

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Deems Fining of Ivanishvili and Kaladze Unlawful

GYLA studied decisions of Tbilisi City Court dated August 10 and August 11, 2012, warranting fining and impounding of movable and immovable property as well as intangible assets of leaders of the political coalition Georgian Dream - Bidzina Ivanishvili and Kakha Kaladze. Pursuant to the court's decision, the fines imposed on Kakha Kaladze and Bidzina Ivanishvili amounted to GEL 16 944 960 and GEL 20 243 827,5 respectively.

In the process of analyzing the cases, a particular attention must be paid to evaluation

of court's decisions. In view of the fact that acts of the State Audit Service lack validity, it is even more important for the court to act as a guarantor of balance and protection of rights and ensure fair and impartial examination of the case. But instead, decisions of court are characterized by loyalty to public agencies and fail to ensure a fair trial. It has once again been reaffirmed by final decisions delivered against Kaladze and Ivanishvili. Regrettably, such precedents have an adverse impact on reputation of judicial authority in general.

GYLA has highlighted on numerous occasions multiple violations during court proceedings initiated under the law of Georgia on Political Union of Citizens, including unreasonable time for review of cases by court - 48 hours; making it impossible for the defense to prepare properly; a short period of time for appealing, which rules out any possibility to familiarize with minutes of the trial or the decision to be appealed. In addition to the noted problems, another acute issue in decisions delivered against Kaladze and Ivanishvili is unsubstantiated judicial decisions.

Unsubstantiation of and absence of evidence in the decisions

The court has not cited any of the circumstances important to find violation of administrative law or evidence that would prove the violation. Decisions of court fail to indicate at all

the type of illegal donation made (provision of financial resources, transfer of material or non-material value or provision of service at no cost or at a discounted price/on concessionary terms;

concrete action that amounts to making of illegal donations in favor of a party;

which party/a person equivalent to a party (a person envisaged by Article 261)

received the donation and the amount received;

which representative of a party/a person equivalent to a party (a person envisaged by Article 261) received the noted donation;

whether the donation was made through a third party and which concrete persons were involved in this action.

Court has failed to provide address any of the foregoing issues in its decisions.

Moreover, these issues have not been raised at all, which makes judgment of the court rather illusive, detached from the case and groundless.

The decision delivered against Kaladze cites explanation of the State Audit Service saying that there is a "sufficient doubt" that the money withdrawn by Kakha Kaladze will be used for "political and electoral purposes". The fact that the explanation

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mentions doubt and future actions must be highlighted. However, it is impossible to tell whether in its legal evaluation the court is focusing on past donations or donations to be made in the future. Absence of specific details and evidence make it impossible to find an answer to this question in the decisions. It is noteworthy that the law of Georgia on Political Union of Citizens does not envisage any liability for making donations in the future. Further, it is noteworthy that the court must have been guided by the human rights standard in which every doubt that can not be proved must be resolved in favor of the defendant.

Instead, the court's decision notes that spending of part of the money withdrawn by Kaladze in cash was ambiguous. The decision notes multiple times that "purpose of spending GEL 3 565 687 is **unknown**..."

"purpose of spending GEL 2 253 892 is **unidentified** as it has been withdrawn in cash, without specifying a reason..."

Kakha Kaladze's trustee, Karlo Kaladze has withdrawn USD 450 000 in cash, whereas Kakha Kaladze - [has withdrawn] USD 157000 [in cash], purpose of spending of which is **unknown**. The fate of USD 163000 is also **unknown**, since on May 4 Kakha Kaladze converted the money in GEL.

Correspondingly, Kakha Kaladze has withdrawn from Bank Cartu JSC and Progress Bank JSC in 2012 GEL 3 388 992 in cash throughout 2012 for an unknown purpose".

In addition, the court notes that despite the withdrawal of cash, Kakha Kaladze still has various accrued liabilities. Therefore, the court straightly moves on to a conclusion that "this in itself amounts to composition of offense ... [of illegal donations]... - making a donation/paying a membership fee prohibited by the Georgian legislation by a natural... person in favor of a party or a person envisaged by para.1 of Article 261 of this Law..." These two circumstances do not confirm the fact of making an illegal donation and therefore, the decision is completely unsubstantiated.

In the decision delivered in Ivanishvili's case, the court says that "the fact of using the money withdrawn from the bank accounts for political purposes by the person charged with an administrative offense has been proved, and there is no evidence in the case to invalidate this." In reality, use of the disputed funds for political purposes is not proved by any evidence at all. Furthermore, the court has failed to take into account the notary act dated July 27, 2012, submitted by the defense for proving the

fact of legal importance. The document confirms that GEL 700 000 and USD 2 900 000 is kept in house of Ekaterina Khvedelidze. The court tossed out the evidence due to the fact that "the noted amount exceeds the amount withdrawn from Bank Cartu JSC throughout 2012." We believe that the noted judgment of court completely lacks any logic.

Ambiguous issues

There are many unsubstantiated judgments that have not been based on any factual or legal grounds in these decision. It is further noteworthy that both decisions contain certain ambiguous entries. It is unclear whether the court refers to vote buying by Ivanishvili and Kaladze and thus goes beyond the scope of dispute and violates presumption of innocence, or is simply unable to distinguish vote buying from illegal donations. These entries are as follows:

"The court believes that in the present case offense was committed by violating legal requirement. Specifically, Kakha Kaladze, as a person related to the coalition Georgian Dream and political parties that are members of the coalition, aimed at providing assistance to any citizen of Georgia by means of financial resources, providing service to the party, perpetrating the action - transferring material values and service to citizens of Georgia, which amounts to a prohibited action performed in favor of the party."

"The court believes that Bidzina Ivanishvili uses his financial standing to incite interest of Georgian citizens - voters, in favor of the noted political subjects and for realization of their electoral goals."

Unlawfulness in the process of enforcement of the decision

The process of enforcement of the fine imposed on Kaladze must also be highlighted. Institution of forceful enforcement by the National Bureau of Enforcement against Kakhi Kaladze amounts to violation in consideration of the fact that the term prescribed by court based on applicable legislation for voluntary compliance with the decision has not yet expired. Specifically, under the Code of Administrative Offenses of Georgia, the ruling on imposition of a fine must be enforced forcefully in an event of failure of the offender to pay the fine within the period of time prescribed (Article 291.1). Therefore, the enforcement proceedings should not have commenced before expiration of the 7 day term for voluntary compliance. Further, explanation of the

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National Bureau of enforcement that "the process of enforcement has started but it is not forceful as Kaladze was served with an enforcement notice and provided with a 7-day term for paying the fine, effective upon serving the notice ... Forceful enforcement will commence after the 7-day term expires." Enforcement proceedings are forceful in nature. As to the seven-day term provided by the National Bureau of Enforcement, the Georgian legislation stipulates that the term is granted after expiration of the 7-day term prescribed by court. Even in an event of voluntary compliance with the term fixed by the National Bureau of Enforcement, the debtor will still be imposed with an additional obligation to pay 7% of the fine in enforcement charges. If Kaladze had paid the fine prior to expiration of the term fixed by the court, he would not have to pay any additional charges. Illegal action of the National Bureau of Enforcement inflicts material damage to Kaladze as well as reduces the legal term for voluntary compliance - minimum of 14 days (7 days fixed by court + 7 days fixed by the National Bureau of Enforcement).

Having studied the decisions of the court, GYLA concludes that the resolutions of Tbilisi City Court dated August 10 and August 11, 2012, grossly violate right of Bidzina Ivanishvili and Kakhi Kaladze to a fair trial, which is guaranteed by the Constitution of Georgia and the European Convention for Human Rights. It is noteworthy that despite appealing, Tbilisi Appellate Court upheld both decisions on August 14.

We would like to highlight once more that violation committed by any political party or a politician is equally unacceptable and calls for application of due measures against offenders. All political parties must act within legal frames, and violation of law should not be encouraged. However, monitoring of party funding and activities of state agencies should first of all fall within legal frames and be carried out in full compliance of the principles of justice. Otherwise, the process may have irreparable impacts on election-related developments.