

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## Statement of GYLA on Sentencing former President of Georgia to Pre- Trial Imprisonment as Measure of Restraint

On August 5, Tbilisi Appellate Court deemed complaint filed by the defense in Mikheil Saakashvili [ ] case as inadmissible, thus upholding August 1, 2014 verdict of Tbilisi City Court sentencing former President of Georgia to pre-trial detention as a measure of restraint. The trial was attended by GYLA [ ] lawyer specializing in criminal law; also,

we are familiar with the decision of Tbilisi City Court. Trial monitoring or the analysis of the court [ ] decision has not revealed any circumstances to prove that the court [ ] verdict was unsubstantiated or that sentencing of pre-trial detention violated Constitutional or legal rights and principles. Even though that naturally, proceedings brought against President Saakashvili have a political aspect, in light of GYLA [ ] mandate and high public interest we limited ourselves to legal analysis of the preventive measures ordered by court. Considering that GYLA does not have access to case materials, we are unable to assess the extent to which charges are substantiated.

From the very outset, we would like to highlight that use of a measure of restraint is not directly linked to the extent to which charges are substantiated and founded. At this stage of proceedings, whether the person concerned has committed crime is not the subject of court's deliberations.

Pursuant to Article 205 of the Criminal Code of Georgia, detention can be only be used as a measure of restraint if it is the only means for avoiding defendant [ ] a) going into hiding and perverting the course of justice; b) interruption of obtaining evidence; c) commission of a new crime. Pursuant to para.12, Article 38 of the Criminal Procedure Code of Georgia, [ ] defendant shall not be ordered to detention as a measure of restraint, except when there is a threat of hiding, committing a repeat crime, exerting influence on a witness, destroying evidence or hindering enforcement of a judgment. A If the existence of one of these grounds is validated, court is authorized to order detention.

When prosecution motioned for detention, it highlighted threats of exerting influence on witnesses, destroying evidence and going into hiding. In terms of exerting influence on witnesses and destroying evidence, the prosecution stated that [ ] this stage of investigation, vast majority of state officials tied to criminal orders issued by M.Saakashvili or possessing such information are yet to be questioned. A The prosecution also highlighted that M.Saakashvili, as an influential figure, has sufficient financial and human resources to pose the threat of exerting influence on witnesses and destroying evidence."

In terms of the threat of the defendant [ ] going into hiding, the prosecution stated that even though Mikheil Saakashvili was notified on a number of times to appear before the investigating authorities, he did not. The prosecutor also stated that several

months ago M.Saakashvili was summoned for questioning as a witness, which he refused to. He also refused the offer of the prosecution service to participate in the investigating activities as prescribed by law, by means of Skype (GYLA believes that the refusal lacked any legal substantiation).

The prosecution maintained that the fact that [REDACTED] refuses to appear before the investigating authorities engenders not only a reasonable doubt that he will avoid justice in the future but also, it has been authentically established that the defendant has already avoided investigation and Georgian justice.”

Furthermore, the prosecution also stated that with the use of their official powers and influence, M.Saakashvili and other defendants were able to prevent relevant authorities from assessing November 7 developments from legal point of view for over the years (GYLA is unable to specify which officials in particular have caused this failure to act; however, to us it is an undisputed fact that mass violation of human rights occurred during November 7 developments and the law enforcement authorities did not investigate the case despite their legal obligation to do so).

The prosecution also stated that in various cases the ECHR has indicated in various cases that even though individuals may no longer be holding political offices, to a certain extent they have means to exert influence on witnesses and destroy evidence.

In terms of the risk of obstruction of justice, the prosecution cited the case of Enukidze and Girgvliani v Georgia, in which the ECHR stated that [REDACTED] Court is struck by how the different branches of State power \* all acted in concert in preventing justice from being done in this gruesome homicide case. A In addition to the Interior Ministry, Prosecution Service, the Prisons Department, the Court also mentioned the President of Georgia among “the different branches of State power.”

The prosecution also cited the standard established in the national case law and specific decisions of court with respect to measures of restraint.

As to the defense, the defense lawyer noted that instituting criminal proceedings against the former President was politically motivated, citing statements of international organizations and representatives of foreign states as proof. The lawyer also stated that charges brought against Saakashvili was founded on testimony of a witness, Nino Burjanadze, questioned by the prosecution after delivering the bill of

indictment, while there is not direct evidence in the case. The lawyer also noted that all pieces of evidence prove existence of some fact, even a criminal fact; however, it is unclear for the defense as to how M.Saakashvili is tied to these facts. The defense did not submit to civil court any arguments that would have refuted prosecution [ ] allegations about pressuring witnesses, obstruction of justice and destroying evidence.

As to the court [ ] decision, the court listed the following types of evidence submitted by the prosecution: written material from various state and private organizations, [ ] and audio recordings, protocols of seizing documents, of inspection and requesting access to information, expert opinions. A In its verdict the court has also listed names of dozens of witnesses. The court directly indicates five witnesses, who in the court [ ] opinions [ ] indicate that the defense may have committed crimes he has been charged with A [ ] which creates [ ] standard of proof for measure of restraint,” – it is noted in the court’s verdict.

The verdict also cites ECHR judgments in Contrada v Italy (N27143/95; 24.08.1998), Shikuta v Russia (N45373/05; 11.07.2013), in which the ECHR indicated that even though at the time charges were brought against the defendant, he was no longer holding a high-ranking position, he still maintained influence, possessed various types of information and remained to have real leverage for influencing witnesses and obstruction justice.

After analyzing position of either parties, circumstances involved, arguments presented and verdict of court, GYLA has found the following: the fact that the court upheld the foregoing arguments of the prosecution does not suggest that its decision was illegal and politically motivated. From legal point of view, the fact that the court was considering the case of a former President and not an ordinary citizen, did not entitle it to demand standard of proof any different from the one that exists in judicial practice compliant to applicable legislation for ordering imprisonment.

Lastly, we would like to note that even though GYLA has evaluated the foregoing case only from a legal standpoint, clearly the proceedings brought against the former President have political meaning, as illustrated by statements made inside the country or at the international level. In light of high public interest, GYLA believes that all the evidence of the prosecution should be made public, even though the prosecution service has no such legal obligation. The president of Georgia, members of the

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Government, MPs and Georgian ambassadors, civil society representatives and all relevant individuals should have access to comprehensive and accurate information about the case, in order to be able to give it a proper assessment.

GYLA continues to monitor the proceedings and it will further update public with objective and impartial information.