



2018 წელს საიას უფასო სამართლებრივი დახმარებით ისარგებლა:



## Results of Legal Assistance Provided by GYLA in 2018

In 2018, GYLA successfully completed 123 advocacy cases, including 3 in the Constitutional Court of Georgia and 2 in the European Court of Human Rights. As a result of winning the actions, the rights of certain individuals were protected and some other cases have had a positive impact on the change of the legislation and / or case-law. GYLA continues to advocate more than 300 cases both at national and international levels.

Successfully completed cases are as follows:

### The right to labour

- A number of institutions were ordered to reinstate 19 persons who were illegally

dismissed and reimburse the forced days of absence;

- An administrative body was ordered to pay compensation in favor of an unlawfully dismissed person;
- A disciplinary liability imposed on a public servant was canceled;
- In 2 cases, the employees dismissed due to the planned reorganization of the company were awarded the final payment, including the amount of the unused leave;
- One person has been compensated the cost of medical treatment for the health injury which he/she sustained while performing the official duties.

## **Discrimination**

The Ministry of Labor, Health and Social Affairs of Georgia was ordered to change a discriminatory regulation, namely:

- An application form to be completed on the social status of a household in order to be registered in the unified database of socially vulnerable households should be available in Braille or other alternative means and an appropriate amendment should be made in the Act regulating this issue;
- Information about social / healthcare programs for disabled persons should be provided in Braille, gesture language, enhancement and alternative communication and / or other available means;
- Tbilisi City Hall was advised to define the appropriate regulation in such a manner that the possibility of obtaining a special identification sign should be determined by the individual needs of persons with disabilities and in case of equal needs, be provided with equal access to parking spaces;
- One fact of sexual harassment on the grounds of gender discrimination was identified;
- A person dismissed due to the age discrimination was reimbursed 10,000 GEL by the employer based on the mutual agreement;

- Discrimination has been eliminated into the case managed by GYLA and other IDP families (whose family member / members are dual citizens), as the applicant, were granted the opportunity to address the Ministry for obtaining a residential place and their applications will be considered in compliance with the applicable criteria;
- Due to foreign citizenship, a person was prevented from benefiting the component of antenatal surveillance of the Maternal and Child State Program and the cesarean delivery service provided by the State-Funded Universal Healthcare scheme. The direct discrimination on the grounds of citizenship was established and the Ministry of Labor, Health and Social Affairs of Georgia was advised to ensure access to social, economic and health programs existing in Georgia for persons holding residence permits in Georgia on an equal basis with citizens of Georgia and to observe the principles of equality when planning and developing state programs in the future.

### **Protection against violence**

- A protective warrant was issued for 12 victims (including 2 minor children);
- A protective order was issued on 1 fact of stalking;
- 5 offenders were found guilty and sentenced under the Criminal Code of Georgia;
- A person accused of gender harassment was found guilty of committing a murder under aggravating circumstances by one family member of another member of the family and was sentenced to imprisonment for 16 years;
- Restrictive orders issued against the victims were canceled;
- 2 victims of domestic violence were given the opportunity to communicate with their minor children;
- Divorce cases were completed in favour of 4 women, the victims of domestic violence;
- The abuser father, who killed his wife, was imposed the payment of allowances in favour of the minor child.

## **Social rights**

- A socially vulnerable household was reimbursed the material damage caused by an unlawful termination of the social assistance;
- The dispute was concluded in favour of 2 families and they were granted the status of socially vulnerable households;
- 2 persons were reinstated in the status of war veterans of the military forces, based on which they will be able to receive compensation envisaged by law.

## **Juvenile rights**

- In 20 cases, the defendants (father) were imposed the payment of the alimony in favour of the minor children;
- The change was entered into the birth certificate of a child born as a result of the extracorporeal fertilization, and the biological father of the minor was specified as a biological father, who by the moment of the artificial insemination had been already deceased.

## **Prisoners' rights**

- The Ministry of Penitentiary and Probation was instructed to ensure appropriate conditions for the convicts placed in the Facility No.7 and was imposed the compensation for moral damages in favour of a convicted person.

## **Freedom of expression**

- GYLA was protecting the interest of a journalist who was ordered by a public servant to deny the information disseminated. The Court did not grant the application of the public servant requesting the journalist to deny the reports distributed. The Court

found that the journalist did not publicize the information containing substantially wrong data regarding the head of the National Agency for Cultural Heritage Preservation and the statements which were causing substantial harm to the person;

- The commentary made by Irakli Kordzaia in Imedi TV regarding the murder of businessman Beso Khardziani was not considered a slander. The Court did not accept the arguments provided by the plaintiff Zviad Jankarashvili and held that Irakli Kordzaia's statement was an assessment and was protected by the freedom of expression.
- The Ministry of Internal Affairs of Georgia acknowledged that it publicized the defamatory information about Giorgi Kldiashvili. In particular, the MIA admitted that on 17 December 2014 the information disseminated about Giorgi Kldiashvili's detention was misleading and rendered the factual circumstances incorrectly.

## Obtaining information

- The Supreme Religious Administration of All Muslims of Georgia was able to obtain public information related to funding of the Islamic Organization Representative Council from the State Agency for Religious Affairs.

## Right to education

- The LEPL [REDACTED] Education Center A was ordered to re-examine the issue of the applicant Kamran Mamedov regarding the financing his yearlong master's degree program in social sciences (International migration and ethnic minority) in one of the universities.

## Compensation of damages

- The Ministry of Culture and Sports of Georgia, together with one of the museums under its supervision, was imposed the compensation of damages in favour of a disabled person. The person received serious bodily injuries due to the collapse of a balcony construction of the museum. According to the Court ruling, the plaintiff was

compensated for the moral damages caused by the health injury, the expenses of medical treatment abroad, the costs of medical treatment carried out in Georgia and a monthly allowance was designated based on his disability status;

- Due to the suicide of a prisoner in a penitentiary facility, the Ministry of Penitentiary and Probation was ordered to compensate the mother of the deceased for the moral damages;

- LTD "Tbilservice Group" and Tbilisi Municipality jointly were imposed the compensation for material and moral damages inflicted on the citizen who fell into a wastewater pit and received a physical injury;

- The Ministry of Internal Affairs was imposed the compensation in favour of a person who was subjected to an apparently unlawful violent treatment by law enforcement officers during the 26 May 2011 protest rally;

- JSC "Georgian State Electrosystem" compensated the moral damage in favour of the family of the deceased child who died as a result of the glass fall off the building façade;

## Healthcare

- An insurance company reimbursed the plaintiff the cost of the medical treatment and expert examination incurred by the applicant.

## Property rights

- "Telasi" was imposed the payment of a lease fee due to an unauthorized installation of a high voltage tower on the plot of the land belonging to the plaintiff;

- The Property Management Agency was ordered to pay the compensation for providing housing facilities for the families affected by the disaster of June 13;

- The applicant and the Apostolic Autocephalous Orthodox Church of Georgia settled the dispute and the Church returned 2 land plots to the plaintiff;

- One natural person managed to register his/her real property.

## **The right to live in a healthy environment**

GYLA was defending a natural person who was not able to exercise his/her right to live in a healthy environment due to the noise coming from the car wash service located nearby. According to the Court ruling, the defendants were prohibited to operate the car wash service.

## **Violations**

- The proceedings against 10 persons who were accused by the police of committing an offence were terminated and / or no administrative liability was imposed;

## **Personal Data Protection**

- One person managed to protect the violated personal data. A warning was issued against the offender and was ordered to remove the illegally published data. In addition, the National Agency of Public Registry was advised to better define the tools and mechanisms through its internal regulations and policies in order to comply with the data protection obligation;
- The Personal Data Protection Inspector established a violation of personal data protection by the Ministry of Internal Affairs of Georgia against a GYLA beneficiary and imposed a fine in the amount of 2000 GEL as an administrative penalty. Furthermore, the Ministry was ordered to remove the data on the administrative liability of the person from the unified information bank of the Ministry.

## **Criminal cases**



- An acquittal judgment was rendered regarding a person accused of intentional damage of another person's property;
- A guilty verdict against a person accused of unlawful entrepreneurial activity was not delivered. The Prosecutor's Office withdrew the case from the Court for diversion as a result of which the criminal prosecution against the person was terminated.

## **Rights of Victims**

- GYLA defended the interest of a victim of violence on the ground of sexual orientation. The abuser has been found guilty of violence against the victim on the grounds of sexual orientation and for the violence committed on the ground of intolerance. The aggressor has been charged with an appropriate punishment;
- GYLA protected the interest of a person subjected to violence due to his/her sexual orientation, and the diversion was signed regarding the juvenile who committed violence;
- 2 police officers were charged with exceeding of official power;
- GYLA defended the interests of the family whose member died due to the negligence on the ski resort. The defendant was sentenced to 2 years of imprisonment for negligent manslaughter.

## **The cases reached in the Constitutional Court in 2018**

### **- David Malania against the Parliament of Georgia**

GYLA complained concerning the unconstitutionality of the norms of the Administrative Offenses Code of Georgia, according to which the decision taken by the First Instance Court regarding certain cases of administrative offences was final and could not be appealed. According to the judgment of the Constitutional Court, the restriction of appealing by the appellate procedure has been considered unconstitutional in cases when: 1) a decision is issued for committing a grave offence (the action envisages administrative imprisonment as a sanction) despite the fact that



the administrative body used a fine as a measure of sanction. 2) The courts of one instance interpret the norms differently.

### **- Nana Parchukashvili against the Minister of Penitentiary and Probation**

The Constitutional Court of Georgia considered a provision of Order № 200 issued by the Minister on 1 August 2013 to be unconstitutional, which envisaged the possibility of undressing prisoners. In this case, GYLA argued that unlawful items (knife, narcotic drugs, etc.) in the body of the prisoner could be detected without undressing the prisoner, using a scanner device. In addition, the Order did not specify the cases in which the director had the right to undress the prisoner. The Constitutional Court ruled that the disputed provision violated the right envisaged by the Constitution of Georgia which prohibits inhuman and degrading treatment, and protects the right to private life.

- On December 14, 2018 **the Constitutional Court ruled that the words of Article 56 (5) of the Code of Criminal Procedure, which, upon the superior prosecutor`s denial prohibited to appeal the case of a person, reported to be a victim of less grave or particularly grave crimes, to be unconstitutional.** As a result, from now on, all the persons who have not been able to appeal against the prosecutor`s decree on being reported as victims of less severe or severe crimes, will be able to appeal to the court. For more information, click [here](#).

### **The case reached in the European Court of Human Rights in 2018**

#### **- Ramishvili against Georgia**

On 31 May 2018, the European Court delivered a [positive judgment](#) regarding the GYLA's application filed in 2008. In the case, the applicant argued that he, as a convict, was deprived of the right to take part in the parliamentary elections of 21 May 2008, as the law applicable at that time did not allow prisoners to vote irrespective of the gravity of offences committed and the length of sentence. The Court found that the law that prohibited prisoners to vote was general, automatic, of indiscriminate nature and was applied to all convicts, regardless of severity of the offence committed or the sentence imposed on them. Although the Constitution and

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



the Election Code were changed in 2011 and convicts imprisoned for less serious crimes were permitted to vote, these changes did not change the applicant's situation regarding the elections of 21 May 2008. Consequently, the Court held that there was a violation of Article 3 of the Additional Protocol 1 of the Convention (the Right of free elections) in respect of the applicant.

- The European Court of Human Rights finds that Georgia is responsible for the violation of Giorgi Torosholidze 's right to life