

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Comments on the Developments about the Case of Zurab Zhvania and Raul Usupov

On February 3, 2005, on the very day of death of Zurab Zhvania and Raul Usupov, a number of questions were raised by public about the official findings of investigation (their death was ruled as an accident, gas asphyxiation), to which the law enforcement authorities have not yet provided competent and convincing answers yet. In view of public interest, we believe that the investigation should be conducted in a highly professional and objective manner, without politicizing the case, without the confrontation of political forces, and without multiple announcements that the

investigation will be closed in coming days. These are the conditions that need to be met in order to avoid bringing any harm to interests of investigation.

With the present statement we would like to highlight several aspects of the recent developments around the case and reiterate the necessity to handle the criminal case in a professional manner:

1. During March 20 meeting of the government the Prime Minister of Georgia made the following statement: “Zurab Zhvania has serious injuries on his head, visible to a naked eye, which as far as I know and as far as I have been informed, were pre-mortem injuries.” The Prime Minister also noted that the office of the prosecutor was in talks with international forensic bureaus for exhumation of the bodies.

This raises the following question: if the investigating authorities themselves believe that it is necessary to exhume the bodies with the help of international experts, i.e. as of now, no competent answers have been provided to questions posed before the investigation, it is peculiar that the Prime Minister has concluded that the injuries “were pre-mortem”. Who provided the information to the Prime-Minister? If the information is based on official findings of the investigation, why did not the investigating authorities themselves made the statement before the Prime Minister?

Furthermore, notably Article 50 of the Law of Georgia on the Prosecution Service stipulates that “the Chief Prosecutor periodically reports to the Prime Minister of Georgia, the head of the state, with updates. The updates shall not be related to criminal proceedings, except when otherwise stipulated by Georgian laws, as well as international treaties and agreements of Georgia.” Further, the Criminal Procedure Code of Georgia does not envisage updating the Prime Minister with information about any concrete criminal proceedings. Therefore, we believe that it is peculiar and that public should be provided with an explanation about which normative act in particular served as grounds for providing the Prime Minister with the information.

2. According to the official version of the Prosecution Service, photos leaked by unidentified person are the material recovered in safe of the former chief prosecutor Murtaz Zodelava post-2012. If these photos are authentic and they in fact show the injuries that forensic findings from years ago have failed to mention, it will certainly raise additional questions both about experts and former law enforcement authorities.

Therefore, it is only logical that the Prosecution Service had certain questions about L.Chachua and subsequent investigation was instituted. However, when was the investigation instituted exactly? Was it before or after these photos were leaked to web by unidentified person? Also, it is peculiar that it took the Prosecution Service more than a year to find that forensic findings in one of the publicized cases failed to mention the materials recovered from the ex-chief prosecutor's safe.

3. The Prosecution Service charged Levan Chachua, an expert from L.Samkharauli National Forensics Bureau and Mikheil Dzadzamia, a member of Zurab Zhvania's security under Article 342 of the Criminal Code of Georgia (official negligence). It has been stated that statute of limitation has already expired. In response, we would like to state the following:

In 2005 or the time when the alleged crime was committed, the limitation was six years. However, in 2006 the term was increased from 6 to 16 years for the crime envisaged by Article 342 of the Criminal Code. Considering that the law was amended one and not six years after the crime was allegedly committed, the limitation for the alleged crime concerned is 15 years, i.e. the statute of limitation has not expired. Such approach is upheld by the Constitutional Court of Georgia. In its May 13, 2009 judgment the Court stated the following: "when a lawmaker increases the length of the statute of limitation and the statute of limitation established by previous applicable law has not yet been expired, it may not be deemed as violation of the Constitution. It does not contradict with the Constitutional principle prohibiting retrospective law and therefore, it may not be viewed within the scope of the prohibition envisaged by the impugned norm. Even though rights of an individual suffer to a certain extent by lengthening the term of criminal prosecution brought against him/her, the normative reality is justifiable by interests of legal safety."

4. It does not matter whether the unidentified person got hold of the leaked photos during current or previous authorities. The truth is that the law enforcement authorities failed to keep the important materials of the criminal case in safe. This needs to be investigated.

5. During press-conference held in the Office of the Chief Prosecutor at 24:00 on March 20 it was stated that the body displayed evident signs of pre-mortem injuries and that "it was necessary to conduct new forensic examination in the case."

Considering the Prime-Minister's statement that negotiations with international forensic bureaus are ongoing, it is safe to assume that no such forensic examination has been conducted yet. If so, what served as grounds for the investigation to conclude that the body displayed evident signs of pre-mortem injuries? Clearly, establishing such facts is outside the scope of competence of a law expert and requires specialized knowledge, while if the forensic examination has not yet been performed, how did the Prosecution Services establish the fact?

6. The investigating authorities must be ready that considering high public interest, a number of questions will be posed during the criminal proceedings by members of the deceased persons, journalists, the defense, NGOs and other stakeholders. These questions need to be responded with qualified, highly-professional answers; otherwise, inadequate answers will raise new questions. Any suspicions that may exist after the investigation is over will have a harmful effect on interests of the investigation and get in the way of delivering a lawful and substantiated verdict. Generally speaking, any case involves the risk counter-productiveness of ineffective and unprofessional investigation, and clearly, in the present case we are in no position to claim what actually happened but if the crime has indeed been committed and the investigating authorities failed to corroborate the allegation with adequate evidence, any questions that public may have will remain as questions while the alleged criminal will remain unpunished. Article 40 of the Constitution of Georgia stipulates that "A resolution on preceding a person as an accused, a bill of indictment and a judgment of conviction shall be based only on the evidence beyond a reasonable doubt. An accused shall be given the benefit of doubt in any event." The cited norm of the Constitution clearly highlights the importance of conducting adequate investigation, collecting credible evidence and ruling out of any doubt.

Finally, we would like to commend the position of the President of Georgia stating that "it is not the public interest to see the grave footage but to bring the investigation to an end" and urge the Prosecution Service to do as much as it can to ensure timely, effective and highly-professional investigation of the case.