

საქართველოს ახალგაზრდა იურისტთა ასოციაცია
GEORGIAN YOUNG LAWYERS' ASSOCIATION



Opinion of GYLA on the Statement of the Secretary of Anti-Corruption Council Concerning Impounding of Property on the Account of Global Contact Consulting LLC

On June 24, 2012, GYLA released a statement on impounding of property on the account of Global Contact Consulting LLC under the June 21, 2012 decision of Tbilisi

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City Court. In its statement GYLA evaluated lawfulness of the decision and other circumstances on grounds of Article 151 of the Criminal Procedures Code of Georgia, noting that the decision to impound the property was made in violation of procedures law.

In response to the statement, we received a legal analysis from the secretariat of the Anti-Corruption Council, focusing on Article 151 of the Criminal Procedures Code of Georgia. Therefore, we believe it is necessary to focus our judgment solely on Article 151 of the Criminal Procedures Code in our further opinion. Hereby, we present our initial assessment again, in light of Article 151.

However, first we should note that crimes of corruption are not systematized in the Criminal Procedures Code. Moreover, the Code does not offer any definition of corruption as a crime. Thus the law leaves an unjustifiably broad discretion for evaluating whether criminal actions concerned constitute corruption. As for the crime of vote-buying, despite its criminal characteristics, it must also be taken into account that it is included in the chapter dealing with crimes against basic human rights and freedoms, which clearly excludes the possibility of arguing that it amounts to criminal actions of corruption. Neither does the UN Convention against Corruption, ratified by Georgia, qualifies vote-buying as corruption. The Justice Ministry's official website offers a standard scheme of qualification of crimes. According to the scheme, crimes fall under three levels of classification. The first level differentiates between violent and non-violent crimes; the second differentiates between particularly grave, grave and less grave crimes. The third level differentiates between crimes according to objects/different chapters of the Criminal Code, including common crimes as a separate category, whose statistics are maintained by the MoJ.

Number 33 (thirty-three) on the standard scheme of qualification of crimes published by the Ministry of Justice refers to Articles of the Criminal Code that the MOJ views as crimes of corruption, which does not include the crime envisaged by Article 1641 of the Criminal Code.

Nevertheless, it is important to address compliance of the court's ruling with stipulations of the Criminal Code.

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Article 151 of the Criminal Procedures Code envisages aims and grounds for

impounding property. Different paragraphs of the noted Article discuss three alternative cases when judge can order impounding of property, including:

- A court may impound property of a defendant, a person financially responsible for his actions and/or a related individual, including bank accounts if there is information that property will be hidden or spent and/or property has been obtained through criminal actions;
- Property can be impounded in an event of one of the crimes envisaged by Articles 323-330 and 3311 of the Criminal Code or when preparing for other particularly grave crime or for combating such crimes, if there is enough proof that the property will be utilized to commit the crime;
- Court can also impound property if there is sufficient proof that the property belongs to an individual involved in corruption, racketeering or criminal actions, or to an individual convicted under paragraph 3c, Article 194 of the Criminal Code of Georgia and/or crime has been committed towards the property and/or it has been obtained through criminal ways.

The decision to impound the property on the account of the Global Contact Consulting LLC would have complied with requirements of the Criminal Procedures Code if the ruling substantiated existence of one of the said alternative cases.

As GYLA noted in its initial statement, the ruling to impounding property of the Global Contact Consulting LLC failed to comply with the requirements of the Criminal Procedures Code since grounds envisaged by paragraphs 1 and 2, article 151 of the Criminal Procedures Code did not exist. The analysis prepared by the secretary of the Anti-Corruption Council did not question this judgment but examined argumentation and fairness of GYLA's position.

The decision of Tbilisi City Court, cited in GYLA's statement, said that "there is a reasonable doubt that the Global Contact Consulting LLC's technical equipment for TV broadcasting is the property aimed to commit crime and specifically, vote-buying and therefore, the said technical equipment shall be impounded."

The decision did not offer the judgment as to which part of Article 151 of the Criminal Procedures Code was evident, resulting in impounding of property in the given case. It

also failed to offer combination of facts or information that created a reasonable doubt that the crime would be committed in the future and therefore, necessitated impounding of property. As noted above, Article 151 of the Criminal Procedure Code provides for three alternative grounds for the court to deliver the decision impounding property. Therefore, it was the purview of the court to determine whether the existing situation provided grounds for impounding property; further, the court had to clearly and explicitly indicate individual provision of Article 151 of the Criminal Procedures Code that served as the basis for its decision to impound the property.

In view of the fact that the court's decision failed to address any of the said questions, in order to find out the legal grounds of the decision to impound the property of the Global Contact Consulting LLC, we should follow the line of judgment, phrases and references made in the court's decision.

The decision cites use of property for committing a crime and vote-buying in particular as the only grounds for impounding it. The decision does not offer any other arguments. The court does not make reference to corruptive property and furthermore, it fails to offer a judgment about links between vote-buying, corruptive crime and corruptive property, and their evidence in the given case.

Hereby we don't intend to evaluate the legal analysis prepared by the secretariat; however, it must be noted that it follows the line of judgment which is completely irrelevant to the court's decision. Further, arguments cited by the analysis, despite their quality, are useless for explaining and moreover, reinforcing the court's decision.

If the court had ruled that the decision to impound the property should have been based on paragraph 3 of Article 151 (as noted in the analysis) it should have at least mentioned existence of corruptive property. In view of the fact that the legislation does not recognize such term, the court should have offered its own relevant interpretation and explained it. Further, the court should have substantiated the necessity to impound the property under the said Article.

To the contrary, in its decision the court cited reasonable doubt that the property would be used to commit crime and vote-buying in particular, as grounds for impounding. Impounding of property on grounds of the assumption that it will be used to commit crime in the future is laid out in paragraph 2 of Article 151 of the Criminal Procedures Code as opposed to paragraph 3 of said Article. Court's argument

reiterates the stipulation of paragraph 2, Article 151 of the Code, which allows impounding of property if, in addition to other circumstances, “there is sufficient information that the property will be used to commit crime.” The fact that the given case may not be qualified under paragraph 2, Article 151 of the Code is substantiated in GYLA’s initial statement and shared by the secretariat’s legal opinion.

The court’s assumption that the property will be used to commit crime in the future leads us to think that the court had no intention to qualify the case under paragraph 3, Article 151 of the Criminal Procedures Code, which possibly resulted in the court not developing the judgment with regard to corruptive property or possible corruptive crime. Analysis of paragraph 3 of Article 151 of the Code suggest that had the court qualified the property as corruptive (meaning of the term is unclear), it would not have to cite additional circumstances by saying that the property could be used for committing crime in the future. Analysis of the norm suggests that additional circumstances are not to impound corruptive property and therefore, court does not have to focus on this direction.

It is further noteworthy that the necessity of this line of judgment was first of all produced by absence of concrete legal grounds in court’s decision. Scant judgment in the decision excluded the possibility qualifying the given case under paragraph 3, Article 151 of the Criminal Procedures Code, intention of which was never expressed by the court in the first place. Certainly, substantiation offered by the legal analysis can not be used to explain court’s position. If the court had made its decision based on paragraph 3, Article 151 of the Criminal Procedures Code (as assumed in the analysis), it should have at least mentioned evidence of corruptive property. Further, in view of the fact that the legislation does not recognize such term, the court should have offered its own applicable interpretation and should have explained the term. Further, the court should have substantiated the necessity to impound the property on the noted grounds.