



Statement of GYLA in reaction to proposed amendments to the Law of Georgia on Special Penitentiary Service

The Parliament of Georgia is expeditiously reviewing amendments to the Law of Georgia on Special Penitentiary Service, drafted and initiated by the Committee for Human Rights and Civic Integration.

Before analyzing contents of the draft itself, we'd like to highlight an extremely negative trend identified in the work of the parliament. Analysis of the legislating process suggests that the parliament often resorts to expediting procedures.

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According to the Regulations of the Parliament of Georgia, consideration and adoption of a draft law in an accelerated manner means discussing and adopting the draft by all three hearings during one week of the plenary sittings. Naturally, under certain circumstances use of the expediting procedure is necessary. However, in reality, use of the procedure is not always justified by solid arguments and does not involve adequate analysis of pros and cons of expedited process. In addition, the expedited procedure involves extremely tight timeframe, which undermines the possibility of civil society and other stakeholders to fully participate in the legislative process. Notably, problematic nature of expedited process is highlighted in OSCE/ODIHR report on Assessment of the Legislative Process in Georgia. According to the report, the government and the parliament of Georgia should pay “special attention 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.” The Georgian Parliament should take into account the above recommendation as well as disadvantages of the accelerated procedure and consider establishing a legal framework that considerably limits application of the procedure. As to the draft law itself, we'd like to highlight the following key points:

-The draft law mandates special examination of candidates for employment at the Special Penitentiary Service, which is problematic for the following reasons: first of all, the law of Georgia on Special Penitentiary service does not provide a definition of special examination. Therefore, it is unclear what this stage of recruitment entails exactly. The issue is especially important in light of the fact that if a candidate fails the examination, s/he will be disqualified. Because this particular stage of recruitment has tangible implications for candidates, at the very least the law should expressly define what is meant by special examination as well as rights of a candidate who failed the examination (e.g. right to appeal unfavorable outcome of the examination).

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-Both the existing law and proposed amendments stipulate that as a rule, candidates will be selected on the basis of a competition. The phrase “as a rule” creates room for a broad discretion in recruitment. If it applies to the list of offices filled by the Minister’s approval and not subject to rules of a special competition, the ambiguous provision that falls short of the requirements of legal foreseeability must be replaced by a norm that provides clear instructions.

-Proposed amendments provide broad regulation for employee promotions and demotions, especially for demotions based on official needs and with consent of employee concerned. Because “official needs” is a wide notion and may entail many situations, we believe that this provides employer with leverage over an employee. As to consent of employee, clearly it may not serve as an adequate legal guarantee for employer and is mostly a pro forma requirement.

-The legal draft introduces transitional period of recruitment. In particular, until May 1, 2016, the Minister and head of the department will be authorized to fill positions without a competition and hire employees for a trial period of no more than 6 months. The explanatory note justifies the above practice by a large outflow of personnel during the reform and time needed for competitive recruitment and training of new employees. This argument is inadequate to justify proposed changes. Proper recruitment and training of new employees of the Special Penitentiary Service is extremely important because its employees serve a very special cause of promoting rights of defendants/convicts in penitentiary facilities, observing legal regime and safety at penitentiary facilities, realizing legal rights of convicts/defendants, re-socializing and rehabilitating convicts and promoting their social integration. The transitional period introduced by the legal draft rules out competitive recruitment and timely training of employees. According to the draft, a candidate attends a basic training course first and later a mandatory specialized training during the trial period, whereas under the existing legislation, a candidate undergoes specialized training before appointment. The specialized training entails various theoretical and practical issues, including human rights and freedoms, as well as special courses in pedagogy and psychology for employees who work with juvenile defendants/convicts.

In addition, the proposed regulation poses a corruption risk, as selections/appointments without a competition and by decision of certain individuals call fairness of the recruitment process into question, while the six-month trial period

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puts former employees at an advantage compared to other candidates during a competition.

We remain hopeful that the parliament of Georgia will take into account GYLA's recommendations about accelerated legislative process and the draft law in particular, and will take meaningful steps to address the above problems.