



## Problematic of Applying Preventive Measure in Criminal Cases

On April 2, 2012 GYLA held presentation of trial monitoring results focused on criminal cases in city courts of Tbilisi and Kutaisi. The trial monitoring was conducted in the framework of USAID funded "Judicial Independence and Legal Empowerment Project " (JILEP) implemented by the East -West Management Institute.

In view of urgency of topics related to justice system in Georgia, GYLA has been implementing direct trial monitoring for already two years on criminal cases in Tbilisi City Court and by releasing periodic monitoring reports attempts to submit objective, fact-based picture of some of what is going in Georgia's criminal trial courtrooms.

Firstly, it should be noted that no one has conducted trial monitoring in Georgia's courts before and this fact grants the obtained information even more value and interest.

Although the report addresses many important aspects, I would like to draw your attention, in my opinion, on the most important topic, which is application of preventive measure.

Generally, preventive measure is applied during the defendants first appearance in a court, with a view to reduce the risk of fleeing or the risk of undue interference with administration of justice.

It is troubling to note that in majority of cases observed by GYLA since October 2011, the court used only two types of the most severe preventive measures: pre-trial detention and bail. The Georgian CPC, however, lists many other types of forced measures of lesser severity that should have been considered by the court, such as: personal suretyship, agreement to not leave an area, and supervision over the

behavior of a military serviceman by the military command or leaving a person without preventive measure, when suitable circumstances so allow.

Problematic of the preventive measure is mainly caused by the prosecutions' position and court judgments, yet it should be mentioned also that defense made no active efforts for solving the problem. In particular, the defense rarely asked for other types of preventive measures.

While discussing passiveness of the defense, we have to review some causes of their conduct. I consider, that it might be reasoned from judiciary's past practice when courts granted absolutely all prosecution's motions on preventive measure. It is natural that such environment killed motivation in lawyers and they were not eager to protect defendant's position by all possible means. The fact, however, is only an explanation of the situation, rather than an excuse.

The situation after the October 2012 Parliamentary Elections is especially interesting in terms of changing trends in courts. Namely, there were 13 pieces of unprecedented cases observed, where prosecution's motions for imprisonment were rejected and instead, other type of preventive measure was applied. Although, ten from those defendants were former high government officials and therefore it is difficult to make any conclusions on changed attitude of the court, I remain hopeful and optimistic that this positive trend will be applied in terms of other defendants as well in future.

Indeed, society is interested in fair and impartial court decisions rather than in consideration of individual parties' positions. This is most urgent topic that should be solved by a judge.

With a view to have the feeling of justice in a society, a judge should assess all circumstances of the case in all individual cases, he should also take into account the personality of the defendant and only afterwards make reasoned decision on application of the preventive measure. It will raise motivation of the defense and will impose increased obligation over the prosecution to be well reasoned in their positions. While all this will make positive impact on judiciary's reinforcement and on raising public trust.

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



*Tinatin Avaliani*

*Project – “Promoting Judicial Independence and Impartiality in Georgia” - Project Analyst.*

*Georgian Young Lawyers’ Association.*