საქართველოს ახალგაზრდა იურისტთა ასოციაცია
GEORGIAN YOUNG LAWYERS' ASSOCIATION

Summary Analysis of Court Proceedings brought against Rally Participants arrested on May 1 on charges of Administrative Offence

The trials of the participants of students' manifestation on the International Workers' Day, who were arrested on May 1, 2013 and charged with administrative offences, concluded in Tbilisi City Court. The police arrested participants after they relocated to Rustaveli Avenue 8-10 minutes before the rally ended. The Interior Ministry charged 37 protesters with administrative offences and submitted them to the court. GYLA defended 32 of the protesters in court. Some of the First Instance Court's rulings has been appealed in the Appellate Court, which has not yet delivered its final decisions. Therefore, the present analysis covers results of the first instance court trials.

In the protocols of arrest, the police cited two Articles of the Code of Administrative Offences: Article 166 (petty hooliganism) and Article 173 (malicious disobedience to lawful orders of a law enforcement officer). The police explained by blocking Rustaveli avenue and using a bad language the participants committed petty hooliganism. The police also explained that by disobeying orders of the police to stop acting illegally the participants committed malicious disobedience. The police charged 10 protesters with violating both Articles, while in remaining 27 cases they only one – Article 166. The police failed to present any credible arguments as to why 10 participants were charged under two Articles even though the circumstances were analogous to the remaining 27 cases. This has triggered suspicions that the decision were made subjectively.

In recent years, participants of peaceful rallies, or manifestations, have been arrested and charged under Articles 166 and 173 of the Administrative Code. Subsequent trials and decisions made by courts were frequently criticized by local or international organizations, which was one of the reasons why GYLA actively sought to defend the rights of individuals arrested on May 1.

The court fined 6 participants in the amount of GEL 400, 9 participants GEL 100, and 18 participants were released from administrative liability and issued a verbal warning by the court. Charges were dropped against 4 individuals as no administrative offence had been found.

The fact that protocols and reports of violation drawn up by the police were absolutely identical, and their testimonies before court were often ambiguous, conflicting and baseless can be viewed as continuation of existing malicious practices. In a number of instances, a policeman indicated in the protocol and report of arrest that they had arrested a manifestation participant, whereas video and photo material submitted by us proved otherwise. These facts questioned the credibility of evidence submitted by the police to court.

Many participants of the manifestation reported that they had been arrested by men dressed in civilian clothes (allegedly police officers). Additionally, the participants added that these people in civilian clothes were the ones that tried to provoke the participants. Footage showing arrests of participants by men in civilian clothes was released by a number of media outlets. During one of the trials, a police officer explained that these people were "outraged citizens helping the police restore order."

GYLA applied to Ministry of Internal Affairs to determine whether the men in civilian clothes were in fact employees of the Ministry. The MIA's written response dated June 6, 2013 states that "employees of the patrol police department who were doing their job at the scene of the manifestation were dressed in patrol police uniforms." Thus, the men in civilian clothes remain unidentified, as does the reason why the police failed to take appropriate measures to halt their actions.

We welcome the decision of Judge Inga Kvachantiradze of the city court's board of administrative cases to terminate proceedings brought against four participants because no administrative offence was found. In GYLA's experience over the last several years, this was the first case where the court did not uphold the evidence submitted by the police and decided in favor of defendants, terminating the proceedings in absence of an administrative offence.

During the trial, GYLA was able to submit essential pieces of evidence proving that no administrative offence had been committed; nevertheless, in many cases, the court based its ruling solely on the evidence submitted by the police. We believe that the court not only adopted unfounded decisions, but it also jeopardized the credibility of court as an institute with a mission to resolve a case in an objective manner. This suggests, once more, that the principle of an adversary trial is only for formalities' sake.

Lastly, we would like to reiterate the particular importance of the right to assembly and manifestation for a democratic society. Interference in the right to assembly is justified only when legitimate public interest exists, and the proportionality test must be applied to limit the government's interference. The government must resort to measures with less restrictive impact and take adequate positive measures for facilitating an assembly. The short-term and partial blocking of traffic during the May 1 manifestation and individual offences committed by certain participants of the

manifestation may not be viewed as a reason enough to stop the manifestation completely and massively arrest majority of participants without warning.

We remain hopeful that the government will apply the lessons learned during the May 1, 2013 incident in the future, and will provide an opportunity for everyone to fully realize their rights to assembly and manifestation as guaranteed by the constitution.

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