

Composition of the Board

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Secretary of the Hearing: Mariam Baramidze

Title of the Case: Citizens of Georgia – Zurab Japaridze and Vakhtang Megrelishvili v. the Parliament of Georgia

Subject of the Dispute: Constitutionality of a normative content of the wording “and/or use without a doctor’s prescription” of Paragraph 1 of Article 45 of Administrative Offences Code of Georgia which sets punishment for use of narcotic substance - marijuana indicated in 92th horizontal cell of the second appendix of the law of Georgia “On Narcotic Drugs, Psychotropic Substances and Precursors and Narcological Assistance” with respect to Article 16 of the Constitution of Georgia.

Participants of the Hearing:

Claimants – Zurab Japaridze and Vakhtang Megrelishvili and their representative Iago Khvichia; Representatives of the Parliament of Georgia – Giorgi Giguashvili and Nino Kochiashvili; Witnesses – doctor-narcologist, Head of Department 8 (responsible for implementation of State Substitution Therapy Program) of Ltd “Center for Mental Health and Prevention of Addiction”, Gvantsa Piralishvili; Deputy Head of Information Centre (division) of Information and Analytics Department of the Ministry of Internal Affairs of Georgia – Giorgi Kavelashvili; doctor-narcologist, Chief Expert of Division 1 of Agency of Narcological Testing of Expert-Forensic Department of the Ministry of Internal Affairs of Georgia – Inga Panchulidze.

I**Descriptive Part**

1. On December 13, 2017 a constitutional claim (registration №1282) was lodged to The Constitutional Court of Georgia by the Citizens of Georgia Zurab Japaridze and Vakhtang Megrelishvili. On December 18, 2017 the Constitutional Claim was assigned to the First Board of the Constitutional Court of Georgia for ruling on admission of the case for consideration on merits. Preliminary session of the First board of The Constitutional Court without an oral hearing was held on April 27, 2018. Pursuant to the Recording Notice №1/5/1282 of April 27, 2017 of the First Board of the Constitutional Court of Georgia the constitutional claim was admitted for consideration on merits. The hearing on merits was held on May 30, 2018.

2. According to the Constitutional Claim №1282, the legal basis for submission of the Claim is: paragraph 1 of article 42, subparagraph “f” of paragraph 1 of article 89 of the Constitution of Georgia, subparagraph “e” of paragraph 1 of article 19, subparagraph “a” of paragraph 1 of article 39 of the organic law of Georgia “On The Constitutional Court of Georgia”, articles 15 and 16 of the Law of Georgia “On Constitutional Legal Proceedings”.

3. Section 1 of Article 45 of Administrative Offences Code of Georgia determines that acts such as illegal purchase, storage, transportation, transfer, and/or consumption without a doctor’s prescription of a small quantity of a narcotic substance – marijuana are administrative offences and imposes respective sanctions for commission of these acts.

4. Article 16 of the Constitution of Georgia protects the right to a free development of personality.

5. As stated in the constitutional claim, a right of a person to decide on acts in connection with his/her body, health, physical development, as well as, right to freely choose a desirable form and means of recreation and relaxation, is protected by the right to a free development of personality. In the scope of a discussed right, a person has an ability to determine activities or acts that are beneficial for him/her.

6. Claimants indicate that in order to justify interference into an autonomous area of personal liberty, state must base its claim on harmful effects on society emanating from an act and not on a moral assessment of that act. Consumption of Marijuana does not pose a public threat. There exists no legitimate aim for imposing punishment for an act, effects of which is limited only to a person committing it and does not invite any public harm. Effects of using Marijuana might involve harm only for the user, who will him/herself bear the consequences. Moreover, use of Marijuana does not pose a significant risk to a person’s health. By virtue of ethical autonomy, a person is not obligated to argue for an objective value of an act committed in the scope of personal liberty. The State does not have authority to prohibit a person from committing acts that involve a risk to his/her health. Imposing punishment on a Marijuana user, on the basis of moralistic and paternalistic arguments alone, contradicts with the right to a free development of personality.

7. At the hearing session on merits, claimants asserted that they have been using Marijuana for several years, yet it has never interfered in their career advancement or professional development. Moreover, they have never had an urge to consume other types of narcotic substances. Deriving from the provided argumentation, Claimants consider that the disputed norm is in violation of Article 16 of the Constitution of Georgia.

8. In order to further support the argumentation Claimant party additionally refers to the case-law of the Constitutional Court of Georgia on related issues.

9. Pursuant to a position of the Parliament of Georgia, the right protected by Article 16 of the Constitution of Georgia is not of an absolute character and is subject to constitutional limitations. It is impermissible to interpret this norm solely in the context of negative obligations of the state and to regard it in such a way that the right to a free development of personality is unlimited.

10. Respondent party pointed out that the legitimate aims of the disputed norm are protection of health of individuals, as well as of the whole population, maintenance of public security, prevention of narcotic substance addiction among the population, with particular emphasis on the youth. In order to achieve the indicated objectives, the Legislator imposes

administrative responsibility for an act, which is harmful to human health, but not to a degree, which would be sufficient to justify imposition of criminal responsibility.

11. Representatives of the respondent party draw attention to the effects of Marijuana consumption, such as - loss of adequacy of behaviour and psyche, depersonalization and hallucinations. A chronic user of this narcotic substance at a certain point reaches a stage when he/she loses energetic potential. Chronic use of Marijuana can also possibly cause degradation of personality, mental disabilities, paranoias and chronic schizophrenia. Behavioural effects of Marijuana consumption include relaxation, impairment of psychosomatic activities, deterioration of attention concentration, deterioration of perception of distance and range, which involves significant risks particularly for drivers.

12. In order to further support the argumentation Respondent party refers to legislation of foreign countries on narcotic related crimes and the case-law of The Constitutional Court of Georgia.

13. Doctor-narcologist, Chief Expert of Division 1 of Agency of Narcological Testing of Expert-Forensic Department of the Ministry of Internal Affairs of Georgia – Inga Panchulidze was called as a witness to the Court. As stated by the witness, harmful effects on health caused by use of Marijuana are individual in every specific case. It is possible that a user of years does not develop any considerable physical changes, whereas a singular fact of consumption might seriously affect certain people and cause psychosis. It should be noted that Hashish Psychosis mainly develops in persons, who are at risk of certain psychological disorders.

14. The witness further pointed out that use of Marijuana is considered as a ‘gateway’ to abuse of other, harder drugs. Research conducted in United States of America revealed that 93% users of different narcotic substances consumed Marijuana as their first narcotic substance.

15. Another witness, Deputy Head of Information Centre (division) of Information and Analytics Department of the Ministry of Internal Affairs of Georgia – Giorgi Kavelashvili presented a study, according to which from 2017 to date expertise revealed a fact of consumption of narcotic substance tetrahydrocannabinol (THC) in 2951 persons, 40% of whom were charged for commission of other crimes, with 31% charged for narcotics related crimes. The witness continued by explaining that the research does not determine whether mentioned perpetrators were under influence of Marijuana at the moment of committing a crime.

16. Doctor-narcologist, Head of Department 8 (responsible for implementation of state substitution therapy program) of Ltd “Center for Mental Health and Prevention of Addiction”, Gvantsa Piralishvili was called as a witness to the Court. According to her statement, use of Marijuana does not normally induce aggressive behaviour in users. In rare cases, atypical forms of Marijuana consumption can lead to development of Hashish Psychosis. In such cases individuals experience hallucinations, disordered speech, pathologies regarding reason and perception of reality. In 2017, the “Center for Mental Health and Prevention of Addiction” identified only 30 cases of Hashish Psychosis, half of which was caused by use of tetrahydrocannabinol and the rest by use of synthetic cannabinoids. In 2018, the same facility registered 6 cases of Hashish Pgsychosis, 5 of which

was caused by use of synthetic cannabinoids. Comparatively, the Center registers approximately 20 cases of Alcohol induced psychosis every month.

17. As the witness asserted, according to the studies conducted in the United States of America absolute majority of users of narcotic substances name Marijuana as the first narcotic substance to consume, but the same subjects also indicate that before Marijuana they consumed tobacco and alcohol.

II

Reasoning Part

a. Protected ambit of the right/determination of interference into the right

1. Article 16 of the Constitution of Georgia guarantees the right to a free development of personality, “which primarily implies right of one’s personal self-determination and autonomy. It is the personality that defines one’s essence, indicates his/her individuality and distinction from others” (Judgement of The Constitutional Court of Georgia №2/1/536 of February 4, 2014 on the case of “Citizens of Georgia – Levan Asatiani, Irakli Vatcharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze V. the Ministry of Labour, Health and Social Affairs of Georgia”, II-54). “In essence, the right to a free development of personality represents a fundamental guarantee for exercise of human rights and liberties, which protects the freedom to conduct one’s life based on his/her own views” (Judgement of The Constitutional Court of Georgia №3/7/679 of December 29, 2017 on the case of ““Ltd Broadcasting Company Rustavi 2” and “Ltd Television company Sakartvelo” V. the Parliament of Georgia”, II-2).

2. Pursuant to established case-law of The Constitutional Court, Article 16 of the Constitution of Georgia “... extends its protection to a person’s right to control how he/she presents him/herself in a society and the freedom to decide on acts necessary for personal development and realization. For autonomy of an individual, for his free and full-fledged development, special importance is attached to independently define the relations with outer world, but also to physical and social identity of an individual...” (Judgement of The Constitutional Court of Georgia №2/4/532,53 of October 8, 2014 on the case of “Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze V. the Parliament of Georgia”, II-3). “Article 16 of the Constitution protects person’s freedom of will and act in private, as well as public dominions” (Judgement of The Constitutional Court of Georgia №2/4/570 of August 4, 2016 on the case of “Citizen of Georgia Nugzar Jakeli V. the Parliament of Georgia”, II-9).

3. As The Constitutional Court is limited to the scope of the constitutional claim, it reviews only the normative content of the disputed norm and within the scopes, which were disputed by the Claimant. In the case at hand, the claim only refers to the issue of punishment imposed for consumption of Marijuana without a doctor’s prescription. Consequently, in the scope of this dispute the Court will neither review constitutionality of use of other narcotic substances, nor other acts (purchase, storage, transportation, transfer) proscribed by the disputed norm.

4. Marijuana is mainly consumed without a doctor’s prescription with the aims of relaxation, recreation and entertainment. The Constitutional Court of Georgia, in one of its judgements has already established that consumption of Marijuana with the aims mentioned

above falls within the protected ambit of the right to free development of personality. “The right to a free development of personality permits a person to decide on forms of entertainment and recreational activities without state’s interference. Individual’s leisure activities are doubtlessly encompassed by a sphere of personal autonomy. Therefore, person’s impact on him/herself and taking pleasure or enjoyment in this manner certainly falls within the scope of the right to a free development of personality. The Constitutional Court recognizes that person’s right to decide on a preferable form of leisure, including consumption of Marijuana, is part of a sphere protected by personal autonomy of a person” (Judgement of The Constitutional Court of Georgia №1/13/732 of November 30, 2017 on the case of “Citizen of Georgia Givi Shanidze V. the Parliament of Georgia”, II-12). Based on the fact that the disputed norm declares consumption of Marijuana unlawful, limitation to the protected scope of Article 16 of the Constitution of Georgia is evident.

b. Justification of interference

a. Common principles

5. The Constitutional Court of Georgia determined that “the right to a free development of personality is not of absolute nature and its exercise may be limited, when it causes harm to rights of others and to other important public interests. State’s role is vital in this regard, which, on the one hand, has obligation to create a free space for personal development and ensure effective realization of this right, and, on the other hand, ensure protection of important public interests” (Judgement of The Constitutional Court of Georgia №2/4/570 of August 4, 2016 on the case of “Citizen of Georgia Nugzar Jakeli V. the Parliament of Georgia”, II-13). “The State should recognise and respect freedom of conduct and development in such a manner, that it does not result in disproportionate and unjust limitation of others’ constitutional rights and freedoms, violation of constitutional order and prejudice of valuable legitimate aims” (Judgement of The Constitutional Court of Georgia №2/1/536 of February 4, 2014 on the case of “Citizens of Georgia – Levan Asatiani, Irakli Vatcharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze V. the Ministry of Labour, Health and Social Affairs of Georgia”, II-65).

6. In the light of all the aforementioned, the right to a free development of personality, guaranteed by Article 16 of the Constitution of Georgia, is subject to constitutional limitations.

7. As determined by established case-law of The Constitutional Court of Georgia “In a rule of law based state, the government is restricted by unconditional obligation to interfere into person’s freedom (in any right) only when it is absolutely unavoidable and to the objectively necessary extent. Such is a constitutional order of any rule of law based state. Naturally, this obligation specifically limits the state in creation and application of legislation imposing responsibility. Such legislation is inherently characterized by appropriateness of intensive interference in a liberty of a person. Therefore, it is also appropriate that the State needs to be extremely cautious in this process, as justice will be deprived of its function if people are punished without appropriate and indispensable grounds” (Judgement of The Constitutional Court of Georgia №1/6/557,571,576 of November 13, 2014 on the case of “Citizens of Georgia – Valerian Gelbakhiani, Mamuka Nikolaishvili and Aleksandre Silagadze V. the Parliament of Georgia, II-62-64).

8. Accordingly, in order for limitation to the right of a free development of personality to be justified principle of proportionality must be adhered. “It is the requirement of the principle of proportionality that legal regulation limiting a right represent an suitable and necessary mean of achieving a valuable public (legitimate) aim. At the same time, intensity of limitation of the right must be proportionate, commensurate to the public purpose that is intended to be achieved. Legitimate aim may not be achieved by means of an excessive limitation of a person’s right” (Judgment of The Constitutional Court of Georgia №3/1/512 of June 26, 2012, Citizen of Denmark Heike Cronqvist v. the Parliament of Georgia, II-60). On the basis of the above mentioned, The Constitutional Court shall review whether or not declaration of Marijuana consumption as unlawful serves to achieve legitimate aims and if so, does it represent a proportional limitation to the right of a free development of personality with regard to respective legitimate aims. This also involves determination of whether or not fair balance between conflicting legitimate interests is struck.

b. Legitimate public aim

9. Generally, aim for declaring consumption of Marijuana, like other narcotic substances, unlawful is prevention of illegal circulation of narcotic substances. “United Nations Convention against Illicit Traffic of Narcotic drugs and Psychotropic Substances” of 1988 imposes obligation on signing states, including Georgia, to fight against illicit traffic of narcotic substances and regulate acts promoting and related to illicit traffic of narcotic substances under the framework of Criminal Law. The Convention declares that illicit traffic of narcotic substances generates large profits for transnational criminal organizations, thus undermining legal economy, stability of states, security and sovereignty.

10. It is necessary to note that removal of narcotic substances from legal circulation does not represent self-evident, self-sufficient aim. “The task to exclude some substances from free circulation cannot be considered as legitimate aim itself. Prevention of distribution of Marijuana as well as other narcotic substances should be related to safeguarding constitutionally protected value – human health, public order and safety. Thus, the Court should assess whether purchase/possession of Marijuana for personal use constitutes danger for achieving any of the above mentioned legitimate aims. In absence of such danger the punishment prescribed by the disputed provision would be incompatible with the Constitution” (Judgement of The Constitutional Court of Georgia №1/4/592 of October 24, 2015 on the case of “Citizen of Georgia Beka Tsikarishvili V. the Parliament of Georgia, II-73).

11. The Constitutional Court of Georgia has already determined that “generally, legitimate aims of regulating (limitation, prohibition) narcotic substances are protection of health and ensuring public safety” (Judgement of The Constitutional Court of Georgia №1/9/701,722,725 of July 14, 2017 on the case of “Citizens of Georgia Jambul Gvianidze, Davit Khomeriki and Lasha Gagishvili V. the Parliament of Georgia, II-11). The Court established that “Fight against drug crimes... serves avoidance of increase in number of drug crimes, prevention of other crimes and asocial behaviour, and as a result protection/improvement of health and wellbeing of society” (Judgement of The Constitutional Court of Georgia №1/4/592 of October 24, 2015 on the case of “Citizen of Georgia Beka Tsikarishvili V. the Parliament of Georgia”, II-67).

12. Accordingly, declaring consumption of Marijuana unlawful has aims of prevention of harms arising from illicit circulation of narcotic substances such as: a) protection of health of an individual, as well as of the society as a whole, and, b) ensuring public safety. The Constitutional Court of Georgia has already determined in one of its judgements that “the State, generally has a legitimate interest of ensuring public safety. Aims stipulated by the Respondent – protection of health, prevention of crime and other antisocial behaviour, certainly represent legitimate aims, for achieving of which limitation of the right laid down in Article 16 is permitted” (Judgement of The Constitutional Court of Georgia №1/13/732 of November 30, 2017 on the case of “Citizen of Georgia Givi Shanidze V. the Parliament of Georgia”, II-18).

13. Therefore, the State is entitled to regulate circulation of narcotic substances with the aim of prevention of the risks to health of population and public safety caused by their consumption.

c. Suitability

14. Respondent party, advocating constitutionality of the disputed norm refers to two, separate legitimate aims such as protection of public health and ensuring public safety. Additionally, according to witnesses point out the existence of a view that Marijuana plays a role of gate-way to other, harder narcotic substance abuse. Hence, the Legislator is attempting to decrease consumption of Marijuana, as well as of other, harder narcotic substances through the disputed norm. Furthermore, on the hearing on merits, opinion was expressed according to which consumption of Marijuana possibly increases the risks of commission of other crimes.

i. Protection of public health

15. In number of cases The Constitutional Court of Georgia was necessitated to examine, on the basis of information provided by experts, the harms that Marijuana consumption can cause to human health. In the case of “Citizen of Georgia Beka Tsikarishvili V. the Parliament of Georgia” the Court found that Marijuana consumption involves potential harm to human health. “Although formation of drug addiction as well as incurrence of specific damage, level of health damage depends on individual characteristics of each user, general health condition as well as on duration of drug consumption, existence of such danger still cannot be disregarded and ignored” (Judgement of The Constitutional Court of Georgia №1/4/592 of October 24, 2015 on the case of “Citizen of Georgia Beka Tsikarishvili V. the Parliament of Georgia”, II-76). The Court followed similar reasoning regarding threats stemming from use of cannabis products, including Marijuana and stated that “... consumption of cannabis products can negatively affect human health. At the same time, harm possibly caused by cannabis consumption is minor compared to potential harms caused by consumption of other, so called hard drugs” (Judgement of The Constitutional Court of Georgia №1/9/701,722,725 of July 14, 2017 on the case of “Citizens of Georgia Jambul Gvianidze, Davit Khomeriki and Lasha Gagishvili V. the Parliament of Georgia, II-19). Essentially identical were findings of the judgement of The Constitutional Court of Georgia №1/13/732 on the case of “Citizen of Georgia Givi Shanidze V. the Parliament of Georgia”.

16. Hearing on merits of the case №1282 did not reveal any unfamiliar, tangible, indisputable data and evidence, which would raise questions on the findings of the Court in the cases mentioned above with regard to potential threats of Marijuana consumption to human health. Witnesses and experts, without exception point out that harms to human health caused by use of Marijuana are minor compared to risks of other, harder drugs. Furthermore, in many instances consumption of alcohol and tobacco can involve higher risks than use of Marijuana. As attested by an expert, D. Andguladze “unlike other narcotic drugs Marijuana does not lead to physical addiction.... alcohol abuse causes no less psycho-physical and legal difficulties” (Judgement of The Constitutional Court of Georgia №1/4/592 of October 24, 2015 on the case of “Citizen of Georgia Beka Tsikarishvili V. the Parliament of Georgia”, II-79).

17. Generally, declaration of consumption of narcotic substances, including Marijuana unlawful aims for protection of human health and public order. However, it should be analysed whether or not and in which aspects a measure prescribed by the disputed norm – declaration of Marijuana consumption unlawful – represents a step towards achievement of these aims. Generally, declaration of an act unlawful aims at prevention of this act. Accordingly, prohibition of Marijuana consumption certainly serves for protection of health of its users. However, effect of the disputed norm on public health is not limited to protection of its users’ health.

18. Traffic of narcotic substances consists of series of complex operations. This process is accompanied by various hindering and supportive factors. Participants of this circulation comprise of producers of narcotic substances, together with distributors and clientele. By purchasing narcotic substances, users create “market demand”, which represents a driving force of narco-traffic. Although it is smaller than the share of distributors’, but users also promote illicit traffic of narcotic substances, prevention of which constitutes a legitimate aim and obligation of the State.

19. At the same time, for consumption of narcotic substances without doctor’s prescription it is obviously necessary that they find their way to users. Consequently, consumption of narcotic substances is always preceded by illicit purchase or production (cultivation). Therefore, legal regulation of consumption of narcotic substances promotes achievement of prevention of purchase and production of narcotic substances. Undoubtedly, a separate fact of consumption of narcotic substance, on the basis of impossibility of distribution or other factors, contains less threats to public interests than other acts related to narcotic substances. However, it does not exclude prohibition of consumption of narcotic substances, including consumption of Marijuana without a doctor’s prescription, to be considered as a measure carried out for achieving an aim of protection of public health and as a suitable means for achieving the mentioned aim.

ii. Public safety

20. With regards to a legitimate aim of public safety, the Court has to consider two issues: a. whether or not being under Marijuana influence creates increased threat of violation of public safety; b. to what extent it is probable that craving for Marijuana consumption can incite users to violate public order.

21. Notably, Respondent party did not provide the Court with proper information, trustworthy studies, which would convincingly reveal causal link between Marijuana consumption and increase in other illegal activities. During hearing on merits, witnesses, doctor-narcologists Inga Panchulidze and Gvantsa Piralishvili asserted that Marijuana consumption does not incite aggressive behaviour in its users as a rule. In rare cases, atypical forms of Marijuana consumption can lead to development of hashish psychosis, but it cannot be considered as a typical, accompanying effect of Marijuana consumption. Opinion that Marijuana consumption increases the number of vehicle accidents was also expressed on the hearing. Needless to say, driving vehicles under the influence of narcotic substances, as well as alcohol, significantly raises the chance of accident, however, its prevention is ensured by declaration of such behaviour unlawful itself, and within the scope of the dispute to be reviewed, threats related to this behaviour cannot be referred as a justification for declaration of Marijuana consumption without a doctor's prescription unlawful.

22. Another witness, Deputy Head of Information Centre (division) of Information and Analytics Department of the Ministry of Internal Affairs of Georgia – Giorgi Kavelashvili presented a research, according to which from 2017 to date expertise revealed consumption of narcotic substance tetrahydrocannabinol (THC) in 2951 persons, 40% of whom were charged for commission of other crimes, with 31% charged for narcotics related crimes. The witness continued by explaining that the research does not determine whether mentioned perpetrators were under influence of Marijuana at the moment of committing other crimes. Consequently, it cannot be concluded that consumption of Marijuana directly incited commission of the mentioned crimes. Subsequently, Marijuana consumption could not be identified as a cause of commission of other crimes by the users. The Court was not convinced that such causal link is more frequent and evident than, e. g. in cases of alcohol intoxication.

23. Witnesses and experts called to the Court on the hearings of №1282, as well as №592, №701, №722, №725 and №732 constitutional complaints affirmed that consumption of Marijuana can lead to addiction only in cases of continued consumption of excessive quantities of it. Periodical, relatively less intensive use of Marijuana does not develop into addiction or dependence on it as a rule. As The Constitutional Court already asserted in one of its judgements “excessive consumption for prolonged period of alcohol can also lead to addiction. However, practice of alcohol consumption demonstrates that majority of population consumes it with entertainment and/or cultural aims, and dependence on it develops only in individual cases” (Judgement of The Constitutional Court of Georgia №1/13/732 of November 30, 2017 on the case of “Citizen of Georgia Givi Shanidze V. the Parliament of Georgia”, II-37). Accordingly, in case of Marijuana, similarly to alcohol, the conclusion that ceasing to consume Marijuana develops into craving is hypothetical. And chance of a person, in condition of abstinence caused by cessation of Marijuana consumption, to resort to crime, in order to obtain narcotic substance, is even more hypothetical. Therefore, prohibition of Marijuana consumption does not serve for preventing its users from committing other unlawful acts, including criminal ones.

iii. Gateway to use of other narcotic substances

24. On the hearing on merits, opinion was expressed that consumption of cannabis products represents a gateway to use of other, harder narcotic substances.

25. First of all, it must be noted that no scientific studies, proving that Marijuana due to its biological and chemical features, causes dependence on other narcotic substances. Authors based this opinion on their personal experience, statistical data, which demonstrate that users of various narcotic substances consumed Marijuana as their first drug. Witnesses on the hearing, doctor-narcologists – Inga Pachulidze and Gvantsa Piralishvili, to substantiate this theory, referred to a study conducted in the United States of America, according to which 93% of users of narcotic substances name Marijuana as the first narcotic they consumed. However, the same individuals admit on consuming alcohol and tobacco before consumption of Marijuana. “The Constitutional Court of Georgia does not exclude that some Marijuana users might use other, harder drugs, however Marijuana and its characteristic features cannot be the cause of it” (Judgement of The Constitutional Court of Georgia №1/13/732 of November 30, 2017 on the case of “Citizen of Georgia Givi Shanidze V. the Parliament of Georgia”, II-39).

26. Therefore, presented studies do not confirm direct link between Marijuana consumption and the use of other, harder narcotic substances. Moreover, the Court does not exclude probability that declaration of Marijuana consumption unlawful might have an opposite effect and promote Marijuana users to switch to harder narcotic substances, and accordingly, legalization of mentioned act might promote reduction of discussed tendency. Thus, the Court cannot agree to Respondent’s argument according to which declaration of Marijuana consumption unlawful serves for prevention of use of harder narcotic substances.

d. Necessity of limitation

27. Based on all the above mentioned, the Court deems it established that declaration Marijuana consumption unlawful represents a suitable means to achieve only the aims of protecting health of users and public. Accordingly, at this stage the Court shall review whether or not the measure prescribed by the disputed norm is a necessary and proportional means of achieving mentioned legitimate aims. “besides suitability, restrictive measure must be a necessary (the least limiting) measure” (Judgement of The Constitutional Court of Georgia №3/4/550 of October 17, 2017 on the case of “Citizen of Georgia Nodar Dvali V. the Parliament of Georgia”, II-26). Additionally, it shall be noted that it is not the function of The Constitutional Court to evaluate application of which measure would be preferable or advisable for achieving legitimate aims. The Court should determine compliance of measures selected by the State with the constitutional right to a free development of personality.

28. As stated above, by declaring Marijuana consumption an administrative offence the State protects health of both users and the public. Accordingly, the Court will consider two issues: (1) how necessary is declaration of Marijuana consumption unlawful for protection of users’ health; (2) how necessary is it for protection of public health.

i. Necessity of limitation with respect to protection of users’ health

29. Generally, The Constitutional Court positively regards every rational act of the State aiming for protection of its citizens’ health. As the Court has already noted, “protection

of citizens' health, healthy lifestyle is critical for development of the State and society. However, this possibly falls within the State's sphere of facilitation, similar to, for example, Article 34¹ of the Constitution of Georgia points to facilitation of physical development of adults and youth" (Judgement of The Constitutional Court of Georgia №1/13/732 of November 30, 2017 on the case of "Citizen of Georgia Givi Shanidze V. the Parliament of Georgia", II-48).

30. The State normally bears strong positive obligation to carry out legislative or other measures in order to protect human life and health. In certain cases, such obligations arise even when matter at hand involves protecting individuals from the threats deriving from themselves. However, positive obligations of the State are of limited scope in this area. The State must respect personal autonomy of an individual, his/her lifestyle and conscious decisions and refrain from interference, if there exists no real threat of violation of others' rights and liberties, or other significant public interests. Interference becomes more unjustified and excessive, in cases where self-harming behaviour is declared unlawful.

31. According to the reasoning of the Court, "imperative determination of what is permitted to eat, drink or smoke and imposition of punishment for deviation from this obligation, represent such a form of interference into the protected ambit of personal autonomy, implementation of which is only permissible for protecting public interests. Punishing a person solely for commission of self-harming act, represents such a form of state paternalism that is not consistent with a concept of free society" (Judgement of The Constitutional Court of Georgia №1/13/732 of November 30, 2017 on the case of "Citizen of Georgia Givi Shanidze V. the Parliament of Georgia", II-50). Imposition of administrative punishment for similar acts falls within the reasoning provided above. "It is unequivocal that the state should not interfere into the human liberty only because he/she conducts irrational act. In order for the interference to be justified it is necessary for the act to reach the extent when it causes real and serious harm for others." (Judgement of The Constitutional Court of Georgia №1/4/592 of October 24, 2015 on the case of "Citizen of Georgia Beka Tsikarishvili V. the Parliament of Georgia", II-74).

32. Based on the aforementioned, as Marijuana consumption is not associated with serious harm to its users' health, The Constitutional Court reasons that the State does not have a positive obligation to protect individuals from self-harming behaviour by declaring such behaviours unlawful. This represents an excessive interference into the right to a free development of personality, which is not justified by provided legitimate interest. The disputed norm does not strike fair balance between the right to a free development of personality and the interest of protecting his/her health. Consequently, interest of protecting user's health does not justify declaration of Marijuana consumption without a doctor's prescription as administrative offence.

ii. Necessity of limitation with respect to protection of users' health

33. As mentioned above, prohibition of Marijuana consumption also serves for protection of public health. The Court takes into consideration that Marijuana consumption truly incites market demand for it. Acts of all users, as a whole, contains certain threats – it encourages illicit traffic of narcotic substances and in this manner, increases risks to public health. However, a form, a type and a level of severity of a reactive measure applied to an

individual case of Marijuana consumption must be corresponding to the threats related to a specific fact of consumption and not to the threats that emanate from the acts of all users as a whole. "... In order for punishment of consumption to be deemed constitutional, threats emanating from individual case of Marijuana consumption must be evaluated" (Judgement of The Constitutional Court of Georgia №1/13/732 of November 30, 2017 on the case of "Citizen of Georgia Givi Shanidze V. the Parliament of Georgia", II-51).

34. Threats of illegal consumption of narcotic substance drastically differ in essence and intensity from the threats of illegal purchase, production or trade of narcotic substances, thus the difference in legislative sanctions for dealers, purchasers and keepers. Extent of their responsibility must be corresponding to their role and degree of culpability in illicit circulation of narcotic substances, and when this role is insignificant thus are the threats created by a respective act, including threats to public health. Consumption of narcotic substances, in this context Marijuana, as opposed to other acts declared unlawful by the disputed norm (purchase, storage, transportation, transfer) does not involve even hypothetical risk of distribution and, therefore a direct threat to health of other individuals. The act, declaration of unlawful of which the Court has to review, is objectively materialized by consumption of Marijuana and is solely limited to this circumstance. Consequently, such factual circumstances exclude even theoretical chance of direct harm to others' health, and if anything is under a direct and actual threat, it is the health of a Marijuana user.

35. However, the Court does not rule out existence of certain threats to others' in certain circumstances of Marijuana consumption, for instance, in cases of Marijuana consumption in schools, or other situations, in particular, in juvenile establishments, or in their presence, which can influence minors, incite curiosity towards Marijuana and provoke Marijuana consumption. Subsequently, restriction of Marijuana consumption is justified with the aim to protect minors from its negative influence, to ensure their healthy development. Furthermore, limitations to Marijuana consumption is justified in other educational, academic, or teaching establishments, in the Army, in medical and state (public) premises, also, in certain public gathering places (for instance, public transportation), with the aim to protect legitimate interests of public health and public order. In the process of imposing restrictions to Marijuana consumption restrictive standards related to control of alcohol beverages and tobacco might be helpful, and it can also require distinctive, specific and harsher regulations depending on circumstances and place of consumption, determination of which belongs to a category of State prerogative. Additionally, the Court gives particular emphasis that declaration of Marijuana consumption unlawful and imposing punishment for its commission does not have any constitutional justification when it is conducted in private, personal space with the aims of recreation, relaxation and entertainment, and not in the places and circumstances mentioned in this paragraph.

36. Therefore, The Constitutional Court concludes that absolute and blanket prohibition of Marijuana consumption regardless the circumstances, is not necessary for protection of other individuals or public order. There is no reasonable link of proportionality between declaration of Marijuana consumption unlawful and prevention of threats to legitimate interests specified above. It does not strike fair balance between the right to a free development of personality and other legitimate interests in a value conflict with it. In order to be in compliance with the principle of proportionality, regulations related to Marijuana

consumption can only encompass separate, individual cases. As the Court has already indicated, “additionally, advertising Marijuana products, accessibility of these products for minors, informing the public on potential risks of use of Marijuana, etc. can be a subject to special regulations” (Judgement of The Constitutional Court of Georgia №1/13/732 of November 30, 2017 on the case of “Citizen of Georgia Givi Shanidze V. the Parliament of Georgia”, II-48).

37. The Constitutional Court of Georgia gives particular emphasis to the fact that the Legislator shall adopt special regulations in order to protect legitimate interests provided in Paragraph 35 of this Judgement from the threats deriving from specific circumstances of Marijuana consumption.

iii. International principles and standards

38. In the process of rendering a decision in the case at hand, the Court also takes into consideration modern medical studies and evaluations, which demonstrate that Marijuana consumption does not involve such harmful effects to human health, as it was believed in previous years by the society and that there still exist inaccurate and exaggerated stereotypical perceptions about it. The Court also takes into account recent growing international tendency, practice of foreign countries, which decriminalized, or in some cases legalized consumption of Marijuana with the involvement of judicial or legislative branches of government. These practices clearly demonstrate that even enabling Marijuana into legal circulation through legislative regulations, has not caused actual negative, or dramatic effects regarding increase of Marijuana consumption or worsening situation for public health or public order.

39. Ensuring supremacy of the Constitution in human rights field is one of the most crucial functions and purpose of the Constitutional Court. Exercise of this function is inseparably linked to ensuring firm and constant constitutional values – democracy, human dignity, justice, tolerance and humanity. “... the function of humanity of justice cannot be ignored either, as it promotes not only justice itself, but also progressive development of the public. Consequently, achievement of humanity of justice and its development through it is a permanent goal, promotion and assurance of which is state’s obligation, however, obviously till the point when it comes in conflict with justice and other goals and main function of the law. ... People shall enjoy the positive outcomes of progressive humane understanding of development of society and law” (Judgement of The Constitutional Court of Georgia №1/6/557,571,576 of November 13, 2014 on the case of “Citizens of Georgia – Valerian Gelbakhiani, Mamuka Nikolaishvili and Aleksandre Silagadze V. the Parliament of Georgia, II-62-64).

40. Finally, the Constitution as a basic law of the State, which is the fundament for human rights and liberties, is a living organism, legal framework that is under constant development in accordance with the existing realities and challenges in the country, as well as modern requirements and tendencies of international human rights law. A fundamental principle of international human rights law dictates that provisions establishing human rights shall be interpreted broadly, as opposed to narrow interpretation of restrictive provisions, in order to minimize possibility of arbitrary and unjustified interference of the State. The same idea is a basis for another core principle of international human rights law – *in dubio pro*

libertate (every doubt shall be decided in favour of liberty). Such are the modern approaches towards interference in the area of human rights, which are dictated by enhanced public awareness, development of legal culture, development of exercise of human rights and liberties by individuals. Modern era is characterized by enhancement of the culture of individualism, which is based on personal autonomy, ability and opportunity of independent decisions, free development and protection of private life. Therefore, the Constitutional Court of Georgia shall interpret human rights provisions of the Constitution and their substantial scopes in accordance with the requirements of modernity and apply not static, but dynamic method of interpretation, reflecting constantly changing legal and cultural realities, humane perceptions and experiences of human rights. Accordingly, normative regulation of any right that years ago might not constitute a violation of the constitutional right, can be deemed as such over time, needless to mention, that with the condition of taking into account all relevant legitimate aims and firmly maintaining a fair balance between them.

41. Based on views examined above, the Constitutional Court concludes that general, blanket prohibition of Marijuana consumption represents a disproportionate interference into the ambit protected by the personal autonomy of a person, thus it is not necessary for achieving any legitimate aims in a democratic society. Consequently, the disputed norm is found in violation of Article 16 of the Constitution.

III

Ruling part

Based on subparagraph “f” of paragraph 1 and paragraph 2 of Article 89 of the Constitution of Georgia, subparagraph “e” of paragraph 1 of Article 19, paragraph 2 of Article 21, paragraph 1 of Article 23, paragraphs 1, 2, 3 and 6 of Article 25, paragraph 5 of Article 27, subparagraph “a” of paragraph 1 of Article 39, paragraphs 2, 4, 7, 8, 11 and 13 of Article 43, Article 45 of the organic law of Georgia “On The Constitutional Court of Georgia”, paragraphs 1 and 2 of Article 7, paragraph 4 of Article 24, Articles 30, 31, 32 and 33 of the Law of Georgia “On Constitutional Legal Proceedings”

THE CONSTITUTIONAL COURT

RULES:

1. The Constitutional Claim N1282 (Citizens of Georgia – Zurab Japaridze and Vakhtang Megrelishvili v. the Parliament of Georgia) shall be upheld and a normative content of the wording “and/or use without a doctor’s prescription” of section 1 of Article 45

of Administrative Offences Code of Georgia which sets punishment for use of narcotic substance - marijuana indicated in 92th horizontal cell of the second appendix of the law of Georgia “On Narcotic Drugs, Psychotropic Substances and Precursors and Narcological Assistance” shall be declared unconstitutional with respect to Article 16 of the Constitution of Georgia.

2. Unconstitutional norm shall be annulled from the moment of publishing this judgement on the webpage of the Constitutional Court.

3. The Judgement enters into force from the moment of publishing the webpage of the Constitutional Court of Georgia

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

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

6. The judgment shall be immediately published on the webpage of the Constitutional Court of Georgia and sent to the “Legislative Herald of Georgia”.

Composition of the board:

Merab Turava

Eva Gotsiridze

Giorgi Kverenchkhiladze

Maia Kopaleishvili