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**CITIZEN OF GEORGIA IA UJMAJURIDZE  
V. THE PARLIAMENT OF GEORGIA**

N2/5/556

Batumi, November 13, 2014

***Composition of the Board:***

Zaza Tavadze – Chairman of the Hearing;  
Otar Sichinava – Member, Judge Rapporteur;  
Lali Papiashvili – Member;  
Tamaz Tsabutashvili – Member.

***Secretary of the Hearing:***

Darejan Tsaligava.

***Title of the Case:***

Citizen of Georgia Ia Ujmajuridze v. the Parliament of Georgia.

***Subject of the Dispute:***

Constitutionality of words “who has been dismissed from public service... due to disciplinary misconduct” in subparagraph “d” of paragraph 1 of Article 14 of the Law of Georgia “On Notary” with respect to Article 14 of the Constitution of Georgia.

***Participants of the Hearing:***

Claimant – Ia Ujmajuridze. Representative of Respondent, the Parliament of Georgia – Tamar Meskhia.

**I**

**Descriptive Part**

1. On June 14, 2013 Constitutional Claim No. 556 was lodged with the Constitutional Court of Georgia by citizen of Georgia Ia Ujmajuridze. On June 18, 2013, the Constitutional Claim was assigned to the Second Board of the constitutional Court of Georgia for ruling on admission of the case for consideration on merits.

2. Pursuant to the Recording Notice No.2/9/556 dated December 27, 2013 the Constitutional Claim was admitted for consideration on merits in the part disputing constitutionality of the words “who has been dismissed from public office... due to disciplinary misconduct” in subparagraph “d” of paragraph 1 of Article 14 of the Law of Georgia “On Notary” with respect to article 14 of the Constitution of Georgia. Hearing on the merits of the case was held on March 25, 2014.

3. The legal basis for submission of Constitutional Claim No.556 are: paragraph 1 of Article 42 and subparagraph “f” of paragraph 1 of Article 89 of

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the Constitution of Georgia, subparagraph “e” of paragraph 1 of Article 19 and subparagraph “a” of paragraph 1 of Article 39 of the Organic Law of Georgia on the Constitutional Court of Georgia.

4. Article 14 of the Law of Georgia “On Notary” defines the grounds for rejection of appointment to the position of a notary. Pursuant to subparagraph “d” of paragraph 1 of the same Article, a person shall not be appointed to the position of a notary if he/she has been released from the public service and/or terminated the membership of the Georgian Bar Association due to disciplinary misconduct, grave and/or repeated breach of law, misuse of authority to the prejudice of justice and service interests or committing corruption offence.

5. Pursuant to Article 14 of the Constitution of Georgia, “Everyone is born free and is equal before the law regardless of race, colour of skin, language, sex, religion, political or other opinions, national, ethnic and social affiliation, origin, property or social status, place of residence.”

6. Constitutional Claim indicates that the Claimant has been dismissed from public service due to administrative misconduct. Claimant presented order of the Judges of Tbilisi Court of Appeals, which attests her dismissal from the workplace. At the same time she notes that she had passed qualification exam for notaries on May 25 2013 and has obtained corresponding license of occupation; however due to the limitation set by the disputed provision, has not addressed the Ministry of Justice with application for granting her the post.

7. The Claimant asserts that the disputed provisions are discriminatory and they establish differentiated treatment between the persons who have been dismissed from public service due to disciplinary misconduct and those who satisfy the criteria for appointment on the post of a notary.

8. The Claimant notes that no similar ground for rejection of appointment exists in other provisions, for example those regulating appointment of judges, bar members, arbiters. Neither does the Law of Georgia “On Public Service” contain such limitation. Consequently, the legislator has unjustifiably set a differentiated legal regime for regulation of notaries, and therefore has subjected them to a differentiated treatment *vis a vis* other public posts.

9. The Claimant notes, that the grounds for refusal of appointment to the position of notary in their essence contain a different type of social threat and must not lead to the same legal outcome. The disputed provision sets identical limitation for persons who have been dismissed from public service due to disciplinary misconduct as well as those who have been dismissed due to criminal charges, despite the fact that commission of a criminal offense entails much higher danger. Pursuant to the Claimant, unconstitutionality of the disputed provision is further supported by the fact that it does not prescribe a term during which a person dismissed from public service due to disciplinary misconduct would be limited from taking the post of a notary. According to Georgian legislation, it is possible to annul or discharge any type of liability, though the disputed provision does not provide for such possibility. It is therefore possible for the limitation to

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last infinitively, which, in Claimant's opinion, excludes the possibility of individual assessment of a person and his/her future conduct – as opposed to tried people who have this advantage.

10. At the hearing on the merits, the Claimant noted that the limitation set by the disputed provision only concerns people dismissed from public service due to disciplinary misconduct and does not extend to people employed in private sector. Pursuant to the Claimant, this is problematic, since the disputed provision does not limit a person dismissed from a private entity to take the position, irrespective of the fact that his/her disciplinary misconduct might have caused a much higher damage to the company.

11. At the hearing on the merits the Claimant additionally noted that pursuant to systemic interpretation of the disputed provision together with the Law of Georgia "On Public Service", in cases where due to disciplinary liability a person shall be dismissed from the job, the one year term established for lifting of the disciplinary liability shall not apply. The Law "On Public Service" regulates only issues related to persons employed in public service.

12. In support of her arguments the Claimant referred to the case-law of the European Court of Human Rights and regulations of other countries.

13. According to the Respondent's definitions, when arguing on unjustified differentiation of persons, it is necessary to identify the comparable categories. The Respondent deems that people of other legal education towards whom no such limitation is set do not form such category, in view of the fact that it is impermissible for the purposes of Article 14 of the Constitution of Georgia to consider those people who are not subjects of the disputed provision as a comparable category.

14. The Respondent noted that Article 14 of the Law of Georgia "On Notary" must be interpreted systematically, together with paragraph 3 of Article 80 of the Law of Georgia "On Public Service" pursuant to which, if the public servant has not been subject to a new disciplinary liability, he is considered as not having a disciplinary liability. According to the Respondent, the Law "On Notary" sets grounds for rejection of appointment as a notary, while the grounds for setting and lifting disciplinary liability itself are regulated by the Law of Georgia "On Public Service" which is of special character. Consequently, deriving from systemic analysis of these norms, a person shall be limited from the right to pursue notary position due to disciplinary misconduct within one year of committing the misconduct.

15. The Respondent notes that the persons dismissed due to disciplinary misconduct from a private entity and public service do not form comparable categories. Respondent deems that dismissal of a person from an entity of private law on the basis of disciplinary misconduct shall to some extent be taken into account when appointing a person to the position of a notary, since pursuant to Article 27 of the Law of Georgia "On Notary", a person may be appointed as a notary if there are no facts known which would make him/her unfit for the post

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of a notary. At the same time, one's work for the entity of private law does not represent a precondition for his/her appointment to the post of a notary, since pursuant to Article 11 of the Law of Georgia "On Notary", the post of a notary may be taken only by those citizens who have gone through internship, have at least one year experience of working as a notary or 5 years of professional experience in public service.

16. Based on paragraph 1 of Article 14<sup>1</sup> of the Law of Georgia "on Constitutional Legal Proceedings", member of the Georgian Bar Association Giorgi Ustiashvili presented written *amicus curiae* on Constitutional Claim No.556.

17. *Amicus* notes that contrary to criminal, administrative and disciplinary liability, the disputed provision does not envision possibility of cancellation or removal of such liability. Consequently, it sets the limitation for an indefinite period of time. Thus, the disputed provision is not based on the principle of fairness and does not derive from the purpose which could be protection of high status of notaries.

## II

### Reasoning Part

1. Based on Article 14 of the Constitution of Georgia, "Everyone is born free and is equal before the law regardless of race, colour of skin, language, sex, religion, political or other opinions, national, ethnic and social affiliation, origin, property or social status, place of residence."

2. Article 14 of the Constitution is a normative expression of the idea of equality – "a norm-principle of the Constitution which generally implies guarantee of equal terms of legal protection of individuals" (Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens "Akhali Memarjveneebi" and "Conservative Party of Georgia" v. the Parliament of Georgia, II.1). The purpose of the given constitutional provision is a guarantee of equal treatment of essentially equal persons and *vice versa*.

3. When discussing compatibility of the disputed provision with Article 14 of the Constitution, it is necessary to identify the comparable groups and determine to what extent they form essentially comparable subjects with respect to a specific legal relationship. Essential equality of people must be assessed not in general, but with respect to a specific legal relationship. At the same time, "when discussing Article 14 of the Constitution, the issue of essential equality of people should be assessed not in general, but with respect to a specific legal relationship. Discourse on discriminatory treatment is possible only if the persons can be considered as essentially equal subjects with respect to a specific legal relationship." (Judgment of the Constitutional Court of Georgia No. 2/1/536 dated February 4, 2014 Citizens of Georgia – Levan Asatiani, Irakli Vatcharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze v. the Minister of Labour, Health and Social Affairs of Georgia, II-19).

4. In the instant case, intervention in Article 14 of the Constitution shall

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be in place only if the differentiation is among the essentially comparable persons.

5. The Claimant considers that the disputed provision is discriminatory since it sets differentiated treatment between the persons dismissed from public service due to a disciplinary misconduct and those persons who satisfy criteria for appointment as a notary. Besides, the Claimant asserts that the grounds for refusal of appointment to the position of a notary in their essence contain a different type of social threat and must not lead to the same legal outcome. The disputed provision sets an identical limitation towards a person who has been dismissed from public service due to disciplinary misconduct and a person who has been prosecuted for criminal offence, despite the fact that commission of a criminal offense entails much higher danger.

6. Consequently, in the legal relationship under consideration, the comparable groups (categories) are, on the one hand, applicants for the post of a notary, who satisfy the requirements set by the law and can take the post of a notary, and persons in the similar situation as Claimant, who, despite formally complying with the indicated requirements, are deprived of the opportunity to take the position of a notary because they had been dismissed from public service due to disciplinary misconduct and on the other hand persons in the similar position as Claimant, who will not be able to take the post of a notary due to criminal conviction.

7. The Constitutional Court clarifies that taking a position of a notary, in its essence, is a practical realisation of a right to pursue public service, established in Article 29 of the Constitution of Georgia. According to the Law of Georgia “On Notary” a person may take position of a notary if he/she is a citizen with full legal capacity of Georgia, has higher legal education, has gone through internship or has at least 1 year experience of working as a notary or has at least 5 years of professional experience in public service and has passed qualification exam for notaries. Article 14 of the same law sets ground for rejection of appointment to the position of notary. The disputed provision establishes that a person shall not be appointed as notary if he/she has been dismissed from public service due to disciplinary misconduct.

8. For appointment of notary, the law prescribes certain criteria, upon satisfaction of which any citizen with full legal capacity has a possibility to take the position. At the same time, the legislator separates out a group of people, who due to infringement of the law or a crime are limited in this right and are subject to a different legal regime. The basis for a differentiated treatment is commission of an illegal act (for example perpetration of a deliberate crime) and/or occurrence of a certain legal outcome towards him/her (dismissal from public office due to a disciplinary misconduct). Consequently, the candidates who satisfy criteria prescribed by law, when there are no grounds for refusal of their appointment to the position of a notary by law, cannot be considered as equal to the group of people similar to the Claimant.

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9. In view of the above mentioned, the Court does not share Claimant's argumentation that in the given situation, the candidates to the position of a notary and persons in the same position as the Claimant are essentially equal. Therefore, with respect to this part of the Claim the disputed provision shall not be assessed with respect to Article 14 of the Constitution.

10. The Claimant also notes that the disputed provision is discriminatory, since it does not set a period during which a candidate dismissed from public service due to disciplinary misconduct would be limited in pursuing the position of a notary, as opposed to person who had been convicted, whose criminal record shall be lifted or discharged and could take this position. The Claimant does not dispute the fact that for the purposes of the given legal relationship, persons in the same position as the Claimant and candidates who have been tried are essentially equal. For the Claimant, the only issue of concern is that contrary to the candidates who had been tried, a person dismissed from public service due to disciplinary misconduct has no possibility to change his/her legal status (to lift or clear the liability), as a result of which he/she is barred from pursuing the position of a notary infinitely.

11. Respondent asserts that the disputed provision should be interpreted in conjunction with paragraph 3 of Article 80 of the Law of Georgia "On Public Service", pursuant to which a public servant is considered as not having disciplinary liability if he/she is not subject to a new disciplinary sanction within one year. Consequently, a person is prevented from taking a position of a notary due to administrative misconduct for the period of one year. If, after one year from a person's dismissal from public service (i.e. when the person is considered as not having disciplinary liability) he/she is not appointed to the position of a notary for this reason, such action shall be considered as interpretation in bad faith of the law.

12. The Constitutional Court is limited by the scope of the Claim. Therefore, to resolve the present dispute it must establish whether for the purposes of taking a position of a notary persons in the similar position as the Claimant, candidates who had been tried, are essentially equal or not and whether they are subject to differentiated treatment.

13. Pursuant to Article 14 of the Law of Georgia "On Notary", a person shall not be appointed to the position of a notary: 1) if he/she is had been tried for a deliberate crime; 2) if he/she had been tried for a crime related to the notarial activity, irrespective of the fact whether the criminal record has been cancelled or removed. It is noteworthy that for Claimant the only problematic fact is that a person who had been tried shall have the criminal record lifted or discharged and has a possibility to take the position of a notary. Consequently, within the frames of the present dispute, the Court shall not assess the issue of barring a person who had been convicted for a crime related to notarial deeds to take the position of a notary, since for candidates of this category cancellation or removal of criminal record does not change their *status quo*.

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14. The institute of criminal record represents one of the important elements of criminal adjudication. Pursuant to Article 79 of the Criminal Code of Georgia “convicted person shall be considered to have a record of conviction from the day of entry into force of the judgment of conviction up to the moment when the record of conviction is cancelled or removed”. Same article sets conditions for cancellation or removal of criminal record, namely, different terms are set for cancellation of criminal record based on the severity of the crime and the type of the punishment used. On the other hand, removal of criminal record takes place when the court lifts the record prior to expiration of the term for its cancellation. In view of the above mentioned, record of conviction is a legal category, an institute, which is a sequel following a judgment of conviction and is characterised by action in time.

15. Contrary to criminal record, the disputed provision does not affect all people in general who have committed a disciplinary misconduct, rather those who have been dismissed from public service due to this misconduct. Besides, the Court does not share the Respondent’s argumentation and considers that under the conditions of the currently existing legislation persons in the same position as the Claimant have no possibility to request change of their status (cancellation or removal of disciplinary liability), which would give them possibility to pursue the position of a notary after certain period of time. The provisions of the Law of Georgia “On Public Service” invoked by the Respondent regulate relationships only with currently serving public servants and do not extend to persons dismissed from public service. Therefore, the disputed provision prescribes differentiated treatment for essentially equal persons.

16. In view of the above mentioned the Court finds that in the legal relationships under consideration the differentiated persons represent essentially equal subjects. The disputed provision sets differentiated treatment for essentially equal persons, which is subject to assessment with respect to Article 14 of the Constitution of Georgia.

17. The principles of right to equality and prohibition of discrimination established by Article 14 of the Constitution of Georgia obliges the State to carry its activities in line with the requirements of this article, namely, “the legislator is obliged to regulate a specific matter in a non-discriminatory way. This obligation accompanies the legislative process irrespective of whether it aims at regulating constitutional rights or legal interests and regardless of which factual circumstance or attribute does the discrimination relate to.” (Judgment of the Constitutional Court of Georgia No. 2/1/536 dated February 4, 2014 “Citizens of Georgia – Levan Asatiani, Irakli Vatcharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze v. the Minister of Labour, Health and Social Affairs of Georgia, II-21).

18. Therefore, the legislator is obliged to regulate issues related to the position of a notary in compliance with requirements of Article 14 and should not allow discriminatory treatment of equal persons, and *vice versa*.

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19. Pursuant to the existing case-law of the Constitutional Court of Georgia, the list of attributes of discrimination provided in Article 14 of the Constitution is not exhaustive. The purpose of this provision of the Constitution “is more extensive, than mere prohibition of discrimination solely on the basis of these criteria... Only grammatical interpretation would make Article 14 empty and undermine its importance within the constitutional sphere” (Judgment of the Constitutional Court of Georgia No. 2/1-392 dated March 31, 2008, Citizen of Georgia Shota Beridze and others v. Parliament of Georgia, II.2). “Prohibition of discrimination mandates the State that any regulation which it sets be in line with the essence of equality... consequently, any provision which is in conflict with the essence of equality should be subject to consideration by the Constitutional Court” (Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. the Parliament of Georgia, II.4).

20. Claimant notes that the limitation set by the disputed provision leads to discrimination on one of the grounds envisioned under Article 14 of the Constitution of Georgia. Despite this, existence of a different legal regime towards notarial candidates is in itself assessable with respect to the basic right of equality.

21. For the purposes of the right to equality protected under Article 14 of the Constitution of Georgia, not every type of differentiation towards essentially equal people will be considered as discrimination. “[A]rticle 14 of the Constitution does not oblige the state to fully equalize essentially equal people in any case. It allows for certain differential treatment... [since] certain cases even relationships which are sufficiently analogues the differential treatment may be necessary and even inevitable... we shall distinguish discriminatory differentiation and differentiation which is cause by objective reasons. Equal treatment should not be end in itself” (Judgment of the Constitutional Court of Georgia No. 2/1/473 dated March 18, 2011, Citizen of Georgia Bichiko Chonkadze and others v. the Minister of Energy of Georgia, II.2; See also Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. the Parliament of Georgia, II.3).

22. In view of the essence of the right to equality, the Constitutional Court considers constitutionality of the limitation set by the disputed provision differently in each case. “In certain cases it may entail the necessity to substantiate existence of legitimate public aims... in other cases the need or necessity of the limitation must be tangible... In some cases maximum realism of the differentiation may suffice.” (Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. Parliament of Georgia, II.5).

23. Consequently, the Court uses the proportionality test of two kinds – rational differentiation and strict assessment of proportionality. Which one of them the court will be guided by in deciding on a particular case depends on



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various circumstances or factors, including, intensity of intervention and the basis for differentiation.

24. In determining the test to be used for the assessment of a differentiated treatment the Court must establish to what extent the differentiation envisioned by the disputed provision relates to classic attributes of Article 14 of the Constitution. “Historically, constitutions would list those characteristics according to which groups of people were united based on their personal features, physical attributes, cultural characteristics or social belonging. These characteristics got enlisted in the constitutions specifically due to long experience of discrimination on their basis, as well as due (in response) to the fear of continuation of such treatment” (Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. the Parliament of Georgia, II.4). As has been noted, the disputed provision does not set a differentiated treatment based on one of the characteristics noted in Article 14 of the Constitution. Therefore, there is no precondition for applying strict scrutiny due to differentiation on the basis of a classic basis.

25. Nevertheless, the Court may still apply strict scrutiny if intervention into the right to equality is of intense nature. For this purpose the Court must assess “to what extent the essentially equal people will be put in different conditions, i.e. how much the differentiation will put equal people apart from equal possibility to engage in a specific social relationship” (Judgment of the Constitutional Court of Georgia No. 1/1/493 dated December 27, 2010, Political unions of citizens “Akhali Memarjveneebi” and “Conservative Party of Georgia” v. the Parliament of Georgia, II.6).

26. In the given case, in order to determine intensity of intervention into the right established by Article 14 of the Constitution, the disputed provision should be fully analysed, its content and scope of application must be determined. Pursuant to the disputed provision of the Law “On Notary” of Georgia, “a person shall not be appointed to the position of a notary if he/she has been dismissed from public office... due to a disciplinary misconduct.” The Court must establish how sharply the rejection to the appointment to the position of a notary puts the persons dismissed from public service due to disciplinary misconduct away from essentially equal persons.

27. As it has already been noted above, the limitation set by the disputed provision is directed not towards the fact of a disciplinary misconduct, rather towards dismissal of a person from public service due to this reason. The disputed provision covers only those persons, who have committed a disciplinary misconduct and, at the same time, have been dismissed from public service as a result of this reason. Dismissal from office is a one-off occurrence, which takes place in certain time and circumstances. There is no legal mechanism, which would give possibility to persons similar to the Claimant to influence the process, namely, to change their legal status due to cancellation or removal of the

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liability. Thereby the disputed provision sets an absolute (blanket) prohibition and infinitively limits the right to take a position of a notary for persons dismissed from public office due to disciplinary infringement.

28. An absolute ban for an indefinite period of time puts essentially equal people in the given legal relationship significantly apart from each other. Consequently the intensity of differentiation is high and the Court must be guided by the strict scrutiny of assessment.

29. When applying the strict scrutiny, the limitation set by the disputed provision must serve the legitimate aim and must be a proportionate mean of achieving this purpose. It is the requirement of the principle of proportionality that „the restrictive regulation must be reasonable and necessary means for achieving (legitimate) public aim. At the same time, the intensity of the restriction must be proportionate to the aim pursued. It is impermissible to pursue a legitimate aim at the expense of increased restriction of human right” (Judgment of the Constitutional Court of Georgia No. 3/1/512 dated June 26, 2012, Citizen of Denmark Heike Cronqvist v. the Parliament of Georgia, II.60).

30. Intervention into a human right must not be an end in itself it must serve achievement of a defined, essentially valuable legitimate aim. “Only the constitutionality of the means of attaining a legitimate aim can be reviewed with the principle of proportionality” (Judgment of the Constitutional Court of Georgia No. 1/2/411 dated December 19, 2008, LTD “Russenergосervice”, LTD “Patara Kakhi”, JSC “Gorgota”, Givi Abalaki’s Individual Company “Farmer” and LTD “Energia” v. the Parliament of Georgia and the Ministry of Energy of Georgia, II.9).

31. At the same time “without a legitimate purpose, any intervention into the individual’s right is frivolous and limitation of the right is at the outset unjustified and unconstitutional” (Judgment of the Constitutional Court of Georgia No. 3/1/531 dated November 5, 2013, Citizens of Israel – Tamaz Janashvili, Nana Janashvili and Irma Janashvili v. the Parliament of Georgia, II.15.).

32. Pursuant to the Respondent the purpose of the disputed provision is to protect the honourable position of a notary from unworthy people, who would not be morally or professionally able to duly perform their obligations prescribed by the law.

33. The Constitutional Court defines that the position of a notary carries an important function and plays a distinct role in social life. Pursuant to paragraph 1 of Article 1 of the Law of Georgia “On Notary” “Notariate is a public legal institution, the aim of which is to confirm legal relations between different persons and juridical facts within the limits determined by the state.” Thereby, the legislation determines that the notary is free in his/her professional activity and executes public authority when performing notarial and other activities related to it. This puts an emphasis on particular roles of Notariate as a public institution and of a notary as an executor of important public function in a fair and democratic State. Therefore, the State must regulate this sphere, including the clear, fair and objective criteria for appointment of notaries.

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34. In view of the above mentioned, it is clear that the disputed provision aims at achieving a legitimate aim – appointment of qualified and suitable people to the position of a notary. However, existence of a legitimate aim for constitutional justification of differentiation of such a high intensity is not sufficient. It is necessary that the limitation prescribed by the disputed provisions are absolutely necessary and for the State to have an invincible interest.

35. The Claimant considers that dismissal from public office due to disciplinary misconduct indefinitely limits her ability to take the position of a notary. The Constitutional Court shares the Claimant's argumentation and clarifies that a disciplinary misconduct represents an action which is of less dangerous nature and does not lead to infringement of significant private or public interests. Legal definition of the term attests to the same, namely, pursuant to Article 78 of the Law of Georgia "On Public Service" disciplinary misconduct is: 1) culpable neglect or improper performance of official duties; 2) damage to the property of the institution or culpable creation of danger of such damage; 3) indecent behaviour (culpable behaviour) against generally accepted ethical norms or intended to discredit an official or an institution, irrespective of whether it is committed at or outside of work.

36. In light of the above mentioned, it is undisputed that the disciplinary misconduct is not equivalent to a criminal action, which likewise represents a precondition for rejection of appointment to the position of a notary. At the same time, the existing legislation envisions possibility of removal from disciplinary liability. As indicated by the Respondent, pursuant to paragraph 3 of Article 80 of the Law of Georgia "On Public Service" if the public servant has not been subject to a new disciplinary liability, he/she is considered as not having a disciplinary liability. Pursuant to paragraph 2 of the same article, "an official or an institution imposing disciplinary sanctions on an official shall have the right of early removal of the sanctions if the public employee has not repeatedly committed disciplinary fault or has proved himself/herself as a conscientious worker."

37. Besides, the Regulation on "Disciplinary Misconduct of Notaries" affirmed by the Order No. 69 of the Minister of Justice of Georgia dated March 31, 2010, envisions possibility of disciplinary liability for misconduct against notaries themselves. The same Order sets terms for cancellation of the liability, which based on the type of the sanction, range from 6 months to 2 years. Existing legislation permits cancellation or removal of disciplinary liability towards public servants in general, as well as towards notaries themselves, as opposed to persons in the same position as the Claimant, who have no such possibility.

38. In view of all the above mentioned, the Constitutional Court considers that it is possible to set limitations for appointment of notaries leading to the necessity of a differentiated treatment, including on the basis of dismissal from public service due to a disciplinary misconduct, which in certain circumstances may be reasonable and even proportionate. However, in the given case, the limitation established by the disputed provisions sets an unjustified unequal

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treatment towards essentially equal people and limits the right to a greater intensity than it is necessary for achievement of a legitimate aim. In particular, persons pursuing the position of a notary who have been dismissed from public service due to disciplinary misconduct, indefinitely, for the duration of whole life, are banned from taking the position of a notary. Consequently, the disputed provision contradicts the basic right of equality guaranteed by Article 14 of the Constitution of Georgia.

### **III**

#### **Ruling Part**

On the basis of subparagraph “f” of paragraph 1 of article 89 and paragraph 2 of article 89 of the Constitution of Georgia; subparagraph “e” of paragraph 1 of article 19, paragraph 2 of article 21, paragraph 1 of article 23, paragraphs 1, 2 and 3 of article 25, paragraph 5 of article 27, subparagraph “a” of paragraph 1 of article 39 and paragraphs 2, 4, 7 and 8 of article 43 of the Organic Law of Georgia “On the Constitutional Court of Georgia”, paragraphs 1 and 2 of article 7, paragraph 6 of article 13 , articles 30, 31, 32 and 33 of the Law of Georgia “On Constitutional Legal Proceedings”,

#### **THE CONSTITUTIONAL COURT OF GEORGIA**

##### **RULES:**

1. Constitutional Claim No.556 (Citizen of Georgia Ia Ujmajuridze v. the Parliament of Georgia) shall be upheld and the normative content of the words “who has been dismissed from public service... due to disciplinary misconduct” in subparagraph “d” of paragraph 1 of Article 14 of the Law of Georgia “On Notary” by virtue of which persons dismissed from public service for disciplinary misconduct are barred from taking the position of a notary, be declared unconstitutional with respect to Article 14 of the Constitution of Georgia.

2. Unconstitutional provision shall be declared invalid from the moment of publishing of this judgment.

3. The judgment is in force after its public announcement on the hearing of the Constitutional Court.

4. The judgment is final and is not subject to appeal or review.

5. Copies of the present judgment shall be sent to the parties, the President of Georgia, the Government of Georgia and the Supreme Court of Georgia.

6. The judgment shall be published in “Legislative Herald of Georgia” within the period of 15 days.

#### ***Members of the Board:***

Zaza Tavadze

Otar Sichinava

Lali Papiashvili

Tamaz Tsabutashvili