POLITICAL UNION OF CITIZENS "MOVEMENT FOR UNIFIED GEORGIA", POLITICAL UNION OF CITIZENS " CONSERVATIVE PARTY OF GEORGIA", CITIZENS OF GEORGIA - ZVIAD DZIDZIGURI AND KAKHA KUKAVA, GEORGIAN YOUNG LAWYERS' ASSOCIATION, CITIZENS - DATCHI TSAGURIA AND JABA JISHKARIANI, PUBLIC DEFENDER OF GEORGIA V. THE PARLIAMENT OF GEORGIA

№2/482,483,487,502 **Batumi, 18 April 2011**

Composition of the Plenum:
George Papuashvili – Chairman of the Hearing;
Vakhtang Gvaramia- Member;
Ketevan Eremadze – Member;
Konstantine Vardzelashvili-Member; Judge Repporteur;
Zaza Tavadze - Member;
Maia Kopaleishvili – Member;
Otar Sitchinava – Member;
Lali Papiashvili – Member;
John Khetsuriani– Member.

Secretary of the Hearing: Darejan Chaligava.

Title of the Case: Political Union of Citizens "Movement for Unified Georgia", Political Union of Citizens "Conservative Party of Georgia", Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, Citizens - Datchi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia.

Subject of the Dispute: A. In the constitutional claim №482 - Constitutionality of the words in article 9, clause 1 of the Law of Georgia "On Assembles and Manifestations": "within the territory of 20 meters radius from entrances." with respect to article 24, clause 1, and article 25, clause 1 of the Constitution; Constitutionality of article 11, clause 3, subclause "b", article 11^1 clauses 1 and 2 and 4, second sentence of clause 5, the words in article 13, clause 1 "also in case of violation of requirements of article 11^1" of the same law with respect to article 25, clause 1 and clause 2 of the Constitution; Constitutionality of article 11^1, clause 3 of the same law with respect to article 25, clause 1 of the Constitution; Constitutionality of words of article 125, clause 6^1 of the Code of Georgia on Administrative Offences: "Organized blockage of road by means of vehicles or participation in a group rally that fully blocks carriageway in a city or any other populated area" with respect to article 24, clause 1 and article 25, clause 1 and 2 of the Constitution. Constitutionality of the words "Arbitrary making of inscriptions, paintings and symbols on facades of administrative buildings and adjacent territories, including roads for pedestrians and carriageways" of article 150, clause 2^1 of the same Law with respect to article 24, clause 1 of the Constitution; Constitutionality of words "at the residence of the judge... or within the territory of twenty meters radius" of

article 174[1], clause 3 of the same Law with respect to article 25 clause 1, 2 and 3 of the Constitution. B. In the constitutional claim №483 - Constitutionality of article 9, clause 1, words "within the territory of 20 meters radius from entrances" of the Law of Georgia "On Assemblies and Manifestations" with respect to article 25, clause 1 of the Constitution; Constitutionality of the second sentence of article 11[1], clause 3 of the same Law with respect to article 25, clause 1 and 2 of the Constitution of Georgia; Constitutionality of words "Organized blockage of road by means of vehicles or participation in a group rally that fully blocks carriageway in a city or any other populated area" of article 125, clause 6 [1] of Code of Georgia of Administrative Offences with respect to article 25, clause 1 of the Constitution in part of claimants of Zviad Dzidziguri and Kakha Kukava; Constitutionality of words "Arbitrary making of inscriptions, paintings and symbols on facades of administrative buildings and adjacent territories, including roads for pedestrians and carriageways" of article 150, clause 2[1] with respect to article 9, clause 1 and 2 of the Constitution. C. In the Constitutional claim №487 - Constitutionality of words "incitement to subversion or violent change of constitutional order of Georgia" in article 4, clause 2 of the Law of Georgia "On Assemblies and Manifestations" with respect to article 19, article 24, clause 1 and 4, article 25 clause 1 of the Constitution in part of claimants - Dachi Tsaguria and Jaba Jishkariani; Constitutionality of words: "within the territory of 20 meters radius from entrances" in article 9, clause 1 of the same Law with respect to article 25, clause 1 of the Constitution; Constitutionality of article 11[1], clauses 1 and 2, first sentence of clause 3, the following words in clause 5: "as soon as the appropriate conditions are restored, in view of number of participants in it" with respect to article 25, clause 2 of the Constitution. D. In the constitutional claim №502 - constitutionality of words "as well as employees with special powers in the relevant service of Ministry of the Finance of Georgia" in article 1, clause 2, article 3, subclause "e" and words "political party, union, enterprise, establishment, organized group of citizens," in article 5, clause 1 and words in article 9, clause 1 "within the territory of 20 meters radius from entrances", article 11, clause 3 subclause "b", article 11[1], clause 1 and 2, first sentence of clause 3, words "in view of the number of participants" of clause 5 word "necessity" of clause 5 and words "according to the number of participants in it" of the same clause, words "also in case of violation of requirements of article 11[1]" followed by the word "immediately" in article 13, clause 1 with respect to article 25 of the constitution; Constitutionality of words "at the residence of the judge or " in article 174[1], clause 3 and words "within territory of 20 meter radius from it" of the same clause of the Code of Georgia of Administrative Offences with respect to article 25 of the constitution; Constitutionality of article 150, clause 2[1], words "and adjacent territories, including roads for pedestrians and carriageways" with respect to article 24 and 25 of the Constitution; Constitutionality of article 4, clause 3, subclause "c" of the Law of Georgia "On the Investigation Unit of the Ministry of Finance of Georgia" with respect to article 25, clause 1 of the Constitution of Georgia.

I

1. On 17 September, 2009 the constitutional claim (registration №482) was lodged with the Constitutional Court of Georgia by the political union of citizens "Movement for Unified Georgia". To decide the issue of admissibility on merits the constitutional claim was transferred to the first chamber of the Constitutional Court of Georgia on 25 September.

2. On 28 September 2009 constitutional claim (registration N°483) was lodged with the Constitutional Court of Georgia by the "Conservative Party of Georgia" and citizens of Georgia Zviad Dzidziguri and Kakha Kukava. To decide the issue of admissibility on merits the constitutional claim was transferred to the first chamber of the Constitutional Court of Georgia on 7 October, 2009.

3. On 11 December 2009 constitutional claim (registration N°487) was lodged with the Constitutional Court of Georgia by Georgian Young Lawyers Association, citizens Datchi Tsaguria and Jaba Djishkariani. To decide the issue of admissibility on merits the constitutional claim was transferred to the first chamber of the Constitutional Court of Georgia on 16 December, 2009.

4. On 7 September 2010 constitutional claim (registration N° 502) was lodged with the Constitutional Court of Georgia by Public Defender. To decide the issue of admissibility on merits the constitutional claim was transferred to the first chamber of the Constitutional Court of Georgia on 13 September, 2010.

5. The First Chamber of the Constitutional Court found that the present case raises rare and particularly important legal issues of constitutional interpretation. Therefore pursuant to article 21^1 of the Organic Law of Georgia on the Constitutional Court of Georgia the case was transferred to the plenum of the Constitutional Court by the ruling N° 1-1/1/482/483/487 of 3 November, 2010 and ruling N° 1-1/2/502 of 5 November 2010. According to the recording notice N° 4/ N° 482, N° 483, N° 487, N° 502 of 10 November of 2010 the constitutional claims where admitted for consideration on merits by plenum. Hearings on the merits of the case where held on 3 and 4 December, 2010.

6. The legal ground for submission of the constitutional claim N° 482 is indicated to be the following: article 42 clause 1, article 89 clause 1, subclause f, of the Constitution of Georgia, article 19(1) (i), article 39 of the Organic Law of Georgia On the Constitutional Court of Georgia, article 1, clause 2, article 12 clause 1, subclause a , article 15 and 16 of Law of Georgia on Constitutional Proceedings.

7. The legal ground for submission of the constitutional claim N° 483 is indicated to be the following: article 89 clause 1, subclause f, of the Constitution of Georgia, article 19(1(i), article 39,clause 1 , subclause a, of the Organic Law of Georgia On the Constitutional Court of Georgia article 15 and 16 of Law of Georgia on Constitutional Proceedings. additional legal ground for submission of constitutional claim N°483 is indicated article 42, clause 1 of the Constitution of Georgia.

8. The legal ground for submission of the constitutional claim N° 487 is indicated to be the following: article 42 clause, article 89 clause 1, subclause f, of the Constitution of Georgia, article 19(1(i), article 39, clause 1, subclause a, of the Organic Law of Georgia On the Constitutional Court of Georgia, article 15 and 16 of Law of Georgia on Constitutional Proceedings.

9. The legal ground for submission of the constitutional claim N° 502 is indicated to be the following: , article 42 ,article 89 clause 1, subclause f, of the Constitution of Georgia, article 19(1(i), article 39, of the Organic Law of Georgia On the Constitutional Court of Georgia" article 1 clause 2 of Law of Georgia on Constitutional Proceedings.

10. Under article 1, clause 2 of the Law of Georgia on Assemblies and Manifestation and article 4 clause 3 , subclause "c" on the Investigative Unit of the Ministry of the Finances of Georgia, which are disputed provisions, it is prohibited for employees of investigative unit of the Ministry of the Finance with special competences to participate in assemblies and manifestations.

11. The law of Georgia on Assemblies and Manifestations article 3, subclause "c" states definition of the term *"principal"* . Under article 5, clause 1 of the same law, group of people is defined which can empower an agent to file notice on manifestation or assemblies with the local self-government.

12. Pursuant to article 4, clause 2, of the Law of Georgia on Assemblies and Manifestations which contains disputed provision it is prohibited to incite to overthrow or violent change of Constitutional Order of Georgia when the assemblies and manifestations is organized or held.

13. Pursuant to article 5, clause 2, of the Law of Georgia on Assemblies and Manifestations person responsible for organization of assemblies and manifestations cannot be non-citizen of Georgia.

14. According to the disputed sentence of article 9, clause 1, of the Law of Georgia on Assemblies and Manifestations it is prohibited to hold manifestation or assemblies within the territory of twenty meters radius from the entrances of establishments enlisted in the law.

15. According to article 11, clause 3, subclause "b" of the Law of Georgia on the Assemblies and Manifestations it is prohibited to intentionally obstruct traffic of vehicles including violation of requirements of article 11^1 of the same law.

16. Pursuant to article 11^1, clause 1 of the Law of Georgia on Assemblies and Manifestations the carriage way can be fully or partially blocked only if due to the amount of participants assemblies and manifestations cannot be held otherwise. Under clause 2 of the same article, streets can be blocked only for that time, when it is necessary in view of the amount of participants in assembly or manifestation. Under clause 3, second sentence of the same article, it is prohibited to block the thoroughfare with cars or other constructions and objects. Under clause 4 of the same article, if participants violate requirements of this article and block thoroughfare, representative of local self-government is authorized to address participants of assembly or manifestation demanding to free the thoroughfare, which demand shall be complied with by the organizers of assembly or manifestation. In case of blocade of the thoroughfare in violation of requirements of article 11^1, once the representative of local self-government requires to free the road, which is not complied, law enforcement bodies are authorized to restore traffic, as soon as this is possible in view of the number of participants in assembly or manifestation. According article 13, clause 1 of the same law, the disputed words state that in case of violation of requirements of article 11^1 assembly or manifestation shall be terminated immediately, as soon as the representative of local self-government requires it.

17. Under article 125, clause 6^1 of the Code of Georgia of Adminsitrative Offences, the disputed norm prohibits, to block the highway with vehicles in organized way or to participate in group rally, as a result of which the thoroughfare is fully occupied.

18.Under article 150, clause 2^1 of the same law, it is prohibited to do writings, paintings or symbols on the façade of administrative buildings, territories adjacent to them, including the thoroughfares.

19. The disputed norm in article 174^1, clause 3 of the Code of Georgia on Administrative Offences, it is prohibited to hold assembly or manifestation at the residence of a judge or ordinary court and in territory of 20 meters radius from them.

20. Constitutional claim no. 482 asserts, that article 9 of the Law of Georgia "On Assemblies and Manifestations" providing restriction on place of manifestations, contradicts article 24 and 25 of the Constitution, as the Constitution does not provide for power for such restrictions.

21. In respect with article 11, clause 3, sub-clause "b" of the Law of Georgia on Assemblies and Manifestations, it is noted in the claim, that article 24 and 25 of the Constitution does not allow for restriction, such as prohibition of obstruction of traffic. The very opposite is true, as Constitution explicitly provides entitlement to this.

22. It is stated in the claim 482, that article 11^1 of the Law of Georgia on Assemblies and Manifestations is inconsistent with article 25 of the constitution, as the latter provides for only one type of restriction, which is obligation of prior notice, when the assembly or manifestation is held at the thoroughfare or pedestrian part of the street. Moreover, this article is also inconsistent with article 24 of the Constitution, as the goal of manifestation is to realize freedom of expression, whereas the disputed norm restricts possibility to enjoy freedom of expression.

23. In respect with article 13, clause 1 of the Law of Georgia on Assemblies and Manifestations, it is stated in the claim, that the enacted form of restriction of manifestation is not the least restrictive means of that right and therefore it does not pass the muster of the proportionality test. The claim refert to the judgement of the European Court of Human Rights "Oya Ataman v. Turkey", where the claimant asserts, the Court held that the government shall be tolerant to the assemblies which are peaceful, even if they hinder the traffic. According to the claim, the cases "Balchik and Others v Turkey" and "Nuretten Aldemir and Others v. Turkey" evidence the same approach of the European Court of Human Rights, as do other cases.

24. In respect with article 125, clause 6^1 of the Code of Georgia on Administrative Offences it is indicated in the Constitutional claim, that this article restricts freedom of assembly and Constitution does not allow for restriction of opportunities to use vehicles during assemblies and manifestations.

25. The constitutional claim asserts that article 150, clause 2^1 of the Code of Georgia on Administrative Offences violates article 24 of the Constitution, also article 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as there is no legitimate purpose served, that would justify the restriction and would overweigh the interest of protection of freedom of expression.

26. It is indicated in the constitutional claim, that disputed norm of article 174^1 of the Code of Georgia on Administrative Offences, is unconstitutional as it is based on unconstitutional norms of the law of Georgia on Assemblies and Manifestations.

Constitutionality of disputed words of article 174[1] shall be reviewed with respect to article 25, clause, 1, 2 and 3 of the Constitution.

27. The constitutional Claim no 483 asserts, that restriction to hold assembly in the territory of 20 meters radius from entrances of enlisted buildings constitutes inadequate and illegitimate restriction of constitutional right. In view of the claimants, if the purpose of article 9, clause 1 of the Law of Georgia on Assemblies and Manifestations is to ensure the normal functioning of these establishments, that goal could be achieved through lesser restriction. Prohibition to hold assembly or manifestation within 20 meters radius from this buildings practically eliminates any possibility to hold an assembly in front of the state organs.

28. At the hearing on merits of the case, representative of claimants, Kakha Kukava stated that the disputed norm shall not be construed literally, but shall be given adequate interpretation in view of the reality. Introducing the rule on 20-meters radius, constitutes not merely restriction of a right, but prohibition of assembly in general, as 20 meters radius is too strict regulation and in view of the location of the buildings, the disputed norm makes it practically impossible to communicate the protest to the addressee.

29. The Claimants believe it is illegitimate to prohibit the blockade of the traffic and pedestrian part of the street with vehicles and other constructions. According to the claim, if the participants of assembly occupy territory lawfully, they shall be entitled to locate whatever objects on relevant territory. Claimants assert, that to place tents, cells and other installations at the place of meeting, is well-known form of protest and its prohibition violates the Constitution.

30. At the hearing on merits, representative of the claimants declared that the disputed norm is not amenable to clear and precise interpretation, as if there is high number of people and assembly is held lawfully and the street is blocked, than there is not legitimate purpose left to pursue by prohibition of placement of construction on the blocked street. If the purpose of the norm is to prohibit blocking of streets with constructions by the small number of people, than there is a flaw in the norm, as to block the street by the small number of people is prohibited, with or without constructions and this is not subject of dispute for the claimant. Therefore claimant thinks that invalidation of the disputed norm will satisfy the claims of claimants. On the other hand, the legitimate goal will be protected.

31. The claimants believe, that prohibition of organized blockade of road by means of vehicles or participation in a group rally in a city or any other populated area is inconsistent with freedom of expression of speech and opinion, as blockade of road through these means, is wellknown form of expression of protest.

32. Representative of the claimants stated at the hearing of merits of the case, that the disputed norm does not serve any legitimate aim. The carriageway can be fully occupied when cars move in a raw, as well as there is traffic jam on the roads and highways. The disputed norm does not refer to the intentional character of action, which can be punished. As long as the norm is effective, it is possible that without any intention thereto, due to the amount of cars in the raw, the carriageway naturally appeared fully occupied, on the

basis of which the driver of vehicle can get punished and deprived of driving license. The claimant also points to the fact, that freedom of expression is not an absolute right and it can be restricted to protect freedom of movement of others. However, the claimant underscores the fact, that hindrance of traffic shall be intentional act, such as intentional slow driving. If the legislator aimed at protection of rights of others, than the norm shall be structured in a way that would punish only intenational and no other cases, when the raw of cars occupies the carriageway fully and person just participates in the raw. In view of this, the claimant believes, that the disputed norm contradicts Constitution and it shall be invalidated. Moreover, the representative of claimant, Kakha Kukava reduced the claim in the part which deals with constitutionality of the disputed words in article 150, clause 2^1 of the Code of Georgia on Administrative Offences "Wilful making of various inscriptions, paintings and symbols on facades of administrative buildings and adjacent territories, including roads for pedestrians and carriageways" with article 19, clause 1 and 2 of the Constitution of Georgia.

32. In the constitutional claim no 487, the claimants Datschi Tsaguria and Jaba Jishkariani point out that they held meeting in front of the Parlaiment of Georgia on 23 November, 2009, due to which they were subjected to administrative liability. It is noted in the claim, that it was not the only case, when Datschi Tsaguria and Jaba Jishkariani excercised their rights, enshrined in article 19, 24, and 25 of the Constitution of Georgia. In view of their intensive social and political activities, they frequently organize protest events against the government and therefore their constitutional rights can be violated again in the future as a result of the disputed norms.

33. Claimant, Georgian Young Lawyers' Association states in the constitutional claim, that its charter names the popularization of human rights as one of the goals of Association, due to which it often organizes meetings as part of the campaign for protection of rights. The claimant believes, that when the head of legal person or its members carry out different activities on behalf of the organization and in furtherance of its goals, this process constitutes enjoyment of fundamental rights of legal person, as well as those of members - physical individuals. Pursuant to article 45 of the Constitution of Georgia, the basic rights and freedoms enshrined in the Constitution shall apply to legal entities too, with due regard to the content of rights and freedoms. When a legal person is deprived of opportunity to achieve the goal, in furtherance of which the legal person was created, it shall also be entitled to challenge the constitutionality of restrictive norms. It is stated in the claim, that the disputed norms can violate rights and freedoms of the Georgian Young Lawyers' Association guaranteed in articles 19, 24 and 25 of the Constitution in the future.

34. According to the constitutional claim no. 487, article 4, clause 2 of the law of Georgia on Assemblies and Manifestations regulates the substance of the expression of participants in assemblies and manifestations. In view of the claimants, article 25 of the Constitution is special constitutional norm, which regulates form of the assemblies and manifestations and scope of permissible expression at these meetings is beyond its regulation. Issues of expression are regulated in article 19 and 24 of the Constitution. Therefore the disputed norm shall be reviewed from the perspective of article 25, but in conjuction with article 19 and 24.

35. The claimant assert that article 19 and article 25 of the Constitution does not allow restriction of rights enshrined in them for such legitimate purposes, as state sovereignty, territorial unity and security is, which legitimate purposes might be served by the disputed norm. Only article 24, clause 4 allows restriction of freedom of expression to serve the abovementioned legitimate purposes and therefore the disputed norm shall be reviewed with respect to article 24, clause 4 of the Constitution.

36.The representative of claimants, Giorgi Gotsiridze explained at the hearing of merits of the case, that words of article 4, clause 2 of the Law of Georgia on Assemblies and Manifestation, "Incitement to subversion or violent change of the constitutional order of Geogia" is unconstitutional, as it does not contain criteria of present and imminent danger. The Claimant believes, that the disputed norm imposes liability on a person for incitement, without regard to the fact, whether the incitement is dangerous and whether it is shared by the other participants of the manifestation. The claimant believes, that incitement to overthrow the constitutional order or infringe on the territorial integrity of Georgia is protected under article 24 of the Constitution and a person shall have opportunity to enjoy this constitutional right in the abovementioned form, until there will appear present and imminent danger. Only presence of such a danger can make restriction consistent with the legitimate aim. The claimant also stated, that in contrast to propaganda of war and violence and incitement to trigger religious or ethnical conflict, the incitement in the disputed words are directed only against the government. Government has higher obligation of toleration, than specific group of people (minority). At the same time, the claimant believes, that in case of prohibition of incitement to war propaganda legitimate aim is different from the one served by the disputed norms. As long as the disputed norm is effective, the local self-government has no procedural burden of proof in case of litigation, that specific incitement was dangerous. It is enough for them to demonstrate that inciment was made at several times during the manifestation, that already presents ground for dissolution of meerihg. In view of this the claimant believes, that absence of standard of imminent danger makes the norm unconstitutional.

37. Under the disputed words in article 9, clause 1 of the law of Georgia on Assemblies and Manifestations, it is stated in the claim, that article 25, clause 1 of the Constitution stipulates only one requirement – that the meeting shall be without arms; the constitutional norm does not provide for restriction of meetings at the certain state establishments. The claim refers to the judgement of the European Court of Human Rights in case of Sergey Kuznetsov v. Russia. Based on this case, the claimants assert, that it is necessary and feasible to balance the interest in normal functioning of state establishments with such opportunity of holding meetings, that the protest of partipants be perceivable to maximum level by the addressee establishments and officials.

38. At the hearing on merits of the case, the representative of claimants stated, that 20-meter radius established in the disputed norm makes freedom of assembly meaningless, as the named prohibition makes it impossible that grievances of participants be heard by specific state establishment. Narrow pavements at the establishment makes it also impossible for people to express protest as they are removed from carriageway and in part

of carriageway another restriction related to number of participants applies. All these compels participants of the meeting, to choose a place for meeting, where no one can notice them.

39. Moreover, the claimant notes, that the blanket restriction present disproportional interference in the scope of right. He corroborates the claim by referring to draft law of Armenia, where prohibition does not mention any specific distance, but points to such distance, which will not obstruct normal functioning of the relevant establishment. In view of this the claimant believes that rational balance shall be struck in each case between the effective enjoyment of right of assembly and manifestation and normal functioning of establishments.

40. Elaborating on constitutionality of disputed norms in article 11^1 of the Law of Georgia on Assemblies and Manifestations the claimants stated, that article 25, clause 2 of the Constitution stipulates only one requirement of prior notice, when the peaceful assembly or meeting is held at the carriageway or road for pedestrians. The disputed norms of article 11^1, does not allow for holding the meeting at the carriageway, even if there is duly made notice, unless the number of participants does not allow them to locate themselves on the pedestrial part of the street. Under disputed norms of article 11^1, the scope of freedom of assembly is determined by the number of participants which is not constitutional. It is emphasized in the claim, that the blockade of traffic of vehicles by group of people is instrument to attract attention of public and government, particularly in the case, when number of participants in protest is not impressive.

41. The essence of the institute of notice is to achieve balance between the freedom of assembly and freedom of movement. The competent organs of government shall ensure alternative routes for normalization of traffic. It is stated in the claim, that possibility to hold a meeting, which violates the normal rhytm of life is not unlimited and shall be subjected to restrictions over time, but it is impermissible to restrict the right according to the number of participants.

42. Discussing the constitutionality of disputed norms in article 11^1, the claimants cited the judgements of the Constitutional Court of Georgia in cases: “Citizens of Georgia, Maia Natadze and others v. The Parliament and President of Georgia” and “Georgian Young Lawyers’ Association and Zaal Tkeshelashvili, Nino Tkeshelashvili, Maia Sharikadze, Nino Basishvili, Vera Basishvili and Lela Gurashvili v. The Parliament of Georgia.” The claimants also corroborated their claims with Opinion of the Venice Commission on “Law of Armenia on Amendments and Supplements to the Law of Armenia on Rallies, Meetings, Assemblies and Demonstrations” and Opinion of the Member of the Venice Commission, Ms. Finola Flanegal on the Law of Georgia on Assemblies and Manifestations. The claim also refers to number of judgements of the European court of Human Rights in cases of “Oya Ataman v. Turkey”, “Balchik and others v. Turkey”, “Nurettin Aldemir and others v. Turkey”, “Baracco v. France” and “Lingens v. Austria”.

43. On the hearing on merits of the case, the representative of claimants explained, that under the disputed norm, the small numbered group is totally deprived of right to block street and thus express their protest. The claimant believes, that carriageway is

shared public good and it belongs to everyone. Therefore, small groups shall also be entitled to block temporarily street and to express the protest. The claimant referred to case law of the European Court of Human Rigths and stated that test of reasonable time established in that case-law is proportional means of interference in the scope of right. To block the street for reasonable time, even by the small number of people constitutes adequate restriction and enables any group of people to effectively enjoy their constitutional rights.

44. Under claim no. 502 disputed words in article 1, clause 2 of the Law of Georgia on Assemblies and Manifestations and article 4, clause 3, sub-clause "c" of the Law of Georgia on Investigative Unit of the Ministry of Finance of Georgia contradict article 25 of the Constitution, because the latter provision of the Constitution explicitly states group of people who are not entitled to participate in assemblies and manifestations. Employees with special powers of relevant services of the Ministry of Finance are not enlisted among them and thus they shall be entitled to participate in assemblies and manifestations.

45. According to the opinion of the claimant, restriction in the disputed norm may be related to the function of relevant unit, which is protection of public order, security and human rights and freedoms. The claimant notes, that it is possible that relevant service of the Ministry of Finance has these functions, but Ministry of Internal Affiars has even broader powers and functional overlap of the latter with investigative unit of the Ministry of Finance happens only in part of fighing crime. Therefore to restrict rights of employees of investigative unit of Ministry of Finance based merely on function of protection of public order and human rights is unjustified. Following that logic, all the employees shall be restricted to participate in assemblies and manifestations if relevant organs carry out the function of protection of human rights and public order (Prosecutors' Office, Penitentiary Department, Investigative Department of Ministry of Protection of Environment and Natural Resources). However, acts regulating these other organs do not contain similar restrictions. Hence, claimant asserted that the disputed norms are in conflict with article 25 of the Constitution.

46. It is stated in the claim, that article 3, sub-clause "c" of the Law of Georgia on Assemblies and Manifestations as well as disputed provisions of article 5, clause 1, conflict with article 25 of the Constitution, as the effective wording of these provisions exclude possibility that physical person be initiator of assembly or manifestation.

47. During consideration of merits of the case, representatives of the claimant declared that through assembly or manifestation is carried out collectively, it is individual right. The disputed norm, while enlisting subjects, entitled to initiate assembly(manifestation) does not mention physical person among them. The restriction of right in the disputed norms is unjustified, as the goal which is served by it is unclear.

48. According to the international human rights instruments and relavant case-law, to justify the interference in righ it is necessary that interference be provided by law, pursued legitimate aim and be proportional means to that aim. In present case, the goal, served by restriction is not evident. Therefore it is impossible to elaborate on proportionality of the employed means. At the same time, restrictions set forth in the disputed norms

cannot influence the public security, public order and protection of rights of others. Application by the initiator of assembly or manifestation can influence participants not by the number of initiators, but by ability of initiator to influence crowd. When the goal served is not clear, the restriction in the disputed norm is unconstitutional.

49. The Claimant believes, that article 5, clause 2 of the Law of Georgia on Assemblies and Manifesttations is not consistent with article 25 of the Constitution of Georgia, because deprivation of right to organize assembly or manifestation to non-citizens presents disproportional interference in the scope of rights of these people guaranteed in the Constitution.

50. The representatives of claimant explained that article 25 of the constitution of Georgia entitles everyone to right of assembly and manifestations (which includes right to organize assemblies) and like other articles of the Constitution of Georgia does not grant this right only to citizens of Georgia. To impose restriction on rights of people, who are not citizens of Georgia, cannot be justified with restriction of right of political activities of non-citizens, as being the responsible person for assembly or manifestation does not present political activity. Under article 27 of the Constitution of Georgia the state has right to restrict only political activities of foreigners. Assembly or manifestation may be cultural, educational, political, but organizing can be political activitity only in case when it is carried out by political parties and assembly has political contents. Organizing means to communicate with crowd and article 27 of the Constitution cannot serve as justification to consider organization as political activity per se.

51. Foreigners residing in Georgia and people without citizenship are deprived of possibility to express their opinion about an event, which can be of no interest for citizens of Georgia (willingness to express solidarity or protest). In view of this, the disputed norm shall be considered unconstitutional.

52. In view of the claimant, restrictions stated in article 9 of the Law of Georgia On Assemblies and Manifestations in respect with the place of manifestation, contradicts article 25 of the Constitution of Georgia, as this type of restriction constitutes disproportional means of restriction of constitutional right to assembly and manifestation.

53. On the hearing on merits of the case the representatives of the claimant, declared in respect with 20-meter radius restriction contained in the disputed norm, that majority of the listed establishments have no free space after 20 meters from their entrances, or that space overlaps with 20-meter radius from entrance of other administrative building. In these conditions, right becomes theoretical and is devoid of significance. To ensure the normal functioning of establishments, to comply with 20 meter radius rule will not be effective in all cases and the balance between normal functioning of establishments and effective enjoyment of rights shall be struck in view of the functions and location of specific establishments.

54. It was noted in respect with article 11, clause 3, sub-clause “b” of law of Georgia on Assemblies and Manifestations that article 25 of the Constitution does not provide for such restriction, as prohibition of obstruction of traffic is. Moreover, in respect with article 11^1 of the same law, the claimant declared that the provision contradicts with

article 25 of the Constitution, as it excludes possibility to block carriageway and pedestrian roads for the purpose of small-scale events, even when blockade of thoroughfare can be particularly important for assembly or manifestation. It is stated in the claim with respect to disputed norms of article 13, clause 1 of the Law of Georgia on Assemblies and Manifestations, that this manner of prohibition of manifestation is not the least restrictive means and therefore it cannot meet requirements of test of proportionality. At the same time, the claimant refers to opinion of the Venice Commission, according to which, unless massive violations of law take place in assembly or manifestation, assembly or manifestation shall not be immediately dissolved.

55. During consideration of the case on merits, the representatives of the claimant declared, that article 25 of the Constitution provides for requirement of prior notice, if assembly or manifestation takes place at the carriageway or pedestrian road and it does not link blockage of the road with number of assembly participants. In contrast to the Constitution, the disputed norm allow for blockage of carriageway and pedestrian road only in case of widescale events, though in practice events may be of lesser scale and its participants may deem it necessary to block the road to express the protest or to achieve a specific aim. Thus right to block the carriageway and pedestrian road shall not be contingent on number of participants only. At the same time, the claimants believe that the disputed norms does not state clearly, who will make the assessment of necessity of blockade of carriageway and pedestrian road and how. The claimant refers to case law of the European Court of Human Rights and asserts that possibility to block the road shall be available even in small scale events and the state has obligation to tolerate in this case. To control the abuse of the right, it will be necessary to determine the duration of blockade of the pedestrian road and carriageway, whether the message of participants was communicated to addressee, whether the goal is achieved, whether blockade of the road affects any other right except for freedom of movement and whether it is possible to continue the meeting at different place.

56. In respect with disputed words of article 13, clause 1 of the Law of Georgia "On Assemblies and Manifestations" the representatives of claimant state that restriction in the disputed norm does not comply with requirements of proportionality. The law requires that assembly or manifestation be immediately terminated, it does not provide for possibility, that the unlawful facts was eradicated and assembly was continued according to strictures of law. When the constitutional values are not endangered, immediate termination of assembly is unjustified. The representatives of claimant emphasized the fact, that under article 11^1, clause 4 of the Law of Georgia on Assemblies and Manifestations, when carriageway is blocked in disregard of the requirements of law representative of local government is authorized to apply the participants with the request to free road. Organizers of Assemblies and Manifestations are obliged to comply with this and to bring Assemblies and Manifestations within the bounds of law. In case of violation of article 11^1, article 13 stipulates immediate termination of Assemblies and Manifestations. Therefore relation between this two rules is ambiguous. The law does not provide precise answer when to terminate Assembly: immediately after violation of the law or once the responsible officials

address participants and violations will not be eradicated. In view of this , disputed norms contradict article 25 of the constitution of Georgia.

57. In respect with article 150, clause 2^1 of the Code of Georgia on administrative offenses the constitutional claim asserts that it violates article 24 and 25 of the Constitution of Georgia and also article 10 and article 11 of the European Convention on Protection of Human Rights and Fundamental Freedoms. Making of inscriptions, paintings and symbols orbitrarily on the facades of administrative buildings is prohibited which may serve certain legitimate aim. However making of inscriptions and paintings in these places is well-known form of expression and of spreading message. Thus there is no legitimate purpose that would meet requirements of proportionality.

58. At the hearing of consideration on merits representatives of the claimant explain that the territory adjacent to administrative buildings does not present property of a certain person; it is public good and everyone has the equal access to it. Accessibility inter alia implies various forms of expression. Under disputed norm it is prohibited to express one's opinion through this form in certain places which is not dangerous to the goals stated in the Constitution and shall not be prohibited. At the same time disputed norm does not define term adjacent territory. Ambiguous norm provides possibility of different interpretations and abuse of rights. Hence the norm conflicts with article 24 and 25 of the Constitution. This is depending on the fact whether making inscriptions and paintings in above mentioned territories is carried out in the context of assemblies and manifestations or it is individuals who express their opinions in scope of article 24 of the Constitution.

59.The constitutional claim states in respect with article 174^1, clause 3 of the Code of Administrative Offences of Georgia that it contradicts article 25 of the Constitution as named provision is vague and does not provide clear answers on the question whether any meeting at the place of residence of judge and 20 meters radius from it is prohibited or only those meetings which are directed against the judge.

60. At the hearing of merits of the case representatives of claimants stated that Constitution prohibits pressure on the judge though it shall not be interpreted in a way that would restrict rights of others to express their opinion. Holding assemblies or manifestation at the place of residence of judge shall not be qualified as the attempt to influence in itself. Under the Law of Georgia on Assemblies and Manifestations the goal of Assembly in addition to expression of protest can also be expression of solidarity. It is also possible that the protest has general nature and be devoid of specific goals.

61. Representatives of the claimant believe that the restriction in the disputed norm does not serve any legitimate aim stated in the Constitution and conflicts with the constitution.

62. The respondent explained that article 1, clause 2 of the Law of Georgia on Assemblies and Manifestations is consistent with the Constitution Article 25 of the Constitution implies in the term military arms that Unit of the Ministry of Finance which is armed and carries out coercive activities on the basis of law. In this case restriction is justified as participation of employees can question the issue of impartiality of public officials who shall protect public security and serve the society.

63. Article 24 of the constitution of Georgia states that freedom of expression can be restricted for the goals of state security and public safety. To restrict right of assembly of employees with special competence of the Investigative Unit of the Ministry of Finance, fully complies with the above mentioned restriction stipulated in the Constitution, as the named employees have extraordinary working day, they are authorized to apply coercive measures and they are carrying arms. In view of this it is important that they be at the disposal of state any time in order to assure public safety.

64. The representatives of the respondent explain in respect with article 3, subclause "c" of the Law of Georgia on Assemblies and Manifestations that right of assembly is the means of freedom of expression in collective form, it is not a right which can be enjoyed by an individual separately. In view of the fact that enjoyment of freedom of assembly automatically implies restriction of other public goods (free movement of traffic, restricted movement of pedestrians) for likelihood that assembly will take place and its persuasive force, it is necessary that there be an organized group of citizens. Assembly is citizen group activity (at least 2 or 3 people), which cannot be carried out by one person.

65. Moreover, Constitution enshrines right of assembly, not the right of organizing assembly, which means that state shall not establish conditions which will hinder effective implementation of right to assembly. It is noteworthy, that presence of organized group is required only in cases when assembly is planned to be held at carriageway or pedestrian road; it is not required in all cases. To organize such an event is responsibility, which implies issues related to security of participants as well as communication between organizers and representatives of local self-government. If it is impossible to contact one of the organizers, the disputed norm ensures the possibility to contact other organizers. Whether prior notice on meeting shall be made individually or collectively, this issue does not affect enjoyment of right and does not present disproportional restriction of right. Therefore, it cannot be reviewed in respect with article 25.

66. In view of the respondent, incitement for subversion of constitutional order or territorial integrity amounts to instigation of public to carry out these acts. The Law refers to massive character of inciting statements, which automatically implies that the danger is actual. At the same time, this act is not punishable under the criminal legislation, therefore legitimate aim of this restriction is to prevent crime.

67. During consideration on merits of the case, representatives of respondent declared, that it is complicated to delineate imminent and non-imminent dangers. Despite the fact, whether these statements are real or not, content of statements are starting point of emergence of danger and imposition of restriction aims to protect public safety. Therefore the disputed norm is in compliance with the Constitution of Georgia.

68. In respect with article 5, clause 2 of the Law of Georgia on Assemblies and Manifestations, the respondent stated, that goal of assembly or manifestation is to influence activities of government, which gives political character to assembly. Despite the fact of non-policital character of a specific assembly or manifestation, organization of assembly is always related to political activities, as it aims to channel the efforts of society in a way that would influence public and decision-making organs. Assembly is always dealing with unspecified group of people, which grants assembly political content.

69. It is also noteworthy, that article 47 of the Constitution grants foreigners equal rights with citizens of Georgia, except for exclusions set forth in the Constitution and laws of Georgia, whereas article 27 of the Constitution authorizes state to impose restriction on political activities of citizens of other countries and people without citizenship. The disputed norm provides restriction with respect to those assemblies and manifestations which is related to blockade of carriageways and pedestrian roads, which is related to resptriction of rights of citizens and has effect on enjoyment of those rights. People who have no citizenship are not deprived of right to participate in an assembly, but in view of the fact, that right to assembly can clash with constitutional rights of citizens, the legislator is empowered to decide, based on article 47 and 27 of the Constitution, that right to communicate with local self government bodies is privilege of citizens. Therefore the disputed norm does not contradict the constitution.

70. Respondent asserts, that the Law of Georgia on Assemblies and Manifestations, article 9, which contains restriction of 20-meters radius, constitutes unified acceptable standard, which serves to striking of rational balance between the effective realization of freedom of expression and normal functioning of relevant agencies. Without protection of the distance, it is possible to paralyze the establishment, which would endanger public order and protection of rights of citizens. 20-meter buffer zone does not present such a restriction which can have negative influence on enjoyment of constitutional rights or perception of message of assembly participants by the addressee. At the same time, in terms set by the disputed norm, the dangers of blockade of establishment is eliminated, as the later can lead to mass disorders.

71. The respondent notes, that after amendment of the disputed norm, the 20 meter buffer zone is calculated not from the buildings(as it was in the previous wording of the law), but from the entrances of the buildings, which makes it easier for the participants in manifestation to communicate their message to addressee. The valid wording of the disputed norm defines reasonable distance, which shall be complied with to pursue legitimate aims of public order and protection of rights of others.

72. At the hearing on merits of the case, in respect with article 11 of the Law of Georgia on Assemblies and Manifestations the representatives of respondent declared, that article 25, clause 2 of the Constitution sets forth requirement of prior notice of government, though it does not automatically imply the right to realize this right arbitrarily. In case, when place can be utilized, so that normal routine of social life and public order is not disrupted, artificial hindrances would expand the scope of rights without any justification. If there is insufficient number of participants, its resonance shall not be increased through violation of rights of others. The blockade of the road may take place only if there is no other way to enjoy constitutional rights.

73. In addition, the Respondent refers to Guidelines of the OSCE Office of Democratic Institutions and Human Rights on “Freedom of Peaceful Assemblies”, which states that any social event, including official events and public meetings, creates certain discomfort to people, who does not participate in it. When the discomfort is excessively disturbing, state interference in the right can be considered as proportional means. Therefore

the respondent believes, that restriction in the disputed norm serves legitimate aim and complies with the Constitution.

74. In respect with the Law of Georgia on Assemblies and Manifestations article 11 and 11^1, the representatives of respondent explained, that article 11, clause 3, sub-clause "b" regulates a general case, including the situation, when the organizers of event have no intention to block the road, while article 11^1, clause 1, 2, 3 deals directly with competence to block the road. The legislator applies restrictive and permissive regulations. In case of reiteration of the idea, legislator is authorized to give detailed regulation of specific relationships and clarify them to exclude the possibility of various interpretations.

75. Restrictions set forth in article 11^1 deals with artificial blockade of the carriageway, when attraction of attention is achieved through damage of public order, as well as blockade of the road without constructions. In this case too, to place construction at the venue of meeting presents an act which is not protected by the Constitution, article 25, as it is not aimed at freedom of expression, but to artificial paralysis of normal public life and it can also cause danger or health damage of participants of event as well as for other people. Analogously, to prohibit organized blockade of road through vehicles is justified by the fact, that full blockade of traffic is beyond the scope of accepbtable discomfort causd by any demonstration. It is noteoworthy, that law refers to term "blockade" and not "usage", which underscores that law prohibits artificial blockade of road. Hence, disputed norms are fully compliant with provision of the Constitution of Georgia.

76.The Respondent asserts, that article 13 of the law of Georgia on Assemblies and Manifestations, its construction confirms, that termination of event shall take place only if lawful demand of the representative of local selfgovernment is not complied and termination of event can take place within short time period ("immediately") after this procedure becomes applicable. Moreover, article 25, clause 3 explicitly states, that government can terminate assembly or manifestation if it becomes unlawful. Hence, it is discretion of state, to identify the procedures for termination of event. The norms of law establish quite reasonable measures and allegations that restrictions are disproportional are groundless.

77. To hold assembly or manifestation means to carry it out in compliance with law. Any violation, which endangers constitutional values, automatically grants the government right to prohibit unlawful events, under article 25, clause 3 of the Constitution. In view of the principle of foreseeability and certainty of law, it states absolutely clearly time of application of restriction in response to violation of law. Otherwise the state would have to accept multiple violations which is dangerous naturally from the perspective of protection of rights of others, as well as from the perspective of interests in public safety.

78. At the hearing on consideration of merits, the representatives of the respondent declared, that Code of Administrative Offences, article 125, clause 6^1 is in no way related to rights of assembly and manifestation. Movement of vehicles cannot be related to definition of meeting. Even in case, if the disputed norm restricts freedom of expression, article 24 of the Constitution sets forth restriction for the purpose of protection of public safety (including traffic safety). Full blockage of the carriageway creates real danger of damage

of legal order, because special services (police, fire brigades, emergencies) encounter important impediments to act operatively. Moreover, this movement violates rights of third person (for example, vehicles moving in opposite direction). It cannot overrun other cars, which creates additional risk of traffic accidents. Therefore the restriction is legitimate and fully proportional.

79. In view of the respondent, goal of the assembly shall not be to damage, no matter it deals with public or private property. The goal of assembly shall be to express the attitudes of participants and to communicate specific message to government, which is feasible without damage of property and additional waste of resources.

80. The respondent underscores that claimants challenge only second clause (2^1) of article 150 of the Administrative offences Code of Georgia, whereas clause 1 of this article is practically identical. The only difference, is that in the latter case, the norm aims to protect facades and road of administrative buildings from impingement. The respondent asserts, that goods of public use, shall be protected equally to private property, as their damage presents violation of public order. AT the same time freedom of expression does not change its nature and scope whether is results in damage or public or private property. Restriction of freedom of expression is based on legitimate grounds in both cases.

81. At the hearing on merits of the case, the respondents representatives declared in respect with article 174^1 of the Code of Administrative offences, that holding a meeting at the place of residence of judge constitutes pressure on the judge in respet with a specific case, that is implemented through influence on his/her family members. Therefore the legitimate aim of this norm is interest of administration of justice and guarantee of independence of judiciary. Independence of judicial activities is the main principle of rule of law state and to influence him by the group of people, who are not satisfied with the judgement, does not meet requirements of administration of justice. Judge is not a political official, he has no right to deny adjudication of a specific case and not to participate in it. He or she is obliged to take decision and in contrast to politicians, he cannot be object of obligation to tolerate when the meeting is held at his resindece to influence him. Freedom of expression does not guarantee opportunity to influence the judicial decision-making through freedom of assembly.

82. The respondent believes that identification of residence is no problem in practice, as the place of residence of judge shall be interpreted to mean a place, where holding of meeting is possible and from where influence will be rationally perceivable by a judge and his/her family members. Therefore the restriction in disputed norms is proportional and serves legitimate constitutional aims.

II

The issue of compliance of disputed norms with articles 19, 24 and 25 of the Constitution

1. The present constitutional dispute raised the issue of compliance of legislative norms regulating organization and holding of assembly or manifestation with article 24 and 25 of the Constitution of Georgia. At the same time, part of claimants raised the issue of constitutionality of norms banning incitement to subversion of constitutional order or territorial integrity in respect with article 19 of the Constitution.

2. Therefore, the Constitutional Court has to interpret scope and substance of article 19, 24 and 25 to adjudicate the present dispute. First, the Constitutional Court shall ascertain relationship between the scopes of these constitutional articles, in order to review and decide the issue of constitutionality of disputed norm with respect to relevant constitutional norm. At the same time, it shall be noted, that Constitutional Court does not face necessity for comprehensive interpretation of abovementioned constitutional norms. The substance of each of them will be analyzed as far as it is necessary, to review constitutionality of specific legal norms.

3. Artcle 24 of the Constitution of Georgia enshrines different aspects of freedom of expression. This article, clause one sets forth right to dissemination of opinions and information "orally, in writing or by any other means"; it contains guarantees for freedom of expression, dissemination of opinions. This article protects opinions and believes of person, information and means which are employed for their expression and dissemination, including, press, television and other means for dissemination of information and opinions. Right to assembely (manifestation) is linked to the scope of article 24 of the Constitution, as it constitutes one of the means to disseminate opinions. The gathering of people (or their demonstration), which is devoid of ideas, does not serve dissemination or exchange of ideas and information and has no connection with right to assembly and manifestation enshirined in the Constitution. What makes assembly or manifestation into constitutional right is its goal and substsance, which determines logical and substantive link between article 24 and article 25 of the Constitution. From this perspective, article 25 of the Constitution protects opportunity of collective expression of ideas and thereby continues article 24 in that sense. Thus, legislative norm, which regulates expression of opinions through holding meeting or manifestation, or deals with place, substance or form of assembly or manifestation, can have equal relation with article 24 and article 25 of the Constitution.

4. Right to assembly and manifestation, as special form of expression, has two equally important aspects indispensable of right: assembly and manifestation , as form of expression of opinion (formal aspect of right) and specific opinion, which is promoted by assembly or manifestation. It is instrumental right, which gives a person enjoying the right opportunity to express his feelings and opinions (political, social, artistic, religious, etc). Assembly and manifestation can be indispensable element of political activities, can serve expression of ideals, reception and dissemination of information, etc. It is this substance that makes the right enshrined in article 25 of the Constitution instrumental and in this case grounds of restriction of right to meeting and manifestation can be identical with grounds of restriction of that right, which it serves to carry out.

5. It shall be noted, that article 25 does not contain list of legitimate aims for restriction of freedom of assembly, in contrast to article 24, which gives the list of aims to review legitimacy of interference in freedom of expression. However, as article 24 of the Constitution comprises those expressions of opinions which take form of assembly or manifestation, in this part substance and ground of restriction of rights enshrined in article 24 and 25 can be identical. Therefore, the issue of compliance of norms regulating

assemblies and manifestation with the Constitution can be evaluated employing the standards set forth in article 24 of the Constitution.

6. At the same time, right of assembly (manifestation) in article 25 of the Constitution has autonomous content too. Restriction of right to assembly will not in all cases amount to restriction of freedom of expression or information. Therefore, despite the close link between the articles, to consider them as identical will not be appropriate in all cases. In order to evaluate relation of disputed norm to this constitutional article, it is necessary to review the substance of regulation and to ascertain the aspect of right, which is restricted under that norm.

7. Article 25 of the Constitution provides special protection for assembly and public expression of opinions. The Constitution describes this right as right to public gathering, without arms, sets forth one of its aspect – right to gather without prior permission. The Constitution underscores assembly as special means of expression of opinions in article 25. In this sense, article 25 is comparable to article 24, clause 2, which provides protection of one means for dissemination of ideas and information, protected in clause 1 of the same article – freedom of Media.

8. Thus, articles challenged by the claims, which determine group of people entitled to participate, organize, hold assemblies or manifestations, determine place of assemblies and manifestations (Law of Georgia on Assemblies and Manifestations, article 9, words in clause 1: "and on the territory within 20 meter radius from their entrances", words in article 125, 6^1 of the Code of Georgia on Administrative Offences: "Organized blockade or road by means of vehicles or participation in the group rally that fully blocks carriageway in a city or any other populated area"), are related to opinions and information expressed in the process of organization or holding of assembly or manifestation (Law of Georgia on Assemblies and Manifestations, article 2, clause 2, words "Incitement for subversion or violent change of constitutional order" and will be reviewod in respect with article 24 and article 25.

9. The Constitutional Court takes different position with respect to article 19 of the Constitution. Article 19 of the Constitution protects fundamental human right – freedom of speech, opinion, belief and conscience. Despite certain similarity between article 19 and article 24 of the Constitution – in both article there is freedom of opinion, and article 19 also enshrines right to freedom of speech, there is critical difference between these two articles. Article 19 of the Constitution, if read with other constitutional articles, through systemic analysis provides possibility to define scope of this article. At the same time, "In determination of any constitutional right, it is essential to identify forms and extent of interference in the right (Constitutional Court of Georgia, Ruling no. 1/7/454, December 19, 2008)". It is noteworthy from this perspective, that article 46 of the Constitution does not provide for possibility of restrict rights enshrined in article 19 in case of war or other emergencies. It is clear, that article 19 occupies special place in the system of rights. Constitution allocates it among those category of rights, which cannot be restricted to achieve the goals of state security, safety and other important goals. At the sme time, the only ground of restriction of article 19 is necessity to protect rights of others.

10. The above analysis makes it clear, that article 19 of the Constitution protects personal sphere of human being, his or her freedom to have, share and neglect opinions, religion and belief. The goal of Constitution is to structure freedom of opinion, speech, conscience, religion and belivef, as forum internum, internal realm of human, guarantee of inviolability of his personal sphere. This is right (aspect of right), which cannot be restricted for sake of public interests, including in times of war and emergencies. No one is able and entitled to compel human being to accept or change his own opinion or belief. Human being is also protected from compulsion to say something they don't want to say or express their opinion. This right cannot be subjected to regulation, as it provides ground for liberty, identity and autonomy of human being.

11. According to the Constitution, the only ground for interference in the personal sphere protected in article 19 is the legitimate goal to protect rights of others. The internal realm of human being (forum internum), his personal sphere are protected from state interference, but act which causes violation of rights of others within that sphere of personal realm can be restricted. Thus, in the sphere of private relationships, in the family, expression of opinions and belivefs cannot be regulated, as there is no public interest which would justify interference in relationships between individuals, family members. There is only exception to this rule – when expression of opinion or belief infringes on rights of participants of these relationships.

12. It shall be noted, that state or society's interest towards human belief or opinion can emerge when they are take form of specific act (failure to act), or social activity. Speech or idea leaves the personal realm and can be restricted when it comes out in real world and conflicts with rights of people beyond the personal sphere or interests of public. Such an expression is beyond the scope of internal realm and falls out of the scope of article 19. To restrict this expression is allowed according to the terms set forth in article 24 or other articles of the Constitution.

13. Georgia, which is independent state after demolition of totalitarian system of Soviet Union, considered it expedient to entrench in the Constitution peculiar guarantees for protection of internal sphere of human being and his personal realm. The Soviet State did not recognize the boundary between the internal realm and public realm and used to interfere in the private sphere easily, did not recognize not only freedom to manifest beliefes and opinions, but also free choice of them. In view of the totalitarian past, the Constitution of Georgia enshrined special guarantees of human autonomy and freedom, where state has no right of interference or its power to interfere is strictly limited. These articles of the Constitution provides defensive liberty of person, which bans state interference in this sphere, which a person constructs on his own.

14. In view of the above mentioned, the Constitutional Court of Georgia finds, that article 19 of the Constitution had no connection with the disputed norm - article 4, clause 2 of the Law of Georgia on Assemblies and Manifestations challenged by the claimants, (Incitement for subversion or violent change of Constitutional Order). The issue of constitutionality of this norm will be reviewed by the Court with respect to article 24 and article 25 of the Constitution.

Occupation of the Road by the Participants of Assembly or Manifestation; Blockade of the road through temporary constructions, vehicles and other objects.

15. One part of disputed norms challenged by the claimants is derogatory and imposes restriction on artificial occupation and blockade of the carriageway. Namely, under article 11, clause 3, subclause "b" of the Law of Georgia on Assemblies and Manifestations, it is prohibited to create intentional obstructions for traffic, whereas article 11^1, clause 3 prohibits artificial blockage of the carriageway, as well as occupation of thoroughfare with cars, other constructions and objects.

16. One part of claimants, think, that the Constitution of Georgia ensures and protects right of person or group of people to hold assembly or manifestation at any part of the street according to their judgment, despite the fact whether such an act causes disturbance of movement of vehicles and people. Therefore the restriction in the impugned norm, as well as the exception to that restriction does not comply with the Constitution.

17. The claimants believe, that right to block carriageway for purposes of assembly or manifestation is protected under article 25 of the Constitution. This right provides entitlement to choose the form of expression to publicly and peacefully express one's opinions in that part of the street, which he or she thinks appropriate. Moreover, right to block the road, as the radical form of expression, shall be guaranteed under the Constitution, when the hindrance of vehicles is goal in itself or when occupation of the carriageway of the street is chosen by the participants in the meeting or manifestation as form or means of expression to attract attention, if it is viewed as effective means to attract attention, express opinion, protest or solidarity.

18. Moreover, the claimants believe, that constructions to block the carriageway is also covered by their constitutional right. This right shall be available, when construction is aimed at obstruction of traffic.

19. The claimants think, that in view of abovementioned, the government is obliged, to ensure possibility for enjoyment of this right within reasonable period. In their opinion, to restrict human beings (or group of people) in blocking the carriageways to the cases, when this is necessity due to number of participants, as well as prohibition of temporary constructions presents violation of article 25 of the Constitution.

20. The second part of claimants do not challenge these exceptional norms. They think it is acceptable, that disputed norms prohibit blocking the carriageways with cars and other constructions, though they think that article 11^1, clause 3 is vague and it also bans those constructions which are considered necessary for organization or holding of assemblies or manifestations. Moreover, claimants think, that disputed norm, which imposes restriction of constructions, is applicable even when, the thoroughfare is occupied in according with law, due to the high number of participants of assembly or manifestation. In that case, it is not clear what is aim served by the prohibition of constructions, when the carriageway is blocked without them.

20. The claimants also expressed idea, that blockade of streets through vehicles can serve security of participants of assembly or manifestation and therefore claimants, as organizers, shall be able to locate the vehicles on carriageway for duration of assembly, participants of which occupy the street.

21. The respondent asserted, that artificial blockage of the street, prohibition serves simultaneously protection of public order and rights of others, including freedom of movement.

22. The Respondent believes that Constitution of Georgia does not provide unconditional entitlement to block the street. In case if the freedom of expression conflicts with other rights enshrined in the Constitution, the state is authorized to set such reasonable limits, that would create possibility of realization of both rights.

23. For the present dispute, that Court shall identify essence of restriction and evaluat whether it serves legitimate aim.

24. Freedom of expression is fundamental and functional element of democratic society. It is necessary premise of development of society, and to ensure human rights. As one form of expression, freedom of assembly and manifestation facilitates free and democratic society, achievement of interest and aspirations of each member of society. Possibility of meeting to discuss the issues of public interest is indispensable element of democratic governance. Equal and complete opportunity to enjoy this right defines the degree of openness and democracy in society. This right, as well as other forms of freedom of expression can be restricted for legitimate aims, for protection of constitutional rights and principles. Right to assembly and manifestation is not absolute.

25. Assembly or Manifestation is part of healthy political and social process, one of its characteristics. There is consensus in democratic society in respect with the freedom of expression and its importance for democratic society, though manifestations of this right can often conflict with other rights or interests of society, such as public order and safety, etc. In enjoyment of legitimate right of protest, rights of organizers and participants naturally contradicts rights of others, including right to freedom of movement or occupational activity, which can be restricted because of obstruction of traffic. If this conflict is present, state is authorized and obliged to interfere, though the interference shall be rational and proportional to the aim. Moreover, to strike the balance between rights, the legislator shall be guided by the clear criteria.

26. As it was noted, article 25 of the Constitution does not contain the list of aim, in pursuance of which, restriction of constitutional rights is justified. There are not present grounds of restriction of right, which is stated in article 24 (an some other articles), such as, protection of rights of others, social order and safety, etc. Article 25, clause 2 of the Constittuion sets forth requirement of prior notice of government, if assembly or manifestation is held at thoroughfare. Article 25, clause 3 grants power to government to interfere in realization of right to assembly or manifestation if it takes unlawful character. This article does not clarify, what requirements shall law meet, which will be used for restriction of this right, how much discretion is granted to government in the process of setting legislative norms for regulation of right to assembly and manifestation.

27. The legislator shall be guided by the legitimate aims stated in the Constitution in the process of adoption of norms, which restrict constitutional rights. As it was noted, grounds for restriction of right to assembly and manifestation can be identical to restriction of those constitutional rights, realization of which is related to gathering. For example, prohibition of statements of certain content in assembly or manifestation, as substantive

restriction, shall be proportional to legitimate aims enshrined in article 24 of the Constittuion. It is also noteworthy, that when content-sensitive restrictions are established, discretionary power of state is significantly lower.

28. The government has wider discretion, when it acts within the bounds of formal grounds of restriction or regulation of rights. In setting the restrictions of formal character, it is important that regulatory norms are not manifestly unreasonable, hard to comply with and do not deprive the significance of realization of constitutional right. At the same time, it is permissible to establish content-neutral regulatory norms to pursue the legitimate aims enshrined in the Constitution.

29. We can draw parallel with article 24 and article 26 of the Constittuion. The Government acts within its powers, when it adopts norms regulating media, political and social unions for their registration and functioning. Among various regulations, government is empowerd to choose that type, that it considers to be best means to achieve legitimate aim. However,when government restricts or prohibits information or union with specific purpose or specific content, its acts will be subjected to strict scrutiny.

30. It is noteworthy, that the Constitution of Georgia does not protect possibility to occupy and block the streets, per se. Such an action will be related to the constitutional right only if it is related to content or form of expression of opinions. Intensity of state interference in article 25 of the Constitution and seriousness of restrictions depends on the form and aim of the act. Word or act, which has not political, social, artistic or other value falls beyond the scope of Constitution, when it conflicts with public order, security and rights and freedoms of others.

31. The Court agrees with the respondent, that the disputed norm serves to protection of rights and freedoms of others, and to public order and security, which is stated in article 24 of the Constitution. In view of this the Court shall evaluate, whether the restriction chosen by legislator is proportional to legitimate aim, whether the disputed norms strikes rational balance between right to assembly and public order or protection of rights and freedoms of others. The regulation chosen by the legislator is rational, when its action aims at coexistence of conflicting rights and ensuring possibility for their realization, for achieving balance between rights. At the same time, when it is impossible to avoid conflict and to solve collision, restriction of constitutional rights by the state becomes inevitable. In that case least restrictive means shall be used.

32. Assembly or manifestation, hed at the pedestrian road or carriageway, disrups the normal rhytm of traffic, conflicts not only with the disputed norms, but also with legislation, regulating traffic rules. Had the legislator not accepted the Law on Assemblies and Manifestations at all, including the disputed norms, expression of opinion on the carriageway would amount to violation of traffic rules. It is also clear that it is discretion of state to establish norms regulating traffic movement and practically any such rule can conflict with rights to assembly and manifestation. At the same time, legislation grants lawenforcement organs special competences in case of violation of traffic rules (independently from disputed norms) (under the Law of Goergia on Police, article 8, “u” and article 9, clause 1, subclause “g”, Law of Georgia on Security of Traffic Movement, article 44 and article 45 to ensure traffic security.

33. Therefore, in case of emergence of conflict between the freedom of movement and right to express protest at carriageway by specific person including participants of assembly and manifestation, the government (police) in empowered to resolve the collision between rights. These norms determine, when a person or group of people have right to occupy carriageway. One of the main goals of article 11 and article 11^1 of the Law of Georgia on Assembly and Manifestation is attempt to set clear and foreseeable criteria to resolve that conflict. Therefore, the Court shall evaluate whether the restrictions set forth by the legislator are proportional to their aim.

34. The Court shares the position of claimant, that right to assembly and manifestation encompasses right of choice of place, time, forms and substance of assembly. However realization of this right can conflict with freedom of movement of others, as well as occupation freedom and enjoyment of property by those people who are hindered by the meeting. The goal of arbitrary blockade of the road and sharp expression of opinion by the participants of manifestation is to attract the attention of society. In this case, restriction of rights of movement of others, is an instrument to achieve maximal effect of assembly. In expressing the opinion, intentional and purposeful blockade of street by participants and organizers of assembly transforms into means interests of those people, who do not participate in assembly. Therefore to guarantee right of blockade of the street any time and at any place would cause frequent restriction of rights of others without justification. It is not correct to state, that article 25 of the Constitution grants right to participants of assembly or manifestation to purposefully restrict rights of others. When restriction of rights of others is the goal of assembly or manifestation, the government is authorized to interfere in the process of assembly or manifestation for protection of rational balance between rights.

35. It is also noteworthy, that restriction of freedom of movement of third person can be byproduct of the realization of right of assembly or its side effect. Article 11^1, clauses 1 and 2 of the Law of Georgia on Assemblies and Manifestations aim to regulate precisely this “by-product” and to resolve the conflict emerged after the realization of different rights. However, margin of appreciation for government in resolution of conflicts is not limitless.

36. In assessment of proportionality between legitimate aim and means employed for its achievement it is important to note that disputed norm also limit discretion of government. In case when carriageway is blocked as a result of participants number, the government is bound by article 11^1 not to interfere and not to restore traffic during assembly or manifestation, as this norm grants right to participants in assembly to block the street. The disputed norm prohibits arbitrary blockade of the street, inter alia, with constructions, vehicles and other objects. This prohibition stated in law is also content-neutral, they apply in all cases, when small group of people arbitrarily blocks carriageway or pedestrian way (despite what is their purpose and which group is acting). Right to assembly and manifestation is restricted as much as it is necessary to protect rights of others.

37. It is true, that participants of assembly or manifestation define themselves the form, which is best to express the aim of assembly, but as participants are directly affecting

interests of other members of public and can have significant influence in this regard, necessity of legislative regulation of organizational and procedural issues of enjoyment of this right emerges. Legislation shall, on one hand, protect rational balance between this right and interests of public and rights of other people, if they clash. At the same time, as the intensity of interference of right of assembly in other rights increases, so does the power of state to interfere too.

38. When the collision between rights is inevitable – in case, if number of participants in assemblies and manifestations makes it impossible for others to move, according to the disputed norm, priority shall be granted to the right of assembly protected by article 25 of the Constittuion, as otherwise, freedom of assembly and manifestation would not be available for numerous participants of assembly and manifestation and for protection of rights of others they will have to give up realization of their right of assembly. Therefore right to assembly and manifestation shall be granted priority if its realization without restriction of rights of others is impossible and when blockade of carriageway is objectively necessary. In this case, the goal of prohibition stated in the Law is to ensure safety and security, to strike balance between freedom of expression and freedom of movement, to protect rights of those, who are reluctantly involved in the process against their will and whose legal interests are restricted due to assembly or manifestation.

39. The constitutional Court of Georgia reiterates that when manifestation can be held without violation of rights of others and without infringement on pubcli order at the place, where addressee of protest or solidarity of manifestation is present, government is empowered to restrict right to assembly or manifestation, when it is realized through blockade of the carriageway or street, which in its turn violates rights of others or conflicts with public order and security.

40. At the same time, we shall not that article 11^1 of the Law of Georgia on Assembly and Manifestation does not provide ground for immediate termination of assembly or manifestation. It states limits of discretion of government, and gives criteria to assess when the relevant state body is authorized to interfere in the meeting. According to the law, relevant body is responsible to ensure bringing the assembly or manifestation within the bounds of law and according to the same law, it is responsible to ensure safe and organized progress of meeting. The court states, that disputed norms set forth restriction which serves legitimate purposes of protection of rights of others, public order and safety. At the same time principle of proportionality is met, as violation of legal rules does not automatically cause termination of meeting, but it provides opportunity to continue in compliance with law.

41. At the court hearing, the claimant also stated that possibility to block the street with constructions and vehicles is determined by the aspiration that participants protect themselves against attackes. It is clear that locating temporary constructions on the road with this aim, cannot be considered as constitutionally protected action. Public safety shall be ensured by the bodies created for this purpose.

42. It shall be noted that the higher is the number of participants in manifestation, higher is ther risk of commission of offences. Existence of such danger can be enough in

itself to run to special measures. Due to this, when the road is occupied due to the number of participants of manifestation, it is justified to prohibit blocking of road with vehicles or other objects, as it is crucial to address the violations of law or to provide timely medical help, which could be hindered otherwise.

43. As for right to erect constructions, which does not bar the road, but is necessary for organization and holding of meeting, the Court shares respondent' s argument, that the disputed norm is not related to prohibition of this type of construction. The plausible reading of disputed norm, which is agreed by the claimants, makes it clear that the norm deals with artificial barring of the street and its blockade.

44. It is necessary to answer the question of claimants related to foreseeability of disputed norm. The disputed norm contains the phrase "could not be held otherwise", which deals with the situation when the number of participants is so high, that they cannot fit on the pedestrian part of the street. Claimants assert, that this definition is problematic, as fas as it causes the following hardships: a. who and how can define, how many people can fit at certain place in the pedestrian part of the street: b. how can participants of assembly locate at the pavement in the way that assembly or manifestation is not deprived of its sense and on the other hand the legitimate purpose of this restriction be served.

45. According to the Law on Assembly and Manifestation officials with relevant power will assess case by case compliance of assembly or manifestation with requirements of law. Application of this discretionary power shall always be reasoned and based on clear objective criteria. Evaluation of sufficient amount of participants shall be guided by obvious and clear criteria for guidance. The representative of government is authorized to interfere in the process of meeting, when it is clear, that number of participants of assembly or manifestation is obviously not enough to hold the meeting at the place chosen by the participants (in proximity of addressees of solidarity or protest) through full or partial blockade of street. At the same time, remedy against abuse of discretionary power or its unreasonable use is to apply to the court. In each case, discretionary decision of the local self government can be challenged in the court, where the competent official will carry the burden of proof on legality and necessity of restriction. Therefore, institute of discretion cannot be considered as inconsistent with the Constitutions, when its material substance does not cause violation of constitutional rights. The same discretion would be granted to official who would have to define reasonable time that would be allocated to citizens for occupation of roads. To employ concept of "reasonable time" as criteria for restriction participants' rights to assembly or manifestation can be as suspect from the perspective of constitutionality, as "number of participants".

Grounds for Termination of Assembly or Manifestation

46. The claimants challenge words in article 13 of the Law of Georgia "On Assemblies and Manifestations", "also in case of violation of requirements of article 11^1" and "immediately". These norms stipulate that assembly or manifestation shall be terminated immediately, after the relevant official makes demand thereof, if the meeting takes unlawful form. Therefore, disputed notm states that assembly or manifestation can be terminated: 1.

when entire article 11^1 of the Law of Georgia "On Assemblies and Manifestations" is violated; 2. when, any requirement of article 11 (any of its clauses) is violated.

47. Naturally, the government acts within powers granted by the Constitution and law when it demands to bring the assembly in compliance with law from participants of assembly (article11^1, clause 4). At the same time, in case of non-compliance with the lawful requirements of the competent official, in view of the gravity of violations and danger, created by the unlawful assembly for public order, the government is authorized to restrict realization of right of assembly and restore traffic or demand immediate termination of meeting. Therefore, when participants of assembly violate article 11^1 of the Law of Georgia on Assemblies and Manifestations or mass violations of law (incitement to subversion or violent change of constitutional order) are committed, interference of government in realization of right presents proportional means to pursue rational and legitimate aim.

48. However, act of government will not be proportional on the other hand, if it requires immediate termination of assembly or manifestation as soon as the violations of article 11^1, clause 1, 2 or 3 happens. Occupation of the road by participants of assembly or manifestation or blockade of carriageway in disregard of law, shall be ground for requirement to bring assembly in compliance with the law, instead of its immediate termination. In case of conflict between public order, rights (including freedom of movement) of others and right to assembly and manifestation, the latter shall be granted priority until this will be exploited to the extent of abuse of the right.

49. Discretion of government is limited with necessity of protection of rights of others, restoration of public order and security. Government is authorized to interfere in realization of right of assembly or manifestation, when the less restrictive measure for resolution of conflict of rights is not available or, when it will not work, or it is obvious, that alternative will not be effective. The disputed norm provides for possibility of termination of assembly, where violations of law take place, without notice and without first giving possibility to continue the meeting in compliance with law. The Constitutional Court finds that in given case, the means chosen by the legislator is disproportional to the legitimate aim.

50. In view of the abovementioned, the Constitutional Court of Georgia holds: 1. Words of article 13, clause 1, "also in case of violation of requirements of article 11^1" does not comply with requirements of article 25 of the Constitution. As violation of article 11^1 was one of the grounds of immediate termination of assembly, to uphold the claim in this part will solve the constitutional dispute. As a result of partial satisfaction of claims, the word "immediately" has become linked to cases of mass violatations stated only in article 4 and article 11 of the Law of Georgia on Assemblies and Manifestations, which was not challenged by the claimants. 2. Therefore, the disputed parts of the Law of Georgia on Assemblies and Manifestations – article 11^1, clause 2, 3, and 5, article 13, clause 1, word "immediately" are consistent with article 24 and 25 of the Constitution of Georgia.

Prohibition of Assemblies and Manifestations in 20 Meters Radius from Entrances of Establishments, Administrative Organs

51. The claimants challenge article 9, clause 1, words "…and within 20 meters radius from their entrances" in the Law of Georgia on Assemblies and Manifestations and

words in the Code of Georgia on Administrative Offences, article 174[1], clause 3, "…or within the territory of 20 meters radius". According to the Law of Georgia on Assemblies and Manifestations restriction of holding assembly or manifestation covers territory in 20 meters radius from entrances of administrative organs, organizations and establishments named in the same article. At the same time, the legislator qualifies as administrative offence holding of meeting within the territory of 20 meters radius from the building of common courts.

52. The claimants believe, that in case of majority of establishments listed in article 9, clause 1 of the Law of Georgia on Assemblies and Manifestations, restriction of 20 meters radius from entrances of buildings does not leave any freely available space for assembly, it overlaps with territory of 20 meters radius of another establishment. Under these conditions, right becomes illusory and meaningless. To ensure the normal functioning of establishments, it is not always effective to impose the rule of 20 meters radius and balance between functioning of specific establishments and realization of right shall be struck in view of the functions and locations of a specific establishment. Hence, the claimants think, that the disputed norm does not comply with requirements of proportionality and constitute disproportional means of interference in the scope of right.

53. The respondent explained, that goal of the disputed norm is to ensure effective functioning of establishments enlisted in the norm. To hold the meeting on the territory within 20 meters radius from their entrances creates danger of their blockade. In view of the fact, that it is prohibited to hold meeting not at the buildings, but in 20 meters radius from their entrances and even under such restriction free expression of opinion is available the respondent believes that restriction in the disputed norm is proportional and consistent with the Constitution.

54. It is noteworthy, that norms similar to the disputed norms have already been subject to review of constitutionality in the Constitutional Court of Georgia. Issue of constitutionality of the norms regulating holding of assemblies and manifestations in proximity of administrative organs was decided by the Constitutional Court of Georgia by the Judgement of 5 November, 2002, no.2/2/1880-183 in the case of "Georgian Young Lawyers' Association and Zaal Tkeshelashvili, Nino Tkeshelashvili, Maia Sharikadze, nino Basishvili, Vera Basishvili and Lela Gurashvili v. The Parliament of Georgia." The Constitutional Court of Georgia ruled that prohibition of meetings within territory of 20 meters radius from buildings of certain establishments was constitutional. The Court decided that the disputed norm enlisted precisely those places, where assembly or manifestation would obstruct "normal functioning according to the functions of these establishments", which in their turn would damage public order and safety.

55. As it was already noted, article 25 of the Constitution enshrines right of assembly, which implies right to choose specific place for assembly. To restrict this right there shall be legitimate aim and proportional means to pursue it, in order interference to be justified. There is no doubt that normal functioning of public establishments constitutes the public interest. The Law of Georgia on Assemblies and Manifestations, the present wording enlists the establishments, which carry out important state or public functions.

To ensure effective functioning on their part is of vital importance for state and society and therefore they present legitimate aims for constitutional restriction.

56. At the same time, it is noteworthy that within the present dispute and in view of the claims, it is not for the Constitutional Court to evaluate constitutionality of territorial restriction in respect with each establishment in article 9. This sort of restriction can be constitutional in respect with some establishments in view of specificity of its competences and activities, and unconstitutional in respect with others. Constitutionality of territorial restriction to hold assembly, shall be ascertained on the basis of evaluation of specific situation and location of an establishment, its functions and dangers of holding assembly or manifestation in its proximity. In the present case, the subject of dispute is blanket character of prohibition, as despite the diversity of establishments enlisted in law, the legislator enacted unified attitude and imposed identical restriction in respect of all of them.

57. The court cannot share the position of respondent, that purpose of disputed norm is to avoid blockade of establishments and their paralysis. Blockade of buildings is subject of regulation in article 9, clause 2 of the Law of Georgia on Assemblies and Manifestations, whereas the disputed norm sets forth general prohibition of assemblies and meetings within the territory of 20 meters radius from entrances of buildings without reference to any specific conditions. The restriction in the disputed norm applies even in the case, when assembly or manifestation creates no danger for normal functioning of administrative organs or public establishments.

58. The Court shares the position of claimants, that under the conditions of the disputed norms, in view of the landscape of cities and populated areas and location of administrative organs and establishments, to realize right to assembly or manifestation will be practically impossible in certain cases. The establishments can be placed so close to each other, that territories of 20 meters radius from their entrances can overlap. The law also prohibits to occupy the carriageway, except for those cases, when it is required by the number of participants in assembly or manifestation. All this reduces the public space available for right of assembly and in certain cases fully eliminates possibility of holding the assembly or manifestation. In view of the abovementioned, the disputed norm restricts right of individual more than it is necessary to pursue the legitimate aim.

59. The abovementioned does not exclude the competence of legislator to ensure the normal functioning of establishment in view of its functions, specificity and location and to determine the appropriate place for holding an assembly or manifestation, without disregard of essence of constitutional right. The legislator is also empowered to set limitations of freedom of expression, assembly and manifestation and their realization at those buildings and territory, which require special measures of protection and security. Under exceptional circumstances, the limitation can be justified even if restriction makes it practically impossible to hold meeting or manifestation at specific places: “The competent state body is empowered to link the meeting to compliance with certain conditions, if due to obvious reasons, there is direct danger for public security or order in the process of meeting or manifestation…”(The Constittuional Court of Georgia, Judgement no. 2/2/180-

183 of 5 November, 2002). The discretion of government is particularly broad, when interference in right is the only means to ensure legitimate purpose of public safety. To pursue the aim, it can be justified to impose blanket restriction on assemblies in proximity of some establishments. For example, to prohibit holding of assembly or manifestation within territory of certain radius from buildings of police, military units, penitentiaries and pre-trial detention places can be justified despite the fact, whether it will be practically impossible to hold assembly or manifestation at the addressee of protest.

60. The separate subject of constitutional review is the norm of the Code of Georgia on Administrative Offences, article 174^1, clause 3, the disputed norms of which prohibit to hold assembly or manifestation in 20 meters radius from building of common courts. This prohibition is stricter than the one entrenched in the Law of Georgia on Assemblies and Manifestations. The Court does not share the argument of respondent, that to ensure the unimpeded work by courts and to protect it from pressure are related to legitimate aims of independence and imparliaty of court. However in a given case, the limitation in the disputed norm presents disproportional and severe means for achieving the goal. For example, holding of silent or smallscale meeting in proximity of court building can be harmless and will not present any danger to normal functioning of establishment. Right to hold meeting and to express one's opinions in the proximity of court shall be guaranteed, with exception of the case, when realization of this right disrupts normal functioning of court. To restrict the right can also be justified by the requirements of safety at the litigation ongoing in the court.

61. It is impossible to foresee beforehand, what shall be the distance that would achieve the legitimate purpose. At various time, in view of the nature of assembly or association, number of its participants and other factors, this distance can differ. Assembly or manifestation may be restricted if it substantially hinders the judicial litigation, obstructs function of court (or other establishment) despite the fact whether it is held within or without 20 meters radius. At the same time, territorial restriction is not justified, if realization of right is excluded in case, when assembly or manifestation poses no threat of disruption of public order or violation of rights of others. Therefore blanket restriction in the disputed norms is inconsistent with article 24 and 25 of the Constitution.

Prohibition of Assembly and Manifestation at the Place of Residence of Judge

62**.** The claimants also dispute article 174^1, clause 3 of Code of Georgia of Administrative Offences, which contains the words "at place of residence of judge". The disputed norm makes it administrative offence to hold assembly or manifestation at the place of residence of judge. The Claimants believe, that they are entitled to express their opinion through assemblies and manifestation and they shall be entitled to this even, at place where judge resides, when opinions to be expressed are related to professional activities of judge and his or her decisions. The Claimants also expressed opinion in the Court, that article 174^1, clause may even restrict holding assembly or manifestation not only at the residence of judge but also within 20 meters radius from it. At the same time, the restriction is of blanket nature. It covers every type and any form of holding assembly or manifestation. Moreover, the claimants think, that the term "residence" is vague and does

not comply with requirements of certainty of law, as it is not clear what the territory that it covers is. It is also vague, whether the disputed norm prohibits assembly at the place of residence of judge and within 20 meters of radius from it in case of meetings which address the judge or not. All this together imposes excessive burden on realization of right to assembly and manifestation, which is not justified. It is true, that independence of court shall be ensured and this can be considered as legitimate aim, but freedom of expression implies obligation of toleration. The disputed norm imposes blanket restriction, which presents disproportional means of interference in right and therefore does not meet requirements of certainty of law, as well as proportional restriction of rights.

63. The respondent thinks, that holding meeting at the residence of judge constituted coercion through his or her family members and influences him to take into account opinions of participants of assembly in adjudication on specific cases, which shall be considered as interference in independence of judge. Therefore the legitimate aim of this disputed norm is interest of administration of justice and independence of court. In view of the respondent, the residence of judge shall mean the place, where holding of meeting is rationally perceivable by a judge as coercive measure carried out against him and his/her family members. Therefore the restriction in disputed norms is proportional and serves legitimate constitutional aims.

64. According to article 174[1], clause 3, it is administrative offence to "block the entrance of court, to hold meeting at residence place of a judge or in common court of Georgia or within territory of 20 meters radius from it…" Analysis of the norm makes it clear that restriction on 20 meters radius applies only the common courts of Georgia. Therefore the law prohibits to hold assemblies or manifestation at residence of judges, in the building of court or in 20 meters radius from it.

65. On the constitutionality of territorial restriction on assemblies and manifestations in respect with article 24 and 25 of the Constitution, the Constitutional Court has elaborated, when it reviewed the relevant articles of the Law of Georgia On Assemblies and Manifestations. The Court noted that restriction is justified, if it is the only possibility to achieve the legitimate interest. In the present dispute the Court shall review whether restriction on holding of meeting at the resindence of a judge serves any legitimate aim, and is proportional means for it.

66. According to article 24 of the Constitution of Georgia, restriction of freedom of expression can be applied for independence and impartiality of court. The Constitutional Court shares opinion of the respondent, that in the present case, the disputed norm serves the interest of administration of justice, independence of judiciary and protection of judges from pressure. which are legitimate aims. The independence of judge is one of the basic principles of rule of law state and it protects from interference professional activities as well as private life of a judge. The judge shall be separated and protected from government, as well as social and political groups and personal interests. At the same time, to care for independence of court and judge does not mean to prohibit criticism towards professional activities of judge or his or her judgement. The Constitutional Court emphasizes that to express one's opinion to activities of court, inter alia, in the form of assembly or manifestation in proximity of a court is constitutional right of individual.

67. Expression of one's opinion in respect with activities of the judge is constitutional right. Judge, as public official, has obligation of toleration, as criticism of his activities, discussion of his professional or personal features can be animated by the social interest. At the same time, the Constitutional Court cannot share the attitude of complainant, that judges have the same obligation of toleration that applies to other public officials. In contrast to public political officials, professional and particularly personal activities of judge is more protected than others, because he or she are restricted to involve in public political debate for defending of their positions. This restriction imposed on judges follows from the principle of impartiality and serves establishment of confidence towards courts in public. Due to this, it is permissible to restrict freedom of expression, when the criticism of professional activities of judge interferes without justification in his or her private life for the purpose of influencing him or her.

68. Excercising right of assembly or manifestation at the residence of a judge or adjacent territory, the goal is to approach to the maximum private sphere of a judge, whether he is addressee of protest or solidarity. It is notworthy that claimants do not deny this. This form of expression does not leave to its addressee a choice and it interferes in private sphere of a judge for the purpose of influencing him or her, without impediment and justification. This factor is what differs gathering at the residence of judge from criticism or solidarity expressed in the media. To declare the disputed norm as unconstitutional in this case, would leave private life of judge without possibility of protection from unjustified interference. In view of the abovementioned, the Constitutional Court considers, that the disputed norm presents proportional means to achieve the legitimate aim of protection of independence and private life of judge.

69.The Constitutional Court cannot share the argument of claimants, that place of residence is such a vague term, that is provides ground for disproportional restriction of right. The object of protection of the disputed norm is one aspect of the private life of a judge – his or her place of residence. The disputed norm makes it administrative offence to hold meeting, which takes place at direct proximity of his house or accomodation with the purpose of interference in the private life of judge and for directly influencing it. The prohibition in the disputed norm is related to the case, when holding a meeting at the residence of judge amounts to interference in his private life, personal realm. Imposition of administrative penalties shall proceed according to these criteria.

70. The Court also notes, that contents of the disputed norm, its purpose and scope point to the fact that to hold assembly or manifestation at the residence of judge is prohibited only in case when the addressee of meeting is judge.

Prohibition of Group Rally that Fully Blocks Carriageway

71**.** According to the Code of Administrative Offences of Georgia, article 125, clause 6^1, "organized blockage of road by means of vehicles or participation in a group rally that fully blocks carriageway in a city or any other populated area" is prohibited. The claimants challenge the part of the norm, which states that group rally is punishable act. The claimants assert, that this article restricts enjoyment of right of assembly and manifestation, impedes arrival of participants at the location of assembly or manifestation. Moreover, it makes impossible to express protest or solidarity through use of cars.

72. The respondent explained, that blockade of road with vehicles or driving, which fully blocks the carriageway violates legal order, as it creates important obstruction for special organs (police, fire brigades, emergency) to provide timely service. Moreover, such driving violates rights of third person and creates real danger of enhancement of percentage of car accidents.

73. The parties expressed conflicting opinions in respect with the substance of established prohibition. Different interpretations were provided in respect to "group rally" and when it is qualified as violation of law. The claimants assert, that driving of vehicles will constitute a delinquent act in all cases, when it is carried out by group, with prior agreement and by the specific group of people. Therefore movement of large amount of vehicles from one point to another in the carriageway, even with full compliance with traffic safety rules, will be punishable. The respondent thinks, that the disputed norm prohibits only driving, which causes artificial occupation of carriageway, which excludes possibility for other cars to move.

74. To review constitutionality of disputed norm, in the first place content and scope of restriction shall be identified. For comprehensive interpretation of the disputed norm, we shall employ provisions of the Law of Georgia on Safety of Driving. According to article 1, sub-clause "e" of this law, road is defined as "stripe of earth adjusted for movement of vehicles or installation with artificial surface(road comprises one or several carriageways, road for tram, pavements, sidewalks and separation stripes, if they are present)." According to article 1, subclause "z" , carriageway is defined as "part of road, which is determined for movement of vehicles without rails.", whereas subclause "s" states that driving stripe is "indicated or non-indicated long stripe, which is broad enough for movement of vehicles in one raw." Based on the analysis of abovementioned norms, full blockage of carriageway shall be defined as occupation of all driving stripes determined for vehicles.

75. It is noteworthy that, in contrast to disputed norms, different rule is stated in article 125, clause 6 of the Code of Georgia on Administrative Offences, according to which it is prohibited "To participate with vehicle in group rally in city or other populated area, which impedes the traffic or endangers safety of driving." It is groundless to state, that two different norms of Code of Georgia on Administrative Offences provide different sanctions or one and the same act. Therefore, participation in group rally of vehicles and impediment of traffic without full blockage of carriageway is prohibited under article 125, clause 6 of the Code, whereas, full blockage of carriageway by well-organized rally of vehicles is regulated under article 125, clause 6^1. It is clear, that in contrast to clause 6, the disputed norm is related to more serious violation of rules of safe driving and punishable act is not impediment of traffic but full blockade of it(organized blockage of road by means of vehicles) and full occupation of carriageway (participation in a group rally that fully blocks carriageway). The interpretation of substance of norm points to the fact that article 125, clause 6^1 prohibits exploitation of vehicle at carriageway, if that can lead to blockade of the road and makes impossible for other vehicles to move in the part of the road, during that time period, when the road is occupied by participants in "group raaly."

76. The disputed norm does not apply in cases, when participants in the group rally does not occupy fully the carriageway, neither applies it in the cases,when people who wants to participate in assembly or manifestation drive to destination via facilities available and likable to them separately. Restriction applies only to cases, where movement of vehicles has collective character. No matter what is destination of participants in group rally, the collective nature of action puts it on equal ground with manifestion or collective movement and thus subjects it to regulation. Therefore court cannot share the argument of claimants, that the disputed norm restricts possibility to reach the location where meeting will be held.

77. The disputed norm is not related to those cases either, when vehicles move in compliance with safe driving rules, within the permissible speed limit and in accordance with traffic rules. The carriageway is not fully occupied, if vehicles have possibility to move freely and maneuvr without violation of traffic rules. The disputed norm restricts opportunity of manifestation via vehicles, only if it causes full blockage of carriageway or practically its blockage. Paralysis of carriageway can lead to significant disorders and disruption of normal human life or their activities. Driving rally, will fall under the restriction contained in the disputed norm, when it moves intentionally with very low speed or in different stripes of carriageway with the same speed on a purpose to express protest or solidarity, which makes unimpeded movement of other vehicles impossible, reduces number of vehicles that pass the road and makes the carriageway not available for other drivers. Therefore, participation in organized group rally, which occupies fully the carriageway is equal to blockade of the road in view of its nature and outcomes. It shall be noted, that article 125, clause 6^1 of the Code of Georgia on Administrative Offences does not exclude possibility of manifestation via vehicles, when it is carried out without blockade of the carriageway and paralysis of traffic in compliance with the traffic rules.

78. Realization of right of assembly and manifestation via full blockage of carriageway by vehicles, is unconditionally related to freedom of movement of others and violation of other constitutional interests, which reduces possibility of maneuring on the carriageway and creates high risk of car accidents. Therefore, the disputed norm serves goals of free movement and protection of public order.

79. In view of the abovementioned, it is clear, that the disputed norm serves legitimate purpose. It is also clear, government does not act *ultra vires*, when it prohibits violation of traffic rules and its paralysis. The Court elaborated on this issu in the context of evaluation of article 11 and article 11^1 of the Law of Georgia on Assemblies and Manifestations. On one hand, similarity between the disputed norms is clear, as they prohibit arbitratry blockade of road, when it is goal in itself. At the same time, discussing the articles of the Law of Georgia on Assemblies and Manifestations that Court declared, that restriction to hold assembly at the carriageway would be unjustified, if it is due to the number of participants, when it is impossble to hold meeting at that place otherwise, whereas place is essentially related to the goal of meeting, or it is the place of presence of addressee of protest or solidarity, etc. Therefore, now the issue shall be addressed, whether owners of vehicles shall have right to fully occupy carriageway in case when blockade of the road is due to number of vehicles.

80. Under article 25, clause 1 of the Constittuion of Georgia, everyone has right to gather without prior permission or notice and to express their opinions publicly, but for exception set by this article. From this perspective, the Constitution of Georgia sets forth right of an individual to express his or her opinion, through participation in the peaceful assembly or manifestation. It is true that right to assembly implies freedom to choose form of expression, content and place of assembly, however to assert that realization of right to assembly with any form is equally protected by Constitution will not be correct. Despite multiplicity of vehicles, right to occupy the carriageway cannot be ensured to the extent as it happens in case of physical participants of assembly. Article 25 of the Constitution does not imply unlimited freedom of assembly or manifestation via any technical means.

81. In realization of right to assembly freedom of each individual is limited by rights of other and necessity to protect public safety and security. However, as it was stated above, large scale meeting cannot be held without violation of traffic rules and restriction of rights of others. This is why the Law of Georgia on Assemblies and Manifestations, in accordance with Constitution, grants rights to participants of assembly to gather at the carriageway. Therefore the Law overrides traffic rules and causes their termination, when in view of number of participants, it would be impossible to realize the right without occupation of carriageway. The law provides guarantee for realization of right to assembly on one hand, and it provides for balance between right to assembly and necessity to protect rights of others, as well as public order. In case of assembly or manifestation via vehicles (which can lead to blockage of carriageway or its full occupation as a result of group movement) it is impossible to strike balance. Moreover, possibility to occupy the carriageway will depend on size and weight of vehicles or other technical means. Therefore restriction of rights of others will follow as a result. In this case right to assembly cannot be equally available, rational balance with rights of others and necessity to protect public safety and order will not be ensured. Furthermore, it shall also be noted, that blockage of carriageway or its occupation with vehicles or other technical means will make movement of police, fire brigades or emergency cars practically impossible under extraordinary conditions. In contrast to this, assembly with high number of participants impedes the traffic of vehicles, but does not exclude it.

82. Realization of right to assembly is naturally conflicting with rules of traffic and causes restriction of rights of others. Despite this, to underscore the importance of right to assembly, the Constitution explicitly states that state has no power to introduce system of permissions on assemblies. At the same time, in realization of right to assembly or manifestation, limits of rights of each individual are set by rights of others, necessity to protect public safety and security.

83. In view of all the abovementioned, the freedom of movement and public order protected by disputed norm is counterweight to right of assembly and manifestation via vehicles and it does not contradict to article 25 of the Constitution.

Incitement to Subversion of Violent Change of Constitutional Order

84. According to article 4, clause 2 of the Law of Georgia on Assemblies and Manifestations, the following is prohibited “incitement to subversion or violent change

of the constitutional order, infringement on independence and territorial integrity of country, or incitement which presents propaganda of war or violence, facilitates national, ethnic, religious or social conflicts."

85. The Claimants challenge the part of the abovementioned norm, which is related to "incitement to subversion or violent change of constitutional order". They assert that content of the disputed norm restricts the right of speech and expression protected by article 19 and 24 of the Constitution and right of assembly protected in article 25 of the Constitution. At the same time, claimants do not challenge the fact, that violent change of constitutional order is crime. Action, which contains real danger of new crime, can be subjected to restriction. The claimants point out, that incitement can be restricted, when it presents the immediate and real threat of commission of crime. Moreover, the claimants think, that "subversion" can also imply the "non-violent change of constitutional order", which cannot be qualified as crime and therefore incitement to such acts shall not be subjected to restriction. The claimant believes, that content of the disputed norm allows for restriction of constitutional right even in the case when there is no real threat of commission of crime, because it does not contain any criteria for assessment of risk of commission of crime. As a result of disputed norm, incitement can be subjected to restriction in case, where there is no true intent to carry out the incited acts of subversion or violent change of constitutional order or there is no other elements, such as "organized group that will implement overthrow, armament, allocation of roles withina specific group." It is also possible that incitement to constitutional overthrow is articulated, but the present and imminent danger were not present.

86. The claimant also notes that the disputed norm does not contain clear indication, of which type of statements fall in the prohibited categories. The claimant asserts, that the disputed norm can prohibit "simple statement, which participants of assembly can make" and which other participants of assembly may not share.

87. The respondent asserts, that prohibition of incitement to subversion of government or its violent change set forth in the disputed norm in the process of assembly serves the legitimate aim of prevention of unlawful acts and maintenance of the peaceful nature of assembly.

88.The disputed norm prohibits incitement to violence in two cases: during organization of assembly and in the process of assembly. In both cases, it deals with content-based restriction of assembly and manifestation, as it is not allowed to organize or to hold the meeting for a specific purpose – purpose of "subversion or violent change of constitutional order." At the same time, the disputed norm requires to abstain from certain statements in the process of assembly or manifestation. Thus the connection of disputed norms with respect to article 24 and article 25 of the Constitution of Georgia is evident.

89. The Constitution cannot share the opinion of claimant and considers, that subversion of constitutional order is always related to acts of violence. Subversion is aiming at destruction of existing order through the use of unconstitutional and unlawful methods and therefore it contains elements of violence. "Violent change" also refers to

substitution of existing system with alternative. Government, which is elected through democratic procedure, constitutional form of government and order can only be changed through constitutional and legal means. Any other form of change endangers the existence of democratic society and has violent character. Due to this, article 26 of the Constitution of Georgia sets forth specific provision, that political movement, which aims at subversion or violent change of constitutional order shall not be allowed.

90. It is not permissible that constitutional rights be aimed at infringement of democratic order entrenched in the Constitution and that constitutional rights presented ground for implementation of unlawful acts. Limit of freedom of expression is set at the point where expression endangers values, goods and principles declared and protected in the Constitution. The constitutional right can be restricted to ensure protection of constitutional values. "The Constitution of Georgia recognizes and guarantees freedom of speech and expression, freedom of mass media, but at the same time it regards other grounds of restriction of rights too, including restriction for such legitimate purposes, as protection of rights of others is. Freedom of Expression can be restricted, when the expression crosses the boundary between freedom of expression and rights of others."(Constitutional Court of Georgia, Judgement of 10 November, 2009, no. 1/3/421,422)

91. At the same time, subversion of government shall not be considered identical to change which can follow as a result of peaceful assemblies and manifestations. Citizens have constitutional rights to gather and express their will or attitude towards government which in its turn can affect ongoing political and social processes, cause resignation of government or its member, change of political order or its form. It is essentially wrong to identify these processes characteristic for democratic society with "subversion of government" or to think of them as equals. Therefore the disputed nor prohibits incitement to violent and unlawful acts.

92. It is clear on one hand, that prevention of crime in general and particularly crime to prevent subversion or violent change of government presents important social interest. At the same time, within the present dispute, that Court shall assess, how can the named legitimate aim be pursued through prohibition of statements and phrases of special content. The issue, of whether ground for restriction of right can be phrases, which formally appear to have form of incitement to crime, but cannot cause commission of crime in reality can be limited. To answer these questions, number of issues shall be underlined.

93. The Constitutional Court shares argument of claimants, that incitement to violence or criminal actions shall not in all cases be ground for responsibility. It is important, that the law, as well practice of its application, distinguishes practice, which can contain hate speech, but be harmless and part of political, social or scientific discourse; on the other hand, there is incitement, author of which has analyzed the outcome of incitement and aims to have the specific result. As far as the claimant did not present examples of inconsistence of disputed norm with the Constittuion, the Constitutional Court can elaborate on opportunities of presumable violation.

94. In response to question of court, which wording of the disputed norm would be consistent with the Constitution, the representative of claimant noted, that law shall

provide to the official clear guidance on which phrases are prohibited. It is necessary to underscore the direct link between incitement and (real or presumable) crime. As it was already stated the claimants think that real danger of violation of constitutional rights is related to the fact, that criticism of government and statements against government made in the context of process of assembly or manifestation may be qualified as "incitement to subversion". Moreover, ground of restriction of rights maybe a statement, which formally can contain "incitement to subversion or violent change" of government, but there was not real threat or intention to implement these acts.

95. To resolve the issue of constitutionality of disputed norm, it is necessary to identify the substance of disputed norm, its purpose and types of legal consequences it can cause. Therefore it is important to interpret the norm in the context of legislation, together with Law of Georgia on Assemblies and Manifestations and other legislative acts. Otherwise risk of incorrect and inappropriate interpretation of law is increased. In the case of "Citizens of Georgia Maia Natadze and others v. The parliament of Georgia and the President of Georgia", the Constitutional Court declared "...the disputed norm shall not be considered in isolation from other norms related to it as this approach can lead the Constitutional Court to wrong findings. If in case of conscious interpretation, it would be impossible to interpret the norm in arbitrary manner and to use it against the interests of individuals, than the law will be fully compliant with requirements of legal certainty." (Constitutional Court of Georgia, Judgement no 2/2/389 of 26 October, 2007, in the case of "Citizens of Georgia Maia Natadze and others v. The parliament of Georgia and the President of Georgia",)

96. As it was already noted, the Court shares the opinion of claimants that phrases of formal incitements to violence, or phrases which present rare and isolated articulations does not always create the real danger of violence. At the same time, to identify whether the danger was real, it shall be ascertained, what was context and situation in which the suspect statements were made. The competent authority shall evaluate case by case, whether statement related to subversion or violent change of government amounts to incitement to subversion or violent change and if there is danger of violence. State is authorized to interfere and terminate assembly or manifestation only in case if, incitement meets both criteria. The norm would be unconstitutional if it allowed for restriction of freedom of speech without the above criteria.

97. It shall be noted, that together with incitement to subversion of constitutional order or violent change the same article of Law also prohibits propaganda of war, facilitation of social, ethnic and religious conflicts. The claimants expressed conflicting views with respect to these norms. At the court hearing, the claimant stated, that to prohibit propaganda of war and facilitation of social, ethnic or religious conflicts is justified. Thus in these cases, the claimant decided the elements of criminal intent and real danger of implementation of these acts were present. At the hearing in the Court, the claimant confirmed, that in case of incitement to subversion, he could not see the legitimate ground for restriction, whereas in case of propaganda of war, social, ethnic and religious conflicts, such a ground is present. The Law of Georgia on Assemblies and Manifestations, article

4, clause 2 provides basically the same restriction; the words "propaganda" and "facilitation of conflict" are related to dissemination of opinions, to incitements too. Therefore, standard structured by the claimant shall equally apply to all aspects of named norm. Statement, which facilitates ethnic, social or religious conflict, as incitement to subversion, can contain or not imminent danger of implementation of criminal act.

98. It shall be noted, that the Law of Georgia on Assemblies and Manifestations does not provide the interpretation of what is implied under the term "incitement"; however, the Law of Georgia on Freedom of Speech and Expression, states, that incitement means "statement, author of which intends or manifestly accepts that certain action may be caused" (article 1, sub-clause "d"). Therefore, in case of reasonable interpretation of the disputed norm, the restriction provided in law, is related to intention of unlawful act and instigation of this act, which claimant himself, deems to be legitimate ground for restriction.

99. As it was already noted, article 25 of the Constitution of Georgia links the right of assembly and manifestation to peaceful gathering of people without arms to express their opinion (protest, solidarity, petition, etc.). At the same time, subversion or violent change of constitutional order, as violent and criminal action, as well as intent thereof, conflicts with the "peaceful" nature of right to assembly and association. At the stage of preparation of meeting, these type of statements made by initiators and organizers inevitably points to the violent intent and thus to non-peaceful nature of assembly. Therefore, meeting, purpose and desired outcome of which is subversion of constitutional order or its violent change, fall beyond the scope of constitutional protection.

100. The Constitution of Georgia does not exclude the possibility for restriction of freedom of speech and expression for protection of rights of others and prevention of crime. Moreover, as it was already noted, article 25 of the Constitution protects only right of peaceful assembly and association. Therefore, to ensure the peaceful character of assembly or manifestation, the legislator is empowered to impose certain restriction. However, each of these restrictions will naturally be evaluated in respect with relevant constitutional rights, and its existence will be justified, if it presents adequate and proportional means to achieve the goal. When organizers of meeting have intention of implementation of unlawful act and there is high risk of its implementation, the legislator is authorized to impose restrictions. The disputed norm, which prohibits incitement for subversion in the process of organization of meeting, falls precisely in this category of restrictions.

101. Despite this, according to the Law of Georgia on Assemblies and Manifestations, disputed norm cannot cause interference in the process of specific assembly or manifestation on the basis of only incitements to subversion or violent change. According to the Law of Georgia on Assemblies and Manifestations, article 13, clause 1, termination of meeting can only take place if mass violations of the disputed norm are committed. When the peaceful protest of participants of the meeting gradually changes and incitements to violence take mass character, or when assembly or manifestation is gathered particularly for reason of implementation of criminal act, it becomes not only unlawful, but also goes beyond the scope of constitutional protection.

102. The Constitutional Court shares the argument of respondent, that in this case, Law has preventive function. In the process of assembly or manifestation mass incitements to the subversion of constitutional order or its violent change can cause uncontrollable situation, which enhances the risk of unlawful acts. Moreover, wide-scale meeting, despite opinions and goals of participants, carries the enhanced risk of commission of delinquent acts. This is why incitement to violent acts in the process of assembly or manifestation increases even more the risk of commission of delinquent acts. At the same time, according to article 13, clause 1 of the Law of Georgia on Assemblies and Manifestations, as a result of state interference right to assembly of those people, who did not personally commit any unlawfulness, are also restricted. Therefore, termination of assembly or manifestation by the state shall be allowed only in case, if risk of violence as a result of incitements is real.

103. Thus, article 4, clause 2 prohibits incitement to crime, though it does not cause restriction of freedom of expression independently. Necessary grounds and rule of interference in freedom of expression is provided in article 13 and relevant norms establishing criminal or administrative liability. Namely: statements of prohibited incitement will only cause termination if they have mass character and when it is reflected in the process, aim and motivation of assembly and manifestation. At the same time, article 13, clause 1 determines when can assembly and manifestation be considered as heightened risk even for public safety. When the organizers or participants of assembly or manifestation massively make inciting statements to subversion or violent change of constitutional order, the danger of implementation of criminal actions caused by the incitement also increases. In other cases, when the expression prohibited by the disputed norm is made rarely and does not affect the character of the meeting, the law does not provide for interference in the process of assembly or manifestation.

104. It shall be noted at the same time that in case of incitements to overtrow of government or its violent change, the disputed norm, as well as other norms of Law of Georgia on Assemblies and Manifestations does not provide for individual liability. In case of violation of requirements of disputed norm, as well as violation of rule of organization and holding of assembly and manifestation, individual liability of person will be determined under article 174^1 of the Code of Georgia on Administrative Offences. However, as it was noted, the fact of incitement by itself shall not be sufficient for individual liability of a person. The Court shares argument of claimant that facts of commission of violence or criminal acts or real threat of implementation of such acts is necessary for imposition of individual liability. This standard is established under the Law of Georgia on Freedom of Speech and Expression, according to which, incitement triggers legal liability only if, act of a person (incitement) "... causes direct, manifest and material danger for emergence of unlawful outcome"(article 4). Therefore, in determination of issue of personal liability on the basis of disputed norm and article 174^1 of the Code of Georgia on Administrative Offences, law enforcement official shall be guided by the requirements stipulated by the Law of Georgia on Freedom of Speech and Expression. It shall also be noted, that the Criminal Code of Georgia, article 317 also provides for

liability for incitements to violent change of constitutional order or its subversion. However the claimants had not challenged the relevant norm.

105. The Constitutional Court shares the position of respondent, that the goal of disputed norm is to prevent crime and protect public order and security. The state is empowered to interfere in realization of right to assembly or manifestation for prevention of crime and violation of rights of others, when the meeting takes unlawful character. However, in case when the human action causes real danger to safety and rights of others, the obligation of state to respond emerges.

106. It shall not be disputed, that the Constitution protects critical opinions, including those opinions, which part of society can perceive in excessively serious or inadequate way. Critism towards government, including demand of change of form of government, its specific member or government in general cannot serve as ground for restriction of freedom of expression, assembly or manifestation. In the protest meeting, where people of antagonist disposition towards government are gathered, it is characteristic that statements for change of government and its resignation are made. These critical statements do not fall under the scope of regulation of the disputed norm. Neither fall here those statements, which formally contain words of subversive statements, but the context in which the statements were made, their true sense and purpose, does not provide ground for finding of violation of law. It is also clear that, only law-enforcement official can evaluate whether specific statement constitutes incitement prohibited by law. Even in case, if the disputed norm will be specified in the way, that claimant requires, it will still be for law-enforcment official to evaluate, whether specific statements present incitement to subversion and whether they cause real danger of commission of crime. The prohibition in the disputed norm is related to incitements, which implies the intent to carry out the criminal act. Incitements without such an intent does not fall within the scope of disputed norm.

107. According to the Law of Georgia on Assemblies and Manifestation, article 13, clause 1 allows for restriction of right to assembly or manifestation, when the violations of disputed norm (incitement to subversion and violent change of constitutional order) take massive character. As for the issue of administrative liability of an individual, it shall be defined in accordance with Law of Georgia on Assemblies and Manifestations and Law of Georgia on Speech and Expression. In both cases, there is heightened risk of violent acts. In view of the abovementioned the Constitutional Court finds that restrictions set forth in article 4 of the Law of Georgia on Assemblies and Manifestations is in compliance with article 24 and article 25 of the Constituion.

Prohibition of Inscriptions and Paintings at Facades of Public Establishmens and Territory Adjacent to them

108. Article 150, clause 2 of the Code of Georgia on Administrative Offences prohibits artibtrary making of insriptions, paintings and symbols on the facades of administrative buildings, also territory adjacent to them, including pedestrian road and carriageways.

109. The claimants assert, that maintenance of image of administrative buildings is linked to public order and therefore to prohibit making of paintings on them is expedient.

However, as for adjacent terriotires, carriageways and roads of pedestrians, none of them falls within the property of specific subject. They are public goods and everyone shall have equal access to it, including equall access for purposes of various forms of expression. In their view, freedom of expression can be restricted only to pursue legitimate aims enlisted in article 24 of the Constitution, whereas the form of expression does not endanger any aim provided in the Constitution. Moreover, the claimants refer to the term "adjacent territory" in the disputed norm and claim that it is vague and gives possibility of multifarous interpretations.

110. The claimant also points out, that the disputed norm is vague and does not comply with article 19 and article 24 of the Constitution. In the present dispute, the claimant distinguishes scopes of these two constitutional articles and asserts that expression of opinions in form of making inscriptions, writings and symbols in public space falls under the scope of both articles. In view of the discussion in the present judgement with respect to identification of essence and scope of these articles, the court shall evaluate: 1. Whether there is connection between the disputed norm and legitimate aim in article 24 of the Constitution; 2. Whether means of restriction chosen by the legislator is proportional interference in the scope of right; 3. Whether the prohibition in the disputed norm meets the principle of certainty of law.

111. The respondent explained, that the disputed norm serves the legitimate aim of protection of public order and safety.

112. The Court cannot share the argument of claimant, that article 24 of the Constitution does not contain a legitimate aim that would justify the restriction in the disputed norm. It shall also be noted, that the claimant expressed contradictory opinions in respect with compatibility of disputed norm with the Constitution. In Concluding Opinion, the claimant stated, "administrative organs are state bodies and to maintain their image is linked with public order". Thus, prohibition of making of inscriptions, paintings and symbols at the facades of administrative bodies is considered to be justified on that ground. However, it gives different opinion in respect with adjacent territory of the administrative organ: "As for adjacent territory, carriageways and pedestrian roads, they do not belong to specific subjects, they are public goods and everyone shall have equal access to them. Equal access implies different forms of expression too." However, despite the request of the Court to that purpose, that claimant could not identify any legitimate purpose in article 24 of the Constitution that would be linked to prohibition of making arbitrary inscriptions, paintings or symbols at the façade of administrative building. The opinion of respondent, that restriction of freedom of expression is justified by the purpose to maintain the image of administrative organ is equally applicable with respect to its adjacent territory. The façade of building, where administrative establishment is located, as well as pavement and roads are public space. These objects can present state, municipal or private establishments.

113. It shall also be noted, that according to the Code of Georgia on Administrative Offences, article 150, part 1, which claimants did not challenge, it is prohibited to make arbitrary inscriptions, paintings, symbols not only at the facades of buildings, but also at

"fences, columns, threes and bushes, also placement of slogans, and banners in places, which is not determined for this purpose...". In constrast to article 150, clause 1, the prohibition in the disputed norm challenged by the claimant is much narrower in its focus – it applies specifically to public establishments and their adjacent territories. To place inscriptions and paintings arbitrarily is always prohibited, whether it comes to buildings of public or private property. Moreover, article 150, clause 1 prohibits placement of slogans anywhere, including carriageway and pedestrian roads. Furthermore, fences, threes and columns, incsriptions and paintings on which is also prohibited, can be part of adjacent territory to administrative bodies. In both clauses of article 150, the same type of restriction is provided. The crucial difference, is that legislator makes the façade of administrative organ and its adjacent territory into object of special protection, which is reflected in more serious penalty.

114. It is noteworthy, that article 150, including the disputed norm, links the prohibition to arbitrary making of inscriptions, writings and symbols. The keyword is "arbitrary" here. The law provides content-neutral restriction, which protects public property from arbitrary exploitation. The task of this restriction is to ensure equal accessibility for everyone to public space, state or municipal property in respect with placement of inscriptions, paintings, banners, slogans, etc, which requires enactment of special regulation. Due to this, arbitrary placement of commercial, political, or social inscriptions and paintings (including advertisments) is prohibited everywhere, unless the place is "designated for that purpose" (article 150, clause 1). Article 150 of the Code of Georgia on Administrative Offences establishes unified rule for utilization of public space, including the facades of administrative buildings and its adjacent territory; it aims to ensure the equal accessibility of public space for everyone and in view of this, it prohibits arbitrary making of inscriptions, paintings or symbols, which is related to legitimate aim of protection of rights of others and public order and presents legitimate ground for restriction of article 24 of the Constitution.

115. The Court shares the opinions of parties, that care for image of buildings is important public interest. Arbitrary making of inscriptions, paintings and symbols at the façade of administrative organs and adjacent territory causes change of image of respective places. Despite this, it is not enough for constitutionality of this norm, that there is legitimate aim served; it is necessary that the restriction be proportionatl to the legitimate aim pursued.

116. "Principle of proportionality... ensures somewhat balanced, proportional attitude between the liberty and its restriction and prohibits restriction of human rights more than it is necessary in a democratic society. Principle of proportionality is constitutional criteria for review of legitimacy of restriction of human rights. This is precisely why it has crucial importance for constitutional review."(Judgement of the Constitutional Court of Georgia, 15 December 2006, no. 1/3/393,397). The legislator is obliged in a democratic society to strike rational balance between private and public interests so that freedom of expression was protected on one hand and public order and safety was not endangered on the other hand. Through introduction of the disputed norm, the legislator declared an act, which

endangers public order as unlawful act and protected the state and municipal property from arbitrary exploitation. Under the legislation of Georgia, it is only with the permission of competent authority that placement of inscriptions, paintings and symbols is possible in the public space (facades of buildings and constructions, in streets and territories belongining to public sphere). Under the legislation, to express the opinion in this form is equally available for everyone. In the present case, the Court does not find any alternative means to achieve the legitimate aim that would be less restrictive. Therefore, restriction in the disputed norm constitutes a proportional means of interference in the scope of the right.

117. In respect with foreseeability of disputed norms, the court partially shares opinion of claimant and considers that "adjacent territory" is vague term, and it is not clear where to draw the line between adjacent and other territories of administrative buildings. The Court notes, that "to define the scope of constitutional right within limits of Constitution, the legislator is obliged to enact clear, precise, not ambiguous, foreseeable legislation, what answers" requirements of certainty of law. This condition is often deciding criteria, in review of constitutionality (Constitution al Court of Georgia, Judgement of 26 December, 2007, 1/3/407 in case of "Georgian Young Lawyers's Assotionation and citizen of Georgia Ekaterin Lomtatidze v. Parliament of Georgia."

118. In the present case, it is clear that the disputed term mentioned in the norm "adjacent territory" is related to the establishment, to its surroundings and premises, it is located in close proximity of that establishment and it implies pedestrian part as carriageway of the road. It is practically impossible to determine the universal criteria for definition of adjacent territory; it shall be determined case by case in view of the location of buildings, their architecture, size, urban planning and othe important factors. The restriction in the disputed norm is related to cases, when placement of inscriptions, paintings and symbols at the carriageway and pedestrian roads practically amounts their placement at the façade of administrative buildings. The Court considers, that in present case, the law provides sufficiently clear notice for rational person: under the Code of Georgia of Administrative Offences making of paintings and inscriptions is prohibited in places which "are not designated for that purpose". Facades of Administrative Organs and the adjacent territory is particularly underscored in this respect. As for the amount of penalty, it will be determined case by case, according to the rational explanation of adjacent territory by administrative organs.

119. In view of all the abovementioned, the Court rules that disputed words of article 150, clause 2 of the Code of Georgia on Administrative Offences, are consistent with article 24 and 25 of the Constitution.

Individuals Responsible for Organization and Process of Assembly or Manifestation

120. Under the Law of Georgia on Assemblies and Manifestations, article 5, clause 2, people responsible for organization and process of assembly or manifestation shall not be people, who are not citizens of Georgia. According to article 3, sub-clause "f" of this Law, "responsible person" means organizer and trustee. According to the explanation in

this law, trustee is a person, who is confidant of initiator of assembly or manifestation, while organizer is a person appointed for leading the organization of meeting.

121. The claimants believe, that article 25 of the Constitution provides right to organization of assembly and manifestation. Everyone is holder of this rights, as it does not provide restriction according to the citizenship criteria and imposition of such a restriction on people who have no citizenship of Georgia cannot be justified by reference to article 27 of the Constitution. To be responsible person for assembly or manifestation does not always mean implementation of political activities. Political nature of assembly or manifestation shall be identified case by case in view of its initiator and purposes. If the prohibition in the disputed norm applies to assemblies and manifestations which have political character, then this prohibition will be proportional means of interference in the right.

122. The respondent considers that the assembly can be political or non-political, but in his opinion, organization of assembly or manifestation is always political activity. In the Present case, interference in article 25 of the Constitution is justified by article 27 of the Constitution, which gives power to legislator to restrict political activity of foreigners.

123. In order to ascertain constitutionality of the disputed norm, we need to determine in the first place, whether to organize assembly or manifestation is political activity for purposes of article 27 of the Constitution.The Court shall also evaluate if there is any other legitimate ground for restriction of right of non-citizens, which is set forth in article 25 of the Constitution.

124. In certain cases, organization of assembly, as well as initiation and participation in it can be related to political activities of a person and one element of it. Assembly or manifestation can be employed as tool for political competition, which people involved in political activities will use for their own purposes. The Court shares the argument of respondent that in this case, the state is empowered to restrict non-citizens in realization of their right to assembly or manifestation.

125. At the same time, the Court cannot share the argument of respondent that organization of assembly or manifestation is always related to political activities of a person. Meeting, as one of the forms of expression of opinion, can be related to civil or social attitudes of a person, to his ideas, inter alia, his political beliefs, but it can be no part to political activity. Assembly and manifestation provide possibility of expression of opinions to great multiplicity of issues. Thus it would be error, to conclude that organization of assembly or manifestion shall be considered as equal to political activities in each and every case. Whether activities of non-citizen is political shall be ascertained in a particular case, in view of specific conditions, content of assembly and purposes of organizers and initiators.

126. Non-citizens residing in Georgia, who are part of the society, despite the fact that they are not considered to be citizens, have special interest towards social processes of the country, they are tightly related to state and are direct participants of social events. This makes them rightholders for purposes of article 25 of the Constitution. These people have rights guaranteed under the Constitution to be participants, initiators and organizers

of the meeting. To restrict this right, there shal be legitimate aim, including legitimate aim set forth in article 27 of the Constitution.

127. The scope of article 25 of the Constitution encompasses assemblies of political character, premised on political reasons, as well as assemblies which have social significance and which are totally not-political. The scope of right to assembly implies right to participation in it, as well as right to organize it. The respondent could not demonstrate in the Court, what is the crucial difference between legal status of participant and that of responsible individuals, that would make it possible to qualify the activities of responsible individuals as political activity. Therefore article 25 of the Constitution protects right of non-citizens residing in Georgia to express and disseminate their opinions through assemblies and manifestations, inter alia, to participate in assemblies, or to be their initiator or organizer.

128. The Constitution of Georgia provides possibility to restrict political activities of non-citizens, but the legitimate purpose of the impugned norm cannot be based on article 27 of the Constitution, whereas relevant activity when implemented by the citizen of Georgia cannot be considered as political activity. The disputed norm imposes blanket restriction, which deprives non-citizens right to initiate or organize assemblies without exception. In view of the abovementioned, the Constitutional Court of Georgia, holds that the disputed norm is no consistent with article 25 of the Constitution in that part, which excludes non-citizens living in Georgia to be organizers and responsible individuals for meetings.

Individuals entitled to Initiate Assembly or Manifestation

129. According to article 3, sub-clause "c" of the Law of Georgia on Assemblies and Manifestations, the "principal", initiator of assembly or manifestation can be a political party, union, enterprise, establishment, organization or iniative group of citizens. According to the disputed norm, principal cannot be a physical person. The claimants assert, that right to assembly is individual right, whereas the disputed norm restricts that right without legitimate purpose and thereby violates article 25 of the Constitution.

130. The respondent explained that article 25 of the Constitution enshrines right to assembly, not the right to organize assembly, while restriction imposed by the disputed norm, to be principal does not affect realization of right to assembly by them. Moreover the respondent thinks that the goal of the disputed norm is to ensure in the process of assembly compliance with reqirements of law. The respondent points that presence of group of initiators makes assembly more persuasive and points to the fact, that there is group of likeminded people, without which the assembly cannot be realized in practice. The respondent thinks that assembly or manifestation as a form of collective expression of opinion is realized by group of people and therefore it is plausible, that to arrange the organizational problems proxy be issued by the group of people.

131. The Court considers that effective realization of right to assembly or manifestation comprises participation as well as initiation and organization of assembly or manifestation. Its is groundless to take one aspect of right beyond its scope. Therefore prohibition imposed on a physical person to be principal is restriction of article 25 of the

Constitution and needs constitutional justification, which in its turn requires presence of legitimate purpose of restriction. In view of this, it shall be reviewed if any of the aims named by respondent can be considered as such.

132. In order the goals, named by the respondent to qualify as legitimate aim, they shall be directed to protection of constitutional good, important interest. Naturally, assembly requires presence of group of like-minded people and assembly is related to collective form of expression of opinions, but participants in assembly realize this right as individuals. It is groundless to restrict the right of individual to be principal, as it is groundless to restrict right of individual to participate in assembly independently of others and without agreement with others. In the present case, the legitimate purpose served by restriction is vague and respondent could not prove the constitutional interest that was protected by the disputed norm.

133. As for another purpose named by the respondent, the Court considers that better management of organizational problems and controlling the process of assembly to be held according to law, is by all means a legitimate purpose, as far as it can serve public safety, protection of rights of other, proper realization of assembly rights by participants themselves, etc. However, there is clear inconsistence between this goal and restriction imposed in the disputed norm. The respondent could not demonstrate, how this goal is achieved, if principal is initiative group instead of individual. Setting restriction of a constitutional right "...legislator shall meet the requirements of constitutional principle of proportionality. The legitimate aim chosen by him shall be achieved with less painful, necessary and legally useful means. Usefulness and necessity determine the validity of means. Usefulness is defined by objective conditions and it means ability of the employed means to achieve the legitimate aim. When the means becomes useless, not in the process of its usage, but from the very beginning, then the manifest uselessness is present."(Constitutional Court of Georgia, Judgement no. 1/2/411, 19 December 2008 in the case of "LLC Rusenergoservice, LLC Patara Kakhi, JSC Gorgota, Individual Enterprize of Givi Abalaki "Farmer" and LLC Energy v. the Parliament of Georgia and Ministry of Energy of Georgia"). In the present case that Court finds that the disputed norm cannot be reviewed as the means aimed to pursue legitimate aim. Therefore article 3, sub-clause "c" is not consistent with article 25 of the Constitution of Georgia.

Prohibition of Organization and Participation in Assemblies for Employees of the Investigative Unit of the Ministry of Finance

134. According to the Law of Georgia on Assemblies and Manifestations, challenged by the Public Defender of Georgia, right of assembly is not granted to employees with special powers of the Ministry of Finance. According to the law of Georgia on Investigative Unit Service of the Ministry of Finance, employees of the investigative unit have no right to participate, organize or control the process of assembly or manifestation.

135. The claimant explained, that right to participation in assembly and manifestation is restricted for employees of military forces and Ministry of Interior. The same restriction does not follow from the Constitution of Georgia in respect with employees with special powers of Ministry of Finance of Georgia. Article 25 does not contain general reference to

group of people whose right of assembly can be restricted and restriction of a right is not related to special powers, for example right to carry arms. Under article 25, defense forces and people serving in the Ministry of Interior have no right to participate in assembly. This provision is exhaustive from the perspective of determination of group of right-holders, which means that there is no room left for free choices in article 25.

136. At the same time, the claimant refers to the purpose of restriction of right of people in defense forces and Ministry of Internal Affairs to participate in assembly or manifestation and states that purpose of prohibition if to fully protect publi safety. Investigative Unit of the Ministry of Finance has no direct link to public security and therefore restriction of their right on this ground is unconstitutional.

137. The respondent states, that restriction of right of assembly for employees with special powers of Investigative Unit of Ministry of Finance is justified by the purposes of state security and public safety, as they have law enforcement functions, overtime work, they have right to apply measures of coercion and they bear arms. At the same time, article 25 of the Constitution does not aim to protect the liberty of employees of military-type special services. In their opinion, defense forces under Constituion shall be interpreted to encompass the unit of the Ministry of Finance which is armed establishment and has power to apply coercive measures on the basis of law.

138. As it was already stated, article 25 of the Constitution guarantees right to assembly in public without permission and without arms. According to the Constitution, this form of freedom of expression – right to assembly and manifestation, is entitled to anyone, except for military forces and people employed in the Ministry of Interior. This prohibition is related to the status of individuals, their professional activity and their belonging to abovementioned establishments. Therefore any right-holder person from the moment of making professional choice and starts employment in the Ministry of Interior, voluntarily waives his/her right to realize constitutional right to assembly, as this right does not cover employees of the Ministry of Interior. This is the choice that is offered by the Constitution, itself.

139. The Constitutional Court of Georgia shares the opinion of the claimant, that prohibition stated in the disputed norms towards special category of employees of the Ministry of Finance, Defense Forces and Ministry of Interior is identical to the prohibition stated in the Constitution. In view of the abovementioned to resolve the constitutional dispute and to review the constitutionality of the disputed norms in respect with article 25 of the Constitution, the Court shall ascertain, whether the employees of Investigative Unit (or employees with special powers) belong to the category of people, that have no right to assembly or manifestation under article 25 of the Constitution.

140. It is noteworthy, that from the formal perspective the named employees do not belong to defense forces or Ministry of Interior and in that sense, in case of literal reading of the constitutional norm, restriction in article 25 of the Constitution shall not be applied to them. However it is important, to analyze the substance of this constitutional prohibition.

141. In the first place is shall be noted, that article 25 of the Constitution names Ministry of Interior, due to careful and extraordinary attitude towards the functions and

competences of this institution/ establishment. These functions are: law enforcement and operative- investigative activities, units of special function which is armed and militarized, right to use legitimate and proportional force and physical coercion. Under the Constitution of Georgia, and in view of their specificity, discharge of functions and competences of this institution is incompatible with realization of rights of assembly and manifestation of these people. At the same time it is hard to imagine, that reference in article 25 of the Constitution was premised on anything else, other than its functions. The Ministry of Interior, like any other institution constitutes the tasks, competences and powers vested in it. Therefore the Constitution of Georgia applied the restriction in article 25 to the functions or competences of persons employed in the Ministry of Interior.

142. The Law of Georgia on Investigative Unit of the Ministry of Finance of Georgia, states in article 2, clause 1 that "Unit is dependent establishment in the system of Ministry of Finance of Georgia, which is special lawenforcement organ, which implements in accordance with the law fight against crime in the financial-economic field, investigates cases which come under its competence according to Criminal Procedure Legislation and implements other functions granted by the legislation of Georgia. Article 7 states that goals and functions of the unit are, prevention of corrupt transactions and financial-economic crime, idenfication and deterrence thereof. To achieve this goal, article 8 of the same law grants powers, to carry out investigative-operative activities and to conduct full investigation. Article 9 of the law, grants special powers to employees. They are empowered to employ the physical coercion, special means and firearms. The unit has it group of special destination.

143. Goals, functions and competences are enlisted in the Law of Georgia On Police. This law states that police is executive organ which carries out lawenforcement, special, police and militarized system of establishments, which is granted the power to ensure social security and safety, protection of rights and freedoms from unlawful infringement according to powers vested by the legislation of Georgia. In order to protect public legal order, it is authorized to conduct operative-investigative activities and investigation. Police employees are also equipped with special powers to use physical coercion and firearms (article 1,2,8-14 and others).

144. Law on Police and Law on Investigative Unit of the Ministry of Finance of Georgia make it evident, that tasks of police and investigative unit of Ministry of Finance are almost identical. Moreover, in some cases, employees of the Ministry of Finance are carrying out the powers provided in the law of Georgia on Police (Namely, article 9, clause 2 of the Law of Georgia on Investigative Unit of the Ministry Of Finance states that employees use physical coercion, special means and firearms according to Law of Georgia On Police, articles 10, 11, 12 (except for d,f ,g subclauses of article 12, clause 1) and article 13 (except for article 13, clause 10)).

145. The above analysis makes is clear, that the Investigative Unit of the Ministry of Finance carries the same functions and competences due to which the Constitution of Georgia isolated functions of those people employeed in the Ministry of Interior and does not provide for them right to assembly. Therefore, these people carry out specific functions

of Ministry of Interior and thus under article 25 of the Constitution their competence is inconsistent with right to assembly and fall beyond the scope of right. Thus, employees of the Investigative Unit of the Ministry of Finance, fall in the category of people who cannot be considered as subjects of the right and if the Law restricts their right to assembly, they cannot debate the violation of article 25 of the Constitution. Prohibition set forth in the disputed norms, which deprives employees of Investigative Unit of Ministry of Finance to participate or organize an assembly cannot be considered as violation of article 25 of the Constitution.

III

On the basis of article 89(1)(f) and article 89(2) of the Constitution of Georgia; article 19(1)(e), article 21^1, clause 1, article 23(1), article 25(1,2,3), article 27 (5), article 39(1)(b) and article 43 (2,4,7,8) of the Organic Law of Georgia "On the Constitutional Court of Georgia", article 24(2), article 30, article 31, article 32, article 33 and article of the Law of Georgia "On Constitutional Legal Proceedings",

The Constitutional Court of Georgia

r e s o l v e s :

1. Constitutional claims N 482, N 483, N 487 and N 502 (Political Union of Citizens "Movement for Unified Georgia", Political Union of Citizens "Conservative Party of Georgia", Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, Citizens - Datchi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. The Parliament of Georgia.) is partially upheld.

2. Words in article 3, clause "c" of the Law of Georgia on Assemblies and Manifestations „ Political Party, Union, enterprise, establishment, organization and Initiative group of citizens" is declared unconstitutional in respect with article 25 of the Constitution.

3. Words in article 5, clause 1 of the Law of Georgia on Assemblies and Manifestations „Political Party, Union, enterprise, establishment, organization and Initiative group of citizens" is declared unconstitutional in respect with article 25 of the Constitution.

4. Words in article 5, clause 2 "also individuals without citizenship of Georgia" is declared unconstitutional in respect with article 25 of the Constitution.

5. Words in article 9, clause 1 of the Law of Georgia "On Assemblies and Manifestations": "within the territory of 20 meters radius from entrances." is declared unconstitutional in respect with article 24 and 25 of the Constitution.

6. Words in article 13, clause 1 of the Law of Georgia on "Assemblies and Manifestations" "also in case of violation of requirements of article 11^1" is declared unconstitutional with respect to article 25.

7. Words in article 174^1 clause 3 of the Code of Administrative Offences "or within the territory of 20 meters radius" is declared unconstitutional with respect to article 25 of the Constitution.

8. Constitutional claims N 482, N 483, N 487 and N 502 (Political Union of Citizens "Movement for Unified Georgia", Political Union of Citizens "Conservative Party of Georgia", Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, Citizens - Datchi Tsaguria and Jaba Jishkariani, Public Defender of

Georgia v. the Parliament of Georgia.) is not partially upheld, in the following part of their claims: constitutionality of words "as well as employees with special powers in the relevant service of Ministry of the Finance of Georgia" in article 1, clause 2, article 11, clause 3 subclause "b", article 11^1, clause 1 and 2, first sentence of clause 3, words "in view of the number of participants" of clause 5, word "necessity" of clause 5 and words "according to the number of participants in it" of the same clause, with respect to article 25 of the constitution; Constitutionality of words "at the residence of the judge or " in article 174^1, clause 3 of the Code of Georgia of Administrative Offences with respect to article 25 of the constitution; Constitutionality of article 150, clause 2^1, words "and adjacent territories, including roads for pedestrians and carriageways" with respect to article 24 and 25 of the Constitution; Constitutionality of article 4, clause 3, subclause "c" of the Law of Georgia "On the Investigation Unit of the Ministry of Finance of Georgia" with respect to article 25, clause 1 of the Constitution of Georgia.

9. The norms declared unconstitutional shall be invalidated from the the moment of publication of this judgement.

10. The judgment is in force from the moment of its public announcement at the hearing of the Constitutional Court;

11. The judgment is final and shall not be subject to appeal or review;

12. A copy of the judgment be dispatched to the parties, the Supreme Court of Georgia, the President of Georgia, and the Government of Georgia;

13. The judgment shall be published in "Legislative Gazette of Georgia" within 15 days.

Composition of the Plenum: Giorgi Papuashvili,
Vakhtang Gvaramia,
Ketevan Eremadze,
Konstantine Vardzelashvili,
Zaza Tavadze,
Maia Kopaleishvili,
Otar Sitchinava,
Lali Papiashvili,
John Khetsuriani.