

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA's statement about the lifetime prisoners

GYLA voices its position about the fact of announcing hunger strike by lifetime prisoners. In view of sensitivity of the issue and high public interest we would like to make some explanations.

Criminal Code of Georgia envisages lifetime sentence as one of the types of punishment. Moreover, the punishment may be applied only in case of especially serious offence.

Existence of such punishment, when it is applied with observance of fairness and proportionality principle, serves the state legitimate objective to protect society from danger and crime. Though GYLA, along

with ECtHR, the Committee against Torture and other international human rights institutions considers (1) that it is incorrect from the side of a legislator or a court to associate an individual with the category of permanent danger and to deprive him/her, under this motive, of the real chance and hope to be dismissed from the prison.

Though the legislation of Georgia envisages opportunity for revision of the lifetime sentence,(2) the barrier established by law is too high (20-25 years) and the effectiveness of the mechanism is questioned.

In view above, we think appropriate to introduce legislative amendments for bringing relevant articles of the Criminal Code in line with the international standards.

It should be noted as well, that revision of the issue for alteration of the sentence of the lifetime prisoner or his dismissal from prison does not automatically mean resolution of the matter in favor of the prisoner. The commission should take decision after individual assessment of personality and conduct of each inmate. It should review risks associated with alteration of the sentence or dismissal of an individual from the prison and the ways for risk management. Further, it should consider the will and ability of the individual to reintegrate in the society and to launch/continue law obedient life.

We would like to make explanation about the pardon opportunity envisaged by the Georgian legislation, which concerns lifetime prisoners as well. The new decree of the president on [REDACTED] of pardon rule A(3) , adopted in March provides that lifetime prisoners may be pardoned, if they have already served 15 years of the sentence. (Prior to amendments, the term comprised 25 years. GYLA was among initiators to decrease the term).

We consider that foregoing amendment introduced to the presidential decree creates the mechanism enabling to revise, within reasonable terms, the necessity of applying lifetime imprisonment, which is a positive step. Though it needs to work effectively in practice. Moreover, these amendments will not substitute the need to introduce other amendments to the Criminal Code. The reason is that the presidential decree does not envisage the obligation of the Commission to convene periodically. It is assembled

upon the President's discretion. We opine, that opportunity to revise the sentence (discussion of the issue by the Commission) should not depend on the discretion of any high official or agency, rather it should be guaranteed by Law. Accordingly, relevant amendments need to be introduced to the Criminal Code of Georgia.

In addition, we would like to highlight that as letters received by us illustrate, one of the requests of lifetime prisoners, similar to other prisoners, is creation of effective mechanism for revision of illegal court decisions. GYLA has stressed its position several times on the issue. We opine that illegal imprisonment is one of the gross human rights violations. The state should create such mechanism timely and ensure its effectiveness, with a view to implement its constitutional obligation of protection of fundamental human rights.

We are ready to cooperate with all interested state agencies or individuals with a view to prepare forgoing legislative amendments for protection of prisoners rights and to ensure their realization in practice.

(3) As it was mentioned in the report of the Committee against Torture, it is inhuman to sentence an individual to lifetime imprisonment without real hope of being discharged (reports prepared about visits in Hungary (2007) and Switzerland (2011)). According to the European Court of Human Rights, when national legislation does not envisage any possibility to revise periodically the necessity of continuing lifetime imprisonment in terms of the concrete individual, lifetime imprisonment is inconsistent with Article 3 of the European Convention, prohibiting torture and inhuman treatment. (Winter and other vs. the Great Britain, decision of the Great Chamber, 2013)

(2) According to Para 7, Article 72 of the Criminal Code of Georgia, an inmate may be discharged from the sentence, if he had already served 25 years and the local council of the Ministry of Corrections considers that there is no need to continue the punishment. According to Para 7, Article 73 of the same Code, if lifetime prisoner has served 20 years of the sentence, it may be altered by another sentence: by community labor or restriction of freedom. Local council of the Ministry of Corrections is authorized to change the sentence in such matter as well.

As per Article 74 of the Penal Code, an inmate may be dismissed completely from the sentence for his old age, or if he was diseased seriously during his prison sentence. In these cases no specific terms are set for lifetime or other prisoners.

(1) Presidential order #120, on approval of the pardon rule (March 27, 2014)

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