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The GYLA responds to legislative changes related to the jury system

The Parliament of Georgia is considering *by the accelerated procedure* the Draft Law of Georgia on Amendments to the Code of Criminal Procedure of Georgia, which was initiated by the Government of Georgia. The draft law aims at eliminating deficiencies revealed in the functioning of juries in Georgia and bringing the legislation that regulates the said institution in line with international standards.

Before we discuss the content of the normative act itself, we consider it important to pay particular attention to a very negative trend in the parliamentary activity. Analysis of the practice of adoption of laws by the legislative body indicates that the Parliament often uses the accelerated procedure. For example, in the last week of the spring session, the Bureau decided to discuss six draft laws by the accelerated procedure. According to the Rules of Procedure of the Parliament of Georgia, consideration and adoption of a law means discussing and adopting it in all the three readings during one week of plenary sessions. Naturally, there are circumstances that make it necessary and inevitable to apply the said procedure in certain cases, though it is noteworthy that, in practice, the decision to apply the accelerated procedure is not always based on solid arguments and due analysis of negative aspects of adopting the draft law by the accelerated procedure. In addition, the accelerated procedure is characterized by extremely tight deadlines, which practically deprives the civil society and other stakeholders of the opportunity to get properly involved in the ongoing legislative process. It should be noted that the problematic nature of the accelerated procedure is also emphasized in the report prepared by the OSCE Office of Democratic Institutions and Human Rights (ODIHR) entitled "Assessment of the Legislative Process in Georgia". The report says that the *Government and the Parliament may review their Rules of Procedure to provide for clearer criteria for defining when draft laws are considered "urgent", and to require a justification when the accelerated procedure is applied*. [1] Considering the aforementioned, we believe it important that the Parliament of Georgia take into account both the

recommendation of the OSCE and the negative aspects of the accelerated procedure and discuss the need to regulate the use of the aforementioned institution by far narrower legal norms in the nearest future.

As for the draft law itself, we believe that it is important to emphasize the following issues:

Thematic jurisdiction of the jury – The draft law defines the thematic jurisdiction of the jury in a new way which involves reference to concrete articles of the Criminal Code. Although the functioning of the said institution is subject to certain restrictions even in the existing reality, the Code of Criminal Procedure envisages a firm safeguard for its meaningful application – if the charges brought prescribe imprisonment as a sentence, the case shall be heard by a jury. *[2]* At this stage, it is planned to resolve this issue in the main part of the normative act instead of transitional provisions, which, we think, is unjustifiable. Application of the jurisdiction of the jury to only certain articles of the special part of the Criminal Code as a permanent procedure raises a number of questions with regard to both the principle of equal treatment and the criteria by which the aforementioned crimes were selected. *[3]*

Incompatibility of members of the jury – We consider it unjustifiable to remove such professions from the list of exceptions as investigator, police officer, lawyer, psychologist, and psychiatrist. We think that restriction of concrete professions by the legislator aims at ruling out all kinds of influence on members of the jury. People with the aforementioned professions possess the special knowledge and skills whose use creates an increased risk that they will acquire a dominant position and exert an influence on other members of the jury, which may largely determine the final verdict. The argument made in the explanatory note regarding the right of the parties to exercise a challenge with or without a cause fails to completely resolve the aforementioned problem; for this very reason, we believe it necessary to share the experience of such countries as Italy, Spain, Sweden, Portugal, Denmark, and Poland and to retain the applicable criteria of incompatibility of members of the jury.

Jury selection session – According to the amendments, the jury selection session should be open, though it may be closed in cases envisaged by Article 182 of the Code of Criminal Procedure. According to the said norm, a session may also be closed for the purpose of protection of personal data and professional or commercial secrets. The said norm is so broad that it makes it possible to close practically all jury selection

sessions. Obviously, the need to protect the personal life of jury members should be reckoned with, though when both the prosecution and the defense – who are expected to be most interested in exerting pressure on members of the jury – take part in the jury selection session, excluding the public from the selection process is devoid of all legitimate goals. The possibility of leaving a large part of jury selection sessions outside the civil monitoring absolutely neglects the required standard of transparency of this most important procedural stage and, to a large extent, brings under doubt the public's trust in jury members selected as a result of a closed session. Whereas the court has a number of levers to ensure the protection of the personal life of jury members, such as referring to them by numbers (instead of using names and surnames), interviewing them face-to-face on particularly sensitive topics, etc., the public format of the sessions should be given an unconditional priority.

At the same time, apart from the initiated draft law, it is important to mention Paragraph 5 of Article 82 of the Constitution of Georgia which establishes that "*The cases shall be considered by juries before the courts of general jurisdiction in accordance with a procedure and in cases prescribed by law*." We think that this broad provision allows for broad interpretation and leaves unlimited powers in the hands of the authorities to establish a legal framework for regulating juries in line with the existing political context and interests. Such an approach is unjustifiable and contains tangible risks in terms of orderly functioning of the institution. Based on the aforementioned, we believe it important that the State consider the necessity of forming the basic safeguards in the country's supreme legislative act which will create a stable environment for the functioning of juries in the future.

We retain hope that the Parliament of Georgia will take into consideration the issues raised by the GYLA regarding both the concrete draft law and the adoption of laws by the accelerated procedure in general, and will take relevant steps to resolve the said problems.

[1] "Specific attention should be paid to the accelerated procedure whereby "urgent laws" are discussed and adopted: the Government and the Parliament may consider reviewing their Rules of Procedure to provide for clearer criteria for defining when draft laws are considered "urgent", and to require a justification when the accelerated procedure is applied";

[2] Paragraph 1, Article 226 of the Code of Criminal Procedure;

[3] A number of crimes that are punishable by more than ten years of imprisonment or life imprisonment remain outside the jurisdiction of juries.