



GYLA's Position about the Arbitration Agreement Made between the State and the Patarkatsishvili Family

On January 17, 2014 the Ministry of Justice disclosed the settlement agreement and its additional documents made between the successors of Arkadi (Badri) Patarkatsishvili and Georgia in the international arbitration. In the arbitration, A.P.'s family members requested to be given ownership of "Imedi" TV and that the lease on Mtatsminda Park be reinstated, or in the alternative, sought compensation in the amount of 400 million USD. As mentioned, the arbitration ended with settlement under certain conditions between A.P.'s successors and Georgia.

Following examination of the settlement act and its legal analysis it should be concluded that, the document allegedly reveals presumable criminal conduct of high state officials from the former government. The state should investigate the lawfulness of the document, as well as the process prior to drafting it and after its preparation. In the case concerned, systemic violation of law might be observed from the side of state and other agencies.

GYLA focuses on some substantial circumstances, which, in our opinion, should be investigated by relevant competent state agencies.

Parties to the agreement

The agreement is drafted between Georgia and A.P.'s successors. The term "Georgian Party" implies:

1. Georgia, represented by the first Deputy Minister of Justice;
2. The Ministry of Justice;

- 3.The General Prosecutor's Office of Georgia;
- 4.The Ministry of Foreign Affairs;
- 5.The Department of Constitutional Security;
- 6.The Ministry of Defense of Georgia;
- 7.Financial Police;
- 8.Taxation department;
- 9.Georgian National Communications Commission;
- 10.Tbilisi municipality.

The causes for representing such wide spectrum of law enforcement agencies in the arbitration should be determined. Furthermore, involvement of Tbilisi City Hall and Georgian National Communications Commission in the case, also raises some questions.

The settlement agreement provides that Georgia is represented by the First Deputy Minister of Justice of Georgia, authorized to represent the state and to conclude this Settlement Agreement by virtue of Decree of President of Georgia No.70 dated 30 June 2011. Though, it should be examined if the President was entitled to grant her authority to represent law enforcement bodies and especially Tbilisi City Hall and GNCC. Legislation of Georgia provides that neither law enforcement bodies, nor local self-governing agencies or the independent commission fall under subordination of the President.

Settlement on the Property owned by another person

As it follows from one of the stipulations of the agreement:

*“Georgian parties” (individually and jointly) will ensure transfer of assets of former Rustavi Metallurgical Plant, currently Joint Stock Company Georgian Steel, from any relevant third party to the legal entity (**Investor**) named by Ina Gudavadze.*

By the time of making the settlement agreement, Georgian Steel had been the ownership of another individual (it was not owned by the state or local municipality). Therefore, the listed public agencies undertook obligation to transfer to the “Investor” other individual's property. We are unaware of any other official agreement with similar content. Georgian Legislation does not envisage opportunity, under any transaction, allowing one party to undertake obligation to transfer to another party,

the third person's property when it has no rights thereon. Making such transaction on behalf of the state or local municipalities contains elements of criminal offence.

Furthermore, the statement of "Georgian Steel" should also become the subject of interest of investigation. It provides that "Within two hours after signing the settlement agreement ... the special task force made us leave the territory of the plant exactly in 15 minutes."

Possible intervention of judiciary's activities

According to the agreement:

"A.P. family parties remain unwilling to enter into any settlement, unless Georgia court litigation has been finally resolved and A.P. family parties' claim successfully determined in their favor in all material respects ".

As per agreement, the term "Georgia Court Litigation" implies the three different, by that period, ongoing actions in the court. In all three cases A.P.'s family members and other private individuals were parties. However, the state, on behalf of any public agencies, was not represented in these litigations. The circumstances bring up questions if any of the mentioned state agencies have influenced court litigation process with a view to finish the arbitration dispute with favorable ends for the former government?!

Although the agreement provides that Georgian parties undertake no control on the "Georgia Court Litigation", there are some conditions which prove otherwise:

a) The settlement agreement provides that final resolution of the A.P.'s family issues shall be deemed to occur by 15 August 2011 (or within a little bit more than a month since making the agreement.) If the executive branch was really unable to influence litigation in the court, with high probability it was not either able to predict the quick end date of generally delayed litigations, especially with favorable ends for the applicant. It is less likely that government would have agreed on settlement of the dispute worth to 400 million, with a necessary condition in the agreement that was beyond their control. According to the settlement agreement, unless the stipulation was fulfilled, A.P.'s family was free to resume the arbitration on 400 million USD.

Obviously, it was not in the interest of Georgian parties.

b) Some specific facts reinforce our doubts: by the time of making the agreement (July 6, 2011), an action numbered AS-967-1246-09 had been pending before the Supreme Court of Georgia. The case was ruled in favor of Josef Kay in previous two instance courts (in the case concerned GYLA does not intend to determine whose position was legitimate). In 2009 A.P.'s Family members lodged a lawsuit in the Supreme Court and claimed invalidation of decision of the Appellate Court. Although, according to the Criminal Procedure Code, the term for case examination in the Supreme Court shall not exceed 6 months, it violated established time frames and after two years since lodging the case, it did not even judge on admissibility of the lawsuit, let alone examination of case.

However, on July 6, 2011 after making the arbitration agreement, the situation changed. The Supreme Court considered the lawsuit of A.P.'s family members admissible and ruled the case in favor of the applicant. It should be noted that the Supreme Court reviewed the case without parties' attendance. As a result, one of the stipulations of the settlement agreement had been fulfilled, namely the Supreme Court had ruled the case in favor of A.P.'s family members by 15 August, 2011. In view of these and the systemic problems related to judiciary's independence reported for years, there is a justifiable doubt about criminal intervention in judiciary's activities in the case concerned, which should become the subject of investigation of law enforcement agencies.

Closure of the Georgian Criminal Proceedings

As it follows from the settlement act, prior to passing away of A.P. criminal proceedings were brought against him on three cases in the period of November-December 2007. Notwithstanding his death, all three cases were pending for years. One of the stipulations of the settlement agreement was termination of the criminal proceedings. Though, it should be noted that the Criminal Procedure Legislation does not envisage arbitrations agreement as bases for termination of investigation.

GYLA believes, that conduct of investigation and criminal justice in general, should not become the subject of arbitration agreement by the state. Launch of investigation against A.P. following 7 November, 2007 developments, failure to terminate it after he

passed away and considering investigation process as condition for arbitration agreement, might have signs of alleged political persecution carried out against A.P.

The issue of Imedi TV

One of the substantial issue of arbitration agreement was the consensus on Imedi TV. According to the settlement, if government fulfilled agreement conditions, A.P.'s family waived all demands and legal claims in terms of Imedi TV. As it seems the interest to own TV company was so high that government did not event refrain from undertaking obligations with alleged criminal content. As mentioned already, the government undertook obligation to transfer to A.P.'s family the property owned by the third person (see above "agreement on the property owned by another individual".)

Impartial investigation needs to be conducted on substitution of initial owners of Imedi TV.

Confidentiality of the settlement agreement

According to GYLA's information the settlement agreement was considered confidential as per September 5, 2013 resolution of the Government of Georgia and September 17, 2013 order of the President of Georgia. At this point, it is unknown what type of confidential information was incorporated in the settlement agreement. Moreover in view of the content of the agreement, lawfulness of considering the settlement agreement confidential raises questions and it needs to be examined separately. It should be determined whether confidentiality of the agreement was dictated for legislative requirements or it was undertaken for covering alleged violations of law.

In view of above, we believe that making of the agreement by public agencies on the property owned by the third person, alleged interference in judiciary's activities, setting criminal justice as condition for arbitration agreement, some questions concerning Imedi TV, considering settlement agreement confidential and other issues should become the issue of additional examination of relevant state agencies. In certain instances there might be elements of offence in conduct of high officials, including the President of Georgia, therefore impartial investigation needs to be

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conducted. Observance of the property right, independence of judiciary and media and politically neutral criminal justice are the pillars of democracy development oriented state, while when they are prejudiced, legally correct, impartial and effective response becomes the obligation of competent state agencies.