

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Investigation should start based on Ivane Merabishvili's Statement

According to the information released by media and provided by GYLA's court monitors (who attended the trial personally), the accused Ivane Merabishvili stated that on Saturday, December 14, some unidentified individuals took him away blindfold from the penitentiary department on a car to the unknown direction.

As Merabishvili reports, he was brought allegedly to the penitentiary department, where the Prosecutor General and one other individual met him. Merabishvili says that the Prosecutor General demanded from him to cooperate on Zhvania's case and to submit Saaakashvili's bank accounts, in return he promised assistance in leaving

the country. Otherwise the prosecutor threatened with creation of unfavorable conditions in prison and arrest of Merabishvili's friends.

Some questions emerge in terms of the alleged facts and in view of the high public interest we would like to provide answers thereto:

Should the investigation start?

According to Article 100 of the Criminal Procedure Code, "In case of receiving information about offence, the investigator and the prosecutor shall launch investigation." In addition, Article 101 of the Code provides more details: "information about the offence that was submitted to the investigator or the prosecutor, or was revealed during the criminal proceeding or was published in mass media shall serve as the basis for launching the investigation."

Ivane Merabishvili's statement contains elements of offence. For example, according to Article 335 of the Penal Code of Georgia, giving evidence and submitting opinion under duress constitutes an offence. In view of above, legislation of Georgia envisages an obligation to launch an investigation on the fact. Furthermore, necessary prerequisite for exercise of the obligation shall not be submission of Ivane Merabishvili's or any other individual's official application to the investigative organ. As Article 101 of the Criminal procedure Code provides, the obligation to launch investigation arises even in case of dissemination of such information in mass media.

Which agency should investigate the case?

According to Para.2, Order #34 of July 7, 2013 of the Ministry of Justice of Georgia, cases concerning offences committed by prosecutors should be investigated by the investigators of the Prosecutor's Office. GYLA, however considers the provision problematic and it was clearly revealed in the case concerned. The principle comes in conflict with the international standards, according to which to exclude the risk of conflict of interest and the doubts on impartiality and fairness of conducted investigation, the offence committed by one agency should be investigated by another agency. In view of above we consider necessary to introduce relevant amendments to the legislation, which will bring the disputed norm in line with the international standards.

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GYLA also voices its position in terms of developments that took place after Merabishvili's statement. Merabishvili challenged his lawyers and left the court room. His lawyers Stephane Tumanishvili and Otar Kakhidze also left the trial under the motive that they were not able to protect defendant's rights any longer. Giorgi Chiviashvili, the Merabishvili's third lawyer was in the court room. As Chiviashvili reported he was also deprived of the right to represent Merabishvili's interests. The judge fined all three lawyers by GEL 200 for contempt of the court. Since the defendant requested recusal of lawyers himself, the judge's motivation to fine the lawyers is unclear for GYLA.