

Report on the findings
of the first trial monitoring programme in Ukraine

2017

MONITORING OF ADHERENCE TO FAIR TRIAL STANDARDS IN UKRAINE



Organization for Security and
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Project Co-ordinator in Ukraine



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This publication presents the findings of the first large-scale trial monitoring programme in Ukraine, implemented in 2017 by the NGO Centre of Policy and Legal Reform with support of the OSCE Project Co-ordinator in Ukraine. The findings of this monitoring may be used in the future to evaluate the progress of judicial reform in Ukraine.

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TABLE OF CONTENTS

INTRODUCTION.....	4
METHODOLOGY	6
1. OVERVIEW OF MONITORING FINDINGS	9
1.1. Adherence to General Procedural Rules.....	10
1.2. Publicity	11
1.3. Impartiality and Observance of the Principle of Equality.....	16
1.4. Culture of Conducting Proceedings	18
1.5. Reasonable Time	20
2. FINDINGS OF THE MONITORING BY COURT TYPE	21
2.1. General Jurisdiction Courts	22
2.2. Commercial Courts.....	26
2.3. Administrative Courts	31
2.4. Courts of Different Instances.....	36
2.5. Conclusions.....	40
3. FINDINGS OF THE MONITORING BY JURISDICTION	41
3.1. Civil Cases	42
3.2. Criminal Cases	47
3.3. Administrative Offence Cases	51
3.4. Administrative Cases	56
3.5. Commercial Cases.....	59
3.6. Conclusions.....	60
4. FINDINGS OF THE MONITORING BY REGIONS.....	61
4.1. Central Regions	62
4.2. Western Regions	65
4.3. Eastern Regions	68
4.4. Southern Regions	71
4.5. Conclusions.....	74
5. FINDINGS OF THE MONITORING IN SPECIFIC CASE TYPES	75
5.1. Corruption-Related Cases	76
5.2. Cases, Caused by the Armed Conflict in the East of Ukraine	78
5.3. Cases with Participation of National Minorities.....	79
GENERAL FINDINGS AND RECOMMENDATIONS.....	81

INTRODUCTION

This publication presents the findings of the trial monitoring programme, which was implemented in 2017 by the NGO Centre of Policy and Legal Reform (CPLR) with support of the OSCE Project Co-ordinator in Ukraine.

This was the first large-scale trial monitoring programme in Ukraine.

Within the framework of this monitoring programme the OSCE Project Co-ordinator in Ukraine aimed to:



Strengthen the capacity of civil society in trial monitoring on adherence to fair trial standards and protection of human rights in Ukrainian courts;



Analyse monitoring findings in the light of applicable international fair trial standards, identify gaps in the domestic framework and provide recommendations to address these gaps.

As a result of the implementation of this programme, a team of monitors who had completed a specialized training course was formed. They will further be able to conduct trial monitoring regardless of its type (systemic, thematic and ad hoc).

The purpose of this programme was not to identify errors or omissions in judicial practice attributable to specific judges, but to establish the general trend and the changes in court proceedings with regard to adherence to fair trial standards. Therefore, the analysis of the monitoring findings within the framework of this programme cannot be regarded as assessing the performance of individual judges and may not be regarded as an attempt to question or affirm the correctness of respective judicial decisions.

The findings of the monitoring reflect the open part of court proceedings, namely – the behaviour of judges and participants in the course of the trial.

However, the rather optimistic findings of the monitoring need to be evaluated in the light of the fact that the presence of monitors at hearings usually has a positive influence on the adherence to the procedural rules. Thus, the situation in hearings where only the parties to the case are present may be different. This is also confirmed by monitoring findings.



From the questionnaire of a monitor in a criminal case:

“Before the monitor appeared in the courtroom, there were no plans to conduct the panel hearing. Since the defendant had failed to appear in court, the presiding judge intended to agree upon the date of the next hearing with the prosecutor and the Special Service of Ukraine representative in his chambers. When the judge realized that someone wanted to observe the trial, he put on his robe and badge, called for other panel members to join him in the courtroom and conducted the hearing with audio recording”.

It is important to note that most monitoring visits took place in oblast capitals and their satellite cities. In more remote areas, the public and monitors seldom attend open trials, thus, the judges there may demonstrate different standards of conduct.

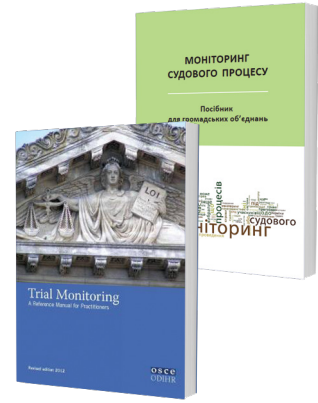
It is also worth stressing that this report does not provide any general assessment of the functioning of the judiciary, but it only characterizes its external functioning side – the trials. Accordingly, the findings of trial monitoring may become integral components of more complex justice sector monitoring programmes.

The findings of this monitoring may serve as a baseline for assessing the progress of judicial reform in Ukraine.

The authors would like to extend their sincere gratitude to the OSCE Project Co-ordinator in Ukraine for supporting this monitoring programme, as well as to those OSCE officials who co-ordinated the monitoring programme and assisted with its implementation – Ms. Natalia Stupnytska, Ms. Natalia Betsa, Ms. Olena Lungol, Mr. Yevhen Avramenko, Ms. Roksolana Melnyk, and the CPLR co-ordinator of monitors and information manager of the programme – Ms. Yaryna Busol.

METHODOLOGY

The Implementing Partner of the programme, the NGO Centre of Policy and Legal Reform, was tasked with conducting training on trial monitoring (in line with the methodology described in OSCE Project Co-ordinator in Ukraine’s publication “Trial Monitoring: Manual for Non-governmental Organizations”, available only in Ukrainian at <http://www.osce.org/ukraine/233521> and based on OSCE Office for Democratic Institutions and Human Rights’ “Trial Monitoring: A Reference Manual for Practitioners, Revised edition 2012” available at <http://www.osce.org/odihr/94216>), conducting trial monitoring, analysis of monitoring findings, and producing an Assessment Report with recommendations.



The monitoring was conducted in closed form, i.e. the monitors did not inform the courts that they were present at open trials specifically for monitoring purposes.

Within the framework of the monitoring programme, the CPLR:

1. Held trial monitoring training for future monitors.
2. Conducted trial monitoring.
3. Analysed and produced a report on the monitoring findings.



PREPARATION AND TRAINING OF MONITORS



50 legal professionals, selected on a competitive basis from among 217 candidates, completed a training course, which included theoretical part and a quest in Kyiv courts, as well as a mentoring programme in the regions, which included attendance of 90 trials together with their mentors and preparation of reports on their work.



Based on the results of the mentoring programme, 25 best monitors were selected, 24 of whom together with 5 mentors implemented the monitoring programme.





MONITORING

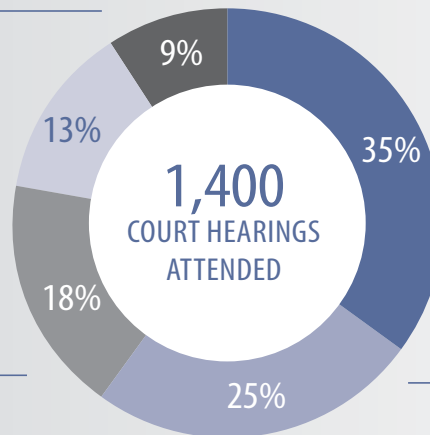


TIMEFRAME –
APRIL-OCTOBER 2017

126 (9%) – in cases on
administrative offences

180 (13%) –
in commercial cases

255 (18%) –
in administrative cases



495 (35%) –
in criminal cases

344 (25%) –
in civil cases



23
CASES



51
CASE



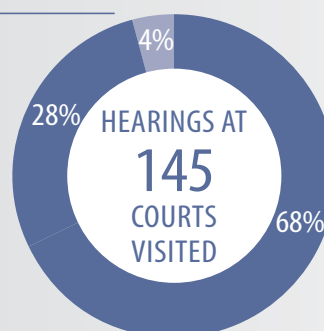
78
CASES

Special attention was paid to cases:

- with participation of national minorities;
- caused by the armed conflict in the East of Ukraine;
- on corruption offences and offences related to corruption.

55 (4%) court hearings –
cassation instance and the
Supreme Court of Ukraine

390 (28%) court hearings –
appeal instance



955 (68%) court hearings –
first instance



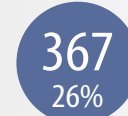
BY REGION



Central



Western



Eastern



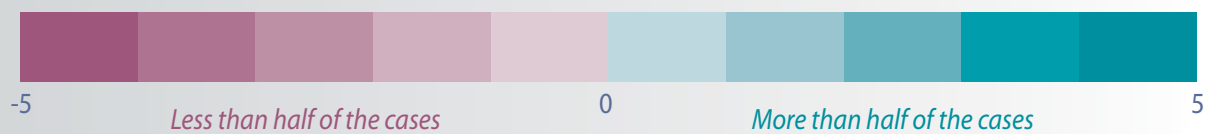
Southern



MONITORING

After studying and processing in detail the data from the questionnaires, the analytical team prepared this report. Most monitoring indicators are provided in percentage terms, which allows to compare different data.

The observation of the principles of publicity, impartiality and equality, and the culture of conducting proceedings by the courts were evaluated against a 10-point scale (five points with a positive value, used in cases when the courts followed the respective standard in more than half of the monitored trials, and five points with a negative value, used when this standard was observed less than in half of the trials). This score is an aggregate value by detailed criteria, which were in the questionnaire and cumulatively applied to a specific standard (publicity, impartiality and equality, culture of conducting proceedings).



This scale matches the percentage rates.



For example, the score 3.7 for publicity corresponds to 87%, which is the aggregate value of compliance with each criterion of publicity that the monitors used in their observations.



OVERVIEW OF MONITORING FINDINGS

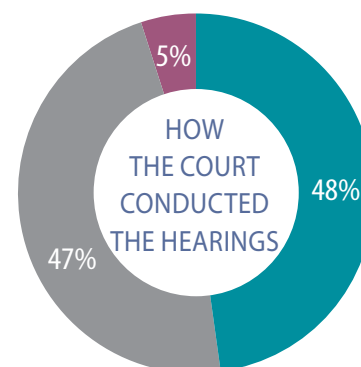




ADHERENCE TO GENERAL RULES OF PROCEDURE

According to the monitors, the court conducted the hearings:

-  impeccably in **48 %** of the cases
-  with minor violations – in **47 %** of the cases
-  with gross violations of procedural rules and the rights of the parties to the proceeding – in **5 %** of the cases



Law of Ukraine On the Judiciary and Status of Judges (Article 12):

“Judicial proceedings and case management in courts of Ukraine shall be conducted in the official language of the country/state language.

The courts shall ensure the equality of rights of citizens in a court process regarding their language.

Courts shall use the official language in the course of the proceedings and guarantee citizens' right to use their native language, or the language they speak, in the course of the proceedings.”

According to the findings of the monitoring, the provisions of the law regarding the language of trial were observed in 96% of cases. The courts used the Russian language sporadically or sometimes switched into Russian completely. Sometimes the representatives of national minorities who had a bad command of the state language (Hungarians and Roma) did not receive translation services.



Law of Ukraine On the Judiciary and Status of Judges (Article 16):

“Judges shall exercise justice wearing a robe and a badge”.

In 88% of cases the judge conducted the trial wearing a robe and a badge. Sometimes, it was the presence of monitors which motivated the judge to put on the robe and badge. In many cases the judge did not wear the robe and/or the badge.



From the questionnaire of a monitor in a district administrative court:

“The judge conducted the hearing without a robe and badge [...]. I understood that this was a judge only when he seated himself in the respective chair”.

The rules of court procedure required verification of identity of trial participants who appeared at the hearing. The monitors recorded compliance with this requirement in 95% of cases.

The procedural codes established the rules regarding the confidentiality of the deliberations room that require the court to deliver a judgement immediately after considering a case behind closed doors and in the absence of any other persons except for the judges themselves. The confidentiality of the deliberations room was observed in 94% of the cases (however, if administrative offence cases for which the law does not establish the deliberations

room confidentiality rule are not included, then the rate of compliance with this requirement turns lower – 91%). The monitors as well considered this requirement to be met in cases, when the judges' chambers served as a deliberations room (provided that there were no other persons than the judge or judges in that room).

However, from time to time the rule of confidentiality of the deliberations room was breached. *Inter alia*, the monitors noted cases when a judge left for the deliberations room, returned without announcing the judgement and proceeded with hearing another case; or when a third person was present in the deliberations room; or when the presiding judge announced into the microphone that the court left for the deliberations room but actually stayed in the courtroom.



From the questionnaire of a monitor in a first instance court of general jurisdiction:

"The judge was in the "deliberations room" together with four court staffers – in reality, it was the court hearing room" [this is the case when the court, after hearing the case, instead of leaving for the deliberation room asked all the participants of the trial and monitors to leave the courtroom. However, the court staff remained in the room, although presence of other persons, except for the judges, in the deliberations room is prohibited by law].



PUBLICITY



Constitution of Ukraine (Article 129):

*"The main principles of adjudication are:
... publicity of court proceedings ..."*



International Covenant on Civil and Political Rights (Article 14):

"...everyone shall be entitled to a ... public hearing by a ... tribunal ... The press and the public may be excluded from all or part of a trial 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; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."



Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6):

"... everyone is entitled to a ... public hearing ... by a ... tribunal. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice"



Law of Ukraine On the Judiciary and Status of Judges (Article 11 as of the time of monitoring):

“Court decisions, court hearings and information on cases considered by the court are open, except for cases stipulated by law.... Information about a court hearing the case, the parties to the dispute and the subject matter of the claim, the date of receipt of the claim, or a statement of appeal, cassation complaint, application for review of a court decision, the current status of the proceedings, venue, date and time of the court session, transfer of a case from one court to another, shall be open and immediately published on the official web-portal of the judiciary in Ukraine, except in cases stipulated by law

Consideration of cases in courts shall be open, except in cases stipulated by law. Any person may be present at an open court hearing...

Persons present in the courtroom and media representatives may take photographs, make video and audio recordings in the courtroom, using portable video and audio devices without a specific permission of the court, but subject to the restrictions established by law. ...

The court proceedings shall be conducted exclusively in a courtroom specifically equipped for that — in a court hearing room suitable to accommodate the parties and other trial participants, and enables them to enjoy their procedural rights and fulfill procedural obligations”.

The principle of publicity protects the parties to the trial and public from secretive administration of justice, and serves as one of the means to ensure public trust in judiciary. “Not only must justice be done; it must also be seen to be done”, stated the English judge Lord Hewart in one of his judgements¹.

In order to verify to which extent this principle got embedded into Ukraine’s adjudication practice, the monitors noted whether or not:

- the hearing in the case was publicly announced;
- access to the court hearing was provided to all those interested;
- the hearing took place in the courtroom;
- the court verified the identity of all those persons present in the courtroom who were not parties to the trial;
- the court announced the case and the composition of the court;
- the court publicly pronounced the judgement in cases it had to be made public.

The monitors were almost always able to access the court building where the hearing took place. In many cases (37%) the court security required them to show IDs; sometimes – present their personal belongings for inspection and/or go through the metal detector ramp. Sometimes they managed to get inside only after a discussion with the guard, which included answering questions on whether the monitor was a journalist, where he lived, etc.

In addition, internal procedures in certain courts required the monitors to take certain actions, for example, call the respective court staffer by phone and then wait for him/her to come. In some cases, the monitors were not allowed into the courtroom in case the parties to the case had not arrived. Such obstacles were identified in the Supreme Court of Ukraine, some high, appeal and first instance courts.

¹ *Rex v. Sussex Justices, 1, King’s Bench Reports, 256, at 259 (1924).*



From the questionnaire of a monitor on the High Specialized Court of Ukraine for Civil and Criminal Cases:

"To be admitted into the court building you have to wait for an invitation from a court guard. One can contact him/her only on the internal phone. Generally, the whole process takes around half an hour".

The court hearings have to be announced on the court's web-site and on the information board in the court building, so that all interested persons could learn about the time and place of hearing they might be interested in. However, sometimes the courts failed to observe these requirements.

The courts announced hearings on their web-site in 94% of monitored cases. Sometimes the announcement on the web-site was different from the schedule posted on the information board in the court building.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

"It was announced on the web-site that the hearing would start at 14:20, but when I arrived to the court at 14:10, I was "late" because on the information board the hearing was scheduled for 14:10 and it started on time so they did not allow me to enter the judges' chambers".

The monitoring disclosed that the courts rather announce hearings on their web-site than on the information boards. The hearings were posted on the information board in 82% of cases. In some courts, the absence of schedules or incomplete schedules are a common practice.



From the questionnaire of a monitor on a first instance commercial court:

"The cases have not been posted in this court [on the information board] at all for a long period of time; not all cases are posted on the web-site, some announcements lack certain data, especially when the local self-government authorities are parties to the case".

From time to time the monitors reported that the court hearing schedule contained the surname of the judge and the date and time of the hearing, but did not contain information on where the hearing would take place.

Usually, (in 98% of cases) the monitors were able to get inside the room where the hearing was being conducted – the courtroom or the judges' chambers. However, there were some obstacles to that from time to time, namely, the court staff asked them to show IDs and inform of the purpose of their presence.



From the questionnaire of a monitor on an administrative court of appeal:

"The secretary did not allow me to enter three [public] court hearings, closing the doors to the courtroom right before me".

In several cases all the interested persons could not fit into the premises where the court hearing was conducted (the judges' chambers), and they stood in the corridor.

Before the beginning of the hearing of a case, which was related to a representative of a national minority, approximately 20 Roma entered the courtroom. Shortly, a court staffer came together with several police officers, and demanded them to leave the room without any explanation. The Roma were forced to leave the room.

Monitors often reported instances when court staffers were unhappy with their presence. They called one of the monitors an “eavesdropper” and suggested he should go “spy under the court’s windows”.

In 81% of cases the court considered the case in the court hearing room. The authors of the report did not consider the chambers of a judge a court hearing room, even if it was used as one and a sign “Court hearing room” was put on the door. The monitors noted instances when the consideration of cases took place in the judges’ chambers despite the availability of vacant courtrooms. Sometimes, the consideration of the case in the judges’ chambers gave the judge an excuse to prohibit the presence of the public during the hearing.



From the questionnaire of a monitor on a district administrative court:

“The case was considered in the judges’ chambers, and the presiding judge stressed that the public may only be present in a hearing room”.

In most cases (64%) the judges did not inquire who else, except for the participants, was present at the trial. In other instances, the judges required the monitors to introduce themselves, and in 4% of cases – asked them to present IDs.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

“The judge asked who I was and whom I represented. I said that I was an independent attendee and came on my own; she was very surprised and did not believe me. She told the secretary of the court hearing to make a photocopy of my passport. I asked why and which norm provided for that. The judge answered that in their court there was a case when in the course of the hearing a piece of evidence (a document) was being presented, and a visitor ran up, grabbed the original, ate it and ran away. Nobody knew who that person was. Thus, the council of the court decided to require attendees to present their IDs”.

In 91% of cases, when opening the court hearing, the court announced which case was being considered; in 81% of cases the presiding judge announced the composition of the court at the hearing.

In 98% of cases the persons present in the court hearings, including the monitors, were able to make audio recordings without any obstacles. In several dozen cases the monitors reported obstacles from the court to making audio recordings, despite the fact that procedural law clearly establishes the right of everyone to make such records. Sometimes the monitors directly noted in their questionnaires that the court prohibited audio recordings or the judge was speaking very quietly. There also were reports that in certain high-profile cases the courts prohibited the journalists to make video recordings but did not object to audio recordings.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

“One could make audio recordings. The media was allowed to make video recordings only when the final judgement in the case was announced”.

For reporting purposes, the monitors themselves made audio recordings of each hearing they visited. The methodology of the monitoring did not provide for making video recordings, given that video recording could have some influence on the conducting of the trial and the behaviour of the court and the participants, thereby distorting the monitoring results.

In 94% of cases, when a court judgement was supposed to be pronounced, the court did this publicly. However, this announcement was not made in all the cases in due order.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

"The judge read the judgement very quickly, not clearly, and it was hard to understand. I was not the only one who failed to understand the judgement of the court. The representatives of the parties to the case after leaving the court room asked each other whether they understood the judgement and agreed that it was necessary to receive a written copy to understand it".

The monitors reported instances when the participants of the trial asked the judge to clarify the meaning of the judgement after it had been pronounced, because of the judge not speaking clearly. Another monitor informed that in an administrative offence case the judgement was not pronounced, the judge only said he found the person guilty and established a fine. In yet another case, the judge instead of pronouncing the judgement said he would give the text of the judgement to the parties. The monitors also reported instances when the judge left for the deliberations room and immediately appointed the date for pronouncing the final judgement, although under the law he was supposed to pronounce the judgement in the same hearing.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

"The court left for the deliberations room and noted that the judgement would be pronounced on another day".

Summing it all up, the courts mostly acted in compliance with the principle of publicity (openness). Having an ID, there was no problem getting inside the court building. As a rule, all the interested persons were admitted to the court hearing room freely.



HOWEVER

- every fifth case was considered by judges in their chambers, even if there was a vacant courtroom;
- every fifth case was not posted on the information board in the court, and every tenth – on the court's web-site;
- in each fifth case the court did not announce the composition of the court, and in each tenth case – the case which was being considered;
- in every twentieth case considered in an open court hearing, the court judgement was not pronounced publicly.

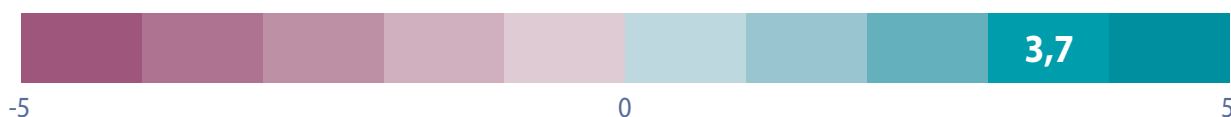
BEST SCORE **4,8** points

Access to court hearings provided for all the interested persons, the court did not create obstacles for audio recording.

WORST SCORE **1,4** points

The court did not establish the identity of persons present at the hearing (with the exception of trial participants).

AVERAGE COMPLIANCE SCORE FOR THE PUBLICITY PRINCIPLE





IMPARTIALITY AND OBSERVANCE OF THE PRINCIPLE OF EQUALITY



Constitution of Ukraine (Article 129):

*"The main principles of judicial proceedings shall be:
...equality of all participants of a trial under the law and before the court..."*



International Covenant on Civil and Political Rights (Article 14):

"All persons shall be equal before the courts and tribunals. ... everyone shall be entitled to a fair and public hearing by a ... impartial tribunal"



Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6):

"...everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal..."



Law of Ukraine On the Judiciary and Status of Judges (Articles 7 and 9 as of the time of conduction of the monitoring):

*"Everyone is guaranteed the protection of his\her rights, freedoms and interests ... by an ... impartial and fair court...
Justice in Ukraine is administered on the basis of equality of all participants to a court process before the law and the court regardless of race, color, political, religious and other beliefs, gender, ethnic or social origin, property status, place of residence, language and other status...
A court shall create such an environment where each participant of a court proceeding is guaranteed equality in the exercise of their procedural rights and in the performance of procedural duties, as determined by the procedural law"*

In order to verify to which extent the courts complied with the requirements of impartiality and equality of arms, the monitors noted whether or not:

- the presiding judge explained the right to demand the recusal of a judge;
- the court did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights;
- the court heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law;
- the court paid sufficient attention to the arguments or motions of the participants of the trial, and provided justifications when turning them down;
- the court gave the participants the possibility to get familiarized with the evidence and other documents in the case provided they filed respective motions;
- the court restricted the participants of the trial in their right to participate in a court debate (in those hearings, where such debate took place);
- the court exercised moral pressure on the trial participants in the course of the hearing;
- the court treated one of the parties in a friendlier way than the other.

In 77% of cases the presiding judge informed the participants of their right to demand the recusal of a judge.

In 95% of cases the court did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

“The judge did not ignore that the plaintiff was an elderly person and did not hear well, so he spoke very loudly and repeated the question several times to make sure the plaintiff understood”.

In 98% of cases the court heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law. Sometimes the monitors noted deviations from this rule.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

“The court did not ask the opinion of the defendants regarding the possibility to hear the case in absence of the defense council [the defendants had lawyers, but they failed to appear at the hearing]”.

The court mostly (in 98% of cases) paid sufficient attention to the arguments or motions of the participants of the trial and provided justifications when turning them down.

In 95% of cases the court gave the participants the possibility to get familiarized with the evidence and other documents in the case provided they filed respective motions.

In 99% of cases the court did not restrict the participants of the trial in their right to participate in a court debate (in those hearings, where such debate took place).

In 98% of cases the court did not exercise moral pressure on the trial participants in the course of the hearing and did not treat one of the parties better than the other. At the same time, the monitors described instances when the conduct of the judge did not appear to be impartial.



From the questionnaire of a monitor on a court of appeal of general jurisdiction:

“The court treated the defendant much better. In the course of the trial certain judges talked to him, and told him that the first instance court was very light on him, they also hinted that the panel treated him lightly as well”.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

“The mimics and tone of the judge showed a positive attitude to the defendant, and a haughty one – to the victim”.

Summing it up, the judges in the course of the trial mostly behaved themselves impartially and observed the principle of equality.



HOWEVER: almost in each fourth case the judge did not explain the right to demand recusal of a judge.

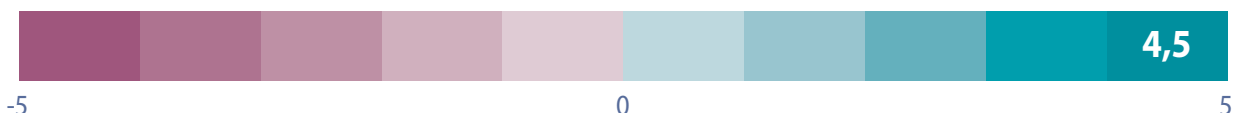
BEST SCORE **4,8** points

WORST SCORE **2,7** points

The court heard the arguments of the participants of the trial and did not limit their right to participate in a court debate.

The presiding judge informed the participants of their right to demand the recusal of a judge.

AVERAGE COMPLIANCE SCORE FOR IMPARTIALITY AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE





CULTURE OF CONDUCTING THE TRIAL



Law of Ukraine On the Judiciary and Status of Judges (Article 56):

"A judge shall be obligated to:

...comply with the rules of judicial ethics, including displaying and maintaining high standards of conduct in any activity in order to strengthen public trust in court, and ensure public confidence in judicial integrity and incorruptibility..."

In order to verify to which extent the judges observe the rules of culture of the trial and require compliance with these rules from trial participants, the monitors noted:

- the general status of observance of ethical norms and communication culture both by the court (including judges and court staff) and the trial participants;
- whether the court was rude, tactless or haughty to the trial participants, or it demonstrated impeccable conduct;
- whether the court made any comments and actions which showed disrespect to a person by race, sex, nationality, religion, political opinions, social and economic status, physical disabilities or other forms of discrimination;
- whether the judge got distracted from the hearing or listened to the parties attentively;
- whether the other participants of the trial observed ethical norms and due communication culture.

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as:

- impeccable – in 78% of cases;
- with minor violations – in 20% of cases;
- with gross violations of ethical standards – in 2% of cases.

In 95% of cases, the court was neither rude, tactless nor haughty to the trial participants, and demonstrated impeccable conduct. In other cases, the monitors noted unethical conduct, specifically, the judge raising the voice and even yelling, focusing attention on the physical disabilities of the victim, communicating in a derogatory manner, making fun of the witness's comments, etc.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

"In the course of the trial the judge behaved in an haughty way towards trial participants".

In 99% of cases the court did not make any comments and actions which showed disrespect to a person by race, sex, nationality, religion, political opinions, social and economic status, physical disabilities or other forms of discrimination. However, the monitors also noted instances of disrespect. For example, in the Transcarpathian oblast the court showed disrespect to Roma persons, persons of the opposite sex, persons with special needs and police officers.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

"The victim came together with a man who supported him when he walked, but the judge several times pointed out that he needed additional assistance. The actions of the judge did not correspond to the situation, since the victim was able to move with the help of a cane. However, the judge focused attention on the victim's physical disabilities ..."

In 90% of cases the judge did not get distracted from the hearing and listened to the parties attentively. However, in other cases the monitors noted the judges taking phone calls, messaging, etc., whispering to each other while hearing out the parties and during the interrogation of witnesses.



From the questionnaire of a monitor on a court of appeal of general jurisdiction:

"One judge in the panel slept in the chair in a reclining position. Another judge did not turn off the sound on his phone, which rang four times during the hearing"

In 94% of cases the participants of the trial observed ethical norms and due communication culture. In other cases, the monitors described the parties interrupting each other and even the judge, yelling, abusing, ridiculing and disrespecting the witness.



From the questionnaire of a monitor on a court of appeal of general jurisdiction:

"The lawyers talked to each other during the hearing, which created noise. The judges did not stop this behaviour"

Summing it up, ethical norms are mostly observed in court, but there are certain issues:

- in each fifth case the monitors noted minor violations of ethical norms and communication culture, in each fiftieth case these violations were gross;
- in each tenth case the judges did not show sufficient attention and got distracted (mostly by their phones).

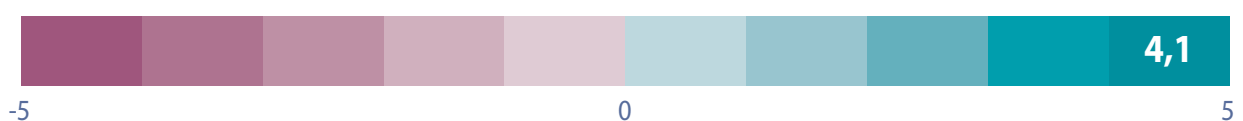
BEST SCORE **4,9** points

The court did not make any comments and actions which showed disrespect to a person by race, sex, nationality, religion, political opinions, social and economic status, physical disabilities or other forms of discrimination.

WORST SCORE **2,8** points

The general status of observance of ethical norms and communication culture both by the court and the trial participants.

AVERAGE SCORE FOR MAINTAINING DUE COMMUNICATION CULTURE





REASONABLE TIME



Constitution of Ukraine (Article 129):

*"The main principles of judicial proceedings shall be:
... reasonable time for the consideration of the case by a court ..."*



Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6):

"everyone is entitled to ... hearing within a reasonable time..."



Law of Ukraine On the Judiciary and Status of Judges (Article 7 as of the time of conduction of the monitoring):

"Everyone is guaranteed the protection of his\her rights, freedoms and interests within reasonable time..."

This monitoring did not aim to monitor the duration of trials as it did not observe the trial from beginning to end, but only hearings in different cases. Although the monitoring results do not give a comprehensive understanding of the problem of observing reasonable time limits of court trials, certain items in the questionnaire allowed to identify serious problems.

Only 54% of the hearings, which the monitors planned to visit, took place. In other cases, the hearing did not take place either due to the absence of the judge, due to the failure of the parties to appear or for other reasons.

Substantial human, financial and time resources could have been saved in case the courts would have taken efficient actions to encourage the parties to settle. According to the monitors' evaluation, the court took settlement actions only in 52% of cases where that was necessary.

The monitors noted lack of precision in the beginning of court hearings. Only in 20% of cases the court hearing started on time or with a 5-minute delay.

To sum it up, serious problems which may have negative influence on the observance of procedural timeframes were identified:

- almost every second scheduled court hearing did not take place;
- the courts underestimated the potential of settlement tools in adjudication;
- only each fifth court hearing started on time.

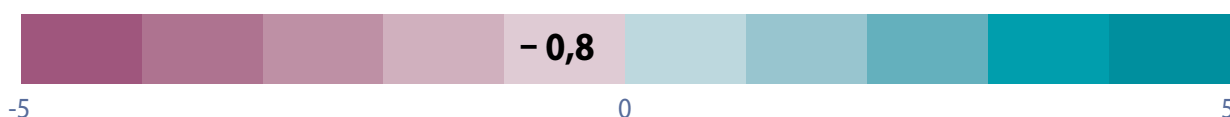
BEST SCORE **0,4** points

WORST SCORE **-3** points

The court hearing took place on the day it was scheduled.

The court hearing started on time.

AVERAGE SCORE FOR OBSERVING REASONABLE TIME LIMITS
(evaluated based on the limited indicators noted above)





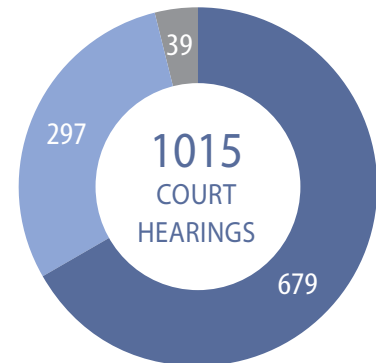
FINDINGS OF THE MONITORING BY COURT TYPE



GENERAL JURISDICTION COURTS

The monitors visited **1,015 court hearings** in general jurisdiction courts, including:

- **679 cases** – in first instance courts;
- **297 cases** – in courts of appeal;
- **39 hearings** in cassation courts and the Supreme Court of Ukraine (review of cassation court judgements in civil, administrative and criminal cases).



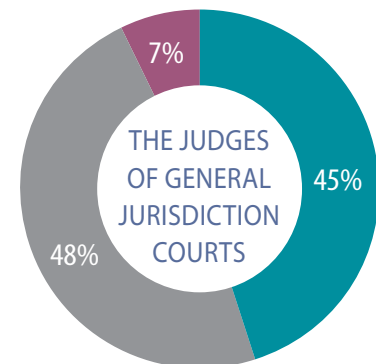
At the time of the conducting of the monitoring, the first instance general jurisdiction courts considered civil and criminal cases, cases on administrative offences and certain types of administrative cases. Courts of appeal reviewed civil and criminal cases, and cases on administrative offences. The High Specialized Court of Ukraine for Civil and Criminal Cases of Ukraine served as the cassation instance in civil and criminal cases, and under outstanding circumstances its judgements could be reviewed by the Supreme Court of Ukraine.



ADHERENCE TO GENERAL RULES OF PROCEDURE

According to the monitors, the judges of general jurisdiction courts conducted the hearings:

- 👍 **impeccably in 45 % of the cases;**
- ⊖ **with minor violations – in 48 % of the cases;**
- ⚠️ **with gross violations of the rules of procedure and/or the rights of the participants of the trial – in 7 % of the cases.**



The general impression the monitors had regarding compliance of the general jurisdiction courts with procedural rules was significantly worse compared to administrative courts and slightly worse compared to commercial courts. This is also confirmed by a number of answers to further questions.

In 86% of cases the judge considered the case wearing a robe and a badge. However, certain judges neglected this requirement.



From the questionnaires of monitors on first instance courts of general jurisdiction:

“At the beginning of the hearing, the judge did not wear a robe and a badge, then, in presence of the parties and the monitor she put them on”.

“In fact, there was a robe; it hung over the judge’s shoulder. But it was not properly worn”.

Judges of general jurisdiction courts verified the identity of the participants of the trial who arrived to the hearing in 93% of cases.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

"The defense lawyer did not have the power of attorney ... the judge believed his words" (criminal case).

The confidentiality of a deliberations room was observed in 93% of cases.



From the questionnaires of monitors on first instance courts of general jurisdiction:

"A person dressed in civilian clothes was always present in the deliberations room".

"While the judge was in the deliberations room, people came in and left his chambers [which served as the deliberations room] all the time".



PUBLICITY

Court hearings must be announced both on the web-site of the court and on the information board. The courts posted information about the hearings on the web-site in 93% of cases which were monitored. However, the information on the web-site was not always complete and correct. Hearing schedules were posted on the information board less often – in 81% of cases.

In 98% of cases the monitors were able to get inside the room where the case was being heard (courtrooms or judges' chambers). In certain cases, the monitors noted they were able to enter the courtroom only after an identity check. In the course of the monitoring there were cases when the interested persons were not admitted to the courtroom.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

"The court passed a ruling to ban independent attendees from the courtroom. At the same time, live video streaming was available in another room, although it shut down from time to time" (criminal case).

However, one of the monitors was able to participate in an on-site court hearing which took place at a penitentiary institution.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

"It was an on-site hearing in a correctional facility, the process of getting clearance to participate was long and complicated" (criminal case).

In 79% of cases the court heard the case in the courtroom. The monitors noted cases when the consideration of the case started in the courtroom and then continued in the judges' chambers. In 10% of cases the monitors noted that during the hearing in the judges' chambers at least one courtroom was vacant.

In most cases (70%) the judges of general jurisdiction courts did not inquire who was present at the hearing in addition to the trial participants. This indicator was much better than in other courts. This is largely explained by the fact that the judges of general jurisdiction courts are more used to the presence of the public in court hearings.

In 89% of cases when opening the court hearing, the court announced which case was being considered; in 80% of cases the presiding judge announced the composition of the court at the hearing.

In 99% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings. However, there were several cases where the judges attempted to deceive those present in the room regarding the rules for making audio recordings.



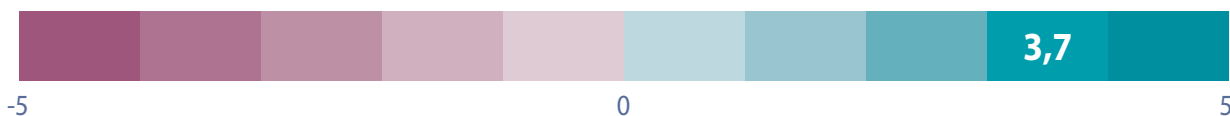
From the questionnaires of monitors on first instance courts of general jurisdiction:

"The judge refused to allow audio recording saying that it was prohibited to use mobile phones during the hearing".

"The judge and the parties did not object to the audio recording, but at the end of the hearing the judge noted that the monitor should receive from the parties their consent to disclose their personal information in case the information on this hearing will be disclosed through the media".

In 92% of cases, when a court judgement was supposed to be pronounced, the court did this publicly. However, this announcement was not made in all the cases in due order. The judges usually pronounced only the introductory and dispositive parts of the judgement, although by law this was supposed to be done only as an exception in complex cases (with the exception of criminal cases, where the sentences were usually read completely).

PUBLICITY IN GENERAL JURISDICTION COURTS



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 77% of cases the presiding judge informed the participants of the case about their right to demand the recusal of a judge. This is a higher rate than in commercial courts, but it is lower than in administrative.

In 94% of cases the monitors noted that the court did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights. However, opposite cases occurred more frequently than in administrative and commercial courts.

In 98% of cases the court heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law.

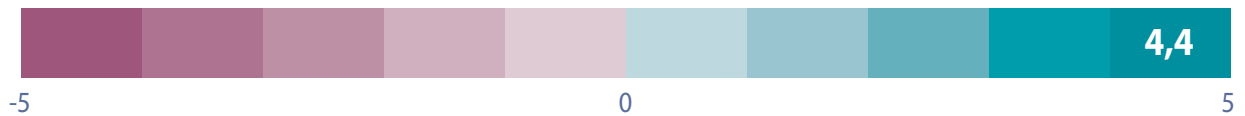
The court paid sufficient attention to the arguments or motions of the participants of the trial, and provided justifications when turning them down (in 97% of all cases).

In 94% of cases the judges of general courts gave the participants the possibility to get familiarized with the evidence and other documents in the case provided they filed respective motions. At the same time, no deviations from this rule were reported in commercial and administrative courts.

In 98% of cases the court did not restrict the participants of the trial in their right to participate in a court debate (in those hearings, where such debate took place).

In 97% of cases the court did not exercise moral pressure on the trial participants in the course of the hearing and in 98% did not treat one of the parties better than the other.

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN GENERAL JURISDICTION COURTS



CULTURE OF CONDUCTING THE TRIAL

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 76% of cases.

In 95% of the cases the court was neither rude, tactless nor haughty to the trial participants, and demonstrated impeccable conduct. However, there were cases of the opposite.



From the questionnaires of monitors on first instance courts of general jurisdiction:

"The judge was rather rude to a witness, who started stammering as a result" (a civil case).

"You don't get it, do you?" – that's how the judge reacted to the request of one of the parties to repeat what she just said" (a civil case).

In 99% of cases the court did not make any comments and actions which showed disrespect to a person by race, sex, nationality, religion, political opinions, social and economic status, physical disabilities or other forms of discrimination.

In 92% of cases the judge did not get distracted from the hearing and listened to the parties attentively. This rate is much better than in administrative (87%) and commercial courts (86%).

In 93% of cases the participants of the trial observed ethical norms and due communication culture. On certain occasions, the monitors noted violations of ethical norms and communication culture by the participants. The judge took relevant action only in half of these cases.



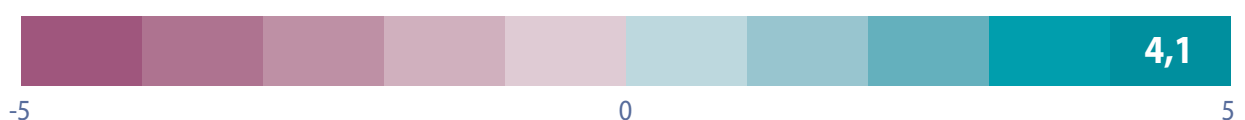
From the questionnaires of monitors on first instance courts of general jurisdiction:

"The defendant and his representative kept interrupting the judge and broke order, the judge reacted accordingly to ensure the hearing still took place within the requirements of the Civil Procedure Code".

"The defendant scolded the witness, and the judge did not issue any warning or inform about responsibility".

"The person who was being brought to justice for an administrative offence treated the presiding judge without respect, interrupted him, tried to manage the trial, stressed it is unbecoming for the head of the court to hear such a minor case about hooliganism".

CULTURE OF CONDUCTING THE TRIAL IN GENERAL COURTS





REASONABLE TIME

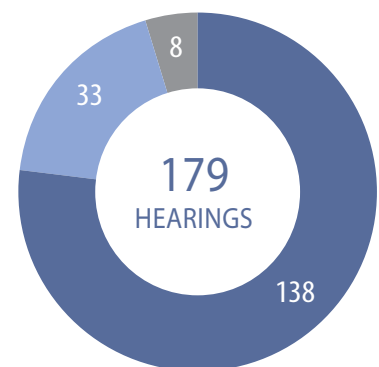
According to the assessment of the monitors, the court took effective measures to encourage the parties to settle only in 61% of those cases where it was necessary. Only in 20% of cases the court hearing started on time or with a delay of up to 5 minutes.

As for those cases, when the hearings scheduled for monitoring did not take place, unfortunately the questionnaire did not include questions in which cases and which courts they were supposed to take place.

COMMERCIAL COURTS

The programme monitors visited **179 hearings** in commercial courts, including:

- **138 cases** – in first instance courts;
- **33 cases** – in courts of appeal;
- **8 cases** – in cassation courts (High Commercial Court of Ukraine).



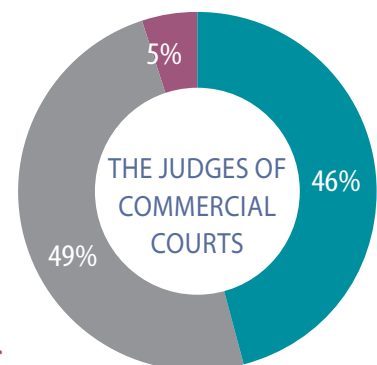
At the time of monitoring, the commercial courts considered exclusively commercial cases (mostly, disputes between legal entities), including bankruptcy cases.



ADHERENCE TO GENERAL RULES OF PROCEDURE

According to the monitors, the judges of commercial courts conducted the hearings:

- 👍 impeccably in **46 %** of the cases;
- ⊖ with minor violations – in **49 %** of the cases;
- ⚠️ with gross violations of the rules of procedure and/or the rights of the participants of the trial – in **5 %** of the cases.



The overall impression of the monitors regarding the observance of the rules of procedure in commercial courts is somewhat better than in general courts; however, it is worse compared to administrative courts.

In 88% of cases the judge considered the case wearing a robe and a badge.

Judges of commercial courts verified the identity of the participants of the trial who arrived to the hearing in 96% of cases.

The confidentiality of a deliberations room was observed in 91% of cases. This is the lowest rate compared to other courts.



From the questionnaire of a monitor on a commercial court of appeal:

"In the course of the trial the court asked the parties to leave the courtroom as the judges needed to confer (before leaving for the deliberations room)".



PUBLICITY

The courts published information about the hearings schedule on their web-sites in 94% of cases. Nevertheless, this information was not always complete and correct. Schedules were published on the courts' information boards somewhat less frequently – in 79% of cases. This is also the lowest rating compared to other courts.

In 98% of cases the monitors were able to get inside the room where the case was being heard (courtrooms or judges' chambers).

In 80% of cases the court considered the case in the court hearing room.

Only in one third of cases (31%) the judges of commercial courts did show interest in who was present at the trial in addition to the parties to the case. This indicator is worse than in other courts. This might be due to the fact that the judges of commercial courts are not used to the presence of other persons, except the parties to the case, in the hearings. Commercial cases seldom become high-profile and of interest to the public compared to other case types.



From the questionnaires of monitors about commercial courts (of different levels and regions):

"The presiding judge asked who I was and which party I represented (and asked the parties if they knew me), asked me to show my ID, put down my name in her notebook and looked at each page of my passport. After that, she allowed me to be present at the hearing after informing me of my rights as follows, "You have the right to be present at the hearings, but make no records and do not obstruct the hearing in any way!". After that, she made sure I understood what she had said".

"The secretary of the court hearing took the monitor's passport to "input data into the voice recording system". The document was returned to the monitor during the hearing".

"The secretary of the court hearing allowed the monitor to the hearing on condition that she would make a photocopy of his passport", "the court established the identity of the monitor on the grounds of his passport and made its copy".

"Before the beginning of the hearing the secretary, after finding out that there will be an independent attendee in the case, noted that he was supposed to file a motion to request participation in the hearing".

"In the course of the hearing the judge asked who I was and why I came to the hearing, she noted that I was supposed to inform her thereof. Before leaving for the deliberations room she asked me what I thought about the case".

At the time of monitoring the commercial code did not contain a direct requirement to announce which case was being heard, but this was presumed by the general requirement about the publicity of commercial proceedings (Article 4). In accordance with Article 74 of the Commercial Procedure Code the judge shall announce the composition of the court. In 89% of cases, when opening the hearing, the court announced the case that was being heard; in 71% of cases the presiding judge announced the composition of the court.

In 97% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings.

In 94% of cases, when a court judgement was supposed to be pronounced, the court did this publicly. However, there were cases when the judge did not read the whole text of the judgement but rather gave a brief overview of its content.

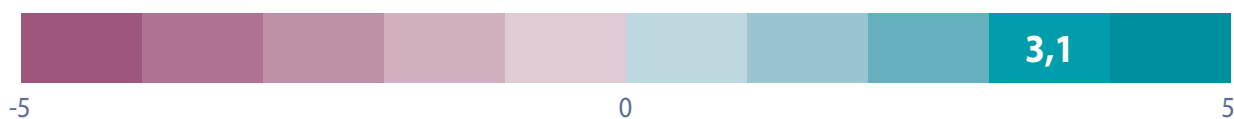


From the questionnaires of monitors about commercial courts:

"The court did not publicly pronounce the ruling about the approval of the settlement agreement. The court limited itself to mentioning that the court had approved the agreement, and that the parties would receive written copies of the ruling later".

"The judge noted that he would prepare a ruling on approval of the motion to dismiss the arrest".

PUBLICITY IN COMMERCIAL COURTS



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 70% of cases the presiding judge informed the participants of the case about their right to demand the recusal of a judge. This is a much lower rate than in general and administrative courts.

In 99% of cases the monitors noted that the court did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights.

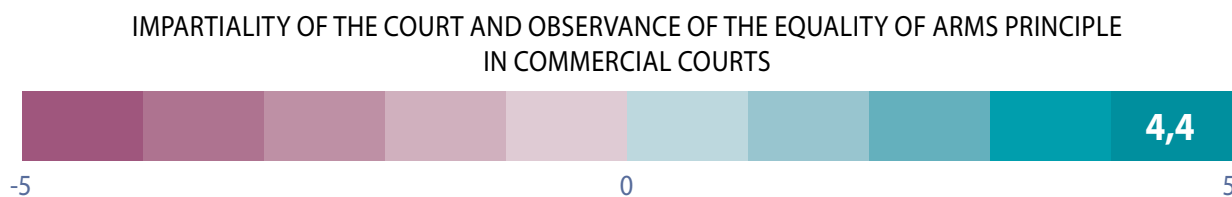
In 99% of cases the court heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law.

The court paid sufficient attention to the arguments or motions of the participants of the trial, and provided justifications when turning them down (in 98% of all cases).

In 100% of cases the judges of commercial courts gave the participants the possibility to get familiarized with the evidence and other documents in the case provided they filed respective motions.

The commercial rules of procedure at the time of monitoring did not provide for a court debate, thus, the indicator regarding equality of arms in court debates was not measured.

In 98% of cases the court did not exercise moral pressure on the trial participants in the course of the hearing and in 95% did not treat one of the parties better than the other. Moreover, the latter rate documented for the commercial courts is lower than that of the general jurisdiction courts (98%) and the administrative courts (99%).



CULTURE OF CONDUCTING THE TRIAL

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 79% of cases.

In 94% of the cases, the court was neither rude, tactless nor haughty to the trial participants, and demonstrated impeccable conduct.

In some cases the monitors noted the violation of ethical norms and communication culture by the judge.



From the questionnaires of monitors about commercial courts (of different levels and regions):

"During the trial the judge ... several times lost composure because of the liquidator's incompetence, she started raising her voice, became nervous, burst into laughter".

"The judge interrupted the parties, did not allow them to finish their thoughts, got distracted talking to the secretary, reviewed some documents".

"From the very moment when the defendant's representative got up to state his opinion, the judges started interrupting him, allegedly for clarifications, but in fact at the beginning they did not allow him to speak at all... And in general, the way they spoke – yelling and with contempt – did not correspond to ethical norms".

"The judge allowed himself to make inappropriate comments during the hearing [...]. In answer to the remark of the plaintiff's counsel that the previous hearing was postponed because the court needed to send an information request, the judge answered, "This is not my job, you should have reminded the girls and initiated it, I am supposed to listen to you, not to make information requests. I will write a ruling about the canmobileation of arrest. I am not going to pry evidence from you. Go to an appeal court, and then tell it to those academicians, here we do not have time to deal with this".

The monitors did not report any cases when the court made any comments and actions which showed disrespect to a person by race, sex, nationality, religion, political opinions, social and economic status, physical disabilities or other forms of discrimination.

In 86% of cases the judge did not get distracted from the hearing and listened to the parties attentively. In other cases, the monitors noted that the judges got distracted from the proceedings or were not paying attention. As a rule, those were members of panels, who got distracted by their mobile phones.



From the questionnaires of monitors about commercial courts (of different levels and regions):

“In the course of the trial while studying the motion of the plaintiff’s representative, the judge got distracted by talking to someone on the phone”.

“The judge twice answered phone calls during the hearing”.

“The judge did not listen to the plaintiff; he was typing something in his phone”.

In 91% of cases the participants of the trial observed ethical norms and due communication culture. On certain occasions the monitors noted violations of ethical norms and communication culture by the participants, specifically the overly emotional conduct of the parties.



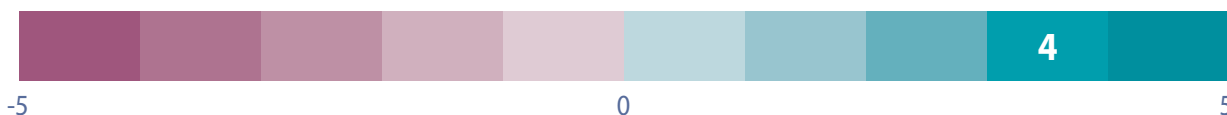
From the questionnaires of monitors about commercial courts:

“The representative of the plaintiff violated ethical norms and took actions which precluded the further conducting of the trial (the representative left the courtroom)”.

“The representatives of the plaintiff and the independent attendees showed disrespect (once an independent attendee made a threat against the representative of the defendant and the court), they made comments all the time, but the judge, in my opinion, did not take sufficient action to prevent this conduct”.

These indicators are worse than in other courts. As a rule, the representatives of the parties participate in commercial trials rather than the parties themselves, so the level of emotion should have been lower. This result may either be explained by an error (the difference between the ratings of courts of different jurisdictions by these indicators varies from 1 to 6 percent), or by the fact that the participants are mostly professional lawyers, and there might be tensions in case their interpretation of the law differs from that of the court.

CULTURE OF CONDUCTING THE TRIAL IN COMMERCIAL COURTS





REASONABLE TIME

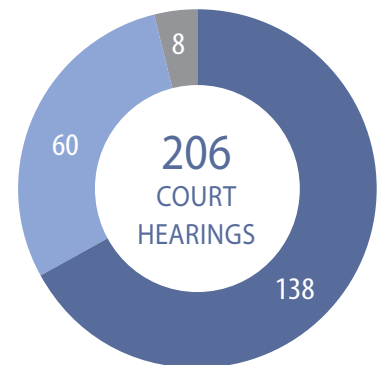
According to the assessment of the monitors, the court used efficient actions to encourage the parties to settle in 89% of those cases where it was necessary. This indicator is notably higher than in other courts. It may be connected to the fact that until mid-2001 the principle of “arbitration” worked in commercial courts (called courts of arbitration at that time), under which the court of arbitration was required to promote the settlement of the dispute between the parties. Even though this principle had been removed, the tradition to encourage the parties to settle may have remained.

Only in 17% of cases the court hearing started on time or with a delay of up to 5 minutes. Thus, the punctuality of the judges of commercial courts is lower than in other courts. The monitors often noted more than one hour delays in the beginning of the hearing of certain cases – in commercial courts of all instances.

ADMINISTRATIVE COURTS

The monitors visited **206 court hearings** in administrative courts, including:

- **138 hearings** – in district administrative courts;
- **60 hearings** – in administrative courts of appeal;
- **8 hearings** – in the High Administrative Court of Ukraine.



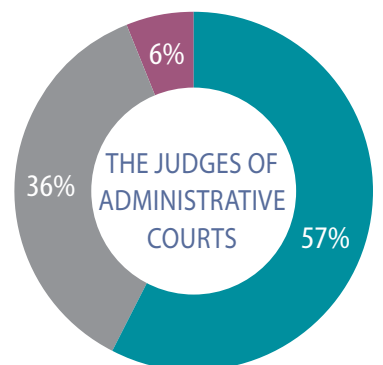
At the time of the monitoring, the administrative courts considered only administrative cases – disputes with local self-government bodies. However, certain types of administrative cases were considered by the first instance courts of general jurisdiction as administrative courts (these cases were not taken into account in this section of the report).



ADHERENCE TO GENERAL RULES OF PROCEDURE

According to the monitors, the judges of administrative courts conducted the hearings:

- 👍 **impeccably in 57 % of the cases;**
- ⊖ **with minor violations – in 36 % of the cases;**
- ⚠️ **with gross violations of the rules of procedure and the rights of the participants of the trial – in 6 % of the cases.**



The overall impression of the monitors regarding compliance with the procedural rules in administrative courts is much better than in general and commercial courts.

In 92% of cases the judge considered the case wearing a robe and a badge.

Judges of administrative courts verified the identity of the participants of the trial who arrived to the hearing in 98% of cases.

The confidentiality of a deliberations room was observed in 99% of cases. This is the best score compared to other courts. However, in some cases the courtroom served as the deliberations room, and the parties and the persons present at the hearing had to go wait in the corridor.



From the questionnaires of monitors about administrative courts:

“Since the case was being considered in the judges’ chambers, which consisted of two rooms, the secretary of the court hearing changed the sign on the entrance door to “Deliberations Room” and remained there”.

“As far as the case was considered in the judges’ chambers, the participants of the trial had to move into the corridor to provide for the confidentiality of the deliberations room”.



PUBLICITY

The courts posted information about the hearings on the web-site in 96% of cases which were monitored. The information on the web-site was not always complete and accurate. Hearing schedules were posted on the information board less often – in 91% of cases.

In some cases the monitors noted that the cases were posted without the time of the beginning of the hearing or with such time as “00 hrs. 00 min.”, or without the court address.



From the questionnaire of a monitor about an administrative court:

“The court has two buildings located far from each other – on the opposite edges of the city. I was able to find that out only later since the schedule of case hearings posted on the web-site did not contain information about the location. The list of cases was generic, without addresses specified. In terms of accessibility, restricted information creates obstacles in getting to the hearing. Under those conditions we were unable to visit some of the hearings”.

In 99% of cases the monitors were able to get inside the room where the case was being heard (courtrooms or judges’ chambers). In other words, the access to court hearings was free for all; however, in some cases the monitors noted the impossibility for all the interested parties to fit into the courtroom, since the case was in fact heard in the judges’ chambers.



From the questionnaires of monitors about administrative courts:

“In the course of the trial the requirements of openness were breached, the third parties were unable to enter the judges’ chambers as they were too small to fit all the persons willing to be present. At the same time, the court building had vacant courtrooms of bigger size”.

“The court guard tried to find out from the parties before the hearing whether they did not object to the presence of monitors in the trial”.

In 86% of cases the court heard the case in the courtroom. In other cases the judges' chambers were used. The monitors noted cases when during the consideration of the case in the judges' chambers at least one courtroom was vacant.

In 98% of cases, when opening the court hearing, the court announced which case was being considered; in 94% of cases the presiding judge announced the composition of the court at the hearing.

In 99% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings.

In near 100% of cases, when a court judgement was supposed to be pronounced, the court did this publicly. This is the best score compared to other courts. However, in one case the monitor noted the following:



From the questionnaire of a monitor about an administrative court:

"The judge said he would go to the deliberations room for 30-40 minutes to prepare the ruling, but in fact stayed in the room and let the parties go, agreeing to notify them of the result of the consideration of the case by phone".

However, in 61% of cases the judges of administrative courts did not show interest in who was present at the trial in addition to the parties to the case. In each tenth case the court established the identity of the parties by their IDs. This indicator is worse than in the general courts, but better than in commercial.

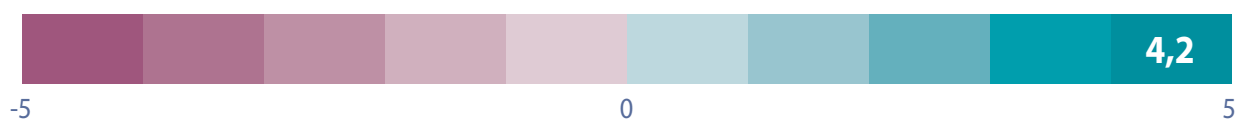


From the questionnaires of monitors about administrative courts:

"After having verified the monitor's ID, the court secretary kept his passport till the end of the court hearing".

"The judge asked the independent attendee to show his ID, asked many questions to find out in detail about the purpose of his presence. Besides, the judge made me introduce myself for the minutes of the hearing, and read out my rights and warned about responsibility for potential violations. In addition, the court room did not have separate seats for independent attendees".

PUBLICITY IN ADMINISTRATIVE COURTS



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 86% of cases the presiding judge informed the participants of the case about their right to demand the recusal of a judge.

In 99% of cases the monitors noted that the court did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights. Instances of the opposite took place less often than in general and commercial courts.

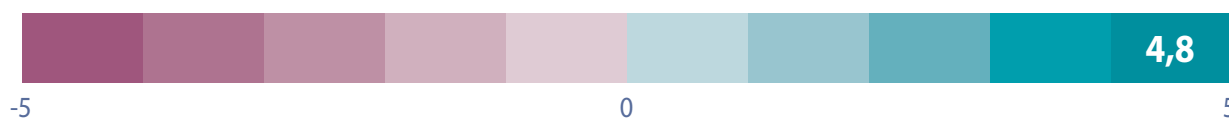
In all the cases the court heard the arguments of the participants of the trial when it was provided for by the procedural law.

The court paid sufficient attention to the arguments or motions of the participants of the trial, and provided justifications when turning them down (in 98% of all cases).

In 100% of cases the judges of administrative courts gave the participants the possibility to get familiarized with the evidence and other documents of the case provided they filed respective motions.

The monitors did not note any cases where the court restricted the participants of the trial in their right to participate in a court debate (in those hearings, where such debate took place), and not a single case when the court exercised moral pressure on the trial participants. In 99% of cases the court treated the parties without any bias.

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN ADMINISTRATIVE COURTS



CULTURE OF CONDUCTING THE TRIAL

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 84% of cases.

The monitors noted three cases when the court was rude or tactless and no cases when administrative court judges made discriminatory remarks or actions.



From the questionnaire of a monitor about an administrative court:

"The mother of the defendant was also present in the trial as an independent attendee. The judge told her in Russian, "You are nobody here, sit down and shut up"."

In 87% of cases the judge did not get distracted from the hearing and listened to the parties attentively. In several cases the monitors noted that the judges got distracted or became inattentive (mostly judges in panels). In several cases, the monitors reported that the judges got distracted by court staffers who came to the courtroom to ask the judge to sign some documents or solve some issues.



From the questionnaire of a monitor about an administrative court:

"The judge chewed gum all the time, which was unacceptable and unethical, read something, did not listen to the parties. The other judge did not listen to the parties, went about his own business, leafed through some papers, read, and looked into the window"."

"The trial was going on in a quite speedy way as there were many other cases scheduled for that day, the presiding judge spoke in a very low voice and it was hard to hear him. ... Only the presiding judge participated in the hearing, the other professional judges were "daydreaming" in their chairs".

In 95% of cases the participants of the trial observed ethical norms and due communication culture. On certain occasions the monitors noted violations of ethical norms and communication culture by the participants. The judges mostly failed to take any actions against the violators of order in the course of the hearing.



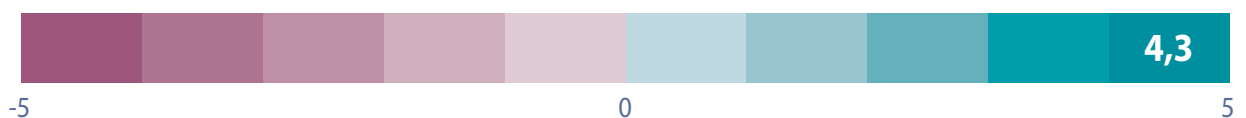
From the questionnaires of monitors about administrative courts:

"The plaintiff interrupted the defendant's representative and the judge several times, but the judge did not react".

"The plaintiff kept saying how the court should act and which judgements it should make, and threatened to demand the recusal of the judge all the time. When the judge started asking questions, the plaintiff, without listening to the end of the question, raised his voice and started threatening recusal once again".

"While the judge was in the deliberations room, the plaintiff (representative of the North Operative Command) started making threats to me [the monitor]".

CULTURE OF CONDUCTING THE TRIAL IN ADMINISTRATIVE COURTS



REASONABLE TIME

According to the monitors' assessment, the judges of administrative courts did not take any efficient actions to encourage the parties to settle. This indicator was strikingly different from other courts. It is possible to assume that the reason for that is the lack of readiness of state institutions' representatives to settle the disputes.

In 20% of cases the court hearing started on time or with a delay of up to 5 minutes. The monitors often noted delays in the beginning of the trial of one hour and more.



From the questionnaires of monitors about administrative courts:

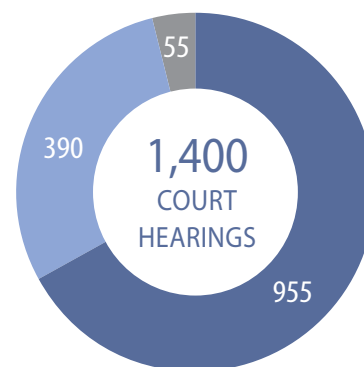
"... the judge ... delayed the beginning of the trial and made elderly people and women with children wait (standing!) from 09:10 till 11:44".

"The hearing started 3.5 hours later than planned".

COURTS OF DIFFERENT INSTANCES

In the course of trial monitoring the monitors visited:

- **955 (68 %) hearings** in first instance courts;
- **390 (28 %) hearings** in courts of appeal;
- **55 hearings (4 %)** in three high specialized courts and the Supreme Court of Ukraine.



The findings of the monitoring showed, that the higher the instance – the fewer violations the monitors identified.



ADHERENCE TO GENERAL RULES OF PROCEDURE

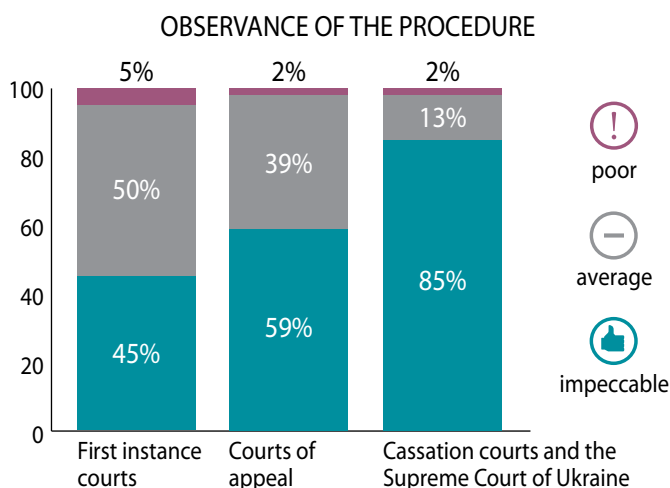


According to the monitors, the judges conducted the hearings impeccably:

- in first instance courts – in **45 %** of cases;
- in courts of appeal – **59 %**,
- in cassation courts and the Supreme Court – **85 %**.

The monitors detected gross violations in **5%** of cases in first instance courts, and in **2%** of cases considered in higher instances.

The highest number of cases when judges considered the case without wearing a robe and a badge was noted in first instance courts – 16% of the monitored hearings. In courts of appeal this was noted in 9% of cases. Unlike lower level courts, the judges of the Supreme Court of Ukraine and the high specialized courts all wore robes and badges.



PUBLICITY

Hearings schedules were posted:

On the web-site:

- in **93%** of cases, where monitoring was conducted in first instance courts,
- in **98%** of cases – in courts of appeal;
- in **100%** of cases – in high specialized courts and the Supreme Court of Ukraine.

On the court's information board:

- in 73% of cases in first instance courts;
- in 93% in courts of appeal;
- in 98% in courts of higher level.

However, the high courts have the practice of scheduling all cases for one and the same time, which complicated the attendance by the monitors of those hearings they wanted to participate in. With this type of notification the monitors were unable to plan their time. The parties to the case and their representatives have similar issues, and sometimes spend the whole day in court.

In addition, only in 75% of cases the hearings schedule was accurate in first instance courts, and in 86% of cases – in courts of appeal.

In 98% of cases the monitors were able to get inside the room where the hearing of the case took place in first instance courts; in 99% – in courts of appeal, 100% – in courts of higher level.

The biggest challenge in cassation courts is related to the lengthy waiting at the entrance to the court building. One of the monitors noted he had to wait for almost half an hour at the entrance to the High Specialized Court of Ukraine for Civil and Criminal Cases before being escorted to the courtroom by a court guard. Our monitors did not receive any clear explanations why they needed to wait for the court guard at the entrance to the court building.

In 74% of cases the first instance court considered cases in the court hearing room, the judges of higher courts considered cases only in courtrooms.

The judges did not take interest in who was present at the hearing except the parties to the case:

- in 62% of cases in first instance courts;
- in 74% – in courts of appeal;
- in 83% – in courts of higher instance.

When opening the hearing, the courts announced the case that was being heard:

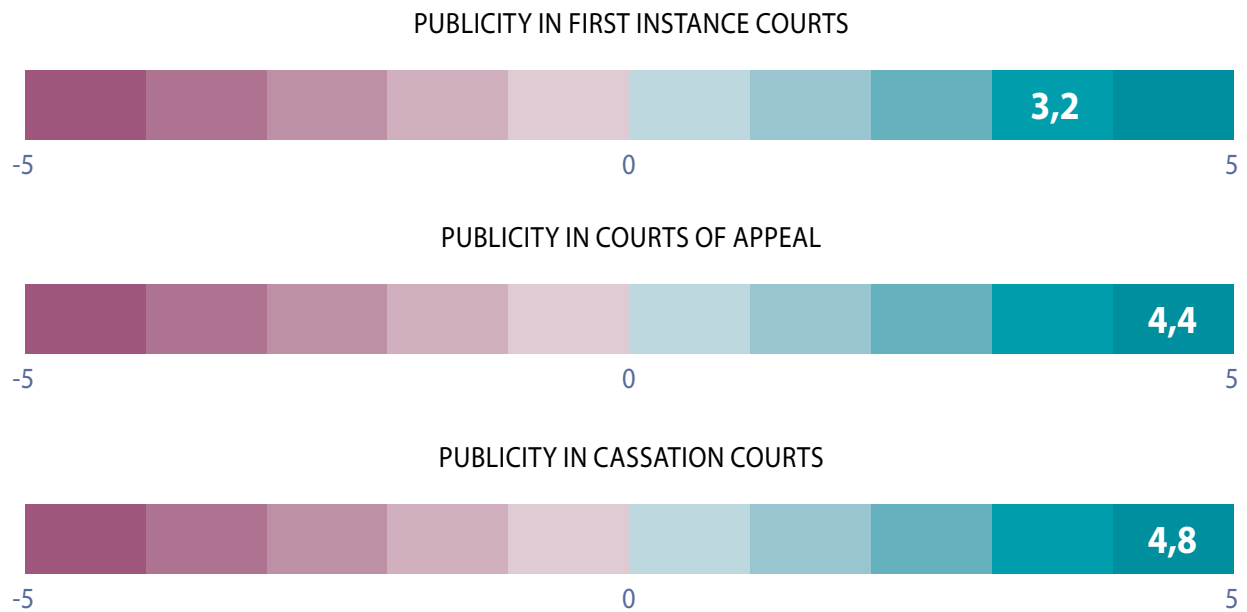
- in 88% of cases in first instance courts;
- in 95% – in courts of appeal;
- in 96% – in courts of higher instance.

Regarding the announcement by the presiding judge of the composition of the court, this requirement was observed:

- in 74% of cases in first instance courts;
- in 93% – in courts of appeal;
- in 96% – in courts of higher instance.

The judges of first instance courts publicly pronounced the court judgement in 90% of the court hearings in which this judgement was supposed to be pronounced, and the judges of higher instances – in 100% of cases. In 4% of cases at the courts of appeal the monitors noted that the court judgement was pronounced not clearly and was hard to understand.

At the same time, regarding the cassation instance the monitors reported that the judge pronounced the court judgement in a low voice and not clearly only in one case.



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 99% of cases in first and appeal instances there were no reports of the court taking a biased attitude towards one of the parties. In cassation courts there was one case when the monitor reported that the court treated one of the parties better than the other one.

In the predominant number of cases the monitors did not report the judge failing to take into account the arguments and motions of the parties or third parties in the case or their turning down without due justification. However, such problems exist in almost 5% of cases in courts of appeal. At the level of first instance courts this rate amounted to only 2%, while at higher courts there were no instances of this kind at all.

There are practically no violations regarding the restriction of the parties in their right to participate in a court debate or get familiarized with documents and evidence in the case. These rights are observed in the courts of all instances. However, in courts of appeal there were cases when the court restricted the right to participate in the court debate – 3% of cases.

There were also no cases of providing one party with unjustified advantages over the other.

With regard to explaining the right to demand the recusal of a judge, this requirement was observed in first instance courts in 77% of cases, in courts of appeal – in 88%, in courts of higher level – in 94%.

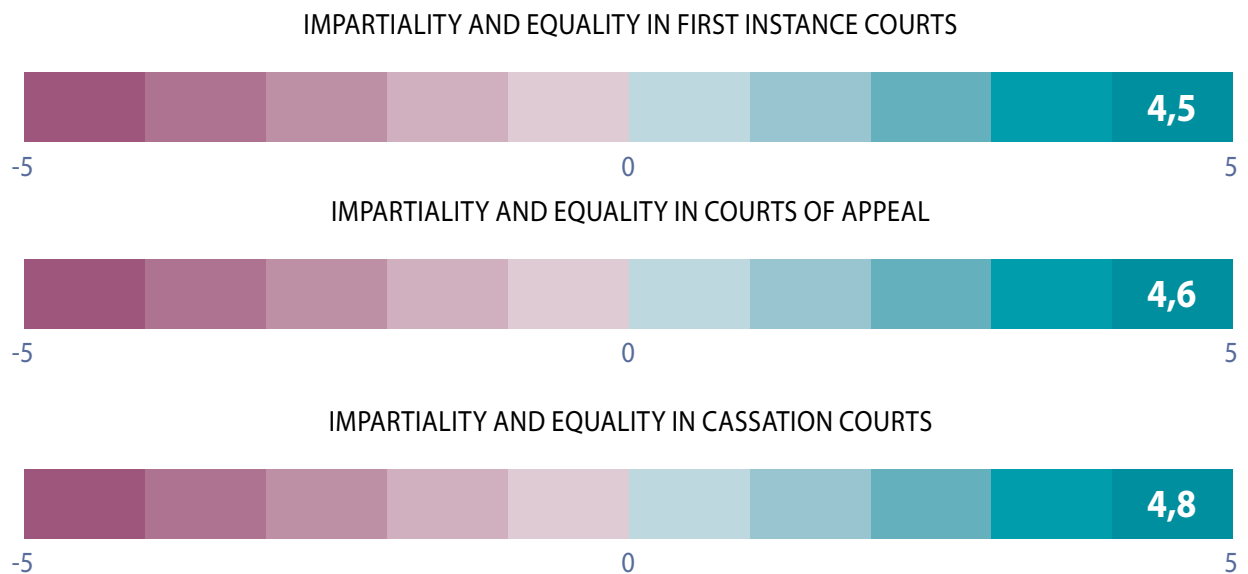
As a rule, the monitors noted that the court did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights, in first instance courts – in 94% of cases, in courts of appeal – in 95%, in courts of higher level – in 100%.

Regarding hearing the arguments of the participants of the trial in all the cases when it was provided for by the procedural law, this requirement was observed in first instance courts and courts of appeal in 98% of cases, and in 100% of cases in higher level courts.

The judges of first instance courts gave the participants the possibility to get familiarized with the evidence and other documents in the case provided they filed respective motions in 93% of cases, courts of appeal – in 97%. The monitors did not register violations of this right in courts of higher level.

The result of the monitoring of the criterion “absence of moral pressure on the trial participants” is quite unexpected. The relationship here is the opposite – the higher the instance, the more violations were detected: in first instance courts – 2% of cases, in courts of appeal – 3%, in courts of higher level – 8%.

Regarding impartiality, this requirement was observed in first and higher instance courts in 98% of cases.



CULTURE OF CONDUCTING THE TRIAL

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 78% of cases in first instance courts, in 75% of cases in courts of appeal and in 92% of cases in courts of higher level.

The highest number of cases where the judges got distracted in the course of the trial or did not pay attention to what the parties said, was observed in courts of appeal – approximately 12%. This conduct most often involved those judges who were members of panels, during the trial they often reviewed other case files or went about some other business not related to the hearing. Interestingly, there were no cases of the kind in cassation courts, while the judges of first instance courts got distracted or did not listen to the parties attentively in 7% of cases.

Almost in 5% of cases in the courts of all levels the monitors noted rudeness, tactlessness, contempt to the participants of the trial or other judicial misconduct. This score is the same in courts of different instances.

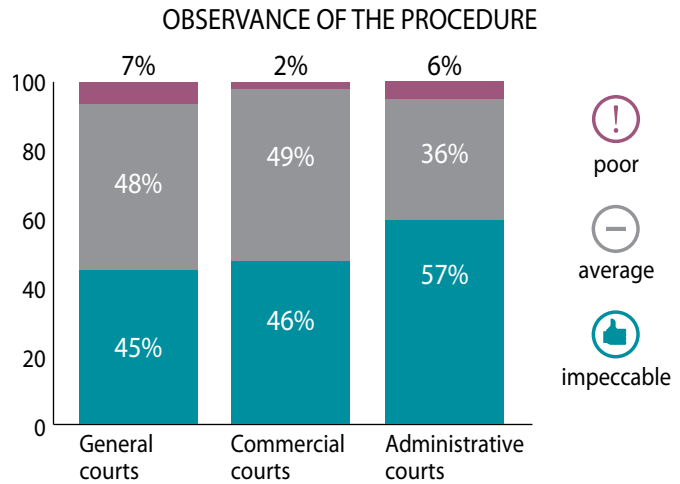
In addition, in approximately 5% of cases in the courts of all instances the parties or other participants of the trial demonstrated improper conduct in the course of the hearing. No specifics of this score have been established depending on the instance.

CONCLUSIONS

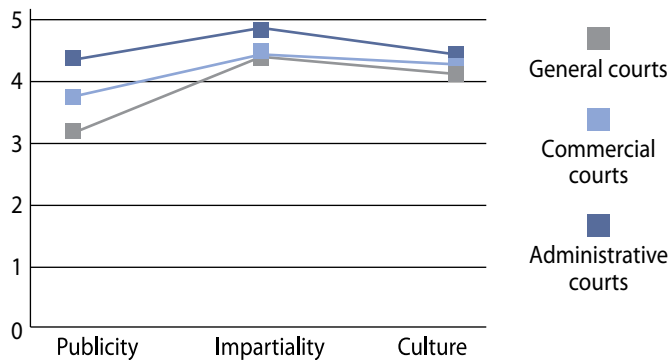
The findings of the monitoring show that the administrative courts observe the rules of procedure more often than the courts of general and commercial jurisdictions.

The administrative courts also demonstrated higher scores of publicity, impartiality and culture of conducting judicial proceedings. It is important to note that commercial courts are the least ready for the publicity of judicial proceedings.

Despite certain stereotypes related to the “elite” nature of commercial courts, the questionnaires of monitors did not confirm that the judges of these courts and trial participants demonstrate better conduct standards than in other courts.



OBSERVANCE BY THE COURT OF THE PRINCIPLES OF PUBLICITY, IMPARTIALITY, EQUALITY OF ARMS AND THE CULTURE OF CONDUCTING JUDICIAL PROCEEDINGS



A striking difference in the application of settlement procedures by the courts of different jurisdictions became clear. According to the monitors, the first instance courts took efficient measures to encourage the parties to settle in 61% of those cases where it was needed. Commercial courts did the same in 89% of cases. At the same time, in administrative courts the monitors did not note any cases of the kind despite the existence of this concept in the respective procedural law. This phenomenon calls for further investigation (for example, by verifying the efficiency of settlement

activities based on the registry of court judgements or court statistics) and study. In case this conclusion is confirmed, the experience of commercial courts regarding settlement might be of interest to the courts of other jurisdictions.

The higher the instance, the fewer violations the monitors noticed.



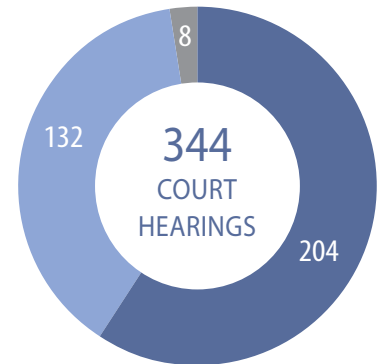
FINDINGS OF THE MONITORING BY JURISDICTION



CIVIL CASES




The monitors visited **344 civil case hearings** all over Ukraine:

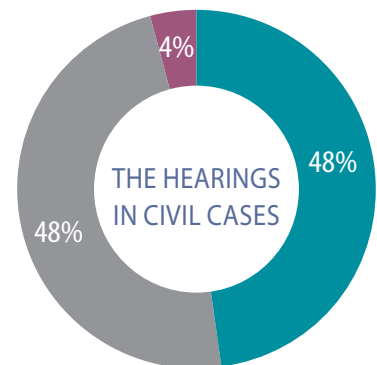
- in first instance courts – **204 hearings**;
- in courts of appeal – **132 hearings**,
- in the Supreme Court of Ukraine – **8 hearings**.



ADHERENCE TO GENERAL RULES OF PROCEDURE

According to the monitors, the judges conducted the hearings in civil cases:

-  impeccably – in **48 %** of cases;
-  with minor violations – in **48 %** of cases;
-  with gross violations of the rules of procedure and/or participants' rights – in **4 %** of cases.



Thus, the general impression of the observance of procedure rules in civil cases was similar to that in criminal and commercial cases.

In 82% of cases the judge considered the case wearing a robe and a badge. This is the lowest score, which was also given to administrative offence cases. The judges usually did not wear the robe and the badge while hearing cases in their chambers as opposed to courtrooms.



From the questionnaire of a monitor on a civil case:

"The judge did not wear a robe and a badge. The consideration of the case looked more like a common discussion, off the record, and with advice given to apply for a reduction of the penalty".

Judges in civil cases verified the identity of the participants of the trial who arrived to the hearing in 94% of cases.

The confidentiality of a deliberations room was observed in 95% of cases. As far as in most cases the judges used their chambers as a deliberations room, this led to various violations of the secret of the deliberations room.



From the questionnaire of a monitor on a civil case:

"While the judge was in the deliberations room, people came in and left his office all the time".

"While deliberating, the judge stayed in his office together with the court secretary".



PUBLICITY

The courts posted information about the hearings on the web-site in 98% of civil cases which were monitored. The information on the web-site was not always complete and accurate. In 4% of cases the information contained incorrect names of the judges, summary of the case and court buildings.

Hearing schedules were posted on the information board less often – in 87% of cases. These rates are higher than in other case types (only hearing schedule in administrative cases were posted on the information board more often). At the same time, in 2% of cases the information on the case was incorrect.

The general tendency shows that when the case is not posted on the information board, there is information about it on the court's web-site. Only in 1% of cases information on civil cases was absent both on the information board and on the court's web-site.



From the questionnaire of a monitor on a civil case:

"This judge conducted case hearings not according to a schedule posted on the web-site or the information board, but based on some unknown principle. I wanted to be present at one such hearing, but the secretary asked me to wait. Afterwards, she invited me in, but the judge informed me that the parties to the case had objected to the presence of monitors. I was forced to leave without due justification".

In 98% of cases the monitors were able to get inside the room where the hearing of the civil case took place (a courtroom or judges' chambers). However, in some cases the monitors faced obstacles to their participation in open court hearings.



From the questionnaire of a monitor on a civil case:

"The secretary was rude in answer to my request to be present as an independent attendee, she closed the doors in my face and refused to answer my question regarding where the chief judge of the court would hear the case. I was forced to watch the parties and go into the room together with them. The secretary yelled at me again in a rude manner, saying that I was not a party to the case, and without permission of the judge (the chief judge of the court) I was not allowed to participate. Thus, I had to ask for the judge's permission standing in the doorway to the courtroom where the parties were already present – the judge did not object".

In 73% of cases the judge considered the case in the courtroom.

In each fifth case which was heard in the judges' chambers, the monitors noted the existence of vacant courtrooms.



From the questionnaire of a monitor on a civil case:

"The case was considered in the judges' chambers; however, the court has enough court rooms, part of which were vacant at the time of hearing of the case".

In most cases (70%) the judges did not take interest in who was present at the hearing of a civil case in addition to the trial participants. This indicator is much better than in other case types (except criminal). In other cases

the judges verbally asked who was present at the hearing. In 3% of cases the judges required the persons present at the open court hearing to present IDs.



From the questionnaire of a monitor on a civil case:

“With regard to the participation of an independent attendee – the judge did not prevent me from participating in the hearing, but she asked twice whom I represented, and when she understood I were just a visitor – a member of the community (which I stated to her right away) – she started asking why I chose this case and not some other, why I decided to visit a case presided by her rather than some other judge, and asked me to show her my passport. She then told me where to sit. During the whole hearing she kept looking at me. At the end of the hearing I (the monitor) was the first one to leave, as I was seated near the doors, the judge used that to request the parties to stay for a moment, the representatives of the parties left the room 12 minutes later”.

In 91% of cases, when opening the court hearing, the court announced which case was being considered; in 83% of cases the presiding judge announced the composition of the court at the hearing.

In 99% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings.

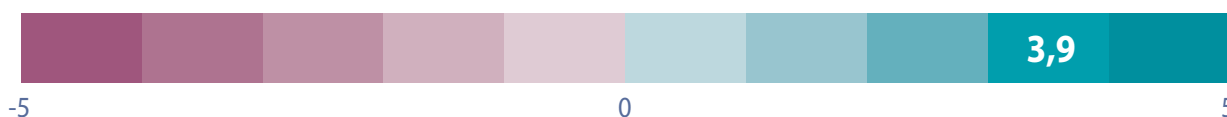
In 99% of cases, when a court judgement was supposed to be pronounced, the court did this publicly. As a rule, the judges pronounced only the introduction and the dispositive parts of the judgement. At the same time, the monitors made remarks regarding the way the judgement was pronounced.



From the questionnaire of a monitor on a civil case:

“The judge pronounced the judgement in such a way that you could make no sense of its content at all”.

PUBLICITY IN CIVIL CASES



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 73% of civil cases the presiding judge informed the parties of their right to demand the recusal of a judge.

In 92% of cases the monitors reported the judge did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights.

In 96% of cases the judge heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law.

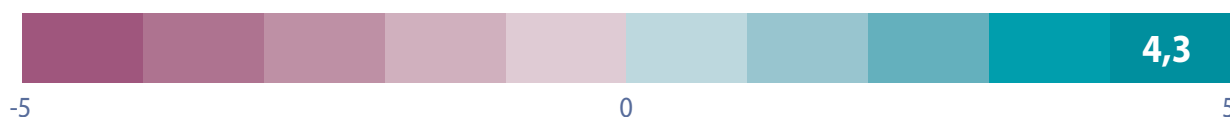
In 96% of cases the judge paid attention to the arguments and motions of the parties, and did not turn them down without due justification.

In 96% of cases the judge did not restrict the parties in their right to get familiarized with documents and evidence in the case provided they filed respective motions.

In 96% of cases the judge did not restrict the parties in their right to participate in a court debate (in those hearings where the debate took place).

In 96% of cases the judge did not exercise any moral pressure on the trial participants, and did not treat one of the parties better than the other.

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN CIVIL CASES



CULTURE OF CONDUCTING THE TRIAL

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 71% of civil cases. This is the lowest rate compared to other courts.

In 91% of cases the court did not allow rudeness, tactlessness, contempt to the participants of the trial, and demonstrated impeccable conduct. However, there were other instances.



From the questionnaire of a monitor on a civil case:

"The judge yelled at the parties".

In 99% of cases the court did not make any comments and actions which showed disrespect to a person by race, sex, nationality, religion, political opinions, social and economic status, physical disabilities or other forms of discrimination.

In 89% of cases the judge did not get distracted from the hearing and listened to the parties attentively.



From the questionnaires of monitors on civil cases:

"The presiding judge listened attentively, while the others [judges] worked on something on their laptops".

"The judges listened to the representatives inattentively. They talked to each other from the very beginning of the hearing. They did it so loudly that they interrupted the representative's arguments. When the representative of the plaintiff justified his position, they did not pay any attention at all. Having understood this, the representative of the plaintiff made a pause so that the judges would pay attention to him. Instead, the presiding judge, without abandoning her lively discussion, automatically asked the representative of the defendant to state his opinion. However, the discussion between the judges was so loud and intense that they hardly paid attention to the representative of the defendant as well".

In 93% of civil cases the participants of the trial observed ethical norms and due communication culture.



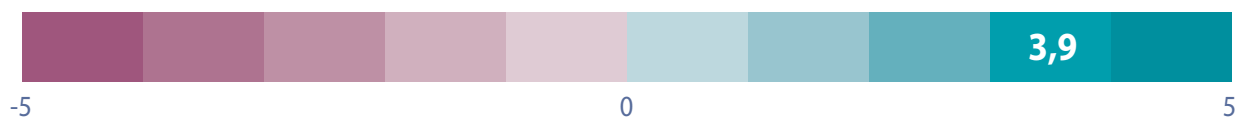
From the questionnaires of monitors on civil cases:

"The parties openly quarreled with each other, paying no attention to the judge. The defendants made discriminatory remarks, and the court did not prevent this".

"The parties interrupted each other many times, the judge tried to calm them down. The defendant answered the court's questions without standing up; the judge did not react to that. The defendant's mobile phone rang loudly, the judge did not react".

In general, the indicators in these criteria in civil cases are worse than in other case types.

CULTURE OF CONDUCTING THE TRIAL IN CIVIL CASES



REASONABLE TIME

According to the assessment of the monitors, the court used efficient actions to encourage the parties to settle only in 62% of those cases where it was necessary.

Only in 14% of cases the court hearing started on time or with a delay of up to 5 minutes. The average delay in the cases visited by the monitors amounted to 31 minutes. The duration of the hearing was 29 minutes on average.

Six cases were considered earlier than posted on the information board and on the court's web-site. The hearings in these cases started from 6 to 30 minutes ahead of schedule, and sometimes ended before the time scheduled for their beginning.

From all courts visited by the monitors, the courts of appeal more often delayed the beginning of the hearings for more than an hour (34 civil cases). In the first place, these violations are the result of the scheduling by courts of appeal of several cases for the same time. In reality, these cases may not be heard simultaneously, and as a result delays in the schedule occur.



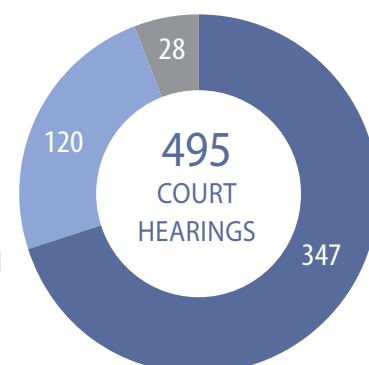
From the questionnaire of a monitor on a civil case:

"The court hearing started with a 33-minute delay. The delay was caused by scheduling issues in the first part of the day, which caused the judges to go to lunch later and start their work after lunch later".

CRIMINAL CASES

The monitors visited **495 criminal case hearings** all around Ukraine:

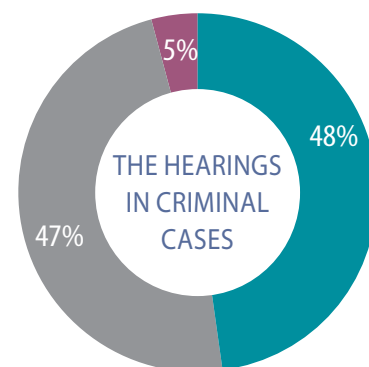
- in first instance courts – **347 hearings**,
- in courts of appeal – **120 hearings**,
- in the High Specialized Court of Ukraine for Civil and Criminal Cases and the Supreme Court of Ukraine – **28 hearings**.



ADHERENCE TO GENERAL RULES OF PROCEDURE

According to the monitors, the judges conducted the hearings in criminal cases:

-  impeccably – in **48 %** of cases;
-  with minor violations – in **47 %** of cases;
-  with gross violations of the rules of procedure and/or participants' rights – in **5 %** of cases.



In 90% of cases the judge considered the case wearing a robe and a badge, which is the best score as well as for the administrative courts.

Judges in criminal cases verified the identity of the participants of the trial who arrived to the hearing in 94% of cases.

The confidentiality of a deliberations room was observed in 93% of cases.



PUBLICITY

The courts posted information about the hearings on the web-site in 91% of criminal cases which were monitored.

Hearing schedules were posted on the information board less often – in 78% of cases.

In 99% of cases the monitors were able to get inside the room where the hearing of the criminal case took place (a courtroom or judges' chambers).

In 90% of cases the judge considered the criminal case in the courtroom, which is the best score compared to other case types.

In 75% of cases the judges did not take interest in who was present at the hearing of a criminal case in addition to the trial participants. However, in other cases the judges required the persons present at the open court hearing to identify themselves, sometimes even to present passports.



From the questionnaire of a monitor on a criminal case:

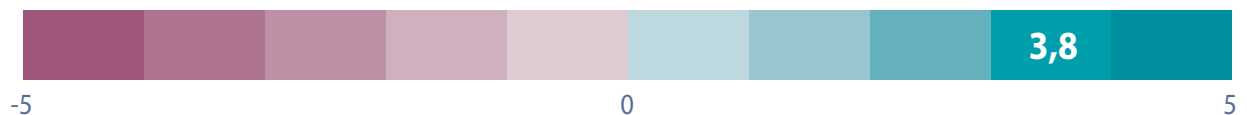
"The court verified the identity of an independent attendee by passport and asked to explain the reasons for his participation in the hearing".

In 93% of cases, when opening the court hearing, the court announced which case was being considered; in 83% of cases the presiding judge announced the composition of the court at the hearing.

In 99% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings.

In 89% of cases, when a court judgement was supposed to be pronounced, the court did this publicly.

PUBLICITY IN CRIMINAL CASES



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 73% of criminal cases the presiding judge informed the parties of their right to demand the recusal of a judge.

In 95% of cases the monitors reported that the judge did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights.

In 99% of criminal cases the judge heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law.

In 98% of cases the judge paid attention to the arguments and motions of the parties, and did not turn them down without due justification.

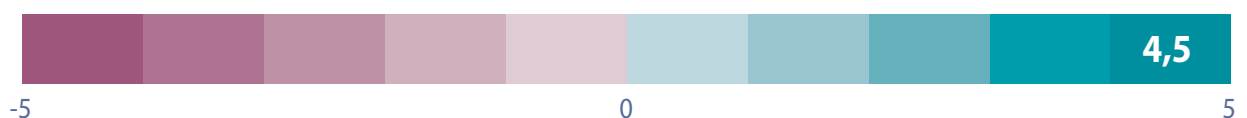
In 95% of cases the judge allowed the parties to get familiarized with documents and evidence in the case provided they filed respective motions.

The judge did not restrict the parties in their right to participate in a court debate (in those hearings where the debate took place).

In 97% of criminal cases the judge did not exercise any moral pressure on the trial participants.

In 99% of cases the court behaved impartially.

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN CRIMINAL CASES





CULTURE OF CONDUCTING THE TRIAL.

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 79% of criminal cases.

In 96% of cases the judge did not allow rudeness, tactlessness, contempt to the participants of the trial, and demonstrated impeccable conduct.

The judge did not make any discriminatory comments and actions.

In 92% of cases the judge did not get distracted from the hearing and listened to the parties attentively. However, there were opposite examples – usually when the case was heard by a panel.

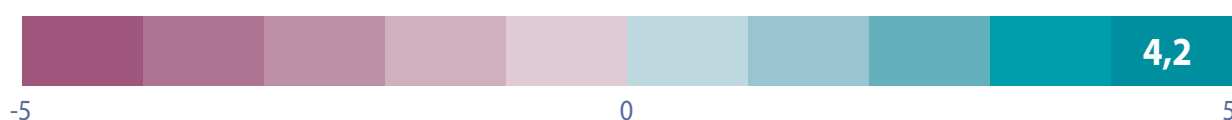


From the questionnaire of a monitor on a criminal case:

“One of the judges fell asleep during the hearing”.

In 93% of cases the participants of the criminal trial observed ethical norms and due communication culture.

CULTURE OF CONDUCTING THE TRIAL IN CRIMINAL CASES



REASONABLE TIME

According to the assessment of the monitors, the court used efficient actions to encourage the parties to settle in 75% of those cases where it was necessary.

In 23% of cases the court hearing started on time or with a delay of up to 5 minutes.



From the questionnaire of a monitor on a criminal case:

“The beginning of the hearing was almost 2 hours late. During that time the parties first waited in the corridor (for an hour and a half) and then in the courtroom (another half an hour), while the judge stayed in his office and attended to other cases”.



SPECIFICS OF CONSIDERATION OF CRIMINAL CASES

In addition, the monitors identified specific features of the criminal proceedings. *Inter alia*, it was established that the judges seldom read out their rights to the participants of criminal proceedings. In 20% of cases the

judges failed to inform the trial participants of their rights and obligations. At the same time, the monitors noted positive examples.



From the questionnaire of a monitor on a criminal case:

“The judge explained to the defendant her rights quite in detail, taking into account that she did not have any defense counsel, her old age (a pensioner) and evident disability (used a cane to walk)”.

In approximately each fourth case both in first instance courts and courts of appeal the substance of the accusation was not explained to the defendant.

A key problem is that the judges usually do not protect the physical immunity of persons. In 7 cases the monitors witnessed the defendant making claims about the use of physical violence or threat of such violence against him/her; however, the judge took any action to verify this statement only once. The other 6 claims remained unattended. At the same time, two defendants clearly had physical injuries which could mean that violence was used against them, but the judges did not react to those facts in any way.

In 15% of criminal cases the defendants were not located close to their counsel, as they were locked in booths or cages, and also because of the small size of the rooms where the hearings took place. This did not provide for efficient defense.



From the questionnaires of monitors on criminal cases:

“The attorney was sitting very far from the accused, and in fact her presence was just a formality”.

“The attorney was unable to sit near the defendant, since he was locked in a cage”.

Certain monitoring data showed an accusatory bias in criminal proceedings. Out of 145 judgements made in the course of the court hearings where monitors were present, 90 judgements (62%) were in favour of the prosecution (prosecutors and investigators). The judges and investigative judges agreed with the opinion of the defense in 45 judgements (31%). Other 10 judgements (7%) approved guilty pleas and settlement agreements.

The findings of the monitoring showed that in 87% of cases the judges observed the presumption of innocence, the right to defense and other specific rights of the parties in criminal proceedings. The monitors noted a number of cases where the court clearly violated the presumption of innocence. *Inter alia*, according to one questionnaire, the judge, before making her judgement, asked the defendant why he was killing people.



From the questionnaire of a monitor on a criminal case:

“After the hearing was over, the judge addressed the defendant, “I hope to live long enough to see you locked in jail for 10 years””.

In addition, some of the established facts showed the bias of certain judges.

In the majority of cases in first instance courts and courts of appeal the defendants were seated in a glass booth or a barred cage. However, the defendants were aggressive only in two cases. In fact, in one of those cases the defendant was sitting on a bench outside the cage or glass booth.

The monitors found out that the suspects and accused persons in each seventh case (14%) were kept in a barred cage in the courtroom. At the same time, the requirements of the Criminal Procedure Code and the respective practice of the European Court of Human Rights do not allow keeping persons in barred cages.

The absence of need for cages is confirmed by the fact that 98% of the defendants did not show any signs of aggression and could safely stay near their defense counsel without any danger to other persons present in the hearing room.

As a rule, in first instance courts and courts of appeal the defendant was handcuffed only while being escorted into the courtroom. In one case in a first instance court the defendant was handcuffed for the whole duration of the hearing.



From the questionnaire of a monitor on a criminal case (on execution of the sentence):

"The convict stayed handcuffed for the whole duration of the hearing. He was also forced to stand all the time since he was not provided with the possibility to sit [the court heard the case in the judges' chambers]".

As a rule, the judges follow the rules of interrogating witnesses in criminal proceedings.



From the questionnaire of a monitor on a criminal case:

"In general, the hearing took place while all the norms and standards were observed, the judge was very attentive during the hearing and took notes, specified facts provided by the witness and tried to calm down the witness who became too agitated".

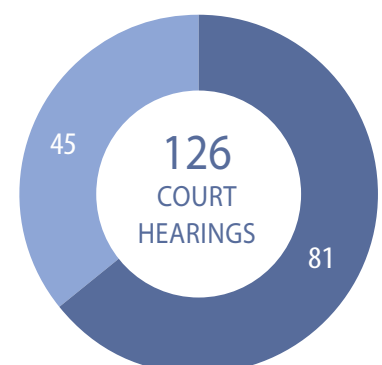
According to the provisions of the Criminal Procedure Code, the testimonies of witnesses are one of the sources of evidence in criminal proceedings and must be provided directly in court. The minutes of witness's interrogations conducted at the pre-trial stage should not be taken into account by the court. The conducting of the interrogation of witnesses according to the requirements of the law has a decisive influence on the outcomes of criminal proceedings.

The judges mostly comply with this requirement. However, in 6 cases the monitors noted that the court, in contrary to the law, did not remove a witness who arrived before the beginning of the interrogation from the courtroom.

ADMINISTRATIVE OFFENCE CASES

The monitors visited a total of **126 court hearings** where the cases on administrative offences were considered.

- In first instance courts they visited **81 hearings**,
- while in courts of appeal – **45 hearings**.

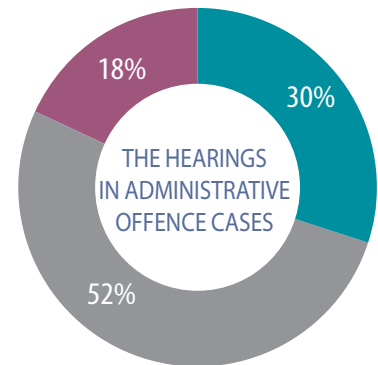




ADHERENCE TO GENERAL RULES OF PROCEDURE

The monitors concluded that the judges conducted the hearings in administrative offence cases:

-  impeccably – in **30 %** of cases,
-  with minor violations – in **52 %** of cases,
-  with gross violations of the rules of procedure and/or participants' rights – in **18 %** of cases.



This is the worst rate compared to other case types. Sometimes the monitors noted that the judges “delegated” their authority to hear cases on administrative offences to their assistants or secretaries of the court.



From the questionnaire of a monitor on an administrative offence case:

“As a matter of fact, it was the assistant (or secretary) of the judge who conducted the hearing. It was not announced in the course of the hearing which case was being heard, by which composition of the court, which rights and obligations the person, who was being brought to justice for an administrative offence, had”.

In 82% of cases the judge considered the case wearing a robe and a badge. A monitor once witnessed the judge starting the consideration of an administrative offence case without a robe and a badge, and then, without announcing a break, in presence of the participants of the trial he started putting his robe on in a careless way.

The judges verified the identity of the persons, who arrived to the court hearings in administrative offence cases in 88% of cases based on IDs.

The Code of Administrative Offences does not establish requirements to observe the confidentiality of the deliberations room, thus, we do not include data on this criterion.



PUBLICITY

The schedule of hearings in administrative offence cases was posted on the web-site of the court in 92% of cases monitored.

The information about cases was posted on the court's information board less often – in 73% of cases.

In 97% of cases the monitors were allowed into the room where the consideration of the administrative offence case took place (courtroom or judges' chambers). In one case the judge requested the monitor to leave, stating he was not considering a case but just having a conversation with people, and in another one – the judge remarked to the monitor that he should have applied for permission to visit the hearing.

In 60% of cases the courts heard the cases in the courtroom, which is the worst score compared to other case types.



From the questionnaire of a monitor on an administrative offence case:

"The hearing took place in the judges' chambers despite the fact the courtrooms were vacant".

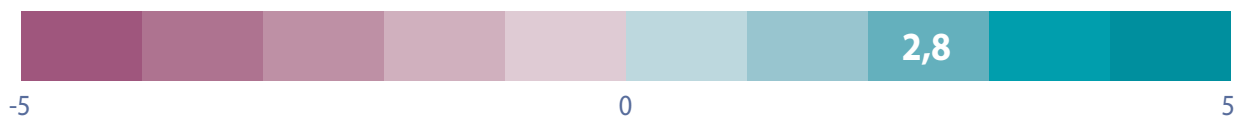
In 52% of cases the judges were not interested in who else, except the parties to the administrative offence case, came to the hearing.

In 73% of cases, when opening the court hearing, the court announced which case was being considered; in 65% of cases the presiding judge announced the composition of the court at the hearing.

The monitors had no obstacles from the court in making audio recordings of the proceedings in administrative offence cases.

In 89% of cases, when a court judgement was supposed to be pronounced, the court did this publicly. There were several cases when the judge did not leave for the deliberations room and announced his judgement without reading aloud the text of the ruling on the administrative offence. In two cases, the judgement was not announced at the end of the hearing, and only afterwards the respective rulings were published in the Unified State Registry of Court judgements.

PUBLICITY IN CASES ON ADMINISTRATIVE OFFENCES



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 87% of cases the presiding judge informed the parties of their right to demand the recusal of a judge.

In 96% of cases the monitors reported that the judge did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights.

In 99% of cases the judge heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law.

In 96% the judge paid attention to the arguments and motions of the parties to the case, and did not turn them down without due justification.

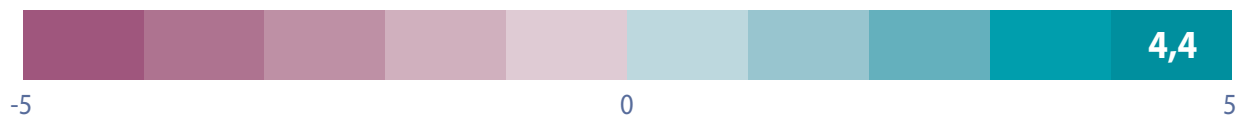
In 88% of cases the judge allowed the parties to get familiarized with documents and evidence in the case provided they filed respective motions.

The law does not provide for debate in administrative offence cases, thus, this indicator was not measured.

In 99% of cases the judge did not exercise any moral pressure on the trial participants. However, there were cases when the judge tried to deceive the person who was being brought to justice for an administrative offence to make him confess of committing the administrative offence. The judge said that this confession would serve as grounds for not bringing the person to justice for a criminal or disciplinary offence.

As a rule, the court did not act in a biased manner in the course of considering these cases.

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN ADMINISTRATIVE OFFENCE CASES



CULTURE OF CONDUCTING THE TRIAL

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 77% of administrative offence cases.



From the questionnaire of a monitor on an administrative offence case:

"The judge did not turn off the sound on her phone and kept receiving messages during the whole hearing".

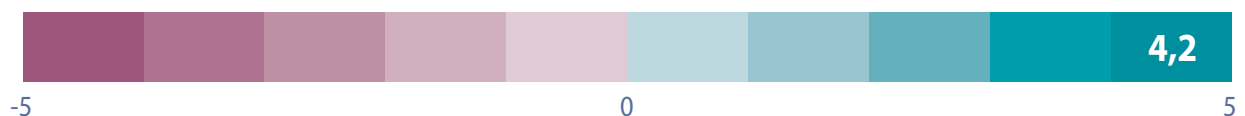
In 97% of cases the court did not allow rudeness, tactlessness, contempt to the participants of the trial, and demonstrated impeccable conduct.

The court did not make any discriminatory comments and actions.

In 92% of cases the judge did not get distracted from the hearing and listened to the parties attentively.

In 93% of cases the participants of the trial observed ethical norms and due communication culture.

CULTURE OF CONDUCTING THE TRIAL IN CASES ON ADMINISTRATIVE OFFENCES



REASONABLE TIME

According to the monitors, in 24% of cases the court hearing started on time or with a delay of no more than 5 minutes. This is the best score among all other cases. However, in 39% of cases in first instance courts the monitors noted delays in the beginning of the hearings from 20-30 minutes up to 4 hours.



From the questionnaire of a monitor on an administrative offence case:

"The case was scheduled for 09:00, however, the judge heard all the civil and criminal cases scheduled for a later time, and only after finishing the consideration of all the civil and criminal cases scheduled before lunch he started hearing the cases on administrative offences. Accordingly, the participants had to wait in the corridor for more than four hours".



SPECIFICS OF CONSIDERATION OF CASES ON ADMINISTRATIVE OFFENCES

Despite the fact that the Code of Administrative Offences does not regulate the procedure for consideration of those cases in first instance courts and courts of appeal in much detail, in practice the review of these cases in courts of appeal takes place in adherence to the general adjudication standards. As per the first instance – the judge conducted the hearings impeccably only in every third case.

At the same time, certain procedural offences by the judges of courts of appeal were detected. In every fifth administrative offence case considered by the courts of appeal, the court did not explain the rights of the participants of the trial, including the right to demand the recusal of a judge.

The situation with the consideration of cases on administrative offences in first instance courts is worse compared to the courts of appeal. Almost half of the hearings in first instance courts took place in the judges' chambers, and the judges often did not use the symbols of the judiciary (the robe, the badge and the state flag).

The findings of the monitoring showed that the judges in those cases often turned them into a “friendly meeting”, “discussion”, “chat”, etc. – they did not announce the composition of the court and the content of the case being considered; they do not inform the participants of their rights and do not study the evidence on file with the case. There were cases when in the judges' chambers with open doors the visitors interrupted the consideration of the case with their business and questions, the consideration of the case was accompanied by radio music, the judge got distracted by phone calls all the time, etc. In one of the cases the judge offered the accused to choose the punishment that he himself believed would be appropriate in view of the offence.

In the course of the monitoring it was established that the protocol on the administrative offence is the main document considered by the court, and it becomes the grounds for invoking administrative responsibility. There were only four cases in the first instance court when the witnesses were heard. However, in all those cases the judges breached the rules for interrogating the witnesses – they were not informed of responsibility for false testimony and were not removed from the courtroom before interrogation.

The attitude of the judges to this type of cases may be described by a quote of one of the judges made to the monitor, “these cases are not interesting for visitors, these are just administrative offences”.

In 8 out of 10 cases the first instance court took the side of administrative bodies when deciding the case. Thus, the judges mostly supported the opinion of administrative bodies stated in the protocol on the administrative offence. When they did not take the side of the authorities, they usually closed the case due to the expiration of terms for bringing to justice for an administrative offence.

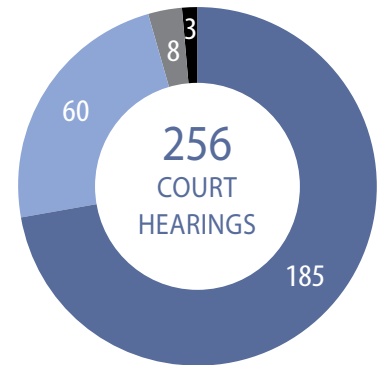
At the same time, in courts only each fourth case was decided in favour of the administrative bodies. In other cases the courts of appeal usually cancelled the judgements of first instance courts and found that the plaintiffs did not commit administrative offences.

When evaluating these figures it is worth noting that the right to appeal in administrative offence cases is given only to those persons who were brought to justice, the victims, and, in exceptional cases, the prosecutors. In case the administrative bodies were allowed to lodge appeal, the number of reversed judgements could have been higher.

ADMINISTRATIVE CASES

The monitors visited **256 administrative case hearings** all over Ukraine:

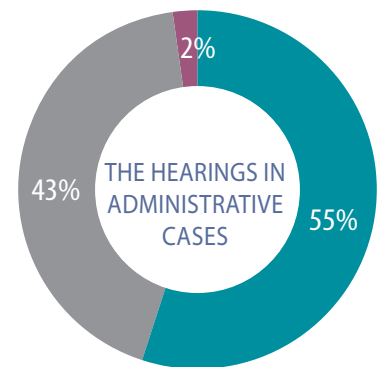
- in first instance courts – **185 hearings**;
- in courts of appeal – **60 hearings**;
- in the High Administrative Court of Ukraine – **8 hearings**;
- in the Supreme Court of Ukraine – **3 hearings**.



ADHERENCE TO GENERAL RULES OF PROCEDURE

According to the monitors, the judges conducted the hearings in administrative cases:

-  impeccably – in **55 %** of cases;
-  with minor violations – in **43 %** of cases;
-  with gross violations of the rules of procedure and/or participants' rights – in **2 %** of cases.



In 90% of cases the judges considered the case wearing a robe and a badge.

Judges in administrative cases verified the identity of the participants of the trial who arrived to the hearing in 98% of cases.

The confidentiality of a deliberations room was observed in 96% of cases.



From the questionnaire of a monitor on an administrative case considered in a first instance court of general jurisdiction:

"The confidentiality of the deliberations room was not observed: after announcing that she left for the deliberations room, the judge did not leave the courtroom, but immediately told the secretary to invite the parties to the next case".



PUBLICITY

The schedule of hearings in administrative cases was posted on the web-site of the court in 95% of cases monitored.

The information about cases was posted on the court's information board less often – in 89% of cases.

In 99% of cases the monitors were allowed into the room where the consideration of the administrative case took place (courtroom or judges' chambers).

In 83% of cases the courts heard the administrative case in the courtroom.



From the questionnaire of a monitor on an administrative case:

"The court hearing took place in the judges' chambers, while there was a vacant courtroom available".

In most cases (68%) the judges were not interested in who else, except the parties to the administrative case, came to the hearing.

In 95% of cases, when opening the court hearing, the court announced which case was being considered; in 88% of cases the presiding judge announced the composition of the court at the hearing.

In 97% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings.

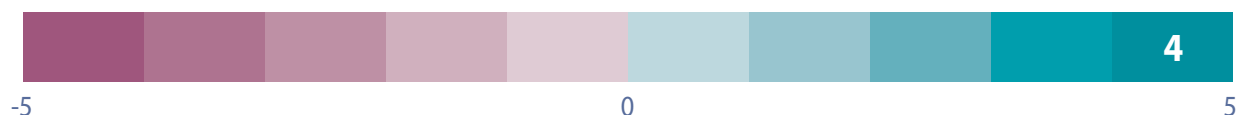
In 96% of cases, when a court judgement was supposed to be pronounced, the court did this publicly. The judges usually announced the introductory and dispositive parts of the court judgement.



From the questionnaire of a monitor on an administrative case in a first instance court of general jurisdiction:

"The judge never returned from the deliberations room, and the secretary announced the judgement".

PUBLICITY IN ADMINISTRATIVE CASES





IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 83% of cases the presiding judge informed the parties to the administrative case of their right to demand the recusal of a judge.

In 97% of cases the monitors reported that the judge did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights.

In 99% of administrative cases the judge heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law.

In 98% the judge paid attention to the arguments and motions of the parties to the case, and did not turn them down without due justification.

In 97% of cases the judge allowed the parties to get familiarized with documents and evidence in the case provided they filed respective motions.

The court did not restrict the parties in their right to participate in a court debate (in those hearings where the debate took place) and did not exercise any moral pressure on the trial participants.

In 98% of cases the court behaved impartially.



From the questionnaire of a monitor on an administrative case:

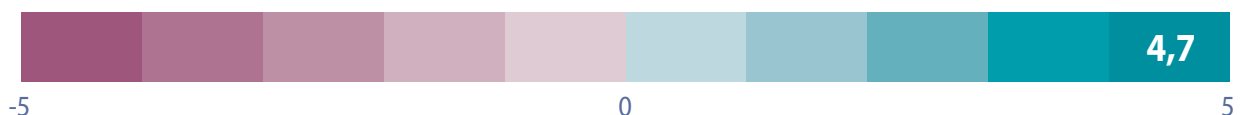
"This case was the last one scheduled, so I was able to witness the existence of a relationship between the judge and the party to a case, who was then present at the hearing.

As we found out, this person was the representative of the Department of the Ministry of Internal Affairs in Z. oblast.

The judge shook hands with the party and invited him to his office to allegedly discuss a hearing scheduled for the following day. However, when the monitors reviewed the hearing schedule for the next day, they did not find any cases where this law enforcement body was a party.

It is unknown which case the judge discussed before the hearing and which issues he resolved in the court building outside the trial, however, a connection between the judge and the party was obvious".

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN ADMINISTRATIVE CASES





CULTURE OF CONDUCTING THE TRIAL

The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 84% of administrative cases. This is the best rate among all case types.

The court did not allow rudeness, tactlessness, contempt to the participants of the trial, and demonstrated impeccable conduct.

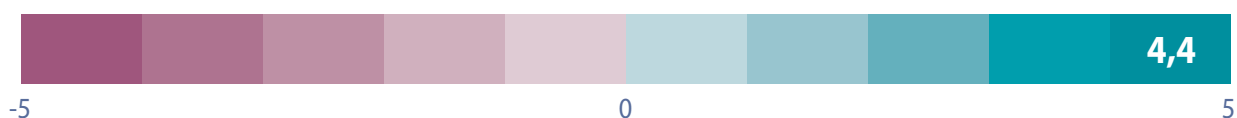
The court did not make any discriminatory comments and actions.

In 89% of cases the judge did not get distracted from the hearing and listened to the parties attentively.

In 95% of cases the participants of the administrative proceedings observed ethical norms and due communication culture.

In general, the indicators in these criteria in administrative cases are better than in other case types.

CULTURE OF CONDUCTING THE TRIAL IN ADMINISTRATIVE CASES



REASONABLE TIME

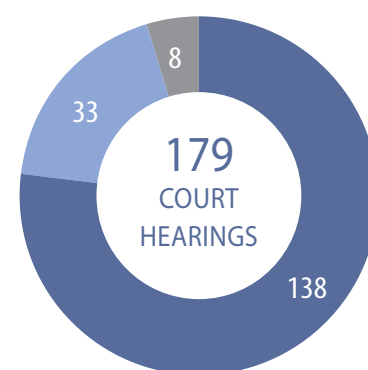
According to the monitors, the court did not take any efficient actions to encourage the parties to settle.

In 21% of cases the court hearing started on time or with a delay of no more than 5 minutes.

COMMERCIAL CASES

The monitors visited **179 commercial case hearings** all over Ukraine:

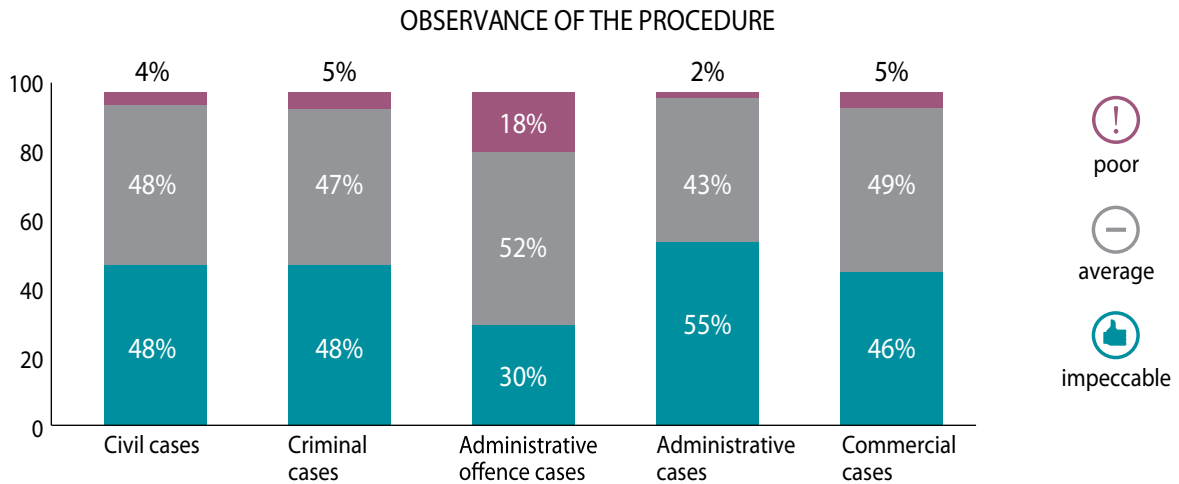
- in first instance courts – **138 hearings**;
- in courts of appeal – **33 hearings**;
- in the High Commercial Court of Ukraine – **8 hearings**.



Since the commercial courts considered only commercial cases, this issue was exhaustively covered in Section 2.2. Commercial Courts.

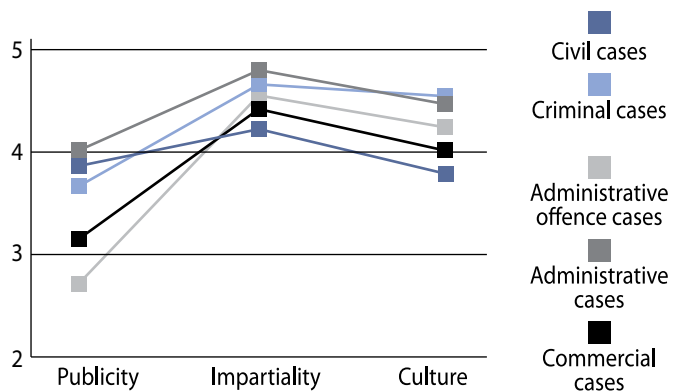
CONCLUSIONS

The best compliance with rules of procedure was observed while monitoring the hearings in administrative cases (the monitors evaluated as impeccably conducted more than half of the court hearings). At the same time, the situation with administrative offence cases is the worst – less than each third case was considered impeccably.



A similar relationship is observed in the compliance of the courts with the principles of publicity, impartiality and equality of arms, as well as the culture of conducting of the court hearings. The highest variation between the different types of adjudication is observed regarding the compliance with the publicity principle. This principle is best implemented in administrative cases, and worst – in the cases on administrative offences and in commercial cases.

COMPLIANCE OF THE COURTS WITH THE PRINCIPLES OF PUBLICITY, IMPARTIALITY, EQUALITY OF ARMS AND CULTURE OF THE CONDUCTING OF COURT PROCEEDINGS





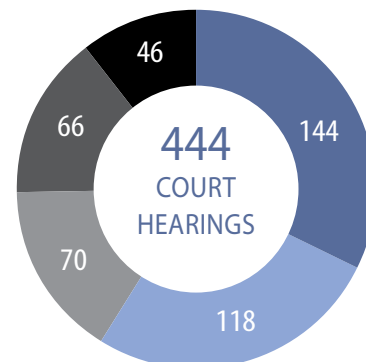
FINDINGS OF THE MONITORING BY REGION



CENTRAL REGION

The monitors observed **444 court hearings** in the central region, which amounts to 32% of the total number of court hearings attended. The monitoring in the central region included Kyiv, Chernihiv, Khmelnytsky, Vinnytsia oblasts and the city of Kyiv:

- **144 (32 %) hearings** in criminal cases;
- **118 (27 %) hearings** in civil cases;
- **70 (16 %) hearings** in commercial cases;
- **66 (15 %) hearings** in administrative cases;
- **46 (10 %) hearings** in administrative offences cases.



Most visited hearings took place in first instance courts – **272 (61%)**, another **117 (26%)** – in courts of appeal, and the lowest number of hearings took place in cassation courts and the Supreme Court of Ukraine – **55 (13%)**.



ADHERENCE TO GENERAL RULES OF PROCEDURE

By most indicators the monitoring in the central region replicated the situation in the country as a whole; however, by certain parameters the results are either better or worse than in other regions. According to the monitoring data, all over Ukraine the hearings were conducted impeccably in 48% of cases. At the same time, in the central region this indicator was lower – 45%. In addition, in the central region the monitors stated that the judge grossly breached the rules of adjudication or the rights of the parties to the case 4% more frequently (9% against the general indicator, 5% nationwide).

In 87% of cases the judge considered the case wearing a robe and a badge, which matches the average rate for all over Ukraine.

There also is no meaningful difference in observance of the rules for identifying the participants of the hearing and the observance of The confidentiality of a deliberations room. In the central region the situation regarding these two indicators is better by 2% and 1% accordingly.



PUBLICITY

The schedule of hearings was posted on the web-site of the court in 94% of cases monitored (matches the nationwide average rate). The information about cases was posted on the court's information board less often – in 79% (below nationwide average by 3%).

In 98% of cases the monitors were allowed into the room (a courtroom or judges' chambers) where the consideration of the case took place (matches the nationwide average rate).

In 84% of cases the courts heard the cases in the courtroom (matches the nationwide average rate).

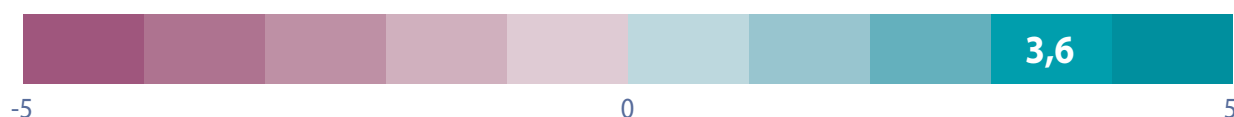
In 88% of cases, when opening the court hearing, the court announced which case was being considered; in 79% of cases the presiding judge announced the composition of the court at the hearing (below nationwide average by 3% and 2% accordingly).

In 99% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings (above nationwide average by 1%).

In 94% of cases, when a court judgement was supposed to be pronounced, the court did this publicly (matches the nationwide average rate).

In 61% of cases the judges were not interested in who else in addition to the parties to the case came to the hearing (above nationwide average by 3%).

PUBLICITY IN THE CENTRAL REGION



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 73% of cases the presiding judge informed the parties to the case of their right to demand the recusal of a judge (below nationwide average by 4%).

In 99% of cases the monitors reported that the judge did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights (above nationwide average by 4%).

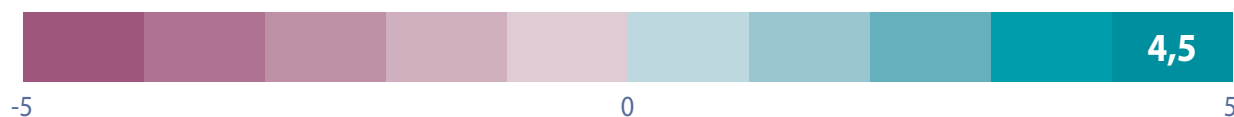
In 99% of cases the judge heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law (above nationwide average by 1%).

In 99% the judge paid attention to the arguments and motions of the parties in the case, and did not turn them down without due justification (above nationwide average by 1%).

In 97% of cases the judge allowed the parties to get familiarized with documents and evidence in the case provided they filed respective motions (above nationwide average by 2%).

The court did not restrict the parties in their right to participate in a court debate (in those hearings where the debate took place (above nationwide average by 2%).

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN THE CENTRAL REGION



At the same time, the monitors noted instances of moral pressure on the trial participants in the course of the hearing of the case in 4% of cases (below nationwide average by 2%).

In 98% of cases the court treated the parties impartially (matches the nationwide average rate).



CULTURE OF CONDUCTING THE TRIAL

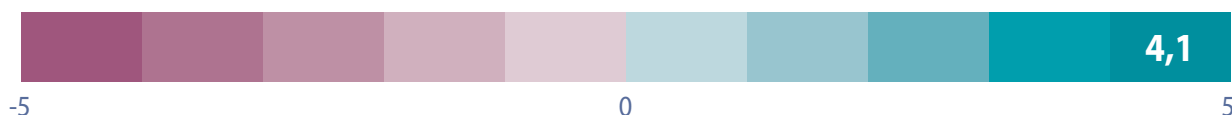
The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 77% of cases (below nationwide average by 1%).

In 95% of cases the court did not allow rudeness, tactlessness, contempt to the participants of the trial (matches the nationwide average rate), and did not make any discriminatory comments and actions (above nationwide average by 1%).

In 92% of cases the judge did not get distracted from the hearing and listened to the parties attentively (above nationwide average by 2%).

In 91% of cases the participants of the trial observed ethical norms and due communication culture (below nationwide average by 3%).

CULTURE OF CONDUCTING THE TRIAL IN THE CENTRAL REGION



REASONABLE TIME

According to the assessment of the monitors, the court took efficient actions to encourage the parties to settle in 85% of those cases where it was necessary (33% above the nationwide average rate). This rate strikingly differs from all other regions. The reasons for this need to be investigated further.

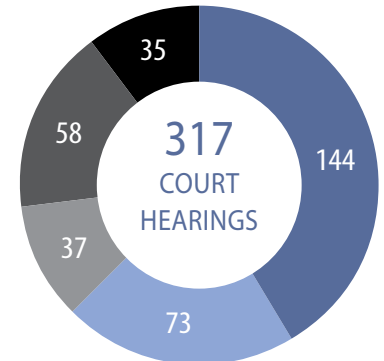
In 20% of cases the court hearing started on time or with a delay of up to 5 minutes (matches the nationwide average rate).

The rates on the general duration of the consideration of cases are also different. On average, there are 10% more court hearings in the central region which lasted from 5 to 30 minutes (67% against 57% all over Ukraine). In case nationwide the duration of each fifth hearing did not exceed 5 minutes, in the central region only each seventh case ended within this timeframe.

WESTERN REGION

The monitors observed **317 court hearings** in the western region, which amounts to 23% of the total number of court hearings attended. The monitoring in the western region included Lviv, Volyn, Ivano-Frankivsk, Transcarpathian and Chernivtsi oblasts:

- **114 (36 %) hearings** – in criminal cases;
- **73 (23 %) hearings** – in civil cases;
- **37 (12 %) hearings** – in commercial cases;
- **58 (18 %) hearings** – in administrative cases;
- **35 (11 %) hearings** – in administrative offences cases.



Most visited hearings took place in first instance courts – **233 (74%)**, another **84 (26%)** – in courts of appeal.



ADHERENCE TO GENERAL RULES OF PROCEDURE

By most indicators the monitoring in the western region demonstrated a situation slightly worse than the nationwide average, however, the discrepancies are not major. According to the monitoring data, all over Ukraine the hearings were conducted impeccably in 48% of cases. At the same time, in the western region this indicator was lower – 46%. In addition, in the western region the monitors stated that the judge grossly breached the rules of adjudication or the rights of the parties to the case 1% more frequently (6% against the general rate 5% nationwide).

In 87% of cases the judge considered the case wearing a robe and a badge, which matches the general rate for all of Ukraine.

The difference in observance of the rules for identifying the participants of the hearing and the observance of The confidentiality of a deliberations room is more visible. In the western region the situation regarding these two indicators is better by 3% and 6% accordingly.



PUBLICITY

The schedule of hearings was posted on the web-site of the court in 93% of cases monitored (below nationwide average by 1%). The information about cases was posted on the court's information board less often – in 82% (matches the nationwide average rate).

In 99% of cases the monitors were allowed into the room (a courtroom or judges' chambers) where the consideration of the case took place (above nationwide average by 1%).

In 76% of cases the courts heard the case in the courtroom (below nationwide average by 5%).

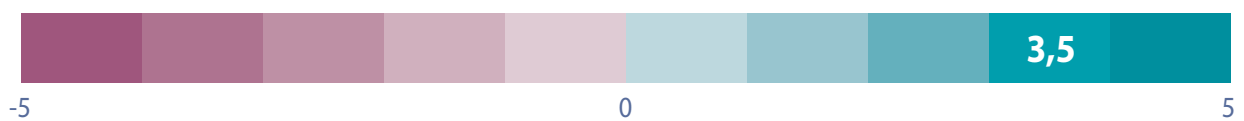
In 91% of cases, when opening the court hearing, the court announced which case was being considered (matches the nationwide average); in 75% of cases the presiding judge announced the composition of the court at the hearing (below nationwide average by 6%).

In 98% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings (matches the nationwide average rate).

In 92% of cases, when a court judgement was supposed to be pronounced, the court did this publicly (below the nationwide average rate by 2%).

In 60% of cases the judges were not interested in who else except the parties to the case came to the hearing (above nationwide average by 4%).

PUBLICITY IN THE WESTERN REGION



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 75% of cases the presiding judge informed the parties to the case of their right to demand the recusal of a judge (below nationwide average by 2%).

In 86% of cases the monitors reported that the judge did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights (below nationwide average by 9%).

In 96% of cases the judge heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law (below nationwide average by 2%).

In 93% of cases the judge paid attention to the arguments and motions of the parties to the case, and did not turn them down without due justification (below nationwide average by 5%).

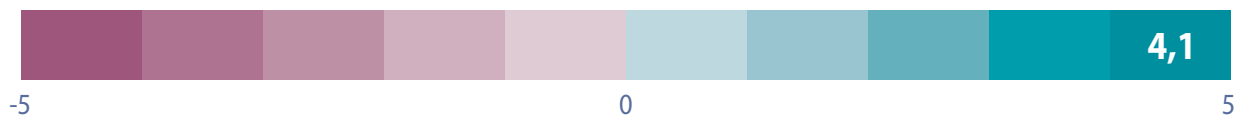
In 88% of cases the judge allowed the parties to get familiarized with documents and evidence in the case provided they filed respective motions (below nationwide average by 7%).

In 95% of cases the court did not restrict the parties in their right to participate in a court debate (in those hearings where the debate took place (below nationwide average by 3%).

At the same time, the monitors noted instances of moral pressure on the trial participants in the course of the hearing of the case in 2% of cases (matches the nationwide average rate).

In 93% of cases the court treated the parties impartially (below nationwide average by 5%).

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN THE WESTERN REGION



CULTURE OF CONDUCTING THE TRIAL

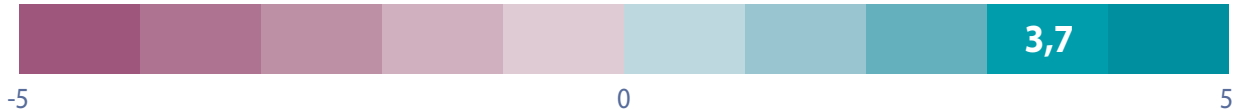
The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 62% of cases (below nationwide average by 16%).

In 95% of cases the court did not allow rudeness or tactlessness (matches the nationwide average rate), and in 99% of cases did not make any discriminatory comments and actions (matches the nationwide average rate).

In 87% of cases the judge did not get distracted from the hearing and listened to the parties attentively (below nationwide average by 3%).

In 93% of cases the participants of the trial observed ethical norms and due communication culture (below nationwide average by 1%).

CULTURE OF CONDUCTING THE TRIAL IN THE WESTERN REGION



REASONABLE TIME

According to the assessment of the monitors, the court took efficient actions to encourage the parties to settle in 67% of those cases where it was necessary (15% above the nationwide average rate).

In 15% of cases the court hearing started on time or with a delay of up to 5 minutes (below the nationwide average rate by 5%).

The average delay in the beginning of the case hearings which the monitors visited amounted to 29 minutes.

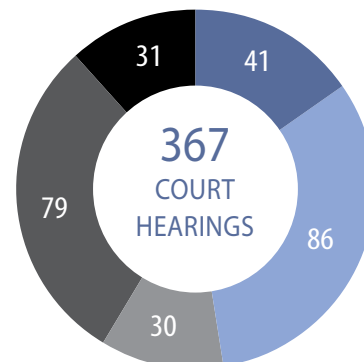
The reason for these delays was the practice of courts of appeal to schedule several cases for the same time. Consequently, one case was heard on schedule, and then the participants of the other hearings had to wait from 30 minutes to 4 hours.

The average duration of the consideration of cases was 24 minutes. The shortest hearing was registered in a civil case (1 minute), the longest – in a criminal case (3 hours).

EASTERN REGION

The monitors observed **367 court hearings** in the eastern region, which amounts to 26% of the total number of court hearings attended. The monitoring in the eastern region included Sumy, Kharkiv, Luhansk and Donetsk oblasts:

- **41 (38 %) hearings** – in criminal cases;
- **86 (23 %) hearings** – in civil cases;
- **30 (8 %) hearings** – in commercial cases;
- **79 (22 %) hearings** – in administrative cases;
- **31 (9 %) hearings** – in administrative offences cases.



Most visited hearings took place in first instance courts – **265 (72%)**, another **102 (28%)** – in courts of appeal.



OBSERVATION OF GENERAL RULES OF PROCEDURE

According to the monitoring data, all over Ukraine the hearings were conducted impeccably in 48% of cases. At the same time, in the eastern region this indicator was lower – 45%. In addition, in the eastern region the monitors stated that the judge grossly breached the rules of adjudication or the rights of the parties to the case 2% less frequently (3% against the general indicator, 5% nationwide). Nevertheless, by many indicators the monitoring in the eastern region demonstrated a better situation than nationwide.

In 87% of cases the judge considered the case wearing a robe and a badge, which correlates with the general rate for all of Ukraine.

The difference in observance of the rules for identifying the participants of the hearing is more visible. In the eastern region the situation regarding this indicator is worse than nationwide. At the same time, compliance with the requirement to observe the confidentiality of the deliberations room is the same as nationwide.



PUBLICITY

The schedule of hearings was posted on the web-site of the court in 94% of cases monitored (matches the nationwide average rate). The information about cases was posted on the court's information board less often – in 85% (3% above the nationwide average rate).

In 99% of cases the monitors were allowed into the room (a courtroom or judges' chambers) where the consideration of the case took place (above nationwide average by 1%).

In 77% of cases the courts heard the case in the courtroom (below nationwide average by 5%).

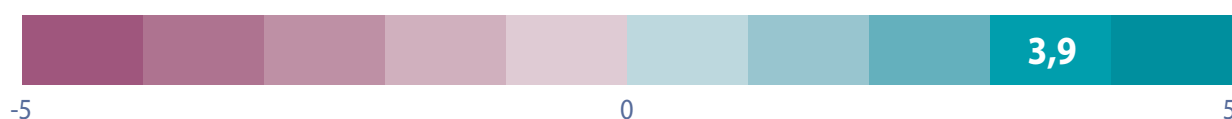
In 94% of cases, when opening the court hearing, the court announced which case was being considered (above the nationwide average by 3%); in 87% of cases the presiding judge announced the composition of the court at the hearing (above nationwide average by 6%).

In 98% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings (matches the nationwide average rate).

In 93% of cases, when a court judgement was supposed to be pronounced, the court did this publicly (below the nationwide average rate by 1%).

In 70% of cases the judges in the eastern region were not interested in who else except the parties to the case came to the hearing (above nationwide average by 6%).

PUBLICITY IN THE EASTERN REGION



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 78% of cases the presiding judge informed the parties to the case of their right to demand the recusal of a judge (above nationwide average by 1%).

In 93% of cases the monitors reported that the judge did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights (below nationwide average by 2%).

In 99% of cases the judge heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law (above nationwide average by 1%).

In 99% of cases the judge paid attention to the arguments and motions of the parties in the case and did not turn them down without due justification (above nationwide average by 1%).

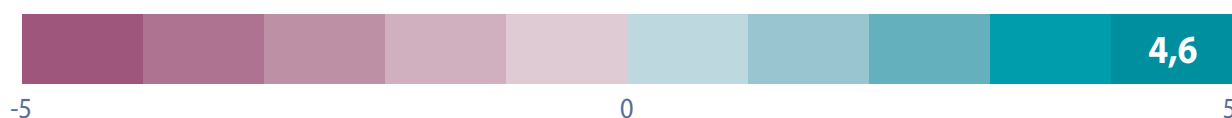
Practically in 100% of cases the judge allowed the parties to get familiarized with documents and evidence in the case provided they filed respective motions (above nationwide average by 5%).

The court did not restrict the parties in their right to participate in a court debate in those hearings where the debate took place (above nationwide average by 2%).

In 99% of cases the monitors noted no instances of moral pressure on the trial participants in the course of the hearing of the case (above the nationwide average rate by 1%).

In 99% of cases the court treated the parties impartially (above nationwide average by 1%).

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN THE EASTERN REGION





CULTURE OF CONDUCTING THE TRIAL

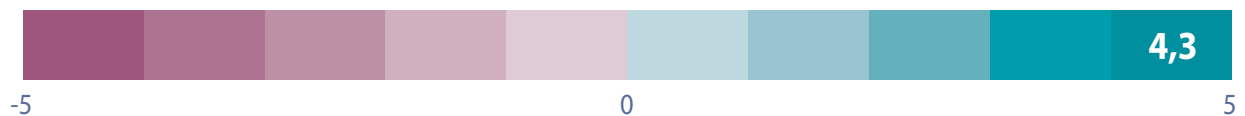
The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 87% of cases (above nationwide average by 9%).

In 98% of cases the court did not allow rudeness or tactlessness (3% above the nationwide average rate), and in 99% of cases did not make any discriminatory comments and actions (matches the nationwide average rate).

In 88% of cases the judge did not get distracted from the hearing and listened to the parties attentively (below nationwide average by 2%).

In 95% of cases the participants of the trial observed ethical norms and due communication culture (above nationwide average by 1%).

CULTURE OF CONDUCTING THE TRIAL IN THE EASTERN REGION



REASONABLE TIME

According to the assessment of the monitors, in the eastern region the court took efficient actions to encourage the parties to settle only in 18% of those cases where it was necessary (34% below the nationwide average rate). The reasons for that require further investigation.

In 28% of cases the court hearing started on time or with a delay of up to 5 minutes (above the nationwide average rate by 8%).

In certain cases, the monitors noted delays in the beginning of the hearings of more than 1 hour, which was caused by the court spending time in the deliberations room or participation in panels. The longest delay registered by the monitors was 4 hours and 15 minutes. The monitors also informed of cases when the hearing started ahead of schedule.



From the questionnaires of monitors on first instance courts of general jurisdiction:

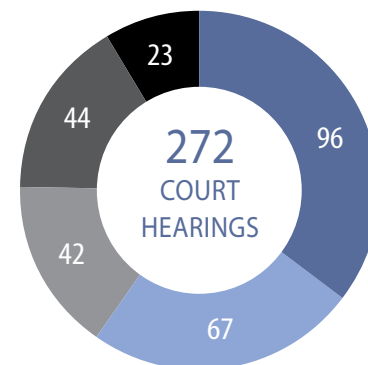
"The court started hearing the case 4 hours and 15 minutes later than scheduled, as all the members of the panel were busy in another trial".

"The court started hearing the case 1 hour ahead of schedule since the defendant was not transported to court, and the prosecutor did not object to the conducting of the next preparatory hearing via video conferencing".

SOUTHERN REGION

The monitors observed **272 court hearings** in the southern region, which amounts to 19% of the total number of court hearings attended. The monitoring in the southern region included courts in Odesa and Dnipropetrovsk oblasts:

- **96 (35 %) hearings** – in criminal cases;
- **67 (25 %) hearings** – in civil cases;
- **42 (15 %) hearings** – in commercial cases;
- **44 (16 %) hearings** – in administrative cases;
- **23 (9 %) hearings** – in administrative offences cases.



Most visited hearings took place in first instance courts – **185 (68%)**, another **87 (32%)** – in courts of appeal.



OBSERVATION OF GENERAL RULES OF PROCEDURE

According to the monitoring data, all over Ukraine the hearings were conducted impeccably in 48% of cases. At the same time, in the southern region this rate was the highest – 56%. In addition, in the southern region the monitors stated that the judge grossly breached the rules of adjudication or the rights of the parties to the case 1% less frequently (4% against the general indicator, 5% nationwide). By many indicators the monitoring in the southern region demonstrated a better situation than nationwide.

In 88% of cases the judge considered the case wearing a robe and a badge, which is 1% higher than the average for all over Ukraine.

Regarding the difference in observance of the rules for identifying the participants of the hearing and compliance with the requirement to observe the confidentiality of the deliberations room, in the southern region the situation is better than average by 1 and 5% respectively.



PUBLICITY

The schedule of hearings was posted on the web-site of the court in 94% of cases monitored (1% above the nationwide average rate). The information about cases was posted on the court's information board in 81% of cases (1% below the nationwide average rate).

In 98% of cases the monitors were allowed into the room where the consideration of the case took place (matches the nationwide average rate).

In 89% of cases the courts heard the case in the courtroom (above nationwide average by 8%).

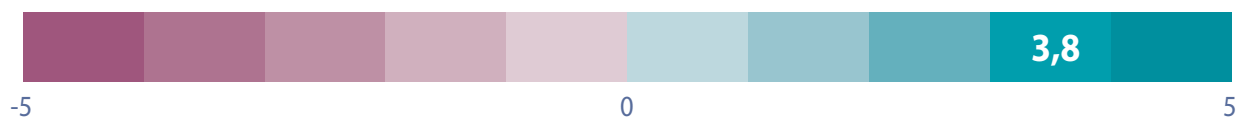
In 89% of cases, when opening the court hearing, the court announced which case was being considered (below the nationwide average by 2%); in 83% of cases the presiding judge announced the composition of the court at the hearing (above nationwide average by 2%).

In 99% of cases the monitors had no obstacles from the court in making audio recordings of the proceedings (above the nationwide average rate by 1%).

In 96% of cases, when a court judgement was supposed to be pronounced, the court did this publicly (above the nationwide average rate by 2%).

In 60% of cases the judges were not interested in who else except the parties to the case came to the hearing (below nationwide average by 4%).

PUBLICITY IN THE SOUTHERN REGION



IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE

In 93% of cases the presiding judge informed the parties to the case of their right to demand the recusal of a judge (above nationwide average by 16%).

In 95% of cases the monitors reported that the judge did not ignore the age, general level of development, psychological and physical status of the trial participants when explaining to them their procedural rights (matches the nationwide average rate).

In 99% of cases the judge heard the arguments of the participants of the trial in all the cases when it was provided for by the procedural law (above nationwide average by 1%).

In 98% of cases the judge paid attention to the arguments and motions of the parties to the case and did not turn them down without due justification (matches the nationwide average rate).

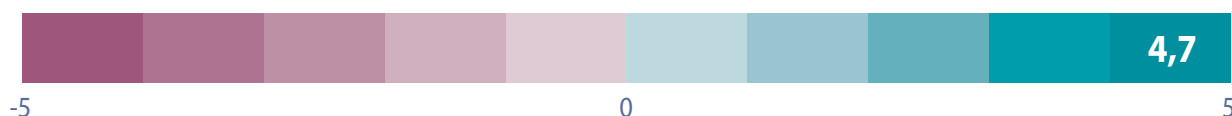
In 96% of cases the judge allowed the parties to get familiarized with documents and evidence in the case provided they filed respective motions (above nationwide average by 1%).

The court did not restrict the parties in their right to participate in a court debate in those hearings where the debate took place (above nationwide average by 2%).

In 99% of cases the monitors noted no instances of moral pressure on the trial participants in the course of the hearing of the case (above the nationwide average rate by 1%).

In 99% of cases the court treated the parties impartially (above nationwide average by 1%).

IMPARTIALITY OF THE COURT AND OBSERVANCE OF THE EQUALITY OF ARMS PRINCIPLE IN THE SOUTHERN REGION



CULTURE OF CONDUCTING THE TRIAL

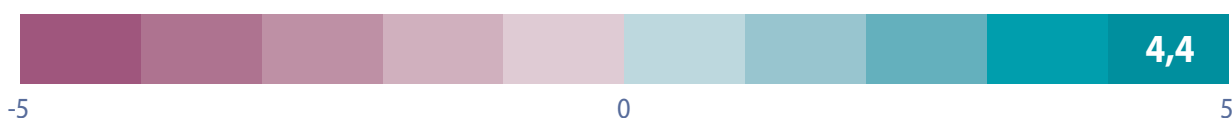
The monitors evaluated the general status of observance of ethical norms and communication culture both by the court and the trial participants as impeccable in 87% of cases (above nationwide average by 9%).

In 95% of cases the court did not allow rudeness and tactlessness (matches the nationwide average rate), and never made any discriminatory comments and actions (above the nationwide average rate by 1%).

In 94% of cases the judge did not get distracted from the hearing and listened to the parties attentively (above nationwide average by 4%).

In 95% of cases the participants of the trial observed ethical norms and due communication culture (above nationwide average by 1%).

CULTURE OF CONDUCTING THE TRIAL IN THE SOUTHERN REGION



REASONABLE TIME

According to the assessment of the monitors, the courts in the southern region took efficient actions to encourage the parties to settle in 33% of those cases where it was necessary (19% below the nationwide average rate). The reasons for that striking difference require further investigation.

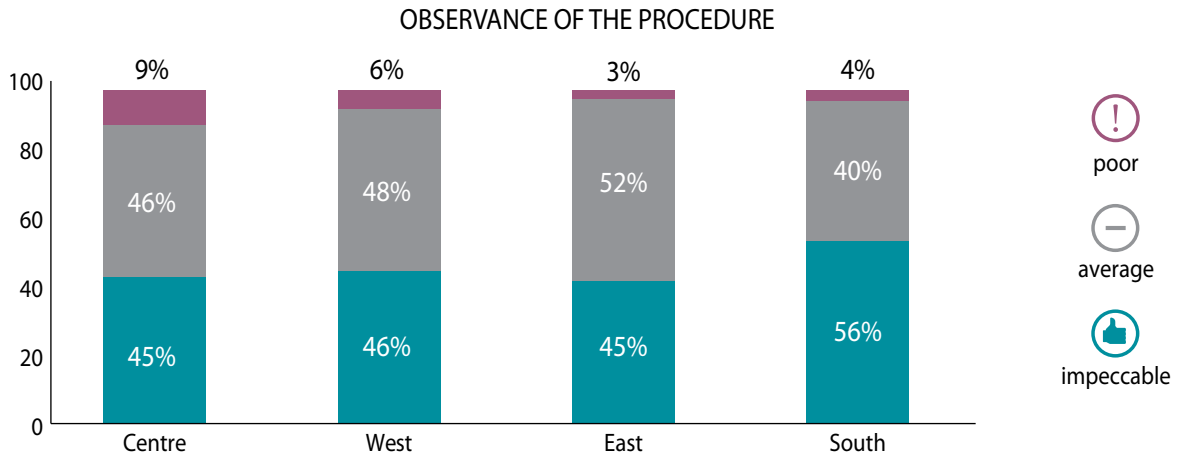
In 17% of cases the court hearing started on time or with a delay of up to 5 minutes (above the nationwide average rate by 3%).

Almost one third of all the hearings started with significant delays – from 14 minutes to 4 hours.

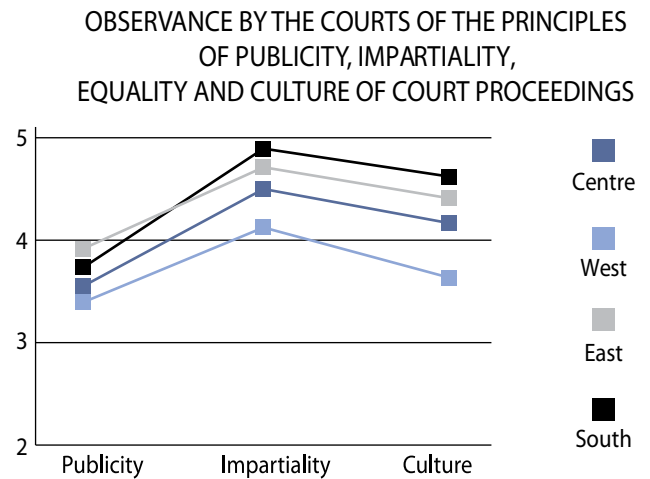
CONCLUSIONS

The analysis of monitoring data showed the absence of significant regional specifics of consideration of cases. However, the monitors' impressions of the consideration of cases in the southern region are slightly better than average.

In the central region there were more cases of gross violations of procedure (almost in each tenth case).



Regarding the observance by the courts of the principles of publicity, impartiality, equality and culture of court proceedings, the courts of the southern region demonstrated somewhat better results (except publicity), while the courts of the western region scored below average.





RESULTS OF MONITORING IN SPECIFIC CASE TYPES



CORRUPTION-RELATED CASES

Corruption-related cases were one of the focuses of the 2017 trial monitoring.

The following cases were subject to monitoring:

- Criminal cases, in which the person was suspected or accused of committing a **corruption crime** (crimes provided for by articles 210, 354, 364, 364-1, 365-2, 368-369-2; and crimes provided for by articles 191, 262, 308, 312, 313, 320, 357, 410 of the Criminal Code in case they are committed through abuse of office);
- Cases on **administrative offences related to corruption** (articles 172-2, 172-5, 172-6, 172-7, 172-8, 172-9, 172-9-1 of the Code of Administrative Offences).

The monitors observed 78 corruption-related cases, which amounted to more than 5% of all cases monitored in 2017.

Among corruption-related cases, 72 cases (92%) were considered by first instance courts, 4 (5%) by courts of appeal and 2 more (3%) – by a cassation court (the High Specialized Court of Ukraine for Civil and Criminal Cases). These were not high profile corruption cases, since, according to the data from the National Anticorruption Bureau of Ukraine, such cases are few, and as a rule, their consideration is being protracted.

By content, 71 cases (91%) were criminal cases in which the person was suspected or accused of a corruption crime, and 7 (9%) – cases on administrative offences related to corruption.

The monitoring did not reveal any substantial differences by different indicators in this type of cases compared to all the others, although the number of violations recorded in corruption-related cases was higher.

As far as procedure is concerned, the courts conducted the hearing impeccably in 45% of the cases (the general rate being – 48%), with small violations – 55% (the general rate being – 47%). The monitors did not register any gross violations in the course of the consideration of corruption-related cases (general rate in Ukraine – 5%).

According to the “publicity” criterion, the score for this type of cases is 3.4 points (general rate in Ukraine – 3.6). In general, by most indicators the publicity in this type of case was lower by 1-2% than in other case types, but the court had failed to announce the composition of the court 9% more frequently than in other case types.



From the questionnaire of a monitor on a first instance court of general jurisdiction:

“While hearing a case under Article 364 of the Criminal Code of Ukraine (abuse of office or service authority) the judge first passed a judgement to prohibit video recording in the course of the hearing, and then announced a break in the hearing and offered the parties to come to his chambers to find out about the date of the next hearing.”

At the same time, in corruption-related cases the monitors did not note any instances of the court judgement not being pronounced publicly. In all the 46 hearings during which judgements were made, the courts pronounced them (in general, 5% of violations of this rule were recorded for all types of cases). Moreover, as mentioned in the questionnaires of monitors, almost in all cases the judgements were pronounced clearly.

According to the criterion “impartiality of the court and observance of the equality of arms principle” – these proceedings scored 4.6 points (general score – 4.8).

Observance of ethical norms and communication culture both by the court and the parties was evaluated as “impeccable” in 85% of cases, while the general result is 78%.

At the same time, during the trial in 14% of cases the judges got distracted from the proceedings or listened to the parties inattentively. In two cases the judges were openly rude, tactless, showed disrespect to the parties and demonstrated misconduct in other ways.

However, a worrisome situation was observed regarding the observation by judges of the rules of procedure on the removal of witnesses from the courtroom before the beginning of the hearing of the merits of the case, as well as regarding the process of their interrogation.

In 43% of cases the witness, who was to be questioned, was not removed before the interrogation, and he/she participated in the trial (by 16% more often than in all other cases in which monitoring was conducted).



From the questionnaire of a monitor on a first instance court of general jurisdiction:

“First of all, the witness was present in the courtroom before his interrogation. Second, the judge opened the interrogation himself, asked him questions and did not react to the objections of the defense that under Article 352 of the Criminal Procedure Code of Ukraine the witness was first to be interrogated by the prosecutor, then the defense, and the court was allowed to ask the witness questions only after the interrogation by both parties ended. In addition, the judge prohibited the defense lawyer to ask the witness suggestive questions, and engaged into an argument with the attorney regarding this, requiring him to justify it based on the provisions of the Code The witness was vague several times, but the court did not require him to give a clear answer “yes” or “no”. The judge openly laughed at the witness’s words”.

In 5 cases of 71 (7%), the accused was kept in a separate booth or cage, although he did not behave aggressively in the hearing.

Based on the monitors’ testimonies, in two hearings of corruption-related cases the witnesses and other participants of the trial were subjected to moral pressure. *Inter alia*, in one case the judge, in the monitors’ point of view, put pressure on the defendant scaring him with the fact that in absence of a lawyer his situation will be very bad.

In addition, 16 men in military uniform came to a court hearing regarding the administrative responsibility for a corruption-related administrative offence, likely, to put pressure on the judge and the prosecutor.

The situation with the courts’ compliance with the requirements of the procedural law regarding the explanation to the participants of the trial of their rights and obligations is also worrisome. In 13 hearings of this type of cases the court did not explain their rights and obligations to the trial participants, although it was required by the law. Considering that this explanation was to be provided in 54 hearings visited by the monitors, the level of violation of this requirement of procedural law amounts to 24%.

The breach of confidentiality of the deliberations room was not recorded in any cases related to corruption.

CASES CAUSED BY THE ARMED CONFLICT IN THE EAST OF UKRAINE

The military conflict, caused by the aggression of the Russian Federation in early 2014, caused the emergence of numerous new case types in courts.

While conducting the monitoring, the monitors visited 51 hearings of cases caused by the armed conflict. More specifically, the monitoring included 28 criminal proceedings, 12 administrative, 5 civil, 4 cases on administrative offences and one commercial case.

The criminal proceedings were related to the participation of persons in illegal military and paramilitary units, capital treason, encroachment upon the territorial integrity of Ukraine, obstruction of operations of the Armed Forces of Ukraine, illegal use of weapons and ammunitions, desertion, draft evasion, and other offences committed by military personnel and draftees.

Administrative cases were mostly related to appeal against the judgements or actions of the bodies of the Ministry of Defense regarding military personnel. Civil cases were related, *inter alia*, to the need to establish in court the fact of death of persons, which occurred on the temporarily occupied territory of Ukraine.

The monitors evaluated that in 40% of cases the quality of the conducting of the trial was impeccable (average rate – 48%), in other cases the monitors noted minor violations – 60% (average rate – 47%). The monitors did not notice any gross violations in the course of consideration of these cases (average rate in Ukraine – 5%).

In one case the presence of the monitor forced the judge to put on a robe and a badge, invite other judges – members of the panel to the courtroom, and conduct a full-fledged court hearing.

According to the “publicity” criterion this case type received the score of 3.5 points (average rate in Ukraine – 3.6). In total, the publicity in these cases was similar to that of the general rate in Ukraine.



From the questionnaire of a monitor in a criminal case:

“The consideration of a motion to extend the duration of the remedial measures. The consideration of the case was not announced anywhere, but taking into account the fact this case was high-profile (encroachment upon territorial integrity of Ukraine), everybody knew about the consideration of this case”.

At the same time, in 17% of the cases related to the armed conflict the monitors noted that the final judgement in the case was not pronounced when it was supposed to. This is 11% above the average rate in Ukraine.

In three criminal cases the judges and law enforcement officers, understanding the sensitive nature of the accusations and the high public interest in these cases, deliberately created obstacles and did not allow monitors and other persons to be present in the course of the hearing of the case. In doing so, they violated the principle of publicity of court hearings. *Inter alia*, the information about the hearing schedule was not posted in the court building and on the court’s web-site, and when the monitors were still able to locate the beginning of proceedings, the police officers or the Security Service of Ukraine representatives physically prevented the monitors from entering the courtrooms, closed the doors, etc., referring to the respective court orders which they refused to provide for review.

According to the criterion “impartiality of the court and observance of the principle of equality” – 4.5 points (the general score is exactly the same).

The observation of ethical norms and the culture of communication both by the court and the persons present in the hearings, related to the armed conflict, was evaluated as “impeccable” in 94% of cases, while the general rate was 78%.

Overall, the monitors did not detect any specifics in the consideration of these cases.

CASES WITH PARTICIPATION OF NATIONAL MINORITIES

The monitors observed 23 court hearings which concerned the representatives of national minorities. These cases are insufficient for a quantitative analysis; however, certain conclusions may be drawn.

The monitoring of such cases mostly took place in the Transcarpathian oblast. Comparing the cases of Roma, Romanian and Hungarian national minorities, it is worth mentioning that the nature of the cases visited by the monitors was quite different. The Romanians and Hungarians most often participated in civil cases, while the Roma – in criminal cases.

In certain cases with participation of the representatives of national minorities (Roma, Romanian and Hungarian) serious breaches of the right to fair trial were identified, discriminatory by nature.

FORGERY OF DOCUMENTS

The victim in a criminal proceeding was a Romanian who was only able to speak Ukrainian but could neither read nor write. The court employee wrote in his name and gave him to sign an application of a different content than he requested. Instead of the request to consider the case in his absence and inform of the results in written form, the court employee wrote, “I have no moral and material damage claims”. The victim signed the document.

VIOLATION OF THE PUBLICITY OF THE TRIAL

At the beginning of the trial more than 15 Roma entered the courtroom and waited for the hearing to begin. The court staffer told them to leave without any explanation, and allowed only the legal representatives, the guardians the defendants and the monitor to stay.

FAILURE TO PROVIDE FOR THE RIGHT TO INTERPRETATION, VIOLATION OF THE RIGHT TO LEGAL COUNCIL

Five Roma youngsters were defendants in a criminal case about theft, out of them only one knew Ukrainian well enough. An interpreter was not invited to the trial. The defense lawyer did not know the language his clients spoke. The defendants claimed they were illiterate and could neither read nor write. Therefore, the Roma signed applications and motions of content unknown to them.

In certain cases (for example, when the parties were Hungarian and spoke only Hungarian) an interpreter was present. The monitors, referring to the words of the defense lawyers, informed that many cases are not being considered because there is a need for interpreters, which have the necessary knowledge of legal terminology.

BIAS AND DISCRIMINATION

The monitors also reported certain issues regarding consideration of cases with participation of Roma. These people often have no documents and permanent place of residence. It is almost impossible to serve subpoenas to them. Free legal aid for them is not of high quality. The courts are unable to provide interpreters to such persons.

For a better study of these problems it is recommended to conduct a focused monitoring of cases with participation of national minorities.



GENERAL FINDINGS AND RECOMMENDATIONS



FINDINGS

PUBLICITY

Mostly, **the courts adhere to the principle of publicity (openness).**

In case you have an ID, it is possible to get inside the court building without any obstacles.

As a rule, all the interested persons have free access to the court hearing room.

However!

- *every fifth case is considered by judges in their office, even if there is a vacant courtroom;*
- *every fifth case is not posted on the information board at the court, and every tenth – on the court's web-site;*
- *in each fifth case the court does not announce the composition of the court, and in each tenth case – the case which is being considered;*
- *in every twentieth case considered in an open court hearing, the court judgement is not pronounced publicly.*

IMPARTIALITY AND EQUALITY

In the majority of the cases heard in front of the monitors, **the courts demonstrated impartiality and provided for equality of arms.**

- ☑ The judges seldom showed disrespect or discrimination.
- ☑ As a rule, the courts heard out the opinion of the participants of the trial when it was provided for by procedural law; they paid sufficient attention to the arguments or applications of the participants of the case; they treated both parties equally; they did not constrain the right of the parties to participate in the court debate.

However!

- *In cases with participation of the representatives of national minorities, the instances of discrimination by the courts were observed more often.*

CONSIDERATION OF CASES WITHIN REASONABLE TIME

- ☑ Almost every second court hearing scheduled in the case did not take place on the day on which it was planned.
- ☑ Almost each third court hearing which was conducted started with more than a 30-minute delay against the scheduled time.
- ☑ The courts often failed to take any efficient action to encourage the parties to settle.

OBSERVATION OF THE RIGHTS OF THE DEFENDANT

- ☑ The courts seldom reacted to evidence of force being used against the defendant during the pre-trial investigation.
- ☑ Usually, the courts did not take any action to verify the allegations of the defendant about physical or psychological compulsion, torture, threats and deceit in the course of the pre-trial investigation.
- ☑ The courts often did not explain the accusation to the defendants in criminal cases.
- ☑ The defendants were often kept in a cage behind the bars during the court hearing, and did not sit close to their defense.

COMPARISON OF COURTS OF DIFFERENT INSTANCES AND JURISDICTIONS

- ☑ The administrative courts observed the procedure more often than the general and commercial courts.
- ☑ Administrative courts demonstrated higher publicity, impartiality and culture of conducting the court trial.
- ☑ Commercial courts were the least ready for publicity of the trial.
- ☑ Despite certain stereotypes regarding the “elite” status of commercial courts, the questionnaires of the monitors did not confirm that the judges of those courts and trial participants demonstrated better behaviour standards than in other courts.
- ☑ A striking difference was observed in the use of legal means by the courts to encourage the parties to settle. According to the monitors, efficient actions aimed at settlement of the case were often used by general courts, and especially by commercial, while in administrative courts the monitors did not see any cases of the kind.
- ☑ The higher the court instance was, the fewer violations the monitors noted.

COMPARISON OF DIFFERENT TYPES OF ADJUDICATION

- ☑ The highest compliance with the rules of procedure during court hearings was demonstrated in administrative case trials (more than half of court hearings were evaluated by the monitors as impeccable). At the same time, the situation with administrative offence cases was the worst – less than each third case was considered impeccably.
- ☑ A similar ratio was observed regarding the observance by the courts of the principles of publicity, impartiality and equality, and the culture of conducting the court trial. The highest difference between different types of adjudication was noted in the scores for observing the principle of publicity. This principle was best implemented in administrative cases, worst – in cases on administrative offences and commercial cases.
- ☑ The suspects and the accused in each seventh criminal case (14%) were in a barred cage in the courtroom in contrary to the requirements of the Criminal Procedure Code and the respective case-law of the European Court of Human Rights.
- ☑ In first and second instance courts the handcuffs were put on the accused mostly on the stage of escorting him/her to the courtroom. It is important to note that in one case at a first instance court the defendant stayed in handcuffs for the whole duration of the hearing. Although this was a single occasion of the kind, it requires taking general measures to prevent similar occurrences in the future.

RECOMMENDATIONS

TO COURTS

- Pay attention to the need to hear cases in courtrooms whenever possible;
- Provide for complete transparency of work related to the consideration of cases: announce the consideration of a case, announce the composition of the court and the case even when this is not the first hearing;
- Put more effort into the observation of the rights of the defendant in criminal proceedings, address to the claims of the accused about the application to them of prohibited methods of influence during the investigation, make sure that these persons do not wear handcuffs;
- Provide for non-discrimination of the representatives of national minorities;
- Do not allow the conducting of trials without wearing a robe and a badge;
- Pay attention to observing the procedure for witness interrogation.

TO THE NATIONAL SCHOOL OF JUDGES OF UKRAINE

- Study the reasons for the widespread practice of postponements of trials and delays in starting the hearings, take them into account in developing/improving time-management training courses to allow the judges to react to these challenges;
- Introduce training courses for judges on mediation skills after studying the experience of the commercial courts regarding settlement;
- Study the reasons for violations of the rights of national minorities and organize courses for the judges of those courts where this problem is the most expedient.

