

საქართველოს ახალგაზრდა იურისტთა ასოციაცია
GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA MAKES AN EVALUATION OF THE INVESTIGATION OF AN INCIDENT OCCURRED BETWEEN THE

CHAIRPERSON OF THE TBILISI CITY COURT AND THE HEAD OF ONE OF THE NON-GOVERNMENTAL ORGANISATIONS

The ongoing investigation of an incident occurred in Gonio on 26 August 2016 between the Chairperson of the Tbilisi City Court and Tamar Khachapuridze, the head of one of the non-governmental organisations - "Hope for the Future" - calls into question that the investigation of the incident involving a high official may be conducted in an impartial and objective manner. The accuracy of the qualification of the action committed, the proportionality of expected punishment, the independence and objectiveness of judicial control over the investigation process are in question.

We would like to emphasise how important is the safety and protection of judges from threatening or revenge, in connection with the cases reviewed by them, for the building of the state based on the rule of law. Undoubtedly, if there are any violations with respect to judges, an appropriate response to such violations as provided for by law should be made. However, both the investigation and the court hearing of the case should be directed in such a manner as to avoid any doubts about the adequacy of the evaluation of the committed action, about the objectiveness, impartiality and fairness of the investigation and the court hearing.

It is unfortunate that multiple circumstances have already occurred in the process of investigating the above incident, which cast doubts on the objectiveness of the investigation due to the following circumstances:

- the investigation of the incident involving the judge (the Chairperson of the court) is conducted in one direction only; the investigation failed to study the compliance with law of the actions of the judge during the incident. Despite the fact that the case has been initiated on the basis of the complaint filed by Tamar Khachapuridze in connection with physical assault of her minor child, the investigation of the case in this direction is no longer conducted;

- Tamar Khachapuridze and her spouse have been detained on the ground of urgent necessity; however, the existence of this ground has not been substantiated appropriately;
- The decision delivered by the court on the imposition on Tamar Khachapuridze of imprisonment as a measure of restraint has not been substantiated either;
- The accuracy of qualifying the action indicated by the prosecution and the proportionality of punishment are in question.

Due to the above stated circumstances, the response made to this case may leave the society with an impression of the judicial system (both the investigatory bodies and the judicial authority) having a privileged position, and of considerable inequality and vulnerability of the second party (citizen), involved in the incident, before this system.

The above mentioned does not serve the purpose of increase of confidence of the society in the court, rather it may cast a shade and contribute to the alienation of the society and its negative attitude to the court.

We hope that the investigation of the above case and the court will take into account the above said, will ensure an objective response to this case, will not challenge the principle of equality before law and will not create a precedent tainting the image of investigatory bodies and the judicial authority.

We also hope that the High Council of Justice will show interest in this fact and will fully investigate the incidence, in order to support the correct interpretation and the respect of the principles of independence of courts and inviolability of judges by imposing a disciplinary sanction if there is a possible disciplinary misconduct in the actions of the judge.

Additional information

In this case, GYLA defends the interests of the accused persons. We would like to draw the attention of the society to all problems that have been identified by now and that are based on the participation of GYLA in investigatory actions and on the evaluation of the case materials and the court decisions:

Time and context of detention

During the incident occurred on 26 August 2016 between the Chairperson of the Tbilisi City Court and the head of a non-governmental organisation, Davit Khachidze, a minor child of Tamar Khachapuridze, received bodily injuries. Tamar Khachapuridze filed a complaint with law enforcement bodies against the judge in connection with bodily injuries; an investigation has been initiated in accordance with Article 125 of the Criminal Code of Georgia (Battery). The participants of the incident have been interrogated in the course of the investigation. The minor child has undergone an expert's examination due to his injuries.

The investigatory actions continued till 22:00 of the same evening. As investigatory actions may be conducted in night hours only in the case of urgent necessity, the investigators requested Tamar Khachapuridze and her spouse to postpone the interrogation of the minor child to the following day. The parents of the minor child agreed and left the police department at about 22:30. On 27 August 2016, at 02:10, Tamar Khachapuridze and her spouse were detained by law enforcement officers due to urgent necessity. At the time of detention, Tamar Khachapuridze and her spouse were staying at a hotel with their young daughter and minor son. Also, there was a visiting child of 10 years old staying with them. Following the detention of Tamar Khachapuridze and her spouse, the children were left with the representative of social service.

Problematicity of detention due to urgent necessity

It is undoubtedly proved that the accused stayed in law enforcement bodies for the whole day and actively cooperated with the investigation. Furthermore, they left the investigatory body upon the instruction of an investigator. Hence, detaining Mrs. Khachapuridze and her spouse in four hours after they had left the investigatory body, casts doubts on the impartiality and objectiveness of the investigation.

According to Article 171(3) of the Criminal Procedure Code of Georgia, a person may be detained without a court decision only if there are reasonable grounds to believe that the person committed a crime and the threat of his/her hiding, failure to appear at the court, destruction of information important for the case or commission of a new crime cannot be prevented by means of different, alternative measures that are proportional to the circumstances of an allegedly committed crime and to personal data of the accused. Emphasis should be placed on the circumstance that the legislature specifies the cumulative unity of grounds and does not consider individual elements as admissible probability to detain a person.

In the case of detention due to urgent necessity, the judge should examine at the first hearing if there was a case of urgent necessity and if the procedures provided for by law have been observed. The judgement of the judge regarding this issue contain superficial and ready-made phrases. The judge specifies only legislative norms and speaks about the threat of hiding by the accused and of obstructing in obtaining information; however, the decision of the judge does not contain factual circumstances that caused him/her to believe so. The evaluation of this issue in such a general form cannot be considered as the exercise of judicial control over the necessity and lawfulness of detention on the ground of urgent necessity.

Signs of incomplete and biased investigation

The investigation of the fact of physical assault of the minor which was initiated on the basis of an application of Tamar Khachapuridze was discontinued and the investigation against Tamar Khachapuridze and her spouse was initiated in connection with the crime provided for in Article 365 of the Criminal Code of Georgia (menace or violence during conducting legal proceedings, investigation or defence). Accordingly, it is identified that the investigation developed only in one direction - only circumstances indicated by the judge were investigated, instead of investigating the commission of alleged crime by the judge.

Such an approach of investigation impedes the State to discharge its obligation of conducting the investigation comprehensively and impartially. If, during the ongoing investigation under Article 125 of the Criminal Code of Georgia, the fact of committing another crime was detected, the Prosecutor's Office had to start a separate investigation in this direction without terminating the ongoing investigation under

Article 125 on the fact of beating the minor. In this regard, a number of procedural and investigative actions are to be conducted to obtain full information. Such a decision of the Prosecutor's Office shows that the conduct of investigation under Article 125 is not in the interests of the investigation.

Difficulty of qualifying the action

The proper qualification of the action depends on the complete and comprehensive investigation of the circumstances of the case. As there are questions in the case in this regard, it is difficult to evaluate how properly the Prosecutor's Office qualified the action as a crime. As for the use of aggravating circumstances considering the existing qualification, the materials of the case show that the spouse of Tamar Khachapuridze involved himself in the conflict after the relation between the judge and Tamar Khachapuridze tensed. Actions of Kakhaber Khachidze were not directed against the case of the judge or the review of the materials of the case. Hence, Article 365 of the Criminal Code of Georgia may not be applied to the action of Kakhaber Khachidze. Using Article 365 of the Criminal Code of Georgia to qualify the action of Kakhaber Khachidze resulted in the consideration of the action as having been committed in aggravating circumstances. In its turn, the above mentioned results in the aggravation of penalty against Tamar Khachapuridze and her spouse. Group commission of a crime provided for in Article 365, entails the deprivation of liberty from 7 to 10 years, while without aggravating circumstances the said crime is punished by imposing a fine or depriving liberty for a period up to 3 years.

Failure to substantiate the application of imprisonment

The motion submitted by the Prosecutor's Office on the application of imprisonment as a measure of restraint contains a number of legal inaccuracies; it is not adequately substantiated and the motion on the application of imprisonment is based on hypothetical arguments only. In particular:

- the motion of the Prosecutor's Office specifies that, based on the qualification of the crime charged, the law considers only two types of measures of restraint: bail or imprisonment. The said interpretation of law is not true.

- Possible influence by the accused on witnesses is not substantiated by facts, except oral assumption that a real possibility is created by the fact that the accused may influence witnesses as she is the head of a non-governmental organisation. Such

substantiation of possible influence on witnesses is hypothetical and cannot be used for imprisonment as it does not satisfy the standard of proof established by law.

- According to the motion, the application of imprisonment as a measure of restraint is based on the fact that the accused did not accept and sign the detention protocol and the decision on the charges, which indicates that she is going to impede the administration of justice. Signing a decision on charges and, generally, the cooperation with investigative bodies is the right and not the obligation of the accused and the refusal of the accused may not be used against him/her.

Failure to substantiate the judge's decision on the application of imprisonment

On 28 August 2016, the Khelvachauri District Court satisfied the motion of the prosecutor on the application of imprisonment as a measure of restraint against Tamar Khachapuridze. And the request of the prosecutor to apply imprisonment against Kakhaber Khachidze was satisfied partially and bail was imposed on the accused. The Kutaisi Court of Appeals remained the above decision of the court in legal force.

It should be noted that the decision of the court is not substantiated and its content is general and abstract in nature, in particular:

- the court uses ready-made phrases regarding the purposes of applying measures of restraint, without presenting concrete facts and evaluating circumstances individually;
- the judge fully relies on arguments of the prosecution and does not discuss the arguments and indications of the defence. In addition, the decision of the court does not specify the reason why the court has taken into account the arguments of the prosecution and came to such conclusion;

- the decision of the court only generally touches the reasons why the goals of measures of restraint cannot be achieved through less strict and restrictive measures than bail or imprisonment. Especially groundless and obscure is the application of imprisonment to Tamar Khachapuridze. Although, in the decision, the judge highlights that imprisonment is an extreme form of using a measure of restraint, he/she still mentions nothing about the need of using such a measure against Tamar Khachapuridze.

Signs of possible disciplinary misconduct in the actions of the judge

According to the information we have, during the incident, the judge acted inappropriately (presumably expressed in using humiliating words and swearing against the citizen in a public place). It is important that the fact of possible commission of a crime provided for in Article 125 of the Criminal Code of Georgia is investigated. In parallel to this, the High Council of Justice should consider and discuss whether a disciplinary misconduct was committed by the judge or not.