The Constitutional Court partially upheld GYLA's claim

On 15th July 2021, the Constitutional Court partially upheld GYLA's constitutional claim filed on behalf of citizen Giorgi Beruashvili. GYLA challenged Article 171 of the Criminal Code, which prohibits the involvement of a minor in “anti-social behavior.” GYLA argued that anti-social behavior was a vague term and allowed to be interpreted differently. To prove this, GYLA submitted two Rulings of the Supreme Court. Both cases concerned the fact that the adults had persuaded the juvenile to commit robbery.

One Ruling in which Giorgi Beruashvili was accused had been delivered by the Supreme Court on July 6, 2007. Through this Ruling, the Supreme Court stated that persuading a juvenile to commit robbery was "an anti-social behavior and was punishable under Article 171 of the Criminal Code." In the second case, the Supreme Court delivered the Ruling on January 3, 2008. In this case, too, an adult committed robbery with the help of a minor. However, this time, the Supreme Court of Georgia did not consider persuading a juvenile to commit robbery as an "anti-social behavior" and acquitted the accused of committing the crime under Article 171. The Supreme Court stated in its Ruling of 3 January 2008 that the word "anti-social behavior" in

Article 171 of the Criminal Code meant the involvement of a juvenile in an act that was not a crime. For example, such action is making a minor a drunkard.

Thus, the Supreme Court case law indicated discriminatory treatment of defendants in the same situation, which was provided by the vague and general record of the Criminal Code. GYLA argued that the word "anti-social behavior" did not meet the requirements of foreseeability and was contrary to paragraph 9 of Article 31 of the Constitution (no punishment without law).

GYLA's position was shared in part by the Constitutional Court, which examined the Supreme Court's apparently contradictory practice and determined whether inciting a juvenile to commit a crime would be considered an anti-social behavior depending on which judges would hear the case the Supreme Court. Under such circumstances, even a qualified lawyer cannot tell an accused upfront who had persuaded a juvenile to commit a crime whether they would be convicted under Article 171 of the Criminal Code. [1] Therefore, the Constitutional Court considered the word "anti-social behavior/action" with the normative content, which implies persuading a minor to commit a crime, unconstitutional.

Following a Judgment by the Constitutional Court, if an adult involves a minor in the commission of a robbery or other crime, he or she will be punished as an accomplice or accessory to the robbery. A person is liable for anti-social behavior only when they persuade a juvenile to commit an act that is not a crime (for example, making a juvenile addicted to alcohol).

The Georgian Young Lawyers' Association litigated this case with the support of USAID/ PROLoG.

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[1] Paragraph 27 of the Second Chapter of the Judgment N2/1/1289 of the Constitutional Court of 15 July 2021