

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA believes that the initiative of the Chairman of the Parliament to weaken the immunity of MP is unjustified

GYLA would like to comment on the statement of the Chairman of the Parliament of Georgia, Mr. Davit Usupashvili and express disapproval of the initiative to amend the Criminal Procedure Code to allow the Prosecution Service of Georgia to institute criminal proceedings against MP, without parliamentary consent, based on the grounds that the Articles 167 and 169 of the Criminal Procedure Code of Georgia are

unconstitutional.

Para.2, Article 52 of the Constitution of Georgia prohibits arrest of a Member of the Parliament, keeping him/her in custody, searching his/her apartment, car and workplace or conducting his/her personal search without the consent of the parliament. Criminal proceedings may be instituted and the bill of indictment may be delivered without arresting or keeping defendant in custody. If the Constitution prohibits the Prosecution Service from arresting MP without parliamentary consent, the Criminal Procedure Code prohibits recognition of MP as defendant (whether s/he has been arrested or not).

In this light, there is no collision (conflict) of the Constitutional and penal norms as clearly, these norms regulate two different issues. Correspondingly,
the Criminal Procedure Code may not be deemed unconstitutional. The Criminal Procedure Code prescribes higher standard for protection of MP's immunity and GYLA would like to stress that providing standards higher than those prescribed by the Constitution in no way means that the law conflicts with the Constitution. The law would have conflicted with Constitution had it provided different regulation of an issue directly regulated by the Constitution but considering that the Constitution does not regulate conviction of an individual without his/her arrest, any regulation of the issue by lawmaker does not pose the problem of constitutionality (allowing arrest of MP without parliamentary consent, for instance, would have been unconstitutional).

The purpose of the foregoing norms of the Criminal Procedure Code is to provide additional safeguards for MP's immunity and the fact that these safeguards are not directly envisaged by the Constitution in no way means that they are unconstitutional.

Furthermore, GYLA does not agree with the statement of the Chairman of the Parliament on that the Criminal Procedure Code provides an absolute immunity for a member of the Parliament. Immunity that can be removed based on the parliamentary consent is not absolute. Further, the Chairperson of the Parliament has stated that there are no applicable legal regulations (for instance, there is no fixed term in which the parliament should consider the appeal the Prosecution Service for a consent to institute criminal prosecution, etc.). Therefore, the efforts of the parliament should be directed at elaborating such regulations instead of repealing norms that

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provide for higher standards of protection for MPs.