

Annex 1

Ruling

In the name of Georgia

Case N3/1010-18

March 15, 2018

Tbilisi

Tbilisi City Court

Chamber of Administrative Cases

Judge Nana Aptsiauri

Secretary of the Hearing Natia Pitskhelauri

Plaintiff - Ivane Merabishvili

Representatives - Giorgi Chiviashvili, Shota Kakhidze

Defendant – First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia

Representatives – Aleksandre Toria, Tinatin Shamugia, Zviad Tabatadze

Subject of the suit – Making administrative-legal act void and ordering the defendant to issue new administrative-legal act regarding early conditional release of the plaintiff.

Description:

1. Demand of the suit

- 1.1 To make the decision N001/17-3550 of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia of December 25, 2017, void;
- 1.2 To order the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia to issue a new individual administrative-legal act regarding early conditional release of Ivane Merabishvili (protocol of the March 15, 2018, court hearing).

2. Position of the defendant

2.1 Defendants – representatives of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia did not recognize the suit and supported the response. According to the representatives of the defendant, the Council made a decision following the rules provided by General Administrative Code of Georgia, Imprisonment Law of Georgia and Statute of Quantity and Territorial Jurisdiction of Local Councils of the Ministry of Corrections and Probation of Georgia, approved by the order N138 of the Minister of Corrections and Probation of Georgia on October 19, 2015. Decision of the Council is grounded and is based on factual circumstances from the personal case file of the convict. Requirements of the law has not been violated while preparing and issuing the decision. Thus, there are no grounds for making the decision void and issuing new administrative-legal act.

3. Factual Circumstances

3.1 Established factual circumstances

3.1.1 Ivane Merabishvili, born on April 15, 1968, was found guilty by the verdict of the Kutaisi City Court of February 17, 2014, for violation of paragraph B of the Part 3 of the Article 160, paragraph D of the Part 2 and paragraph B of the part 3 of the Article 182 (first episode), paragraphs A and D of the Part 2 and paragraph B of the Part 3 of the Article 182 (second episode) and Article 164¹ of the Criminal code of Georgia and sentenced to 10 years of imprisonment. Based on the Law of Georgia “on Amnesty” of December 28, 2012, the term of imprisonment was halved and the final term was established for 5 years of imprisonment in the penitentiary facility.

The decision of Kutaisi Appeal Court of October 21, 2014, left the verdict of the Kutaisi City Court of the February 17, 2014, unchanged.

By the decision of the Supreme Court of Georgia of June 18, 2015, the appeal was not found admissible for the review.

By the verdict of the Tbilisi City Court of February 27, 2014, was found guilty for violation of paragraph B of the Part 3 of the Article 333 of the Criminal code of Georgia and sentenced to 6 years of imprisonment. Based on the Law of Georgia “on Amnesty” of December 28, 2012, the term of imprisonment was reduced by one fourth and the final term was established for 4 years and 6 months of imprisonment in the penitentiary facility.

The decision of Tbilisi Appeal Court of August 11, 2014, left the verdict of the Tbilisi City Court of the February 27, 2014, unchanged.

By the decision of the Supreme Court of Georgia of February 27, 2015, the appeal was not found admissible for the review.

By the verdict of the Tbilisi City Court of October 20, 2014, was found guilty for violation of the Part 2 of the Article 332 (the version acting before May 31, 2006) and Article 341 (the version acting before May 31, 2006) of the Criminal code of Georgia and sentenced to 4 years of imprisonment. Based on the Law of Georgia “on Amnesty” of December 28, 2012, the term of imprisonment was reduced by one fourth and the final term was established for 3 years of imprisonment in the penitentiary facility.

The decision of Tbilisi Appeal Court of August 4, 2015, left the verdict of the Tbilisi City Court of the October 20, 2014, unchanged.

By the decision of the Supreme Court of Georgia of February 29, 2016, the appeal was not found admissible for the review.

On January 13, 2017, Director of the Penitentiary Department of the Ministry of Corrections and Probation of Georgia, addressed Tbilisi City Court according to the Article 286 of the Criminal Procedure Code of Georgia, with the motion to define the final term of punishment for the convict Ivane Merabishvili.

On January 16, 2017, Tbilisi City Court has fulfilled the motion and based on several unexecuted verdicts, has defined the final punishment for the convict according to these verdicts, namely: verdicts of Kutaisi City Court of February 17, 2014, of Tbilisi City court of February 27, 2014 and of Tbilisi City Court of October 20, 2014, based on which, more severe punishment sentenced to Ivane Merabishvili has absorbed less severe punishment and finally convict Ivane Merabishvili was sentenced to 5 years of imprisonment. In addition, he was deprived of the right to be appointed at public service for 2 year and 3 months. Period of being in prison – from May 21, 2013, till January 16, 2017, was counted as part of a served sentence. By the verdict of the Tbilisi City Court of September 22, 2016, was found guilty for violation of paragraph E of the Part 5 of the Article 25,117 and paragraph B of the Part 3 of the Article 333 of the Criminal code of Georgia and sentenced to 9 years of imprisonment. Based on the Law of Georgia “on Amnesty” of December 28, 2012, the term of imprisonment was reduced by one fourth and the final term was established for 6 years and 9 months of imprisonment in the penitentiary facility.

The decision of Tbilisi Appeal Court of February 23, 2017, left the verdict of the Tbilisi City Court of the September 22, 2016, unchanged.

By the decision of the Supreme Court of Georgia of September 29, 2017, the appeal was not found admissible for the review.

On October 24, 2017, Director of the Penitentiary Department of the Ministry of Corrections and Probation of Georgia, addressed Tbilisi City Court according to the Article 286 of the Criminal Procedure Code of Georgia, with the motion to define the final term of punishment for the convict Ivane Merabishvili.

On October 26, 2017, Tbilisi City Court has fulfilled the motion and based on several unexecuted verdicts, has defined the final punishment for the sentenced person according to these verdicts, namely: verdicts of Kutaisi City Court of February 17, 2014, of Tbilisi City court of February 27, 2014, of Tbilisi City Court of October 20, 2014 and of Tbilisi City Court of September 22, 2016, based on which, more severe punishment sentenced to Ivane Merabishvili has absorbed less severe punishment and finally convict Ivane Merabishvili was sentenced to 6 years and 9 months of imprisonment. Period of being in prison – from May 21, 2013, till October 26, 2017, was counted as part of a served sentence.

By the verdict of the Tbilisi City Court of May 3, 2017, was found guilty for violation of the Part 2 of the Article 333 (the version acting before July 1, 2004) of the Criminal code of Georgia and sentenced to 3 years of imprisonment. Based on the Law of Georgia “on Amnesty” of December 28, 2012, the term of imprisonment was reduced by one fourth and the final term was established for 2 years and 3 months of imprisonment in the penitentiary facility.

The decision of Tbilisi Appeal Court of October 27, 2017, left the verdict of the Tbilisi City Court of the May 3, 2017, unchanged.

The decision of Tbilisi Appeal Court of October 27, 2017, is currently disputed at the Supreme Court of Georgia.

Convict Ivane Merabishvili was charged for committing a crime according to the Part 3 of the Article 333 of the Criminal Code of Georgia. The main hearing of the case is proceeding at the Tbilisi City Court.

According to case materials, on July 28, 2017, Convicts' Threat Assessment Team has defined high threat risk for Ivane Merabishvili. Based on this, by the order N12337 of August 4, 2017, of the Director of the Penitentiary Department of the Ministry of Corrections and Probation of Georgia, Ivane Merabishvili's prison term was defined to be served at closed type prison facility and was placed at the N9 Penitentiary Facility of the Ministry of Corrections and Probation of Georgia (ground for the order N12337 of August 4, 2017, - protocol of the secret meeting of the Convicts' Threat Assessment Team of July 28, 2017). Convict Ivane Merabishvili refused to accept the order N12337 of August 4, 2017, of the Director of the Penitentiary Department of the Ministry of Corrections.

It was established that on November 21, 2017, Ivane Merabishvili has factually served two thirds of sentence - 6 years and 9 months - defined by the verdict of the Tbilisi City Court on October 26, 2017.

Beginning of the sentence adopted by the verdict of Tbilisi City Court on October 26, 2017 – 26.10.2017. The end of the sentence – 21.02.2020.

Beginning of the sentence adopted by the verdict of Tbilisi City Court on May 3, 2017 – 03.05.2017. The end of the sentence – 03.08.2019.

The Court relies on following evidences:

- the decision N001/17-3550 of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia of December 25, 2017.
- personal case of Ivane Merabishvili.

3.1.2 Materials of the case prove that Ivane Merabishvili does not have precious convictions. He has been punished twice while serving the prison term. Namely, by the order N19176 of the Director of the Penitentiary Facility N9 of the Ministry of Corrections and Probation of Georgia, on 09.07.2014 Ivane Merabishvili was prohibited to use allowed objects, because he physically insulted Deputy Director of the Penitentiary Facility N9 of the Ministry of Corrections and Probation of Georgia and verbally insulted employees of the Facility's administration.

By the order N238249 of the Director of the Penitentiary Facility N9 of the Ministry of Corrections and Probation of Georgia, on 09.03.2015 the use allowed objects was limited, because the convict was loudly insulting administration of the Penitentiary Facility from his cell.

By the decision (case N 3/2599-14) of the Chamber of Administrative Cases of Tbilisi City Court, on October 24, 2014, appeal of Ivane Merabishvili was partially satisfied – part of the order of the Director of the Penitentiary Facility N9 of the Ministry of Corrections and Probation of Georgia, on 09.07.2014, regarding prohibiting use of the personal computer by Ivane Merabishvili as a measure of disciplinary punishment, was made void. The rest of the appeal was not satisfied. This decision has entered legal force.

By the decision (case N 3/1695-15) of the Chamber of Administrative Cases of Tbilisi City Court, on June 10, 2015, appeal of Ivane Merabishvili was partially satisfied – part of the order of the Director of the Penitentiary Facility N9 of the Ministry of Corrections and Probation of Georgia, on 09.03.2015, regarding prohibiting use of the personal computer by Ivane Merabishvili for four months as a measure of disciplinary punishment, was made void. The rest of the appeal was not satisfied. This decision has entered legal force.

The Court relies on following evidences:

- the decision N001/17-3550 of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia of December 25, 2017.
- personal case of Ivane Merabishvili.

3.1.3 Materials of the case prove that Ivane Merabishvili has been rewarded once while serving the prison term. Namely, by the order N15 of the Director of the Penitentiary Facility N9 on 11.04.2014, he was allowed an additional short meeting.

The Court relies on following evidences:

- the decision N001/17-3550 of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia of December 25, 2017.
- personal case of Ivane Merabishvili.

3.1.4 On December 25, 2017, the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia has reviewed without oral hearing the motion and appropriate materials regarding early conditional release of the convict Ivane Merabishvili. By the decision of the Council N001/17-3550 (the issue of early conditional release of the convict Ivane Merabishvili was reviewed only in regards of the punishment ruled by the judgement of Tbilisi City Court on October 26, 2017) the motion was not satisfied at the current stage. While reviewing the case, the Council inquired attitude of the convict towards administration of the prison facility, that currently he does not express aggressive behavior towards the staff of the Penitentiary Facility N9 and obeys legal requirements of the administration. Positively assessed the fact of rewarding him and reviewed information regarding his family circumstances. On the other hand, the council paid attention to the character and gravity of the crime, namely that there is an aggregation of crimes. The convict was found guilty for crimes of different category and gravity, including for especially grave crime. He has committed number of crimes abusing his official position and authority. In addition, the convict was accomplice in a crime against human health causing injuries, including intentional severe injuries by the group, of more than 200 individuals. Attention was also paid to the fact that while serving the prison term, the behavior of the convict has twice caused disciplinary sanctions, including for violent act. The council has also noted the fact that Threat Assessment Team has defined high threat risk for the convict. While discussing the issue of early conditional release by the Local Council, the gravity and character of the crime, as well as circumstances in which this crime was committed, had special negative influence. Thus, the Council considered that at this stage the negative opinions accompanying these criteria were not nullified and outweighed by other positive criteria.

The Court relies on following evidences:

- the protocol of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia of December 25, 2017.
- the decision N001/17-3550 of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia of December 25, 2017.
- personal case of Ivane Merabishvili.

Motivational Part:

4. Summary of the court conclusion

As a result of hearing the materials of the case and explanation of the sides, reviewing the legal and factual basis of the case and legally assessing evidences in the case, the court has concluded that the motion should not be satisfied.

5. The laws on which the Court relied

General Administrative Code of Georgia, Imprisonment Law of Georgia and Statute of Quantity and Territorial Jurisdiction of Local Councils of the Ministry of Corrections and Probation of Georgia, approved by the order N138 of the Minister of Corrections and Probation of Georgia on October 19, 2015.

6. Legal assessment

6.1 According to paragraph 1 of the Article 22 of the Administrative Process Code of Georgia, the suit with the request to make void an administrative-legal act can be filed.

According to sub-paragraph D of the paragraph 1 of the Article 2 of the General Administrative Code of Georgia, individual administrative act is a legal act issued by an administrative body under the administrative law establishing, modifying, terminating, or confirming the rights and obligations of a person or a limited group of persons. The decision of an administrative body to refuse to address an applicant's issue within its competence, as well as any document issued or confirmed by an administrative body that may have legal consequences for a person or a limited group of persons, shall also be counted as an individual administrative act;

Judging from the contents of the above mentioned norm, the court believes that the decision N001/17-3550 of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia of December 25, 2017, disputed by the plaintiff, contains all the elements of legal definition of individual administrative-legal act provided by sub-paragraph D of the paragraph 1 of the Article 2 of the General Administrative Code of Georgia, which provides grounds for assessing it as an individual administrative-legal act. Thus, according to sub-paragraph A of the paragraph 1 of the Article 2 of the General Administrative Code of Georgia, when reviewing the suit, the compatibility of individual administrative-legal act with appropriate norms regulating issuing of acts according to General Administrative Code of Georgia, Imprisonment Code and other subordinate acts, should be checked.

6.2 The Court admits that Imprisonment Code defines rules and conditions of enforcing the verdict ruled by the court in regards to a limitation of a freedom within criminal case, guarantees of legal defense of convicts and accused persons, regulates activities of institutions from imprisonment

and detention enforcement system, establishes rules and conditions for participation of state institutions, civil society organizations and citizens in enforcement of imprisonment and detention.

According to the Article 1 of the Imprisonment Code, the purpose of the legislation of Georgia on the enforcement of detention and imprisonment is to enforce detention and imprisonment, prevent new crimes and re-socialize convicted persons. At the same time, the enforcement of detention and imprisonment in Georgia is carried out under the principles of legality, humanity, democracy, equality before the law and individualization of punishment.

The court indicates that rules of early conditional release from the punishment are defined by the Article 40 of the Imprisonment Code. According to paragraph 1 of the above mentioned Article, a convicted person may be released on parole only if he/she has actually served: a) at least half of the term of the sentence of imprisonment imposed for committing a crime of little gravity; b) at least two thirds of the term of the sentence of imprisonment imposed for committing a grave crime; c) at least three fourths of the term of the sentence of imprisonment imposed for committing an especially grave crime; d) three fourths of the term of the sentence imposed on a person who was previously released on parole, and the release on parole was revoked based on paragraph 5 of this article; e) three fourths of the term of the sentence imposed on a person whose previous term of sentence which had not been actually served by him/her, was changed by less severe sentence, and whose changed sentence was set aside on the basis of Article 73(10) of the Criminal Code of Georgia.

According to the Article 41 of the above mentioned Code, the Local Council of the Ministry is a body that reviews issues related to the release on parole and commutation of sentences.

According to the paragraph 1 of the Article 42 of the same code, if a convicted person, except for a high risk convicted person, has actually served the term established by law for the release on parole, the penitentiary institution shall immediately file a relevant application with the Council and notify the convicted person about it. If an additional time is required to obtain and process the necessary information, the penitentiary institution may file this application within seven days.

According to paragraph 3 of the same Article, the Council reviews a case by oral hearing and/or without oral hearing, in compliance with administrative procedures. The decision to deny a parole, or to admit the case for oral hearing or to release a convicted person on parole is taken by the Council without oral hearing, according to the assessment criteria determined by the Minister.

The decision shall include the main circumstances of the case and details of the convicted person.

The paragraph 4 establishes that when reviewing an application, the Council takes into account the conduct of the convicted person during his/her imprisonment, the criminal acts committed by him/her in the past, his/her character family status, the nature of the crime committed and other circumstances that may influence the decision of the Council. According to the paragraph 5, the Council shall conduct an oral hearing if it considers that it is necessary to obtain additional information from the convicted person to decide his/her release on parole. By oral hearing, the Council shall decide to deny or grant parole to the convicted person.

- 6.3 Rules and conditions of early conditional release of the convict are provided in more details by the Statute of Quantity and Territorial Jurisdiction of Local Councils of the Ministry of Corrections and Probation of Georgia, approved by the order N138 of the Minister of Corrections and Probation of Georgia on October 19, 2015. According to this statute, Local Council of the Ministry of Corrections and Probation is a permanent body reviewing the issues provided by the Articles 40, 42 and 43 of the Imprisonment Code. The aim of the Council is to support re-

socialization of the convict and protect public safety. Article 6 of the Statute defines the authority of the Council, including authority to review the convict's early conditional release from punishment, provided by sub-paragraph A of the paragraph 1 of the same Article.

According to the Article 7 of the Statute, the council adopts decision at the meeting. There are two types of meetings: without oral hearing and with oral hearing. The council reviews accepted motions without oral hearing. At the meeting without oral hearing, the Council adopts decisions to refuse the motion, or to admit the case to oral hearing, or regarding early conditional release of the convict. According to paragraph 1 of the Article 10 of this Statute, the bases for initiating the review of the case are Articles 42 and 43 of the Imprisonment Code.

Paragraph 1 of the Article 15 of the same subordinate regulation defines that the meeting without oral hearing is held only with participation of the member of the Council and representatives of the Council staff. According to paragraph 4 of the same Article, when reviewing the case of a convict without oral hearing, the Council is guided by evaluation criteria defined by this Statute. According to the Article 5, when reviewing the case of a convict without oral hearing, the Council adopts decisions by open voting.

Article 13 of this Statute provides evaluation criteria. Namely, evaluation criteria are: a) character of a crime – when evaluating according to this criteria, the attention should be paid to the gravity of the crime committed, in what circumstances and situation the crime was committed, as well as if the crime was committed during conditional sentence; b) behavior of the convict while serving the sentence - when evaluating according to this criteria, the attention should be paid to how many and what type of disciplinary, administrative and rewarding actions were used against the convict while serving the sentence, as well as what were the specific actions causing this decision. The attention should also be paid to information regarding following the statute and schedule of the prison facility, fulfilling the responsibilities according to Georgian legislation and keeping to security regime of the facility, while serving the sentence. c) previous conviction or crimes committed in past by the convict - when evaluating according to this criteria, the attention should be paid to the number, gravity and character of the crimes committed in past. Also, to the character and gravity of crimes and quantity of previous convictions. d) family circumstances - when evaluating according to this criteria, the attention should be paid to the attitude of the convict towards family members, having minor children, other family members who have no ability to work, financial conditions of close relatives and etc. e) character of the convict - when evaluating according to this criteria, the attention should be paid to the attitude of the convict towards the crime committed, employees of the facility and other convicts, information regarding participation in social activities whiles serving the sentence, necessity for special supervision from the administration of the facility and other important aspects, enabling to assess an individual.

According to paragraph 2 of the same Article, the convict is accessed based on the evaluation criteria defined by paragraph 1 of this Article. According to paragraph 3, when reviewing the case based on sub-paragraph “a” of the paragraph 1 of the Article 6 of this Statute, one of the following decisions may be made: a) regarding early conditional release of the convict; b) regarding having an oral hearing of the case, in case if the Council finds it necessary to receive an additional information from the convict in order to decide the early conditional release of the convict; c) regarding refusal of the early conditional release of the convict.

Based on the analysis of the above mentioned legal norms, the court believes that deciding the issue of the early conditional release of the convict from the punishment is the discretionary

authority of the Local Council of the Ministry of Corrections and Probation of Georgia, since it has to adopt a decision according to evaluation criteria provided by the Article 13 of the Statute of Quantity and Territorial Jurisdiction of Local Councils of the Ministry of Corrections and Probation of Georgia, approved by the order N138 of the Minister of Corrections and Probation of Georgia on October 19, 2015, which will be dictated by beliefs of the members of the Council and based on qualified assessment of the objective and subjective circumstances of the disputed issue.

In the case currently under review, it has been established that the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia has reviewed the case without oral hearing based on criteria provided by the Article 13 of the Statute of Quantity and Territorial Jurisdiction of Local Councils of the Ministry of Corrections and Probation of Georgia, approved by the order N138 of the Minister of Corrections and Probation of Georgia on October 19, 2015, inquired attitude of Ivane Merabishvili towards administration of the prison facility, that currently he does not express aggressive behavior towards the staff of the Penitentiary Facility N9 and obeys legal requirements of the administration. Positively assessed the fact of rewarding him, reviewed information regarding his family circumstances, but paid attention to the character and gravity of the crime, as well as to the fact that while serving the prison term, the behavior of the convict has twice caused disciplinary sanctions. The council has also noted the fact that Threat Assessment Team has defined high threat risk for the convict. Based on the above mentioned, the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia, as a result of analyzing the information received, made a decision to refuse in satisfying motion regarding early conditional release of the convict.

The court points to sub-paragraph "1" of the paragraph 1 of the Article 3 of the General Administrative Code of Georgia, according to which discretionary authority is an authority, which provides freedom to an administrative body or an individual to choose the most acceptable decision out of several options provided by the legislation, based on protection of public and private interests. Articles 6 and 7 of the same Code define norms and conditions of exerting discretionary authority.

The court admits that regarding individual administrative-legal act issued within discretionary authority, the court can only discuss the compliance of the disputed act with the requirements of the legislation, i.e. its legality. When settling the dispute, the court follows the requirements of the law and not considerations of expediency. Thus, the court cannot discuss the aspects of expediency of the disputed decision, since the revision of the expediency of the act goes beyond the limits of judicial control, which is established by constitutional principle of separation of power.

The court explains that, while discussing legality of exerting discretionary authority, the court must inquire how well grounded is the chosen decision of the issue, made by administrative body, which on its side, must be based on unbiased inquiring, establishing and evaluation of the facts regarding the case. The court reviews legality and grounding of the chosen decision, rather than its expediency. An administrative body must substantiate that the decision made was the most acceptable out of existing options.

Regarding this case, the Court believes that evidences provided does not reveal exertion of discretionary authority by the defendant exceeding limits set by legislation and/or ignoring the aim for which the Council has such authority. The evaluation of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia completely corresponds to the

requirements provided by the subordinate normative act, since, as already mentioned, the convict is assessed by the Council based on the criteria provided by the Article 13 of the Statute of Quantity and Territorial Jurisdiction of Local Councils of the Ministry of Corrections and Probation of Georgia, approved by the order N138 of the Minister of Corrections and Probation of Georgia on October 19, 2015. One of these criteria is the character of the crime, evaluating which, an attention should be paid to gravity, circumstances and situation in which the crime was committed. When making the decision, the defendant paid attention to the above mentioned criterion and found it inexpedient to release the convict.

The Court shares the position of the Council regarding character and gravity of the crime. Taking into consideration that there has been no illegitimate exertion of discretionary authority and the Court has no possibility to discuss the expediency of the disputed act, the Court believes that while making the disputed decision, the Council fully took into consideration behavior of the convict while serving the sentence, characteristics of the convict, his family circumstances, the character of the crime committed by him and other circumstances, which could influence the decision of the Council.

The court believes that, the evidences provided does not prove that discretionary authority has been exerted by exceeding limits set by legislation and/or ignoring the aim for which the Council has such authority. The evaluation of the First Local Council of Eastern Georgia of the Ministry of Corrections and Probation of Georgia completely corresponds to the requirements provided by the subordinate normative act.

- 6.4 The Court explains that grounds for making administrative-legal act void are provided by the Article 60¹ of the General Administrative Code of Georgia, where the paragraph 1 establishes that administrative-legal act is void if it contradicts the law or other requirements regarding preparing or issuing it as provided by legislation, has been substantially violated. In addition, the paragraph 2 of this Article specifies that issuing of an administrative-legal act at the meeting held in violation of Articles 32 or 34 of this Code, or in violation of administrative proceedings provided by the legislation, or such violation of a law, in absence of which a different decision would be made regarding the issue, can be considered as a substantial violation of preparing or issuing of an administrative-legal act.

According to the Paragraph 1 of the Article 32 of the Administrative Process Code of Georgia, the Court is authorized to decide on making the administrative act void regarding the suit under Article 22 of the same Code, in case if an administrative act contradicts the law and it causes direct and personal (individual) harm to the legal right or interest of the plaintiff or causes illegal limitations. According to the Article 33 of the same Code, in case if refusal to issue an administrative-legal act contradicts the law or the time limits of issuing has been violated and this directly and personally (individually) harms legal rights or interests of the plaintiff, the Court will make a decision regarding the suit mentioned in the Article 23 of this Code, to order an administrative body to issue an administrative-legal act.

Noting above mentioned circumstances, the Court believes that in this case there has been no violation of the Article 60¹ of the General Administrative Code of Georgia, the disputed decision has been issued in accordance with requirements of the law, thus, there is no ground to make the disputed act void and to order the defendant to issue a new administrative-legal act.

7. Procedural expenditures

- 7.1 According to the Paragraph 2 of the Article 55 of the Civil Procedure Code of Georgia, in case if the appeal is rejected, the court expenditures will be paid by plaintiff in favor of state budget, while according to the Paragraph 2 of the Article 37 of the same Code, the court expenditures imply the state tax, which has been paid by the plaintiff in proportion to subject of the dispute. Thus, the Court believes that the state tax should remain unchanged.

Resolution Part:

The court has followed Articles 1, 2, 3, 4, 12, 22 and 23 of the Administrative Process Code of Georgia and Articles 8, 55, 244, 248, 249, 257, 364 and 367 of the Civil Procedure Code of Georgia and

Ruled:

1. The suit of Ivane Merabishvili is not satisfied.
2. The tax paid by the plaintiff – 100 GEL, is considered paid in favor of the state budget.
3. The decision can be disputed within 14 days after the sides receive the grounded decision, by filing an appeal through the Chamber of Administrative Cases of the Tbilisi City Court (at 12th km, N6 David Agmashenebeli Alley, Tbilisi) at the Chamber of Administrative Cases of the Tbilisi Appeal Court (at N7a Grigol Robakidze Avenue, Tbilisi).

Judge Nana Aptsiauri