



Georgia should not transfer Mustafa Emre Çabuk to Turkey

On May 25, 2017, the Georgian Young Lawyers' Association monitored a trial where Quality Assurance Manager of Demireli private college, Turkish citizen Mustafa Emre Çabuk was sentenced to a provisional arrest pending extradition. GYLA believes that the provisional arrest ordered against Mr. Çabuk is unsubstantiated. GYLA also believes that in view of the context of the case and the situation in Turkey, transferring Mustafa Emre Çabuk to Turkey will pose a real threat to his rights. Therefore, Georgia should not extradite Mr. Çabuk.

Unsubstantiated provisional arrest

[It has been reported](#) that Georgia launched the extradition procedure against Mustafa Emre Çabuk upon request of Turkey. According to the information provided to Georgia by the Republic of Turkey, Mustafa Emre Çabuk has been wanted for committing a crime envisaged by Article 314/2 of the Criminal Code of Turkey – membership of a terrorist organization. In particular, the Turkish side claims that he has ties with Fethullah Gülen-associated FETÖ – an organization that has been designated as terrorist by Turkey. The Turkish side believes that FETÖ was involved in the

developments that occurred in summer 2016.

On May 25, 2017, Tbilisi City Court sentenced Mustafa Emre Çabuk to a three-month extradition imprisonment. GYLA monitored the trial and believes that **the position of the prosecution about use of the provisional arrest as well as the court's decision ordering the provisional arrest lacks adequate substantiation and falls short of the standards established under the Georgian legislation and the European Convention.**

The prosecutor explained that there was a threat that the defendant would continue the criminal activities and would go into hiding; however, he did not provide any arguments or facts as to the reasons why. ^[1] According to the prosecutor, **use of a restraining measure against Mr. Çabuk was justified by gravity and nature of the crime and severity and nature of the punishment.** The defense did not agree with the motion; instead, it offered the court to grant a bail of GEL 10000 and order the defendant to submit his passport. The lawyer explained that the defendant has lived in Georgia for a long time, he has a residency permit here but he never received any notice from Georgian or Turkish investigative authorities at his home address. Therefore, he was unaware that he was expected to appear before the law enforcement authorities and he didn't evade any such obligation. In addition, the lawyer noted that the defendant successfully pursues pedagogical activities and serves as a coordinator of a union of schools. Before that, he was a schoolteacher and later he was entrusted with certain managerial functions. The lawyer also stated that Çabuk is the only breadwinner for his family and has no prior record of conviction.

During the trial, the defendant was sentenced to provisional arrest pending extradition without giving consideration to expediency of other less severe measures and without stating why it was necessary to use arrest - the measure that restricts human rights the most.

The Georgian legislation allows using of extradition imprisonment or, in view of special characteristics of extradition procedures, other types of restraining measures (e.g. bail, personal bond) against an individual wanted by foreign law enforcement agencies.^[2] Based on a number of cases handled by the European Court and recommendations of the CoE Committee of Ministers, imprisonment is a measure of last resort and the authorities must always consider use of a less restraining measure first. In addition, imprisonment should not be used for punitive purposes^[3] and

arguments provided for justification of the sentence of imprisonment should not be general and isolated^[4]; rather, they should make reference to concrete facts.^[5]

Justifying imprisonment by gravity^[6] and nature of the crime, severity^[7] and specific nature^[8] of the punishment is in direct conflict with the standards established by the European Court.

In addition, because the motion of the prosecution for use of imprisonment lacked substantiation^[9] and credibility^[10] and later, the court relied on such poor substantiation for using the imprisonment pending extradition, it is safe to conclude that the above measure served the purpose of a punishment instead of, for instance, preventing interference with extradition procedures, avoiding repeat crime and the risk of the defendant going into hiding, etc.

The risk of violation of rights

Based on the ECHR jurisprudence, states are obligated not to extradite an individual when there are serious and well-founded reasons for believing that the extradition would expose the individual to a real risk of torture, inhuman and degrading treatment.^[11]

If extradited, Mustafa Emre Çabuk's rights may be put in serious danger. In this context, it is important to consider the human rights situation in Turkey and especially the important legal problems that entail gross violation of rights of individuals linked to Fethullah Gülen.

Georgia must especially consider the above context, evaluate the quality of guarantees provided by Turkey and whether these guarantees reflect the situation in Turkey.^[12]

GYLA urges the Minister of Justice of Georgia to act in abidance by the international standards in handling of the issue of Mustafa Emre Çabuk's extradition and make all necessary measure to ensure that his fundamental rights are not put at risk.

[1] The European Court of Human Rights believes that only the fact that an individual is accused of committing an organized crime does not justify arrest. In *Aleksei Makarov v Russia*, as grounds for the applicant's detention the domestic courts referred to the fact that the imputed offence had been committed by an organized group. The European Court found that in the case concerned there was no risk of interference with the administration of justice and therefore, use of the detention was unjustified.

[2] Article 30 of the Law of Georgia on international cooperation in the field of criminal justice.

[3] *Lopez Alvarez v. Honduras; Peirano Basso v. Uruguay.*

[4] *Smirnova v. Russia; Boicenco v. Moldova.*

[5] *Fox v. United Kingdom*

[6] Gravity of crime and severity of punishment should not be the sole condition for keeping an individual in custody - *Tomasi v. France; Kalashnikov v. Russia; Patsuria and Georgia; Kostadinov v. Bulgaria.*

[7] Fear of severity of anticipated punishment is not an adequate basis for using imprisonment; risk of the defendant going into hiding may not be determined solely by severity of the punishment - *Mansur v. Turkey; W. v. Switzerland.*

[8] Under the Turkish legislation the crime is punishable by deprivation of liberty for up to 10 years, and under the Georgian legislation it is punishable by deprivation of liberty from 10 to 12 years.

[9] Based on the ECHR standards, grounds for demanding imprisonment must be relevant and substantiated with adequate circumstances - *Buzadji v. Republic of Moldova.*

[10] The decision to use imprisonment must contain reference to concrete facts that

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justify imprisonment of the defendant; the state must provide “relevant and sufficient” arguments to justify imprisonment of an individual - Aleksanyan v. Russia; Yagci and Sargin v. Turkey; Bakhmutskiy v Russia; Arutyunyan v Russia; Yagci and Sargin v. Turkey.

[11] For instance, [Shamayev and 12 Others v. Georgia and Russia](#) (Application no. 36378/02)

[12] <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/>

<https://www.hrw.org/world-report/2017/country-chapters/turkey>