

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Specific measures must be taken for objective and effective investigation of Lapankuri Special Operation

GYLA believes that ongoing investigation into the August 28, 2012 Lopota Gorge special operation falls short of the standards of an objective, effective and independent investigation, and we call on the investigating authorities to address deficiencies in the process of investigation in a timely manner.

GYLA is defending interests of families of the following victims of the special

operation: Aslan Margoshvili, Bahaudin Aldamov, Bahaudin Baghakashvili, Salam Zaurbekov and a police major, Archil Chokheli. In the name of close relatives of the victims, GYLA has had a close written communication with the investigating authorities since December 2012; however, the latter has not shared important comments and opinions expressed by us.

Important issues including due qualification of the case, institutional independence of investigation and protection of procedural rights of the victims remain to be a problem in the process of investigation; in particular,

-Documents provided by the investigating authorities to GYLA show that the investigation has been instituted only under subparagraphs “a”, “c” and “i”, para.2, Article 144 of the Criminal Code, envisaging taking of a hostage. However, in view of the fact that the special operation of the Georgian authorities resulted in death of members of an armed force, it is essential for the investigation to address the necessity of use of lethal force by law enforcement authorities, its lawfulness and proportionality.

According to the ECHR case law, the state must ensure effective and official investigation into deprivation of life with the use of force by the authorities. Further, the ECHR calls for the assessment of not only actions by officers that personally used the lethal force but also the assessment of planning and implementing special operation. Therefore, instituting investigation only under Article 144 of the Criminal Code is inadequate. The state must institute a separate investigation into deprivation of lives of members of an armed force. Further, the investigation must be carried out by the office of the prosecutor as opposed to the Interior Ministry’s investigators.

-Institutional independence of the investigation remains a problem. According to the information provided by the investigating authorities, the criminal case initiated under Article 144 of the CPC is handled by the investigating unit of the Interior Ministry’s department for counter intelligence. Further, expediency of the use of legal force by the law enforcement authorities is assessed in frames of the foregoing case. This constitutes direct violation of the standard of institutional independence of investigation, as Lapankuri special operation was carried out by the armed forces of the Interior Ministry. Moreover, under the applicable law of Georgia investigation of similar cases falls under the purview of the office of the prosecutor; however, referral of the case to the office of the prosecutor requested a number of times has not yet

been met.

-Families of the deceased persons has not been given the status of victims' legal successors, whereas in investigations into the alleged deprivation of life by authorities the state has high accountability and the obligation to keep victims updated on the ongoing investigation. Without the status of a victim, these families have been stripped of the rights delegated by the Procedure Code of Georgia.

Consequently, for an effective, objective and timely investigation into Lapankuri special operation, GYLA calls on the authorities to take the following measures immediately:

- Institute a probe to examine lawfulness and proportionality of the use of lethal force by the law enforcements; further, investigate circumstances of planning and implementing the special operation
- Investigation (including investigating actions of essential importance for the case) be carried out by the office of the prosecutor
- Grant the families with the status of victims' legal successors to ensure their effective involvement in the process of investigation.