

საიამ „აღკვეთის ღონისძიების
გამოყენების სტანდარტები“
კვლევის შედეგების
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GYLA presented the results of the research "Preventive Measure Usage Standards"

On 14 April 2020, GYLA held an online presentation of the research "Preventive Measure Usage Standards". For the purposes of the research, GYLA studied and analyzed local legislation. One of the most important instruments of the study was to analyze the legislative framework relating to preventative measures, implemented reforms and practice. The study provides an overview of international standards in relation to preventative measures in criminal proceedings and the synopsis of obstacles and best practices in national jurisdictions in terms of implementation of these standards. The interviews were conducted with 13 judges, a focus group was held with the Criminal Law Committee of the Georgian Bar Association, the interviews were held with 15 prosecutors and 6 lawyers as well.

As a result of the research, the following key findings have been identified:

- According to international standards and Georgian legislation, detention should never be the starting position in a decision on preventative measures, but rather may

only be considered once all other measures for achieving one or more permissible ground have been ruled out.

- The statistics provided by the Supreme Court in relation to the use of detention show that the rate of imposing detention increased since 2016. In 2016, the court applied detention in 29% cases, in 2017 - 34%, in 2018 - 43%, in the first eleven months of 2019 - 47%.
- Most of the judges, prosecutors and lawyers point out in the interviews that the high rate of using bail and detention is due to the lack of alternative preventative measures, which deprives the judge of broad discretion.
- The interviewed lawyers indicate that in practice periodical review of pre-trial detention is formal and in most cases judges leave detention in force and at a court hearing do not substantiate the necessity of leaving detention unchanged.
- International standards and practice of foreign countries have shown that monetary bail increases injustice between different socio-economic and racial groups and leads to a loss of confidence in the criminal justice system.
- The evaluation of the public information obtained has proved that there are cases where the person is imposed bail secured with detention, yet the accused is remanded in custody because of the inability to pay the bail amount, which *de facto* means that the court uses detention.

Wide range of preventative measures

- International standards and the practice of foreign countries show that there is no internationally prescribed list of alternative preventative measures. Each domestic jurisdiction must provide a wide range of workable preventative measures that will give the court broader discretion to use them.
- The interviews have shown that a large number of the prosecutors, lawyers, and judges participating in the study advocate for removing the limitation from the preventative measure - an agreement not to leave and proper behavior- as it may be applied only for the offences which are punishable by imprisonment up to one year.
- A small group of the interviewed judges and prosecutors and a large number of the interviewed lawyers support the idea that the ancillary preventative measures should

be used independently as major preventative measures.

- The interviews have shown that the absolute majority of the judges and lawyers and a small part of the prosecutors advocate for the idea to extend the list of major preventative measures to give the court wide discretion to apply any types of preventative measures

We obtained significant information about the given issue with the help of the research methodology and developed recommendations based on the findings. We hope that the recommendations and further legislative proposals will facilitate the development of the concept of the preventative measures system that will ensure the improvement of the legal rights of defendants and develop democratic standards for the preventative measures system.

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