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უფლებები საქართველო

2020

**THE EFFECTIVENESS
OF ELECTRONIC
JUSTICE DURING
THE PANDEMIC**

The Effectiveness of Electronic Justice during the Pandemic (an Evaluation Report)

The Report is developed by:

Kakha Tsikarishvili

Nana Mchedlidze

Ana Tvaradze

Dimitri Khachidze

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This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). Rights Georgia is responsible for the contents of the report. It does not necessarily reflect the position of the USAID, the US Government or East-West Management Institute.



E A S T • W E S T
M A N A G E M E N T
I N S T I T U T E
*Promoting Rule of Law
in Georgia (PROLoG)*

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1. INTRODUCTION

In the first half of 2020, the modern world faced a new challenge in the form of the Covid-19 pandemic that had emerged at the end of 2019 and spread across 213 countries within 6 months. As of 21 July 2020, there were 14,774,887 confirmed cases and 6,115,999 deceased throughout the world.¹

Georgia was not immune from the pandemic either. While the country was less affected in terms of the spread of the virus, the pandemic had its impact on almost every field of everyday life, including justice.

The Decree of the President of Georgia, issued on 21 March 2020, declared an emergency in the country and restricted a number of civil rights. While the restrictions did not apply to the right to a fair trial, the presidential decree gave preference to online participation of parties in court proceedings. Corresponding changes were made to the Criminal Procedure Code of Georgia and the HCoJ adopted a set of recommendations aimed at contributing to the safe administration of justice during the pandemic.

This new reality affected the administration of justice throughout the country: a significant number of court hearings were adjourned and the rest continued with the online participation of parties;² movement in court buildings was restricted and the public nature of court hearings was restricted as well. While online hearings ensured administration of justice in urgent cases, they also gave rise to the worsening of the quality of justice and breach of court users' rights. Under those circumstances, where the delay in court proceedings was a systemic problem, adjournment of hearings during the pandemic was bound to worsen this problem.

According to the European Court of Human Rights (the "ECtHR"), the use of Internet in this form of participation in proceedings is not, as such, incompatible with the notion of a fair and public hearing, but it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments and that effective and confidential

¹ See <https://stopcov.ge/>.

² According to the HCoJ, as of 15 July, already more than 16,900 hearings have been held.

communication with a lawyer is provided for.³ Accordingly, these issues, unless solved, may lead to serious breaches of the defence rights.

Since July 2020, courtrooms were reopened and the legal restrictions imposed on conducting actual hearings were lifted. However, detention facilities (as of 26 July 2020) are largely avoiding transportation of prisoners to courtrooms and prefer their online participation in proceedings. This poses a problem since the quality of videoconferencing often fails to meet minimal standards.

On the other hand, the large-scale resort to videoconferences gave rise to the necessity to introduce new technologies in the justice sphere which should continue after the end of the pandemic as well.

Since May 2020, Rights Georgia is implementing “Monitoring Electronic Justice during Emergency” project with the support of the Promoting Rule of Law in Georgia Activity (PROLoG) carried by the East-West Management Institute with the United States Agency for International Development (USAID) funding. The project aims at evaluating the effectiveness of e-justice through interviewing court users, monitoring online hearings and developing corresponding recommendations.

2. RESEARCH QUESTION AND APPROACH

The research was focused on the evaluation of the effectiveness of online court services and e-justice. Court proceedings held remotely were evaluated based on the following parameters:

- Quality of audio and video communication;
- Impact of electronic procedures on the speed, costs and quality of court proceedings;
- Respect for defence rights in electronic proceedings; and
- Technical, legal and practical aspects of electronic process.

³ *Sakhnovskiy v. Russia*, application no. 21272/03, judgment of the Grand Chamber of the European Court of Human Rights of 2 November 2010.

3. RESEARCH OBJECTIVE AND METHODOLOGY

The main objective of the research is to evaluate the effectiveness of the courts' online services and electronic hearings. The following quantitative and qualitative research methods were employed to achieve this objective and obtain the maximum amount of information:

- Analysis of normative framework and international experience (desk research);
- Interviewing court users with written questionnaires (quantitative and qualitative research)
- Telephone interviews with respondents (qualitative research);
- Interviews with focus groups (qualitative research); and
- Monitoring of electronic hearings.

Apart from the usual methods of research, it was deemed appropriate to present the primary results of the research to all stakeholders and hold discussions on the identified problems to gain feedback from different perspectives and analyse the issues at stake.

The following were interviewed based on a written questionnaire:

- 121 Lawyers;
- 19 Prosecutors; and
- 14 Judges.

The following participated in the face-to-face interviews:

- 8 Lawyers;
- 6 Assistant Judges; and
- 4 Secretaries to a Court Hearing.

10 Journalists were interviewed within a focus group.

In parallel to the research activities, the project's lawyers carried out real-time monitoring of online court hearings. The project's lawyers attended 20 court hearings.

The methodology was developed especially for monitoring purposes. Taking into account the parameters of online court hearings, a

standardised questionnaire was developed, which was filled out by the project team directly during the monitoring process. The monitoring was aimed at evaluating the effectiveness of a hearing from the technical standpoint, namely, whether the defence participated in the proceedings in compliance with national legislation and international human rights standards.

The monitoring was carried out only with regard to criminal cases, out of which two hearings concerned the approval of plea bargain agreement; 12 hearings were on the examination of merits; 2 hearings concerned application/commutation of a preventive measure and 4 hearings were pre-trial hearings. The average duration of the hearings was 30 minutes. In 16 cases, an accused person was in custody and a non-custodial measure was applied in 4 cases. No material evidence has been examined at any of these hearings. Witness examination took place in 3 cases.

At the concluding stage of the research, the international experience was studied and analysed. This included standards of the United Nations and consultation bodies of the Council of Europe as well as experience of a number of states. The research outcomes were integrated into the project's findings and recommendations.

4. INTERNATIONAL STANDARDS AND STATES' PRACTICE

This sub-chapter discusses the standards laid down within international organisations specifically to tackle the challenges caused by the pandemic in the justice sphere. The project carried out monitoring based on these standards. Other states' practice is given as an example.

4.1. *The United Nations*

The United Nations High Commissioner for Human Rights called upon the Member States to prioritise those cases that the justice system has to tackle during the pandemic. Notably, the Member States should give

priority to serious crimes and domestic violence and employ modern technologies when administering justice with full respect for human rights standards.⁴

4.2. The Council of Europe European Commission for the Efficiency of Justice (CEPEJ)

On 10 June 2020, the European Commission for the Efficiency of Justice (the “CEPEJ”) made the Declaration of Lessons Learned and Challenges Faced by the Judiciary During and After the Covid Pandemic.⁵ According to this document, the COVID-19 pandemic is a health crisis with serious human and social consequences which also created challenges for courts and judicial authorities in the Member States. Therefore, the CEPEJ calls upon the Member States to make efforts to adjust to the new circumstances within a short time and make the best use of existing resources to ensure the functioning of their courts. In the opinion of the commission, the crisis cannot be used to excuse deficiencies in judicial systems and even less to reduce standards or breach legal guarantees. After the end of the crisis, the court systems should be ready for the future possible waves of the pandemic.

In this regard, the CEPEJ called upon the Member States to uphold international standards, among others:

- Right to a fair trial – has to be protected at all times, which become especially important during the crisis. Emergency measures must respect the principles of legality, legal certainty and proportionality and need to be constantly re-evaluated;
- During the pandemic, locking down courts might be necessary to protect the health and safety of justice professionals and court users. It should be done carefully and proportionately as it results in an important limitation of access to justice which is a fundamental principle of the Rule of Law;

⁴ Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>, (accessed 22.07.2020).

⁵ The European Commission for the Efficiency of Justice (CEPEJ), Declaration of Lessons Learned and Challenges Faced by the Judiciary During and After Covid Pandemic, available at: <https://rm.coe.int/declaration-en/16809ea1e2>, (accessed 20.07.2020).

- The public service of justice must be maintained as much as possible, including providing access to justice by alternative means such as online services or strengthening access to information through court websites and other means of communication (phone, email, etc.);
- Greater consultation and coordination with all justice professionals will help to ensure a good level of access to justice;
- Access to justice must be ensured for all users, but at the time of a health crisis, special attention must be devoted to vulnerable groups that are even more at the risk of suffering from the situation. Thus, judicial systems should give priority to cases which concern these groups, such as cases of domestic violence, in particular against women and children, involving elderly people or persons with disabilities, or concerning serious economic situations;
- During the pandemic, locking down courts might be necessary to protect the health and safety of justice professionals and court users;
- Given the number of cases that could not be processed and adjournments of hearings, human resources and budgetary support should help courts to put in place a plan to absorb delays;
- IT-solutions, such as online services, remote hearings and videoconferences, as well as the future development of digital justice, must always respect the fundamental rights and principles of a fair trial. The impact of the use of these technologies on justice delivery should, therefore, be evaluated regularly and remedial measures are taken when necessary;
- Specific training on teleworking should be provided for justice professionals. Judicial training should adapt to the emerging needs, including the use of IT. New curricula should be developed to support justice professionals during and after a health crisis; and
- The COVID-19 pandemic has also been an occasion to introduce emergency innovative practices. A transformation-strategy for judiciaries should be developed to capitalise on the benefits of newly implemented solutions.

4.3. The Consultative Council of European Judges (CCJE)

On 24 June 24 2020, the President of the Consultative Council of European Judges (the “CCJE”) made a statement on the Role of Judges during and in the Aftermath of the COVID-19 Pandemic: Lessons and Challenges.⁶ According to the statement, the effective role of courts during, as well as in the aftermath, of the pandemic will help increase public trust in the judiciary and will reinforce the application of the ECHR, together with social, economic and cultural rights, across the Member States of the Council of Europe. The fundamental principles and standards applicable to the judiciary remain fully valid and applicable.

Member States might consider developing action plans for their courts in the aftermath of the pandemic. A range of disputes is emerging, and the return of the societies to normal life and the re-booting of the national economies will depend on the swift resolution of cases by national courts.

In the opinion of the president of the CCJE, webcasting of court sessions, in normal conditions, is being used to reach a wider audience and encourage a broader interest in the aspects of public life touched upon by courts. Accordingly, when it comes to an emergency, webcasting maybe even more justified to expressly demonstrate that justice is being performed openly and in public.

Member States should provide the necessary resources for courts to fulfil their functions. The need to have adequate resources, equipment and software for effective teleworking and teleconferencing becomes particularly important.

New types of cases are likely to reach courts, including sanctions against individuals for breaches of quarantines and remedies against other emergency measures. The constitutional and human rights scrutiny of emergency legislation may also be needed.

⁶ Consultative Council of European Judges (CCJE), The role of judges during and in the aftermath of the COVID-19 pandemic: lessons and challenges, CCJE(2020)2, Strasbourg, 24 June 2020, available at: <https://rm.coe.int/ccje-2020-2-statement-of-the-ccje-president-3-lessons-and-challenges-c/16809ed060>, (accessed 22.07.2020).

Despite an emergency situation, such as the pandemic, training initiatives should not be suspended, and online training should be considered.

The council recommends that allocation and prioritisation of cases will be required to be properly regulated and any politicisation should be strictly prevented.

In particular, the prioritisation of cases following the end of emergency measures should not overemphasise economic issues over the protection of rights of individuals and should follow fair and objective criteria. The courts should also question whether there are ways of increasing the involvement of mediation and thereby reducing the caseload.

4.4. The European Court of Human Rights (ECtHR)

The below ECtHR cases concern the participation of applicants, mostly accused persons, by videoconferences from the place of custody, in criminal cases against them examined at the domestic level. These cases are particularly relevant as all the cases monitored by the project team fell within the category of criminal cases, where accused persons participated in proceedings remotely from their place of custody.

- ***Marcello Viola v. Italy, 2006***

Marcello Viola v. Italy was one of the first cases, in which the European Court of Human Rights had to pronounce itself on the participation of an applicant in domestic proceedings by videoconference.⁷ The ECtHR observed that although the defendant's participation in the proceedings by videoconference is not as such contrary to the Convention, it is incumbent on the Court to ensure that recourse to this measure in any given case serves a legitimate aim and that the arrangements for giving evidence are compatible with the requirements of respect for due process as laid down in Article 6 of the Convention.⁸

⁷ *Marcello Viola v. Italy*, application no. 45106/04, judgment of the European Court of Human Rights of 5 October 2006.

⁸ *Ibid.*, para. 67.

- ***Sakhnovskiy v. Russia, 2010***

The Grand Chamber of the European Court of Human Rights, in its judgment,⁹ reiterated the dictum made in the *Marcello Viola* case concerning the use of web link that this form of participation in proceedings is not as such incompatible with the notion of a fair and public hearing, but it must be ensured that the applicant can follow the proceedings and to be heard without technical impediments and that effective and confidential communication with a lawyer is provided for. This case is particularly important in terms of confidentiality of communication with a defence lawyer.

In this case, the applicant was able to communicate with the newly-appointed lawyer for fifteen minutes, immediately before the start of the hearing. The Court considers that, given the complexity and seriousness of the case, the time allotted was clearly not sufficient for the applicant to discuss the case with his lawyer. Furthermore, the accused and the defence lawyer had the communication using the same web link used for conducting the hearing. While all persons left the rooms, both in the courtroom and in the detention facility, the ECtHR doubted whether the communication by video link offered sufficient privacy. The Court noted that, in the *Marcello Viola* case, the applicant was able to speak to his lawyer via a telephone line secured against any attempt at interception. In the case at hand, the applicant had to use the video-conferencing system installed and operated by the State. The Court considers that the applicant might legitimately have felt ill at ease when he discussed his case with his lawyer.¹⁰ The Court noted in this respect that nothing had prevented the authorities from organising at least a telephone conversation between the applicant and Ms A. well ahead of the hearing. Nothing prevented them from appointing a lawyer who could have visited the applicant in the detention centre and has been with him during the hearing. The Court concluded that the applicant had not been able to enjoy effective legal assistance and there was a violation of Article 6 § 1 of the Convention, taken in conjunction with Article 6 § 3 (c), in the proceedings taken as a

⁹ *Sakhnovskiy v. Russia*, application no. 20272/03, judgment of the Grand Chamber of the European Court of Human Rights of 2 November 2010.

¹⁰ *Ibid.*, para. 104.

whole.¹¹ The Court maintained this approach in its subsequent case-law as well.¹²

- ***Trepashkin v. Russia (no. 2), 2010***

In this case,¹³ the ECtHR specified that, even where the hearing is not public, the defendant still has the general right to be present, participate effectively, hear and follow the proceedings and make comments. This can be negatively affected by a malfunction in the video-link system resulting in an applicant being prevented from following the course of the hearing, making oral remarks and putting questions to the participants in the proceedings when necessary.¹⁴

- ***Vladimir Vasilyev v. Russia, 2012***

In this case,¹⁵ the Court observed that Article 6 of the Convention does not guarantee the right to be heard in person at a civil court, but rather a more general right to present one's case effectively before the court and enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the state a free choice of the means to be used in guaranteeing litigants these rights.¹⁶

- ***Yevdokimov and Others v. Russia, 2016***

The ECtHR pointed out in this case¹⁷ that the particular form of procedural arrangements for securing a detainee's effective participation depends on many factors, the most important one being the question whether the claim involves his or her personal experience and, accordingly, whether the court needs to take oral evidence directly from him or her. Concrete practical solutions consistent with the fairness requirement ought to be found by the domestic courts with regard to the local situation, the technical equipment available in the courthouse and in the detention

¹¹ *Ibid.*, paras. 106-107.

¹² See, for instance, *Gorbunov and Gorbachev v. Russia*, applications nos. 43183/06 and 27412/07, judgment of the European Court of Human Rights of 1 March 2016, para. 37, also, judgment of the European Court of Human Rights of 27 November 2018 in the *Sakhnovskiy* case.

¹³ *Trepashkin v. Russia (no. 2)*, application 14248/05, judgment of the European Court of Human Rights of 16 December 2010.

¹⁴ Para. 152.

¹⁵ *Vladimir Vasilyev v. Russia*, application no. 28370/05, judgment of the European Court of Human Rights of 10 January 2012.

¹⁶ *Ibid.*, para. 84.

¹⁷ *Yevdokimov and Others v. Russia*, applications nos. 27236/05 et al., judgment of the European Court of Human Rights of 16 February 2016.

facility where the detainee is being held, the accessibility of legal aid services and other relevant elements. Having considered such arrangements, the domestic courts must inform the detainee accordingly and in good time so that he/she has adequate time and facilities to decide on the course of action for the defence of his/her rights.¹⁸

As regards the use of a video link or videoconferencing equipment, resorting to such facilities is not, as such, incompatible with the notion of a fair and public hearing, but it must be ensured that the detainee can follow the proceedings, to see the persons present and hear what is being said, but also to be seen and heard by the other parties, the judge and witnesses, without technical impediments.¹⁹

The ECtHR opined that organising a court session outside the courtroom is, by contrast, a time-consuming exercise. In addition, holding it in a place such as a detention facility, to which the general public in principle has no access, is attended by the risk of undermining its public character. In such cases, the state is under an obligation to take compensatory measures to ensure that the public and the media are duly informed about the place of the hearing and granted effective access.²⁰

Lastly, the Court observed that whenever the domestic courts opt for procedural arrangements aiming to compensate for the handicap which a detainee's absence from the courtroom has created, they are expected to verify whether the chosen solution would respect the absent party's right to present his/her case effectively before the court and would not place him/her at a substantial disadvantage *vis-à-vis* his/her opponent. It will then fall to the Court to judge whether the safeguards that were put in place to ensure that the detainee could participate fully in the proceedings were sufficient and whether the proceedings as a whole were fair in terms of Article 6 of the Convention.²¹

4.5. Experience of European States

¹⁸ *Ibid.*, para. 41.

¹⁹ *Ibid.*, para. 43.

²⁰ *Ibid.*, para. 44.

²¹ *Ibid.*, para. 47.

There is a wide range of activities carried out by European states when administering e-justice during the pandemic,²² among them:

- Encouraging e-justice (Croatia, Austria, Bosnia and Herzegovina, Greece, Portugal and Russia);
 - Encouraging online services (filing documents by post or electronically (Moldova);
 - Setting up a crisis management team at the courts of Denmark, comprising the management and a number of key employees in the Danish Court Administration, as well as representatives from the courts. The team receives daily inputs from the courts, deals with all aspects of the emergency, and regularly sends relevant information to the courts and internally within the administration (Denmark);
 - Identifying critically important cases that could not be adjourned and adjournment of hearings in other cases (Denmark, Russia and Slovakia);
 - In criminal matters, hearings except detention and other procedures that cannot be postponed can be cancelled ex officio (Austria);
 - Allowing those court officials whose physical presence in court is not necessary to work from home (Austria);
 - Approving special guidelines concerning the work of the judiciary during the pandemic (In Azerbaijan, these guidelines were adopted by the Supreme Court);
 - Limiting access to court buildings to parties only (Belgium);
 - Restricting office hours in courts (Italy);
 - Placing a correspondence box at court entrances (Belgium);
 - Direct communication between court staff is minimised. Communication is done mainly by phone and email (Bosnia and Herzegovina);
 - Shortened (part-time) working hours (Bosnia and Herzegovina);
- and
- Suspension of procedural time-limits for certain category cases (Bosnia and Herzegovina, Portugal and Spain).

²² Management of Judiciary – Compilation of Comments by Country (see <https://www.coe.int/en/web/cepej/compilation-comments>, (accessed 20.07.2020)

5. NATIONAL LEGISLATIVE REGULATION / NORMATIVE FRAMEWORK

First, it should be noted that procedure legislation had been familiar with conducting hearings and carrying out procedural actions remotely even before the pandemic. In particular, online participation of an accused person in court hearings is determined by Article 38.14 of the CPC; online participation of a party is determined by Article 188 of the CPC; online examination of a witness is determined by Article 243,3 of the CPC and Article 148.6 of the Civil Procedure Code.

Under Article 27¹.4 of the Administrative Procedure Code, when examining issues determined by the Imprisonment Code, a court may allow the participation of the party in legal proceedings remotely by technical means, based on the motion of a party. It is also noteworthy that these possibilities determined by procedural legislation have never been used on a large scale. Furthermore, it is noteworthy that the Civil Procedure Code does not determine the possibility of holding court hearings remotely.

On 13 March 2020, the High Council of Justice adopted a decision for preventing the spread of the new coronavirus and recommended the following principal measures to be taken in common courts:

- Adjournment of pending court cases (except for cases to be examined within a short time- frame);
- Examination of cases without oral hearings in cases established by procedural legislation;
- Holding court hearings remotely;
- Restriction of the number of persons attending court hearings, including media representatives;
- Restriction of unnecessary movement of citizens in court buildings;
- Limiting the number of court users to 20 in citizens' reception areas;
- Postponing public measures planned in court;
- Informing citizens about online services provided by courts;
- Receiving claims, applications and other documents in special boxes placed in citizens' reception areas; and

- Online work of the court staff whose physical absence does not impede court performance.

Under Article 7 of the presidential decree, hearings determined under the Criminal Procedure Legislation of Georgia can be held remotely by using electronic means of communication. Participants of the proceedings are not entitled to object to this form of proceedings based on the desire to attend in person.

Under the legislative changes made to the CPC on 22 May 2020 and 14 July 2020, Article 332⁵.1 determined the possibility of holding hearings remotely in those cases where:

- a) An accused/convicted/acquitted person agrees;
- b) Detention as a preventive measure has been applied to an accused person; imprisonment as a punishment has been imposed on a convicted person and/or the failure to hold hearings in this manner may result in the infringement of a public interest related to closing a crime and criminal responsibility of a person.

Under Article 332⁵ of the CPC, whenever a hearing is held remotely, participants of the proceedings are not entitled to object to online proceedings based on the desire to attend in person.

On 5 June 2020, the HCoJ approved a new set of recommendations,²³ which draw attention to the following issues:

- Courts should give priority to examining cases without an oral hearing or hearing remotely with the use of technical means;
- To observe 2-metre distance among persons attending hearings;
- Wearing a face mask is obligatory in a court building;
- Transparent shield screens should be set up in the reception areas;
- Citizens should be encouraged to use e-services of the court; and
- Court staff whose physical presence in the court building is not necessary should work from home.

These HCoJ recommendations are valid until abolished. Therefore, as of today, these are still in force.

²³ <http://hcoj.gov.ge/ge/iustitsiis-umaghlesi-sabchos-rekomendatsiebi/3672>

6. BRIEF SUMMARY OF IDENTIFIED PROBLEMS

Introduction of online proceedings proved to be a significant challenge for the court system. Administration of e-justice gave rise to several considerable problems. The circumstances impeding effective administration of e-justice can be divided into redeemable and immanent problems.

One of the large-scale problems is that the majority of the Georgian population, especially citizens living in the regions lack IT knowledge and skills. This makes it difficult for them to participate in remote hearings and it delays proceedings. Attitude towards IT is also problematic – unfortunately, some lawyers and judges do not deem it necessary to improve their IT skills. There is also a category of judges and court users who oppose any form of e-justice.

The low quality of voice and image transmission during video conferences, insufficient number of properly equipped courtrooms, the small number of video rooms in places of detention, the inability of communication between an accused with his/her defence lawyer during videoconferences have to be particularly noted among the technical problems.

The problems related to the lack of technical requirements of remote hearings, the lack of IT skills of court users and shortcomings of respective legal regulations are redeemable. On the other hand, some of the problems are immanent and their solution needs holding actual hearings in a courtroom. For instance, there is a risk that a court hearing held in camera is attended by an unauthorised person, i.e., a video link can become accessible in some manner for an unauthorised person (hacker intervention or an authorised person giving access to a third person). There is also a risk that the recording of a hearing held in camera enters the public domain.

It is difficult to establish the identity of a witness participating remotely. There could be various manipulations during witness examination that

could prevent effective questioning; it is impossible to examine a witness or material evidence as effectively as allowed by in-person hearings.

The public nature and transparency of court proceedings could prove to be difficult to redeem at this stage. Unfortunately, as of today, the public is unable to have any access to court proceedings which violates the principle of public nature of administration of justice.

Apart from the shortcomings, certain advantages are characteristic to electronic hearings such as cost-efficiency, no waiting time in courtrooms, the possibility of participating from any place and effective participation of persons with disabilities.

7. RESEARCH OUTCOMES

The research outcomes are divided into two parts: 1) problems and shortcomings identified as a result of the research; and 2) advantages of online hearings.

The main research outcomes concern the problems identified as a result of quantitative and qualitative research analysis, which are divided into three groups: 1) legal and practical problems; 2) technical problems, and 3) immanent problems (i.e. problems that can only be eradicated by holding actual hearings).

7.1. Problems of Legal and Practical Nature

When implementing the project, the project team identified a number of problems punctuating the administration of e-justice. When assessing e-justice, the project team was guided by the ECtHR. Under this approach, apart from the express legitimate aim sought by participation in court proceedings by videoconference, which is easily identifiable in the present situation as the protection of public health, there is another issue that should be scrutinised cumulatively in each particular case. Where this

method is used, it should be examined to what extent the measures taken ensure fair proceedings under Article 6 of the Convention.²⁴

Public Proceedings: the public nature of proceedings can be considered to be one of the serious problems of e-justice. Under Article 13 of the Law of Georgia on Common Courts, each case is examined in public proceedings in a court except for cases determined by law. The legislation in force does not provide for any exception from this rule either during or after the pandemic.

On 1 May 2020, the project applied to the HCoJ and requested to allow its monitors to observe electronic proceedings. According to the response received from the HCoJ on 5 May 2020, the project's request was denied. The following reason behind the refusal was given: "The court does not have any possibility to involve monitors in remote hearings." According to the HCoJ letter, the project's monitors could attend hearings after "the country got back to normal." Having received this response, the project applied to individual judges and sought attendance at hearings. Only a very small number of judges gave consent to online hearings. However, the majority of them cited technical shortcomings caused by the participation of too many persons in videoconferences. Despite this, the public nature of remote proceedings remains a serious problem as, on the one hand, an accused person's right to a public hearing is breached and, on the other hand, the public has no right to observe the administration of justice.

This approach by the HCoJ also contradicts the recommendation of the CCJE that webcasting court sessions, in normal conditions, is being used to reach a wider audience and encourage a broader interest in the aspects of public life touched upon by courts. In the opinion of the CCJE, when it comes to an emergency, webcasting maybe even more justified to expressly demonstrate that justice is being performed openly and publicly.²⁵

The above approach taken by the HCoJ also contradicts the interpretation of the ECtHR that holding a hearing in a place such as a detention facility,

²⁴ See *Marcello Viola v. Italy*, application no. 45106/04, judgment of the European Court of Human Rights of 5 October 2006, para. 72,

²⁵ Consultative Council of European Judges (CCJE), *The role of judges during and in the aftermath of the COVID-19 pandemic: lessons and challenges*, CCJE(2020)2, para. 16.

to which the general public in principle has no access, is attended by the risk of undermining its public character. In such cases, the state is under an obligation to take compensatory measures to ensure that the public and the media are duly informed about the place of the hearing and are granted effective access.²⁶

Public Broadcasting of Electronic Hearings: under Article 13^{1.2} and Article 13^{1.3} of the Law of Georgia on Common Courts, a public broadcaster may perform taking of photos, cinematographic, video and audio recording of a trial without limitation. If the public broadcaster fails to exercise the right under paragraph 2 of this article, such right may be exercised by another general over-the-air broadcaster which is selected by a court through a ballot. The public broadcaster shall release the record to any other media upon request. Accordingly, based on the statutory wording in force, the number of broadcasting media outlets is limited to only to maintain order in the courtroom. On the other hand, it is clear that this regulation cannot apply to online hearings, as the restriction of the number of broadcasters attending online hearings is unreasonable. However, it is unclear to this day, what is the provision that a media outlet should invoke to be able to record an online hearing and its broadcasting. This issue was raised during a focus group meeting with journalists on 24 July 2020. In the journalists' opinion, media outlets should have unlimited access to electronic hearings which are public and they should have unlimited power to record, use and broadcast them.

In the project's opinion, this position taken by the journalists is not substantiated, as Article 13¹ of the Law of Georgia on Common Courts does not lay down any restriction in terms of covering public hearings, except for Article 13^{1.5} and Article 13^{1.6} of the law. Under paragraph 5, it is impermissible to make photo and video recording of a jury trial and under paragraph 6. Based on the interests of a victim or a witness, the court may prohibit the recording of a witness or a victim based on a reasoned motion.

The project believes that broadcasting video hearings by media outlets requires additional regulation. For instance, it should be determined by law whether a media outlet is authorised to broadcast an electronic

²⁶ *Yevdokimov and Others v. Russia*, applications nos. 27236/05 et al., judgment of the European Court of Human Rights of 16 February 2016, para. 44.

hearing in real-time. It is the project's opinion that the court should be able to ban a media outlet from broadcasting a public hearing in real-time or ban temporarily the dissemination of this recording in those cases where a witness is being examined on the stand whose testimony must not be heard by other witnesses in accordance with Article 118.²⁷

Client-Lawyer Communication during Hearings: One of the most important legal problems identified by the project team in the process of monitoring e-justice is related to agreeing on defence strategy during hearings conducted through videoconference. In an actual hearing, this is done by communication between an accused person and his/her defence lawyer sitting next to each other. Three ways to address this issue were identified by the team: 1) defence strategy is agreed between an accused and his/her lawyer during their meeting before a hearing; 2) a meeting is arranged in Webex before the hearing and communication is allowed in this form; 3) during a hearing, a judge announces a recess and everybody leaves the system except for the accused and his/her lawyer and the guard leaves the room to leave the accused alone.

In the last two methods, the software records the session due to which communication is not confidential. According to some lawyers, they use online communication only to agree on the issues that are not strictly confidential.

During the monitoring of hearings, in one of the cases, a lawyer and his client had a conversation regarding some private issues and issues related to the case. This conversation was not confidential and it was overheard by other participants.

The confidentiality of a lawyer-client communication is regarded by the ECtHR to be the central issue in the context of Article 6 of the Convention. Notably, according to the ECtHR case-law, one of the key elements in a lawyer's effective representation of a client's interests is the principle that the confidentiality of information exchanged between them must be protected. This privilege encourages open and honest communication between clients and lawyers. The European Court recalls that it has

²⁷ A witness shall be examined separately from witnesses who have not yet been examined. At the same time, the court shall take measures to ensure that witnesses summoned for the same case do not interact with each other until the end of their examination. After the end of an examination, the judge shall inform the witness of his/her right to be present during the court session.

previously held that confidential communication with one's lawyer is protected by the Convention as an important safeguard of the right to defence.²⁸ The Court recalls that the Convention is intended to guarantee not the rights that are theoretical or illusory but rights that are practical and effective. This is particularly true of the rights of the defence because of the prominent place held in a democratic society by the right to a fair trial, from which they derive.²⁹

The above problem identified by the project team directly contradicts the requirements of Article 6.3.c) of the ECHR. In the *Sakhnovskiy* case, the Grand Chamber had its misgivings that the system installed and administered by the state would not ensure sufficient confidentiality of the conversation between the accused and his/her lawyer and found it to be a breach of the Convention. In the case at hand, however, the fact that the communication is recorded demonstrates expressly that confidentiality cannot ever be guaranteed under such conditions.

- **Hearings held in camera:** As the judges pointed out, it is almost impossible to have a hearing in camera electronically (for instance, in minors' cases, or cases involving a state secret) as there are no guarantees against the proceedings becoming accessible for third persons.
- **Participation of persons over 70 in proceedings:** During the pandemic, the participation of persons over 70 in proceedings was problematic, as they were not allowed to leave their place of residence during the emergency. Therefore, remote hearings were the only avenue for participating in proceedings. However, it should also be borne in mind that senior citizens often do not have the relevant IT skills and have to ask for help.
- **Absence of technical means used as a pretext:** a party can delay proceedings claiming not having the necessary technical equipment. In such cases, the court should always be ready to offer such a participant to appear before the court in person or to participate from a courtroom provided especially for him/her.

²⁸ *Castravet v. Moldova*, application no. 23393/05, judgment of the European Court of Human Rights of 13 March 2007, para. 49.

²⁹ *Artico v. Italy*, application no. 6694/74, judgment of the European Court of Human Rights of 13 May 1980, para. 33.

- **Turning off video during hearings:** According to judges, sometimes participants of the proceedings turn off video which the judges think is impermissible. In the opinion of the project team, participation in the court proceedings always implies attendance at the hearings which cannot be verified by audio only. Therefore, only in exceptional situations, it should be allowed to participate in the proceedings by audio connection only. It is also important to maintain the same dress code during electronic proceedings, which applies during actual hearings.
- **Establishing the identity of a witness connecting remotely:** Establishing the identity of a witness connecting remotely is problematic. During actual hearings, the identity of a witness is confirmed by a person in the courtroom and the judge requests the witness in the courtroom to present an ID. During online proceedings, a witness' identification is established only by communicating with the witness which poses dangers in terms of a wrong person participating in the proceedings.
- **One witness hearing another's testimony:** a witness who has not been questioned yet could be listening to another witness being questioned during a video conference. This poses problems from a legal point of view.
- **Problems related to witness examination:** as a lawyer pointed out in an interview, a lawyer can "crack" a lying witness when questioning him/her during actual proceedings. This is difficult during online proceedings. In the opinion of some respondents, manipulations during witness examinations are possible, notably, when asking a witness critical questions as the video connection can be purposefully cut off and the witness could be "prepped" for questions before reconnecting. According to some respondents, prompting cues to a witness could be another problem. This can be done by another person in the room or by using technologies. For instance, if a witness is wearing headphones, a prompter could be giving cues through them (and hearing sounds from the courtroom through loudspeakers. Thus, answers might this way be fully prompted in live mode. A witness could be reading a written text and this could go unnoticed by the judge and the parties. A witness could avoid answering difficult questions by pretending that he/she cannot hear the question, which is difficult to verify. In those cases where a witness is questioned from a police station, he/she could be under police

duress.³⁰ A party could indicate an answer pretending that the witness could not understand the question. Under Article 297.c) of the Criminal Procedure Code, during the appeal hearing, only newly submitted evidence in the court of appeal may be examined and all evidence examined by the court of the first instance shall be considered examined, except when the evidence was examined in substantial violation of the law and a party files a motion for the re-examination of the evidence. If during questioning a witness it was revealed that, the witness had been under duress or the evidence was not examined in accordance with the rule established by law, lawyers have to request a re-examination of the evidence in accordance with Article 297.c). The courts, on the other hand, should develop a practice thereby establishing when there is a need for the re-examination of evidence in appeal proceedings.

- **The parties' consent to remote hearings in civil and administrative proceedings:** the fact that the respondent, as a rule, rarely agrees to electronic proceedings prevents from the systematic use of remote hearings in civil cases. On the other hand, the Civil Procedure Code does not provide for a general possibility of holding remote proceedings. Hearings in civil and administrative cases can be held only with the HCoJ's recommendations.

- **Maintaining order during remote proceedings:** some respondents pointed out that it was more difficult for judges to manage remote proceedings, as it is difficult for a judge to prevent spontaneous remarks. The monitoring of court proceedings demonstrated that it was often the case and the judge is unable to control arbitrary interventions of participants which makes it difficult to follow proceedings adequately.

- **Examination of documents and other material evidence:** during remote proceedings, it is difficult for a witness to demonstrate documents and other material evidence. Examination of written evidence is also problematic as originals are kept in the court.

- **Verification of ill-treatment of a person in custody:** in criminal and administrative violation cases, a judge cannot verify in remote proceedings a defendant's condition to exclude any doubts about ill-treatment. A defendant appearing before the court in a courtroom can

³⁰ See also the special report of the Young Lawyers' Association on Justice during the Pandemic, 2020, available at: shorturl.at/ajln2.

talk more freely about ill-treatment than when connecting online from a penitentiary establishment.³¹

- **Following proceedings visually by the accused online:** during the so-called semi-remote proceedings, the accused connecting to the hearing from a penitentiary establishment can only see the judge but not the lawyer and other participants of the proceedings present at the courtroom.

- **The territorial jurisdiction of cases examined remotely:** In accordance with procedure legislation currently in force, a claim is submitted to a court depending on the respondent's whereabouts. Territorial jurisdiction, which is related to access to a court, causes unequal case-load in different courts. Furthermore, under Article 21.1 of the Civil Procedure Code, a court that lacks jurisdiction may acquire jurisdiction also in cases where a respondent is not against hearing the case in a court that lacks jurisdiction and agrees to participate in the hearing. In the project team's opinion, during electronic proceedings, territorial jurisdiction becomes moot and any dispute in any district can be examined by the court of another district. In order to decrease case-load of some busiest courts, such as the Tbilisi City Court and cases be equally distributed to other first instance courts, the parties should be encouraged to refer cases from the busy courts to other courts with lesser case-load.

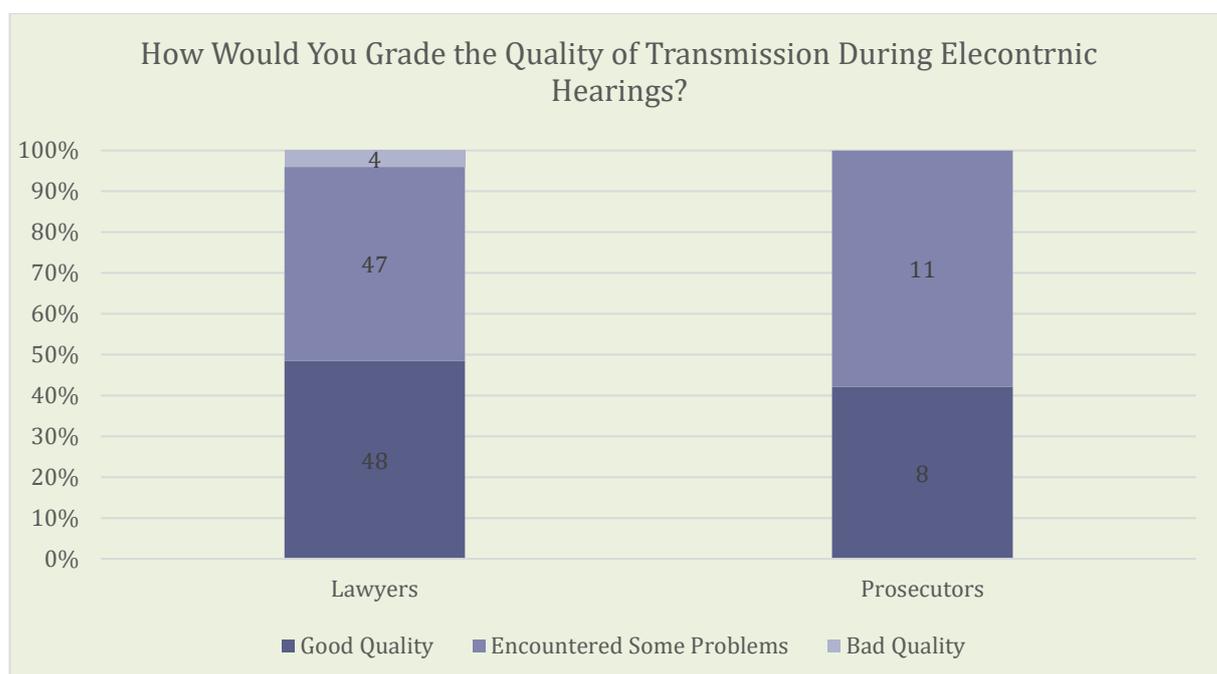
7.2. Technical Problems

The monitoring conducted by the project team identified a number of technical shortcomings which separately or cumulatively can amount to the violation of Article 6 of the ECHR. Notably, according to the case-law of the European Court of Human Rights, whenever the domestic courts opt for procedural arrangements aiming to compensate for the handicap which a detainee's absence from the courtroom has created, they are expected to verify whether the chosen solution would respect the absent party's right to present his/her case effectively before the court and

³¹ See also the special report of the Young Lawyers' Association on Justice during the Pandemic, 2020, available at: shorturl.at/ajln2.

would not place him/her at a substantial disadvantage *vis-à-vis* his/her opponent.³²

- **Sound and image quality:** the monitoring revealed that the quality of sound and image is the most significant technical problem. According to 51% of lawyers and 57% of prosecutors interviewed, they faced technical problems when participating in hearings held by videoconference.



121 lawyers and 19 prosecutors have been interviewed. This particular question was answered by 99 lawyers.

It was established during the interviews that, in electronic proceedings, sometimes the sound is lost (intermittent) and sometimes echoed; it is sometimes not sufficiently clear. In the majority of the cases, the low speed of a participant's Internet is to be blamed for the low quality of transmission. Very often, a judge has to ask the participants of the proceedings to repeat themselves to allow others to hear.

According to some respondents, the quality of connection drops as the number of participants increases. Some respondents did not agree with

³² *Yevdokimov and Others v. Russia*, applications nos. 27236/05 et al., judgment of the European Court of Human Rights of 16 February 2016, para. 47

this position. There was no direct link established between the number of persons participating in the proceedings and the quality of the connection.

The following shortcomings were revealed as a result of monitoring the hearings:

- The quality of the sound and image was good in 3 cases; average in 9 cases and bad in 8 cases. As revealed, audio quality is a problem. Participants' voice is lost, intermittent or otherwise unclear. Sound echoing is especially irritating. During one of the hearings, each participant's voice, except for one witness, would echo. The judge had to explain to the witness extremely slowly the rights and take an oath and the prosecutor had to ask questions with long pauses to avoid confusion caused by the sound echo.
- In two cases, where witnesses were questioned, the hearing was problematic and a witness' voice was hardly heard.
- In one of the cases, an accused was cut off for several minutes and the judge asked the lawyer to repeat the conversation to the client.
- It was established that only in seven cases the quality of communication was such that there would be no difference had the proceedings been conducted in the usual format. In the rest of the cases, the quality of proceedings would have been better if held in the usual format.

In this context, the ECtHR case of *Marcello Viola v. Italy* is noteworthy.³³ In this case, the applicant, *inter alia*, claimed that videoconferencing resulted in "foreseeable difficulties" due to defective links or poor voice transmission, which prevented speedy communication with the defence counsel.³⁴ The European Court implied this issue within Article 6.3, which concerns a defendant's minimum safeguards of a fair trial in criminal proceedings. The Court, however, was unable to examine the merits of this claim as the applicant had put forward them at the domestic level and hence domestic remedies had not been exhausted.³⁵ Although, as it is pointed out in the judgment, such technical shortcomings are foreseeable

³³ See *Marcello Viola v. Italy*, application no. 45106/04, judgment of the European Court of Human Rights of 5 October 2006.

³⁴ *Ibid.*, para. 48.

³⁵ *Ibid.*, para. 74.

and should be addressed by the state to ensure unimpeded communication of an accused with his/her lawyer and full participation in court proceedings. According to the approach taken in the *Yevdokimov* case, the state is indeed under the obligation to check these issues in advance and avert them.

- **The so-called semi-remote hearings:** the so-called semi-remote hearings are particularly problematic in terms of communication (when some participants of proceedings are present in the courtroom and others are participating electronically). An accused connecting from a penitentiary establishment cannot properly hear the conversation of participants of proceedings (the courtroom microphone is not connected to Webex) and a judge has to repeat what has been said in the courtroom. The accused is also unable to see the persons present in the courtroom.

This also contradicts the case-law of the European Court of Human Rights. According to this case-law, an important factor that considerably affects the assessment is whether the detainee can follow the proceedings, see the persons present and hear what is being said and also seen and heard by the other parties, the judge and witnesses, without technical impediments.³⁶

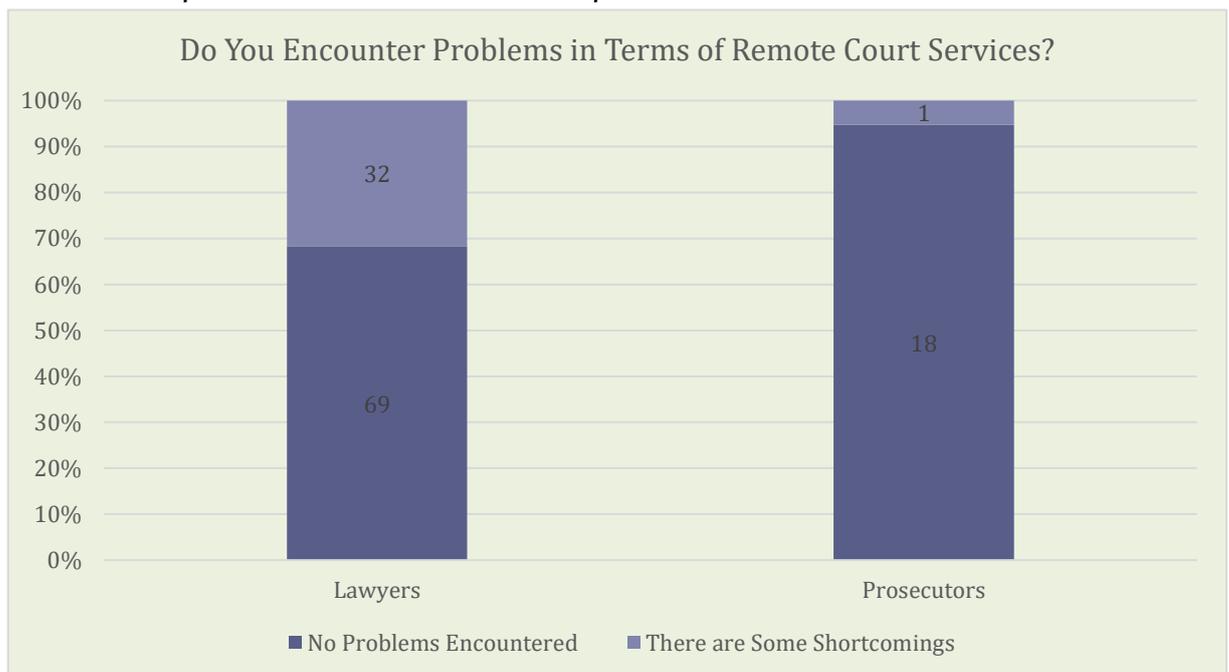
- **The lack of relevant equipment on the part of participants of proceedings or low speed of Internet connection:** parties, witnesses and sometimes interpreters do not always have the required equipment or their Internet speed is too low, which makes it difficult or delays their participation in proceedings. Therefore, the majority of hearings are delayed or adjourned altogether.³⁷ During interviews, one of the judges pointed out that the electronic hearings did not speed up but instead slowed down proceedings. According to the respondent, the usual format allowed examination of more daily cases in comparison to the electronic format. The judge attributed this to delays in starting hearings and insufficient IT skills of parties.

- **The impossibility of providing simultaneous interpretation:** the software does not allow simultaneous interpretation. Consecutive interpretation makes the proceedings longer.

³⁶ *Yevdokimov and Others v. Russia*, applications nos. 27236/05 et al., judgment of the European Court of Human Rights of 16 February 2016, para. 42.

³⁷ See also the special report of the Young Lawyers' Association on Justice during the Pandemic, 2020, available at: shorturl.at/ajln2.

- **Lack of adequately equipped rooms in court and penitentiary establishments:** remote proceedings require the provision of respective equipment in courtrooms and video rooms of penitentiary establishments. It has turned out that not every courtroom in district courts is adequately equipped and the number of video rooms in penitentiary establishments is insufficient. Therefore, judges had to queue and wait which caused delays in proceedings.
- **Software problems:** according to interviewed judges in several cases, the software did not record the hearings and the minutes of the proceedings had to be reconstructed based on the audio and video recording systems of the courtroom.
- **Outdated equipment:** according to some respondents, the outdated computers of the courts slow down the speed of the software and the quality of transmission.
- **Examination of a video recording:** the examination of video recordings as evidence is problematic as video recording is played on a different computer and a video camera is turned to this computer or a display screen. This worsens the quality of the transmitted image.
- **Court services and remote access to case-files:** One of the objectives sought by the research was to establish the effectiveness of the provision of court services during remote proceedings. 68% of the interviewed lawyers and all but one prosecutor maintained that there were no problems in terms of provision of online services.



121 lawyers and 19 prosecutors participated in the survey. This particular question was answered by 101 lawyers.

Despite the above-mentioned, in-depth interviews and targeted questions, the majority of lawyers indicated to the absence of access to case-files as one of the serious problems of e-justice, which is a part of online services of the court.

Online accessibility of court implies full accessibility of case-files through the software. Presently, case-files are accessible in civil and administrative cases in the first instance court only and not in appeal or cassation proceedings. Criminal case-files are not electronically accessible at all. Study of case-files was particularly problematic during the emergency, where court users faced difficulties in reaching the court, studying and photocopying case-files. The lawyers also pointed out that not every court allows filing documents electronically. Sometimes, the court requests the original of a particular document (for instance, the receipt of the payment of court fees, a lawyers' warrant) which excludes the possibility of submitting these documents electronically.

Under the case-law of the European Court of Human Rights, the failure to disclose case-files violates the principles of equality of arms and adversarial proceedings.³⁸ The project is aware that these rights are not absolute. In particular, according to the Grand Chamber, "the entitlement to the disclosure of relevant evidence is not an absolute right. In any criminal proceedings, there may be competing interests, such as national security ... which must be weighed against the rights of the accused. In some cases, it may be necessary to withhold certain evidence from the defence to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which are strictly necessary are permissible under Article 6.1."³⁹

- **Problems related to participants' skills:** in the majority of cases, participants of proceedings lack relevant IT skill which makes it difficult for them to take part in the proceedings and causes a delay. A secretary

³⁸ See, *inter alia*, *Rowe and Davis v. the United Kingdom*, application no. 28901/95, judgment of the Grand Chamber of the European Court of Human Rights of 16 February 2000, para. 60.

³⁹ *Ibid.*, para. 61.

to the proceedings needs some time until the parties get familiar with the software.

7.3. Immanent Problems

As the project's activities progressed, certain immanent problems punctuating electronic proceedings were identified. These problems cannot be redeemed unless actual hearings are held. For instance:

- **Jury trials:** the leading legal systems of the world are looking into the avenues of holding jury trials electronically⁴⁰ and there are already some precedents.⁴¹ This project, however, does not recommend the use of remote proceedings for jury trials except as a last resort. Apart from general problems related to questioning witnesses and examining material evidence in remote proceedings, there are additional difficulties related to jury trials such as the need to isolate jurors from the outside world, their lack of IT skills, the confidentiality of jury deliberations, etc. Several respondents mentioned the challenges related to this issue and deemed it undesirable to have jury trials conducted electronically. According to the information at the project's disposal, there were no jury trials conducted in the reporting period.
- **Examination of material evidence:** the examination of material evidence during remote hearings is an immanent problem. This requires visual and actual observation from a close distance. Therefore, courts avoided examination of material evidence during electronic proceedings as much as possible which should be positively assessed.

7.4. Advantages

It is assumed in many Western countries that electronic hearings contribute to the establishment of cost-effective, prompt and efficient justice. Therefore, many countries strive towards introducing e-justice in certain areas. Against the background of technological progress and globalisation, it is important to establish modern approaches and

⁴⁰ See e.g. <https://justice.org.uk/wp-content/uploads/2020/06/Mulcahy-Rowden-second-evaluation-report-JUSTICE-virtual-trial.pdf>.

⁴¹ <https://fortune.com/2020/05/23/texas-court-jury-trial-videoconferencing/>.

standards in Georgian justice as well. Forced transition to e-justice can also be considered as one of the options by objectively assessing the positive and negative aspects of electronic justice.

One of the aims of the research was to identify the positive aspects of e-justice and their analysis to create a foundation for certain directions to evolve.

Mixed attitudes of respondents towards e-justice can be considered to be one of such foundations. A rather large number of respondents are completely against the continuation of remote proceedings after the end of the pandemic. However, the same participants (along with others, a small number of respondents) identified and named the following advantages of remote proceedings:

- Field hearings which cannot be attended physically by an accused can be conducted electronically;
- A party can join proceedings from any location;
- The expenditure of the parties and those of the courts are spared (the cost of travel and the use of court infrastructure).
- Less time is wasted on moving around in court buildings and waiting in a courtroom;
- It is easier for persons with disabilities (persons using a wheelchair or with impaired vision) to participate in proceedings;
- Some witnesses can talk more freely during electronic proceedings, whereas a courtroom may appear to them as too oppressive.
- According to some respondents, judges are not influenced by victims' emotions which is assessed positively.

Those who are sceptical about the future of electronic justice assume that, if certain shortcomings are eradicated, hearings not involving witness interrogation and examination of evidence, if both parties consent, can be conducted remotely.

It is important to mention that those taking part in the survey identified and categorised cases where it is recommended to conduct electronic proceedings.

According to the respondents, electronic justice can be introduced on a large scale in both civil and administrative cases (preparatory hearings, hearings about appointing a supporting person, non-contentious

proceedings, the examination of merits where witnesses are not questioned and evidence examined) as well as criminal cases (pre-trial hearings, cases where evidence is not disputed, revision of detention, approval of plea bargain agreements, introductory and concluding remarks of the parties, appeal and cassation proceedings).

This position demonstrates that legal professionals already have some readiness about the integration of e-justice. However, to this end, a number of measures need to be carried out.

8. RECOMMENDATIONS

Modern technologies have great potential in the administration of justice. While remote proceedings cannot entirely replace actual hearings, it is possible to conduct a significant number of proceedings by using modern technologies of communication.

The guiding principle for the actors of the justice system is not violating the safeguards of a fair trial as determined by national legislation and international human rights law. Furthermore, communication makes up the major part of the proceedings. Therefore, the quality of these proceedings depends on the quality of the communication.

The problems arising during electronic justice require a systemic response. Some of these problems can be solved and actual hearings will have to be conducted in other cases.

Based on the problems, recommendations are divided into three groups:

1. Recommendations to improve regulations and practice;
2. Recommendations to improve skills; and
3. Recommendations related to infrastructure and technologies.

8.1. *Improving Regulations and Practice*

- To elaborate guidelines on electronic proceedings with the participation of all subjects (agencies) involved in the administration of justice. These guidelines should determine technical procedures as well as recommendations stemming from the interests of justice. Guidelines should determine rules for preparing and conducting remote proceedings and rules of behaviour of participants of these proceedings;
- The Civil Procedure Code should determine the possibility of conducting electronic proceedings upon the consent of parties;
- Remote examination of a witness should be conducted only upon the consent of both parties. Guidelines on remote questioning of a witness and averting possible manipulations should be developed. Before the examination of a witness, it should be made sure that he/she is alone and not dictated answers in any manner.
- Whenever there is influence exerted on a witness during an electronic examination or questioning is not carried out effectively due to the poor quality of connection, or material evidence is not examined adequately, the lawyers should motion for a repeated examination of the evidence in appeal proceedings under Article 297.c) of the Criminal Procedure; appeal courts should develop case-law on identifying the need for re-examination of a witness and material evidence;
- Brochures should be developed to inform citizens of the rationale of remote proceedings and the rules of behaviour during videoconferences.
- It should be possible to file documents electronically in all categories of cases. It should be possible to request filing original documents afterwards as well.
- To ensure the public nature of remote proceedings, the schedule of hearings posted on the court's website should contain information about the nature of the proceedings – actual or remote. In the case of remote proceedings, citizens and media should be informed about to whom they should apply to attend these meetings. The publicity of remote hearings should be possible on broadcasting on courts' websites. Access should be given to everyone or only those requesting it. A court should be allowed to restrict a media outlet to broadcast remote questioning of witnesses in real-time to avert influence on the witnesses who have not been questioned yet. Furthermore, a citizen attending an electronic

hearing could be prohibited to disseminate recordings for a certain period;

- Whenever an accused person and/or parties cannot effectively participate in the proceedings and exercise their rights due to technical or other reasons, the judge should adjourn proceedings;
- For maintaining order during hearings, judges should resort to turning participants' audio on and off whenever it is possible. Furthermore, participants should be warned that no unnecessary remarks are allowed that prevent from following proceedings adequately. Judges should ensure that the same standards of behaviour are upheld during electronic proceedings as during actual hearings;
- Turning off the video should not be allowed unless strictly necessary;
- After the end of the pandemic, to use electronic proceedings in cases of various categories more widely; and
- To relax the case-load of busy district (city) courts, the courts should encourage referring cases for electronic examination to a court outside the jurisdiction which is less busy and can manage solve this dispute sooner.

8.2. Improving Skills

- Training sessions to retrain persons participating in electronic proceedings (judges, lawyers, prosecutors, and secretaries) should be planned and carried out.

8.3. Infrastructure and Technologies

- Microphones in courtrooms should be connected to the Webex programme and, accordingly, the conversations of participants of court proceedings should be transmitted to the programme through the microphone and not the courtroom;
- On the one hand, it is necessary to provide all the courtrooms with the equipment necessary for online hearings and, on the other hand, it

should also be possible to conduct hearings in full from a judge's chambers;

- In this case, double recording should be made to protect a court hearing's recording – both by Webex programme and other audio recording software on the computer;
- It is necessary to technically regulate the confidentiality of a client-lawyer conversation during remote hearings. To this end, a separate software can be installed on respective computers that will be protected against third persons and will allow confidential conversation between a client and his/her lawyer;
- To increase the number of video rooms in penitentiary establishments and improve their technical equipment;
- To allow those participants of proceedings that do not have the technical means to take part in remote hearings to join videoconferences from local courts of public centres. To this end, such rooms should be set up in courts⁴² and public centres;
- Outdated equipment causing software problems during proceedings should be updated and upgraded;
- To troubleshoot video and audio transmission problems and voice echoing during video conferences and take measures to eradicate the root-causes; and
- To arrange for simultaneous interpretation in the respective software.

9. CONCLUSION

The present research is an analysis of standards introduced in the justice system to the emergency and the shortcomings arising as a result. This is also the first attempt to evaluate the effectiveness of e-justice in the light of international standards and practice.

Georgian judiciary had not had any experience to work under force-majeure conditions before. Therefore, there had not been any prior plan or strategy for the transition to e-justice during a crisis. Despite this, it

⁴² See also the Special Report of the Georgian Young Lawyers' Association on Justice during the Pandemic, 2020, available at: shorturl.at/ajln2.

should be noted that the judiciary adapted to the new reality rather promptly. In accordance with the HCoJ decision, the significant part of cases was adjourned by the end of the pandemic and the rest was given a priority to be heard online. The research, however, demonstrated that adjournment of cases worsened the case-load and delayed the hearing of cases by Georgian courts even more. At the same time, the deficiency of technological infrastructure gave rise to worsening the quality of justice and bulk violation of court users' rights in the process of administration of e-justice.

Unfortunately, the pandemic as it exists now in the rest of the world does not allow us to make a clear prediction. It is, however, more likely that humanity will have to co-exist with the pandemic for the next one year. Given the existing reality, the courts, the governmental and non-governmental bodies and institutions must take effective measures for developing e-justice and improving its quality. It is important to use the post-emergency situation effectively for eradicating the problems that have been identified and confirmed as a result of the research. It is necessary to introduce the technical and technological standards required for the effective administration of e-justice so that the judiciary is better prepared for the second wave of the pandemic. The respective institutions must pay due attention to the human rights standards analysed in the research so that the administration of e-justice continues in full compliance with these standards.