
**CITIZEN OF GEORGIA BESIK ADAMIA
VERSUS THE PARLIAMENT OF GEORGIA**

N1/1/539

Batumi, 11 April 2013

Composition of the Board:

5. Konstantine Vardzelashvili – Chairman of the sitting

6. Vakhtang Gvaramia – Member;

7. Ketevan Eremadze – Member, Judge Rapporteur;

8. Maia Kopaleishvili – Member

Secretary of the Sitting: Lili Skhirtladze

Title of the Case: Citizen of Georgia Besik Adamia versus the Parliament of Georgia.

Subject of the Dispute: Constitutionality of the words “... and a bank document certifying the 5000 GEL deposit made by the majoritarian candidate for a MP on the account prescribed by the CEC.” of paragraph 7 of Article 116 of the organic law of Georgia “Election Code of Georgia”, also constitutionality of the 2nd and 3rd sentences of the same paragraph with respect to Article 14 and the first paragraph of Article 29 of the constitution of Georgia.

Participants to the case: the Claimant – Besik Adamia and his representative – Mikheil Sharashidze; representatives of the Parliament of Georgia – Tamar Meskhia and Tamar Khintibidze.

I – Descriptive Part

22. On 30 July 2012, a constitutional claim (registration N539) was lodged with the constitutional court of Georgia by a citizen of Georgia Berisk Adamia. On 03 August 2012, the constitutional claim was referred to the First Board of the Constitutional Court with a view to deciding about the admissibility of the case for the consideration on the merits. By the Recording Notice N1/4/539 of 07 November 2012 of the constitutional court of Georgia, the constitutional claim was admitted for the consideration on the merits.

23. The sitting of the case for consideration on the merits with the oral hearing was held on 26 February 2013.

24. The grounds for lodging the constitutional claim with the constitutional court of Georgia are subparagraph “f” of the first paragraph of Article 89 of the constitution of Georgia; subparagraph “e” of the first paragraph of Article 19, paragraph 5 of Article 25 and subparagraph “a” of the first paragraph of Article 39 of the organic law of Georgia “On the Constitutional Court of Georgia”; paragraph 2 of Article 1, paragraphs 1 and 2 of Article 16 of the law of Georgia “On the Constitutional Legal Proceedings”.

25. In the constitutional claim, the Claimant contests constitutionality of the words "... and a bank document certifying the 5000 GEL deposit made by the majoritarian candidate for a MP on the account prescribed by the CEC" of paragraph 7 of Article 116 of the organic law of Georgia "Election Code of Georgia", also constitutionality of the 2nd and 3rd sentences of the same paragraph with respect to Article 14 and the first paragraph of Article 29 of the constitution of Georgia.

26. Pursuant to the disputed norms, in order to register the candidate for a member of Parliament of Georgia, representative of the initiative group of voters, no later than the 50th day prior to polling, shall submit to the relevant District Election Commission the bank document certifying the 5000 GEL deposit made by the majoritarian candidate for an MP on the account prescribed by the Central Election Commission. The amount deposited on the account shall be fully refunded to the candidate only in case, if the candidate receives at least 10 percent of the overall votes in the elections. If not, this amount shall be transferred to the state budget of Georgia.

27. According to Article 14 of the constitution of Georgia, "Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence", and under the first paragraph of Article 29 of the constitution of Georgia, "Every citizen of Georgia shall have the right to hold any state position if he/she meets the requirements established by legislation".

28. It is indicated in the constitutional claim that the Claimant is a citizen of Georgia, who participated in local self-government elections held on 2002 as the majoritarian candidate for member of local self-government representative body – Kutaisi Sakrebulo and he still wishes to participate in the elections. Moreover, he is not a member of any political party or election block and intends to nominate his candidacy through voters' initiative group for the upcoming elections.

29. As the Claimant explained, pursuant to the relevant provisions of the Election Code, Passive electoral suffrage is the right of a citizen of Georgia to run for representative body of public authority and public office. All citizens of Georgia, regardless of their affiliation with any political group, are equal in essence with respect to enjoyment of the right to passive electoral suffrage. Accordingly, election subjects with respect to the elections are persons being equal in essence for the purposes of Article 14 of the constitution of Georgia.

30. The Claimant points out that the obligation to make the 5000 GEL deposit is applicable only towards the majoritarian candidate for a MP nominated by the voters' initiative group and such obligation is not imposed upon candidates nominated by the party or respective election bloc independently participating in

the elections. Consequently, the disputed norm places persons being equal in essence in differentiated situation.

31. The Claimant also indicates that existence of differentiated treatment towards persons being equal in essence automatically does not mean the discrimination. The election legislation often establishes unequal legal regime with regard to subjects participating in the elections, for example, qualified election subjects are not obliged to again submit relevant signatures in every elections. Similar different rules serve the aim that the candidates and political groups that are present in the elections enjoy certain support in the public and the election process is protected from certain political-legal obstruction. In the opinion of the Claimant, it is possible that the restriction defined by the disputed norm may also have analogous legitimate aim, however, it is unclear for him, such legitimate aim is applicable only for the candidates nominated by the voters' initiative group and is not applicable for political parties, especially in the case of small and prospective political unions and election blocks. Stemming from this, in order to justify the differentiated approach foreseen by the disputed norm through the respective legitimate aim, it is required that an absolute necessity of imposing the payment of the 5000 GEL for the candidates nominated only by the voters' initiative group from the part of the State and existence of "the State's overwhelming interest" should be singularly distinctive. Under the assertion of the Claimant, in the case of the disputed norm, the necessity and "overwhelming interest", which could justify legality of its application to the independent majoritarian candidates only fails to be discerned. Consequently, in the opinion of the Claimant, the dispute norm envisages not fair differentiation, but rather gives rise to discrimination.

32. Furthermore, the Claimant, both in the constitutional claim and at the sitting of the consideration of the case on the merits, noted that on the basis of the disputed norm, differentiation of the persons being equal in essence (the majoritarian candidates nominated, on the one hand, by the voters' initiative group and on the other hand, by political party or election block) occurs according to their political affiliation and property belonging. In the opinion of the Claimant, in case if a candidate does not want his activities to be associated with any political force, he/she is obliged to pay the amount of money prescribed by the disputed norm. The Claimant asserts that the given restriction compels a person in a certain way to become a member of any specific party and thus imposes the unjustified obstacle in the process of effectively enjoyment of the right to passive electoral suffrage as guaranteed by the constitution. Stemming from this, the disputed norm gives rise to discrimination of the candidate for a MP nominated by the voters' initiative group based on his/her political affiliation and thus the disputed norm contradicts Article 14 of the constitution of Georgia. Simultaneously, in the opinion of the Claimant, the disputed norm, by obligating the persons without parties

to pay the 5000 GEL deposit, imposes in a certain manner the property qualification upon them and this gives rise to the discrimination based on property.

33. The Claimant at the sitting of consideration of the case on merits indicated that the disputed norm would not have been problematic, if the restriction was extended equally to all the candidates and, moreover, it had an alternative nature, notably, if a person was given the possibility to choose by himself between collection of signatures and payment of the electoral deposit. Besides, the Claimant noted that existence of obligation to collect signatures only is acceptable for him, because, in this case, the candidate has to work directly with voters and the seriousness of the electoral process is secured by this mechanism.

34. The Claimant, in order to shore up his argumentations, additionally provided the practices of the European Court of Human Rights and the Constitutional Court of Georgia with regard to the disputed issues.

35. At the sitting for consideration of the case on the merits, the Claimant reduced the requirement of the claim in the part, which deals with constitutionality of the disputed norms with respect to the first paragraph of Article 29 of the constitution of Georgia.

36. As the Respondent clarified, the persons nominated by the voters' initiative group and political party or election block, who want to become the majoritarian candidates for members of the parliament, are not equal in essence for the purposes of Article 14 of the constitution of Georgia. The respondent believes that the voters' initiative group in its essence differs from a political party and election block. A political party represents volunteer independent political union of citizens created in accordance with the Georgian legislation and on the ground of common organizational world-view. This union is created on the basis of the defined objectives, as to participate in the political processes occurring in the State. The political party has an organizational structure and its activity is defined by the statute of the Party. The legislation lays down defined criteria for establishment of a party, acquirement of its legal validity and its registration through legal procedure. Its activity, finances, issue of responsibility before the law is legally defined and controlled by competent agencies of the State. Election block, in its way, is created by the political parties. The voters' initiative group, pursuant to the legislation, is not required to comply with such or similar requirements. The voters' initiative group is created spontaneously in the pre-election period for nominating candidates; accordingly, the persons nominating the majoritarian candidates are substantially different from one another therefore the candidates themselves shall not be considered as equal in essence. Stemming from this, the Respondent believes that the disputed norm establishes differentiated treatment towards persons being unequal in essence and, therefore, must not be assessed with respect to Article 14 of the constitution of Georgia.

37. Despite the aforementioned, the Respondent indicates that the legitimate aim for introduction of the disputed norm is to ensure the seriousness of the election process and to prevent participation of such candidates in the election process, who do not approach to this process with responsibility, do not have required quantity of supporters and do not have real prospect for victory in the election. In the opinion of the Respondent, in case of political parties and election blocks, the mentioned aim is achieved by imposing upon them those obstacles, which is connected with establishment and functioning of a party, consequently, the presumption is applied towards the candidates nominated by the given subjects that they participate in the elections for holding a specific position and treat the election process seriously. And in the case of voters' initiative group, the same legitimate aim is achieved and the conduct of the electoral process in proper environment is secured exactly through introduction of the 5000 GEL deposit.

38. The Respondent also explained that existence of the deposit does not represent the property qualification, because in the event of receiving the number of votes defined by the legislation, the deposited amount is fully refunded to the candidate. Stemming from this, the Respondent believes that since refunding of the amount of money depends upon the receipt of the votes of certain number of voters, moreover, on the one hand, the amount of money is not inaffordably high, and on the other hand, the candidate is not bound with paying this amount from his own financial resources, therefore, there is no differentiation based on property qualification.

39. Stemming from the aforementioned, the Respondent thinks that the constitutional claim shall not be upheld and the disputed norms are constitutional with respect to Article 14 of the constitution of Georgia.

40. The Respondent, in order to back up his argumentations, resorts to the practice and case-law of the constitutional court of foreign countries as well as the constitutional court of Georgia with regard to the disputed issues.

II – Motivational Part

1. The idea of equality is one of the cornerstones of the system of values, for establishment of which the constitutions of states were created. Equality before the law – this is not only a right, this is the underlying concept, principle of the rule-of-law based state and democratic values. “The norm establishing the fundamental right to equality before the law represents universal constitutional norm-principle of equality, which generally implies the guarantees for equal conditions of legal protection of individuals. The degree for assuring the equality before the law is an objective criterion for assessing the degree of the supremacy of law restricted in favor to democracy and human rights in the country. Therefore, this principle represents not only the foundation for democratic and rule-of-law

based state, but also its goal” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”).

2. The major essence, designation and challenge of democratic, rule of law based and social state is to ensure the freedom of an individual – to guarantee the possibility for free self-realization through fully enjoying fundamental rights and freedoms. Moreover, the state itself also should be such guarantee for the society as a whole, for each and every human being, because the idea of freedom shall be depreciated if it shall not have substantially the same content and shall not be equally accessible for everyone. Recognition of any right shall lose its sense without the guaranteed possibility for equal access (accessibility) to it. The sense, that they are fairly treated, is vital for people. Precisely “... the idea of equality serves to provision of equal possibilities, that is, guarantee for similar possibilities for self-realization of individuals in this or that area. Whether or not equal chances are used equally, this depends upon the skills of specific persons. But attempt to equalize the skills by the State efforts, in most cases, gives rise to discrimination” (Decision N1/1/493 of 27 December 2010 of the constitution court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”, II-1).

3. Interrelation of freedom and equality of an individual is unequivocally indicated in Article 14 of the constitution of Georgia, under which: “Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence”. In this norm, equality before the law is indicated together with the freedom of an individual, which undoubtedly points to the importance of equality for the freedom of an individual – human rights equally belongs to each human being, for this reason they must have equal access to them (enjoyment of the rights), only then can be possible to perceive the freedom fully.

4. Precisely such fundamental meaning of the constitutional principle of equality before the law binds the interpreters while interpreting the right to equality. The basic essence and purpose of Article 14 of the constitution of Georgia is “that the State treats equally the persons who are in analogous, similar, materially equal circumstances, shall not permit to consider essentially equal as unequal and vice versa” (Decision N2/1-392 of 31 March 2008 of the constitutional court of Georgia on the case “Citizen of Georgia Shota Beridze and others versus the Parliament of Georgia”; Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Geor-

gia”; Decisions N1/1/477 of 22 December 2011 of the constitutional court of Georgia on the case “The Public Defender of Georgia versus the Parliament of Georgia”). Besides, “the basic right to equality differs from other constitutional rights in the following that it does not protect any defined area of life. The principle of equality requires equal treatment in all areas protected by the human rights and legitimate interests... prohibition of discrimination requires from the State that any regulation established by the State be in compliance with the basic essence of equality – the substantially equals should be treated equally and vice versa” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”).

5. Article 14 of the constitution of Georgia prohibits both direct and indirect discrimination. At the same time, any differentiated treatment, in itself, does not mean discrimination. In separate case, even in sufficiently similar legal relations, it is possible that differentiated treatment be necessary and inevitable. This is frequently necessary. Accordingly, differentiation for different areas of public relations is not strange occurrence, “however, each of them shall not be uncorroborated” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”).

6. The constitutional court of Georgia has based its assessment, establishment of discriminatory nature of differentiated treatment upon the following basic approach: “upon differentiated treatment, we have to make difference between discriminatory differentiation and the differentiation caused by objective circumstances. Different treatment shall not be an end in itself. Discrimination occurs if the reasons for differentiation are unexplained, lack the reasonable ground. Therefore, the discrimination amounts to the end in itself only, unjustified discrimination, and uncorroborated application of the law against the circle of specific persons with different treatment. Consequently, the right to equality prohibits not the differentiated treatment in general, but only the intentional and unjustified difference” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”).

7. Within the scopes of the given dispute, special importance of equality in the electoral process, while enjoying the electoral rights by citizens should be necessarily mentioned.

“Elections are certain institutional mechanism, which puts democracy into operation. In order to realize “the governance of people”, people must participate in the politics and the best way for this is elections.

Elections create the feeling and belief in people that they directly participate in the State governance (by electing their chosen candidates or being elected). How elections are conducted is of paramount importance, in the first place, how good is the election legislation, to what extent it contains sufficient and required guarantees that as a result of elections, the country, its citizens will obtain “the governance of people”. This result is attainable, if participation in the elections are really equally accessible for every citizen.

The equality in general is an integral part of the essence of the election right. In the electoral process, the State has an obligation to introduce the conditions that secure equality. In this process, its main function is to not restrict anyone or put in advantageous position without reasonable justification.

Citizens should have equal possibility to achieve the changes through the elections: on the one hand, all voters should have equal possibility to elect their own representative. In this sense, each of them should be provided with the equal guarantees to participate in the electoral process and exert an influence upon its results; and on the other hand, political parties or individual candidates should have equal possibility to propose their voters real political choice. The legislation should provide sufficient guarantees that ... contest of, on the one hand, political forces, and on the other hand, their supporters in the political process be carried out in equal conditions.

Special importance of equality in the electoral process, simultaneously, does not exclude the possibility of introduction of differentiation by the state. Differentiation in a certain measure accompanies the electoral process” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “Political Union of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”). Therefore, despite the special importance of equality in the electoral process, differentiation for the electoral process as well as for different spheres of public relations is not strange. However, as it has been already mentioned, it should not be uncorroborated, intentional, unjustified and, accordingly, discriminatory.

8. Within the scopes of the dispute to be considered, the constitutional court should assess whether or not the disputed norm, which among the candidates nominated by independent party, election block and voters’ initiative group composed of 5 persons participating in the elections, in order to register the candidate for member of the Parliament of Georgia, obligates only the candidate nominated by the voters’ initiative group to submit a bank document certifying the 5000 GEL deposit made by the majoritarian candidate on the account prescribed by the Central Election Commission (the amount deposited on the given account shall be fully refunded to the candidate, if the candidate receive at least 10 percent of the overall votes in the respective elections. If not, this amount shall be transferred

to the state budget of Georgia), gives rise to discriminatory differentiation of persons wishing to enjoy the right of passive electoral suffrage within the scopes of the majoritarian electoral system.

9. In the opinion of the Claimant, the disputed norm gives rise to unequal treatment and discrimination based on political and property characteristics towards the majoritarian candidates for MP nominated by the voters' initiative group and those nominated by independent political party/election bloc participating in the elections as the persons being equal in essence.

10. In the opinion of the Respondent, despite the fact that all three subjects foreseen by the legislation – political party, election bloc and voters' initiative group pursue one and the same aim and falls one and the same legal framework, stemming from their nature and legal status, they must be considered as persons being unequal in essence. "The voters' initiative group in its essence completely differs from a political party. The political party represents volunteer independent political union of citizens created in accordance with the Georgian legislation and on the ground of common organizational world-view. This union is created on the basis of the defined objectives, as to participate in the political processes occurring in the State. The political party has an organizational structure and its activity is defined by the statute of the Party. The legislation lays down defined criteria for establishment of a party, acquirement of its legal validity and its registration through legal procedure. Its activity, finances, issue of responsibility before the law is legally defined and controlled by competent agencies of the State. Election block, in its way, is created as a result of the unification of political parties. So, the criteria similar to those for political parties are determined for its establishment. In order to participate in the elections, a political party or election block has to pass through a range of procedures. The sufficiently many requirements defined by the legislation are laid down by the state with regard to them, for example, registration procedures, registration of voters, the number of votes and etc... as for the voters' initiative group, the legislator does not regulate any special requirements towards them, except of the signature of certain persons required for the registration and obligation to make the 5000 GEL deposit...". Consequently, in the opinion of the Respondent, the possibility to consider such persons as equal in essence is conditioned by the difference in the subjects nominating them. In particular, there is a political party towards which requirement of registration or other requirements defined by the law conditions its firmness and seriousness, and on the other hand – the voters' initiative group, which is spontaneously created for a specific purpose. Accordingly, differentiated treatment from the part of the State "is fully adequate given that the subjects are, in essence, different from one another".

11. The constitutional court cannot share the position held by the Respondent because of the following circumstances:

The subjects with the right of passive electoral suffrage in participating in the elections with the majoritarian electoral system are equal in essence with respect to the electoral process, independently from the fact whether they are represented by a political party or the voters' initiative group, because they participate in the elections based on one and the same principle, within the scopes of the single system, to achieve one and the same goal. Nevertheless the fact that the subjects nominating the majoritarian candidates for MP are different – a political party, block and voters' initiative group are, in a certain way, different entities in terms of not only organizational form, but also the content, purpose of their activities, duration of functioning and agenda of their activities. This shall not affect the necessity of considering the candidates nominated by them as being equal in essence. In the given case, both a party (a block) and voters' initiative group represent only the possibility, within the scopes of the majoritarian electoral system, for enjoying the right of passive electoral suffrage and for participating in the elections through this. Therefore, it is evident that these candidates for a MP should have equal starting conditions and legal levers, the possibilities to succeed in healthy political process. It is natural that in this regard, guaranteeing for substantially equal possibilities is necessary in the electoral process as a whole, accordingly, the constitutional guarantees start being enacted not from the stage of electoral contest of the subjects with the right of passive electoral suffrage, but rather from the guaranteeing for equal access for Georgian citizens to enjoyment of the right of passive electoral suffrage. If this is not ensured, certain groups, citizens were totally unable to use their own right of passive electoral suffrage.

12. Although, the disputed norm gives rise to unequal treatment of persons being equal in essence, but the court should also find out if or not their differentiation based on political belonging occurs, as it is claimed by the Claimant. In particular, in his opinion, “the sole reason for different legal approach is the circumstance that a specific subject participates in the respective parliamentary elections independently and he does not represent any political party or election block. Therefore, if a specific subject wants to participate in one and the same legal relation not as a representative of any political party, then the obligation to submit the existence of the 5000 GEL deposited on the bank account is imposed upon him. The ground for differentiation can be only that political position of a specific subject may differ from the political positions of political parties participating in the elections and for this very reason, the respective person may not want his political ambitions and objectives to be related with any political party participating in the elections”.

13. It is remarkable that the Claimant links the possibility of causing the discrimination based on political affiliation on the ground of the disputed norm with his personal experience, his example – he personally did not want to be as-

sociated with any political forces participating in the elections, but because he did not have 5000 GEL in order to obtain the right to participate as an independent candidate, he considers that the disputed norm compelled him to make choice in favor of any political force, otherwise, he would not be able to participate in the elections. However, the Claimant and his representative failed to substantiate that the purpose of the norm is exactly to achieve such outcome, or general phenomena, original outcome, they failed to corroborate that the disputed norm by introducing the deposit requirement compels the persons without the respective financial means to correct (revise) their political positions and to show loyalty in the elections towards specific political forces in return for obtaining the right of passive electoral suffrage. From their argumentations, they failed to demonstrate that the legislator by regulating the electoral deposit, directly or indirectly “punishes” independent candidates for their neutral or negative attitude against political forces participating in the elections.

14. The court may not share the position held by the Claimant that the differentiation occurs based on political signs. On the one hand, nomination of a candidate by this or that political party/election bloc, automatically and necessarily does not mean the affiliation of this person to the political force nominating him/her, the similarity of their political positions. Such person may not only be no-member of this specific political party, but also be completely apolitical, however, simultaneously, be successful in this or that field, be prominent in a particular field by his/her high professionalism, qualification, because of which some political force may consider his activity in the Parliament as required. On the other hand, the desire of a person to participate as an independent candidate automatically does not mean not only his apoliticality, but also does not exclude his sympathies, among them, towards political forces participating in the elections and sharing their political positions. Besides, the desire to separate from this or that political force does not exclude the right of persons wishing to participate in generally in the elections and i.e. the major political processes of the country to established a political party on their own on their own political platform, with their own objectives and political agenda and through this way were added to the list of the majoritarian candidates who are nominated by a political party or political bloc. The point, that the candidate is nominated by the voters’ initiative group may be conditioned based on different ground, reasons and is not all the same connected with his/her political thoughts.

15. Stemming from the aforementioned, the disputed norm does not cause restriction of persons based on political signs, however, the disputed norm imposes more burden to the candidates nominated by the voters’ initiative group that the candidate nominated by a political party, because as opposed to the latter, it additionally imposes the obligation to make the electoral deposit. I. e. the dis-

puted norm, although non-political characteristics, but still gives rise to differentiated treatment of persons being equal in essence and, accordingly, requires the assessment by the constitutional court, because the constitutional court unequivocally formulated its own position with regard to the scopes of Article 14 of the constitution of Georgia. In particular, “Historically, the constitutions lay down the signs, under which, groups of persons are united according to their personal or physical properties, cultural features or social belonging. The listing of these signs in the constitutions took place due to (in response to) extensive experience of discrimination of people exactly on these very grounds and the fear of continuing the malpractice of such treatment”. However, simultaneously, the court mentioned that “considering the signs laid down in Article 14 of the constitution as exhaustive shall in itself cause the court to confirm that any other differentiation cases are not discriminatory, for they are not secured by the constitution. Naturally, such approach would not be correct, because failure to mention each of them in Article 14 of the constitution does not exclude failure to corroborate the differentiation A differentiated approach may occur not only according to the signs set out therein and not only based on those characteristics in the process of enjoying specific constitutional rights. The prohibition of discrimination requires from the State that any regulation established by it be in compliance with the basic essence of equality – to treat persons who are equal in essence as equal and vice versa. Stemming from this, any norm conflicting with the basic essence of equality should be a subject for deliberation by the constitutional court” (Decision N1/1/493 of 27 December 2010 of the constitutional court of Georgia on the case “The Political Unions of Citizens: “The New Rights” and “The Conservative Party of Georgia” versus the Parliament of Georgia”).

16. Persons, who wish to participate in the elections with the right of passive electoral suffrage within the scopes of the majoritarian electoral system, on the one hand, should be free to decide which ways offered by the law to choose – to participate in the elections through being nominated by a political party/bloc or independent voters’ initiative group. Such choice is equally offered to everyone by the legislation, besides, anyone who chooses one or another way, specific requirements set forth for each of these ways by the law are equally extended to them. On the other hand, the persons, after they have already made their choice, should have equal possibility, exactly according to their choice (the way they chose) to become the subjects of the rights of passive electoral suffrage. Accordingly, they should have essentially equal possibilities, within the scopes of one and the same system, to have access to enjoyment of the right of passive electoral suffrage.

17. The court may not share the position held by the Claimant that the disputed norm differentiates the persons being equal in essence (the majoritarian

candidates for MP nominated by the voters' initiative group and the candidates nominated by party/election bloc participating independently in the elections) based on their property characteristics. It is doubtless that the appealed norm establishes the unequal treatment towards the persons being equal in essence, but the differentiation of these persons is linked with the fact of their nomination by different subjects and does not have anything in common with property status of the nominator subjects. Although, imposition of the obligation to submit the electoral deposit upon only one out of the groups of persons being equal in essence, by its content, implies the imposition of financial obligations upon it, but the ground, under which and because of which introduction of the obligation of such property character takes place, is connected with solely the circumstance that nomination of specific candidates is made by the voters' initiative group and not by a political party/election block.

18. The constitutional court of Georgia in several cases indicated that stemming from the peculiarities of the right to equality, while assessing the norms establishing differentiation the court shall not take identical, homogenous approach towards each of them. As it was mentioned, "Article 14 of the constitution secures protection of individuals in various spheres of public life from unjustified differentiated treatment. However, on the other hand, all cases of differentiated treatment (based on any sign, in any rights) may not have the same gravity. Therefore, in case of assessing each of them based on the same standard and identical criteria, the court, under the motive of securing the right to equality, may change its goal, may increase the risk of considering practically all cases of differentiated treatment as unconstitutional and restrict the legislator much more than it is required by Article 14 of the constitution.

Stemming from the nature of the right to equality before the law, while interfering with it, the state's margins of appreciation are different, especially depending on which sign or in which sphere of public life, the differentiation of persons takes place. Respectively, the scopes of assessing reasonability of differentiated treatment also varies ... it must be said that historically, assessments and tools for assessments as to what is "natural", "reasonable" and "necessary" in this sphere are subject to change. However, in any case, the principle of equality gives the legislator the freedom of choice while adopting a decision on its restriction as long as the objective justification of differentiated treatment is accessible" (Decision N1/1/492 of 27 December 2010 of the constitution of Georgia on the case "Political Unions of Citizens: "The New Rights" and "The Conservative Party of Georgia").

19. Stemming from the abovementioned, for purposes of assessment of discriminatory nature of differentiated treatment, the court established different criteria. In particular, with respect to Article 14, the constitutional court assesses

the constitutionality of a norm based on: 1) Strict scrutiny test; or 2) “Test of rational differentiation”. Preconditions, grounds for their application differ.

20. The court applies the strict scrutiny test in cases of differentiation based on “classic, specific” characteristics and in such cases the norm is assessed according to the principle of proportionality. The court determines the need for application of the strict test also according to the degree of intensity of differentiation. Moreover, the criteria for assessing the intensity of differentiation will differ in every particular case, stemming from the nature of differentiation and sphere of regulation. However, in any case, it will be decisive as to what extent the persons being equal in essence were placed significantly differentiated conditions, in other words, how distinctly the differentiation will separate equal persons from equal opportunities to participate in particular public relation. If the intensity of differentiation is high, the court will apply the strict test, and in the event of the low intensity – the court will apply “the test of rational differentiation” (the scrutiny test on the ground of rationality).

21. Nevertheless, unequal treatment towards persons being equal in essence (the majoritarian candidates for MP nominated by the voters’ initiative group and the candidates nominated by party/election bloc participating independently in the elections) does not rest upon “classic characteristic” (as it was clarified, differentiation occurs neither according to political affiliation nor property status), the court considers that the constitutionality of the norm must anyway be assessed according to “the strict test”, because the disputed regulation perceptibly, considerably separates persons being equal in essence from equal startup conditions, in particular, in individual case, it completely excludes the possibility of persons to participate within the scopes of the majoritarian electoral system with the right of passive electoral suffrage.

22. In line with the strict text, in order to assess the constitutionality of the norm, in the first place, it is necessary to clarify the legitimate goal for introducing the disputed norm. In the opinion of the Respondent, “we can consider the electoral deposit as one of the barriers set out in the legislation by the legislator in order to participate in the elections and also, the measure preventing less serious and less motivated candidates from participating in the elections, who do not really intend to win in the elections. Linkage of participation in the elections with the finances may also make the candidates with less prospects for the victory in the elections, refuse to participate in the elections and conduct the elections in actually more competitive environment”.

23. Although, on the one hand, for healthy development of democratic processes, party-pluralism and multiplicity of the candidates in the electoral process is desirable, moreover, necessary, however, on the other hand, this process, for achievement of democratic goals, should be protected from artificiality. The leg-

islation regulating the elections should ensure expression of the genuine will of the voters and its adequate manifestation in the outcomes of the elections. The representative body should represent the outcome of the genuine will of the people. The voters should have the possibility, based on their own responsibility, to make conscious and informed choice. However, for this, it is necessary not only to have equal access to complete and adequate information with regard to each candidate, but also conscious and responsible attitude of the candidates themselves to the electoral process – pursuant to the constitution, universal and equal possibility of the Georgian citizens to participate in the elections with the right of passive electoral suffrage implies not only the possibility to realize their desire to become a member of the Parliament of Georgia, but it also simultaneously implies such desire should rest upon a real intention, readiness of persons to be representatives of citizens of the whole country and to represent their will at the legislative body.

24. Naturally, in the end, the decision is made by a voter and only the voter makes his/her choice on the candidate who, in his/her opinion, is the most decent and more adequately complies with his requirements, but the State's obligation is to support him/her in this process, through creating the guarantees assuring both the formation of his/her will, its expression and its adequate manifestation in the final results, among them, the State should neutralize those threats that may arise towards the electoral process and by participation of the persons who have unserious disposition towards the outcomes and through this way, artificially overloading the electoral process. In particular, the more unpromising, not-seriously-disposed candidates participate in the elections, the more complicated becomes the determination of the electoral outcome for voters, making of the completely informed, conscious and responsible choice, the election campaign may be destructive, which gives rise to confusion of the voters; accordingly, there is a threat that they votes shall be lost or "devaluated"; the proportional distribution of political forces at the legislative body is possible to be threatened and etc. All of this does not promote democracy.

25. Exactly for this reason, the legislation of the democratic State may lay down to a person a range of requirements for enjoyment of the right of passive electoral suffrage, which facilitate the enhancement of responsibility towards the electoral process, removing so called "unpromising" candidates from the electoral process, as a result, avoidance of unreasonable expenditures of the state resources, and in the end, the efficient exercise of the election right, prevention of abuse of this right. Accordingly, precisely these circumstances are deemed as the legitimate goals, the paths for attainment of which is the obligation of submission of the electoral deposit and certain number of signatures of the voters by the candidates, in most cases, chosen by the majority of democratic States.

26. Consequently, imposition of the electoral deposit has the legitimate goal and it itself secures to reflect the genuine will of the people through effective enjoyment of the election right, its realization and eventually, the outcomes of the elections. The State for achieving this goal enjoys the wide margins of appreciation, because it is utterly important that the electoral process as a whole (and in this regard, every procedural stage of it) assure the governance of the people – on the one hand, the possibility for every person with the election right to participate and on the other hand, the genuine manifestation of their will in the election outcomes.

27. Simultaneously, in order to achieve the legitimate goals foreseen by the constitution, the legislator should choose the proportionate way for interfering with the right. For this, the regulation selected by the legislator should be permissible, necessary and proportionate. “Since any legal order is built on interrelation of the purpose and means, this obligates the State to use such means for achieving the goal, with the help of which not only the achievement of the goal is guaranteed, but also the principle of proportionality shall be secured” (Decision N1/2/411 of 19 December 2008 of the constitutional court of Georgia on the case “Ltd. RusEnergService”, ltd “Patara Kakhi”, JSC “Gorgota”, Givi Abalaki’s individual enterprise “Farmer” and ltd “Energy” versus the Parliament of Georgia and the Ministry of Energy of Georgia”).

28. In the given case, it is of decisive importance that the constitutional right of separate individuals to participate in the elections as equal as to other candidates by the right of passive electoral suffrage, should not be sacrificed to the goal of healthiness of the electoral process, democracy and protection, promotion of the authenticity of the people’s will.

29. In order to achieve the given legitimate goal, the legislator took into account the obligation of both signatures of the voters and submission of the electoral deposit, besides, the latter requirement (the obligation to submit the electoral deposit) was determined towards only the candidates nominated by the voters’ initiative groups only.

30. In general, this path for interference with the right – the obligation to pay the electoral deposit – is permissible because it represents valid, useful means to achieve the goal, that is, it gives the possibility to achieve the mentioned goal. This is not even denied by the Claimant. In particular, on the one hand, it agrees with the legitimacy of the given public goals and does not call into question the necessity to protect these interests, moreover, on the other hand, does not generally oppose the justification of existence of the electoral deposit by these legitimate goals, because of which the Claimant does not demand to recognize the institute of the electoral deposit as such, as unconstitutional. But the Claimant cannot comprehend the reason why such regulation is imposed upon only the candidates nominated by the voters’ initiative group.

31. For justifying the imposition of the electoral deposit upon only the candidate nominated by the voters' initiative group, the Respondent should have submitted convincing arguments that towards this segment of the majoritarian candidates for MP, as opposed to the candidates nominated by party and election block, the submission of only the list of signatures of the voters is not sufficient means to achieve the given goal, that is, the Respondent should have proved the need to inevitable application of the electoral deposit towards these persons.

32. In this connection, the Respondent did not name any new circumstance (argument). As it has been already mentioned above, the basic argumentation of the Respondent rests upon the logics that political parties, stemming from the necessity to comply with the requirements related to their creation and activities prescribed by the legislation, are in themselves more firm and serious subjects as compared to the voters' initiative groups, because of which, the Respondent does not consider them as persons being equal in essence and simultaneously believes that "...if the requirements of the electoral deposit is not imposed upon the candidates nominated by the voters' initiative group, then political parties shall be put, in a certain extent, in unequal condition in comparison to the persons, who shall be nominated by the voters' initiative group".

33. As the context, to assume that the candidates nominated by a party and election bloc shall have more serious attitude towards the elections than those nominated by the voters' initiative group, we consider, that this is entirely wrong from the very beginning. This argument has not been already shared by the court at the stage of proving the given persons as being ones unequal in essence and the court considered this argument as irrelevant ground for resolving the issue. It is not necessary to prove that in spite of complying with the registration procedure and other requirements prescribed by the law, even the parties can be competitive and uncompetitive ones, also result-oriented and without such aims, while participating in the electoral process, therefore, nomination of the candidates by them is also possible to rest upon similar principles. As it cannot equally exclude that the candidates nominated by the voters' initiative group may take highly seriously this electoral process or may just try their forces in order to analyze their own real possibilities and exactly without assessment. Therefore, there is the likelihood for nominating the candidates seriously-disposed and "accidental" towards the electoral process from the both groups. Accordingly, in both cases, there is equal necessity to reduce, neutralize the threats of nominating the so called "unserious" candidates, but in such a way that to assure that the goal shall be achieved and enjoyment of the specific right shall be applied as the most minimally restrictive and proportionate means to achieve the goal, furthermore, none of them should be imposed the burden that is unjustifiably heavier as compared to the other.

34. In the given case, application of this institute only to the candidates nominated by the voters' initiative group, on the one hand, makes dubious the complete achievement of the goal, because, as it was mentioned above, the probability of nominating "accidental" candidates exists from the part of both political parties and the voters' initiative group, accordingly, in both cases, there is a need to protect the electoral process and the election right. i.e. despite the fact that the institute of the electoral deposit is one of the ways to achieve the given goal, the applicable regulation of the electoral deposit that only imposes the obligation upon the candidates nominated by the voters' initiative group to make the deposit, seemingly, calls it into question as the appropriate means to achieve the goal, on the other hand, since the legislation also envisages the obligation to submit the list of signature of the voters for candidates nominated by both party/election block and the voters' initiative group and this lever is deemed as the sufficient guarantee for proving the seriousness of the candidates nominated by a party (together with the registration of a party), requirement, necessity for additionally corroboration logically arises that the given legitimate goals with respect to candidates nominated by the voters' initiative group, without payment of the electoral deposit, cannot be achieved. And the Respondent failed to provide such argumentation.

35. Consequently, given that the Respondent failed to corroborate, failed to provide convincing arguments with regard that for achievement of the legitimate goal there is the unconditional necessity for additional requirement towards the candidates nominated by the voters' initiative group – imposition of the electoral deposit, in the given case, the disputed norm cannot be deemed as the means that least restricts the right, because application of the electoral deposit towards the candidates nominated by the voters' initiative group together with other means (submission of the list of signatures of the voters) for achieving this same goal, which is considered as sufficient guarantee in case of nomination of the candidate by a party/election block for achieving this goal. Accordingly, the disputed norm imposes unjustifiably heavy burden upon the only one group of candidates. Application of the electoral deposit towards only independent candidates through the interference more heavy and excessive than necessary with the right amounts to discrimination towards them.

36. Stemming from all the aforementioned, generally, the State should enjoy the wide margins of appreciation while regulating such important spheres as assurance of conducting the electoral process based on the democratic principles. As it has been already mentioned above, the electoral deposit is also deemed, among them, as the effective way. However, it is increasingly important that its specific content be such that it truly serves to achievement of this goal and not the contrary, its exclusion. This institute should not give rise to the

impossibility to enjoy the right, among them, it does not have the content which will substantially, perceptibly, significantly distance the persons from equal chances for enjoyment of the right, including triggering such contrast as the impossibility for enjoyment of the right. Making advance deposit payment on the account cannot be an intentionally created barrier for the electoral candidates. Besides, the amount of the deposit must not be unproportionally high, must be reasonable and preconditioned by the goal that every citizen has the possibility to enjoy its own right of the passive electoral suffrage, it should not lead up to transformation of the election right as a privilege. Also, presence of the alternative is important, in terms of gathering the signatures of supporters (by which it is possible to prove the existence of the number of minimum supporters of the candidates among the electorate), because this would have reduced the risk that nomination of the electoral candidacy depended upon a person's financial state. Therefore, on the one hand, establishment of the financial obligation of the deposit may be justified by preventing the incidents of abuse of the right of passive electoral suffrage, but on the other hand, it should not create the unproportionate threat to enjoyment of the constitutional right. The provision of the elections as the direct democratic way for participation of citizens in the State governance should not become as the means for disregarding, excluding this very right of the citizens. The care for democratic elections shall not have its sense and justification, if the possibility to participate in the elections is called into question.

37. As for the issue of constitutionality of the sentences 2 and 3 of paragraph 7 of Article 116 of the Election Code of Georgia, the Claimant, in this regard, noted that these provisions are problematic for him only within the context of the first provision thereto. Under the words of the Claimant, in case of recognizing the first sentence as unconstitutional, the requirement for recognition of the 2nd and 3rd sentences as unconstitutional will lose its ground. Therefore, the Claimant does not demand to assess constitutionality of these sentences in independent meaning.

III – Resolutive Part

Having been guided by subparagraph “f” of the first paragraph and paragraph 2 of Article 89 of the constitution of Georgia; subparagraph “e” of the first paragraph of Article 19, paragraphs 2 of Article 21, paragraphs 3 of Article 25, subparagraph “a” of paragraph 1 of Article 39, paragraphs 2, 4, 7 and 8 of Article 43 of the organic law of Georgia “On the Constitutional Court of Georgia”; the first and second paragraphs of Article 7, paragraph 4 of Article 24, Articles, Articles 30, 31, 32 and 33 of the law of Georgia “On the Constitutional Legal Proceedings”,

The Constitutional Court of Georgia

rules:

1. To uphold the Constitutional Claim N539 of the citizen of Georgia Besik Adamia versus the Parliament of Georgia. To recognize as unconstitutional the words "... and a bank document certifying the 5000 GEL deposit made by the majoritarian candidate for a MP on the account prescribed by the CEC." of paragraph 7 of Article 116 of the organic law of Georgia "Election Code of Georgia" with respect to Article 14 and the first paragraph of Article 29 of the constitution of Georgia.

2. To terminate the legal proceedings on the claim N539 in the part of the claim requirement that concerns "constitutionality of the 2nd and 3rd sentences of paragraph 7 of Article 116 of "Election Code" with respect to Article 14 of the constitution of Georgia?

3. To terminate the legal proceedings on the claim N539 in the part of the claim requirement that concerns constitutionality of "the words "... and a bank document certifying the 5000 GEL deposit made by the majoritarian candidate for a MP on the account prescribed by the CEC." of paragraph 7 of Article 116 of the organic law of Georgia "Election Code of Georgia", also constitutionality of the 2nd and 3rd sentences of the same paragraph with respect to the first paragraph of Article 29 of the constitution of Georgia.

4. The unconstitutional norm shall be legally invalid from the moment of promulgation of this judgment.

5. The judgment shall come into force from the moment of its public delivery at the hearing of the Constitutional Court.

6. The judgment is final and not subject to appeal or revision.

7. Copies of the Judgment of the Constitutional Court of Georgia shall be sent to the parties, the President of Georgia, the Supreme Court of Georgia and the Government of Georgia.

8. The Judgment of the Constitutional Court of Georgia shall be promulgated in the "Legislative Herald of Georgia" within 15 days.

Members of the Board: Konstantine Vardzelashvili,
Vakhtang Gvaramia,
Ketevan Eremadze,
Maia Kopaleishvili.