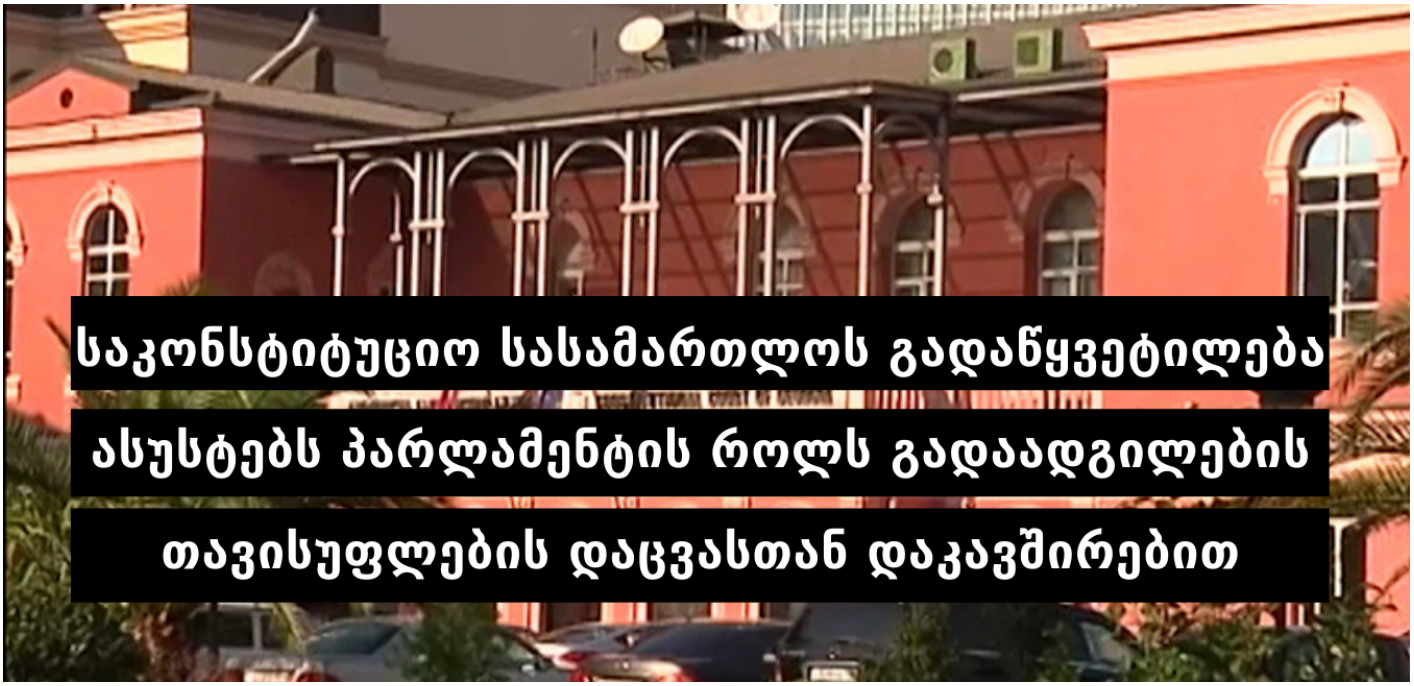

The Judgment of the Constitutional Court weakens the role of Parliament in protecting freedom of movement

On 11th February 2020, the Constitutional Court delivered a Judgment on quarantine restrictions imposed by the government. In this case, GYLA, along with other non-governmental organizations, was also represented the plaintiff's interests. Although the Constitutional Court shared GYLA's position that the imposition of restrictions on labor rights not by organic but by ordinary law was contradicting the Article 26 of the Constitution, the Constitutional Court did not grant the GYLA's more important claim regarding the so-called “curfew” (restriction of freedom of movement).

GYLA argued in the Constitutional Court that the imposition of an obligation on a person to stay at home/indoors was such a fundamentally important issue which has to be decided by a parliament, directly elected by people. Instead, parliament has given the government the power to regulate the issue.

The so-called "curfew", which means forcing people to stay at their homes from 9 pm to 5 am, was not considered by the Constitutional Court to be a matter of fundamental

importance, an intensive interference with the right.[1] This is when being forced to stay indoors is the most severe form of restriction on freedom of movement. However, the Constitutional Court stated that the imposition of the curfew was not related to repressive measures.[2] In fact, leaving home from 9 pm to 5 am is punishable by a fine of up to GEL 2,000 for the first time, and committing this act again, without alternatively, implies severe penalties such as a house arrest and imprisonment for up to three years.[3] Clearly, both administrative fines and criminal detention (house arrest) are nothing more than repressive measures taken by the state.

GYLA also disagrees with the Constitutional Court's argument that although it is true that the public has an interest towards the curfew, although this circumstance does not make the curfew a matter of fundamental importance. The curfew affects millions of people in Georgia who do not have the so-called "pass." Therefore, it would be more legitimate if the decision on this measure was made by a directly elected legislative body and not an executive body.

The Constitutional Court clarified that the so-called “curfew” is not a serious restriction of the right, but a temporary nature of this measure.[4] This is when, according to the authorities, this will be the quarantine measure that will be lifted in the end. [5] Accordingly, it is unknown up to what time this measure will continue. However, the Constitutional Court stated, that the pandemic situation is changing and that the executive body has more opportunity to adapt to this changing situation rather than the legislature. [6] In this regard, the position of GYLA lawyers in the Constitutional Court was that in addition to the Law on State of Emergency (this is a law that is not currently in force) there should be a detailed reference also in other laws to the fact that the state has the right to require from a citizen to refrain from leaving home in accordance with the deterioration of the situation due to pandemic. And the question of how long the curfew should last, in what territorial units the measure should have been used, was decided by the government itself, taking into account the changed circumstances. Unfortunately, we do not find the answer to these arguments in the judgment.

GYLA believes that this Judgment weakens also the role of the Georgian Parliament in terms of government control/oversight and protection of human rights in the country. In this regard, the opinion of Giorgi Kverenchkhiladze, the author of a Dissenting Opinion, is interesting: “"In the conditions of delegation provided by the disputed norms, the Parliament of Georgia has not made a decision on any of the principal

issues itself. It has entrusted the executive not only with the power to determine the details, procedure or technical aspects, but has given it full authority to determine, at its discretion, the substance of fundamental rights and the conditions for their restriction during a pandemic/ epidemic. [7]

GYLA believes that the Judgment of February 11, 2020 is a dangerous precedent in terms of effective legislative control over the freedom of movement and the government.

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[1] Paragraph 59 of the second chapter of the Judgment.

[2] Ibid

[3] Article 248^1 of the Criminal Code

[4] Paragraph 57 of the Second Chapter of the Judgment

[5] https://www.interpressnews.ge/ka/article/640007-paata-imnaze-komendantis-saati-albat-qvelaze-bolos-moixsneba-ar-mgonia-rom-aprilshic-gagrzeldes/

[6] Paragraph 58 of the Second Chapter of the Judgment

[7] Paragraph 18 of the Dissenting Opinion