministry of Finance	16	1	2	0	0
Other	46	2	13	1	2
	189	30	37	6	6

Annex 3. Punctuality and Reasonable Time

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

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Total # of hearings Monitored	459	98	97	12	17
Hearings starting on time	366 (79.7%)	75 (76.5%)	50 (51.5%)	8 (66.7%)	5 (29.4%)
Hearings starting late	93 (20.3 %)	23 (23.5%)	47 (48.5%)	4 (33.3%)	12 (70.6%)

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

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Total # of hearings Monitored	459	98	97	12	17
Hearings starting 10 minutes or more late	66 (14%)	6 (6.1%)	40 (41.2%)	2 (16.6%)	12 (70.6%)

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

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Hearings delayed more than 10 minutes	66 hearings	6 hearings	40 hearings	2 hearings	12 hearings
Reason announced	26 (39.3%)	2 (33.3%)	16 (40%)	1 (50%)	0 (0%)
Reason not announced	40 (60.7%)	4 (66.7%)	24 (60%)	1 (50%)	12 (100%)

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

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Hearings delayed more than 10 minutes	66 hearings	6 hearings	40 hearings	2 hearings	12 hearings
Previous hearing lasted too long	21 (31.8%)	1 (16.7%)	13 (32.5%)	1 (50%)	0
One of the parties was late	5 (7.6%)	1 (16.7%)	1 (2.5%)	0	0
Other	3 (4.5%)	0	0	0	0
Unknown	37 (56.1%)	4 (66.6%)	26 (65%)	1 (50%)	1 (100%)

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

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Average	30 days	44 days	31 days	22 days	20 days
Maximum	338 days	198 days	106 days	50 days	56 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	Kutaisi	Gori	Rustavi
Total # of Hearings Monitored	459	98	97	12	17
Published hearings	429 (93.5%)	87 (88.8%)	97 (100%)	12 (100)	17 (100)
Unpublished hearings	30 (6.5%)	11 (11.2%)	0	0	0

Table 4.2 – Publishing of the article under dispute

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Total number of hearings published	459	98	97	12	17
Article under dispute published	0 (0%)	65 (66,3%)	96 (99%)	10 (83.3%)	17 (100%)
Article under dispute not published	459 (100%)	33 (33.7%)	21 (1%)	2 (16.7%)	0 (0%)

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

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Total # of Cases Monitored	189 cases	30 cases	37 cases	6 cases	6 cases
All the hearings were recorded	98.4% 186 cases	90% 27 cases	97.3% 36 cases	100 % 6 cases	6 100%
At list one of the hearing was not recorded	1.6% 3 cases	10% 3 cases	2.7% 1 cases	0% 0 case	0 case 0%

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
2.7%	97.3%	30%	70%	21.6%	78.4%	0%	100%	0%	100%
5 cases	184 cases	9 cases	21 cases	8 cases	29 cases	0 cases	6 cases	0 cases	6 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		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	130 (94.2%)	8 (5.8%)	27 (100%)	0 (0%)	28 (100%)	0 (0%)	5 (83.3%)	1 (16.7%)	4 (100%)	0 (0%)
At the opening of the main hearing	170 (97.1%)	5 (2.9%)	21 (100%)	0 (0%)	36 (97.3%)	1 (2.7%)	3 (100%)	0 (0%)	7 (100%)	0 (0%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	125 (90.6%)	13 (9.4%)	27 (100%)	0 (0%)	28 (100%)	0 (0%)	6 (100%)	0 (0%)	4 (100%)	0 (0%)
At the opening of the main hearing	164 (93.7%)	11 (6.3%)	21 (100%)	0 (0%)	36 (97.3%)	1 (2.7%)	3 (100%)	0 (0%)	6 (85.7%)	1 (14.3%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	47 (34.1%)	91 (65.9%)	23 (85.2%)	4 (14.8%)	28 (100%)	0 (0%)	4 (66.7%)	2 (33.3%)	2 (50%)	2 (50%)
At the opening of the main hearing	106 (60.6%)	69 (39.4%)	18 (85.7%)	3 (14.3%)	36 (97.3%)	1 (2.7%)	2 (66.7%)	1 (33.3%)	1 (14.2%)	6 (85.8%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	19 (13.8%)	119 (86.2%)	27 (100%)	0 (0%)	27 (96.4%)	1 (3.6%)	3 (50%)	3 (50%)	4 (100%)	0
At the opening of the main hearing	38 (21.7%)	137 (78.3%)	19 (90.5%)	2 (9.5%)	31 (83.8%)	6 (16.2%)	3 (100%)	0 (0%)	6 (85.7%)	1 (14.3%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	110 (79.7 %)	28 (20.3%)	27 (100 %)	0 (0%)	28 (100%)	0 (0%)	2 (33.3%)	4 (66.7%)	4 (100%)	0 (0%)
At the opening of the main hearing	155 (88.6 %)	20(11.4 %)	21 (100 %)	0 (0%)	37 (100%)	0 (0%)	3 (100%)	0 (0%)	3 (42.9 %)	4 (57.1 %)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	Yes	No	No	Yes	No	Yes	No
At the preliminary hearing	109 (80%)	29 (20%)	27 (100%)	0 (0%)	28 (100%)	0 (0%)	3 (50%)	3 (50%)	4 (100%)	0 (0%)
At the opening of the main hearing	150 (85.7%)	25 (14.3%)	21 (100%)	0 (0%)	35 (94.6%)	2 (5.4%)	0 (0%)	3 (100%)	6 (85.7%)	1 (14.3 %)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	19 (13.8%)	119 (86.2%)	26 (96.3%)	1 (3.7%)	28 (100%)	0 (0%)	4 (66.7%)	2 (33.3%)	0 (0%)	4 (100%)
At the opening of the main hearing	22 (12.6%)	153 (87.4%)	21 (100%)	0 (0%)	35 (94.6%)	2 (5.4%)	2 (66.7%)	1 (33.3%)	0 (0%)	7 (100%)

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		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	10 (7.2%)	128 (92.8%)	21 (77.8%)	6 (22.2%)	28 (100%)	0 (0%)	1 (16.7%)	5 (83.3%)	0 (0%)	4 (100%)
At the opening of the main hearing	11 (6.3%)	164 (93.7%)	16 (76.2%)	5 (23.8%)	37 (100%)	0 (0%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

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		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	15 (10.9%)	123 (89.1%)	20 (74.1%)	7 (25.9%)	28 (100%)	0 (0%)	1 (16.7%)	5 (83.3%)	0 (0%)	4 (100%)
At the opening of the main hearing	14 (8%)	161 (92%)	16 (76.2%)	5 (23.8%)	37 (100%)	0 (0%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	10 (7.3%)	128 (92.7%)	20 (74.1%)	7 (25.9%)	28 (100%)	0 (0%)	0 (0%)	6 (100%)	0 (0%)	4 (100%)
At the opening of the main hearing	12 (6.9%)	163 (93.1%)	16 (76.2%)	5 (23.8%)	36 (97.3%)	1 (2.7%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

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		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	16 (11.6%)	122 (88.4%)	20 (74.1%)	7 (25.9%)	28 (100%)	0 (0%)	1 (16.3%)	5 (73.7%)	0 (0%)	4 (100%)
At the opening of the main hearing	11 (6.3%)	164 (93.7%)	16 (76.2%)	5 (23.8%)	36 (97.3%)	1 (2.7%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	7 (5.1%)	131 (94.9%)	20 (74.1%)	7 (25.9%)	28 (100%)	0 (0%)	0 (0%)	6 (100%)	0 (0%)	4 (100%)
At the opening of the main hearing	13 (7.4%)	162 (92.6%)	16 (76.2%)	5 (23.8%)	35 (94.6%)	2 (5.4%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	7 (5.1%)	131 (94.9%)	24 (88.9%)	3 (11.1%)	18 (64.3%)	10 (35.7%)	0 (0%)	6 (100%)	1 (25%)	3 (75%)
At the opening of the main hearing	10 (5.7%)	165 (94.3%)	15 (71.4%)	6 (28.6%)	26 (70.3%)	11 (29.7%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

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

Court	Accepted	Rejected	No Counterclaim
Tbilisi	1.6% 3 cases	0% 0 cases	98.4% 186 Cases
Batumi	33.3% 1 cases	0% 0 cases	96.7% 29 Cases
Kutaisi	2.7% 1 cases	0% 0 cases	97.3% 36 Cases
Gori	0% 0 cases	0% 0 cases	100% 6 cases
Rustavi	0% 0 cases	0% 0 cases	100% 6 cases

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Accepted	Rejected	Accepted	Rejected	Accepted	Rejected	Accepted	Rejected	Accepted	Rejected
56.4%	43.6%	66.7%	33.3%	80%	20%	-	-	-	-
22 cases	17 cases	10 cases	5 cases	12 cases	3 cases				

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
189 cases		30 cases		37 cases		6 cases		6 cases	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
2 (1.1%)	187 (98.9 %)	0 (0%)	30 (100%)	0 (0%)	37 (100%)	0 (0%)	6 (100%)	0 (0 %)	6 (100%)

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
189 cases		30 cases		37 cases		6 cases		6 cases	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
187 (98.9 %)	2 (1.1%)	0 (0%)	30 (100%)	0 (0%)	37 (100%)	0 (0%)	6 (100%)	0 (0 %)	6 (100%)

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
17.5% 33 cases	82.5% 156 cases	60% 18 cases	40% 12 cases	100% 37 cases	0% 0 cases	33.3% 2 cases	66.7% 4 cases	83.3% 5 cases	16.7% 1 cases

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

Court	Yes	No	No interim decision
Tbilisi	45.5% 86 cases	8.5% 16 cases	87 cases
Batumi	100% 28 cases	0% 0 cases	2 cases
Kutaisi	100% 23 Cases	0% 0 cases	14 cases
Gori	100% 6 cases	0% 0 cases	0
Rustavi	83.3% 5 case	16.7% 1 cases	0

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
96.3%	3.7%	96.7%	3.3%	100%	0%	100%	0%	100%	0%
182	7	29	1	37	0	6	0	6	0
cases	cases	cases	case	cases	case	cases	case	cases	case

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1.6%	98.4%	0%	100%	0%	100%	0%	100%	0%	100%
3	186	0	30	0	37	0	6	0	6
case	cases	case	cases	case	cases	case	cases	case	cases

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1.1%	98.9%	0%	100%	0%	100%	0%	100%	0%	100%
2	187	0	30	0	37	0	6	0	6
case	cases	case	cases	case	cases	case	cases	case	cases

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
96.8%	3.2%	100%	0%	97.3%	2.7%	100%	100%	100%	0%
183	6	30	0	36	1	6	0	6	0
case	cases	cases	cases	cases	cases	case	cases	case	cases

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
25.9%	74.1%	60%	40%	100%	0%	100%	0%	33.3%	66.7%
49	140	18	12	37	0	6	0	2	4
cases	cases	cases	case	cases	case	cases	case	cases	case

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
54%	56%	66.7%	33.3%	100%	0%	100%	0%	66.7%	33.3%
102	87	29	1	37	0	6	0	4	2
cases	cases	cases	case	cases	case	cases	case	case	cases

Table 5.26 – Did the judge propose a settlement?⁴⁵

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
Tbilisi	19.6% 27 hearings	68.8% 95 hearings	11.6% 16 hearings	19.4% 34 hearings	69.7% 122 hearings	10.9% 19 hearings
Batumi	96.3% 26 hearings	0% 0 hearings	3.7% 1 hearings	90.5% 19 hearings	4.8% 1 hearings	4.7% 1 hearings
Kutaisi	96.4% 27 hearings	3.6% 1 hearings	0% 0 hearings	81.1% 30 hearings	16.2% 6 hearings	2.7% 1 hearings
Gori	66.6% 4 hearings	16.7% 1 hearings	16.7% 1 hearing	66.7% 2 hearings	33.3% 1 hearings	0% 0 hearing
Rustavi	0% 0 hearings	75% 3 hearings	25% 1 hearings	0% 0 hearing	100% 7 hearings	0% 0 hearings

⁴⁵ 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		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	yes	no
At the preliminary hearing	15 (10.9%)	123 (89.1%)	0 (0%)	27 (100%)	1 (3.6%)	27 (100%)	0 (0%)	6 (100%)	0 (0%)	4 (100%)
At the opening of the main hearing	11 (6.3%)	164 (93.7%)	0 (0%)	21 (100%)	3 (11.1%)	24 (100%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	17 (12.3%)	121 (87.7%)	4 (14.8%)	23 (85.2%)	4 (14.3%)	24 (85.7%)	1 (16.7%)	5 (83.3%)	0 (0%)	4 (100%)
At the opening of the main hearing	11 (6.3%)	164 (93.7%)	1 (4.8%)	20 (95.2%)	8 (29.6%)	19 (70.4%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

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

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	24 (17.4%)	114 (82.6%)	20 (74.1%)	7 (25.9%)	8 (28.6%)	20 (71.4%)	6 (100%)	0 (0%)	0 (0%)	4 (100%)
At the opening of the main hearing	12 (6.9%)	163 (93.1%)	2 (9.5%)	19 (90.5%)	6 (22.2%)	21 (77.8%)	3 (100%)	0 (0%)	0 (0%)	7 (100%)

Table 6.4 - Did the judge invite expert/specialist/interpreter/witness to the case on his/her own initiative?

	Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
At the preliminary hearing	5 (3.6%)	133 (96.4%)	0 (0%)	27 (100%)	2 (7.1%)	26 (92.9%)	0 (0%)	6 (100%)	0 (0%)	4 (100%)
At the opening of the main hearing	4 (2.3%)	171 (97.7%)	0 (0%)	21 (100%)	0 (4.5%)	27 (95.5%)	0 (0%)	3 (100%)	0 (0%)	7 (100%)

Table 6.5 - Did the judge provide the parties with a relevant explanation about the meaning of each stage?

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
33 (17.5%)	156 (82.5%)	18 (60%)	12 (40%)	37 (100%)	0 (0%)	2 (33.3%)	4 (66.7%)	5 (83.3%)	1 (16.7%)

Table 6.6 - Did the judge establish any relevant evidence when asking questions?

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
84.8%	15.2%	100%	0%	100%	0%	100%	0%	100%	0%
134	24 cases	30	0	37	0	6	0	6 case	0
case		cases	case	cases	cases	cases	case		case

Table 6.7 - Did the judge show initiative?

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
58.7%	41.3%	66.7%	33.3%	97.3%	2.7%	66.7%	33.3%	0%	100%
111	78	20	10	36	1	4	2	0	6
cases	cases	cases	cases	case	case	case	cases	case	cases

Table 6.8 – Average number of questions asked by the judge?

Tbilisi	Batumi	Kutaisi	Gori	Rustavi
5	4	6	3	2

Annex 7. Equality of Arms (Adversarial Principle)

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

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Total motions filed by the plaintiff	122 motions	29 motions	43 motions	12 motions	6 motions
Motions granted	62.3% (76 motions)	86.2% (25 motions)	81.4% (35 motions)	50% (6 motions)	66.7% (4 motion)
Motions denied	37.7% (46 motions)	13.9% (4 motions)	18.6% (8 motions)	50% (6 motion)	33.3% (2 motion)

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

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Total motions filed by the defendant	50 motion	25 motions	31 motions	5 motions	-
Motions granted	76% (38 motions)	96% (24 motions)	83.9% (26 motions)	40% (2 motion)	-
Motions denied	24% (12 motions)	4% (1 motions)	36% (16.2 motions)	60% (3 motion)	-

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

Tbilisi		Batumi		Kutaisi		Gori		Rustavi	
Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
0%	100%	0%	100%	0%	100%	0%	100%	0%	100%
0	189	0	30	0	37	0	6	0	6
cases	cases	cases	cases	cases	cases	cases	cases	cases	cases

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

Court	plaintiff	defendant	neither
Tbilisi	3.7% 7 cases	1.6% 3 cases	94.7% 179 cases
Batumi	0% 0 cases	0% 0 case	100% 30 cases
Kutaisi	2.7% 1 cases	10.8% 4 case	86.5% 32 cases
Gori	0% 0 cases	0% 0 case	100% 6 cases
Rustavi	0% 0 cases	16.7% 1 case	83.3% 5 cases

Annex 8. Dispute Outcomes

Table 8.1 – Status of state party

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
State party was plaintiff	1.6% 3 cases	0% 0cases	16.2% 6 cases	0% 0cases	0% 0cases
State party was defendant	98.4% 186 cases	100% 30 cases	83.8% 31 cases	100% 6 cases	100% 6 cases

Table 8.2 – Was the state party successful?

	Tbilisi	Batumi	Kutaisi	Gori	Rustavi
Entirely	61.4% 116 cases	26.7% 8 cases	29.7% 11 cases	33.3% 2 cases	66.7% 4 cases
Partially	24.3% 46 cases	50% 15 cases	16.2% 20 cases	33.3% 2 case	33.3% 2 case
Not at all	14.3% 27 cases	23.3% 7 cases	54.1% 6 cases	33.3% 2 cases	0% 0 cases