

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA voices its position on the pending amendments to the Imprisonment Code concerning the use of special devices

The draft has been initiated in the Parliament aiming to introduce number of amendments to the Imprisonment Code. The author of the Code is the Ministry of Corrections of Georgia and the initiator is the government of Georgia. GYLA along with other NGOs had opportunity to participate in the working process on the draft and to

submit its opinions prior to initiation of the document. The organization evaluates number of amendments positively, while certain changes received negative assessment. GYLA intends to submit its written opinions to the Parliament in the nearest future.

At this point, we would like to state our position on the part of amendments concerning the use of special devices in penitentiaries. For the past period, the issue generated great interest in media and public. Use of special devices in the penitentiary system is the part of the security measures directed to ensuring protection of the order from the side of accused and convicts. According to the applicable Imprisonment Code only three types of special means are allowed in penitentiaries. These are handcuffs, strait-jacket and firearms. The draft increases their number up to 13 and adds the special (calming) chairs and beds, rubber batons, tear-gas, pepper gas, non-lethal firearms, acoustic devices, light -sound devices of psychological influence, water cannons and dogs to the list.

According to the draft, each device may be applied only in exceptional cases. The cases are differentiated in view of the risks associated with the device. For example, the dog may be used if the prisoner flees away, for discovery of the prohibited object, for transfer of the prisoner or with a view to repulse an attack; while tear-gas, acoustic device and non-lethal fire arms may be used for curbing the prisoner's attack on others on the protected territory, in the course of mass riot and/or the group offence, with a view to make prisoner leave the territory where he hides.

It should be noted that the given list of special devices does not come in conflict with the International Human Rights Standards, nor is it a novelty for Georgia. For example, today, the Police Law envisages more special devices for the mentioned institution than it is provided in the draft. Until inconsistency with international standards is observed, it is the state discretion to determine the necessary devices for resolution of various critical situations in prisons. It is also important that the list defined by the state, allowed proportional selection of the special devices according to different situations and decreased maximally the risk of abuse of power.

GYLA opines that, along with the list of special devices, it is important to incorporate the set of guarantees in the legislation, with a view to ensure their correct application in practice. At this point, we are focusing on creation of such mechanism. Although application of special means does not come in conflict with the international human

rights standards, they envisage number of restrictions and limitations on application of special devices. The draft envisages certain levers for preventing arbitrary conduct, in particular, application of the special device shall be proportional to the existing danger (Para 3, Article 571); application of the special means shall be terminated immediately, when the danger is eliminated (Para 2, Article 57); they shall be applied only in case of ineffectiveness of other means (Para 4, Article 571); moreover, there are some limitations in terms of female prisoners and juveniles (Para 13, Article 571) . Following application of such devices, the management of the relevant institution jointly with the medical personnel shall conduct medical inspection of the prisoner and draft the relevant report (Para 4, Article 57) and others.

GYLA considers that the guarantees are insufficient and require further development. It opines that along to the already applied mechanisms directed at prevention of arbitrary use of special device, some other guarantees shall be introduced to the draft. To this end:

- 1) application of special devices shall be agreed with high rank responsible individuals where it is possible;
- 2) prior to use of special devices, prisoners shall be notified in advance;
- 3) The list of competent individuals eligible to use special devices shall be specified;
- 4) The concrete technical features of the special devices shall be defined in advance by the normative act issued by the Minister;
- 5) According to the draft, the amendment concerning application of the special devices will enter into force immediately after its publication. We consider the approach incorrect, since relevant by-laws should be worked out prior to its enactment (for instance the special order of the Minister on the rule of keeping, wearing and using special devices. Three months period is set for its adoption after the law enters into force.)
- 6) Prior to enforcement of the new norms, the high quality trainings should be conducted for the employees of the penitentiary system on the use of special devices.

GYLA will submit more detailed opinions on the issue in the legal opinion that will be submitted to the Parliament. We hope that, the initiator and the author of the draft, as well as the Parliament of Georgia will pay attention to our remarks and will consider them. Otherwise, in view of the problematic nature and past experience of the penitentiary system, introduction of the new norms may create serious risk of abuse

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of power in penitentiaries.

We would like to mention as well, that new norms on use of the special devices raise the necessity of public monitoring in penitentiary institutions by NGOs. The issue has been reviewed by the Ministry of Corrections and we remain hopeful that it will be resolved positively and timely. Public monitoring will be one of the protective mechanisms for relevant enforcement of the discussed norms in practice.