CAUCASUS OPEN SPACE

BEHIND THE COURTROOM DOORS

OPINIONS OF JUDGES AND ASSISTANTS ON EDUCATIONAL AND PRACTICAL NEEDS

Imereti Case

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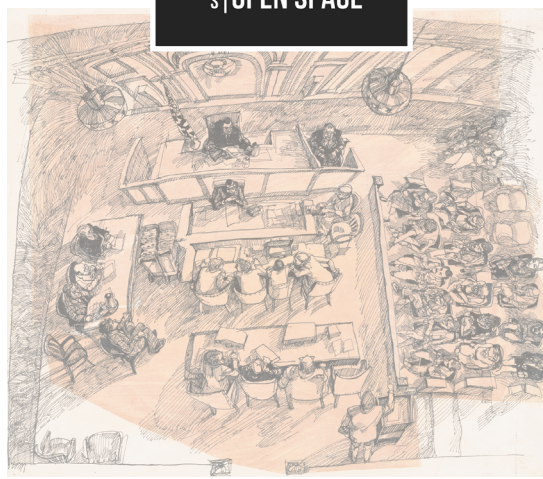

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MANAGEMENT
INSTITUTE
Promoting Rule of Law
in Georgia (PROLoG)

Research was held in partnership with the High School of Justice.

HIGH SCHOOL OF JUSTICE

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Summary

The goal of this pilot research project by Caucasus Open Space (COS) is to reveal the needs of judges and their assistants for improvement of the quality of continuous education. In parallel with qualitative analysis throughout Imereti regional courts, quantitative survey was held, covering entire Georgia. The research concentrated on three core issues: technical skills of judges and their assistants, content (legal) knowledge and their awareness/sensitivity towards contemporary standards of human rights, as well as organizational barriers in receiving access to high quality continuous education.

The research is experimental, containing experimental methodology, questions, and questionnaire structure (which is based on the international practice, studied through desk research, including review of the empathy assessment methods). The research methodology includes online anonymous quantitative survey, as well as in-depth interviews and focus groups: 44 respondents participated in qualitative, and 63 – in quantitative research. **Total, the research reflects opinions of 107 respondents.** Considering the pilot, experimental nature of the research, the qualitative component was concentrated only in Imereti.

The research was held in close cooperation with the High School of Justice, and it is planned to conduct this research in other regions of Georgia as well. It is also planned to reflect the research findings and recommendations in the educational program of judges and their assistants (both in terms of content, as well as from the organizational perspective).

The key findings of the research in Imereti are:

Content (legal) training needs:

1. Research respondents require trainings on many different topics, among them, priorities are amendments, resulting from Constitutional cases; new standards, introduced under the Association Agreement, other legal amendments. Research respondents also mentioned difficulties, caused by lack of expertise in specific fields, and emphasized the need for trainings in those fields (most acutely in finance, elections, construction, environmental and other specialized fields).

Awareness about human rights standards:

2. According to respondents, they need trainings in contemporary standards of human rights protection, because they do not have timely and comprehensive accessibility to information (due to limited capacity of the trainings, lack of Georgian translations of foreign literature, as well as the language barriers).

Organizational issues:

3. Within the training programs, organized by High School of Justice, the existing selection rule is creating unequal environment: the online training system is registering only first 15-20 participants. As a result, many of the judges and assistants in the regions were prevented from having access to information about legal amendments and new standards for years. The existing system requires change.

4. Research respondents give preference to in-person trainings because online trainings do not create an opportunity to discuss/exchange experience on complex and contradictory legal issues. At the same time, they are indicating the low quality of the trainings (lack of permanent access to stable internet, lack of technical infrastructure, disengaging methodology of online trainings, etc.).

5. Considering that prosecutors, attorneys, police, judges – are all trained according to different standards, by different trainers and through different approaches, there is no consistency in terms of legal interpretations. It is necessary to train all parts of the justice chain through consistent materials/approaches, which would have increased both fairness and efficiency of the justice system.

6. According to respondents, lack of human resources and specialization (lack of judges, assistants, non-division of duties), in the context of increasing caseload, negatively affects the quality of justice.

Technical issues:

7. There is a serious challenge in terms of public visibility as well: it is necessary to hold trainings in formulation and justification of decisions (which is the key instrument for the judges and the court for communicating with the society – thus, well-formulated and justified decision has the capacity to increase acceptance of decisions by all parties and deepen the trust of society towards the court).

Detailed findings and recommendations are reflected in the research chapters below.

Methodology

Needs assessment of Imereti region's judges is the first, pilot part of a wider research effort and it aims to analyze the needs of the judges from Imereti (**primarily concentrating on the continuous education, however also touching upon institutional, organizational, legislative, and socio-political issues**). The research is experimental in nature, thus the first pilot part additionally aims to develop the research instruments (considering the best international practices, synergized with local context), which can be introduced as a regular mechanism of assessment throughout entire Georgia, for evidence-based capacity building of the High School of Justice.

The research instruments, and thus the report, includes three major components:

- ***Organizational issues*** (which organizational, institutional, and legislative challenges must be overcome for improvement of the judiciary work).
- ***Content-related issues*** (what do judges, and assistants need to be trained in, for increasing effectiveness of their work).
- ***Quality of accessibility to information about human rights standards*** (this part aimed to assess, whether judges and assistants receive sufficient information in the most recent developments, experience and standards in human rights, among others, on specific challenges faced by women, persons with disability, ethnic, religious minorities and LGBTQ community).

Multidisciplinary composition of researcher team is a defining feature of the research as well, including individuals specializing in judiciary system, practicing attorney, social research methodologist, good governance specialist and political psychology specialist.

Questionnaire was developed based on the brief review of the American and European experience and theoretic frameworks, measuring bias and tendency towards discriminatory approach. Among others, the team reviewed one of the classic models assessing empathy (the Empathy Quiotient EQ), developed by Simon Baron-Cohen[1], consisting of 60 self-assessment questions and filled out without external presence (questions are aimed towards self-assessment in sensitivity towards humans and animals). Other reviewed literature involved hidden bias tests[2], which is based on associative attribution method (word-photo), to reveal subconscious bias and has been applied in US for years, to assess discriminatory approaches[3]. Other notable papers reviewed included EU guidelines on human rights-based approaches and literature by David Myers on group influence, attitude, and behavior formation[4]. This and other body of relevant literature served as the basis for discussion within the multidisciplinary group and considering separate elements from each, the team developed new questions/questionnaire design and relevant methodology. It is desirable to allocate more time in the future for a more detailed research and discussions, especially, in the multidisciplinary format.

Experimental nature of the research is on the one hand, a good opportunity to develop new instruments and test them. However, at the same time, ***the experimental nature of the research also represents a limitation:*** the questionnaire is not tested on validity and does not consist of widely tested questions. At the same time, ***parts of the research might be sensitive for the respondents,*** which, considering charged public discourse around the issue of judiciary, may affect sincerity of the answers. Third limitation of the research is the ***restricted timeframe,*** which prevented the researchers from exploring the arising issues with a greater depth. The fourth of the major limitations is also the ***homogeneity of the respondents, consisting primarily of the judges and their assistants,*** thus reflecting only their view of the system.

1. Simon Baron-Cohen, Autism Research center at the University of Cambridge, link
2. Project Implicit, Hidden Bias Tests/IATs (Hidden Association Tests), Harvard, Virginia and Washington University, link
3. EU Rights-Based Approach (RBA), link
4. David Myers - Group Influence, Attitudes and Behavior formation, link

To mitigate the negative influence of the above limitations, the research team triangulated the research and draw from variety of sources, such as desk research (including preliminary brief overview of the existing research and best international practices – both in terms of judiciary educational system and continuous education, as well as in terms of research techniques – asking sensitive questions, structuring questionnaires and other issues), as well as quantitative anonymous questionnaire, group discussions (focus groups) and in-person in-depth interviews.

Comparison of the different sources of research (focus groups, in-depth interviews, and online questionnaires) reveals certain homogeneity, indicating likely high level of sincerity of the responses. At the same time, those results match interestingly with the brief desk research of the international experience.

Overall, quantitative questionnaire included 30 questions and has been anonymously filled up by 63 judges throughout Georgia (including 11 judges from Kutaisi)[5]. Group discussions (focus groups) involved total 15 judges and 19 assistants, while in-depth interviews were held with 4 judges and 4 assistants (total 63 participants in quantitative part of the research and 44 participants in qualitative). ***In total, research includes the views of 107 judiciary representatives (judges and assistants).***

Research revealed interesting findings, which both can be reflected in educational programs and organizational arrangement immediately, as well as can be instrumentalized for further in-depth discussion, contributing to development of new approaches to the existing challenges in the judiciary.

5. Tbilisi - 27, Imereti - 13 (Kutaisi - 11, Samtredia - 1, Zestaponi - 1), Kvemo Kartli - 8 (Rustavi - 6, Bolnisi - 2), Kakheti - 5 (Sighnaghi - 3, Gurjaani - 1, Telavi - 1), Shida Kartli - 3 (Gori - 1, Khashuri - 2), Samtskhe-Javakheti 2 (Akhalkalaki - 1, Akhaltsikhe - 1), Adjara - 2 (Batumi), Guria - 2 (Ozurgeti), Samegrelo 1 (Poti)

Key Findings

1. Continuous Education: Trainings

1.1. Content of Trainings: thematic preferences

Discussing the desired topics for trainings, respondents touched upon multitude of different ones, in which they feel shortage of instruction, and which has significant impact on their work. Despite diversity of the identified topics, there were consistent tendencies throughout almost every interviewed group: respondents say that the ***information about constantly increasing numbers of constitutional disputes and judgements does not reach them in a timely and comprehensive manner.*** Among others, many of the constitutional judgements have not yet been reflected by Parliament in relevant legislative amendments and in many cases – there are no concrete procedures/standards/approaches, which creates certain ambiguity. Judges and assistants also said that it is important for them to be introduced to the recent developments in the field of human rights, due to its permanently evolving nature. Most acute needs for trainings were identified precisely in the field of human rights, from the viewpoint of the content-oriented trainings.

> "...International…human rights – although the School holds trainings every year, but it is always necessary too: approaches constantly evolve. The most recent precedent law is very important..."

Second significant common tendency – acute ***necessity of trainings in technical/specialized fields.*** Research respondents mentioned difficulties caused by shortage of expertise in specific fields

and necessity of trainings, in the fields, such as finance, construction, environmental and other specific areas.

> "...For example, it will be very interesting about administrative violations – many companies violate, in terms of air contamination – this is a great pain for me. This issue is very important, and we really need trainings on environment. ***The most productive trainings are those by multidisciplinary groups..."***

From the viewpoint of content-based trainings, respondents mentioned the following topics, which they desire to be trained in:

- Unjustified enrichment (due to contradictory and complex norms).
- Delicts (due to contradictory practices/precedents).
- Child rights (considering the entry into force of the new Code of Child Rights).
- Commercial law (considering wide range of issues it entails).
- Bankruptcy (due to importance for the investment climate).
- Human rights and precedent law (considering its permanently evolving nature).
- Electoral law (judges with no experience in electoral disputes are frequently appointed to review those cases due to high multitude of such cases around electoral periods).
- Construction, environmental laws (due to multiple violations in the sphere).
- Constitutional judgements and related changes in approaches, standards, and legislation.

Respondents repeatedly said that ***increased number of electoral disputes around electoral periods results in involvement of judges with no experience in electoral disputes,*** which causes multiple challenges for all sides involved. Electoral disputes are one of the strategically important spheres, affecting political stability – especially in the transitional democracy, like Georgia. Election observation reports by Caucasus Open Space indicate, among others, the need to maximally direct electoral confrontations into the legal-institutional framework, which would have significantly mitigated the highly damaging political crises in the past years, through resolving the disagree-

ments in open courts. Furthermore, limited timeframes of electoral disputes, permanent legislative updates additionally strengthen the need for trainings in electoral issues.

Particular attention was devoted to the ***need of exchanging information and participating in trainings related to bankruptcy cases.*** According to respondents of qualitative part of the research, they never participated in a training, related to bankruptcy. The knowledge of such cases is so low that judges even had to postpone the court hearings until further collection of information and independent learning. According to them, ***in many cases, such disputes are of such high impact that they have the potential to influence the investment climate in Georgia*** (especially, when disputes relate to large, government-owned companies and/or those cases with involvement of foreign companies).

Despite child rights being recognized as the priority on the national level, the judiciary system was not prepared to enforce the new Code on Child Rights. Research participants emphasized overall increase of cases in this regard and large workload on child rights' cases. They also emphasized the need of training the staff of the childcare institutions. As one of the judges explained, there are only two attorneys in Kutaisi, specializing on such cases, which significantly complicates adjudication of such cases. Respondents also mentioned that expertise on such cases is challenging (due to lack of experts in Kutaisi, requiring over a year just to receive the conclusion from the expertise). Furthermore, there are no child psychologists in Kutaisi (only one in entire Imereti region). There is no childcare facility/room in Kutaisi city court, which, according to judges, complicates already difficult psychological condition of the children involved in the court cases.

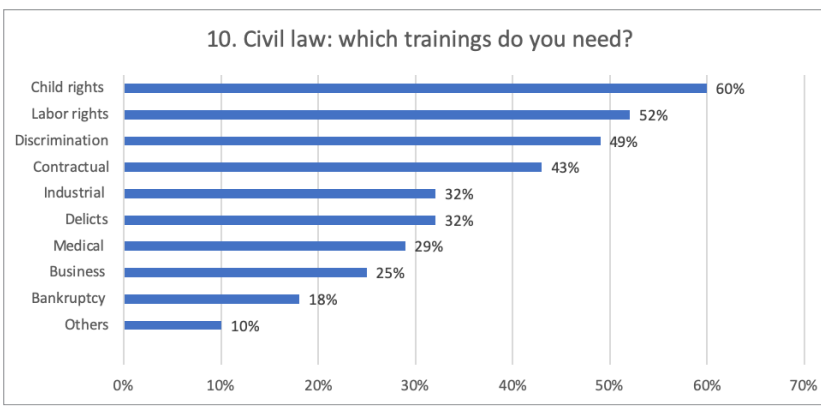
> "...If you appoint an expertise {on child rights cases}, you may have to wait for a year… How is it acceptable to have only one psychologist in whole of Imereti: writing a conclusion takes 2 months, which is more than enough time for a murder to happen in a family…"
>
> "...We don't have child rooms either: I had a case when brother and sister were crying – to calm them down, assistant had to take them to their room, play with stationery..."

This part of the research revealed the need to develop professional skills of judges, as well as improve the infrastructure of the courts.

In Kutaisi anonymous survey (regarding civil law), out of 11, 6 respondents mentioned the need for trainings in child rights, 5 – in labor disputes, 5 in contractual disputes, 4 in entrepreneurial/commercial issues, 3 in delicts, 3 in discrimination, 3 in insolvency, 3 in large economic/business disputes, 3 in medical disputes.

In a nationwide quantitative survey (civil law component) about 50% and more indicated that they wish for trainings in child rights (60%) – despite comparative multitude of trainings held in child rights, labor rights (52%), and discrimination-related issues (49%).

About 25-50% of respondents wish to be trained in contractual law (43%), delicts (32%), industrial (32%), medical (29%) and business disputes (25%). Less than 25% wishes to be trained in bankruptcy (18%) and other issues.



In Kutaisi anonymous survey (on criminal law), out of 11, 6 mentioned the need for trainings in cases involving the underage, 6 – on economic crimes, 5 on domestic violence and 4 on medical cases.

In a nationwide quantitative survey (criminal law component) about 50% of respondents wish to be trained in cases that involve underage youth (56%), family disputes (48%), domestic and gender related violence (46%) – despite also relative multitude of such train-

ings held in the past. About 30% of respondents wish to be trained in medical (35%) and commercial disputes (30%).

It is notable that participants particularly emphasized lack of accessibility to new information in the field of criminal law.

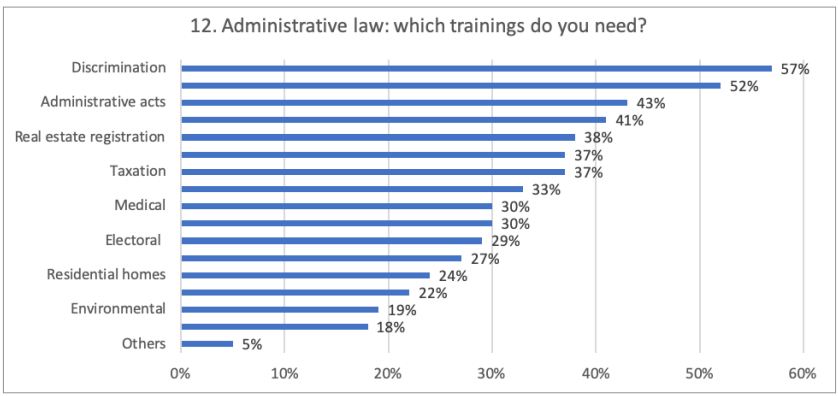
> "...There are so many decisions in criminal sector {referring to constitutional judgements} – and not a single training on them, and in general – on constitutional amendments. Prisoners, even from inside the prisons, know well before us {judges} about the recent amendments..."

In Kutaisi anonymous research (on administrative cases), out of 11, 5 mentioned the need for trainings in domestic and gender-based violence, 5 on discrimination, 5 on construction, 5 on administrative-legal acts, 5 on execution of decisions, 4 on taxation, 4 on electoral, 4 on social protection, 4 on the rights of public servants, 3 on environmental cases, 3 on administrative contracts, 3 on procurements, 3 on privatization of real estate, 3 on registration of real estate and 3 on medical disputes.

In a nationwide survey (administrative law component), about 50% and more respondents wish to be trained in discrimination issues (57%), domestic and gender-based violence (52%). About 25-40% wishes to be trained on the issues related to administrative legal acts (43%), administrative contracts (42%), real estate registration (43%), tax law (37%), execution of decisions (37%), social protection (30%),

medical (30%), electoral (29%) disputes, and cases related to the rights of public sector employees (27%).

About 15-25% wishes to be trained in housing privatization (24%), public procurements (22%), environment protection (19%), involuntary psychological treatment (18%) and other issues.

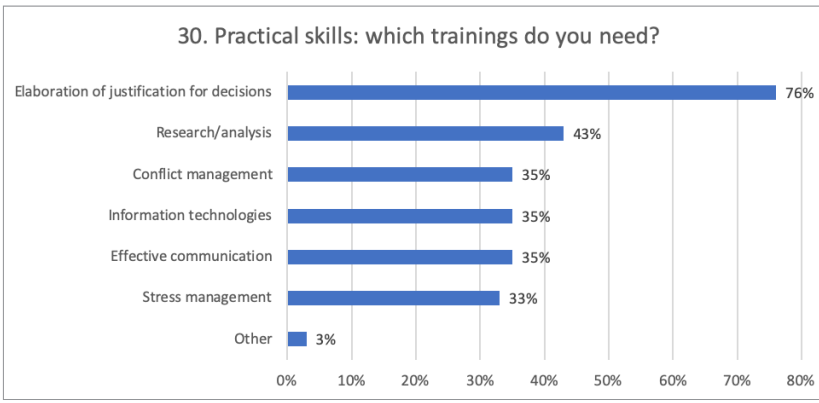


Aside from content-related issues, ***respondents express wish to be trained in multitude of practical skills.*** Overwhelming majority expressed wish to be trained in the techniques of elaborating decision justifications (76%). Respondents say that better justification would have significantly improved the adjudication: on the one hand, it would have supported greater development of the precedent law, since judges and assistants would be able to read each other's decisions more easily, quickly (for sharing experienced and developing uniform practices), while on another hand, clearly elaborated and well-justified decisions would have strengthened the belief among the sides that a decision is fair (thus increasing public trust towards the judiciary).

The judges and assistants expressed wish to engage in trainings as trainers themselves, to share their own knowledge, information, and experience with their counterparts from other regions. For this, ***respondents emphasized the need for Training of Trainers (TOT).*** Furthermore, "cascade method" of holding trainings is seen as one of the methods of overcoming the problem with lack of spots on trainings, organized by the High School of Justice (cascade methodology refers to the trainings in which small group of trainers is trained to hand down the information to the next group of trainees).

In Kutaisi anonymous survey, out of 11, 9 requested trainings in formulation/justification of the decisions, 4 in stress management, 3 in effective communication, 3 in research/analytics, 3 in information technologies, 3 in conflict management.

Respondents to the nationwide online survey expressed wish to be trained in the following skills' trainings: research/analysis (43%), effective communication (35%), information technologies (35%), conflict management (35%), stress management (33%) and others.



1.2. Organizational Arrangement of Trainings

Unequal access to trainings among the capital and the western Georgia (due to unfair registration system) was identified as the fundamental problem in organizational arrangement of trainings. Respondents explained that prior registration to limited number of spots on any given training is more accessible to Tbilisi-based judges and assistants, among others, due to better access to the internet.

Respondents negatively assess the 15-person limit. Many participants mentioned that despite the wish to register for trainings, after introducing electronic registration program, they never managed to register for trainings, because the spots are filled up quickly. To resolve the problem, independently of each other, in almost every group, respondents suggested to introduce quota system (so that East and West Georgia, or each region will be allocated with set quota, for equal geographic distribution of training spots). Training participants positively assessed the periodic survey by High School of Justice, regarding the preferred topics for trainings, however, respondents wish to reflect those results in quantitative and geographic accessibility of those trainings.

Respondents also criticized the rule, according to which same people can participate in same trainings multiple times, preventing other interested candidates from registering. One of the obstacles for participating in trainings is also the fact that the spots are filled up by those candidates, whom, given the nature of their work, do not necessarily need specific trainings they apply for (for example, administration registry staff, mail personnel, etc.). In other cases, assistants registered for specialized trainings without having any need/practice in those given cases, while the assistants having acute need of those specific trainings were left out. Participants expressed wish for the elaboration of a method, allowing to prioritize the candidates, identifying those with acutest need in trainings (for example, prioritizing those, who have most cases on any given issue and only if they give up their spots, to allow second-tier priority candidates to register).

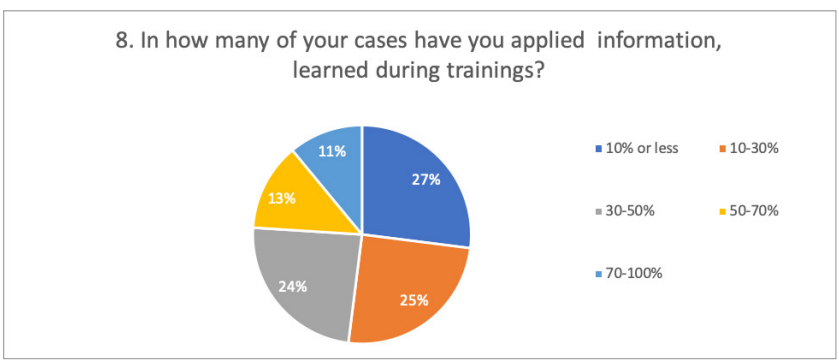
> "…Training module must be developed in such a way, to be part of the evaluation process. There must be role plays, case studies and trainer assessment…"
>
> "…Court managers could engage in selection of the training participants…"

Judges and assistants also emphasized on the need to develop specific criteria for selecting trainers and/or introducing mandatory preparation period for trainers. Specifically, large part of respondents mentioned that trainings are most effective when train-

ers are informed of the local context – Georgian law and practice (and not just the training topic), allowing them to introduce the new topic through the prism of the local peculiarities (which, according to respondents, would make trainings more valuable and practical). Trainings, where trainers have no knowledge of the local context and experience, usually does not provide actionable knowledge, and is rarely applied by participants in real life cases.

In Kutaisi anonymous survey, one judge indicated applying information learned during the trainings in less than 10% of the cases, 4 indicated in 10-30% of the cases, 2 indicated in 30-50% of the cases and one judge indicated in 50-70% of the cases.

According to the nationwide survey, regarding application of the knowledge, received during trainings, 27% said they apply training knowledge "in less than 10% of cases", 25% applies it in 10-30% cases, 24% - in 30-50% of cases, 13% - in 50-70% of cases and only 11% said "in 70-100% of cases. This demonstrates that majority of respondents apply training materials in only small number of cases. It is important to improve this indicator over time, so that more judges think that each training has practical value.



As for the training format, ***large part of respondents say that in-person trainings are more effective, since online trainings do not allow for a discussion and exchange of experience on complex and contradictory issues.*** Latest developments prevented them from professional development opportunities, isolating them from each other more. Covid-19 pandemic created irreversible and growing need to move more activities online, meaning in either case,

the quality of online trainings must be improved significantly (both in terms of internet accessibility, as well as searching for methodological solutions for effectively engaging participants and encouraging discussions – experience of which is partially accumulated at Caucasus Open Space, which applied various socio-psychological methods in the past online trainings)[6].

According to large part of respondents, ***holding trainings online (through recording lectures/seminars, which can be uploaded to relevant websites will enable larger number of judges/assistants to benefit from those trainings, which may indicate the need for creatin permanently accessible video-resources).***

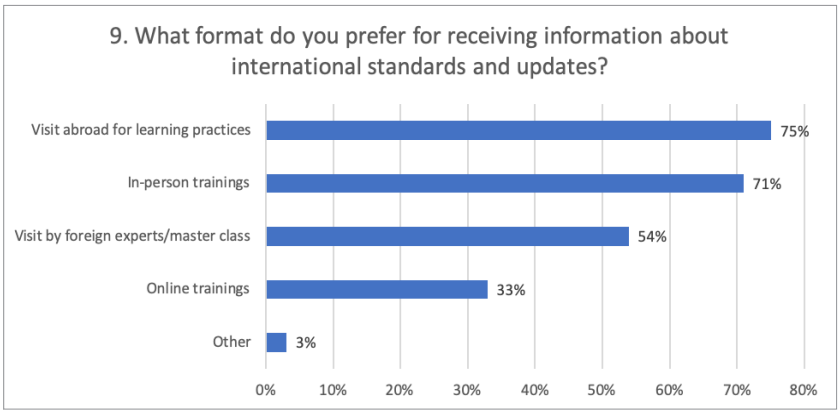
In addition to improvement of the quality of online trainings and increasing engagement in them, ***it is essential to increase geographic accessibility of the in-person trainings as well.*** Participants expressed wish to engage in live trainings both in their own city, as well as in other regions. Among others, respondents mentioned that it would have been good to launch trainings in Tskaltubo and Batumi branches of the High School of Justice (as currently, most of the trainings are held in Tbilisi, making it difficult for Western judges/assistants to attend them).

As for the timing of the trainings, respondents' preferences diverge: some indicate that trainings held by the High School of Justice on weekends take away their resting time, asking for holding trainings on weekdays. Yet, another part of the respondents says that weekend is more convenient, since they cannot concentrate on trainings on the workdays anyway. Best approach might be dividing the groups and enabling selection of timing for the registered participants.

According to the Kutaisi anonymous survey, out of 11 respondents, 8 wish to have trainings in person, 5 wish to travel abroad and be introduced to the best international practices (and observe foreign judges in court), 5 wish to host foreign experts for master classes and only one judge indicated preference for online trainings.

6. As Covid-19 Pandemic started in Spring 2020, Caucasus Open Space held 10 online pilot trainings, for testing various engagement mechanisms, methods, which would enable maximal online engagement of the trainees. As a result, COS developed internal manual for online meetings.

As for the answers to ***preferred format of the trainings in a nationwide online survey,*** 71% indicates preference for in-person trainings, 33% - for online trainings. Also, overwhelming majority wishes to visit Western countries and personally witness judges apply practical skills in real court proceedings. 54% of respondents wish to attend master class by a visiting foreign expert (many adding the condition that foreign experts be paired up with domestic experts or be well informed of Georgia's legal context themselves).



Among others, those who mentioned that they cannot attend online trainings, they indicated technical problems as the major cause.

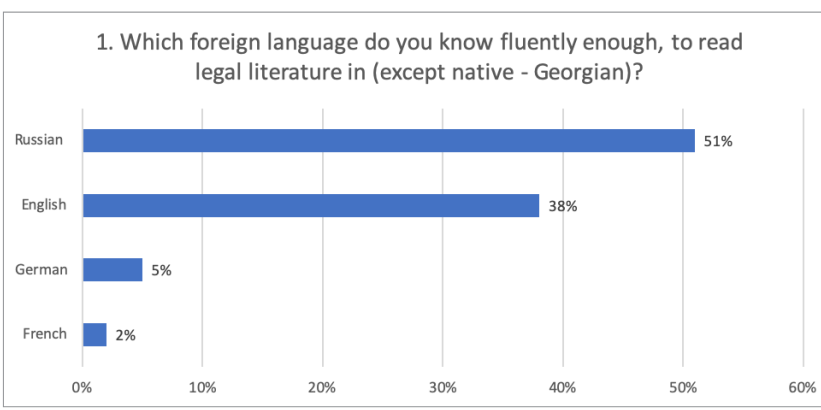
> "...We are not equipped – there is no capability at work, so there is no point to log online– because you need a video camera, so you can be seen during discussions. How long can a mobile internet last? Then it must be unlimited. This is the problem, largely causing absenteeism..."

2. Consistency of Court Practices: Synchronizing Approaches

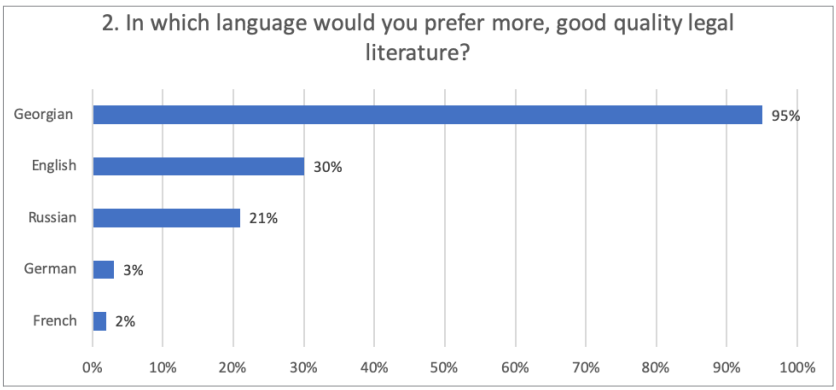
2.1. Access to International Practices, Availability of Sources in Georgian Language

As mentioned in other parts of the report, research respondents believe that ***there is not enough literature available on the most recent precedent law, among others, on the important judgements of the European Court of Human Rights.*** 38% of respondents knows English, however still expressing the wish to learn legal English, while the rest of the participants expressed the wish to learn at least basic English, to be able to read at least the justification/decision part of the judgements. About two thirds of the respondents wish to have more legal literature accessible in Georgian, about one third wishes more legal literature in English.

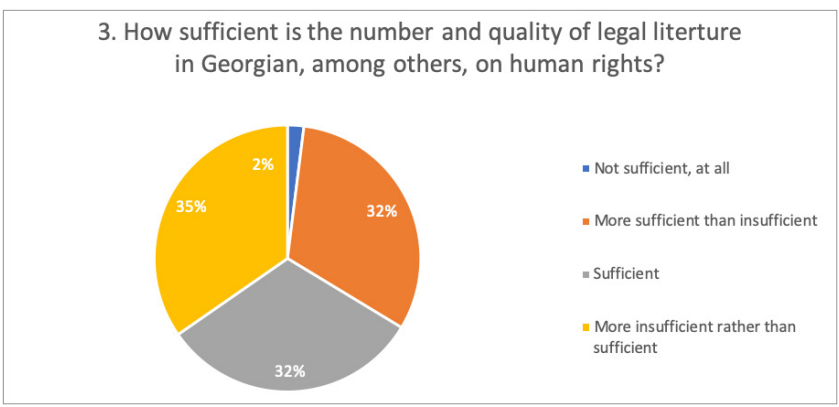
According to anonymous survey in Kutaisi, out of 11, 4 indicated that they know Russian, fluently enough to be introduced to legal literature, 2 indicated – English, 2 – only native Georgian and 1 – both English and Russian.



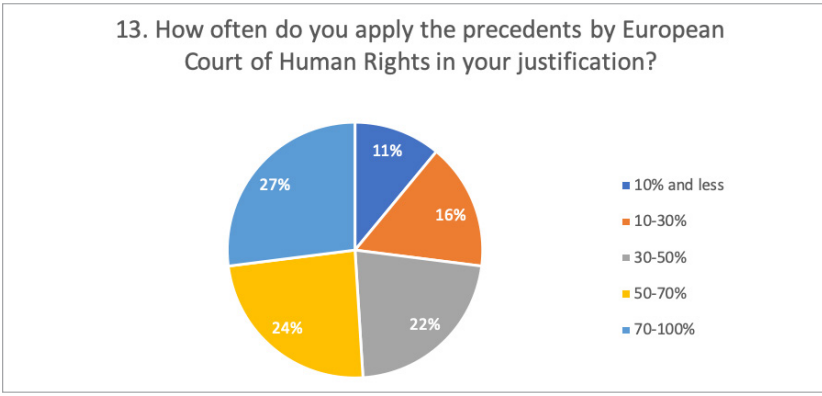
According to anonimous survey in Kutaisi, despite basic knowledge of Russian and English, in majority of cases – 7 out of 11 judges indicate that they would wish more legal literature in Georgian language. One also wishes for more literature in English and one – in Russian. Such tendency is also replicated in nation-wide survey:



According to the anonymous online survey in Kutaisi, 4 out of 11 respondents says that the legal literature in Georgian is “more insufficient, rather than sufficient”, 3 – “sufficient”, 2 – “more sufficient than insufficient”. Similar distribution of answers is reflected on the nation-wide scale as well:



According to anonymous online survey in Kutaisi, only one judge is applying ECHR precedent laws in 10-30% of their cases, 2 judges apply in 30-50% of cases, 4 – in 50-70% and only one in 70-100%. The distribution of answers throughout the country is more homogenous:



2.2. Horizontal Exchange of Practice/Experiences among Judges in Different Regions, as well as among Judges, Prosecutors and Attorneys

Judges and assistants expressed a serious lack of socialization/communication and discussion, due to lack of effective exchange platform (apart from the internal system). According to them, experience, and knowledge, abundantly accumulated in different courts is scattered, and if organized more effectively, will significantly support the work of the judiciary, decrease the number of appealed decisions, and will enable consistency of practices throughout Georgia.

> "…All sides must be educated in School, to ensure common base. This would have decreased the disputes…"
>
> "…All levels of court must permanently meet regarding important cases and new approaches. Very often, lower level is informed of the new developments, while appellate court isn't, so there is discrepancy. It is impossible to independently search for new practices in this situation…"

"…There must be trainings prior to all amnesties – we are learning while actually working on the case…"

Apart from the need for exchange among the judges, assistants, respondents emphasized the need of uniform/consistent training/information sharing with police, prosecution, representatives of administrative bodies and judges, to handle the cases under the same standards.

"...Ministry of Internal Affairs, prosecution and court must be guided by the same standard – we must interpret the law in a consistent way. Everything starts with correct understanding of the incident by police and prosecution – this affects the whole adjudication afterwards. When police start a case incorrectly, prosecution usually tries to fix it and cover up for the police, then a good lawyer knows how to use this and as a result – a criminal may end up walking freely in the streets. It is necessary to hold trainings for mixed groups, so that all three four institutions understand the law correctly. This will allow us to avoid many problems – so we must start from the police, move on to prosecution and afterwards – to the court. This is the most important thing. They hold trainings separately for each of us, each trainer then comes with their own opinion. There must be coordination for trainers as well, otherwise, say, Gurjaani and Zugdidi make wildly different decisions on almost identical cases. We can be a better country if we resolve this issue..."

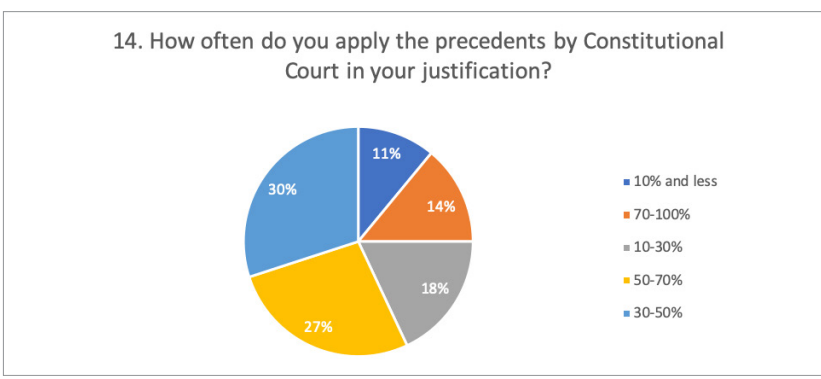
2.3. Vertical Synchronizing of Practices: Reflection of Supreme and Constitutional Court Decisions in Common Courts

As already mentioned in other chapters of this report, ***interpretation of constitutional court judgements is a significant issue for the judges and their assistants,*** considering multitude and complexity of such cases. According to the participants, past years have seen

increase in the number of constitutional cases and judgements and "there are absolutely no meetings" to introduce such judgements or explain the reasoning behind them; judges and assistance struggle in identifying the meaning/intention behind those judgements and how to reflect those judgements in their own adjudication (especially in cases when Parliament has not yet adopted the new law, to substitute the revoked ones).

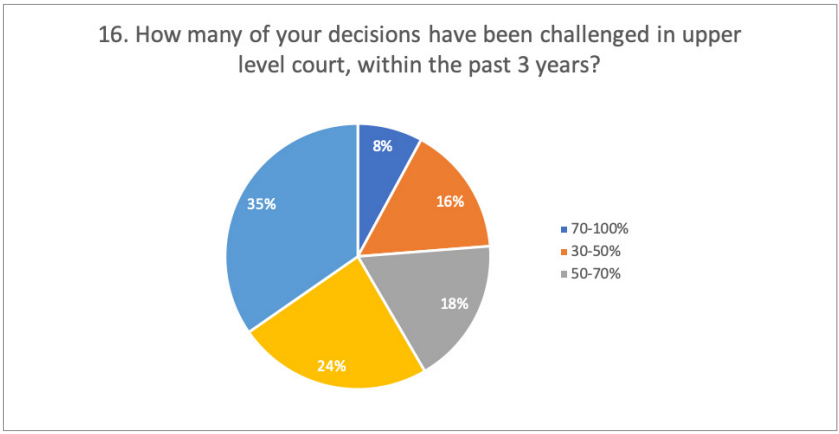
where they'd have an opportunity to exchange information, ask questions and receive answers from other judges and assistance, for quick access to answers and experience of other courts. Respondents say that they find particularly valuable the practice, in which they share complex questions with supreme court, who, after certain deliberation, issue recommendations on various issues. Systematizing similar practices, as well as developing more flexible digital platform would be desirable for the respondents.

According to the online anonymous survey in Kutaisi, out of 11, only one is applying Constitutional court's standards in 10-30% of the cases, 2 – in 30-50% of the cases, 5 – in 50-70% of the cases and only one in 70-100% of the cases. The distribution throughout the country is as follows:

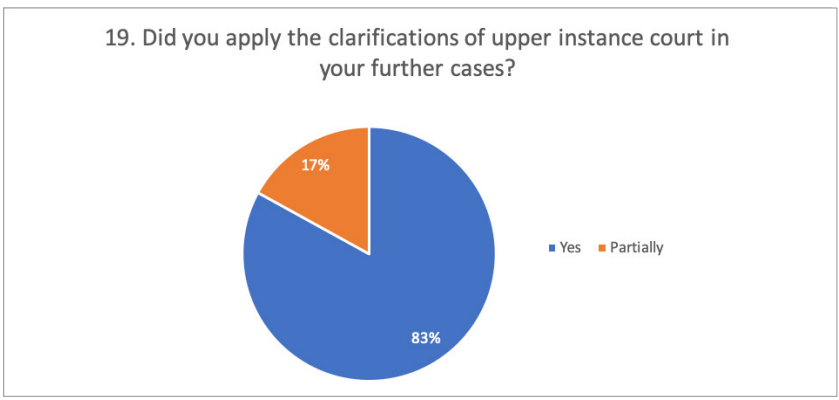


According to respondents, if they gain opportunity/forum for permanent exchange, discussions on court practices related to various complex, ambiguous cases, this will significantly decrease the numbers of appeals and will enable more affective management and adjudication in the court system.

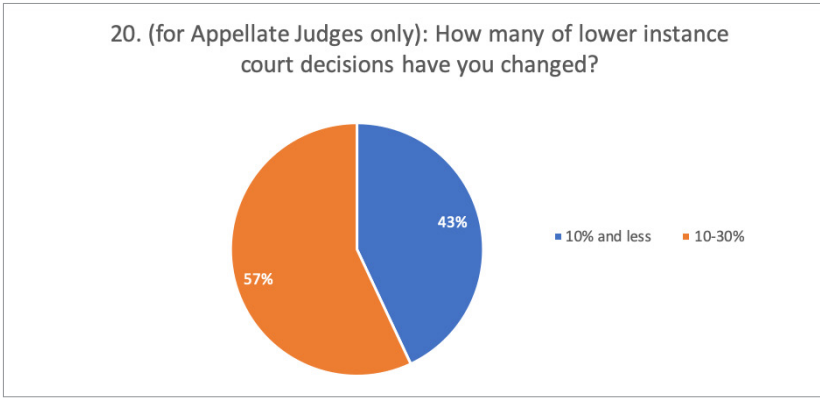
According to the anonymous online survey in Kutaisi, 5 respondents mentioned that less than 10% of their decisions were appealed in higher court in the last 3 years, 2 mentioned that about 10-30% of their decisions were appealed. The number of appealed decisions throughout the country is slightly higher:

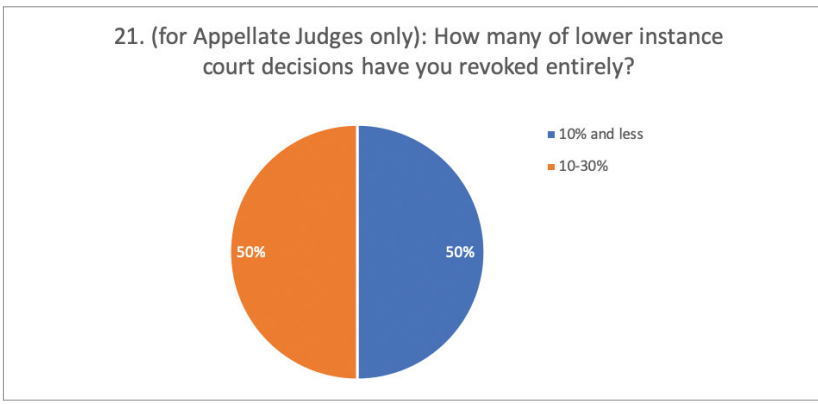


According to the anonymous online survey in Kutaisi, 6 out of 7 consider the decisions of the upper court, while one – only partially. Similar distribution of answers is reflected in nationwide survey as well:



There are slight differences between the respondents of the first level and the appellate court: 2 appellate court representatives in Kutaisi say that they change about 10-30% of decisions of lower court, 1 changes less than 10%. The gap is higher on the national level:





Respondents mentioned that they don't have such work meetings, where they would have discussed changed and revoked decisions, which, in their opinion, is important – on the one hand for developing uniform practices, while on another hand, for professional development.

3. Organizational Barriers

3.1. Lack of Human Resources, amid Growing Workload

Large workload (many cases) and lack of judges and assistants, as well as absence of specialization of both was revealed as the fundamental problem. According to respondents, fixing this issue would have resolved many problems in the judiciary. Specialized judges would have further resolved problems in sworn jury cases (this category of cases is so specific that they require specialized judges. Judges who are involved in adjudicating all types of cases – criminal, civil and administrative categories, cannot be equally good in each of them. Often, cases of different categories are appointed in tight sequence, resulting in many mistakes by judges.

> "...I have million tasks, each with a deadline, each a priority – how can you ask me for any quality? God forbit the case goes to the Strasbourg court; no-one will say that a judge might have had 1000 cases. No one analyzed, how many cases are the limit, to ensure quality..."
>
> "...The other day, I was reviewing the restrictive measures and people were waiting while I judged on bankruptcy case: they were surprised to learn I adjudicated both criminal case and a bankruptcy case – naturally, they may doubt my qualification. It is a great achievement that we have specializations for judges in Tbilisi..."

Particular problem is also ***shortage of assistants and brain-drain due to low reimbursement.*** Respondents gave an example, in which only 13 young lawyers applied for 53 vacant positions. One of the solutions is increasing number of judges, which will be followed by increased number of assistants, as well as decreased workload (and improved quality per each adjudication). Respondents also ***emphasized that there are no programs for motivating assistants, they have no social guarantees, no health insurance.***

Absence of duty separation for assistants was indicated as one more problem, in particular, assistants, in addition to performing technical functions (such as, communication with the sides, managing correspondence, and resolving other technical issues) are also drafting case decisions. Due to absence of separation of those duties, they do not manage to elaborate decisions/justification in a sufficient quality, asking for introducing additional position of a writer-assistant, which in their opinion, will improve the work of the court and make it more effective.

> "…Requirements on judiciary standards and the workload are disproportional…"
>
> "…Mediation institute would have taken off much workload from us. We can involve pensioners – former judges as mediators and use their experience…"

Absence of assistants' specialization was emphasized as a particular problem: in addition to absence of division of tasks, they also have to work on all types and all categories of legal cases, making them unproductive. ***One assistant frequently works with multiple judges***. Programmatically, one judge can only have one assistant, but in practice, they have multiple assistants, which is why ***assistants must wait for each other to work in a system.***

3.2. Communication, particularly in the Context of Pandemic

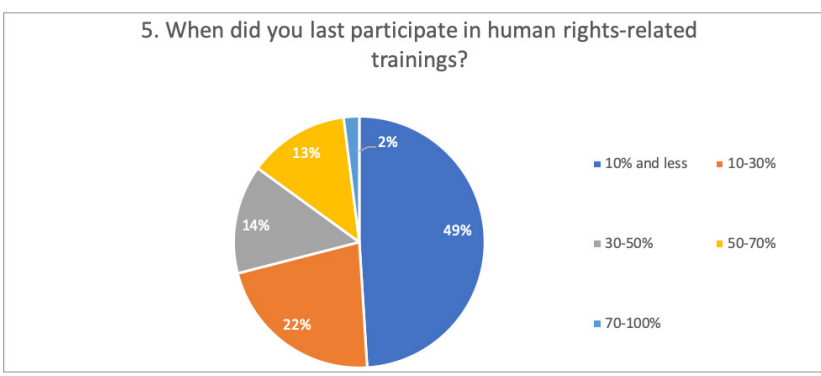
Respondents disagreed when it came to preference between in-person and online court hearings. ***Supporters of online hearings explained that online format enables to lead the process faster and more efficiently*** (especially, in no-dispute types of cases), helps to control that the sides stay within the allocated timeframes, also making it easier to mute the sides when they shift to verbal confrontation/insults, which is more difficult in the courtroom. Online hearings enable more transparency and openness for those who can follow online court hearings; however, practices are not well-established in this regard so far. From this perspective,

it might be valuable to develop certain criteria, allowing to define whether a case requires in-person hearing, or whether online adjudication is sufficient, to optimize the work of the court.

As for the downside of online hearings, one of the predominant reasons indicated by opponents is prevalence of ***technical issues.*** In addition to actual technical problems, respondents indicate that the sides pretend to have technical problems for prolonging the court hearings. At the same time, residents of ***remote villages normally don't have access to high quality internet and relevant equipment,*** to enable digital involvement in court proceedings. Furthermore, opponents of digital hearings consider that preparation and conduct of digital hearings requires much more time and involves more difficulties than in-person hearings. They also believe that it is important for both judges to observe body language of the sides, as well as for the sides – to strengthen their trust in a judge through in-person contact.

Technical issues also involved post-related challenges: respondents mentioned that mail personnel cannot or intentionally do not find even the simplest addresses and return the documents (currently, TNT is providing post services to courts) which, respondents suspect, could be due to the faulty system of reimbursement for mail personnel – who are paid per trip (which in the end, prolongs the delivery of materials to the sides).

Other technical issues include difficulties in filling up the court forms. According to the online anonymous survey in Kutaisi, out of 11 respondents, 3 indicated such problems in less than 10% of cases, 2 – in 10-30% of cases, 2 – in 30-50% of cases, 2 – in 50-70% of cases, while throughout the country the distribution is different:



4. Access to Information about New Human Rights Standards and Human Rights-Based Approaches

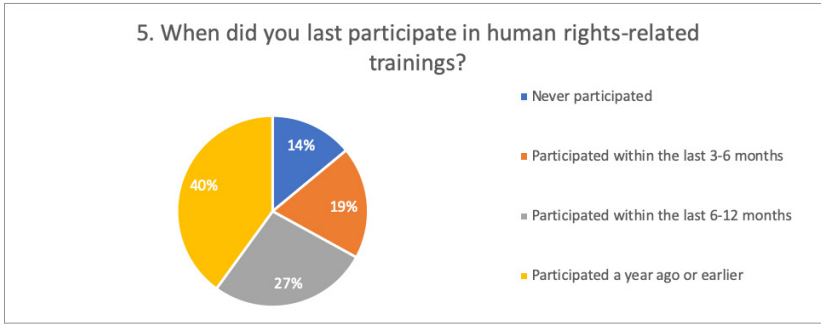
Research participants mentioned that they do not have comprehensive access to the decisions by the European Court of Human Rights. Respondents emphasized that the ***human rights precedent law is constantly evolving, and due to, among others, lack of language skills and lack of translations to Georgian, they do not have comprehensive access to it.*** On another hand, they do not have sufficient time to read those decisions, to guide their work based on those standards (among others, caused both by lack of human resources and multitude of routine/technical tasks).

At the same time, respondents mentioned that there are trainings held on human rights issues, however, they consider them insufficient, among others, due to multitude of constitutional decisions (not reflected in legal amendments by Parliament so far).

> "...Constitutional court writes decisions very ambiguously. For us, it is vital to have trainings on those issues, hold meetings. It wasn't as tough years ago – now amendments have become more frequent; some spheres have been completely turned upside down and Parliament hasn't adopted relevant amendments yet..."

In Kutaisi anonymous survey, out of 11, 3 respondents never participated in trainings on human rights, 2 participated within the last 6-12 months, 4 – one year ago or earlier.

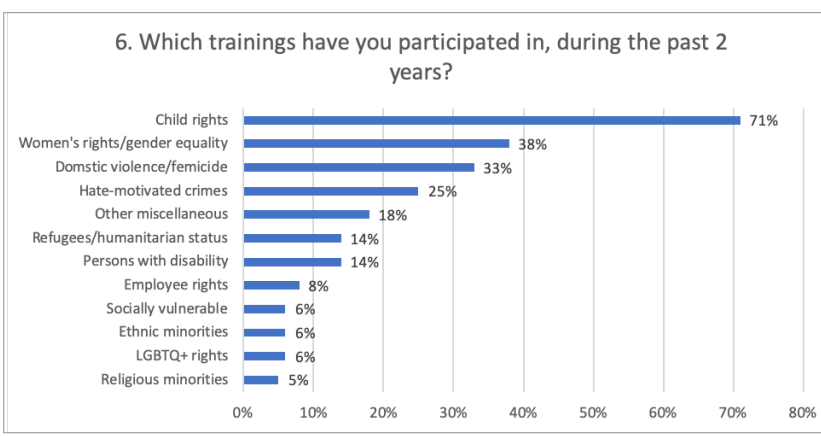
About 40% of respondents to quantitative questionnaire throughout the country mention having attended human rights-related trainings one year ago or earlier, 27% - within the last 6-12 months, 19% - within the last 3-6 months and 14% has not ever attended human rights related trainings.

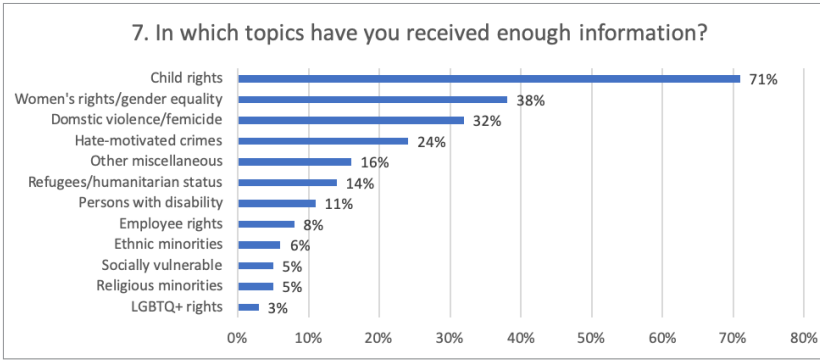


Considering thematic distribution, 71% of respondents were trained in child rights within the last two years, 38% - in women's' rights/gender discrimination, 33% - domestic violence/femicide, 25% - on hate motivated crimes.

Less than 20% of judges and assistants were trained in the following topics: rights of persons with disability (14%), refugee/humanitarian status (14%) and only 3-5% were trained on LGBTQ persons' challenges, ethnic/religious minorities, and socially vulnerable groups' issues.

Considering that there is no specialization-based appointment of judges and assistants to different cases, the percentage of those who participate in human rights-related trainings is insufficient for ensuring high standard of Rights-Based Approaches in court litigation.





In Kutaisi, anonymous online survey shows that out of 11 respondents, 5 were trained in women's rights/gender equality, 4 in child rights, 4 in hate-motivated crimes, 3 in domestic violence/femicide, 2 on ethnic minority issues, 2 on issues related to religious minorities, 2 in refugee and humanitarian status, 1 in socially vulnerable and IDP cases. None of the respondents were trained in LGBTQ or disability issues.

Almost all respondents mentioned that the trainings on above issues are insufficient (except child rights).

5. Sensitivity Towards Human Rights

Training participants expressed a wish for more trainings on such sensitive issues, as the rights of persons with disability, gender equality and child rights.

At the same time, training participants believe that it is necessary to have knowledge about child psychology, for better litigation of cases involving the underage, and for consideration of the best interests of a child.

"...Prosecution is frequently asking questions from the gender perspective and we need trainings in this regard... "

6. Pubic Trust towards Courts: Public Relations and Visibility

Large part of the respondents spoke of the ***low public trust towards the judiciary, which in their opinion, is caused by low level of public awareness*** of their rights, responsibilities, and the work of the court. On the one hand, information about the courts is permanently aired on national television, however, almost exclusively in the negative light, which accordingly to respondents – does not reflect the existing reality. Respondents spoke about the high level of responsibility and heavy workload required by each case, expressing wish for society to be more informed about the real work they do, hoping to decrease the widespread notion that each judge is operating under a political influence. Judges also mentioned alleged unethical behaviors by some attorneys or representatives of defense, including by spreading incorrect/inexact information, solidifying public perception that the judiciary is delivering politically motivated decisions (which according to respondents, is not true).

"...When labor disputes started massively – everyone submitted a lawsuit. Those who complied with legal timeframes – won the cases, those who were late – lost. Then rumor was disseminated that those two groups represented different parties, which of course isn't the case. This information was not disseminated in good faith – let alone lack of professionalism..."

Respondents also mentioned the problem, partially caused by disseminating untrue information among the public, especially in cases when defendants are represented by unlicensed citizens (people without attorney status) in the first instance courts, since they are not restricted by ethics code or laws, so there are cases of misleading the defendants, in addition to engaging in unethical, confrontational behavior, disrupting the adjudication process.

> "...There is one problem there – when I was working in the first court instance on civil cases, there is this old provision in the law – that anyone can represent a client in the court of first instance. In 98% of cases, attorneys won't touch the unwinnable cases – they won't risk their reputation. But all those other people – they have problem with qualification, and they don't observe the ethics either. Lawyers have at least some restraint – others have no barriers at all, so they act in bad faith. Many lie to their clients. Bar association is training its attorneys, improving quality, while those other representatives submit lawsuits without even a clear definition of the request, defendants don't know how to protect themselves – this is a very real problem. Perhaps this provision served a purpose years ago, but today practice and law have evolved, and I think we don't deserve such treatment. We could have avoided many unfounded lawsuits by revising this provision..."

Furthermore, respondents repeatedly mentioned that the ***public trust towards the judiciary depends on the quality of their own awareness – whether they know their own rights and methods of protection,*** explaining that judging by the number of cases, urban settlement residents have higher level of trust towards the judiciary. As already mentioned in the beginning, public trust towards judiciary plays a crucial role in avoiding political crises/deadlocks or at least mitigating their negative impact. Therefore, it is important to conduct additional research on the visibility of the judiciary and to develop evidence-based communication strategy for it.

At the same time, respondents mentioned that well-elaborated justification of a decision is an important mechanism for public relations, and they expressed wish for more trainings in this regard, as well as more time for elaborating justifications/decisions.

"...We were trained in elaboration of justification – our medium of conversation with the society is a written decision – the clearer and more accessible it is, the more the sides understand the cause of their defeat and they don't feel they have been treated unfairly. But this requires time – which we do not have. When I had a chance to work on the justification for 1 day – I loved the results and the judge loved the results, but unfortunately, this is a luxury we don't have. Lack of time decreases quality, and this has bad consequences..."

Recommendations

Research findings allow to suggest several recommendations and topics for further discussions, which can be grouped together into five major parts:

1. Vertical and horizontal harmonization of the court precedents – the research has revealed concerns among the judges and assistance on the diverging practices – different decisions on similar cases among different courts. Overcoming this challenge, as well as harmonizing the judiciary system requires vertical harmonization (unified program and uniform preparation for trainers of prosecutors, attorneys, and judges – and in some cases, police as well). Apart from uniform/consistent educational programs, it is important to arrange forum/format for more systemic unified discussions, as well to establish online portal for user-friendly search by different parameters, as well as to ask questions and receive answers from fellow colleagues, using "**crowd-sourcing**" opportunities. Furthermore, vertical harmonization is also important: it is necessary to hold frequent and systemic meetings/trainings with law-makers, representatives of constitutional and supreme courts (considering ambiguities caused by growing body of constitutional judgements, yet unconverted by Parliament to the legal amendments) as well as to increase accessibility to international court decisions in Georgian language (especially, translations of European Court of Human Rights), and/or introducing Legal English classes for judges and assistants (which can be implemented through online classes/resources as well, building on the to the existing platforms.[7]

2. Increasing sensitivity towards human rights/accessibility of information about the most recent international standards

7. Such as Edx, Coursera, Udemy, Duolingo and others.

on human rights – considering comparative homogeneity of judges and assistants (social, ethnic, religious and otherwise) and that the research has revealed strong prejudices/stereotypical attitudes among the judges, it is necessary to hold trainings for them in the most recent approaches in human rights cases, as well as to organize different events/trainings with psychologists, to develop resistance against prejudices, fallacies and stereotypes and to develop more perceptiveness towards human rights standards. At the same time, it is worth exploring American and European models in a greater detail, to learn about the good practices of assessing the sensitivity of judges on human rights standards and the quality of justification from the Rights-Based Perspective. Any such assessment mechanism must involve a balance between confidentiality of judges and the system for assessing the impact of the continuous education (and the quality of reflection in the work of judges)[8].

3. Developing communication strategy and methodology, for increasing public trust towards the judiciary – according to the interviewed judges and assistants, public trust towards the judiciary is largely influenced by the level of awareness of the public about their rights, obligations, as well as the work of the courts. This has a paramount significance for avoiding political crises in Georgia. Therefore, it is important to develop relevant communication strategy for the court system, to increase public awareness and trust towards the judiciary.

4. Technical issues – being no less important for improvement of the judiciary educational system, include among others, the need to ensure access to high-quality unlimited internet (both for online trainings, as well as online court hearings). It is important for both judges, as well as the residents of remote villages, to increase the transparency and quality of participation in court hearings for all sides. At the same time, it is essential to diversify training venues geographically and hold more of them in the regions. At the same time, it is important to introduce regional quotas (preferably for all courts – 26 first instance, 2 appellate and 1 supreme court), to ensure equal accessibility to trainings for judiciary professionals of different regions. Regarding the digital court hearings, it is important to develop criteria, which would define the types of cases that require in-person adjudi-

8. See models indicated in the Methodology section.

cation and those that can shift to online format, enabling optimization of court hearings. Timing and format of the trainings must also be flexible, and participants must be able to choose from multiple options (weekend/workday, in-person/online), to maximize attendance and decrease accompanying stress among the judges and assistants (already under much stress and workload). Number of trainings must be defined based on the number of participants, expressing needs on those specific topics.

5. Better use of technologies and crowd sourcing tools – it is worth exploring the possibility of more user-friendly, systemic, and well-arranged online crowd-sourcing platforms (such as tools, arranging questions and answers, court materials in topics by various indicators), as well as online tools for dialogue. It is furthermore advisable to create permanent online resources for continuous education of judges and assistants (possible pre-recorded online lectures). Furthermore, the accessibility to internet, criteria and procedures for digital adjudication must be improved. Online trainings must be improved methodologically, to ensure engagement and dialogue of participants, given irreversible shift towards more digital solutions following the rise of Covid-19 pandemic.

6. Introducing the mechanism for systemic assessment – one of the most important findings of the research is the lack of regular assessment system and instruments in the High School of Justice, which means that the continuous education is not based (or insufficiently) on systemic assessment of practical needs. It is thus desirable to develop unified methodology and instruments for consistent and regular assessment of the needs of the judges (as well as their assistants and secretaries), as well as the quality of reflection of the continuous education in their work. Such research must be regularly performed for updating the educational programs and adjusting them to evolving needs.

Research process and analysis has raised many questions regarding the opportunities of improving the judiciary educational system, as well as other related issues, which requires deeper research and discussions.