

CASE NOTES OF THE CONSTITUTIONAL COURT OF GEORGIA

ABSTRACT

The Journal of Constitutional Law continues to offer the readers brief summaries of the latest significant cases resolved by the Constitutional Court of Georgia. For this Volume four judgments adopted by the Court within 2019 were selected for publication, some of which have had high resonance not only within Georgia, but globally in the legal field. The Journal hopes the notes will bring more interest towards the case-law of the Court and will motivate further discussions around its practice.

LLC SKS v. THE PARLIAMENT OF GEORGIA

On 18 April 2019, the First Chamber of the Constitutional Court of Georgia rendered a decision on the Case of “LLC SKS v. the Parliament of Georgia” (The Constitutional Complaint №655).

In this case, the subject of dispute was constitutionality of subparagraph “r” of Paragraph 3¹ of Article 1 of the law of Georgia “On Public Procurement” with respect to the first and second sentences of article 30(2) of the Constitution of Georgia, the edition that was in force as of December 16, 2018.

Pursuant to the disputed regulation, it was established that Law of Georgia “On Public Procurement” may not apply to the public procurement by a contracting authority of postal and courier services of the LLC Georgian Post.

According to the complainant, the disputed provision allowed public agencies to procure postal and courier services through direct contract from LLC Georgian Post. Therefore, it excluded the ability of other economic agents operating in the same market to participate in the state procurement process. Under the aforementioned circumstances LLC Georgian Post was granted the exclusive authority to provide postal and courier services and created a legal precondition for establishing it as a monopolist on the postal and courier service market. Given the above-mentioned argumentation, the complainant considered that the disputed regulation was contrary to the constitutional right of the entrepreneurship and the freedom of competition.

The Respondent, the representative of the Parliament of Georgia, explained that the measure envisaged by the impugned regulation served the legitimate aim of providing postal and courier services at an affordable price throughout the whole territory of Georgia. In line with the Respondent’s argument, the standards of postal and courier services provided by LLC Georgian Post was in accordance with qualitative and tariff requirements established by international

documents in this field. At the same time, under the disputed provision procuring entities had the right, not an obligation, to conclude a direct contract with LLC Georgian Post. Respectively, they were fully entitled to declare tender in which case economic agents operating in the postal and courier market would have the opportunity to participate in it. Based on provided arguments, the Respondent party considered that the disputed regulation was not in contradiction with the requirements of the Constitution of Georgia and constitutional complaint should not be upheld.

In the present judgment, the Constitutional Court of Georgia held that public agencies and other entities funded from the state budget had the ability to purchase postal and courier services solely from the LLC Georgian Post, by evasion of procedural requirements for public procurement so, as not to take into account the offers of other economic agents providing the same services. Under these conditions, the LLC Georgian Post was given a significant market advantage, as far as, unlike other economic agents operating on the same market, it had already served a significant number of guaranteed purchasers, in the form of public procurement organizations. Accordingly, the Constitutional Court of Georgia indicated that under the disputed regulation LLC Georgian Post was granted such benefit, through State resources on a selective basis, which improved its market position and created risks for freedom of entrepreneurship and competition. Thereby, it was established that the contested regulation restricted the constitutional right to freedom of entrepreneurship and competition.

The Constitutional Court of Georgia shared the position of the Parliament of Georgia and indicated that providing population with access to the postal and courier services throughout the whole territory of the country was an important legitimate aim. At the same time, The Constitutional Court of Georgia accepted the respondent's position that the delivery of postal and courier services in less populated and hardly accessible areas of the country may not be commercially attractive. Therefore, in order to ensure affordable prices for postal and courier services on the whole territory of the country, the interference in the relevant market would be justified *inter alia* by establishing a preferential treatment for the LLC Georgian Post. Nevertheless, the Constitutional Court of Georgia indicated that any such benefit granted to the LLC Georgian Post should be proportional to the services rendered.

Finally, the Constitutional Court of Georgia concluded that the Georgian legislation in the field of the public procurement failed (a) to clearly define the obligation of the LLC Georgian Post to provide postal and courier services with affordable price on the whole territory of the country; (b) to establish transparent and objective criteria for calculation of economic expenses necessary for providing postal and courier services with affordable price on the whole territory of the country; and, (c) to incorporate a mechanism that would prevent LLC Georgian Post from abusing their market power by receiving benefits, which exceed adequate commercial expenses and reasonable profit. In view of the above-mentioned arguments, the Constitutional Court of Georgia established that the disputed legal provision unduly restricted the freedom of entrepreneur-

ship and competition and contradicted first and second sentences of article 26(4) of the Constitution of Georgia.

Furthermore, the Constitutional Court of Georgia indicated that in case of an immediate invalidation of the impugned legal provision LLC Georgian Post would lose granted economic benefits. This may have hindered the process of providing postal and courier services throughout the whole territory of the country at an affordable price and may negatively affect on the interests of the postal and courier services customers. For this reason, the Constitutional Court granted the legislature, the Parliament of Georgia, with reasonable time to address the said regulatory non-compliance in line with the Constitution of Georgia by May 1, 2020, after which the disputed legal provision will be invalidated.

N(N)LE MEDIA DEVELOPMENT FOUNDATION AND N(N)LE INSTITUTE FOR DEVELOPMENT OF FREEDOM OF INFORMATION V. THE PARLIAMENT OF GEORGIA

On 7 June 2019 the First Chamber of the Constitutional Court of Georgia adopted the judgment in the case of “N(N)LE Media Development Foundation” and “N(N)LE Institute For Development of Freedom of Information” v. Parliament of Georgia (Constitutional complaints N693 and N857). Constitutionality of the several provisions of the Administrative Code of Georgia and Law of Georgia “On Personal Data Protection” were challenged.¹ Disputed norms regulated granting freedom of information (FOI) request regarding the public information, which contained personal data. The disputed provisions restricted the disclosure of any type of personal data in response to public information requests. If the personal data fell under the special category disclosure or granting access of that data as FOI was prohibited under any circumstances without the consent of the data subject.

According to the complainants, accessing the full text of the judgments (without depersonalization of the text) of the court is vital for judicial transparency and it is protected by the right to access the public information. Plaintiffs indicated that based on the disputed provision they were unable to acquire full text of the judicial acts adopted by common courts of Georgia after open/public hearing. Namely, courts refused to disclose judicial acts to protect personal data in it on the one hand and if the act was requested in redacted form, they indicated that it was unable to depersonalize the requested document and they did not grant the requests. Complainants claimed that such regulation contradicted the right to access the information stored in public institutions (Article 18, Section 2 of the Constitution of Georgia).

¹ Disputed provisions within the N693 constitutional complaint – article 44 (1) of the Administrative Code of Georgia (effective until 16 December 2018) and article 6(3) of the Law of Georgia “on personal data protection with respect to article 41(1) of the constitution of Georgia (effective until 16 December 2018).

Disputed provisions within the N857 constitutional complaint – article 28(1) and 44 (1) of the Administrative Code of Georgia (effective until 16 December 2018) and articles 5, 6(1) and 6(3) of the Law of Georgia “on personal data protection with respect to article 41(1) of the constitution of Georgia (effective until 16 December 2018).

The respondent disagreed with the plaintiffs' positions. Representative of the Parliament of Georgia argued that the disputed provisions existed to protect the personal data of the parties and other participants to the cases. The respondent indicated that, legislation allowed disclosure of the personal data within the document and the balance of interests was protected. The parliament of Georgia claimed that personal data under the special category was extremely sensitive and prohibition to disclose such information without the consent of the data subject was justified. Consequently, the respondent concluded that the disputed provisions were in accordance with the requirements of the Constitution of Georgia.

The Constitutional Court of Georgia acknowledged that article 18(2) of the Constitution of Georgia allowed the members of the society to be informed on the issues it deemed to be important and to engage consideration and implementation of these issues in active and effective manner. It is the aim of the right to access information that exist in public institution to facilitate public control and to engage society in decision making process. The Constitutional Court indicated that the disputed provisions regulated general issues regarding public information that contained personal data and the scope of the norms cover every type information and they were binding to any public institution. Considering the constitutional claim, The Constitutional Court reviewed the constitutionality of the disputed norms only in relation to the accessibility of the judicial acts delivered within the scope of an open hearing by the Common Courts of Georgia.

The Constitutional Court acknowledged that the freedom to access judicial acts were protected by the right to receive information from public institutions. The Court stated that the disputed provisions restricted access to judicial acts that contained personal data and if depersonalization was not possible, the respective act was not disclosed. Therefore, the provision constituted a restriction to the right protected by the article 18(2) of the Constitution of Georgia.

The Constitutional Court agreed to the respondent party's position and declared that the legitimate aim of the disputed provisions was the protection of personal data. In addition, disclosing personal data during the open court hearing has an instant effect whereas disclosing the same information in response of the requests increases the publicity level and in certain circumstances, it may restrict right to privacy more intensively in comparison to open court hearing. Therefore, the Constitutional Court did not exclude the interest of data subject to prevent the further spread of instantly revealed information and the Court considered the disputed provisions to be adequate/suitable for achieving legitimate aim.

On necessity stage, the Constitutional Court discussed the will of personal data subject to keep his/her personal data confidential. The Court interpreted, that the legislation does not contain flexible measures ensuring the right of an adult person with full legal capacity to waive his right on personal data protection within the scope of the respective judicial act. The law required consent of the data subject every single time, but the identity of the data subject is usually unknown for the person seeking the copy of the judgment. According to the assessment of the Constitutional Court within the existing legal framework it was almost impossible to gain access to the full texts of the judicial acts even if data subjects had no interest to protect their personal

data or wished their case to be publicly accessible. The Constitutional Court interpreted that such regulation was not pursuant to the necessity requirement as it restricted the right of access to information in the public institution excessively and such extreme measures were not necessary for achieving the legitimate aim.

According to the Constitutional Court, data subject having an interest in keeping his/her personal data confidential, does not automatically provide a ground for restricting the accessibility thereof. The Constitutional Court indicated that, under such circumstances, there was a collision between two competing constitutional rights, and it established the balance between competing interests on proportionality (*stricto sensu*) stage.

The Constitutional Court acknowledged that the interest of accessibility of the information stored in the public institutions varies and there might exist superior public interest of transparency toward certain category of public information. The Court named judicial transparency to be the first interest of accessibility of the common court judgments. The Court indicated that the Constitution of Georgia considers judicial transparency amongst matters of special importance as the Constitution regards transparency to be the principle for exercising judicial power. The Court noted that public trust is the vital source for legitimacy of the judiciary and it could not be ensured without transparency.

The Court emphasized that public oversight on exercising judicial power and on judicial acts in particular had vital importance in a democratic society. In this manner, every individual enjoys possibility to carry out public control of the judicial system. People shall have opportunity to evaluate every judicial act and place every judgment, order or interpretation under wide public scrutiny. The Court noted that in certain circumstances it is impossible to fully evaluate judicial acts in order to find out whether it is objective or biased and prejudiced without the full text of the judgments including personal data within.

The Constitutional Court acknowledged that the judicial transparency is a part of fair trial and legal safety. The Court stated that every person shall have the right to inform the society about his/her own case and place it under public scrutiny. In addition, legislation gains its real effect upon applying and interpreting its provisions by the judiciary. Judiciary is a part of the constitutional architecture of governmental institutions, which makes final statement regarding the interpretation and applicability of the law. Thus, accessibility of judicial decisions ensures the opportunity of individuals to know the content of the law, how specific provisions are applied by the courts and what a normative regulation requires from them.

Based on mentioned arguments the Constitutional Court considered that there was superior public interest toward accessibility of the judicial acts.

The Constitutional Court underlined the relevance of the personal data protection and noted that confidentiality of personal data aims to ensure protection of one's private life. Level of protection varies by the importance of the information and its potential to negatively influence one's private life. Higher potential of negative influence and consequently higher guarantees for con-

fidentiality might be caused by the category of the data, also circumstances accompanied to accessing and disclosing of such information and other relevant factors.

The Constitutional Court emphasized that the disputed norms restricted access to the judicial acts delivered within the scope of an open/public hearing by the Common Courts of Georgia. The Court assessed that confidentiality level of personal data in such acts is usually low and it shall not outweigh the superior public interest toward the accessibility of the judicial acts. The Court interpreted that covering personal data in judicial act after public hearing could be justified but decision-maker shall assess whether personal data protection prevails over high constitutional interest of the accessibility of the judicial acts.

The Court indicated that, the disputed norms established the default balance in favor of the personal data protection and such legislative approach contradicted the order of the constitutional values established by the basic law. The Court noted that the disputed norms undermined the public oversight and trust toward judiciary. According to the judgment, in many cases it is impossible to demonstrate and reason high public interest toward a case without accessing the personal data in it. Necessity for such reasoning every time an interested party requests a judicial act excludes effective public oversight and the possibility of accidental (untargeted) public control for exposing possible shortcomings, biased tendencies or selective justice. According to the assessment of the Constitutional Court, restriction imposed by the disputed norms is extremely intensive when common courts refused to grant the access to judicial act at all if the depersonalization was not possible. According to judgment under consideration, such regulation not only excludes untargeted public control but also disregards the requirements of legal safety as society is refused to have access to legal reasoning and authoritative interpretations of the existing legislation.

The Constitutional Court also ascertained that there may be circumstances which require to reverse balance in favor of personal data protection when disclosure of the data has intensive negative influence of one's privacy considering the content and subject of the data, time and form of exposure and other conditions. To demonstrate such exceptional circumstances the Court invoked the interests of minors and intimate issues. However, the Court noted that if such exceptional need for privacy is challenged by outstanding public interest toward the case there should exist legislative measure to disclose the respective judicial act.

Based on represented reasoning, the Constitutional Court ruled that the disputed provisions established unconstitutional balance toward personal data protection with respect to the right to access the information kept in public institutions and it caused the breach of article 18(2) of the Constitution of Georgia. In addition, the Court noted that enforcing its judgment immediately would cause legislative absence. Namely, there would not be any legislative ground for denying freedom of information requests for protecting the personal data within the judicial acts and that could cause the violation of the right to privacy. In addition, to ensure necessity of the restriction establishing flexible legislative means for persons with full legal capacity in ongoing as well as finalized court proceedings to ensure that possibility to restrict the right to access judicial deci-

sion will only be available if data subject expresses will to protect his/her personal data. Therefore, the Constitutional Court postponed invalidating the disputed provisions until May 2020.

THE PUBLIC DEFENDER OF GEORGIA V. THE PARLIAMENT OF GEORGIA

On 2 August 2019 the Constitutional Court of Georgia adopted the judgment in the case of “The Public Defender of Georgia v. the Parliament of Georgia” (the Constitutional complaint №770). The subject of the dispute was the constitutionality of the wording “if the application of this measure is considered insufficient after taking into account the circumstances of the case and the person of the offender – administrative detention for up to 15 days” of section 2 of Article 45 of the Administrative Offences Code of Georgia (version of provision that was in force until 28 July, 2017) and the wording “or by imprisonment for up to one year” of Article 273 of the Criminal Code of Georgia (version of provision that was in force until 28 July, 2017) with regard to paragraph 1 and 2 of Article 17 of the Constitution of Georgia (version of the provision that was in force until 16 December, 2018).

The Public Defender of Georgia claimed that the sanctions of administrative detention and imprisonment, respectively, for illegal production, purchase, storage and/or use without a doctor's prescription of a narcotic drug, its analogue or a precursor in small quantity contradicted the Constitution of Georgia. The complainant indicated that according to the disputed norms prison sentence was equally applicable for illegal use of soft and hard narcotic drugs. Furthermore, in some cases, the punishable quantity of narcotic drugs was so small that the public threat derived from this action could not justify the prison sentence. The complainant further stated that the main purpose of above-mentioned sanctions was repression and general prevention of prohibited action. The complainant thereby considered the sanctions of administrative detention and imprisonment, as established by the disputed norms, were clearly disproportional punishment.

The respondent indicated the protection of public health, prevention of distribution of drugs and drug addiction as legitimate aims of the disputed law. Further, the respondent emphasized that the law in question prescribed alternative sanctions, which allowed courts and law enforcement bodies to take into account the factual circumstances of the case and interpret the law in each individual case.

In the present case, the Constitutional Court had to assess, in general, the constitutionality of the sanctions of administrative detention and imprisonment for illegal production, purchase, storage and/or use without a doctor's prescription of a narcotic drug, its analogue or a precursor in small quantity. The Constitutional Court explained that the subject of disputed norms included multiple type of narcotic substances, which had various effects and contained different degree of threat for society. Further, “small quantity”, indicated in the impugned norms, may have been quantity enough for a single use or quantity that exceed the amount of one-time use. Therefore, the Constitutional Court assessed separately, on the one hand, the punishment for production,

purchase, storage of a narcotic drug, its analogue or a precursor for a clearly personal use (quantity enough for a single use) and, on the other hand, production, purchase and storage thereof that exceeds the amount of a single-use.

The Constitutional Court noted that every person who was involved in illegal turnover of drugs (drug users, manufacturers, retailers, etc.), to some extent, contributed to illicit traffic of prohibited substances and created a “market demand”. Illegal turnover of narcotic drugs was a threat to public health and safety and preventing these threats was legitimate aim of the disputed norms.

The Constitutional Court drew the distinction between criminalisation of illegal production, purchase, storage and/or use without a doctor's prescription of narcotic drugs, which cause rapid addiction and/or aggressive behaviour and prohibited substances which did not have mentioned side effects. The Constitutional Court stated that the potential risk of violation of public order is carried by the illegal use of only those prohibited substances, which established a state of abstinence, caused fast addiction, aggressive behaviour or high risk of committing crime. Accordingly, the Constitutional Court noted that the sanctions of administrative detention and imprisonment for illegal production, purchase, storage and/or use without a doctor's prescription of a narcotic drug for clearly personal use that do not cause fast addiction and/or aggressive behaviour in their user did not serve the legitimate aim of protection of public order and security and it was limited only by the protection of public health.

The Constitutional Court explained, that the sanction for illegal production, purchase, storage and/or use without a doctor's prescription of narcotic drugs for personal use had deterrent and preventive effects and was reducing illegal turnover of prohibited substances. Therefore, the impugned provisions protected the health of a consumer of narcotic drug and the health of the entire society. Regarding these legitimate aims, the Constitutional Court stated that imposition of punishment to prevent an adult person from harming his or her own health was the form of paternalism demonstrated by the state, which was not compatible with the free society and contradicted the requirements of the Constitution. In relation to protection of public health, the Constitutional court pointed out that the importance of an individual drug user in the process of illegal turnover of prohibited substances was insignificant and by this reason, using prison sentence for drug users had non-essential consequences for reducing illicit traffic. The Constitutional Court further explained that production, purchase, storage of a narcotic drug for personal/single-use generated minimal, hypothetic risk of its distribution and the danger of public health emanating from this action was significantly low. Taking the above arguments into account, the Court concluded that the sanctions of administrative detention and imprisonment for production, purchase, storage of a narcotic drug for personal/single-use (prohibited substances which did not cause fast addiction and/or aggressive behaviour in their user) was clearly disproportional punishment and contradicted the Constitution.

The Constitutional Court separately addressed the constitutionality of applying imprisonment for narcotic substances which cause fast addiction and/or aggressive behaviour in their user and pointed out, that even a single use of these types of drugs, as well as, production, purchase or

storage for a clearly personal use contained a high risk of violating public order and safety. According to the Constitutional Court, being under the influence of such drugs or in the condition of abstinence, increased the risks of committing a crime and/or violating public order. Therefore, the Constitutional Court concluded that applying the sanctions of administrative detention and imprisonment was justified for the prevention of the above-mentioned threats.

Furthermore, the Constitutional Court found a prison sentence for production, purchase, storage of drugs that exceed the amount of one-time use constitutional. The Constitutional Court indicated that production, purchase, storage of narcotic substance exceeding the amount of single use did not necessarily refer to the purpose of distribution. Nevertheless, along with an increase in the amount of drug public (including, adolescents) access to narcotic substances rises, which, consequently, increases the illegal circulation of drugs. According to all the above mentioned, the Constitutional court concluded that production, purchase, storage of drugs that exceed the amount of one-time use contained significant threat for the society and applying the sanctions of administrative detention and imprisonment for this action could not be considered as an apparent disproportional punishment.

ALEXANDRE MDZINARASHVILI V. THE GEORGIAN NATIONAL COMMUNICATIONS COMMISSION

On 2 August 2019, the Constitutional Court of Georgia adopted the judgment in the case of “Alexandre Mdzinarashvili v. the Georgian National Communications Commission” (constitutional complaint №1275). The subject of dispute in this case were the norms of the regulation adopted by the Ordinance №3 of March 17 of 2006 of the Georgian National Communications Commission on Providing Services and Protection of Users’ Rights in the Field of Electronic Communications. On the one hand, the disputed provisions established the obligation of the internet domain issuer to block the website in order to prevent dissemination of inadmissible products and, on the other hand, it gave the service supplier the opportunity to adopt appropriate measures in order to prevent dissemination of the message containing inadmissible products via network (according to the disputed Resolution, inadmissible products encompassed products depicting particularly severe forms of hatred and violence, degrading the personal life, also products that were defamatory, abusive, violating the presumption of innocence and inaccurate).²

According to the complainant’s position, the contested Resolution of the National Communications Commission itself defined the notion of inadmissible products and regulated the issues

² The subject of the dispute fully: Constitutionality with regard to Article 24(1) of the Constitution of Georgia (version in force until December 16, 2018) of Article 10³ (2)(b), Article 25(4)(g) and Article 25(5)(b) of the regulation adopted by the Ordinance №3 of March 17 of 2006 of the Georgian National Communications Commission on Providing Services and Protection of Users’ Rights in the Field of Electronic Communications.

related to the prohibition of the dissemination of such products. As explained by the complainant, interference with freedom of expression by the disputed norms was carried out without delegation of powers. The restriction instead of the law, was based on the Resolution of the Georgian National Communications Commission. Complainant considered that it was formally in contradiction with the constitutional requirements.

The respondent, the Georgian National Communications Commission, emphasized that disputed provisions did not violate the formal requirement of the Constitution to restrict freedom of expression. In particular, the respondent indicated that the authority had been delegated to the National Communications Commission by the relevant provisions of the law on Electronic Communications and the law on National Regulatory Bodies and based on this delegation, the Georgian National Communications Commission was given the authority to draft legal acts on any matter that would be aimed at protecting users' rights in the field of electronic communications.

According to the Constitutional Court of Georgia, freedom of expression protects the right to freely receive and disseminate opinion/information, which includes the exchange of information in a desirable manner and means, without any content filtering. Based on the disputed norms, the Georgian National Communications Commission prohibited the transmission of messages depicting particularly severe forms of hatred and violence, degrading the personal life, defamatory, abusive, violating the presumption of innocence or inaccurate. In the Court's view, regulating the issue in such a manner meant the content regulation of expression and the restriction of the dissemination of opinion/information because of its content, which constituted one of the most severe forms of interference in this right.

According to the Constitutional Court, freedom of expression is not an absolute right and the Constitution of Georgia allows its restriction. The Court indicated that the constitutional norm establishing freedom of expression requires that the restriction of this right be allowed only in accordance with law. Failure to comply with the aforementioned formal requirement, despite the content of the regulation, leads to the unconstitutional restriction of the fundamental right.

The Constitutional Court elucidated that the constitutional guarantees for the restriction of the fundamental right by the law serve the realization of the principle of separation of powers, thereby avoiding the risk of concentration and abuse of state power. At the same time, such an order additionally ensures that the right is restricted only by the decision of state authority which is the highest representative body with the proper legitimacy granted by the people. The Parliament of Georgia is the constitutional body that resolves the issues based on a transparent legislative process, as a result of political debates and in this way, creates an additional filter to reduce the risks of unjustified interference in the right.

However, the Court considered that the formal requirement of the Constitution does not imply that the right can be restricted only by the Parliament of Georgia. In some cases, the Parliament of Georgia is authorized to delegate the competence of the regulation of some issues to another

state body, as the imposing of obligation to regulate on all issues related to the restriction of the rights on the Parliament of Georgia may paralyze legislative authority and delay the legislative process. The mechanism of the delegation of power greatly simplifies the law-making process and gives the legislature the ability to make decisions on principal political-legal issues, while passing the details necessary for their implementation to other state bodies.

According to the Constitutional Court, the delegation of powers by the Parliament may violate the Constitution in cases where delegation is expressly prohibited by the Constitution of Georgia and/or when it is determined that by delegation of certain powers the Parliament of Georgia refuses to exercise its constitutional authority. The Court considered that this occurs, for example, when the Parliament of Georgia delegates a fundamentally important part of its power.

According to the Constitutional Court, by the disputed regulation, the Georgian National Communications Commission determined what type of opinion and information is inadmissible. Accordingly, the content regulation of expression was established, which implies a restriction of the dissemination of opinion/information due to its content. The Constitutional Court noted that freedom of expression is a fundamental and functional element of a democratic society. It forms the necessary foundation for the development of society and for the protection of human rights. The equal and full enjoyment of this right determines the degree of openness and democracy of society. Thus, the content regulation of freedom of expression and determination of its aspects is the issue of high political and public interest. Therefore, according to the Court, the determination of this issue was a fundamentally important power of the Parliament of Georgia and delegation of this power to the Georgian National Communications Commission was inadmissible. Consequently, even if there was a legislative provision delegating the power of content regulation of freedom of expression, such a will of the Parliament would be unconstitutional.

At the same time, the Court indicated that the impugned provisions beyond the content regulation of expression also regulated the procedure for technical enforcement of the restraint establishing the content regulation. The Constitutional Court noted that the Constitution of Georgia does not exclude the power of Parliament of Georgia to delegate to another state body the authority to adopt the regulation of technical, content-related issues related to the restriction of freedom of expression. However, based on an analysis of the relevant legislative norms, the Court found that the Parliament of Georgia had not delegated the power to the Georgian National Communications Commission to regulate freedom of expression regarding the disputed matter.

In view of the foregoing, the Constitutional Court of Georgia held that the formal requirements for the restriction of freedom of expression had not been complied with. Therefore, the disputed provisions were found unconstitutional with respect to the first sentence of Article 17(1) and Article 17(2) of the Constitution of Georgia.