

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## NGOs' statement about the arrests of the United National Movement Members

It has been reported that on February 10, 2014 the Law Enforcement Agencies arrested the Khoni municipality governor Zurab Jibukhaia, his deputy Besarion Tchelidze, and the deputy chairman of the United National Movement's Dusheti organization Zurab Otiashvili.

Zurab Jibukhaia and Besarion Tchelidze have been charged under Para 3, Article 182 of the Criminal Code of Georgia (aggravated misappropriation and embezzlement),

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Para 1, Article 332 (abuse of official power), and Article 341 (official forgery), envisaging the punishment of 7 to 11 years imprisonment. The case refers to illegally cut timber confiscated by the Financial Police 4 years ago and officially handed over to the Khoni municipality governance. As reported by the prosecutor's office, the defendants delivered the timber to sawmills instead of distributing it among vulnerable families.

Under Para 12, Article 38 of the Georgian Criminal Procedure Code, the accused shall not be imposed pre-trial imprisonment except in cases where there is a danger of escape, further criminal activity, influencing witnesses, destruction of evidence, or threat of non-enforcement of the judgment. The prosecution failed to prove the presence of any of the above threats. Nevertheless, the Kutaisi City Court sentenced Zurab Jibukhaia and Besarion Tchelidze to pre-trial detention on February 12, 2014.

Khoni local government is among the 3 local governments that have retained governors representing the United National Movement after the 2012 parliamentary elections. Two of them have now been brought under criminal charges. According to the United National Movement, Zurab Jibukhaia was supposed to be the party's candidate for the governor in local elections. Detention of Zurab Jibukhaia and Besarion Tchelidze, however, prevents them from direct and active participation in the pre-election campaign.

It should also be noted that, in addition to Khoni district, criminal proceedings have been initiated against UNM members in Dusheti municipality as well. The deputy chairman of the United National Movement's Dusheti organization Zurab Otiashvili, who was recently elected as Deputy Chairman of the Dusheti local council (Sakrebulo), was charged by the Finance Ministry Investigation Department with crimes qualified under the Criminal Code Article 332 (abuse of power), Article 333 (abuse of office), Article 180 (fraudulent practices), and Article 340 (illegal receipt of gifts). We have not studied Zurab Otiashvili's case. Nevertheless, we believe that detention of the Dusheti local council chairman, similar to the situation with Zurab Jibukhaia and Besarion Tchelidze, will not facilitate the United National Movement to run an adequate pre-election campaign.

We believe that everyone is equal before the law and anyone should be brought to justice if found guilty, regardless of party affiliation. However, it is also necessary to

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take into account that detention of active members of an opposition party ahead of local self-government elections, their incrimination for crimes committed several years ago, and the law enforcement's pre-trial detention motion raise additional questions. The situation is further exacerbated by the fact that the prosecutor's office officially stated a few months ago about its intent to reserve special attitude to the so-called "White collar" offences; what the prosecutor's office referred to in particular was seeking preventive measures other than detention against persons committing such crimes. Pre-trial detention motion was definitely not in line with the above spirit.

- In our opinion, the law enforcement agencies should try their best to refrain from arresting members of an opposition party ahead of elections, except for the cases, of course, where there is an immediate need. Such actions might generate questions as to the fairness of the electoral environment. A similar recommendation was issued by the Interagency Committee prior to the presidential elections as well.
- Preferably, the government should already start thinking about setting up an Interagency Committee. The arrest of the opposition political party members once again generates the need to establish a similar committee, including, prior to the commencement of the election campaign.