

Article 184 of the Criminal Code of Georgia

In spite of changes introduced on May 23, 2007, Article 184 (Unlawful obtaining of a car or other mechanical vehicle without the purpose of misappropriation) was deleted from the Criminal Code of Georgia. The mentioned Article for the criminal purpose differed from the composition of crime directed against ownership (theft, robbery, burglary), necessary element of which is the misappropriation of ownership as the purpose of the crime.

In accordance with the explanatory note the Article 184 is being deleted from the Criminal Code as the misappropriation of a vehicle doesn't bear social danger to such extent that the mentioned action could be punishable by criminal law. "According to the draft law the mentioned action is being de-criminalized".

After the abolition of the Article 184 the convict M. Kopaliani, who was serving the sentence in accordance with the mentioned Article, appealed to the Supreme Court due to newly revealed circumstances and requested the Appeal Court to re-consider the sentence.

According to the resolution dated July 20, 2007 of the Chamber of Criminal Cases of the Supreme Court of Georgia, "the deletion of the Article 184 from the Criminal code, which entered into force on June 16, 2007, according to the change dated May 23, 2007 introduced into the Criminal Code of Georgia, doesn't mean that this action doesn't have criminal nature and that it has lost social danger".

The resolution also states that in the form of resolution dated June 28, 2007 of the Great Chamber of the Supreme Court of Georgia the court practice already exists, according to which the punishability of action in accordance with the Article 184 of the Criminal Code is provided by the relevant articles of crimes directed against ownership. The Supreme Court states in its resolution that following to the abolition of the Article 184 the actions provided by this Article are punishable in accordance with sub-points "a" and "b" of p.3 of the Article 177 of the Criminal Law (theft, i.e. obvious obtaining of movable article with the purpose of misappropriation, committed repeatedly, on the basis of preliminary agreement, by the group), which provides for imprisonment for the period from four to seven years. But, as the application of the Article 177 in the given case would aggravate the convict's condition, the court won't apply the mentioned disposition.

Following to the above stated, the Chamber of Criminal Cases of the Supreme Court of Georgia satisfied M. Kopaliani's appeal partly. The accusation, raised on the basis of p.1 of the Article 187 of the Criminal Code of Georgia was deleted from the decision dated May 24, 2006 of the Chamber of Criminal Cases of Kutaisi Appeal Court, and left unchanged in other part, including the part of punishment appointed on the basis of the abolished Article 184.

Currently, on the basis of the Article 184 criminal proceedings are initiated towards 26 individuals. 8 of them are sentenced to preliminary imprisonment. The Public Defender recommended to the Prosecutor General of Georgia to apply to the Supreme Court with the claim to re-consider the verdict passed towards the individuals, which are convicted and serve sentence on the basis of the Article 184 of the Criminal Code. In answer, Deputy Prosecutor General wrote to us that in accordance with the resolution dated June 28, 184 of the Supreme Court of

Georgia, the deletion of the Article 184 from the Criminal Code of Georgia doesn't mean the abolition of criminality and punishability of the action provided by the mentioned Article.

As we see, the Supreme Court of Georgia, and then the Prosecutor's Office of Georgia, explained the deletion of the Article 184 from the Criminal Code of Georgia against the legislator – as it was stated, the purpose of the legislator was the de-criminalization of the mentioned action – due to which the mentioned resolution contradicts the Constitution of Georgia, international legal acts and internal legislation of Georgia, according to which “the criminal law, which abolished the criminality of the action, or lightens the crime, has the counter-force”.

In accordance with the Criminal Code of Georgia, the court is obliged to terminate the criminal prosecution if the new law abolishes the criminality of the action (the Article 395, p. “c” of the Article 28). In accordance with the same Code, the verdict or another court decision entered into the legal force the adoption of the new law which abolishes or lightens criminal liability, serves as the basis for the re-consideration of the verdict (Article 593).

Besides, the inadmissibility of detailed explanation (e.g. in analogue) of criminal law in harmful manner to the person represents the general principle of the law, which is also recognized by the case law of European Court of Human Rights. In accordance with the explanations of European Court, the vital importance is attached to the fact that the law must always define the crime clearly. This requirement is met when a person has the possibility to perceive from the text of the relevant norm and, if required, from the explanation of the text provided by the Court, for what kind of action he will be imposed the liability.

The Supreme Court doesn't directly state in its resolution, but it uses the law analogue and considers actions like theft, robbery, burglary as criminal actions. I.e. it declares the actions similar to other crimes - not formulated as a crime in the Criminal Code - as a crime on the basis of analogy.