
**CITIZEN OF DENMARK HEIKE KRONQUIST
VS. THE PARLIAMENT OF GEORGIA**

№3/1/512

Batumi, June 26, 2012

Composition of the board:

Giorgi Papuashvili – the President of the Board, Judge Rapporteur;

Vakhtang Gvaramia – member;

Ketevan Eremadze – member;

Konstantine Vardzelashvili – member;

Zaza Tavadze – member;

Otar Sichinava – member;

Lali Papuashvili – member;

Tamaz Tsabutashvili – member.

Secretary of the hearing:

Darejan Chaligava.

Title of the case:

Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia.

Subject of the dispute:

Constitutionality of wording in the “Law of Georgia on ownership of agricultural land” article 4, paragraph 1: “in cases stipulated by paragraphs 1¹, 1² and 1³ of this article”, “foreigner and”, continued by working “legal entities registered abroad have property rights only to those agricultural plots...”, “while foreigners – also for the agricultural plots, which was rightfully owned by him/her, as a citizen of Georgia.”, wording of Article 4, Para. 1¹ “foreigner and”, wording of Article 4, Para. 1² “foreigner and” and Article 4, Para. 1³ in relation to the Article 21 and Article 47, Para. 1 of the Constitution of Georgia.

Participants of the Court hearing:

Konstantine Eristavi and Tamar Kvintradze - representatives of the claimant – citizen of Denmark, Heike Kronquist; Tamar Khintibidze – representative of the respondent – Parliament of Georgia.

I

Descriptive part

1. On April 14, 2011, citizen of Denmark, Heike Kronquist lodged a constitutional claim with the Constitutional Court of Georgia (registration number 512). The Board of the Constitutional Board admitted the claim as recorded by the protocol of the session of May 13, 2011 as №3/1-1/512 record №512 to be discussed by the Board of the Constitutional Court based on the

motion of the president, according to which, the discussion of this claim creates a necessity to define the sentence in Article 21, Para. 2 of the Constitution of Georgia and to determine the essence of the universal right to acquisition of property, as regulated by this article, which creates a rare legal opportunity of defining the Constitution. By the protocol record of May 13, 2011, N3/1-1/512, this claim was admitted for substantive hearing. Substantive hearing took place on September 21, 2011.

2. The basis of the constitutional claim is Article 42, Para. 1, Article 89, Para. 1, subparagraph. “v” of Constitution of Georgia, Article 39, Para. 1, subparagraph. “a” of Organic Law of Georgia “about Constitutional Court of Georgia”, Article 1, Para. 2, Article 10, Para. 1 and Article 16, paragraphs 1 and 2 of the Law of Georgia “on Constitutional litigation”.

3. Claimant disputes the constitutionality of certain norms of the “Law of Georgia on ownership of agricultural land” as they relate to the Article 21 and Article 47, Para. 1 of the Constitution of Georgia. In particular, the above listed law, in Article 4, Para. 1, stipulates, that a foreign national can have property rights to agricultural land only in exceptional cases listed in paragraphs 1¹, 1² and 1³ of this article, only to the land which he/she received as inheritance, or which was rightfully owned by him/her as citizen of Georgia. According to the paragraphs 1¹, 1² and 1³ of the same Article, the foreign national is obliged to transfer the rights to the land to the citizen of Georgia or/and Georgian legal entity within the period of six months after obtaining the ownership of this land. Otherwise, he/she will lose the rights to this land according to the procedure stipulated in the “law of Georgia on acquiring property for pressing social need”.

4. The claimant is a citizen of Denmark with permanent residence permit in Georgia and believes that the disputed norms violate her universal right of acquiring and inheriting property, since she is prohibited from acquiring agricultural land, and in case of inheritance, is obliged to transfer the rights to it.

5. According to the claimant, the rights of the foreign nationals and Georgian citizens can be limited in exercising their “universal rights to acquiring, selling and inheriting property” in accordance to the regulations stipulated in Article 21, Para. 2 of the Constitution of Georgia. Specifically, the restrictions should stem only from pressing social need. In cases under the disputed norms, public interest does not require such restriction.

6. The claimant points, that the goals of the “Law of Georgia on ownership of agricultural land” are a) to create legal basis for organized farming and improve agricultural structure based on rational use of land; b) avoid chop-

ping and irrational use of land allotments. The claimant believes that since the respondent has not provided another legitimate goal, the goals outlined in the law itself should be discussed as the “social need” which prompted introduction of the existing restrictions. Further, even if the mentioned restrictions serve a legitimate cause, the restrictions on foreign nationals are disproportionate and inconsistently harsh.

7. The claimant points out that the regulation, which obligates a foreign national to transfer the rights to the inherited agricultural land plot within 6 months is a restriction of property rights, which in its essence equates seizure of property. The claimant believes that the Constitution of Georgia in Article 21, para. 3 defines the “social need” as much higher and stricter standard of restricting constitutional rights rather than the Article 21, Para. 2. Therefore, the restriction set forth by the disputed norm does not meet the qualifications for pressing social need as set forth in Article 21, Para. 2, consequently, it cannot meet the strict standards given in the Article 21, Para. 3 of the Constitution of Georgia. Hence, the regulation stipulated in the disputed norm, whether it is considered a restriction of property right or seizure, would be contradicting the essence of the property right as it is guaranteed by the Constitution.

8. The claimant believes that the disputed norms also contradict Article 47, Para. 1 of the Constitution of Georgia. Particularly, the above listed stipulation institutes a general principle, according to which, the foreign national residing in Georgia have equal rights with the Georgian citizens, except for instances, defined by the Constitution and law. Certain articles of the Constitution have specific directives as to which Constitutional rights extend only to the citizens of Georgia. She believes, that such distinction is found mainly for political and some social rights, while the area, protected by the Article 21 of the Constitution applies to the citizens of Georgia and foreign nationals equally. Article 47 of the Constitution does not give the state discretion, to exclude foreign national from the sphere protected by Article 21. Therefore, the disputed norm, in light of property rights, contradicts the regulation on equality of Georgian citizens and foreign nationals residing in Georgia.

9. The claimant grounds the argumentation in the definitions of property rights given by the Constitutional Court in its practice.

10. According to the respondent, a part of the disputed norm does not relate to the Article 21, Para. 2 of the Constitution. While the norms, which obliges the foreign national owner to transfer the rights to the agricultural land, is in full compliance with the Article 21, Para 3 of Georgian Constitution.

11. The respondent points out that the property rights are not absolute rights, and can be abrogated due to the pressing social need as defined by the cases considered in the Constitution. Taking certain measures justified by the pressing social need does not automatically mean that it is directed only to avoiding inevitable negative consequences. The legislator may be motivated by the positive impact for the public or part of society.

12. Agricultural land has particularly important meaning for land-poor agricultural countries. The respondent believes that the main goal of such prohibition of acquiring agricultural land by foreign nationals is rather to avoid purchase of cheap land by citizens of rich countries, which would negatively impact about economic security of the state, environmental protection and national security. The goal of the state restriction on property rights in this manner is motivated by the public interest, to ensure improved agricultural structures and organized farming based on rational use of land. It's important to consider the strategic value of agricultural plots for the national security, environmental protection, economy and public health areas.

13. According to the respondent, current laws do not prohibit foreign nationals and stateless persons from investing in agricultural sector and leasing agricultural plots. If a legal entity is registered in accordance with Georgian legislation, even if 100% of its shares are held by a foreign national, it can purchase agricultural land plot, since it is completely under Georgian jurisdiction, acts on its own behalf in legal matters and is legally accountable to the Georgian State. Besides, it is noteworthy, that Georgian legislation does not limit inheritance of such type of property, therefore does not abrogate this right, however, acting on the basis of public interest, obliges the foreign national to transfer the rights to the agricultural land plot to a Georgian citizen and receive material benefit in an alternate form, or re-zone the land to a non-agricultural category in accordance to the "Law of Georgia on valuation of agricultural land plot and compensation for material damages" and use the agricultural land plot for another purpose.

14. According to the representative of the Parliament of Georgia, the rights and freedoms protected by the Constitution of Georgia equally applies to all persons. In certain issues, such as political and several other rights, the Constitution sets a different regime for the citizens and non-citizens of Georgia. The State, based on its political will, has the right to prioritize protection of social rights of its citizens, while keeping to international law standards and prohibition of discrimination. Article 47 of the Constitution gives equal rights

to Georgian citizens and foreign nationals or stateless persons rather than extending general equality. Based on this article, the State has the right to set a legal regime for foreign nationals and stateless persons that is different from that of the citizens of Georgia. Therefore, the limitation set by the disputed norm is in accordance with the Article 47, para.1 of the Constitution.

15. Based on Article 141, Para. 1, Ltd “Free University” provided an amicus brief to the Constitutional claim №512, with an addendum from Washburn University School of Law – a memo, regarding Constitutionality of limitation of property rights of foreign nationals to agricultural land plots in the United States of America.

16. The amicus brief covers Article 47, Para. 1 of the Constitution of Georgia. According to brief, the Constitution hereby introduces the concepts of separating the rights of the subjects and gives a clear definition of the principle of universal application. Everyone is equal in their rights, unless the difference derives from the Constitution and the text of the law. Considering the Article 47, Para. 1, amicus curiae concludes, that the guarantee to acquire and own property set out in Article 21 of the Constitution is limited to neither the citizens of the country, nor the foreign nationals residing there.

17. Amicus curiae mentions that the right of acquiring property from interested parties is the basis for acquiring certain assets or rights to certain assets from the State. The word “acquire” has a meaning of getting something in return for compensation. In a narrower meaning, it can be synonymous of purchasing. Its wider definition can expand to include any way of obtaining as acquisition. The right to acquiring property establishes freedom of action towards receiving specific assets and therefore, is an expression of “person’s free development” as guaranteed by Article 16 of the Constitution of Georgia embodied in property. A person chooses to become an owner, use his time and energy to acquiring valuable assets and it’s his/her personal choice. Therefore, amicus curiae considers inheritance of property as a specific type of acquisition of such ownership. Such right considers potential state interference and constitutional control of a relationship, whereby an heir expressly selected by a testator must receive the property meant for him/her. Elements of acquiring and inheriting property according to Article 21 of the Constitution are subject to the universal test set forth in Article 21, Para. 2.

18. Amicus curiae is unsure of effectiveness of the disputed norm, since a foreign citizen can freely purchase 100 per cent of the shares to a legal entity and in this manner, take ownership of agricultural land plot. Amicus curiae

iae explains that the regulations set out in the disputed norm are futile means for achieving legitimate objectives. Therefore, they believe that the disputed norm contradicts the essence of property rights protected by Article 21 of the Constitution of Georgia.

19. To substantiate this argument, *amicus curiae* points to decisions of the Constitutional Court as well as legislation and regulations in various countries.

20. Ivane Javakhishvili Tbilisi State University legal department masters program students – Giorgi Amiranashvili, Tamar Akhmeteli, Ana Kukhaleishvili, Irma Kukhianidze, Khatia Mikaberidze, Avto Natsvaladze and Mariam Oziashvili also provided an *amicus* brief to the Constitutional claim №512.

21. According to the *amicus* brief, in market economy, agricultural land plots must be privately owned, but they should be subject to sale and purchase only between Georgian private and legal entities. Besides, the state must take priority in sale and purchase, exchange, gifting, inheritance, etc. and any attempts to speculate by land or by the foreign nationals to acquire land plots must be completely eliminated.

22. *Amicus* brief also points out that Georgia is a land-poor state, with 0.24 ha arable agricultural land per person on average. Therefore, in cases of selling agricultural land plots to foreign nationals, specifics of Georgian countryside, including social-economic and ethnic-demographic problems must be considered. Agricultural land is a vital space for nation's existence, the sole resource for production, which essentially determines the quality of political-economic independence of the country.

23. State and society look at this issue from the point of national and social reasoning. If classical understanding of property rights contradicts public interest, the latter will be given preference.

24. Despite the restrictions set forth in the disputed norms, the law gives foreign nationals an opportunity to register a legal entity, which can own agricultural land. Therefore, the law provides an alternative, which means that the norm should not be considered unconstitutional. Based on all of the above, *amicus curiae* believes that the disputed norms are consistent with Article 21 of the Constitution of Georgia. To substantiate this argument, *amicus curiae* points to decisions of the Constitutional Court as well as legislation and regulations in various countries.

25. Ivane Javakhishvili Tbilisi State University legal department students – Zviad Nesoshvili, Vera Gobejishvili, Salome Kerashvili and Mariam Devdariani also provided an *amicus* brief to the Constitutional claim №512.

26. Amicus curiae points out that the obligation for the person to transfer the rights to the inherited agricultural land plot within six months, as set out in the disputed norm, does not violate Article 21 para.2 and 3 of the Constitution. According to the brief, Article 21, Para. 2 considers limitation of any component of the rights set forth in the paragraph 1 of the same article in light of pressing social need. It is possible, to restrict both the right to use and the right to freely utilize property without violating the essence of the right to ownership. According to the regulations set forth in the disputed norm, the owner is not limited in property rights, but rather deprived of any and all rights to this property, therefore loses ownership. Therefore, it is not the case of restriction of property rights for the purpose of Article 21, Para. 2 of the Constitution of Georgia.

27. Amicus curiae claims, that Article 21, Para. 3 of the Constitution of Georgia allows for seizing specific property in certain case, rather than seizure of the right to ownership, as it is stipulated in the disputed norm. Therefore, it is not the case of seizing property for the purpose of Article 21, Para. 3 of the Constitution of Georgia.

28. Amicus curiae believes that the regulation set forth by the disputed norm is another type of interference, which is not considered by Article 21, Para. 2 and 3 of the Constitution and therefore contradicts Article 21, Para. 1 of the Constitution.

29. Amicus brief mentions that the legitimate reason for the restriction contained in the disputed norm is to protect the country's economic security, sovereignty, cultural and historical heritage. Amicus curiae believes that to achieve this objective, foreign nationals should not have the right to acquire ownership of agricultural property, while in cases of inheritance, restriction should be proportionate. Specifically, 6 months is not enough time for a person to fully enjoy the inheritance right. If the timeframe is increased, the limitation set out by the disputed norm will be in accordance with the Constitution of Georgia.

II

Motivational Part

30. In the framework of this constitutional dispute, the court faces the need to consider and solve several important issues. The disputed norms limit the opportunity for foreign national to acquire property, specifically, according to the "Law of Georgia on ownership of agricultural land" article 4, paragraph 1, foreign national can only acquire property rights to agricultural land only by

inheritance or if he/she rightfully owned it as a citizen of Georgia. According to paragraph 1¹ of the same article, the foreign national is obliged to transfer rights to the agricultural land within six months after acquiring property rights to a Georgian citizen, household or legal entity. The claimant, resident of Georgia, citizen of Denmark, Heike Kronquist, believes that these regulations violate the property rights guaranteed to her by the Constitution of Georgia and therefore, calls for declaring them unconstitutional.

31. In the framework of this constitutional dispute, the Constitutional Court should define the essence of universal right to acquiring property, determine the scope of application of property rights per Georgian Constitution to foreign nationals, and determine whether or not such right is indeed being restricted. If such limitation is to be found, proportionality thereof must be determined. Further, since the claimant believes that the disputed norms violate Article 47, para. 1 of the Constitution of Georgia, the Constitutional Court must also define the essence and boundaries of the mentioned regulation.

32. Article 21, Para. 1 of the Georgian Constitution protects the universal right to acquiring, transferring rights to, or inheriting property. Property right is an inherent right, without which a democratic society cannot exist. "Property right is not only the simple basis of human existence, but also ensures a person's freedom, adequate realization of his/her skills and abilities, leading a self-sufficient life. All of the above tends to create private initiative of individuals in economic sector, which supports development of economic relations, free enterprise, market economy, and normal, stable civil trade." (Constitutional Court of Georgia decision N1/2/384 of July 2, 2007 on the case "citizens of Georgia – Davit Jimshelishvili, Taniel Gvetadze and Neli Dalalishvili vs. Parliament of Georgia", II-5).

33. In order for a person to practically exercise his/her property rights, it is not enough to grant him/her abstract guarantee. He/she must also have access to a civil, private legislative order, which will allow for unobstructed exercise of property right and therefore, contribute to developing civil trade. Constitutional guarantee of property rights includes the obligation of creating legislative bases which will ensure practical realization of the property rights and will make it possible to accumulate assets through acquiring property.

34. Article 4, Para. 1 of the "Law of Georgia on ownership of agricultural land" defines the exceptions when a foreign national could obtain property rights to agricultural land. Specifically, a foreign national may only own agricultural property through inheriting it or by owning it previously as Geor-

gian citizen. It is clear that this regulation only allows two ways of acquiring property by foreign nationals. Therefore, it narrows the wide opportunities for acquiring property guaranteed by the Georgian laws, when it comes to foreign nationals.

35. As mentioned above, the right to property is an inseparable, most important inherent right of a human being. Constitutional Court of Georgia has already defined essence and scope of constitutional guarantees of existing property. The boundaries set forth in the Constitution for restricting this right is also defined. Unlike all of the above, acquiring property rights regulates the processes before acquiring ownership on a specific object, which differs in essence from the relationship between an owner and the object under ownership.

36. Article 21 of the Georgian Constitution clearly states, that acquisition of property, ownership and inheritance thereof is a constitutionally guaranteed right. The claimant contests, that the disputed regulation abrogates her universal right to acquiring property. Therefore, in this case, the Constitutional Court has to define second sentence in Article 21, Para. 1. It is also noteworthy, that defining acquisition of property rights is not a necessary prerequisite to deciding this case. Defining the essence of this right is relevant inasmuch as it is related to the opportunities of acquiring property right and ownership of agricultural land by a foreign national.

37. Right to acquire property infers the ability of a person to become an owner. Human aspiration to acquiring property is a normal social behavior. This aspiration is a way of expressing personal freedom. Constitutional right to acquiring property establishes negative obligation of the state, not to obstruct a person in accumulating property and therefore ensure his/her own well-being. This right in itself cannot become a basis for a person to require certain material goods from the State.

38. Respect for the main Constitutional value – human dignity within one's social and economic context, is greatly dependent upon full realization of property rights. Property is one of the sources for personal independence and development of a human being. Human aspiration to own property for own independence and well-being, is well worth of respect by the state, which must be in legislative regulation, which would ensure unobstructed exercise of property right by individuals on one hand and effective civil trade on another hand.

39. The possibility of acquiring property serves the purpose of exercising the key right to property. Therefore, legislation should ensure such possibility of acquiring and subsequently using property. In this regard, the court should share the opinion of *amicus curiae* (Free University), which states that

if people do not have access to legislative avenues for acquiring property does not reason with further protection of property rights. Therefore, lack of legal mechanisms of acquiring property would cause the concept of property ownership, which consists of the elements of ownership, use and handling of property to lose its substance and turn the constitutional guarantee of property rights into an illusory concept.

40. Constitutional guarantee of acquiring property protects the opportunity for rightful acquisition of property. According to the practice of Georgian Constitutional Court, Article 21 of Georgian Constitution, which regulates property rights, also protects rightful ownership, which is at its conception defined by the fact of its rightful acquisition. Constitutional guarantee of acquisition of property infers the right of the state to regulate the procedure of acquiring property, which, in its material sense, should be in accordance with the Constitution.

41. The right to owning property is an important human value. However, for a person to exercise the guarantees set out in Article 21 of the Constitution, he/she must represent a subject of this right. The main character of basic rights is their dual function. Specifically, they represent subjective rights on one hand and create constitutional order on the other hand. The possibility to separate the citizens and aliens included in the constitution is noteworthy in the context of regulating constitutional legislative framework and its scope when it comes to foreign nationals. “Each Constitutional right has its own way of defining the subjects to this right” (Decision #1/466 of Constitutional Court of Georgia of June 28, 2010 on the case “Public defender vs. Parliament of Georgia”, II-7).

42. Chapter 2 of Georgian Constitution, which regulates citizenship and the rights and freedoms of individuals, uses different terms in defining subjects to various rights. In respective stipulations of the Constitution, one sees the following formulations: “human being”, “everyone”, “every human being”, “all people”, “citizen”, “citizens of Georgia”, “all Georgian citizens”. Constitution of Georgia, as an example of most modern Constitutions, separates the rights, which are held only by the citizens of Georgia, from those, that are universal and extend to “everyone”.

43. Universal human rights are characterized by equal coverage for all and their innate character. Innate character means that these rights are inalienable rights, which are connected to the human being as such. The concept of human rights serves the main imperative, to protect the human dignity, which is then reflected in these rights and whereof the international community has a widely accepted consensus.

44. The right guaranteed by Article 21 of the Constitution belongs to everyone and the constitutional norm does not define an exclusive circle of subjects of this right, including by citizenship. Universal character of property rights is reflected in various international acts, including the United Nations' Universal Declaration of Human Rights, the European Convention on Human Rights, etc. The international documents point out that property is "everyone's" right and is not related to citizenship of a specific country. The modern understanding of lawful state does not allow use of narrow, citizenship criteria in order to identify the subject of a right. In this context, a modern state grounds its argument in territorial and legal basis. Therefore, understanding that an individual is a subject to property rights is related to the fact that he/she is a human being and does not depend on his/her citizenship of any country.

Assessment of Constitutionality of article 4, paragraph 1 (disputed wording) of the "Law of Georgia on ownership of agricultural land" as it corresponds to Article 21 of the Constitution of Georgia.

45. As mentioned earlier, Article 4, Paragraph 1 of the "Law of Georgia on ownership of agricultural land" narrows the opportunities of owning property for foreign nationals in Georgia down to two possibilities – inheritance or previous rightful ownership as a citizen of Georgia. As mentioned above, article 21 of the constitution protects the right of a foreign national to acquiring property, which makes it clear that the disputed norm restricts the claimant's mentioned right.

46. Constitutional standard for justifying restriction of property right significantly depends on which form of restriction is used by the state. Therefore, before assessing the proportionality of restriction, it is vital to look at the nature of the restriction. Claimant points out that, the disputed regulations abrogate her universal right to acquiring property, which without exception is prohibited by the Constitution. To assess the constitutionality of the disputed norm, the Constitutional Court has to find out whether this is the case of abrogation of universal right to acquiring property, or limitation thereof based on article 21, para.2 of the Constitution.

47. The second sentence of Article 21, para.1 of the Georgian Constitution does not deem permissible to "abrogate the universal right to acquiring, transferring rights to or inheriting property", thereby establishing a framework for guaranteeing property rights as set out in the Article 21 of the Constitution. Moreover, it specifies the notion of property, by ensuring safety and freedom of actions for an individual within the sphere of property relations and obliges the legislator to create a system of norm, which will not cast doubt on existence of

these elements. Therefore, article 21, para.1 of the Constitution aims at effective protection of private property.

48. It is important to consider article 21 of the Constitution of Georgia as one whole along with the structure of the norm. The first sentence of the mentioned article contains a statement, which recognizes and pronounces property and the right of inheritance as an inalienable right and asset. The constitutional mechanisms of influencing property are regulated by paragraphs 2 and 3 and include possibilities of restricting property rights and seizure of property.

49. When it comes to the second sentence of the first paragraph of the constitutional norm, which pronounces it impermissible to abrogate the universal right to acquiring, transferring rights to or inheriting property, this statement serves two crucial functions. As mentioned above, this statement somewhat expands on the substance of property and points to its main aspects. On the other hand, by pronouncing it impermissible to abrogate the above mentioned universal right includes a general notion, which pronounces the state's choice in favor of private property. Therefore, this constitutional norm serves as a basis for regulating matters of private law and property relations, getting these functions from the close interaction of first and second sentences of Article 21, cl 1. Article 21 of the Constitution, in its paragraph 1, second sentence expands on the guarantees to private property enshrined in the first sentence of this article, since it relates to forms of expression of individual freedoms, which belong to the scope of private property as protected by these guarantees. Besides, by prohibiting abolition of such expression, article 21, Para. 2, second sentence also strengthens the notion of private property in general, as enshrined in the first sentence of Article 21, para.1.

50. Regarding paragraph 1 of Article 21 of the Constitution, the Constitutional Court of Georgia states, that "first of all, this norm of the Constitution considers equal recognition of property right for everyone and ensures, irrespective of the manner of expression of the right to property... Property recognized and protected by the Constitution means establishment of universal and equal right to property for everyone. Of the post-soviet countries, Georgia is one of the first states, to denounce forms of property and therefore, the notion of privileged owner. In Soviet reality, such owner was the State. The idea of property as enshrined in Article 21 of Georgian Constitution, equates the State as an owner, to others with property rights. Subsequently, Georgian civil legislation was formulated in accordance." (Decision of the Constitutional Court of Georgia of July 28, 2005 # 1/4/184, 228 on the case "JSC "Sakgazi" and "Anajgupi" (Formerly "Tbilgasoaparati") vs. Parliament of Georgia", 2).

51. The above mentioned explanation clearly shows that Article 21 of the Constitution of Georgia contains a crucial decision of the State in the context of recognizing and protecting private property. This norm expresses the Constitutional right of property in relation to the subjects of this right and stipulates that the right to acquiring, transferring rights to and inheriting property is a universal right and abolition of these elements is impermissible. Article 21 of the Constitution is a certain “declaration” for current policy in the field of private property regulation. Article 21 of the Constitution takes on a special meaning and importance for Georgia, as a post-soviet State and ensures overcoming of the cumbersome legacy in the property relations sphere. A legacy, where the concept of property was laden with Socialist ideology.

52. The claimant’s approach, that the current regulation causes abolition of the right of acquiring and inheriting property guaranteed by Article 21 of the Constitution, is flawed. The claimant gives an incorrect interpretation to the phrase “abrogation of the universal right” in Article 21, Para. 1. A universal right can be abolished in case, when legislator expresses the State’s political decision to abolish private property, as basis of human coexistence. Abolishing universal right to acquiring and inheriting property means deeming unacceptable the freedom of individual activity in private property relations through various forms. Such action of a State, in essence, would not limit the scope of addressees and irrespective of the object of property would cause relevant outcome. The right to property, enshrined in Article 21, para.1 of Georgian Constitution, with its positive statement “for everyone”, acts independently from specific expression of property. Rather, it establishes the universal right to property in general.

53. “Abolishing the universal right” as a legal issue in the context of Article 21 of the Constitution is not a mechanism of influence over the property which is considered in the scope of Article 21 Para. 2 and 3. Instances of restricting or seizing property right, represent an intervention, which, evaluated against the Constitutional Standards can be justified or not. As for abolishing the universal right to acquiring, transferring rights to or inheriting property, this would be a case of a certain kind of “overpowering” the balance of Constitutional values overall.

54. The above mentioned can be confirmed by the fact that Article 21 of the Constitution is not separate from the Constitution in its entirety in providing legal guarantee of property. In this context, the issue hinges on main principles of the Constitution, which define the directions of a State’s development.

One of the key principles among these is the principle of economic freedom, which cannot be fulfilled without the expressed freedom of individual activity in property relations as defined by the second sentence in Article 21, para.1 of the Constitution. This condition is yet another confirmation of the importance of abrogation of universal rights given in second sentence of Article 21, para.2 of the Constitution, for development of the State. This norm protects private property as such and strengthens the respective direction of development of the State.

55. The disputed norm is highly specific. First of all, it concerns agricultural land. Therefore, the decision on this case must concern property rights in a narrow field of agricultural land segment. Therefore, this is not a case of abrogation of universal right to property for the purpose of Article 21, Para. 1 of the Constitution of Georgia.

56. Regulation, addressed in the Constitutional claim, apart from exceptional cases, excludes foreign national from the potential group of owners for agricultural land. The disputed norm, in its essence, represents a limitation of property right as defined by Article 21, Para. 2 of the Constitution of Georgia. In the context of disputed regulation, the issue is specified by property type (agricultural land plot) and group of persons (foreign national). Therefore, the court must decide whether or not the regulatory limitation is in compliance with Article 21, para.2 of the Constitution of Georgia.

57. According to Article 21, Para. 2 of the Constitution of Georgia, the rights regulated by the Para. 1 of this article can only be restricted for necessary public good in cases and manner defined by the law. Besides, this article also requires maintaining the essence of the property even in the process of such restriction: the essence of property right must not be violated. The right to property, which is a right that can be defined by the legislator, should not, as a result of legislator's definition of its essence and boundaries, become a right, which will depend mostly on legislative regulation. In sum, loss of the essence of the field protected by a right must be avoided.

58. In order to restrict constitutional right to property, it is necessary to regulate the order of restriction imposed for necessary public good. Only necessary public good gives constitutional-legal legitimacy to restricting property rights. At the same time, the legislator must be very clear in outlining the components of public interest in each of the cases of limiting property rights. Only this approach makes it possible to strike a balance in proportionality. It is impermissible to limit the right more than it is necessary in each particular case for the public good.

59. It must be emphasized that the Constitution does not a clear definition of “necessary public good”. In a democratic state, the essence of this notion is defined by the legislator and its meaning can vary depending on current political or socio-economic challenges. At the same time, “action for “necessary public good” does not mean that it is aimed at avoiding a specific and inevitable negative consequence for the society. Legislator can act out of “necessary public good” with an objective of bringing positive results for society or parts of the public. Besides, it is not necessary for the legislator to state in the norm, which “necessary public good” a particular law serves. “Whether or not there is a need for “necessary public good” can be identified by an analysis and definition of a particular norm.” (Decision of the Constitutional Court of Georgia of May 18, 2007 # 2/1-370, 382, 390, 402, 405 on case “Citizens of Georgia – Zaur Elashvili, Suliko Mashia, Rusudan Gogia et al. and public defender of Georgia vs. Parliament of Georgia II-15).

60. The measure of constitutional rights, including property rights, is the principle of proportionality. This principle represents a mechanism for restraining the legislator in restricting human rights and therefore, is an element of constitutional control. The principle of proportionality requires the restrictive regulation must be a reasonable and necessary means for achieving (legitimate) public aim. At the same time, the intensity of the restriction must be proportionate to the aim pursued. It is impermissible to pursue a legitimate aim at the expense of increased restriction of human rights.

61. To justify restriction of property rights, the responding party must prove that there is a pressing social need, which would be served by the disputed norm. In this case, the respondent points to several legitimate public interests for such evidence and claims, that the regulations given in the disputed norm serve protection of those interests.

62. The responding party, first of all, points to the objectives stated in the law “on ownership of agricultural land”. Specifically, Article 1, Para. 1 of this law aims to: “a) create legal basis for organized farming and improve agricultural structure based on rational use of land; b) avoid chopping and irrational use of land allotments.” Besides, the respondent also points out that restriction of ownership of agricultural land by foreign nationals ensures that citizens of rich countries are prevented from purchasing land on Georgian territory and thus avoids acquisition of agricultural land by foreign nationals. According to the respondent, the risk of wide-spread sale of land is created by the underdeveloped land market. Consequently, the disputed norm, in part, serves the purpose of the country’s economic environmental and national security, which

along with improvement of agricultural structure, creates the pressing social need.

63. Ensuring national security, as well as support to improvement of agricultural structures, is an important public interest, which in some cases could become reason for justifying restriction of certain rights under Article 21, para.2 of the Constitution. For this purpose, it is necessary to have a logical link to legislative regulation and the pursued aim. “In case, when the restriction is not logically linked with the legitimate aim, the restriction is not justified. Only when this link exists, can the disputed norm move on to the next step of evaluating its constitutionality: whether or not there is a proportionate balance between the individual rights and public interests” (Constitutional Court of Georgia, April 11, 2012 N 1/1/468 decision on the case “Public defender of Georgia vs. Parliament of Georgia”, II-44) .

64. Since the respondent validates constitutionality of the disputed norm for two separate, independent legitimate aims, the Court will evaluate the link of each respective restriction with the disputed norm separately.

65. Work on improving agricultural structure certainly is a legislative discretion, however, when the actions of the legislator limits human rights, it becomes necessary to prove the logical links between the restrictive regulation and the pursued social aim. Actions aimed at improving agricultural structure are defined by their objective, which implies improvement of agricultural sector directly. In the given case, the respondent’s position does not show any arguments to point out the links between prohibiting ownership of agricultural land by foreign nationals and improvement of agricultural structure. The state has the opportunity to improve agricultural structure irrespective of the ownership of the agricultural land – whether the owner is foreign farmer residing in Georgia or a Georgian citizen. Economic character as well as quality of agricultural production does not depend on the citizenship of the resource producer. At the same time, new players on the agricultural market and related technological or scientific advances could contribute to economic growth and improvement rather than deteriorate the situation. Therefore, the court believes that there is no logical link between prohibiting ownership of agricultural land for foreign nationals and social need of improvement of agricultural structure. As a result, the disputed norm becomes an unsuitable means for achieving the pursued aim.

66. The respondent mentions, that wide spread acquisition of agricultural land by foreign nationals is a threat to economic and national security. At the same time, the respondent does not deem problematic the issue of pur-

chasing land by a foreign national through a legal entity registered in Georgia, since, according to them, such subject fully falls under Georgian jurisdiction as it becomes legally capable under Georgian regulations. Therefore, such subject enters legal relationships as a Georgian legal entity and has legal obligations to the State.

67. Based on Article 21 of the Constitution of Georgia, the parliament has the right to regulate property rights. Within the boundaries of the Constitution it can define the essence of right to property, scope thereof, and cases for seizing property. At the same time, regulatory mechanisms introduced by the legislator may be equally obligatory for both foreign nationals and Georgian legal entities. Foreign national can be subjected to the same legal restrictions as a Georgian legal entity or citizen of Georgia. Additionally, a foreign national has the possibility to exercise patronage over agricultural land plot through a Georgian legal entity, established by him/her, as it would be done through immediate ownership of the plot. Property right based on the Constitution and legislation covers private and legal entities equally. Therefore, they both have equal levels of patronage over property. They also have identical boundaries for using and managing the material goods. If ownership of agricultural land by foreign nationals poses certain risks to the state, then the risk levels remain the same through the legal entities established by foreign nationals, which then can acquire agricultural property. Based on this, restricting the right of foreign nationals to acquire agricultural land, under the circumstances, where the same foreign national has the opportunity to purchase the same land plot through establishing a legal entity, is not logical and is an inappropriate mean for achieving the pursued aim.

68. The respondent's arguments also do not show the threats of ownership by foreign nationals, which would show the logical link between the disputed norm and state economic or environmental security. The state has sovereignty on its territory, which means that it controls and defines the legal field thereby, including private property essence and scope. At the same time, existence of private property could not be discussed as a possibility for diminishing state sovereignty in any form. To counter this, Article 21, para.1 of the Constitution obliges the legislator to recognize and protect private property, therefore truly ensuring existence of private property.

69. Acquisition of private property by a person, as well as ownership and management thereof is an expression of individual autonomy of the person and is not in any way connected with state sovereignty. Irrespective of what plots of land on the state territory is owned by what private owner, regulation of private property remains the exclusive competence of the state and therefore, it

is able to include the essence and scope of any property within the framework of Constitutional regulation. There may be a specific plot of land, ownership of which, based on its strategic importance, may be a part of state security interest, however, overall agricultural land cannot be considered as such. The Court is of similar opinion regarding the public interest towards environmental protection. The Court admits that there may be a category of land, for instance, recreational zones, sale of which may be prohibited out of environmental interests. However, there is no logical link between prohibition of ownership of agricultural land by foreign nationals and environmental protection.

70. Interference into the right should be justified with a relevant social need, but this should not happen at the expense of infringing human rights. The legislator must be fair in balancing public and private interest, legal position of the individual and social implication of property. In this case there is no logical link between the disputed norm and the legitimate aims stated by the respondent. The disputed norm restricts a right, yet does not serve an important social need. Therefore, the reasonable balance between private and public interests is not stricken and the restriction of rights provided in the disputed norm is disproportional, goes beyond the limits of permissible restriction of right under article 21, paragraph 2 of the Constitution of Georgia and contradicts it.

71. According to the established practice of the Constitutional Court of Georgia, “the norm, violating Article 21, para.2, which does not stand up to the constitutional legal standard ... of evaluating restriction of property right, automatically contradicts paragraph 1 of the same article.” (Decision of the Constitutional Court of Georgia of May 18, 2008 # 2/1-370, 382, 390, 402, 405 on case “Citizens of Georgia – Zaur Elashvili, Suliko Mashia, Rusudan Gogia et al. and public defender of Georgia vs. Parliament of Georgia”, II-6).

72. Based on the above, the words of the “law of Georgia on ownership of agricultural land” Article 4, Para. 1 “in cases considered by paragraphs 1¹, 1² and 1³ of this article”, “foreigner and”, continued with words “legal entities registered abroad have rights to ownership only to those agricultural land plots...”, “while foreign national also to those agricultural land plots, which s/he rightfully owned as a citizen of Georgia” contradict Article 21 Para. 1 and 2 of the Constitution of Georgia.

Assessment of Constitutionality of article 4, paragraph 1¹ wording “foreigner and” in the “Law of Georgia on ownership of agricultural land” as it corresponds to Article 21 of the Constitution of Georgia.

73. According to the Article 4, Para. 1¹ of the “law of Georgia on ownership of agricultural land”, foreign national is obliged to transfer the rights

to the property under his/her ownership within 6 months of acquiring such right over to a Georgian citizen, family or legal entity. Considering the fact, that a foreign national can acquire rights to agricultural property only through inheritance or if s/he rightfully owned it as a citizen of Georgia, the claimant believes, that the disputed norms contradict the property right enshrined in the Constitution of Georgia and guaranteed by Article 21 thereof.

74. Right to inheritance is enshrined in Article 21, Para. 1 of the Georgian Constitution and therefore it represents the highest level of legal good. The guarantee of right to inheritance completes the guarantee of right to property as such, thereby creating the basis of private property regulation considered by the Constitution. Property and inheritance rights together create the main elements of the public order, which is based on the principle of individual autonomy.

75. The function of the right to inheritance is to ensure, that the basis of independently managing private property, as a part of individual life is not lost with death of the original owner. Rather, to provide opportunity for continuation of such life through rightful inheritance. If inheritance right did not exist, private property would automatically be transferred to state ownership which would eventually result in weakening of private property notion. Without the right to inheritance, the essence of the property right would be lowered to ownership, which is limited by a person's lifetime and which has a factual expiration, rather than a legal one.

76. The guarantee to inheritance right strengthens the specific possibility of individuals to acquire property. Based on all of the above, the right of testator, to manage his/her property through will and the right of the heir to acquire respective property through inheritance represents an indivisible part of freedoms, structured as fundamental rights. At the same time, right to inheritance represents an important aspect of ensuring individual freedom.

77. Inheritance is one of the forms of acquiring or managing property. Like the right to acquiring property, the right to acquiring inheritance also regulates the processes before establishment of ownership. Therefore, this right also protects the ability of an individual, to become an owner through inheriting property. The right should be considered exercised from the moment of the property rights being transferred to the individual through inheritance. After this moment, the individual's property is protected through the constitutional guarantee of free ownership and management of property.

78. The claimant, as mentioned above, bases the restriction of inheritance right on the circumstance, that the disputed norm sets the obligation of

selling the inherited land. The Constitutional Court believes that the disputed norm gives the foreign national an opportunity to inherit an agricultural plot of land, become an owner and therefore, fully exercise the right of inheritance. However, evaluation of normative regulations of the property rights after such rights have been acquired is beyond the scope protected by the inheritance rights.

79. Based on the aforementioned, the obligation for the foreign national by the law of Georgia on “ownership of agricultural land” is not a restriction on the right to inheritance, but rather a restriction on owning and managing property. This, in itself falls under the scope of evaluating in relation to Article 21, para.1 and 2.

80. The law of Georgia on “ownership of agricultural land” Article 4, Para. 11 stipulates an obligation to the foreigner to transfer the rights to the owned agricultural land plot within 6 months of acquiring property rights thereto. This obligation serves the same purpose as the para.1 of Article 4 of the law of Georgia on “ownership of agricultural land”. In both cases the purpose and eventual result of the regulation in question is the same: to exclude foreign ownership of agricultural land. In the first case, the component of acquiring the property right is restricted, while the second case limits the right to owning and managing property. Both the grounds and boundaries of restriction on any component of the property right are the same according to Article 21 of the Constitution of Georgia. In either of the cases, the state is obliged to prove that there is a pressing social need, which is protected by the regulated restriction.

81. Based on the aforementioned, the cases of restriction of rights given in Article 4, Para. 1 and 11 of the law of Georgia on “ownership of agricultural land”, represent almost identical postulations for the purposes of evaluating proportionality. It is also noteworthy, that establishing obligation to transferring rights to already existing property can be considered as a heavier form of restriction compared to acquiring property, since it deals with a case of existing significant legal bond between the individual and the property. Along with pronouncing unconstitutional the disputed parts of Article 4, Para. 1 of the law of Georgia on “ownership of agricultural land”, the Court also considers solved the issue of constitutionality of Para. 11. Specifically, to oblige a foreign national to transfer property rights within 6 months or lose the rights to agricultural land plot, represents unfit means of achieving the pursued legitimate aim, which turns it into a disproportionate restriction of property right. Therefore, wording of Article 4, Para. 1¹ of the law of Georgia on “ownership

of agricultural land” – “foreigner and” contradicts Article 21, Para. 1 and 2 of the Constitution of Georgia.

Assessment of Constitutionality of article 4, paragraph 1² wording “foreigner and” in the “Law of Georgia on ownership of agricultural land”

82. According to the law of Georgia on “ownership of agricultural land”, Article 4 Para. 1², in case of not meeting the obligation considered in Para. 11 of this article, the foreign national and foreign registered legal entity will face property seizure measures through a court decision and receiving respective compensation. This means that if the foreign national does not transfer the property rights to the agricultural plot of land within 6 months as the law requires, the state will use forced obligatory measures and seize the property from him/her.

83. Law of Georgia on “ownership of agricultural land” article 4 Para. 1², is a conditional paragraph. Activation of the norm within depends on the condition stipulated by the law – not meeting the obligation by the foreign national according to Para. 1¹ of this article. In other cases it is not possible to use the mechanism of seizing property set forth in Article 4, Para. 1² towards a foreign national.

84. In the aforementioned argumentation, the Constitutional Court deemed unconstitutional the obligation of a foreign national to transfer rights to the agricultural land in his/her ownership within 6 months from acquiring such property rights as set forth in Article 4, Para. 1¹. With this decision, annulling the obligation stipulated in Article 4, Para. 1¹ as it relates to foreign nationals, the regulation stipulated in Article 4, Para. 1², loses its essence. Naturally, after annulling such obligation, execution thereof cannot be evaluated and hence, the forced measures set forth in Article 4, Para. 1² cannot be applied.

85. The Constitutional Court believes that by pronouncing unconstitutional article 4, Para. 1¹ of the law of Georgia on “ownership of agricultural land”, the regulation stipulated in Article 4, Para. 1², loses its normative essence in connection with foreign national and hence cannot be considered as a regulation containing threat of violating constitutional right of the claimant.

86. It is also noteworthy, that the procedure of seizing property stipulated in article 4, Para. 12 of the law of Georgia on “ownership of agricultural land”, represents a mechanism of forced execution of the foreign national’s obligation. It is organically linked with the essence of specific obligation and cannot be evaluated independently from it. The regulations set forth by the legislator for not meeting the determined obligations and whether such regulations are

proportionate to restricting constitutional right, largely depends on the nature of the obligation which is countered by the forced mechanism regulated by the legislator. Determination of proportionality of state response to not meeting the obligation is only possible with consideration of the essence and volume of the specific obligation.

87. Based on the aforementioned, the Constitutional Court believes that the legal proceedings should cease in the part of the claim which relates to Article 4, Para. 1² of the law of Georgia on “ownership of agricultural land”, wording “foreigner and”, as it relates to Article 21 of the Constitution of Georgia.

Assessment of Constitutionality of article 4 of the “Law of Georgia on ownership of agricultural land”

88. According to Article 4, Para. 1³ of the law of Georgia on “ownership of agricultural land”, at the time of seizing agricultural land plot, the norms of Georgian law on “seizing property for the purpose of pressing social need” are applied.

89. The aforementioned norm refers and determines what regulations apply in the process of seizing property. The claimant disputes this norm since it determines the procedure of appropriation and thus becomes a part of the overall scheme of seizing property, aiding its execution. The claimant, however, did not present argumentation regarding unconstitutionality of the procedure given in According to Article 4, Para. 1³ of the law of Georgia on “ownership of agricultural land” as a whole or in any parts thereof.

90. The Constitutional Court pronounced unconstitutional the obligation, contained in the Article 4, Para. 11 of the law of Georgia on “ownership of agricultural land”, to transfer the rights to the agricultural land plot, hence excluding application of Para. 11 of this article towards foreign nationals. Since the possibility of seizing property from the foreign national is not applicable, the procedural parts related thereto are devoid of normative basis and become irrelevant. Consequently, there is no link between the procedures stipulated in Para. 12 of the Article 4 and constitutional rights of the claimant. The regulation in the disputed norm can be applied to the process of seizing property from foreign registered legal entities, which does not represent a matter of consideration for the Constitutional Court in this case.

91. Based on the aforementioned, the Constitutional Court believes that legal proceedings should be terminated in part of the claim, which concerns constitutionality of Article 4, Para. 1³ of the law of Georgia on “ownership of agricultural land” as it relates to Article 21 of Georgian Constitution.

Assessment of Constitutionality of disputed norms in relation to Article 47, paragraph 1 of the Constitution of Georgia

92. The claimant believes that the disputed norms also contradict Article 47, paragraph 1 of the Georgian Constitution, according to which, “foreign nationals residing in Georgia as well as stateless persons have equal rights and responsibilities, except for cases postulated by the constitution.” Therefore, the claimant believes that disputed norms cause an imbalance in the condition of foreign nationals compared to Georgian citizens, particularly when article 21 of the Constitution gives everyone, including foreign nationals, the right to property, to which the Constitution stipulates no exception.

93. The goal of article 47, Para. 1 of the Constitution is to delineate the scope of coverage through constitutional rights for foreign nationals residing in Georgia and stateless persons. This norm determines the group of persons for constitutional rights and sets forth a guarantee that constitutional rights enshrined in Chapter 2 of the Constitution apply equally to aliens as to Georgian citizens, unless otherwise stated in the Constitution itself.

94. Foreign nationals residing in Georgia are closely tied to the state. They represent a part of Georgian society and like Georgian citizens, play an important role in the life of the country, in its advancement and development. Foreign nationals, who live in Georgia, are under Georgian jurisdiction and regulations. Formation of normative control, as a rule, has equal influence on activity, existence and development of foreign nationals residing in the country as it does on the citizens of Georgia.

95. Existence of democratic society demands respect of the rights to each of its member, creation of equal circumstances and opportunities for development of each individual. The close ties of the foreign nationals residing in Georgia are what determined their special status in the Constitution, through which they acquired significant equality with Georgian citizens in the context of exercising their constitutional rights.

96. The claimant believes that article 47, Para. 1 was violated when the respective parts of the law did not consider her as equal to Georgian citizens. In this context, to clearly show the essence of Article 47 of the Constitution, it is important to establish its link with Article 14 of the Constitution.

97. The right to equality before the law is enshrined in article 14 of the Constitution and means that the law must treat essentially equal persons in the same manner and essentially unequal persons – differently. Article 14 of the Constitution applies to the law and determines how it should act. Unlike this, article 47, Para. 1 applies to the essence of constitutional right and points out

that they apply to both Georgian citizens and resident aliens, and that the level of protection of constitutional rights and exercise thereof is equal for resident alien and Georgian citizens, unless contrary has been established by the Constitution itself.

98. In relation to foreign nationals, not residing in Georgia, the Constitutional Court decided: “each constitutional right determines the subjects of the particular right, therefore, the issue of exercising constitutional rights by foreign nationals not residing in Georgia should be determined in the framework of the particular constitutional norm (of each of the rights)” (decision of Constitutional Court N1/466 from June 28, 2010 on the case “Public defender of Georgia vs. Parliament of Georgia II-7). Unlike the aforementioned, article 47, para.1 gives resident aliens a guarantee, that constitutional rights, regardless of the essence, will apply to them in the same way as it applies to Georgian citizens, unless the Constitution determines it as an exclusive right of Georgian citizens.

99. Article 47, Para. 1 of the Constitution does not define how the legislation should regulate rights of the foreign nationals. In cases, when certain rights are restricted for the foreign nationals, it should be assessed directly in connection with this specific right. While putting resident alien and Georgian citizen in different legal position is subject to regulation under the right to equality before the law as stipulated in Article 14 of the Constitution.

100. The norms, disputed by the claimant, as normative regulations, restricting equality before the law, cannot be assessed in connection to the article 47, paragraph 1 of the Constitution, since giving various opportunities through the law does not mean that constitutional rights become unequal compared to Georgian citizens, or that any of the constitutional rights are taken away from the claimant.

101. The Constitutional Court believes that the disputed norms, based on the claim, cannot be assessed in connection with article 47, Para. 1 and legal proceedings in part of the claim, which concerns the disputed norms violating article 47, Para. 1 should terminate.

III

Resolutive Part

Guided by the Article 89, Para. 1 and subparagraph “v” and paragraph 2 of the Constitution of Georgia; and Article 19, para.1, subparagraph “e”, Article 21², Article 23, Para. 1, Article 25, Para. 2 and 3, Article 39, Para. 1, subparagraph “a”, Article 43, Para. 2, 4, 7, and 8, Article 44, Para. 1 of the “Law of Georgia on Constitutional Court”; Article 7, Para. 1 and 2, Article 24, Para. 1 and 2, Articles 30, 31, 32 and 33 of “Law of Georgia on Constitutional process”

Constitutional Court of Georgia

rules:

1. To uphold Constitutional claim N512 (Citizen of Denmark Heike Kronquist vs. Parliament of Georgia). Pronounce unconstitutional in relation to Article 21, Para. 1 and 2 of the Constitution the wording of law of Georgia on “ownership of agricultural land” Article 4, Para. 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 wording of Article 4, Para. 1¹, “foreigner and”.

2. To terminate legal proceedings for the Constitutional claim N512 (citizen of Denmark, Heike Kronquist vs. Parliament of Georgia) in the part of the claim which concerns the wording of the law of Georgia on “ownership of agricultural land” Article 4, Para. 1² “foreigner and” and Article 4, Para. 1³ in relation to Article 21 of the Constitution of Georgia.

3. To terminate legal proceedings for the Constitutional claim N512 (citizen of Denmark, Heike Kronquist vs. Parliament of Georgia) in the part of the claim which concerns constitutionality of the disputed norm in relation with Article 47, Para. 1 of the Constitution of Georgia.

4. The norms deemed unconstitutional, shall be considered null and void from the moment of publication of this decision.

5. The decision shall enter into force from the moment of its public announcement at the Constitutional Court hearing.

6. The decision is final and is not subject to appeal or review.

7. Copies of the ruling shall be sent to the parties, president of Georgia, Supreme Court of Georgia and Government of Georgia.

8. Ruling shall be published in “Sakartvelos Sakanonmdeblo Matsne” within 15 days.

Members of the Board: Giorgi Papuashvili,
Vakhtang Gvaramia,
Ketevan Eremadze,
Konstantine Vardzelashvili,
Zaza Tavadze,
Otar Sichinava,
Lali Papiashvili,
Tamaz Tsabutashvili.