



The Statement on Postponement of the Establishment of the State Commission for Revision of Miscarriages of Justice

Georgian Young Lawyers' Association responds to the government's position voiced by the Minister of Justice yesterday on November 28, 2013. As she reported the State Commission for Revision of Miscarriages of Justice will not be established at this point.

We consider inadmissible postponement of the formation of the Commission for an undefined period, as well as the reasons underpinning the decision, namely the excuse that for the economic and financial conditions the state is not ready to set up such a commission.

In view of above, we would like to explain the following:

Although there might be different ideas on the type of the commission or about the mandate, composition or other elements of the mechanism with similar functions, it is evident that instances of **violation of law resulted from unlawful and unsubstantiated court judgments remain to be problematic so far**. It was acknowledged by the supreme legislative branch itself, when on December 5, 2012 it issued the resolution on imprisoned and persecuted individuals under the political motive and undertook the obligation to establish to those individuals "the legislative mechanism to exercise the right to fair trial." Though, the scale of the problem is greater than only politically motivated imprisonments.

The issue of illegal prisoners is also linked to the gaps of justice system and the

problem has not been exhausted through the amnesty implemented by the Parliament. The letters submitted to GYLA from penitentiary establishments reveal that certain individuals being in prisons so far consider themselves illegal prisoners. Some have been even sentenced to lifetime imprisonment and neither amnesty nor pardon was applicable to such category. Furthermore, as reported, thousands of complaints have been filed to General Prosecutor's Office of Georgia claiming to investigate problems of justice system, as well as to respond to alleged offences that took place previous years. Though, no effective investigation was conducted so far on the issue.

For many individuals, establishment of adequate legislative mechanism is practically the only way for restoration of justice and for ending illegal imprisonment. In view of the reality, the state should not ignore the problem, especially when the state acknowledges the problem itself.

GYLA cannot accept government's arguments underpinning postponement of formation of the Commission. None of the responsible citizen or civil society organization can remain indifferent before the economic challenges faced by the state. We also consider the terrible past inherited by the new government in terms of human rights violations which require important resources (including financial ones). Nevertheless, we are of the opinion that "resolution" of the challenges at the expense of justice is incompatible with rule of law principles enshrined in the Constitution of Georgia and Universal Human Rights and Freedoms the state is obliged to observe. Therefore, financial resources need to be paid for fulfillment of the obligation.

Otherwise, injustice will be stimulated and all fundamental values that should be protected by the state will be prejudiced.

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Moreover it is unclear what were governments' calculations and analysis in terms of impossibility of setting up commission at this point. Government also fell short to specify the necessary financial resources for resolution of the issue. GYLA is also interested **why government required more than a year for the decision and what was the reason of permanent promises about formation of the commission even in the nearest past periods.** We should also take into account that, for the relevant procedural norms, the obligation to issue monetary compensations could have emerged only after some period when the commission started operation (approximately after two years), rather than in the nearest future.

Furthermore, the state's obligation to respond by adequate legislative mechanisms whether individual's right has been violated or not, differs from provision of suitable monetary compensation. While implementation of the second obligation may be postponed and subjected to certain restrictions, the same approach cannot be applied in terms of the first obligation. **Sometimes, delayed justice is deprived justice. Moreover, frequently, determination of truth plays a key role for the victims in the case, while financial factors are secondary for them.**

Right to fair trial, as well as the right to be released from illegal imprisonment are fundamental human rights acknowledged and guaranteed by the Georgian legislation, as well as the International Law. (International Covenant on Civil and Political Rights, Article 14, (1966). Moreover, the international law provides that none of the conditions, including military or emergency situation can justify derogation from exercise of the right to fair trial. (Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001); Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007). International law also states that any person whose rights or freedoms are recognized as violated should be granted effective remedy. (International Covenant on Civil and Political Rights, Article 2(3); Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004). No derogation is permitted in terms of the rights and its limitation cannot be justified under any circumstance. (Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

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Apart from criminal justice part, political factor of the decision also attracts attention. One of the key promises in pre and post election period was “elimination of effects of unlawful, unsubstantiated and unfair court judgments” and “revision of the cases of thousands of illegally imprisoned individuals within reasonable terms with a view to restore their rights”. (Election block – “Bidzina Ivanishvili – Georgian Dream”, Election Progra, (2012 Parliamentary Elections). While making political statement, any political team (be it in opposition or in government) should feel more responsibility in terms of given promises to the citizens. It also implies advance examination of possible financial and economic outcomes related to the promise.

We call on the Parliament to review its decision, to analyze possible financial resources necessary for initiation of the mentioned legislative mechanism, to work out the action plan with a view to issue compensations within reasonable terms and to direct its efforts for implementation of the plan.