

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Won another Court Case Taken to ECHR

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European Court: the President of the Tbilisi Court of Appeal was negligent in reviewing both the factual and the legal basis for the applicants' detention.

On 2 October 2012, the European Court of Human Rights delivered a judgment in the case of Kakabadze, Chkhartishvili, Jishkariani, Rtveliashvili and Dalakishvili v Georgia (No. 1484/07) . The Court found breaches of Article 5 (illegal deprivation of liberty), Article 6 (right to a fair trial), Article 11 (freedom of assembly and association) and

Protocol No. 7, Article 2 (right of appeal in criminal matters) of the European Convention on Human Rights and Fundamental Freedoms, as the applicants were unlawfully arrested, in violation of freedom of expression, whereas the Tbilisi Court of Appeal sentenced all five applicants to 30 days of administrative detention without reviewing both the factual and the basis for their detention, which in ECHR [] opinion was an excessive punishment.

The applicants were represented by GYLA and the European Human Rights Advocacy Centre (EHRAC).

The Court found that the applicants [] initial arrest and subsequent detention for thirty days was [] in an arbitrary manner, without the requisite exercise of good faith on behalf of the domestic authorities. [] the Court concluded that the applicants [] arrest was not based on sufficiently clear and foreseeable domestic provisions and they could not have foreseen that their street picket in front of the Tbilisi Court of Appeal could entail their arrest and detention as applicable provisions give bailiffs power of arrest for acts committed inside court-house (violation of Article 5 of the Convention).

With respect to Article 6 (right to a fair trial), the ECHR ruled that the manner in which the President of the Tbilisi Court of Appeal heard the applicants [] case on the basis of the court bailiffs [] written submissions only and without giving the applicants a chance to be heard, constituted a complete negation of the most elementary procedural requirements of a fair trial. Decision of the President of the Tbilisi Court of Appeal was nothing more than affirmation of charges brought against the applicants and was not made as a result of reviewing both the factual and the legal circumstance of the case.

The Court found a violation of Article 11 (freedom of assembly and association), as the national courts

did not adduce sufficient and relevant reasons justifying the interference, and imposed a sanction which was disproportionate in the circumstances.

A violation of Article 2 of Protocol 7 (right of appeal in criminal matters) was also found as the appeal before the Supreme Court had depended on the discretion of the domestic authorities, lacked a clear procedure or time-limits, and was therefore an ineffective remedy.

The ECHR awarded the applicants 3,000 EUR each in respect of non-pecuniary

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damage, and ordered the respondent State is to pay the applicants EUR 5,957 in respect of costs and expenses.