The Constitutional Court`s clarification on GYLA`s Lawsuit

On October 19, the Constitutional Court announced the decision on one of the cases filed by GYLA (,,David Malania against the Georgian Parliament □□□ the case aims to change the unconstitutional use of the Code of Administrative Offenses.

GYLA complained on constitutionality of Articles 172 and 272 of the Code of Administrative Offenses in relation to Article 42 (1) of the Constitution of Georgia. According to the disputed norms, the decision taken by the First Instance Court, was final in the case of some administrative offenses and has not been subject to appeal. GYLA considered that in certain cases, a person should have had the right to appeal the decision of the administrative body in two-instance court. The absence of such a possibility violated the right to a fair trial, guaranteed by Article 42 of the Georgian Constitution.

With the decision of the Constitutional Court, the restriction of appealing by the appellate procedure has been considered unconstitutional in cases when:

1. The decree is issued for committing a serious offence (the action envisages administrative imprisonment as a form of sanction) despite the fact that the administrative body used a fine as means of sanction. For such misconducts, the Constitutional Court has brought offenses envisaged by Article 116 (9), 121 (4), 123 (4) of the Code of Administrative Offenses as an example, when the internal organs are entitled to impose a fine or suspend the right of driving (as in case envisaged by Article 123 (4)), or to take the person to the court for imposing administrative imprisonment.

According to the Court, a legitimate interest of a person to appeal the decision, depends on the gravity of the fact, for which the person is known to be a lawbreaker and not, which sanction will be applied against them in particular case. Within the scope of the dispute, such misconducts have been considered as serious offenses by the Constitutional Court, which envisage imprisonment as a means of the sanction, however, it does not exclude that, like administrative imprisonment, other sanctions envisaged by the Code of Administrative Offenses also might reach the degree of intensity of the right restriction, which might be enough to be considered as a serious offence; however, the Court does not identify such violations within the dispute;

2. One-instance courts define the norms differently. In such case the appeal by appellate procedure should be allowed despite the gravity of the offence;

According to the Constitutional Court, ,,Inadmissibility of the appeal, when one-instance courts define the norms differently, is equal to the denial of one of the most crucial functions of the appeal mechanism. Under those circumstances noted, the crisis, in terms of explanation and the use of the law is apparent, the most effective way to fix it, is to appeal. The argument that the court should be protected from being overcrowded, cannot justify the restriction of the appeal when it is the most needed. In general, the main aim of protecting the court from being overloaded is to make its fundamental functions work effectively not conversely, to reject those functions.''

The recognition of the annulation of the norms considered as unconstitutional is postponed till March 31, 2019, by the Constitutional Court, in order to enable the Parliament of Georgia to arrange the issues in accordance with the requirements of

the Constitution.

GYLA welcomes the decision of the Constitutional Court. GYLA considers the separation of serious offenses as a progressive step and calls upon the Parliament to envisage appropriate procedural protection guarantees for serious offences and to implement repeatedly postponed reforms of the law on administrative offenses.