

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA's Opinion on Pending Amendments to the Code of Imprisonment

The Parliament of Georgia is considering draft amendments to the Code of Imprisonment. The amendments deal with both incentives and restricting measures. [Public Defender has released a statement regarding the planned changes to the Code.](#) In his statement Public Defender noted that restriction of a short-term visits to convict was a definite negative step. GYLA's opinion on the draft law under Parliament's consideration were submitted to the Parliament in a written form on October 27,

2011. Currently the draft has been approved with its first reading.

The draft provides for increase of number of telephone conversations, video appointments and visits, as an incentive for prisoners; it also contains a number of restrictive amendments and supplements. For example, Article 9 of the draft inserts new types of disciplinary punishments in the Code, including: h) restriction of the right to telephone conversations for the maximum period of 3 months; i) restriction of the right to receive and send personal correspondence for the maximum period of 3 months; j) restriction of the right to use the service of a store located on the territory of penitentiary/freedom deprivation facility for the maximum period of 3 months, k) restriction of the right to remittances for the maximum period of 3 months.

In GYLA's opinion, restriction of the right to telephone conversations for the maximum period of 3 months and restriction of the right to receive and send personal correspondence for the maximum period of 3 months is an unreasonable form of disciplinary punishment. In view of high risk of poor treatment at penitentiary facilities, access to telephone communication and correspondence is one of the guarantees for protection of prisoners. Restriction of the access, as a type of punishment, will result in complete isolation of prisoners and even deprive them from an opportunity to communicate with attorney. The latter is in direct conflict with the 2010 recommendation of the Committee Against Torture for Georgia. Imposition of the aforementioned punishment will automatically rule out any access to attorney, as the Code of Imprisonment does not contain any stipulation prohibiting convict's access to attorney even in cases where punishment has been imposed. Consequently, restriction of the right to telephone communication or personal correspondence will hinder prisoner's ability to submit an application or a claim on abusive treatment to a corresponding addressee (e.g. to Public Defender), whereas he will also be deprived from his right to contact attorney. It should be noted that by imposing the noted punishment, a prisoner will also be deprived from the right to address Public Defender as it is carried out based on correspondence, which means that a prisoner will be deprived from one of the guarantees for his protection.

Another important novelty contained in the draft law is abolishment of disciplinary

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punishment as a precondition for using administrative imprisonment, which would allow use of administrative imprisonment for any kind of disciplinary offence. For example, violation of hygienic and sanitary norms is a type of disciplinary offence; if committed, under the draft norm, an offender can be subject to administrative imprisonment for 60 days and nights. It decreases the standard for using the strictest measure to an unreasonably low level. Recommendation of the Committee of Ministers of the Council of Europe underlines that punishments should be proportional in severity to their offences. Furthermore, it also defines that solitary confinement of an individual, as a measure of punishment, can be used only in extraordinary cases, for a concrete period of time and for the shortest term possible. Administrative arrest is a solitary confinement and absence of preconditions for resorting to the measure (commission of a new disciplinary offence when the before the term of previously imposed punishment expires) will rule out its use in extraordinary cases and for the shortest term possible, even at the legislative level. Therefore, the proposed amendment contradicts the aforementioned recommendation by turning administrative imprisonment into a disproportionate punishment.

GYLA believes that the Parliament of Georgia should take international standards into account with reference to the issues under its consideration and improve the legal draft.