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“საქართველოს მოსამართლეები”**

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Dear ladies and gentlemen,

After the rose revolution in Georgia, in the start of 2004 a new government came to power. The government initiated of reform of all State institutions, including judicial branch.

The new government has planned to carry out judicial reform in two directions: Structural reorganization of the courts and changes in the composition of courts:

Unfortunately, the government has openly stated his political will to replace the old judges with new judges.

One reason for the replacement of judges was the desire to get rid of corrupt judges.

And the second “unofficial reason” for the replacement was to get rid of judges whose thinking and actions did not correspond to State policy interest.

How could the government remove old judges and appoint new judges:

Judges of Georgia are appointed by the president for 10 years and they can be removed through disciplinary or criminal prosecution.

In addition, there is one way of dismissal of judges of Georgia. This is reorganization or liquidation of courts.

In the first stage, the government has declared the reorganization or liquidation of courts and has removed a half of all acting judges from their positions. More then once hundred and fifty judges have been removed from office because of the reorgianization and placed in reserve list.

New people have been appointed to these places and in this way, great part of judicial staff has been replaced.

All this was done with the judges of trial and appellate court.

But in the Supreme Court, it is more difficult to remove a judge, because he or she is more constitutionally protected.

The judge of the Supreme Court judge is appointed by the Parliament of Georgia for ten years and can be removed only through criminal or disciplinary prosecution, or if she leaves the office by herself.

In order to press Supreme Court judges to resign, the parliament adopted a law according to which a Supreme Court judge, who left his office before January 2006 , would receive full compensation of his salary until the end of his term.

By the January 2005, there were 37 judges in the Supreme court. By the end of 2005, as consequence of this law and government pressure 21 Judges resigned from office.

But six judges have decided not to resign and stay in office, because we believed that we have not done anything wrong and it was our duty to continue to serve the people and make justice, protect judicial independence and maintain our dignity.

We also believed that the Constitution was protecting us from any unreasonable and illegal prosecution. Therefore, we openly rejected the government demand to resign and leave the office. .

But unfortunately our hopes were vain.

In September of 2005, the High Council of Justice have started disciplinary prosecution against judges who refused to leave the office.

Our case was heard by Disciplinary Council in December 2005 and 5 judges were suspended from office. The parliament of Georgia has approved this decision suspended us from office.

One judge received reprimand as disciplinary punishment.

Now our cases are pending in Disciplinary Chamber of the Supreme Court and we want to argue our case to the very end, including the application European Court of Human Rights.

Why did they punish us, what were the charges.

There were two charges made formulated by Disciplinary Council.

The first charge was that we violated the law while hearing a criminal case of murder.

The case involved the killing of 45 year old man by his own brother.

The defendant was convicted and sentenced by the court to 3 years of deprivation of liberty.

According to Georgian law, the victim of the crime has the right to appeal the court sentence. If the victim of the crime is dead, then this right is given to his close relative – including his wife.

The appeal court decided that unregistered wife of the victim could be considered as “wife”, therefore, granted the right to appeal to the victim’ s common law spouse.

Unregistered marriage, which in Western Countries is called common law marriage is not recognized by Georgian civil law, but in criminal law, the issue is not strictly defined.

In our decision, we agreed to the court of appeal and decided that common law wife could also be victim of the crime. Our interpretation of the law was based on standards of European Convention of Human rights, other international standards defining the rights of the victim, and what is most important, **our decision was based on our belief**, in the interpretation of the law.

In all civilized countries, the judge (and especially Supreme Court Judge) has the power to interpret the law.

Therefore, based on the appeal of the victim, the case was retried and defendant received a sentence of 9 years of deprivation of liberty.

The second charge against us was that according to High Council of Justice, on several cases we did not review cases against those defendants who did not appeal.

Georgian criminal procedure obliges court of appeal and court of cassation to review cases not only complaining but also for non complaining defendants. Whenever we reversed or modified decision of lower courts with regard to non complaining defendants, we always wrote it in Supreme Court decision, but if the decision was not changed, then the court did not mention it.

Disciplinary council decided that this practice was wrong and we had to mention non complaining defendants in all cases.

Even if this practice were wrong, one judge of the Supreme Court, which was in our panel has received admonition, as disciplinary punishment for this violation.

Admonition is the lowest disciplinary punishment applied against the judge and it means that the judge has committed a minor disciplinary offence.

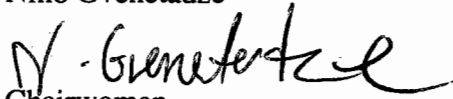
Therefore, only for these two violations, recognition of unregistered wife as a victim of crime and mistake in judicial decision writing, which the disciplinary considers as minor mistake, we 4 judges of the Supreme Court were fired from office.

Our case received a wide publicity throughout all Georgia. Media called us called "rebel" judges and received wide support from NGO sector and Georgian public, who is interested in having an independent judiciary protecting their rights and not the interests of government.

In order to save judicial independence and oppose government abuses of power, Media and NGO sector has created a coalition: "Civil Society for Democratic Georgia". This coalition mobilizes public awareness to ongoing processes and reflects the public interest in saving judiciary as independent branch of Government.

In a democratic country, judiciary should be the cornerstone for protection of human rights. This means that it should not be easy to fire a judge. If the government can dismiss judges without serious reason, this means that we shall never have judicial independence and we shall never have democracy in Georgia.

Nino Gvenetadze



Chairwoman

Judges of Georgia