

25/06/2015

Dissenting opinion of Ms. Eka Beselia, Member of the Legal and Human rights Issues Committee on the Abuse of pre-trial detention in States Parties to the European Convention on Human Rights (ajdoc16 2015)

I do not agree with the words in the brackets of paragraph 7.2. Reference to a single political party is not relevant in this case because pre-trial detention is used not because they are affiliated to some political party but because we are bound by the article 5 of the European Convention of Human rights. Pre-trial detention should be used only as an absolutely necessary last measure in the specific criminal cases on most of which there are final court judgments already. In some cases involving the UNM members no pre-trial detention measure was used (for example on Mr. Chiaberashvili case). Moreover, in most of the criminal cases the court used pre-trial detention measure only after a person did not appear before the investigation body or absconded from justice.

I also cannot agree with the paragraph 11.4 of the draft report because the rapporteur does not mention any single fact in the explanatory memorandum to prove the statement. I would agree with the formulation if it referred to the period before the change of Government in October 2012.

11.5 states that the Prosecution somehow manipulates with the pre-trial detention periods. This is absolutely wrong because only the Courts take decisions on restraint measures in Georgia. Based on statistics the level of independence of Courts in Georgia has significantly increased since 2012 where use of pre-trial detentions has shrunk by 34%.

Sub-paragraph 12.2.2 should be corrected because such a demand goes beyond the authority of the Parliamentary Assembly of the Council of Europe belongs to the exceptional competence of National Courts and the European Court of Human Rights. As the meaning of sub-paragraph 12.2.1 is really vague and general, I would rather suggest to merge these two sub-paragraphs with the following wording: “the Assembly urges the states to consult Article 5 of the European convention on Human Rights and abide by the standards of the ECHR when using pre-trial detention.”

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