
**CITIZEN OF AUSTRIA MATHIAS HUTER
V. THE PARLIAMENT OF GEORGIA**

N1/2/563

Batumi, June 24, 2014

Composition of the Board:

Konstantine Vardzelashvili – Chairman of the Hearing, Judge Rapporteur;

Ketevan Eremadze – Member;

Maia Kopaleishvili – Member.

Secretary of the Hearing:

Lili Skhirtladze

Title of the Case:

Citizen of Austria Mathias Huter V. the Parliament of Georgia

Subject of the Dispute:

Constitutionality of paragraph 3 of Article 22 of the law of Georgia “on the Ownership of Agricultural Land” with respect to article 14 and paragraphs 1 and 2 of article 21 of the Constitution of Georgia.

Participants of the Hearing:

Representatives of the Claimant - citizen of Austria Mathias Huter: Tamar Tcharbadze and Teona Zakareishvili; Representative of the Respondent - the Parliament of Georgia: Tamar Meskhia.

I

Descriptive Part

1. On September 17, 2013 a constitutional claim (registration N563) was lodged to the Constitutional Court of Georgia by the citizen of Austria Mathias Huter. On September 18, 2013 N563 Constitutional Claim, was assigned to the First Board of the Constitutional Court of Georgia for ruling on admission of the case for consideration on merits. Preliminary session of the First Board of the Constitutional Court with oral hearing was held on January 24, 2014.

2. The legal basis for submission of the Constitutional Claim is paragraph 1 of article 42, subparagraph “f” of paragraph 1 of article 89 of the Constitution of Georgia, subparagraph “a” of paragraph 1 of article 39 of the organic law of Georgia “On the Constitutional Court of Georgia”, paragraph 2 of article 1 of the Law of Georgia “On Constitutional Legal Proceeding”

3. Claimant party disputes Constitutionality of paragraph 3 of Article 22 of the law of Georgia “On the Ownership of Agricultural Land” With respect to article 14 and paragraph 1 and 2 of article 21 of the Constitution of

Georgia. According to the disputed provision the force of subparagraph “b” of paragraph 1 of article 4 of the same law is suspended until December 31, 2014. According to the suspended provision property right on agricultural land (among them on inherited land) belongs to foreigner, legal person registered abroad and legal person registered according to the law of Georgia by a foreigner.

4. The Constitutional Claim indicates that on June 28, 2013 the Parliament of Georgia adopted the law on amendments in the law of Georgia “On the Ownership of Agricultural Land”. Based on the amendment a foreigner is not allowed to acquire property right on agricultural land (among them on inherited land) until December 31, 2014. The Claimant, citizen of Austria Mathias Huter, considers that based on the disputed provision his right to purchase and inherit agricultural land is restricted, which violates property right protected under article 21 of the Constitution of Georgia and equality rights established by article 14 of the Constitution of Georgia.

5. The Claimant submits that application of the right to property recognised by the Constitution of Georgia extends to everybody, including foreigners and stateless people. Therefore, the right to property for foreigners and citizens of Georgia may be restricted only in accordance with the rules established by paragraph 2 of article 21 of the Constitution of Georgia; specifically, the restriction should be based only on pressing social need, cases and procedure of the restriction should be defined by the law and the restriction should not violate essence of the right.

6. The Claimant party indicates that adoption of the disputed provision aims to organise cadastre of agricultural land, unified system of land tenure and public law regulation of the field. The need derives from the threat of irrational transfer of the land, which might have negative influence on economic safety of the state, protection of environment and state security. It might substantially harm local inhabitants of the villages as well. According to the explanatory note of the bill, state has public interest to ensure organised farming and improvement agricultural structure, based on the rational use of the land. Therefore, until the enactment of suitable state policy and organising cadastre data, irrational transfer of the land and massive purchase of cheap land by foreigners must be avoided.

7. During the preliminary hearing the Claimant indicated that content of the disputed provision is identical to the content of the provisions which has already been declared unconstitutional by the Judgment №3/1/512 of the Constitutional Court adopted on June 26, 2012. The Claimant submitted that economic safety of the state, protection of environment and state security are legitimate aims which were also indicated by the Parliament in 2012 and as it was established by the judgment of the Constitutional Court that the disputed provision constituted neither the sole nor suitable measure for achieving the mentioned legitimate aims.

8. The Claimant additionally explained that the decision of the state to organise land cadastre is indisputably positive one, but it does not justify restriction of the right established by the disputed provision. According to the Claimant's opinion it is illogical to claim that danger to local population is caused by purchase of the land solely by citizens of foreign countries. Citizenship of the purchaser of the land is irrelevant for the people employed in agricultural sector. Furthermore, the Claimant submitted that if other condition established by law ensures economic stability, protection of environmental and state safety, citizenship of the owner of the land could not become dangerous to local population. Moreover, every individual and legal person within the jurisdiction of Georgia, notwithstanding their citizenship and/or place of registration is obliged to obey the requirements established under the Georgian law. Therefore, restriction of the right to property established by the disputed provision is disproportional.

9. The Claimant further defined that the Constitution of Georgia does not recognise special treatment to restriction of a right for a limited period; therefore even temporary restriction established by the disputed provision cannot be justified by the mentioned legitimate aims.

10. Based on the above mentioned the Claimant considers, that the disputed provision contradicts to paragraphs 1 and 2 of article 21 of the Constitution of Georgia.

11. The Claimant indicated that the disputed provision also violates the right to equality recognised under article 14 of the Constitution of Georgia. According to the Claimant's position the disputed provision established different legal regime for citizens of Georgia and foreigners, individuals which are in a substantially similar situation. Mentioned restriction is not caused by pressing social need, contradicts principle of legality, and constitutes disproportionate measure of interference into to the right. Therefore, restriction established by the disputed provision constitutes arbitrary and unjustified discrimination.

12. Based on paragraph 5 of article 25 of the organic law of Georgia "On the Constitutional Court of Georgia" the Claimant submitted the motion asking the Court to suspend force of the disputed provision until adoption of final judgment on the case. The Claimant stated that if the court does not uphold argumentation that the disputed provision has the content identical to the provision previously declared unconstitutional by the Court and admits the case on merits, suspension of the force of the disputed provision is necessary. The Claimant also indicated that operation of the disputed provision might not cause irreparable consequences to the claimant, but generally, it will cause negative result for the right.

13. In order to support the argumentation, the Claimant party additionally referred to the related precedents of the Constitutional Court of Georgia and the European Court of Human Rights.

14. The Respondent party indicated that the aim of the restriction established by the disputed provision is creation of unified state policy on ownership of the agricultural land by the Government of Georgia, establishment of state regulation on protection and use of the agricultural land resources and public law regulation of relations connected to agricultural land, as well as organising cadastre of agricultural land and unified system of land tenure for the purpose to ensure perfection of cadastre data.

15. The respondent claimed that the restriction on property right of a foreigner imposed by the disputed provision is temporary measure; therefore it does not constitute highly intensive interference within the right. The Respondent explained that Georgia is the country with limited land resources. Cultivated land amounts to 0.24 hectare per person; therefore creating state policy on this issue has significant importance. Furthermore agricultural land is vital resource, instrument of production which does not have an alternative. It significantly influences quality of political and economic independence of the state. At the same time, during entire period of the restriction the Parliament of Georgia is working with the Government to define the terms of the acquisition of agricultural land, which after enforcement will apply equally to foreigners and citizens of Georgia. Therefore, main objective of restriction on transferring agricultural land to foreigners during the defined period of time is avoidance of massive purchase of cheap land by citizens of richer countries.

16. On the preliminary hearing the Respondent indicated that the legitimate aims of the restriction imposed based on the dispute provision are identical to the legitimate aims of the provision already declared unconstitutional by the Constitutional Court, but the main difference between these two provisions is temporary character of the first. Since, the disputed provision has force only till December 31, 2014, it does not deprive property right from a foreigner, just suspends it temporarily, thus constitutes proportionate measure for achieving the mentioned legitimate aims.

17. Based on above mentioned the Respondent considers that the disputed provision is not identical to the provision which has already been declared unconstitutional by the Constitutional Court and the provision does not contradict paragraphs 1 and 2 of article 21 of the Constitution of Georgia.

18. The Respondent party submitted that constitutionality of the disputed provision with respect to article 14 of the Constitution, should be assessed based on rational differentiation test, the Court should evaluate whether disputed provision is as close to reality as possible, necessary and real and rational link is present between the objective reasons of differentiation and its outcomes. The respondent claimed that since the disputed provision establishes temporary restriction, differentiation should not be considered to be highly intensive and it does not contradict the requirements of the article 14.

19. In respect to suspension of the force of the disputed provision the Respondent indicated that no credible argument was presented by the Claim-

ant, which could prove existence of inevitable danger that the application of the disputed provision will result in irreparable consequences to him. Therefore the motion is unsubstantiated and should not be granted.

20. Furthermore, the Respondent claimed that because of the temporary nature of the provision, its suspension will make the legitimate aims unachievable. If the Constitutional Court grants the motion based on paragraph 4¹ of article 22 of the organic law of Georgia “On the Constitutional Court of Georgia” maximum 45 days will be subtracted from 11 month period, of the force of the provision, left till December 31, 2014. In addition, during the suspension period, foreigners will be able to freely acquire agricultural land, which will jeopardise the achievement of the legitimate aims.

II

Reasoning Part

1. In this case the constitutionality of paragraph 3 of Article 22 of the law of Georgia “On the Ownership of Agricultural Land” is disputed. According to the provision the right to acquire property on agricultural land is suspended until December 31, 2014 for foreigner, legal person registered abroad and legal person registered according to the law of Georgia by foreigner. The Claimant requests assessment of constitutionality of the provision with respect to paragraphs 1 and 2 of article 21 and article 14 of the Constitution of Georgia.

2. Furthermore, the Claimant submits the motion to the Constitutional Court to annul the disputed provision by the ruling based on paragraph 4¹ of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” since it contains the content identical to the content of the provision which was declared unconstitutional by the Judgment N3/1/512 of the plenum of the Constitutional Court of Georgia on the case of “Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia” on June 26, 2012.

3. According to paragraph 4¹ of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” if the Constitutional Court determines at its preliminary session that a disputed normative act or its part contains the same content which has already been declared unconstitutional by the Constitutional Court, it shall deliver a ruling on the inadmissibility of the case for consideration on the merits and on the recognition a disputed provision or its part void.

4. Therefore, in this case the Constitutional Court firstly should decide whether the disputed provision has the content identical to the provision which was declared unconstitutional by the Judgment N3/1/512 of the Plenum of the Constitutional Court on the case of “Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia” on June 26, 2012. In the mentioned case, words of paragraph 1 of article 4 of the law of Georgia “On the Ownership of Agricultural Land” in force at the time - 1. a) “in cases considered by paragraphs

11, 12 and 13 of this paragraph”; b) “foreigner and”, further wording “foreign registered legal entity has property right only to the agricultural land plot...” c) “while foreign national, also to the agricultural land plot, which s/he rightfully owned as a citizen of Georgia” and words of Article 4, Para. 11 - “foreigner and” was declared unconstitutional with respect to paragraphs 1 and 2 of the article 21.

5. According to the provision declared unconstitutional on the case of “Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia”, foreign national was able to acquire property right on agricultural land only as a result of inheritance or in cases when he/she lawfully processed it as a citizen of Georgia. According to the law in force at the time, foreign national who acquired property on agricultural land, was obliged to transfer the title within 6 months of acquiring such right to a Georgian citizen, family or legal person registered in Georgia. Protection of the state security and promoting improvement of agricultural sector were indicated as legitimate aims of the restriction during the hearing on the case. The Respondent was claiming that prohibiting foreign national to acquire property right on agricultural land was preventing massive purchase of the agricultural land by nationals of rich foreign countries and thus ensuring avoidance of massive transfer of ownership of agricultural land towards foreign nationals. Therefore it was claimed that the disputed provision aimed to protect economic safety of the state, environment and state security, which together with the improvement of agricultural structure constituted presence of the pressing social need.

6. According to the mentioned judgment the decision of the Plenum of the Constitutional Court to declare the disputed provision unconstitutional was based on the following grounds: 1) Foreign national constitutes full-fledged subject of the right guaranteed under article 21 of the Constitution; 2) The disputed provision constituted restriction of the right to property protected under paragraphs 1 and 2 of article 21 of the Constitution; 3) No logical connection existed between the disputed provision and the legitimate aims indicated by the respondent. The right was restricted based on the disputed provision in absence of achieving any significant public interest. The Court did not uphold the argumentation of the Respondent claiming the existence of correlation between restricting foreign national’s right to purchase the agricultural land and legitimate aim to improve agricultural structure. According to the judgment of the plenum of the Constitutional Court, the capacity of state to support improvement of agricultural structure is the same despite the fact whether agricultural land is owned by a citizen of Georgia or by a foreign national. The Constitutional Court considered that argumentation presented by the respondent party did not indicate the dangers derived from the acquisition of property on agricultural land by foreign national, which would demonstrate logical connection between the disputed provision and ecologic and economic safety of the state. Based on this reasoning, the provisions disputed by the

citizen of Denmark Heike Cronqvist were declared unconstitutional by the judgement of the Constitutional Court dated June 26, 2012.

7. On June 28, 2013 as a result of amending the Georgian law “On the Ownership of Agricultural Land” the third paragraph was added to article 22 of the same law, according to which the force of subparagraph “b” of article 4 of the same law was suspended until December 31, 2014. The subparagraph “b” of the article 4 defines that property right on agricultural land (including inherited land) belongs to a foreigner, legal person registered abroad and legal person registered according to the law of Georgia by foreigner. Therefore, the disputed provision prohibits foreign national from becoming owners of the agricultural land until December 31, 2014.

8. Paragraph 4¹ of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” on the one hand protects the principle of procedural economy. In the cases when substantive part of the disputed issue has been already settled by the Court, the Constitutional Court is not required to repeatedly discuss constitutionality of the disputed provision on the merits. On the other hand, the mentioned provision constitutes effective mechanism for supervision by the Constitutional Court on implementation of its judgment and for prevention of human rights violation.

9. The Constitutional Court defines that while deciding whether disputed provision constitutes “the provision overruling” the previous Judgment of the Constitutional Court, it takes circumstances of the case into consideration and in each occasion assesses whether new provision repeats the content of the provision which has been already declared unconstitutional by the Constitutional Court. If the Constitutional Court concludes that the content of the disputed provision is similar to the provision which has already been declared unconstitutional by the judgment of the court, it will declare the disputed provision void without holding the hearing on merits. Furthermore, according to the precedents established by the Constitutional Court “Similarity of the disputed provision should be assessed not only based on formal approach, but also based on the regulatory result which both provision might have in common” (Ruling N1/5/525 of the Constitutional Court of Georgia, December 14, 2012 on the case of „Citizen of Moldova Mariana Chicu v. the Parliament of Georgia“, II-11).

10. The Constitutional Court defines that textual, editorial or other formal difference should not be considered as substantial factor of differentiation between the provisions. The court will assess in each occasion, whether disputed provision is similar to provision which is already declared unconstitutional content-wise, considering the objectives of the disputed provision, the intent of legislator and legal instrument preserved in it. Content based similarity will exist not only in case when the disputed provision repeats content of the unconstitutional provision word by word but also when the disputed provision generates substantially similar legal outcome.

11. In order to decide whether legal ground prescribed by paragraph 4¹ of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” exists, together with assessment of the content of the disputed provision, the court should take into consideration the legitimate aims which are intended to be achieved by the provision. The Court might face a necessity to assess some factual and/or legal circumstances, if these circumstances were not present at the time when the provision was declared unconstitutional by the Constitutional Court.

12. Therefore, qualification of the disputed provision as “the provision overruling” previous judgment of the Constitutional Court and voiding it without hearing on the merits is possible in case, when substantial content based similarity of the provisions is presented. In cases when the disputed provision restricts the same constitutional right similarly to the provision which is already declared unconstitutional, uses similar legal measure for restriction of the right and provides identical legal outcomes and when other factual or legal circumstances which would create ground/prerequisite for reassessment of the disputed provision on merits do not exist.

13. The analysis of the disputed provision, information presented during the hearing, arguments of the Claimant and the Respondent demonstrate significant similarity between the provision already declared unconstitutional by the Constitutional Court and the disputed provision in present case. Specifically, both provision declared unconstitutional by the judgment of the Plenum and the provision disputed in present case prohibits foreigners from holding title on agricultural land. The prohibition imposed based on the disputed provision, similarly to the previous case, covers every category of agricultural land and constitutes general and absolute (but with limited time) restriction. In this regard, it does not contain any different regulations. Moreover, in comparison to the provision already declared unconstitutional, the existing regulation aggravates legal situation of foreign individual, since it does not leave the possibility of at least temporarily inheriting agricultural land. Therefore, regulatory result of the disputed provision is substantially similar to the provision which was considered unconstitutional by the judgment N3/1/512 of June 26, 2012.

14. Explanatory note of the bill of law of Georgia on “Amendments to the Law of Georgia “On the Ownership of Agricultural Land” (N795-IIb, June 28, 2013) indicates, that “recently the threat of irrational transfers of land is presented, which might negatively influence economic safety of the state, protection of environment and state security; it also might significantly harm local rural population. Therefore according to the explanatory note, it was considered appropriate to suspend the right to acquire land ... for foreign nationals and legal person registered abroad, for certain period of time until January 1, 2017 till creation of suitable state policy”. As specified in the explanatory note, firstly it was planned to impose the mentioned restriction

until January 1, 2017; however, finally period of restriction was set until 31 December, 2014. This content of the provision is disputed in the Constitutional Court. The explanatory note also indicates that “the aim of adoption of the temporary restriction is public interest of the state to ensure organised farming and improvement of agricultural structure based on the rational use of the land; Therefore, until the creation of suitable state policy and organising cadastre data, irrational transfer of the land and massive purchase of cheap land by foreigners must be avoided”.

15. On preliminary hearing the Respondent confirmed that the legitimate aim of adoption of the disputed provision is the same as the legitimate aim, achieving of which was intended by the provision, considered unconstitutional in the case of “Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia”. Furthermore the Respondent additionally states that “certain period of time is necessary to avoid massive transfer of land to foreign nationals, to prevent situation, in which prior to establishment of the criteria, majority of the agricultural land will be cheaply sold to foreign nationals”.

16. Based on above mentioned the Constitutional Court considers that in the present case legitimate aims indicated by the respondent, achievement of which is intended by the disputed provision are significantly similar to the legitimate aims indicated by representative of the Parliament of Georgia during hearing on Constitutional Claim N512 (“Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia”).

17. Furthermore, it is necessary that the Constitutional Court assesses another argument of the Respondent, which is related to the temporary nature of the restriction imposed based on the disputed provision. As it was already indicated force of the disputed provision is limited with certain period on time, specifically it is applicable until December 31, 2014. The Respondent claims that temporary nature of application of the disputed provision substantially differentiates it from the provision declared unconstitutional by the judgment N3/1/512 of the Constitutional Court adopted on June 26, 2012. Therefore, for the purpose of paragraph 4¹ of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” the disputed provision should not be qualified as “the provision overruling” previous judgment of the Constitutional Court.

18. The Respondent party submitted, that certain period of time is necessary for the legislator to establish state policy on agricultural land, define certain criteria and category of land, transfer of which will be generally restricted. The Respondent party indicated that temporary restriction established by the disputed provision among others derives from the necessity to enforce the judgment of the Plenum of the Constitutional Court. The party referred to the part of the judgment of the Plenum of the Constitutional Court which indicates that “there may be a category of land, for instance, recreational zones, sale of which may be prohibited out of environmental interests”. The

respondent claimed that within the time frame of the moratorium category of the agricultural land will be defined sale of which is prohibited on inexpedient, for example lands in the border regions or lands of protected territories. The Respondent considers that because of the strategic nature of the land its transfer should be restricted. To achieve this aim state policy related to agricultural land needs to be established and land cadastre should be organised, which will enable avoidance of irreparable consequences caused by the transfer of the agricultural land.

19. Therefore, the Constitutional Court should assess whether temporary nature of the restriction established by the disputed provision constitutes a circumstance sufficiently important to lead the Court to the conclusion that for the purposes of Paragraph 4¹ of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” the content of the disputed provision significantly differs from the content of the provision already declared unconstitutional the judgment N3/1/512 of the Constitutional Court (June 26, 2012).

20. The Constitutional Court indicated that within the process of defining content of the disputed provision, the period of time of its application is an important factor. Regulation which is applicable for the limited period of time might cause less intensive retraction of right, compared to regulation which is in force permanently. Provisions which content-wise repeat the regulation already declared unconstitutional, but have temporary nature, in some cases, might be considered as significantly different regulations, which requires assessment within the new hearing on merits by the Constitutional Court. For example, if the Constitutional Court declared disputed provision restricting the right for indefinite period of time and based its judgment on the reasoning that unconstitutionality was caused by high intensity of the restriction since the right was restricted for indefinite period of time, the temporary restriction which is adopted after delivery of the judgment and content-wise repeats the regulation already declared unconstitutional, might be qualified as significantly different regulation, which requires holding a separate hearing on merits. But in the event when measures used for the restriction is not logically related to the indicated legitimate aim and therefore does not constitute suitable measure for achieving them, intensity of the restriction of right does not substantively affect the constitutionality of the provision. Such provision should be considered unconstitutional even without assessing the intensity of the interference within the human right. The time frame of the application of the restricting regulation also does not have substantial importance when judgment adopted by the Constitutional Court indicates that any intensity of the interference will cause violation of the constitutional right. The judgment N3/1/512 of the Constitutional Court of Georgia (June 26, 2012) indicates, that the disputed provision is unconstitutional because “there is no logical link between the disputed provision and the legitimate aims stated by the

respondent. The disputed provision restricts a right, yet does not serve an important social need”. (The Judgement N3/1/512 of the Constitutional Court of Georgia on the case of “Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia” dated June 26, 2012, II-70). Therefore, unconstitutionality of the disputed provision was caused not by existence of unreasonably severe, disproportionate interference within the right, but by the fact that restriction was not logically related to the legitimate aims indicated by the Respondent, thus was not suitable mechanism for achieving them. Furthermore, the position of the Parliament regarding the legitimate aims has not changed.

21. Similarly in the present case the Respondent could not present the argumentation demonstrating correlation between prohibiting foreign national from purchasing an agricultural land and accounting the agricultural land and creation of state policy on transferring state owned lands. The Constitutional Court does not preclude authority of state to establish special rule on the lands of certain geographical location or certain category which will apply on citizens of Georgia as well as on foreign nationals. However the Respondent could not demonstrate how identification of such land correlates with imposing even temporary restriction for foreign nationals on purchase of the land. The Constitutional Court identifies that the part of state policy on agricultural land which relates to identification of which category of land should be reserved as state property and not be privatised is not related to the moratorium established based on the disputed provision. The right to privatise state property is held solely by the state; therefore it is unreasonable to even temporarily prohibit foreign nationals from purchasing land for the purpose to preserve state owned land. In the case of privately owned land, it is also unexplainable how changing of the owner of the land could jeopardise organisation of land accounting. Although time frame between the adoption of Judgment N3/1/512 of the Plenum of the Constitutional Court of Georgia and adoption of the disputed provision was one year, the Respondent could not indicate any fact or example which would demonstrate the necessity of adoption of the disputed provision. Therefore, the Respondent could not present suitable argumentation to show the connection between organisation of land cadastre and the property right of a foreign national.

22. It should be indicated, that organisation of the accounting of agricultural land, systematisation and precision of data constitutes legitimate task and its implementation may need some time. But ensuring precision of cadastre, setting criteria for use of agricultural land and adoption of state policy by itself could not be considered as an autonomous, self-sustaining legitimate aims. The mentioned measures/acts constitute tools for achieving certain goal/public interests. Paragraph 4 of article 22 of the Law of Georgia “On the Ownership of Agricultural Land” also defines the activities which should be carried out by the government during moratorium. Specifically – a) creation of the unified state policy on ownership of agricultural land for the

purpose of ensuring rational use of the land and its protection; b) creating state regulation on use and protection of the agricultural land resources; c) public law regulation of the relationships related to the agricultural land; d) organising agricultural land cadastre on entire territory of Georgia and unified system of land use for the purpose to achieve completeness of land cadastre data. It is important to mention that at first the Government of Georgia had December 21, 2013 as a deadline to complete mentioned tasks. But by the amendment made on February 20, 2014 the deadline was postponed till November 30, 2014. It should be indicated that during the oral hearing on preliminary session which was held on January 24, 2014, the Respondent did not indicate any important decision or activity of the legislator or other authorised entity, completion of which would be impossible (or significantly difficult) without adoption of the disputed provision.

23. As it was repeatedly indicated in the present case legitimate public aims indicated by the Respondent are significantly identical to the aims presented on the hearing of the N512 Constitutional Claim (“Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia”); specifically, economic safety and state security. Therefore measure prescribed by the disputed provision still should not be considered as suitable legal instrument for achieving the legitimate aims of adoption of the provision. Therefore for the purpose of paragraph 4¹ of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” temporary nature of the disputed provision cannot become the ground for conclusion that its content is substantially different from the provision already considered unconstitutional and rehearing on the merits is required.

24. Based on the above mentioned, the Constitutional Court concludes that there are no grounds, which substantially differentiate the disputed provision from the provision already declared unconstitutional by the Judgment N3/1/512 of the Plenum of the Constitutional Court dated June 26, 2012 (“Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia”). The legitimate aims of the disputed provision, legal instruments used for achieving the aims and legal consequences caused to the Claimant are significantly similar. Moreover, the Respondent did not indicate any circumstance, which would substantively change Court assessment regarding the restriction established by the disputed provision; thus the ground defined by paragraph 1 of article 21¹ of the organic law of Georgia “On the Constitutional Court of Georgia” does not exist. Therefore, for the purposes of paragraph 4¹ of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” the disputed provision constitutes the provision which has content similar to the provision already declared unconstitutional by the judgment N3/1/512 of the Plenum of the Constitutional Court dated June 26, 2012 and, therefore, it should be declared void without holding hearing on merit.

25. In the present case the Constitutional Court will not assess constitu-

tionality of the part of the disputed provision which regulates right of a legal person registered abroad and a legal person registered according to the law of Georgia by foreigner. In present case the Claimant is a foreign individual, therefore according to subparagraph “b” of the article 18 of the law of Georgia “On Constitutional Legal Proceeding” he is not authorised to dispute violation of legal persons’ right to acquire property right on agricultural land.

26. The Claimant also requests assessment of the disputed provision with respect to article 14 of the Constitution of Georgia. Since the disputed provision was considered to be “the provision overruling” previous judgment of the Constitutional Court and thus it was declared void, there is no necessity for additional assessment of its constitutionality with respect to the article 14. Moreover, the Claimant indicated during the preliminary hearing that if the court declared the disputed provision unconstitutional with respect to article 21 of the Constitution of Georgia, he would have no interest in additional assessment of the disputed provision with respect to article 14 of the Constitution of Georgia. Therefore the Court will not assess constitutionality of the disputed provision with respect to article 14 of the Constitution of Georgia.

III

Ruling part

Based on subparagraph “f” of paragraph 1 and paragraph 2 of article 89 of the Constitution of Georgia, subparagraph “e” of paragraph 1 of article 19, paragraph 4¹ of the article 25, paragraph 1 of the article 27¹, paragraph 2 of the article 31, subparagraph “a” of paragraph 1 of article 39, paragraphs 5, 5¹, 7 and 8 of article 43 of the organic law of Georgia “On the Constitutional Court of Georgia”, paragraphs 5 and 5¹ of article 17, subparagraph “b” of article 18 and paragraph 3 of article 21 of the Law of Georgia “On Constitutional Legal Proceeding”

THE CONSTITUTIONAL COURT RULES:

1. The Constitutional Claim N538 submitted by the citizen of Austria Mathias Huter shall not be admitted for consideration on merits and from the moment of publishing the ruling the normative content of paragraph 3 of article 22 of the law of Georgia “On the Ownership of Agricultural Land” which suspends the force of subparagraph “b” of paragraph 1 of article 4 of the law of Georgia on “On the Ownership of Agricultural Land” with respect to foreign individual until December 31, 2014 shall be declared invalid with respect to paragraphs 1 and 2 of article 21 of the Constitution of Georgia.

2. This ruling is in force from the moment of its public announcement on the hearing of the Constitutional Court.

3. The ruling is final and is not subject to appeal or review.

4. A copy of the ruling shall be sent to: the parties, the President, the Government and the Supreme Court of Georgia.

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

Members *of the board*:

Konstantine Vardzelashvili

Ketevan Eremadze

Maia Kopaleishvili