

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



NGOs' joint statement on the developments in the Chela village

On August 26, rights of Muslim population were grossly violated by dismantling mosque minaret in the village Chela of Adigeni Municipality by employees of the customs' departments of the revenue service of the Ministry of Finance and abusing local residents physically by law-enforcement representatives.

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None of the recent facts (Nigvziani, Tsintskaro, Samtatskaro) of threats towards the Muslim community, their persecution, creation of obstacles to performance of their religious rituals or hooliganism were followed by the relevant punishment of law offenders. Inadequate, discriminatory and inefficient actions of the state resulted in systemic nature of harassment of Muslims based on religious grounds.

Irresponsible statements of particular civil servants and politicians aggravated these rather dangerous processes even more.

In this context, particularly alarming is the official position of the Minister of Justice, who noted in her statement that Muslims can pray without minarets, while the construction of the latter can become a disputable issue.

We are also concerned with the statements of the state minister on reintegration issues intending to put out of sight the real meaning of the problem and to view it from the angle of confrontation between political forces.

From the point of view of the illegal limitation of religious rights of Muslim population and increased number of the facts of discrimination on religious grounds, the events which took place in the village of Chela are of the utmost severity.

Official version on the reasons behind the events in Chela village presented by the authorities falls beyond any legal criticism or logic. Analysis of the information on hand makes it clear the custom clearance of the minaret did not cause the state any financial damage; even in the case of the latter, the State would not have had any legal grounds for dismantling the minaret.

We believe there are clear signs of crime in the actions undertaken by the representatives of the state bodies on August 26, 2013. The case shall be thoroughly investigated by the Office of the Prosecutor General of Georgia.

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Therefore, we address the Office of the Prosecutor General of Georgia with the request to launch the investigation of the above stated facts and to bring to justice all those public servants or other officials, whose illegal actions infringed constitutional rights of the Muslim population of Chela village.

Legal analysis of the events

On August 26, 2013 representatives of law enforcement agencies carried out dismantling of mosque minaret in the village Chela of Adigeni municipality. Based on the statement of the Revenue Service of the Ministry of Finance of Georgia this action was carried out within post customs clearance field examination. In the same statement it is said the weight and the commodity coding of the construction were, supposedly, not in the conformity with data declared at customs, thus the Revenue Service decided to conduct its commodity expertise. Also, due to the fact of the wrong classification of the goods, the import tax might have been calculated incorrectly. At the same time, it is impossible to make any conclusions “without physical examination of the goods and the relevant expert opinion”.

Based on the official information disseminated, the assumption can be made that the dismantling of minaret was conducted due to the inspection of possible violation of the customs legislation.

As it follows from the oral explanations received from the local Muslim population, authorities told them that that wrong customs clearance of minaret resulted in the financial damage of the state in the amount of 4000 GEL.

Minaret constituted a construction with a foundation, essential part of already existing immovable property (land). In order to dismantle the minaret, it became necessary to damage (cut) its whole supporting metal construction.

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Indeed unusual and questionable are scales and resources of the operation undertaken by the state in order to dismantle the construction. Based on the information from the local population, at least one helicopter, up to 45 4WD vehicles, a truck, a crane, up to 200 representatives of the law-enforcement bodies (special unit representatives among them, who during 3 hours controlled the village of 50 households only), took part in this operation.

During the operation, all roads to the village were blocked. Neither local population, nor representatives of mass media outlets managed to get any closer to the mosque. The traffic was restored only after the dismantled minaret was loaded to the truck and removed from the village. Part of the population who tried to get closed to the place of worship was physically assaulted by the police, while another part was detained and charged with resisting the law-enforcement representatives. Video recordings made by the mobile phones of some witnesses of the event showed some warning gun shots were made by the police officers in order to threaten the population.

Some witnesses reported that individuals trying to get closer to the place of dismantling in order to record the ongoing process with their mobile phones were detained upon the orders of the chief police officers and their devices were confiscated.

Disseminated video materials illustrate that those individuals expressing their concern about the minaret dismantling process were detained by the people in military uniform, handcuffed and put into the baggage compartments of the vehicles. As reported, the police detained 11 individuals; some of them were released the same night of August 26.

According to one of the detained persons, Selman Chogadze, he was apprehended for the mere reason of trying to calm down his fellow villagers. By the end of the day, 9 persons were detained with charges of resisting the police officers.

On August 27, the Akhaltsikhe District Court fined six detained persons (400 GEL each) based on the Article 173 of the Administrative Code of Offences of Georgia. These individuals state they did not have either time or chance to consult their defense lawyers before the court trial. They also affirm they did not resist the police officers physically during the process of minaret dismantling; nevertheless, all six of

them had physical injuries, including some serious ones.

Three detained persons faced charges based on Article 353 (2) of the Criminal Code of Georgia (resisting a police officer or any other government representative), and were released on 2000 GEL bail each.

Compliance of the minaret custom clearance procedure with the legal requirements

On July 14, 2013, citizen Jambul Abuladze imported in the country the disassembled minaret (prefabricated construction); country of production Turkey.

Customs applicant mentioned his imported goods in the customs declaration as an assembling house with the National Commodity Nomenclature code 9406 00 110 00.

According to the Tax Code of Georgia, while customs clearance of the goods (save for legislative exceptions), the customs applicant has to pay VAT and import tax.

Taking into the consideration the fact that the country of production of goods was Turkey – since 2007 the free trade agreement between Georgia and the Republic of Turkey has been in force – goods produced in Turkey are import tax exempt. Therefore, the only tax to be paid in such case by the customs applicant was the VAT.

According the Article 169(1) of the Tax Code of Georgia, the VAT rate constitutes 18% of the total value of the goods. According to Article 213 (1) of the same Code, determination of the customs value of the goods means its valuation by the customs clearance day. Based on the section 2 of the same Article customs value of the goods is determined by the customs applicant. The Revenue Service controls the accuracy of the determination of the customs value of the goods and in case it disagrees with the determined value, the Service establishes the value itself.

Section 3 of the Article 213 sets the following methods of the determination of the customs value:

- a) Based on the value of transaction (method 1);
- b) Based on the value of transaction of identical goods (method 2);
- c) Based on the value of transaction of similar goods (method 3);
- d) Based on the value of the item (method 4);
- e) Based on the composite value (method 5);

f) Based on the reserve method (method 6).

According to the section 4, Article 213, each subsequent method is used if the previous one cannot be used justifiably.

In view of the given legal provisions, Jambul Abuladze was obliged to pay 18% of the total value of the goods. Based on information on hand, the customs value of the imported goods – using the first method of determination of the value – was 9000 USD (invoice price).

In accordance with the legislative requirements, the customs applicant paid the abovementioned tax and customs cleared his goods; the ownership of the latter was eventually transferred to a third party.

According to the statement of the Revenue Service, “after the thorough analysis of the documentation there appeared a reasonable doubt that the wrong classification of the goods in custom declaration and supporting documentation can decrease the amount of import taxes. The decrease of the mentioned amount is impossible without physical examination of the goods and the relevant expert opinion”. This very explanation became the official version of the dismantling of the minaret.

As already mentioned, the goods produced in Turkey are import tax exempt. Consequently, this imported good was tax exempt, regardless of its weight and classification.

As for Value Added Tax, it constitutes 18% of customs value anyhow; the customs value in this case was already determined and paid based on first method of determination of customs value.

Even if the Customs Department had any doubts in correctness of determination of customs value based on first method, it was obliged to use the second, then third and other methods. At the same time it was obliged to demonstrate the reasons why it was not possible to determine customs value based on each previous method.

In the Order #39828 as of August 20, 2013 of the acting Head of the Customs Department of the Revenue Service of the Ministry of Finance – based on which the

goods were checked after their customs clearance - there is no reference as to why the Customs Department failed to establish customs value based on previous method.

At the same time, even if the customs applicant indicated wrong classification (assembling house instead of metal constructions), this would have had no impact on amount of the tax, as it would have still been calculated as 18% of customs value.

In view of above, it is evident that customs applicant did not hide any taxes from the state budget and it has fulfilled all tax liabilities envisaged by Georgian legislation. As for the statement issued by the Revenue Service, it aimed at misleading the society.

Legality of the post customs clearance field examination carried out by the Customs Department of the Revenue Service

Article 214 (2) of the Tax Code of Georgia does envisage the form of post customs clearance examination.

The additional requirements for such examination are determined by the Chapter XXV of the Regulation on Movement and Registration of Goods on Georgian Customs Territory.

Article 112 (1) of this Regulation provides exhaustive list of the basis for post customs clearance examination. The Order of the Acting Head of the Customs Department fails to indicate the basis under Section 1 of Article 112, which increases doubt, that the Customs Department had no valid legal grounds for examination.

Article 115 (1) of the same Regulation obligates Customs body to provide 10 days advance notice to customs applicant or other relevant person regarding post customs clearance examination. As evidenced by the documentation at our disposal, such notice was served to Mr. Jambul Abuladze's spouse on August 21, 2013, while dismantling was carried out on August 26. This action has clearly violated requirements of the legislation.

Article 115 (5) of the Regulation provides exhaustive list of authorities that respective bodies have after customs clearance. These authorities are:

a) Request from the customs applicant or other relevant person the submission of

documentation on operations of import and/or export of goods, calculated (bookkeeping) data on material valuables and/or other information;

b) Request written and verbal explanations from the customs applicant or other relevant person (that possesses relevant documentation and/or information) regarding the issues raised during field examination;

c) Carry out observation on the activities of the customs applicant and/or other responsible person, examine the goods, and get a sample.

The action carried out by the Customs Department has clearly exceeded its authorities under the law. Minaret, that was already assembled, did not constitute a good, as it was an essential part of already existing immovable property. Simultaneously, during the examination the property of a third party (David Chogadze) and not of a customs applicant (or other person responsible) was encroached. Obviously, law enforcement bodies had no such competence.

To summarize, the action of the Customs Department of the Revenue Service was illegal by its nature, was unjustified and violated property rights of David Chogadze, as well as encroached freedom of religion of the Muslim population. Even though the State did not incur any loss during custom clearance of the minaret, the volume of this action, ignoring of the procedures and terms established by the law and exceeding of the powers by the state bodies, creates reasonable doubt that the aim of this action was not establishment of possible tax losses and its exemption.

The Chela village incident exceeds the illegal action of the Customs Department of the Revenue Service and constitutes a highly alarming symptom of Government's discriminative policy towards religious minorities.

Georgia Democracy Initiative (GDI)

Tolerance and Diversity Institute (TDI)

Analytical Center for Interethnic Cooperation and Consultations (ACICC)

Georgian Young Lawyers' Association (GYLA)

Media Development Foundation (MDF)

ALPE Foundation

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The Human Rights Education and Monitoring Center (EMC)