

CASE NOTES OF THE CONSTITUTIONAL COURT OF GEORGIA

ABSTRACT

The Constitutional Court of Georgia has rendered several significant cases in 2018, which have influenced the constitutional adjudication and established new approaches. Below are case notes of seven important judgments adopted by the Court within the first part of the year depicting the content and argumentation of the cases.

CITIZENS OF GEORGIA – GUCHA KVARATSKHELIA, GIVI TSINTSADZE, GIORGI TAVADZE, ELIZBAR JAVELIDZE AND OTHERS (17 APPELLANTS) V. THE PARLIAMENT OF GEORGIA

On February 22, 2018, the Second Chamber of the Constitutional Court of Georgia delivered the judgment “Citizens of Georgia – Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 appellants in total) v. the Parliament of Georgia” (Constitutional Claim N863), where the subject of the dispute was the constitutionality of article 5.4 of the law of Georgia on “Georgian National Academy of Sciences” with respect to article 14 of the Constitution of Georgia. According to the disputed norm, a person aged more than 70 years old could not have held an administrative position of the Academy, namely the office of the President and the Vice-President of the Academy.

The claimants indicated that the disputed provision had restricted psychologically and mentally healthy persons above 70 years with full legal capacity the right to hold administrative positions of the Academy based on age. According to the claimants, in spite of age difference, academicians both above and under 70 years, were substantially equal and the differential treatment between them had no objective justification. Therefore, the regulation was discriminatory and in violation of equality before the law enshrined in the Constitution of Georgia.

According to the Respondent, establishing age limits, in general, does not violate equality before the law. The legitimate aim for the restriction provided by the disputed norm was to promote the effectiveness and unhindered functioning of the activity of the Academy. Even a healthy person above 70 years might not be able to handle the features of administrative-governing activities and the necessary physical requirements for it.

At the same time, by the position of the Parliament, the administrative positions of the Academy could only be held by the persons holding the Academic status. The number of academics was limited by the legislature and in fact, the age of the majority of academics was above 70. Hence, it was likely for the Academy not to be able to elect the person on the respective position. For these arguments, the Respondent admitted the constitutional claim.

By the legislature applicable at the time admitting the complaint by the Respondent does not lead to termination of the case. Therefore, the Constitutional Court considered the constitutionality of the disputed provision in spite of admitting the claim.

The Constitutional Court considered that with respect to holding an administrative position of the Academy, academics under and above 70 years were substantially equal and the disputed norm had established differential treatment based on their age. The Court also held that the differentiation was not based on any ground indicated in article 14 of the Constitution of Georgia and the intensity of interference was not high. Therefore the Court used rational differentiation test for considering the constitutionality of the differentiation.

The Constitutional Court emphasized that in general, it might be allowed to impose different qualification requirements upon servants for the effective functioning of an establishment. But it is also important for the age restriction to be in logical and rational correlation with the intended aim. Although, diminishing certain skills is the subsequent result of getting older, is not sufficient to a priori justify every age restriction.

The Constitutional Court set the two-step test for assessing the rationality of age restriction. Namely, for the age restriction to be justified the lawmaker has to show that, due to the nature of the duties assigned, as a rule, a majority of people reaching certain age cannot handle to appropriately perform these duties. It is necessary to be reasoned that in the majority of cases, reaching the indicated age leads to the diminishment of the skills necessary for handling certain activities. At the same time, imposing a blank restriction will be irrational if the decision about the compatibility with the position can be evaluated based on the individual assessment of a person's skills.

The Constitutional Court assessed the duties and the responsibilities imposed on the positions indicated in the disputed norm and held that implementation of the aims of the Academy and the functions of academics as well, is not connected to any kind of special physical activity. It was also clear from the hearing on the merits, that holding administrative positions of the Academy did not require such energy that is impossible for academics to hold. Therefore, the Court ruled that there was no indication for people above 70 holding administrative positions of the Academy to not be able to fulfill their duties because of the age.

The Constitutional Court also outlined that there were only a few current academics whose age was under 70 and their number is decreasing as the time goes by. Therefore, it is possible that the group of persons who can be elected on the positions at hand will disappear in the future because of the disputed norm. Considering these merits, the disputed provision not only fails to reach the intended aim but in fact, at a certain stage it may cause difficulties and make it impossible for the academic positions of the Academy to be taken by academics.

Based on these merits, the Constitutional Court of Georgia granted the constitutional complaint and found unconstitutional article 5.4 of the law of Georgia on "Georgian National Academy of Sciences".

CITIZEN OF GEORGIA TAMAR TANDASHVILI V. THE GOVERNMENT OF GEORGIA

On May 11, 2018 the Second Board of the Constitutional Court of Georgia granted the constitutional complaint of the citizen of Georgia, Tamar Tandashvili, and declared unconstitutional a rule of the Decree of the Government of Georgia (№126 originally adopted on 24.04.2010), which aims at establishing a centralised registry for the socially vulnerable families, who would then be eligible for state-provided social assistance. The disputed provision excluded those persons from registration, who were in unlawful possession of the premises owned by the state without a permission of the owner

The complainant argued that those individuals who lived in the property owned by the state without permission and were entitled by law to the registration (before the disputed legal provision took effect on 1 June, 2013) as a socially vulnerable family, were effectively stripped of the possibility to receive state-provided social assistance. By contrast, such assistance was provided to those people, who unlawfully occupied the state-owned premises, yet managed to undergo registration before the contested law was introduced. Based on this argument, the complainant declared that it was subject to a differentiated treatment contrary to the constitutional right to equality (Article 14).

The complainant further noted that as a result of the disputed law, it had to make a difficult decision between their housing and the right to receive social assistance. Therefore, according to the complainant's position, the disputed law was also in contradiction with the right to dignity (Article 17.1) since it employed the people as the means of achieving the state's regulatory aim.

The respondent, the Government of Georgia, emphasized that the law in question pursued the important legitimate objective to ensure the protection of state property, and it provided for a proportionate measure in line with the constitutional requirement. To justify the differential treatment, respondent noted that cancelling the registration of already registered persons would cause difficult economic consequences for them.

The Constitutional Court sided with the complainant's arguments and indicated that for the purposes of the state-provided social assistance, those persons who lived in the state-owned property without permission, irrespective of the fact when they were entitled to obtain the status of a socially vulnerable family and undergo registration, were substantially equal. The constitutional court also pointed out that there was a differential treatment between comparable persons.

According to the court, in the instant case taking into consideration that one part of the comparable persons could not get social assistance at all, disputed provision interfered with the right at a high intensity, therefore differentiation should be assessed by the strict scrutiny test.

The constitutional court stated that differential treatment could be somehow reasonable if it was linked to the date of arbitrary possession of state property, but the disputed regulation differentiated comparable persons by the date of their registration in the social database.

Therefore the measure was not considered suitable to achieve the legitimate aim. Besides, rejecting claimant's demand for registration in database should be considered as painful as canceling the registration for those who were registered before. In conclusion the court stated that the disputed law unjustifiably restricted the rights of the complainant (and persons with a similar status). The Constitutional Court found the foregoing differentiation between the two equal groups of individuals unconstitutional, in violation of the constitutional right to equality.

The Constitutional Court further noted that the state does enjoy the legitimate interest to ensure the protection of their property from unlawful possession. Nevertheless, any measure employed in the course of attaining the mentioned objective has to be in line with the constitutional rights and freedoms. The Court indicated that in the present case, to ensure the protection of their property, the state effectively resorted to deprive the complainant (and persons with a similar status) of their right to receive social assistance. Hence, the economic hardship of individuals was, in fact, the very measure employed in the given case to achieve the legitimate objective of protecting the state property from unlawful possession. The court concluded that using humans as a mean for achieving the aim, violates the right to human dignity.

LEPL “EVANGELICAL-BAPTIST CHURCH OF GEORGIA” AND OTHERS V. THE PARLIAMENT OF GEORGIA

On July 3, 2018 the First Chamber of the Constitutional Court of Georgia made the rulings on the cases: “LEPL “Evangelical-Baptist Church of Georgia”, NNLE “Word of Life Church of Georgia”, LEPL “Church of Christ”, LEPL “Pentecostal Church of Georgia”, NNLE “Trans-Caucasus Union of the Seventh-Day Christian-Adventist Church”, LEPL “Caucasus Apostolic Administration of Latin Rite Catholics”, NNLE “Georgian Muslims Union” and LEPL “Holy Trinity Church” v. the Parliament of Georgia” (Constitutional Claim №671) and “LEPL “Evangelical-Baptist Church of Georgia”, LEPL “Evangelical Lutheran Church of Georgia”, LEPL “The Highest Administration of all Muslims in Georgia”, LEPL “The Redeemed Christian Church of God in Georgia” and LEPL “Pentecostal Church of Georgia” v. the Parliament of Georgia” (Constitutional Claim №811).

Subject of the dispute of abovementioned cases was constitutionality of the wording of subparagraph “B” of section 2 of article 168 of the Tax Code of Georgia and the paragraph 1 of article 63 of the Law of Georgia “On State Property” with respect to article 14 of the Constitution of Georgia.¹

Under the disputed provisions construction, restoration and painting of cathedrals and churches commissioned by the Patriarchate of Georgia, were exempted from VAT without the right of deduction, as well as the Apostolic Autocephalous Orthodox Church of Georgia was allowed free-of-charge transfer of the state-owned property.

According to the definition of the Claimant party, the disputed provisions were established above-mentioned privileges only for the Patriarchate of Georgia and for the Apostolic Autocephalous Orthodox Church of Georgia. Therefore, the claimants considered that disputed provisions violated equality before the law protected by article 14 of the Constitution of Georgia.

The respondent party emphasized that the Georgian Orthodox Church and the complainant religious organizations represent substantially equal groups, yet the differentiated treatment serves the legitimate purposes of protecting cultural heritage and recognizing the outstanding role of the Georgian Apostolic Autocephalous Orthodox Church in accordance with article 9 of the Constitution and the Constitutional Agreement of Georgia.

The Constitutional Court indicated that the main purpose of religious associations is to coordinate religious activities and create all necessary conditions for believers. Aforementioned purposes are equally important for the Patriarchate of Georgia as well as for religious organ-

¹Full text of subject of the dispute:

On the Constitutional Complaint №671 – Constitutionality of the wording “under commission by the Patriarchate of Georgia” of subparagraph “B” of section 2 of article 168 of the Tax Code of Georgia with respect to article 14 of the Constitution of Georgia.

On the Constitutional Complaint №811 – Constitutionality of the wording “to the Georgian Apostolic Autocephalous Orthodox” of the paragraph 1 of article 6³ of the Law of Georgia “On State Property” with respect to article 14 of the Constitution of Georgia.

izations, which represent claimant party. Therefore, comparable persons have an equal interest to gain the state-owned property without charge as well as to create necessary conditions for their religious institutions and services. Since using of tax privilege and the conveyance of the state-owned property without charge is granted only for the Patriarchate of Georgia the Constitutional Court shares the submissions of the parties and considers that disputed provisions establish differential treatment between substantially equal persons based on the ground of religion.

According to the Court's established practice, in order to assess the lawfulness of differentiation based upon the religious ground enlisted in article 14 of the Constitution the strict scrutiny test is applied. The Court firstly made an assessment of the disputed provisions in compliance with the legitimate aim of protecting cultural heritage. According to the statement of the Court the protection of cultural heritage represents a valid legitimate interest. In this context, due to preserving cultural heritage the state is entitled to establish minimum standards for monument protection and restoration. However, it is insignificant for the realization of this legitimate aim whoever from these religious organizations will be allowed to commission works (construction, restoration and painting of churches and cathedrals) so long as other technical requirements are met.

The Court emphasized that the contested regulation is directed not specifically to the VAT exemption of services related to the monuments of cultural heritage, but to the VAT exemption of services under commission by the Patriarchate of Georgia. Consequently, services connected with not only to the monuments of cultural heritage, but also other churches and cathedrals without such status may fall within the regulation of the disputed provision. At the same time such kind of services under commission by the other religious organizations (except the Patriarchate of Georgia) are not exempted from VAT. Based on the above mentioned arguments the Court concluded that there is no logical link between the legitimate aim of protecting cultural heritage and differentiated treatment established by the disputed norm and that achieving of this legitimate aim is possible without the differentiated treatment between comparable persons in this case.

The Constitutional Court also assessed whether the disputed provision was a mechanism for enforcing the requirements of article 9 of the Constitution of Georgia. Specifically, the Court assessed whether article 9 of the Constitution of Georgia requires granting privileges to the Apostolic Autocephalous Orthodox Church of Georgia and restriction of article 14 of the Constitution of Georgia in this manner.

According to paragraph 1 of article 9 of the Constitution, "The State shall declare absolute freedom of belief and religion. At the same time, the State shall recognise the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State". The Court indicated that the purpose of recognizing the outstanding role of Orthodox Church in the history of Georgia is not to represent the predominance of Orthodox faith with respect to other religions. Considering constitutional provision in question as the basis of entitlement of any kind of privilege would remove the basis of the right to equality and would be incompatible with the requirements of the Consti-

tution of Georgia, including requirements derived from article 7 and paragraph 2 of article 9 of the Constitution.

The recognition of the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia is associated with its historical contribution, however, historical contribution cannot be considered as a self-sufficient source of legitimacy of any privilege. Consequently, it should be assessed from the view of the content of relations regulated by the disputed provisions whether abovementioned privileges derive from the historical role of the Orthodox Church.

The court indicated that the privileges granted to the Orthodox Church by disputed provisions are not derived from any historical circumstances. Specifically, neither granted tax privileges, nor allowance of free-of-charge transfer of state-owned property does not have direct, rational and inevitable correlation with the special role of Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia.

Having regard to its findings the Court established that disputed provisions are not in compliance with the requirements of the right to equality recognized by the Constitution of Georgia.

LTD “COCA-COLA BOTTLERS GEORGIA”, LTD “CASTEL GEORGIA”, JSC “HEALTHY WATER” V. THE PARLIAMENT OF GEORGIA AND THE MINISTER OF FINANCE OF GEORGIA

On 27 July 2018, the “Ltd Coca-Cola Bottlers Georgia”, “Ltd Castel Georgia” „Inc Healthy Water” v. The Parliament of Georgia and the Minister of Finance of Georgia” (Constitutional complaint N700).

The applicants challenged constitutionality of article 1921 of the Tax Code of Georgia and paragraphs 781.1, 781.2, 781.4, 781.8 of the instructions “on Tax Administration” approved by the order N996 Minister of Finance of Georgia on 31 September 2010. According to the complaint designated provisions contradicts the requirements of the paragraphs 21.1 and 21.2 (right to property) and the first sentence of the paragraph 30.2 (right to free enterprise) of the Constitution of Georgia.

Article 1921 of the Tax Code established legislative grounds for mandatory marking of non-excisable goods and empowered the Minister of Finance of Georgia to compile a list of goods subject to mandatory marking and define the terms of the marking. Disputed provisions of the order of Minister of Finance declared non-alcoholic drinks, including mineral and still waters as goods subject to mandatory marking. In addition, the provisions regulated other issues related to marking procedure.

Applicants argued that, disputed norms obligated them to allow marking service provider company selected by the Revenue Service of Georgia in their bottling plants in order to install marking devices on applicant’s bottling hardware. Complainants stated that marking devices were performing with multiple failures that was disrupting the industrial process and the generated electronic data did not reflect the actually produced goods with proper accuracy. Moreover, applicants indicated that their obligation to cover the marking expenses constituted an extreme financial burden on non-alcoholic drink industry. Applicants questioned compliance of the disputed provisions with the formal requirements of article 21 of the Constitution of Georgia as the Parliament of Georgia delegated unlimited power to regulate mandatory marking of non-excisable goods.

The respondent party disagreed with applicants opinions. Representatives of the Parliament of Georgia and Ministry of Finance of Georgia asserted that disputed provisions served as valuable legitimate aims of proper tax administration and protection of consumer’s rights. The respondents argued that disputed provisions were in compliance with the formal and material requirements of the Constitution of Georgia.

Initially, the Constitutional Court differentiated between right to property and right to free enterprise. The financial burden accompanied to mandatory marking was considered in the context of the right to property whereas claims regarding disruption industrial process examined under the right to free enterprise.

The Constitutional Court indicated that article 21 of the Constitution does not require all property right related issues to be regulated exclusively by primary legislation. The court interpreted that the Parliament is entitled to delegate regulatory power to secondary legisla-

tion if it is not directly prohibited by the constitution and/or such delegation is resulted in denial of caring out its own exclusive powers. The Constitutional Court ascertained that issues related to mandatory marking are not subject to high importance. Therefore, the parliament's decision to transmit the regulatory power of mandatory marking procedure to the Minister of Finance does not contradict the formal requirements of the Constitution.

The Constitutional Court applied principle of proportionality to assess the constitutionality of the disputed provisions. The Court shared the respondent's opinion and recognized that the disputed norms serve as valuable legitimate aims of proper tax administration and protection of consumer's rights. According to the judgment, the legislator is entitled to interfere in the right to property while pursuing the designated legitimate aims if further requirements of proportionality are followed.

Firstly, the Constitutional Court considered the independent expert opinion attached to the constitutional complaint. Applicant used mentioned opinion, as an evidence to prove that the installed marking devices were functioning with failures and generated data was not beneficial for tax administration. The Court emphasized that according to the opinion, data generated by the devices was precise by 99.48%. Moreover, the court indicated that independent expert opinion does not answer the question whether the marking devices caused the error or not. The Constitutional Court pointed out that, problems of technical implementation could be resulted in unconstitutionality of the disputed normative requirements if the law is the basis for existing such technical problems and/or proper technical implementation of the solution required by the law is impossible. Due to absence of designated criteria, the Constitutional Court noted that mandatory marking stipulated by the disputed provision serves as a valuable tool for tax administration.

Complainants argued that the same legitimate goal could be achieved with the same effectiveness by other cost efficient solutions. As an alternative solution applicants designated constant video surveillance and data generated by their own bottling hardware. The Constitutional Court noted that, considering the dynamics of bottling process, video surveillance could not be reliable source for generating valuable data for tax administration. In addition, the Court emphasized that one essence of the disputed provisions was effective external control of non-alcoholic drink business industry and only the data generated by the company owned/controlled hardware is not beneficiary for the idea laid behind the mandatory marking. Moreover, the Constitutional Court underlined that marking procedure includes establishment of central electronic database where records regarding individualities of the products, companies and other data is automatically transferred upon marking. The database enables automatic reporting by reading the individual matrix on the bottle. The Court remarked that complainants could not prove that functioning of such advanced database is technically possible under their suggested alternatives in cost efficient way. Therefore, Constitutional Court ascertained that mandatory marking procedure is beneficiary/admissible and essential instrument for proper tax administration.

The Constitutional Court emphasized the financial burden on the companies stemming from the mandatory marking. The Court noted that, in general, government is entitled to oblige

taxpayers to exercise actions which are necessary for tax administration and protecting the consumers' rights. Following tax regulations is usually resulted in expenses of the taxpayers/companies and such financial burden is inevitably justified by the major legitimate interests of the state.

The Constitutional Court indicated that nominal value of marking is an expense for tax administration where marking process is not exercised by the taxpayer itself. The Court referred that overall expense of such financial burden is not enough to determine unconstitutionality of the disputed provisions. Applicants shall prove that financial burden has major negative impact on business and damage the respective industry itself to great extent. Complainants shall represent that the burden is not an ordinary unpleasant regulation for the business but an intensive measure that is incompatible with free market. The court ascertained that such evidences were not presented in the case.

In connection with right to free enterprise, the Constitutional Court examined arguments regarding the disruption industrial process. The Court underlined that when parties to the constitutional litigation indicate facts as grounds for unconstitutionality of normative regulation they are expected to represent reliable and relevant evidences to support their arguments. There was no evidence indicating that installed marking devices disrupted industrial process beyond the ordinary, expected level.

Therefore, the Constitutional Court considered the disputed provisions in compliance with the right to property and the right to free enterprise recognized by the Constitution of Georgia.

**CITIZEN OF GEORGIA NANA PARCHUKASHVILI V. THE MINISTER OF JUSTICE OF GEORGIA
SPECIAL PENITENTIARY SERVICE**

On July 26, 2018 the Second Board of the Constitutional Court of Georgia rendered a judgement on the case №665/683 and partially upheld the constitutional complaint of citizen of Georgia, Nana Parchukashvili.

According to the disputed provision, in cases of strip searches, any accused or convicted person was obliged to fully or partially remove his/her clothing. The procedure was performed when leaving or entering a jail, solitary confinement and in other cases if a director or authorized officials decide to use that measure.

The complainant argued that undressing a person in front of a stranger, causes humiliation and abuse of human, thereby such kind of measure should be used only in extremely exceptional circumstances. The petitioner mentioned that forbidden things could be discovered by a scanner, so there was no necessity to use such a strict measure permanently. At the same time, the contested norm had blank character as persons arrested for minor offenses were also subjected to strip searches. The complainant also pointed out that director of penitentiary facility possessed too broad discretionary power and legislation was ineffective to prevent unnecessary and arbitrary searches. Therefore the disputed provision was in violation of articles 17.2 (prohibition of inhuman and degrading treatment and punishment), 16 (everyone's freedom to development their own personality) and 20.2 (right to respect for private life) of the Constitution of Georgia.

The respondent emphasised that that legitimate aim of the disputed provision was to preserve safety in prison, prevent commitment of criminal and unlawful acts, and protect life and health, also other's rights and liberties. The respondent noted that scanner could not be considered as alternative measure, as there are substances that can't be discovered by scanner.

The constitutional court stated that undressing a person for checking purposes does not a priori constitutes violation of article 17 of the Constitution of Georgia. But this measure should only be used in utterly exceptional conditions and in such a manner that will not cause inhuman and degrading treatment. The court emphasized that the disputed norms were suitable to achieve above mentioned legitimate aims and also the measure was necessary to achieve that aim. During the proceedings it was revealed that some forbidden substances (such as horsehair and paper), or inscriptions can't be discovered by a scanner.

The court declined the complainant's claim that persons arrested for minor offenses should not be subjected to strip searches and noted that danger of entering forbidden substances into jail, comes from any prisoner regardless of seriousness of crime he/she committed. Therefore requirement of strip searches in cases of solitary confinement or contacting outside world was constitutional.

The constitutional court noted that order №200 did not include clear guidelines for a director's discretionary power in context of using disputed measure; thereby there was high probability of arbitrary interference in constitutional rights. As a result, the disputed norm was

declared unconstitutional with respect to article 17.2 of the Constitution of Georgia. But taking into consideration that order №116 did contained such guarantees, it was not in violation of constitutional right to prohibition of inhuman and degrading treatment and punishment.

The court interpreted the formal requirement of article 20.2 of the Constitution of Georgia according to which any interference in the right to respect for private life would be justified if there is a court decision or urgent necessity provided for by law. The court stated that the purpose of the above mentioned formal requirement is to control discretionary power of executive government. In cases of specific legal relationships, where it's always necessary to interfere in right of private life, above mentioned formal requirement is not relevant anymore.

It was concluded that in penitentiary facilities there is a permanent necessity to interfere in the right of private life in the defined circumstances of instant case. Therefore there was no need to satisfy the formal requirement every time the disputed measure is used. At the same time, the fact that the formal requirement of article 20 of the Constitution of Georgia is not applicable in some specific relationships, does not mean that constitutionality of those provisions won't be assessed on merits.

CITIZENS OF GEORGIA – MARINE MIZANDARI, GIORGI CHITIDZE AND ANA JIKURIDZE V. THE PARLIAMENT OF GEORGIA

On July 27, 2018 the Second Board of the Constitutional court of Georgia partially upheld the constitutional complaint of citizens of Georgia and declared unconstitutional the regulation set out in article 30.8 of the "Law of Georgia on Cultural Heritage". The disputed provision excluded from governmental control cultural heritage objects owned that were under the ownership of religious organisations. In particular, the state organs had no authority to impose responsibility upon the religious confessions in case of their failure to take care of those cultural objects that were under their ownership (enjoyment), as well as state authorities could not take necessary measures to protect objects, without the consent of their owner.

The complainants argued that the state violated its positive obligation to protect cultural heritage, according to article 34.2 of the Constitution of Georgia. At the same time the disputed provision was in violation of right to equality (Article 14 of the Constitution of Georgia) as it exempts from duty of care requirements religious organizations but all the other owners of the cultural heritage objects are subject to legal responsibility in case they do not fulfill their obligations properly.

The respondent, the Parliament of Georgia, emphasized that the extension of the state's monument conservation regime to religious organizations would have seriously restricted their right to freely profess their belief, as owners of the cultural heritage objects that are used for religious purposes, would not be able to fully enjoy by using those objects for religious rituals. Therefore legitimate aim of the contested regulation was to ensure the free exercise of freedom of religion.

The Court noted that facilitating the realization of the freedom of religion represents a valid legitimate interest and as religious organizations are able to use cultural heritage objects for religious purposes without restrictions, the measure is suitable to achieve the aim.

Assessing the necessity of the measure to achieve the legitimate aim, the court indicated that the disputed provision excluded state control of cultural heritage objects in all circumstances without taking into account whether the necessary measures to protect cultural heritage interrupt the realization of religious rituals or not. At the same time the contested law applied to all kind of cultural heritage objects regardless of whether it's used for religious rituals or not. Consequently the provision was considered problematic due to its blank nature and it constituted an unnecessary measure in relation to the proclaimed legitimate objective. Therefore the constitutional court found the disputed norm to be in violation of article 34.2 of the Constitution of Georgia.

Additionally the court concluded that in order to promote realization of religious freedom, legislative branch may enact narrowly tailored regulation, but at the same time, above mentioned measure should be reasonable, considering the competing interests of different legitimate aims at hand.

Assessing the constitutionality of disputed regulation with respect to article 14 of the Constitution of Georgia (right to equality) the court emphasized that while establishing legal responsibility for an act, it should be taken into consideration whether the committed act is motivated by religious beliefs or not, in order to determine if comparable persons are substantially equal. In the instant case disputed regulation is not narrowly framed to religiously motivated acts, therefore comparable persons are substantially equal.

Because of the fact that ground for differentiation is not one of those indicated in article 14 of the constitution, also disputed provision does not interfere with the right at a high intensity, the court assessed differential treatment by the rational differentiation test. The constitutional court noted that the blank character of the disputed provision not only violates requirements of proportionality, but it's also unreasonable by its nature and does not satisfy the criteria of the rational differentiation test. Therefore the contested regulation was found unconstitutional with respect to article 14 of the Constitution of Georgia.

CITIZENS OF GEORGIA – ZURAB JAPARIDZE AND VAKHTANG MEGRELISHVILI V. THE PARLIAMENT OF GEORGIA

On 30 July 2018 the First Board of the Constitutional Court of Georgia rendered a judgment on the case “Citizens of Georgia – Zurab Japaridze and Vakhtang Megrelishvili v. the Parliament of Georgia” (constitutional complaint №1282).

The subject of the dispute was the constitutionality of normative content of the wording “or/and consumption without medical prescription” of section 1 of Article 45 of the Administrative Offences Code of Georgia which imposes punishment for consumption 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.

The complainants argued that the consumption of Marijuana does not threaten public order and can only be detrimental to one’s individual health. It was submitted that an individual should be allowed to consume Marijuana freely and bear the health risks on their own. Thus, applying sanction carry no valuable public interest.

The respondent, the Parliament of Georgia, contended that the disputed provision served the legitimate objective of protecting the well-being an individual and of the entire society, as well as ensuring the public order. It was further argued by the Parliament that the consumption of marijuana is detrimental to one’s health and there is a need to ensure the public, particularly adolescents, are protected.

The Constitutional Court emphasized that the consumption of marijuana is protected by the right to free development of one’s personality as guaranteed by the Article 16 of the Constitution of Georgia. When assessing the legitimate aim to protect social safety, the Constitutional Court noted that the Respondent party could not present persuasive information, trustworthy researches, which would demonstrate existence of inevitable correlation between consumption of Marijuana and increased number of violent crimes. The respondent party also opined that marijuana can act as a “gateway drug” leading to addiction to other, stronger narcotic substances. However, The Constitutional Court indicated that neither the Respondent nor experts examined at the hearing, presented trustworthy information, incontrovertible researches showing that there is correlation, or mostly, addiction to hard drugs is caused by Marijuana consumption and not other factors.

The Constitutional Court pointed out that restriction of consumption of marijuana serves the legitimate aim – protection of health. Assessing the legitimate aims to protect the health, the Court distinguished the dangers to health of a consumer of Marijuana and to health of society. Based on the information provided by experts, as well as other relevant materials presented on the hearing, the Court concluded that consumption of Marijuana carries potential threat to human health. At the same time mentioned danger (which marijuana might cause to its consumers) is lighter compared to the damage caused by consumption of other so-called hard drugs. With the level of damage caused to human health, consumption of Marijuana is also comparable to legally permitted substances (nicotine, alcohol).

The Constitutional Court noted that a ban on the consumption of Marijuana has an effect on illegal circulation of Marijuana and serves the legitimate goal of protecting the health of society. Nevertheless, the role of an individual consumer in the circulation of marijuana and threats emanating from an individual consumption are very minimal. The Court also emphasized that consumption of Marijuana does not involve risks of distribution, therefore causing the damage to health of others.

Therefore, the Constitutional Court found that mostly due to its blank character the disputed provision caused intense infringement upon the right to free development of personality, compared the minimum level of protection of health. The Court further noted that responsibility on consumption of Marijuana is in line with the Constitution, when under specific circumstances, an individual consumption of Marijuana poses threat to third persons, e.g. in educational facilities, public transport, in presence adolescents etc. The regulations may limit the age to consume and/or the place where it is allowed to make such consumption. Otherwise, the disputed provision prohibited Marijuana consumption in any situation. The Court did not find that the damages were of such gravity as to warrant an absolute ban on consumption.

Based on the above mentioned, since the disputed provision had a blank character the Constitutional Court of Georgia granted the constitutional complaint and the disputed provision declared unconstitutional.