

საია მოუწოდებს პოლიტიკურ პარტიებს, არ დაუშვან კანონპროექტის ინიცირება, რომელიც მიზნად ისახავს ამნისტიის გავრცელებას 2019 წლის 20-21 ივნისს სამართალდამცავთა მიერ ჩადენილ დანაშაულებზე

GYLA calls on political parties not to initiate a draft law aimed at extending amnesty for crimes committed by law enforcement on June 20-21st, 2019

On 19th April 2021, GYLA called on the parties involved in the mediation process to sign a compromise proposal submitted by the President of the European Council, however, emphasizing that the agreement shall be implemented in accordance with the Constitution of Georgia and international standards.

One of the subjects of the agreement document is the response to the issues of perceived politicized justice. According to the relevant paragraph, “in the interest of

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Georgia's political stability and in order to implement this Agreement, the signatories commit to address, within one week of the signing this Agreement, **the two cases** of perceived politicized justice either by an amnesty and/or taking such steps as to produce an equivalent outcome. [1] In particular, within one week of signature of the agreement, a party represented in the Parliament shall initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests."

As it is known to the public, GYLA represents the interests of the victims (both demonstrators and journalists) affected during the June 20-21 rally, both at the national level and in the European Court. The dispersal of the rally by the Ministry of Internal Affairs of Georgia on June 20-21, 2019, turned into a large-scale violation of the rights of the protesters. Unlawfulness and disproportionate use of force against victims, ill-treatment in detention and subsequent period, unlawful interference with journalistic activities, problems with the regulation of active special means, and the ineffectiveness of the investigation, in essence, causes a violation of Article 3 of the European Convention (prohibition of torture) both material and the procedural aspect.

GYLA emphasizes that it is inadmissible to apply amnesty/pardon to serious crimes against human rights committed by state officials, including during inhuman/degrading treatment.

The application of amnesty to persons who have committed crimes of inhuman or degrading treatment (regardless of whether they are properly investigated at the national level) is contrary to Article 3 of the Convention; as such an action impede the investigation into such crimes and at the same time causes the impunity of those accountable. Such outcome makes the safeguards created by the prohibition of ill-treatment [2] to be illusory and, at the same time, has a detrimental (stinging) effect on the unimpeded enjoyment of freedom of assembly and/or expression by individuals.

In the cases against Georgia (see Vazagashvili and Shanava v. Georgia, [3] Girgvliani and Enukidze v. Georgia [4]), the European Court has strongly criticized the fact that during the adoption of the amnesty law, the legislature did not pay due attention to the need to punish serious misconduct with full severity committed by the representatives of the state (whether it is low or high-ranking law enforcement). In this regard, the Court construed again the standard established by international law that applying amnesty or pardon to state officials shall not be allowed in connection

with serious human rights violations, including inhuman/degrading treatment. [5] The same approach is shared by **the Inter-American Court**, [6] **the UN Human Rights Committee**, [7] **the UN Commission on Human Rights**, [8] **the UN Committee against Torture**, [9] **the UN Economic and Social Council**, [10] **the OSCE** [11] **and European Parliament**. [12]

Consequently, the application of amnesty and pardon to state officials responsible for committing serious crimes against the prohibition of inhuman or degrading treatment (regardless of the national qualifications of the case) is a violation of international law. International legal acts that provide for such a prohibition are an integral part of Georgian law and, after the Constitution, are the highest in the hierarchy; therefore, Georgia has an obligation both before international bodies and its own citizens to implement them.

GYLA calls on political parties not to initiate a draft law aimed at extending amnesty for crimes committed by law enforcement on June 20-21, 2019 (regardless of the qualifications of the investigation). Otherwise, at stake is not only the issue of individual criminal liability of the offender but also public trust and respect for the law enforcement system, as well as the fulfillment of the state's obligation to combat the sense of impunity that the offender may have due to his/her official position. As a result, among other benefits, the right to freedom of assembly or expression is also significantly harmed.

[1] The criminal cases against Nika Melia and Giorgi Rurua are implied.

[2] *Margus v. Croatia*, no. 4455/10, 27.05.2014, § 127; *McCann and Others v. the United Kingdom*, Series A no. 324, 27.09.1995, § 146; The same approach is shared by the CAT, „The Committee has also continuously criticized amnesty laws and stressed that waivers of prosecution and statutes of limitations do not apply under any circumstance to the crime of torture.“ - CAT, ‘Concluding Observations: Algeria’ (2008) UN Doc CAT/ C/ DZA/ CO/ 3, para 11; CAT, ‘Concluding Observations: Yugoslav Republic of Macedonia’ (2015) UN Doc CAT/ C/ MKD/ CO/ 3, para 16; cited in: *The United Nations Convention Against Torture and Its Optional Protocol, Commentary, Second Edition*, by Nowak M., Birk M., Monina G., Oxford University Press, 2019, 342.

[3] *Vazagashvili and Shanava v. Georgia*. no. 50375/07, 18.07.2019, § 92.

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- [4] *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 16.04.2011, § 274.
- [5] Cf., among many others, *Nina Kutsenko v. Ukraine*, no 25114/11, 18.07.2017, § 149; *Yeter v. Turkey*, no. 33750/03, 13.01.2009, § 70, *Ali and Ayşe Duran v. Turkey*, no. 42942/02, 08.04.2008, § 69; *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, 20.12.2007, § 63.
- [6] *Barrios Altos v. Peru* judgment, Series C No. 75 [2001], IACHR 5, 14.03.2001, § 41.
- [7] Human Rights Committee, General Comment No. 20, Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), HRI/GEN/1/Rev.9 (Vol. I), 10.03.1992, § 15; Human Rights Committee, General Comment No 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26.05.2004, § 18.
- [8] UN Commission on Human Rights, Commission on Human Rights Resolution 2004/72: Impunity, E/CN.4/RES/2004/72, 21.04.2004, § 3.
- [9] Committee Against Torture, Concluding observations on the third periodic report of Tajikistan, CAT/C/TJK/CO/3, 18.06.2018, §§ 13-4.
- [10] United Nations Economic and Social Council, Commission on Human Rights – Sub-commission on Prevention and Discrimination and Protection of Minorities, 39th Session, The Administration of Justice and the Human Rights of the Detainees, Question of Human Rights of Persons Subjected to Any Form of Detention or Imprisonment, Study on Amnesty Laws and Their Role in the Safeguard and Promotion of Human Rights, Preliminary Report of Mr. Luis Joinet, Special Rapporteur, 21.07.1985, §§ 60-76.
- [11] OSCE / ODIHR, Eliminating Incentives For Torture in the OSCE Region, Baseline Study and Practical Guidance, 2020, pg. 64, §4. იბ. ასევე, Recommendations to OSCE participating States, international conference on “Effective Multilateralism in the Fight against Torture: Trends in the OSCE region and the way forward,” 2019, Recommendation 16.

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[12] European Parliament, REPORT of the Committee on Foreign Affairs and Security on Human rights in the world and Community human rights policy for the years 1991-1992, Rapporteur: Mrs. Marlene LENZ, A3-0056/93/PART A, 18.02.1993, § 7.