

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA responds to pre-trial detention of Sulkhan Tsuladze

On April 15, 2016, Tbilisi City Court satisfied the motions of prosecutors of Prosecutorial Oversight Division of Investigation Unit of the Chief Prosecutor's Office of Georgia regarding imposing pre-trial detention to Sulkhan Tsuladze, one of users of Tbilisi Forum. On April 20, 2016 Tbilisi Appeal Court upheld a ruling by the Tbilisi City Court on pre-trial detention.

Based on the statement made on internet-forum towards the Ambassador of the United States of America, Sulkhan Tsuladze is accused of threatening to commit an assault on persons or institutions enjoying international protection, stipulated in paragraph 2, Article 326 of the Criminal Code of Georgia and shall be punished by imprisonment for a term of six to twelve years. Namely, the prosecutor's office

charges him with threatening to commit an assault to threaten the Embassy of the United States of America and the Ambassador.

In view of the high public interest, GYLA would like to explain the following regarding the abovementioned ruling:

Based on legislation of Georgia and also international standards, the aim of imposing pre-trial detention, is to prevent committing a new crime by an accused and also the behavior of the accused, that may hinder and impeded effective and thorough investigation (e.g. prevent the threat of hiding of accused, pressuring the witnesses and/or destruction of evidence).

Thus, when deciding the question of measure of restraint against the accused, the judge makes decision not whether the person is guilty or not but based on how necessary it is to use one of the measure of restraint for investigation (detention, bail, personal surety etc.) Additionally, the court judges which measure of restraint is adequate and advisable in order to achieve legal goals.

Georgian legislation and International Law of Human Rights stipulates that detention, as the most serious and intense interference in human rights, should be used only as a last resort, as an exception, when the other measures are not adequate in order to achieve legal goals. In case *Alexanyan vs. Russia*, European Court of Human Rights states that the justification of using detention as a measure of restraint should contain references to the specific facts justifying person's detention. In case *Smirnova vs. Russia*, the court explained that the arguments for imprisonment must not be general and abstract.

GYLA believes that using imprisonment as a measure of restraint in the given case does not satisfy the mentioned standards. Additionally, the ruling is not justified, as the reasoning is general and abstract and necessity of using imprisonment as a measure of restraint is not supported with specific facts and information from the case.

Namely:

- The court generally observes that in the given case there is a risk of hiding of

accused, committing a new crime and destruction of evidence, but there is no reference to specific facts and convincing reasoning, why the court agreed with arguments of prosecution and made this decision.

- Additionally there is no reasoning and justification why it was necessary to use the most sever and restrictive measure of restraint and why the less stringent measure of restraint could not ensure to achieve the same goals.

- The court considered that financial conditions of Sul Khan Tsuladze gives him opportunity to flee the country and also creates the risk of actually executing the menace. This argument is also abstract. The abovementioned risk could have been prevented by different means, i.e. transferring travel documents to the police that the accused person showed his readiness for.

- Also the risk of hiding should be examined with reference to factors such as: the person has previously already attempted to escape from punishment by fleeing the country or there is specific evidence of risk of hiding that has not been proved in the given case. In case *Makarova vs. Russia* the **European Court of Human Rights explained that in order to justify the risk of hiding, the states shall provide credible evidence, to use imprisonment as a measure of restraint.**

- The court also agreed with arguments of prosecution that the person could hide in fear of gravity of charges and expected severity of the penalty. In case *Patsuria vs. Georgia*, the European Court of Human Rights explains that using a custody solely on a statutory presumption based on the gravity of the charges because of a hypothetical danger of absconding or re-offending is incompatible with Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

- It is noteworthy that the risk of executing the menace could be prevented though other preventive measures considered by law, that would have been more effective but less restrictive of rights of the accused than imprisonment.

And finally it is significant, that in accordance with ruling, imprisonment of Sul Khan Tsuladze was carried out based on urgent necessity. In such cases, on first proceeding before the court the judge should examine if the imprisonment was an urgent necessity and whether the detention was in line with the procedures of the law. The judgement of the judge on this issue is general and templated and does not provide the necessity of detention, with the permission of court based on urgent necessity and

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is not executing judicial control over legality.

Considering all abovementioned, GYLA believes that the mentioned ruling is unjustified and is not in line neither with domestic legislation nor standards established by international conventions.

Additionally, in view of the high public interest, despite the fact that the prosecutor [] office is not obliged by law directly, GYLA considers it appropriate that the prosecutor [] office, protecting the person [] constitutional rights, should make public the evidences that the prosecution relies on.

Georgian Young Lawyers [] Association will actively keep tracking the abovementioned case and provide the public with appropriate information.