



Another court hearing scheduled on the case of Zaza Saralidze and Malkhaz Machalikashvili V the MIA- Arbitrary and unlawful restriction of setting up tents

On 31 October 2018, at 10:00 am, Tbilisi City Court is considering the complaint of the applicants Zaza Saralidze and Malkhaz Machalikashvili against the Ministry of Internal Affairs of Georgia and MIA Patrol Police Department with regards to invalidating of the decision (act) under which the plaintiffs were restricted to exercise their right to peaceful assembly and were limited in the possibility to place tents on the sidewalk adjacent to the Parliament building. [1][\[1\]](#)

On 10 September 2018, the plaintiffs launched a protest rally outside the parliament building. They spend days and nights at Rustaveli Avenue. Saralidze and

Machalikashvili demand an unbiased and comprehensive investigation of the cases of their children's murder and punishment of the perpetrators by the State.

On 26 September 2018, the participants of the rally organized by Zaza Saralidze and Malkhaz Machalikashvili in the proximity to the parliament in Tbilisi decided to use another form of peaceful assembly and put up a tent in front of the parliament building. Due to the fact that the protest rally takes place 24 hours a day, setting up the tent has both the crucial significance for the realization of the right to peaceful assembly and a practical purpose. It is important to note that the rally participants wanted to place the tent on the sidewalk in order not to cause blocking /hindering of the functioning of the Parliament building and pedestrians, however, the police rudely interfered with the right to peaceful assembly. In particular, police officers dismantled the tents forcefully and did not allow the protesters to continue the protest in the above manner.

The action of the police preventing the participants of the protest rally from putting the tent at the place of the assemblage is an attempt to control the form of peaceful expression and is a gross violation of the Constitution of Georgia and the essence of the right to assembly under the Law of Georgia **III Assemblies and Manifestations** Article 11. The MIA shall be obliged not to obstruct an assemblage or a manifestation in a manner that is peaceful and selected by participants. The right to choose the form, time and place of the manifestation or a protest rally is a part and the content of the right to assembly.

In the given case the protest organized by the plaintiffs serves only the purpose of the objective and comprehensive investigation of the murder of their children and has a form of the peaceful assembly, therefore, the state did not have the grounds for the interference with the freedom of assembly.

By virtue of the fact that Georgian legislation does not envisage prohibition of putting up tents in a public space, the restriction does not have a legal basis and represents unjustified interference with the right to peaceful assemblage. Nevertheless, even in the presence of the legal grounds, considering the case-law of the European Court of Human Rights, the prohibition cannot be considered as a proportionate means for achieving the legitimate aim.

It should be emphasized that the applicable legislation of Georgia does not provide for the prohibition of temporary constructions, including tents unless they hamper roadways and highways.

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In the conditions when the participants of the protest rally organized by the plaintiffs did not block the roadway, nor their action conveyed any illegal content and purpose, the seizure and prohibition of placing the tents by law enforcement officers is not only illegal but also unconstitutional restriction of freedom of expression and a precedent of the gross interference with the right to freedom of expression, which substantially affects the functioning of pluralist democracy and establishes the practice of hampering protests. [2][2]

The interests of Zaza Saralidze and Malkhaz Machalikashvili are represented and protected by lawyers of the Georgian Young Lawyers' Association and Human Rights Education and Monitoring Center (EMC). The dispute is aimed at eliminating the arbitrary and illegal practice of prohibition of putting up tents by the MIA and has much higher legal significance against the background of the detention of Zaza Saralidze.

[1]http://liberali.ge/news/view/39820/karvis-gashlis-shesakheb-saralidzis-sarchelis-gankhilva-mosamartlem-31-oqtombramde-gadado?fbclid=IwAR2OoEK0VHH2MqM4geo1qmaLJ7n-0TWwmAUqCQ4APdYZmAYPcVHk_ZtCTbc

[2] <https://emc.org.ge/ka/products/sakartvelos-shs-saministros-mier-sakartvelos-konstitutsiis-gangrdzobadma-da-ukheshma-darghvevam-parlamentis-tsin-dzaladobis-eskalatsia-gamoitsvia>