

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA's Statement on the Case of the High-Level Officials of the Defense Ministry

The Chief Prosecutor's Office of Georgia has detained five (5) employees of the Defense Ministry on October 28, 2014 and brought charges against them on the next day. The charges were brought under the sub-clauses 1A and 2A of the clause 2 and the sub-clause 1A of the clause 3 of the Article 182 of the Criminal Code of Georgia, which cover appropriation and embezzlement of another person's property in large quantities, by the group, through the preliminary agreement and through abusing

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official authority.

Following the address to GYLA for legal assistance, the GYLA lawyer was attending the process of bringing the charges on October 29, along with other lawyers of the accused individuals.

During the process of bringing the charges, the defense was refused to be given the copies of the evidences existing in the case, citing that the case relates to the state secrecy. This position of the prosecution contradicts the essential principles, guaranteed under the Constitution of Georgia, the legislation, as well as the international agreements.

According to the clause 3 of the Article 85 of the Constitution of Georgia, [] proceedings shall be conducted on the basis of equality and competition among the parties. A We consider it impossible to ensure the essential principles of equality and competition in applying preventive measures or in main hearings, if the defense is not even given a possibility to examine the case materials.

The principles of applying to court and guarantee of the legal protection, stipulated under the Article 42 of the Constitution of Georgia, cover the principle of competition. (1) The [] A will be fair only in case if both sides have equal opportunities to defend their positions.

It is notable that the state prosecution has violated the constitutional principle on October 28 as well, on the day of the detention, by illegally not letting the lawyer to meet the accused individual for hours. According to the Article 18 of the Constitution of Georgia, [] arrestee or a detainee (...) may request the assistance of an advocate **upon his/her arrest or detention** and the request shall be satisfied".

As for the criminal legislation, the constitutional principle of the equality of arms and the competition are provided under the Article 9 of the Procedural Criminal Code of Georgia.

It should be underlined that the question of the defense [] provision in the legislation prohibits forwarding a lawyer the copies of the case materials? A was left unanswered by the prosecution, and clearly, the question could not have been answered, because none of the provisions in the criminal procedure legislation

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prescribes such a prohibition. In addition, the interest of the state prosecution to prevent the publication of the case materials in this case, would have been safeguarded anyways, because the lawyers took an obligation in writing to not publicize the case materials.

Moreover, according to the Article 83 of the Procedural Criminal Code of Georgia, **any stage of the criminal proceedings** the request of the defense to receive the information which will be applied as the evidence by the prosecution at the court, must be immediately satisfied. According to the clause 3 of the same Article, **of the existing materials in full amount, following the request to exchange information, will cause inadmissability of the mentioned evidences**. Due to the above, the court must recognize inadmissability of all of the prosecution evidences submitted by now, because the defense was not informed of any of the evidences despite the request.

The correctness of our above position is supported by a number of the decisions of the Constitutional Court of Georgia and the European Court of Human Rights. For example, in the decision made in 2009 against the Russian Federation (Moiseyev V. Russia) the European Court mentioned that an unlimited access to the case materials, including the copies whenever needed, is one of the significant guarantees for ensuring the right to a fair trial, which should not be automatically limited because of the state secrecy or national security interests.

In one of the other cases, in which the prosecution has classified a majority of the case materials as the top secret, the defense was not given a possibility to examine those materials outside the prosecution building and was also not given a possibility to make copies of the case materials, the European Court has recognized that the Article 6 of the Convention (right to a fair trial) was violated (Matyjek v. Poland).

Due to the above, GYLA calls upon the prosecution of Georgia to act in full compliance with the essential principles, guaranteed under the Constitution of Georgia and the international agreements and to give defense a possibility to fully enjoy the principles of the equality of arms and competition.

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See the decision of the Constitutional Court of Georgia (2006) on the case Masurashvili and Onise Mebonia against the Parliament of Georgia”