

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## **GYLA's statement on ineffectiveness of a court and a commission in terms of postponing the sentence**

On March 7, 2012 Akaki Dadiani – a convicted died in a prisoners' medical center No 18. The medical report provides that heart, vascular and respiratory failure due to tuberculosis was the reason of his death.

According to medical report a convicted had serious health problems. Levan Samkharauli National Forensic Bureau provides in its report that: "A. Dadiani suffers

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from acute phthisical pathology, as for hepatology, his health condition is not serious.” Even though according to the report, Dadiani’s health condition was not critical in terms of hepatology, acute phthisical pathology was sufficient ground for postponing his sentence. Generally, decision on postponement of punishment is made by a court.

According to the ruling of Tbilisi City Court of February 28, 2012 A.Dadiani’s motion on postponing of the sentence was not satisfied for “lack of reasoning”. Later on the ruling was appealed to an appeal court. The lawyer reported that a convicted Daduani was unable to move independently and his health condition was critical. Yet, no reaction followed and Dadiani died on March 7, 2012.

On March 15, Tbilisi Court of Appeal did not uphold the motion on postponing the punishment. The court observed that “though he is seriously ill with tuberculosis, submitted documents does not prove that his health condition will prevent serving the sentence.” However, Dadiani had died 8 days before the court submitted its reasoning.

According to Georgian legislation, the court examines the issue of postponing the sentence for the health problems, as for discharging prisoners from punishment for health problems, the joint standing commission of the Ministry of Corrections and legal Assistance of Georgia and the Ministry of Health, Labor and Social Affairs takes the relevant decisions. The practice demonstrates that examination of the issue in a court, as well as in the commission, bears formal character: prisoners’ health condition is not assessed adequately and applicants fail to receive timely and adequate responses which frequently have fatal ends.

Otar Khabelashvili’s case: GYLA provided attorney assistance to Otar Khabelashvili with a view to postpone his sentence/release from punishment for the critical health condition. He was seriously ill with tuberculosis. On November 7, 2011 Khabelashvili applied to the standing commission after unsuccessful attempts to receive relevant decision in a court, yet no reaction followed from the Commission so far. On March 2, 2012 the lawyer applied to the Commission again and informed that defendant’s health condition was critical and the patient was terminal, therefore the lawyer requested to hasten examination of his application.

On April 10, 2012 another prisoner notified us that Otar Khabelashvili passed away. With a view to check the information, the lawyer visited No.18 penitentiary (where

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Khabelashvili served his sentence). Administration of the penitentiary however provided that such prisoner was not in their list. Afterwards we applied to penitentiary department for exact information. No official information was submitted so far, yet family members had justified that Otar Khabelashvili died in Penitentiary No. 8.

We think that by its conduct the Commission not only violates Georgian legislation, but in certain cases it contains criminal elements. We consider that investigation should get interested with similar facts.

GYLA provides attorney assistance to certain prisoners with a view to postpone their sentence. Their health condition is also critical, yet their demand was also rejected for “lack of reasoning”. We think that unless decision making bodies – a court and a standing commission change their formal approach to the issue, the opportunity to postpone the sentence granted to the prisoners by Georgian legislation will be useless and may frequently cause deprivation of the right to life.