



The Court illegally restricted the metro train drivers` right to strike

On March 18, 2018, Tbilisi Civil Court restricted the rights of the employees of „Tbilisi Transport Company” to strike. The aim of the metro workers` strike was to require dignified work conditions and payment. The decision made by the court was based on the mediation with which the company (aiming to ensure the complaint in advance) was asking to postpone/suspend the metro drivers` strike until the court had finished hearing the case on finding the strike unlawful.

GYLA believes the decision of the court to be unsubstantiated and contradictory to the constitution of Georgia and to the international standards/tools of the Human Rights, noteworthy Georgia is a part of mentioned international standards. The decision also contains a number of errors, which is the reason for the unfair restriction of the underground train drivers` constitutional write of strike.

In accordance with the constitution of Georgia, the employee has the right to strike and it should take place according to the requirements set by law. For the strike to be

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acknowledged as lawful, it is fundamental that the strike agreement procedures established by the law are fulfilled and also that the merits contained in the Labour Code (among those human life, health and workplaces connected with safety of human life and health) are not endangered. The Ministry of Labour Health and Social Affairs of Georgia has confirmed the list of the jobs connected to the human life and health safety, which does not include the work of the underground metro drivers. Therefore, the employees in this case had the right to go on strike, since their work is not connected to the protection of human life and safety.

According to the Labour Code of Georgia, a strike is a temporary, voluntary refusal of partial or whole fulfillment of the obligations taken into account by the labour contract. The decision made by the court gives workers the right to strike only after working hours the company has set for them. This is totally contradicting the meaning of a strike, since the realization of the right to go in strike must take place exactly in the frames of working hours set by employer to the employee. Moreover, the court is casting doubt on the existence of the possibility of underground metro drivers lawful strike. We see this as a problem, since this attitude practically might be perceived as the court's future position on the issue of recognition strike unlawful.

It must be mentioned that the procedure of strike, according to the constitutional stipulation, is regulated by the Organic Law of „Georgia Labour Code”. According to the article 50, if the preconditions included in the law are present, it is possible to suspend/postpone the lawful strike based on the court decision for not more than 30 days. In the case at hand, the court builds the postponement/suspension of the right to go strike on the Civil Procedure Code article 198, part 2 sub-clause A which, by the purpose of ensuring the complaint, prohibits the defendant from taking certain actions. Therefore, since the right of the „Non-entrepreneurial (Non-commercial) Legal Entity Unity 2013” to strike was already postponed by the maximum time frame stated in the Labour Code, it raises questions on the right of the court to suspend/postpone the strike based on the Civil Procedure Code article 198, which has less legal force than the Labour Code enacted by the Law of Georgia on Normative Acts, and especially doing so while the case discussing recognition of the strike as unlawful is still in progress.

Therefore, the right to strike is the right guaranteed by the legislation of Georgia and the international tools. Strike is the fundamental freedom of the national and international labour law and the possibility of its realization is how the quality of

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guarantying the employees' labour rights in the country is mainly evaluated. Therefore, it is important for the court to ensure the realization of the strike right for the employees in the frames provided by law and by taking into account the Human Rights standards.