

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA and Transparency International Georgia stress the necessity of investigating the “Constanta” case

As the reports or researches released by NGOs and Public Defender's Office provide, property right was one of the most frequently violated rights in Georgia for the past years. Although the issue is not disputed by the current government, the state's response to the violations is ineffective. Moreover, save for some high profile cases no reaction followed on violations of property rights. In the absolute majority of cases familiar to us, investigation either is not launched or is conducted ineffectively. As it seems, creation of the effective response mechanism on such violations is out of the

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agenda. In addition, the state falls short to ensure restoration of rights of the individuals who were forced to gift their property to the state. Law enforcement and administrative agencies, while authorized to do so, do not even attempt to revise their illegal decisions.

In certain cases, there is a chance to restore violated rights through litigation. We regret that in the cases where state agencies are indicated as respondents to the case, instead of making adequate response they try to validate their former illegal decisions. The case of Constanta Foundation is among such cases.

As reported by representatives of the Constanta Foundation, on March 18, 2011 Levan Lebanidze, executive director of the Fund was detained and brought to the General Prosecutor's Office. The meeting was held with Gela Gelashvili and Giorgi Kondakhashvili from the Prosecutor's Office. Prosecutors accused him of use of official power against legitimate interests of the foundation, that inflicted significant damage to it. On the basis of plea-agreement prosecutor's office demanded GEL 12000000 in exchange to his release, otherwise they threatened with arrest of all board members and initiation of the black PR campaign via several channels against Constanta bank.

When L. Lebanidze and other board members declared that they were unable to pay such amount, prosecutors offered the following option of payment: to mortgage 80% share of the bank "Constanta" (owned by "Constanta" Foundation and natural persons) on the same day, afterwards plea-agreement would have been made with L.Lebanidze and the issued credit would have been paid in the state budget as penalty. Following coercion and threats L.Lebanidze and his partners had to accept the offer. The second day, on March 19, at the trial, the court reduced the fine GEL 12,000,200 requested by prosecution by GEL 200 and consequently Levan Lebanidze was fined 12,000000(twelve million GEL). Prior to approval of the plea-agreement the amount had already been transferred to the state budget, which illustrates pro-forma nature of the trial.

Number of circumstances brought in the case create justifiable doubt to believe that prosecution has committed a criminal conduct in terms of L.Lebanidze and Constanta Foundation in 2011. The details are provided in the complaints filed by Constanta in the prosecutor's office in 2013-2014, though no effective investigation followed so far.

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Furthermore, being convinced in ineffectiveness of investigation, Constanta lodged a civil lawsuit in a court against the prosecutor's office. Its response, however, illustrates that instead of conducting impartial and effective investigation on the case, the agency attempts to cover alleged criminal conduct of prosecutors that took place three years ago (the response notes that fact of coercion is not supported by evidences, that limitation period has expired and the court should consider the case inadmissible and etc.)

Indeed, state's foregoing approach not only falls short to restore violated rights, but also enhances impunity feeling and inhibits establishment of rule of law principle in the country.

We call on all law-enforcement and administrative agencies to react effectively, within their competence, on the foregoing and other similar gaps. Furthermore, it is necessary for the government of Georgia to ensure elaboration of the state policy for restoration of the rights of individuals who were forfeited their property illegally.