

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



What was Bidzina Ivanishvili fined for?

Georgian Young Lawyers' Association

Transparency International – Georgia

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On June 11, 2012, judges of Tbilisi City Court [Koba Gotsirize](#) and [Nana Daraselia](#) fined Bidzina Ivanishvili with total of GEL 148,650,131. The Court found that Ivanishvili made an illegal contribution in favor of the Georgian Dream – Democratic Georgia.

The Chamber of Control of Georgia contends that in the first case Ivanishvili transferred money to his brother – Alexandre Ivanishvili, used for installing satellite antennas for population. As estimated by the political parties' financial monitoring service, total market value of the antennas amounted to GEL 12, 622, 019. In the second case, Elita Burju LLC and Burji LLC rented 239 vehicles to the party Georgian Dream – Democratic Georgia at a symbolic price, whereas the market value of the service amounted to GEL 2, 242, 000. The court found that Bidzina Ivanishvili was behind these two companies.

The said decisions were delivered following two trials held on June 8 and June 11 respectively. We believe that court's decision was not based on comprehensive, thorough and objective examination of the case. Judging by the court proceedings, the evidence and the materials presented by the Chamber of Control of Georgia, fining of Bidzina Ivanishvili was unlawful due to the following circumstances:

1. Restricting the right to defense. As the defense explained during the trial, they had total of 3 business hours and after-hours to familiarize with the case materials and prepare the defense speech, making it basically impossible for them to familiarize with the details of a rather voluminous case file, collect evidence, file subsequent motions and submit counter-evidence before court.

Motions filed by lawyers in both cases to postpone the hearing and provide the defense with time to familiarize with the case materials were rejected by judges stating that parties had adequate time to familiarize with case materials and the motion to postpone the hearing aimed at delaying the trial.

We believe that the motion filed by the defense for postponing the hearing and providing reasonable time to familiarize with the case materials was expedient in order to allow the defense to realize rights and responsibilities of a defendant accused of administrative offence as envisaged by Article 252 of the Code of Administrative Offences of Georgia. It is also noteworthy that the time notice was submitted gave no

reasonable doubt that the defense was provided with reasonable time as prescribed by the applicable legislation.

2. Position of the Chamber of Control on individual issues was not reinforced with relevant evidence. The Chamber of Control substantiated the claim about ownership of companies concerned by Ivanishvili based on statement of individual employees of the companies. During the trial it was stated a number of times that “it was a common knowledge Cartu Group was Ivanishvili’s”. Representative of the Chamber noted during both trials that actual owner of Burji, Elita Burji and Management Service registered in off-shore zone is kept secret, whereas their representative – Kakhas Kobiashvili, is Bidzina Ivanishvili’s relative. On one trial it was stated that Mr. Kobiashvili was Bidzina Ivanishvili’s nephew, and cousin on the other. Further, a document certifying the relationship was not presented on any of the trials.

We believe that the Chamber of Control should reinforce its position more by legal arguments and not be guided by unsubstantiated opinions and assumptions. In view of the fact that absolute majority of administrative disputes are settled in favor of the state, weak arguments offered by of the Chamber as well as the court’s ruling in favor of the claimant, reinforces the assumption that burden on proof is rather easy on administrative agencies and their position is upheld by court in any case.

3. None of the important motions filed by the defense were granted. Similar to the trial involving Management Service, covered by the [previous blog](#) of the Transparency International – Georgia, representatives of Ivanishvili filed a number of motions to postpone the hearing and provide the defense with reasonable time to familiarize with the case materials, for questioning witnesses, applying to the Constitutional Court, involving companies concerned as third parties, recusal of judges, etc.; however, none of the motions were granted, except for several motions for inclusion of certain evidence in the case file. Among the motions filed by the defense, the court granted the ones requesting inclusion of the business plan of the Global Consulting Ltd and certificate of registration of the political union Georgian Dream – Democratic Georgia in the case file. Before granting the motion the judge left for a conference room and allowed inclusion of the documents in the case file following an hour-long conference. This is a rather unusual practice when examining similar motions. Further, both judges admitted evidence submitted by the Chamber of Control during the stage of debate for establishing Bidzina Ivanishvili’s ties with the business companies. It was protested by Ivanishvili’s representatives, stating that submission of new evidence during the

noted stage is unacceptable. Judge Daraselia explained that although a party is prohibited from submitting evidence during the state of debate, based on the principles of inquisitorial system court may solicit certain evidence. Although the court had not solicited the noted evidence before and examined them to determine whether they are significant for the case, this is what served as grounds for inclusion of the evidence submitted belatedly in the case file. It is further noteworthy that similar actions of court has an adverse effect on the image of court as an objective juror and allows calling its objectivity in question. Even if judge is guided by his/her inner belief when making such decisions, it is important to take into account the principle established by the ECHR saying that justice must not only be done, it must also be seen to be done.

Further, several significant deficiencies were revealed in the course of the trials:

1. Disregarding procedural matters of drawing up a protocol of violation. Both protocols of violation drawn up against Bidzina Ivanishvili were missing Bidzina Ivanishvili's signature and/or statement of an alleged offender about contents of the protocol. Rights and responsibilities envisaged by Article 252 of the Code of Administrative Offences were not explained to the offender and correspondingly reflected in the protocol, which amounts to violation of Articles 240 and 252 of the Code of Administrative Offences.
2. Schedule of court hearings was not public. In order to ensure public access to court hearings, the Tbilisi City Court publishes schedule of pending cases on a daily basis on its official website. None of the two hearings involving administrative proceedings against Bidzina Ivanishvili were indicated in the schedule published on the court's website. We believe that cases of high public interest must be treated with more attention by court's administration and public must be kept informed.
3. Security measures were particularly tightened; cell-phones, recorders and other electronic devices were banned from the courtroom. Despite high public and media interest in the proceedings, the court tightened control due to the said trials. As ordered by the chairman of Tbilisi City Court, Mamia Pkhakadze, on the 6th floor of the court where administrative disputes are heard, as well as prior to hearings all individuals that had reached the 6th floor were searched though metal detectors. Bags were searched by hand and the order by the courtrooms was personally observed by the head of the court's mandaturi service Shalva Julukhadze. The

tightened control resulted in limited attendance; public interest in the case was disregarded.

4. Despite high public interest, court hearings were held in an extremely small courtroom. According to the court practice, each judge is assigned to a concrete courtroom where trials s/he presides over are usually held, with some exceptions. The case involving Global Contact Consulting was the subject of most interest among Ivanishvili's cases, since GEL 126 million in fine was at stake. The case was presided over Judge Koba Gotsiridze who examines disputes in the smallest courtrooms that can hold only 8 persons. Due to the small size of the courtroom, a line was formed at its entrance. All places were occupied immediately after the opening of the trial. Therefore, many journalists and stakeholders could not get in. Representative of the U.S. Embassy in Georgia wanted to attend the hearing postponed for June 11 but was left without a seat in the courtroom. Although most of the courtrooms that hold three times more people were free in the administrative board, Judge Gotsiridze decided to examine the dispute in the same room. An exception was made for a representative of the U.S. Embassy - after her identity was verified, additional chairs were brought in the courtroom for her and her interpreter. We believe that the principle of an open trial applies to all citizens equally. Therefore, in order not to give a special treatment to certain individuals and satisfy public interest as much as possible, such trials must be held in courtrooms with adequate size.

Tbilisi City Court's decisions were appealed. The Appellate Court still rejected all motions filed by Ivanishvili's representative, stating that it was not judging on merits of the case but rather, evaluating the decision made by the city court from legal point of view. Unlike the court of first instance, the Appellate Court demanded a forensic test for evaluating profitability of Global TV's business plan. The forensic analysis determined that the business plan was not profitable. The applicant called the finding in question and demanded summoning of the forensic expert for questioning but the motion was rejected.

The Appellate Court upheld all circumstances established by the first instance court, except that the offense was committed repeatedly by Ivanishvili. The court explained that the amendment to the law of Georgia on Political Union of Citizens that doubled administrative liability for a repeated offence was introduced after the actions were perpetrated by Ivanishvili through natural or legal persons. Since the legislative amendment burdened the responsibility, it did not have a retrospective effect and

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therefore, it should not have been applied in the given case. The court halved the amount of fine imposed on Ivanishvili and fixed it at GEL 74 325 065.

Georgian Young Layers' Association and Transparency International – Georgia will continue to monitor similar cases.