

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



NGOs' joint statements on police raids held for the past period

For the past several days the Ministry of Interior held some wide scale police raids in the capital which raised concern of the part of population. Policemen stopped and searched pedestrians and vehicles and inspected private documentation of citizens. As reported, sometimes policemen wrote down personal information of individuals (name, father's name, address, phone number) and took photos of them by mobile phones. We consider that often implemented activities were illegal and violated human rights and freedoms guaranteed by the Constitution.

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We are especially concerned about the case of the journalist from Tabula TV Company being chased by some policemen while recording the raid process. Police searched him and deleted the recorded video material.

The Ministry of Interior denied the incident. The facts, however, raises doubts, especially when the journalist was not even summoned by the agency for investigation of fidelity of the fact.

According to the Georgian legislation, information released by the journalist on destroying video recording constitutes an offence and prosecution should launch an investigation on the fact.

Considering the high public interest on the case, we deem necessary to inform public about relevant regulations of the Georgian legislation and submit our opinion.

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According to Article 9 of the Law on Police, police is authorized to implement raids in emergency and military situations, as well as for detention of offenders or law breakers in populated areas, traffic roads and territorial waters.

As it follows from the provided norm, conduct of raids is permitted only in the listed conditions:

1. Emergency and military situation;
2. For detention of offenders;
3. For detention of other law breakers.

No emergency or military situation has been announced in Georgia, therefore Police should have conducted raids for detention of offenders or other law breakers. However, as reported, citizens have been stopped and searched massively which generated reasonable doubt that police stopped and searched randomly selected individuals rather than aimed discovery of the accused or other law breaker. It is interesting that the statement released by the Ministry of Interior also provides that conducted raids were of preventive nature which contradicts mentioned legislative aims.

According to the Law on Police, in cases prescribed by the Criminal Procedure Code of Georgia and Administrative Offences Code of Georgia, police is entitled to stop an individual and a vehicle and to inspect them with observance of the established rules for search and seizure.

Therefore, the Law on Police sets two independent criteria for conduct of search and seizure during police raids

1. There should be conditions determined by the by the Criminal Procedure Code of Georgia and Administrative Offences Code of Georgia;
2. Individuals and vehicles should be inspected with observance of established rules for search and seizure.

Criminal Procedure Code specifies the list of conditions when search and seizure is permitted. As for applicable Administrative Code of Offences it says nothing about search and seizure. Consequently, with a view to observe legitimacy principle by a Police, it is necessary to implement search and seizure of an individual or a vehicle in presence of circumstances envisaged by the Criminal Procedure Code.

Criminal Procedure Code of Georgia provides for the exhaustive list of circumstances when search and seizure is permitted. In particular, according to Article 119 of the Code, search and seizure is carried out in case of a justifiable doubt with a view to discover and obtain an object, a document, substance important for the case or other object containing information. Search is also permitted for discovery of a missing person or a corpse.

Criminal Procedure Code permits conduct of search (including private search) in case of justifiable doubt. The same Code provides that justifiable doubt means facts and information, which according to the circumstances of the concerned criminal case could have satisfied an impartial individual in deciding about committing alleged fact of offence by an individual or the necessary standard for conduct of investigative operations directly envisaged by the Code. It would be unreasonable to consider the decision of law-enforcement officials on massive search of individuals as justifiable doubt.

Furthermore, with a view to avoid possible breach of human rights, the legislator

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placed search and seizure during raids, within common regulations as well and permitted their conduct only in line with rules provided for by the Criminal Procedure Code.

According to Criminal Procedure Code of Georgia, search (including private search) should be implemented on the basis of the court decision, whereas in extreme necessity investigator's order should be submitted. There is an exception when detained is being searched, however information is recorded in the protocol of detention.

As far as we are informed, no court decision or investigator's order was submitted to individuals who were subjected to search during the raids, which is a gross violation of procedural rights.

In addition, according to Para. 3, Article of the Law on Police, "policeman shall introduce himself to a person whom he stops, submit documents certifying his authority and explain his right to challenge lawfulness and reasonability of such conduct." As we are informed, policemen failed to observe this requirement of law as well.

Georgian Young Lawyers' Association (GYLA)

Georgian Democracy Initiative (GDI)

Transparency International - Georgia (TI)

International Society for Fair Elections and Democracy (ISFED)