
**NON-COMMERCIAL ENTITY “HUMAN RIGHTS
EDUCATION AND MONITORING CENTRE (EMC)”
AND THE CITIZEN OF GEORGIA
VAKHUSHTI MENABDE
VS. THE PARLIAMENT OF GEORGIA**

N3/2/577

Batumi, December 24, 2014

Composition of the Board:

Giorgi Papuashvili – Chairman of the Hearing;
Ketevan Eremadze – Member;
Konstantine Vardzelashvili – Member;
Zaza Tavadze – Member;
Maia Kopaleishvili – Member;
Otar Sichinava – Member;
Lali Papiashvili – Member, Judge Rapporteur;
Tamaz Tsabutashvili – Member.

Secretary of the Hearing:

Darejan Chaligava.

Title of the Case:

Non-Commercial Entity “Human Rights Education and Monitoring Centre (EMC)” and the citizen of Georgia Vakhushti Menabde vs. the Parliament of Georgia.

Subject of the Dispute:

Constitutionality of paragraph 4¹ of Article 22 and of second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” with respect to paragraph 1 of article 42 of the Constitution of Georgia.

Participants of the Hearing:

Representative of the Claimants Non-Commercial Entity “Human Rights Education and Monitoring Centre (EMC)” and the citizen of Georgia Vakhushti Menabde - Giorgi Davituri and representative of the Respondent, the Parliament of Georgia – Tamar Meskhia.

I

Descriptive Part

1. On February 21 2014 non-commercial entity “Human Rights Education and Monitoring Centre (EMC)” and the citizen of Georgia Vakhushti Menabde lodged a constitutional complaint (registration N577) to the Constitutional Court

of Georgia. On February 24, 2014 the constitutional complaint was assigned to the Second Board of the Constitutional Court of Georgia for ruling on admission of the case for consideration on merits.

2. For the purpose of ruling on admission of the complaint N577 for consideration on merits, on June 10, 2014 Preliminary Session without oral hearing was held. With the Recording Notice N2/4/577 the Second Board of the Constitutional Court of Georgia the constitutional complaint N577 was admitted for consideration on merits.

3. The Second Board of the Constitutional Court of Georgia handed the constitutional complaint N577 to the Plenum of the Constitutional Court of Georgia, which by the Recording Notice N3/4/577 admitted the constitutional complaint for consideration on Plenum on August 8, 2014. The oral hearing on merits was held on September 12, 2014.

4. The legal basis for submission of the constitutional complaint according to the constitutional complaint N577 is paragraph 1 of article 42, also subparagraph “f” of paragraph 1 of article 89 of the Constitution of Georgia, subparagraph “e” of paragraph 1 of article 19 and paragraph 1 of article 39 of the organic law of Georgia “On the Constitutional Court of Georgia”, as well as articles 15 and 16 of the Law of Georgia “On Constitutional legal Proceedings”.

5. Paragraph 4¹ of Article 22 of the organic law of Georgia “On the Constitutional Court of Georgia” provides that “The time limit for consideration of and making a final decision on a constitutional claim or constitutional submission, if the Constitutional Court suspends the force of a disputed act or a relevant part thereof based on this claim/submission and on Article 25(5) of this Law, must not exceed 30 calendar days after the decision of suspension. In special cases, based on a reasoned referral by a court reviewing the case, the President of the Constitutional Court extends this time limit, at the latest five days before it expires, for a maximum of 15 calendar days.”

6. Second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” provides that in case after the suspension of the disputed provision the Constitutional Court fails to make a final judgment within the time limit set by article 22.4¹ the decision on suspension of the force of a disputed provision or its relevant part shall become invalid from the day following the expiration of the above time limit.

7. According to paragraph 1 of article 42 of the Constitution of Georgia “Everyone shall have the right to apply to the court for protection of his/her rights and freedoms”.

8. The Claimants note the definitions made by the Constitutional Court in their complaint regarding the content of the right protected by paragraph 1 of article 42 of the Constitution. Specifically, the Claimants state, that the right protected by paragraph 1 of article 42 of the Constitution of Georgia is seen by the Constitutional Court of Georgia as an instrumental right tightly linked with due realisation of other rights and freedoms. This is why, according to the Claimants,

the Constitutional Court of Georgia has put not only the right to access the court taken separately within the scope of paragraph 1 of article 42, but the process guarantees as well that give relevance to exercising this right.

9. The Constitutional Claim states that the goal for access to the Constitutional Court is defending one's right through the judgment of the court, however, according to the Claimants, in rare cases considering the individual circumstances of a case, the application of disputed provisions before the final judgment is rendered, can violate a person's right so much, that the final judgment might have no value. The Claimant indicates that preventing this very occasion is the aim of paragraph 5 of article 25 of the organic law of Georgia "On the Constitutional Court of Georgia".

10. The Claimants additionally note that despite the fact that declaring a normative act unconstitutional has various results, it is primarily the tool for protecting an individual's right, which is what suspending the force of disputed provision serves and supports the effect of the judgment of the court.

11. The Claimants state that according to the disputed provisions the Constitutional Court of Georgia is authorised to suspend the force of the provision for no longer than 30 days (that can be prolonged for no more than 15 days), however the final judgment can be made beyond this time frame, in accordance with the time frames prescribed by the relevant procedural provisions, which are much longer than the period established for suspension of the disputed provision. Therefore the Claimants consider that renewal of the force of disputed provision prior to the final judgment causes irreparable results for a claimant, which, on its own leaves the access to court baseless, since with the final judgment of the Constitutional Court that might be beneficial for a claimant the negative results already occurred will be impossible to correct.

12. The Claimants state that the Constitutional proceedings have particularly difficult and peculiar characteristics. The Court has to elaborate not on a concrete fact, but the provision, it should research the practical use of the provision, select the specialist or expert, give them time to deliver their reports, etc. Considering these circumstances, according to the Claimants, within the period of 30 days it is impossible for the Constitutional Court to impeccably study the case and deliver reasoned judgment. The Claimants state that this on the one hand includes the threat of effective protection of individual's right and at the same time, considering the status and the authority of the Constitutional Court, includes important threat for public interests as well.

13. According to the Claimants, the goal of different procedural guarantees is support of delivery of objective, fair and reasoned judgment. The Claimants note that reasoned judgment cannot be understood as a one-sided duty of the Court, it is a human right to expect the judgment from the court, the competent body, which will be based on due research of the facts and circumstances. This, according to the Claimants, firstly means reasonable time for the court proceedings. The Claimants state that without reasonable time the risk that the judgment will be

unfounded and thus, the rights and freedoms of a person will be illegally limited are raised. Therefore the Claimants consider that the provision, that unreasonably limits the time frame for court proceeding and makes due research of a specific case impossible is not in conformity with the right to fair trial established by the paragraph 1 of article 42 of the Constitution of Georgia.

14. The Claimants assess that by the force of disputed provisions the procedural condition, when it will be impossible to render a judgment based on due examination of case circumstances without causing a claimant to face irreparable results, is created, which is the most important aspect of right to fair trial.

15. The Claimants also note that the right protected by the paragraph 1 of article 42 is not absolute, therefore it can be limited if Rule of Law principle is followed, specifically, if there is a legitimate aim and the infringement is proportionate.

16. The Complaint notes that in the explanatory note of the relevant draft law the aim of limitations set by disputed provisions is protection of third party interests which might face damages due to suspension of a disputed norm. According to the Claimants in many cases suspension of a norm might indeed cause damage to individual third party or public interests; however for such occasions the constitutional proceedings include limited time periods on its own.

17. According to the Claimants, above mentioned circumstances may not be prescribed exhaustively by the law; however the authors of the Constitutional Complaint assess that the established limitation is in force irrespective to whether the third party interests face damages or not. The Claimants consider that there will be cases when the right of a claimant may be limited even if legitimate aim does not exist, which is against the fundamental and basic human rights protection principle.

18. The Complaint also notes that even when there is a legitimate aim the Rule of Law principle requires the infringement to be in conformity with the principle of proportionality. According to the Claimants the principle of proportionality is established by the elements of prescription, necessity and proportionality.

19. The Claimants state that in the Rule of Law State the right cannot be limited more than it is necessary for achieving the legitimate aim. The Claimants consider that in the instant case the disputed provisions limit the legal interest of a person irrespective to whether the interests of a third party are damaged or not.

20. The Claimants state that the disputed provisions allow the individual right of a party to be sacrificed to the non-existent interests of a third party. The Claimants note that the legislator could have chosen less restrictive measure, for instance, by establishing reasonable interval and allowing the Constitutional Court to assess whether third party interests are violated or not. In the event when such

assessment is not existent, the Claimants consider that the limitation established by the disputed provisions is more intense than necessary for achieving specific legitimate goal, which is violation of the principle of proportionality.

21. On the hearing on merits the representative of the Claimant stated that the disputed provision gave superiority to the third party interests without any differentiation. This is against the principle of proportionality, which obliges the legislator to use the least restrictive measure.

22. According to the Claimant, the short period prescribed by the organic law may violate the institutional guarantees of the judges, since by establishing unreasonably short time frame has high possibilities that the judgment will not be rendered within such period, which in turn may become the basis for disciplinary hearings on judges and other administrative proceedings.

23. The Claimants consider that achieving the legitimate aim, protection of third party interests, is possible by other less limiting measures. According to the representative of the Claimants suspending the force of a disputed provision with respect of certain individuals can be one of such measures. The Claimant stated that such possibility would not go beyond the competences of the Constitutional Court, since it exists indirectly in the case of constitutional submission from the common courts. Additionally, the Constitutional Court of Georgia already has competences that are beyond the abstract review.

24. Derived from above mentioned the Claimants demand from the Constitutional Court of Georgia to declare paragraph 4¹ of Article 22 and of second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” unconstitutional with respect to paragraph 1 of article 42 of the Constitution of Georgia.

25. On the hearing on merits the representative of the Respondent stated that when the Court adopts the decision to suspend the force of a provision, the procedures of preliminary stage are passed and the time period of 30 and 45 days from that moment is reasonable. Specifically, within this period the attention is set on the relation between the provision and the Constitution, as well as its legal definition, not the discovery of the content of a disputed provision.

26. According to the Respondent, when the Constitutional Court of Georgia faces the need to define this or that constitutional provision for the first time, the existing law allows the Board of the Court to hand the case to the Plenum, at this point the lapse of time for the Board to decide on the case is stopped, allowing the Plenum to concentrate only on the case at hand. This supports adoption of qualified and reasoned judgment.

27. The Respondent considers that the disputed provision does not affect the quality and reasoning of the judgments, since the 45 days period established by the disputed provision is not final, in which the Court is obliged to deliver a judgment.

28. According to the Respondent, systemic reading of articles 89 and 42 of the Constitution does not allow the Constitutional Court of Georgia to suspend a

disputed provision with regards to a specific person, since it only has the competence to elaborate on the provision generally. By establishing the suspension of a provision with regards to specific individual it would go beyond its competences.

29. Based on all above mentioned the Respondent considers that the disputed provisions are fully in conformity with paragraph 1 of article 42 of the Constitution.

II

Reasoning part

1. In the case at hand the Claimants question the constitutionality of paragraph 4¹ of Article 22 and of second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” with respect to paragraph 1 of article 42 of the Constitution of Georgia.

2. The limitations established by the disputed provisions are regarding the period of suspension of the force of a disputed provision within the constitutional proceedings. Specifically, according to paragraph 4¹ of Article 22 of the organic law of Georgia “On the Constitutional Court of Georgia” provides that “The time limit for consideration of and making a final decision on a constitutional claim or constitutional submission, if the Constitutional Court suspends the force of a disputed act or a relevant part thereof based on this claim/submission and on Article 25(5) of this Law, must not exceed 30 calendar days after the decision of suspension. In special cases, based on a reasoned referral by a court reviewing the case, the President of the Constitutional Court extends this time limit, at the latest five days before it expires, for a maximum of 15 calendar days.” While according to the Second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” in case after the suspension of the disputed provision the Constitutional Court fails to make a final judgment within the provided time limit (30 days with the possibility to be prolonged by 15 days) the decision on suspension of the force of a disputed provision or its relevant part shall become void from the day following the expiration of the above time limit.

3. Article 42 of the Constitution of Georgia establishes the right to a fair trial. The Constitutional Court has numerously stated that the right to a fair trial is very important constitutional guarantee for protection of human rights and freedoms, ensuring the Rule of Law and division of powers.

4. The right to judicial defence recognised by the paragraph 1 of article 42 of the Constitution of Georgia is formally the right to access to court, content-wise - it ensures complete legal defence of human rights. Complete defence, first of all includes the duty of the legislator to create the normative rule that will ensure right to timely, fair and effective judiciary, so that a person can fully defend his/her own rights and freedoms through access to court. The Constitutional Court has numerously underlined the relevance of realising the right to access to court for the Rule of Law and Democratic State.

Constitutionality of paragraph 4¹ of Article 22 of the organic law of Georgia “On the Constitutional Court of Georgia” with respect to paragraph 1 of article 42 of the Constitution of Georgia

5. The Claimant considers that the period set by the disputed provision for hearing and deciding a case is unreasonably short and in most cases does not allow for complete research of the case and rendering the reasoned judgment.

6. “Generally, time periods have big importance in bringing order into the legal relationships... time periods bring important order into the process of exercising the right to a fair trial (The Judgment of the Constitutional Court of Georgia N3/1/531 dated November 5 2013 on the case “Citizens of Israel Tamaz Janashvili, Nana Janashvili and Irma Janashvili vs. the Parliament of Georgia”, II-16,17).

7. Court dispute is effective if it responds to the demands of rapid/timely, fair and efficient justice. Derived from the right to a fair trial, the court judgment has to be delivered within the reasonable time period, without undue delay, since such delay of judgment undermines the trust of society towards it. Simultaneously the period for hearing and deciding the case has to provide the opportunity to objectively research the circumstances. This is why the reasonableness of the proceeding should be assessed based on the specific circumstances of the case.

8. When assessing the difficulty of the case, all factors related to it have to be considered and evaluated. The difficulty of the case might be related to the need to research both legal and factual circumstances, invitation of expert, specialist and/or witness, to their quantity, to the time period required for the reports by them, the number of disputed provisions and/or their constitutionality with regards to the constitutional provisions, etc.

9. In the event when the time period for deciding the case is unreasonably long, protecting the right is delayed and loses efficiency. Unreasonably short time period on the other hand limits the possibility of the parties and the court to deliver important evidences, completely research the case circumstances and conduct necessary procedural activities, which reflects negatively on the quality of the hearing, threatens protection of those constitutional rights and freedoms, protection of which was the goal of addressing the court, creates the threat of rendering unreasoned judgment and, therefore, the violation of right to a fair trial.

10. The part of a right to a fair trial is the right to reasoned judgment. Effect and correct understanding of a court judgment by the parties and the society is largely dependent on the quality of reasonableness of the judgment. Unreasoned, unclear and general formulations may create impression to the parties that the justice was arbitrary and lacked transparency. The court need to demonstrate the reasoning, the judgment is based on, with enough clarity. Specific aspects of the disputed provisions should not be left beyond the attention of the court and all segments of the provision should be assessed in complexity. The court judgment should clarify that all relevant issues of the case were responded.

11. The requirement of reasoned judgment obliges the judges to base their

reasoning on objective arguments. At the same time the duty to reason varies according to the characteristics of the provision and the nature of proceedings. Therefore the standard of reasoning the judgment of the Constitutional Court is particularly high, which, on the one hand is final and not subject to appeal and, on the other hand, as a rule, is addressed to indefinite circle of persons and in frequent cases offers practically new standards of regulating relationships or identifies criteria for interpreting disputed provisions according to the constitutional requirements.

12. Hearing the case in the Constitutional Court is related to interpreting relevant constitutional provisions, analysis of current legal environment, and comprehensive research of modern international practice and standards of international human rights law. At the same time, considering the specificity of pending cases, there are instances when the Constitutional Court faces the need to establish important factual circumstances, request of information from governmental or non-governmental organisations, call for witnesses, experts or specialists and question them, request for expert positions from international organisations or forums from abroad; considering the complexity of pending cases the time period prescribed by the disputed provision for hearing and deciding a case at the Constitutional Court might be insufficient to completely research the circumstances of the case. Without complete research the circumstances of the case the Constitutional Court will not have objective possibility to adopt a reasoned judgment, putting the right to a fair trial under the doubt.

13. Therefore it is unfounded to ensure rapid proceeding by limiting the right to a reasoned judgment.

14. Simultaneously the right to a fair trial is an instrumental right. Its components need to be used in the volume objectively necessary for protecting a specific right, when it can objectively affect the efficiency of defending a right through court.

15. According to the explanation by the Constitutional Court of Georgia the principle of Rule of Law “requires that the law of a country has to ensure, in the fullest extent, the recognition of basic human rights and freedoms and creation of all guarantees necessary for their protection. The Constitutional Court plays an immense role in achieving this goal. It, in every specific case, has to manage to correctly and exhaustively construe the contents of the constitutional rights” (The Judgment of the Constitutional Court of Georgia N3/1/466 dated June 28 2010 on the case “The Public Defender of Georgia vs. the Parliament of Georgia”, II-2). The Constitutional Court defines the Constitution and ensures the primacy of the Constitution and protection of human rights and freedoms within its competences prescribed by the Constitution of Georgia. Therefore article 42 of the Constitution of Georgia includes the right to access the Constitutional Court and creates constitutional guarantee for protecting human rights and freedoms.

16. According to the practice set by the Constitutional Court of Georgia the right to a fair trial is not absolute. This right can be limited for pursuing the

legitimate aim existing in a democratic society. At the same time the legislator must maintain a reasonable balance between the means used for the limitation and the legitimate aim (see for instance the Judgment of the Constitutional Court of Georgia N2/3/558 dated February 27 2014 on the case “Citizen of Georgia Ilia Chanturaia vs. the Parliament of Georgia”, II-6, etc.)

17. In a certain case existence of a restricted time period, establishing limitations and bringing order in the use of the right to a fair trial is necessary. The Constitutional Court does not preclude the right of a legislator to establish periods for specific procedural actions. However any limitation should be a proportionate measure to achieve a valuable legitimate aim. No procedural time period may threaten exercising the justice and constitutional review. In any event the time period shall be reasonable and satisfactory for the principle of proportionality.

18. According to the definition of the Constitutional Court “The principle of proportionality requires the restrictive regulation must be a reasonable and necessary means for achieving (legitimate) public aim. At the same time, the intensity of the restriction must be proportionate to the aim pursued. It is impermissible to pursue a legitimate aim at the expense of increased restriction of human rights” (The Judgment of the Constitutional Court of Georgia N3/1/512 dated June 6 2012 on the case “Citizen of Denmark Heike Cronqvist vs. the Parliament of Georgia”, II-60).

19. On the hearing on merits the Respondent named avoiding the prolonged “legal vacuum” created by the suspension of a disputed provision and protection of third party interests as a legitimate aim for limiting the right to a fair trial.

20. The general obligatory rules established by normative acts serve regulating relevant spheres of societal life and achieving specific legitimate aim, protection of private and public interests. In some instances suspending the force of a normative act might limit both private and public interests and damage the values it was adopted to protect; the Constitutional Court of Georgia shares the position of the Respondent regarding the statement that avoiding negative effects brought by prolonging the suspension of a normative act serves protecting significant private and public interests and is the legitimate aim in pursuit of which limiting the right guaranteed by the paragraph 1 of article 42 of the Constitution is permissible.

21. The special period established by the paragraph 4¹ of Article 22 together with the second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” establish regime, in which possible negative results are reduced in time. This, to a certain extent, ensures protecting those private and public interests, protecting of which is the goal of a disputed provision suspended by the Constitutional Court and which would be damaged by suspending the provision for an indefinite period. However when evaluating the limitation of a right all issues related to suspension of a disputed provision should be taken into consideration.

22. In the instance case it should be determined, whether the disputed

regulation is the least limiting and appropriate measure for avoiding negative effects caused by long suspension of a disputed provision.

23. When selecting such a measure the legislator has wide margin of appreciation, however while adopting a normative act the legislator should follow the constitutional standard of proportionality and select the regulation that will limit the rights and freedoms recognised by the Constitution of Georgia the least.

24. Negative results caused by suspending the force of a disputed provision in some instances are not related to the duration of suspension. If negative results are related to the suspension and not its duration, the logical link between the disputed regulation and the interests subject to protection is lost. In such occasion the usefulness of the disputed provision is suspicious.

25. The Constitutional Court of Georgia indicates that establishing less limiting mechanism is possible, which would allow fair balance between the right to a fair trial of a claimant, on the one hand and the protection of private and public interests, on the other hand. Including, for instance, as mentioned during the hearing on merits, the suspension of a normative provision by the court not generally, but with regards to a claimant only. In certain instances, when, for instance, the possibility of damage caused by the suspension is high, such mechanism could indeed represent a more precise, better fit tool for solving a problem, which on the one hand would protect the interests of a claimant and on the other hand reduce the threat to violation of public or third party interests caused by the suspension. Therefore, the negative effects based on suspension of a normative provision would be decreased.

26. The Respondent could not establish that the offered legal mechanism was the sole, least limiting measure for achieving the legitimate aim and that less limiting measure could not be elaborated, which would be lesser weight for a claimant and would protect third party and societal interests as well.

27. Derived from above mentioned the Constitutional Court of Georgia holds that the limitation set by the paragraph 4¹ of Article 22 of the organic law of Georgia “On the Constitutional Court of Georgia” is disproportionate and is not in conformity with the demands of the paragraph 1 of article 42 of the Constitution of Georgia.

The constitutionality of the second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” with regards to the paragraph 1 of article 42 of the Constitution of Georgia

28. The stated disputed provision operates only in the case when the Court does not decide a case within the time frame set by the paragraph 4¹ of Article 22 of the organic law of Georgia “On the Constitutional Court of Georgia”. The Constitutional Court of Georgia exercises its powers according to the Constitution of Georgia, following the Rule of Law, which also entails following the legislation on constitutional proceedings. However since the disputed provision has allowed the possibility of the Constitutional Court to violate the time frame for hearing and deciding on a case set by the law and linked the right to a fair

trial to this event, the Constitutional Court will discuss the constitutionality of this limitation as well.

29. The Constitutional Court is a significant guarantee of the primacy of the Constitution of Georgia and the right and freedoms enshrined in the Second Chapter of the Constitution. Together with other competences, the Constitutional Court exercises this function based on the complaints/submissions made by the individuals and legal entities, evaluating the conformity of normative provisions with regards to the Constitution and finding unconstitutional normative provisions void.

30. The right to access to court guaranteed by paragraph 1 of article 42 of the Constitution of Georgia, which also entails the right to access to the Constitutional Court, cannot be illusory, but should create real possibility of restoring the right in a due manner and provide for an efficient tool of protecting the right. A claimant should have the expectation and real possibility to protect own rights through the constitutional powers of the Constitutional Court.

31. Considering the characteristics of the constitutional justice suspending the force of a disputed provision protects a claimant from unavoidable and irreparable violation of a right and supports the efficiency of access to the Constitutional Court.

32. The judgments of the Constitutional Court often do not have effect on the legal relationships emerged before the judgment and there is a threat that restoring a person's right will not happen after the Constitutional Court renders its judgment.

33. The criminal justice has certain peculiarity in this regard specifically the law allows the possibility of revision of the final judgment, if there is a judgment of the Constitutional Court finding the criminal law used in a relevant case unconstitutional. Therefore in the criminal law cases the Constitutional Court judgment has a certain effect on legal relations emerged prior to such judgment. However in numerous instances the criminal law/criminal procedural law might cause such irreversible and irreparable damage, that finding a provision unconstitutional after rendering the judgment by the Constitutional Court might lose the interest for a claimant and the violated right might not be restored.

34. Despite above mentioned the legislation prescribes suspending a disputed provision only in the cases when there is a real danger that the force of a disputed provision will cause irreparable damages. Therefore the institution of suspending the force of a disputed provision is driven to prevention of those unavoidable and irreparable threats, that could follow the operation of a disputed provision and recovering of which might become impossible after finding a provision unconstitutional by the Constitutional Court. The analysis of the case-law of the Constitutional Court demonstrates that the Court applies suspension measure solely in extreme circumstances, only in the cases, when the threat of irreparable damage to a party is clear and there are no risks of unjustified limitation of third party or public interests.

35. Therefore suspending the force of a disputed provision is an extremely relevant preventive measure for protecting a right and significantly conditions the efficiency of the Constitutional Court.

36. In the instant case the disputed provision, specifically the second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” establishes that in the event when the Court does not render a judgment within the time frame of 30 days (with the possibility to prolong with 15 days) provided for hearing and deciding a case, the decision on suspension of a disputed provision loses force.

37. During the process of realisation of the right to access the Constitutional Court, despite the relevance of the suspension of a disputed provision, the force of the latter can also be limited. However any limitation should be proportionate to the aim.

38. As for the case discussed above the goal of the second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” is also avoiding the negative effects caused by long suspension period. As mentioned above, the Constitutional Court shares the position of the Respondent that for achieving this legitimate goal limiting the right to access to court is permissible.

39. The Constitutional Court considers that according to the disputed regulation the possible negative effects caused by suspension of a provision is reduced in time; partially the private and public interests, achieving of which is set by the suspended provision and which would be damaged with suspension for unlimited period, are protected. Simultaneously the disputed provision limits the operation of the suspension tool and leaves a claimant without the tool for preventing irreparable violation of a right, which puts access to the Constitutional Court under suspicion.

40. Normative documents, regulating various relationships and serving different private or public interests can fall within the jurisdiction of the Constitutional Court. At the same time, as indicated by the case-law of the Constitutional Court, there are instances when the legitimate aim, which a disputed provision serves, is not clear or there is no evidence that it addresses third parties. In such instances suspending a disputed provision despite the length of such suspension might not cause any threat of damage to private or public interests.

41. The disputed provision establishes general limitation that governs on all instances of suspending a disputed provision by the Constitutional Court and provides for the unconditional reinstatement of the force of all disputed provisions in the event when the time limit for suspension has lapsed. This includes instances when suspension of a disputed provision does not violate third party right or damages to relevant public interests. Therefore the legislation creates limitation of claimants even when it is not conditioned by the necessity to protect public interests or third party rights.

42. The Constitutional Court has stated in the relevant part of the judg-

ment that there is objective possibility to regulate the suspension of a disputed provision using less limiting legal tool.

43. The legislator has a wide margin of appreciation to subordinate the realisation of the right to fair trial to a procedural order; however the limiting measures in this process should be used in proportion with the necessities. The legislator is obliged to ensure achieving the legitimate aim on the one hand and avoid limiting the right extensively on the other hand, by establishing flexible and fit to the needs measures.

44. It is noteworthy that offered tool is not flexible and does not allow to evaluate in each instance on the one hand, the interests of a claimant not to face irreparable results and irrevocable violation of right and on the other hand, the interests of third party and public that are aimed to be protected by the disputed provision. The disputed provision *a priori* prioritises the third party interest, however simultaneously creates the possibility to limit in a blanket and absolute way the interests of third parties for 45 days and does not allow the Constitutional Court the ability to balance on its own the opposing interests in specific cases.

45. It is possible that there are instances when violation of third party interests is so high, that it significantly exceeds the interest of a claimant. According to the established case-law of the Constitutional Court “In each specific instance when deciding to suspend a disputed provision the Court should evaluate the threat of violating the rights of others caused by the suspension” (The Judgment of the Constitutional Court of Georgia N1/3/509 dated November 7 2012 on the case “Citizen of Georgia Sopio Ebralidze vs. the Parliament of Georgia”, II-9). In such instances the Court does not suspend the force of a disputed provision.

46. The reality is different when it is established that at the moment of deciding to suspend, as well as after 30 (or in certain cases 45) days the interest to protect the rights of a claimant is significantly higher than the protection of the rights of others and the interests of public. Derived from the disputed provision, in such an instance, the Court does not have the possibility to prioritise the interest of a claimant and suspend the force of a disputed provision for longer than 30 (or in certain cases 45) days. Therefore, according to the disputed provision, it is possible that the right of a claimant to a fair trial be limited even when the interest to protect it is significantly higher than the interests of third parties or public values. Hence the disputed provision does not provide for a proportionate and fair balance between the right to fair trial and the legitimate aims, the limitation of a right is wider than necessary for the legitimate aim.

47. Derived from all above mentioned, the regulation established by the disputed provisions should be evaluated as disproportionate and unconstitutional limitation of the right to access the court. Therefore, the Constitutional Court holds that the Constitutional Claim shall be upheld and paragraph 4¹ of Article 22 and of second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” shall be found unconstitutional with regards to paragraph 1 of article 42 of the Constitution of Georgia.

III

Ruling Part

Based on subparagraph “f” of paragraph 1 of article 89 and paragraph 2 of article 89 of the Constitution of Georgia, subparagraph “e” of paragraph 1 of article 19, paragraph 1 of article 21¹, paragraph 1 of article 23, paragraphs 1, 2 and 3 of article 25, paragraph 5 of article 27, subparagraph “a” of paragraph 1 of article 39, paragraphs 2, 4, 7, 8 of article 43 of the organic law of Georgia “On the Constitutional Court of Georgia”, paragraph 2 of article 24, articles 30, 31, 32 and 33 of the Law of Georgia “On Constitutional legal proceeding”

THE CONSTITUTIONAL COURT

H O L D S:

1. The constitutional claim N577 of “Non-Commercial Entity “Human Rights Education and Monitoring Centre (EMC)” and the citizen of Georgia Vakhushti Menabde vs. the Parliament of Georgia” shall be upheld.

2. Paragraph 4¹ of Article 22 and of second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” shall be found unconstitutional with regards to paragraph 1 of article 42 of the Constitution of Georgia.

3. Paragraph 4¹ of Article 22 and of second sentence of paragraph 5 of article 25 of the organic law of Georgia “On the Constitutional Court of Georgia” shall be declared invalid from the moment of publishing this decision.

4. The judgment is in force from the moment of publicly announcing it on the session of the Constitutional Court.

5. The judgment is final and is not subject to appeal or review.

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

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

Members of the Plenum:

Giorgi Papuashvili
Ketevan Eremadze
Konstantine Vardzelashvili
Zaza Tavadze
Maia Kopaleishvili
Otar Sichinava
Lali Papiashvili
Tamaz Tsabutashvili