

ბურაბ ვაზაგაშვილის სიცოცხლის უფლების დარღვევაზე სტრასბურგის სასამართლომ საქართველოს პასუხისმგებლობა დააკისრა

Strasbourg Court imposed Liability on Georgia for the Violation of Zurab Vazagashvili's Right to Life

On July 18, 2019, the European Court of Human Rights ruled on the case "[Vazagashvili and Shanava v. Georgia](#)", and imposed the liability on the state on the violation of Zurab Vazagashvili's right to life. GYLA and The European Human Rights Advocacy Centre (EHRAC) represented the applicant in the European Court.

According to the factual circumstances of the case, the police opened fire on Zurab Vazagashvili and his companions while Zura was driving his car near the tennis courts on May 2, 2006. They shot more than 70 bullets at the car, while there was no shooting out of the car. Z. Vazagashvili and his friend A. Kh. were killed on the spot as a result of the control shot but the third passenger survived. The forensic medicine failed to find the exact number of bullets shot on Z. Vazagashvili's body due to the gravity of the damages.

On the same day, the Criminal Police Department of the MIA launched an

investigation into the alleged attempt of robbery and illegal carrying of weapons of the applicant's son and his friends. On May 5, 2006, the Prosecutor's Office of Tbilisi launched an investigation into excessive use of force by the police during the special operation on May 2, 2006. On April 20, 2007, the Prosecutor's Office terminated the investigation with the argument that shots had been fired from the Z. Vazagashvili's car, which was the reason the police had opened fire themselves.

On 14 December 2012, the Chief Prosecutor's Office reopened terminated investigation on Special Operations of 2 May based on the application of the applicants. On 30 October 2015 Tbilisi City Court convicted five police officers. According to the verdict, the court found 2 police officers guilty of premeditated murder in the aggravating circumstances, 1 policeman was found guilty of exceeding official powers, 1 person - of falsification of evidence, and 1 person - of intentional illegal detention. The Tbilisi Court of Appeals and Supreme Courts upheld the decision.

In the present case, the European Court has established a violation of Article 2 of the European Convention (the right to life) and explained that **during the domestic processes the courts clearly stated that police officers during the special operation acted in the official status, thus murder of Zurab Vazagashvili's was attributable to the respondent State.**

The European Court also found a violation of the procedural limb of Article 2 of the European Convention. In this part the Court emphasized the following errors that the State has made:

- The police officers who had carried out the tennis courts special operation had themselves carried out the initial and the most crucial investigative measures. The investigation carried out by the Prosecutor's Office was based on the evidence collected by these police officers. Consequently, the investigation in these conditions lacked objectivity and impartiality.
- Investigative authorities have delayed granting the second applicant, Tsiala Shanava victim status. Although the Prosecutor's Office granted the applicant victim status, however, it was soon canceled that had prevented her from being able to appeal to a court against the prosecution decision to terminate the investigation.
- The Prosecutor's Office did not appraise appropriately the testimony of two independent witnesses indicated that Zurab Vazagashvili and his companions did not

put up armed resistance to the police, although the evidence of these persons was substantial in assessing the proportional use of the force by the police officers.

The European Court noted that although the investigation was reopened in 2012 and finally 5 persons were convicted, however, the outcome of the resumed proceedings does not meet the fair expectation of the applicants. **According to the Court, it had taken more than nine years from the killing to acknowledge the murder of the applicants' son. Coupled with the significant periods of total inactivity by the investigation authorities, that had amounted to procrastinated justice.** The European Court indicated the shortcomings shown by the reopened investigation since 2012, in particular, the Court explained that after the investigation reopened, the first applicant Yuri Vazagashvili had collected substantial evidence. He had taken over the investigative role while he put himself in jeopardy. The Court explained that the tragic murder of the first applicant in the grave of his son is a further clear example of the aggravated consequences of a lack of due diligence by authorities investigating life-endangering crimes.

Also, the European Court has criticized the domestic courts in the part of the sentence imposed on persons accused of the murder of Z. Vazagashvili. In particular, the court explained that the domestic courts sentenced them to only 16 years, less than national legislation could have permitted, which was reduced to 12 years under an amnesty. Also, these persons had not been banned from public service by the domestic courts.

The Court held that Georgia was to pay the applicant 50,000 euros (EUR) in respect of moral damage.