

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Calls on the Investigative Authorities to Avoid Giving Too Broad and Unreasonable Interpretation of Law

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On July 17, 2012, the Ministry of Interior Affairs released information about detention of the following three individuals: Merab Kachakhidze, Teimuraz Sheklashvili and Taniel Kardava. GYLA held a press-conference about this matter on July 18, 2012.

As reported by the Interior Ministry, Merab Kachakhidze, Executive Secretary of the Conservative Party, gave GEL 7000 in cash to the chairperson of the party's Mtatsminda District branch and the money was later distributed among 6 pre-selected individuals per his instructions. The Interior Ministry alleges that these individuals acted according to a deliberate scheme and returned the money back to the Conservative Party in the form of membership fees. Further, deputy chairperson of the National Forum's Gldani branch Teimuraz Sheklashvili, and activist of the party Taniel Kardava gave GEL 1750 in cash to one of the Forum's activists who deposited it on the account of the National Forum in the form of a donation.

The Interior Ministry notes that charges will be brought against the detainees for making a malicious deal to evade the prohibition established by prima Article 164 of the Criminal Code of Georgia. We'd like to comment on a probe launched under the said norm.

The prima Article 164 of the Criminal Code qualifies vote-buying as a criminally liable action, as shown in the name and contents of the norm itself. The very same Article also refers to "making of an ostentatious, malicious or any other deal for evading prohibitions established by the law", which is also cited by the Interior Ministry. However, we believe that the cited norm shall be interpreted narrowly, only with respect to vote-buying. It should not be interpreted as broadly as offered by the Interior Ministry. Otherwise, making of a malicious, ostentatious or any other deal for evading prohibitions prescribed by the law would be punishable by the Article against vote-buying, which, in view of the nature of the criminal law, would amount to a legal nonsense. In May 2012, during discussion of amendments to the prima Article 164 of the Code, such narrow reading and interpretation of the law was the subject of agreed upon by MPs from the ruling party as well as representatives of the executive authority.

The information released by the Interior Ministry suggests that the detainees – Merab Kachakhidze, Teimuraz Sheklashvili and Taniel Kardava - will not be charged with

offering/transferring material or nonmaterial property to voters, which is a key component of vote-buying. Materials that the investigating authorities have indicate illegal donations or illegal membership fees as opposed to vote-buying. Paying illegal membership fees and making illegal donations is certainly an illegal action but it is punishable under administrative as opposed to criminal law. Under the law on Political Unions of Citizens, making a deal for evading rules and prohibitions established by Chapter 3 of this Law will result in imposition of a fine five times the value of the deal. Therefore, it is an exclusive purview of the State Audit Service to respond to actions indicated in the statement of MIA, and indeed, up until now all cases involving illegal donations were persecuted under administrative proceedings. The trend of treating similar cases within the context of criminal law, as shown in the present case, is alarming.

Even if actions described in the statement of MIA are proved pursuant to the procedure established by this law, discussing criminal liability of the individuals concerned is disproportionate and unlawful, since actions envisaged by the criminal law are not evident. Under the Criminal Procedures Code, this amounts to grounds for termination of investigation/criminal persecution. Therefore, we call on the authorities to terminate investigation into the said case and refer materials to the State Audit Service for further actions.

Hereby, we'd like to highlight an issue which law enforcement authorities should pay a particular attention to when carrying out operative actions.

The statement published by MIA says that one of the participants of the scheme was Eka Lomaia, chairperson of the Conservative Party's Mtatsminda district office, who was to transfer money to 6 natural persons for paying their membership fees. MIA has also published video material showing several episodes of the scheme. The video material has been obtained through an operative measure by the chairperson of the district office.

With respect to operative measures, we'd like to highlight that authorized individuals participating in operative measures should observe a reasonable boundary to prevent their actions from growing into incitement of commission of crime and thus amounting to provocation of crime punishable under the Criminal Code. Relevant authorities should take all measures possible for observing the said reasonable boundary. Therefore, it is important that the law enforcement authorities pay particular attention

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to planning and carrying out operative measures in a way that rules out any signs of provocation of crime.