

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Presentation of the Research Mechanisms for Early Release and Reprieve of Convicts for Health Problems in Georgia



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On November 20, 2012, Georgian Young Lawyers' Association held a

presentation of the research Mechanisms for Early Release and Reprieve of Convicts for Health Problems in Georgia.

Purpose of the research was to offer an overview of the applicable legal base and identify legislative problems that result (or may result in) obstruction of the work of the permanent commission and court for effective, timely, comprehensive and objective examination of applications of convicts ill with grave and terminal diseases. Further, authors of the research sought to illustrate problems in practice of the commission and court by citing concrete examples and offering an overview of applicable ECHR case law.

The research is based on the analysis of 23 cases litigated by GYLA, Article 42 of the Constitution, the Youth for Justice and independent lawyers. When analyzing the cases from medical point of view, GYLA closely cooperated with the Medical Association of Georgia.

The research revealed a number of flaws and deficiencies in legislation and practice, including

- ☐ The commission fails to ensure timely examination of applications;
- ☐ The Joint Order fails to determine timeframe for examining admissibility of applications, for relevant specialized doctors to examine cases and for the Commission to deliver final decision; as well as timeframes for expedited examination;
- ☐ Criteria for admissibility of cases is ambiguous both in practice and in legislation;
- ☐ The Code of Imprisonment and the Criminal Procedure Code provide for different conditions reprieve and early release of convicts from punishment. The Criminal Procedure Code additionally stipulates that a serious illness should hinder serving the punishment. What exactly is meant by hindering serving of punishment is neither specified by the legislation nor interpreted in judicial decisions; however, the noted grounds are actively cited by courts in their refusals;
- ☐ Illnesses determined by the Order do not correspond to illnesses that exist in contemporary medicine and needs modification.

Analysis of the cases featured in the present research unveiled the following problems:

None of the cases featured in this research were examined by the Commission. With exception of a single case, the Commission failed to not only deliver final decisions but to examine admissibility of applications. Several prisoners died before the Commission examined their cases;

In cases examined by us, court rejected motions for reprieve, stating that illnesses did not hinder serving of punishment. In one of the cases, the convict had already died by the time court delivered its decision;

There were cases when convicts died several months after the court had granted reprieve;

Clearly, existing problematic situation has been caused by flawed legal base as well as distorted practice. Cases cited by us, together with analysis and international practice, once again indicate that the existing situation needs to be examined by authorized individuals and corresponding measures must be taken. GYLA stands ready to cooperate and participate in elaboration of recommendations that would contribute to solving the existing problems.

Representatives of international organizations, NGOs and the authorities have been invited to attend the meeting.

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