

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Petition of the Coalition to the Parliament of Georgia

The Coalition for an Independent and Transparent Judiciary responds to the draft law prepared by the Ministry of Justice about regulation of applying jury trial to cases of high public interest.

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According to the draft law initiated in the parliament of Georgia, high public interest will be related to status of a defendant; in particular, it will apply to cases where a defendant is an official indicated in Chapter 2 of the Law of Georgia on Conflict of Interests and Corruption in Public Service, holding corresponding position as well as an individual charged with assisting the foregoing individuals in committing crime.

The Coalition views the initiative in relation to the legal draft currently being elaborated by the MOJ, offering new regulations for a defendant to refuse a jury trial. In particular, according to the initiative a defendant has the right to raise a substantiated motion for a trial without participation of jurors. However, granting the motion is directly related to the position of the prosecutor. If prosecutor does not agree with the motion, judge will refuse to grant it and the case will be examined by jury trial. Notably, the proposed law does not envisage an obligation of a prosecutor to substantiate its position, meaning that a substantiated refusal of a defendant to have a trial with participation of jurors and an unsubstantiated refusal of a prosecutor may still result in jury trial.

The coalition believes that the foregoing two draft laws are closely related to each other and must be assessed in view of the risks inherent to jury trial. In some of the criminal cases where charges have been brought against former public officials, public opinion and approach has already been formed to a certain extent. In this light, we believe that application of jury trial to these cases will pose significant risks to due process. Right of the defendant to refuse a jury trial may be viewed as a safeguard against these risks.

Further, the Coalition believes that application of jury trial to complex economic crimes, i.e. legalization of illegal income is unjustified. Broadening the purview of jury trial and moreover, imposing it as an obligation should be founded on the analysis of existing practice in Georgia. While there is a scarce practice to be analyzed, application of jury trial to all Articles of the Criminal Code may harm interests of justice.

In view of the foregoing, the Coalition believes that as jury trial may be proceeded by a large-scale spread of public preconceptions, the process of selection of jurors may not compensate for the limited right of a defendant to refuse a jury trial. Therefore, the coalition believes that application of jury trial to cases of high public interest that includes pending cases involving ex-officials may be acceptable only if defendant has

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the right to refuse a jury trial. Otherwise, the coalition believes that there will be some risks to due process.

Lastly, we remain hopeful that expediency of the draft law will be subjected to a broad public discussion in which we stand ready to participate.