



GYLA APPEALS TO THE CONSTITUTIONAL COURT ON BEHALF OF THE PARTICIPANTS OF THE DEMONSTRATION “WAKE THE OLIGARCH UP”

Today the Georgian Young Lawyers' Association filed a new lawsuit in the Constitutional Court on behalf of Bondo Tevdoradze, Anzor Gubaevi and Khatuna Beridze, the participants of the demonstration “Wake the Oligarch Up”.

The plaintiffs are individuals living in Kobuleti and Batumi, against whom, on August 14, 2019, the Ozurgeti Municipality Legal Assurance and Supervision Service drew up the protocols on Administrative Offence during the course of the demonstration

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“Wake the Oligarch Up”. The protocols were drawn up on the ground of exceeding of the permissible rates of acoustic noise by the plaintiffs during the course of the assembly near Ltd. “Residence”. Exceeding the permissible rates of the acoustic noise is punishable under Article 77 of the Administrative Offences Code. However, according to the note of the same article, exceeding the permissible rates of acoustic noise at the events related to assembly and manifestation is not considered as an offence.

The lawfulness of the protocols was initially discussed by Ozurgeti District Court and afterwards by Kutaisi Court of Appeal. No court upheld the plaintiffs’ complaint; the courts stated that the administrative liability was properly imposed on them as the definition of the assembly provided for by the Law of Georgia “On Assemblies and Manifestations” did not include the purpose of the plaintiffs’ assembly. In particular, Ozurgeti District Court stated that “of course the expression of solidarity for the protection of human rights will be assessed as an assembly; however, the subject of the protest cannot become an exercise of the rights by any person, the rights that are the basis of human existence”. The mentioned opinion was also shared by Kutaisi Court of Appeal and the court further explained that “the assembly served to deliberately disturb a particular person and create discomfort for him, which in its content, goes beyond the right of expression and violates the principle of proportionality between the freedom of expression and the legitimate interest in protecting the excess of permissible rates of acoustic noise in private property”.

According to GYLA, exclusion of disputable normative content from the right to assembly and manifestation is unconstitutional with respect to Article 21, paragraph 1 of the Constitution of Georgia, which strengthens the right to assembly and manifestation. The public should have the right to express its own dissatisfaction with public-political figures, with their activities, in a similar form of assembly and thereby to change an attitude/action of a particular public-political figure on the issue of public interest. Unlike judges, public-political figures have the opportunity to engage in public debate against them and to slowdown the wave of protest by expressing their opinion. Precisely this circumstance determines deviation from a reasonable balance to a limited right in discussing the proportionality of the restriction.

If the gathering takes place in the vicinity of the public-political figure’s residence or private property, and the assembly is peaceful in its form and content, according to GYLA, exclusion of the similar assembly from the right is disproportionate and there is

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no reasonable balance between benefits protected and limited right. Hereby, requirement of the complaint is to recognize normative content of Article 3, subparagraph “a” of Georgian Law “On Assemblies and Manifestations” as unconstitutional, which does not consider an assembly to be an assembly for the purposes of the mentioned law when this action takes place in the vicinity of public figure’s residence/private property, purpose of which is to make an influence on him and cause discomfort and disturbance to him.

The Georgian Young Lawyers’ Association is handling the case with the help of USAID/PROLoG.