

Image not found or type unknown

GYLA calls on Constitutional Court to examine the constitutionality of government quarantine restrictions in an expedited manner

On November 26th, 2020, Prime Minister Giorgi Gakharia announced the imposition of certain restrictions throughout Georgia from November 28th. According to the government's decision, in 8 big cities of the country (Tbilisi, Telavi, Batumi, Kutaisi, Rustavi, Gori, Poti, Zugdidi) and ski resorts (Bakuriani, Gudauri, Mestia, and Goderdzi) all kinds of markets and shops will be working in a remote mode, municipal and intercity transport will be suspended. At the same time, the current restriction from 22:00 to 05:00 will be in effect from 21:00 to 05:00. [1]

It is important to note that the decisions made by the government affect economic activity. Prohibition of movement of vehicles at night hours restricts the freedom of movement guaranteed by the Constitution, the closure of markets and trade facilities restricts the property rights of the owners of these facilities, which leads to interference with the freedom of labor of people employed in these facilities.

Currently 2 cases of GYLA are admitted under the consideration of the Constitutional Court [2], which deals with the constitutionality of the above-mentioned restriction of rights by the government. GYLA considers it unconstitutional to delegate restrictions on labor and freedom of movement from parliament to the government. The reason for this is that according to Article 14, paragraph 2 of the Constitution of Georgia, the freedom of movement shall be restricted **only by law**, and according to the first paragraph of Article 26 of the Constitution, freedom of labor is regulated by the **organic law**. Both ordinary law and organic law are adopted by the Parliament of Georgia. Accordingly, it is an unequivocal requirement of the Constitution that the freedom of labor and freedom of movement be restricted by the Parliament and not

by the Government.

According to the Recording Notice, the Constitutional Court accepted one of the mentioned claims for consideration of the merits on June 5th, 2020, on the 11th day after the registration of the claim in the court. And the second claim was received for consideration of the merits on 12th November 2020, according to the Recording Notice, approximately five months after the claim was registered with the court. It should be noted that the Constitutional Court has not yet considered any of the claims.

GYLA, along with other NGOs, was criticizing the delegation of powers on the restriction of labor, freedom of movement, and property rights to the government while the bill was being debated by parliament. [3] Nevertheless, the Parliament of Georgia did not take this position into account and still handed over excess power to the government.

The Constitution reinforces the principle of separation of powers, according to which the Parliament has an obligation to establish an exclusive legislative framework on freedom of labor and movement. According to the principle of separation of powers, the government must strictly enforce the standards set by the parliament. This is the model of separation of powers that the Constitution offers. In contrast, we actually get a situation where a framework restricting constitutional freedoms of labor and movement, without the participation of parliament, is imposed by a government that is enforcing its own restrictions. In such a situation, one of the guarantees of preventing the government's uncontrolled and excessive abuse of power should be the Constitutional Court, which should protect the constitutional rights of a person from unjustified government interference and at the same time compel the parliament to fulfill its constitutional obligation - establish a legislative framework restricting freedom of labor and movement for the government.

It should be noted that the constitutional courts of European countries soon after the imposition of restrictions on the covid-19 pandemic decided to resolve the issue of the constitutionality of the disputed quarantine measures. This was the case in the courts of Germany, Austria, Portugal and France [4]. The activity of the Constitutional Courts - to respond quickly to restrictions on preventing the spread of covid19 - enables citizens, on the one hand, to effectively restore their constitutional rights and, on the other hand, to prevent future human rights and freedoms violations.

საქართველოს ახალგაზრდა იურისტთა ასოციაცია
GEORGIAN YOUNG LAWYERS' ASSOCIATION



In view of all the above, **GYLA calls on the Constitutional Court to consider in a timely manner the cases admitted under its proceedings concerning the constitutionality of delegating restrictions on labor and freedom of movement to the government. Prolonging the consideration of these claims (lawsuits) will further damage the quality of human rights protection, will question the effectiveness of the constitutional justice, and undermine public confidence in the Constitutional Court.**

[1] http://gov.ge/index.php?lang_id=GEO&sec_id=541&info_id=77890; Ordinance N322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, available at: <https://matsne.gov.ge/ka/document/view/4877009?publication=70>.

[2] N1/9/1505 და N1/14/1529 Constitutional claims - Paata Diasamidze v. Parliament of Georgia and the Government of Georgia.

[3] GYLA Statement of May 19, 2020: „GYLA negatively assesses the regulations to be imposed after the end of the state of emergency“. Available at: <https://bit.ly/3l9Bjik> .

[4] EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), opinion No.995/220. Available at: [INTERIM REPORT ON THE MEASURES TAKEN IN THE EU MEMBER STATES AS A RESULT OF THE COVID-19 CRISIS AND THEIR IMPACT ON DEMOCRACY, THE RULE OF LAW AND FUNDAMENTAL RIGHTS](#). Par. 93.