



Georgian Young Lawyers' Association and Penal Reform International Submitted to the Parliament of Georgia Legal Opinion on Proposed Amendments to the Criminal Procedure Code of Georgia

Georgian Young Lawyers' Association (GYLA) and Penal Reform International welcome initiatives of the government of Georgia for liberalization of criminal justice. Practicing fair trial is one of the most important preconditions for facilitation of democratic processes in the country. Ensuring equality of arms and improving the procedure code will naturally help improve the criminal justice situation in the country. We also believe that there are a number of issues in the draft law that need to be further improved, as well as some other issues that need to be introduced for the legal proposal to actually achieve set goals.

First of all, we would like to draw your attention to proposed amendments to the Criminal Procedure Code that regulate receiving a certificate, a letter of reference or any other document from an agency. An agency now becomes obligated to comply with any such request made by a defendant him/herself personally or through a lawyer. We believe it is important to regulate the issue in a way that does not damage interests of any other natural persons involved.

Maximum amount of fine for violating order during a trial, for failure to appear before

court for invalid reason will be reduced from GEL 5000 to GEL 500. We welcome the initiative; however, based on the principle of a fair trial a person imposed with a fine should have the right to appeal the decision at least once. Otherwise, this norm will conflict with the Constitution of Georgia and safeguards for the protection of basic human rights and freedoms as envisaged by the European Convention.

The draft envisages the possibility of investigation based on substantiated motion by the defense and under court's judgment. The investigator must be an individual other than the one engaged in investigation of the case. Participation of the defense in selection of investigator is important. Investigator must be selected by head of the investigating authorities and with recommendation of the defense.

It is also important for the draft law to envisage other issues as well. The existing procedures for questioning witnesses give unjustified advantage to the prosecution. For a meaningful equality of arms, immediate enactment of the new procedure is crucial. Further, to prevent risks of violation of privacy during search, term of the institute of search witness must be extended. Another problematic issue is subjecting a person without the status of a defendant to search and seizure. The Criminal Procedure Code does not envisage an opportunity for these persons to apply to court over lawfulness of investigating measures they have been subjected.

Access to case file by a new lawyer has also proven to be problematic in practice. The Code must address the problem by providing for lawyers' right to receive copies of existing case materials both from court and the prosecution.

Together with enactment of jury trial, it is important to minimize as much as possible the threat of media reports about crime affecting public opinion, which in its turn will protect jurors from outside influence.

Court control over certain issues during the stage of investigation must be renewed. The possibility to appeal certain resolutions of the prosecutor in court should be provided.

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To combat ill-treatment effectively, rights of victims must be revised in order to ensure their participation in investigation. Further, scope of judges' authority must be broadened for to ensure that their declarative role is efficient.

Furthermore, when investigating authorities conduct certain investigating activities or collect different types of information about any specific individual, they must also have an obligation to notify the person concerned about these activities.

The foregoing issues are part of the amendments that need to be made in criminal justice law in a timely manner. Further, this is a general overview of problematic issues presented by Georgian Young Lawyers' Association and Penal Reform International. We stand ready to participate in in-depth discussions about each of these issues and to propose concrete amendments to the legislative body.

[Full text of the joint legal opinion is available at:](#)