

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Postponement of enacting restriction of freedom as non-custodial punishment is unacceptable

A draft law has been initiated in the parliament, envisaging amendment of the Criminal Code of Georgia and postponement of enacting restriction of freedom as one of the types of non-custodial punishment for two years. These changes were initiated by the government of Georgia and drafted by the Ministry of Corrections. GYLA disapproves of the initiative.

Restriction of freedom is a non-custodial punishment and envisages a relatively free

regime for a convict, which in certain cases is the best way for re-socialization of a convict. While serving this type of punishment, convicts are in a facility for restriction of freedom, on the territory of which they enjoy freedom of movement. Usually, they are able to leave the facility during weekends and holidays, also based on a permission of authorized individual, when a convict concerned is working, studying, etc. There are educational and rehabilitating programs in the facility. Courts have not been able to order restriction of freedom as punishment, which deteriorates legal condition of convicts and limits the scope of judge's discretion.

The existing Criminal Code envisages restriction of freedom together with other types of punishment since the day it was adopted in 1999. However, according to a transitional provision, it was to be enacted from the day the law of Georgia on "regulations of serving restriction of freedom as punishment" was adopted. The transitional provision was amended on October 4, 2013 to envisage that court would be able to order restriction of freedom as punishment starting from January 1, 2015, while the local board of the Ministry of Corrections would have been able to replace the unserved part of deprivation of freedom with restriction of freedom starting from November 1, 2013. The explanatory note of the legal draft stated that "the adoption of the draft law will not require allocation of any additional funds from the state budget."

9 months after the previous amendments were made, a draft law was initiated in the parliament for the postponement of enacting restriction of freedom as non-custodial punishment for the period of two years, until January 1, 2017. This time the explanatory note indicates that "certain objective problems have been found related to the enactment of the norm. [...] In the remaining time it is impossible to create facilities for restriction of freedom [...]. Further, financial resources needed cannot be afforded."

We believe that the present case illustrates all the legal gaps in legislative process and procedures for elaborating the state budget in Georgia. We urge the Ministry of Corrections, the government of Georgia and the parliament to treat determination of the new term of enactment with maximum responsibility and refrain from delaying the enactment restriction of freedom; further, the issue of allocating necessary financial resources should be included in the process of reviewing the state budget law.

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