

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## **GYLA Filed in the Constitution Court against the Power of Prosecutor to Appeal for Additional or Re-Qualified Charges**

GYLA filed in the Constitutional Court representing interests of D.Ts. charged under Article 117 of the Criminal Code of Georgia (inflicting intentional damage to health). Article 117 of the Criminal Code prescribes prison time ranging from three to five years as a punishment. Tbilisi City Court re-qualified the charges and D.Ts. was found

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guilty for crime envisaged under Article 122 of the Criminal Code of Georgia (inflicting serious or less serious damage to health beyond the limits of necessary defense). Article 122 prescribes maximum of one year in prison as a punishment. The court sentenced D.Ts. to imprisonment for ten months. The prosecution appealed the decision in Appellate Court, requesting that D.Ts. be found guilty of a more serious crime under Article 117 of the Code. D.Ts. had already served the ten-month imprisonment before the proceedings started at the appellate court and was released from prison.

If the Appellate Court grants the appeal of the Prosecution, D.Ts. will be forced to go back to prison for the crime that he has already served the punishment for. If the Appellate Court rules in favor of the prosecution, D.Ts. will be prosecuted again for the same crime, in violation of para.4, Article 42 of the Constitution of Georgia stipulating that  one shall be convicted twice for the same crime. A It will also violate presumption of innocence. Person found guilty by the first instance court will appear before the appellate court as a convict (as opposed to a defendant), considering that the decision of the first instance court comes into force immediately after it has been announced while appealing the decision will not suspend its effect.

GYLA believes that the power of the prosecutor to file appeal for additional or re-qualified charges and the power of the appellate court to add to or re-qualify charges based on the appeal violates the Constitution of Georgia.