



How the former mayor of Marneuli survived the punishment

On February 12, 2020, the Rustavi City Court fully acquitted the former mayor of Marneuli, Temur Abazov and 3 persons accused with him of the charges filed. The public paid special attention to the “Temur Abazov Case” from the very beginning, considering its severity, as well as the activities and position of the accused persons. The circumstances, which were known around the case, left a feeling that the prosecutor’s office would be able to prove allegations filed at the court and the court would issue a judgment of conviction. Thus, the announcement of the acquittal verdict against all four persons by the court raised legitimate questions regarding its reasoning as well as the action of the prosecutor’s office.

GYLA defends the interests of the victim and summarizes the important details of the case based on the judgement passed by Rustavi City Court in the present document.

GYLA believes, that at the court of the first instance, **at the stage of closing argument**, the prosecutor’s office groundlessly dropped the charge filed against

Temur Abazov, Ramin Alakhverdiev and Elikhan Guliyev regarding unlawful obtaining and dissemination of secrets of personal life, which affected the outcome of the case and formed a ground for the judge not to consider this part of the allegation supported by the evidence at all.

Based on the unjustified actions of the prosecutor's office, the court only discussed the group beating and humiliation and inhuman treatment. The court held that the evidence submitted by the prosecutor's office failed to meet the standard beyond the reasonable doubt for issuing a guilty verdict. However, the judgments and findings developed by the court in the verdict raise questions about its justification, especially given that, the important evidence and circumstances in the case are left beyond proper evaluation.

1. The charges filed by the prosecutor's office against the defendants

On June 10, 2018, a resident (hereinafter referred to as the victim) of Marneuli made a Live Streaming on Facebook from the protest rally held on Rustaveli Avenue in Tbilisi. Within the Live Stream he verbally insulted Bidzina Ivanishvili, Temur Abazov and supporters of the "Georgian Dream". Temur Abazov found out about the incident, identified the victim with the help of J. Ch., a member of the Marneuli Municipality Assembly and decided to punish him exemplarily.

After returning to Marneuli, at 22:00 o'clock, the victim was contacted by R. A., a member of the city assembly and called for a meeting at the "United National Movement" office. The victim arrived to the office with his nephew. Azer Suleimanov, a member of the parliament, J. Ch. and Ramin Alakhverdiev, members of the Marneuli City Assembly, as well as Elikhan Guliyev, a relative of Teimuraz Abazov, came to the meeting. Azer Suleimanov asked the victim for an explanation about the incident and together with Elikhan Guliyev physically abused him.

Hereupon, the victim was then taken by J.Ch. and Ramin Alakhverdiev to one of the restaurants in Marneuli to apologize to Temur Abazov. As soon as they met, Temur Abazov spat in his face, hit him and forced him to urinate into the glass. He also forced him to go live on Facebook, to apologize to him, to assault his own wife verbally and to wash his face with the urine. The victim fulfilled the request of Temur Abazov, which was filmed with a mobile phone by Ramin Alakhverdiev and Elikhan

Guliyev. On the same day, Ramin Alakhverdiev sent the video recordings to P. G., who disseminated the recordings through social networks in agreement with Temur Abazov.

4 persons were accused of the facts by the prosecutor's office:

Temur Abazov-under Subparagraph "a" of Paragraph 2 of Article 144³ of the Criminal Code, which implies humiliating or coercing a person by an official, placing him/her in an inhuman, degrading and humiliating condition, which inflicted severe physical and psychological suffering on the victim. The prosecutor's office also accused Abazov of committing an act provided for in paragraph 1 and 2 of the Article 25, 157¹, which implies organizing unlawful obtaining and storage of secrets of personal life; as well as organizing unlawful dissemination of secrets of personal life through internet, including social network.

Ramin Alakhverdiev, Elikhan Guliyev and Azer Suleimanov- under Subparagraph "b" of Paragraph 1¹ of Article 126 of the Criminal Code, which implies beating by a group of persons (that has caused the victim physical pains). Initially the prosecutor's office accused **Ramin Alakhverdiev and Elikhan Guliyev** of committing an act provided for in paragraph 1 and 2 of Article 157¹, which implies unlawful obtaining, storage of secrets of personal life; as well as unlawful dissemination through internet.

1. Actions of the Prosecutor's Office at the stage of closing argument.

In the court of the first instance, **at the stage of closing argument**, (i.e. at the stage of case hearing, when all the evidence in the case had already been examined and the prosecutor's office had to assess the circumstances of the case under consideration, focus on the testimony of witnesses and other evidence, that supported the allegation), the prosecutor's office actually dropped the charge, filed against Temur Abazov, Ramin Alakhverdiev and Elikhan Guliyev with respect to Article 157¹.

With respect to the drop of the charge against Abazov, the prosecutor's office explained that, organizing storage, recording and dissemination of the video recording aimed humiliation of the victim, placing him in an inhuman, degrading and humiliating condition, and since Abazov had been charged under Article 144³, there was no need

to refer additionally to Article 157¹. With regard to Ramin Alakhverdiev and Elikhan Gliyev, the prosecutor's office explained that, in fact, they did not report the crime committed by Abazov. For this reason, as for them, the prosecutor's office replaced Article 157¹ with a new Article (Paragraph 2 of Article 376).

The reasoning of the prosecutor's office contradicts the current legislation. Articles 144³ and 157¹, as well as 376 and 157¹ of the Criminal Code, establish criminal liability for various acts. Accordingly, there is no issue of competition of norms raised in relation to these Articles. Correspondingly, neither Article 144³ nor 376 comprises the act provided for in Article 157¹ and the prosecutor's office was obliged to dispute with regard to filming, storage and dissemination of the videos, till the end.

1. How the drop of the charge filed under Article 157¹ affected the outcome of the case

Given that, at the stage of closing argument all the evidence had already been examined, the prosecutor's office could have assumed, that the judge would have to pass a judgement of conviction for the charge filed regarding filming and dissemination of the videos. Among them, the examination report in the case clearly proved the connection of the defendants with the dissemination of the video recordings. According to the report, on June 10, 2018, at 23:25:09 and 23:25:36 o'clock, Ramin Alakhverdiev received 2 videos from Elikhan Guliyev in WhatsApp. In the first video the victim washes his face with the urine, and in the second video he apologizes and verbally assaults his own wife. Approximately in a minute, Ramin Alakhverdiev sends both videos to P. G. and instructs him to disseminate the videos. P.G. gets in touch with Temur Abazov, receives consent from him to disseminate the videos and he disseminates the videos.

At the court hearing a witness-P.G. confirmed, that he had received two videos and text message from Ramin Alakhverdiev via WhatsApp. After receiving the videos, he sent a text message to Temur Abazov and asked him if he should send those videos to other people, to which he received the consent from Abazov. After that, he sent the mentioned videos from mobile phone to different people and also posted them on his Facebook page.

The sum of this and other evidence in the case would have been sufficient to pass

judgment of conviction for the charge filed under Article 157¹, however, the action of the prosecutor's office affected the outcome of the case and allowed the court to no longer consider the issue.

1. The groundlessness of the judgment

Based on the actions of the prosecutor's office, the court talked over only with regard to the Articles, for committing of which the defendants were charged by the prosecutor's office till the end. The court held that the evidence presented by the prosecutor's office could not meet the standard beyond a reasonable doubt to issue a guilty verdict, however, the reasoning and findings developed in the judgment raise questions regarding its justification. A judgment shall be considered reasoned if it comprises convincing findings formed as a result of mutual comparison and analysis of evidence in the case. [1] The verdict issued by Rustavi City Court does not meet the mentioned standard and important evidence and circumstances are left beyond proper assessment.

The testimony of important witnesses

The judge did not consider the victim's testimony, which described the facts in detail. The judge considered the victim's nephew as an interested person and also did not accept his testimony. His testimony was in accordance with the victim's testimony. At the court, the witness described the incident in details and explained, that Azer Suleimanov acutely hit the victim three times on the left cheek with an open hand, Ramin Alakhverdiev hit him on the neck and shoulder, and as for Elikhan Guliyev, who had entered the office late, he hit him twice from behind with an open hand and kicked him once. According to him, A.A. and J.Ch. were present at the incident. The witness states, that after the incident the victim was taken by Ramin Alakhverdiev and J.Ch. to Temur Abazov in order to apologize. At the court, A.A. and J.Ch., who were interrogated as witnesses, changed the testimony given during the investigation and gave a testimony useful to the defendants. According to J. Ch., there are many things translated incorrectly as well as stated incorrectly in the testimony given during the investigation, because he recently underwent surgery, did not feel good and was interrogated in such conditions.

A. A. stated in the court that the explanation provided by him during the investigation is incorrectly translated and recorded and that he has not used the words "beating" and "hit". His interrogation took place during Ramadan dry fasting, he felt very bad, he wanted the interrogation to end soon, he trusted the investigator and signed the testimony without translation.

Despite the fact, that the testimonies, changed by A.A. and J.Ch. at the court, raised doubts about their credibility, the court considered both, the changed testimonies and did not substantiate how essential were the mistakes made by the translator at the interrogation of witnesses during the investigation.

The examination conducted on the psychological state

The examination conducted to assess the psychological state of the victim proves that he has experienced psychological suffering due to the incident. The court found the examination findings incomplete and did not consider them. According to the judge, the finding is only based on the narrative of the victim, however, the judge did not substantiate why the examination conducted by relevant experts based on the narrative of the victim is not considered as credible evidence.

Forensic-medical examination

According to the forensic-medical examination report, the victim had a bruise in the area of a helix of the left ear, which was inflicted by any solid blunt object. In terms of age, the injury did not contradict the date of the incident indicated in the circumstances of the case and it was attributed to a mild degree injury without disrupting the health.

With regard to this evidence, the judge noted, that the victim and his nephew decisively indicated, that the defendants had inflicted injuries to him on the cheek and not in the area of the ear. In addition, the judge explained, that even if the accusation implied this fact in the context of humiliation committed by Temur Abazov, this was not confirmed by the testimony of two witnesses (A.A. and J.Ch.).

Biological examination report

The judge also did not uphold an explanation of the victim, where he was stating that he had poured the urine on his own hand and washed his face with a glass handed over to him directly by Temur Abazov.

According to the biological examination report, no traces of Temur Abazov's genetic complicity were found on the glass, however, traces of biological material (urine) of the victim were ascertained on it.

The detailed extracts from telephone communication; Computer and phonoscope examination findings

The computer examination report and detailed extracts from telephone communication confirm the involvement of Temur Abazov, Elikhan Guliyev and Ramin Alakhverdiev in the mentioned case, among them, their participation in the dissemination of the video recordings depicting humiliation of the victim and placing him in inhuman, degrading and humiliating condition. Although the prosecutor's office dropped the charge filed with regard to 157¹, Temur Abazov was accused by the prosecutor's office of humiliating and coercing a person, placing him in an inhuman, degrading and humiliating condition till the end. The disseminated video recordings authentically confirm that the victim was in a degrading and humiliating condition. According to the phonoscope examination report, audio parts in audiograms and videograms have no signs of editing. The court did not assess the mentioned evidence properly. Accordingly, the question (if the defendants were not present at the scene, how did they have these recordings) remained unanswered.

The prosecutor's office appealed (under the current legislation, the victim has no right to appeal a judgment) against the verdict issued by the court of the first instance and case hearing will continue at the Tbilisi Court of Appeals.

[1] According to Paragraph 3 of Article 259 of "Criminal Procedure Code of Georgia", a court judgement shall be considered reasoned if it is based on the sum of evidence excluding reasonable doubt that has been examined during court hearing. All findings and decisions provided in a court judgement shall be reasoned.