



Legislation and practice of photo, video and audio recording in the courts in the light of 2013 legislative amendments

Executive Summary¹

Legislative amendments of 2013 to the Organic Law on Common Courts of Georgia re-introduced² the right of media outlets to conduct photo-video-audio recording of trial proceedings and further disseminate this information to the public. The aim of these changes was ”to ensure greater degree of democratic nature of the judiciary and the principle of publicity.”³

Article 13¹ of the Law on Common Courts establishes the following rules and regulations for photo-video-audio recording in the courtroom:

- The Public Broadcaster [*hereinafter* PB] is given preference over all other media outlets to conduct photo-video-audio recording of trial proceedings.
- If the PB is not interested in recording the trial, other media outlets, who have the license of general broadcasting, are entitled to do so. If more than one media outlet shows an interest in making use of this right, the presiding judge selects one media outlet by casting lots among all those interested.
- The media outlet recording the trial is obliged by the law to provide a copy of that recording to any other interested media outlet.

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² The courtrooms were practically closed down to the media for the purposes of photo-video-audio recording as a result of legislative amendments of 2007. These amendments provided that only the court and persons authorized by the latter were entitled to record the trial. Although in theory, the notion of “the person authorized by the court” could be interpreted as implying the media, among others, the practice did not develop in this direction.

³ Explanatory Note to the Draft Law on the Law on Common Courts, (Georgian version available at https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1785041&lang=ge)

- Courts are obliged by the law to conduct video recording of each and every trial which takes place before them and provide copies to the parties (upon request).
- Any person present in the courtroom is entitled to conduct audio recording of the trial from a specially designated place in the courtroom under the condition that this does not obstruct the trial (e.g., by making noise, etc.) If this rule is breached, the judge is entitled to fine the violator, expel him from the courtroom or order his detention.
- In case of a jury trial, recording the faces or other personal identification details of the jury members is prohibited. The same rules apply if - based on the request from a party to the proceedings- the judge decides that non-disclosure of personal identification details is in the interest of witness's / victim's security.
- The 2013 amendments further authorized photo, video, audio recording in the courthouse and the court yard without any restriction. Seizure of private belongings (such as mobile phones, computers, photo, video, audio recording devices) to persons entering the courtroom is prohibited.

Importance of the Amendments

Greater openness of courtrooms for media is an important step towards transparency and accountability of the judiciary and serves the interest of individuals and the society at large. Therefore these amendments deserve to be assessed in a positive way. As noted by the Venice Commission, in the Georgian context these amendments are commendable.⁴ It should be noted positively that the amendments have largely taken into consideration recommendations from the Coalition for the Independent and Transparency Judiciary, which is a positive development. The Coalition has a number of times drawn the attention of the relevant authorities to the deficiencies of the previously existing regulations and practices which practically banned audio-photo-video recording in the courtroom. However, these recommendations were not taken on board until 2013.

After more than a year since the adoption of the amendments, it is important to revisit them, especially in the light of the practice of their implementation in various courts and by various media outlets after more than a year since their adoption.

Analysis of the practice has revealed the following problematic areas of the law which need to be addressed:

⁴ 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)

➤ **Preferential right granted to the Public Broadcaster to conduct photo and video recording of the trial**

As noted, the PB is granted a preferential right to conduct photo, video, audio recording of the trials. Other media outlets are authorized to do so only if the former does not show an interest in using the right granted to it under Article 13¹

Journalists interviewed for the purposes of this research paper, have negatively assessed the preferential right granted to the PB to conduct the photo-video recording of the trial. As noted by one journalist, although the PB is obliged by law to provide a copy of the recording to all other interested media outlets, in some cases the PB records only a few minutes at the beginning of the trial and then leaves the courtroom, thus other media outlets are left with the footage of only the first few minutes, not the entire trial.⁵

Although the courts are also obliged to record the trials, as noted by another journalist, the quality of their recording is very low and not suitable for media purposes.⁶ Besides, as the analysis of the public information submitted in response to our requests shows that not all trials are being recorded.⁷ Last but not least, according to the law, it can take up to 10 days to receive a copy of the recording from the court, which is not a very reasonable time frame considering that information is a perishable commodity.

➤ **Media outlets who do not possess the license of general broadcasting are excluded from the right to conduct photo - video recording of the trial**

This fact has been negatively assessed by journalists from media outlets who do not possess the general broadcasting license; moreover, even representatives of those media outlets, who are entitled by the law to conduct the recording, disapprove such differential treatment between media outlets.⁸ As explained, different media outlets have different editorial policies and focus of interest -what might be very relevant and interesting for local media outlets is often not a priority for national broadcasters (who is authorized by the law to record the trial). This means that because national broadcasters are not always able and/or interested in attending each and every trial which are of interest to the regional media outlets, investigative journalists, bloggers, internet media and others, the latter are left without the possibility to obtain the copies.

As noted by one journalist,

investigative journalists are able to go into deeper details of a case before the court, can provide more analysis than us (general broadcasting license holders). We have a different focus, we cannot cover all the cases, therefore, they should probably be granted the right to conduct the video recording on their own.⁹

⁵ Interview with a representative of the “Network of Information Centers”, email communication with the representative of studio “Monitor”

⁶ id

⁷ See e.g., replies to GYLA’s public information requests by Tbilisi City and Appellate Courts (Letters N 2-0665/373724, 02.12.2013; N 82, 02.12.2013; N 23061, 03.09.2014)

⁸ Interviews with a representative of Imedi-TV, online media “Liberali” and a representative of the “Network of Information Centers”

⁹ Interview with a representative of “Imedi”

*Online media, unlike national broadcasters, are often more critical and provide a more detailed reporting of court proceedings, focusing on actions of the judge, protection of procedural rules, etc. Therefore, they should be able to conduct video recording of the trials on their own.*¹⁰

Journalists also note that video footage is often a much more effective means of communication with the audience/reader, than words. It also strengthens credibility of the media outlet in the eyes of its reader. Therefore, although they can still report regarding the trial, when they are deprived the possibility to provide video footage in addition to the text, they consider their abilities to effectively communicate with their audience to be unfairly restricted.

➤ **The obligation to obtain prior authorization at least an hour before the start of the trial**

The law does not establish any obligation to obtain a prior authorization for conducting the photo-video recording of trials, this obligation is however established by relevant Orders of the Court Chairpersons¹¹ adopted specifically for the purpose of putting Article 13¹ into effect.

Although the court may establish certain rules and regulations in order to ensure smooth conduct of judicial affairs, media obligation to obtain prior authorization at least one hour before the start of the trial raises questions as to its compatibility with the law. Particularly problematic is the fact that the media may lose the right enshrined in the law if it fails to comply with a procedural rule established by a the Decree of the Court Chairperson (which stands lower in the hierarchy of legislative acts than the law itself).

In practice this rule is not applied in a uniform manner by all courts. We have identified cases when non-compliance with the time limit did not present an obstacle for the media to conduct the recording, on the other hand, we have also identified cases when this right was restricted due to the failure to comply with it. In one case, although the journalist complied with this requirement, he was denied the right to conduct recording, the judge explained that this was due to the latter's failure to review the request within the given time limit.

As noted by one journalist, information regarding the hearings on pretrial detention is not available on the special information board in the courtrooms; journalists often learn about these trials in the very last minute and it is practically impossible to comply with the required time limit for obtaining the permission.

¹⁰ Interview with a representative of the "Network of Information Centers"

¹¹ GYLA has requested copies of these Orders from 12 courts throughout Georgia. Analysis shows that all Orders are absolutely identical in their content and 10 out of 12 are adopted on the same date. The Decrees contain a number of additional regulations concerning photo, video and audio recordings in the courtroom.

➤ Sanctions

If media violates the rules of photo, audio, video recording, it can be subject to a fine, expulsion from the courtroom or detention. These sanctions are prescribed in Civil and Criminal Procedure Codes of Georgia.

If a person is expelled from the courtroom, s/he should be provided with a copy of the relevant decision within 24 hours of expulsion, the decision can be appealed in the next 48 hours. Thus, if the media representative is expelled, he loses the possibility to cover the trial, although he can later appeal this decision in the court. But what matters is that, due to the expulsion, the media representative can no longer obtain and disseminate information about the trial to the public in a timely manner. What is even more important is that the law does not envisage the possibility for replacing the expelled person by another person (either from the same or a different media outlet). Decision regarding expulsion from the courtroom is taken without an oral hearing of the case.

Analysis of the practice shows the following:

- Out of 26 media outlets who responded to our questionnaires,¹² 16 have neither requested the court to grant the right to record the trial, nor requested the PB to provide a copy of such records. One out of 26 has not resorted to the court, but resorted to the PB and has obtained the requested copy. 9 out of 26 have requested the courts to give the permit, and 7 out of the 9 have received such permits (in one case the reason was that the trial was being recorded by the PB, in another case the reason was that the media was not a holder of a general broadcasting license.)
- Tbilisi City Court and Appellate Court do not maintain statistical data as to how many times and which media outlets requested copies of video recordings of court proceedings before the respective courts;
- No single instance of using sanctions against media outlets/representative for breaching the rules of recording in the courtroom has been identified in the period starting from May 1, 2013 (when the provision entered into force) up until September 2014.
- No single instance of a media outlet (PB or other) has denied a copy of the recording to other interested media outlet has been identified in the above-mentioned period. We have noted however, that the Public Broadcaster does not keep statistical data as to how many times and which media outlets have requested it to provide copies of video recordings of court proceedings.

¹² Answers were provided by different media outlets, including TV companies “Kavkasia”, “Tabula”, regional TV companies, e.g., “Odishi”, print media, e.g., “Borjomi”, etc.

Certain issues need to be further regulated by the law:

- Rules and procedures for live broadcasting – live broadcasting is not envisaged by the law, as it stands for now.
- Rules and time frame for retention of video recordings by the courts and media outlets.
- Rules of recording images of certain categories of persons and objects in the courtroom (e.g., minors, evidence placed on the tables of the parties).
- Rules and procedure for filing and reviewing a complaint if media access to the courtroom is denied contrary to the law.

Recommendations:

We Recommend to the Parliament of Georgia to adopt the following legislative changes:

- Article 13¹ of the Organic Law on Common Courts be formulated in such a way that if a trial is being photo-video-recorded by the Public Broadcaster, this does not deny the same right to other interested media outlets.
- Article 13¹ of the Organic Law on Common Courts be formulated in such a way that the right to video-record the trial is not restricted to those media outlets which have the general broadcasting license.
- Define the rule and the time frame for retaining video-records by courts
- Define the rule and the time frame for retaining video-records by media outlets
- Define the rules and procedures for video recording of certain category of persons present in the courtrooms (e.g., minors) and objects (e.g., evidence and certain documents placed on the tables of the parties)
- Amend the relevant provisions in the Criminal as well as Civil Procedure Codes in such a way that if a journalist is expelled from the courtroom or is fined for breaching certain rule of video-audio-photo recording, this does not hinder the media from disseminating information in a timely and thorough way
- Define the rules and procedure for submitting and reviewing a complaint if media access to the courtroom is denied based on any reason which is not envisaged or is contrary to the law or the relevant Order of the Chairman of the Court. Such complaints should be reviewed orally; submitting a complaint should delay the start of the trial. If the media is expelled from the courtroom without a proper legal ground it should have the right to redress.
- The law should establish different standards of transparency for criminal and administrative cases, as opposed to civil cases.
- The law should define the rules for live reporting from the courtroom and conditions and rules for restricting such reporting.

City and Appellate Courts of Tbilisi:

- Ensure that each and every trial is recorded by the courts; ensure that the statistical data of media requests made for obtaining video copies of the trials is kept.

Chairmen of the Courts:

- Introduce changes to the relevant Orders and establish that advance notice for obtaining permission for photo-video recording should be given within a *reasonable time* before the start the trial, instead of a fixed limit of at least one hour before the trial.