

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA filed in the Constitutional Court against the Authority of Police to Stop and Frisk

The Georgian Young Lawyers' Association (GYLA) filed in the Constitutional Court of Georgia on behalf of citizen Davit Shubladze with a request to repeal Article 91 (stop and frisk) of the law of Georgia on Police, as it contradicts Article 18 (right of liberty and integrity) and Article 20 (right to personal life) of the Constitution of Georgia.

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On August 24, 2010, the Parliament of Georgia approved insertion of Article 91 in the Law on Police. The noted provision authorizes a police officer to stop a person and perform search of his/her outer clothing based on reasonable suspicion and if there is a reasonable suspicion that a personal safety of the police officer is threatened.

GYLA provided its recommendations to the Parliament concerning the noted insertion in the law of Georgia on Police. GYLA stated that the proposed amendment did not require stopping of a person to be followed by frisking; thus it authorized a police officer to stop a person without performing search of his/her outer clothing. The provision is so vague that it fails to lay out an opportunity to envisage grounds for which a police officer is stopping a person.

Furthermore, the law does not provide definition of a reasonable suspicion or a difference between the latter and a founded supposition that serves as one of the basis for detention under the Criminal Procedure Code. A police officer is not obligated to explain to a person a concrete alleged crime that served as the basis for stopping him/her. The law does not give any guidelines on performing a search of a person's outer clothing; neither does it specify the difference between the latter and a search. Most importantly, stop and frisk is not documented, which makes it impossible to prove alleged illegal and unfounded actions of a police officer in court.

The lawsuit in the Constitutional Court is filed on behalf of Davit Shubladze. On April 4, 2011, at around 23:00, Davit Shubladze was stopped by police officers; his wallet and other items that he had on him were searched. After the procedure was finished, he was let go. In the given case, the fact of stopping and frisking Davit Shubladze was not documented. In contradiction to the applicable provisions, the police officer did not identify himself to the person stopped. Under such circumstances, there was no point in filing against the actions of the police officer in court, as even identity of the police officer was unknown. Furthermore, it was impossible to prove to court the fact of stop and frisk had occurred.