

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



The Government of Georgia Has Admitted Violating the Right to Life of G. Gamtsemlidze

On March 10, 2010, Georgian Young Lawyers' Association (GYLA) addressed the European Court of Human Rights, representing the family members of Giorgi Gamtsemlidze (mother, widow and under-aged children of G. Gamtsemlidze) with the complaint "Gamtsemlidze and Others against Georgia". The complaint related to the fact of infringing the right to life of Giorgi Gamtsemlidze on May 8, 2008 by the employee of the patrol police. In its complaint, GYLA argued on the disproportionate use of force by the police, resulting in the infringement the Article 2 of the European

Convention (Right to Life), Article 6 (Right to a Fair Trial) and Article 13 (Right to an Effective Remedy). Based on the position of the Government of Georgia (unilateral declaration), the European Court of Human Rights excluded the complaint “Gamtsemlidze and Others against Georgia” from the list of the cases to be considered.

Following are the factual circumstances of the case: in the center of Tbilisi, two employees of the patrol police chased the car, driven by Giorgi Gamtsemlidze at an excessive speed. After some time the car hit the street curb; the driver – Mr. Giorgi Gamtsemlidze got out of the car and tried to escape by climbing up the roof of the nearby garage. One of the employees of the patrol police – V. A. pursued him. During the chase, the employee fired from the police gun on Gamtsemlidze, without prior verbal warning and/or warning shot, which resulted in the lethal wound on the back of the neck. G. Gamtsemlidze died on spot.

On May 8, 2008, the crime scene was examined by the investigation division of the Tbilisi Prosecution and at the same time, by the patrol police department of the Ministry of the Internal Affairs. According to the materials of the case, at the crime scene, the investigators of the patrol police department discovered the gun, which, according to the investigation, allegedly, was accidentally dropped by G. Gamtsemlidze during an attempt to escape. Two criminal cases were initiated - the first was against the employee of the patrol police, V. A., on the allegations of the murder as a result of exceeding the necessary measures for capturing the violator (described under the Article 144 of the Criminal Code of Georgia). The second case initiated was against Mr. Giorgi Gamtsemlidze, on the allegations of illegally storing and carrying the gun; the violation is described under the Article 236 of the Criminal Code of Georgia. On May 9, 2008, the mentioned criminal cases were united. The investigation was unable to establish the ownership of the gun.

On January 16, 2009, in its ruling, the Tbilisi City Court recognized the patrol police employee – V.A. to be guilty of the negligent homicide (Article 116 of the Criminal Code of Georgia) and imposed two years of imprisonment at the penitentiary and two years of conditional probation term on him. V.A. was also ordered to pay 41,500 GEL to the widow of the deceased.

In its complaint, addressed to the European Court GYLA claimed, that both the prior

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and the court investigations on the murder of G. Gamtsemlidze were conducted with grave violations and shortcomings. GYLA claimed that the qualification of the offence and the court-imposed punishment were not adequate and that in case of an objective and impartial investigation, the employee of the patrol police might have been found guilty of a deliberate murder.

At the European Court, the Government of Georgia admitted violating the right to life of Gamtsemlidze. According to the position (unilateral declaration) of the Government:

“Considering the factual and legal circumstances of the case, the Government of Georgia wish to express their regretful acknowledgement of violations of the main and procedural parts of the Article 2 of the Convention... The Government is ready to conduct re-investigation on the fact of use of an excessive force against Mr. Giorgi Gamtsemlidze; to ensure involvement of the claimant in the investigation process, in accordance with the requirements under the Article 2 of the Convention...to pay € 20,000”.

GYLA notes, that conducting re-investigation on the use of excessive force against G. Gamtsemlidze is a mandatory condition for the purpose of executing the judgment of the European Court. In case of non-performance of the unilateral declaration by the Georgian Government, the complaint will be recovered in the European Court list of the cases to be considered. We hope that the investigation will start in the nearest future. GYLA, as the representative of the claimant, will actively observe the process of the investigation.