



Based on GYLA complaint European Court found violation of children's rights

On February 2, 2016 The European Court of Human Rights satisfied complaint "NTS and Others v. Georgia" lodged by GYLA.

The applicant in abovementioned case was aunt that raised three minor nephews. After death of Applicant's sister, accordingly the mother of children, children's place of residence was determined their fathers place of residence by domestic courts.

GYLA argued before the European Court on behalf of three minor nephews of the applicant that the Government of Georgia has breached Article 8 of the Convention

(respect for private and family life), as children were not properly involved in proceedings, domestic courts and social workers did not consider children's best interests during decision-making and did not consider their desire, to live with family of their aunt.

With this judgement, European Court has fully agreed on GYLA's argumentations and concluded that there has been a violation of Article 8 of the Convention.

The European Court clearly indicates in this judgement that existing Georgian Legislation regarding the rights of a child – to have legal representatives, that will substantially protects his/her interests – is inconsistent and is not in line with existing international standards.

Opposing to the claims of the Government of Georgia that the interests of children in the court were represented by social workers of Social Service Agency, the European Court specifies that the mentioned social workers were involved in the appeal proceedings with the status of an "interested party", although Legislation of Georgia does not provide for procedural rights of "interested party". Based on abovementioned, European Court establishes that "interested party" cannot effectively protect rights of children without substantial rights.

Neither Civil Procedure Code of Georgia nor related legislation regarding Social Service Agency provide for the functions and authorities of child representative that is assigned by custody and guardianship authorities during court proceedings. European Court clarifies that child representative is obliged to provide the information and explanations to child regarding existing process and find out child's opinions on current issues and is obliged to inform judiciary system regarding child's wishes and views. Accordingly, European Court provides that filling in protocols and attending proceedings does not imply proper representation of child's interests in given case. Especially when the children did not have an opportunity to be presented before the court. European Court expresses astonishment regarding the fact that domestic courts did not consider it appropriate to listen at least to older boy on court proceedings.

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Additionally, European Court assesses judgement made by domestic courts regarding returning the boys to father as disregard of the best interests of a child, considering their hostile attitude towards their father that was undisputed, established fact.

Judgement of European Court is the basis for renewal of proceedings on national level and for amendments of proper laws of Georgia. GYLA will actively monitor process if implementation of the decision.