

საქართველოს ახალგაზრდა იურისტთა ასოციაცია
GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Welcomes the Decision of the Constitutional Court to Recognize the Right to Good Faith Resistance in Reserve Military Service

GYLA welcomes the decision of the Constitutional Court delivered on December 21, 2011, in Public Defender v Georgia which was decided in favor of the applicant's constitutional claim. In the noted case, GYLA submitted its written legal opinion as amicus curiae.

GYLA expresses satisfaction over the decision of the Constitutional Court to apply the right good faith resistance based on religious or non-religious (pacifist) believe, derived from Article 19 of the Constitution of Georgia, to Reserve Military Service as well. In its written legal opinion GYLA noted that in compulsory military service, recruits enjoyed the right to good faith resistance and the right to request alternative military service based on the good faith resistance; however, the same exception did not apply to persons who were subject to serving in Reserve Military Service.

In its written opinion GYLA noted that similar to the compulsory military service, in Military Reserve Service, there are legitimate grounds for good faith resistance. Based on the constitutional practice of foreign countries, GYLA also noted that the obligation of an able citizen of Georgia to protect the country can be carried out by means of non-military, public labor of civil nature which is necessary for respecting the religious or non-religious belief of an individual.

GYLA expresses satisfaction over the decision of the Constitutional Court to deem the prohibition provided by the law against a good faith resistant – to request alternative way to serve instead of serving in military reserve – as unconstitutional as it conflicts with Article 14 (equality right) and Article 19 (freedom of religion). This approach of the Constitutional Court is in full compliance with the UN Human Rights Committee, other human rights agencies of the UN and the recent case law of the European Court of Human Rights (Bayatian v. Armenia).