PUBLIC DEFENDER OF GEORGIA
V. THE PARLIAMENT OF GEORGIA

No. 1/1/477 **Batumi, 22 december 2011**

Composition of the Board:
KonstantineVardzelashvili – Chairman of the Hearing;
VakhtangGvaramia– Member;
KetevanEremadze – Member, Judge Repporteur;
Maia Kopaleishvili – Member.
Secretary of the Hearing: Lili Skhirtladze.
Title of the Case: Public Defender of Georgia v. The Parliament of Georgia.
Subject of the Dispute: Constitutionality of article 2, clause 2 the Law of Georgia "On Military Reserve Service" in respect with article 14 and article 19, clause 1 and 3 of the Constitution of Georgia.
Participants of the Hearing: Representative of Claimant- Public Defender of Georgia- Tamar Tcharbadze; Representative of the Respondent- Parliament of Georgia – Zurab Dekanoidze.

I

1. On 10 June, 2009, the constitutional claim (registration No. 477) was lodged with the Constitutional Court by Public Defender of Georgia. Pursuant to recording notice of the First Chamber No. 1/4/477 of 2 December, 2009, the case was admitted for consideration on merits.

2. Hearings on the merits of the case were held on 11 and 12 of July, 2008.

3. The legal ground for submission of the constitutional claim is indicated to be the following: article 42(1) and article 89(1), sub-clause "f" of the Constitution of Georgia, article 19 clause 1, sub-clause "e", article 25, clause 5, article 39, clause 1, sub-clause "a" of the Organic Law of Georgia "On the Constitutional Court of Georgia", article 1, clause 2 of the Law of Georgia"On Constitutional Legal Proceedings".

4. Article 2, clause 2 "On Military Reserve Service" of the Law of Georgia declares the duty of each and every citizen of Georgia, to serve in Military Reserve pursuant to this norm. The claimant points out, that based on the above mentioned law, the main goal of service in military reserve is supporting of military forces and preparation of mobilization in case of war and other emergencies. The discussion of recruit of relevant types and functions of reserve indicates that preparation in reserve and in particular, participation in emergency and war operations is directly linked to study and implementation of battle operations. In view of the Public Defender, participation in liquidation of consequences of emergency and other extraordinary situations is only one case, when a person has no obligation to take arms in his hand and participate in fight. The Claimant states, that reserve service comprises preparation for fight. Therefore, people, who are obliged to serve in military reserve can have conscientious objection to that service, in view of the religious or non-religious beliefs.

5. The Claimant notes, that according to the law of Georgia on Military Reserve Service, individuals and students have no right to refuse to serve in military reserve on the ground of conscientious objection, if there are no grounds of exclusion from the service based on article 8 of this law. At the same time, pursuant to article 1, clause "t" of the abovementioned law "those persons are free from military reserve service, who have served in non-military, alternative, labour service." In view of the claimant, it is clear from formulation of norm, that it covers only those people, who were conscripted in the military service before they had to serve in military reserve and due to conscientious objection, they required and took non-military alternative labour service instead of military service. In view of this norm, the claimant considers, that when they are called to serve in reserve, people with conscientious objection have no possibility to demand non-military, alternative labour service. At the same time Law of Georgia on Military Obligation and Military Service and Law of Georgia on Military Reserve Service if analyzed together show, in the opinion of claimant, that military reserve service presents part of military obligation not of the military service. Under the law of Georgia on Non-military, Alternative Labour Service, articles 3 and 4, non-military, alternative labour service is considered as alternative to military service only. Therefore this legislation does not grant opportunity to people who have conscientious objection and who are conscripted to serve in Military Service, to demand alternative nonmilitary labor service instead of military reserve.

6. In view of the Claimant, article 19 of the Constitution guarantees rights to have religion and beliefs as absolute rights and right to manifest them. The constitution of Georgia protects internal convictions as well as external freedom of belief.

7. The Claimant explained, that in freedom of religion and conscience, there are implied rights to freely choose religious or non-religious faith. It follows, that people have right to perform certain action or abstain from acts which are contrary to one's beliefs. Thus, right to deny compulsory military service and to substitute it with non-military alternative labor service is fundamental aspect of ones beliefs and conscience, which is protected under article 19 of the Constitution of Georgia and international acts of human rights, including the European Convention of Human rights and International Covenant on Civil and Political Rights. The claimant cites the case of the European Court of Human Rights, Bayatian v. Armenia (Judgement of Grand Chamber, 7 July, 2011). Here the Court expressed strong attitude toward protection of conscientious objection as protected separately within the scope of freedom of religion and which gives rise to relevant obligations.

8. In view of the claimant, the disputed norm of article 2 of the Law of Georgia "On Military Reserve Service" is general and neutral. It does not aim to suppress religious minorities. However the Public Defender believes that even neutral law can significantly affect freedom of religion, when something is required from a person, which contradicts their religion and belief.

9. In view of the Public defender, for the purposes of freedom of religion military service as well as military reserve service are to be viewed equally cause they have identical grounds that trigger conscientious objection.

10 The Claimants think, that in review of constitutionality of the disputed norm, the attention shall be paid to its relation with article 101 of the Constitution, according to which, protection of Country and discharge of military service is duty of every citizen who have relevant abilities. In consideration of abilities of a person, except for physical powers, conscientious objection shall also be regarded. Therefore article 101 shall be interpreted in light of article 19.

11. The claimant states, that conscientious objection is right, which is one of the manifestations of the freedom of belief and it can be restricted in cases when external manifestation endangers public safety, security and rights of others. However article 19, clause 3 allows for restriction of this right only once they are manifested and for the purpose of protection of rights of others.

12. In the opinion of claimant, the disputed norm violates article 14 of the Constitution. He believes that on one hand people are essentially unequal, as those reserve servants, who have conscientious objection and those reserve servants, who have no such objection, are imposed the same burden by the legislator. On the other hand, people who have conscientious objection are granted possibility, in case of first conscription to take alternative service and substitute the military service, whereas at the stage of conscription in reserve service, people with similar beliefs are not entitled by the law to employ the same means.

13. Representative of the parliament of Georgia believes that disputed norm fully complies with general obligation that has its origin in article 101 of the Constitution and sets forth imperative requirement under which protection of country and discharging the military duty is due from each citizen who have appropriate abilities. The respondent thinks that reserve is precisely one form of discharging military obligation.

14. The respondent notes, that State has no rights under article 101 of the Constitution, to impose on a person discharge of his military duty or to waive such a duty according to its judgement. However to protect the rights of people who want to protect their belief, conscience and religion and does not want to serve in military service, that constitution of Georgia sets forth whole range of privileges. Namely, article 8 of the Military Reserve Service states that people who have already served in nonmilitary, alternative labour service, which means that they voluntary denied to serve in compulsory military service, will not be conscripted in military reserve service. In case by the time of conscription in military reserve service they have not taken alternative labour service , the respondent asserts that he can apply to relevant administrative organ and take alternative labour service. More overeven if such a person will be conscripted in reserve, his freedom of belief will not automatically be violated, as conscientious objection is international standard, which is not guaranteed in the Constitution of Georgia.

15. The respondent refers to article 19 of the Constitution which protects rights of speech, opinions, conscience and religion, which implies the right of individual to have convictions, to share and exchange it with others if that does not violate the rights of others. In this case, subject is individual, citizen, whereas clause 2 states that no one shall undergo persecution for speech, conscience, or religion. Therefore it is necessary that the state move forward and take measure that will be directly applicable to religious convictions

of person and pressure applied to him. The representative of Parliament thinks that this article does not take into account what is justification for failure to comply with the positive duty imposed on individual by the state. Failure to comply with legal requirements imposed by the state is very dangerous and to defy these obligations can change not only military service, but also state institutions and state-oriented thinking.

16. The representative of the Parliament of Georgia states, that State Military service is specific form of military obligation, goal of which is to support the armed forces for the sake of national security interests. Military legal service does not automatically imply that a person has obligation to participate in certain battlefield activities. Respondent believes that chief governance in the army aims at having maximum number of effective soldiers and therefore, it is their interest to differentiate between conscripts in order to have their tasks achieved. It is natural, that person with conscientious objection can appear in reserve, but he will have to carry out different types of activities, which will not have military character. Even in case if military unit's administration will manage to impose such functions on conscientious objector, which will not be related to discharge of basic tasks of military units, his right of religion and outlook will be fully protected.

17. The respondent points out, that compulsory military service goes for several months, whereas duration of military reserve service is very short. The main objective of reserve is not initiation of fighting operation, or in other words it is not performing military tasks. His function is to support military, which can be expressed in such type of activities, as the logistic service or defense of already neutralized territory might be. Therefore reserve servants carry out easy tasks, compared to members of military battalions and units, when they perform basic military assignments.

18. The respondent also states that law of Georgia on Nonmilitary Alternative Labor Service and Military Reserve Service in case of reading together grant possibility to reserve servants to take nonmilitary labor service. Nonmilitary labor service substitutes the military service. military reserve service is type of military service. Therefore person has choice to go to serve in reserve or work in nonmilitary alternative labor service and carry out non-fighting military tasks. Even in case of this second choice, he can request to substitute alternative, non-military labor service for reserve service. However in this case, the formal problem can be encountered, which is based on the Decree of the President and which states that conscription takes place as decided by the Minister of Defense.

19. In view of this, the representatives of parliament of Georgia thinks that disputed norm does not violate article 19 of the Constitution.

20. The respondent also thinks, that the disputed norm does not contradict article 14 of the Constitution. Under article 101, it is duty of every citizen with relevant abilities to discharge the duty of military service. In view of this universal obligation, waiver of obligation on the basis of mentality would violate the principle of equal treatment, which ensures provision of the equal opportunities for human beings in the opinion of representative of respondent.

21. The respondent thinks that as the state has possibility to create the same conditions within the reserve service, that are available during alternative labor service, requirements of article 14 of the Constitution are met.

22. Under article 14[1] of the Law of Georgia on Legal Proceedings of Georgia, the NGOs Georgian Young Lawyers' Association and Article 42 of the Constitution have presented opinions of friends of court ("amicus briefs").

23. The Georgian Young Lawyers' Association believes that, the disputed norm can put the person in conflict between obligation to serve in Military Reserve and his outlook, which is inconsistent with article 19 of the Constitution of Georgia.

24. The Friend of the Court explains what internal belief means (forum internum) and notes that influence on the person which aims at coercion of person to act against his conscience, does not fall within article 19, clause 3 of the Constitution, which regulates the restriction of liberty enshrined in this article. Therefore we can state, that forum internum is absolute right and it is impermissible to interfere in the internal realm. Therefore article 19, clause 3 of the Constitution allows for interference in the external realm, (forum externum), when it violates rights of others.

25. The friend of the court also deals with article 101 of the Constitution and states that this provision has substantive link to the disputed norm, as both provision call for discharge of military duty, as general universal obligation. The addressees of these norms are everyone, who has relevant abilities.

26. The representative of the Georgian Young Lawyers' Association also interprets scope of conscientious objection. It cites General Comment of UN Human Rights Committee, in respect with article 18 of the ICCPR. There are references to UN Co-Rapporteur on prevention of Discrimination and Protection of Minorities and relevant opinions of Venice Commission underscoring importance of conscientious objection.

27. The Friend of Court asserts that disputed norm conflicts with article 19 and it is important that people have right to conscientious objection against military reserve service. The reason is the nature of military reserve service. In view of its goals, it has military character, it has no civil function. People involved in it have to carry firearms and use it. Therefore military activities are primary obligations there and this triggers right to conscientious objection. Therefore alternative nonmilitary labor service shall be available, as it is in case of compulsory military service.

28. "Article 42 of the Constitution" stated in its written opinion that to deny military service based on the internal conviction, is mechanism of practical realization of freedom of religion.

29. It is underscored in the brief that General Comment no. 22 of 30 July 1993 mentions right of conscientious objection based on internal faith.

30. The friend of the Court discusses case-law of the European Court of Human Rights in respect with interpretation of article 9 and emphasizes "living instrument" doctrine of European Convention, which aims at dynamic and evolutionary interpretation of rights.

31. The friend of Court also refers in his written opinion to attitude of Council of Europe on conscientious objection, particularly recommendation of Committee of Ministers, which recognizes this right as part of freedom of opinion, conscience and religion.

32. In view of all the above mentioned, the friend of court concluded that right to conscientious objection is protected by freedom of opinion, conscience and religion, as

it is demonstrated by the relevant positions of Council of Europe, UN Human Rights Committee and European Court of Human Rights.

II

1. The primary issue pending before the Court is whether Article 19 of the Georgian Constitution provides for the right to reject military service, based on religion or other belief.

2. According to Article 19 of the Georgian Constitution:

"1) Everyone enjoys the freedom of speech, thought, conscience, religion or belief.

2)It is forbidden to persecute anyone on the ground of speech, thought, religion or belief; or to force someone to express their perceptions related to them.

3)It is forbidden to limit the freedoms listed in this article except when the rights of others are being violated."

3. Article 19 of the Georgian Constitution protects various freedoms; however, it is not the purpose of this Court to de Article 19 exhaustively and comprehensively within the present case. The complaint refers only to the alleged violation of the freedom of belief under the disputed norm; therefore the Court is limited with the necessity to interpret this freedom according to the aims of the complaint.

4. The freedom of belief is the foundation and source of personal self-determination. Similarly to other rights, this freedom is the expression of respect towards personal dignity. "Human dignity and personal freedom are expressed in their basic human rights, their adequate protection and full enjoyment" (the judgment of the Georgian Constitutional Court on the case "The Georgian Young Lawyers' Association and Ekaterine Lomtatidze against the Georgian Parliament", N1/3/407, 26 December 2007).

5. The freedom of belief means inner personal freedom to define independently directions and priorities of one's own religious, ideological and moral-ethical development; shape one's life accordingly; live within the society with the possibility of individual self-realization and find oneself with this feeling. In this regard, the freedom of belief is the basis of personal conviction and feelings and the basis for living in accordance with them. It must be noted that this freedom includes both religious and non-religious believes and is not uniquely identical to the notion of religious freedom. It covers religious freedom but is not limited to it.

6. Freedom of belief, at some point, is the freedom of the point of view. It is the possibility to live and develop according to your interests, desires, taste, imagination, conviction and skills. Freedom of belief determines personal self, its content and personality, its function within private circle or society, gives guidance to life. Thus, violent and exaggerated interference with this freedom and conduct leading to alterations in personal mindset, cause spiritual suffering.

7. Freedom of belief greatly affects society, as the latter consists of freely self-realizing individuals, formed according to their own (albeit, diverse) believes. Freedom of belief enables to manifest, exhibit and express particular belief in various contents and forms. This freedom involves great potential to influence the development of a society and its moods. Consequently, the freedom of information is the basis of personal

development and autonomy; at the same time, it shapes the architecture of a society as a whole, defines how democratic it is – as pluralism in general and religious (or, any other belief) pluralism in particular, is vital for a democratic society. Stemming from the above-mentioned, freedom of belief, as a minimum, requires guaranteeing the possibility for the followers of different believes to cohabitate in harmony. This obliges every subject entitled to the freedom of belief to limit their freedom with the similar freedom of others – this is the accompanying obligation of the freedom of belief.

8. Therefore, this right is vital and substantially determinative for personal freedom, self-development, self-realization and development; at the same time, due to this very function and importance of this right, it is the most frequently concurring: a) with the same freedom of others; b) with other rights and lawful interests. Hence, upholding the freedom of belief and guaranteeing its full enjoyment on the one hand, and effective enjoyment of this freedom while respecting and taking into consideration lawful interests of others, on the other hand, are equally challenging for the state, individuals and the society.

9. The Constitutional Court has stated on many occasions that for correct and full realization and effective protection of any right, it is decisive to define its content and limits. Otherwise, there is a risk and temptation of both, disproportionate interference into the right, and abuse of the right; in this case reasonable balance between interests is destroyed and private and public interests are equally threatened. Despite the above-mentioned, taking into consideration the content and purpose of the freedom of belief, it us unrealistic to define its limits precisely and exhaustively, to identify in details the exact range of issues protected under the freedom of belief, to name every opinion, feeling or the content of belief. Similarly, it is impossible to list exhaustively clear and tangible criteria for separate issues covered and not covered under Article 19 of the Georgian Constitution. The realization and effective protection of this freedom requires individual approach, analysis and decision upon each specific case. Attempt to articulate general assessment criteria or universal approaches might harm the right itself. The content of this right depends on the capabilities of human brain and process of thinking, meaning that it evolves and expands constantly. Therefore, it cannot be fully tangible and exhaustive.

10. The Constitutional Court does not need to interpret fully the freedom of belief in this case. As it was mentioned before, the Court needs to clarify, within the complaint, whether conscientious objection is covered under the freedom belief guaranteed by Article 19 of the Georgian Constitution.

11. For the purpose of this complaint, it is important to interpret the freedom of belief under Article 19 in accordance with the content given in this article, while taking into consideration the essence of the right. The purpose and function of the Constitutional Court is to interpret constitutional rights in accordance with the aims of the Constitution, constitutional values and the essence of the rights themselves; this ensures practical, real and effective enjoyment of rights and does not dilute them to theoretical and illusory rights.

12. The freedom of belief protected under Article 19 of the Georgian Constitution, by its primary understanding, means sharing, choosing, ascribing to oneself (positive freedom) or rejecting, changing (negative freedom)particular belief without state

interference; this also means protection of inner sphere of human reason. In this regard, the violation of freedom of belief by state could be ideological, psychological, or moral influence, threatening, forcing to reject particular face or replace it (with another).

13. At the same time, as it was mentioned before, the freedom of belief includes its external expression: the right to live in accordance with particular belief (the sphere of application). The freedom of belief would be unreal and unrealized without guaranteed possibility of interpersonal communication in accordance with this belief. The freedom would be deprived of its content if it does not consist of acting on the basis and in accordance with this belief; otherwise, the right would be negated - merely having the right does not suffice in light of full enjoyment of this right. If there are no guarantees to live and develop in accordance with the belief, it would be meaningless to uphold the freedom of belief.

14. Article 19 of the Constitution foresees absolute protection of personal inner space and inner world and sets out the boundaries of this right by giving possibilities to limit its external expression. The right to lead a life in accordance with one's belief can be limited under Article 19.3 for the purpose of protecting the rights of others.

15. Notably, it might be the case that an action based on particular belief goes beyond the right protected under Article 19 and imply the realization of other constitutional rights (f.e. freedom of expression, right to privacy, freedom of education, freedom of assembly). It is obvious that various constitutional rights might cross each other. Hence, in the present case, in the interest of both protecting the right and correctly balancing private- public interests, it is crucial to decide the following issue: whether Article 19 protects the right to conscientious objection.

16. The source for "conscientious objection" is the personal belief that forbids taking away someone's life. Accordingly, conscientious objectors generally reject armed service during war and peace as the war necessarily includes using the force and taking away human life. As long as military service serves the defense capabilities of a state, it also means preparation for the warfare. Therefore, conscientious objection means rejection of military service not only during the war, but also in peacetime.

17. It should be noted that belief and perceptions behind conscientious objection do not have to be religious in content. For instance, the European Court of Human Rights declared pacifism as a form of belief, even when it is not linked to any of the religions (*Arrowsmith v. United Kingdom*; *Le CourGrandmaison and Fritz v. France*).

18. There was no uniform approach as to whether conscientious objection is part of the freedom of belief. For example, the European Court of Human Rights encouraged states to uphold conscientious objection as part of the fundamental right to belief. It declared several times that Article 9 of the Convention, in conjunction with Article 4.3 (b), does not impose obligation upon states to uphold the right to conscientious objection.

19. However, in the end, international consensus was reached among democratic societies about not merely the possibility of treating conscientious objection (provided that pre-requisites exist) as part of the freedom of belief, but about the necessity to do so. In its last judgment (*Bayatyan v. Armenia*) dealing with the issue at hand, on 7 July 2011, the Grand Chamber of the European Court of Human Rights declared that the application

should be assessed based on Article 9 independently. In this case the court found that: "Article 9 does not explicitly refer to a right to conscientious objection. However, it considers that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9" (*Bayatyan v. Armenia*, para. 110).

20. The Parliamentary Assembly of the Council of Europe notes in its Recommendation 1518 (2001) that the right to conscientious objection constitutes fundamental aspect of the freedom of thought, conscientious and religion (*Council of Europe, Parliamentary Assembly, Recommendation 1518 (2001), Exercise of the right of conscientious objection to military service in Council of Europe member states,* para. 2). It must be noted that the Parliamentary Assembly refers to the Universal Declaration of Human Rights and the European Convention of Human Rights. In July 1993, the Human Rights Committee of the United Nations adopted a commentary to Article 18 of the International Covenant on Civil and Political Rights: "The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief"(*Human Rights Committee - General Comments, General Comment No. 22: The right to freedom of thought, conscience and religion (Art.18),* 30.07.1993). The Committee confirmed its approach by the relevant practice (The decision of the UN Human Rights Committee on the case of *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, para.8.3.).

21. It is interesting to note the position of the Georgian Parliament related to the issue of treating conscientious objection as part of the freedom of belief:

The preamble of the Georgian law on "Non-military, alternative labor service" sets out the purpose of the law and the issue it regulates. The preamble also states: "Stemming from universally accepted international human rights principles and in accordance with the constitutionally guaranteed freedom of conscience, religion and belief, this law regulates legal relationships related to Georgian citizens serving their military duty in the form of non-military, alternative labor service". Article 1 of the same law defines the purpose of the law in the following way: "Based on the Universal Declaration of Human Rights, this law defines non-military, alternative labor service as a reasonable and human compromise between freedom of belief and military duty". Article 2 states that Georgian legislation related to the non-military, alternative labor service consists of the Constitution, the mentioned law and other normative acts. The following conclusion can be reached after the analysis of the above norms: the Georgian Constitution links the possibility of non-military, alternative labor service (the right to conscientious objection) to the constitutionally and internationally guaranteed freedom of conscience, religion and belief and defines this freedom as the basis of the alternative labor service.

22. The conscientious objection guaranteed by the freedom of belief is protected by Article 19 of the Georgian Constitution directly. Namely, the refusal of conscientious

objectors to serve in the military service has the sole purpose of maintaining and living in accordance with particular faith; in the other words, both having this particular belief and expressing it externally (by rejecting military service) is the decision-making related directly and uniquely to their private lives. Their purpose is not publicizing, sharing, impressing or influencing, convincing others with and by their belief. Another circumstance indicating the same is that conscientious objection based on belief happens only when state forces conscientious objectors to act against their belief. In other words, living in accordance with this belief does not require any form of activities from its followers, it does not require taking certain actions either and, accordingly, influencing society in a way or another. The only form of its external expression is conditioned by the necessity to protect and preserve their belief; because of this, in terms of result, there is very little difference between having this belief and expressing it. Stemming from the above-mentioned, conscientious objection is protected under the freedom of belief guaranteed by Article 19 of the Georgian Constitution.

23. The Georgian Constitutional Court cannot share the following argument of the Respondent: conscientious objection should not be deemed part of the freedom of belief, because the believes of people can vary and be multiple; rejecting state obligations based on belief, generally, would uncontrollably increase the number of such objectors who have different motivations for refusing to serve, but will build their case on belief. At the same time, the Respondent argues that it is very difficult, if not impossible, for the state to establish precise and exhaustive criteria to reveal real conscientious objectors. Such position of the Respondent cannot serve as the argument having a weight, as administrative advantage cannot serve as unconditional constitutional standard. Failure of the state to verify the genuineness of beneficiaries of various rights or important complications existing in this regard, cannot serve as the ground for abolishing the right.

24. In this case the Constitutional Court does not aim to draw up universal criteria that should be applied to confirm/establish the existence of real conscientious objection. However, drawing from the essence of the freedom of belief, it is evident that belief should dictate a person a decision that affects his or her personal identity. An individual, in any particular circumstance, should internally feel that the mentioned decision is binding and unconditionally/absolutely obligatory.

25. As long as the broad definition of religion and belief can make the realm of the right shapeless, it is not sufficient for a person to indicate that his or her action was motivated by certain belief; the person should be able to present his or her decision as convincing, serious and having no alternative based on the belief. When the action is carried our based on belief, it is important that the action is related to the issue that the person identifies with. The decision based on belief should have significant importance in shaping personal self.

26. To assess the constitutionality of the disputed norm, in parallel with defining freedom of belief under Article 19 of the Georgian Constitution, it is necessary to analyze the disputed norm itself.

27. According to the disputed norm of the Georgian law on "Military Reserve Service": "Each Georgian citizen has a duty to undergo military reserve service defined by this law".

28. The disputed norm should be interpreted systematically for the purpose of the judgment:

The purpose and aim of creating military reserve is given in Article 2.1. of the Georgian law on "Military Reserve Service": "Military reserve is created with the aim of supporting armed forces during mobilization, warfare and/or state of emergency, or in other special cases or in the interests of national security". Naturally, under this purpose, functions and problems might differ; it is not necessary for them to be intrinsically linked to military activities requiring the use of arms. Military preparation can involve a number of other issues too, for example, teaching logistical matters, preparing military medical personnel. However, despite the diversity of military preparation activities, one of the leading activities is mandatory teaching of how to use arms. Naturally, exactly this activity is more frequent and regular. It is unimaginable to prepare for the hostilities without learning how to use arms. Accordingly, military reserve service unambiguously consists of those aspects, whose rejection might lead to conscientious objection. Consequently, conscientious objectors might object to both military and military reserve service in the same way.

29. It must be noted that the purpose of conscription for the military reserve service is given in a number of provisions of the law. For example, Article 4 additionally highlights that military reserve conscription has the aim of military preparation. This provision unambiguously indicates military preparation of those, being (conscripted) in military reserve. This is identical to the training of military personnel.

30. The purpose of the military reserve is specified more in Article 2.3 that deals with the categories of military reserve. By describing the aims of each category of preserve, the provision gives better understanding of the entire purpose of military reserve. Namely, the aim of the reserve of active forces is to maintain high military preparedness, mobilization activity; the purpose of the national guard is to participate in the military operations in rear, as well as taking part in emergency and other special situations defined by law; the main purpose of individual reserve is the rotation and supplement of sub-regiments of armed forces.

31. The claimant links the complaint to individual reserve only. Individual reserve is made up from individuals of various categories, including those ones who have already undergone military service. At the same time, individuals who have already undergone military service are exclusively assigned to military reserve. This is exactly that category of military reserve, which based on its purpose and aim, is involved directly and actively in military activities where necessary, as well as respective preparation.

32. Persons serving in the individual reserve carry out identical activities to military personnel, as the rotation and supplement of sub-regiments of the actual armed forces are carried out from the individual reserve personnel. Therefore, there is no substantial difference between activities of reserve and military personnel on the one hand, and on

the other hand, the purpose of this category of reserve is precisely the one of participating and preparing for hostilities. Thus, there is a ground for conscientious objection (emanating from the type of activity); at the same time, there is no difference between military and reserve personnel for the mentioned grounds to arise.

33. Drawing from the above-mentioned, Respondent's argument that military reserve substantially differs from military preparation by essence, intensity of military training or degree, and therefore, reserve personnel should not be entitled to claim non-military, alternative labor service, is groundless. It should be noted that Respondent's arguments in this regard are contradictory. On the one hand, Respondent argues that reserve personnel should not have the mentioned right at all, on the other hand, it states that the legislation foresees or does not exclude reserve personnel to ask for non-military, alternative labor service. The Respondent also notes here that when these persons are conscripted to the military reserve, the burden of their duties is identical to the functions of non-military, alternative labor service.

34. According to Article 3 of the Georgian law on " Non-military, alternative labor service", non-military, alternative labor service is the civil service benefiting society, replacing military service and is based upon substantiating the refusal to serve military service due to the freedom of conscience, religion or belief. According to Article 4 of the same law, a person is conscripted to the non-military, alternative labor service during peacetime, when this person has to serve in the military service; however, under the motivation of freedom of conscience, religion or belief this person rejects military service. We can assume from these explanations that non-military, alternative labor service does not replace military obligation altogether, but solely in the component of military service.

35. It should be noted that nothing in the legislation indicates legislator's will to allow those individuals, eligible for reserve conscription, to ask for the non-military, alternative labor service, like the individuals eligible for military conscription can. At the same time, the problem is not that there is a defect in law – or, to say it another way, that insufficient regulations deprive future reserve personnel from the right to ask for the non-military, alternative labor service; but the problem is that certain legal norms directly exclude such possibility.

36. The legislation unambiguously refers to the intent of he legislator to grant the right of requesting the non-military, alternative labor service – when respective conditions apply – to individuals that are eligible for mandatory military service. In other words, legislator links the possibility of requesting non-military, alternative labor service to the status of future military conscript and being on initial military registration, as only in latter case the right to non-military, alternative labor service arises. Namely, Article 7 of the Georgian law on " Non-military, alternative labor service" states that: "A citizen can address the district (city) conscription commission within 10 days after the President calls for conscription, if he is under the duty to serve in the military service and has substantiated reason for rejecting this service". The same is upheld by Article 8. 1 of the mentioned law and Article 12.1. as well: "The commission on non-military, alternative labor service registers the future military conscript and gives him the document...". Therefore, whenever the

legislation deals with non-military, alternative labor service, it is always linked to military conscripts.

37. According to Article 13 of the law on "Military duty and military service", initial registration of citizens occurs from the age of 17 and the citizen on initial registration is called a future military conscript. The rules for qualifying as a future reserve conscript are different (you cannot be a future reserve conscript until you are 23) and they are laid out in the law on "Military reserve service" (Articles 4 and 7). It should be noted that the law differentiates future military and reserve conscripts on a number of occasions.

38. At the same time, the right to request non-military, alternative labor service is procedurally linked to the stage when the President calls for conscription (Article 7). The time frame, procedures and appeal mechanisms for the request of non-military, alternative labor service are related to this stage precisely (Article 8). Therefore, the enjoyment of the mentioned right consists of the following components: a) status (of a future military conscript); b) stage (the President calls for conscription); c) respective procedures. The right cannot be enjoyed without these components, as it is linked to them. Logically, this excludes the possibility of requesting non-military, alternative labor service at the stage of military reserve service, as none of the components mentioned above apply in such instance: conscription for reserve differs from the military conscription. Reserve conscription is carried out on the basis of the order of the Defense Minister; the target group is usually other than "future military conscripts".

39. The fact that the legislator links the right to request non-military, alternative labor service only to the future military conscripts and does not grant such right to the future (or actual) reserve conscripts, is additionally given in Article 8 of Georgian law on "Military reserve service". This provision defines the exhaustive grounds for release from military reserve service and describes each ground. According to Article 8.1. ("t), "individuals, who have served in the non-military, alternative labor service" are released from the military reserve service. Therefore, conscientious objectors are released from the military reserve but not always. Conscientious objection is a valid ground only when the person had already been released from the military service; at the stage of military reserve conscription based on conscientious objection and has undergone non-military, alternative labor service. Accordingly, it is assumed that at the stage of military conscription (when the person was qualified as a future military conscript), the person has already used the right to reject military service and request non-military, alternative labor service. Therefore, the will of legislator is unambiguous in linking the right to request non-military, alternative labor service with the stage of the conscription in the military service (the status of the future military conscript). It should be noted that such formulation of the ground for release and the parallel existence of exhaustive list of the grounds for release disables the possibility of broad interpretation to release conscientious objectors from the reserve service at any stage in general.

40. Accordingly, individuals who did not have conscientious objection during military conscription and until the age of 27 have not used alternative labor service or used the right of release from or postponement of military service, while they have

conscientious objection at the stage of reserve service conscription, are not entitled to request non-military, alternative labor service under current legislation.

41. Deriving from all the abovementioned, the analysis of the legislation makes it clear that: 1)Military reserve service with its content and gravity equals to mandatory military service, that is why it, just like the mandatory military service, potentially gives rise to the legitimate grounds of conscientious objection; 2)Georgian legislation in force excludes the possibility for individuals conscribed for the military reserve service or the individuals serving at the reserve to request non-military, alternative labour service in case of the existence of the conscientious objection; 3)Accordingly, the disputed provision interferes with the freedom of religion.

42. In order to assess the proportionality of the interference with the right, and, accordingly, the constitutionality of the provision, firstly, we should identify the legitimate purpose of the provision in dispute.

43. Pluralism and tolerance of different thoughts are one of the important characteristics and the basis of a democratic society. Due to this reason, the priceof creating and preserving a democratic society lies in the fact that the interests of the majority cannot always or mostly be primary. Democracy is based on the reasonable balance between private and public interests, which among others means fair approach towards minorities. Hence, balancing the exercise of the rights of the individuals of different religions by reasonable and adequate mechanisms ensures the stability of pluralism, achieving and maintaining harmony in the society.

44. At the same time, in spite of the great importance of the freedom of religion, for the purpose of a democratic society as well as each person's personal autonomy and self-realization, the state does not have an obligation to consider legitimate any decision of people, which they take according to their beliefs. In specific cases, the state has a right to and is responsible to intervene in the freedom of religion in order to ensure the respect of the autonomy of others, to protect the legitimate interests of separate individuals or the society.

45. The idea of an individual's freedom can exist only with the limits set by others' rights and freedoms as well as other legitimate interests. Therefore, it is unavoidable to limit most of the rights, because their realisation creates the conflict of values. The intricacy of the conflict of values is that the legal interests collide with each other, which means that both parties have a right to protect their interest and the expectation that their legal interest will be realized. The way out of this dilemma is only one – achieving the fair balance. While the clash of interests cannot be avoided, there is a need to harmonize and fairly balance them.

46. People need to pay a certain price for their beliefs (religion), because they are the members of the society where other people, just like them, also need self-realization, which cannot be achieved without respecting the dignity, rights and autonomy of each of them. For this reason, putting certain obligations by the state on a person, which tries to protect his/her religious rules and live according to them, does not always mean violating the freedom of religion.

47. “In a democratic society, where different religions coexist among the population, it might be necessary to put limits (on expressing religion and beliefs) in order to balance the interests of individual groups and ensure respecting the religious beliefs of everyone” (Kokkinakis v. Greece, 260-A Eur.Ct. H. R. (ser.A) 1993).

48. The Constitutional Court of Georgia has mentioned in its several decisions that the state should reasonably balance private and public interests while protecting and ensuring rights. This is the only way to achieve exercising rights as well as specific public purposes. “One of the most important conditions for the stability of a modern state is defining the priorities between private and public interests in a right and fair way, creating a reasonably balanced system of the relationship between the government and a person” (Decision 1/2/384 of the Constitutional Court of Georgia on the case “Citizens of Georgia – Davit Jimsheleishvili, TarielGvetadze and NeliDalalishvili vs. The Parliament of Georgia”, July 2, 2007).

49. The complex nature and many-sided, indefinite content of the freedom of religion shall not become an insurmountable hindrance for limiting it proportionally, in order to protect relevant public interests. In other words, this kind of nature of this right shall not become a reason for abusing this right; people should not transform into legislators of their own and should not unilaterally define what complies with their dignity and beliefs, they should not abide only by those laws which are rational in their opinion.

50. What is the answer on this issue in the Constitution of Georgia? What can be those legitimate aims because of which the freedom of religion can be limited? How should the state maintain reasonable balance between the interests in order to ensure public purposes as well as not obstruct the freedom of religion?

51. Article 19 of the Constitution of Georgia allows limiting the freedom of religion only in order to protect the rights and freedoms of others. Along with this, in this case, those objectives are considered as legitimate objectives (national defence, public safety), which would serve to achieve the obligations set forth by Article 101 of the Georgian Constitution. However, it is crucial to address the following issue – does the constitutional duty of protecting the country give rise to a basis for proportionate intervention into the right, or does it exclude protection of conscientious objection by the Constitution, on which the Respondent was basing its argumentation. Specifically, they claim that Article 101 lays down the constitutional obligation of each citizen, which in itself excludes the possibility of protecting the right of conscientious objection by the constitution.

52. According to Article 101 of the Constitution of Georgia:

Defence of Georgia shall be an obligation of every citizen of Georgia.

Defence of the country and discharge of military service shall be a duty of every citizen being fit thereupon. The form of the discharge of military service shall be determined by law.”

53. The Court cannot share the opinion of the Respondent that the obligation laid down in Article 101 excludes the possibility of protecting the right of conscientious objection by the constitution. Defending the country does not only mean defending it with a weapon in the hands – mostly, it is indeed associated with participating in military operations,

however, these operations do not exhaust the substance of "defending" the country. At the same time, military duty might not be related to using weapon at all. It is notable that Article 101 does not itself specify the form of military duty. Due to this reason, it is not correct to claim that the obligation in Article 101 equals only to mandatory military service and gives the possibility of being discharged only in this form.

54. Along with this, it is noteworthy that if Article 101 of the Constitution excludes letting Georgian citizens free from military duty with the motive of conscientious objection, then the legislator would not allow such an exception not only for the reservists, but also for the military servants. In this case, the Respondent's argument that the lawmaker has the right to express its good will and give more rights to a person than it is given to him/her by the constitution, is not acceptable. Generally, the legislator is of course not limited in this, but only up to the extent that it does not contradict the Constitution itself.

55. According to the current legislation, non-military alternative labour service is the alternative for the mandatory military service. In other words, non-military alternative labour service is a form of discharging of the military service by the way of substituting the military service with the civil service. In addition to this, the legislation is focused that the alternative labour service be the real and adequate alternative to the military service, in order not to distribute the burden of military service among the country's citizens unequally (for example, the period of non-military, alternative labour service shall be more than the period of the military service, etc.).

56. Taking the aforementioned into consideration, non-military, alternative labour service, despite of the fact that it is a civil service, is a way to reach a reasonable compromise between the constitutional right and the constitutional obligation to defend the country. As it has to be the real and adequate alternative for the military service with its gravity, and considering that military duty as well as country's defence is not expressed only in armed operations and getting ready for them, it creates the possibility to defend the country and to discharge of military duty. Therefore, Article 101 of the Constitution does not exclude the right to conscientious objection. Hence, there is nothing in the Georgian Constitution indicating that conscientious objection is not or cannot be considered as a component of the right to freedom of religion.

57. At the same time, it is necessary to ensure a balance between a person's freedom of religion and the obligation to defend the country in a way that by harmonizing these constitutional values the freedom of religion is protected and fulfilling the duty is not easily avoided. If this is not achieved, public interest (country's security, self-defence, rights of others) and freedom of religion, the essence of which is impeded when it is used for avoiding civil and constitutional obligations, will be under the same threat. Every right, including the freedom of religion, shall be protected and guaranteed only in the boundaries of its real essence, that is why expanding the boundaries of a right by its incorrect interpretation as well as application creates a threat to the balance between the constitutional values.

58. In General, forcing a person to act against his/her beliefs equals to the denial of one's religion in certain cases and thus can be very close to distorting the internal sphere

(forum internum) of the freedom of religion. Consequently, the state, by forcing the denial of manifesting the religion, might influence the inner belief itself. However, it is evident, that this approach is too general and using it for all the cases has the risk of incorrect interpretation of the right. Along with this, in this regard it is not possible to form definite, tangible and at the same time universal criteria and it is not the Court's aim in this case. Each case needs to be studied and analysed individually.

59. Any belief and living according it is realized by its manifestation, thus if a person is forced to deny it, he/she cannot be a follower of that specific belief. When a belief with a specific content is protected by freedom of religion and at the same time someone is intensively and severely intervening in it, which equals to denying this belief, this can be assessed as interference in the internal sphere of a right. In the given case, conscientious objection is protected by freedom of religion guaranteed by Article 19 of the Georgian Constitution. As it has been noted, it is expressed in denying the war and refusing to use weapons, only this is the content of this belief. The disputed provision means implies forcing people with conscientious objection to act against their beliefs. They have following alternatives - either to fulfil military reserve service against their beliefs, or to act in accordance with their own beliefs, but for this they will bear the responsibility imposed by law. These people have no other choice to stay as the followers of this belief. While going to the military service, reserve or war to fulfil the duties, they cannot have a feeling, impression, understanding of living according to their beliefs. Therefore, the State requires these individuals to act against the requirements of their religion, which, in the case at hand, in fact means requiring them to deny their beliefs by their actions.

60. Conscribing conscientious objectors to military reserve service is a way of realizing a legitimate goal, but it does not ensure a fair balance between the interests, which is an unjustifiably severe interference in freedom of religion, the harshest kind of interference, which practically equals to not being able to exercise the right, when it is possible to achieve the same goal by less interference in the right. Maintaining the reasonable balance between freedom of religion and country's defence requires the coexistence of these interests, not protecting one at the expense of the other's infringement. Establishing civil service instead of the military one, which has to be the adequate alternative, by the states is indeed the way to balance the interests. It is noteworthy that in order to balance the freedom of religion and the said public interests, the Georgian legislator also established non-military, alternative labour service, however it did not extend this possibility to all the conscientious objectors, by which the latter's freedom of religion has been violated.

61. According to the Applicant, the provision in dispute also contradicts Article 14 of the Georgian Constitution. Specifically: a) it puts the same burden on the individuals which are essentially not equal (reservists, which are conscientious objectors and reservists, which are not) – they have to discharge of the military reserve service on same terms; b) it gives different treatment to essentially equal individuals (conscripts with conscientious objection and reservists with conscientious objection). Namely, conscientious objector

conscripts have the right to request alternative labour service and, hence, the right to be free from military service, while the conscientious objector reservists have no such right (except the cases, when they have already taken non-military, alternative labour service).

62. Before the Court discusses the relationship of the disputed provision towards Article 14 of the Constitution, it needs to decide whether the provision, deriving from its nature, purpose and aim, gives a possibility to assess it in this perspective at all.

63. It is obvious that the laws (provisions) regarding the prescription of citizens to the military service are general and neutral; oppressing religious or other minorities is not their aim. The disputed provision is also neutral in this respect – its aim is to establish the duty to undergo a military service, it is not aimed at positively or negatively regulating conscientious objection, it is not directed towards regulating relationships connected to freedom of religion; in other words, it is neutral to belief (religion) by its essence and purpose. However, it is noteworthy that it also imposes a significant burden on individuals with Conscientious objections, as, just like all the other citizens, it establishes the duty of military reserve service for them as well. The rest of the aims of the legislation indicate the same.

64. It needs to be noted that the neutral nature of a law cannot always be used for unconditionally claiming that its neutrality absolutely excludes unjustified differentiation.

65. At the same time, applying the law equally to everyone does not always speak for its fairness – general and neutral law, if it foresees equal treatment towards everyone, among them not equal individuals, itself violates the principle of equality. Thus, a law with a general aim might be indirectly discriminatory, due to the reason that it puts a considerably heavier burden on a specific group of people than on others. Deriving from this, it is impossible to say that the possibility of assessing general and neutral laws against the right to equal treatment needs to be excluded prima facie.

66. 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."

67. "This provision, establishing the fundamental right to equality before the law, is the universal constitutional principle of equality, which in general implies the guarantee of equal legal protection for the individuals. The level of ensuring equality before the law is an objective criterion to assess the quality of democracy and the rule of law limited by the priority of human rights. Hence, this principle is the basis as well as the aim of a democratic and legal state." (Decision 1/1/493 of the Constitutional Court of Georgia, December 27, 2010).

68. The essence and the goal of Article 14 of the Constitution is to give equal treatment to the individuals who are in analogous, similar, objectively equal circumstances, "does not allow treating essentially equal unequally and vice versa" (Decision 2/1-392 of the Constitutional Court of Georgia, March 31, 2008).

69. In order to establish whether the disputed provision causes differential treatment at all, we need to define the circle of people, who are the immediately affected by the law and are the object of regulation. "In order to be able to consider issues under Article 14,

the Court firstly has to define: 1) whether the individuals (group of individuals) are essentially equal; this has the decisive importance, as these individuals need to be comparable categories; they need to fall under similar categories, analogous circumstances according to a certain criterion, they need to be equal in a specific situation or relationship; the same individuals can be considered as equal in a specific relationship or situation, while in other circumstances - they cannot. 2) unequal treatment towards equal individuals (or equal treatment towards unequal individuals) needs to be evident on the basis of a specific ground, according to the fields protected by the right" (Decision, 1/1/493 of the Constitutional Court of Georgia, December 27, 2010).

70. The disputed provision establishes a duty for each citizen of Georgia to undergo the military reserve service. Although the regulation is aimed at all citizens, it does not deal with military duty or compulsory military service in general. The immediate sphere of its regulation is only defining military reserve service duties. Therefore, this provision does not cover recruits and it does not establish privileges or prohibitions in an equal manner of the individuals that have the duty to go to the reserve. Hence, the disputed provision does not relate to everyone, who needs to serve military duty in its every form (mandatory military service or military reserve service), but its interest only extends to establishing a general duty of military reserve service. Naturally, the fact that the disputed provision does not extend to military recruits does not annul the reality that, in general, the legislator establishes different possibilities for recruits and the reservists with regard to requesting alternative labour service. As it was noted, the analysis of the legislation showed that conscientious objectors who are enlisted for the reserve, unlike military recruits, do not have a right to request alternative labour service (in this case, only those individuals are free from military reserve service, who have already taken non-military, alternative labour service). But in order to accurately establish the connection towards Article 14 of the Constitution, it is essential that the disputed provision does not cover military recruits, it only concerns reservists.

71. In view of above mentioned that Court cannot share the argument of complainant that the disputed norm causes unequal treatment of essentially equal individuals. Conscripts having conscientious objection and reserve servants having conscientious objection are not subject to differential treatment, as people who were not conscripted yet are not subject of regulation of disputed norm at all.

72. As for the opinion that disputed norm treats equally those who are unequal, The Constitutional Court has to ascertain the following in this respect: a. whether the disputed norm deals with substantially unequal people and b. whether it subjects them to identical treatment. Once these questions are answered the constitutionality with respect to article 14 can be reviewed.

73. As we noted above, the disputed norm deals with people conscripted in reserve. However part of those conscripted has conscientious objection to the compulsory reserve service, whereas the other part - has not. Therefore from the perspective of their beliefs these people shall be considered as unequall.

74. The disputed norm, literally, establishes obligation of everyone to serve in military reserve. As people can have different religions, including those religions which

prohibits violence and killing the neutral law that establishes identical obligation, practically puts them under distinct and unequal regime. Therefore we have treatment of substantially unequal people equally.

75. To review constitutionality of differential treatment, ground of discrimination is very important. In the present case, ground is enlisted in article 14 of the Constitution "religion or other opinions". In any case, whether conscientious objection is determined by religious or other conviction, both religion and other convictions present ground of discrimination of article 14 and differential treatment based on them is strictly unjustified.

76. In view of characteristics of right to equality, in reviewing constitutionality of norms that establish differential treatment, the Constitutional Court shall not have identical and unified approach. Due to the nature of equality before the law, the margin of appreciation of state differs in view of the ground of differential treatment and in which field of social life it occurs. Therefore criteria for evaluation of rationality also differs. However right of equality leaves choice to state until that moment, when the objective reasoning of differential treatment is available.

77. Hence, the Court has different criteria for evaluation of differential treatment: "when differential treatment is based on classical, specific grounds the Court employs the strict test…When strict test is employed it is necessary to demonstrate that state interference is absolutely necessary to achieve compelling state interest." (Judgement of the Constitutional Court , 27 December, 2010, #1/1/493)

78. As differentiation takes place between people who have conscientious objection and those who have not, differential treatment of reserve servants is based on religion or other conviction, which is classical ground of discrimination under article 14 of the Constitution. Therefore strict test shall be applied.

79. It is noteworthy, that respondent did not try to demonstrate compelling state interest as necessary step for proving constitutionality of challenged norm. As representatives noted article 101 of the Constitution excludes possibility of right to conscientious objection, as protected right. Therefore, to grant conscientious objection is discretionary power of state and not obligation. This issue was already resolved in the Constitution. At the same time, legitimate general aims for introducing of the disputed norm still hold here, as they were used in review of constitutionality of disputed norm with respect to article 19.

80. The Court has already ruled that the disputed norm violated right of conscientious objectors to freedom of belief. In given situation, this regulation cannot be in compliance with article 14 of the Constitution. It is natural, that violation of a constitutional right does not always imply violation of right to equality. However, when a legal norm violated freedom of religion of group of people and at the same time differentiates people on the ground of religion, this law cannot comply with requirements of equality before law. Therefore the disputed norm is disproportional means to achieve public goals and it causes violation of right to equality.

81. It is clear that law that explicitly and literally prohibits right of conscientious objection and obliges people, in disregard of their conviction, to discharge military service

like other citizens, is law which equalizes conscientious objectors with other people in respect with discharge of military service, violates their freedom of belief. It is also logical that law which causes identical outcome indirectly, is also violating freedom of belief and religion despite the fact that it does not aim to equalize people of different convictions.

82. It shall also be stated that neutral laws, through establishment of general obligations, cannot account for interests of all the citizens equally. Naturally, this does not mean, that general obligations shall not be introduced through law or that they are essentially in conflict with the Constitution because they violate rights of specific people. In the given case, the fact itself that obligation of military reserve service causes interference in equality and freedom of belief, does not mean that state shall generally abstain from establishing this sort of obligations. In this case, subject of dispute was not constitutionality of military reserve as institution. Therefore it shall be underscored, that court judgement will have no effect and will not challenge constitutionality and legality of this institution.

III

On the basis of article 89(1)(f) and article 89(2) of the Constitution of Georgia; article 19(1)(e), article 21 clause 2 and clause 6, article 23(1), article 25 clause 2 and 3, article 39(1)(b) and article 43 (2,4,7,8) of the Organic Law of Georgia "On the Constitutional Court of Georgia", article 32, and article 33 of the Law of Georgia "On Constitutional Legal Proceedings",

The Constitutional Court of Georgia

r e s o l v e s :

1. The constitutional claim (N477) the Public Defender of Georgia v. the Parliament of Georgia and to declare as unconstitutional article 2, clause 2 of the Law of Georgia "Military Reserve Service" with respect to article 14 and article 19, clause 1 and 3 of the Constitution of Georgia with respect to the normative content, which imposes the duty to serve in military reserve for the people, who object to serve in military reserve on the ground of freedom of belief is upheld.

2. Unconstitutional norm shall be declared invalid from the very moment of public announcement of this judgment.

3. The present judgment shall be in force from the moment of its public announcement at the hearing of the Constitutional Court.

4. The present judgment is final and shall not be subject to appeal or revision.

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

6. The present judgment shall be published in "Sakartvelos Sakanonmdeblo Matsne" within 15 days.

Members of the Board: KonstantineVardzelashvili,
VakhtangGvaramia,
KetevanEremadze,
Maia Kopaleishvili.