



GYLA held presentation of the research Immunity as a Guarantee

On February 8, 2016, Georgian Young Lawyers' association and Local Democracy Agency Georgia held a presentation of a research Immunity as a Guarantee.

By its May 23, 2014 decision (in Giorgi Ugulava v Parliament), the Constitutional Court ruled that the provision of the Criminal Procedure Code of Georgia that allowed indefinite suspension from office of an elected local self-government official without verbal hearing and unconstitutional. The decision raised a number of questions and issues. To examine these issues GYLA and the Local Democracy Agency Georgia implemented a research.

The goal of the research was to examine and comparatively analyze the practice and legal framework for immunity from criminal prosecution in Georgia and in European

countries, which would serve as a basis for elaborating legislative proposals to create effective guarantees for independence of elected officials.

The research also incorporates opinions of 279 respondents interviewed within 19 focus groups (180 representatives of local self-government and 99 civil society representatives) about the status of local self-government officials in Georgia and the need of immunity.

Results of the research suggest the following:

There is a need for review of the legislation to introduce higher standards of protection of officials of local self-government who were elected through secret ballot of general, equal and direct elections; however, the new regulations should not constitute an obstacle for effective criminal prosecution and interests of justice.

Based on the research findings, below are recommendations that will help create adequate guarantees for LSG officials and ensure a reasonable balance between competing interests.

- The General Prosecutor only should have the right to institute criminal proceedings against elected LSG officials. Ordinary prosecutors should not have the said authority, which will minimize risks of abuse of power;
- Main Prosecutor only (or Deputy Main Prosecutor in exceptional cases) should have the power to recommend suspension from office of elected LSG officials;
- If a court considers suspension from office of such official, it should specify the time of suspension. Indefinite suspension until final summary judgment is made should be prohibited. Possibility to recommend suspension for a certain period of official term (e.g. beginning or end of the official term) can also be allowed.
- The review procedure of the measure (suspension from power) should be specified enabling the accused to restore authority if grounds for suspension are dispelled;
- Use of pre-trial detention against these officials can be limited to a certain extent, as detention entails suspension of authority (e.g. the law may provide for a reduced detention period; the Main Prosecutor may be granted with an exclusive power to recommend detention), especially with respect to serious and less serious crimes;

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- Lawmakers should differentiate official misconduct and other crimes. Granting immunity from serious crimes such as torture, inhumane and degrading treatment, murder, etc. is unreasonable. The lawmakers should identify the list of crimes that can be potentially used for politically motivated prosecution and introduce special rules for these crimes;

- Privileges should not create an obstacle to investigation. It should be allowed to use ordinary investigative measures, including search and seizure, taking a sample, compelling to give evidence. These measures do not hinder implementation of official functions. Clearly, a verdict of guilty should be followed by termination of power, whether or not the defendant will be deprived of liberty.

The research was prepared within a joint project of Georgian Young Lawyers' Association and Local Democracy Agency Georgia, Protected Voice – Guarantee of Effective Self-Governance, with financial support from Open Society Georgia Foundation.