



## **GYLA and Article 42 of the Constitution call upon Giorgi Mikautadze, the Secretary of the High Council of Justice, to resign from office**

GYLA and Article 42 of the Constitution are responding to two criminal cases that presumably involve Giorgi Mikautadze, a high official of the judicial branch of government. Protraction of investigation by the Prosecutor  Office in one case and administration of flawed justice by the Prosecutor  Office and the court in another undermine the authority of and confidence in the judiciary and pose a threat to judicial independence.

The investigation into an alleged [beating](#) of an underage person by Giorgi Mikautadze, the Secretary of the High Council of Justice, was launched in August 2016 and is still

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



being protracted. Despite the fact that the investigation into the commission of a crime prescribed by Article 365 of the Criminal Code (threat against a judge with respect to examination of a case in a court) by Tamar Khachapuridze against Giorgi Mikautadze proceeds from the same incident and was launched on the same day, the investigation into this case has been completed, and the case is being examined by the District Court of Khelvachauri. The developments related to both of these cases during the past year and a half point to a selective approach and give rise to a well-founded doubt that the participation of the high official of the judicial branch in these cases interferes with the administration of fair justice in relation to a citizen, contrary to the principle of the rule of law.

On the one hand, the ongoing criminal cases that involve Giorgi Mikautadze pose a threat to the high interest of the realization of citizens' right to a fair trial. On the other hand, the very fact that the investigation is underway into the alleged incident of beating of the underage person by Giorgi Mikautadze, Secretary of the High Council of Justice (there is also a video recording of the incident), undermines the authority of and confidence in the judicial branch as a whole. At the same time, protraction of the investigation into the incident of beating of an underage person poses a serious threat to the independence of the judiciary.

## **We call upon Giorgi Mikautadze to:**

resign from the office of member and, accordingly, Secretary of the High Council of Justice of Georgia, in order to protect the reputation of the judicial branch and the public's confidence in the administration of justice;

## **We call upon the Chief Prosecutor's Office of Georgia to:**

investigate the incident of the alleged beating of Tamar Khachapuridze, an underage son by the Secretary of the High Council of Justice quickly, thoroughly, and objectively;

## **We call upon the High Council of Justice of Georgia to:**

fulfill the function of protecting the independence and reputation of the judicial branch and request the Prosecutor [ ] Office to ensure the completion of protracted investigations quickly, thoroughly, and effectively and to immediately provide the public with relevant information.

## Appendix

### **Circumstances of two criminal cases involving Giorgi Mikautadze, Secretary of the High Council of Justice**

GYLA is defending the interests of Tamar Khachapuridze in a criminal case related to an incident that took place on August 26, 2016. In this case, she is charged with committing a crime prescribed by Article 365 of the Criminal Code (threat or violence with respect to legal proceedings, investigation, or conduct of defense) against Judge Giorgi Mikautadze. The GYLA is also defending the interests of Tamar Khachapuridze [ ] underage son in a criminal investigation relating to an incident of alleged beating of the underage child by a judge and Secretary of the High Council of Justice, Giorgi Mikautadze.

From the very start of the litigation of the said cases, there have been well-founded doubts about the impartiality of the law enforcement bodies and the court. Their actions might go beyond the interests of justice and, contrary to the principle of the rule of law, might be aimed at demonstrating strict treatment against Tamar Khachapuridze or at saving Giorgi Mikautadze from criminal liability, including by means of intentional protraction of the investigation. The GYLA responded to the said incident with a public [statement](#) as early as in September 2016. The statement pointed to the following circumstances that brought fair administration of justice in relation to Tamar Khachapuridze under question from the very beginning: Tamar Khachapuridze and her spouse were detained on the pretext of urgent necessity, although such necessity was not appropriately substantiated; the court [ ] ruling on imposing the strictest measure of restraint [ ] imprisonment [ ] on Ms. Khachapuridze was not appropriately substantiated; the correctness of the legal qualification of the act mentioned in the indictment and the proportionality of the punishment were under

question.

The developments that have surrounded the cases up to now further deepen the doubts about selective justice and about the independence and impartiality of the judiciary:

**We are witnessing a selective approach with regard to the speed of the investigations of two criminal cases launched in connection with a single incident.**

Despite the fact that both criminal cases concern a single incident and involve common evidence, the investigation, prosecution, and legal proceedings were conducted in one case only where Giorgi Mikautadze is a victim and Tamar Khachapuridze is the accused. Meanwhile, the second case which may involve Giorgi Mikautadze's culpable action related to the beating of Tamar Khachapuridze's underage son is still under investigation, the criminal prosecution has yet to be started, and the investigation has been protracted for a year and a half. Such a selective approach violates the State's obligation to conduct the investigation thoroughly, fully, and impartially.

In the case in which Tamar Khachapuridze is the accused, Giorgi Mikautadze was recognized as a victim and had unlimited access to the case materials and to information about the progress of investigation. In the case of beating of Tamar Khachapuridze's son, the child has yet to be recognized as a victim, and Ms. Khachapuridze does not have access to the case materials and to information about the progress of investigation. In addition, according to the information at the GYLA's disposal, criminal prosecution against Giorgi Mikautadze has not started in this case. The aforementioned circumstances also point to selective administration of justice.

**Charging Tamar Khachapuridze with commission of the crime under aggravating circumstances together with a group, which is punishable by imprisonment from seven to 10 years, is flawed from the legal point of view.**

According to the version of the investigation authorities, Tamar Khachapuridze committed the crime because Judge Mikautadze had examined her case in the court as early as in 2015. Even if we suppose that the commission of the crime by Tamar Khachapuridze was related to the past activity of Judge Mikautadze, the argument that Tamar Khachapuridze committed the crime together with a group is flawed from

the legal point of view. A crime committed by a group must be based on a common agreement and be aimed at achieving a common goal.

According to the case materials, Tamar Khachapuridze [ ] spouse got involved in the conflict after the relations between Judge Mikautadze and Tamar Khachapuridze became tense; accordingly, the actions of Kakhaber Khachidze were not related to the case examined by the judge. Therefore, the action of Kakhaber Khachidze does not coincide with the crime prescribed by Article 365 of the Criminal Code. Qualification of his action under Article 365 of the Criminal Code caused this action to be deemed as an aggravating circumstance, specifically, commission of the crime together with a group. The foregoing, in its turn, causes the toughening of the expected punishment of Tamar Khachapuridze and her spouse.

**Tamar Khachapuridze [ ] right to obtain evidence that will benefit her has been restricted unlawfully. The Prosecutor [ ] Office fails to conduct the investigation thoroughly, fully, and objectively.**

Despite her appeal, the prosecutor unjustifiably refused to hand over the expert [ ] report [ ] which confirms that her son sustained damage to his health [ ] to Tamar Khachapuridze. The Prosecutor [ ] Office also failed to enclose this evidence with the case file of Tamar Khachapuridze. This is a violation of the Criminal Procedure Code of Georgia. The prosecution authorities are obliged to hand over the acquitting evidence at their disposal to the defense, while the investigator/prosecutor is obliged to conduct the investigation thoroughly, fully, and objectively.

**Khvicha Kikilashvili, the judge examining the case of Tamar Khachapuridze, was appointed to office for life when Giorgi Mikautadze was already the Secretary of the High Council of Justice; neither Giorgi Mikautadze nor Khvicha Kikilashvili ensured the avoidance of the existing conflict of interest.**

On February 22, 2018, Khvicha Kikilashvili, the judge who is examining the case of Tamar Khachapuridze, was appointed to office for life. Neither Khvicha Kikilashvili nor Giorgi Mikautadze made a statement of recusal during this process, despite the fact that there was a conflict of interest, and Giorgi Mikautadze took part in the closed job interview with Kvicha Kikilashvili. It was only after this information was reported by the media that Giorgi Mikautadze stated that he had not taken part in the procedure

of voting on the appointment of Khvicha Kikilashvili due to the conflict of interest. The foregoing has reinforced doubts that Giorgi Mikautadze might be exerting an influence on the decision to be taken in the case, while Khvicha Kikilashvili might be under this influence.

**Giorgi Mikautadze is believed to be a member of an influential group within the judicial system which exerts undue influence on the independence of the judiciary and individual judges.**

The public has a firmly established belief that there is an influential group of judges within the judicial system which exerts undue influence on the independence of the judiciary and individual judges. In connection with this, 38 civil society organizations have launched a campaign titled "We want to trust the Court" one of the demands of which is the dissolution of clan governance in the judiciary. The Secretary of the High Council of Justice is believed to be a member of the said influential group, which undermines the confidence of the accused and the public in the court hearings with the participation of Giorgi Mikautadze and damages the reputation of the judiciary.

**The investigation into the incident that involved Judge Giorgi Mikautadze is being protracted.**

The investigation into the incident of beating of Tamar Khachapuridze's son has been protracted for a year and a half. Such protraction of investigation in a criminal case that involves a judge poses a serious threat to the independence of this judge, the more so that the said judge holds one of the highest positions in the judicial branch – that of the Secretary of the High Council of Justice, while in 2016-2017 he served as the Chairperson of the Tbilisi City Court. In addition to the powers of a judge, Giorgi Mikautadze has a lot of other powers that are related to the independence of the judiciary, administration of justice, and activity of individual judges.