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ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

EMC

Human Rights Education and Monitoring Center



Qualitative Study on the Role of Judges in the Criminal Justice System

Executive summary

Within the project “Facilitating Implementation of Reform in the Judiciary” (FAIR), funded by the European Union and implemented by Human Rights Education and Monitoring Center (EMC) in cooperation with the Institute for Development of Freedom of Information (IDFI) and Caucasus Research Resource Centers Georgia (CRRC), CRRC conducted a qualitative study on the role of judges in criminal justice system. The study took place in the period between February 27 and March 29, 2019. Criminal and administrative law judges of two instances (city/district court and court of appeal¹) were interviewed in Tbilisi, Mtskheta, Rustavi, and Kutaisi (18 interviews in total). Three focus groups were held with private and NGO lawyers in Tbilisi and Kutaisi.

The study aims to identify the issues in regard with the role of judges that legal professionals (judges and lawyers) find important for ensuring fair, impartial and human rights oriented criminal justice system. The study includes the evaluation of the role of judges and discussion of any needed changes in the following areas: administrative offences, adversarial principle in criminal law, termination of the criminal prosecution at the pre-trial stage, plea bargaining, punishment and proportionality of sanctions, the role and status of victims. Apart from the general criminal justice issues, the study is oriented on the two specific crimes: domestic violence and drug related crimes.

¹ Supreme Court refused to participate in the survey due to high workload.

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Due to the research methods used, the results of the study are not representative and cannot be generalized for judges and lawyers in Georgia. Therefore, the report does not present all the arguments and observations about the issues that were raised in the study. However, an important finding is that responses and argumentation among target groups are often similar, leading to the conclusion that the document and data collected reflects the main challenges and views about those challenges in the fields studied.

Some judges and lawyers described the need to change the Code of Administrative Offences. The exact definition of different offenses was of particular focus in this regard. However, many judges did not see it as a particular obstacle to the administration of justice, as they can explain or refer to the change of qualification of the case. In addition, judges refer to inconsistencies of penalties in the Code of Administrative Offence as often people facing administrative punishment prefer to go to detention isolator than pay a fine.

The absence of the burden of proof when discussing administrative offences was named as a challenge especially if there is only testimony or the protocol of an administrative body representative in the case. Often, judges see no grounds to question the testimony of police officers. In contrast, lawyers find it problematic that judges trust administrative body representatives unconditionally and often do not require additional evidence from them (e.g. shoulder camera recordings).

When discussing Criminal Procedure Code, judges and lawyers name two main domains for the expansion of the role of judges: giving judges the right to ask questions without the consent of the parties and the ability to demand expertise. At the same time, according to lawyers, judges treat their role in the adversarial process too formally when they can interpret norms in a broader way. Some judges and lawyers also find it necessary to equip judges with the right to change the terms of plea agreement. Nevertheless, judges say that they do not encounter particular difficulties in approving plea bargains as everything is defined by the law. At the same time, lawyers find it problematic that judges do not analyze plea bargain conditions thoroughly and approve it right away. In order to ensure fair punishment, some judges and lawyers think it is important for judges to have the right to use a punishment that is less than the minimum. As for the role of victims, a large number of judges see no need for change. A smaller share noted that victims should have the right to present evidence and to appeal if the Prosecutor's Office rejects their request. Lawyers claim that victims should have the right to appeal the final decision of the court.

With domestic violence cases, judges name insufficient evidence and witnesses changing or rejecting testimony as the main challenges. As for potential ways to resolve those challenges, judges named making it mandatory for victims to give testimony to court or give testimony to a judge before the court hearing, which will later be used as evidence. Judges pointed out the importance of more active preventive measures on the side of the state. Lawyers report it is important to investigate the reasons victims change their testimony or refuse to make it again and to take into consideration their social-economic background when discussing the case.

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In the discussion of drug related crimes, judges see no need to expand their rights to check the reliability of the sources of operative-investigative information. According to a small number of judges, they should have some ability to check the reliability of the source of operative-investigative information. A judge may receive information about the source at a closed hearings or in case of serious or particularly serious crimes. Most lawyers think it is necessary that judges check the reliability of the source. The absence of video materials depicting searches is not a large challenge for judges. However, lawyers see it as a major shortcoming. According to both judges and lawyers, the burden of proof in drug related crimes is on the side of the accusing side. However, when the defense suggests that drugs were planted on the defendant, the judges' think the defense should share the burden of proof. Most judges reported having difficulty assessing the proportionality of punishment in drug related crimes as they follow the law and the list and amounts provided in the law. Some welcome more differentiation of drugs in the law. Lawyers think punishments are not proportional. They criticize the attitude of judges as they do not refer to the Constitutional Court even if they come across a problem in the legislation. As for the Constitutional Court's precedents on marijuana crimes, judges have positive and negative views. Some highlighted the shortcoming that the legislation does not define legal ways of purchasing marijuana. Lawyers are positive about Constitutional Court precedent and some think it is necessary to have the amount of drugs for personal use defined in the law.

Both Judges and lawyers report that judges rarely refer to the Constitutional Court. Judges explain it through the need to finish the case, as appeals prolong the process and may harm the interests of the accused. They resolve such problems by using the right to interpret the norm of the law. As for lawyers, they report judges do not have a sufficient level of independence in this matter.

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