



GYLA Requests Effective Investigation on Taking the Infants Abroad Illegally

Georgian Young Lawyers' Association (GYLA) was addressed by the association "Hope of Future", which informed GYLA of child birth certificate falsification for the purpose of taking the infants abroad. According to the information provided by the "Hope of Future" the presumably criminal scheme operated in the following way: the infants were conceived using the donor cells; the obtained embryos were then transplanted to and nurtured in the uteruses of the surrogate mothers. After this, the surrogate mothers were forced to conceal the fact of surrogation, to register as legal mothers and to indicate a foreigner to be the father; that foreign citizen should then have taken the infant abroad. It is notable, that according to the Article 143 of the law of Georgia on the "Protection of Health" the surrogate mother does not have a right to be recognized as a parent of the child, since a surrogate mother is not a biological mother. Taking the infants abroad required the consent of the person, authorized as the parent, which is why the fact of surrogation was being concealed; falsified birth certificates were being created, after which the person indicated as biological mother (being surrogate mother in reality) was forced to submit the written statement to the Notary, refusing to exercise the parenthood. This refusal gave the foreigner, mentioned as father, the possibility to take the infant abroad independently.

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According to the information provided to GYLA by the “Hope of Future”, the Tbilisi main division of the Ministry of the Internal Affairs started the investigation couple of months ago on the allegations of the criminal offence according to the Part 2 of the Article 3441 of the Criminal Code of Georgia. This provision regulates illegal transportation of migrants through the border of Georgia using the falsified documentation.

The “Hope of Future” informed the investigative authorities about a number of such cases, however, the proper investigation on this issue has not been conducted. It is notable that at first, the investigation was based on the allegations of breaching the Part 1 of the Article 362 of the Criminal Code of Georgia, which only entails the falsification of the documentation.

According to the letter of the Tbilisi Prosecution’s Office, dated May 17/2013, some of the employees of the private company “International Healthcare Agency New Life Georgia” were falsifying the documentation; however, the decision on termination of the criminal proceedings was made on May 7/2013, due to the fact that under the law of Georgia on the “Amnesty” this offence was amnestied.

It should be mentioned that since the present case relates to the child rights, there might be significant damage involved. In case of the significant damage, the Second Part of the Article 362 of the Criminal Code of Georgia prescribes the imprisonment from three (3) to six (6) years, which means that this is the violation of the grave category, which is not automatically covered by the law of Georgia on the “Amnesty”.

Apart from this, it is clear, that the investigation should have examined the purposes of document falsification and should have qualified the committed offence under the relevant Article. As already mentioned, the investigation on allegations under the Article 3441 of the Criminal Code of Georgia (illegal transportation of migrants through the border of Georgia using the falsified documentation) started only two months ago.

It is also notable, that despite the availability of a number of evidences, the investigation authorities have only initiated the investigation so far and the criminal prosecution of specific persons has not yet started, according to the information available to us.

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We also would like to underline that this may be the case of organized crime by the group of persons, which is an additional circumstance adding to the gravity of the criminal offence. In such case the investigation should be based on the allegations under the Part 3 of the Article 3441 instead of the Part 2 of the same Article. There is a possibility of discovering the signs of other offences as well.

Due to the importance of the case, the sensitivity of child rights and the necessity of preventing such offences in the future, GYLA calls on the Ministry of Internal Affairs and the Prosecution to ensure fast, objective and effective investigation.