



# GYLA's Statement Regarding the Shares of the Shareholders of the Broadcasting Company "Rustavi 2" and the Sequestration of the Company's Assets

On August 5, 2015, under the ruling of the Tbilisi City Court, the Ltd. [REDACTED] Company Rustavi 2 A (Rustavi 2, hereinafter), the shares of the shareholders and the company [REDACTED] assets were sequestered; also, the directorate of the Rustavi 2 was prohibited from governing the company or undertaking any actions relating to management of the company, as well as managing the property. This was preceded by the businessman Kibar Khalvashi submitting the lawsuit to the court for returning the [REDACTED] 2 A shares and requesting sequestration of the property of the [REDACTED] 2 A partners for the guarantee of the lawsuit.

The importance and potential outcomes of this dispute [REDACTED] regardless of their concrete content [REDACTED] significantly exceeds the interests of the directly engaged sides. The activities of the company, as well as the issue of its ownership is a particularly sensitive topic, not only because the matter relates to the media company, but also because this media company is characterized by the highest rating and critical approach towards the government. Considering the above, the ongoing dispute between the two private subjects, whatever the outcomes will be, has not only legal, but also a significant political context.

However, considering GYLA [REDACTED] mandate, the given evaluation aims at informing the society about the important legal aspects of only the specific legal dispute. As a result

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of the preliminary examination of the issue, based on the legal documentation available to us at this stage (ruling on the application of the sequestration as a lawsuit guarantee, and not the case materials entirely), we consider it is important to mention the following:

1. According to both the legislation, as well as the practice, it is clear that the standard of the justified doubt applied by the judge for the guarantee of the lawsuit, is generally low and the characteristics of the sides to the dispute do not prescribe a different standard. While considering the specific means of lawsuit guarantee the court did not examine whether there are factual grounds to the lawsuit. However, it is only justified to apply a specific measure of lawsuit guarantee when the court has a high-level probability belief that non-application of the specific measure of the guarantee will make it difficult or impossible to execute the court decision.

2. In the mentioned dispute it is notable that the application of measures against Rustavi 2, which prohibit the management and shareholders of the company to manage the company and undertake management-related actions, might damage the company and hinder its operation, which, in its turn, will reflect in the functioning of the media outlets; in such case it is clear that not only private subject will be damaged, but also the public interest, which is the pluralistic media environment and possibility of freely spreading critical ideas.

3. Therefore, we consider that in this case, while considering the application of the lawsuit guarantee measures, the judge should have considered not only the procedural legislation, but on the one hand, the distinct role of the judge in a democratic state and on another hand □ the crucial function of media in a democratic society, but also the possible irrevocable damage, which might be caused to the media outlets, therefore □ to the public interest □□□ a result of applying the above lawsuit guarantee measures.

Specifically, Georgian Young Lawyers' Association (GYLA) considers that:

4. The judge should have justified application of those guarantee measures not only based on the assumption that theoretically there is a possibility of the directorate and shareholders of Rustavi 2 unconscientiously selling the property or decreasing its

amount, which might in the future create the problems to the execution of the court decision in favor of the claimant, but also the judge should have strengthened the decision through specific evidences or facts; because, according to the interpretation of the Supreme Court of Georgia (case #as-511-821-09, 22 June, 2009) [ ] justified assumption that any given fact will happen in the future is not only the subjective evaluation of an individual-doubt. The justification of any potential fact is connected to the existing facts existing in the past or in the present, which represents the basis for having high-probability belief that one or another fact will occur in the future.”

5. At the same time, since the given decision can have a negative impact on the operation of media outlets, the judge should have acted based on the proportionality and necessity principles and **should have evaluated, whether applying simultaneously a number of lawsuit guarantee measures against Rustavi 2 for the protection of the interests of the claimant was necessary and proportional for the achievement of the legitimate goal.**

6. **However, the ruling does not justify the necessity of applying a number of guarantee measures simultaneously and why it is not possible to achieve the same legitimate goal with less restrictive measures.** (Specifically, why it wouldn't [ ] have been enough for the judge to apply one measure at a time, or to only sequester part of the property or not prohibit the right to manage and govern the company entirely).

7. At the same time, since, according to the procedural legislation, the period of applying the measures is not restricted with a particular time period, while, according to the ruling, [ ] is in force prior to finalization of the essential dispute (and there is theoretical possibility that the dispute may continue for months and perhaps even years), we consider that while applying the mentioned measures, the judge should have demonstrated a particular strictness in justification of the applied guarantee measures, in evaluation of its necessity and proportionality.

8. And finally, **to maintain the balance between the two private subjects, we consider that the judge should have applied the legally granted authority and protected not only the future interests of the claimant, but also the interests of the defendant as well; therefore, the judge should have considered not only guarantee for the defendant [ ] lawsuit, but also the guarantee for the damages, which might result from the application of the claimant-requested guarantee. However, the ruling mentions nothing of the**

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later.

**Based on all of the above, GYLA considers that the court ruling does not comply with the high standard of justification that must be applied in every case, when not only the interests of the direct dispute participants are at stake, but also the high level public interests and when there is a risk of irrevocable damage to those public interests.**

And finally, we consider that the legal dispute, surrounding Rustavi 2 must be conducted in protection of the highest standard of publicity and transparency, which are prescribed under the legislation of Georgia and international practice.

At the same time, politicians, especially, the representatives of the government political forces must strictly refrain from making such statements or undertaking such actions, which might affect the impartiality and independence of the court. The dispute proceedings at the court, as well as the justification of the court ruling and the decision is and will be the indicator of the independent and impartial, therefore, apolitical resolution of the case.

GYLA will continue observing the case and will continue informing the public of its evaluations in relation to the legal aspects of the case.