



Overview of Three-Years of Monitoring on Administrative Cases

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Introduction

This document provides an analysis of the performance of administrative justice in Georgia during 2011-2014. During this time, Transparency International Georgia monitored administrative cases in various cities across Georgia. TI Georgia has produced four court monitoring reports on 771 cases (1749 hearings) overall. Cases were monitored at Tbilisi City Court (TCC), Batumi City Court (BCC), Kutaisi City Court (KCC) - and the district courts of Gori (GDC), Telavi (TDC), Khelvachauri (KDC), Zugdidi (ZDC) and Rustavi (RDC).

Before the start of the court monitoring project, there were serious concerns about the administration of justice. According to the Georgian Supreme Court's statistics, in 2011, **74% of administrative law cases were decided in favor of the state party**. The increasing number of cases involving property rights violations was also alarming, there had been many allegations of serious property rights violations in the context of recent infrastructure developments and the state's strong interest in real estate.¹ Several applications related to such property rights violations have been lodged with the European Court of Human Rights².

Beyond the Supreme Court's statistics, no publicly known reports on administrative hearings were prepared by any organization. For these reasons, TI Georgia initiated its Administrative Court monitoring project. TI Georgia's court monitoring project aimed to facilitate the transparency, efficiency, and accessibility of Georgia's justice system in the area of administrative law.

The political situation during TI Georgia's monitoring project should be taken into consideration. During the first and second monitoring periods (the pre-election period), there were significant flaws in the administration of justice within the Administrative Courts. By the third monitoring period (the post-election period) the overall conduct of administrative courts had changed. In addition, the percentage of cases in which the state party was successful significantly decreased. These trends continued during the fourth monitoring period, but problematic areas still remain.

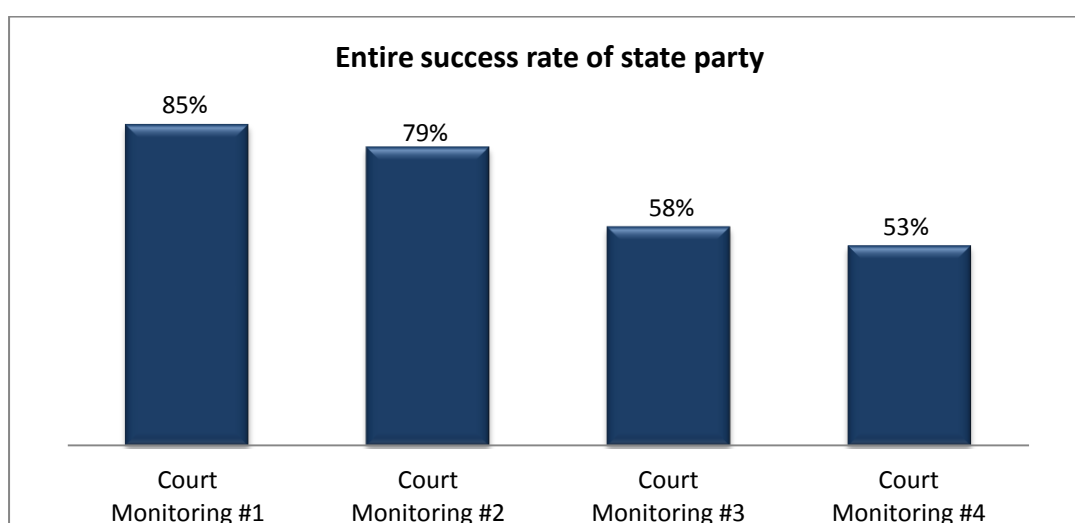
¹ TIG work card 11/05/2011, <http://transparency.ge/en/post/report/transparency-international-georgias-work-card>. Studio GNS documentary "Property Rights Violations Digomi case", <http://www.youtube.com/watch?v=ioAZneCQ1nw>; Problems related to the Protection of Property Rights - The case of Mestia, July 2011, <http://transparency.ge/en/post/report/problems-related-protection-property-rights-case-mestia-july-2011>

² Studio GNS documentary "Property Rights Violations Digomi case", <http://www.youtube.com/watch?v=ioAZneCQ1nw>

Main findings

The court monitoring project's initial results showed that concerns about the administration of justice were reasonable. The first monitoring period revealed a significant and highly problematic result: in 85% (92 of 108) of cases monitored the state party was entirely successful, and in 7% (8 of 108) of cases the state party was partially successful. During the second monitoring period, the success rates of the state party were 79% (112 of 142 cases) and 16% (22 of 142 cases), respectively. During the second monitoring period TI Georgia also monitored high-profile cases (period covered June 2012- October 2012). Cases were considered high-profile if they were the subject to broad media coverage, the private party involved was a public person, the amount of the potential fine was large, or there was a probable link between the dispute and politics. It was found that judges tended to differentiate between routine and high-profile cases. ***In cases of significant public interest, judges appeared to not only render decisions favorable to the state party, but also to violate procedural regulations in favor of the state party.***

Over its four monitoring periods TI Georgia observed a ***positive trend: the success rate of the state party has reduced significantly.*** Although TI Georgia only monitored a limited sample of cases and did not evaluate the merits of the cases, nor did TI Georgia review the case files, the extremely high success rate for state parties when TI Georgia began its monitoring program was of concern. Whereas success rate of state party was 85% (92 of 108) in the first monitoring period, by the fourth period the rate has significantly reduced, with the state party entirely successful in 53% (141 of 268) of cases.



The Supreme Court's official statistics confirm this trend – in 2011 the Supreme Court's statistics reported that the state party was fully successful in 74% of cases³; the ten months of statistics for 2014 report that state party was fully successful in 50% of cases⁴. With regard to the success rate of state parties, BCC showed the most significant difference between monitoring periods. During the first monitoring period, the state party in BCC was fully successful in 87% (27 of 31) of cases and partially successful in 3% (1 of 31) of cases; by contrast, during the fourth monitoring period these figures were 27% (8 of 30) and 50% (15 of 30), respectively. It should also be noted that during all four monitoring periods in most cases judges failed to announce the evidence they relied upon for their decision, but that the regions showed significantly better results regarding this issue. TI Georgia recommends that all judges announce the evidence on which they based their decisions to ensure transparency within the judicial system.

The first court monitoring period also revealed that judges at all of the courts monitored failed to explain procedural rights and obligations to private persons. This was particularly alarming in cases where the private persons were not represented by a lawyer. TI Georgia observed instances when private persons were put in a disadvantageous situation due to the lack of procedural knowledge. After the release of TI-Georgia's first court monitoring report, which showed the failure of courts in explaining their rights to the parties, the courts in Tbilisi, Batumi and Khelvachauri installed special cards on the parties' desks at the courtrooms that listed all of the rights that parties to a dispute have. Judges have also become much more active and have started to provide an explanation of rights to private parties during the proceedings. This has significantly increased the awareness of persons not represented by a lawyer.

Nonetheless, as a state party holds administrative resources and usually has its own legal department, the representation of the state party can be expected to be better than a private party without a lawyer. This creates a gap between the parties. The court's proper use of its inquisitorial power is supposed to fill that gap, with the judge maintaining a legal balance between the public institution and the private party. When utilized, this increases the likelihood that justice is served. However, **during all four monitoring periods judges were very reluctant to exercise their inquisitorial powers** and they were passive in their conduct of hearings. For example, judges were very reluctant to: invite third parties to the case; request additional information or evidence on their own initiative; give instructions/recommendations to the parties; and explain to parties without an attorney/representative procedures that were to be followed during each stage of the court hearing.

³ See. <http://www.supremecourt.ge/2011-year-statistic/> visited on 21.11.2014

⁴ See. <http://www.supremecourt.ge/statistics/2014/> visited on 21.11.2014

The data from TI Georgia's monitoring project are not enough to fully evaluate the inquisitorial principle on an objective basis. However, based on our results, ***the abuse of the court's inquisitorial power was evident in some cases***. In particular, inquisitorial powers were used against private parties during the high-profile cases during the second court monitoring period. For example, in one high-profile case the judge accepted additional evidence submitted by the state party at the closing stage. This was a clear violation of the procedural law, since submission of evidence from the parties at this stage is strictly prohibited. After the private party objected to this, the judge referred to the court's inquisitorial powers and declared that he was requesting the documents from the state party at his own initiative. However it was clear from the hearing that the judge did not have such initiative, nor was the initiative declared in advance; the court's argument was put forward only after the private party objected to the judge's violation of the procedure.

As for the right to public hearing, generally, during the monitoring project anyone interested was allowed to attend administrative hearings. The monitors had no problems when taking notes in courtrooms. Also, bailiffs and clerks were often helpful to our monitors when they were looking for a courtroom. However, during the second court monitoring period ***a troubling change affecting the right to a public hearing*** occurred. On 19 June 2012, the Chairman of TCC issued a decree under which persons interested in attending a court hearing were banned from taking electronic devices into the courtroom. The stated purpose of the decree was to ensure that the provision of the Organic Law of Georgia on Common Courts, which banned audio and video recordings of hearings without the consent of the judge, was enforced. However, although the decree only limited taking devices into the courtrooms, court personnel also prohibited taking the devices into the corridors, which imposed unnecessarily strict restrictions on citizens. In practice, it took time for the bailiffs to check people for electronic devices, which sometimes hindered the ability of TI Georgia's monitors to be on time for hearings. TI Georgia concluded that this ***extra measure*** of prohibiting electronic devices in the courts' corridors was undertaken ***because of the number of politically charged high-profile cases being heard during the second monitoring period***. This practice was abolished during the third monitoring period in March 2013, and according to new regulations court hearings are now open to the media. Audio and video recordings, as well as broadcasting, as a rule are now allowed; although there are exceptional circumstances when a judge can restrict filming based on a reasoned decision. TI Georgia applauds this initiative ***as a step in the right direction of broadening the scope of the right to a public hearing***. As the Venice Commission noted: "There is no doubt that there are considerable advantages to having audio recordings of court hearings, notably for the purpose of settling any disputes about what transpired in court and

also from the point of view of the transparency of proceedings. It can also help ensuring public scrutiny of the functioning of the justice system”⁵.

Overall, judges tended to differentiate between routine and high-profile cases during the second monitoring period. The most alarming problems were observed in high-profile cases. For example, problems regarding the right to public hearing were observed in high-profile cases at TCC. The court frequently failed to publish information about the upcoming hearings in these cases. Also, the hearings in high-profile political cases were normally held in small courtrooms, making it difficult for many interested citizens to attend. In one high-profile case, a violation of the adversarial principle against a private party was observed. In that case the private party filed a motion to postpone the main hearing in order to better familiarize itself with the case materials. The private party argued that a large volume of case materials were delivered only the day before the hearing, and that this gave the party very little time to prepare. The judge denied this motion, arguing that the party had enough time to study the case materials and prepare for the hearing.

The first court monitoring period made it evident that TI Georgia needed to pay closer attention to the punctuality of courts. ***TI Georgia’s observers witnessed cases when disputing parties had to wait several hours for a judge.*** This was a clear indication of the poor time management at the courts. Once TI Georgia started to monitor and report on the punctuality of the courts, the results became significantly better. For example, at TCC during the first monitoring period only 35% of hearings started on time, while during the fourth monitoring period 80% of hearings started on time. However, although punctuality generally improved by the second monitoring period, in high-profile cases punctuality remained a problem with hearings in some high-profile cases starting up to an hour later than scheduled.

Another important problem that was revealed at the final monitoring period is related to the ***heavy caseload at the TCC.*** 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

⁵ OPINION ON THE DRAFT AMENDMENTS TO THE ORGANIC LAW ON COURTS OF GENERAL JURISDICTION OF GEORGIA, Adopted by the Venice Commission at its 94th Plenary Session, Venice, 8-9 March 2013, p. 2 [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)007-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)007-e)

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. The problem should be addressed immediately, before it significantly affects the rights of individuals and impedes the delivery of justice to the citizens.

Conclusion

TI Georgia's Administrative Court monitoring project was introduced during a period of serious concerns regarding administrative justice in Georgia. In its four court monitoring reports TI Georgia identified various problems in the courts monitored, including: unusually high success rate of the state party, judges' reluctance to use their very important inquisitorial power, poor time management at the courts, and increasing caseloads.

Since the launch of the monitoring project in October 2011, TI Georgia has observed a number of improvements at the Administrative Courts. ***Improvements were made before and after the change of government in October 2012.*** The most noteworthy improvement was observed after the elections of 2012, when the overall percentage of cases won by state parties significantly decreased. Another improvement made after the election was regarding the right to a public hearing, with the introduction of new laws that allow greater access to the media. There were also improvements that occurred before October 2012. For example, the introduction of cards in courtrooms that informed parties of their rights, improved punctuality of the judges.

Despite the identified positive trends, the monitoring process showed areas that require further improvements. For example despite placing cards that inform persons of their rights, in most cases the judges still do not provide verbal explanations of different procedures to the parties, even if they are not represented by a lawyer. Other areas where improvements are still needed are the failure of judges to announce the evidence relied on for their final rulings, and the failure of judges to fully utilize their inquisitorial powers.

TI Georgia hopes that ongoing problems revealed by its court monitoring project will be addressed, and that the improvements that TI Georgia has identified will continue in the future and will result in the improved administration of justice in Georgia.