

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Importance of the ECHR's Ruling in the case of Enukidze and Girgvliani v Georgia

On April 26, 2011, the ECHR ruled in the case of Enukidze and Girgvliani v Georgia. The ruling contains a number of significant and important messages for the investigative authorities of Georgia. Specifically, the ruling directly lays out how investigation of crimes that has been allegedly committed by state officials, in order to ensure that investigation is in full compliance with provisions of Article 2 (effective investigation) of the Convention. In the case of Enukidze and Girgvliani v Georgia the ECHR found that there had been violation of Article 2 of the European Convention on Human Rights, as the case of kidnapping and death of Sandro Girgvliani manifestly lacked the requisite independence, impartiality, objectivity and thoroughness.

The Court was struck by how the different branches of State power... acted in concert in preventing justice from being done in this gruesome homicide case.” Specifically,

- Actions of the Ministry of Interior Affairs from the early stage of the investigation,
- Indifference of the prosecutor’s office toward the case,
- The prison department’s decision to place all of the convicts in the same cell,
- Deficient trial and pre-term release of convicts’
- President Saakashvili’s unreasonable leniency towards the convicts.

The Court ruled that the investigation conducted by the Ministry of Interior Affairs between January 28, 2006 and March 5, 2006 lacked independence and impartiality. Despite circumstances implicating Ministry of Interior officials in the case from an early stage of the investigation, the same Ministry remained in charge of the investigation for more than a month and the investigation was not handed over to the Prosecutor’s office.

In this regard, the court expressed its substantiated concern regarding a number of shortcomings:

- Between January 28, 2006 and March 5, 2006 the Ministry had conducted numerous important investigative steps, including one that later proved to be of decisive importance in the case;
- Hierarchical subordination between the implicated senior Ministry officers and the investigators – D. Akhalaia who was directly responsible for the ongoing investigation at MIA, occupied the table in the café at the night of the incident together with the Minister’s wife; he was also a direct hierarchical superior of G. Alania, who was later pronounced as guilty;

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- The court was particularly struck by the fact that after D. Akhalaia and the Minister of Interior Affairs learned (supposedly, on February 2) about possible ties of the persons that were under their hierarchical subordination and the Minister's wife to the crime, the case was not handed over to the Prosecutor's Office but was continued by investigators of MIA.

The ECHR also found that the prosecutor's office of Tbilisi failed to conduct thorough, impartial and most importantly, proper investigation.

In this regard, the Court highlighted the following facts:

- The applicants' rights were disregarded by lack of access to the case materials during the investigation and refusal to participate in important investigative activities; they were also left in an informational vacuum as regards the progress of the investigation.
- The investigator took advantage of the fact that the injured party L. Bukhaidze was not familiar with the case materials and during his examination the investigator made a particular emphasis on the alleged fact that L. Bukhaidze and Sandro Girgvliani left the café Chardin separately, at the time of the incident. L. Bukhaidze may not have been aware of the importance of the alleged fact for the investigation, whereas the investigator was well aware that such version of sequence of facts matched statement of one of Gia Alania who was later convicted. Questions that the investigator was asking L. Bukhaidze were intended to reinforce the version.
- During the police line-up on March 8, the investigator intentionally failed to record that one of the persons in the line-up, O. Melnikov was identified by the witness – L. Bukhaidze.
- Despite repeated requests of the applicants, the prosecutor's office refused to question all persons that had been in communication with the convicts by phone.
- During the investigation, convicts were unlawfully placed in the same cell. It is particularly noteworthy that D. Akhalaia's brother was head of the prison department.
- The court did not take interest in what type of sharp object was used to stab Girgvliani or which of the four convicts had stabbed him, whereas the forensic findings explicitly stipulated that cuts in the neck of the deceased were inflicted by a sharp object. The investigation took the convicts' word and upheld their testimonies that Girgvliani was wounded probably after he ran away.

The ECHR noted that one of the significant violations during review of the case in national courts was the case that the applicants had not had sufficient time and facilities to study the file. It is particularly noteworthy that it took the court of first instance nine days only to review such complex case. Naturally, it would have been difficult to study the file and prepare adequately both by the applicants as well as the court itself.

The ECHR underlines that despite repeated requests; the court of first instance did not solicit or examine telephone conversations of persons that were at Chardin Bar that night. Regrettably, the court of first instance did not consider the arguments of the plaintiff concerning the fact that only part of the telephone conversations were used in the case, whereas the investigation had collected recording of the telephone

conversations in their entirety.

The ECHR is particularly struck by the fact that the national court failed to take L. Bukhaidze's explicit testimony into consideration about L. Melnikov being the fourth person that was involved in beating up of him and Sandro Girgvliani. The noted serious accusation was disregarded by the court and investigation authorities despite the fact that it constituted a direct testimony of the victim. In the ECHR's view, instituting investigation against O. Melnikov, who was among the persons sitting together with the Minister's wife at the café, would have basically substantiated claims of the injured party about persons at the café being accomplices to the crime.

The Court also said that there were a number of details implicating persons occupying the table in the café together with the Minister's wife but the investigation refused to examine the details.

The court underlined that the punishment given to the four perpetrators by the domestic courts, namely the prison sentences and the way they had been imposed in practice – due to the presidential pardon - had been inadequate. In the Court's view, such unreasonable tolerance toward the four state officials found guilty does not allow for remedy for violation of Article 2 of the Convention.

The ECHR also found violation of Article 38 in the case due to inadequate cooperation of the Government of Georgia with the Court. Specifically, the materials requested by the court and recorded on 23 CDs were provided by the government of Georgia on December 15, 2009 instead of December 22, 2008, i.e. one year late, only after repeated requests of the Court. The court particularly underlined that despite multiple requests, the government of Georgia failed to submit in its entirety the video material reflecting the developments on Tbilisi-Kojori road from 2 am to 3 am. Instead of an hour-long recording, the government of Georgia submitted a 68-second long video to the Court.

In addition to violation of Article 2 and Article 38 of the European Convention, the Court ordered the government to pay to the applicants EUR 50,000 for non-pecuniary damage.

In GYLA's view, the Georgian investigation authorities and domestic courts should take all shortcomings in the ruling of the ECHR, particularly in cases where state officials have been allegedly involved, in order to ensure effective investigation of similar cases at the domestic level.