RESULTS OF TRIAL MONITORING IN THE KYRGYZ REPUBLIC

2005-2006

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS

OSCE CENTRE IN BISHKEK

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LIST OF ABBREVIATIONS

UN – United Nations

UDHR – Universal Declaration of Human Rights

ICCPR – UN International Covenant on Civil and Political Rights

UN BP – UN Basic Principles on Independence of the Judiciary

ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights)

CSCE – Conference on Security and Co-operation in Europe

OSCE – Organization for Security and Co-operation in Europe

OSCE/ODIHR –OSCE Office for Democratic Institutions and Human Rights

CC – Criminal Code of the Kyrgyz Republic

CPC – Criminal Procedure Code of the Kyrgyz Republic

NGO – non-governmental organization

EXECUTIVE SUMMARY

In order to advance human rights protection and rule of law standards, OSCE participating States have committed themselves to allow international and national monitors open access to trials conducted in their countries. On this basis, between November 2004 and September 2006 the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) implemented a trial monitoring project in Kyrgyzstan. This project was carried out as part of the OSCE/ODIHR mandate to monitor OSCE participating States' compliance with and implementation of their OSCE commitments, in this case commitments relating to fair-trial standards. The project in Kyrgyzstan was aimed at obtaining reliable information on the degree to which fair-trial standards are observed in the country's judicial system. This is particularly important given the judicial reforms currently being carried out in the country. The report therefore provides recommendations for the relevant state bodies based on the results of monitoring.

The Kyrgyzstan Criminal Procedure Code (CPC) provides for basic guarantees prescribed by international fair-trial standards. By ratifying the UN International Covenant on Civil and Political Rights (ICCPR) in 1995, Kyrgyzstan assumed further obligations to bring its legislation and law-enforcement practice into line with international standards. This report does not purport to provide an in-depth analysis of the existing legislative framework and its compliance with international fair-trial standards. Much has been already done or continues to be done in this regard by the OSCE/ODIHR as part of its rule-of-law activities in Kyrgyzstan.

The foundation of a democratic state based on the rule of law is inextricably linked to the strength of the judiciary, its genuine independence and its compliance with international fair trial standards and current national legislation. In spite of progress made by Kyrgyzstan in this field, the report identifies areas for further improvement and the need for appropriate resources in order to ensure that fair-trial standards are upheld.

During the course of monitoring from February 2005 until April 2006, trial monitors attended 1,134 first instance court hearings open to the public in 821 criminal cases. These court sessions took place in 26 district and three regional (city) courts. Monitoring was carried out in two ways: general monitoring, when monitors attended random court sessions; and complete monitoring, when monitors selected one criminal case from cases recently set down for trial and followed it through from the time of the first hearing until the verdict was pronounced. Monitors carried out complete monitoring of 333 cases, and general monitoring of 488 cases. The court sessions attended by the trial monitors were presided over by a total of 105 judges. After each court session the trial monitors completed a standard Trial Monitoring Reporting Form.[1]. Following quality control by the project co-ordinator, these reports were used for preparing this final report.

The structure of the report follows the sequence of questions contained in the Trial Monitoring Reporting Form. The monitoring results provided by the report are supported by tables, diagrams, and charts summarizing the findings and providing statistics based on the reported observations. It should be noted that any statistics in the body of the report relate only to the court sessions monitored and cannot be extrapolated as to allow for any conclusions to be made necessarily about the judicial system in Kyrgyzstan as a whole.

The right to trial by an independent, competent and impartial tribunal established by law

The monitoring established that in the vast majority of cases (92.2% of cases) judges appeared to act within the bounds of professional ethics. Nevertheless, in 7.8% of court hearings monitored judges were assessed as making statements of an accusatory nature, threatened, exerted psychological pressure on trial participants or unjustifiably restricted their rights, thereby raising doubts as to their impartiality. An assessment of judicial independence and competence is beyond the scope of this report.

[1] See Annexe 2

The right to a public hearing

Justice is not yet entirely a public matter in Kyrgyzstan. The public character of justice is hampered because of the following shortcomings identified during monitoring: court hearing schedules were not always made public, public access to court buildings and courtrooms was often arbitrarily restricted, and many court hearings were held in judges' chambers. The report contains the following findings in this regard:

- In 41.7% of court hearings were court hearing schedules available and published in advance;
- In 51.2% of court hearings, proceedings were held in judges' chambers, as opposed to courtrooms;
- In 11.1% of court hearings monitors were obliged to obtain permission from court clerks to remain in courtrooms or judges' chambers;
- In 10.9% of court hearings monitors were required to obtain permission from judges to remain in courtrooms or judges' chambers;
- In addition attendees of court hearings who were not trial participants were frequently asked to explain why they wished to attend court hearings.

Another shortcoming, which hindered public attendance, was courts' failure to be punctual. Trial monitors established that 87.1% of court hearings did not start on time. Most hearings commenced more than 15 minutes late. Monitoring also established that the vast majority of courts observed the following procedural requirements concerning the right to a public hearing:

- Court records were kept in all but 10 court hearings (less than 1%). In only 18 court hearings (more than 1%), an audio or video recording was kept.
- Access to court buildings was upheld everywhere, despite the fact that in few places monitors were requested to show their IDs, and to register to visit court buildings.
- Court rooms were equipped with sufficient and appropriate furniture to allow for public attendance.

The right to a fair hearing

Monitoring established that national rules of procedure were observed in all court hearings in which expert evidence, site visits, identification of persons or other forms of judicial enquiry were undertaken. The major shortcomings with respect to the right to a fair hearing include judges' failure to explain to defendants their rights, to ensure that defendants be examined first by defence counsel, to consider the mental capacity of defendants and their physical condition before opening the proceedings, and to inquire whether parties wished to adduce further evidence before declaring the judicial investigation complete. The report contains the followings relevant data:

- In 49.7% of cases judges failed to explain to defendants their rights;
- In 35% of court hearings examination of defendants was initiated by judges, and in 27 % by state prosecutors;
- In 49.7% of cases judges failed to consider the mental capacity of defendants and their physical condition before opening court proceedings;
- In 46.4% of court hearings judges did not inquire whether both parties wished to adduce further evidence before declaring the judicial investigation complete.

The report contains data about the following other shortcomings:

Shortcomings related to general procedure

- In 15.9% of court hearings judges failed to announce the court's composition and trial participants;
- In 24.2% of cases judges failed to announce the cases that were being heard;
- In 28.0% of court hearings judges did not consider whether or not the hearing could take place *in absentia.*

Shortcomings related to the examination of defendants

- In 23.7% of cases judges failed to ascertain whether a copy of the charges had been delivered to defendants in time.

Shortcomings related to the interrogation of witnesses

- In 13.8% of the court hearings witnesses were not excluded from the courtroom prior to being called to testify;
- In 31.8% of the court hearings judges did not explain witnesses' rights and obligations;
- In 14.2% of the court hearings court witnesses were examined in the presence of witnesses yet to be examined;
- In 7% of court hearings judges, prosecutors or defence counsels appeared to exert pressure on witnesses.

Shortcomings related to the interrogation of victims

- In 15.5% of court hearings judges did not read to victims their rights and obligations.

The right to be present at trial and to defend oneself in person

- On the basis of the presence of the defendant in court, establishing the defendant's identity and being asked to answer the charges, monitoring did not establish major shortcomings with respect to the right to be present at trial and defend oneself in person.

The presumption of innocence

Monitoring established that in the vast majority of cases defendants were kept handcuffed and behind bars during court hearings and before a verdict had been reached, thereby undermining the presumption of innocence. The report contains no findings concerning how the courts dealt with the burden of proof since this issue was beyond the scope of the monitoring.

The right not to be compelled to testify or confess

Monitoring revealed that in the vast majority of court hearings the right not to be compelled to testify or confess guilt was observed. Nevertheless, it was established that in 3.9% of court hearings judges appeared to exert pressure on defendants to confess.

Exclusion of evidence elicited as a result of torture or other duress

Monitoring established that judges mostly failed to investigate allegations of torture but if they did so, their investigation was ineffective. The report contains the following findings concerning the evidence elicited as a result of torture or other duress:

- In 9% of court hearings defendants alleged that torture or other forms of duress had been used in pre-trial stages with the aim of obtaining a confession;
- In 60.2% of the above cases judges failed to investigate the allegations of torture;
- When courts investigated allegations of torture they summoned investigators to testify as witnesses and always accepted their accounts that defendants had not been tortured during pre-trial proceedings.

Equality of arms

Monitoring was only able to assess this according to the extent to which the parties' petitions were likely to be granted. It was observed that defence lawyers' petitions were marginally more likely to be dismissed without adequate reasons than prosecutors' petitions in similar cases. Monitoring revealed that:

- 80% of petitions submitted by defence lawyers were granted. No reason was given for the dismissal of 10 petitions. The remaining petitions were dismissed with adequate reasons.
- 86% of petitions submitted by prosecutors were granted. In the dismissal of only one petition was no reason given. The remaining petitions were dismissed with reasons given.

The right to a counsel

Monitoring established that in the majority of cases defendants were represented by defence counsel. The major problems concerning the right to counsel include the transparency of defence lawyers' appointment, their apparent preparedness for trial and the adequacy of their interaction with defendants during court hearings. In particular monitoring revealed that:

- In only 15.3% of court hearings were defendants unrepresented;
- In 33.4% of court hearings defence counsel were restricted in their immediate contact with defendants because the latter were either seated away from them or were placed in iron cages;
- In 30.4% of court hearings defence counsel did not appear to demonstrate a sufficient level of experience or were not sufficiently prepared for court hearings. The latter might be explained with the procedure of their appointment. Trial monitors observed that defence counsel were appointed in some cases only because they were present in judges' chambers or court rooms at the time of the court hearings. In such cases defence counsel assumed responsibilities without always being familiar with the case materials.

The right to an interpreter

- There were only a very small number of cases in which interpretation was necessary and an even smaller number of cases when it was not provided. However, when it was provided it was observed that judges did not always explain the rights and responsibilities of interpreters or the right of parties to reject interpreters. In 72% of the cases with interpretation the interpreter was assessed as having only working knowledge of the language spoken by the defendant.

The right to a public judgment

Monitoring revealed that the right to a public judgment was respected. In a small number of cases judges failed to explain to parties their right to appeal the verdict and sentence. In particular trial monitors found that:

- In all cases the verdict was read out publicly;

- In 5.5% of cases judges failed to explain to the parties their rights to appeal verdicts and sentences;
- In 91% of all cases with verdict defendants were found guilty. In only 13 cases (1% of all cases) were not-guilty verdicts returned.

Recommendations

This report contains recommendations based on the results and conclusions of the monitoring carried out during the OSCE/ODIHR trial-monitoring project. These recommendations are aimed at making implementation of legislative norms more efficient and improving judicial practice in Kyrgyzstan. In some cases, minor amendments to existing legislation are recommended, and in others new mechanisms are proposed to provide for better observance of fair-trial standards established under both international and national law and set out in OSCE commitments.

Strict adherence to legal procedures contained in Kyrgyzstan's CPC would be one step towards significantly improving compliance with fair-trial standards, and straightforward organizational and logistical changes would remove a number of current shortcomings in administering justice.

These changes include unrestricted public access to court buildings and courtrooms; strict adherence to published schedules of court hearings; and holding court sessions only in courtrooms and eliminating the practice of using judges' chambers for public hearings. The report also recommends raising the awareness among judges of their duty to respect the judicial code of ethics, and to promote respect by court personnel towards members of the public wishing to attend trials. The importance of eliminating the use in courtrooms of metal cages is also stressed.

The recommendations also relate to other essential fair-trial standards, such as judges' and prosecutors' responsibility to undertake a full and impartial investigation of any allegation of torture made by defendants in court; judges' and prosecutors' obligation to exclude all evidence obtained as a result of torture or other duress; and the duty of the state to provide proper legal defence by counsel either appointed or engaged.

Implementation of this report's recommendations by the Supreme Court of Kyrgyzstan would render the criminal justice system further compliant with international and national fair-trial standards and OSCE fair-trial commitments.

The OSCE/ODIHR and the OSCE Centre in Bishkek stand ready to continue to provide expertise and assistance to the Supreme Court of Kyrgyzstan in bringing the criminal justice system into conformity with international fair-trial standards, especially in implementing the recommendations of this report.

INTRODUCTION

The OSCE/ODIHR monitors compliance by OSCE participating States with their OSCE human-dimension commitments.[1] OSCE fair-trial commitments constitute an integral part of international standards that protect the human rights of individuals involved in criminal justice proceedings.

The ODIHR and OSCE field operations undertake trial monitoring in order to assist participating States in complying with their OSCE fair-trial commitments.

Trial monitoring activities are conducted on the basis of the CSCE Copenhagen Document of 1990 in which participating States made a commitment to accept court monitors as a confidence-building measure and to ensure transparency in the implementation of their commitments to fair judicial proceedings.[2] Trial monitoring has been or is being conducted in the majority of OSCE field operations.[3]

This report is a summary of the results of the trial monitoring conducted between February 2005 and April 2006[4] in Kyrgyzstan as part of an OSCE/ODIHR trial monitoring project that started in November 2004 and continued until the end of 2006. The trial monitoring project was carried out by OSCE/ODIHR and the OSCE Centre in Bishkek in co-operation with Kyrgyzstan's Supreme Court, and received financial support from the European Commission and the governments of the Netherlands, Norway and the United States of America.

This report is intended for the relevant state authorities, non-governmental organizations and other interested stakeholders in the area of criminal justice in Kyrgyzstan. Its conclusions and recommendations are intended to assist in strengthening and reforming the judicial system and enhancing compliance by Kyrgyzstan with its international obligations and OSCE fair-trial commitments.

Part One lays out a list of recommendations for the relevant Kyrgyzstan authorities drawn from the data gathered during implementation of the project.

Part Two describes the methodology of the project, including information on the aims, objectives, and subject of monitoring, as well as the trial monitors, monitoring procedures, and general information on key project activities.

Part Three provides information on the compliance of Kyrgyzstan's criminal procedure with international standards, including OSCE commitments, and national laws on fair-trial standards. It comprises two chapters: Chapter One is in the form of tables and diagrams and sets out general statistics from the project, including the number of monitored court sessions, and the criminal cases, courts and judges included in the monitoring. Chapter Two sets out the monitoring results under specific fair-trial standards.

Information under each of these standards is set out as follows:

First, there is a general description of the international standard itself, with references to international documents, including OSCE documents. Then there is reference to relevant national legislation. After this comes a brief description of issues examined by the trial monitors in assessing compliance with the standard. The analysis is based upon consideration of observations in the court and it does not include consideration of pre-trial stages, interviews with trial participants, or case materials. The analysis follows a sub-heading entitled "Statistics and conclusions" and is presented in the form of tables, diagrams and charts based upon information contained in trial monitors' reports. These statistics relate

[1] OSCE standards are not legally binding norms, but since they were adopted by consensus among all OSCE participating States, they are political commitments to which governments voluntarily agreed to adhere.
[2] Paragraph 12, the Copenhagen Document of the CSCE, 1990.
[3] OSCE field operations in Albania, Armenia, Bosnia and Herzegovina, Croatia, Kosovo, FYROM, Moldova, Serbia and Tajikistan have ongoing projects.
[4] The OSCE/ODIHR simultaneously carried out a similar Trial Monitoring Project in the Republic of Kazakhstan. See the report "Results of Trial Monitoring in the Republic of Kazakhstan."

only to the cases monitored and should not be extrapolated to reflect the entire Kyrgyzstan criminal justice system.

Additional explanation of the trial stages studied during analysis of the relevant fair-trial standard, references to national laws and brief conclusions analysing the statistics are given above and/or below the tables and diagrams. This section includes case studies from the Trial Monitoring Reporting Forms submitted by monitors.

The annexes provide additional documents relevant to the project.

The OSCE/ODIHR and the OSCE Centre in Bishkek express their gratitude to the Supreme Court of the Kyrgyz Republic and all courts covered by the trial monitoring, as well as to the experts and monitors who participated in the project for their support during implementation of the project.

PART ONE

RECOMMENDATIONS

The following recommendations are made with the objective of further improvement of the existing criminal procedural legislation in compliance with international fair-trial standards.

The right to trial by an independent, competent and impartial tribunal established by law

- Judges should avoid making statements that appear to be of an accusatory nature, threatening or exerting psychological pressure on trial participants or unjustifiably restricting their rights.

The right to a public hearing

The proper conditions for a public hearing should be secured by ensuring:

- Free access to court buildings, and to the courtroom where public hearings are taking place;
- Cease the practice of holding hearings in judges' chambers;
- Publicize detailed court schedules in a location that can be viewed easily by members of the public; and
- Introduce effective case management that takes into account the number of trial participants.

The right to a fair hearing, and the right to be present in court and to defend oneself in person

- Uphold all procedural safeguards for the rights of defendants, witnesses and victims and in particular:
    - Ensure that defendants, witnesses and victims are aware of their procedural rights;
    - Observe the rule that defence counsel should begin examination of the defendant;
    - Ensure that witnesses remain outside the courtroom until they give evidence;
    - Ascertain that copies of the indictment or of the private accusation have been served on the defendant in time for their defence;
- Ensure that no undue pressure is applied by the judge or any of the trial participants to defendants, victims, and witnesses; and
- Comply strictly with procedures for informing participants of the date and location of the hearing, and confirmation that the appropriate notification of the trial has been given must be presented in court.

The presumption of innocence and the right not to be compelled to testify or admit guilt

- Ensure that defendants are not induced to incriminate themselves; and
- Eliminate the use of metal cages in court rooms and judge the necessity for any security measures including the use of handcuffs according to the merits of each case.

Exclusion of evidence elicited as a result of torture or other duress

- Ensure that any allegations of torture or ill-treatment by defendants are properly investigated and that any evidence found to have been elicited by torture or ill-treatment is excluded.

Equality of arms

- Ensure that full reasons are given when rejecting petitions submitted by either party.

The right to counsel

- Ensure that in accordance with national legislation the defendant is granted free legal representation; and
- Establish a transparent process for the selection of court appointed defence counsel.

The right to an interpreter

- Ensure that the rights and responsibilities of interpreters are explained and that interpretation of a satisfactory standard is provided.

PART TWO

PROJECT METHODOLOGY

The project was implemented during a period of reform of the judicial system in Kyrgyzstan.

It was carried out from November 2004 to September 2006. Monitoring of court hearings took place from February 2005 to April 2006.

The project's main aim was to assess the extent to which court practice in criminal cases in Kyrgyzstan met international fair-trial standards.

Project objectives:

- To collect reliable information on the extent to which international fair-trial standards are observed in Kyrgyzstan's judicial system;
- To process and analyse the monitoring results, and to develop recommendations;
- To present the results of monitoring to all interested stakeholders and for general consumption, with the aim of further improving the judicial system;
- To provide instruction for civil society on international fair-trial standards and trial-monitoring practices during criminal hearings.

The monitoring paid particular attention to the following international fair-trial standards:

- The right to trial by an independent, competent and impartial tribunal established by law
- The right to a public hearing
- The right to a fair hearing
- The right to be present at trial and to defend oneself in person
- The right to be presumed innocent and the right not to be compelled to testify or confess guilt
- Exclusion of evidence elicited as a result of torture or other duress
- Equality of arms
- The right to be defended by an experienced, competent and effective defence counsel
- The right to an interpreter and to translation
- The right to a reasoned judgment and the right to a public judgment.

Monitoring Targets

The targets monitored were court hearings of criminal cases. Monitoring took place in courts of general jurisdiction and covered only cases heard in courts of first instance. Under the project methodology there was no monitoring at the appeal stage or in reviews of court verdicts and judgments.

Monitors

In November 2004, 26 people with higher legal education or human-rights experience were selected on a competitive basis to undergo training as trial monitors. In December 2004 and July 2005 the trial monitors were trained, based on a specially developed Trial Monitoring Manual.[5] This explained the aims and procedures of trial monitoring, as well as principles of impartiality in reporting and non-interference in the course of the trial. All participants received documents certifying their status as trial monitors of the OSCE/ODIHR project. The top performing 19 participants in the training were selected to work as trial monitors from September 2005 until September 2006.

[5] See Annex 1.

Monitoring Procedure

At the outset of monitoring all trial monitors had to acquaint themselves with the court schedules. If this information was not available due to schedules being absent, trial monitors were advised to obtain the information from the court secretariats.

The question of whether to conduct complete case monitoring in specific cases was for the independent judgment of trial monitors. In these cases they conducted monitoring from the first court session until the verdict was pronounced.

General monitoring was implemented on a random basis, meaning that court sessions were attended spontaneously and regardless of the stage of the trial. On average, trial monitors had to attend eight court sessions a month.

A separate report was compiled for each court session attended in accordance with the Trial Monitoring Reporting Form. This report was forwarded to the project co-ordinator, and was logged in the data base for further use when compiling the final report on the project.

Monitoring was limited to observation of court sessions, without access to case materials. To elicit additional information, monitors were advised to interview participants using questions listed in the Trial Monitoring Reporting Form. However, in the majority of monitored cases participants did not agree to be interviewed and consequently the results achieved were insufficiently representative and were therefore not taken into account during the writing of this report.

A substantial number of court hearings were monitored and most of the regions of Kyrgyzstan were covered. The project was developed and implemented in accordance with generally accepted standards and rules for trial monitoring.[6]

Stages of the project

In November 2004, the OSCE Centre in Bishkek, together with the OSCE/ODIHR briefed the Supreme Court and the Ombudsman's Office about the project, its aims and objectives, and also about an introductory session for members of NGOs.

In December 2004, the OSCE/ODIHR, in co-operation with the OSCE Centre in Bishkek, organized a first training session for trial monitors, with the participation of international and national experts. As part of the training, a mock trial was organized, with the involvement of a judge from the Supreme Court and a staff member of the General Prosecutor's Office.

In January 2005, pilot monitoring was conducted in district and regional (city) courts. Trial monitors tested the Trial Monitoring Reporting Form, and submitted recommendations for its improvement. The form was amended accordingly.

After the pilot monitoring was completed, the first stage of monitoring was carried out from February to June 2005 in district, city and oblast courts in the Chuy, Issyk Kul, Naryn, Osh, Batken, and Jalal-Abat oblasts, and the city of Bishkek.

In July 2005, a second training session took place in Almaty, Kazakhstan, at which participants discussed their experiences, the results of the preliminary monitoring results were presented, and suggestions made on making the project more effective.

The second stage of monitoring was carried out from September 2005 to April 2006.

In April and July 2006, expert meetings were held with OSCE/ODIHR staff, to discuss the project outcomes and draft the final report.

The drafting of the report was finalized in the spring of 2007.

[6] The Trial Monitoring Manual incorporated rules and principles used by the United Nations and OSCE Missions as well several international NGOs, such as the International Commission of Jurists and American Bar Association in their work on trial monitoring.

PART THREE

COMPLIANCE WITH INTERNATIONAL FAIR-TRIAL STANDARDS

CHAPTER ONE. GENERAL STATISTICS

This chapter contains information on project statistics in the form of tables and diagrams, including on the number of hearings monitored, criminal cases, courts, and judges.

Table 1.1. Hearings attended and criminal cases monitored by trial monitors during the project

City/Region	Total hearings	Total cases
Bishkek	208	141
Chui Oblast	13	12
Issyk Kul Oblast	214	177
Naryn Oblast	55	51
Osh Oblast	319	230
Jalal-Abat Oblast	257	163
Batken Oblast	68	47
Total	**1134**	**821**

Table 1.2. Complete monitoring and general monitoring, by number of cases

City/Region	Total cases	Complete monitoring	General monitoring
Bishkek	141	50	91
Chui Oblast	12	5	7
Issyk Kul Oblast	177	87	90
Naryn Oblast	51	22	29
Osh Oblast	230	82	148
Jalal-Abat Oblast	163	59	104
Batken Oblast	47	28	19
Total	**821**	**333**	**488**

Diagram 1.3. Full-scale monitoring and mass monitoring, percentage of cases

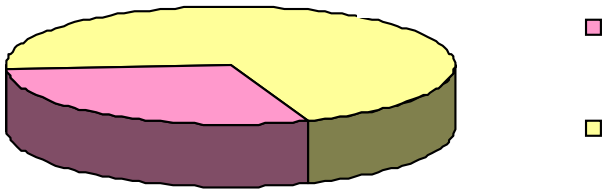


Table 1.4. Languages in which cases monitored were conducted

City/Region	State language (Kyrgyz)	Official language (Russian)	Not established*
	Number of hearings		
Bishkek	28	176	4
Chui Oblast	3	10	-
Issyk Kul Oblast	133	81	-
Naryn Oblast	55	-	-
Osh Oblast	260	42	17
Jalal-Abat Oblast	229	26	2
Batken Oblast	66	2	-
Total	**774**	**337**	**23**

* Since in some hearings trial participants spoke in both Russian and Kyrgyz, monitors were not able to establish the language in which justice was administered.

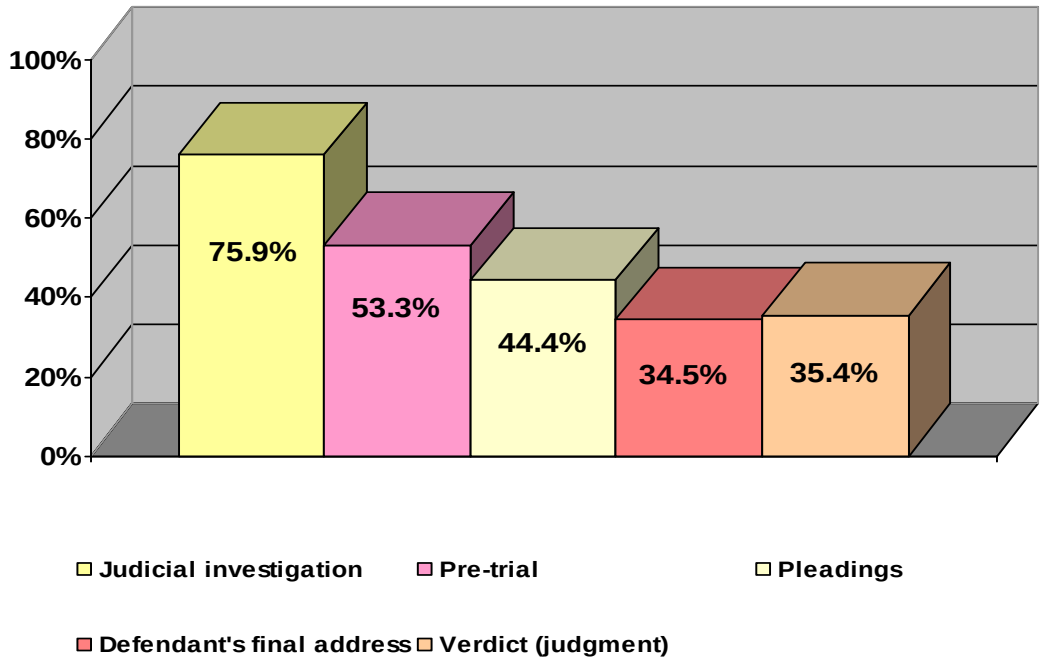
Table 1.5. Courts in which hearings took place

	City (Region)/Court	Number of hearings monitored	Total number of judges included in monitored hearings
Bishkek			
1	Leninsky District Court	47	7
2	Pervomaisky District Court	32	7
3	Sverdlovsky District Court	47	5
4	Oktyabrsky District Court	82	6
	City Total	**208**	**25**
Chuy Oblast			
1	Chuy District Court	1	1
2	Tokmak City Court	2	1
3	Sokuluk District Court	3	3
4	Ysykatin District Court	3	3
5	Alamudun District Court	4	4
	Oblast total	**13**	**12**
Issyk Kul Oblast			
1	Tyup District Court	6	2
2	Aksuy District Court	35	2
3	Karakol City Court	86	7
4	Balykchin City Court	52	4
5	Issyk Kul District Court	20	3
6	Ton District Court	15	2
	Oblast total	**214**	**20**
Naryn Oblast			
1	Naryn City Court	31	9
2	Naryn District Court	24	8
	Oblast total	**55**	**17**
Osh Oblast			
1	Osh City Court	291	13
2	Karasuy District Court	26	4
3	Nookat District Court	2	2
	Oblast total	**319**	**19**
Jalal-Abat Oblast			
1	Jalal-Abat City Court	156	4
2	Nooken District Court	95	2
3	Suaz District Court	6	1
	Oblast total	**257**	**7**
Baten Oblast			
1	Kadamzhai District Court	24	3
2	Leilek District Court	40	1
3	Sulyutin City Court	4	1
	Oblast total	**68**	**5**
26	**Total**	**1134**	**105**

Table 1.6. Monitoring by stage of trial

City/region	Preliminary	Trial			Verdict (judgement)
		Judicial investigation	Pleadings	Defendant's final address	
	Number of hearings				
Bishkek	86	155	73	59	53
Chui Oblast	9	11	8	7	6
Issyk Kul Oblast	154	186	110	102	94
Naryn Oblast	47	51	37	36	34
Osh Oblast	149	224	138	115	110
Jalal-Abat Oblast	127	188	105	78	76
Batken Oblast	32	46	33	28	28
Total	**604**	**861**	**504**	**425**	**401**

Diagram 1.7. Percentage of hearings monitored by stage of trial*



* As percentage of total number of hearings monitored (1, 134)

Table 1.8. Number of defendants

City/region	Number of defendants							
	One	Two	Three	Four	Five	12	15	39
	Number of cases							
Bishkek	81	39	13	4	3	-	-	1
Chui Oblast	8	2	1	1	-	-	-	-
Issyk Kul Oblast	142	23	7	4	1	-	-	-
Naryn Oblast	41	6	3	-	1	-	-	-
Osh Oblast	187	28	9	3	-	2	1	-
Jalal-Abat Oblast	139	16	6	-	2	-	-	-
Batken Oblast	43	3	1	-	-	-	-	-
Total cases	**641**	**117**	**40**	**12**	**7**	**2**	**1**	**1**
Total defendants	**1156**							

Table 1.9. Number of juvenile defendants

City/region	Number of juvenile defendants	
	Number of cases	Number of defendants
Bishkek	7	10
Chui Oblast	2	2
Issyk Kul Oblast	19	29
Naryn Oblast	11	20
Osh Oblast	12	13
Jalal-Abat Oblast	6	8
Batken Oblast	2	2
Total	**59**	**84**

Diagram 1.10. Percentage of juvenile and adult defendants

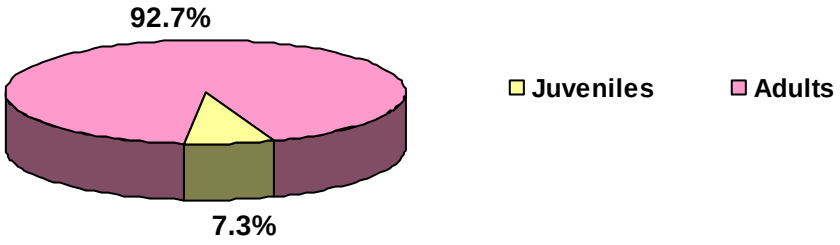


Table 1.11. Measures applied to defendants

City/oblast	Measures							
	Bound over to keep the peace and to remain *in situ*	Remanded in custody	Personal surety	Transferred to custody of military unit	Transfer of juvenile to parents' custody or the custody of those *in loco parentis*	Bail	House arrest	Not established
	Number of defendants							
Bishkek	109	152	3	-	-	1	-	3
Chui Oblast	5	5	-	-	-	-	-	9
Issyk Kul Oblast	83	141	2	-	1	-	1	2
Naryn Oblast	35	32	-	-	-	-	-	-
Osh Oblast	90	220	1	-	-	-	2	8
Jalal-Abat Oblast	88	108	1	-	-	-	-	2
Batken Oblast	19	33	-	-	-	-	-	-
Total	**429**	**691**	**7**	**0**	**1**	**1**	**3**	**24**

Diagram 1.12. Percentage of restraining measures applied to defendants

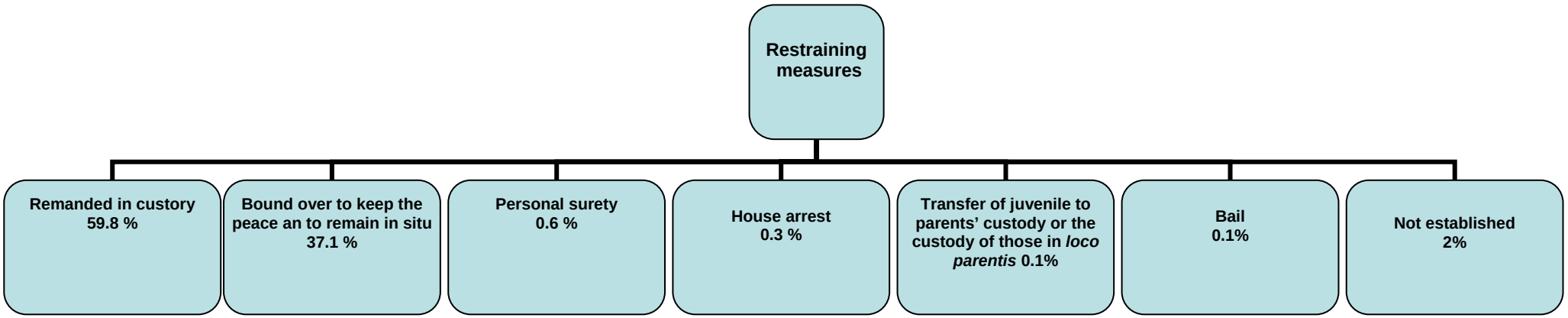


Table 1.13(1). Articles of the Criminal Code under which defendants in monitored trials were tried

Chapter	Article
Chapter 6. Committed and attempted crimes	Article 28. Attempted crime
	Article 30. Complicity in a crime
Chapter 16. Crimes against the person	Article 97. Murder
	Article 98. Manslaughter
	Article 102. Incitement to murder
	Article 104. First-degree premeditated bodily harm
	Article 105. Second-degree premeditated bodily harm
	Article 112. Third-degree premeditated bodily harm
	Article 119. Professional negligence by a medical worker
	Article 121. Failure to render assistance to persons in danger
	Article 122. Illegal medical treatment
Chapter 17. Crimes against the liberty, honour and esteem of a person	Article 123. Kidnapping
	Article 124. Trading in people
	Article 127. Libel
	Article 128. Giving offence
Chapter 18. Crimes against sexual inviolability and personal sexual freedom	Article 129. Rape
	Article 132. Sexual relations or other actions of a sexual nature with a minor (under 16)
	Article 133. Depraved behaviour
Chapter 19. Crimes against the constitutional rights and freedoms of man and the citizen	Article 134. Breaching the equality of citizens
	Article 137. Breaching the inviolability of property
Chapter 20. Crimes against the family and minors	Article 154. Marital relations with a person under marriageable age
	Article 156. Involving a minor in committing a crime
	Article 157. Involving a minor in committing anti-social actions
	Article 162. Parental negligence
Chapter 21. Crimes against property	Article 164. Theft
	Article 165. Cattle rustling
	Article 166. Fraud
	Article 167. Robbery
	Article 168. Brigandage
	Article 169. Grand larceny
	Article 170. Extortion
	Article 171. Embezzlement
	Article 172. Unlawful taking of an automobile or other means of transport
	Article 173. Obtaining property by deception or abuse of trust
	Article 174. Premeditated destruction or damage of property
	Article 176. Negligent destruction or damage of property
	Article 177. Knowingly purchasing or selling property obtained by criminal means

Table 1.13(2). Articles of the Criminal Code under which defendants in monitored trials were tried (continued.)

Chapter	Article
Chapter 22. Economic crimes	Article 182. False enterprise
	Article 185. Improper use of state credit
	Article 187. False accounting
	Article 198. Manufacturing, storing, or spending counterfeit money
	Article 201. Unlicensed production or sale of alcoholic drinks
	Article 204. Smuggling
	Article 208. Illegal trade in precious metals or stones
	Article 215. Illegal offering or receiving of financial benefits
Chapter 23. Crimes against the interests of service in non-state enterprises and organizations	Article 221. Abuse of office by employees of commercial or other organizations
	Article 225. Illegally accepting a reward
Chapter 24. Crimes against social security	Article 233. Mass disorder
	Article 234. Hooliganism
	Article 239. Illegal handling of radioactive materials
	Article 241. Illegally obtaining, transferring, selling, storing, transporting or carrying firearms, ammunition, explosive substances or explosive devices
	Article 242. Illegally making or repairing weapons
	Article 243. Negligent storage of firearms
Chapter 25. Crimes against the health of the population and social morality	Article 246. Illegally manufacturing, obtaining, storing, transporting or sending narcotics or psychotropic substances without intention to sell
	Article 247. Illegally manufacturing, obtaining, storing, transporting or sending narcotics, psychotropic substances or precursors with intention to sell
	Article 252. Organization or maintaining premises for the usage of narcotics or psychotropic substances
	Article 259. Organization of an association infringing on the persons and rights of citizens
	Article 260. Involvement in prostitution
	Article 261. Organizing or maintaining premises for prostitution
	Article 262. Preparation or selling of pornographic materials
	Article 263. Desecration of corpses and graves
	Article 264. Cruelty to animals
Chapter 26. Environmental crimes	Article 279. Illegal felling of trees and shrubs
Chapter 27. Crimes against the safe movement and usage of transport	Article 281. Breaking road-safety and transport-operating rules

Table 1.13(3). Articles of the Criminal Code under which defendants in monitored trials were tried (continued.)

Chapter	Article
Chapter 29. Crimes against the foundations of the constitutional order and state security	Article 299. Incitement of ethnic, racial, or religious hatred
Chapter 30. Corruption	Article 304. Abuse of office
	Article 305. Exceeding office
	Article 306. Concluding a state purchase contract against the interests of Kyrgyzstan
	Article 308. Illegal use of budgetary funds
	Article 311. Bribery
	Article 313. Extorting a bribe
	Article 315. Official forgery
	Article 316. Negligence
Chapter 31. Crimes against the administration of justice	Article 317. Perverting the course of justice
	Article 324. Illegal detention
	Article 332. Bribery or coercion to give or withhold evidence, or false translation
	Article 336. Escape from detention centre or from custody
	Article 337. Evasion of completion of a custodial sentence
	Article 338. Non-observance of a verdict, judgement or other judicial act
	Article 339. Concealing a crime
Chapter 32. Crimes against administrative order	Article 340. Encroachment on the life of a law-enforcement officer
	Article 341. Use of force against a state official
	Article 343. Unauthorized use of the title or power of an official
	Article 346. Illegally crossing a state border
	Article 348. Stealing, destroying, damaging or concealing documents, letter-heads, or stamps
	Article 350. Forging, manufacturing, selling or using forged documents, state awards, letter-heads, stamps, and forms
	Article 351. Evading military or other (non-military) service
	Article 353. Forcible assertion of private right

2.1. The right to trial by an independent, competent and impartial tribunal established by law

International standard

The Universal Declaration of Human Rights (UDHR) establishes that, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."[7]

The International Covenant on Civil and Political Rights (ICCPR) also establishes that, "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."[8] The European Convention on Human Rights (ECHR) and the CIS Convention on Human Rights also note the necessity for cases to be heard by an independent and impartial court. A similar position is also to be found in a number of OSCE documents.[9]

A competent criminal court is a court that acts within the boundaries of its jurisdiction and has the power to hear criminal cases. Under this standard, the jurisdiction of a criminal case should be determined by law, judges should administer justice within their competence and within the limits of criminal procedure, and a trial should be conducted within the timeframe established by law.

The right to be tried by an independent and impartial court is of such importance that the UN Human Rights Committee has said that, "it is an absolute right that may suffer no exception."[10]

The relevance to Kyrgyzstan of the fair-trial provisions of the ECHR and the jurisprudence of the European Court of Human Rights (ECtHR) is that OSCE fair-trial commitments reflect the fair-trial standards set down by the Convention. Thus the Convention and the Court set important fair trial standards for all OSCE countries. The ECtHR has developed four basic criteria of a court's independence and impartiality: procedures for appointing judges and depriving them of their authority; the time span of their authority; the presence of guarantees against external pressures (including mechanisms to guarantee judges' inviolability, level of material provision.); and an outward appearances of judicial independence (the forms in which justice is seen to be done, i.e., how the judge appears in front of trial participants and the public – judges' outward appearance, symbols of justice, the behaviour of judges and trial participants, and other outward manifestations of judicial authority).[11]

The independence of the judiciary is one of the most important fair-trial principles. Independence is a major guarantee of a court's impartiality, competence and neutrality. Since court independence should be guaranteed by the organization of the state judicial system, by a system of checks and balances and by transparency, the project did not include special mechanisms to assess the independence of judges during hearings. Technically, the judicial system guarantees a judge's independence and protects him or her from unreasonable interference in his or her work. Violations of this principle are possible outside of court, and as a rule are not obvious to the general public. Trial monitors were not qualified to pass judgement on such irregularities, so the report contains no findings on this aspect of this standard.

[7] UDHR, Article 10.
[8] ICCPR, Article 14(1).
[9] Para. 13.9 CSCE Vienna Document 1989; Para. 5.16 CSCE Copenhagen Document 1990.
[10] Gonzalez del Rio v. Peru /263/1987, 28 October 1992, Report of the HRC, vol. II, (A/48/40), 1993, 20.
[11] In addition, issues of judges' independence are included in the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

Impartiality is based on a lack of bias, respect for neutrality, and an absence of prejudice. Its central pillar is the principle of *nemo judex en su causa.*[12] The judiciary should deliver its verdict impartially, based on facts, in accordance with the law, and with no direct or indirect restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason.[13]

This principle means that the court should meet requirements of impartiality under which both parties have equal standing in a trial. The degree of compliance with this standard is considered at length in the section "Equality of arms".

The right for a case to be heard by a court established by law means that tribunals that replace normal courts should not be created unless they use judicial procedures established by law.[14]

National legislation

The Kyrgyzstan Constitution[15] provides that, "Everyone is guaranteed judicial defence of his or her rights and freedoms."[16]

The rules of judicial procedure are established by the constitution, the Law on the Supreme Court of Kyrgyzstan and Local Courts,[17] the Constitutional Law on the Status of the Courts of Kyrgyzstan,[18] and the Kyrgyzstan Criminal Procedure Code.[19]

Kyrgyz legislation establishes that justice should be administered solely by the courts; their competence, jurisdiction, and procedures for administering justice are defined by the law and may not be changed arbitrarily. The establishment of extraordinary or special courts to hear criminal cases is forbidden.[20]

The independence of judges is written into the constitution, which says that, "Judges are independent and are subordinated only to the Constitution and the law";[21] as well as the CPC: "Interference in the work of judges in administering justice is forbidden, and carries liability under the law … the independence of judges is guaranteed by the Constitution of the Kyrgyzstan."[22]

The CPC also establishes that a criminal case may be heard only by an independent, competent and impartial court.[23]

The independence of the judiciary is one of the most important fair-trial principles. Independence is a major guarantee of a court's impartiality, competence and neutrality. Since court independence should be guaranteed by the organization of the state judicial system, the scope of the project did not allow

[12] "No-one shall be judge in his own cause"
[13] Para. 2 of the UN Basic Principles.
[14] Art. 14(1) of the ICCPR; para. 5 of the UN Basic Principles on the Independence of the Judiciary (hereinafter UN Basic Principles), adopted in 1985 by the Seventh Congress of the UN on the Prevention of Crime and the Treatment of offenders, approved by resolutions of the General Assembly of the UN of 29 November 1985 No.40/32 and of 13 December 1985 No.40/136.
[15] Kyrgyzstan Constitution, adopted at the 12th session of the Kyrgyz Supreme Soviet, 5 May, 1993, and included in the Law on the New Edition of the Constitution of Kyrgyzstan, 15 January, 2007, 2.
[16] Kyrgyzstan Constitution, in the edition in the Law on the New Edition of the Kyrgyzstan Constitution, 15 January, 2007. Article 15, Part 4.
[17] Law on the Supreme Court of the Kygyz Republic and Local Courts, 18 July, 2003, 153.
[18] Constitutional Law on the Status of the Courts of the Kygyz Republic, 8 October, 1999, 105.
[19] CPC, 24 May, 1999 (as amended by Laws of 22 June, 2001, 55; 28 June, 2001, 62; 4 August, 2001, 81; 20 March, 2002, 41; 16 October, 2002, 141; 13 March, 2003, 61; 11 June, 2003, 98; 5 August, 2003, 192; 14 November, 2003, 41; Resolution of the Kyrgyzstan Constitutional Court of 29 January, 2004; Laws of 24 March, 2004, 47; 28 March, 2004, 52; 24 May, 2004, 68; 8 August, 2004, 111; 22 July, 2005, 112; Resolution of the Kyrgyzstan Constitutional Court of 13 January, 2006; and Laws of 6 February, 2006, 35; 19 July, 2006, 123; and 8 August, 2006, 157), Article 1.
[20] CPC, Article 7 Parts 1, 3.
[21] Kyrgyzstan Constitution, in the edition in the Law on the New Edition of the Constitution of the Kyrgyz Republic, 15 January, 2007, 2, Article 83, Part 1.
[22] CPC, Article 17.
[23] CPC, Article 30, Part 1.

for assessment of the independence of judges during hearings. This report therefore contains no findings on this aspect of this standard.

The requirement that judicial impartiality be observed is written into Kyrgyzstan's Code of Honour for Judges: "Judges are obliged to be impartial, and not to allow their professional work to be influenced by outside influences. Judges do not have the right to use their position and status to the benefit of anyone other than according to the provisions of the Law."[24]

National legislation also prescribes the use of judicial symbols, including the emblem and flag of Kyrgyzstan, and also that judges be obliged to wear official robes while administering justice. The Constitutional Law on the Status of the Courts prescribes that court buildings should fly the state flag of Kyrgyzstan, and that courtrooms should contain the state emblem.[25]The Law on the Supreme Court and Local Courts also states that courtrooms of the Supreme Court and local courts must contain both the state flag and emblem. [26]

Aspects studied by monitors

Since the monitoring was limited to stages comprising the main trial, courts' jurisdiction over the cases monitored was not examined. Compliance with procedural deadlines and timeframes prescribed by law was not examined during the monitoring.

Thus, issues of court competence were considered from the point of view of compliance with the established procedural format, proper observance of the rights of trial participants, and appropriate fulfilment of the judge's duties as established by law when administering justice. The compliance of the main trial procedure with the requirements set out by law was viewed as a criterion for assessing the court's competence, since in criminal proceedings procedure must be meticulously observed, and a competent court should not allow itself to deviate from prescribed procedure.

[24] Code of honour of judges of the Kyrgyz Republic, ratified by the Congress of Judges, 7 December 1996, Article 2.
[25] Constitutional Law On the Status of Courts of the Kyrgyz Republic, 8 October, 1999, 105, Article 16.
[26] Law on the Supreme Court of the Kyrgyz Republic and Local Courts, 18 July, 2003, 153, Article 11, Part 2.

Statistical data and conclusions

Over the course of the monitoring period, monitors observed 1,134 hearings in first-instance courts. The judges hearing the cases administered justice within the bounds of their authority in criminal cases.

During monitoring, monitors noted whether in the places where hearings took place[27] the outward symbols of a legal court as required by law were present, namely the country's flag and emblem. It was also noted whether judges wore their judicial robes.

Table 2.1.1. Presence of state and judicial symbols

City/region	State symbols						Judicial symbols		
	Emblem			Flag			Robes		
	Present	Absence	No data available	Present	Absent	No data available	Robed	Not robed	No data available
	Number of hearings								
Bishkek	144	59	5	2	130	76	120	69	19
Chui Oblast	10	-	3	-	4	9	1	12	-
Issyk Kul Oblast	107	20	87	59	22	133	16	180	18
Naryn Oblast	41	3	11	18	21	16	12	25	18
Osh Oblast	210	58	51	139	80	100	39	253	27
Jalal-Abat Oblast	167	41	49	172	63	22	35	161	61
Batken Oblast	55	8	5	32	27	9	8	40	20
Total	**734**	**189**	**211**	**422**	**347**	**365**	**231**	**740**	**163**

[27] Courtrooms, judges chambers, investigation isolation units

Diagram 2.1.2. Presence of the Kyrgyz emblem in places where hearings took place

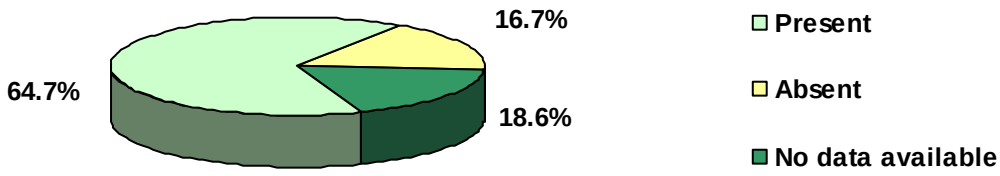
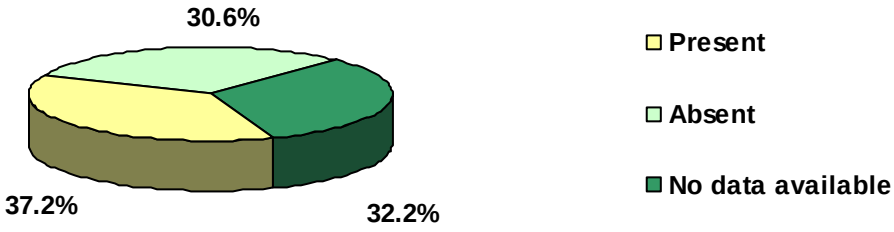


Diagram 2.1.3. Presence of the Kyrgyz flag in places where hearings took place



Monitoring established that the emblem of Kyrgyzstan was present in only about half of hearings. The Kyrgyz flag was present in only every third case.

The absence of state symbols of Kyrgyzstan during the administration of justice is in a significant number of cases a breach of national legislation and also of international judicial standards.

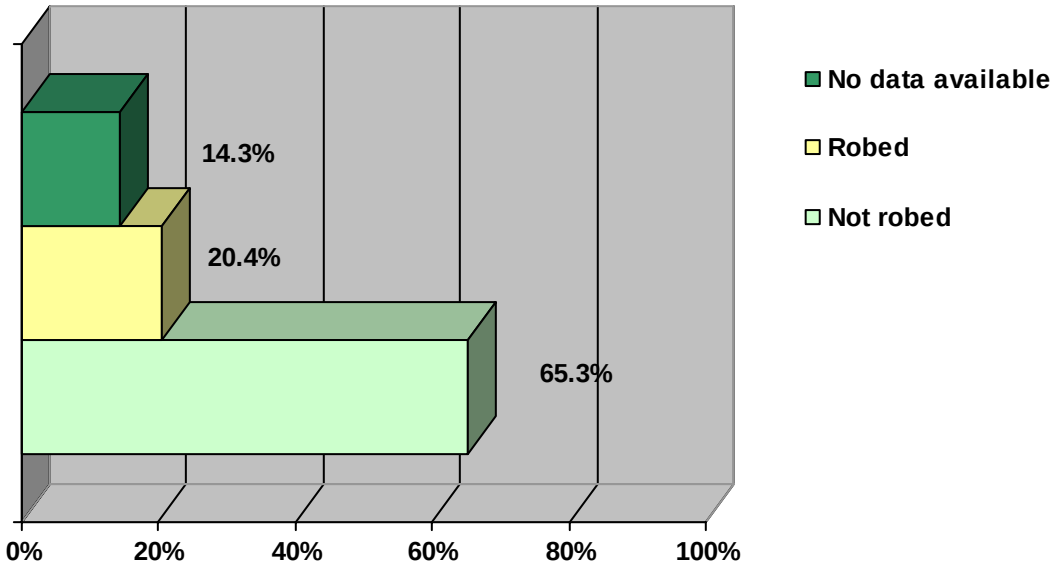
EXAMPLE 1

During hearings that took place on 15 and 17 March 2006, in the case of K., accused of crimes under Article 234 Section 3 Paragraph 2; Article 112, Part 1; and Article 105, Part 2, Paragraphs 2, 4, and 6 of the Criminal Code (CC), no state symbols were present. The hearings took place in the Kadamzhai district court of Baten Oblast. (Reports 90-03-2006-Batken-6-KG, 93-03-2006-Batken-6-KG).

EXAMPLE 2

During hearings on 2 and 8 February 2005, in the case of K., accused of crimes under Article 246, Part 1 of the CC, no state symbols were present. The hearings took place in the Oktyabrsky district court of Bishkek. (Reports 25-02-2005-Bishkek-16/17-KG, 26-02-2005-Bishkek-16/17-KG).

Diagram 2.1.4. Judges wearing correct clothing in court



The law requires that sitting judges should wear robes.[28] This requirement was breached in 740 cases. In only 231 of 1,134 cases studied were judges attired in conformity with legal requirements.

EXAMPLE 3

Judges S. K. (Reports 36-01-2006-Batken-6-KG, 40-01-2006-Batken-6-KG, 95-02-2006-Batken-6-KG, 96-02-2006-Batken-6-KG, 98-02-2006-Batken-6-KG, 100-02-2006-Batken-6-KG) and K.S. (both judges at Kadamzhai district court) (Reports 37-01-2006-Batken-6-KG, 38-01-2006-Batken-6-KG, 39-01-2006-Batken-6-KG, 93-02-2006-Batken-6-KG, 94-02-2006-Batken-6-KG) did not wear robes in a single case observed by monitors during the monitoring period.

EXAMPLE 4

During a hearing on 23 June 2005, in the case of T., accused of a crime under Article 153, Parts 2 and 3 of the CC, the judge presided while not wearing a gown. The hearing took place in Aksui district court (Report 26-06-2005-Karakol-24/25-KG).

EXAMPLE 5

During all hearings monitored in the Jalal-Abat city court, Nooken district court and Suzak district court, all judges presided without wearing gowns (Reports 71-02-2005-Djalalabat-7/8-KG to 75-02-2005-Djalalabat-7/8-KG, 89-04-2005-Djalalabat-7/8-KG to 97-04-2005-Djalalabat-7/8-KG, 79-05-2005-Djalalabat-7/8-KG to 89-05-2005-Djalalabat-5-KG, 102-05-2005-Djalalabat-7/8-KG, 103-05-2005-Djalalabat-7/8-KG).

During the monitoring period, monitors noted other procedural aspects indicative of a court's competence. These included: declaration by the judge of the composition of the jury and of trial

[28] Constitutional Law on the Status of the Courts of the Kyrgyz Republic, 8 October, 1999, 105, Article 16.

participants; declaration by the judge of which criminal case was being heard; allowance being made by the judge for the defendant's intellectual capabilities and psychological and physical state when reading his or her rights; and dismissal by the judge following the defendant's final speech.

Table 2.1.5. Announcement of composition of the jury and trial participants, and of which case was being heard

City/region	Different stage of trial	Announcement by the judge of the composition of the jury and of trial participants		Announcement by the judge of which criminal case was being heard	
		Observed	Not observed	Observed	Not observed
	Number of hearings				
Bishkek	122	71	15	68	18
Chui Oblast	4	7	2	8	1
Issyk Kul Oblast	60	113	41	118	36
Naryn Oblast	8	47	-	28	19
Osh Oblast	170	128	21	117	32
Jalal-Abat Oblast	130	118	9	98	29
Batken Oblast	36	24	8	21	11
Total	**530**	**508**	**96**	**458**	**146**

Diagram 2.1.6. Announcement by the judge of the composition of the jury and of trial participants

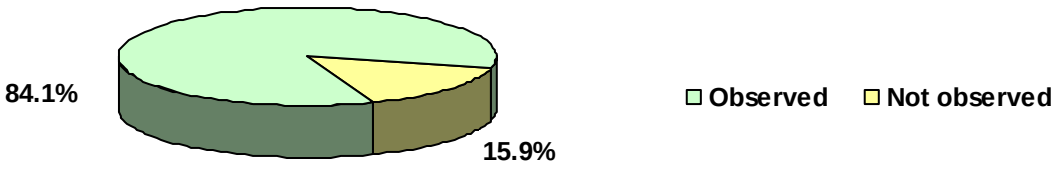
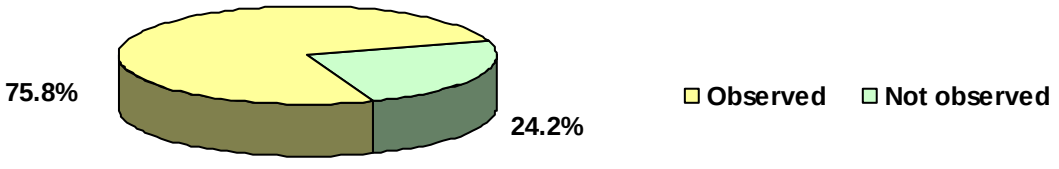


Diagram 2.1.7. Announcement by the judge of which criminal case was being heard



The diagrams include preliminary hearings, at which declaration of the composition of the court and the case being heard are mandatory.

EXAMPLE 6

During preliminary hearings on 10 February 2005, in the case of S., accused of crimes under Article 164, Part 3; Article 167, Part 3; and Article 172, Part 1 of the CC, the judge, without announcing the case, proceeded directly to establishing the identity of the defendant. The case was heard in the Karakol city court. (Report 34-02-2005-Karakol-24/25-KG).

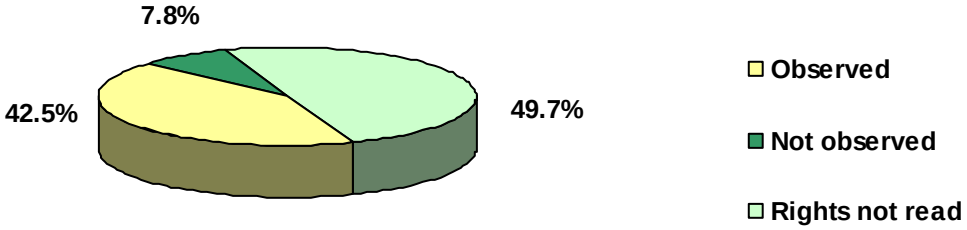
EXAMPLE 7

During preliminary hearings on 24 May 2005, in the case of Y., M., Y., T., and C., accused of crimes under Article 124, Part 2; Article 156, Part 1; Article 165; Article 346, Part 1; and Article 350, Part 3 of the CC, the judge did not announce the composition of the court. The hearing took place in Jalal-Abat city court. (Report 88-05-2005- Djalalabat-7/8-KG).

Table 2.1.8. Allowance made by the judge for the defendant's intellectual capabilities and psychological and physical condition when reading his or her rights

City/region	Different stage of trial	Allowance made by the judge for the defendant's intellectual capabilities and psychological and physical state when reading his or her rights		
		Observed	Not observed	Rights not read
	Number of cases			
Bishkek	122	78	2	6
Chui Oblast	4	8	1	-
Issyk Kul Oblast	60	128	22	4
Naryn Oblast	8	14	29	4
Osh Oblast	170	115	23	11
Jalal-Abat Oblast	130	112	8	7
Batken Oblast	36	27	3	2
Total	**530**	**482**	**88**	**34**

Diagram 2.1.9. Allowance being made by the judge for the defendant's intellectual capabilities and psychological and physical state when reading his or her rights



National legislation requires that a judge should read the defendant his or her rights at the preliminary stage, and also before examination.[29]

Monitors were present at 604 hearings at preliminary stage. In 88 cases, the defendant's intellectual capabilities and psychological and physical state were not taken into account when his or her rights were being read.

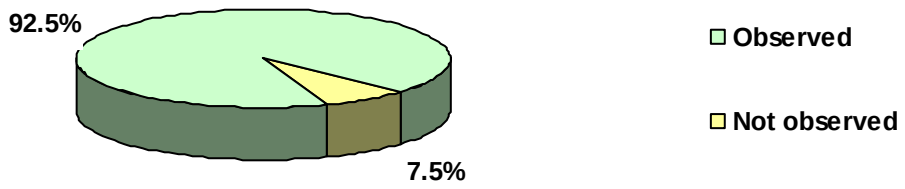
EXAMPLE 8

During examination on 1 June 2005 of the defendant K., accused of a crime under Article 246, Part 1 of the CC, in Karakol City Court, the judge did not explain the defendant's procedural rights, but also ignored the physical condition of the defendant, who had bad headaches, which had delayed the start of the hearing. Defence counsel petitioned for a psychological analysis of the defendant to be made, but the judge rejected the petition without giving a reason (Report 19-06-2005-Karakol-24/52-KG).

Table 2.1.10. Retirement by the court following the defendant's final speech

City/region	Different stage of trial	Dismissal by the judge following the defendant's final speech	
		Observed	Not observed
	Number of hearings		
Bishkek	149	51	8
Chui Oblast	6	6	1
Issyk Kul Oblast	112	97	5
Naryn Oblast	19	33	3
Osh Oblast	204	109	6
Jalal-Abat Oblast	179	70	8
Batken Oblast	40	27	1
Total	**709**	**393**	**32**

Diagram 2.1.11. Dismissal by the judge following the defendant's final speech, percentage



Monitoring found that national legislation regarding the requirement for a judge to retire after the defendant's final speech was violated in 32 court hearings.

[29] CPC, Articles 280, 288, Part 1.

EXAMPLE 9

In hearings at Kadamzhai district court, Baten Oblast, on 17 February 2006, into the cases of M., accused of a crime under Article 281, Part 1 of the CC (Report 98-02-2006-Batken-6-KG); on 28 February 2006, in the case of A. and Sh., accused of a crime under Article 350, Part 1 of the CC (Report 100-02-2006-Batken-6-KG); and on 10 March 2006, in the case of M. and Y., accused of crimes under Article 164, Part 3 of the CC, the judge pronounced the verdict, without the court retiring to consider its verdict, after hearing the pleadings and the defendant's final address.

EXAMPLE 10

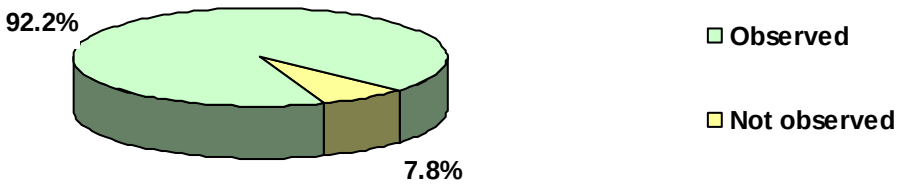
In hearings on 21 February 2006, in the case of I., accused under Article 164, Parts 2 and 3 of the CC the judge asked the defence and the prosecution: "You see? It's obvious. Shall I read the verdict?" After obtaining their consent, the judge immediately read the verdict (Report 99-02-2006-Batken-6-KG).

The Trial Monitoring Report Form aimed to assess judges' impartiality. This was mainly assessed based on the judge's behaviour, display of courtesy and ethical behaviour, and statements reflecting a general attitude to the case being heard.

Table 2.1.12. Observance of the principle of impartiality

City/region	Principle of impartiality	
	Observed	Not observed
	Number of hearings	
Bishkek	202	6
Chui Oblast	13	-
Issyk Kul Oblast	196	18
Naryn Oblast	49	6
Osh Oblast	287	32
Jalal-Abat Oblast	249	8
Batken Oblast	49	19
Total	**1045**	**89**

Diagram 2.1.13. Observance of the principle of impartiality, percentage



In most cases (1,045), judges observed judicial ethics when hearings cases. However, over the monitoring period monitors noted instances of incorrect behaviour by judges during a hearing. These included statements of an accusatory nature, threats, exertion of psychological pressure on trial participants, and unjustified restriction of their rights. In all cases such behaviour was directed at defence counsel and the defendant. Monitors did not record any instances of incorrect behaviour towards state prosecutors.

EXAMPLE 11

During a hearing in Issyk-Kul district court on 13 April 2005 in the case of M., accused of a crime under Article 173, Part 3 of the CC, the court established that the defendant's son, and not the defendant, should be brought to justice. After establishing that the defendant was brought to trial as a result of an error during the investigation (as testified to both by case materials and witness statements), the judge said: "What's the difference if you or your son is brought to justice?" The judge passed a guilty verdict in the case (Report 33-04-2005-Balykchi-23-KG).

EXAMPLE 12

During monitoring on 2 February 2006, at Balykchin city court in the case of B., D., and S., accused of a crime under Article 234, Part 3 of the CC, the judge halted proceedings in the morning, and declared that the court should reconvene at 14:00. The trial did not restart at the appointed time. The monitor asked about the cause of the delay, stressing that all participants were present. The court clerk explained that the judge was waiting for the sides to reach an agreement. At 15:00, the prosecutor entered the judge's chambers and requested that the trial recommence, but the judge replied that he would wait until the sides reached an agreement. Throughout this period, the victims, the defendants and their relatives continued to argue, including the use of impolite language.

According to the victims, the judge then invited them into his chambers, and upbraided them, saying they themselves were at fault for the crime being committed. At 15:15, the judge halted proceedings for four days, saying that the sides wanted to reach an agreement on their own. The victims said that there was no possibility of agreement with the defendants, and requested that the hearing continue and a verdict be pronounced. Despite this, the judge declared a halt to proceedings (Report 32-02-2006-Balykchi-23-KG).

2.2. The right to a public hearing

International standard

The right to a public hearing means that not only those involved but also the public may be present at hearings, since the public has the right to know how justice is being administered.

The UDHR establishes the right to a public hearing.[30]

The ICCPR also stipulates that any person, in determination of any criminal charge against him or her, shall be entitled to a fair and public hearing.[31] Limitations on the public nature of a trial are allowed only "for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."[32] The right to a public hearing also extends to the pronouncement of verdicts. Exceptions are made for cases in which the interests of minors are at stake.[33]

The ECHR also guarantees a defendant's right "to a public hearing" of a criminal charge.[34] A decision by the European Court of Human Rights explicitly stressed that "the public nature of trials protects parties from secret administration of justice lacking public control; and also constitutes a means to maintain public trust in courts."[35]

The 1990 Copenhagen Document stipulates that trials may be held behind closed doors only "in the circumstances prescribed by law and consistent with obligations under international law and international commitments."[36]

National legislation

The Kyrgyz Constitution states, "Trials in all courts are public. Case hearings in closed courtrooms are allowed only in cases established by the law. Court decisions are declared in public."[37] The same position is taken in the Law on the Supreme Court and Local Courts,[38] as well as the Constitutional Law on the Status of Courts.[39]

The CPC provides that all trials in all courts shall be open to the public, except in cases in which this would be against state, military or commercial interests; in cases of sexual or other offences in order to prevent public disclosure of intimate details of the lives of those involved in the case; and in cases requiring safeguards of the security of the victim, witnesses, and others involved in the case, their families or close relatives. If a case is heard behind closed doors, a reasoned argument by the judge or a court resolution must be given. In all cases, the verdict must be pronounced in public.[40]

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[30] UDHR, Article 10.
[31] Para. 13.9 of the 1989 CSCE Vienna document, paras. 5.12, 5.16 of the 1990 CSCE Copenhagen document contain a similar provision.
[32] Art. 14(1) of the ICCPR.
[33] ICCPR, Article 14, para. 1.
[34] Art. 6(1) of the ECHR.
[35] ECtHR judgment, *Diennet v France* (1995) 21 EHRR 554, para. 33.
[36] Para. 12 of the 1990 CSCE Copenhagen document .
[37] Constitution, in the edition in the Law on the New Edition of the Constitution of the Kyrgyz Republic, 15 January, 2007, 2, Article 88, Part 1.
[38] Law on the Supreme Court of the Kyrgyz Republic and Local Courts, 18 July, 2003, 153, Article 6.
[39] Constitutional Law On the Status of Courts of the Kyrgyz Republic, 8 October, 1999, 105, Article 8.
[40] CPC, Articles 22, 254.

Aspects studied by monitors

Monitors assessed observance of the right to a public hearing[41] based on the following criteria:

- Availability of information on the place and date of the hearing;
- Appropriate conditions for the hearing;
- Opportunity for the public to be present;
- Public pronouncement of judicial decisions.

[41] See: Para. 12 CSCE Copenhagen Document 1990: "The participating States, wishing to ensure greater transparency in the implementation of the commitments … decide to accept as a confidence-building measure the presence of monitors sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law; it is understood that proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments."

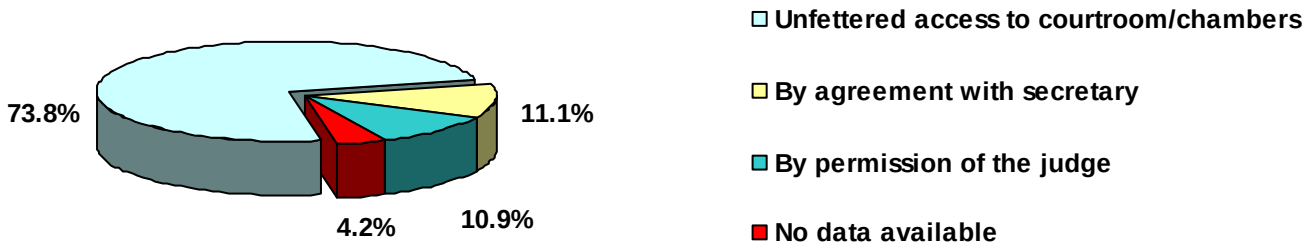
Statistical data and conclusions

The right to a public hearing was considered to have been breached in the case of difficult access to court buildings or courtrooms/judges' chambers where hearings were taking place, and also in cases of difficulty in establishing the schedule of hearings.

Table 2.2.1. Monitors' access to court hearings

City/region	Access to court buildings			Access to courtrooms/chambers			
	Unfettered	By showing or registering documents in register of court visitors	No data available	Unfettered	By agreement with court clerk	By permission of the judge	No data available
	Number of hearings						
Bishkek	197	1	10	176	24	8	-
Chui Oblast	13	-	-	8	2	3	-
Issyk Kul Oblast	214	-	-	192	5	17	-
Naryn Oblast	55	-	-	50	-	5	-
Osh Oblast	310	5	4	234	11	51	23
Jalal-Abat Oblast	233	-	24	145	83	17	12
Batken Oblast	58	8	2	32	1	23	12
Total	**1080**	**14**	**40**	**837**	**126**	**124**	**47**

Diagram 2.2.2. Observance of free access to courtrooms/chambers



During the monitoring period, monitors found no instances of difficulty of access to court buildings. In 14 cases monitors were obliged to present documents confirming their identity, and to register in the court's visitors log on entering the building.

Monitors frequently encountered problems of access to courtrooms or judges' chambers in which hearings were being held. In 124 cases (10.9%), monitors had to obtain permission to be present at the hearing from the judge beforehand by presenting either their monitor's card, and in some cases a letter from the Chairman of the Supreme Court. There were a number of instances of disrespectful and rude treatment of monitors by court clerks, who arbitrarily imposed additional limitations on monitors' access to courtrooms or judges cabinets. In 126 cases monitors had to obtain permission of access from the court clerk.

During the monitoring period trial monitors were refused access to six trial hearings that took place in courtrooms/judge's chambers. Five of these refusals took place at Osh city court. Access to one court hearing was restricted also at Karakol city court. Monitors informed theproject co-ordinators immediately of each refusal.

EXAMPLE 13

When monitoring began, problems of access for monitors were encountered at Karakol city court. The court president banned monitors from being present at court hearings. A meeting was held with the local project co-ordinator and the president of Karakol city court, during which the aims, objectives, and methodology of the project were explained. Letters requesting co-operation from the President of the Supreme Court and the OSCE Centre in Bishkek were presented. The outcome of the meeting was agreement from the judge to monitors being present at court hearings to carry out monitoring (Analytical Report 02-2005-Karakol-24/25-KG).

EXAMPLE 14

On 3 February 2005 a judge at the Issyk Kul district court allowed the monitor to be present only after he presented his OSCE/ODIHR monitor's card. The judge also reprimanded the monitor for not having previously obtained permission from him to be present at the trial (Report 30-02-2005-Balykchi-23-KG).

EXAMPLE 15

During hearings at the Leilek district court in Baten oblast on 7 February 2005 in the case of M. and D., accused of a crime under Article 234, Part 3 of the CC (Report 88-2-2005-Batken-6-KG); on 17 February 2005, in the case of R., accused of a crime under Article 281, Part 2 of the CC (Report 91-02-2005-Batken-6-KG); and on 21 February 2005, in the case of U., accused of a crime under Article 281, Part 2 of the CC (Report 89-02-2005-Batken-6-KG), the judge allowed the monitor to be present only after he had shown his OSCE/ODIHR monitor's identity card.

EXAMPLE 16

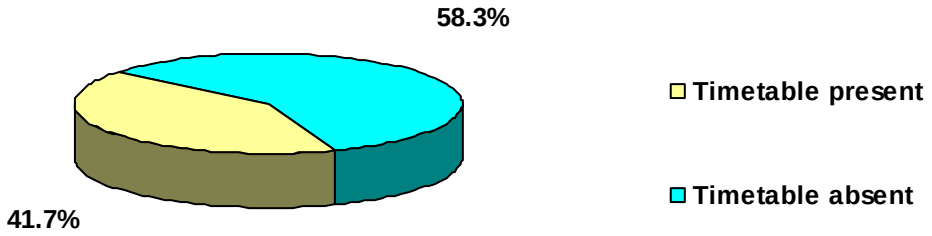
On 14 April 2005, monitors attempted to attend a hearing presided over by the deputy president of Osh city court. The judge refused access to the hearing, explaining that he was not prepared to have monitors at the hearing. When asked to explain, the judge said that he had sent his robes for cleaning, and for this reason it would not be possible for monitors to be present. The monitors handed over a copy of an official letter from the Head of the OSCE Centre in Bishek, countersigned by the President of the Supreme Court. The letter had no effect. When asked whether the hearing was a public one, he answered in the affirmative.

On 4 February 2006, monitors again attempted to enter a hearing, following the group around the defendant. However, they were refused access to the hearing by the judge in a rude manner, and were forced to leave his chambers. The hearing was a public one (Analytical Report 02-2005-Osh-1/2-KG).

Table 2.2.3. Information on the places and dates of hearings and necessary conditions for access

Oblast (city)/court	Timetable of hearings		Location			Area of courtroom	
	Present	Not present	Courtroom	Other (external hearing)	Judge's chambers	Sufficient	Insufficient
	Number of hearings						
Bishkek							
Leninsky District Court	41	6	44	-	3	44	-
Pervomaisky District Court	32	-	32	-	-	29	3
Sverdlovsky District Court	2	45	46	-	1	45	1
Oktyabrsky District Court	7	75	79	1	2	78	1
Total	**82**	**126**	**201**	**1**	**6**	**196**	**5**
Chui Oblast							
Chui District Court	-	1	-	-	1	-	-
Tokmak City Court	-	2	2	-	-	2	-
Alamedin District Court	1	3	2	-	2	2	-
Issykatin District Court	-	3	1	-	2	1	-
Sokuluk District Court	-	3	3	-	-	3	-
Total	**1**	**12**	**8**	**0**	**5**	**8**	**0**
Issyk Kul Oblast							
Ton District Court	-	15	-	-	15	-	-
Karakol City Court	34	52	13	-	73	13	-
Balykchin City Court	-	52	-	-	52	-	-
Aksui District Court	11	24	22	-	13	22	-
Tyup District Court	6	-	1	-	5	1	-
Issyk Kul District Court	15	5	-	-	20	-	-
Total	**66**	**148**	**36**	**0**	**178**	**36**	**0**
Naryn Oblast							
Naryn City Court	10	21	9	-	22	8	1
Naryn District Court	19	5	18	-	6	16	2
Total	**29**	**26**	**27**	**0**	**28**	**24**	**3**
Osh Oblast							
Osh City Court	143	148	97	-	194	97	-
Karasui District Court	2	24	15	-	11	15	-
Nookat District Court	2	-	-	-	2	-	-
Total	**147**	**172**	**112**	**0**	**207**	**112**	**0**
Jalal-Abat Oblast							
Jalal-Abat City Court	67	89	68	-	88	68	-
Nooken District Court	67	28	66	-	29	61	5
Suzak District Court	-	6	4	-	2	4	-
Total	**134**	**123**	**138**	**0**	**119**	**133**	**5**
Batken Oblast							
Kadamzhai District Court	-	24	6	-	18	6	-
Leilek District Court	12	28	24	-	16	24	-
Sulyuktin City Court	2	2	-	-	4	-	-
Total	**14**	**54**	**30**	**0**	**38**	**30**	**0**
Total	**473**	**661**	**552**	**1**	**581**	**539**	**13**

Diagram 2.2.4. Information on the place and time of hearings



The absence of information on the date and time of a case hearing compromises the right to a public hearing, since people wishing to attend a hearing are not informed where and when it is taking place.

Monitoring concluded that in most cases information about the time and place of court hearings was not provided. A hearings timetable was not available in 661 cases (58.3%). In Ton district court, Balykchin city court, Bishkek's Oktyabrsky district court, Kadamzhai district court, and Suzak district court no timetables were available over the whole monitoring period.

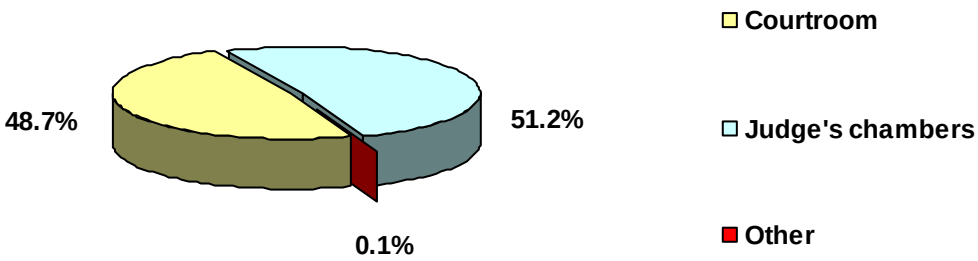
Of the 1,134 hearings attended, in 473 cases (41.7%) a schedule of hearings was available in a publicly accessible place – the courtroom hall. The schedule included the following information: defendants' surnames, article of the CC under which they were being tried, judges' surnames, and date and time at which the hearing was scheduled to start. Information on the location of the hearing was not always included in the schedule. In some cases, court secretaries called trial participants immediately before the start of the hearing and showed them the hearing location.

In some cases, judges did not announce the exact time of the hearing, but only an approximate time (for example, "after lunch").

EXAMPLE 17

During hearings at Leilek district court, Batken Oblast on 21 February, 2005, in the case of U., accused of a crime under Article 281, Part 2 of the CC (Report 89-02-2005-Batken-6-KG); and on 7 February 2005, in the case of M. and D., accused of a crime under Articles 234, Part 3 of the CC (Report 88-02-2005-Batken-6-KG), relatives of the defendants were unable to attend the hearing since there was no case hearings timetable, and they were not informed of the time of the hearing.

Diagram 2.2.5. Location of hearings



Hearings should take place in properly equipped rooms. The size, furniture and technical equipment of courtrooms should be optimal for the administration of justice. There must be enough seats for all trial participants and for those wishing to attend.

In breach of the requirements of national legislation, most hearings (581) attended by monitors took place in judges' chambers. This practice contradicts the essence of judicial power, as justice is administered in the name of the state and should be accompanied by observance of all necessary formalities. During a case hearing, a court should be housed in a location appropriate to its status with state emblem and flag displayed. The safety of participants should be guaranteed, and their rights and dignity respected. Hearings that take place in judges' chambers not only create additional obstacles in terms of public access to the hearing, but do not inspire public respect for the judiciary. In assessing the material and technical preparedness of proceedings, the condition of judges' chambers was not taken into account.

Hearings may also take place in locations other than court buildings, such as cells of solitary confinement. During the monitoring period, one hearing took place in isolation block 1 of the Bishkek city police. The room in the isolation block where the hearing took place was not appropriate for the function: There were no specially allotted places for the judge, state prosecutors, lawyers, or defendants; there was no witness box; and state symbols and essential technical equipment were not secured. Outside the entrance to the room where the hearing took place was a holding cell for prisoners.

EXAMPLE 18

A hearing in the case of D., accused of a crime under Article 164, Part 2 of the CC, took place on 9 March 2005 in Karakol city court in the judge's chambers, even though a courtroom was free at the time. No reason was given by the judge for this (Report 29-03-2005-Karakol-24/25-KG).

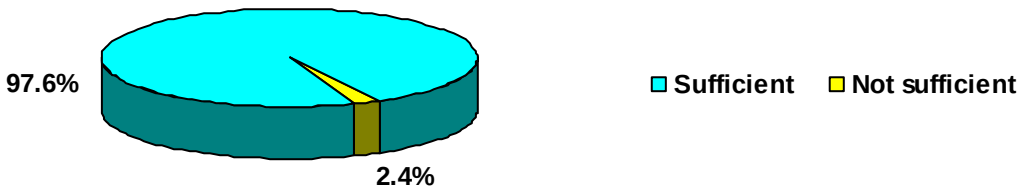
EXAMPLE 19

During a hearing in the case of S., accused of a crime under Article 171, Part 3, and Article 315 of the CC, that took place on 4 March in Naryn district court, the preliminary stage of proceedings took place in the judge's chambers. The courtroom was very cold, and the judge suggested to participants and those present that the hearing continue in his chambers (Report 32-03-2005-Naryn-21/22-KG).

EXAMPLE 20

In the case of Sh., accused of a crime under Article, Parts 2 and 3, and Article 243 of the CC, that was heard on 10 March 2005 in Osh city court, the hearing took place in the judge's chambers, although a courtroom was free (Report 72-03-2005-Osh-11/12-KG).

Diagram 2.2.6. Space available for trial participants and others wishing to attend



In 13 cases, monitors considered the space available for the hearing to be insufficient, and that it limited the opportunity for participants and visitors to be present.

EXAMPLE 21

During a hearing in the case of L., accused of a crime under Article 247, Part 2 of the CC, which took place on 11 February 2005 in Leninsky district court, Bishkek, monitors noted insufficient space to accommodate trial participants in courtroom no. 4. Some of those present stood by the doors throughout the hearing (Report 09-02-Bishkek-15/18-KG).

Table 2.2.7. Necessary material and technical equipment to guarantee a public hearing

Oblast (city)/court	Necessary furniture		Technical equipment (audio and video)		Lighting	
	Sufficient	Insufficient	Present	Not present	Sufficient	Insufficient
	Number of hearings					
Bishkek						
Leninsky District Court	44	-	-	44	42	2
Pervomaisky District Court	32	-	-	32	32	-
Sverdlovsky District Court	46	-	-	46	42	4
Oktyabrsky District Court	79	-	-	79	65	14
Total	**201**	**0**	**0**	**201**	**181**	**20**
Chui Oblast						
Chui District Court	-	-	-	-	-	-
Tokmak City Court	2	-	-	2	2	-
Alamedin District Court	2	-	-	2	2	-
Issykatin District Court	1	-	-	1	1	-
Sokuluk District Court	3	-	-	3	3	-
Total	**8**	**0**	**0**	**8**	**8**	**0**
Issyk Kul Oblast						
Ton District Court	-	-	-	-	-	-
Karakol City Court	13	-	-	13	13	-
Balykchin City Court	-	-	-	-	-	-
Aksui District Court	22	-	-	22	21	1
Tyup District Court	1	-	-	1	1	-
Issyk Kul District Court	-	-	-	-	-	-
Total	**36**	**0**	**0**	**36**	**35**	**1**
Naryn Oblast						
Naryn City Court	9	-	-	9	9	-
Naryn District Court	18	-	-	18	18	-
Total	**27**	**0**	**0**	**27**	**27**	**0**
Osh Oblast						
Osh City Court	97	-	-	97	89	8
Karasui District Court	15	-	-	15	15	-
Nookat District Court	-	-	-	-	-	-
Total	**112**	**0**	**0**	**112**	**104**	**8**
Jalal-Abat Oblast						
Jalal-Abat City Court	68	-	-	68	68	-
Nooken District Court	66	-	-	66	65	1
Suzak District Court	4	-	-	4	4	-
Total	**138**	**0**	**0**	**138**	**137**	**1**
Batken Oblast						
Kadamzhai District Court	6	-	-	6	4	2
Leilek District Court	24	-	-	24	24	-
Sulyuktin City Court	-	-	-	-	-	-
Total	**30**	**0**	**0**	**30**	**28**	**2**
Total	**552**	**0**	**0**	**552**	**520**	**32**

Hearings in criminal cases require that appropriate furniture and equipment be provided. Courtrooms should be equipped with tables and chairs for judges, prosecutors, defence counsel, and secretaries, along with seating for the public, a witness stand, and place for the defendant(s).

All courtrooms covered by the monitoring were equipped with adequate appropriate furniture.

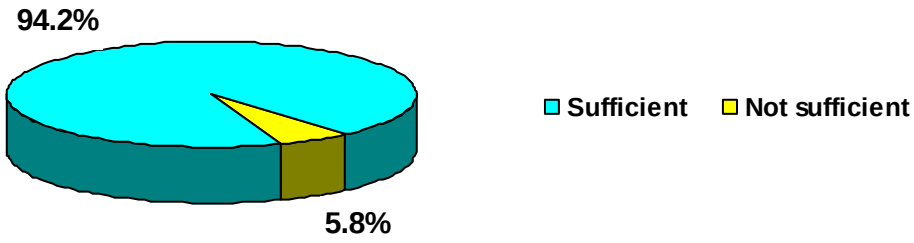
Technical equipment is required for the reliable recording of the proceedings, as well as for investigation of evidence during hearings in criminal cases.

Monitors did not note any technical equipment in any courtroom covered by monitoring.

EXAMPLE 22

During hearings in the case of K., accused under Article 246 of the CC, which took place on 24 February 2005 in Oktyabrsky district court, Bishkek, it was necessary to play a video recording of a search of the defendant's flat. This, however, proved impossible since the courtroom did not have the necessary technical equipment. The judge asked an investigator from the local police station to bring a VCR to the next hearing to play the tape (Report 24-02-2005-Bishkek-16/17-KG).

Diagram 2.2.8. Lighting in courtrooms



In 32 hearings monitors considered the lighting to be unsatisfactory, as the trials took place in half-darkened rooms.

EXAMPLE 23

During a hearing on 18 April 2005 at Oktyabrsky district court, Bishkek, in the case of U., accused of a crime under Article 169, Parts 1 and 2, and Article 234, Parts 1 and 2 of the CC, when the verdict was pronounced the lighting was so poor that the judge had difficulty reading the verdict, and had to hold his text towards the window. Monitors had to observe proceedings in almost total darkness (Report 21-04-2005-Bishkek-16/17-KG).

The right to a public hearing also includes the manner in which verdicts and judgements are read out. Under national legislation, all verdicts and judgements must be read in public. No infringements of this rule were encountered during monitoring.

Table 2.2.9. Observance of public reading of verdicts

City/region	Verdict/judgement read in public	Verdict/judgement not read in public
	Number of hearings	
Bishkek	53	-
Chui Oblast	6	-
Issyk Kul Oblast	94	-
Naryn Oblast	34	-
Osh Oblast	110	-
Jalal-Abat Oblast	76	-
Batken Oblast	28	-
Total	**401**	**0**

2.3. The right to a fair hearing

International standard

The right to a fair hearing is established in the UDHR,[42] the ICCPR,[43] the ECHR,[44] and in OSCE documents.[45]

National legislation

Procedural requirements for the administration of justice are set out in Kyrgyzstan's criminal procedural legislation.[46]

Under the principles for administration of justice, the legal procedures should be strictly observed in practice. Any infringement may cast doubts on the justice of the verdict, and could be used as a basis for an appeal to a higher court.

Aspects studied by monitors

Monitors assessed observance of the following procedural requirements established by national legislation: proper observance of the procedure and timeframe in criminal case proceedings; identifying in court persons called to trial; determining whether a case may be heard *in absentia*; consideration of evidence according to the legally prescribed procedure; compliance with the rules for examination of witnesses, victims and other parties; giving of evidence by witnesses and victims without duress; and compliance with the rules governing progress to the stage of judicial pleadings.

The data set out below illustrates the degree of to which the appropriate legal procedures – an integral part of a fair trial – were respected.

Statistical data and conclusions

One important element of appropriate administration of justice is that hearings should begin on time in accordance with the court schedule. This requirement is stipulated in the CPC.[47]

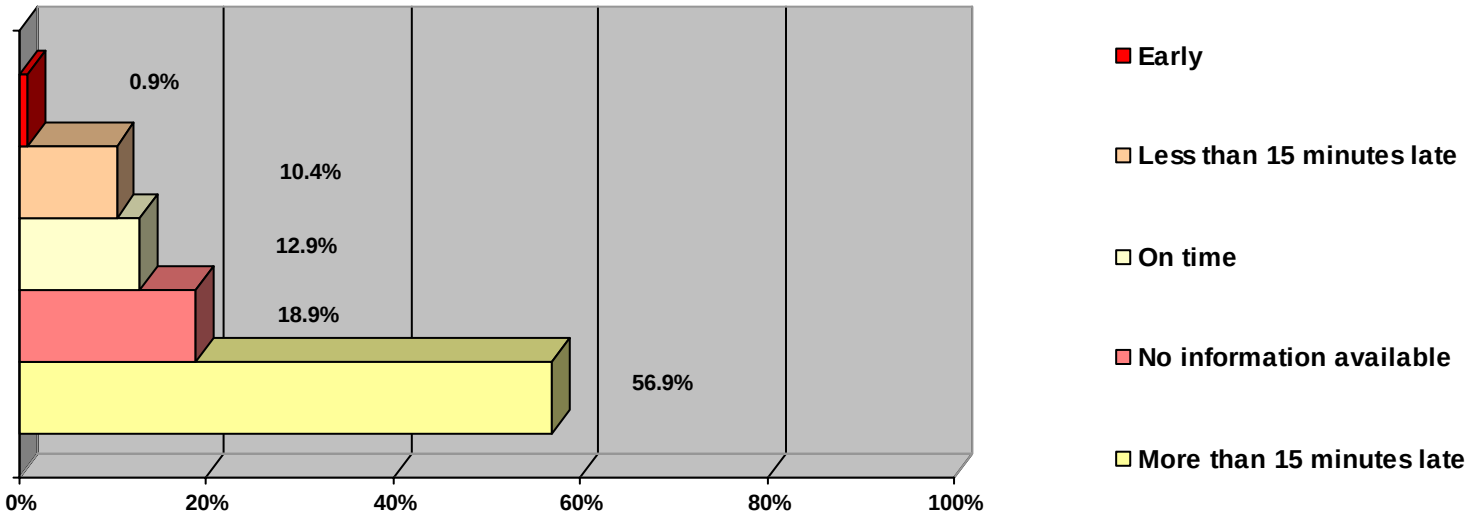
[42] Art. 10 of the UDHR.
[43] Art. 14(1) of the ICCPR.
[44] Art. 6(1) ECHR.
[45] Para. 13.9 of the 1989 CSCE Vienna document, para. 5.16 of the 1990 CSCE Copenhagen document.
[46] CPC, Articles 4, 6, 19, 253, 257, 274, 275, 281-283, 285, 291, 293, 304.
[47] CPC Article 274.

Table 2.3.1. Compliance with court schedule

City/region	Compliance with court schedule					Reason for not starting on time[48]						
	On time	Early	Up to 15 minutes late	More than 15 minutes late	No data available	Due to state prosec-utor	Due to defence	Due to judge	Due to other partici-pants	Technical reasons	No reason given	No data available
	Number of hearings											
Bishkek	53	-	27	102	26	16	10	34	20	32	52	44
Chui Oblast	2	-	3	8	-	1	-	4	4	2	1	1
Issyk Kul Oblast	34	1	14	117	48	37	5	29	17	8	39	79
Naryn Oblast	10	-	-	45	-	2	5	3	17	15	13	-
Osh Oblast	15	6	22	172	104	22	20	22	18	30	77	130
Jalal-Abat Oblast	5	4	49	168	31	12	10	17	75	32	58	53
Batken Oblast	27	-	3	33	5	5	1	12	3	3	5	39
Total	**146**	**11**	**118**	**645**	**214**	**95**	**51**	**121**	**154**	**122**	**245**	**346**

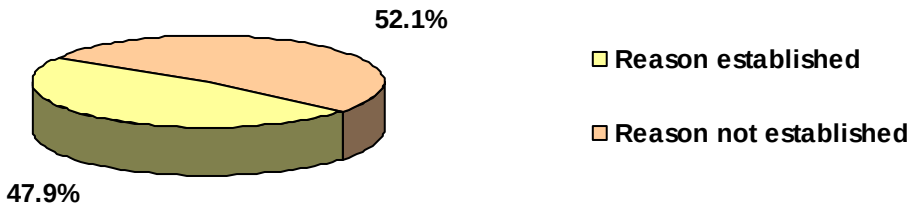
[48] Due to there being more than one possible reason, the total number of cases here may not add up to the total number of hearings monitored.

Diagram 2.3.2. Compliance with court schedule



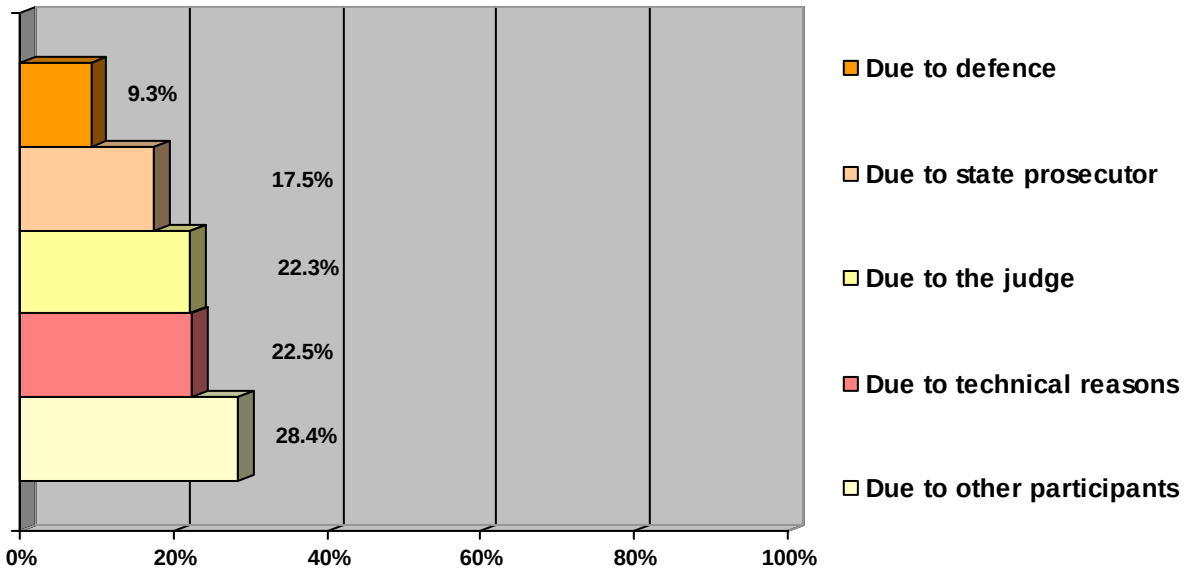
In breach of the requirements of national legislation, which stipulates that all hearings should begin on time,[49] most hearings began significantly behind schedule. Only 146 (12.9%) of hearings of the 1,134 started on time.

Diagram 2.3.3. Cases in which a reason was established for a hearing not starting on time, percentage



In many cases, no reason was established for the hearing starting late either because no reason was stated (245), or because the information was not contained in monitors' reports (346).

Diagram 2.3.4. Reasons for hearings not starting on time



The most common reason for hearings not starting on time was the late arrival of other participants (witnesses, victims) (154), followed by technical reasons[50] (122). A similar number of instances were attributable to the judge (121). The two parties accounted for delays in 146 cases, 95 of which were due to the state prosecutor being late, and 51 due to the late arrival of the defence counsel.

[49] CPC, Article 274.
[50] Technical reasons include late arrival of prison convoy, occupied courtroom, lack of electricity, etc.

EXAMPLE 24

A hearing in the case of M., accused of a crime under Article 247, Part 1 of the CC, on 4 March 2005 at Karakol city court started 3 hours late (the hearing was scheduled for 10 a.m.). No explanation was given to trial participants or those present for the late start (Report 25-03-2005-Karakol-24/25-KG).

EXAMPLE 25

A hearing in the case of A., accused of a crime under Article 28-204, and Article 247, Part 2 of the CC, which took place on 15 March 2005 at Leninsky district court, Bishkek, started two hours and 15 minutes late. The reason for the delay was waiting for witnesses in the case to appear (Report 02-03-2005-Bishkek-13/14-KG).

EXAMPLE 26

A hearing in the case of Zh. and B., accused of a crime under Article 247, Part 2 of the CC, which took place on 17 February, 2005 at Leninsky district court, Bishkek, started two hours late. No reason was given for the delay (Report 08-02-2005-Bishkek-15/18-KG).

Under national legislation, the procedure of identifying trial participants,[51] and also determining whether a trial can continue *in absentia*,[52] is undertaken at the preliminary stage.

Identifying of the presence of those called to the trial proper is a procedural guarantee of a fair trial, as it ensures the participation of all interested parties in the case hearing.

Deciding whether a case may be heard *in absentia* is important to ensure the hearing is direct and oral, and also to consider the parties' positions during investigation of the evidence in a case.

Table 2.3.5. Identifying the presence in court of those summoned to the main trial, and determining whether a case may be heard *in absentia*

City/region	Different stage of trial	Ascertaining the presence in court of those summoned		Decision on whether a hearing may be carried out *in absentia*	
		Court clerk reported	Court clerk did not report	Decided	Not decided
	Number of hearings				
Bishkek	122	49	37	24	62
Chui Oblast	4	8	1	1	8
Issyk Kul Oblast	60	129	25	31	123
Naryn Oblast	8	38	9	13	34
Osh Oblast	170	93	56	67	82
Jalal-Abat Oblast	130	96	31	27	100
Batken Oblast	36	8	24	6	26
Total	**530**	**421**	**183**	**169**	**435**

[51] CPC Articles 257, Part 1, 275.
[52] CPC Article 285.

Diagram 2.3.6. Identifying the presence in court of those summoned

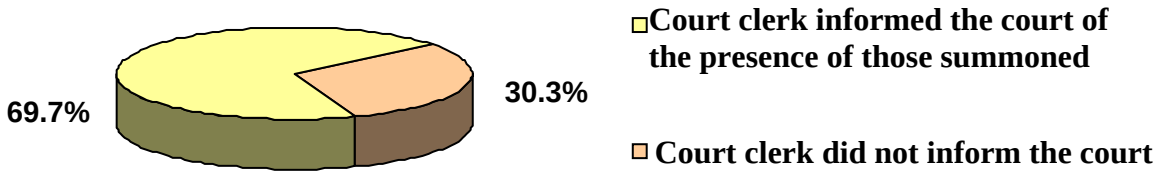
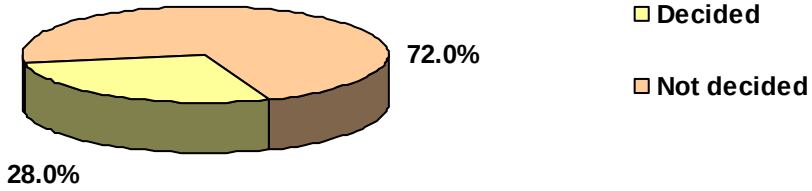


Diagram 2.3.7. Determining whether a hearing may be conducted *in absentia*



The right to a fair trial assumes that all relevant and admissible evidence be considered, that both sides have equal opportunity to present evidence, that both sides participate equally in examining witnesses and experts, and that judges consider the evidence impartially.

Under national legislation, the objectives of the criminal process include expeditious and thorough detection of crimes, finding those responsible and bringing them to justice, and fair judicial trial and correct application of criminal law.[53] The court, remaining neutral and impartial, is under a duty to ensure that both the prosecution and the defence are able to exercise their rights to a full examination of the case and that the judgement pronounced is based only on reliable evidence.[54]

The CPC stipulates that no evidence obtained in breach of criminal procedural law be admitted during the administration of justice.[55] The court is obliged to hear statements from the defendant, the victim, and witnesses, as well as expert testimony, and to examine material evidence. It must also make public protocols and other documents, and carry out other judicial actions in the consideration of the evidence. The verdict should be based only on evidence that has been heard during the course of the hearing.[56]

[53] CPC, Article 4, Part 1.
[54] CPCArticle 19, Part 2.
[55] CPC, Article 6, Part 3.
[56] CPC, Article 253, Parts 1, 2.

Table 2.3.8. Examination of evidence: Court expert evidence, visual inspections, identifications and other actions carried out as established by law

City/region	Expert testimony			Visual inspections, identifications, and other judicial actions as established by law		
	Expert testimony used		Expert testimony not used	Carried out		Not carried out
	Procedure followed	Procedure not followed		Procedure followed	Procedure not followed	
	Number of hearings					
Bishkek	3	-	205	11	-	197
Chui Oblast	-	-	13	1	-	12
Issyk Kul Oblast	1	-	213	3	-	211
Naryn Oblast	-	-	55	-	-	55
Osh Oblast	1	-	318	11	-	308
Jalal-Abat Oblast	-	-	257	3	-	254
Batken Oblast	1	-	67	3	-	65
Total	**6**	**0**	**1128**	**32**	**0**	**1102**

Criminal procedural legislation lays down procedures for examining witnesses, victims and other trial participants. Before examining a victim, a civil plaintiff, civil defendant or their representatives, the judge is obliged to read their rights and obligations.[57] Before examining an expert, the judge must read the expert's rights and obligations, and also warn him or her that deliberately giving false testimony is a criminal offence.[58] As well as reading rights and obligations before examining an expert, the judge is obliged to warn him or her of his or her liability should he or she refuse to fulfil those obligations.[59]

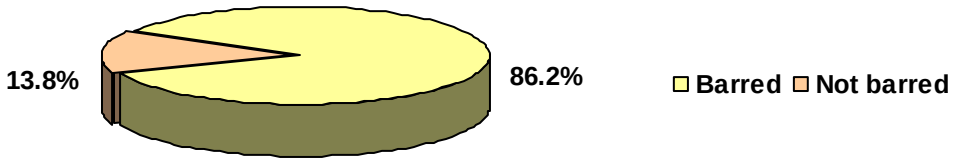
The rules for examination of witnesses stipulate that witnesses be examined separately and in the absence of witnesses who have not yet been examined. Before examining a witness, the court presiding judge must explain his or her civil duty and obligation to give truthful evidence, as well as his or her accountability should he or she refuse to give evidence or knowingly give false evidence.[60] Exception may be made for examining a victim or witness aged under 16. In this case, the presiding judge must explain the importance of giving full and truthful evidence, but must not warn of his or her liability should he or she refuse to give evidence or knowingly give false evidence.[61]

[57] CPC Article 281.
[58] CPC, Article 282.
[59] CPC, Article 283.
[60] CPC Article 291.
[61] CPC Article 293.

Table 2.3.9. Examination of evidence (evidence from witnesses) as established by law

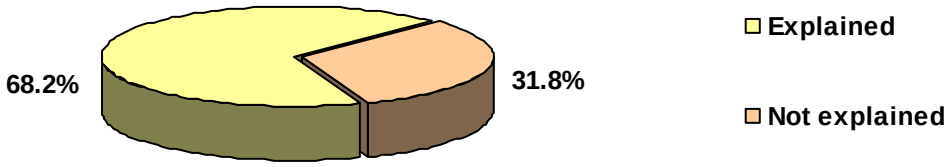
City/region	Witnesses excluded from the courtroom (chambers) before being examined				Explanation of civil duty, obligation and responsibility in giving evidence		Obligation to examine witnesses in the absence of witnesses not previously examined	
	Absent	Not absent	No witnesses	Different stage of trial	Explained	Not explained	Observed	Not observed
	Number of hearings							
Bishkek	55	14	86	53	60	9	52	17
Chui Oblast	5	1	5	2	6	-	4	2
Issyk Kul Oblast	59	22	105	28	42	39	66	15
Naryn Oblast	40	5	6	4	9	36	43	2
Osh Oblast	121	10	93	95	112	19	122	9
Jalal-Abat Oblast	95	10	83	69	70	35	83	22
Batken Oblast	31	3	12	22	22	12	34	-
TOTAL	**406**	**65**	**390**	**273**	**321**	**150**	**404**	**67**

Diagram 2.3.10. Witnesses excluded from the courtroom before being examined



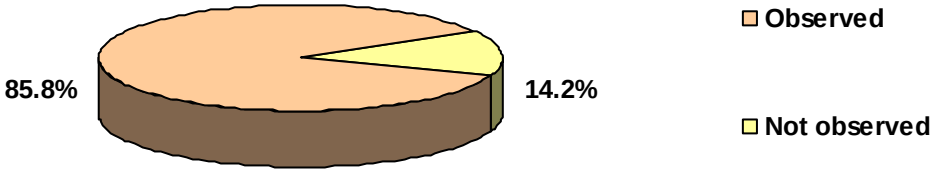
The requirements that witnesses be excluded from the courtroom before they are examined and that they be examined in the absence of witnesses not previously examined was observed in 406 cases. In 65 cases, witnesses were not excluded from the courtroom, in breach of legislation.

Diagram 2.3.11. Explanation to witnesses of their civil duty, obligation and responsibility in giving evidence



In 150 cases, witnesses were not reminded of their civil duty, obligations and responsibilities in giving evidence. This was in breach of national legislation.

Diagram 2.3.12. Examination of witnesses in the absence of witnesses not previously examined



Of the 1,134 hearings attended by monitors, witnesses were examined in 471. In 65 cases, witnesses were not excluded from the courtroom prior to giving evidence, and in 67 hearings witnesses were examined in the presence of witnesses not previously examined and of other parties to the trial. This was a breach of existing legislation.

Monitors recorded 282 instances of non-observance of the standards of the CPC regarding the involvement of witnesses in the criminal process.

EXAMPLE 27

During a hearing in the case of A., accused of a crime under Article 337 of the CC, on 7 June 2005 at Balykchin city court, the judge did not exclude witnesses from the courtroom and examined them in the presence of witnesses yet to be called (Report 30-06-2005-Balykchi-23-KG).

EXAMPLE 28

In the trial of S., accused of a crime under Article 97, Part 1, and Article 241, Part 1 of the CC, during a hearing on 26 May 2005 at Aksui district court, the judge did not exclude witnesses from the courtroom. A witness was examined in the presence of a witness still to be called. The judge reprimanded the court clerk for not informing him that another witness had appeared in the case (Report 35-05-2005-Karakol-24/25-KG).

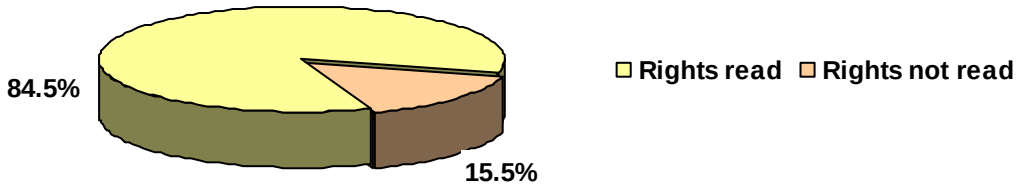
The rights of victims and other parties to the case should be read during the hearing of the evidence, immediately before they are examined. Other parties include civilian plaintiffs, civilian respondents and their representatives, the legal guardians of minors, and private complainants and their representatives. Their rights and obligations should be explained during the preliminary stage of the main trial. [62]

[62] CPC Article 281.

Table 2.3.13. Observance of rules for examination of victims and of other parties to the trial

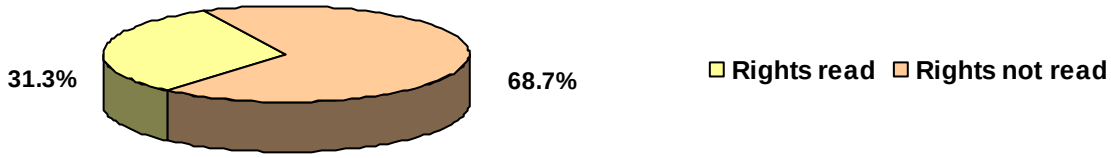
City/region	Reading the rights of victims			Reading the rights of other parties (civilian plaintiff, respondent)		
	Rights read	Rights not read	Not examined during the hearing	Rights read	Rights not read	Not examined during the hearing
	Number of hearings					
Bishkek	75	7	73	26	3	132
Chui Oblast	4	-	7	1	-	10
Issyk Kul Oblast	51	34	101	9	2	175
Naryn Oblast	42	7	2	1	1	66
Osh Oblast	114	9	101	3	15	206
Jalal-Abat Oblast	118	16	54	6	89	93
Batken Oblast	37	8	1	4	-	42
TOTAL	**441**	**81**	**339**	**50**	**110**	**724**

Diagram 2.3.14. Observation of rules for examination of victims



In breach of the requirements of national legislation for examination of victims, in 81 hearings at the relevant stage (hearing of evidence), the judge did not inform the victims of their rights and obligations.

Diagram 2.3.15. Observance of rules for examination of other parties



During hearings at which other parties were present, their rights were read in 50 cases, while in 110 cases this legal requirement was breached.

EXAMPLE 29

During a hearing in the case of K., accused of a crime under Article 105 of the CC, that took place on 14 June 2005 at Issyk Kul district court, the judge did not read the victims' rights and obligations before their examination (Report 31-06-2005-Balykchi-23-KG).

EXAMPLE 30

During examination of the defendant Zh., accused of a crime under Article 165 of the CC that took place on 18 April, 2005, at Naryn district court, the judge did not read the victims' rights and obligations before the examination (Report 40-04-2005-Naryn-21/22-KG).

Table 2.3.16. Observance of the right to call and examine witnesses and victims

City/region	Pressure on witnesses during examination by a party to the trial				Pressure on the victim during examination by a party to the trial			
	Exerted			Not exerted	Exerted			Not exerted
	By the defence	By the prosecution	By the judge		By the defence	By the prosecution	By the judge	
	Number of hearings							
Bishkek	-	-	-	69	-	1	1	80
Chui Oblast	1	1	-	4	-	-	-	4
Issyk Kul Oblast	-	-	1	80	-	-	2	83
Naryn Oblast	1	2	6	36	-	1	2	46
Osh Oblast	-	1	3	127	-	1	2	120
Jalal-Abat Oblast	-	3	4	98	1	2	1	130
Batken Oblast	2	4	8	20	-	-	5	40
Total	**4**	**11**	**22**	**434**	**1**	**5**	**13**	**503**

Monitors reported instances of pressure being exerted on witnesses and victims only at the stage of examination of evidence. Monitors recorded 37 cases of pressure being exerted on witnesses during examination. In most cases (59.5%) the pressure came from the judge.

As with instances of exertion of pressure on witnesses, most cases of pressure being put on victims came from the judge (68.4%). In addition, judges did not interrupt similar violations by other parties to the trial.

EXAMPLE 31

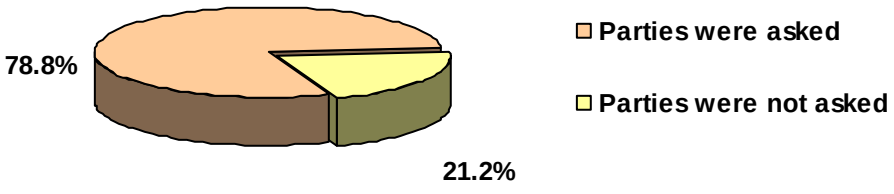
During examination of witnesses in hearings in the case of Sh., accused of a crime under Article 171, Part 3, and Article 315 of the CC, that took place on 4 March 2005 at Naryn district court, the judge exerted pressure on witnesses, interrupted the flow of their witness accounts with numerous questions, and threatened to have cases opened against them should they not tell the truth (Report 32-03-2005-Naryn-21/22-KG).

After hearing all the evidence, the court should observe the requirements of the CPC,[63] which states that the presiding judge should ask both sides whether they wish to adduce any further evidence and the nature of such evidence, and then to declare the judicial investigation complete.

Table 2.3.17. Observance of procedural requirements for progressing to pleadings

City/region	Asking the parties if they wish to adduce further evidence and the nature of this evidence			
	Parties were asked	Parties were not asked	Not required	Different stage of trial
	Number of hearings			
Bishkek	71	28	56	53
Chui Oblast	8	1	2	2
Issyk Kul Oblast	86	28	72	28
Naryn Oblast	34	6	11	4
Osh Oblast	125	23	76	95
Jalal-Abat Oblast	114	30	44	69
Batken Oblast	24	8	14	22
Total	**462**	**124**	**275**	**273**

Diagram 2.3.18. Obligation to ask the parties if they wish to adduce further evidence



During the monitoring period, 504 hearings were at the stage of hearing of evidence and pleadings. In 124 cases, judges did not ask the parties if they wished to adduce additional evidence and the nature of this evidence.

[63] CPC Article 304.

2.4. The right to be present at trial and to defend oneself in person

International standard

Under international standards, the defendant must be present in court in order to exercise his or her right to defend him or herself in person.[64]

The right to be present at trial obliges the authorities to inform the defendant and his or her lawyer in a timely manner of the date and venue of the hearing, to request the defendant's presence in court, and not to bar him or her from the hearing without reason.[65]

The defendant's right to be present at trial may be temporarily limited if the defendant breaches the rules of court to such an extent that the court deems it inexpedient to continue in his or her presence.

The UN Human Rights Committee's General Comment 13 notes that the right to be present in court in person may be waived, but says that, "When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary."[66]

National legislation

The CPC requires the presence of the defendant at hearings in courts of first instance.[67] Hearings may be held in the absence of the defendant only if the defendant is outside the country and declines to appear in court. Otherwise, the case should be adjourned. In this case, the judge must require the prosecutor to ensure the presence of the defendant, and if his/her presence is not secured within the time stipulated by the court, the case is returned to the prosecutor who oversaw the investigation. This process is carried out by judicial writ.[68]

During preliminary hearings, the judge is obliged to establish the identity of the defendant, and ascertain his or her surname, given name, patronymic name, height, place of birth, place of residence, occupation, and other personal details.[69]

Aspects studied by monitors

During the monitoring period monitors assessed the following criteria:

- Defendant's participation in hearings at all stages of the trial;
- During preliminary hearings:
  - Whether the judge established the identity of the defendant;
  - Whether the judge ascertained that copies of the indictment had been sent to the defendant in a timely manner;
- During the main trial:
  - Whether the judge established the defendant's position regarding the charges against him or her;

[64] ICCPR, Article 14, para, . 3 d.
[65] See: Resolution of the UN Committee, *Mbenge v. Zaire*, 25 March, 1983.
[66] See: Notes to the Basic Principles, 13 (21) UN Human Rights Committee, point 11.
[67] CPC, Article 259, Part 1.
[68] CPC , Article 259, Parts 2, 3.
[69] CPC, Article 278, Part 1.

- Presentation of evidence for the defence and evidence from the investigation, as well as reproduction of all audio and video recordings from the case file;
- Observance of rules for examination of the defendant.

- Whether the defendant was given the opportunity to make a final address before pleadings.

Statistical data and conclusions

Table 2.4.1. Participation of defendants

City/region	Participation of defendants		Establishing the identity of the defendant			
	Present	Absent	Established	Not established	NA	Different stage of trial
	Number of hearings					
Bishkek	206	2	71	3	12	122
Chui Oblast	13	-	7	-	2	4
Issyk Kul Oblast	214	-	127	4	23	60
Naryn Oblast	55	-	39	-	8	8
Osh Oblast	318	1	117	6	26	170
Jalal-Abat Oblast	257	-	107	12	8	130
Batken Oblast	68	-	28	2	2	36
Total	**1131**	**3**	**496**	**27**	**81**	**530**

Defendants were absent in 0.3% of the total number of hearings.

EXAMPLE 32

During a hearing on 13 May 2005 at Osh city court, in the case of M., accused of a crime under Article 164, Parts 2 and 3; Article 169; and Article 336, Part 1 of the CC, the defendant lodged a petition to reject the defence counsel and to have him replaced, and refused to give evidence. This was noted in the court register. The judge then began examining the victim's representative, during which the defendant stated that he felt sick and refused to be present at the hearing. The judge ordered that the defendant be removed from the courtroom, and in his absence continued the examination. After the examination of the victim's representative was finished, the judge began examining one of the witnesses, also in the absence of the defendant. The prosecutor then asked the presiding judge for the defendant to be brought into the courtroom. The prosecutor and the judge left the courtroom. They were told that the defendant was in the toilet. The judge surmised that the defendant was faking illness, to which the guard replied that the defendant was indeed feeling ill. Only after this did the judge halt proceedings until another day (Report 60-05-2005-Osh-1/2-KG).

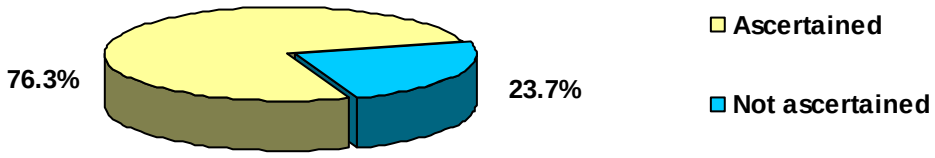
In order to exercise the right to defence, the defendant must have sufficient time to prepare. The judge is therefore obliged not only to establish that the defendant has been given a copy of the indictment, but also the date on which he or she received it. If the indictment was not delivered, the case should be postponed, and should commence no earlier than three days after the defendant receives the document.[70]

[70] CPC , Article 278, Parts 2, 3.

Table 2.4.2. Observance of the right to sufficient time and conditions to prepare a defence

City/region	Ascertaining whether a copy of the indictment was given to the defendant in time			
	Ascertained	Not ascertained	NA	Different stage of trial
	Number of hearings			
Bishkek	58	16	12	122
Chui Oblast	6	1	2	4
Issyk Kul Oblast	74	57	23	60
Naryn Oblast	24	15	8	8
Osh Oblast	110	13	26	170
Jalal-Abat Oblast	115	4	8	130
Batken Oblast	12	18	2	36
Total	**399**	**124**	**81**	**530**

Diagram 2.4.3. Observance of the obligation to ascertain whether a copy of the indictment was given to the defendant in time



In breach of national legislation, in 124 cases the requirement to ascertain whether the defendant was given a copy of the indictment in time was not observed by judges.

EXAMPLE 33

During preliminary hearings in the case of K., accused of a crime under Article 105 of the CC, that took place on 14 June 2005 in Issyk Kul district court, the judge did not ascertain whether the defendant had received a copy of the indictment. (Report 31-06-2005-Balykchi-23-KG).

EXAMPLE 34

During a hearing in the case of Zh., accused of a crime under Article 104, Part 2 of the CC, that took place on 31 May 2005 at Balykchin city court, the judge did not ascertain whether the defendant had received a copy of the indictment. (Report 46-05-2005-Balykchi-23-KG).

EXAMPLE 35

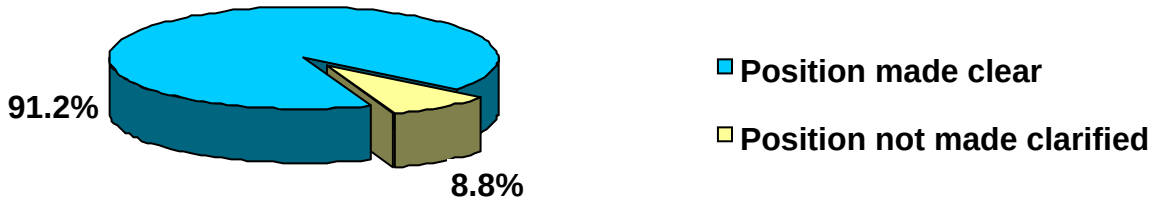
During a hearing in the trial of K., accused of a crime under Article 164, Part 3, of the CC, that took place on 1 June 2005 at Karakol city court, the judge did not ascertain whether the defendant had received a copy of the indictment. (Report 20-06-2005-Karakol-24/25-KG).

In accordance with legislation, at the start of the hearing, after the indictment has been read, the judge is obliged to ask the defendant whether he/she understands the charge and to give his/her understanding of it.[71]

Table 2.4.4. Opportunity given to the defendant to express a position regarding his or her defence

City/region	Ascertaining of the position of the defendant regarding the charge			
	Ascertained	Not ascertained	NA	Different stage of trial
	Number of hearings			
Bishkek	89	9	57	53
Chui Oblast	8	-	3	2
Issyk Kul Oblast	112	21	53	28
Naryn Oblast	44	6	1	4
Osh Oblast	156	12	56	95
Jalal-Abat Oblast	139	6	43	69
Batken Oblast	33	2	11	22
Total	**581**	**56**	**224**	**273**

Diagram 2.4.5. Ascertaining of the position of the defendant regarding the charge



EXAMPLE 36

‚During a hearing in the case of Zh., accused of a crime under Article 104, Part 2 of the CC, that took place on 31 May 2005 at Balykchin city court, the judge did not ascertain the position of the defendant vis-à-vis the given charge (Report 46-05-2005-Balykchi-23-KG).

Legislation provides for the defendant to give oral evidence and information during the investigation, as well as for the playing in court of audio tapes and video recordings of the examination of the defendant under the following conditions:

[71] CPC, Article 286, Part 2.

- In the event of a substantial difference between the evidence given by the defendant during the investigation and evidence given in court;
- Should the defendant refuse to give evidence in court;
- Should the case be heard *in absentia*.

These conditions apply also to evidence previously given by the defendant in the course of pre-trial proceedings.

Audio or video recordings may not be played without first having the evidence contained in the relevant part of the case materials or the hearing transcript read out.[72]

Table 2.4.6. Reading out of defendant's evidence given during the investigation

City/region	Reading out of defendant's evidence given during the investigation		
	Evidence read out	Evidence not read out	Different stage of trial
	Number of hearings		
Bishkek	132	23	53
Chui Oblast	10	1	2
Issyk Kul Oblast	145	41	28
Naryn Oblast	33	18	4
Osh Oblast	190	34	95
Jalal-Abat Oblast	176	12	69
Batken Oblast	43	3	22
Total	**729**	**132**	**273**

EXAMPLE 37

During a hearing in the case of K., accused of a crime under Article 164, Part 3, and Article 165, Part 3 of the CC, that took place in Aksui district court, the judge read out parts of evidence given by the defendant during preliminary investigation, although the evidence given by the defendant in court was consistent with that given during preliminary investigation (Report 20-04-2005-Karakol-24/25-KG).

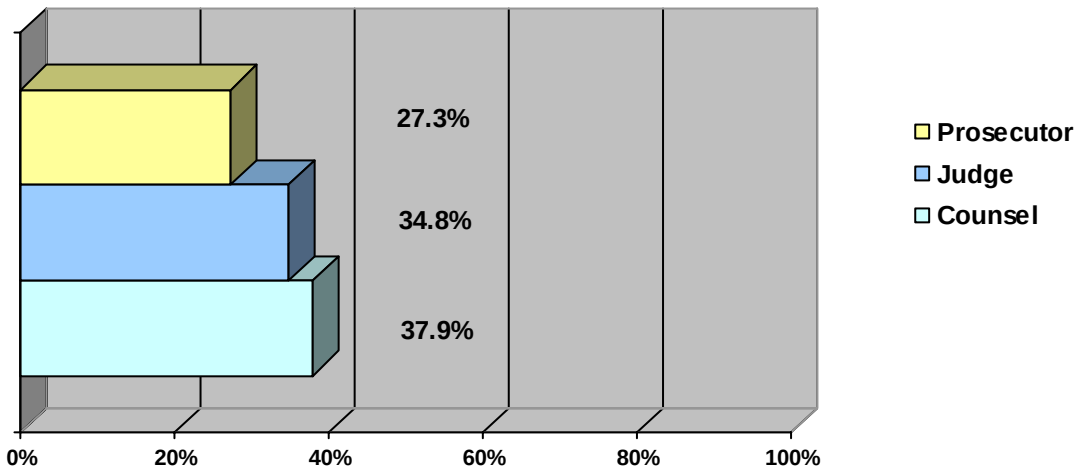
Under national legislation, examination of the defendant during investigation of the evidence is undertaken first by defence counsel and parties on the defence side, followed by the state prosecutor and parties from the prosecution.[73] The president may ask questions of the defendant after he or she has been examined by the sides. Clarificatory questions may be asked by the judge at any moment during examination of the defendant.[74]

[72] CPC Article 289.
[73] CPC , Article 288, Part 1.
[74] CPC Article 288, Parts 1, 2.

Table 2.4.7. Observance of rules for examining defendants

City/region	Defendant first examined by:			
	State prosecutor	Defence counsel	Judge	Defendant was not examined during the hearing
	Number of hearings			
Bishkek	24	58	17	56
Chui Oblast	3	5	2	1
Issyk Kul Oblast	46	49	81	10
Naryn Oblast	6	5	36	4
Osh Oblast	25	69	62	68
Jalal-Abat Oblast	72	78	29	9
Batken Oblast	18	4	19	5
Total	**194**	**268**	**246**	**153**

Diagram 2.4.8. Parties to the trial who first examined the defendant



In breach of procedure established by law for examining defendants, in 194 cases the examination was first conducted by the state prosecutor and in 246 cases by the judge.

In total, 440 breaches of the rules for examining defendants were noted across the country.

EXAMPLE 38

During a hearing in the case of I., accused of crimes under Articles 164 and 165 of the CC, that took place on 16 February 2005, at Issyk Kul district court, the judge was the first to question the defendant (Report 30-02-2005 -Balykchi-23-KG).

EXAMPLE 39

During a hearing in the course of Y., accused of a crime under Article 530, Parts 2 and 3 of the CC, that took place on 9 February 2005 at Osh city court, the first to examine the defendant was the judge (Report 42-03-2005-Osh-1/2-KG).

EXAMPLE 40

During a hearing in the case of K., accused of a crime under Article 165, Part 2 of the CC, that took place on 14 April 2005 at Naryn district court, the first to examine the defendant was the state prosecutor (Report 38-04-2005-Naryn-21/22-KG).

EXAMPLE 41

During a hearing in the case of I., accused of a crime under Article 166 of the CC, that took place on 15 March 2005 at Ton district court, the first to examine the defendant was the state prosecutor (Report 40-03-2005-Ton-26-KG).

EXAMPLE 42

During a hearing in the case of K., accused of a crime under Article 246, Part 1 of the CC, that took place on 1 June 2005 at Karakol city court, the first to examine the defendant was the state prosecutor (Report 19-06-2005-Karakol-24/52-KG).

Table 2.4.9. Granting of final address to the defendant

City/region	Granting of final address to the defendant				Obstacles to delivery of final address	
	Granted	Not granted	Refused by defendant	Different stage of trial	Interrupted or questions asked	Not interrupted, no questions asked
	Number of hearings					
Bishkek	57	2	-	149	-	57
Chui Oblast	6	1	-	6	-	6
Issyk Kul Oblast	101	-	1	112	1	100
Naryn Oblast	35	1	-	19	1	34
Osh Oblast	115	-	-	204	1	114
Jalal-Abat Oblast	77	1	-	179	-	77
Batken Oblast	27	1	-	40	3	24
Total	**418**	**6**	**1**	**709**	**6**	**412**

During six hearings that took place at the relevant stage of the trial, the defendant was not granted the right to make a final address.

In 1.4% of hearings the defendant was interrupted or had questions asked of him or her during the final address.

EXAMPLE 43

Instances of the judge not granting the defendant the right to a final address were as follows:

1. In a hearing in the case of A., accused of a crime under Article 234, Part 1 of the CC, which that took place on 21 February 2005 at Nooken district court, Jalal-Abat Oblast (Report 75-02-2005-Djalalabat-7/8-KG);
2. In the trial of M. and D., accused of a crime under Article 234, Parts 1 and 3 of the CC, which took place on 8 February 2005 at Leilek district court, Batken Oblast (Report 82-02-2005-Batken-6-KG);
3. In the trial of R., accused of a crime under Article 164, Part 3 of the CC, which took place on 19 January 2006 at Kadamzhai district court, Batken Oblast (Report 36-01-2006-Batken-6-KG);
4. In the trial of B., accused of a crime under Article 234, Part 1 of the CC, which took place on 4 November 2005 at Naryn city court (Report 42-11-2005-Naryn-21/22-KG);
5. In the trial of D., accused of a crime under Article 336, Part 1 of the CC, which took place on 25 January 2006 at Pervomaisky district court, Bishkek (Report 02-01-2006-Bishkek-13/14-KG).

2.5. The right to be presumed innocent and the right not to be compelled to testify or confess guilt

International standard

International human rights standards stipulate the right to be considered innocent until proven guilty in accordance with the law. This right is enshrined in the UDHR,[75] the ICCPR,[76] the ECHR,[77] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[78] and the Standard Minimum Rules for the Treatment of Prisoners.[79]

The right to be presumed innocent assumes that judges and officials (prosecutors, employees of investigatory bodies) should not approach any case having prejudged the outcome. The authorities should not conclude that a person is guilty before the court has reached its verdict.[80]

The ECtHR has ruled that one element of the presumption of innocence is the judge's obligation not to commence the trial with a preconception that the defendant has committed the offence with which he or she is charged, since the burden of proof lies with the prosecutor and any doubt should be interpreted in favour of the defendant.[81]

Any public comment of an accusatory nature made by a state official before the judgment is passed may violate the principle of presumption of innocence.[82]

In accordance with the presumption of innocence, the laws of evidence and laws regulating criminal hearings should ensure a position in which the prosecution bears the burden of proof throughout the trial.

The ECtHR has taken the position that the defendant should not have attributed to him or her anything that might indicate his or her guilt during the trial and which could affect the presumption of innocence. In the case of *Sarban v. Moldova* the ECtHR observed that the defendant "was always brought into the courtroom in hand-cuffs and placed in the metal cage during the hearings" and took the latter into account to find a violation of Art. 3 of the ECHR, prohibiting degrading treatment of persons.[83]

The right not to be compelled to testify or confess guilt follows from the presumption of innocence. International human rights law recognizes the right to remain silent during examination and does not permit self-incrimination.[84]

The ICCPR stipulates that no-one accused of a crime should be forced to testify against themselves or to confess guilt.[85] The prohibition of forcing the defendant to give evidence or to confess guilt does not permit the authorities to be party to any forms of coercion, whether direct or indirect, physical or psychological. It also forbids the application of court sanctions with the aim of forcing the defendant to give evidence.[86] If the defendant declares during the course of the hearings that he or she has been forced to give evidence or confess guilt, the judge should exercise his or her power at any stage to investigate such an allegation.[87]

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[75] Article 11 UDHR,
[76] Para. 2, Article 14, ICCPR.
[77] Article 6.
[78] 36, para. 1.
[79] Rule 84, item.2.
[80] General Commentaries of the UN Committee on Human Rights, 13, Para. 7.
[81] ECtHR judgment, *Barberà, Messegué and Jabardo v. Spain*, Application no. 10590/83, 6 December 1988, para. 77).
[82] In the ECtHR judgment , the court decided that comments in the press relating to the guilt of the defendant, made by senior police officers and the Minister of Interior a few days after his arrest, constituted violation of the principle of presumption of innocence. *(Allenet de Ribemont v. France*, Application No. 15175/89, Series A308, 10 of February 1995, paras. 16, 17, 36, 37, 41).
[83] Application No. 3456/06, 4 October 2005, paras. 36, 45, 88, 90.
[84] See: ECtHR decision on *Murray v. United Kingdom*, 8 February, 1996.
[85] ICCPR, Article 14, para. 3 g.
[86] Nowak, Manfred, *U.N. Covenant on Civil and Political Rights: CCPR-Commentary* (Kehl: N. P. Engel, 2005),
[87] Para. 15 General Commentaries of the UN Committee on Human Rights

The ECtHR has emphasized that, "The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused."[88]

National legislation

The Constitution of Kyrgyzstan states, "Everyone is presumed innocent of committing a crime until his or her guilt is established under law by a court judgement."[89] The constitution also stipulates that no-one should be obliged to give testimony against themselves, their spouses, or close relatives, as defined by the law.[90]

The criminal procedural legislation of Kyrgyzstan also establishes the right not to testify against oneself, one's spouse, or one's close relatives,[91] as well as the defendant's right not to be convicted solely on his or her own confession to a crime.[92]

Under national legislation, a defendant should not have to prove his or her innocence. Any doubts as to guilt that cannot be resolved during court proceedings, as well as doubts that may arise in the application of the law, are to be interpreted in the defendant's favour.[93]

National law allows the restraining of defendants with handcuffs and metal cages during court hearings. Under the Directions on Maintaining, Guarding, and Transporting Suspects and Those Accused of Committing a Crime,[94] defendants in court should be placed on benches behind a barrier as prescribed by the presiding judge. Guards may be located one to the left of the defendant, and another on a second bench behind him (if the escort is made up of two guards); or two guards one on each side of the defendants and the remaining guards behind them, if the escort is made up of three or more guards. Pistol holsters should be unfastened and on the belt facing away from the defendant. Handcuffs and restraining measures may be applied to suspects and defendants if there is a necessity to restrain violent or insubordinate prisoners, or during transit. Handcuffs and restraints should be applied by the guards in charge of or accompanying the suspect or defendant on the order of the senior officer to whom they report. The procedure for applying handcuffs and restraints is as follows: handcuffed or bound hands should be behind the prisoner, except when prisoners are being transported in aeroplanes, helicopters, or trucks; handcuffs or restraints should not be applied for more than two hours; handcuffs should be taken off during court hearings. Further set out is the requirement to apply handcuffs during transport in aeroplanes, helicopters and trucks, as well as when verdicts in the case of particularly dangerous repeat offenders are being read, or when used as an exceptional measure of punishment.

Aspects studied by monitors

Trial monitors assessed adherence to the standard under the following criteria:

- Observance of the voluntary giving of evidence;

[88] See: *Saunders v. United Kingdom,* (1996) 23 EHRR 313 Para. 68.
[89] Kyrgyzstan Constitution, in the edition in the Law on the New Edition of the Constitution of the Kyrgyz Republic, 15 January, 2007, 2, Article 15, Part 7.
[90] Kyrgyzstan Constitution, in the edition in the Law on the New Edition of the Constitution of the Kyrgyz Republic, 15 January, 2007, 2, Article 15, Part 5.
[91].CPC, Article 12, Part 2.
[92] CPC , Article 12, Article 15.
[93] Kyrgyzstan Constitution, in the edition in the Law on the New Edition of the Constitution of the Kyrgyz Republic, 15 January, 2007, 2, Article 15 Part 5; CPC, Article 15, Parts 2, 3.
[94]Instructions on Detaining, Guarding, and Transporting Suspects and Defendants, ratified by an Order of the Kyrgyzstan Interior Ministry, 6 February, 2004.

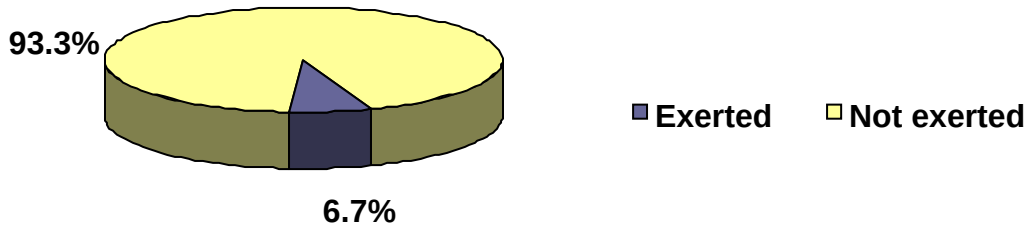
- Presence of outward signs of breaches of the presumption of innocence (defendants being kept in a cage in court, in handcuffs, etc.).

Statistical data and conclusions

Table 2.5.1. Voluntary testimony

City/region	Investigation of evidence				
	Defendant not examined	Perceived pressure on defendant from parties to the trial		Perceived pressure from judge on defendant to confess	
		Exerted	Not exerted	Exerted	Not exerted
	Number of cases				
Bishkek	56	3	96	8	91
Chui Oblast	1	1	9	1	9
Issyk Kul Oblast	10	9	167	6	170
Naryn Oblast	4	9	38	4	43
Osh Oblast	68	12	144	5	151
Jalal-Abat Oblast	9	14	165	8	171
Batken Oblast	5	10	31	2	39
Total	**153**	**58**	**650**	**34**	**674**

Diagram 2.5.2. Perceived pressure on defendants from parties to the trial



During the monitoring period, 58 instances of perceived pressure being exerted at the stage of examination of evidence were recorded by monitors. Pressure was perceived to be exerted by judges, prosecutors, defence counsel, and other parties to the trial, and took the form of threats, raised voices, etc.

Diagram 2.5.3. Perceived pressure from judges for defendants to confess

In 23 cases, perceived pressure from judges for defendants to confess guilt was observed.

EXAMPLE 44

During a hearing on 13 April, 2005 at Issyk Kul district court in the case of K., accused of a crime under Article 164, Part 3 of the CC, although the defendant denied being guilty, the presiding judge, the prosecutor and even the prison guards actively tried to persuade him to confess to the crime (Report 54-04-2005-Balykchi-23-KG).

EXAMPLE 45

During a hearing in the case of I., accused of a crime under Articles 164 and 165 under the CC, which took place on 16 February 2005 at Issyk Kul district court, the judge and the prosecutor exerted psychological pressure on the defendant, asking him why he had not complained earlier about the actions of police officers, and why he had confessed guilt at the pre-trial stage but then retracted his previous evidence in court (Report 30-02-2005-Balykchi-23-KG).

At another hearing in the case that took place on 13 April 2005, the judge said that should the defendant confess guilt, then she would not hold him criminally responsible, "since this case is subject to amnesty." During the course of the hearing the judge and the prosecutor exerted psychological pressure on the defendant, threatening to bring his son to justice should he fail to confess guilt (Report 33-04-2005-Balykchi-23-KG).

EXAMPLE 46

During examination of the defendant O., accused of a crime under Article 165, Part 2 and 3 of the CC, on 28 April 2005 at Naryn district court, the judge permitted accusatory statements, such as "Why did you steal for a third time?" and "Make compensation!" (Report 47-04-2005-Naryn-21/22-KG).

EXAMPLE 47

During a hearing on 27 May 2005 at Balykchin city court, in the case of K. and V., accused of a crime under Article 164 of the CC, the judge demanded that one of the defendants confess guilt, based on a confession given at the pre-trial stage (Report 45-05-2005-Balykchi-23-KG).

Table 2.5.4. Indicators of a breach of the presumption of innocence

City/region	Handcuffs during a hearing			Defendant in a cage		
	Defendant in handcuffs	Defendant not in handcuffs	No data available	Defendant in a cage	Defendant not in a cage	No data available
Bishkek	13	178	17	124	84	-
Chui Oblast	2	11	-	5	8	-
Issyk Kul Oblast	10	198	6	10	203	1
Naryn Oblast	14	35	6	26	29	-
Osh Oblast	58	261	-	115	200	4
Jalal-Abat Oblast	80	166	11	63	186	8
Batken Oblast	9	57	2	12	54	2
Total	**186**	**906**	**42**	**355**	**764**	**15**

Monitoring showed that in the majority of cases the presumption of innocence was upheld. In breach of international standards, defendants who were remanded in custody as a form of restraining measure were led into courtrooms in handcuffs, and were kept in metal cages throughout hearings. Defendants were kept in a cage in courtrooms in 355 cases.

In breach of the requirements of national legislation, in 186 cases defendants were kept in handcuffs throughout the hearing.

Defendants remained standing in courtrooms whose holding cages contained no chairs or benches. In cases when hearings took place in judge's chambers defendants were handcuffed to a prison guard or had their hands tied together by rope.

The practice of applying handcuffs and using metal cages in courtrooms breaches international fair-trial standards because it is demeaning to defendants and is contrary to the presumption of innocence. In most cases, not only were international standards for applying handcuffs and metal cages breached, but also national standards, which in turn do not comply with international standards.

EXAMPLE 48

During a hearing in the case of S., accused under Article 173, Part 3 of the CC, that took place on 25 April 2005 at Leilek district court, the defendant was handcuffed throughout the entire hearing (Report 114-04-2005-Batken-6-KG).

EXAMPLE 49

During a hearing on 6 September 2005 at Nooken district court in the case of U., accused under Article 336, Part 1 of the CC, the defendant was not only kept in a cage throughout the hearing, but was also in handcuffs (Report 72-09-2005-Nooken-9-KG).

EXAMPLE 50

During a hearing on 24 January 2006, at Pervomaisky district court, Bishkek, in the case of A., D., K., Ch. et al, accused of crimes under Article 97, Part 2; Article 168, Part 2; Article 174, Part 2; Article 230, Part 1; Article 105, Part 2; Article 319; Article 241, Part 3; and Article 234, Part 3 of the CC, the court clerk requested all participants to take their place in a cage, even though they had been bound over to remain *in situ*. When asked by those present and by counsel as to the reason for keeping the defendants in a cage, the court clerk gave no answer. The judge began the hearing with no reference to this circumstance. Counsel did not insist that the defendants take their place in the courtroom (Report 11-01-2006-Bishkek-16-KG).

EXAMPLE 51

During a hearing at Osh city court on 31 October 2005, with the defendant I., charged under Article 246, Part 3; Article 234, Part 3; and Article 341, Part 1, handcuffs were not removed, and the defendant was kept in handcuffs throughout the hearing (Report 64-10-2005-Osh-11/12-KG).

EXAMPLE 52

During a hearing in the case of R., Zh., T., N, and K., accused of a crime under Article 164, Parts 2 and 3 of the CC, that took place on 14 April 2005 at Naryn district court, all of the defendants were in a cage, and three of them were handcuffed. All defendants in the case were juveniles at the time of the hearing (Report 39-04-2005-Naryn-21/22-KG).

EXAMPLE 53

During a hearing in the case of Zh., accused of a crime under Article 104, Part 2 of the CC, that took place on 31 May 2005 at Balykchin city court, the defendant's hands were bound with rope throughout the hearing (Report 46-05-2005-Balykchi-23-KG).

2.6. Exclusion of evidence elicited as a result of torture or other duress

International standard

The prohibition of torture has been established by the ICCPR[95], the UDHR[96] and ECHR.[97]

One of the basic international documents outlawing the use of torture is the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[98]

Pursuant to the Convention against Torture, each state party shall ensure that any individual who alleges that he or she has been subjected to torture in any territory under its jurisdiction has the right to complain to the competent authorities and to have his or her case promptly and impartially examined by them. The state is obliged to take steps to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his or her complaint or any evidence given.[99]

The Convention against Torture requires state parties to ensure "that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings except against a person accused of torture as evidence that the statement was made".[100]

All allegations that evidence was obtained under torture or other cruel, inhuman and degrading treatment must be promptly and impartially examined by the competent authorities, including judges. If there is good reason to believe that torture or other forms of cruel, inhuman or degrading treatment has taken place, an immediate and impartial investigation must take place.[101]

In accordance with international practice, if a defendant alleges during the course of the proceedings that he or she has been compelled to make a statement or confess guilt, then the judge has the authority to investigate such an allegation at any stage of proceedings.[102] Indeed, the court is obliged to investigate forced confessions even in the absence of an express complaint or allegation, if the defendant shows visible signs of physical or mental ill-treatment.[103] Allegations of torture should be promptly examined by the competent authorities, including judges, who should order a medical examination, and take other necessary steps to ensure that the allegation is fully, promptly and impartially investigated. These standards apply not only to statements made by the defendants but also to statements made by witnesses.[104]

Pursuant to ECtHR case law, the state must prove that torture was not applied. In other words, if the defendant alleges that he or she was subjected to torture, torture is presumed unless the state proves the contrary. The ECtHR has stated that, "in situations where circumstances of the case that is being reviewed have been in full or in their main part within exclusive control of the state, like in cases where people are held in detention by the state, there appears a strong presumption that injuries and death caused during detention occurred with state's involvement. In such circumstances, indeed, the burden of proof lies with the authorities to present a satisfactory and convincing explanation".[105]

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[95] Art. 7 of the ICCPR.
[96] Art. 5 of the UDHR.
[97] Art. 3 of the ECHR.
[98] Adopted by the Resolution 39/46 of the UN General Assembly of 10 December 1984, also known as the Convention against torture.
[99] Art. 13 of the Convention.
[100] Art. 15 of the Convention against torture.
[101] Article 16 of the Convention against torture.
[102] In conformity with para. 20 of the 1994 CSCE Budapest document, the OSCE participating States "commit themselves to inquire into all alleged cases of torture and prosecute offenders. They also commit themselves to include in their educational and training programmes for law enforcement and police forces specific provisions with a view to eradicate torture".
[103] Art. 14(3) g) of the ICCPR; as well as *Kelly v. Jamaica*, CCPR/C/41/D/253/1987, 10 April 1991, para. 5.5.
[104] Articles 13 and 16 of the Convention against torture.
[105] ECtHR judgment, *Salman v. Turkey*, Application no. 21986/93, 27 June 2000, para100.

National legislation

The Constitution of Kyrgyzstan provides, "No individual may be subjected to torture or inhuman, degrading punishment."[106]

Prior to 2003, national legislation contained no definition of "torture," and therefore no official responsibility was taken for the use of torture.[107]

The CPC establishes that, "No party to a case may be subjected to violence or other cruel or degrading treatment.[108]

Legislation prohibits coercing a suspect, defendant, victim or witness to give evidence. Legal responsibility is established for coercion.[109]

National criminal procedural law prohibits the use of evidence if it has been obtained in breach of the provisions of the CPC. Such evidence has no legal basis, and no verdict may be based upon it.[110]

In 2004, amendments were made to the CPC[111] according to which evidence regarding a suspect charged with committing a criminal act, provided during the course of an investigation of a criminal case, in the absence of a defence lawyer, including cases of the refusal of a defence lawyer , as well as evidence given by a defendant in court in the absence of defence counsel.[112]

Aspects studied by monitors

During the monitoring period monitors were instructed to note the reactions of judges and prosecutors to allegations made in court by defendants or their lawyers of the use of physical or psychological force or threats to give evidence at the pre-trial stages e.g. torture, beatings, threats, deception.

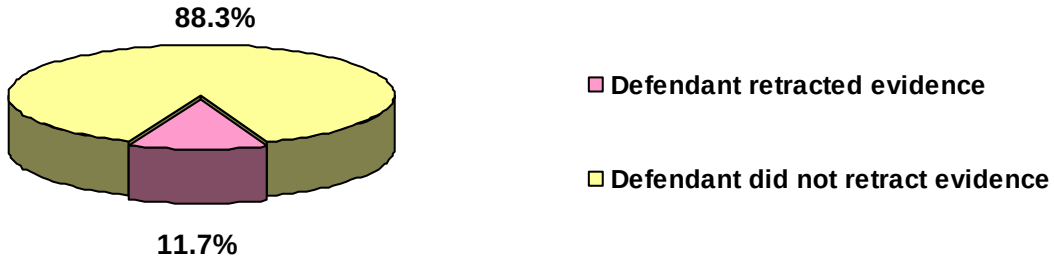
[106] Constitution, in the edition in the Law on the New Edition of the Constitution of the Kyrgyz Republic, 15 January, 2007, 2, Article 19, Part 1.
[107] Article 305-1, "Torture, " was introduced into the CC by a Law of 15 November, 2003, 223. According to figures given by the Justice Department at the Justice Ministry on 14 February, 2006, in 2005 no cases were opened under Article 305-1 regarding law-enforcement officers.
[108] CPC , Article 11, Part 3.
[109] CPC , Article 325.
[110] CPC , Article 6, Part 3, Article 81.
[111] 24 March, 2004, 47.
[112] CPC , Article 81, Part 4 (1).

Statistical data and conclusions

Table 2.6.1. Exclusion of evidence elicited as a result of torture or other duress

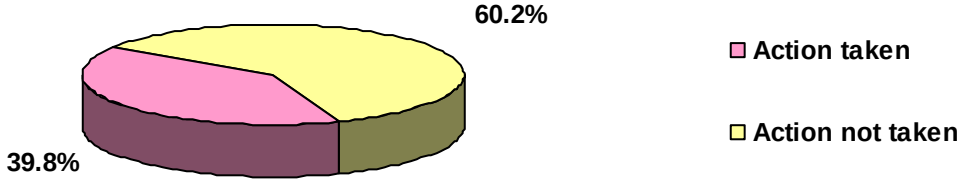
City/region	Allegations by defendant of evidence obtained as a result of psychological or physical coercion, torture, threats, or deception applied during preliminary investigation (inquiry)		Action taken by judge to investigate the allegation		Action taken by prosecutor to investigate the allegation	
	Made	Not made	Action taken	Action not taken	Action taken	Action not taken
	Number of hearings					
Bishkek	33	175	13	20	5	28
Chui Oblast	1	12	1	0	1	0
Issyk Kul Oblast	25	189	12	13	9	16
Naryn Oblast	3	52	1	2	0	3
Osh Oblast	38	281	13	25	7	31
Jalal-Abat Oblast	27	230	10	17	10	17
Batken Oblast	6	62	3	3	3	3
Total	**133**	**1001**	**53**	**80**	**35**	**98**

Diagram 2.6.2. Retraction of evidence by a defendant alleging the use of torture or other forms of duress applied during preliminary investigation (inquiry)



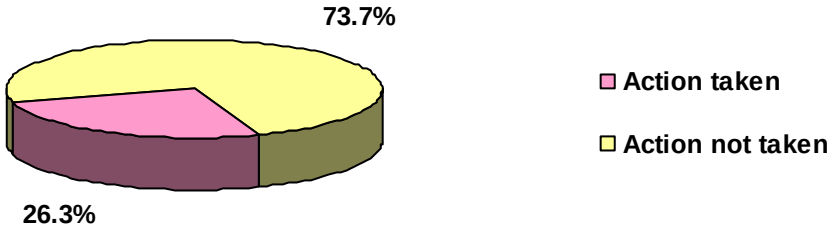
During the monitoring period there were 133 instances in which defendants at trial retracted evidence given during preliminary investigation and inquiry, alleging that they gave the testimony under pressure from law-enforcement officers.

Diagram 2.6.3. Action taken by judges in response to allegations by a defendant of torture or other forms of duress



In cases in which defendants alleged the use of torture or other forms of duress, monitors were instructed to note the reactions of judges and prosecutors. In 53 cases, judges summoned investigators for examination as witnesses; those summoned categorically denied being involved in the use of illegal methods of investigation. The judges' actions in these cases were formal in nature, since more rigorous measures of verifying the defendants' allegations were not taken. In most cases (80), judges took no action at all to establish the veracity of the defendants' allegations.

Diagram 2.6.4. Action taken by prosecutors in response to defendants retracting evidence and alleging torture or other forms of duress



As official figures empowered to exercise oversight of observance of the law, prosecutors rarely reacted appropriately to defendants' allegations about the use of torture or other forms of duress.

EXAMPLE 54

During a hearing at Balykchin city court in the case of K. and V., accused of a crime under Article 164 of the CC, defendant V. alleged that he had confessed guilt during pre-trial investigation as he had been tortured by police officers. However, the judge did not react to this allegation, but rather demanded that the defendant confess his guilt, since he had confessed guilt at the pre-trial stage (Report 45-05-2005-Balykchi-23-KG).

EXAMPLE 55

During hearings in the case of O., accused of crimes under Article 28-129, Parts 1 and 2 (3); Article 167, Part 2 (4); Article 168, Parts 2 (2, 3), 3 (2, 4); Article 234, Parts 2 (2) and 3 (2); and Article 340 of the CC, that took place on 17 February and 15 March 2005, at Nooken district court, the defendant repeatedly alleged to the judge that he had been beaten and threatened by investigators during the pre-trial investigation in order to force him to confess. There was no reaction from the judge (Reports 80-02-2005-Nook-9-KG, 84-03-2005-Nooken-9-KG).

EXAMPLE 56

During the trial of U., accused of a crime under Article 336, Part 2 of the CC that took place on 6 September 2005, at Nooken district court, the defendant completely denied his guilt, and alleged that the investigator and officers had forced him to confess by using physical and psychological pressure (beatings, threats). The judge did not react to these allegations (Report 72-09-2005-Nooken-9-KG).

EXAMPLE 57

During monitoring of a hearing on 26 May 2005, at Balykchin city court in the case of Zh., accused of a crime under Article 234, Part 3 of the CC, the defendant asked the presiding judge whether he could file a complaint against the investigators as he had been tortured, specifically by having his rib broken during examination. The judge answered, "No." Neither the judge nor the prosecutor gave any other reaction to this allegation (Report 44-05-Balykchi-23-KG).

2.7. Equality of arms

International standard

The equality of parties to the trial is one of the most important criteria of fairness.

Equality of arms implies that both parties should be in an equal legal position throughout the trial, and are entitled to equal treatment before the court.[113] "Each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the opposing party."[114] This principle guarantees that the defence has access to all the facts in the possession of the prosecution in order to prepare and present a defence; the right to be present at trial (where a prosecutor is present); and the right to call and examine witnesses.[115]

Throughout the trial, the parties should be treated in such a way as to secure their procedural equality during the course of the trial, and be in an equal position to present their case.[116]

National legislation

The Constitution of Kyrgyzstan prescribes that justice be administered on an adversarial basis and upon the equality of the parties involved.[117]

The CPC also contains a similar provision. The court should not take the side of the prosecution or the defence, and does not express any views other than those in the interest of justice. Parties to a criminal trial have equal rights. During the trial they present their case and defend it without assistance and independent of the court or other bodies or persons. At the request of one of the parties and in accordance with the provisions of the CPC, the court may help a party to obtain relevant evidence.[118]

Equality of arms at a criminal trial (including equal rights to challenge and make submissions, present evidence and participate in the investigation of evidence, submit pleadings, and to examine all matters arising during the course of the case) is set out in criminal procedural legislation.[119]

Aspects studied by monitors

During the monitoring the following aspects of equality of arms were examined: participation of the state prosecutor and defence counsel in the proceedings; position of the parties with regard to the judge; exercise of the parties' right to submit applications and granting by the judge of the same; equal opportunities for the parties at the stage of judicial pleadings; predominance of the parties in the proceedings.

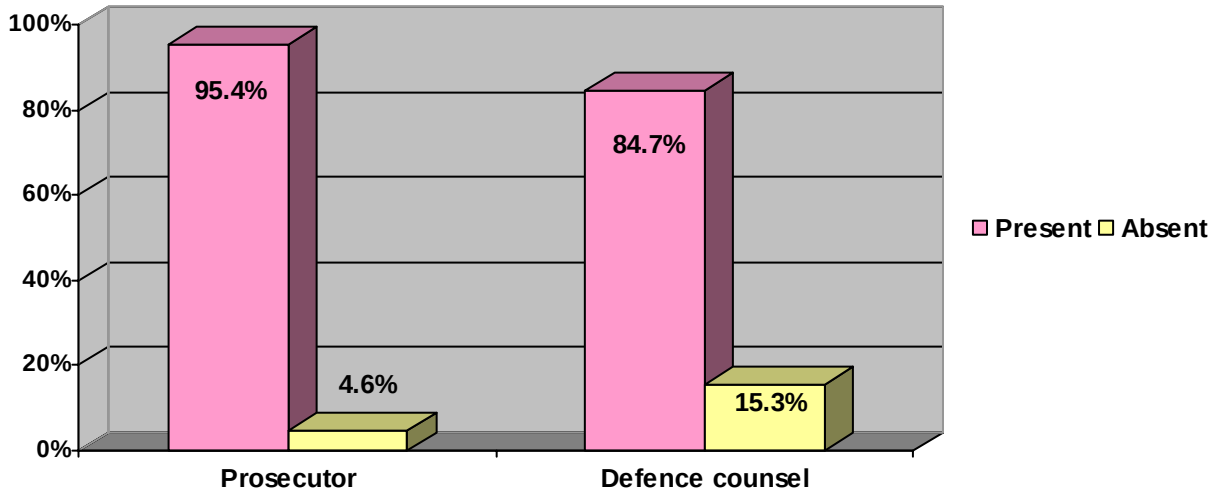
[113] Art. 10 UDHR, Art. 14(1), 14(3) (e) ICCPR.
[114] ECtHR judgment, *De Haes and Gijsels v. Belgium* (1997) 25 EHRR 1 para. 53.
[115] Fair Trial Manual. Amnesty International. M.: Human rights. 2003, p. 83.
[116] See ECtHR resolutions in the cases of Ofrer and Hopfinger, 524/59 and 617/59, 19 December, 1960.
[117] Kyrgyzstan Constitution, in the edition in the Law on the New Edition of the Constitution of the Kyrgyz Republic, 15 January, 2007, 2, Article 88, Part 3.
[118] CPC, Article 18.
[119] CPC, Article 256.

Statistical data and conclusions

Table 2.7.1. Participation of state prosecutor and defence counsel

City/region	Participation of state prosecutor		Participation of defence counsel	
	Present	Absent	Present	Absent
	Number of hearings			
Bishkek	199	9	201	7
Chui Oblast	11	2	13	-
Issyk Kul Oblast	209	5	148	66
Naryn Oblast	55	-	55	-
Osh Oblast	294	25	274	45
Jalal-Abat Oblast	250	7	204	53
Batken Oblast	64	4	65	3
Total	**1082**	**52**	**960**	**174**

Diagram 2.7.2. Participation of state prosecutor and defence counsel



The state prosecutor is obliged to participate in all hearings, except for private prosecutions.[120] However, monitors noted 52 hearings at which prosecutors were absent. Defence counsel was absent in 174 hearings.

EXAMPLE 58

At a hearing at Osh city court that took place on 31 October 2005, in the case of I., accused of a crime under Article 246, Part 3; Article 234, Part 3; and Article 341, Part 1 of the CC, the prosecutor was

[120] CPC Article 258, Part 1.

absent. The judge held the hearing in his absence (Reports 64-10-2005-Osh-11/12-KG, 65-10-2005-Osh-11/12-KG).

EXAMPLE 59

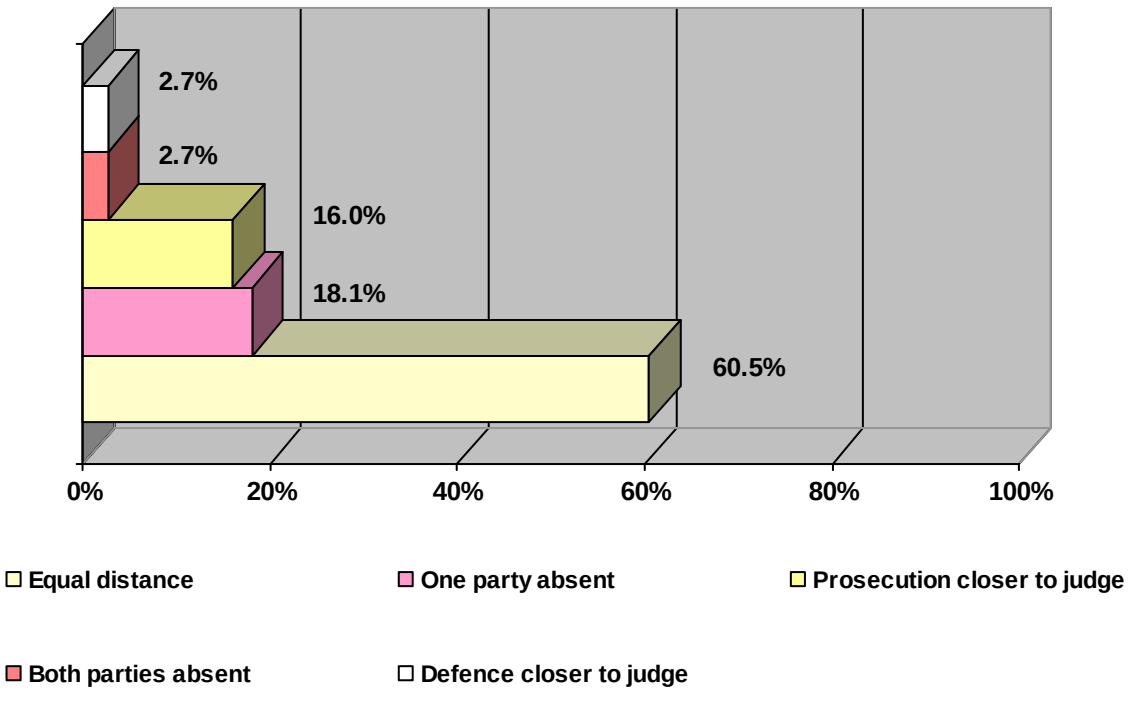
At a hearing in the case of K., accused of crimes under Article 164, Part 3; and Article 165, Part 3 of the CC that took place on 12 April 2005, at Aksui district court, the state prosecutor was absent during pleadings (Report 27-04-2005-Karakol-24/25-KG).

One apparent sign of equality of arms is the physical distance between prosecution and the defence and the judge during the hearing.

Table 2.7.3. Physical proximity of the parties to the judge

City/region	Position of the parties with regard to the judge				
	Equal distance	Prosecution closer to judge	Defence closer to the judge	One party absent	Both parties absent
	Number of hearings				
Bishkek	162	27	3	11	5
Chui Oblast	9	2	-	2	-
Issyk Kul Oblast	93	46	4	68	3
Naryn Oblast	31	7	8	8	1
Osh Oblast	201	35	13	51	19
Jalal-Abat Oblast	162	32	3	59	1
Batken Oblast	28	33	-	5	2
Total	**686**	**182**	**31**	**204**	**31**

Diagram 2.7.4. Physical proximity of the parties to the judge



In court, the parties should as far as reasonably practicable be equidistant from the judge, demonstrating visibly the equality of arms in the judicial process. This rule was observed in the majority of cases.

In 182 cases, the prosecution was located closer to the judge, which could indicate an apparent violation of equality of arms.

EXAMPLE 60

In a hearing in the case of A. accused of a crime under Article 165, Part 3, which took place 24 May 2005, at Tyup district court, the state prosecutor sat at the same table as the court clerk, and was closer to the judge than the defendant (Report 33-05-2005-Karakol-24/25-KG).

Table 2.7.5. Exercising of the parties' right to submit applications*

City/region	Exercising of the parties' right to submit applications		
	Defence	Prosecution	No motions
	Number of hearings		
Bishkek	68	17	139
Chui Oblast	8	1	4
Issyk Kul Oblast	43	11	161
Naryn Oblast	10	6	57
Osh Oblast	55	18	246
Jalal-Abat Oblast	60	23	174
Batken Oblast	8	0	60
Total	**252**	**76**	**841**

Table 2.7.6. Granting of applications submitted by defence**

City/region	Granting of applications submitted by defence			Not considered
	Granted	Not granted		
		Reason given	No reason given	
	Number of hearings			
Bishkek	50	7	2	9
Chui Oblast	5	2	-	1
Issyk Kul Oblast	37	2	2	2
Naryn Oblast	7	2	-	1
Osh Oblast	43	2	5	5
Jalal-Abat Oblast	52	5	1	2
Batken Oblast	8	-	-	0
Total	**202**	**20**	**10**	**20**

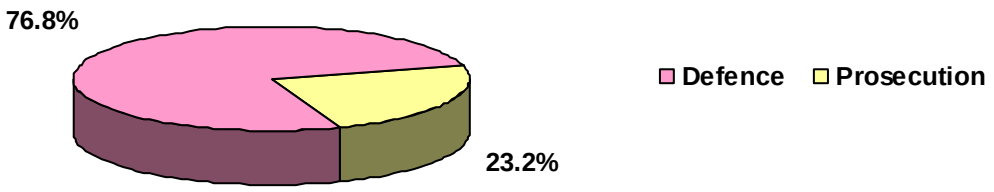
* Number does not tally with total number of hearings, since at one hearing applications may be submitted by defence and prosecution

** Number does not tally with total number of hearings, since at one hearing applications may be submitted by defence and prosecution, parts of which could be upheld and parts not upheld, or adjourned for future consideration.

Table 2.7.7. Granting of applications submitted by prosecution[***]

City/region	Granting of applications submitted by prosecution			Not considered
	Granted	Not granted		
		Reason given	No reason given	
	Number of hearings			
Bishkek	12	5	-	-
Chui Oblast	1	-	-	-
Issyk Kul Oblast	10	1	-	-
Naryn Oblast	6	-	-	-
Osh Oblast	17	-	1	-
Jalal-Abat Oblast	20	3	-	-
Batken Oblast	0	-	-	-
Total	**66**	**9**	**1**	**0**

Diagram 2.7.8. Submission of applications



This diagram to some degree illustrates parties' activity. Defence submitted more than three times as many applications as prosecution.

Of 328 applications submitted, 11 were not granted by the judge with no reason given.

EXAMPLE 61

During a hearing in the case of U., accused under Article 336, Part 2 of the CC, which took place on 12 September 2005 at Nooken district court, defence counsel insisted that videotapes recorded by investigators in the course of the investigation be played. Despite contradictory evidence from witnesses, the judge handed down a verdict without making any reference to the tapes (Report 76-09-2005-Nook-9-KG).

EXAMPLE 62

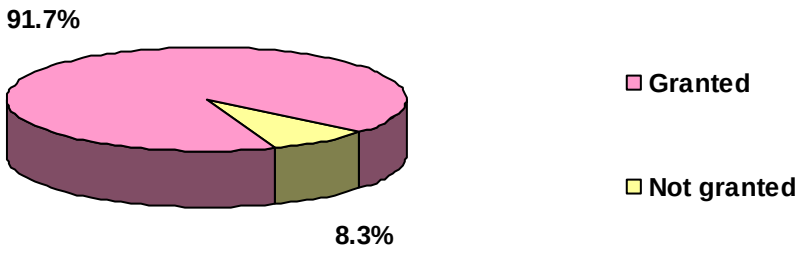
During a hearing in the case of S., accused under Article 234, Part 1 of the CC that took place on 17 February 2005 at Nooken district court, an application was made by the victim and his lawyer to send the case materials for further investigation to resolve omissions in the evidence due to the victim being

unfamiliar with the case materials. The judge rejected the motion without giving a reason for doing so (Report 80-02-2005-Djalalabat-7/8-KG).

Table 2.7.9. Equal opportunities for the parties at the pleadings stage

City/region	First to enter a plea		Restrictions on opportunities to speak at pleadings		Opportunity to make rejoinders	
	State prosecutor/ victim's representative	Defence counsel	Imposed	Not imposed	Given	Not given
	Number of hearings					
Bishkek	71	2	1	72	67	6
Chui Oblast	8	-	-	8	7	1
Issyk Kul Oblast	107	3	-	110	108	2
Naryn Oblast	36	1	-	37	19	18
Osh Oblast	137	1	4	134	133	5
Jalal-Abat Oblast	101	4	-	105	95	10
Batken Oblast	33	-	1	32	33	-
Total	**493**	**11**	**6**	**498**	**462**	**42**

Diagram 2.7.10. Opportunity to make rejoinders



In some cases, the established order for speeches at the pleadings stage[121] was breached, and defence counsel spoke first (11 cases).

At 42 hearings, the provisions of criminal procedural law[122] were breached regarding granting the parties an equal opportunity to make a rejoinder.

[121] CPC , Article 305, Part 1.
[122] CPC, Article 305, Part 4.

EXAMPLE 63

During pleadings in the case of Z., T., N., and K., accused of a crime under Article 164, Parts 2 and 3 of the CC, that took place on 14 April 2005 at Naryn district court, the judge did not give the parties the opportunity to make rejoinder (Report 39-04-2005-Naryn-21/22-KG).

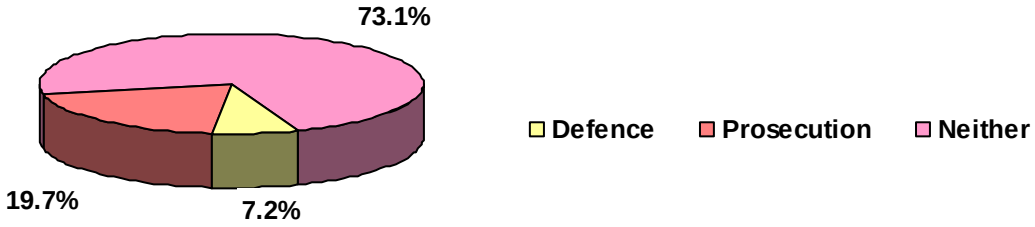
Table 2.7.11. Equal opportunities at the pleadings stage when proposals for the application of criminal law and punishment of the defendant are made

City/region	Proposals at pleadings for the application of criminal law and punishment of the defendant			
	State prosecutor		Defence counsel	
	Made	Not made	Made	Not made
	Number of hearings			
Bishkek	67	6	70	3
Chui Oblast	7	1	6	2
Issyk Kul Oblast	106	4	60	50
Naryn Oblast	31	6	25	12
Osh Oblast	130	8	84	54
Jalal-Abat Oblast	102	3	73	32
Batken Oblast	33	-	26	7
Total	**476**	**28**	**344**	**160**

Table 2.7.12. Dominance of parties at trial

City/region	Dominant party		
	Prosecution	Defence	Neither
	Number of hearings		
Bishkek	27	32	149
Chui Oblast	1	4	8
Issyk Kul Oblast	37	2	175
Naryn Oblast	18	4	33
Osh Oblast	44	8	267
Jalal-Abat Oblast	66	26	165
Batken Oblast	30	6	32
Total	**223**	**82**	**829**

Diagram 2.7.13. Dominance of parties at trial



Dominance by either party at trial was defined based on the following criteria: level of activity; apparent knowledge of case materials and level of preparation; the number and well-foundedness of applications submitted; promptness in responding to events in court; public-speaking skills; and knowledge of national legislation.

In most cases, neither party dominated proceedings (829). However, the prosecution was usually the more active (223), which, in some circumstances, may demonstrate passivity on the part of defence counsel at trial, and could also indicate that defence counsel was insufficiently effective.

2.8. The right to be defended by counsel

International standard

International standards provide for the right of a person accused of a crime to defend himself or herself in person or by defence counsel. The defendant has the right to a defence counsel of his or her choice, or to have one appointed without charge in the interests of justice, if he or she is unable to pay. The right to a defence counsel should be respected and guaranteed at all trial stages. This right is established in the UDHR,[123] the ICCPR,[124] and the UN Basic Principles on the Role of Lawyers.[125]

International standards require the state to provide qualified, competent and effective representation for the defendant.[126] Mere nomination of a defence counsel without charge for a defendant is not sufficient. State authorities (judges and/or prosecutors)[127] must take appropriate measures if the defence counsel does not provide an adequate defence.[128] Furthermore, if such behaviour on the part of defence counsel is observed by the court, the right to be defended by an experienced, competent and effective defence counsel may in some cases be considered breached.[129] This is especially relevant as regards appointed defence counsel. The ECtHR has noted that, "the right to legal assistance by an appointed defence counsel should be real and effective, and not theoretical and illusory." The Court has that this right implies "assistance", and not simply "appointing". The mere appointment of the defence counsel does not guarantee effective assistance, since the lawyer appointed may die, be taken ill, be unavailable for a lengthy period, or wilfully avoid his or her duties. In such cases, if state authorities are aware of such conduct, they are obliged to replace him or her, or to require him or her to fulfil his or her duties.[130]

International standards provide that, in the case of crimes that attract the death penalty, the interests of justice demand that the case be not tried if the defendant does not have legal representation.[131]

Under international standards, the state must allow adequate time and facilities for confidential communication between defence counsel and defendant. Defence counsel should be able to consult with the defendant and to represent his or her interests in accordance with established professional standards without any restrictions, pressures or interference from any quarter.[132] The ECtHR has established that, "the defendant's right to consult with his/her defence counsel beyond hearing of the third party constitutes one of the fundamental requirements of a fair trial in a democratic society".[133]

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[123] UDHR, Article 11, Part 1.
[124] ICCPR, Article 14, Para. 3 «d».
[125] See: Principle 1 of the Principles, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
[126] The 1990 CSCE Copenhagen document has a clause according to which an individual has the right "to seek and receive adequate legal assistance" (para. 11.1).
[127] Conor Foley, Combating Torture, A Manual for Judges and Prosecutors, Human Rights Centre, University of Essex, 2003, p. 49.
[128] In the case *Kelly v. Jamaica* heard by the UN Human Rights Committee, the Committee stated that in connection with the fact that the defendant was not entitled to choose counsel provided to him free of charge, measures had to be taken to ensure that counsel, once assigned, would provide effective representation of the interests of the defendant, including consulting him on the case and informing him about the prospects of the appeal (*Kelly v. Jamaica*, CCPR/C/41/D/253/1987, 10 April 1991, para. 5.10).
[129] In the case *Kamasinski v. Austria*, heard by the European Court of Human Rights, the Court decided that the competent national authorities were required to respond and take the appropriate measures only in those cases where a failure by legal aid counsel to fulfil his obligations on providing effective and competent defence was clearly manifested. (*Kamasinski v. Austia*, Application No. 9783/82, 19 December 1989, para. 65).
[130] ECtHR judgment, *Artico v. Italy*, Application no. 6694/74, 13 May 1980, para. 33.
[131] Decision of the UN Committee on Human Right, *Robinson v. Jamaica*, 30 March, 1989; *Henry and Douglas v. Jamaica*, 26 July, 1996
[132] Para. 9 of the General Recommendation No. 13, UN Human Rights Committee: "Equality before the court and the right to a fair and public hearing by an independent court established by law (Art. 14): 13/04/84".
[133] ECtHR judgment, *S. v. Switzerland, Application no. 12629/87; 13965/88,* 28 November 1991, para. 48).

National legislation

The Constitution states, "Everyone has the right to receive qualified legal assistance. In cases provided for by law, legal assistance may be provided at the state's expense."[134]

The CPC stipulates the right of defendants to assistance. Investigative bodies, investigators, prosecutors and the courts are obliged to ensure that suspects and defendants have the opportunity to defend themselves with the means and opportunities set out by law, and also to maintain their personal and property rights.[135]

Defence counsel may be appointed by investigators or the courts at the defendant's request or hired directly by him/herself or others on his/her behalf. Should the attendance of a chosen or nominated defence counsel be impossible, the court has the right to propose that the defendant engage other counsel, or to nominate counsel through a professional lawyers' organization. If defence counsel is nominated, his or her expenses are covered by the state.[136]

National legislation establishes cases in which defence counsel's participation is mandatory:

- Should the defendant desire it;
- Should the defendant have difficulty in exercising his or her right to a defence as a result of significant impediments to speech, hearing, or eyesight; or due to long-term serious illness; or in case of mental incapacity, obvious deficient mental capabilities, or other physical or psychological weaknesses;
- Should the defendant not understand or have limited understanding of the language in which justice is administered;
- Should the defendant be a juvenile;
- Should the defendant be accused of a particularly serious crime;
- Should the defendant be a conscripted member of the military;
- Should there be a conflict of interests between defendants and at least one of them is represented by defence counsel;
- Should a victim's representative (private prosecutor) or civil plaintiff be participating in the case.[137]

Aspects studied by monitors

During the monitoring period, the main indicators for assessing compliance with the right to defence by a qualified, competent and efficient defence counsel were:

- Participation of defence counsel;
- Replacement of defence counsel during the course of the trial;
- The right to free legal assistance;
- Quality of legal defence provided;
- Proximity of defence counsel to the defendant.

[134]Kyrgyzstan Constitution, in the edition in the Law on the New Edition of the Constitution of the Kyrgyz Republic, 15 January, 2007, 2, Article 40, Part 2.
[135] CPC, Article 20, Part 1.
[136] CPC , Article 45.
[137] CPC , Article 46.

The quality of legal assistance provided was assessed by monitors based on the following criteria: whether defence counsel had a clearly defined position on the case; the effectiveness of the chosen tactics; knowledge of case materials and legislation; ability to defend a position; and public-speaking skills.

Statistical data and conclusions

During the monitoring period, the main indicators for assessing compliance with the right to defence by a qualified, competent and effective defence counsel were: participation of defence counsel; replacement of defence counsel during the course of the trial; opportunity to exercise the right to free legal assistance; the quality of legal defence provided; and the proximity of defence counsel to the defendant.

Table 2.8.1. Observance of the right to be represented by defence counsel

City/region	Defence counsel		Replacement of defence counsel during the trial		Observance of the right to free legal assistance*		
	Present	Not present	Replaced	Not replaced	Nominated defence counsel	Agreed defence counsel	Not established
	Number of hearings						
Bishkek	201	7	9	192	54	127	30
Chui Oblast	13	-	1	12	3	7	6
Issyk Kul Oblast	148	66	3	145	34	61	122
Naryn Oblast	55	-	1	54	9	26	23
Osh Oblast	274	45	16	258	56	172	94
Jalal-Abat Oblast	204	53	1	203	55	110	95
Batken Oblast	65	3	2	63	8	21	42
Total	**960**	**174**	**33**	**927**	**219**	**524**	**412**

* More than one defence counsel could be assigned or engaged at one session involving more than one defendant.

Diagram 2.8.2. Participation of defence counsel

Monitoring established that defence counsel was absent in 15.3 % of the cases. Defence counsel was most commonly absent during reading of the verdict. This is a matter of concern, since it indicates difficulties for the defendant in realizing his or her right to defence during trial.

Defence counsel was provided free of charge following the procedure laid out by legislation. In half of these cases, defence counsel was engaged by the defendant or by his or her relatives. In one third of cases, monitors were unable to establish the basis for defence counsel's participation.

EXAMPLE 64

During a hearing in the case of Sh., accused of a crime under Article 164, Parts 2 and 3; and Article 243 of the CC, that took place on 10 March 2005 at Osh city court, the defendant alleged that he had not previously seen his defence counsel. Another defence counsel was present in the judge's chambers, and his services were proposed by the judge. The defendant agreed. Defence counsel did not request time for familiarization with the case materials, and the hearing began (Report 70-03-2005-Osh-11/12-KG).

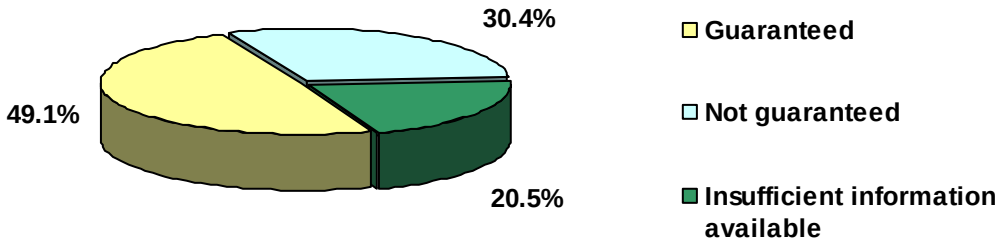
EXAMPLE 65

At a hearing in the case of D., accused under Article 105 of the CC, that took place on 14 March, 2006 at Osh city court, the defendant alleged that he had seen defence counsel on only one occasion, and that during examination as part of the preliminary investigation defence counsel had not participated. The defendant also alleged that police officers had tortured him during the preliminary investigation (Report 53-03-2006-Osh-10-KG).

Table 2.8.3. The right to qualified, competent and effective representation

City/region	The right to qualified, competent and effective representation		
	Secured	Not secured	Insufficient information available
	Number of hearings		
Bishkek	146	17	48
Chui Oblast	9	1	6
Issyk Kul Oblast	77	126	14
Naryn Oblast	26	21	11
Osh Oblast	140	81	101
Jalal-Abat Oblast	133	76	51
Batken Oblast	36	29	6
Total	**567**	**351**	**237**

Diagram 2.8.4. The right to qualified, competent and effective representation



Qualified and competent defence representation can be provided only by individuals with the necessary professional skills.

Based on the criteria used to assess the work of defence counsel, monitors found qualified, competent, and effective representation in 567 cases. In 351 hearings, monitors considered that representation was not effective. In the remaining 237 cases, monitors encountered difficulties in assessing the quality of the defence provided, since there was insufficient information available on which to base reliable conclusions (for example, if a monitor was present only at the stage of reading the verdict).

EXAMPLE 66

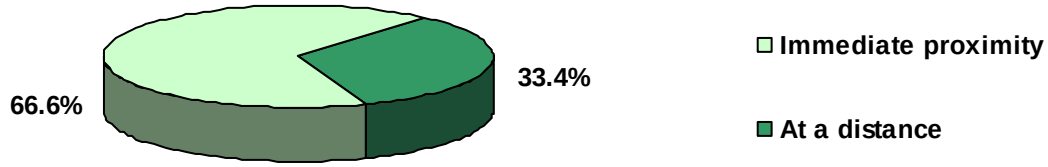
During a hearing in the case of T., accused of crimes under Article 164, Part 3; and Article 167, Part 3 of the CC that took place on 20 April 2005 at Naryn city court, defence counsel was generally passive, remained silent throughout proceedings, did not confer with the defendant, and also had hearing problems. The monitor was of the opinion that the defence provided was not effective (Report 41-04-2005-Naryn-21/22-KG).

Table 2.8.5. Physical proximity of defence counsel to the defendant

City/region	Physical proximity of defence counsel to the defendant	
	Immediate proximity	At a distance
	Number of hearings	
Bishkek	184	17
Chui Oblast	10	3
Issyk Kul Oblast	61	87
Naryn Oblast	4	51
Osh Oblast	196	78
Jalal-Abat Oblast	157	47
Batken Oblast	27	38
Total	**639**	**321**

Given that it was not possible during monitoring to establish conditions of access for defence counsel to defendants at pre-trial stages, monitors concentrated exclusively on outward manifestations of the right to confidential communication with defence counsel, and in particular on the physical distance between defence counsel and defendant in the courtroom to allow for such communication.

Diagram 2.8.6. Physical proximity of defence counsel to the defendant



In 321 cases, defence counsel was at a distance from the defendant that hindered communication during the hearing.

EXAMPLE 67

During a hearing in the case of K., accused of crimes under Article 164, Part 3; and Article 165, Part 3 of the CC, that took place on 12 April 2005 at Aksui district court, defence counsel sat apart from the defendant and did not communicate with him, although he had the opportunity to be seated next to the defendant (Report 27-04-2005-Karakol-24/25).

2.9. The right to an interpreter and to translation

International standard

International standards establish the right of an individual accused of an offence to an interpreter without charge if he or she does not understand and does not speak the language used in court,[138] and also the right to written translation of documents.

The right to an interpreter is an integral part of the right to defend oneself and the right to sufficient time and conditions to prepare a defence. This right is of particular significance when lack of knowledge of the language used in court or difficulties in understanding could prevent the exercise of the right to a defence. An interpreter should be provided free to national and foreign citizens alike.[139]

In practice, this international standard is considered to be satisfied if the state provides professional simultaneous interpretation during a hearing, as well as the services of a professional translator to produce written translation of key procedural documents necessary for the defendant to prepare adequately for his/her defence.[140]

Interpreters should be provided free by the state, regardless of the outcome of the case.[141]

National legislation

The CPC allows for the provision of an interpreter, including the right of parties who do not have command of the language used in court to make statements, submit applications, give evidence, familiarize themselves with the case materials, speak in their own language in court and make use of the services of an interpreter. The law requires that the accused shall be provided with a copy of the indictment and the verdict translated into his or her own language or a language that he or she speaks.[142]

During the preliminary stage of the trial, the presiding judge is obliged to read the interpreter his or her rights and obligations, and also to warn him/her of criminal responsibility for knowingly providing false translation. The interpreter should also be warned that he or she may be fined as established by law should he or she decline to fulfil his or her obligations.[143]

The presiding judge is obliged to read the parties their right to reject an interpreter.[144]

Aspects studied by monitors

Monitors assessed the quality of translation based on their knowledge of the language used in court, the visual and speech skills of the interpreter, and the reaction of the parties to the translation. In cases in which the monitor did not have an understanding of the language being translated, or was unable to give a qualitative assessment of the translation (if the translation was inaudible or if the interpreter's speech was not distinct), they did not assess the quality of the translation. The following aspects were also considered: interpreters' participation in relevant cases; reading of interpreters' rights and criminal

[138] ICCPR, Article 14, para. 3 f.
[139] Commentaries 13, para. 13.
[140] ECtHR judgment, *Harward v. Norway*, CCPR/C/51/D/451/1991, 15 July 1994, para. 9.4.
[141] See: ECtHR judgment in the case of *Luedicke, Belkacem and Koç*, 29 Ser.A, 17-19. The court examined infringements of the rights to free-of-charge assistance from an interpreter, when the authorities forced the defendant to pay the costs of an interpreter after the conviction
[142] CPC, Article 23.
[143] CPC, Article 276.
[144] CPC, Article 279.

responsibility for knowingly providing false translation; and reading of the parties' rights to reject an interpreter.

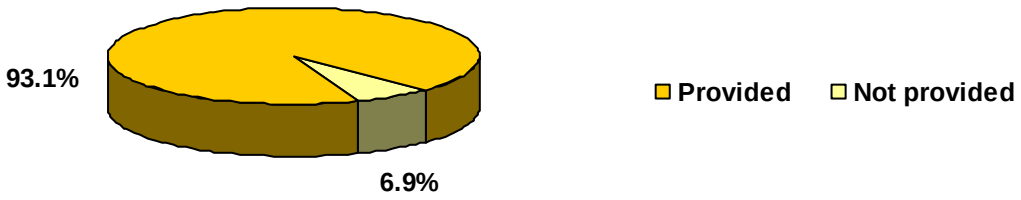
All aspects were monitored during the monitoring period, with the exception of the right to written translation of documents. Here the difficulty was that monitors did not have access to the necessary documents, and were unable to obtain information as to whether a written translation had been made.

Statistical data and conclusions

Table 2.9.1. The right to an interpreter

City/region	Participation of interpreter			Judge's obligations						Quality of translation		
				Reading the interpreter's rights		Warned of criminal liability for knowingly giving false translation		Reading of parties' rights to reject an interpreter				
	Given	Not given	Not needed	Read	Not read	Yes	No	Read	Not read	Guaranteed	Not guaranteed	Could not be assessed
	Number of hearings											
Bishkek	4	1	203	4	-	4	-	-	4	-	4	-
Chui Oblast	-	-	13	-	-	-	-	-	-	-	-	-
Issyk Kul Oblast	3	-	211	-	3	-	3	-	3	1	1	1
Naryn Oblast	-	-	55	-	-	-	-	-	-	-	-	-
Osh Oblast	11	-	308	9	2	10	1	5	6	5	4	2
Jalal-Abat Oblast	6	1	250	5	1	6	-	3	3	2	3	1
Batken Oblast	3	-	65	2	1	2	1	2	1	2	1	-
Total	**27**	**2**	**1105**	**20**	**7**	**22**	**5**	**10**	**17**	**10**	**13**	**4**

Diagram 2.9.2. Presence of an interpreter where necessary

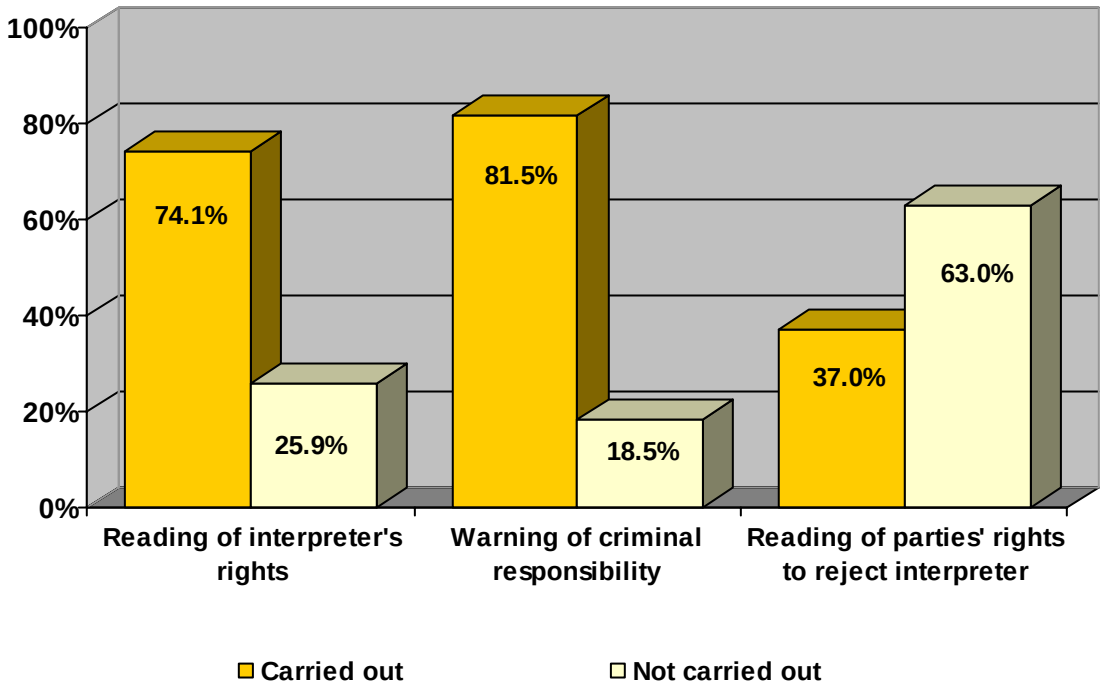


Translation was provided in 27 hearings. In two hearings, translation was not provided in the requisite manner.

EXAMPLE 68

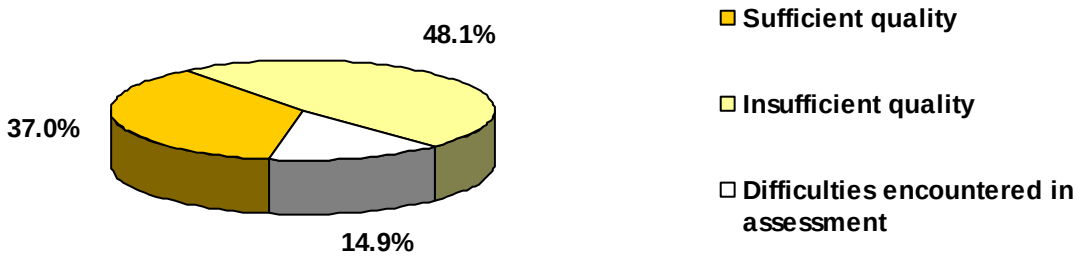
During a hearing in the case of A., accused of a crime under Article 97 of the CC, which took place on 12 October 2005, at isolation unit no. 1 of Bishkek's main interior administration, an interpreter was required for a witness of Uzbek nationality who did not speak the Russian language, in which justice was being administered. The interpreter provided was a man under arrest and being held in the isolation unit who had no professional translation skills. Monitors assessed the level of translation as unsatisfactory (Report 21-10-2005-Bishkek-16-KG).

Diagram 2.9.3. Judge's obligations regarding participation of an interpreter



In most cases, interpreters had their rights and responsibility for knowingly giving false translation read. In approximately one third of cases, the parties were not informed of their right to reject an interpreter.

Diagram 2.9.4. Quality of translation



EXAMPLE 69

During hearings in the case of O., accused of crimes under Articles 2-129, Parts 1 and 2 (3); Article 167, Part 2 (4); Article 168, Parts 2 (2, 3) and 3 (2, 4); Article 234, Parts 2 (2) and 3 (2); and Article 340 of the CC that took place on 17 February and 15 March 2005 at Nooken district court, the defendant, an ethnic Uzbek and citizen of Uzbekistan, did not understand the Kyrgyz language, in which the trial was being conducted. The judge was unable to provide him with a qualified interpreter, and requested a translation from a prison guard, an ethnic Uzbek, who was present in the courtroom. The judge did not read his rights or his responsibility for knowingly providing false translation (Reports 80-02-2005-Nooken-9-KG, 84-03-2005-Nook-9-KG).

EXAMPLE 70

During a hearing in the case of Sh., accused of a crime under Article 234, Part 1 of the CC, which took place on 8 September 2005 at Nooken district court, the accused, an ethnic Russian, did not understand the Kyrgyz language. Since the court could not provide an interpreter, the prosecutor and defence counsel decided to have the case heard in Russian. In the monitor's opinion, their knowledge of Russian was insufficient for the defendant to understand everything that was going on at the trial (Report 73-09-2005-Nooken-9-KG).

EXAMPLE 71

At a hearing in the case of A., T., B., and M., accused of crimes under Article 339, Part 2; Article 174, Parts 2 and 3; and Article 168, Parts 2, 4, and 5, that took place on 13 October 2005 at Osh city court, defendant T. was granted an interpreter. However, the interpreter engaged did not provide translation during the hearing, and was seated in the courtroom at some distance from the defendant, who was held in a metal cage (Report 61-10-2005-Osh-11/12-KG).

2.10. The right to a reasoned judgment and the right to a public judgment

International standard

Judicial decisions should be pronounced in public, except in strictly defined and limited circumstances. Exceptions to the requirement for a public verdict may be cases involving minors, whose privacy must be maintained; matrimonial disputes; and issues relating to the custody of children.[145]

The main objective of the right to a public verdict is to guarantee transparency and to ensure accountability. This right is extended also to those not party to the trial.

Judicial decisions are considered to have been made in public if they are read aloud in a hearing open to the public, and also published.

The requirement for a public verdict should also be observed in cases in which the public is not admitted to all or some of the proceedings.[146]

International law requires that court judgments be reasoned,[147] i.e., that those concerned should see the connection between the circumstances of a specific case and the applicable provisions of criminal legislation. Although the ECHR does not explicitly refer to a reasoned judgment, ECtHR judgements hold that this right arises out of ECHR fair-trial provisions. The ECtHR has ruled that courts in Council of Europe member States are obliged to provide clear explanations of the basis for their judgments. This is necessary for the defendant to be able to appeal the judgment in instances prescribed by law.[148]

National legislation

National legislation stipulates that verdicts be pronounced publicly.[149]

Verdicts should be legal, reasoned, and fair.[150]

The obligation for a court clerk to keep court records, and to reflect fully and correctly therein the actions and decisions of the court and the actions of parties during the hearing is also provided for by criminal procedural legislation.[151]

The presiding judge is required to give parties the opportunity to inspect records of court hearings.[152] Parties may file their remarks on the record within three days of the records being drawn up.[153]

Aspects studied by monitors

During the monitoring period monitors studied compliance with the following:

- Keeping of court records by a court clerk;
- Recording of the trial using technical means (audio or video recording);

[145] ICCPR, Article 14, para. 1.
[146] Commentaries 13, para. 6.
[147] Para. 5.18 of the 1990 CSCE Copenhagen document. Further, in the case of *Becciev v. Moldova*, heard by the European Court of Human Rights, the Court found that the national court had based its decision on detention as a measure of restraint having referred to the law *in abstracto*, at the same time failing to give reasons as to how that legal provision applied to the factual evidence of that particular case (*Becciev v. Moldova*, Application No. 9190/03, 4 October 2005, para. 59-64).
[148] ECtHR judgment, *Hadjianastassiou v. Greece*, App. No. 12945/87, 16 December 1992, para. 33.
[149] CPC, Article 22, Part 4.
[150] CPC, Article 310.
[151] CPC , Article 257, Part 2, Article 272.
[152] CPC, Article 272, Part 5.
[153] CPC, Article 273.

- Declaration by judges of parties' rights to inspect the court record and submit comments;
- Pronouncement by judges of verdicts in full, concisely, clearly, and at measured pace;
- Explanation of parties' rights to appeal against the verdict.

Monitors' reports noted court decisions in the case (guilty or not-guilty verdicts, dismissal of the case, returning of the case to prosecutors), and also instances of special rulings in cases.

Statistical data and conclusions

Table 2.10.1. Record keeping

City/region	Written record of proceedings				Audio or video recording		
	Court clerk maintained uninterrupted	Court clerk was distracted	Not kept	Different stage of trial	Carried out in the interests of judicial administration	Carried out by media or others	Not carried out
	Number of hearings						
Bishkek	186	11	5	6	-	4	204
Chui Oblast	11	2	-	-	-	2	11
Issyk Kul Oblast	213	1	-	-	3	-	211
Naryn Oblast	55	-	-	-	-	-	55
Osh Oblast	309	-	2	8	-	8	311
Jalal-Abat Oblast	246	1	2	8	-	1	256
Batken Oblast	66	-	1	1	-	-	68
Total	**1086**	**15**	**10**	**23**	**3**	**15**	**1116**

For the right to a reasoned judgement and a public verdict to be exercised effectively, the legal requirement for uninterrupted record keeping of proceedings must be strictly observed. This objective may be made significantly easier if audio or video recording is used during proceedings.

During monitoring, instances were observed in which court clerks did not keep complete records, were distracted whilst undertaking their duties, or were occupied with other matters. Such infringements were observed in 1.4 per cent of hearings. In 1 per cent of hearings court clerks maintained no records whatsoever.

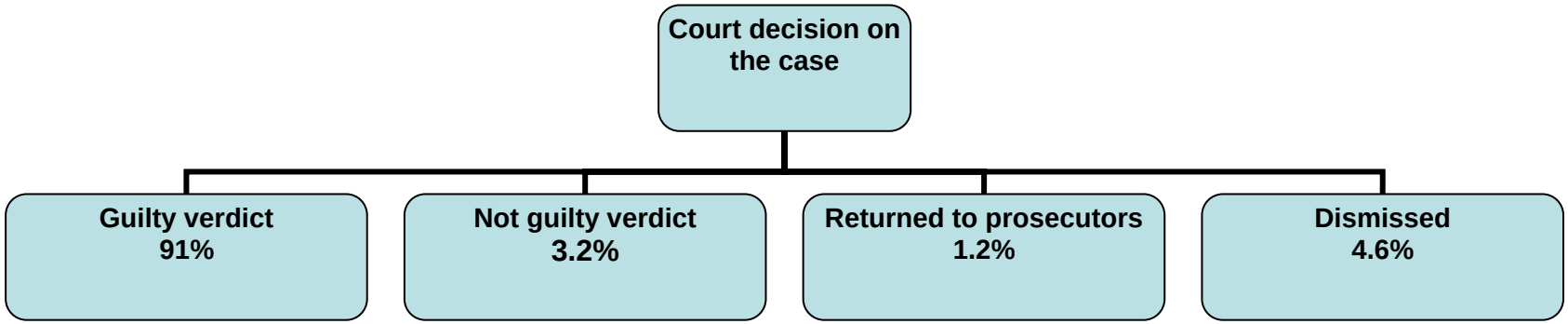
Diagram 2.10.2. Audio or video recordings of proceedings

Not one courtroom covered by the monitoring was equipped with the necessary technical equipment. Audio and video recordings were made by the media and international organizations in 15 cases.

Table 2.10.3. Pronouncement of verdict, and explanation of the right to appeal, and the procedure and the timeframe for doing so

City/region	Result				Special ruling		Explanation of the right to appeal, and the procedure and timeframe for doing so	
	Guilty	Not guilty	Returned to prosecutors	Dismissed	Made	Not made	Given	Not given
	Number of hearings							
Bishkek	47	5	1	-	2	51	50	3
Chui Oblast	2	2	-	2	-	6	5	1
Issyk Kul Oblast	88	1	2	3	3	91	84	10
Naryn Oblast	32	1	-	1	3	31	29	5
Osh Oblast	102	1	-	7	3	107	110	-
Jalal-Abat Oblast	67	3	2	4	3	73	76	-
Batken Oblast	27	-	-	1	1	27	25	3
Total	**365**	**13**	**5**	**18**	**15**	**386**	**379**	**22**

Diagram 2.10.4. Pronouncement of verdicts



Monitoring showed that courts are more inclined to reach guilty verdicts. There were 13 not guilty verdicts against 365 verdicts of guilty.[154]

Monitoring revealed instances of outward manifestations of breaches of the principle that a court be impartial, and in particular of judges consulting with state prosecutors before delivering verdicts.

EXAMPLE 72

At Kadamzhai district court, Batken oblast, the monitor noted in all cases instances of the judge consulting with the prosecutor, and in some cases with defence counsel when deciding on the verdict.

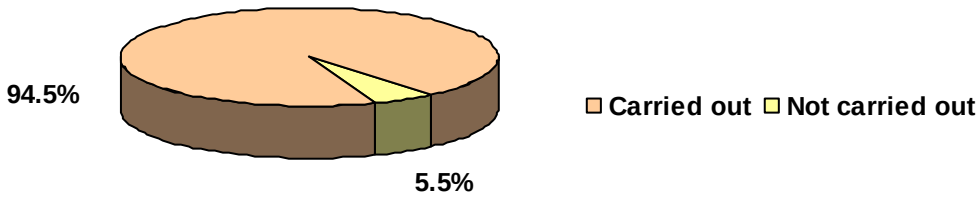
For example, on 19 January 2006, when delivering the verdict in a hearing in the case of R., accused under Article 164, Part 3 of the CC, the judge consulted with the prosecutor (Report 36-01-2006-Batken-6-KG).

In the same court, on 10 February 2006, in the case of N. and T., accused under Article 164, Parts 2 and 3 of the CC, the judge consulted with the prosecutor when deciding on the verdict (Report 94-02-2006-Batken-6-KG).

EXAMPLE 73

On 10 March 2006, in a hearing in the case of M. and Y., accused under Article 164, Parts 2 and 3 of the CC, that took place at Kadamzhai district court, the judge said to defendant Y.: "Have a think about how much you should get. The prosecutor is asking for two years under Article 164, Part 2, Paragraph 4; and four or five years under Part 3; and I can give a maximum of 10 years. Well, I'm going to give you the minimum of five years and six months. I can't give you any less. You understand. Happy?" The judge then turned to the second defendant, M.: "Look, the prosecutor is asking for six years under Article 164, Part 3, Paragraph 4. Also, you have a conditional punishment, and I have the right to add the unexpired time – three years. In total that's nine years. What should I do, you tell me? Well, I'll give you the minimum – five years and six months. I can't go any lower." Then, to both defendants, the judge concluded: "So, you've already been in for a year, let's count one day for every two, that means two years already served, and three years six months left. You'll probably get out under amnesty." (Report 87-03-2006-Batken-6-KG).

Diagram 2.10.5. Explanation of the right to appeal, and the procedure and timeframe for doing so



The legislative requirement to explain to the parties the right to appeal the verdict, and the procedure and timeframe for doing so[155] was breached in 22 cases.

[154] The UN Special Rapporteur on Human Rights, Leandro Despouy, noted in his report the high percentage of guilty verdicts (over 98%), and noted that this was in part based on the predominant role played in the administration of justice by the prosecutor's office.

[155] CPC , Article 324, Part 3.

Table 2.10.6. Reading the verdict in full

City/region	Verdict read in full		Partial reading of verdict	
	Yes	No	Introductory section omitted	Description and reasoning omitted
	Number of hearings			
Bishkek	44	9	4	5
Chui Oblast	3	3	1	2
Issyk Kul Oblast	49	45	13	32
Naryn Oblast	32	2	1	1
Osh Oblast	88	22	-	22
Jalal-Abat Oblast	75	1	-	1
Batken Oblast	17	11	5	6
Total	**308**	**93**	**24**	**69**

Diagram 2.10.7. Reading of verdict in full

Monitors noted 93 cases in which the verdict was not read in full.

Legislation requires that verdicts be reasoned, i.e., that the conclusions follow logically from the descriptive and reasoning section.[156] In 69 cases, the verdict was regarded as not reasoned, since judges did not read the descriptive and reasoning section.

EXAMPLE 74

On 28 February 2006, during a hearing in the case of A. and Sh., accused under Article 350, Part 1 of the CC that took place in Kadamzhai district court, the judge, smiling, told defendant Sh.: "Well, shall I send you to prison or what? Right, I'm reading the verdict. You [to A.] get five years in prison and a fine of 30,000 *som*, and you [to Sh.] get a fine of 50,000. Since you fall under amnesty, you're free." (Report 100-02-2006-Batken-6-KG).

[156] CPC, Articles 317-322.

EXAMPLE 75

During reading of the verdict in the case of M., accused of a crime under Article 164, Part 2 of the CC at a hearing on 4 April 2005, at Ton district court, the judge read only the conclusions of the verdict (Report 49-04-2005-Ton-26-KG).

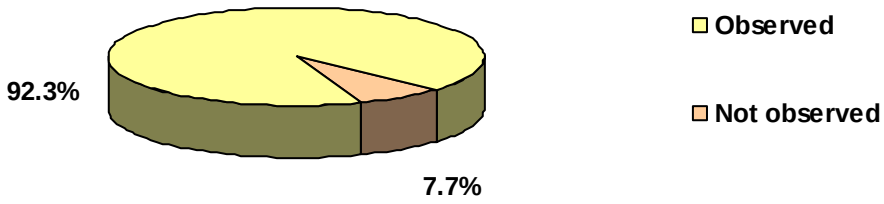
EXAMPLE 76

During reading of the verdict in the case of Y., accused of a crime under Article 164, Part 2 of the CC at a hearing on 29 April 2005, at Sverdlovsk district court, Bishkek, the judge read only the conclusions of the verdict (Report 05-04-2005-Bishkek-13/14-KG).

Table 2.10.8. Observance of requirements for delivering verdicts

City/region	Verdict read precisely, clearly, and in measured tones	
	Observed	Not observed
	Number of hearings	
Bishkek	51	2
Chui Oblast	5	1
Issyk Kul Oblast	85	9
Naryn Oblast	33	1
Osh Oblast	104	6
Jalal-Abat Oblast	72	4
Batken Oblast	20	8
Total	**370**	**31**

Diagram 2.10.9. Verdict read precisely, clearly, and in measured tones



In 31 cases, the verdict was read by the judge inaudibly, quietly, or hastily. As a result, parties could not hear distinctly even the conclusions of the verdict.

Being unable to comprehend the reading of the verdict could influence the level of compliance with international standards for public reading of verdicts, which provide that the verdict should be read in such a way as to enable all those present to understand its reasoning and content.

EXAMPLE 77

During reading of the verdict in the case of A., accused of a crime under Article 165, Part 3 of the CC, at a hearing on 24 May 2005, at Tyup district court, the judge read the verdict in full, but extremely quickly and inaudibly, so that not all those present could hear its content (Report 33-05-2005-Karakol-24/25-KG).

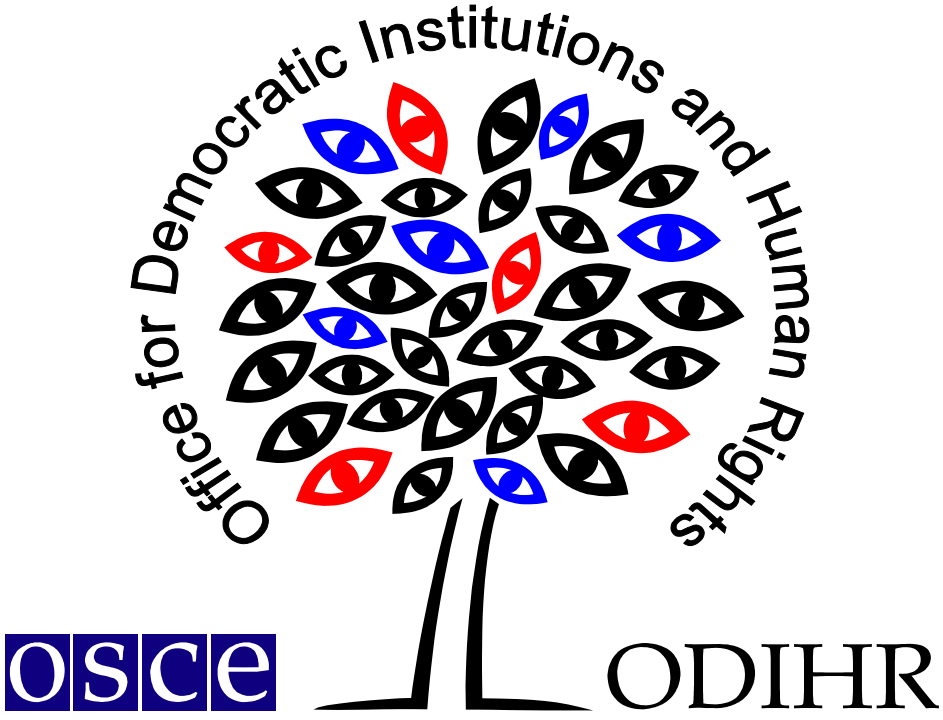
EXAMPLE 78

During reading of the verdict in the case of O., accused of a crime under Article 165, Parts 2 and 3 of the CC at a hearing on 23 March 2005, at Naryn district court, the judge read the verdict in full, but extremely quickly and inaudibly, so that not all those present could hear its content (Report 36-03-2005-Naryn-21/22-KG).

EXAMPLE 79

During reading of the verdict in the case of M. and B., accused of a crime under Article 234, Part 2 of the CC at a hearing on 21 June 2005, at Aksui district court the judge very quickly read only the conclusions of the verdict (Report 24-06-2005-Karakol-24/25-KG).

TRIAL MONITORING MANUAL



CONTENTS

I. DESCRIPTION AND PURPOSES OF THE TRIAL MONITORING PROJECT IN KYRGYZSTAN[157]

The right to a fair trial is a fundamental norm of international and national law. In order to obtain information on the exercise of this right in practice, the OSCE member states have undertaken to allow local and international monitors to monitor trials (paragraph 12 of the 1990 Copenhagen document).

The OSCE/ODIHR Trial Monitoring Project in the Kyrgyzstan includes training for members of civil society in national and international fair-trial standards and trial-monitoring methodology in criminal proceedings, and co-ordinates their subsequent trial-monitoring and reporting activities, as well as compilation of regular reports summarizing their findings.

The Trial Monitoring Project in Kyrgyzstan aims to:

- Assist the collection of reliable information on the practice of criminal justice in order to support the reforms implemented in Kyrgyzstan and to identify issues that need to be addressed;
- Produce independent and impartial reports on criminal trials from the perspective of compliance with national and international fair-trial standards.
- Publish a report summarising the findings of the monitoring;
- Present the findings of monitoring for consideration by the relevant state authorities;
- Train members of civil society in national and international fair-trial standards and trial monitoring methodology.

II. CONTEXT, SCOPE AND TYPES OF MONITORING

CONTEXT

In cooperation with the OSCE Centre in Bishkek the OSCE/ODIHR Project is being carried out in the context of ongoing legal reforms in Kyrgyzstan, which include the work of the courts, defence counsel, state provision of access to free legal assistance, and anticipated judicial sanctioning of arrest.

In connection with the ongoing reforms a pressing need has emerged to collect impartial information that can be used primarily by the state bodies in charge of implementing the proposed reforms.

At present, the OSCE/ODIHR is carrying out a number of projects in Kyrgyzstan on reforming criminal and criminal procedural legislation and practice, and continues its efforts to help state bodies to implement the planned reforms.

The OSCE/ODIHR and the OSCE Centre in Bishkek intend that the results of the Project will contribute to the further improvement of criminal procedural law and its implementation in line with international standards. It is assumed in particular that drafting of impartial reports will help all interested parties in discussing the reforms being carried out.

Monitoring will focus in particular on the following aspects of fair-trial standards: openness of court proceedings to the general public; the presumption of innocence; observation of the principle of equality of arms and adversarial proceedings; and access to justice, including the right to defend oneself through counsel.

SCOPE

Monitoring under the OSCE/ODIHR Project will be held in selected district and *oblast* (regional) courts by 24 Project monitors in the following cities and *oblasty* of Kyrgyzstan: Bishkek, Osh, Jalal-Abat, Naryn, Isfan, Karakol, and the village of Bokonbayev, Issyk Kul Oblast Participants were selected on a

[157] The information below is a brief description of the OSCE/ODIHR Project. Project participants should be guided by this information, as well as by the Information Brochure prepared by Project organisers when informing state authorities about the Project. Project participants should always inform the Project co-ordinator of any inquiries from government bodies.

competitive bases, based on applications submitted following the circulation of relevant information on the Project through the NGO network.

TYPES

Monitoring will be done by 26 monitors trained between 13-16 December 2004 by the OSCE/ODIHR in Bishkek. Monitors will work in pairs or individually.

Each pair of monitors or individual monitor will monitor criminal cases from the first hearing until sentence is passed. Before the commencement of monitoring, monitors should obtain a court schedule from the secretariat of a selected court. When selecting a case, monitors should consult the Project co-ordinator and follow established criteria for selecting cases.

The Project's minimum requirements stipulate that all hearings in a selected case be attended, but at least two hearings a week. Should there be fewer than two hearings a week in the selected case, monitors should, in order to meet minimum Project requirements, carry out "mass monitoring". In any case, the number of court hearings attended in a week should not be less than two.

Mass monitoring implies attending randomly selected hearings, without regard to the stage of a case, and filling out of the respective sections of the Report form.

III. PROJECT TIME FRAME

During January 2005, pilot monitoring was conducted to test the Trial Monitoring Manual and the Monitoring Report form.

In February 2005, after processing comments and proposals received and amending the Report form, monitors started monitoring under the Project.

Subsequent plan of work:

February-June 2005 – First five months of monitoring;

June- July 2005 – Preparation for and holding of second training session;

July-August 2005 – Commencing work on analysing the interim findings;

August-December 2005 – Second five months of monitoring;

December 2005-January 2006 – Start of work on the second set of statistics obtained from monitoring;

February-April 2006 – Final three months of monitoring;

April-September 2006 – Drafting of Final Report on the Project;

IV. BASIC PRINCIPLES FOR PROJECT MONITORS

THE RIGHT TO MONITOR

All OSCE participating states have committed themselves to allow the presence of monitors at trials in order to increase the transparency of trials and to increase public trust in the administration of justice. The right to monitor trials follows from the right to a fair and public trial, as enshrined in the International Covenant for Civil and Political Rights, the European Convention on Human Rights and national laws of OSCE member states.

PRELIMINARY NOTIFICATION OF STATE BODIES

In letters sent in November 2004 the OSCE/ODIHR and the OSCE Centre in Bishkek informed the Presidential Administration, the Supreme Court, the Ministry of Foreign Affairs, the General Prosecutor's Office, and the Ombudsman of the start of the Project.

The Chairman of the Supreme Court, Mr. K.E. Osmonov, recommended in a letter to presidents of courts at all levels that assistance be provided to OSCE/ODIHR Project monitors when carrying out monitoring.

The OSCE/ODIHR has prepared Information Brochures on the Project for monitors to distribute in courts.

Monitors should also try to distribute the Information Brochures through NGOs.

ACCESS TO COURT BUILDING AND COURT ROOMS

Free access to court buildings and courtrooms in the case of a public hearing is a constitutionally guaranteed right under national legislation. Compliance with this legal norm in practice is one aspect of the monitoring.

Accordingly, monitors should primarily try to access court buildings and courtrooms without distinguishing themselves from the general public. The only sign visually distinguishing a monitor at this stage will be a bag with the Project name and the logos of the Project organisers.

Should problems regarding free access arise, monitors should take the following action:

In the event of access to a court building being denied, the monitor should request a meeting with the Chairman of a court to explain the purposes of the Project.

In the event of access to a courtroom being denied, the monitor should request that he or she be allowed to explain the purpose of his or her presence to the presiding judge.

In the event of access still being denied following a conversation with the presiding judge, the monitor should request a meeting with the President of the court or his or her representative.

If a meeting with the Chairman of a court is permitted, the monitor should present his or her identification badge and a copy of the letter from Project organisers to chairmen of oblast or equivalent courts. The identification badge indicates the status of the Project monitor under the OSCE/ODIHR Trial Monitoring Project.

The monitor may inform the President of the court about the purposes of the OSCE/ODIHR Project.

Information provided to the court President should be strictly limited to the information contained on page three of this Manual.

If the court President denies access to a hearing, the Project monitor should record the reasons in the Report form and immediately inform the Project co-ordinator.

The Project monitor should not under any circumstances demand access to a trial, and should remain composed and courteous at all times.

NON-INTERVENTION

One of the fundamental principles of trial monitoring is respect for the independence of the judicial process. Accordingly, Project monitors should never interfere with or attempt to influence trials in any way whatsoever.

In accordance with the principle of non-intervention, monitors should:

- Never interrupt a trial. In the event of a monitor being asked by any trial participant to respond to a question, the monitor must explain his or her role and the principle of non-intervention, and decline to comment.
- Never make recommendations to trial participants on the merits of a case. If a monitor has concerns over the conduct of trial participants, this information should be included in the Report form. Monitors should avoid confrontations and discussions with trial participants.
- Never publicly express opinion on a case they attend, either inside or outside a courtroom.
- Under no circumstances intentionally contact the mass media or give comments on behalf of the OSCE/ODIHR or the OSCE as a whole.
- If the media attempts to find out a monitor's opinion on a certain case being monitored, the monitor may only inform the media of his or her intention to monitor the trial and of the Project's purposes. Furthermore, the monitor should refer journalists to the Project co-ordinator, who after consultation with the OSCE/ODIHR and the OSCE Centre in Bishkek will make appropriate comments in exceptional cases.

FOCUS ON PROCEDURAL ASPECTS

The OSCE/ODIHR Trial Monitoring Project focuses on procedural issues and not on the merits of the cases being monitored.

Accordingly, monitors should pay particular attention to violations of criminal procedural law.

A Project monitor has no obligation to evaluate evidence or other issues that may arise during the course of a trial.

CONFIDENTIALITY

Project monitors may provide information on the purposes of the Project as described on page three of this Manual to court officials, trial participants and other interested parties.

Project monitors are not authorised to make comments to court officials, parties to a case, or any other third party on their observations or findings in relation to procedure or substance of a case, or the criminal justice system in general.

MONITORS' SAFETY

Monitors are participants in the OSCE/ODIHR Trial Monitoring Project. They do not have the status of OSCE staff.

Project monitors should not take any action that may be detrimental to their security. In this regard, they should:

- Report to the Project co-ordinator all incidents that threaten their security;
- Discontinue monitoring immediately and inform the Project co-ordinator if any threat exists in relation to the monitor;
- Avoid contacting any of the parties to a case if that could entail the possibility of affecting the security of the monitor.

V. CODE OF CONDUCT

PREPARATION FOR MONITORING

- If possible, find out in advance the exact date, time and venue of a trial planned for monitoring. Describe in the Report how and when such information was obtained, and if it was accurate.
- If possible and expedient, contact the parties to the trial and familiarize yourself with the background to the case before monitoring. Monitors may attach the most interesting procedural documents to the Report form.
- Arrive in court ahead of time to allow sufficient time to gain access to the court, locate the courtroom, and find a seat. This should be described in detail in the Report form.

IDENTIFICATION

- Carry the monitor-identification badge at all times, and produce it on demand of court officials. Monitors should not misuse their identification badges.

CONDUCT IN COURT

- Maintain polite, composed and dignified demeanour with all court officials and parties to a case.
- Wear appropriate clothing.
- Visibly make extensive notes during hearings.
- Ensure the safety and confidentiality of notes.

DEMONSTRATION OF INDEPENDENCE AND IMPARTIALITY

- Occupy a convenient seat in a courtroom that allows you to observe, hear and follow all aspects of a hearing. In the interests of complying with the principles of independence and impartiality, it is important that monitors not sit next to either the defence or prosecution.
- Avoid interfering during the course of a hearing.
- Do not express any views on the course of a trial either inside or outside a courtroom.
- Do not discuss the merits of a case with any trial participants.
- If it is necessary to obtain additional information on the preliminary investigation, request (but do not insist on) a meeting with the defence to get detailed information on the defence counsel (full name, membership of the college of lawyers, relation to the defendant (contracted, assigned)); the case (at what stage defence counsel was involved, if he or she submitted applications on violations encountered, the reaction to such motions, other procedural details of the pre-trial stages of a case). During the meeting, the Project monitor should not comment on any procedural aspects or merits of a case. Moreover, in order to avoid doubts as to impartiality of the monitor, the meeting should not be held in the presence of or in view of any third parties.

VI. ROLE OF PROJECT MONITORS

In accordance with the purposes of the OSCE/ODIHR Trial Monitoring Project and the Trial Monitoring Principles described above, the role of monitors is to attend court sessions regularly, and to prepare and provide prompt, impartial, and detailed reports on the monitoring of the criminal trials that they attended.

VII. REPORTING

All monitors, working in pairs or individually, shall prepare a report on each monitored court hearing in accordance with the Report form developed by Project organisers. At the end of each week, each monitor or pair of monitors should submit at least two reports to the Project co-ordinator.

Reporting requirements:

- To make detailed notes of everything that takes place in the court building and courtroom.
- To copy the case materials of a case, trial minutes, and sentences (if copying of such documents is possible), and to attach such to the report form.
- To fill out the Report form.
- To produce Reports in a prompt manner based on the notes and personal findings attaching copies of documents (if available).
- To ensure that the information contained in trial Reports is accurate and consistent.
- The major part of information contained in a trial Report should be based on the monitor's direct observations. Where information from other sources is used, it is important to reference these sources accurately (e.g., interview with defence counsel). In addition, facts should be clearly distinguished from third parties' opinions and assessments.
- To include in the Report recommendations on eliminating systematic violations that monitors encountered during the monitoring process.
- To include in the Report examples of observing fair-trial standards ("best practices"), and recommendations on eliminating systematic violations that monitors encountered during the monitoring process.
- To include in the Report quotations from interviews with defence counsels that illustrate systematic problems or exemplify best practices (indicate precisely and double check the name and status of the interviewee).
- If possible, monitors should address in their Reports issues of material conditions and technical equipment of courts.
- To submit reports weekly by e-mail upon monitoring of at least two court sessions.
- At the end of each calendar month a separate report should be prepared elucidating compliance with a specifically selected fair-trial standard or standards with examples from monitored criminal cases. The Project co-ordinator should notify all monitors of the selected standard(s) at the beginning of each month.

The Project co-ordinator, on receipt of the weekly and monthly Reports, should contact monitors for clarification of details in the Reports.

VIII. PROJECT CO-ORDINATION

The Project co-ordinator's objectives include the following:

- Maintaining regular contact with monitors to exchange information and discuss problems;
- Maintaining contacts between monitors and the OSCE/ODIHR, as well as keeping the OSCE Centre in Bishkek updated on the course of the Project;
- After consultation with the OSCE/ODIHR, informing the media and representatives of state bodies on the purposes of the Project;
- If necessary, arranging contacts with court presidents and informing them of monitoring (after consultation with the OSCE/ODIHR);

- Organising the work of monitors, including identifying cases to be monitored, after consultation with the OSCE/ODIHR and the OSCE Centre in Bishkek;
- Attending hearings with monitors;
- Co-ordinating the work of monitors and maintaining a chart of monitoring activities to account for the quantity and quality of monitors' work;
- Collating reports and processing them;
- Providing prompt comments on reports received from each monitor and clarifying unclear and incomplete data;
- Entering data and comments on reports received from monitors into a special chart, maintained separately for each monitor or pair of monitors;
- Preparing of monthly analytical reports on the results of monitoring that describe all fair-trial standards, with additional emphasis on compliance with the specifically selected fair-trial standard(s), and supported by data from monitors' weekly and monthly Reports (case studies);
- Book-keeping and preparing of financial reports.

To co-ordinate the activity of monitors in Kyrgyzstan, the OSCE/ODIHR has appointed two Project co-ordinators.

At the OSCE Centre in Bishkek, the Project is overseen by the head of the Human Dimension section.

At the OSCE/ODIHR office in Warsaw, the Project is managed by Ms. Natalya Seitmuratova, the Human Rights Officer in the Human Rights Department.

ANNEX #2

TRIAL MONITORING REPORT FORM USED DURING THE PROJECT

REPORT ____

Surname, first name, and patronymic of OSCE monitor:

Monitoring date:

Date report submitted:

Time spent in court:

Type of monitoring: 1. Mass

2. Fully fledged

BASIC INFORMATION

Surname, first name, and patronymic of defendant(s):

Gender of defendant(s):

Date of birth of defendant(s):

Ethnicity of the defendant(s):

Qualification of the alleged conduct of the defendant(s) under the CC:

Type of proceedings:

Name of the court hearing the case:

Surname(s), given name(s), patronymic(s) of the judge(s) hearing the case:

Surname, given name, patronymic of public prosecutor:

Surname, given name, patronymic of victim:

Surname, given name, patronymic of defence counsel:

Time of opening and closing the hearing:

Stage of trial:

How did you learn where the hearing would take place?

In what language was the hearing conducted?

Measure of restraint applied:

1. Bound over to remain *in situ* and to keep the peace
2. Remanded in custody
3. Personal surety
4. Remanded in custody of military command unit
5. Minor remanded under supervision
6. Bail
7. House arrest

Any additional information on the defendant(s)? (Place of work, marital status, etc.)

COMPLIANCE WITH FAIR-TRIAL STANDARDS

The right to trial by an independent, competent and impartial tribunal established by law

Q.1. Which state symbols were present in the courtroom?

1. Flag
2. Emblem
3. Flag and emblem
4. No symbols

Q.2. Was the judge wearing robes?

1. Yes
2. No
3. Partially

Q.3. Did the judge announce the case being heard?

1. Yes
2. No

Q.4. Did the judge declare the composition of the court, and did he or she name the prosecutor, the defence, the victim and other participants?

1. Yes
2. No

Q.5. Were any challenges made in the case?

1. Yes
2. No

Q.5.1. By whom?

Q.5.2. In relation to whom?

Q.5.3. Were the challenges upheld?

1. Yes
2. No

Q.6 Did the judge take into consideration the age, general capabilities, and the physical and mental condition of the defendant when reading him or her his or her procedural rights?

1. Yes
2. No

Q.7. In your opinion, did the judge(s) maintain impartiality while trying the case?

1. Yes
2. No, as shown by _____

Q.8. Did the judge(s) speak or act in an incorrect manner or permit unethical statements or actions in respect of any trial participants?

1. Yes
2. No

Q.9. Did the judge(s) raise his or her or their voices towards any of the trial participants?

1. Yes
2. No

Q.10. Did the judge retire to the consideration chamber after the final address of the defendant(s)?

1. Yes, this was announced
2. No, this was not announced

The right to a public hearing

Q.11. Describe how you entered the court building:

1. Showed documents
2. Registered in the visitors' book
3. Other

Q.11.1. and the courtroom:

1. By agreement with the court clerk
2. By permission from the judge
3. Other

Q.12. Was a schedule of cases to be heard (time and place) available on an information board at the entrance to the court building?

1. Yes
2. No

Q.13. Where did the hearing take place?

1. In the courtroom
2. In the judge's chambers, as there were no free courtrooms
3. In the judge's chambers, although there were free courtrooms

Q.14. Was the size of the room adequate to accommodate all trial participants?

1. Yes
2. No

Q.15. Was the room equipped with the necessary furniture?

1. Yes
2. No

" technical equipment?

1. Yes
2. No

Q.16. Was the lighting satisfactory?

1. Yes
2. No

Q.17. If it was decided to hear the trial behind closed doors, what legal reasoning was given for this?

The right to a fair hearing

Q.18. Did the hearing start on time?

1. Yes GO TO B.20
2. Early, by ____ minutes GO TO B.20
3. Late by less than 15 minutes (____ minutes late)
4. More than 15 minutes

Q.19. Give the reason for the delay

1. Prosecutor
2. Defence counsel
3. Judge
4. Other trial participants
5. Technical reasons

Q.20. In what order did trial participants appear in the room?

Q.21. Did the court clerk report on the presence of trial participants?

1. Yes
2. No

Q.22. Yes the issue of holding the hearing in absentia resolved?

1. Yes
2. No, despite the absence of _____
3. No, all participants were present

Q.23. Was there any procedural conflict between the parties, any of their representatives, and the judge during the trial?

1. Yes, between _____
2. No

The right to be presumed innocent and the right not to be compelled to testify or confess guilt

Q.24. Was/were the defendant(s) handcuffed throughout the hearing?

1. Yes
2. Yes, and the defendant(s) was/were also in a cage
3. No

Q.25. Was the defendant kept in a cage?

1. Yes
2. No

Q.26. Where were the prison guards during the hearing?

Q.27. Was moral or other pressure exerted on the defendant(s) during examination by any of the trial participants?

1. Yes, as shown by _____

2. No

Q.28. Was the right of the defendant not to testify against him or herself and his or her close relatives read?

1. Yes
2. No

Q.29. Did the defendant exercise this right?

1. Yes
2. No

Q.30. Was it explained to the defendant that he or she was not bound by any confession or denial of guilt made during pre-trial stages?

1. Yes
2. No

Q.31. Did the judge pressure the defendant to confess?

1. Yes, as shown by _____
2. No

The right to a comprehensive, impartial, and full examination of the evidence

Q.32. Were witnesses removed from the court room before they were examined?

1. Yes
2. No (no witnesses)
3. No (one witness only)
4. No, although there were several witnesses

Q.33. Were witnesses examined in the absence of witnesses yet to be examined?

1. Yes
2. No

Q.34. How was the order of investigating the evidence determined? Was the opinion of parties taken into consideration?

1. Parties were asked, and their opinion taken into account
2. Parties were asked, and their opinion not taken into account
3. Parties were not asked, no order determined
4. Order not determined (different stage of trial)

Q.35. Who examined the defendant(s) first?

1. Defence
2. Prosecution
3. Judge

Q.36. Who conducted the main part of examination of the defendant(s)?

1. Defence
2. Prosecution

3. Judge

Q.37. Were the rights of the witness in connection with his or her testimony explained?

1. Yes
2. No

Q.38. Was the witness warned of his or her criminal liability for giving false evidence?

1. Yes
2. No

Q.39. Summarise the content of all witnesses' testimony.

Q.40. Were the rights of the victim with regard to giving evidence read?

1. Yes
2. No

Q.41. Summarise the content of all victims' testimony.

Q.42. Where the rights of other trial participants read?

Civil plaintiff?

1. Yes
2. No

Civil respondent?

1. Yes
2. No

Expert?

1. Yes
2. No

Q.43. Was expert opinion called for during the hearing?

1. Yes, on the initiative of _____
2. No **GO TO QUESTION 45**

Q.44. Were procedures for appointing and carrying out expert opinion followed?

1. Yes
2. No, as shown in _____

Q.45. Did an expert give evidence?

1. Yes, _____
2. No

Q.46. Were the investigative records contained in the case file read in full?

1. Yes
2. No
3. Partially

Q.47. Were examinations, identifications and other judicial actions carried out as established by law?

4. Yes
5. No, as shown in _____

Q.48. Did the judge explain to the parties at the end of examination of evidence that parties could make closing arguments, and that the court when passing judgment could refer only to evidence examined during judicial investigation?

1. Yes
2. No, since examination is not yet finished
3. No, although the court moved to pleadings

Q.49. Did the judge ask the parties whether they wished to add to the examination, and if so, what?

1. Yes
2. No, since examination is not yet finished
3. Exclusion of evidence elicited as a result of torture or other duress

Q.50. Did the defendant retract previously given evidence, citing psychological or physical coercion, torture, threats, or deceit applied to him during preliminary investigations (inquiry)?

1. Yes
2. No GO TO QUESTION 55

Q.51. What was the reaction of the judge?

Q.52. Was any action taken by the judge to verify such allegations?

1. Yes, _____
2. No

Q.53. What was the reaction of the prosecutor?

Q.54. Was any action taken by the prosecutor to verify such allegations?

1. Yes _____
2. No

Equality of arms

Q.55. Was a state prosecutor present?

1. Yes
2. No, as no prosecutor was party to the trial
3. No, although a prosecutor was party to the trial

Q.56. Did the state prosecutor change during the trial?

1. Yes
2. No

Q.57. Describe the behaviour of the state prosecutor, and how quickly he reacted to events in the room.

Q.58. Were applications (allegations) made in the case?

1. Yes
2. No **GO TO QUESTION 63**

Q.59. By whom were applications (allegations) submitted?

1. Defence
2. Prosecution

Q.60. Briefly summarise the content of the applications (allegation)

Q.61. Was the application (allegation) upheld?

1. Yes
2. No

Q.62. Was the rejection justified?

1. Yes
2. No

Q.63. Which party was located closer to the judge in the courtroom?

1. Defence
2. Prosecution
3. Sides were equidistant

Q.64. Did either party present evidence in the courtroom?

1. Defence
2. Prosecution
3. Both parties
4. No

Q.65. Did the judge assist either party in collecting evidence?

1. Defence
2. Prosecution
3. No

Q.66. Did the defence call witnesses?

1. Yes
2. No

Q.67. Did the prosecution call witnesses?

1. Yes
2. No

Q.68. Was moral or other pressure exerted on witnesses during examination by any trial participant?

1. Yes, _____
2. No, such pressure was not exerted
3. No, no witnesses called

Q.69. Was moral or other pressure exerted on the victim during examination by any trial participant?

1. Yes, _____
2. No, such pressure was not exerted
3. No

Q.70. Who submitted their plea first?

1. Defence
2. Prosecutor

Q.71. Was any trial participant limited in their opportunity to speak at pleadings?

1. Yes, _____
2. No

Q.72.1 Did the prosecutor call at pleadings for the application of criminal law and for the defendant to be punished?

1. Yes, _____
2. No

Q.72.2. Did the defence call at pleadings for the application of criminal law and for the defendant to be punished?

1. Yes, _____
2. No

Q.73. Were other trial participants given the opportunity to make rejoinders after the pleas had been submitted?

1. Yes
2. No

Q.74. Which side was predominant during the hearing?

1. Defence
2. Prosecution
3. No obvious predominance

The right to defend oneself or to be defended by defence counsel

Q.75. Did the judge establish whether a copy of the indictment or summons had been delivered on time to the defendant?

1. Yes
2. No

Q.76. Was defence counsel present?

1. Yes, appointed
2. Yes, engaged

3. No

Q.77. Did defence counsel change during the trial?

1. Yes
2. No

Q.78. Did defence counsel have copies of case materials or excerpts from them at his or her disposal?

1. Yes
2. No

Q.79. Was defence counsel's table in the immediate proximity of the defendant?

1. Yes
2. No

Q.80. Describe the manner of communication between defendant and defence counsel during the hearing.

Q.81. In your opinion, was the right to a qualified, competent, and effective defence counsel guaranteed?

1. Yes
2. No, because _____

The right to be present at trial

Q.82. Was the defendant present?

1. Yes
2. No

Q.83. Was the defendant's identity established?

1. Yes
2. No

Q.84. Was the defendant read his or her rights?

1. Yes
2. No

Q.85. Briefly describe the essence and main points of the indictment against the defendant (in the words of the state prosecutor or private prosecutor)

Q.86. Did the judge ascertain the position of the defendant?

1. Yes
2. No

Q.87. Was the position of the defendant vis-à-vis a civil suit ascertained?

1. Yes
2. No, because no suit was filed
3. No, although suit was filed

Q.88. Briefly describe the testimony of all defendants

Q.89. Was evidence given by the defendant during preliminary investigation read out?

1. Yes
2. No
3. In part

Q.90. Did this testimony contradict evidence given in court?

1. Yes, in that _____
2. No

Q.91. Did the defendant make a final address?

1. Yes
2. No

Q.92. Did anyone interrupt the defendant during his or her final address, and were questions asked of him or her?

1. Yes (give details) _____
2. No

The right to an interpreter and to translation

Q.93. Did a professional interpreter take part in proceedings?

1. Yes
2. No **GO TO Q.99**

Q.94. Were his or her rights read?

1. Yes
2. No

Q.95. Was the interpreter warned of criminal liability for knowingly giving false translation?

1. Yes
2. No

Q.96. Were the parties explained their right to refuse an interpreter?

1. Yes
2. No

Q.97. In your opinion, was translation of sufficient quality provided?

1. Yes
2. No

Q.98. Was written translation of procedural documents provided?

1. Yes
2. No

The right to a reasoned judgment and the right to a public judgment

Record-keeping of the hearing

Q.99. Were minutes taken of the hearing?

1. Yes
2. No **GO TO Q.101**

Q.100. Describe the minute-taking procedure by the court clerk during the hearing

Q.101. Was audio or video recording of the session conducted?

1. Yes
2. No

Q.102. Did the judge explain the right to familiarisation with the minutes of the hearing?

1. Yes
2. No

Q.103. Did trial participants have the opportunity to familiarise themselves with the minute of the hearing?

1. Yes
2. No, because _____

The right to a reasoned judgment and the right to a public judgment

Ruling and reading of the verdict

Q.104. What verdict was handed down in the case?

1. Guilty
2. Not guilty
3. Case dismissed

Q.105. Did the judge explain to a party found not guilty his or her right to compensation for unlawful actions by state bodies?

1. Yes
2. No

Q.106. Was the verdict read in full?

1. Yes
2. No, the _____ part was omitted

Q.107. Was the verdict read precisely, clearly, and at a measured pace?

1. Yes
2. No

Q.108. In your opinion, was the verdict sufficiently reasoned?

1. Yes
2. No

Q.109. Did the judge explain the procedure and timeframe for appealing against the verdict?

1. Yes

2. No

Q.110. Did the judge explain the right to clemency?

1. Yes
2. No

Q.111. Was a special resolution passed in the case?

1. Yes, on the issue of _____
2. No

Q.112. Did defence counsel and defendant receive a copy of the verdict?

1. Yes
2. No

Pre-trial rights

The right to liberty

Q.113. When was the defendant arrested?

Q.114. Where was he or she kept

Q.115. For how long was the defendant kept in custody?

Q.116. Was he or she examined within 24 hours of being arrested?

1. Yes
2. No

The right of people in custody to information

Q.117. Was he or she read his or her rights in custody?

1. Yes
2. No

Q.118. Was the defendant informed of the reasons for his or her being detained in a language that he or she understood?

1. Yes
2. No

Q.119. When were charges filed?

Q.120. Was an interpreter involved if necessary?

1. Yes
2. No

The right to legal counsel before trial and the right to adequate time and facilities to prepare a defence

Q.121. When was a defence counsel allowed?

Q.122. Surname, first name, and patronymic of the defence counsel

Q.123. Defence counsel at pre-trial stages:

1. Assigned
2. Engaged

Q.124. Did the investigator recommend his or her own defence counsel?

1. Yes
2. No

Q.125. Did defence counsel experience difficulty in obtaining permission from investigators for meetings with the defendant?

1. Yes, _____
2. No

Q.126. Did the defendant have confidential and one-on-one meetings with his or her defence counsel, without limitations on time or number of meetings?

1. Yes
2. No

Q.127. Did defence counsel have the opportunity to familiarise him or herself with the case materials?

1. Yes
2. No

Q.128. Was the defence given a copy of the case materials or the opportunity to make notes from the case?

1. Yes
2. No

Q.129. Was he or she given enough time to prepare a defence?

1. Yes
2. No

Right of access to the outside world

Q.130. Were relatives of the defendant informed?

1. Yes
2. No

Q.131. Was the right to a telephone call granted?

1. Yes
2. No

Q.132. Did the defendant ask for medical assistance?

1. Yes, and the request was granted
2. Yes, but the request was not granted due attention
3. No

Q.133. Was the right to consular access granted?

1. Yes
2. No, the defendant was a Kyrgyzstan citizen
3. No, although the defendant was a foreigner
4. The right to be brought promptly before a judge or other judicial officer and right to challenge the lawfulness of detention

Q.134. In deciding on measures of restraint was the defendant examined by a prosecutor?

1. Yes
2. No

Q.135. Did the defendant or his or her defence counsel contest the lawfulness of the arrest or detention?

1. Yes
2. No (go to Q.138)

Q.136. When, to whom, and what were the results

Rights during examination

Q.137. Were the rights of the suspect/defendant read before examination?

1. Yes
2. No

Q.138. Did the defendant exercise his or her right not to give evidence?

1. Yes
2. No

Q.139. Was defence counsel present at all examination sessions?

1. Yes
2. No

Q.140. Was a legal guardian, educational specialist, psychologist present at examination of a minor?

1. Yes
2. No

The right to humane conditions of detention, and to freedom from torture

Q.141. Were any complaints made on the use of torture or other cruel treatment?

1. Yes
2. No

Q.142. From whom did these allegations come?

1. The defence
2. The suspect/defendant
3. Relatives

Q.143. Describe the nature of the allegation

Q.144. What action was taken by the prosecutor to verify such allegati