

საქართველოს ახალგაზრდა იურისტთა ასოციაცია
GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA voices its position about the statement of the Ministry of Energy in terms of public defender

Georgian Young Lawyers' Association is making some explanations about the statement of the Ministry of Energy in terms of public defender.

The statement provides that:

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“When it comes to how reasonable it is to implement the Khudoni project and how necessary to hold discussion and make decisions, this goes beyond the authority and competence of the ombudsman”.

The Ministry is correct when it alleges that **resolution** of the issue goes beyond the authority and competence of the ombudsman. Though, public defender had no intent to settle the issue. As for examination of reasonability and necessity of Khudoni project and participation there, especially assessment of compliance of the process contextually and procedurally with legislation of Georgia and fundamental human rights, it is not only authority, but also obligation of the public defender.

The statement released by the Ministry also provides that:

“Within the competence granted by law, the Ombudsman reveals the facts of violation of human rights and freedoms and assists to their restoration. Accordingly, it is unacceptable to make unprepared and groundless statement about such a project of social importance as the Khudoni dam is.”

The Constitution provides, “The state shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state shall be bound by these rights and freedoms as directly acting law.”

Accordingly, examination of reasonability and necessity of implementing any project on the territory of the country should necessarily imply discussion and analysis about issues that might prejudice mentioned constitutional principle, including human rights and rule of law.

The high value of human rights enshrined in the Constitution and the International Instruments obliges public defender, as well as other human rights’ defenders, to state their position and express opinion, including appealing state authorities to carry out certain measure or to refrain from their implementation. Such obligation arises not only when there are confirmed facts of human rights violation, but also when such rights are jeopardized. As it follows from other countries’ experience, “Khudoni” project, with its scale and specifics, already incorporates such hazard (though it does not necessarily mean that it will be realized).

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European Union Guidelines on Human Rights Defenders provides: “The work of human rights defenders often involves criticism of government’s policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government’s policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role should be recognized and supported.”

Accordingly, criticism of the public defender or other human rights defender shall not be considered as “an attempt of discrimination” (as it is provided in the statement of the Ministry).

Moreover, as it follows from the same statement:

“The Ministry is always open for all stakeholders... It has never refrained to participate in constructive dialogue, therefore we think it is incorrect to emphasize the issue.”

It is recognized that, the state bears the primary obligation in terms of preventing human rights violations and responding to the already happened facts in the frames of its jurisdiction. In view of this, the state should ensure protection of rights and interests of local population in the activities of any investor company. It should carry out public awareness raising activities and ensure public involvement in decision making process (as provided by Aarhus Convention, the binding document for Georgia.) In view of this, we consider that the Ministry shall not be limited to participation in the constructive dialogue. Its, as the state party’s role is proactive facilitation of conduct of such dialogue, promotion of involvement of local population in decision making process and protection of their interests.